

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
MONDAY 19 MARCH 2018 AT 10.30 AM
JUDGES CONFERENCE ROOM, LEVEL +2 PARLIAMENT HOUSE
MINUTES

Members Present: Lord President (Chair)
Eric McQueen (Chief Executive, SCTS)
Colin Lancaster, Scottish Legal Aid Board
Lord Menzies
Lord Boyd of Duncansby
Lord Tyre
Sheriff Principal Abercrombie QC
Sheriff Hughes
Sheriff Murphy QC
Kenneth Campbell QC
Lynda Brabender QC
Jacqueline Harris (Solicitor)
Joel Conn (Solicitor)
Elena Fry (Solicitor)
Ian Maxwell (Consumer representative)
Jane Williams (Consumer representative)
Employment Judge Joseph d’Inverno (LP member)
Brandon Malone (LP member)

In attendance: Diane Machin (Deputy Principal Clerk of Session, SCTS)
Craig McCorkindale (Director for Civil Courts Reform, SCTS)

Support: Roddy Flinn (Secretary to the Scottish Civil Justice Council)
Katherine Marshall (Head of Rules Rewrite Drafting Team)
Norman Munro (Deputy Legal Secretary, Lord President’s Private Office)
Mandy Williams (Deputy Secretary to the Scottish Civil Justice Council)
Andrea Campbell (Policy Officer, Scottish Civil Justice Council)

Apologies: Nicola Anderson (Legislation Implementation Team, SCTS)
Jan Marshall (Scottish Government)

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and noted apologies from Jan Marshall and Nicola Anderson, confirming that Nicola has taken over from Jane MacDonald as Head of the Legislation and Implementation Team of the Scottish Courts and Tribunals Service following Jane's retirement.
2. The Chair advised that Jan Marshall is also due to retire at the end of the month and extended thanks of behalf of the Council and its committees to both Jane and Jan for all their contributions.

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

3. **The minutes were approved.**

Item 2.2 – Activity since last update (Paper 2.2)

4. **The progress that had been made on actions since the last meeting and the activity report on the work of the Council's Committees were noted.**
5. The Chair asked the Committee in particular to note paragraph 17 in relation to the review of the Sheriff Appeal Court Rules.

Item 2.3 – Items by correspondence (Paper 2.3)

6. **Paper 2.3, which advised of the outcome of consideration of matters by correspondence since the last meeting, was noted.**

Five matters have been considered by correspondence since the last meeting:

A. Work stream arrangements

Paper 2018/03 was issued to members on 29 January 2018, inviting members to consider and approve arrangements for work stream 5 of the Rules Rewrite Project. In particular members were invited to approve:

- the proposed outline remit for work stream 5 of the Rules Rewrite Project;
- the proposals for the establishment of a working group to take forward work stream 5;
- the membership proposals for the proposed working group; and
- the proposed reporting arrangements for work stream 5.

Responses were invited by close of business on Friday 02 February 2018. Four responses were received, all approving the arrangements.

B. Committee arrangements

Paper 2018/04 was issued to members on 24 January 2018, inviting members to approve changes to committee membership. In particular, members were invited to approve the re-appointment of Kenneth Cumming to the Costs and Funding Committee for a further period of three years from 29 January 2018.

Responses were invited by 4pm on Friday 26 January 2018. Two responses were received, both approving the re-appointment.

C. Methodology for review of simple procedure

Paper 2018/05 was issued to members on 13 February 2018, inviting members to consider and approve a methodology for the review of the Simple Procedure Rules. In particular, members are invited to consider and, if content, approve:

- a draft consultation paper (**Paper 2018.05A**)
- a draft research specification commissioning research into the experiences of party litigants who have used Simple Procedure (**Paper 2018.05B**); and
- proposals for focus groups to be carried out with stakeholders with experience of using Simple Procedure.

Responses were invited by close of business on Tuesday 20 February 2018. Eight responses were received and a number of comments were made in relation to timings, consultees, the timing of focus groups and the development of civil online. The methodology was revised in light of the comments received.

D. Committee arrangements

Paper 2018/06 was issued to members on 22 February 2018, inviting members to approve, or where appropriate to note, changes to membership and representation on the Council and its Committees. In particular, members were invited to:

- note the re-appointment of Sheriff Hughes as a Council member for a further three year period from 08 March 2018:

- approve the re-appointment for Sheriff Tait to the Family Law Committee for a further period of three years from 15 March 2018;
- approve the appointment for Sheriff McGowan to the Personal Injury Committee for a period of three years from 06 April 2018; and
- approve the appointment of Nicola Anderson to be the SCTS LIT representative on the Council from 19 March 2018.

