

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
FAMILY LAW COMMITTEE
MONDAY 09 MAY 2016 AT 10 AM
JUDGES DINING ROOM, PARLIAMENT HOUSE

MINUTES

Members Present: Lord Brailsford (Chair)

 Catriona Whyte (Scottish Legal Aid Board)

 Simon Stockwell (Head of Family and Property Law, Scottish Government)

 Sheriff Tait

 Lynda Brabender (Advocate)

 Stephen Brand (Solicitor)

 Ian Maxwell (SCJC and Consumer representative)

In attendance: Nicola Anderson (Policy and Legislation Branch, Scottish Courts and Tribunals Service)

 Sheriff Principal Lewis (for consideration of item 6.1)

Support: Inez Manson (Deputy Legal Secretary, Lord President's Private Office)

 Anne Hampson (Policy Officer, Scottish Civil Justice Council)

 Karen Stewart (Business & Policy Manager, Scottish Civil Justice Council) for item 6.1

Apologies: Sheriff McCulloch

 Fiona Jones (Clan Childlaw)

Professor Margaret Ross (Head of the College of Arts and Social Sciences, Aberdeen University)

Gillian Prentice (Deputy Principal Clerk of Session)

Item 1: Welcome, apologies and agreement of private papers

1. The Chair introduced Sheriff Principal Lewis who was attending the meeting in relation to Agenda Item 6.1.
2. The Chair then welcomed those present and noted apologies from Sheriff McCulloch, Fiona Jones, Professor Ross and Gillian Prentice. He extended the sympathy of the Committee to Fiona Jones on her bereavement. The Chair also advised members that Clair McLachlan has resigned from the Committee and recorded thanks to Clair for her valuable contribution during her time on the Committee.
3. Members agreed not to publish the following papers: 2.2, 4.2, 5.1, 5.1A, 5.2, 5.2A, 5.3, 5.4, 6.1 and 6.1A.

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

4. **Members agreed the minutes from the previous meeting.**

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

5. Item 8 of **Paper 2.2** relates to the examination of witnesses in proceedings under the Children's Hearings (Scotland) Act 2011. Simon Stockwell advised the Committee that he had met with Scottish Government (SG) colleagues and that, in light of further evidence being obtained, a policy paper should be expected in due course. **Members noted Simon's comments and the progress on actions.**

Item 3: Proceedings

Item 3.1 Scottish Civil Justice Council Strategy Meeting (Oral)

6. Anne Hampson provided an update on the Scottish Civil Justice Council (the Council) strategy meeting which took place on 14 March 2016. She explained that the aim of the strategy meeting had been to look back over the past year, focussing on successes and challenges and to look forward to the coming year to finalise plans and agree priorities. In particular, Anne advised that that the Council will consider at

its 16 May meeting the Annual Report for 2015/16; its priorities for 2016/17; procedural matters arising from the strategy meeting and the remits of its established Committees.

Item 4: Work programme

Item 4.1 – Update from the Scottish Government (Oral)

7. Simon Stockwell provided members with an update. In particular, he advised that the SG is considering issues around gender recognition; intersex persons and substantive law on contact. Simon advised that the outcome of the Family Justice Modernisation Strategy summit, which took place on 17 March 2016, is being written up with a view to it being published. Ministers will consider this and take a view on how they wish to proceed. **Members noted the update.**

Item 4.2 – Forward Work Programme (Paper 4.2)

8. **Members noted the progress that has been made on actions since the last meeting.**

Item 5: Proposals for rules

Item 5.1 – Child Support Rules – Signature of Applications for Liability Orders (Papers 5.1 and 5.1A)

9. Inez Manson spoke to this Agenda Item. She advised that the amendment proposed by the Office of the Advocate General (OAG) would allow officials in the Child Maintenance Group of the DWP to sign applications for liability orders under section 33(2) of the Child Support Act 1991 on behalf of the Secretary of State, without the need for the official to be authorised as a lay representative under Rule 6 of the Child Support Rules 1993. The DWP's position is that the change would improve efficiency and be more cost effective for the DWP.

10. These proposals for amendments to court rules are as a result of previous amendments made by the Act of Sederunt (Child Support Rules Amendment) (Miscellaneous) 2015 (SSI 2015/351). Inez advised that the Lord President's Private Office (LPPO) has not identified any restriction in the court's competence to regulate the position in rules of court, and that this was therefore really a policy question for the Committee to consider.

11. **Following consideration of the proposal for amendment to the rules along with the legal advice provided, the Committee instructed LPPO to prepare draft rules for consideration at the next Committee meeting.**

Item 5.2 – Hearing the Voice of the Child Form F9 Intimation – Initial Writ (Papers 5.2 and 5.2A)

12. At its 22 February 2016 meeting the Committee instructed LPPO to prepare a draft instrument to amend Ordinary Cause Rule (OCR) 33.7(1)(h) which sets out how a family action that includes a crave for a section 11 order under the Children (Scotland) Act 1995 should be intimated to a child.

