

**SCOTTISH CIVIL JUSTICE COUNCIL  
PERSONAL INJURY COMMITTEE**

**DRAFT MINUTES**

**PARLIAMENT HOUSE, 10.00 AM MONDAY 02 SEPTEMBER 2013**

**Members present:** Lord Jones (Chairman)  
Sheriff Principal Stephen (Lothian and Borders) (papers member)  
Sheriff Abercrombie QC (Dunfermline Sheriff Court)  
Sheriff Mackie (Edinburgh Sheriff Court)  
Amber Galbraith (Advocate)  
Maria Maguire QC (Advocate)  
Gordon Keyden (Solicitor)  
Fraser Simpson (Solicitor)  
Ronnie Conway (Solicitor)  
Alan Rogerson (Claims Manager)  
Catriona Whyte (Solicitor, Scottish Legal Aid Board)  
Hamish Goodall (Scottish Government)

**In attendance:** Frances MacPherson (Sheriff Clerk)  
Yvonne Anderson, Depute in Charge of Offices at Court, Supreme Court (on behalf of Gillian Prentice)  
Ondine Tennant (Deputy Secretary to the Scottish Civil Justice Council)  
Chris Nicholson (Deputy Legal Secretary to the Lord President)  
Lisa Gamble (Scottish Civil Justice Council Secretariat)

**Apologies:** Gillian Prentice, Deputy Principal Clerk of Session

**Item 1: Introduction, welcome and apologies**

1. Lord Jones welcomed those present and noted apologies.

**Item 2: Proceedings**

*Item 2.1 Scottish Civil Justice Council (Standing Orders and committee structure) (Papers 2.2 and 2.2A)*

2. **The Committee noted the Standing Orders of the Scottish Civil Justice Council (SCJC) and that the SCJC will “determine procedures; including its quorum and which of these standing orders will apply to the conduct of the committee and for reporting back to the SCJC”.**

**The Committee noted that the detail of these procedures will be considered at the SCJC meeting of 23 September 2013 and the Secretariat will report to the Committee on the outcome.**

3. It was brought to the Committee's attention that paper 2.1 makes reference to communications (standing order 11) and that members should be aware that committees will have a presence on the SCJC website through the publication of minutes and papers etc. **The Committee noted a communications strategy is under development and will be presented to the Council for consideration at its next meeting.**
4. It was noted that Paper 2.1 also refers to confidentiality and that the Standing Orders provide that agendas, papers and minutes of the Council and committee meetings will routinely be published on the SCJC website, with the exception of any confidential items, such as draft rules and advice pertaining to them.
5. **The Committee agreed not to publish the following papers: Papers 4.2, 4.2A & 4.2B.**

*Item 2.2: Personal Injury Committee remit and membership (Paper 2.2)*

6. It was generally felt that the remit of the Committee was broad. In light of that fact, there was some discussion as to how the Committee's work plan would develop over time. The Secretariat explained that the SCJC would be able to refer specific matters to committees but also that committees would be able to consider matters falling within their remits in the first instance. This would include proposals for changes to rules, whether by external parties, or at the instance of the Committee.
7. **The Committee noted that a forward work programme for the SCJC was under development and that this, coupled with the output of the Rules Rewrite Working Group, would provide some structure to the work the Committee might anticipate.**

*Item 2.3: Personal Injuries User Group (Paper 2.3)*

8. The Chair provided an update as to the work of the PIUG with reference to Paper 2.3. There was a general consensus that the Committee and the PIUG fulfilled separate functions. It was highlighted that the SCJC had considered the role of the PIUG (and the Inner House User Group) in light of the creation of committees under the SCJC. It was further noted that the SCJC Secretariat and DPCS would keep a watching brief as to the PIUG in relation to the PI Committee and would consider the extent of any overlap and the necessity for both to continue.
9. There were questions as to the extent of sheriff court representation on the PIUG and it was noted that there was a separate group which considered sheriff court PI procedure in particular, based in Edinburgh Sheriff Court, and which liaised with the PIUG as appropriate.

*Item 2.4: Freedom of Information (Scotland) Act 2002 (FOISA) (Papers 2.4 and 2.4A)*

10. Members were reminded that the SCJC has been added to the list of Scottish Public Authorities subject to FOISA and that it has adopted a Publication Scheme and Guide to Information (Paper 2.4A). **The Committee noted that agendas, papers and minutes of meetings would be routinely published on the SCJC website, unless deemed confidential under the standing orders, or was subject to an exemption under the terms of the Act.**
11. It was noted that guidance for SCJC and committee members would be prepared in due course and that it was expected that requests under FOISA would increase over time, in line with the SCJC's level of activity.

