

SCOTTISH CIVIL JUSTICE COUNCIL

COSTS AND FUNDING COMMITTEE

MINUTES

PARLIAMENT HOUSE, 2.00PM, MONDAY 24 FEBRUARY 2014

Members present: Lord Burns (Chair)
Sheriff Charles Stoddart (Retired)
Sheriff Thomas Hughes (Dundee Sheriff Court)
Eric Baijal (Solicitor, SCJC member)
Lindsay Montgomery (Chief Executive, SLAB, SCJC member)
Stella Smith (Legal Services Team Leader, Scottish Government)
Julia Clarke (Principal Advocate, Which?)
Alan Rogerson (Claims manager, Aviva, SCJC, PI Committee member)

In attendance: Gillian Prentice (Deputy Principal Clerk of Session)
Alan Nicol (Sheriff Clerk, Perth Sheriff Court)
Ondine Tennant (Deputy Secretary to the Scottish Civil Justice Council)
Graham Crombie (Deputy Legal Secretary to the Lord President)
Neil Robertson (SCJC Secretariat)

Item 1: Introduction, welcome, apologies and private papers

1. The Chair welcomed those present to the first meeting of the Costs and Funding (CAF) Committee.
2. The Chair informed members that following his appointment as Dean of the Faculty of Advocates, James Wolffe has resigned from membership of the SCJC and consequentially this committee. **The Secretariat would revert to the Chair and to the Lord President as to recommendations for an advocate member for this committee once appointments to the SCJC had been made.** The Committee noted the advocate member vacancy and the arrangements being made to fill it. **The Secretariat undertook to apprise any newly appointed advocate member of the Committee's initial discussions and feedback views to the Chair as appropriate.**
3. **The Committee agreed not to publish the following papers: 4.1, 4.1C, 4.2 and 4.2A.**

Item 2: Proceedings

Item 2.1: Scottish Civil Justice Council (Standing Orders and committee structure) [Papers 2.1 and 2.1A]

4. **The Committee noted the Standing Orders of the Scottish Civil Justice Council (SCJC) and in particular the standing orders applicable to committees. The Committee also noted the intention of the SCJC to review the detail of these procedures in spring 2014.**

Item 2.2: CAF Committee remit and membership [Papers 2.2 and 2.2A]

5. **The Committee noted the remit and membership of the CAF Committee.**
6. The Chair informed members that the focus of the meeting was consideration of the Taylor Report and that advice on other matters falling within its remit (the calculation of the value of a claim and the judicial rate of interest) would be brought to it at a future meeting.

Item 2.3 Freedom of Information (Scotland) Act 2002 [Papers 2.3 and 2.3A]

7. Members were advised that the SCJC has been added to the list of Scottish Public Authorities to whom the Freedom of Information (Scotland) Act 2002 (FOISA) applies. **The Committee noted that information, including e-mails, produced in the course of its business would be subject to FOISA.**
8. **The Committee noted the terms of the Publication Scheme and Guide to Information adopted by the SCJC and that the SCJC Secretariat would produce FOISA guidance for members in due course.**

Item 2.4 Records Management Plan [Papers 2.4 and 2.4A]

9. **Members noted the Records Management Plan [Paper 2.4A] and in particular the responsibilities of committee members outlined in paragraphs 29 and 30.**

Item 3: Forward Work Programme

Item 3.1 Update from the Scottish Government [Oral]

10. **Stella Smith** provided an update from the Scottish Government, advised the Committee that the Scottish Government is currently preparing its response to the Taylor Report and that this would be published in due course.

Item 3.2 Making Justice Work Programme, SCJC update [Oral]

11. **Ondine Tennant** gave an outline of the Scottish Government's Making Justice Work programme and how the work of the SCJC and its committees fits within its framework.

12. Members were informed of progress that had been made by the Rules Rewrite Working Group, including that it had agreed that separate rules for the Court of Session and the sheriff court should be retained but that identical procedure and wording should be adopted wherever practicable, and as to the areas of civil courts reform it considers should be taken forward as a priority.

Item 4: Consideration of Sheriff Principal Taylor's Review

Item 4.1 Functions of the SCJC in relation to fees instruments [Papers 4.1 and 4.1A-C]

13. The Committee considered the question as to whether the SCJC's statutory functions include preparation of fees instruments and whether primary legislation to amend the SCJC's functions so that preparation of fees instruments falls within the SCJC's remit would be desirable, if not necessary, to give full effect to Recommendation 14 of the Taylor Review. **It was agreed that primary legislation was required to extend the SCJC's statutory functions so as to include the preparation of draft fees instruments for submission to the Court of Session.**

14. It was noted that until such time as the SCJC's statutory functions were amended the responsibility for fees instruments would remain with the Lord President's Advisory Committee on Solicitors' Fees (LPAC). There was some discussion as to how collaboration with LPAC might be effected. It was noted that the Chair was also Chair of LPAC and that it was supported by the Deputy Legal Secretary. The Secretariat was asked to consider how this collaboration might be supported administratively, such as through the dissemination of each Committee's minutes.

Item 4.2 Consideration of recommendations and progress towards implementation [Papers 4.2 and 4.2 A-B]

15. The Committee agreed that the first step on consideration of the Taylor Review (excepting Recommendation 14) was to identify where responsibility for implementation lay. **The Secretariat were to meet with Stella Smith towards the end of March to discuss responsibilities for implementation.**
16. Members noted that the SCJC was giving consideration to the rule-making powers within the Courts Reform (Sc) Bill (**Paper 4.2B**) and the extent to which these are broad enough to ensure effective delivery of civil courts reform. **Members agreed to submit to the Secretariat any views as to these powers in relation to delivery of the Taylor Review recommendations by 28 February 2014.**
17. Thereafter the Committee discussed the recommendations of the Taylor Review. The Committee identified a number of recommendations that might merit early consideration, namely:
- Qualified one way costs shifting (in tandem with pre-action protocols);
 - Sanction for counsel in the sheriff court;
 - Guidance and training for the judiciary; and
 - Protective expenses orders.

The Committee agreed that members would carry out further, detailed consideration of the Taylor Review recommendations by correspondence. In particular, members would be invited to comment as to which recommendations should be taken forward, their reasoning for this and to note any interdependencies between recommendations and links to wider civil justice reform. The Secretariat was asked to devise and issue a pro-forma for collation of members' responses with a view to reporting back to the Committee at its next meeting. Members agreed to submit responses by 31 March 2014.

Item 5: Future business

Item 5.1: Date of next meeting

18. **The next meeting was scheduled for 16 June 2014 at 2.00 p.m.**

Item 6: A.O.C.B

19. No other business was raised.

Scottish Civil Justice Council Secretariat
February 2014