

**MEETING OF THE SCOTTISH CIVIL JUSTICE
COUNCIL
MONDAY 9 SEPTEMBER 2019 AT 10.30AM
JUDGES CONFERENCE ROOM, LEVEL +2 PARLIAMENT
HOUSE**

MINUTES

Members Present: Lord President (Chair)

Sheriff Principal Abercrombie QC
Lord Boyd of Duncansby
Lynda Brabender QC (Advocate)
Kenneth Campbell QC (Advocate)
Lady Carmichael
Joel Conn (Solicitor)
Employment Judge Joseph d'Inverno (LP member)
Elena Fry (Solicitor)
Jaqueline Harris (Solicitor)
Gavin Henderson (Scottish Government)
Colin Lancaster (Scottish Legal Aid Board)
Eric McQueen (SCTS)
Brandon Malone (LP member)
Sheriff Way

In attendance: Cameron Stewart (SCTS, Director of Development & Innovation)

Support: Roddy Flinn (Secretary, SCJC)
Karen Stewart (Policy Manager, SCJC)
Ian Vickerstaff (Deputy Legal Secretary, RRDT)
Kelly Jack (Policy Officer, SCJC)

Emma Laurie (Policy Officer, SCJC)

Andrea Campbell (Secretariat Business Manager)

Jennifer Kelly (Secretariat Administration Officer)

Apologies: Sheriff Hughes

Nicola Anderson (SCTS)

Diane Machin (Offices of the Court of Session)

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and noted the apologies received from Sheriff Hughes, Nicola Anderson and Diane Machin.
2. The Committee agreed not to publish the following papers: **3.1; 4.2; 4.3; 5.1; 5.1A-C.**

Item 2: Previous meeting

*Item 2.1 – Items by correspondence (**Paper 2.1**)*

3. **Members noted Paper 2.1** which provided a summary of the outcomes of matters considered by correspondence since the last meeting:

Human Fertilisation & Embryology Act 2008 (Remedial) Order 2018

- **Paper 2019/05** invited members to consider and approve draft rules in order to implement consequential changes arising under the provisions of the Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018. The Act of Sederunt (Rules of the Court of Session 1994 and Child Care and Maintenance Rules 1997 Amendment)(Parental Orders) 2019 was made on 24 April 2019 and came into force on 24 May 2019.

SCJC Admin Matters

- **Paper 2019/06** invited members to approve the minutes of the previous meeting on 18 March 2019 and note relevant business updates. Subject to minor amendments, the approved minutes have subsequently been published on the SCJC website.

Committee Appointments and Tenures

- **Paper 2019/12** invited members to approve/note changes to membership and representation of various Committees. The following appointments were approved:
 - Dean Purdie to the Access to Justice Committee for a further period of three years from 3 June 2019;
 - Rachael Kelsey to the Family Law Committee for a further period of three years from 3 June 2019;
 - Sheriff Principal Murray to the Information and Communications Technology Committee for a further three years from 11 July 2019;
 - Ronald Conway, Gordon Keyden, Alan Rogerson and Fraser Simpson to the Personal Injury Committee for a further period of 3 years from 10 June 2019;
 - Amber Galbraith and Maria Maguire QC to the Personal Injury Committee for a further period of 3 years from 26 June 2019.

Insolvency Rules

- **Paper 2019/13** invited members to approve draft rules making amendments to the Rules of the Court of Session 1994 and Sheriff Court Company Insolvency Rules 1986 to correct errors/omissions from a previous rules instrument. The Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Company Insolvency Rules Amendment) (Insolvency) 2019 was made on 17 July 2019 and came into force on 16 August 2019.

Review of Register of Interests

- **Paper 2019/14** invited members to review their personal records to ensure the information held on the Council's Register of Members' interests is up-to-date. The Register of Members' Interests has been updated. The Secretariat will review the register annually.

Signature of Petitions and Answers

- **Paper 2019/15** invited members to approve draft rules amending the Rules of the Court of Session to permit a solicitor to sign a petition in lieu of Counsel in certain circumstances. **The rule change** request was made by

the Court of Session Asylum and Immigration User Group. It is anticipated that the rules will be made in September 2019.

Annual Report 2018/2019 and Annual Programme 2019/2020

- **Paper 2019/17** invited members to approve its Annual Report for 2018/2019 and Annual Programme for 2019/2020. The approved Annual Report 2018/2019 and Annual Programme 2019/2020 were published on the SCJC website on 12 August 2019.

Item 3: Proceedings

Item 3.1 – Committee membership (Paper 3.1)

4. **Paper 3.1**, invited the Council to consider and approve changes to committee memberships in respect that Gavin MacColl's tenure on the ICT Committee expires on the 22 September 2019 and Sheriff Principal Turnbull's tenure on the Access to Justice and Rules Rewrite Committees expires on 02 October 2019. Members noted that both committee members were content to be reappointed for a further 3 years.

