

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
PERSONAL INJURY COMMITTEE
MONDAY 25 APRIL 2016 AT 3.15 PM
JUDGES CONFERENCE ROOM, LEVEL +2 PARLIAMENT HOUSE

MINUTES

Members Present: Sheriff Principal Abercrombie (acting Chair)

Catriona Whyte (SLAB)

Walter Drummond-Murray (Scottish Government)

Sheriff Principal Stephen

Maria Maguire QC (Advocate)

Ronald Conway (Solicitor Advocate)

Gordon Keyden (Solicitor)

Fraser Simpson (Solicitor)

Alan Rogerson (Claims Manager)

In attendance: Gillian Prentice (Deputy Principal Clerk of Session)

Support: Karen Stewart (Business & Policy Manager, Scottish Civil Justice Council)

Stephen Feltham (Deputy Legal Secretary, Rules Rewrite Drafting Team)

John Thomson (Deputy Legal Secretary, Lord President's Private Office)

Neil Deacon (Deputy Legal Secretary, Lord President's Private Office)

Apologies: Lord Armstrong
Sheriff Mackie
Nicola Anderson (SCTS Policy and Legislation Branch)
Marie-Louise Fox (SLAB)
Amber Galbraith (Advocate)

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and noted apologies from Sheriff Mackie, Nicola Anderson (SCTS), Marie-Louise Fox (SLAB) and Amber Galbraith (Advocate).
2. **The Committee agreed that the following papers will be treated as private and not published: Papers 2.2, 5.1, 5.1A, 5.2, 5.2A to D, 5.3 and 5.3A.**

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

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

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

4. **The Committee noted the progress made on actions since the last meeting.**

Item 3: Proceedings

Item 3.1 – Scottish Civil Justice Council Strategy Meeting (Oral)

5. Karen Stewart provided an update on the strategy meeting which took place on 14 March 2016. In particular she advised that an output report has been prepared by the Deputy Secretary and that the Council will be considering its' Annual Report and Programme at the next Council meeting on 16 May 2016.

Item 4: Work Programme

Item 4.1 – Update from the Scottish Government on legislative developments (Oral)

6. Walter Drummond-Murray provided members with an update on legislative developments in the Scottish Government. In particular: on 1 April 2016, the new summary sheriffs took up office and the office of stipendiary magistrate was abolished; the draft Limitation (Childhood Abuse) (Scotland) Bill, which would remove the three-year time bar on civil actions in cases of historical childhood abuse has been published and is likely to be introduced in the next parliamentary session; and a commencement order for lay representation for non-natural persons is in draft.

Item 5: Proposals for rules

Item 5.1 – Compulsory Personal Injury Pre-action Protocol (Papers 5.1 and 5.1A)

7. The Committee considered the policy advice set out in **Paper 5.1** and the revised draft rules and compulsory personal injury pre-action protocol set out in **Paper 5.1A**. The Committee discussed the various drafting and policy issues arising, including timescales for implementation of the personal injury pre-action protocol and fee structures for protocol expenses.

8. **The Committee agreed that:**

- **the compulsory personal injury pre-action protocol should be commenced at the end of November 2016;**
- **the compulsory personal injury pre-action protocol should not apply where the claimant is unrepresented. The question of applying the protocol to unrepresented parties is to be revisited in the future once the protocol is in operation;**
- **the PI simple procedure rules should contain provision for a pre-action protocol; the Summary Cause Rules should be revised in the interim to include such provision;**
- **in cases which are remitted from ordinary procedure to the Court of Session, the Court should be able to exercise powers for failure to comply with the protocol.**

9. **The Committee also suggested a number of detailed drafting amendments to the draft Act of Sederunt and Protocol and instructed the Lord President’s Private Office to prepare a revised draft instrument incorporating all of the above changes for consideration at the next Committee meeting on 6 June 2016.**

10. **The Committee agreed that the issue of ‘pursuers’ offers’ in pre-litigation would be tabled for consideration at a later date.**

11. **The Committee agreed to invite members of the Costs and Funding Committee (CAFC) to attend the next meeting on 6 June 2016 to discuss the matter of protocol expenses.**

Item 5.2 – Simple Procedure – Personal Injury Rules (Papers 5.2 and 5.2 A-D)

12. **The Committee noted the revised timetable for the new Simple Procedure and Simple Procedure (Special Claims) Rules set out in paper 5.2 and instructed the Lord President’s Private Office to prepare draft simple procedure personal injury rules for consideration at the next meeting on 6 June 2016.**

Item 5.3 – Pursuers’ Offers (Paper 5.5 and 5.3A)

13. John Thomson spoke to the papers and in particular advised that the Lord President has remitted the issue of pursuers’ offers to the CAFC for consideration. The CAFC have considered an options paper on the subject and as the issues are relevant to personal injury litigation would like to obtain input from PIC.

14. The Committee discussed a number of issues arising from paper 5.3A, including the question of introducing pursuers’ offers in multi-defender cases. Whilst the Committee appreciated the difficulties inherent in introducing pursuers’ offers in such cases, it noted that it would be an extremely useful development.

15. **The Committee agreed to invite members of CAFC to attend the next meeting of this Committee on 6 June 2016 to discuss the matter of pursuers’ offers along with those issues previously outlined at paragraphs 10 and 11 herein.**

Item 6: AOCB

16. Maria Maguire advised the Committee that she was arranging a conference on the subject of clinical negligence on 20 June 2016. One of the topics is pre-action protocols. She sought permission from the Committee and Chair to share the current working draft of the clinical negligence pre-action protocol with those attending the conference. The reason behind this is that the plan is to suggest the trial of a voluntary pre action protocol pending development of the compulsory protocol. The benefit of a voluntary pre action protocol would be that it would inform the compulsory protocol development in the meantime, as unlike personal injury there has never been a trial of any sort. The Committee agreed that to do so on that

basis would be useful in obtaining preliminary feedback which may assist the development of the document.

17. The Chair approved the sharing of the ideas behind the draft clinical negligence pre-action protocol under the terms of Council Standing Order 13.1(b).

Item 7: Date of Next Meeting

18. Members noted the date of the next meeting:

- Monday 06 June 2016 at 3.15 pm

Scottish Civil Justice Council Secretariat

April 2016