

**MINUTES OF THE MEETING OF THE COURT OF SESSION RULES  
COUNCIL  
PARLIAMENT HOUSE, MONDAY 16 JANUARY 2006**

**Present:** Lord President  
Lord Nimmo Smith  
Mr Ronnie Clancy Q.C.  
Mr J.L. Mitchell Q.C.  
Ms Lesley Shand Q.C.  
Mr Graeme Hawkes  
Mr Fred Tyler  
Mr Robin Macpherson  
Mr Duncan Murray  
Mr Sydney Smith  
Mr Paul Cackette, Scottish Executive Justice Department  
Mr Bob Cockburn, Deputy Principal Clerk of Session  
Mr David Shand, Acting Principal Clerk of Session and  
Justiciary (until end item 7)

**In attendance:** Lord Clarke (item 3 only)  
Lord Penrose (item 7 only)  
Lord Glennie (item 8 only)  
Mr Ruaraidh Macniven, Legal Secretary to the Lord  
President  
Mrs Valerie Montgomery, Deputy Legal Secretary to the  
Lord President

**Apologies:** Lady Paton  
Mr Gordon Keyden

**1. Introduction and welcome**

Members were welcomed and apologies tendered on behalf of absent members.

**2. Minutes of previous meeting**

The minutes of the previous meeting were approved.

**3. Alternative Dispute Resolution**

A work in progress report on Alternative Dispute Resolution in the Court of Session was provided to the Council. It was reported that a small working

party on ADR had been set up. The working party consists of one Inner House and three Outer House judges. Sheriffs Principals Young and Kerr would also attend as observers.

It was noted the Mediation Committee of the Sheriff Court Rules Council had produced a detailed report on ADR together with draft rules. The Sheriff Court Rules Council proposed to consult on the Report. The Council was advised that a fundamental difference of approach between the two courts was unlikely.

It was anticipated that the Sheriff Court Rules Council would have changed their rules within a year. A report from the Court of Session Working Party was also likely to be produced within that time.

**The progress of the working party on ADR was noted by the Council.**

#### **4. Update on Acts of Sederunt**

The Council considered the paper which set out the amendments made to the Rules of the Court of Session since the last meeting of the Rules Council. The Rules had been amended by 6 statutory instruments.

#### **5. Service of Orders under section 1 of the Administration of Justice (Scotland) Act 1972**

The Advisory Committee on Sheriff Officers and Messengers-at-arms had requested a change to rule 64.8 to allow section 1 orders to be served by sheriff officers and messengers-at-arms. A paper had been prepared by the Lord President's Private Office setting out some background information on rule 64.8. It was noted that the requirement that orders under section 1 of the 1972 Act be served by the Commissioner was introduced following a review of the rules to ensure compatibility with the European Convention on Human Rights. It was also noted that a similar request by the Advisory Committee had been considered by the Sheriff Court Rules Council which had decided not to amend sheriff court rules.

**The Council agreed that there should be no change to rule 64.8.**

#### **6. Chapter 41 – appeals under statute**

The Council considered a paper proposing changes to the rules relating to appeals under statute. It was explained that tribunals were not always

informed of when an appeal is received and when it is disposed of. Following discussion, the Council gave support in principle to rule changes to provide that a tribunal from which an appeal is taken should be advised of the appeal and of the disposal of the appeal.

**It was agreed that the Lord President's Private Office would draft the necessary rule changes.**

## **7. Inner House Review**

A report on the Inner House Review was provided to the Council. The Council was advised that a study had been conducted by Dr Rachel Wadia last year on the business of the Inner House. Lord Penrose had presented a report on the statistical information to the Lord President in the last week and had proposed changes to the rules relating to reclaiming motions in order to focus attention on the issues and forcing parties to commit to a timetable. Lord Penrose now proposed to prepare a comprehensive report which should include draft changes to the rules.

**The Council agreed that Lord Penrose should proceed to formulate a comprehensive report on the Inner House review.**

## **8. Summary Assessment of Costs**

The Council considered the paper on the summary assessment of costs procedure. In response to concerns raised at the previous meeting of the Rules Council, it was explained that the hearings on summary cost assessments were generally very short and that the perceived benefits of the procedure were that it would focus the mind of the solicitor and give clients a closer knowledge of the cost implications of decisions taken by their solicitor.

The Council discussed the scope of the proposal. Concerns were expressed about the time and cost implications for solicitors in going through files in order to prepare the summary assessment and about the implications for the work of the Auditor of Court. Doubts were also expressed about incorporating a single aspect of English procedure without exploring the wider context. It was acknowledged that there were some perceived benefits in requiring party litigants to address the issue of expenses at an early stage. However, this was not considered to be an appropriate matter to take forward.

**The Council agreed that no further action should be taken on this matter.**

## **9. IT Committee Update**

The Council considered the paper which provided an update on the IT Committee. Regret was expressed that the Committee had not made progress as expected and had not yet made recommendations regarding the need for manual signatures as set out in its terms of reference. The Council was advised, however, that a rule permitting video conferencing would be discussed at the next meeting of the Committee and a recommendation with regard to a rule on this matter was therefore anticipated soon.

**The Rules Council noted the progress of the IT Committee.**

## **10. Dundee City Council v G.K and Scottish Ministers**

The problem that arose in the case of Dundee City Council v G.K. in respect of the late intimation to the Office of the Solicitor to the Scottish Executive of the possibility of the court making a declaration of incompatibility was explained to the Council. It was noted that the court had commented in its opinion that the Rules on the matter should be revisited. The council was invited to consider a draft rule change, shifting the obligation to notify onto the party seeking a declaration of incompatibility

**The Council agreed to an amendment to the Rules as indicated in the draft.**

## **11. Rule changes agreed at the last meeting**

It was noted that a proposed amendment to rule 43.11(3) had been discussed at the last meeting of the Rules Council. The principle of a rule change had been agreed to allow the court to award interim damages against any defender in an action involving multiple defenders where the court was satisfied that the pursuer was likely to succeed but where liability was still in dispute between the defenders. The Council was invited to consider a draft rule change which had been prepared by the Private Office. The Council discussed the draft rule change and questions were raised as to whether it dealt effectively with the allocation of damages between multiple defenders.

**It was agreed that the Lord President's Private Office would give further consideration to the terms of the draft rule.**

## **12. A.O.C.B**

No other business was raised.