

**Minutes of Joint Meeting of Court of Session and Sheriff Court Rules Council
IT Committee**

Held at Court of Session on 31 March 2006

Present

Court of Session

The Hon Lord Macphail (Joint Chair)
D Boyle
D Morris
R Macniven
D Bruton

Sheriff Court

Sheriff Peebles QC (Joint Chair)
J d'Inverno
J McCormick
C Armstrong
A Johnston
P Cackette
G McKeand

A Oxley (Secretary)

Prior to the joint meeting members of both Committees attended presentations on a secure document exchange system which was delivered by a commercial provider and electronic signatures which was delivered by Kevin Ramsay, Registers for Scotland Executive Agency.

Members found the presentations interesting and of benefit to the matters under consideration.

1. Apologies

Sheriff Fletcher, R Cockburn, D Murray, R Macpherson.

Those present were welcomed to the first joint meeting of both Committees. It was explained that permission had been obtained from the Lord President and the Chairman of the Sheriff Courts Rules Council (SCRC), Sheriff Principal Young Bt QC to meet jointly and it is the intention that the remit of the Court of Session IT Committee be extended to include the terms of reference given to the SCRC IT Committee. Lord Macphail and Sheriff Peebles would jointly chair the Committee.

2. Minutes of the previous SCRC IT meeting

The minutes of the meeting of 27 January were approved.

3. OSSE advice

The Committee found the advice helpful. There followed a discussion in relation to access to court documents. It was agreed:

- ♦ the principle that the process would remain private until the case enters into court and when it does so it becomes public should continue
- ♦ some processes, for example adoption, should be sealed at all times
- ♦ only parties to the action should have access to documents unless specifically restricted
- ♦ the current restrictions for access to documents by others including the press should continue

- ♦ there is no need for solicitors to have access to the current case management system. However, depending on whether a commercial or bespoke electronic document exchange system is introduced access to own case documents may be permissible.

4. Timetable update

The Committee was advised that the timetable was still fluid. The provision of e-submission of documents was no closer now than 6-9 months ago. Guidance on access to documents, e-signatures and what type of electronic exchange system should be in place could not be given until a decision in principle on these matters was taken. However, in relation to small claims and summary cause actions documents there did appear to be mileage in an in-house developed application and this was still being progressed.

Presentations

5. Members were advised that UK Supreme Court has commonality across the UK and compatible systems would be desirable. Also that the Department for Constitutional Affairs was currently looking at a commercial provider and conducting a feasibility study into e-filing in civil and family matters. There then followed a discussion of the content of the presentations given prior to the meeting. The issues discussed included:

- ♦ feasibility
- ♦ desirability
- ♦ competitive tendering
- ♦ intellectual property rights in event of company takeover
- ♦ costs to litigants
- ♦ control over future increase in costs

The Committee debated whether a commercial or bespoke system would be preferable and noted that there were risks and benefits attached to each type of system. It accepted that it is not a matter for the Committee to decide upon which system was preferable, its remit was to see if it was feasible and if so what is possible.

The Committee concluded that:

- ♦ it was feasible and desirable to have an electronic system
- ♦ there were risks and benefits associated with either commercially supplied or procured bespoke systems
- ♦ electronic document exchange should be mandatory for solicitors and differential fees should apply to encourage use of the system
- ♦ different procedures would have to be put in place locally for party litigants who did not have access to IT

It was agreed that the Committee should write to the Chief Executive of the Scottish Court Service copying to the Scottish Executive Justice Department advising the conclusions reached by the Committee, setting out the risks and benefits identified and asking for views and proposals on how an electronic document exchange system could be achieved including a timescale for implementation.

6. Video link evidence

Members considered the paper by Lady Paton and concluded that a simple rule in identical terms for both courts would be appropriate. Discussion on the draft rule took place. It was suggested that the word "special" prior to "cause shown" be deleted as that implies it is more than cause shown. The definition of "witness" is to be extended to include "or may be" immediately before "cited". It was agreed that the drafts person

would further consider whether the rule should refer to “television” or “audio visual”.
Members will finalise the rule at the next meeting.

7. AOB

There were no items for discussion.

8. Date of next meeting

Friday 7 July at 10:30 in the Court of Session.