

# SCOTTISH CIVIL JUSTICE COUNCIL

## MINUTES

PARLIAMENT HOUSE, MONDAY 26 JANUARY 2015

- Members present:** Lord President (Chairman)  
Lord Menzies  
Sheriff Principal Stephen  
Sheriff Abercrombie QC  
Eric McQueen (Chief Executive, SCS)  
Colin Lancaster (Director of Policy and Development, SLAB)  
Jan Marshall (Scottish Ministers' representative)  
Andrew Stewart QC (Advocate)  
Kenneth Forrest (Advocate)  
Eric Baijal (Solicitor)  
Jacqueline Harris (Solicitor)  
Paul Reid (Solicitor)  
Ian Maxwell (Consumer representative)  
Lauren Wood (Consumer representative)  
Employment Judge Joseph d'Inverno (LP member)
- In attendance:** Gillian Prentice (Deputy Principal Clerk of Session)  
Craig McCorkindale (Director for Civil Courts Reform, SCS)
- Secretariat:** Roddy Flinn (Secretary to the Scottish Civil Justice Council)  
Inez Manson (Deputy Legal Secretary, Lord President's Private Office)  
Anne Hampson Policy Officer (Scottish Civil Justice Council)
- Apologies:** Lord Tyre  
Prof. Fran Wasoff (LP member)

## **Item 1: Introduction, welcome and apologies**

1. The Chairman welcomed those present and noted apologies from Lord Tyre and Professor Wasoff.
2. Members agreed not to publish the following papers: 2.2, 2.3, 3.2, 3.2A, 4.4A-B, 4.5, 6.1, 6.1A-B, 6.2, 6.2A-D, 6.3, 6.3A-B.

## **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 actions since the last meeting.**

### *Item 2.3 – Items considered by correspondence [Paper 2.3]*

5. Members noted **Paper 2.3** which provided a summary of the outcome of consideration given to the following matter raised by correspondence since the last meeting:
  - A. Draft rules to amend the Rules of the Court of Session and civil proceedings in the sheriff court relating to rules to make provision for proceedings arising under EU Regulation 606/2013 on Mutual Recognition of Protection Measures in Civil Matters were considered by correspondence and submitted to the Court of Session. The Rules were made on 17 December 2014 and came into force on 11 January 2015.

### **Item 3: Proceedings**

#### *Item 3.1 – Committee Membership [Oral]*

6. The Chairman congratulated Sheriff Abercrombie on becoming Sheriff Principal and informed members that Sheriff Principal Abercrombie would be replacing Sheriff Principal Stephen on the Council following his installation. He also informed members that this would be Sheriff Principal Stephen's last meeting and thanked Sheriff Principal Stephen for her valuable contribution on the Council and its Committees and also for her help in setting up the Council.
7. Sheriff Principal Stephen wished her successor every success and noted that the Council was established through the first recommendation of the Scottish Civil Court Review and that it had made remarkable progress. This was as a result of a successful blend of members together with the hard work of professional staff who very ably support the Council.
8. The Chairman advised members that consideration would now need to be given to appointing a new sheriff member to the SCJC.
9. **Members noted the Chairman's update in relation to the SCJC membership.**

#### *Item 3.2 – FOI Guidance [Papers 3.2 and 3.2A]*

10. Members considered a paper advising them of recent developments in relation to records management and freedom of information (FOI) seeking their views in relation to the Scottish Government proposal for the SCJC to be added to the list of public authorities that are subject to the requirements of the Public Records (Scotland) Act 2011. The Chairman advised that the effect of this is to require the SCJC to produce a Records Management Plan, which the Council has already agreed on an informal basis. The paper also sought agreement for FOI guidance to be issued to the Council's Committee members.
11. **The Council noted the update and agreed that the FOI Guidance should be issued to all Committee members.**

#### **Item 4: Work programme**

##### *Item 4.1 – Update from the Scottish Government on legislative developments [Oral]*

12. Jan Marshall provided members with an update on progress in relation to the Courts Reform (Scotland) Act 2014, which was being implemented on a phased basis; the Tribunals (Scotland) Act 2014, also being implemented on a phased basis; the Legal Writings (Counterparts and Delivery) (Scotland) Bill which passed Stage 2 without amendment on 20 January.
  
