

SCOTTISH CIVIL JUSTICE COUNCIL

MINUTES

PARLIAMENT HOUSE, MONDAY 13 JANUARY 2014

- Members present:** Lord President (Gill)
Lord Menzies
Lord Tyre
Sheriff Principal Stephen
Sheriff Abercrombie QC
Eric McQueen (Chief Executive, SCS)
Lindsay Montgomery (Chief Executive, SLAB)
Kay McCorquodale (Scottish Ministers' appointee)
Sarah Wolffe QC (Advocate)
Eric Baijal (Solicitor)
Duncan Murray (Solicitor)
Ian Maxwell (Consumer representative, from agenda item 7.2)
Lauren Wood (Consumer representative)
Employment Judge Joseph d'Inverno (LP member)
Prof. Frances Wasoff (LP member)
- In attendance:** Craig McCorkindale, SCS
Gillian Prentice, Deputy Principal Clerk of Session
- Secretariat:** Roddy Flinn, Secretary
Ondine Tennant, Deputy Secretary
Chris Nicholson, Legal Secretary
Carmen Murray, Policy Officer
- Apologies:** James Wolffe QC (Advocate)
Jan Marshall (Scottish Government)
Frances MacPherson, Sheriff Clerk

Item 1: Introduction, welcome and apologies

1. The Lord President welcomed those present and noted apologies. Members were advised that Kay McCorquodale was attending in place of Jan Marshall.
2. Members agreed not to publish the following papers: 2.2, 3.2A, 4.4A, 5.1A, 6.1B, 7.1 and 7.1A, 7.2A-E.

Item 2: Previous Meeting

Item 2.1 - Minutes of previous meeting [Paper 2.1]

3. **Members agreed the minutes from the previous meeting.**

Item 2.2 Progress of actions from previous meeting [Paper 2.2]

4. **Members noted the progress that had been made on various action points since the last meeting and that several actions were to be carried forward to future meetings. The following actions points were subject to some discussion by the Council.**
5. Members noted that the work of the Scottish Government's Bar Reporters Working Group was still underway and it was remarked that it would be desirable to make progress in this regard. Kay McCorquodale undertook to provide a further update in due course.
6. The Chairman drew members' attention to the intention to run a seminar on rule drafting and the legislative process during April.
7. In relation to the publication of the analysis of responses to the Consultation on Reporting Restrictions, BBC Scotland had indicated that it wished to submit a supplementary response. **It was agreed that the analysis should be revised, if necessary, following receipt of this further submission, and circulated via correspondence prior to being published.**

Item 2.3 - Update on activity since previous meeting [Papers 2.3 and 2.3A-C]

8. Members considered updates on activity which had taken place since the last meeting and, in particular, the intention of the Personal Injury Committee to submit to the Council a proposal for research into the use of pre-action protocols in Scotland. **In light of the limited budget for research, it was felt that rather than commissioning research, the Committee should carry out an information and evidence gathering exercise through its own membership.** It was thought that the exercise should consider the role of party litigants; whether a new pre-action protocol regime should be introduced in advance of the creation of the specialist Personal Injury Court and whether there should be implications for awards of expenses where the pre-action protocol has not been adhered to.
9. **It was agreed that the matter of research priorities generally should be given further consideration at a future meeting.**
10. **The activity outline paper and reports of the Personal Injury Committee, Family Law Committee and Access to Justice Committee were noted.**

Item 3: Proceedings

Item 3.1 – Membership

11. The Chairman congratulated Sarah Wolffe QC on her appointment as a Senator of the College of Justice. It was noted that Mrs Wolffe's Council and committee membership ends with her appointment. The Chairman announced his intention to carry out a recruitment exercise during February for a replacement advocate member.
12. **Members agreed that Mrs Wolffe should remain a member of the Rules Rewrite Working Group in her judicial capacity in order that it may continue to benefit from her expertise. It was agreed that it would not be necessary to appoint a replacement advocate member to the Family Law Committee.**

Item 3.2 – Records Management Plan [Papers 3.2 and 3.2A]

13. Members considered a draft Records Management Plan. It was remarked that those who are members of the Council by virtue of their office should ensure any records held by them in their capacity as Council members are managed in line with the Council's records management policy. That might require some alignment between the Council's policy and that of the members' office.
14. Clarification was provided that it would be the Secretariat, rather than members, that would have day to day responsibility for maintaining and storing records. It was considered that where reference is made to the destruction of a paper file, the plan should include instruction for deletion of the electronic file. **Subject to that amendment, the Records Management Plan was adopted and it was agreed that it should be published in due course.**

Item 4: Forward work programme

Item 4.1 – Update from the Scottish Government on legislative developments

15. Kay McCorquodale provided members with an update on progress in relation to the Courts Reform, Damages, Bankruptcy and Debt Advice, Regulatory Reform, Victims and Witnesses and Tribunals Bills.

