

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL

ACCESS TO JUSTICE COMMITTEE

20 DECEMBER 2022 AT 4.15 PM

VIA CISCO WEBEX

MINUTES

Present: Lady Carmichael (Chair)
Joel Conn
Employment Judge d'Inverno
Thomas Docherty
Justin Haccius
Dean Purdie
Hazel Thoms

Attending: Craig Anderson (Court of Session)
Chris Fyffe (Court of Session)

Support: Jessica Flynn (SCJC)
Karen Stewart (SCJC)

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and noted apologies from: Fiona Drysdale, Kirsty Hyslop and Gillian Fyfe.
2. Members agreed that the following papers would not be published: Papers 4.1, 4.1A & B

Item 2: Previous meeting

Item 2.1 Items by correspondence (Paper 2.1)

3. Paper 2.1 provided a summary of one matter considered by correspondence since the last meeting. In considering matters by correspondence, members are advised that a nil response will be treated as consent, unless noted otherwise:

- Item 2022/16 was issued on 29 June 2022 and invited members to

to approve the draft minutes of the Committee meeting on 13 June 2022. Responses were invited by close of business on 06 July 2022. No responses were received. The approved minutes were published on the Council website.

Item 3: Work Programme

Item 3.1 Scottish Government Legislative Update (Oral update)

4. The Chair welcomed Justin Haccius who provided a legislative update. It was noted that Scottish Ministers have given clearance for the publication of the conclusions of the Scottish Government legal services consultation. The Scottish Government will introduce regulations on 20 February 2023 which provide reforms on how legal aid fees are paid. These regulations will have a commencement date of 29 April 2023. It is also intended that legal aid fee levels will be subject to approximately a 10% uplift.
5. It was noted that the Scottish Government is considering terms of reference for the establishment of a group early next year to consider a fee review mechanism.

Item 4: Justice System Reform

Item 4.1 Simple Procedure Special Claims: Consideration of draft rules in personal injury cases (Papers 4.1, 4.1A & B)

6. Members noted the late paper tendered by SCTS on the subject of the operational costs to SCTS of service of claims and documents by the sheriff clerk. The Committee was of the view that the paper lacks vouching and relevant information about the basis upon which the calculations provided have been made.
7. The Committee agreed that in order to consider the underpinning policy issues raised by SCTS on the service of documents by the sheriff clerk, **SCTS would be invited to provide more information and to speak on the subject at a subsequent meeting.**
8. **Members agreed to provide the Secretariat with a note, by 9 January 2023, of any specific questions which SCTS should be invited to address.**
9. The Committee considered **Paper 4.1** which discussed Part 22 of the draft Special Claims Rules instrument for personal injury claims. The draft chapter has been scrutinised against the amended Simple Procedure Rules and reviewed to

ensure that the process aligns overall and that any departures from core procedure are appropriate and proportionate.

10. The Committee noted that rules for personal injury cases for claims up to £5,000 are currently found in Chapter 34 of the Act of Sederunt Summary Cause Rules 2002/132. The draft personal injury special claims rules generally replicate the key provisions of Chapter 34 but adopt the accessible style and language of the Simple Procedure Rules where possible. These rules will replace Chapter 34 in due course when the Special Claims Rules are enacted and the Summary Cause Rules are revoked.
11. The Committee made the following decisions on the draft rules in Part 22 of the Special Claims Rules instrument:
12. *Interpretation.* The Committee noted that the summary cause rules provide:
 - “personal injuries” includes any disease or impairment, whether physical or mental.
 - “personal injuries action” means an action of damages for, or arising from, personal injuries or death of a person from personal injuries.
13. The draft special claims rules provide:
 - “personal injury” includes any disease or impairment, whether physical or mental”
 - “personal injury claim” means a claim for damages for, or arising from, a personal injury”
14. The Committee discussed the omission of the words “*or death of a person from personal injuries*” within the draft special claims rule and noted that there was no information in previous policy papers to explain why the scope of the draft procedure has been restricted in this way.
15. Members noted that there may be good reason for this restriction, for example: many awards in such cases will be over the simple procedure upper limit; there may be issues arising relating to the requirement for service on connected persons/multiple claimants and the need for supporting rules in this regard.
16. **The Committee invited the Secretariat to liaise with LPPO on the matter and to report any relevant information to members.**
17. *Draft rule 22.1 What is this part about?* **The Committee agreed that there are no drafting amendments required.**

