

Minutes of Meeting
of
SCRC IT Committee
held in
Edinburgh Sheriff Court
on 27 January 2006

Present;

Sheriff I Peebles QC (Chairman)
Sheriff M J Fletcher
Mr David Morris
Mr Colin Armstrong
Mr Paul Cackette
Mr Alan Johnston
Mr Donald Bruton
Mrs Glynis McKeand (Secretary)

1. Apologies:

Mr Joe d'Inverno
Mr John McCormick

At this stage of the meeting the chairman welcomed Mr Colin Armstrong to the Committee.

4. Project timetable

Noting the timetable suggested in May 2004 the Chairman expressed concern at the way the project was falling behind. It was regrettable the meeting fixed for September had had to be cancelled. The SCRC, Sheriffs and the profession were all anxious to make progress, and most were anxious for Ordinary Causes to be included in the project.

The Committee was advised that some delay was being caused to SCS through lack of clarity as to who should be permitted to view the electronic record. SCS has suggested a revised timetable for consideration today for electronic transmission of small claims and summary causes.

In relation to Ordinary Causes, SCS has, subject to Senior Management consideration, been actively considering and viewing services offered by commercial document exchange providers. The operation of such a system and the feeing process was explained to the Committee. This service would have the advantage of being free to the SCS and would involve the provider dealing with the electronic submission to the court of documents on behalf of a party, for a fee, payable by the party. Such a provider could also undertake necessary intimations for the court, currently carried out by sheriff clerks, if that was desired and could be legally done.

The Committee had not previously considered the employment of a commercial provider. Committee members questioned what consideration had been given by SCS to

- The functioning of the courts in the event of the provider ceasing to operate.
- The application of procurement rules to entering into such an arrangement.
- The overall cost implications to the litigant – if fees were to be charged to the litigant by the company for each transmission - particularly given that it was the SCRC's intention to make electronic transmission to and from the civil court mandatory within a period of time to be specified in rules (most likely two or three years after the system goes live).
- The potential for one firm having a monopoly – and a right, outwith the court's control, once contracted, to increase fees.
- Confidentiality and data protection issues.
- The need for 24hour access and helpdesk support 365 days a year – to allow for emergency cases.

The Committee was advised that contracts and service level agreements would require to address all these issues and in particular that advice would be taken on issues of procurement before selecting any one service provider. There was brief discussion on options of the SCS being able, through contractual terms, to influence or control the fee levels set and suggestions of increases. This was a matter of concern to ensure proper financial controls would be put in place to make sure that SCS could act as a fee watchdog. Figures for processing each document were discussed, in part because the use of this provider would in effect cause “court fees” to increase by whatever the mark up by the service provider would be.

The Committee asked if by employing this commercial provider the courts would get a better service than it would if SCS created a bespoke system and were advised that the advantages of employing this commercial provider were to be gained from:-

- The fact that the same suppliers would be able to provide a secure document exchange between solicitors – thus encouraging greater sign up to use of the system (including its use for courts) in the early stages of the transformation.
- There would be no capital outlay, design period or teething problems with the engagement of a company, which was already operating such a system in other countries.
- The risks for SCS would be reduced – in that the system engaged was already up and running and there would be no need for SCS to provide a 24/7 helpline 365 days a year.

What say the Committee or the Council would have in determining whether or not a bespoke system should be created, or if a commercial supplier should be employed, was then discussed. It was concluded that although the SCRC was the driver for change towards electronic transmission of civil court documentation – it was for SCS to decide on how best the necessary services should be provided. They were best placed to do this and their IT Unit had the expertise.

It would be for the SCRC to consider the need for rules change to facilitate the proposed system. Before the need for rules change can be clarified the Committee would require a greater understanding of what the proposed system would provide.

To this end it was agreed that it would be helpful for the committee at its next meeting to view a demonstration of the proposed system (to be arranged by Mr Morris).