Item 4.2 – Update from SCS on Making Justice Work programme of reform and Shaping Scotland's Courts

16. Craig McCorkindale provided an update on preparations in relation to the proposed Courts Reform (Sc) Bill, the merger of the SCS and the Scottish Tribunal Service and the next round of court closures, scheduled for May 2014.
17. There was some discussion of the extent to which the Tribunals (Sc) Bill provides for the SCJC to have policy oversight of the tribunals system. **The Secretariat was asked to consider the matter and to seek clarification from the Scottish Government as to the Bill provisions and policy intention.** It was noted that the Scottish Government's recently established Interim Advisory Committee on

Administrative Justice and Tribunals had a role in this regard and that the Chairman was planning to meet its Chairwoman in due course.

Item 4.3 – Update on Rules Rewrite Project [Paper 4.3]

18. Lord Menzies provided members with an update on recent decisions made by the Rules Rewrite Working Group following its visit to England and Wales during December 2013. Lord Menzies reiterated a note of thanks to all who had given their time to meet the Group and to the Master of the Rolls' policy team for facilitating the visit, which had been extremely informative. **Members noted the recent decisions made by the Group and its intention to prepare an interim report for consideration at the 10 March meeting.**

Item 4.4 Forward work planning and reporting progress [Papers 4.4 and 4.4A]

19. The Council considered the business tracker [Paper 4.4A], which detailed key areas of Council activity, legislative developments and initiatives of interest to the Council.
20. **It was agreed that consideration of the Scottish Government's response to the Damages (Sc) Bill should be remitted to the Personal Injury Committee.**
21. In relation to a query on Patricia Ferguson MSP's proposed Inquiries into Death (Sc) Bill, clarification was provided that the Cabinet Secretary for Justice has given an undertaking to bring a Bill to Parliament in relation to fatal accident inquiry reform.
22. **Members noted the content and form of the business tracker and the progress outlined therein and agreed that it should become a standing agenda item, subject to some minor modifications.**

Item 5: Communications and engagement

Item 5.1 – Core Briefing [Papers 5.1 and 5.1A]

23. **The most recent version of the core briefing [Paper 5.1A] was noted.**

24. Members discussed the practical application of the Council's guiding principles. **It was agreed that the Secretariat should prepare proposals on how consideration of the principles might be built into the work of the Council and how this consideration can be demonstrated.**

Item 6: Committee structure and associated groups

Item 6.1 - Costs and Funding Committee [Papers 6.1 and 6.1A and B]

25. **Members noted the remit and membership of the Costs and Funding Committee. It was considered that its work should begin as a matter of urgency and that arrangements should be made for it to meet in February 2014.**

Item 7: Secondary Legislation

Item 7.1 – Amendment of Insolvency (Scotland) Rules 1986 [Papers 7.1 and 7.1A]

26. The Council considered a paper [Paper 7.1A] from the Scottish Government in relation to changes to the rules of court in consequence of the forthcoming amendments to the Insolvency (Scotland) Rules 1986. Concerns were expressed as to the timescales which had originally been proposed for these changes and it was remarked that it is necessary to receive such requests timeously, in order that due consideration can be given to proposals and any consequential rule changes.
27. **It was agreed that amendments to the Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986 and Part V of Chapter 74 of the Rules of the Court of Session 1994 should be prepared for the 10 March meeting. However, it was considered that the views of the Consultative Committee on Commercial Actions on the proposal should be sought prior to then. It was considered that provision should be made for the relevant sheriff courts to be notified when a block transfer order is sought and it was remarked that this might best be achieved by letter, rather than service, and the point would be considered further.**

Item 7.2 – Recovery of Documents [Papers 7.2 and 7.2A-E]

28. Chris Nicholson spoke to paper 7.2 and the detail of two draft instruments [Papers 7.2D and E], submitted by the Personal Injury Committee. The instruments proposed to amend the Ordinary Cause Rules so as to replicate in those rules the Court of Session optional procedure for the recovery of documents and to address an ambiguity in the Rules of the Court of Session.
29. There was some discussion as to whether separate forms for party litigants and agents were necessary. It was considered that in this instance, distinct forms would be of particular benefit to party litigants, but that the question of forms generally would be considered by the Rules Rewrite Working Group. Subject to the correction of an error in Form G11, **the two draft instruments were approved for submission to the Court of Session.**

Item 8: A.O.C.B

30. The Lord President informed members that Lisa Gamble had succeeded in gaining a permanent position as a Research and Policy Officer with Barnardo's and would be leaving the Secretariat on 17 January.

Item 9: Dates of next meetings

31. **Members noted meeting dates for the remainder of 2014 as provided on the agenda and that the next meeting will take place at 10.00am, 10 March 2014.**

Scottish Civil Justice Council Secretariat

January 2014