

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

**McDiarmid Park, Perth**

**05 September 2008 10.30am**

### **PRESENT**

Sheriff Principal Sir S S T Young Bt QC  
Sheriff W Holligan  
Sheriff M J Fletcher  
Sheriff C Scott  
Mr S Di Rollo QC  
Mr G Way  
Mr J d'Inverno  
Mr F Simpson  
Mr S Brand  
Ms S O'Neill  
Mr S McCourt (Secretary)  
Miss M O'Neill (Assistant Secretary)

### **1 Apologies**

Sheriff Principal J A Taylor  
Mrs C Flanagan  
Mr A Johnston  
Mr R McMillan  
Mr C McKay

### **2 Minutes of previous meeting**

The minutes of the previous meeting were approved.

### **Matters Arising**

- Item 4: Sheriff Holligan provided an update on the last two meetings of the Lord President's Advisory Group on 23 June and 25 August. He advised that a sub-group has been set-up to consider the heritable removal provisions of the Act. Concern has been expressed to policy holders regarding the experience and knowledge of the group given the wide scope of the provisions. As a result, he advised that no timetabling for the commencement of the provisions could be confirmed at this stage. He confirmed that all draft instruments would come before the Council for approval.
- Item 9: In relation to time orders, Ms O'Neill advised that a draft form had been submitted to the secretariat, who has instructed the Lord President's Private Office to include it in the next diligence instrument. Ms O'Neill advised that no progress had been made in relation to a style form for unfair relationships but agreed to provide the secretariat with one in time for inclusion in the same instrument.

### **3 Adults with Incapacity (S) Act 2000 – Renewal of Guardianship Applications**

The Council again considered the query received from Scottish Government policy holders in relation to intimation of renewal of guardianship applications. Having considered the correspondence between the secretariat and the sheriff concerned since the last meeting, the Council agreed that, given in practice applications are being intimated, no further action is necessary.

### **4 Personal Injury Rules - revised draft rules**

This matter was remitted to the Ordinary Cause Committee for consideration at the conclusion of the meeting.

The Committee met and considered the draft rules produced along with the drafts person's note and, subject to the instruction of certain amendments, agreed that a revised draft be cleared by the Chairman in due course.

### **5 Summary Cause - Personal Injury Actions – Consultation Responses**

The Council considered the responses received to the consultation concerning the adoption of the Coulsfield personal injury rules into the summary cause rules and discussed the current practical issues that arise in summary cause personal injury actions.

The Council voted on the following question:

*Do Council members agree that the Coulsfield personal injury rules should be adopted for summary cause actions?*

In favour:	6
Against:	3
Abstain:	1

Thereafter, it was agreed that this matter be remitted to the Ordinary Cause Committee for full consideration of the procedure to be adopted. As a starting point, the Council requested the secretariat contact the drafts person to confirm whether it is possible to simply apply the new ordinary cause personal injury procedure to summary cause personal injury cases. In the event it is not, Mr Simpson undertook to provide the secretariat with initial draft instructions.

### **6 ADR rules**

The Council considered the draft instrument of the Court of Session, the drafting instruction for the sheriff court rules and the note from the drafts person. Although the Court of Session instrument was drafted to align procedure in the Court of Session and the Sheriff Court, the Council was of the view that the draft instrument did not reflect what the Council considered was required for sheriff court procedure. It was agreed that the Chairman should write to the Lord President in order to clarify the reasoning behind the specific instructions for sheriff court procedure. It was agreed too that in the first instance Sheriff Holligan, Mr di Rollo and Mr Way would prepare a draft letter to be sent by the Chairman.

## **7 Motion for Dismissal**

The Council considered the draft instrument of the Court of Session and the note from the drafts person. The Council confirmed it was of the view that motion procedure was the most appropriate approach in respect it was a simpler procedure. The Council confirmed that the rule should only apply to decrees of dismissal and not absolutor. The Council requested that the secretariat advise the drafts person to prepare the draft rules as originally instructed.

## **8 Employment of Counsel – draft rules**

The Council considered the draft instrument along with the drafts person's note. Following discussion, the Council agreed that it is currently competent for a motion to be made in advance at any stage in the process for sanction for employment of counsel. Accordingly, the Council agreed the best way to address this issue was for inclusion in a practice note by the Sheriffs Principal. The Chairman agreed to prepare a suitable draft with input from Mr di Rollo and then circulate it to his fellow Sheriffs Principal for comment. The Council also considered whether provision might be made for sanction for the employment of solicitor advocates but agreed that this was beyond their remit.

