

**SCOTTISH CIVIL JUSTICE COUNCIL
FAMILY LAW COMMITTEE**

MINUTES

PARLIAMENT HOUSE, MONDAY 27 OCTOBER 2014

Members present: Lord Brailsford, Chair
Sheriff Principal Stephen
Lynda Brabender, Advocate
Stephen Brand, Solicitor
Catriona Whyte, Solicitor, Scottish Legal Aid Board
Professor Margaret Ross, Head of the College of Arts
and Social Sciences, Aberdeen University
Robert Marshall, Head of Care and Justice, Children
and Families Directorate, Scottish Government

In attendance: Gillian Prentice, Deputy Principal Clerk of Session
Mandy Williams, Policy and Legislation Branch,
Scottish Court Service
Roddy Flinn, Secretary of Scottish Civil Justice Council
Sheriff Cubie, Deputy Director, Judicial Institute
John Thomson, Deputy Legal Secretary to the Lord
President
Anne Hampson, Policy Officer, Scottish Civil Justice
Council

Apologies: Sheriff McCulloch
Clair McLachlan, Solicitor

Item 1: Introduction, welcome, private papers and apologies

1. The Chair welcomed those present and noted apologies.
2. The Chair introduced:
 - Sheriff Cubie, Deputy Director of the Judicial Institute and noted that Sheriff Cubie would provide the Committee with an oral update under

Agenda Item 3 on a training course on “Case Management” which the Judicial Institute will be offering to judicial office holders; and

- Roddy Flinn, Secretary to the Scottish Civil Justice Council who would speak to Agenda Item 5.2 on Case Management in Family Actions.
3. The Chair invited Sheriff Cubie to attend the full meeting as Agenda Items 5.1 and 5.2 were also in relation to case management. Sheriff Cubie indicated that he would like to remain for the rest of the meeting.
 4. **The Committee agreed not to publish the following papers: 5.1, 5.1A, 5.2, 5.3, 5.4, 5.4A and 5.5.**

Item 2: Minutes of Meetings [Paper 2.1]

5. **The Committee approved the minutes of the previous meeting.**

Item 3: The Judicial Institute for Scotland

Item 3.1: Case Management training course [Oral]

6. Sheriff Cubie advised members that a Newsletter from the Judicial Institute (JI) will be posted on the Judicial Hub as a means of drawing the attention of the judiciary to new and amended rules of court. He explained that there was a perception that case management rules are underutilised perhaps, in part, due to the lack of legal aid for these cases. The lack of sanctions for not utilising case management is also perceived as an issue. There are culture issues to overcome and part of the function of the JI is to give judicial holders the confidence to intervene where that is necessary.
7. Sheriff Cubie explained that the JI intends to hold a Family Law and Mediation Course in March 2015. Lord Brailsford will speak about the work of the SCJC and Sheriff Sheehan will have input in relation to case management and adoption. Sheriff Cubie then invited questions from the Committee.
8. **Discussion followed and members asked the following questions:**
 - **Is this training compulsory? - A. It is not compulsory as this may devalue, to some extent, the educational benefit.**
 - **Is there a difficulty in case management in party litigant cases? – A. No but JI is conscious of the need for training on dealing with these cases.**

Item 4: Forward work programme

Item 4.1 Work Tracker [Paper 4.1]

9. The Committee noted the work tracker.

Item 4.3 Role of the FLC

10. The Chair advised that he had considered with Secretariat possible areas for discussion. He explained that there is no range of knowledge about how case management is working in sheriff courts and that there was a resource available which could enable research to be commissioned to gather empirical and statistical data on this. The Chair indicated that this led neatly onto the next two Agenda Items.

Item 5: Secondary Legislation

Item 5.1 – Sheriff Court Chapter 33AA Rules [Papers 5.1 and 5.1A]

11. The SCJC agreed at its 29 September meeting that there appeared to be a lack of uniformity in the application of Chapter 33AA OCR and that the matter should be remitted to the FLC for consideration as an urgent priority. **Paper 5.1** provided members with proposals and sought their views, on how work on reviewing how effectively Chapter 33AA OCR is operating could be taken forward.

12. The Committee discussed the paper and indicated that it would be helpful to look at it alongside Agenda Item 5.2.

Item 5.2 – Case Management of Family Actions [Paper 5.2]

13. **Paper 5.2** invited members to consider whether there was merit in considering, in parallel to the proposals at **Paper 5.1**, the operation of case management in sheriff court family actions more generally.

