

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
PERSONAL INJURY COMMITTEE
MONDAY 20 MARCH 2017 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 Principal Stephen

Sheriff Mackie

Maria Maguire QC (Advocate)

Amber Galbraith (Advocate)

Fraser Simpson (Solicitor)

Gordon Keyden (Solicitor)

Ronnie Conway (Solicitor Advocate)

Alan Rogerson (Claims Manager)

In attendance: Chris Fyfe (Court of Session, SCTS)

Support: Norman Munro (Deputy Legal Secretary, Rules Rewrite Drafting Team)

Lauren Gibb (Policy Officer, Scottish Civil Justice Council)

Apologies: Lord Boyd

Nicola Anderson (Legislation and Implementation Team, SCTS)

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and noted apologies from Lord Boyd and Nicola Anderson.
2. The Chair welcomed Chris Fyffe (SCTS, Court of Session) and Lauren Gibb (Policy Officer, Scottish Civil Justice Council) to their first meetings.
3. **The Committee agreed that the following papers will be treated as private and not be published: 2.2, 4.1, 4.1A, 4.1B, 4.2, 4.2A, 4.3, and 4.3A.**

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 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)

6. Walter Drummond-Murray updated the Committee about recent legislative developments. He advised that the Limitation (Childhood Abuse) (Scotland) Bill is progressing through Parliament and that the Justice Committee of Parliament has completed its Stage 1 consideration of the Bill. He advised that the Scottish Government is committed to introducing a Bill which is provisionally titled the 'Expenses and Funding on Civil Litigation (Scotland) Bill' within this Parliamentary year, ending in June 2017. The Bill delivers on the recommendations of Sheriff Taylor's Review of Expenses and Funding of Civil Litigation in Scotland.

7. Walter advised the Committee that other ongoing work includes the ongoing implementation of the Courts Reform (Scotland) Act 2014 with the next stage being the planned introduction of the second phase of Simple Procedure late in 2017. In addition, the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 is scheduled for commencement in the summer of 2017.

Item 4: Justice system reform: Rules rewrite

Item 4.1 - Simple Procedure (Special Claims) – Personal Injury Rules (Papers 4.1 - 4.1A-B)

8. Members considered **Papers 4.1 and 4.1A-B**, which provided the Committee with a set of post consultation personal injury rules for the new Special Claims chapters of the Simple Procedure rules and comprehensive legal advice from the Rules Rewrite Drafting Team about the substantive changes that have been made to the rules since the small focus group exercise with key stakeholders in the fields of personal injury was held in January.

9. **Members agreed the following:**

- a) **That the rules should retain established wording as far as possible, but should explain that wording as a way to assist lay persons.**
- b) **That the rules should explain what dates would be set out in the “timetable” as provided for by rule 3.10 of the core rules.**
- c) **That a rule should be included specifying what must be in first written orders in a personal injury claim.**
- d) **The approach in setting out the Personal Injury Timetable as part of a standard order of the sheriff.**
- e) **The proposal to use the term “adjustment” and to offer an explanation of that term in order to assist lay persons.**
- f) **The proposal to prescribe a Personal Injury Hearing Confirmation Application Form.**
- g) **That “pre-hearing meeting” was not a more appropriate term for the personal injury rules and that “pre-trial meeting” would be retained.**
- h) **That instead of placing a presumption in favour of dispensing with the pre-trial meeting for party litigants, parties should be required to attend a pre-trial meeting in court facilitated by the sheriff.**
- i) **That a rule should be included which signposts the reader to the part of the core rules which covers document recovery.**
- j) **That the objection period for any order in the personal injury rules should be reduced from ten days to one week.**
- k) **That the Committee would approve the revised Personal Injury Claim Form subject to the inclusion of a further example detailing a road traffic collision to aid lay persons.**
- l) **That a twin-approach should be adopted for the Personal Injury Recovery of Documents Certificate whereby documents recovered by a legally represented claimant should be sent to their solicitor, however, in the case of a party litigant those documents should be sent to court.**

- m) **That the Committee would approve the revised Personal Injury Response Form.**
- n) **That the Committee was content with the revised wording of the proposed Statement of Valuation and Joint Note of Pre-Trial Meeting subject to the former being renamed the Valuation Form.**
- o) **That the Committee would approve the proposed Standard Orders.**
- p) **That the special claims rules would not provide for tenders and instead would leave these to the common law.**
- q) **That the rule about what a Sheriff may do after granting a Personal Injury Additional Respondent Application should be widened to include ordering the respondent to do something.**

10. **Members agreed that subject to the agreed changes being made, the Personal Injury Rules could be submitted to the Access to Justice Committee for consideration and approval and thereafter to Council.**

Item 4.2 - Simple Procedure (Special Claims) Fees Instrument Papers 4.2 - 4.2A)

11. Members considered Papers 4.2 and 4.2A which provided the Committee with a draft instrument relating to Fees of Solicitors in the sheriff court in relation to the Simple Procedure (Special Claims) rules. The purpose of this instrument is to make provision for the fees for personal injury claims in Simple Procedure. As such, the basis for the table of fees is Part IIIB of the summary cause table, with procedure, terminology and style updated to align with the ethos of Simple Procedure.

