

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL  
ACCESS TO JUSTICE COMMITTEE  
20 MARCH 2024 AT 4.15 PM  
VIA MICROSOFT TEAMS**

**MINUTES**

**Present:** Lady Carmichael (Chair)  
Joel Conn  
Thomas Docherty  
Employment Judge d'Inverno  
Fiona Drysdale KC  
Sheriff Martin-Brown  
Dean Purdie  
Hazel Thoms  
Sheriff Principal Wade

**In attendance:** Craig Anderson (SCTS)  
Rachel Grant (SCTS)  
Kirsten Henderson (SCTS)

**Support:** Jessica Flynn (SCJC)  
Paula Preston (SCJC)  
Karen Stewart (SCJC)

**Item 1: Welcome and apologies**

1. The Chair welcomed those present including Sheriff Principal Wade to her first meeting and noted apologies from: Chris Fyffe (Court of Session) and Kirsty Hyslop (SCTS). Karen Auchincloss (Scottish Government) was absent.

**Item 2: Justice System Reform**

*Item 3.2 - Simple Procedure Special Claims: Furthcoming (Paper 3.2)*

2. The Committee resumed consideration of Paper 3.2 and discussed the wording of the draft rule relating to expenses of a furthcoming claim.

3. Members had agreed at the previous meeting on 19 February 2024 that further information was required on the matter before the policy approach could be agreed. To assist members in this regard, Joel Conn provide a note on the particular issues discussed along with supporting legal background information.
4. Members considered the matters arising and agreed that draft Rule 20.9 should be amended by deletion of the words “arrested fund” and insertion of the words “arrested property or any proceeds of its sale”. The draft rule was approved subject to this amendment.

*Item 3.3 - Simple Procedure Special Claims: Count reckoning & payment (Paper 3.3)*

5. The Committee reviewed the policy matters previously considered in relation to simple procedure actions of count, reckoning and payment (CRP).
6. The Committee noted that this type of claim is one where the claimant demands from the respondent, production of an account narrating the dealings concerning a particular fund and payment of the sum found due to the claimant. Failing the respondents’ appearance or production of an account, the claimant will seek payment of the sums found due out of the fund.
7. Members noted that there are no special rules for this type of action in ordinary causes but that chapter 29 of the Summary Cause Rules 2002 makes rules provision largely concerned with the form of defences in an action of CRP and with the sheriff’s powers in the event of an accounting hearing being necessary.
8. The Committee agreed that the Simple Procedure Rules provide for full specification of the nature of a respondent’s defence in the response form. They also contain case management powers sufficient for the sheriff to order an accounting hearing with evidence if one is required.
9. The Committee approved the policy approach that an action for CRP can be applied for using the standard simple procedure claim form and that no bespoke procedural rules are required.
10. In addition, given the expected rarity of this type of action in the simple procedure, the Committee considered that providing specialised procedural rules for CPR would not be a proportionate approach.

**Item 3: Other Business**

*Claim Forms*

11. The Committee noted that to date, one of the key features of the special claim rules is the provision of bespoke claim forms for each type of claim, which have

been designed to elicit from the claimant, the information required to enable a sheriff to make a decision in the case.

12. At the meeting on 19 February 2024, the Committee discussed whether, as an alternative to various individual claim forms, a single special claim form could be developed which would be capable of being used for any special claim.
13. At members' request, the Secretariat consulted with SCTS to obtain initial technical advice on the on the feasibility of this approach and the potential scope of such an undertaking.
14. Karen Stewart provided an overview of the matters considered and SCTS' initial views. In particular:

#### *Civil Online*

- The Civil Online service allows parties to submit cases, pay court fees, submit supporting documents and respond to any claim lodged, all online. It supports digital hearings with all case documentation available and presented digitally either in the courtroom or at a virtual hearing. At present, only simple procedure cases are available in Civil Online.
- The claim form, response form and application for a decision form are all web-based forms which are input via Civil Online. Other documents can be uploaded to Civil Online in pdf format by the user. It was noted that 60-65% of documents are currently being lodged via the Civil Online portal.
- Legal firms have the option to register them digitally from their internal case management systems directly into Civil Online using an Application Programming Interface (API). The API was introduced in September 2021 and was updated in May 2023 and is set up for simple procedure only. SCTS do not anticipate that they would be able to offer an API at launch for SP Special Claims however any demand for such a service would need to be considered.

#### *Civil Online Development*

- SCTS explained that current development work for Civil Online is geared towards the provision of initiating documents for ordinary cause actions which will initially be available to legal firms only.
- It was noted that in developing this next stage of Civil Online, SCTS is moving away from input via web-pages to a service which would see the user upload a completed claim form into the Civil Online portal. AI would extract the relevant information from the form and input this to ICMS. It is intended that

the service will provide for the upload of other documents of a similar nature to that currently available under simple procedure.

- SCTS advised that the move away from web-page input is designed to future proof SCTS IT systems and to speed up the delivery of any legislative changes. This will mean that adaptations of the system will be easier and much quicker to implement. The external user experience will also be quicker.
- Whilst this work is at an early stage, it is intended that in due course, the system of web-page data entry will be obsolete and that completed forms will be connected to ICMS via Civil Online using AI technology. In this regard, a single form for each type of special claim would be preferred.
- SCTS advised that the provision of one form for use in all types of special claim could be problematic from a judicial user perspective and that a multi-use form is likely to significantly increase postal service costs for all users.
- SCTS also advise that it would be extremely challenging to provide an API for bulk submission of a multi-use claim form as opposed to a single claim form for each case type.

15. Members discussed various matters arising and in particular noted that the accessibility of the proposed approach will require full consideration. Members recalled that SCTS undertook to monitor the impact of Civil Online. Members wished to be updated at an early stage as to the results of that monitoring. Members recalled that the Equality Impact Assessment for Civil Online had required to be modified and expanded before Civil Online was made permanent. Members considered that the lessons from that process would require to be taken into account in relation to the projected changes to the process for submitting claims.

16. The Committee agreed that it will invite SCTS to provide an update on the monitoring and user feedback of Civil Online. In particular, an update on the Equality Impact Assessment of the current system and in relation to any proposed new technology. The topic will be included on the agenda for the next meeting.

*CJC Consultation: Mental Capacity in Civil Proceedings (Paper 4.1)*

17. The Chair provided an overview of the topic and the issues arising in the CJC consultation. Members provided some information about related issues that they have encountered in the courts.

18. Members noted that where a person lacks capacity, there are procedures that could be employed but the court cannot compel a person to seek any assessment nor could a solicitor representing an individual do so.

19. The Committee noted that in the Scottish context, information on any quantifiable measure on the scale/nature of the problem in the Scottish courts would be helpful. Members agreed to provide any contributions about personal experiences in this regard to the Secretariat and the topic will be added to the agenda for the next meeting.

**Scottish Civil Justice Council Secretariat  
March 2024**