18. *Draft rule 22.2 What is a personal injury claim?* **The Committee agreed that there are no drafting amendments required.**
19. *Draft rule 22.3 What must the parties do before the claimant may make a claim?*
This rule explains that parties will be expected to have complied with the Personal Injury Pre-Action protocol. **The Committee agreed that there are no drafting amendments required.**
20. *Draft Rule 22.4 What happens if the parties do not comply with the Protocol?*
This rule explains the potential consequences for failure to comply with the protocol and the sheriff's powers in this regard. **The Committee agreed that there are no drafting amendments required.**
21. *Draft Rule 22.5 How is a personal injury claim made?* In relation to this draft rule, there are no apparent drafting amendments required. However, the Committee noted that SCTS has raised a policy matter in relation to the service of special claims/documents by the sheriff clerk. The Committee noted that the SP rules make provision for the sheriff clerk to serve claims for party litigants as do the draft special claims rules (which have been approved in principle by Council). **SCTS will be invited to provide more detailed information to the Committee in order to assist consideration of the policy issues arising (as noted in paragraphs 7-9 of this minute).**
22. Mr Conn flagged the provisions of the SP rules on the mandatory requirement for service of claims by recorded delivery in the first instance. The Committee noted that this issue is under wider policy consideration and that the matter is of particular relevance in PI cases regarding the potential impact upon the triennium in such cases.
23. *Draft rule 22.6 How do you complete a personal injury claim form?* The Committee noted that the draft rule aligns with similar provisions in the SP rules and incorporates additional requirements specific to PI claims: that is, the requirement for the claim to include details of each medical practitioner who treated the claimant for their personal injury; information about hospital/institution where treatment was received; and, information about compliance or otherwise with the pre-action protocol.
24. Some minor drafting matters were noted for LPPO's consideration. The Committee agreed that Form 22A – Personal Injury Claim Form will require amendment to streamline it. **The Committee invited the Secretariat to consult the SCTS Legislation Implementation Team and LPPO in order to provide a revised draft for members' consideration and approval.**

25. *Draft rule 22.7 How can the claimant recover documents when making a claim?* This rule prescribes a similar process to the summary cause procedure whereby the claimant sends a recovery of documents form (Form 22B) to the court along with the claim form and provides for the sheriff clerk to issue a certificate authorising the recovery of relevant documents. The Committee agreed that there are no apparent amendments to the rule required, however members considered that the content of the Form 22B could potentially be incorporated into the PI claim form. **The Committee invited the Secretariat to consult the SCTS Legislation Implementation Team and LPPO in order to provide a revised draft for members' consideration and approval.**
26. *Draft Rule 22.8 How do you respond to a personal injury claim?* The Committee noted some drafting amendments for LPPO's consideration. The Committee agreed that the content of Personal Injury Response Form 22E will require amendment to streamline it. **The Committee invited the Secretariat to consult the SCTS Legislation Implementation Team and LPPO in order to provide a revised draft for members' consideration and approval.**
27. *Draft rule 22.9 What responses can you make?* The draft rule provides three options for response and aligns with the procedure in the SP Rules. The Committee agreed that the provisions of response option 3 should be amended to include the wording "*such as the amount the respondent should pay the claimant*". **The Committee invited the Secretariat to issue drafting instructions for the provision of draft rules to give effect to the above requirements.**
28. The Committee noted that the draft rule cross-references Part 5 of the SP Rules in relation to the lodging of time to pay applications. The interaction of Part 5 of the SP rules and each of the chapters of the special claims rules are under wider consideration to ensure these procedures operate effectively in practice. **The Committee invited the Secretariat to consult with SCTS Legislation Implementation Team in order to formulate any rule proposals for members' consideration.**
29. *Draft rule 22.10 What has to go in the Personal Injury Response Form?* The draft rule aligns with similar provision in the SP rules and incorporates an additional requirement, specific to PI claims, in relation to information about whether the protocol has been complied with. The draft rule provides that the respondent must indicate in the Personal Injury Response Form if they think there should be any additional respondents. The Committee agreed that the rule should make provision to signpost the user to Rule 7.5 which regulates the handling of cases in such circumstances.

30. **The Committee invited the Secretariat to issue drafting instructions for the provision of draft rules to give effect to the above requirements.**
31. *Draft rule 22.11 What will be the first written orders in a personal injury case?* The draft rule provides that in a disputed claim the court will allocate a hearing and issue a PI timetable for the case. **The Committee agreed that there are no drafting amendments required.**
32. *Draft rule 22.12 What is the Personal Injury Timetable?* This rule explains the nature of the timetable. **The Committee agreed that there are no drafting amendments required.**
33. *Draft Rule 22.13 How can the respondent ask to bring an additional respondent into the case? and Draft rule 22.27 How can a party ask the sheriff to make any other orders?* These draft rules make procedural provision relating to additional respondents and incidental orders and prescribe related forms (Form 22 and Form 22P).
34. The Committee agreed that where possible, the draft rules and forms should be streamlined in a similar manner to that of the SP Review. In this regard, the SP Review revised the procedures regulating a number of miscellaneous applications, including the bringing of additional respondents into a case. The old rules and form of application have now been omitted in preference to a new Additional Orders Application Form and related procedure (see Part 9 of the SP Rules).
35. The Committee agreed that PI cases should be aligned with the new AOA procedures under Part 9 of the SP rules. As a result, draft rules 22.13 and 22.27 are to be omitted from Part 22 along with their respective draft forms (PI Additional Respondent Application Form 22F and PI Incidental Orders Application Form 22P). Part 9 of the SP Rules will regulate AOAs in PI cases. The Committee proposed that there may be utility in signposting this intention within Part 22.
36. The Committee agreed that a consequential amendment will be necessary to the SP Rules to provide for a 7 day timescale for lodging an objection to an AOA in PI cases. The related AOA form should also be revised to incorporate guidance to this effect. **The Committee invited the Secretariat to issue drafting instructions for the provision of draft rules to give effect to the above requirements.**
37. Due to the lateness of the hour, the Chair continued consideration of this agenda item to the next meeting on a date to be arranged.

Item 5: AOB

38. There were no additional matters raised.