

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL

MONDAY 24 MAY 2021 AT 10.30AM

VIA WEBEX

MINUTES

Members Present: Brandon Malone

Catherine Smith

Colin Lancaster (SLAB)

Denise Swanson (Scottish Ministers' representative)

Employment Judge D'Inverno

Eric McQueen (SCTS)

Jaqueline Harris

Joel Conn

Lady Carmichael

Lord Boyd of Duncansby

Lynda Brabender QC

Lord President (Chair)

Sheriff Hughes

Sheriff Principal Murray

Sheriff Way

Thomas Docherty

In attendance: Alannah McGinley (SCTS Law Clerk)

Diane Machin (Offices of Court of Session)

Nicola Anderson (SCTS Legislation Implementation Team)

Neil Deacon (SCTS Law Clerk)

Support: Craig McCorkindale (Director of Strategy, SCJC)
Karen Stewart (SCJC)
Emma Laurie (SCJC)
Jessica Flynn (SCJC)
Jenny Kelly (SCJC)

Item 1: Welcome, apologies and agreement of private paper

1. The Chair welcomed those present to the forty-first meeting of the Council. There were no apologies tendered.
2. Members agreed to publish the following papers: Agenda, Paper 2.1

Item 2: Previous meeting

Item 2.1 – Items by Correspondence (Paper 2.1)

3. The Chair introduced Paper 2.1 which provided information on the outcome of matters that had been considered by correspondence since the last meeting on 26 April 2021.
4. **Members noted the paper.**

Item 3: Civil Justice Conference

Item 3.1 – Civil Justice Conference (Paper 3.1)

5. The Chair introduced **Paper 3.1** and advised members that the objective for the meeting was to provide a forum for discussion and debate of the issues raised at the Civil Justice Conference held by the Judicial Institute on 10 May 2021; and, to consider any next steps which the council could or should take. The focus of the conference was consideration of the post-covid landscape for civil justice.
6. The Judicial Institute will publish an outcomes report in the coming weeks. The report will be circulated to Council members by correspondence.
7. Members discussed the key themes that arose during the conference, including:
 - Open justice for media/court users
 - Access to justice issues e.g. disability and other equality impacts, digital poverty, specialist support services, geographical barriers
 - Issues around welfare
 - Environmental issues e.g. avoiding unnecessary travel

- Implications for rule making (barriers within existing rules, case management decisions, electronic transmission of documents).
8. Members discussed when/how procedural changes could/should be made in the context of considering whether or not court rules would be needed to embody beneficial elements of the current system of virtual hearings. Virtual hearings are used successfully in commercial courts. Such hearings have had proof of concept. The Employment Tribunal uses virtual hearings regularly and successfully. The ET has a useful VH guidance framework for judges which members may wish to consider. A paradigm shift would be needed to move to wider digitisation of services.
 9. Members noted the content of a recent media release by the 'four bars' which provides a flavour of the views of a range of barristers and advocates.
 10. Members noted that the Scottish Government intends to undertake research on users' experience of the civil justice system over the past year. More information on the nature of that research will be made available in due course.
 11. Members noted that law centres/ Citizens Advice Service could have an important role to play in providing digital venues and that SLAB/Scottish Government could consider funding in this regard. SLAB agreed that a range of community locations could be considered.
 12. Members noted that the SCTS had advised that the Webex system for virtual hearings has been 'rolled-out' across all sheriff courts and the Court of Session. It is accessible for all civil court hearings. Consistency of the Webex service across the country will be an important factor in attaining predictability of costs for litigants. Government guidelines on physical distancing and the impact of these on court capacity are how the SCTS will move forward operationally.
 13. Members considered that rules or guidance may be beneficial to cover some key considerations for the continued effective use of virtual hearings:
 - Implications for rule making (barriers within existing rules in respect of digital capacity and system requirements, case management decisions, electronic transmission of documents).
 - How will a case be assessed as suitable for a virtual hearing, an in person hearing or a hearing on papers only?
 - Developing a 'default' position to deliver core consistency
 14. **Members agreed that draft rules/guidance on the use of virtual hearings should be developed for consultation.** The draft rules should take account of :
 - The need for procedural consistency and predictability for court users - developing a 'default' position to deliver core consistency
 - The need to ensure open justice for media/court users
 - Consideration of access to justice issues e.g. disability and other equality impacts, digital poverty, specialist support services, geographical barriers

- Welfare issues e.g. length of virtual hearings
- Environmental issues e.g. avoiding unnecessary travel
- Digital transmission of documents and productions

15. Members were invited to submit individual views to the secretariat on a range of questions around virtual hearings to help shape the development of the draft rules/guidance.

16. Practical issues were discussed which the SCTS may wish to consider from an operational perspective:

- The use of telephone hearings for Child Welfare Hearings was seen as problematic, particularly where the maximum number of callers (6) has resulted in key participants being dropped from a call. Use of WebEx hearings to conduct Child Welfare Hearings would be an improvement over the current system.
- Operational inconsistencies are developing across some sheriff courts and the Court of Session. This creates barriers to effective digital working.
- There are significant benefits to be gained from harnessing technology so that administrative services are in place for users, e.g. digital transmission of documents.

17. Members noted the significant benefits arising from the electronic transmission of documents, and the availability of electronic bundles. The previous working groups developing the New Civil Procedure rules had made significant progress in that area, and it was suggested that a working group could usefully take that work forward in parallel with the proposed consultation on virtual hearings.

Item 4: AOB

18. Brandon Malone reported that he has been researching the topic of blockchain and smart contracts in the context of dispute resolution and had submitted related papers to the Secretariat. He advised members that work on the topic is being undertaken by the Scottish Government and Lord Hodge and in this regard he withdrew his wish that the matter be considered by Council meantime.

Item 5: Dates of future meetings

19.

- Monday 19 July 2021
- Monday 18 October 2021