

# SCOTTISH CIVIL JUSTICE COUNCIL

## PERSONAL INJURY COMMITTEE

### MINUTES

PARLIAMENT HOUSE, 10.00 a.m., MONDAY 03 FEBRUARY 2014

**Members present:** Lord Jones (Chairman)  
Sheriff Abercrombie QC (Dunfermline Sheriff Court)  
Maria Maguire QC (Advocate)  
Gordon Keyden (Solicitor)  
Fraser Simpson (Solicitor)  
Ronnie Conway (Solicitor Advocate)  
Alan Rogerson (Claims Manager)  
Catriona Whyte (Solicitor, Scottish Legal Aid Board)  
Hamish Goodall (Scottish Government)

**In attendance:** Gillian Prentice (Deputy Principal Clerk of Session)  
Chris Nicholson (Deputy Legal Secretary to the Lord President)  
Neil Robertson (Scottish Civil Justice Council Secretariat)

**Apologies:** Amber Galbraith (Advocate)  
Frances MacPherson (Sheriff Clerk)  
Sheriff Mackie (Edinburgh Sheriff Court)

#### **Item 1: Introduction, welcome, apologies and private papers**

1. Lord Jones welcomed those present to the third meeting of the Personal Injury Committee and noted apologies.

#### *Private Papers*

2. **The Committee agreed that the following papers are to be considered private papers and will not be published:**

- Papers 4.1 and 4.1A (Summary Cause Rules in respect of Recovery of Documents)

- Paper 6.1 (Scottish Government Response to the Civil Law of Damages: Issues in Personal Injury Consultation)

### **Item 2: Minutes of previous meeting (Paper 2.1)**

3. **The Committee approved the minutes of the previous meeting subject to the amendment of paragraph 27 to read:**

*“The Committee wished to report to the SCJC that Sheriff Principal Taylor’s recommendations on qualified one way cost shifting should be taken forward alongside the aspects of courts reform identified for early implementation in 2015. Any implementation of qualified one way costs shifting must, however, be looked at in the context of pre-action protocols and the costs implications of rules.”*

### **Item 3: Forward Work Programme**

#### *Item 3.1: Update on Activity of the Scottish Civil Justice Council (SCJC) [Oral]*

4. The SCJC has met once since the PIC meeting of 09 December 2013. Neil Robertson provided an update on the activities of the SCJC, particularly the establishment of the Costs and Funding Committee, the vacancy for an advocate member of the SCJC (following the appointment of Sarah Wolffe, QC as a Senator of the College of Justice) and advised that a business tracker for the SCJC was being developed.
5. The progress of the Rules Rewrite Working Group (RRWG) was also outlined and members were informed of the following decisions which had been made by the Group:
  - There should be distinct and separate rules for the simple procedure, sheriff court and Court of Session, but that a consistent framework should be established so that the rules of the sheriff court and Court of Session should be identical in procedure and wording, wherever practicable and appropriate.

- There should be a statement of principle and purpose in both the sheriff court and Court of Session rules, to which the court should have due regard, but that it should not override the other rules of court.
- Wherever possible, there should be at least a 3 month laying period for rules.
- In light of the implementation timescales and the fact that many rules changes are likely to be technical and consequential in nature, public consultation should not be adopted as standard, but should be considered on a case by case basis.

**6. The Committee noted that the RRWG will provide an interim report to the SCJC in March 2014.**

*Item 3 .2: Update from the Scottish Government on legislative developments [Oral]*

7. Hamish Goodall provided an update from the Scottish Government on policy initiatives with potential implications for personal injury actions, namely the: draft Courts Reform (Sc) Bill; Damages (Sc) Bill; Apologies (Sc) Bill (a proposal for a Members' Bill); Sheriff Principal Taylor's Review and the Scottish Government's consideration of the consultation on the recommendations of the No-Fault Compensation Review Group.

**Item 4: Secondary Legislation**

*Item 4.1: Summary Cause Rules in respect of Recovery of Documents [Papers 4.1 and 4.1A]*

8. The Committee considered an instrument that had been prepared on the recovery of documents in personal injuries actions.
9. The instrument [**Paper 4.1A**] was an Act of Sederunt that proposed to amend the Summary Cause Rules (SCR). The instrument would replicate in those rules, with necessary modifications, the Court of Session optional procedure for the recovery of documents in so far as it is the parties' solicitors that administer the procedure.

10. The Committee suggested that amendment would be required to Form 10B of the SCR to ensure that recovered documents were not sent to the Sheriff Clerk. That amendment having been made, **the instrument would be submitted to the SCJC for approval.**

#### **Item 5: Pre-Action Protocols**

##### *Item 5.1: Information Gathering Exercise on Pre-Action Protocols [Paper 5.1]*

11. At the last meeting the Committee indicated its intention to propose that the SCJC should use its powers to approve research into the use of the Law Society's voluntary pre-action protocols in Scotland. **Members noted that the SCJC had considered this proposal at its meeting of 13 January 2014 was of the view that, given the limited budget for research, the Committee should carry out an information and evidence gathering exercise through its own membership rather than commissioning a separate piece of work.**

12. Having considered **Paper 5.1** the Committee suggested that the Court of Session Personal Injuries Users Group, the Central Legal Office, the Motor Accident Solicitors Society, the Scottish Trades Union Congress and a Law Accountant be added to the list of consultees.

13. **Thereafter, members agreed to an information and evidence gathering exercise being carried out. The Secretariat was asked to prepare detailed proposals and a questionnaire for consideration by consultees.**

## **Item 6: Justice Reform**

### *Item 6.1: Scottish Government Response to the Civil Law of Damages: Issues in Personal Injury Consultation* **[Papers 6.1 and 6.1A-C]**

14. At its meeting on 13 January 2014 the SCJC noted the publication of the Scottish Government's formal response to the consultation and agreed that consideration of it should be remitted to the Personal Injury Committee.
15. The Committee noted that while its remit included making recommendations to the SCJC as to policy, some members expressed reservations about providing policy views on the Government Response in the absence of detailed draft provisions.
16. **The Committee agreed to report to the SCJC that, while it was in favour of many of the proposals detailed in the Scottish Government Response in principle, there were issues arising from a number of the recommendations which would require further consideration. The Secretariat was asked to prepare a report on the various matters for the SCJC's consideration.**

### **Item 7: A.O.C.B.**

17. Christopher Nicholson presented a draft Act of Sederunt for consideration by the Committee. The instrument would make changes to Chapter 43 of the Rules of the Court of Session by removing a superfluous reference to the discretionary power to put cases out by-order where there is a late record and the removal of the word "special" from the test contained in rule 43.8(2)(b).
18. **It was agreed that the instrument should be submitted to the SCJC for approval once similar amendment to the Ordinary Cause Rules and SCR had been added.**

### **Item 8: Dates of future meetings**

19. **The Committee noted that the next PIC meeting is scheduled for 31 March 2014 at 10.00 a.m.**

**Scottish Civil Justice Council – Secretariat**

**February 2014**