

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
FAMILY LAW COMMITTEE
MONDAY 20 JUNE 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 Principal Lewis

Lynda Brabender (Advocate)

Stephen Brand (Solicitor)

Fiona Jones (Clan Childlaw)

Ian Maxwell (SCJC and Consumer representative)

Professor Frances Wasoff (Edinburgh University)

In attendance: Gillian Prentice (Deputy Principal Clerk of Session)

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

Anne Hampson (Policy Officer, Scottish Civil Justice Council)

Apologies: Rachael Kelsey

Sheriff Tait

Nicola Anderson (Legislation and Implementation Team, Scottish Courts and Tribunals Service)

Item 1: Welcome, apologies and agreement of private papers

1. The Chair introduced Sheriff Principal Lewis who took up her appointment as Sheriff Principal of Tayside, Central and Fife in 2015, and Professor Frances Wasoff, Emeritus Professor of Family Policies at Edinburgh University. Both were appointed to the Committee by the Scottish Civil Justice Council on 03 June 2016 and were attending their first meeting as Committee members. He informed members that Stephen Brand had been re-appointed to the Committee and recorded thanks to Stephen for agreeing to serve another term.

2. The Chair then welcomed those present and noted apologies from Sheriff Tait, Nicola Anderson and Rachael Kelsey who was also appointed as a member of the Committee but unfortunately was unable to attend the 20 June meeting. The Chair advised members that that he had written to Sheriff McCulloch and Professor Margaret Ross in relation to the end of their tenure on the Committee, and thanked them for their valuable contributions. He noted that Sheriff McCulloch has confirmed he would be happy to continue work with the F9 subgroup, and that Professor Ross had passed on her best wishes for the Committee's future work.

3. Members agreed not to publish the following papers: 2.2, 3.2, 4.1, and 4.1A-C.

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. In relation to family law research, Ian Maxwell advised that Families Need Fathers Wales was issuing a survey to users of the Family Courts in Wales, inviting views on their experience. Ian invited comments on whether a similar exercise might be carried out in Scotland. **Following discussion, the Committee decided that the research proposal scheduled to be considered by the Council at its 11 July 2016 meeting should be progressed, and depending what that reveals, the Committee could consider at that stage whether it wished to carry out any further research. Ian advised that he would forward a copy of the Welsh questionnaire for circulation to the Committee for information.**

Item 3: Work programme

Item 3.1 – Update from the Scottish Government (Oral)

6. Simon Stockwell provided members with an update. In particular, he advised that the outcome of the Family Justice Modernisation Strategy Summit which took place on 17 March 2016, is being written up. Ministers' views will be sought over the summer on how they wish to progress this work. He also advised that, as part of the work for the Strategy, the Scottish Government (SG) looked at the Report to the Lord President by the Joint Working Group on Family Actions and had undertaken an analysis of the state of play on the various actions. Simon suggested that, where an action remains outstanding, it should be added to the table at **Paper 2.2**. It was pointed out that some of the actions from the Report are not specifically for the Family Law Committee to consider and that some are currently being considered by other Committees.

7. Simon also indicated that the SG intends to consider whether a policy paper is necessary in relation to seeking a change to rules so that a decree of divorce/dissolution is shown separately to information on contact, residence, aliment etc. It was suggested that the Legislation and Policy Implementation Team of the Scottish Courts and Tribunals Service may be able to provide views on this issue.

8. The SG is planning, following discussion with the Scottish Council of Jewish Communities, to update SSI 2006/253 with an alternative reference to "Any Hebrew Congregation" and this may have an impact on court rules and forms.