2. Minutes of Previous Meeting

The Minutes of the meeting of 13 May 2005 were approved without amendment.

3 and 5 - Advice from OSSE

The subject of the legal advice on both public *access to the court process* and on the proposed *all encompassing rule to allow electronic signatures* to be accepted in place of other forms of authentication was discussed in general terms in the overall discussion that took place. The specific agenda item was revisited towards the end of the meeting when the following issues were considered:-

Access to the court process

What exactly was the advice from the LPPO saying? Was it suggesting there was no right at Common Law to access a court process and that rules of court prescribed such access as was competent? The general consensus of the Committee was that the opposite was the case.

The Committee instructed the secretariat to make contact with the Operations and Policy Unit of Scottish Court Service with a view to ascertaining their firm view of what access was permissible and what guidance has been given to staff in this regard both in the Sheriff Courts and in the Court of Session.

The Secretariat was also instructed, if a need arises, to suggest that SCS and the SCRC jointly seek legal advice from either the LPPO or more likely OSSE on

- What the law is; and
 - What the law should be, given the advent of FOI and data protection legislation,
- and this on the basis that the information is necessary for the protection of litigants, staff and the design of such access on any IT system.

Electronic signatures

The Secretariat was instructed to seek further legal advice on this issue. What it was thought was required, was an all encompassing rule either contained in a regulation or a rule of court which would permit all requirements to have signatures or other forms of authentication effected in writing affected instead in electronic form. In suggesting this it was recognised by the committee that the requirement to write or sign could flow from primary or subordinate legislation. It was also recognised that an Order under the Electronic Communications Act 2000 could perhaps assist in achieving the desired outcome. Further, it was recognised that the Court of Session would require a like rule or regulation to accomplish electronic transmission in that court.

The following further issues were discussed and the secretariat instructed to seek legal advice on their import. Legal advisors are to be invited to the next meeting to amplify their views, if necessary.

Sheriffs and sheriff clerks, duly commissioned for all Scotland effecting work outwith the sheriffdom to which the work relates

The proposal is for small claims and summary cause cases initially and possibly other business including ordinary actions being electronically transmitted to a central site for processing up to the point at which they become defended, at which point they would be transmitted to the appropriate court. In order to facilitate this, it was previously accepted that sheriffs and sheriff clerks involved in the process would require to have commissions to allow them to transact the necessary business for all of our sheriffdoms. The Committee, in discussion, recognised that there had previously been difficulties raised in criminal cases where sheriffs had signed warrants and the like outwith their sheriffdom but it was understood the difficulty identified then had now been removed.

The Committee instructed the Secretariat to seek legal advice on whether or not such difficulties would arise in civil cases and if they did, how such difficulty could be overcome.

“Lodging” within time limits

Both primary and secondary legislation requires certain steps in civil cases to be taken within prescribed time limits. Some require service on individuals to be effected within time limits whereas others require certain items to be lodged in court within time limits.

After discussion it was considered that again an all encompassing rule would be appropriate, specifying that where an item is to be lodged in court within a certain timescale it would be considered to have been so lodged provided it was transmitted to the electronic service provider within that timescale.

The Secretariat was instructed to seek legal advice on how this identified issue could be facilitated within rules in order to permit the electronic system to work.

Service or intimation by sheriff clerk

Many rules provide for the sheriff clerk to serve or intimate certain steps of procedure to parties. SCS advise that the service providers could, on receipt of specific instructions, post, fax or email any documentation that would normally require posting, faxing or emailing by the sheriff clerk. Whilst recognising that proof of such intimation may be necessary – as is required where the sheriff clerk intimates in this way – the Committee again instructed the Secretariat to seek legal advice on the possibility of again, an all encompassing rule, permitting the service providers to effect the necessary service or intimation for an on behalf of the sheriff clerk.

6. AOCB

No discussion took place under this heading.

7. Date of next meeting

31 March 2006 at 10am within the Sheriff Court Edinburgh (if this venue is available).