

NOTE OF DISCUSSION ON MEETING PAPERS

MONDAY 06 FEBRUARY 2017 AT 4.30 PM
JUDGES' CONFERENCE ROOM, PARLIAMENT HOUSE

Members Present: Lord Tyre (Chair)
Sheriff Principal Murray
Craig McCorkindale (Director for Civil Courts Reform, Scottish Courts and Tribunal Service)
Gavin MacColl (Advocate)
Tony Jones (Solicitor)
Claire Taylor (Director of IT, Scottish Courts and Tribunal Service) – papers member

In attendance: Jane MacDonald (Head of Legislation Implementation Team, Scottish Courts and Tribunals Service)
Willie Cowan (Deputy Director Criminal Justice Division, Scottish Government)
Grace Moyles (McNeill and Cadzow) (for Item 4.1)
Kevin Wickstead (McNeill and Cadzow) (for Item 4.1)

Support: Edward McHugh (Deputy Legal Secretary, Lord President's Private Office)
Julie Davidson (Deputy Legal Secretary, Rules Rewrite Drafting Team)
David Ross (Policy Officer, Scottish Civil Justice Council)

Apologies: Lord Woolman
Graeme Hill (Director of Corporate Services and Accounts, Scottish Legal Aid Board)

Absent: Sheriff Murphy
Yvonne Anderson (Depute in Charge of Offices of Court, Court of Session)

Quorum

1. This Committee meeting was not quorate under the Scottish Civil Justice Council Standing Orders.
2. Standing Order 4.12 provides *“The quorum of a committee meeting is one in excess of half the membership, and this must include, subject to rule 4.11, the Chair. However, when not quorate the members present may decide to proceed with a meeting at which items on the agenda are considered and any recommendations*

reached are put to the next committee meeting for decision if time allows or otherwise are put to the SCJC for decision, with a clear statement that the meeting had not been quorate”.

3. At this meeting, five out of nine committee members were present.

The members present agreed to proceed with the meeting and to discuss the items on the agenda, on the understanding that this note of discussions on the papers will be put to Committee members by correspondence for formal decisions to be made.

Item 1: Welcome, apologies and agreement of private papers

4. The Chair welcomed all those present. Apologies were noted from Lord Woolman and Graeme Hill. Sheriff Murphy and Yvonne Anderson were absent.

5. The Chair welcomed Sheriff Principal Murray and Claire Taylor to their first meeting. The Chair informed the members present that Claire Taylor’s appointment to the Committee as the alternative SCTS member in place of Richard Maconachie was approved by the Council on 23 January 2017.

6. The Chair welcomed Willie Cowan, who was attending as Scottish Government representative in place of Stuart Duncan. The Chair informed the members present that Stuart Duncan has moved to a different role within Scottish Government and has left the Committee. The Chair expressed thanks for Stuart Duncan’s contribution to the Committee.

7. **Members present agreed not to publish the following papers: 4.2, 4.2A, 5.1, 5.1A.**

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

8. It was proposed that the list of attendees in the previous minutes should be amended to show Jane MacDonald as being in attendance, rather than being among the members present.

9. **Members present approved the minutes of the previous meeting subject to the agreed amendment.**

Item 3: Work Programme

Item 3.1 – Scottish Government update on the Justice Digital Strategy (Oral)

10. Willie Cowan provided the members present with an update regarding the ongoing digital work in civil justice. He advised that discovery work is underway in relation to two main areas: civil transformation and digital civil resolution. The first area concerns assessing the scope of the online digital tools and systems required in order to achieve digitisation of civil justice. The second area focusses on identifying what information should be made available online via the mygov.scot portal, in order to provide assistance and advice for dealing with disputes without going to court.

Item 3.2 – SCTS update on the ICMS Project (Oral)

11. Craig McCorkindale provided the members present with an update on the Integrated Case Management System (ICMS) project and discussion took place about the roll-out of the system. Craig advised that ICMS was launched in the Sheriff Court on 31 October 2016. It was subsequently updated for the commencement of Simple Procedure on 28 November 2016. Work continues to develop ICMS in three key areas: for roll-out in the Court of Session; for the launch of the online portal; and for the commencement of Simple Procedure Special Claims. Regular enhancements to the system's functionality are being made. Sheriff Principal Murray expressed concerns about the roll out and implementation of ICMS; particularly the number of bug fixes which had been required and were still to be resolved; and the decision to postpone the introduction of ICMS to the Court of Session and the launch of the Portal. It was noted that an interim lessons learned review was ongoing and its report was awaited by the SCTS.

