

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
WORKING GROUP**

WED 20 JULY 2016 AT 2 PM

JURY ROOM 9, PARLIAMENT HOUSE, EDINBURGH

MINUTES

Members Present: Sheriff Principal Abercrombie (SCJC member, Chair)

Sheriff Hughes (SCJC member)

Marie-Louise Fox (SLAB representative)

Hamish Goodall (Scottish Government representative)

Jane MacDonald (SCTS Legislation Implementation Team)

Liz Ross (COPFS)

Jillian Martin-Brown (Advocate)

Rona Jamieson (Solicitor)

Alan McCloskey (Victim Support Scotland)

Support: Caroline Mair (Deputy Legal Secretary, Rules Rewrite Drafting Team (RRDT))

Karen Stewart (Business and Policy Manager, Scottish Civil Justice Council)

Apologies: Sheriff Liddle, Jackie Powell

Item 1: Welcome, apologies and agreement of private papers

1. The Chairman welcomed those present and advised members that the Lord President has appointed Jackie Powell, SCTS ICMS Project Leader as a member of the working group. The Chairman noted apologies from Sheriff Liddle and Jackie Powell.

2. **The Working Group agreed not to publish the following papers: 2.2, 3.1, 3.1A, 3.2, 3.2A.**

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

3. **Members approved the minutes from the previous meeting.** There were no matters arising.

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

4. **Members noted the progress that had been made on actions since the last meeting.**

Item 3: Proposals for rules

Item 3.1 – A Statement of Principle (Papers 3.1 and 3.1A)

5. The Working Group considered Paper 3.1A and discussed the matters of policy arising and, in particular: whether to include a statement of principle in the inquiry procedure rules, the nature and content of such a statement and how it might operate.

6. **The working group agreed that the rules should contain a statement of principle and instructed the RRDT to prepare a draft statement of principle by mid-August for members' consideration. The item is to be circulated to members by correspondence.**

Item 3.2 – Review of Ordinary Cause Rules – Findings and policy proposals (Papers 3.2 and 3.2A)

7. The working group considered **Paper 3.2A** and discussed which of the Ordinary Cause Rules require to be replicated in the FAI rules. The working group discussed the general approach to the rules and agreed: -

- that the rules should be as concise as possible;
- to avoid, as far as possible, importing lengthy sections of the Ordinary Cause Rules;
- that where rules are required, they should be adapted and tailored to the specific circumstances of an FAI;
- that rules should be shortened as much as possible;
- that the rules should confer a broad power on the sheriff to case manage proceedings and make orders or directions.

8. The working group also agreed that a preliminary hearing should be held in all but exceptional cases and that submission of evidence electronically should be supported by the rules.

9. It was noted that at in the future, an electronic case management facility could be developed for FAs but that was some way off and would not be developed to coincide with the coming into force of the rules. The working group acknowledged that the rules should be “future proofed” as far as possible to take account of future improvements in IT provision.

Item 4: AOCB

10. Liz Ross sought clarity on the question of how it is intended that evidence will be given in inquiry proceedings. The working group have previously discussed the matter and adhered to the view that in principle, written evidence would be the preferred approach. Liz Ross advised that Crown Office, in accordance with Law Officers’ guidance do not lodge witness precognitions. A general discussion took place and it was stressed that if a witness will be giving evidence it will be expected that there will be a written statement lodged.

11. Liz Ross undertook to (i) investigate why the Crown Office policy was not to disclose witness precognitions, (ii) consider the implications of the proposals for Crown practice (which will require to change as a result) and to report back to the working group at the next meeting.

12. Sheriff Hughes thanked the Secretariat for circulating the recent speech by Lord Justice Jackson on concurrent expert evidence and asked that the possibility of participation in a training course for the judiciary referred to in the speech be investigated.

13. The Secretariat undertook to investigate the matter of judicial training and report back to the working group.

Item 5: Dates of future meetings

14. The working group agreed the following amended meeting schedule :

- 16 August 2016 - meeting cancelled.
- 14 September 2016 at 12.00 noon
- 8 November 2016 at 2.00pm
- 6 December 2016 - meeting cancelled
- 15 December at 2.00pm – new meeting scheduled
- January 2017 – date tbc if required

- February 2017 – date tbc if required

Scottish Civil Justice Council Secretariat

July 2016