

**SCOTTISH CIVIL JUSTICE COUNCIL
PERSONAL INJURY COMMITTEE**

MINUTES

PARLIAMENT HOUSE, MONDAY 08 JUNE 2015

Members present: Lord Jones (Chairman)
Maria Maguire QC (Advocate)
Amber Galbraith (Advocate)
Fraser Simpson (Solicitor)
Ronnie Conway (Solicitor Advocate)
Alan Rogerson (Claims Manager)
Hazel Dalgard (Scottish Government)

In attendance: Gillian Prentice (Deputy Principal Clerk of Session)
Stephen Feltham (Rules Rewrite Drafting Team)
Kiera Dargie (Deputy Legal Secretary to the Lord President)
Anne Hampson (Policy Officer, Scottish Civil Justice Council)

Apologies: Sheriff Principal Stephen
Sheriff Principal Abercrombie
Sheriff Mackie (Edinburgh Sheriff Court)
Catriona Whyte (Solicitor, Scottish Legal Aid Board)
Gordon Keyden (Solicitor)
Nicola Anderson (SCS Policy and Legislation Branch)

Item 1: Introduction, welcome, apologies and private papers

1. Lord Jones welcomed those present to the eighth meeting of the Personal Injury Committee (PIC) 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 **The Committee agreed that the following papers are to be considered private papers and will not be published:**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 – Compulsory Pre-Action Protocols
- Papers 4.2 and 4.2A-B – Simple Procedure Personal Injury Rules.

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 from the Scottish Government [Oral]

4. Hazel Dalgard informed members that the The Courts Reform (Scotland) Act 2014 (Commencement No. 3, Transitional and Saving Provisions) Order 2015 and The Courts Reform (Scotland) Act 2014 (Consequential Provisions No. 2) Order 2015 had been laid in the Scottish Parliament on 8 June 2015. Hazel also advised that The All-Scotland Sheriff Court (Sheriff Personal Injury Court) Order 2015 had been laid on 28 May. The instruments come into force on 22 September 2015. The latter Order allows personal injury actions above £5,000 and workplace personal injury proceedings exceeding £1,000 to be raised in the personal injury court. Those workplace personal injury cases below £1,000 may be transferred by local sheriffs to the PI court if they pass a test of importance or difficulty.
5. In relation to the Inquires into Fatal accidents and Sudden Deaths etc. (Scotland) Bill, Hazel advised that the Justice Committee had taken evidence over four sessions and that both the Cabinet Secretary for Justice and the Solicitor General had given evidence. She also advised that Patricia Ferguson had introduced her Inquiries into Deaths (Scotland) Bill on 1 June 2015 and that the Justice Committee may consider both these Bills together. Hazel informed the Committee that the Justice Committee first evidence session on the Apologies (Scotland) Bill, introduced by Margaret Mitchell, was to take place on 9 June 2015.

Item 3.2: Update from SCJC 11 May meeting [Oral]

6. Stephen Feltham spoke to this item. The SCJC considered draft rules to implement provisions in the Courts Reform (Scotland) Act 2014 which are due to come into force on 22 September 2015. Regarding rules for an all-Scotland PI court SCJC members indicated that, prior to them being submitted to the Court of Session for consideration, they wished the amended rule 36.K1 Ordinary Cause Rules to be referred back to the PIC for further consideration.
7. A helpful and persuasive reply from the Committee on the points raised was subsequently considered and the Council agreed that the rules be submitted to the Court of Session for consideration, subject to any stylistic or typographical amendment, with a view to being brought into force on 22 September 2015.

8. Stephen explained that the Personal Injury Rules had been combined with the rules on transfers and remits into a single Act of Sederunt and provided members with a copy of the Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (no 2) (Personal Injury and Remits) 2015.
9. The SCJC was advised at its 11 May meeting of the arising fee implications from the new rules and the draft fee instrument that modifies the Tables of Fees for solicitors in the Court of Session and the sheriff court was subsequently submitted, by correspondence, to members for consideration. Stephen explained that where an existing Court of Session procedure is being extended to the sheriff court, provision is made for fees to be chargeable on a similar basis. He provided members with a copy of the Act of Sederunt (Rules of the Court of Session 1994 and Fees of Solicitors in the Sheriff Court Amendment) (Courts Reform (Scotland) Act 2014) 2015.
10. The Chair thanked the Rules Rewrite Drafting Team for their excellent work in producing the Acts of Sederunt within such a short timescale.

