

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
PERSONAL INJURY COMMITTEE
MONDAY 06 JUNE 2016 AT 3.15 PM
JUDGES CONFERENCE ROOM, LEVEL +2 PARLIAMENT HOUSE

MINUTES

Members Present: Lord Armstrong (Chair)

Walter Drummond- Murray (Scottish Government)

Marie-Louise Fox (Director of Operations, SLAB)

Sheriff Mackie

Maria Maguire QC (Advocate)

Amber Galbraith (Advocate)

Fraser Simpson (Solicitor)

Ronnie Conway (Solicitor Advocate)

Alan Rogerson (Claims Manager)

Iain Nicol (Solicitor (for Agenda Item 5.1))

In attendance: Gillian Prentice (Deputy Principal Clerk of Session)

Support: Stephen Feltham (Deputy Legal Secretary, Rules Rewrite Drafting Team)

Anne Hampson (Policy Officer, Scottish Civil Justice Council)

Neil Deacon (Deputy Legal Secretary, Lord President's Private Office)

John Thomson (Deputy Legal Secretary, Lord President's Private Office)

- Apologies:** Sheriff Principal Abercrombie
Sheriff Principal Stephen
Gordon Keyden (Solicitor)
Nicola Anderson (SCTS Legislation and Implementation Team)

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and noted apologies from Sheriff Principal Abercrombie, Sheriff Principal Stephen, Gordon Keyden and Nicola Anderson.
2. The Chair then welcomed Iain Nicol who is a member of the Costs and Funding Committee (CAFC) and John Thomson who supports that Committee. They were attending the meeting to discuss the matter of compulsory pre-action personal injury protocol expenses under Agenda Item 5.
3. Members were advised that the Scottish Civil Justice Council formally approved the re-appointment to the Personal Injury Committee of Sheriff Mackie, Gordon Keyden, Ronald Conway, Fraser Simpson, Alan Rogerson, Maria Maguire and Amber Galbraith for a further three year period from the expiry of their tenure. The Chair indicated that he was pleased that these members had been re-appointed as he valued their contribution to the Committee and it would ensure continuity in taking work forward.
4. **The Committee agreed that the following papers will be treated as private and not published: 2.2, 3.1, 3.1A-B, 5.1, 5.1A-B and 5.2.**

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

5. **The Committee approved the minutes from the previous meeting.**

Item 2.2 – Progress of actions from previous meetings (Paper 2.2)

6. **The Committee noted the progress made on actions since the last meeting.**

Item 3: Proceedings

Item 3.1 – Committee Remits (Papers 3.1 and 3.1A-B)

7. At its 16 May 2016 meeting, the Scottish Civil Justice Council considered a paper proposing revision to the remits of its established committees. It agreed that Secretariat liaise with Committee Chairs and prepare proposals for the Council to consider at its next meeting. **Paper 3.1** invited the Committee to review its current remit with a view to submitting a revised remit for the consideration of the Council at its 11 July 2016 meeting.

8. **The Committee indicated that the remit proposed in Paper 3.1B, revised in line with discussion at the 06 June Committee meeting, should be submitted to the 11 July Council meeting.**

Item 4: Work Programme

Item 4.1 – Update from the Scottish Government on legislative developments (Oral)

9. Walter Drummond-Murray provided members with an update on legislative developments in the Scottish Government. In particular he advised that implementation of the Courts Reform (Scotland) Act 2014, the Succession (Scotland) Act 2016 and the Inquiries into Fatal Accidents and Sudden Deaths etc.(Scotland) Act 2016 is continuing.

10. Looking forward, there are a number of commitments in the manifesto in the area of civil law which would require legislation in the new Parliamentary term. These include reform of gender recognition law, review of regulation of the legal profession, reform of succession law, removal of the time bar for survivors of historical child abuse, implementation of Sheriff Principal Taylor's review of the costs and funding of civil litigation, reform of legal aid and a review of aspects of family law.

11. **The Committee noted that the proposed Scottish Government Redress Bill is to include placing Periodic Payment Orders on a statutory footing. Members observed that a complex body of rules may need to be developed to support this depending on the nature of the statutory provisions. Walter Drummond-Murray advised that he would ask the Bill team to contact Secretariat in relation to this matter.**

Item 5: Justice system reform: Rules rewrite

Item 5.1 - Compulsory Personal Injury Pre-Action Protocol (Papers 5.1 and 5.1A-B)

12. The Committee considered the policy advice provided in **Paper 5.1** and the amendments made to the draft Act of Sederunt set out at **Paper 5.1A** in light of decisions taken at the 25 April 2016 meeting.

13. **The Committee noted the provisions added to apply the protocol to summary cause cases pending the introduction of simple procedure personal injury rules. It also reconsidered the decision made at the 25 April 2016 meeting that, in cases which are remitted from ordinary procedure to the Court of Session, the Court should be able to exercise powers for failure to comply with the protocol. On reflection the Committee agreed that such provision was not necessary. The Committee also agreed some minor drafting amendments.**

14. The Committee went on to consider in detail the issue of protocol expenses. In order to facilitate discussion, and agreement on the levels of protocol expenses, and on any amendment to the existing block pre-litigation fee, a delegation of CAFC members attended the meeting. Iain Nicol and Alan Rogerson (who is a member of both Committees) along with John Thomson offered CAFC views in relation to the recommendations.

15. Iain Nicol provided an overview of **Part A of Paper 5.1B** which contained a number of recommendations relating to protocol expenses provided by the CAFC. Following discussion, **the Committee agreed that:**

- **they were content with the general approach and levels of expenses recommended by the CAFC;**
- **in relation to outlays the protocol should provide that all reasonably incurred outlays are to be recoverable as part of any agreed settlement; and**
- **regarding enforcement of settlements, the protocol should provide that the claimant can raise proceedings if settlement is reached but the defender fails to pay damages and agreed expenses/outlays within a set period from settlement.**

16. **Part B of Paper 5.1B** covered the pre-litigation fee. Members were advised that the CAFC intend to discuss amendments to the pre-litigation fee in more detail at its next meeting on 27 June 2016 and report back to this Committee. **The Committee indicated it was supportive of the recommendations made in the paper in relation to pre-litigation fees.**

17. In conclusion, the Committee indicated that it is content for the draft Act of Sederunt and Personal Injury Pre-Action Protocol to be revised further in line with discussion at the 06 June 2016 Committee meeting and thereafter submitted to the 11 July Council meeting for consideration and approval.

Item 5.2 - Simple Procedure – Personal Injury Rules (Paper 5.2)

18. The Committee noted the revised provisional timetable for the new Simple Procedure (Special Claims) Rules set out in paper 5.2 and that an initial draft set of personal injury simple procedure rules will be submitted to Committee members in August by correspondence.

Item 6: A.O.C.B.

19. The issue of developing a separate compulsory disease pre-action protocol was raised and it was suggested that a working group be set up to consider this. This matter will be included on the Agenda for the next Committee meeting.

Item 7: Dates of future meetings

20. Members noted the dates of the next meetings:

- Monday 17 October 2016 at 3.15 pm
- Monday 05 December 2016 at 3.15 pm

21. The Chair thanked those attending and in particular, Iain Nicol and John Thomson who represented the CAFC.

Scottish Civil Justice Council Secretariat

June 2016