13. Ms Marshall also explained that Commencement Order No. 4 of the Marriage and Civil Partnership (Scotland) Act 2014 comes into force on 1 March 2015 and that the first same sex marriage ceremony took place at the end of 2014; the SG intend to lodge a Bill to reform Fatal Accident Inquiries Legislation; Patricia Ferguson MSP had secured the right to introduce her Inquiries into Deaths (Scotland) Bill; a consultation on proposed fee changes for services offered by the courts was imminent; and that the sub-group of the Welfare Reporter Working Group were making good progress in relation to Child Welfare Reports.

##### *Item 4.2 – Update from SCS on Making Justice Work programme of reform and Shaping Scotland's Courts [Oral]*

14. Craig McCorkindale gave an oral update on the Making Justice Work Programme. He advised that the third stage of the Court Structures project had been completed this week; a business case was considered by the SCS Management Board on 8 December for a fast, reliable and efficient new case management system and the procurement process had been completed with plans for stakeholder engagement now being worked up; and the 2015 Fees Order was going to public consultation.
  
15. Eric McQueen advised that the courts have the capacity to manage the volume of business. The Chairman thanked Eric and his staff for skilled management and hard work.

*Item 4.3 – Presentation from SLAB on Making Justice Work work stream 3 [Oral]*

16. Colin Lancaster explained that the overarching purpose of the Access to Justice Project is to enable people to prevent or informally resolve civil justice problems and disputes where possible, while enabling access to the courts and tribunals where necessary, including with appropriate assistance. The Scottish Legal Aid Board is responsible for managing Project 3 as a whole, which has been translated into a number of workstreams::

- Strategic planning and co-ordination, which includes a grant funding programme
- Improving the legal capability of those with civil justice problems, including research into life events which trigger problems and how people resolve these problems
- The Taylor Review
- Alternative Dispute Resolution
- Exploration of scope for a Family Justice Strategy.

Colin advised that this work goes beyond justice and, while good progress has been made, it is anticipated that the work started under the auspices of the project will continue in one form or another for some time. The project has strong links to the work of the SCJC and its Committees. In particular, the workstreams on the Taylor review and ADR complement the work of the Costs and Funding and Access to Justice Committees respectively, and indeed the work of the project on ADR has fed in directly to the AtJC's consideration of that topic.

17. The Chairman noted that the presentation was helpful and invited comments from members. Eric Baijal wondered whether any funding had been put into training advisers. Lauren Wood informed the Council that Shelter and Citizens Advice Scotland had undertaken some research into lay representatives' experiences which would be shared with the Access to Justice Committee at its next meeting. She advised that lay representatives wanted better access to training. Judge d'Inverno reiterated his regret that judicial mediation is not included in the ambit of the research.

*Item 4.4 – Rules Rewrite: update [Oral]*

18. Roddy Flinn provided an oral update on the progress of the rules rewrite project. Members were advised that draft rules were being prepared in relation to the privative limit; policy instructions for the new specialist PI court had been agreed by the Personal Injury Committee at their December meeting and illustrative draft rules would be discussed at its February meeting. Work is also progressing in relation to the simple procedure, judicial review, the Sheriff Appeal Court and Pre-Action Protocols. Roddy advised that the first commencement order to bring certain provisions in the Courts Reform (Scotland) Act 2014 into force had been made on 20 January 2015.
19. **Paper 4.4B** was a new activity tracker created by the Secretariat to update the Council on the progress of matters being taken forward as part of the Rules Rewrite project.
20. The Chairman indicated that in order to meet the implementation timescales, the Committees have required to meet more frequently than originally envisaged. He was concerned about the enormous strain this places on officials and flagged up the risk of delay with papers being prepared and issued in accordance with the timescales agreed in the Standing Orders. Roddy advised that officials were coping but that there was no slack. However there was money in the budget to add an additional drafter.
21. **Members noted the progress made and the new activity tracker. They also supported additional resources being recruited.**