Item 3.3: Update from 25 May joint meeting with CAFC [Oral]

11. Seven PIC members attended the Cost and Funding Committee (CAFC) 25 May meeting to discuss sanction for counsel and additional fees. These members reported that the meeting had gone well and that the CAFC had invited the views of the PIC in relation to these issues.
12. In relation to timing of the application for sanction for Counsel the overriding principle was certainty and it was considered inappropriate to use partial applications in relation to specific pieces of work as an alternative. Members also advised that there had been no support for applying for additional fees at the beginning and it was considered that proportionate costs could only be assessed at the end of a case.

13. Members noted these updates.

Item 4: Justice Reform

Item 4.1: Compulsory Pre-Action Protocols [Papers 4.1 and 4.1A]

14. At the 16 December 2014 meeting members agreed that a compulsory PI pre-action protocol should be applied to all proceedings in local sheriff courts as well as the all-Scotland PI court. However, discussion of the detailed policy matters was postponed to enable the Rules rewrite Drafting Team to focus on the

development of rules for the establishment of an all- Scotland Personal Injury Court.

15. Now that the rules for the all-Scotland PI court have been made **Paper 4.1** presented a proposal to set up a small reference group to consider various policy matters and to agree a recommended protocol (or protocols) for consideration and approval by the full Committee at its November 2015 meeting.
16. Following consideration of the proposal, the Committee agreed: that a reference group to develop the policy relating to the introduction of compulsory pre-action protocols should be established; and the membership of that group.

Item 4.2: Simple Procedure Personal Injury Rules [Papers 4.2 and 4.2A-B]

17. Section 72 of the Courts Reform (Scotland) Act 2014 provides that certain types of proceedings, including proceedings for payment of a sum of money not exceeding £5,000 must be brought subject to simple procedure. Accordingly, actions of damages for personal injury valued at £5,000 or less will, once section 72 is commenced, require to be brought as a simple procedure case (except for actions of less than £5,000 proceeding in the all-Scotland court by virtue of section 73 of the 2014 Act). A special PI procedure will therefore require to be developed for PI actions in the sheriff court valued at or below £5,000.
18. As a result of the special nature of personal injury procedure, **Paper 4.2** recommends that the Simple Procedure Personal Injury Rules are drafted as a stand-alone set of rules, or perhaps a stand-alone chapter, structured along the lines of the existing chapter 34 of the summary cause rules, but adopting the style and language of core simple procedure where appropriate.
19. Following discussion, the Committee agreed that:
 - the Rules Rewrite Drafting Team take forward, over the summer, the drafting of simple procedure PI rules, largely replicating the existing chapter 34 of the summary cause rules, but adopting the style and language of the new simple procedure wherever possible and taking into account the need to litigate in an appropriate forum and the importance of case flow; and
 - detailed advice and a draft of the rules be prepared for consideration at the Committee's 09 November 2015 meeting.

Item 5: A.O.C.B.

20. The Chair advised members that Maria Maguire has agreed to speak on behalf of the PIC at the SCJC Information Event, being held on Thursday 02 July 2015. She will provide a summary of what the PIC has achieved over the last year and a brief outline of what the PIC is planning to do next. **Members noted the Chair's update.**

21. No further business was raised under this agenda item.

Item 6: Dates of future meetings

22. The Committee noted that the next meeting of the PIC will be held on:

- Monday 9 November 2015 at 16.15.

23. It had been considered whether any future meetings be held on a Monday, Tuesday or Thursday. **The Committee agreed that Monday meetings should continue.**

24. The Chair closed the meeting and thanked members for their attendance and contributions.

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