14. Roddy Flinn spoke to the content of **Paper 5.2** and explained that there was a concern that the efficient management of family actions was ‘patchy’ across the sheriff court system and that it would be helpful to know if this is correct. He invited the Committee to consider what information is required on the operation of case management in family actions to evidence whether case management is operating, and in how consistent a manner, across the courts. Roddy suggested that research could be

undertaken in two stages - stage one gathering raw data and stage two seeking more subjective information.

- 15. Following discussion around the proposals in Papers 5.1 and 5.2 members agreed that Secretariat develop a research brief for the ingathering of statistical information and circulate it to members for consideration. They also agreed that consideration should be given to consolidating the research proposals outlined in Papers 5.1 and 5.2.**

Item 5.3 – Child Welfare Reporters [Papers 5.3 and 5.3A]

16. The Committee considered **Paper 5.3**, which included illustrative draft rules of court, and invited the members to consider the Scottish Government's proposals for changes to rules of court relating to the appointment of bar reporters [**Paper 5.3A**] alongside the draft rules.

17. John Thomson spoke to the content of **Papers 5.3 and 5.3A** and invited the Committee to discuss the issues raised in Paper 5.3 and to comment on the draft illustrative rules, in particular, in relation to:

- the reporter's powers;
- the appointing interlocutor;
- submission of the report; and
- appointment of Local Authorities.

- 18. Following discussion around the draft illustrative provisions the Committee indicated that it was content that revised draft rules be prepared for consideration at the next FLC meeting. Members also agreed that the revised draft rules should be shared with the Bar Reporters Working Group and that the Deputy Legal Secretary should discuss the provisions with Sheriff McCulloch.**

Item 5.4 – Sheriff Court Adoption Rules [Papers 5.4, 5.4A and 5.4B]

19. The Committee considered a Scottish Government policy paper [**Paper 5.4B**] relating to the intimation of reports prepared for the court by a children's hearing under section 95 of the Adoption and Children (Scotland) Act 2007. The Government's policy is that when, in consequence of a non-disclosure determination, any person has been sent a redacted version of the report by the Reporter, the court should be required to consider whether that person should also be given a redacted copy by the court under rule 51 of the Sheriff Court Adoption Rules. It was proposed that this should be achieved through reciprocal

amendments to the Children's Hearings Rules (to be effected by Scottish Ministers), and to the Sheriff Court Adoption Rules (by Act of Sederunt).

20. John Thomson spoke to the content of **Papers 5.4, 5.4A and 5.4B** and invited the Committee to consider whether it was content that the 2009 rules should be amended to give effect to the Scottish Government's policy and to consider and comment on the draft Act of Sederunt at **Paper 5.4A**.
- 21. Following discussion, the Committee indicated that it was content that the draft Act of Sederunt be submitted for consideration by the SCJC at its meeting on 24 November.**

Item 5.5 – Appeals under section 44A of the Criminal Procedure (Scotland) Act 1995
[Papers 5.5 and 5.5A]

22. The Committee considered a Scottish Government policy paper **[Paper 5.5]** which seeks amendments to the Act of Sederunt (Child Care and Maintenance Rules) 1997 to make provision for appeals under the new section 44A of the Criminal Procedure (Scotland) Act 1995 (the 1995 Act) as inserted by section 91 of the Children and Young People (Scotland) Act 2014.
23. John Thomson spoke to the content of **Papers 5.5 and 5.5A** and indicated that before draft rules are drawn up it will be necessary to have sight of the Scottish Government's draft regulations which it proposes to make under section 44A(5) of the 1995 Act to make further provision about appeals to reflect, as far as possible, the appeal rights in Children's Hearings (Scotland) Act 2011.
- 24. Following discussion, members indicated that they were content that the Child Care and Maintenance Rules should provide for section 44A appeals and that, following further engagement with Scottish Government officials to identify the clearest approach to this, draft rules should be drawn up for consideration at a future FLC meeting.**

Item 6: A.O.C.B.

25. 'Family Law': Robert Marshall indicated that current policy on 'Family Law' lies in different parts of Government. This was not always satisfactory, and was sometimes unhelpful to stakeholders. Going forward he and Jan Marshall would jointly lead across this area. In due course it was hoped they would lead on the development of a strategy in respect of Family Law.

Item 7: Date of next meeting

26. The next meeting date is to be circulated to members in November but is likely to be scheduled for late January/ February 2015.

SCJC Secretariat
November 2014