

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL

MONDAY 12 OCTOBER 2026, 10:30AM

JUDGES' CONFERENCE ROOM, PARLIAMENT HOUSE

Present: Lord President (*Chair*)
Fiona Drysdale KC
Malcom Graham (*SCTS*)
Nicola Irvine
Sheriff Lesley Johnston
Sheriff Frances McCartney
Adam McKinlay (*attended by video link*)
Denise Swanson (*Scottish Government*)
Thomas Docherty

In attendance: Paul McKinlay (*SCTS*)
Rachel Grant (*LIT*)
Carolyn Magill (*LPPO*)
Cat Dalrymple (*Scottish Government*)

Support: Danielle McLaughlin (*Secretariat*)
Sarah-Jane McNicol (*Secretariat*)
Paula Preston (*Secretariat*)
Jennifer Kelly (*Secretariat*)

Apologies: Lady Carmichael
Lord Ericht
Colin Lancaster (*SLAB*)
Iain MacRae
Sheriff Principal Ross
Sheriff Jillian Martin-Brown
Usman Tariq KC

Item 1 - Welcome, apologies and agreement of public and private papers

1. The Chair noted the apologies received and welcomed Danielle McLaughlin as the Interim Director of Strategy for the SCJC. Members agreed that papers 2.1 and 2.2 would be marked public.

Item 2 - Previous meeting

2.1- Items considered by correspondence (*Paper 2.1*)

2. Members noted the update provided.

2.2 - Statutory Instruments now in force (*Paper 2.2*)

3. Members were advised that this was a new proposed standing paper and noted its terms.
4. Members discussed the submission of a written response on behalf of the Council, and ultimate attendance of the Interim Director and legal representation at the Equalities, Human Rights and Civil Justice Committee to answer questions on the underlying policy of the instruments relating to fees of Messengers at Arms and Sheriff Officers- [**Act of Sederunt \(Fees of Messengers-At-Arms and Sheriff Officers\) 2026 and Act of Sederunt \(Fees of Messengers-at-Arms and Sheriff Officers\) \(Amendment\) 2026 \(SSI 2026/252\)**](#). The instruments were before the Committee as part of negative procedure. This work had been done at pace and in unprecedented circumstances. A committee member's motion to annul both the instruments was ultimately unsuccessful.
5. It was clear that going forward there may be an increased level of Parliamentary interest in, and scrutiny of, the Council's work.
6. It was noted that this experience provided an opportunity for reflection and to support the continuous improvement of the work of Secretariat and Council in policy formation, engagement and evidence base.
7. To support greater awareness of the work of the Council and public engagement more generally it was suggested by members that there would be benefit in the Council writing to relevant committees of the Scottish Parliament when commencing a consultation, call for evidence or discussion paper in particular. It was agreed that this would be taken forward in the work going forward.

Work Programme updates

Item 3 - Aarhus Convention

3.1 - Update on work concerning the Public Consultation on the extension of Protective Expenses Orders (PEOs) including next steps (Oral Update)

8. Sheriff McCartney provided a brief update on the Aarhus Convention work. The following work was noted in particular.
 - a. The consultation on the extension of PEOs closed on 18 September 2026 with 8 responses received. Late responses were to be allowed given the importance of the topic. Analysis of the responses by Secretariat was ongoing to support preparation of a consultation analysis document. Further consideration of the responses was to take place to support any potential updated policy position and extent to which the current draft rules may require further amendment. A more detailed update would be provided at the Council's next meeting.
 - b. As part of the Council's Annual Programme of Work for 2026/2027 a commitment was made to research the volume of environmental actions initiated across both the courts and tribunals in Scotland; and commission research to consider the ways that environmental disputes are dealt with in Scotland, and potential alternative mechanisms for resolving such disputes. The Secretariat is now commencing initial scoping work in relation to both aspects. The aim is to report on progress in more detail at the next Council meeting.
9. Members noted the update provided.

Item 4 - Group Procedure

4.1 Update on the work of the Group Procedure Working Group including next steps (Oral Update)

10. The Interim Director provided a brief update on the Group Procedure work, which is an important aspect of the Council's Strategic Plan for 2026-2029.
11. Work was progressing well. A particular focus of the work since the Council last met in June had been on the preparation of a discussion paper for ultimate consideration by the Council, and subsequent consultation. Input from a leading academic had been sought as part of that work. The

intention was for a more detailed discussion of this work, with associated papers, to take place at the Council's next meeting.

