

**SCOTTISH CIVIL JUSTICE COUNCIL
PERSONAL INJURY COMMITTEE**

MINUTES

PARLIAMENT HOUSE, TUESDAY 16 DECEMBER 2014

Members present: Lord Jones (Chairman)
Sheriff Principal Stephen
Sheriff Mackie (Edinburgh Sheriff Court)
Maria Maguire QC (Advocate)
Amber Galbraith (Advocate)
Gordon Keyden (Solicitor)
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: Catriona Whyte (Solicitor, Scottish Legal Aid Board)
Nicola Anderson (SCS Policy and Legislation Branch)

Item 1: Introduction, welcome, apologies and private papers

1. Lord Jones welcomed those present to the fifth 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 **The Committee agreed that the following papers are to be considered private papers and will not be published:**

- Paper 3.1 (Pre-Action Protocols- Options).
- Paper 3.2 (Rules for a Specialist Personal Injury Court – Policy Instructions).

Item 2: Minutes of previous meeting (Paper 2.1)

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

Item 3: Justice Reform

Item 3.1: Compulsory Pre-Action Protocols - Options [Papers 3.1 and 3.1A]

- 4. Paper 3.1** outlined options for introducing a compulsory personal injury pre-action protocol (PI PAP) and, as requested by members at the 8 September PIC meeting, **Paper 3.1A** provided a matrix comparing the models suggested by respondents to the *Information Gathering Exercise on Pre-Action Protocols* with the existing Law Society of Scotland voluntary PI PAP and the PI PAP applicable in England and Wales.
- 5. The Committee considered the application and timing of the introduction of a PI PAP as outlined in Paper 3.1. Following discussion members indicated that they were content:**
 - **that a compulsory PI PAP should be applied to all local sheriff courts as well as the specialist PI court;**
 - **to proceed with Option 3 in Paper 3.1 to establish the specialist PI court first and introduce compulsory PI PAPS at a future date, ideally no more than one year after the establishment of the all-Scotland personal injury court to allow for policy development, consultation and awareness raising;**
 - **for the Secretariat and Rules Rewrite Drafting Team to develop a detailed options paper (which takes account of suggestions made by respondents to the information gathering exercise on matters such as disclosure and pre-litigation tenders) setting out a proposed model for the compulsory PI PAP for a future meeting;**
 - **that Paper 3.1A could best be dealt with alongside the detailed options paper at a future meeting; and**
 - **that, in light of the suggested timetable, consideration could also be given to introducing additional compulsory PAPS alongside the PI PAP.**

Item 3.2: Rules for a Specialist Personal Injury Court – Policy Instructions [Paper 3.2]

- 6. Members discussed Paper 3.2** which presented detailed policy instructions to provide for the procedure and practice which will apply following the creation of a specialist personal injury court with civil jury trials. To address issues raised at Committee meeting of the 8 September, the instructions also request provision to allow motions to be intimated and enrolled in the PI court by email and the

introduction of an equivalent procedure to that in Chapter 42A of the Court of Session Rules 1994 (CoS Rules) to allow for active case management in complex cases in the PI court and in local sheriff courts.

7. Following discussion, the Committee agreed that:

- **further consideration of provision for periodical payment orders should be deferred until a later date;**
- **detailed consideration and implementation of the wider exercise of rewriting the rules for PI actions across the board be carried out once the initial changes necessary to establish the PI court have had time to bed in;**
- **there is no need for a separate form of initial writ for actions raised in the specialist PI court. The existing Form PI1 can be used and parties should include averments as to which sheriff court the action is being raised in and, if that is Edinburgh, whether the case is being brought within the sheriff's all-Scotland or local jurisdiction;**
- **a Practice Note should be prepared alongside the drafting of the rules along the lines of Court of Session Practice Notes No 2 of 2003, No 3 of 2007, and No 2 of 2014 which would: (i) encourage pursuer's agents, when enrolling a motion craving the PI court to allow a proof or jury trial, to have already discussed with the other party the likely duration of the hearing sought; (ii) ensure that the pre-proof conference is a real meeting between parties or their representatives (preferably face to face) and not a box ticking exercise. The terminology in chapter 42 of the Court of Session Rules should be used so as to refer to a pre-trial meeting, rather than a pre-proof conference, to encourage parties to view this as a face to face meeting rather than a cursory telephone call; and (iii) encourage parties to hold the pre-trial meeting as early as possible.**
- **The rules should contain provision requiring a pursuer in the specialist PI court wishing to proceed by jury trial to apply by motion for jury trial and for approval of the 'issue' for the jury ;**
- **the terms "issue" and "counter-issue" should be used in the rules (rather than "question") as these are familiar terms in relation to jury trials. A Practice Note could explain in more detail that whilst the term "question" is used in the Courts Reform (Scotland) Act 2014, the rules refer to 'issues' for jury trial and these are intended to be framed in exactly the same way as issues for jury trial in the Court of Session; the Practice Note should also contain a template for an 'issue' and 'counter-issue';**
- **the concept of making e-motions was welcome and, in principle, should follow the procedures and timescales applicable under Chapter 23 of the CoS Rules;**

- **an equivalent procedure to that in Chapter 42A of the CoS Rules should be introduced for the specialist PI court and also in local sheriff courts;**
 - **consideration of sanction for counsel be deferred until the Costs and Funding (CAF) Committee, who are considering its response to the Taylor Report, have asked for views from the PI Committee; and**
 - **draft rules be developed for the next Committee meeting in accordance with the policy instructions at Paper 3.2 and the views noted above.**
8. A concern was raised regarding the Act of Sederunt (Sanction for the Employment of Counsel in the Sheriff Court) 2011 (SSI 2011/404) which, it was suggested, only allows the sheriff, or the sheriff principal, to grant sanction for certain activities, rather than granting sanction in the cause prospectively. **Members agreed that this concern should be communicated to the CAF Committee.**

Item 4: A.O.C.B.

9. Discussion took place around whether the existing power in the Ordinary Cause Rules to transfer cases between different sheriff courts would allow cases raised in a local sheriff court to be transferred to the specialist PI court. It was also noted that rule 16.2 of the Summary Cause Rules requires that an Options Hearing is held when a summary cause action is remitted to ordinary cause, but that this is not necessary in PI cases as there are no Options Hearings under PI procedure. **Members agreed that the Rules Rewrite Drafting Team should look into these matters and, if necessary, include provision in the rules to deal with them.**
10. **Members acknowledged that the order which is to be made by Ministers under section 41 of the Courts Reform (Scotland) Act 2014, with the consent of the Lord President, will specify the types of cases which will be heard in the specialist PI court.** Hazel Dalgard advised that consideration is being given to the content of the section 41 order and that Scottish Government officials will arrange a meeting early in the New Year with the Lord President's Private Office to discuss the matter.

Item 5: Dates of future meetings

- **The Committee noted that the next two meetings of the PIC will be held on: Monday 9 February 2015 at 16.15; and**
- **Monday 23 March 2015 at 16.15.**