

APPROVED

## **Minutes of Sheriff Court Rules Council Meeting**

**McDiarmid Park, Perth**

**2 March 2007**

### **PRESENT**

Sheriff Principal Sir S S T Young Bt QC  
Sheriff Principal J A Taylor  
Sheriff W Holligan  
Mr S Brand  
Mr P Cackette  
Mr R Conway  
Mr A Johnston  
Mr J Murphy  
Ms S O'Neill  
Mr S McCourt (Secretary)  
Mrs A Oxley (Assistant Secretary)

### **Agenda**

#### **1 Apologies & Welcome**

Apologies - C Flanagan, J d'Inverno, S Di Rollo QC. Sheriff M J Fletcher, Mr G Way, Sheriff I A S Peebles QC, R Young

The Chairman welcomed Sheriff Principal Taylor who has replaced Sheriff Principal Kerr QC on the Council.

#### **2 Minutes of previous meetings and matters arising**

##### **Minutes**

The minutes of the previous meeting held on 1 December 2006 were approved.

The Secretariat undertook to check with the Lord President's Private Office as to whether the Act of Sederunt relating to the Animal Welfare Act 2006 had been approved and signed by the Lord President.

Sheriff Holligan raised an issue regarding the minutes of the previous meeting held on 6 February 2007. The minutes were silent in relation to the vote taken on whether the court should make an order at any stage or just at an Options Hearing requiring parties to consider settlement or referral to ADR. The secretariat was asked to check their notes of the meeting and advise the Chairman and Sheriff Holligan by email of what record they had on this. Once confirmed the minutes to be revised and approved.

##### **Matters Arising**

- (1) Sheriff Holligan's paper on heritable actions
- (2) Sarah O'Neill's wording on Summary Cause & Small Claim guidance

## APPROVED

The Council agreed to consider both issues together. These centred on whether a defender when completing an application for time to pay in a summary cause action for recovery of possession of heritable property and payment is deemed not to be disputing the claim for recovery of possession. Discussion took place over amending Form 1A contained in the Summary Cause Rules 2002 as well as the relevant guidance to make clear to a defender the difference between admitting the claim for money and the claim for recovery of possession of heritable property. Consideration was also given to amending guidance on small claims. The Council agreed to remit both issues to the Ordinary Cause Committee for consideration of changes to rules at its meeting on 13 April.

Meantime, the secretariat undertook to write to the Scottish Court Service, COSLA and the Scottish Federation of Housing Association to ascertain whether there would be any cost and logistical implications for them if such amendments were to be made to the forms and guidance.

### **3 Co-opt G McKeand onto Joint IT Committee**

The Council agreed that Mrs G McKeand, Scottish Court Service be co-opted onto the Court of Session and Sheriff Court Rules Council Joint IT Committee. Sheriff Peebles would issue an invitation letter to Mrs McKeand.

### **4 Consumer Credit Act 2006**

The Council considered the papers before it and answered the questions put forward by the secretariat as follows:

#### **Q1 – Unfair Relationships**

Ms O'Neill considered that as such applications were likely to be made mostly by debtors who are not legally represented it may be preferable to devise a form for that purpose rather than require the presentation of a summary application. The form could be similar to the Time Order Application Form. The Council agreed to remit the matter to the Ordinary Cause Committee to consider the drafting of such a form and how it may be used similarly to Form 1 as laid down in the Schedule to the Act of Sederunt (Consumer Credit Act 1974) 1985 in disputed cases. The Committee would also consider whether a specific rule would be required for defended applications.

#### **Q2 – Time Orders**

Yes

#### **Q3 – Amendments to Acts of Sederunt 1985 and 1995**

Yes

#### **Q4 – Further Amendments of Forms**

Ms O'Neill raised a question as to the suitability for use of Form 1 as laid down in the Schedule to the Act of Sederunt (Consumer Credit Act 1974) 1985. The form only applied in instances where there are no court proceedings. In addition Form 1A relating to small claims and summary cause actions and Form 03 in ordinary causes only allowed for instalments and did not include other issues for the court to consider. After discussion it was agreed that Ms O'Neill provide the Council with a paper on this issue for consideration at its next meeting in June.

## **5 EU Insolvency Report**

The Council considered the papers before it and after discussion agreed there was no need to have complicated rules, averments and craves in what was likely to be for just a handful of cases, although there needed to be some provision in place should a cross-border complication arise. Members considered all that was required was a simple rule in each set of rules to draw attention to the EU Regulation coupled with a requirement to include full averments in those rare cases in which an issue under the EU Regulation might arise. The Secretariat undertook to write to the draftsman to obtain his views. The Council meantime continued consideration of the matter until its next meeting in June.

## **6 Road Safety Act 2006**

The Council considered the paper before it. After discussion the Council approved the instruction to amend the relevant form for inclusion in the next Miscellaneous Act of Sederunt.

## **7 Draft Business Plan**

Certain amendments to the Plan were proposed by members. The secretariat undertook to update the Plan as proposed.

## **8 Business Update**

Members noted the progress on the various issues. An oral update was given by Sheriff Holligan regarding the Bankruptcy and Diligence Working Group.

## **9 Any other business**

The Chairman raised a question concerning the membership and sittings of the various Committees. The Mediation Committee was no longer active. There was now a vacancy on the IT Committee since Mr McCormick had resigned from the Council. Mr Conway was nominated to take his place. He would attend future meetings of the IT Committee once he had completed his work with the Ordinary Cause Committee on Personal Injury Actions.

The Council considered the Note on ADR from the draftsman together with associated email correspondence. Members noted the desirability in the Note for a common approach to be adopted between the sheriff court and the Court of Session on ADR. Members decided however that as both the Mediation Committee and the Council had already given long and careful consideration to the matter, (including going out to consultation and taking into account the views of respondents) that it had reached a view and it was now a matter for the Court of Session Rules Council to decide what they wished to do in relation to their own draft Rules. The secretariat undertook to advise the draftsman accordingly.

Sheriff Holligan on behalf of Sheriff Crowe, the Director of Judicial Studies, raised a concern that he received little, if any, advance warning of Rules changes. This made it difficult for him to inform sheriffs of such changes and the reasons for and implications of the Rules. The secretariat agreed to copy the final version of all relevant draft instruments to Sheriff Crowe together with any SCRC paper and, subject to the approval of the draftsman, his accompanying Note.

## APPROVED

A more general concern raised by the Council was how best changes to Rules should be announced. In the absence of any uniform practice, the Council considered that the draftsman may be in the best position to explain in more detail within the Explanatory Notes the purpose of any Rule change to enable practitioners and other court users to gain a better understanding of why these were being made. The secretariat undertook to discuss this possibility with the draftsman.

The Chairman also advised that after 2 years as Assistant Secretary to the Council, Mrs Oxley was moving on to take up a policy post within the Scottish Executive Justice Department. The Chairman and members wished it noted that they were grateful to Mrs Oxley for her advice during that time.

### **10 Date of subsequent meetings.**

Friday 1 June 2007  
Friday 7 September 2007  
Friday 7 December 2007