

**SCOTTISH CIVIL JUSTICE COUNCIL
PERSONAL INJURY COMMITTEE**

MINUTES

PARLIAMENT HOUSE, MONDAY 8 SEPTEMBER 2014

Members present: Lord Jones (Chairman)
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)
Hazel Gibson (Scottish Government)

In attendance: Yvonne Anderson (Depute in Charge of Offices of Court)
Mandy Williams, SCS Policy and Legislation Branch
Kenny Htet-Khin (Rules Rewrite Drafting Team)
Stephen Feltham (Rules Rewrite Drafting Team)
Kiera Dargie (Deputy Legal Secretary to the Lord President)
Anne Hampson (Scottish Civil Justice Council Secretariat)
Susan Brodie (Scottish Civil Justice Council Secretariat)

Apologies: Amber Galbraith (Advocate)
Sheriff Mackie (Edinburgh Sheriff Court)
Gillian Prentice (Deputy Principal Clerk of Session)

Item 1: Introduction, welcome, apologies and private papers

1. Lord Jones welcomed those present to the fourth 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 **The Committee agreed that the following papers are to be considered private papers and will not be published:**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 4.1A, 4.1B and 4.1C (Rules Rewrite Style Guide and instructing process).

- Paper 6.1 and 6.1A (Information Gathering Exercise on pre-Action Protocols).
- Papers 7.2 and 7.3 (Specialist Personal Injury Court and Personal Injury Actions).
- Paper 8.1 (Monitoring access to solicitor and advocate services).

Item 2: Minutes of previous meeting (Paper 2.1)

3. The Committee approved the minutes of the previous meeting.

Item 3: Forward Work Programme

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

4. The SCJC has had three meetings since the Personal Injury Committee meeting of 03 February 2014. Anne Hampson provided an update on the activities of the SCJC, particularly on solicitor member recruitment to the SCJC (following the appointment of Duncan Murray to Sheriff Principal) and a judicial member vacancy which will occur in January 2015 (following the appointment of Sheriff Abercrombie to Sheriff Principal) and advised that the SCJC has agreed in principle to hold 3 stakeholder events after the passage of the Courts Reform (Sc) Bill. Members were also informed that the Rules Rewrite Working Group (RRWG) is being reconstituted as the Rules Rewrite Committee and the final RRWG report is being prepared.

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

5. Hazel Gibson provided an update from the Scottish Government on policy initiatives with potential implications for personal injury actions, namely: Stage 3 of the Courts Reform (Sc) Bill; the proposed Damages (Sc) Bill; the Apologies (Sc) Bill (Margaret Mitchell's Members' Bill which is going through the Scottish Parliament); Sheriff Principal Taylor's Review and the Scottish Government's approach to developing draft proposals for a No Fault Compensation Scheme for consultation.

Item 4: Rules Rewrite

Item 4.1: Style Guide and instructing process [Oral and Papers 4.1A-D]

6. Kenny Htet-Khin spoke to the content of **Papers 4.1A-D** and provided the Committee with an update on the progress of the Rules Rewrite Project, covering the priorities for the year ahead, which include the drafting of rules to implement

provisions in the Courts Reform (Sc) Bill. In the longer term attention would be given to making improvements to the existing rules of court.

7. **Paper 4.1A** was a draft style guide for rules, mainly for use by the drafting team who would also make reference to the Scottish Government Statutory Instrument Drafting Manual, **Paper 4.1B** provided an outline process for instructing rules, **Paper 4.1C** provided a template for covering papers to accompany proposals for rules (with the Committee being the first to receive a paper on the template) and **Paper 4.1D** detailed the responsibilities of each committee under the project.
8. **The Committee noted the priorities for the Rules Rewrite Team the role of the PIC in this and that a proposed timescale was still under discussion.**

Item 5: Secondary Legislation

Item 5.1: Summary Cause Rules in respect of Recovery of Documents [Papers 5.1 and 5.1A]

9. **Paper 5.1A** was the Act of Sederunt (Rules of the Court of Session, Ordinary Cause Rules and Summary Cause Rules Amendment) (Miscellaneous) 2014 (2014 No. 152) which gave effect to changes in relation to recovery of documentation agreed by the Committee and submitted to the SCJC for approval. It came into force on 7 July 2014. **The Committee noted the Act of Sederunt.**

Item 6: Pre-Action Protocols

Item 6.1: Information Gathering Exercise on Pre-Action Protocols [Papers 6.1 6.1A and 6.1B]

10. The Committee undertook an information gathering exercise [**Paper 6.1B**] around the current use of voluntary pre-action protocols and the possible introduction of compulsory pre-action protocols. The information gathering exercise was issued in April and closed on 30 June 2014. The Committee was invited to consider a Report on the content of the responses received [**Paper 6.1A**].

11. Members:

- **approved the draft Information Gathering Exercise on Pre-Action Protocols – Report on Responses and agreed to its publication;**
- **noted that there was general satisfaction with the existing personal injury voluntary pre-action protocol;**

- agreed that the Secretariat should produce a matrix or flowchart comparing the elements of the existing voluntary pre-action protocol against the elements suggested by respondents, together with a range of policy options to be considered at the next Committee meeting;
- noted that some of this work tied in with the Taylor review which was being considered by the Costs and Funding Committee.

Item 7: Justice Reform

Item 7.1: Courts Reform (Sc) Bill Update [Paper 7.1]

12. **Paper 7.1** updated members on the Court Reform (Scotland) Bill Stage 2 proceedings at the Scottish Parliament Justice Committee meetings of 10 and 17 June. **The Committee noted the update.**

Item 7.2: Rules for a Specialist Personal Injury Court [Paper 7.2]

13. Members discussed **Paper 7.2** which outlined proposals for new or amended rules in relation to the specialist personal injury court with civil jury trials which will be required to implement the provisions of the Courts Reform (Sc) Bill. It was suggested that the current Chapter 36 sheriff court Rules and Chapter 37 of the Court of Session Rules (jury trials) could be applied (with any modification necessary).

14. **Following discussion, the Committee agreed that:**

- consideration should be given as to whether rules equivalent to Chapters 23 (e-motions) and Chapter 42A of the Court of Session Rules may also be required;
- policy instructions should be circulated to members by correspondence in October/November 2014 with a view to draft rules being developed for consideration at the first Committee meeting in 2015;
- consideration should be given as to whether rules are also required in relation to periodic payment orders.

Item 7.3: Courts Reform (Sc) Bill Stage 2 Amendments and PI Actions [Paper 7.3]

15. **Paper 7.3** advised the Committee of certain Stage 2 amendments to the Courts Reform (Sc) Bill in relation to Personal Injury Actions (with the effect of removing the availability of simple procedure in the specialist PI court).

16. **Following discussion, the Committee noted the amendments made to the Courts Reform (Sc) Bill at Stage 2 and Secretariat's intention to prepare policy**

options in relation to lower value PI actions for consideration at the next meeting.

Item 8: Monitoring access to solicitor and advocate services in personal injury cases in Scotland

Item 8.1: Responses to Scottish Legal Aid Board Request [Paper 8.1]

17. The Committee considered the responses received in relation to the Scottish Legal Aid Board's query on monitoring access to solicitor and advocate services in personal injury cases. **Members noted the responses and indicated that they had nothing to add.**

Item 9: A.O.C.B.

18. **Members indicated that there was no other business they wished to discuss.**

Item 10: Dates of future meetings

19. **The Committee requested that the next PIC meeting be held in November or December 2014. Secretariat will put forward a proposed date.**

**Scottish Civil Justice Council – Secretariat
September 2014**