Item 4: Justice system reform: Rules rewrite

Item 4.1 – Electronic presentation of documents – demonstration by McNeill & Cadzow (Oral and Papers 4.1 and 4.1A-B)

12. Grace Moyles and Kevin Wickstead of McNeill and Cadzow provided a demonstration of the electronic presentation of court documents. In particular, they demonstrated how a court process can be converted to a single electronic PDF file, which is fully searchable and navigable and can include hyperlinks to relevant sections within the document. Discussion took place regarding the use of such documents in court, and how they might best be displayed for witnesses and parties.

13. **Members present noted the presentation.**

Item 4.2 – Rules Rewrite Discussion Paper – ICT in the Civil Courts (Papers 4.2 and 4.2A)

14. Julie Davidson provided an overview of **Paper 4.2A** and advised that it seeks to assist the Committee to make a set of informed decisions of principle about

general matters relating to the use of ICT in the courts. These decisions are intended to help inform the structure of new civil procedure rules relating to the use of ICT.

15. Members present discussed **Paper 4.2A** in detail, and agreed a number of points of principle regarding the use of ICT in the civil courts.

- **Members present agreed that increasing use of the Civil Online portal should be carried out with a view to the ultimate, long term aim of developing an online court.**
- **Members present agreed that the specific features of the Civil Online portal which should be developed should include the facility to lodge documents online and to adjust/amend pleadings online. Members present noted that they would require to consider the technical aspects in detail at a later stage.**
- **Members present were of the view that the question of whether digital evidence and witness statements should be used was outside the remit of the Committee, and therefore agreed not to comment on the use of pre-recorded digital evidence and witness statements, instead of written evidence or live links.**
- **Members present agreed that, whilst the presumption should be for cases to be progressed online, court rules should continue to provide the option for the use of traditional paper based litigation where necessary in the interests of access to justice. Members present noted their hope that in the long term, the use of traditional paper based litigation will decrease. Members present also noted that online litigation should be encouraged and there was general agreement that it was important to create a digital system that litigants would actively prefer to use instead of traditional methods.**
- **Members present favoured a vertical/services approach to increasing the use of Civil Online in the civil courts. Members present agreed that commercial actions in the Court of Session would be particularly suitable, along with actions in the Sheriff Appeal Court, for early progress.**
- **Members present were of the view that the digital presentation of evidence in the civil courts was outside the remit of the Committee and therefore agreed not to comment on the question of whether a vertical/services or horizontal/step of process approach should be used to increase the use of digital presentation of evidence in the civil courts.**

Item 5: Research and consultations

Item 5.1 – Online Dispute Resolution and the Online Court (Papers 5.1 and 5.1A)

16. **Paper 5.1** invites the Committee to consider and approve a summary of its conclusions regarding online dispute resolution and the online court (**Paper 5.1A**). The Committee previously discussed these matters at meetings on 21 March, 13 June and 10 October 2016.

17. **Members present approved the summary of the Committee's conclusions set out in Paper 5.1A and agreed that the Paper be submitted to the Council for consideration.**

Item 6: AOCB

18. Gavin MacColl provided an update regarding correspondence received from Kennedy's Solicitors, which the Committee discussed at its last meeting. The correspondence concerns two online applications used by Kennedy's, Cybersettle and KLAiM. Mr MacColl advised that he contacted Kennedy's Solicitors to discuss the applications. He advised that he has prepared a draft paper which is with Kennedy's for consideration, but at this stage he does not anticipate that the paper will be put before the Committee.

19. **Members present noted the update.**

20. There was no other business raised.

Item 7: Date of next meeting

21. Members present noted the date of the next meeting:

- Monday 15 May 2017 at 4.30pm

**Scottish Civil Justice Council Secretariat
February 2017**