

**SCOTTISH CIVIL JUSTICE COUNCIL
FAMILY LAW COMMITTEE**

MINUTES

PARLIAMENT HOUSE, MONDAY 07 DECEMBER 2015

Members present: Lord Brailsford, Chair
Stephen Brand, Solicitor
Ian Maxwell, Families Need Fathers, SCJC member
Fiona Jones, Clan Childlaw
Catriona Whyte, Solicitor, Scottish Legal Aid Board
Simon Stockwell, Head of Family and Property Law,
Scottish Government

In attendance: Nicola Anderson, Policy and Legislation Branch,
Scottish Courts and Tribunals Service
Inez Manson, Deputy Legal Secretary to the Lord
President
Anne Hampson, Policy Officer, Scottish Civil Justice
Council

Apologies:
Sheriff McCulloch
Sheriff Tait
Lynda Brabender, Advocate
Professor Margaret Ross, Head of the College of Arts
and Social Sciences, Aberdeen University
Gillian Prentice, Deputy Principal Clerk of Session

Item 1: Introduction, welcome, private papers and apologies

1. The Chair welcomed those present and noted apologies.
2. **The Committee agreed not to publish the following papers: Papers 3.1, 3.1A, 4.1, 4.2, 4.3, 4.3A-C, 4.4, and 5.1**

Item 2: Minutes of Meetings [Paper 2.1]

- 3. The Committee approved the minutes of the previous meeting.**

Item 3: Proceedings

Item 3.1 Membership [Oral and Papers 3.1 and 3.1A]

4. At its 16 November 2015 meeting the Scottish Civil Justice Council (SCJC) considered **Paper 3.1A** which proposed some changes to the current members, and nominations for alternative representation, for the Scottish Legal Aid Board (SLAB), the Scottish Government (SG) and the Scottish Courts and Tribunals Service (SCTS). It also proposed that Craig McCorkindale Director for Civil Courts Reform, SCTS be appointed as a paper member to the Access to Justice, Costs and Funding, Family Law, Personal Injury and Rules Rewrite Committees. SCJC members approved the changes proposed.
5. **Members noted that no change was made to the current SLAB, SG or SCTS membership of the FLC; Robert Marshall remains the SG alternative representative, Marie-Louise Fox has been appointed as the alternative representative for SLAB, Yvonne Anderson as the alternative observer for the Court of Session and Jane MacDonald as the SCTS Policy and Legislation Branch alternative observer. Members noted also that Craig McCorkindale has been appointed as a paper member to the FLC.**

Item 4: Forward work programme

Item 4.1 Work Tracker [Paper 4.1]

- 6. The Committee noted the progress of work as outlined on the work tracker.**

Item 4.2 Forward Work Programme table [Paper 4.2]

- 7. The Committee noted the work programme table.**

Item 4.3 Communications [Papers 4.3 and 4.3A-C]

8. **Paper 4.3** discussed the steps taken following discussion at the 19 October 2015 meeting in relation to publicising the new rules on appointing a Child Welfare Reporter. It also advised members that the Council had approved changes to the SCJC communication activities at its 16 November 2015 meeting.
9. **Members noted the decisions taken by the Council in relation to the SCJC Communications Strategy, the SCJC communications plan and the creation and publication of an SCJC newsletter.**

Item 4.4 Scottish Government update on a Family Justice Modernisation Strategy [Papers 4.4 and 4.4A]

10. The Scottish Government submitted **Paper 4.4A** which outlined a proposed Family Justice Modernisation Strategy with the overarching aim of improving outcomes for children. Simon Stockwell advised that the SG hoped to host a Strategy Summit to outline existing work and seek views on changes that could be made to improve procedures in relation to family cases in early 2016. CELCIS, the Centre for excellence for looked after children in Scotland, were assisting with the organisation of the Summit and it was anticipated that around 70-80 people from across the justice sector would be involved. Simon explained that the intention is to have some short introductory speeches followed by break out groups to discuss both public and private family law. The half day event will be held in Edinburgh. **Members noted the paper and Simon's update.**

