

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
PERSONAL INJURY COMMITTEE
MONDAY 08 OCTOBER 2018 AT 3.15 PM
JUDGES DINING ROOM, PARLIAMENT HOUSE**

MINUTES

Members Present: Lord Armstrong (Chair)

Walter Drummond-Murray (Scottish Government)

Sheriff Principal Stephen

Sheriff McGowan

Maria Maguire QC (Advocate) (From item 5.1)

Amber Galbraith (Advocate)

Fraser Simpson (Solicitor)

Gordon Keyden (Solicitor)

Ronnie Conway (Solicitor Advocate)

Campbell Normand (Solicitor Advocate)

Alan Rogerson (Claims Manager)

In attendance: Laura Glasgow (Court of Session, SCTS)

Mark Kubeczka (Legislation and Implementation Team, SCTS)

Support: Ian Vickerstaff (Deputy Legal Secretary, Rules Rewrite Drafting Team)

Lauren Keillor (Policy Officer, Scottish Civil Justice Council)

Apologies: Lord Boyd

Christina Bardsley (Court of Session, SCTS)

Not Present: Marie-Louise Fox (Director of Operations, SLAB)

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and noted apologies from Lord Boyd and Christina Bardsley.
2. The Chair welcomed Sheriff McGowan and Laura Glasgow to their first meeting.
3. **The Committee agreed that the following papers will be treated as private and not be published: 2.2, 4.1, 5.1, 5.1A, 5.1B, 5.1C, 5.1D.**

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

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

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

5. The Committee considered Paper 2.2, which provided an update on progress on a number of items since the last meeting.
6. The Committee noted that the draft Simple Procedure (Special Claims) Rules were likely to be revised in light of the ongoing review of the core Simple Procedure Rules, being led by the Access to Justice Committee. **The Committee agreed that it should be consulted by the Access to Justice Committee on any revisions to the Simple Procedure (Special Claims) Rules relating to personal injury actions.**
7. **The Committee noted the progress made on actions since the last meeting.**

Item 3: Work Programme

Item 3.1 – Update from the Scottish Government on Legislative Developments (Oral)

8. Walter Drummond-Murray provided the Committee with an update on legislative developments. He advised that the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 had received Royal Assent over the summer and that it was likely there will be a consultation on the implementation of Part 1 of the Act (Success fee Agreements) in due course.

9. Walter also advised that the Damages (Investment Returns and Periodical Payments) (Scotland) Bill was introduced in the Parliament in June and was currently at Stage 1 consideration and that the Prescription (Scotland) Bill had recently completed stage 2 consideration.

10. Walter advised that the Scottish Government would not commence the Simple Procedure (Special Claims) Rules until after the Access to Justice Committee's ongoing review of the core Simple Procedure Rules and the Scottish Court and Tribunal Service's ongoing IT projects had progressed.

11. **The Committee noted this update.**

12. **The Committee agreed that it should be given the opportunity to input into the development of any rules of court in relation to the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 which relate to personal injury practice, particularly in relation to Section 8 of the Act.**

Item 4: Justice system reform: Rules rewrite

Item 4.1 - Pre-Action Protocol – Review Methodology (Papers 4.1 – 4.1A)

13. The Committee considered **Paper 4.1** which invited members to consider and provide views on a methodology to review the statutory Personal Injury Pre-Action Protocol ('the protocol'), which has been in force since November 2016.

14. Members noted that the protocol was developed by the Committee in 2016 and sets out the steps which must be followed prior to raising proceedings. Subject to certain exceptions, it applies to personal injury claims up to the value of £25,000 in local sheriff courts and in the all-Scotland Personal Injury Court. Members noted that parties are expected to follow the protocol in relevant cases where the accident or other circumstance giving rise to the claim for damages occurred on or after 28 November 2016.

15. Members noted that the Council generally reviews rules 18 months to two years from commencement to ascertain whether or not the policy intentions of the rules have been met and whether not any amendments may be required. The Council has previously used a number of methodologies to carry out reviews of court rules. However, in relation to how the review of the protocol may be carried out, the

Committee noted that it is fortunate that it is made up largely of personal injury practitioners and that both pursuer and defender firms are represented.

16. **The Committee agreed that an informal methodology should be used to gather feedback on the protocol in the first instance, whereby Committee members should provide the Secretariat with feedback, to include from staff in their organisations where appropriate, in relation to the operation of the protocol.**

17. **The Committee agreed that the Secretariat should develop and circulate a questionnaire to members to allow for initial feedback on the protocol to be obtained.**

Item 5: Research and Consultations

Item 5.1 - Amendment to Chapter 42A RCS (Papers 5.1 – 5.1A-D)

18. The Committee considered **Paper 5.1** and **5.1A-D**, which invited members to further consider proposals to amend Chapter 42A of the Rules of the Court of Session 1994 and advise on its preferred policy on a number of specific matters raised by the Central Legal Office (CLO) of the NHS since the last meeting.

19. At the April 2018 Committee meeting it was agreed that the Chapter 42A rules should expressly set out the steps parties must carry out within the period between the record closing and a BOAR hearing (to be renamed a 'case management hearing') taking place and that the rules should include express provision that a Lord Ordinary may make an order in relation to expenses. **Members noted that in relation to this second point about expenses, the RRDT has considered this matter and is of the view that it is not necessary to make such provision in the rules on account of the fact that a Lord Ordinary may exercise discretion and make an order about expenses where the Lord Ordinary considers it appropriate.**

20. The Committee also agreed at its April 2018 meeting that once the proposals had been further developed, the Secretariat should informally consult with the CLO to seek their views on the proposals. This has been done and the CLO has kindly provided their views before this meeting.

21. The draft Rules have been developed further following the correspondence between Maria Maguire QC, Amber Galbraith and RRDT and Secretariat, and following the consideration of the CLO's views.

22. The Committee expressed its thanks to the CLO for its helpful views on the draft proposals and agreed:

- **That the draft keeling schedule should be amended make provision for a date for the pursuer to lodge the closed record by and that this date should be 14 days from the closing of the record;**
- **That further informal and targeted engagement with practicing stakeholders on the keeling schedule would be helpful and that the Committee would revisit this issue when the proposals had been further developed to consider who should be consulted.**

20. The Committee agreed that as there were a small number of outstanding issues remaining including some points raised by the CLO which required further consideration, a meeting should take place between the RRDT, Secretariat, Amber Galbraith and Maria Maguire QC in early course to discuss these matters, after which the proposals should be brought back before the Committee for further consideration.

Item 6: A.O.C.B

21. No other business was raised.

Item 7: Dates of future meetings

22. The Committee noted that the date and time of the next meeting would be circulated by the Secretariat in due course.

**Scottish Civil Justice Council Secretariat
October 2018**