Responses were invited by close of business on Friday 02 March 2018. Three responses were received, all approving the appointments.

E. Extension of simplified divorce – consultation on draft rules

Paper 2018/09 was issued to members on 22 February 2018 inviting members to consider a revised Act of Sederunt at **Paper 2018/09A** in relation to the extension of simplified divorce procedure to include cases where there are children of the family under the age of 16, provided that the parties have agreed the arrangements for the upbringing of the children, and no orders are sought regulating residence or contact and to agree that it should be issued for public consultation under cover of the revised draft consultation document at **Paper 2018/09B**.

Responses were invited by close of business on Friday 02 March 2018. Three responses were received, all approving the revised Act of Sederunt and draft consultation document.

Item 3: Work Programme

Item 3.1 – Update from the Scottish Government on legislative developments (Oral)

7. No update was provided as no Scottish Government representative was in attendance.

Item 3.2 – SCTS Update (Oral)

8. Craig McCorkindale updated the Council on developments within SCTS and in particular the ICMS online case management system. Phase 1 development of Civil Online, in relation to case tracking, was now live. A news release on the SCTS website confirmed to legitimate users that they are now able to track cases, allowing claimants, respondents and their representatives to see their case details, the date and time of any hearings for the case and the description of any documents lodged in the case or created by the court. Although there is limited functionality just now, there have been no issues reported for this launch.

9. Ian Maxwell inquired about the next phase. Mr McCorkindale advised that development work is still ongoing in relation to phase 2, which relates to online submission of documents. A period of extensive testing was planned and Mr McCorkindale indicated he would be happy to attend committee meetings to provide an overview of this phase.

10. He also advised that new Fees Orders will come into force from 25 April 2018, applying a 2.3% increase.

Item 3.3 – Business Tracker (Paper 3.3)

11. **Paper 3.3, which provided an update of the Council's work, was noted.**

Item 3.4 – Priorities for 2018/19 (Paper 3.4)

12. **Paper 3.4**, which invited members to consider the ongoing work of the Council and its Committees with a view to agreeing its priorities for 2018/19 for inclusion in its Annual Programme, was considered.

13. **Members noted the ongoing work of the Council and its Committees. It was agreed that that all of the ongoing work would be incorporated into the Council's Annual Programme for 2018/19 but that the Programme should indicate what was achievable during the year ahead. As part of the discussions, members agreed that the Judicial Rate of Interest should be actively reviewed. It was agreed that a paper would be brought forward to the next meeting to allow the matter to be considered more fully.**

14. Members discussed progress in relation to the paper prepared by Brandon Malone in relation to commercial dispute resolution. It was agreed that the **secretariat will provide the Council with proposals at the next meeting.**

Item 4: Justice system reform: Courts Reform

Item 4.1 – Rules Rewrite: update (Oral)

15. Katherine Marshall provided an update on the work of the Rules Rewrite Drafting Team. Working groups in relation to Workstreams 1, 2, 3, and 4 were now established and there were regular meetings of these groups.

16. A group has now been set up to consider Workstream 5 which relates to Access to Justice. Topics to be considered include ADR and representation of parties. The first meeting date of this group is on 30 April 2018.

Item 4.2 – Core Simple Procedure Rules (Papers 4.2 and 4.2A)

17. **Papers 4.2 and 4.2A**, which invited the Council to consider and, if content, approve draft rules making amendments to the core Simple Procedure Rules, were considered.

18. The Council approved the amendments made since the last meeting and instructed an amendment to the Time to Pay Application to include an additional orders section. Further signposting may be helpful in relation to next steps once a decision is recalled.

19. **The Council agreed that revised draft rules should be circulated for consideration by correspondence.**

Item 5: Proposals for rules: policy development

Item 5.1 – Regulation of fees of Messengers-at Arms, sheriff officers and shorthand writers (Papers 5.1 and 5.1A)

20. **Papers 5.1 and 5.1A**, which invited the Council to consider and, if content, approve draft rules increasing in the fees of messengers-at-arms, sheriff officers and shorthand writers by 2.6%, were considered.

21. **The Council was content with the draft instrument and agreed that the rules should be submitted to the Court for approval.**

Item 6: A.O.C.B.

Agreement of private papers

22. The Council agreed to publish **Papers 2.3 and 4.2.**

Item 7: Dates of future meetings

23. Members noted the dates of future meetings and agreed a revised start time of 10:30am:

- Monday 14 May 2018 at 10:30am
- Monday 9 July 2018 at 10:30 am
- Monday 10 September 2018 at 10:30 am
- Monday 19 November 2018 at 10:30 am

**Scottish Civil Justice Council Secretariat
March 2018**