## **9 Joint IT Committee recommendations**

The Council considered the proposed instructions provided by Mrs McKeand and the note by Sheriff Principal Taylor. The Council was content with the instructions and authorised the secretariat to instruct the drafts person on that basis.

## **10 Finance Act 2008 – Summary Warrants**

The Council considered the policy paper produced along with the relevant provisions of the Finance Act 2008. The Council agreed that the current Act of Sederunt should be amended to reflect the provisions of the new Act. The secretariat agreed to instruct the drafts person accordingly and the Council agreed that the draft be cleared by the Chairman in due course.

## **11 Draft Miscellaneous Instrument**

The Council considered the draft instrument along with the note from the drafts person and, subject to the instruction of certain amendments, agreed that a revised draft be cleared by the Chairman in due course.

## **12 Sheriff Court Bankruptcy Rules 2008**

The Council considered the email correspondence from the Accountant in Bankruptcy and agreed that more background information was required concerning the particular issue. It was agreed this matter would be continued to the next meeting to enable the secretariat to seek further information.

Ms O'Neill agreed to provide the secretariat with details of protection agencies to allow the secretariat to contact them to ascertain if there is a perceived problem with the content of the Register of Insolvencies.

### **13 Case Management Conference Calls**

The Council considered the extract of the judgement i.c Jackson v Hughes Dowdall and the relevant papers produced. As current practice has now been amended to take cognisance of the judgement, the Council agreed that no action is necessary.

### **14 Business Update**

Members noted progress on the various issues. In relation to European matters, Sheriff Scott advised the meeting that draft papers have been prepared and these would be forwarded to the secretariat to instruct draft provisions in due course. The secretariat advised that policy information was awaited in relation to the European Service of Documents provisions. Once this is available, Sheriff Scott and Mr Way agreed to also consider these provisions.

The Chairman advised the Council that the first draft instrument for the new adoption provisions has been received from the Lord President's Private Office and circulated to members for consideration prior to the next working group meeting in October.

### **15 AOB**

#### Lay person appointment

The Council was advised that this matter was still outstanding. The Chairman advised that, given the delay, the Lord President's Private Office had been in contact with applicants to confirm whether they are still interested in the position. Arrangements will thereafter be made for interviews. The Council stressed the importance of this vacancy being filled as soon as possible, particularly given the recent changes to the jurisdiction limits and requested the secretariat to convey their concerns to the Lord President's Private Office.

#### Policy Memorandum

The Lord President's Private Office has recently contacted the secretariat to advise that they are not best placed to provide policy memoranda.

#### Publication of Rules Changes

Ms O'Neill raised the issue of the need to communicate rules changes to practitioners and suggested the best way of doing this would be via an electronic press release. The secretariat advised the meeting that the Scottish Court Service website contains the four main sets of rules which are updated to reflect any changes made. All statutory instruments are copied to the Director of Judicial Studies by the secretariat. Further, the Lord President's Private Office has a circulation list who are emailed copies of all statutory instruments approximately four weeks before they are introduced. Ms O'Neill previously provided the secretariat with a list of organisations that would be interested in rule changes and these have been added to the circulation list.

The Council agreed that a form of press release would be desirable to highlight the nature of the rule changes and as it was considered that a policy memorandum was central to this it was agreed that the secretariat should contact the Lord President's Private Office to discuss the matter further. It would then be considered more fully at the next meeting when a representative from the Lord President's Private Office would be in attendance.

### Form Changes

The Council reconsidered the issue of amending the summary cause/small claims forms so as to clarify the meaning and importance of the return and calling dates. The draft forms were circulated to the members at the meeting and it was agreed that the matter be continued to the next meeting. Council members agreed to contact the secretariat with any observations prior to then.

Ms O'Neill advised that she was still waiting to hear from relevant agencies on other possible changes to summary cause and small claim forms.

### Recorded Delivery Intimation

Mr Way advised that the system of recorded delivery has now changed. He advised that the orange slip certifying intimation is no longer completed with the name and address of where it is being delivered but simply refers to a bar code. The Council considered the matter and the terms of Rule 5.3(4) of the Ordinary Cause Rules and agreed that no rule change was required.

### **Date of subsequent meetings**

Friday 05 December 2008

Friday 06 February 2009

Friday 01 May 2009