9. **Members noted the update and instructed Secretariat/LPPO to consider the Report of the Joint Working Group on Family Actions and the recommendations in the Scottish Civil Courts Review with a view to adding any relevant matters to the list of actions in the Committee's work programme.**

Item 3.2 – Forward Work Programme (Paper 4.2)

10. Simon Stockwell advised members that the SG met with the Mental Welfare Commission for Scotland (MWC) to discuss curators *ad litem* and that a joint policy paper will be prepared suggesting a change to court rules to address the specific divorce issues raised by the MWC. More general consideration of curators *ad litem* will be undertaken by the SG who is currently considering how best to progress this work. **Members noted Simon's update and the progress that has been made on actions since the last meeting.**

Item 4: Proposals for rules

Item 4.1 – Child Support Rules – Signature of Applications for Liability Orders (Papers 4.1 and 4.1A-C)

11. The Committee considered a proposed Act of Sederunt which amends Rule 2 and the form of application for a liability order (Form 2-A) contained in the Act of Sederunt (Child Support Rules Amendment) (Miscellaneous) 2015 (SSI 2015/351). The change will ensure that it is competent, in line with previous practice, for officials in the DWP to sign the applications for liability orders on behalf of the Secretary of State.

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

Item 4.2 – Hearing the Voice of the Child Form F9 Intimation – Sub-group Update (Papers 4.2 and 4.2A)

13. The Committee considered **Paper 4.2A** which was prepared by the Form F9 sub-group. Fiona Jones, who leads the sub-group, spoke to the paper. She advised that the sub-group had met twice and had taken on board responses from stakeholders in relation to improving Form F9 along with the views expressed at the 22 February 2016 Committee meeting. Fiona advised that she had a helpful meeting with the Scottish Children's Reporter Administration in relation to the development of the 'All About Me' forms (which are recognised as having a slightly different function to that of Form F9).

14. Following detailed discussion around the terminology used, the timing of issuing the Form F9 and other related matters, the Committee agreed that the sub-group should:

- **continue its work in relation to the development of the revised Form F9 in line with discussion and suggestions provided at the 20 June 2016 meeting;**
- **arrange, with the assistance of Secretariat/LPPO, to seek views on the proposed replacement forms from those who responded to the initial request for comments on Form F9;**
- **make arrangements, with the assistance of Secretariat/LPPO, for groups of children to be consulted on the new Form F9.1 and Form F9.2 with consultees who have offered to facilitate this.**

15. The Committee also agreed that members should consider the timing of when the proposed new forms might be issued to children (i.e. at what stage in

proceedings), and bring proposals in relation to this to the October 2016 meeting.

16. Rules 33.20 and 33A.20 of the Ordinary Cause Rules set out how the views of the child are to be recorded, and enable the sheriff to direct how these views are to be treated. Concerns have been raised that, as the Form F9 is not given a process number (because it does not form a borrowable part of the process), it is not always obvious to the sheriff that a completed Form F9 has been received. Members were therefore asked to consider whether it would be preferable for the Form F9 to be recorded in the inventory of process and given a number, even if it does not form a borrowable part of the process.

17. Following discussion around how this issue could best be addressed, the Committee invited Sheriff Principal Lewis to discuss the matter with Sheriffs Principal and to bring back comments/proposals to the next meeting.

Item 5: A.O.C.B.

18. Ian Maxwell raised the issue of how/when a review of the new Child Welfare Reporter Rules (to assess whether the changes made were working) should be carried out. Catriona Whyte, Scottish Legal Aid Board (SLAB) advised that SLAB will be undertaking a review of the impact on legal aid after the rules have been in force for one year.

19. The Committee noted that the training element, which is an integral part of the changes, is not yet in place. It was therefore decided that a review of the new rules would be best carried out after the training component had been in place for a while. It was agreed that this issue should be considered in spring 2017.

20. The Chair advised members that Sheriff Principal Pyle had notified the Lord President that the SG intended to pilot the PACE project (which aims to improve the speed with which looked after children reach permanence), which was initially piloted only in Aberdeen, Aberdeenshire and Paisley, in additional areas. **Simon Stockwell agreed to check progress on this with SG colleagues.**

21. Simon Stockwell raised a point in relation to parties being excluded from Child Welfare hearings without cause being shown. It was considered that this was not an issue that the committee could appropriately deal with, because a decision to exclude a party, or a decision about whether cause is shown, is a judicial decision for the individual sheriff hearing the case. Sheriff Principal Lewis agreed to discuss this issue with the other Sheriffs Principal.

Item 6: Dates of future meetings

22. Members noted the date of the next meetings

- Monday 10 October 2016 at 10am
- Monday 12 December 2016 at 10am

Scottish Civil Justice Council Secretariat

June 2016