*Item 4.5 – Business tracker [Paper 4.4]*

22. **Members noted the progress of work as outlined on the Business Tracker at Paper 4.5**

## **Item 5: Research and consultations**

### *Item 5.1 – Stakeholder events [Oral]*

23. Members were advised that there would be a delay to the timings for the stakeholder events. Significant progress has been made in relation to the policy intention for the first tranche of commencement provisions under the Courts Reform (Scotland) Act, 2014 which means that it would be difficult for feedback to be incorporated into drafting instructions/rules in line with the agreed timescales.
24. It was suggested that that the events should now be co-ordinated to coincide with the announcement of the new annual programme, likely to be March/April 2015. **Members agreed that it was sensible for the events to be co-ordinated with the announcement of the new annual programme.**

### *Item 5.2 – Faculty of Advocates visit [Oral]*

25. The Chairman thanked Andrew Stewart and Ken Forrest for arranging the visit to the Faculty of Advocates on 15 December 2014. **Members commented that it was an excellent event and that it was good to hear from the perspective of different specialisms.**

## **Item 6: Secondary Legislation**

### *Item 6.1 – Reporting restrictions [Papers 6.1 and 6.1A-C]*

26. Roddy Flinn spoke to Item 6.1. He invited the Council to consider and comment on a draft Act of Sederunt **[Paper 6.1A]** proposing changes to rules on reporting restrictions for the Court of Session and sheriff court. Roddy explained that a draft instrument was originally approved by the Council at its meeting in June last year. It has since been redrafted in terms of style and wording and a number of technical amendments have also been made to clarify the practical operation of the rules.

27. Roddy also invited the Council to consider the terms of the policy note at **Paper 6.1B**. This is the first policy note to be issued by the Council. Similar rules have been prepared for the criminal courts and a policy note has been drafted by the Criminal Court Rules Council to provide further information on how the rules would work. A parallel version has been produced for the civil instrument in the interests of consistency.
28. **Members considered the draft rules and indicated they are content that they be submitted to the Court of Session. They also agreed the policy note.**

*Item 6.2 – Marine (Scotland) Act 2010 [Papers 6.2 and 6.2A-C]*

29. Roddy Flinn spoke to Item 6.2. regarding a draft Act of Sederunt proposing changes to rules as a result of the commencement of provisions of the Regulatory Reform (Scotland) Act 2014. **Members indicated they were content they be submitted to the Court of Session with a view to being brought into force on 27 February 2015.**

*Item 6.3 - EU Regulation on the recognition and enforcement of judgments in civil and commercial matters (Brussels I recast) [Paper 6.3 and 6.3A-B]*

30. Roddy Flinn spoke to Item 6.3 regarding a draft instrument to implement proposals to amend Part V of Chapter 62 of the Rules of Court of Session 1994 to give effect to EU Regulation 1215/2012, which relates to the recognition and enforcement of judgments in civil and commercial matters. **Members agreed that the draft rules be submitted to the Court of Session with a view to being brought into force on 7 February 2015.**

**Item 7: A.O.C.B.**

31. Lord Menzies advised that the Inner House was gradually moving to electronic documents in appropriate cases and encouraging the use of pen drives at the procedural hearing. In Inner House causes, the current Court of Session rule 4.7 requires 6 copies of documents to be lodged in the process and also 6 copies to be



sent to every other party. He proposed that the need for so many copies at an early stage should be looked into and that proposals should be submitted to the SCJC for consideration in due course. **Members agreed with this proposal.**

**Item 8: Date of next meeting**

**32. Members noted meeting dates for 2015 as provided on the agenda and that the next meeting would take place at 10.00am, Monday 16 March 2015.**

**Scottish Civil Justice Council Secretariat**

**January 2015**