

**MEETING OF THE SCOTTISH CIVIL JUSTICE  
COUNCIL  
MONDAY 01 MARCH 2021 AT 10.30AM  
VIA WEBEX  
MINUTES**

**Present:**

Lord President (Chair)  
Lord Boyd of Duncansby  
Lady Carmichael  
Sheriff Principal Murray  
Sheriff Way  
Sheriff Hughes  
Lynda Brabender QC  
Catherine Smith  
Joel Conn  
Jaqueline Harris  
Elena Fry  
Denise Swanson (Scottish Government)  
Kay McCorquodale (SCTS)  
Brandon Malone  
Employment Judge Joseph d'Inverno  
Thomas Docherty

**In attendance:**

Cameron Stewart (SCTS)  
Diane Machin (Offices of Court of Session)

**Support:**

Andrew Campbell (LPPO)  
Craig McCorkindale (Judicial Office)  
Karen Stewart (SCJC)  
Kelly Jack (SCJC)  
Emma Laurie (SCJC)

Jessica Flynn (SCJC)

Jennifer Kelly (SCJC)

**Apologies:** Eric McQueen (SCTS)  
Colin Lancaster (Scottish Legal Aid Board)  
Nicola Anderson (SCTS)

### **Item 1: Welcome, apologies and agreement of private papers**

1. The Chair welcomed those present and introduced new advocate member, Catherine Smith, and Craig McCorkindale, the new Director of Strategy for the Scottish Civil Justice Council. Apologies were noted from Eric McQueen, Colin Lancaster and Nicola Anderson.

### **Item 2: Previous meeting**

2. The Chair introduced paper 2.1 which provided members with the outcome of the 11 matters that had been considered by correspondence since the last meeting on 09 July 2020.

### **Item 3: Work programme**

3. The Chair noted that the current outputs of the Council are primarily reactive such as the development of court rules to support primary legislation. The Gill review had anticipated a more innovative role for the Council. Members discussed how this might be achieved. Members noted that whilst items, such as Judicial Rate of Interest and Extension of Simplified Divorce, have been listed as priority items in the Council's work programme for some time, they have been delayed due to external factors. Members noted that there was potential for certain ongoing rules reviews to be completed in a shorter timescale. There were shared concerns over the current status of the Rules Rewrite Project/New Civil Procedure Rules and the Chair indicated that the topic could be tabled for consideration as a standalone agenda item at a future meeting.
4. Craig McCorkindale introduced paper 3.1 which invited members to discuss and agree the Council's business priorities for inclusion in the Council's Annual Programme for 2021/22.

5. Mr McCorkindale spoke to paper 3.2. This explained the ongoing resourcing constraints across LPPO and the Secretariat which have impacted upon the output of the Council. The paper explained the significant impact upon these resources due to the current health pandemic. Members were reminded of resourcing requirements when considering potential business priorities.
6. Members were invited to join breakout sessions to consider proposals for the priority items which should be progressed in the Council's work programme for 2021/22. The Secretariat facilitated the group discussions and provided feedback to all members on the outputs from each group.
7. Members discussed the swift progress of digitisation across the courts during the past year and the role that information and communication technology could play in the delivery of the work of the Council. Timescales for returning to "normality" remained unclear. Operationally the court system could anticipate some peaks of civil business as a result of the health pandemic. It would have to be well prepared. It would be important to capitalise on emerging opportunities as a result of digitisation to ensure that the Council stayed ahead of the curve, accommodated various court users, and avoided regression of the progress that has been made in the past year.
8. Members discussed the status of the Review of core Simple Procedure. Whilst the work had been put on hold due to other priorities, it was vital that this project was completed in order to realise the benefits to the civil justice system of the significant work undertaken to date. Members considered that this was a high priority item. Subsequent to its completion, work on Simple Procedure Special Claims should recommence.
9. Members discussed the status of the Rules Rewrite Project/New Civil Procedure Rules and considered whether there was scope to resume this work. Members considered that there may be opportunities to take advantage of elements of the rapid digitisation of processes over the past year in the context of court rules and to create consistency across the courts in this regard. The topic should be considered at a future meeting date.
10. Members discussed the relationship between Qualified One Way Costs Shifting and Pre Action Protocol work for clinical negligence and disease claims and the potential for these PAPs to be implemented in anticipation of an increase in these types of claims coming to the courts.

The strategic priorities approved for 2021/22 were the carried forward items from last year's work programme and;

- Mandatory online submission
- Rules Rewrite/New Civil Procedure/digitisation
- Simple Procedure Special Claims

11. The Chair advised that a Civil Business post Covid Conference led by the Judicial Institute (JI) is to be held on 10 May 2021. It was likely to offer further direction on digitisation of the courts post-covid. A Council meeting to discuss the outputs from the conference will be scheduled for May 2021.

#### **Item 4: AOB**

12. Members noted that there may be some merit in devising a pre-action protocol for low value road traffic accidents.
13. Members agreed that papers 3.1 and 3.2 of the meeting will remain private. Paper 2.1 will be released for publication.

#### **Item 5: Dates of future meetings**

- 26 April 2021 – to discuss Qualified One-Way Costs Shifting.
- 24 May 2021 – to discuss the outcome of the JI's Civil Business post Covid Conference.
- Monday 19 July 2021
- Monday 18 October 2021

**Scottish Civil Justice Council Secretariat**  
**March 2021**