13. Inez Manson spoke to this Agenda Item. The draft rules at **Paper 5.2A** provide that when a family action or civil partnership action is intimated to a child who is not a party to the proceedings, a copy of the initial writ must not be sent to the child. This brings the sheriff court rules into line with the Rules of the Court of Session which expressly prohibit the intimation of pleadings to a child unless that child is a party to the action.

14. **The Committee approved the draft rules and agreed that that they be submitted to the Council for consideration and approval. The Committee noted that the issue of intimation in court proceedings may need to be revisited at some point.**

15. The Chair noted that the Form F 9 sub-group met up on 21 April 2016 and that a note of the main points discussed had been circulated to Committee members. Stephen Brand advised that this was work in progress and that a document will be submitted for members' consideration at the next Committee meeting.

Item 5.3 – Amendment to Court Rules - EU Regulation 2201/2003 (Papers 5.3 and 5.2A)

16. When an individual wishes to have a judgment that was issued in Scotland recognised or enforced in another EU Member State, they require to obtain a certificate under Article 39 of EU Regulation 2201/2003. The Chair indicated that the proposed changes to Court of Session Rule 62.78(2) and Rule 10(2) of the Act of Sederunt (Jurisdiction, Recognition and Enforcement of Judgments in Matrimonial Matters and Matters of Parental Responsibility Rules) 2006 are technical in nature and that the purpose of the changes is to ensure that the rules are effective and easily understood. The changes to the rules will make it clearer that evidence of execution of service is only required when enforcement is sought.

17. **The Committee approved the draft rules and agreed that they be submitted to the Council for consideration and approval.**

Item 5.4 – Child Welfare Reporters – SLAB to receive reports (Papers 5.4 and 5.4A)

18. Paper 5.4A was submitted jointly by the SG and the Scottish Legal Aid Board (SLAB). It proposes changes to the rules of court to require a Child Welfare Reporter to send a copy of the report to SLAB when at least one of the parties to the case is in receipt of legal aid. This proposed change to procedure would assist SLAB assess whether it is appropriate for legal aid to continue to be paid in individual cases.

19. The Committee considered whether it was appropriate for the proposal to be regulated by court rules as it relates to the “private” relationship between SLAB and assisted persons. There was some discussion about the varying approaches taken across Scotland, in that while some courts agree to the report being provided to SLAB, others do not. It was noted that practice generally in family actions often varied across Scotland. **Following discussion, Sheriff Principal Lewis agreed to raise the issue of SLAB receiving reports at a meeting of Sheriffs Principal and to provide feedback to the Committee at a future meeting.**

Item 6: Research and consultations

Item 6.1 – Case Management in Family Actions – Research Specification (Papers 6.1 and 6.1A)

20. At its 22 February 2016 meeting the Committee agreed that the next step in taking forward research should be the consideration of a research specification which would include face-to-face interviews with sheriffs, sheriff clerks and family law practitioners and that a research specification should be developed for discussion at the 09 May 2016 meeting.

21. Inez Manson spoke to this Agenda Item. She explained the proposed research specification which has been developed in line with discussions at the 22 February Committee meeting.

22. Members discussed the issue of case management in family actions and considered the research specification and, in particular, its proposed aims and objectives; the sample of sheriff courts and research methods outlined in the specification; the proposed approach to contracting a legal researcher; and the nomination of a Committee member to sit on the Research Advisory Group (RAG).

23. **The Committee agreed the content of the research specification and that:**

- **the research specification be submitted to the Council for consideration and approval;**

- **if the specification is approved, and before research commences, permission to approach sheriffs inviting them to participate must be obtained from Sheriffs Principal;**
- **Stephen Brand will represent the Committee on the Research Advisory Group.**

Item 7: New Family Actions User Group

24. The Chair advised that letters of appointment to the new Family Actions User Group had been issued last week and it was anticipated that the first meeting would take place in June 2016. Lord Brailsford will Chair the Group which consists of two Advocates and four solicitors. Lord Brailsford's clerk will also attend meetings. The role of the Group is to look at operational and administrative issues and case management in the Court of Session in relation to every type of family action. It was noted that at this stage the User Group would just include practitioners and would not include third sector bodies which provide support to litigants. **Members welcomed the setting up of the Group and noted the update.**

Item 8: A.O.C.B.

25. No further business was raised.

Item 9: Dates of future meetings

26. Members noted the date of the next meeting and that future meeting dates will be circulated by Secretariat prior to that meeting:

- Monday 20 June 2016 at 10 am

Scottish Civil Justice Council Secretariat

May 2016