5. **The Council approved the reappointment of Gavin MacColl QC to the ICT Committee and Sheriff Principal Turnbull to the Access to Justice and Rules Rewrite Committee, each for a period of 3 years from 22 September and 2 October 2019 respectively.**

6. The Chair advised members that a Chairperson has yet to be appointed to the ICT Committee.

Item 4: Work Programme

Item 4.1 – Update from the Scottish Government on legislative developments (Oral)

7. Gavin Henderson provided the Council with an update on legislative developments in the Scottish Government. He advised that the Damages (Investment Returns and Periodical Payments) (Scotland) Bill received Royal Assent on 24 April 2019. The Scottish Government is taking evidence on the Children (Scotland) Bill which is at stage 1 of its parliamentary process. The Children (Equal Protection from Assault) Bill has completed stage 2 and stage 3 is anticipated to conclude around September/October 2019.

8. He advised that the Scottish Government has published its Programme For Government which will include three civil Bills: a Civil Partnership Bill; a Defamation and Malicious Publication Bill and a Redress (Survivors of In Care Abuse) Bill. He also advised that the consultation on the Law of Succession closed on the 10 May 2019; a Judicial Factors consultation launched in August 2019 with responses due by 20 November 2019; and, a consultation on the Review of the Gender Recognition Act 2004 will be published by the end of 2019. The Scottish Government intends to respond to a report by Scottish Mediation on the use of mediation in the courts by the end of 2019. The Scottish Government has also responded to the Robertson Report on regulation of legal services and intends to consult in 2020.

9. The Scottish Government continues to plan for Brexit and all Scottish Statutory Instruments have been made.

10. **The Council noted this update.**

Item 4.2 – SCJC Interim Report on Priorities for 2019/2020 (Papers 4.2 and 4.2A)

11. Roddy Flinn introduced the *Interim Report on Priorities* which provided members with updates on progress against the Council's work programme for 2019/20.

12. In response to members' queries, Mr Flinn advised that a policy paper was in development on the subject of the Judicial Rate of Interest. Mr Flinn advised that the timetable for the transfer of Scottish Tribunals was a matter for the Scottish Government and that the Council will require to plan and consider resourcing for this work when timescales are known.

13. **Members noted the contents of the report and agreed that it be published on the Council's website.**

Item 4.3 – Strategy Meeting Proposals (Paper 4.3)

14. Roddy Flinn introduced **Paper 4.3** which outlined proposals for the Council's strategy meeting in November 2019. The aim of the strategy meeting is to:

- Review the Council's Annual Programme and progress against priorities for 2019/2020 discussing successes, challenges and risks;

- Consider ongoing commitments and future work priorities for the next planning session 2020/21; and
- Discuss strategic direction of Council.

15. Related group sessions are proposed including work planning, strategic direction and speakers on current civil justice topics and members made a number of suggestions of potential speakers for the event.

16. **The Council approved the proposals and a budget of £2000.00 for the event.**

Item 5: Proposals for rules: policy development

Item 5.1 – Rules of the Court of Session: Chapter 42A: Case management of certain personal injury actions (Papers 5.1 and 5.1A-C)

17. **Paper 5.1** invited members to consider and approve draft rules which amend a number of procedural time limits in Chapter 42A of the Rules of the Court of Session 1994, introduce a requirement for parties to exchange more information than is the case at present before procedural hearings and provide new procedures regulating debates in these actions.

18. The rules were developed by the Council's Personal Injury Committee as a result of operational issues highlighted by the Court of Session Personal Injury Users Group. Members noted that the policy intention of the rule changes is to facilitate more efficient exchanges of information between the parties in these cases, enabling parties to be better prepared for Case Management Hearings which should mean that actions are capable of being appointed to proof sooner than is the case at present.

19. The Council discussed the draft rules and members made a number of drafting suggestions aimed at simplifying the instrument. It was agreed that the draft instrument be revised and issued to members for approval by correspondence. The revised draft will be shared with the Personal Injury Committee advising of the Council's amendments. The Council agreed that no policy note was required to accompany the draft rules.

Item 5.2 – Court Opinion: Siteman Painting and Decorating Services Limited vs Simply Construct (UK) LLP [2019] SAC (Civ) 13 (Papers 5.2 and 5.2A)

20. Paper 5.2 invited members to consider the issues raised in *Siteman vs Simply Construct*. The opinion invites the Scottish Civil Justice Council to review the issue of time limits for appeals in civil proceedings.

21. The Council noted that the substance of the opinion addresses the question of what constitutes a “final judgment” and how the right of appeal without leave under section 110(1)(a) of the Court Reform (Scotland) Act 2014 Act is thereby applied. Having considered the opinion and current law, the Council noted that appears to be no specific issues arising in the case regarding the practical operation of the court rules relating to time limits. Rather the issues appear to relate to establishing what constitutes a final interlocutor in a case as this will determine the applicable time limit for the lodging of any appeal.

22. **Having considered the issues, members agreed that there is no requirement for changes to court rules at this time.**

Item 6: Any other business

23. There was no other business raised.

Item 7: Dates of next meetings

24. Members noted that meetings are scheduled for:

- Monday 18 November 2019 at 10.30am
- Monday 17 February 2019 at 10.30am

**Scottish Civil Justice Council Secretariat
September 2019**

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