

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
ACCESS TO JUSTICE COMMITTEE
TUESDAY 14 JUNE 2016 AT 4.30 PM
JUDGES CONFERENCE ROOM, PARLIAMENT HOUSE**

MINUTES

Members present: Lady Wise (Chair)
Ruth Crawford QC (Advocate)
Dean Purdie (Solicitor)
Employment Judge Joseph d'Inverno (SCJC member)
Ian Maxwell (Families Need Fathers, SCJC member)
Jane Williams (Queen Margaret University, SCJC member)
Denise Swanson (Scottish Government)
Colin Lancaster (Scottish Legal Aid Board)

In attendance: Jane Macdonald (Policy and Legislation Branch, SCTS)
Yvonne Anderson (Depute in Charge of Offices of Court)

Support: Luke McBratney (Deputy Legal Secretary, RRDT)
Neil Deacon (Deputy Legal Secretary, LPPO)
Bridget Lee (SCJC Secretariat)

Apologies: Sheriff Arthurson
Paul Reid (Solicitor, SCJC member)
Catherine Molloy (Solicitor)
Prof. Frances Wasoff (Edinburgh University, SCJC member)
Nicola Anderson (Policy and Legislation Branch, SCTS)

Item 1: Introduction, welcome, apologies and private papers

1. The Chair welcomed Jane Williams and Dean Purdie, whose appointments had recently been approved by the Council, and all those present to the meeting. Jane Williams had recently been appointed to the Council as a Consumer Representative and lectures in consumer law and Dean Purdie is a solicitor in Aberdeen. The Chair congratulated Employment Judge d'Inverno and Ian Maxwell on being reappointed to the Council and the Committee, and also congratulated Professor Wasoff on her reappointment to the Committee after the end of her tenure on the Council, and thanked them all for their valuable contribution.
2. The Chair noted that Lauren Bruce's tenure on both the Council and the Committee had come to an end and recorded the Committee's thanks for her

valuable contribution, not least in the development of flow charts for the simple procedure rules.

3. The Chair noted that the Simple Procedure Rules had been laid before the Scottish Parliament and announced on the Council website the day before the meeting, 13 June.
4. Apologies were noted.
5. **The Committee agreed not to publish Papers 2.2, 3.1, 3.1A and B, 4.1, 5.1, 5.1A-C, 6.1 and 6.1A-G.**

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

6. **The Committee agreed the minutes from the previous meeting.**

Item 2.2 – Progress of actions from previous meetings (Paper 2.2)

7. **The Committee noted the progress of actions since the last meeting.**

Item 3: Proceedings

Item 3.1 Committee remits (Papers 3.1 and 3.1A and B)

8. Paper 3.1 invited the Committee to review its current remit with a view to submitting a revised remit, if required, to the Council for consideration at its next meeting on 11 July 2016. All the Committees are being asked to review their remits to ensure that they accurately reflected the Committees' current work programme.

9. The Committee discussed the proposed revised remit. The Committee thought that the remit should cover access to justice for all and not just for litigants. It was noted that there are a number of different terms in use for describing the resolution of disputes outside the courts although alternative dispute resolution is a well-understood term.

10. **The Committee agreed to submit the proposed revised remit to the Council for consideration, subject to a number of minor amendments.**

Item 4: Work programme

Item 4.1 – Update from the Scottish Government on legislative developments (Papers 4.1, 4.1A and B)

11. Denise Swanson provided an update on legislative developments in the Scottish Government. She had provided two papers setting out some of the Scottish Government's proposals for the Taylor Bill on multi-party actions and the Auditor of Court and explained that these had been sent to stakeholders as well as the SCJC

Costs and Funding and Personal Injury Committees to try and stimulate discussion. **Comments on the proposals can be submitted to the email address provided in the papers.**

12. The programme for Government would be published in September.

Item 4.2 - Update from the Scottish Legal Aid Board on in-court advice projects developed under Making Justice Work Project 3 and the report on Research into Participant Perspectives of Dispute Resolution in the Scottish Courts (Oral)

13. Colin Lancaster provided an oral update. The report has been distributed and includes a four page summary. There were some interesting findings about whether some disputes could be diverted from the courts. The report raised questions which would be explored at a seminar that Sheriff Arthurson would be attending. **There will be a report about the seminar at the next meeting.**

Item 4.3 - Rules Rewrite Update (Oral)

14. Luke McBratney provided an update on the work of the Rules Rewrite team since the last meeting. The first three discussion papers about the approach to the Rules Rewrite Project have been considered by the Rules Rewrite Committee and other committees will be consulted as appropriate. The Council has agreed that there should be a high level of public and professional engagement in the Rules Rewrite Project, which is likely to take a number of years to complete. It was noted that all rules will now need to be compliant with the ICMS system.

Item 5: Justice system reform: Rules rewrite

Item 5.1 – Lay representation for non-natural persons (Papers 5.1 and 5.1A-C)

15. The Committee considered the draft Act of Sederunt and explanatory papers **(Papers 5.1 and 5.1A-C)** that would provide lay representation for non-natural persons (companies and other organisations), implementing sections 95-98 of the Courts Reform (Scotland) Act 2014. Currently, companies and other organisations must be represented in Scottish courts by a solicitor, advocate or other person with a right of audience which can have serious financial implications for small businesses. **The Committee discussed whether to include some aspects of the proposed provision and agreed that the Committee's views should be submitted to the Council to take a view upon together with the draft Act of Sederunt for consideration and approval, if content, at its next meeting.**

Item 6: Research and consultations

Item 6.1 – Lay representation and lay support – overview of rules and guidance (Papers 6.1 and 6.1A-G)

16. The Committee considered papers 6.1 and 6.1A-G which provided a summary of the current rules of court and an overview of guidance relating to lay representation and lay support, as a starting point for considering whether to recommend changes to the rules and guidance.

17. In discussion it was noted that guidance for party litigants about lay representation and lay support was not easily accessible on the SCTS website. It was suggested that guidance for court staff and the judiciary should be easily accessible and up to date.
18. It was noted that paid lay representatives are permitted in England and Wales and in the Employment Tribunal and that the Committee may wish to consider this possibility during its review. The question of whether there would need to be regulation of the quality of paid lay representation would need to be considered. **Denise Swanson thought that aspects of the Law Society of Scotland's Regulation Paper *The Solicitors (Scotland) Act 1980 The case for change* might be relevant to the Committee's review and said she would arrange for it to be sent to the Committee.**
19. **The Committee agreed that it would be helpful to inform their consideration of this matter by inviting a researcher conducting qualitative research on this subject to speak to the Committee at a future meeting.**
20. **As the meeting had been rather lengthy there was only a short discussion of this item and the Chair suggested that it should be discussed towards the beginning when it is next tabled at a meeting.**

Item 7: A.O.C.B.

21. **There was no other business raised.**

Item 8: Dates of future meetings

22. The Committee noted that the next meeting was provisionally arranged for Monday 29 August 2016 at 3pm and agreed that this date should be confirmed.

Scottish Civil Justice Council Secretariat

June 2016