12. Members noted the contents of this instrument and that it is being prepared by the Costs and Funding Committee, with input being sought from the Personal Injury and Access to Justice Committees.

13. **Members agreed to feed back to the Costs and Funding Committee their view that the instrument should strike a balance between allowing work to be appropriately charged for with the need to avoid encouraging litigation.**

Item 4.3 - Limitation (Childhood Abuse) (Scotland) Bill (Papers 4.3 – 4.3A-B)

14. Members considered Papers 4.3 and 4.3A-B which provided the Committee with a policy paper from the Scottish Government asking for consideration to be given to the Limitation (Childhood Abuse) (Scotland) Bill ('the Bill') in respect of any potential court rules that may be required.

15. Members noted that the Bill would amend the Prescription and Limitation (Scotland) Act 1973 by removing a specific class of action from the limitation regime. Currently, in order to raise a personal injury action for damages in a civil court in

Scotland, the action must be raised within the timeframes specified in the 1973 Act. The Bill removes the three year limitation period set out in section 17 of the 1973 Act for actions of damages where i) the damages claimed consist of damages in respect of personal injuries, ii) the person raising the action was a child (under the age of 18) at the time the act or omission that caused the injury occurred, iii) the act or omission to which the injuries were attributable constituted abuse, and iv) the action is brought by the person who sustained the injuries. As a result, such claims will generally no longer be subject to a set limitation or prescriptive period.

16. Members considered whether or not the proposed amendments to the 1973 Act required any modification of the procedure governing the handling of questions of time bar and *res judicata* in personal injury cases.

17. Members agreed that they were content that no changes to the current rules of court would be required as a result of the current draft of the Bill.

18. Members agreed that the Committee should revisit this matter if substantive changes are made to the Bill.

Item 4.4 - Compulsory Clinical Negligence Pre-Action Protocol (Oral)

19. Maria Maguire updated the Committee on a recent meeting of stakeholders who wished to participate in the voluntary pre-action protocol she has designed for clinical negligence cases. It is anticipated that this voluntary protocol will help inform the compulsory clinical negligence pre-action protocol that will be further developed by the reference group when the trial period for the voluntary protocol has ended.

20. Maria advised that the trial now had a good balance of Pursuer and Defender members and that in the recent meeting of the stakeholders, which took place on 27 February 2017 in Edinburgh, members were engaged and provided valuable input with regards to the trial voluntary protocol. Maria informed the Committee that at this meeting a decision was taken to increase the limit of the protocol to claims worth one hundred thousand pounds or less and that members agreed that the relevant fee scale for work completed under the protocol would be the Law Society's professional negligence scale.

21. Maria advised the Committee that the focus of the group was now to spread the word about the protocol to encourage participation and that some members were now working on communication pieces such as articles in relevant legal publications. Maria advised that the group's intention was to meet again around June to evaluate progress of the protocol.

22. Members noted this update.

Item 4.5 - Compulsory Disease Pre-Action Protocol (Oral)

23. Amber Galbraith updated the Committee on the first meeting of the compulsory disease pre-action protocol sub group, which is tasked with developing policy relating to a compulsory pre-action protocol for disease cases. She advised members that the sub group, which is comprised of pursuer agents, defender agents and insurer representatives, met on 23 February 2017 in Parliament House, Edinburgh and discussed some of the main overarching policy decisions about the compulsory protocol.

24. Amber advised that the sub group made good progress with these decisions but did not get through all of the relevant issues and intend to meet again in April 2017. At this meeting it is hoped that members will finish the Secretariat's overarching policy questions which will, in turn, allow the drafter to start working on a draft protocol. She advised that the Committee will have sight of this protocol at the first appropriate opportunity.

25. **Members noted this update.**

Item 5 A.O.C.B.

26. No other business was raised.

Item 6: Dates of future meetings

27. Members noted the dates of the next meeting:

- Monday 13 November 2017 at 3.15 pm in Parliament House, Edinburgh.

**Scottish Civil Justice Council Secretariat
March 2017**