

**SCOTTISH CIVIL JUSTICE COUNCIL
PERSONAL INJURY COMMITTEE**

MINUTES

PARLIAMENT HOUSE, MONDAY 23 MARCH 2015

Members present: Lord Jones (Chairman)
Sheriff Principal Stephen
Sheriff Principal Abercrombie
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: Sheriff Arthurson
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 Mackie (Edinburgh Sheriff Court)
Nicola Anderson (SCS Policy and Legislation Branch)
Catriona Whyte (Solicitor, Scottish Legal Aid Board)

Item 1: Introduction, welcome, apologies and private papers

1. Lord Jones welcomed those present to the seventh meeting of the Personal Injury Committee (PIC), noted apologies and welcomed Sheriff Arthurson, who attended in place of Sheriff Mackie, to the meeting.

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 **The Committee agreed that the following papers are to be considered private papers and will not be published:**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-D - Rules for an all-Scotland Specialist Personal Injury Court.

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 advised members of the Scottish Government consultation on proposals for fees charged by the Court of Session, Accountant of Court, Sheriff & Justice of the Peace Courts, High Court, Office of the Public Guardian, Personal Injury Court and the Sheriff Appeal Court. The consultation was published on 23 February 2015 with a closing date for responses of 15 May 2015. Members were invited to circulate the link to the consultation beyond the Committee.
5. Hazel explained that these fees orders will form part of the implementation of the specialist Personal Injury Court. It is proposed to increase fees by 2% per annum in each of the years from 2015/16–2017/18 with an additional 2% increase in 2015/16 to assist with the on-going costs of justice reform. This will lead to a slight increase in cost recovery. Proposed fees for the personal injury court are in line with those of the Court of Session (CoS) General Department with the main difference being that Hearing fees are proposed to be set at 80% of the CoS rate to reflect that a specialist personal injury sheriff is on the bench rather than a judge. These will be charged per 30 minutes or part thereof. Sheriff Appeal Court fees will be in line with those currently charged in appeals to Sheriffs Principal with a Hearing fee being added where a quorum of three is required. This is proposed to be set at 2.5 times the standard sheriff court hearing fee. Civil jury fees will replicate existing CoS jury fees. Simple procedure fees will be covered in an ad hoc order that will require to be prepared during the course of the year and laid in time for the commencement of simple procedure. **Members noted the consultation and asked Hazel to ensure that the new fee set up covered personal injury cases dealt with through case management rules in both the sheriff court and the CoS.**

Item 4: Justice Reform

Item 4.1: Rules for an all-Scotland Specialist Personal Injury Court [Papers 4.1 and 4.1A-D]

6. Members discussed **Paper 4.1 and considered Papers 4.1A-D** which presented a revised 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 amended in accordance with the views expressed at the 9 February 2015 PIC meeting.

7. **Following discussion, members agreed that:**

- they were content with the amended interpretation section of the rules, with only a minor change from “would have” to “has” being required in the definition of the sheriff’s “local jurisdiction” in rule 1 of the Ordinary Cause Rules (OCR);
- they were content with the proposed amendments to Chapter 3 of the rules;
- they wished to record their disappointment that it would not be possible for e-motions to be available in all types of actions across all sheriff courts by September 2015 and that the rules would initially need to restrict the availability of e-motion procedure to PI actions in the all-Scotland court. However, members acknowledged that this was a resourcing issue and that the wider Rules Rewrite project alongside the delivery of a new Case Management System through the IT project would allow for this in the longer term;
- they were content that the revised chapter 15 on motions, including the new rules providing for the lodging of motions by email, should remain as drafted;
- no amendment was required to existing rule 26.1 and that as rules regarding remit to and from the Court of Session will be of general application these should be considered by the Rules Rewrite Committee and dealt with in a separate instrument;
- the rules should provide that cases withdrawn from Chapter 36 should be appointed to the new Chapter 36A rather than proceeding as an “ordinary cause”;
- there is some inconsistency regarding the test for withdrawing a case from personal injury procedure in Chapter 36. The test in rule 36.C1 OCR (actions based on clinical negligence) should be the same as in rule 36A.1(2) (i.e., the efficient determination of the action), but the test in rule 36.F1 (disapplication of personal injuries procedure) should stay the

same so as to require the party making the application to persuade the court that there are exceptional reasons for not following the procedure in Chapter 36. The Court of Session Rules (COS Rules) should be revised along the same lines (including changing the test in rules 42A.1 and 43.1A to “efficient determination” of the action, rather than “speedy and efficient determination”);

- when applying to have a personal injury cases based on alleged clinical negligence withdrawn from Chapter 36 and appointed to Chapter 36A, the pursuer should be required to present a full writ in Form G1 for warranting. The Court of Session Rules should be revised along the same lines;
- as regards cases appointed to the new Chapter 36A, rule 36A.6 should be revised so that there is an automatic requirement on the pursuer to lodge an open record following the lodging, or adjustment, of defences;
- they were content with the term “Notes of Issues” rather than “statement of proposals for further procedure” in rule 36A.8 and that the Court of Session rules should be adjusted to adopt this term. The list of matters to be covered at the Procedural Hearing set out in rule 36A.9 should be added to rule 42A.4(4) of the COS Rules.;
- in rule 36A.1(6), the word “including” should be added to the definition of “proof” so that references to an action being sent to proof will be construed as *including* the allowing of a jury trial;
- new rule 36.A8 should be amended to make reference to the Procedural Hearing fixed under rule 36.A7(2);
- in rules which refer to “the sheriff” more than once, use of the term “the sheriff” should be repeated, rather than using “he or she”;
- they were content with the rules regarding jury trials;
- they were content with the amendments made to COS rules 42A.4 and 42.A.5, and the equivalent provisions in the OCR (rules 36A.9(6) and 36A.11), to make it clear that further hearings can be fixed after, as well as before, the action is appointed to debate or sent to proof, and that the court can make such orders as it thinks necessary to secure the efficient determination of the action. ;
- section 2 of OCR Form PI7 (Minute of pre-trial meeting), and the equivalent COS Form 43.10, should be amended so that, if the estimate of the number of days required for proof or trial differs from the number of days previously allocated, the sheriff clerk or the Keeper, should be informed rather than the current requirement to inform if the estimate is more than 2 days (or 4 days in the Court of Session).

8. The Committee agreed that, subject to amendments being made in accordance with the views expressed at the 23 March meeting, the revised draft Act of

Sederunt be submitted for approval to the Scottish Civil Justice Council 11 May meeting.

Item 5: A.O.C.B.

9. Ronnie Conway and Amber Galbraith had indicated that they wished to raise issues around e-motion procedure and the test for moving an action from Chapter 36 to 36A respectively. Discussion around both of these issues took place and is recorded at bullet points 3 and 7 of paragraph 7.
10. The Chair advised members that the Costs and Funding Committee (CAFC) had agreed, at its 16 February meeting, the following topics for discussion at a joint meeting with the PIC: Sanction for Counsel, Additional Fees and Exclusive Competence. Alan Rogerson provided an update on the discussion at the CAFC meeting.
- 11. Following discussion, members agreed that there was merit in having a joint meeting to discuss these topics and that the advocate and solicitor members of the Committee should attend the 25 May CAFC meeting. Secretariat will make the arrangements.**
12. The Chair closed the meeting and thanked members for their efficient determination in finalising the personal injury rules.

Item 6: Dates of future meetings

- **The Committee noted that the next meeting of the PIC will be held on:**
 - **Monday 8 June 2015 at 16.15.**

Scottish Civil Justice Council – Secretariat March 2015