

**SCOTTISH CIVIL JUSTICE COUNCIL
PERSONAL INJURY COMMITTEE**

MINUTES

PARLIAMENT HOUSE, MONDAY 09 FEBRUARY 2015

Members present: Lord Jones (Chairman)
Sheriff Principal Stephen
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 Dalgard (Scottish Government)

In attendance: 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 Abercrombie
Sheriff Mackie (Edinburgh Sheriff Court)
Gillian Prentice (Deputy Principal Clerk of Session)
Nicola Anderson (SCS Policy and Legislation Branch)
Yvonne Anderson (Depute in Charge of Offices of Court)

Item 1: Introduction, welcome, apologies and private papers

1. Lord Jones welcomed those present to the sixth 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 **The Committee agreed that the following papers are to be considered private papers and will not be published:**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 and 4.1A-E - Rules for a Specialist Personal Injury Court.

Item 2: Minutes of previous meeting (Paper 2.1)

3. The Committee approved the minutes of the previous meeting with one amendment at paragraph 7, bullet point 4, line 7 to add after “parties” “or their representatives”.

Item 3: Forward Work programme

Item 3.1: Update from the Scottish Government on legislative developments [Oral]

4. Hazel Dalgard provided members with an update on progress in relation to the Courts Reform (Scotland) Act 2014. She also advised that the Scottish Government intends to lodge a Bill to reform Fatal Accident Inquiries Legislation; Patricia Ferguson MSP has secured the right to introduce her Inquiries into Deaths (Scotland) Bill and has until June to do so; a consultation on court fees amendment orders will publish shortly; a consultation has been published on an Expenses and Funding of Civil Litigation Bill with a closing date for responses of 24 April; a potential Damages Bill is still under consideration; Margaret Mitchell MSP has secured the right to introduce her Apologies Bill which is currently being finalised; and there will be a Succession Bill. Hazel also provided a brief update on criminal legislation.

Item 4: Justice Reform

Item 4.1: Rules for a Specialist Personal Injury Court [Papers 4.1 and 4.1A-E]

5. Members discussed **Paper 4.1 and considered Papers 4.1A-E** which presented a draft of the rules required to provide for the procedure and practice which will apply following the creation of a specialist personal injury court with civil jury trials. The rules were prepared in accordance with the policy instructions provided at the 16 December 2014 PIC meeting, amended to take account of the views expressed at that meeting.
6. **Following discussion, the Committee agreed that:**
 - the amended rules regarding the form of initial writ should reflect the wording in the Courts Reform (Scotland) Act 2014 and should refer to “statement” rather than “condescendence”;
 - for actions raised in the all-Scotland sheriff court, the pursuer should be required to state in the heading of Form PI1 that the action is being raised there; Form PI1 should also contain an averment indicating

- whether the proceedings are for determination under the sheriff's all-Scotland or local jurisdiction;
- ideally, e-motions should be available in all types of actions across all sheriff courts and the rules should accordingly follow the structure and order of Chapter 23 of the Court of Session Rules; however, it was acknowledged that this was dependent upon the necessary IT and staffing resources being in place and, as a result, the rules may initially need to restrict the availability of e-motion procedure to PI actions in the all-Scotland court;
 - for reasons of consistency, cases withdrawn from Chapter 36 of the Ordinary Cause Rules should automatically be subject to a new procedure which closely resembles Chapter 42A of the Court of Session Rules rather than an enhanced Options Hearing procedure. Provision should be included to allow the sheriff on his or her own initiative to remove cases from Chapter 36 of the Ordinary Cause Rules and make them subject to the new procedure;
 - Court of Session Practice Notes heavily supplement Chapter 42A and the equivalent rules in the sheriff court should incorporate rules having the same effect as the current Court of Session Practice Notes. Chapter 42A should itself be revised to make it clear that the court's case management role will continue after the By Order (Adjustment) Roll Hearing (c.f. Rule 42A.4);
 - Rule 36.K1 of the Ordinary Cause Rules should be amended so that parties, or their representatives, are required to attend a pre-trial meeting, rather than a pre-proof conference as currently provided in Rule 36.K1. This amendment should apply to all sheriff courts ;
 - the rules should contain provision requiring no less than 36 jurors to be cited to appear for civil jury trials in the sheriff court;
 - they were content with the draft transitional amendments to Chapter 39 of the Court of Session Rules to cover the period between the establishment in Edinburgh of a sheriff court with a Scotland-wide jurisdiction for personal injury cases in September 2015 and the jurisdiction for civil cases being conferred on the Sheriff Appeal Court in January 2016 and noted that draft rules will be provided later this year for applications to the Sheriff Appeal Court for a new trial;
 - they were content that the draft rules be further developed, in accordance with the views expressed at the meeting, for consideration at the 23 March PIC meeting.

Item 5: A.O.C.B.

7. The Chair advised members that the Costs and Funding Committee (CAF) agreed at its 19 January meeting to consider issues that would merit a joint meeting with the PIC at the 16 February CAF meeting.
8. **Following discussion, members agreed that a joint meeting would be worthwhile but that clarification was required on what issues were to be discussed and they would await the outcome of the 16 February CAF meeting.**
9. Members were asked to note the publication of Expenses and Funding of Civil Litigation Bill - A consultation which had been mentioned in the update from the Scottish Government. **Members noted the consultation.**
10. The Chair closed the meeting and indicated that it had been very productive and was efficiently dealt with by all members.

Item 6: Dates of future meetings

- **The Committee noted that the next two meetings of the PIC will be held on:**
 - **Monday 23 March 2015 at 16.15. and**
 - **Monday 8 June 2015 at 16.15.**

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