

**SCOTTISH CIVIL JUSTICE COUNCIL
FAMILY LAW COMMITTEE**

MINUTES

PARLIAMENT HOUSE, MONDAY 18 JANUARY 2016

Members present: Lord Brailsford, Chair
Sheriff McCulloch
Sheriff Tait
Lynda Brabender, Advocate
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: Gillian Prentice, Deputy Principal Clerk of Session
Roddy Flinn, Secretary to the Scottish Civil Justice
Council
Karen Stewart, Business & Policy Manager, Scottish
Civil Justice Council
Inez Manson, Deputy Legal Secretary to the Lord
President
Anne Hampson, Policy Officer, Scottish Civil Justice
Council

Apologies: Professor Margaret Ross, Head of the College of Arts
and Social Sciences, Aberdeen University
Nicola Anderson, Policy and Legislation Branch,
Scottish Courts and Tribunals Service

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, 3.1B, 4.1 and 4.2.**

Item 2: Minutes of Meetings [Paper 2.1]

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

Item 3: Proceedings

Item 3.1 Remit of the Family Law Committee [Papers 3.1 and 3.1A - B]

4. There was discussion at the Committee's 22 June 2015 meeting around how some of the issues noted in the forward work programme table fitted into the remit of the Committee. Following this discussion, the Secretariat and LPPO prepared a revised form of wording for the FLC remit which was considered at the 19 October meeting.
5. Members expressed a range of views in relation to what the remit should contain and how the forward work programme could best be progressed. A sub-group comprising Robert Marshall, Fiona Jones and Lynda Brabender was appointed to consider the issues and make proposals regarding the remit of the FLC. These proposals were then to be considered and discussed by members at an appointed meeting of the full Committee. **Paper 3.1A** was subsequently received.
6. The Chair advised that the meeting was convened to specifically discuss the proposed remit and future work of the FLC. He recorded the Committee's thanks to Robert, Fiona and Lynda for taking forward this work and for submitting a thoughtful paper which included a proposed remit for members' consideration.
7. The Chair also advised that that SCJC Secretariat [**Paper 3.1**] and Professor Ross, had each provided suggested amendments to the sub-group's proposed remit for members' consideration.
8. The Chair reminded members of the requirement for the SCJC and its Committees to maintain independence and impartiality in carrying out their remit and that changes to substantive law were primarily for the Scottish Government. The chair acknowledged that the FLC can rightly comment on policy which has been fully formulated and, where they identify that existing primary legislation requires amendment to improve the experience of users of the civil justice system can make recommendations to the SCJC that the matter be brought to the attention of the SG with a view to improving practice and procedures in the civil

courts. Commenting on policy proposals would be in line with paragraph 9.4 of the SCJC's Standing Orders.

9. **Following careful consideration of the sub-group's proposed remit and the suggested amendments to it, members agreed the proposed FLC remit that is set out at Annex A to these minutes, subject to approval of the SCJC.**

Item 4: Forward work programme

Item 4.1 Work Tracker [Paper 4.1]

10. Members were provided with an update on the work of the Rules Rewrite Team (RRDT). Work on rules to underpin the provisions in the Courts Reform (Scotland) Act 2014 is almost complete and the team are now moving on to consider the need for rules in relation to other proposals emanating from the Scottish Civil Courts Review which do not require primary legislation. It is then anticipated that the team will undertake a comprehensive review of all court rules, including those relating to judicial case management which is one area under consideration of the FLC. The RRDT is currently developing scoping papers for taking forward this work.

11. **The Committee noted the update on the work of the RRDT and progress of work as outlined on the work tracker.**

Item 4.2 Forward Work Programme table [Paper 4.2]

12. In relation to FLC priorities, it was confirmed that the SCJC will have a strategy meeting to discuss work priorities now that the Lord President has been appointed. It is anticipated that the SCJC and committees' work programme for 2016/17 will be included on the agenda.

13. The Chair informed members that it is hoped that the strategy meeting will take place on Monday 07 March 2016 and that Committee Chairs have been invited to attend. He invited members to consider both the work tracker [Paper 4.1] and the forward work programme table [Paper 4.2] and to propose priorities for the FLC for discussion by the SCJC at the strategy meeting.

14. The Committee agreed that taking forward work in relation to Hearing the Voice of the Child in Family Actions and expediting family actions and proceedings should be regarded as priorities for the FLC.

Item 5: A.O.C.B.

15. The following issues were raised under this Item:

- The establishment of a Court of Session Family Court Users Group. Lord Brailsford advised that he will be seeking a meeting with the Lord President and will raise this matter.
- The Chair advised that he had attended the annual meeting of English High Court Family Division Judges where UK cross-border jurisdictional issues were discussed. He advised that those present acknowledged problems in this area and that implementing a transfer mechanism was the best way forward. It was acknowledged that primary legislation would be required to facilitate such a solution.
- The Chair indicated that England and Wales intend to implement judge led compulsory mediation in every family law money case.

Item 6: Date of next meeting

- **The next meeting is on Monday 22 February at 10.0am in Parliament House**
- **Further meetings are scheduled for: Monday 09 May and Monday 20 June 2016 at 10.0am in Parliament House.**

Proposed Family Law Committee Remit

(Version agreed at 18 January FLC meeting for SCJC approval)

The Committee's remit is concerned with -

- the power to make provision about the practice and procedure to be followed in the Scottish civil courts in relation to family actions and proceedings relating to children.

In relation to these matters the Committee has a remit-

- to make recommendations to the Scottish Civil Justice Council on the practice and procedures to be adopted in family actions and proceedings relating to children;
- to require that family actions and proceedings relating to children be dealt with as expeditiously and efficiently as is possible;
- to review, develop and promote a case management structure for family actions and proceedings relating to children;
- to consider and make proposals for modification and reform of the relevant civil rules;
- to keep the relevant civil rules under review;
- to report to the Scottish Civil Justice Council with its recommendations and, where applicable, draft rules.

In the exercise of the foregoing remit the Committee is to take due account of-

- in cases involving children, the need to regard their welfare as the paramount consideration; and
- the desirability of achieving a consistency of approach in the Court of Session and the sheriff court, while recognising the different circumstances of those courts.