Item 5: Proposals for Rules

Item 5.1 Hearing the Voice of the Child in Family Actions

11. Simon Stockwell advised at the 19 October FLC meeting that that the SG was developing a paper in relation to the voice of the child for consideration at the next FLC meeting. **Paper 5.1A** sets out at paragraph 12 the outcomes which the SG would want to see in the family justice system in relation to hearing the voice of the child. These were summarised at the end of the paper in a numbered table (paragraph 72).
12. The Chair indicated that he had recently attended conferences in Australia and Hong Kong in relation to family law. He advised that the voice of the child was regarded as an important matter internationally. Lord

Brailsford had, during the course of discussion, raised the issue of Form F9 which is sent to a child (in sheriff court cases) as an initial step in seeking their views. This generated a lot of interest as Scotland appears to be almost unique in doing that and some South Pacific jurisdictions indicated that they may adopt it. There was however no international consensus on the best way to seek the views of a child.

13. As the issues around Form F9 had already been raised at previous FLC meetings and members had indicated that they would like to progress work in this area, the Chair advised that it would be particularly useful if members could discuss how the Form F9 might be changed, and offer suggestions on possible methods of taking forward a review.
14. It was recognised that there would be a lot of work required in considering all of the issues raised in relation to hearing the voice of the child which could take some years to progress and that this work could best be undertaken by a step-by-step approach.
15. It was also recognised that there is a lot of expertise in Scotland about how to listen to and hear a child and that a lot of research has been published on this topic. Some organisations already have more child friendly forms and may be able to give the FLC a steer on what would be good to include and what would not.
16. Following discussion, it was agreed that Form F9 was regarded as less than optimal although there was anecdotal evidence it was effective in some cases. It was agreed that developing a better form should be the focus of the FLC in the first instance as a means of taking this work forward, with other work on the voice of the child being taken forward at later meetings.
17. **Members agreed that Secretariat/LPPO should:**
 - **email Committee members seeking contact details of other relevant organisations;**
 - **write to these organisations informing them that the FLC was considering revising Form F9 and inviting any views they may have on how the form could be improved; and**
 - **consider the views provided and prepare an outline of them for the consideration of the Committee.**

Item 6: A.O.C.B.

18. The following issues were raised under this Item:

- Cross border jurisdictional issues between Scotland, England and Wales and Northern Ireland crop up frequently. The Hague Convention only applies between states, it is not applicable in these circumstances and there is no mechanism for transfer of cases between jurisdictions in appropriate cases. The Chair has been invited to attend the annual meeting of English High Court Family Division Judges in January 2016 where this will be one of the discussion topics. The SG expressed a strong interest in this issue and has raised cross-UK border cases with the UK Ministry of Justice, and Northern Ireland counterparts. It was noted that any solution proposed is likely to include primary legislation.
- A programme of reform has been implemented by the sheriffs and sheriff clerk in Aberdeen sheriff court so that the progress of family actions is judicially controlled. The Chair advised that he would contact the Sheriff Principal regarding this and report back to a future meeting of the FLC.
- The SG is considering the confidentiality of information relating to children in court actions and is likely to consult on this issue which may have implications for both primary legislation and rules of court.
- The Court of Session has issued an opinion on the Civil Evidence (Family Mediation) (Scotland) Act 1995 which holds that the 1995 Act does not apply to mediations about Hague disputes. The SG is considering if this gives rise to any need for further legislation in relation to the 1995 Act.

Item 7: Date of next meeting

- **A meeting to discuss the remit of the FLC is scheduled to take place on Monday 18 January 2016 in Parliament House at 10.00am.**
- **Further meetings are scheduled for Monday 22 February; Monday 09 May and 20 June 2016 at 10.0am in Parliament House.**