Item 5 - Taxation of accounts of expenses in Scotland & interim awards

5.1 Update from the SCTS regarding the Auditor of the Court of Session (*Oral Update*)

12. Paul McKinlay, Executive Director of Court Operations, provided a brief overview of the work being undertaken by the SCTS in response to recent concerns expressed regarding delays.
13. The SCTS appreciates this is a very important user service which is key in supporting access to justice. It was explained that there is a capacity issue caused in part by greater demand, particularly from the All-Scotland Sheriff Personal Injury Court, and also by historic issues filling vacancies within the office given the specialist skills needed.
14. A recruitment process had commenced for two trainee law accountants. This was scheduled to close on 14 October 2026. This was seen as an important step to increase capacity, mitigate extension of journey times, and support resilience going forward.
15. Demand for the service will continue to grow. The SCTS was accordingly giving consideration to what improvement could be made to the system to support greater efficiency and allow it to be more responsive to the needs of users going forward. The SCTS will continue to keep Council members and the profession at large informed of progress going forward.

5.2 - Further considerations on changes to interim awards of expenses in Scotland (*Papers 5.1- 5.3.*)

16. Members reflected upon the update received from the SCTS under item 5.1 and its interaction with the request made by the Faculty of Advocates for changes to be made to the rules of the Court of Session ("[Interim award of expenses – the need for a rule change](#)"). It had been submitted by Faculty that increasing journey times for taxations was understood to be influencing a change in behavior towards settlement and payment. This was believed to be disproportionately impacting legal representatives providing representation via speculative fee arrangements, potentially impacting access to justice.

17. Focused discussion took place on what role the Council had in this forum, and the options available to Council to facilitate policy development. Members agreed that there was a lack of data on the extent of the use of discretionary motions for interim awards of expenses; and separately the impact, if any, delays at the Auditor of the Court of Session may be having on the functioning of the civil justice system, given the concerns raised by the Faculty of Advocates. There was a clear need to understand the landscape further and to obtain what data might be available to support the Council to make an informed decision on policy formation in this important but delicate area. It was agreed that there was a need to obtain the views of a wide number of stakeholders to support the Council in doing this. While a consultation on the request was one option available to support the Council in reaching an informed decision on its policy, a call for evidence was another and deemed the most appropriate avenue in the circumstances. A consultation could follow once an informed policy view was taken.
18. Discussions thereafter focused on parties who could be expressly notified of the call for evidence. It was crucial to garner a cross section of views and information. Equalities and Human Rights Commission (EHRC) Scotland and consumer rights organisations should be notified of the call, over and above the legal profession and associated professional bodies.
19. Consideration was also given to draft questions for the call, with an agreement to include focused reference on data available; views on the impact on access to justice, if any; and to encourage reasoning to be provided from respondents when options were presented.
20. It was agreed that the call for evidence should be for a period of 12 weeks.

Action- the Secretariat to prepare an updated call for evidence paper with associated documentation for consideration by Council members, and ultimate progression.

Item 6: Proposal to host event on ‘Growing the commercial disputes landscape in Scotland’ with the Royal Society of Edinburgh, Usman Tariq KC (Paper 6)

21. Members noted the proposal by Usman Tariq KC for a round-table event and discussed how it aligned with one of the SCJCs key-strategic themes:

Scotland as a Forum of Choice.

22. Members were supportive of the idea in principle, however, it was agreed further consideration of the concept was required to support alignment with other aspects of the Council's work including increased stakeholder engagement. Options discussed included the creation of a suite of similar events across the country, in different formats, to support cross sector knowledge sharing and engagement.

Action –the SCJC Secretariat to explore the concept further and prepare a further paper for further consideration by the Council.

Updates

Update from the Interim Director (*Oral Update*)

23. The Interim Director provided a brief overview of some of the key areas of work undertaken since her appointment. This had involved a particular focus on the Council's strategic theme of Sustainable Delivery with work including engagement with Council members to support a greater understanding of the current operational model and the role and functions of Secretariat; and progression of the recruitment of essential senior policy support to be added to the Secretariat.

AOB

24. No items of other business.

Date of next meeting: Monday 14 December 2026