**Item 3: Forward Work Programme**

*Item 3.1 Update from the Scottish Government (Paper 3.1)*

12. Hamish Goodall spoke to Paper 3.1, an update from the Scottish Government on the following initiatives with potential implications for personal injury actions: draft Courts Reform (Sc) Bill; Damages (Sc) Bill; Apologies Bill (a proposal for a Members' Bill); Sheriff Principal Taylor's Review and the Scottish Government's consideration of the consultation on the recommendations of the No-Fault Compensation Review Group.

*Item 3.2 Making Justice Work Programme and SCJC Forward Work Programme*

13. Ondine Tennant provided an oral update on the Scottish Government's *Making Justice Work* (MJW) Programme, explaining how the work of the SCJC and its committees is incorporated within the MJW framework. An update was also given as to the SCJC's first meeting on 10 June 2013, with particular reference to the other committees being established and the matters currently before the SCJC.

**Item 4: Secondary Legislation**

*Item 4.1 Secondary Legislation Tracker (Paper 4.1)*

14. **Members noted the secondary legislation tracker, which keeps the SCJC informed as to the proposals for secondary legislation presently under consideration.** Further, it was noted that the tracker will be updated by the Secretariat for the next meeting of the SCJC on 23 September, following the Committee's consideration of Item 4.2.
15. **It was agreed that a link to both the minutes of the SCJC meetings and the Secondary Legislation Tracker would be forwarded to the Committee by the secretariat.**

*Item 4.2 Sheriff Court Miscellaneous Amendments Instrument in Respect of Recovery of Documents (Papers 4.2, 4.2A and 4.2B)*

16. Members were asked to consider a draft instrument amending the Ordinary Cause Rules in respect of the optional procedure to be followed for the recovery of documents, and whether the Court of Session and Summary Cause Rules should be similarly amended. Fraser Simpson helpfully explained the history of the issue at hand, which had been referred to the SCJC by the Sheriff Court Rules Council.
17. It was considered that a consistent approach should be adopted and that if there were inconsistencies in the equivalent Court of Session and Summary Cause Rules these should also be addressed. It was noted that the Summary Cause Rules were not restricted to personal injury actions. There was discussion as to whether the opportunity should be taken to extensively redraft the relevant parts of the rules (particularly the Summary Cause Rules) with a view to achieving greater clarity, simplicity and accessibility of language. While it was considered there were merits in such an exercise, it was noted that there was a need to address the existing inconsistencies as a matter of priority. It was also noted that the Rules Rewrite project would offer the opportunity to undertake a comprehensive redraft of the rules on a much broader scale and as such, that there was potential for duplication of effort in this regard.
18. **It was agreed that Lord Jones, Sheriff Mackie and the Chris Nicholson would consider the matter further, with a view to preparing two further draft instruments for the Committee's next meeting. The first instrument being a further draft of that which was considered (Paper 4.2B) to address members' specific comments on the draft (including some amendments to achieve greater clarity), and the second being a more comprehensive redraft of the rules in question.**
19. **The Committee noted that consideration of the small claims rules in this respect would be taken forward separately and that advice would be provided to the SCJC or an appropriate Committee in due course.**

**Item 5: Civil Courts Reform**

*Item 5.1. Summary of draft Courts Reform (Sc.) Bill (Paper 5.1)*

20. Ondine Tennant spoke to a paper providing a summary of the key proposals contained in the draft Courts Reform (Sc) Bill which were expected to have implications for the practice and procedure to be followed in personal injury actions. **Members noted that the SCJC has agreed to establish a Rules Rewrite Working Group to consider the "methodology" for the Rules Rewrite project. Members noted that this will have implications for the forward work of the PIC.**
21. Members were invited to consider whether there were any discrete aspects of the proposals which might be capable of being taken forward in early course and separately from the Rules Rewrite project. In discussion it was thought that the recommendations

of the Scottish Civil Courts Review in relation to pre-action protocols might prove potential areas for early consideration. **It was agreed that members would give individual consideration to this matter after the meeting and provide any suggestions to the Secretariat.**

22. **It was agreed that the Secretariat would provide further advice on what may be specified by rules within the provisions of the draft Courts Reform (Sc) Bill in terms of sanctions for non-compliance with pre-action protocols.**
23. It was remarked that the recommendations of Sheriff Principal Taylor's Review would have implications on this work and that it offered the opportunity to examine personal injury actions from the pre-litigation stages through to settlement.

#### **Item 6: Future Business**

##### *Item 6.1 Dates of Future Meetings (Paper 6.1)*

24. **Members were advised that it had been necessary to reschedule the November meeting to 2pm, 09 December 2013, and that the Committee's meeting of 31 March 2014 would also need to be rescheduled. An alternative date will be circulated as soon as practicable by the Secretariat.**

#### **Item 7: A.O.C.B**

25. **Members were reminded that the SCJC Official Launch is taking place from 5.00-7.00pm, Monday 23 September, at Parliament Hall.**

**SCJC Secretariat  
September 2013**