

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL**  
**COSTS AND FUNDING COMMITTEE**  
**MONDAY 27 MARCH 2017 AT 4.15PM**  
**JURY ROOM A, PARLIAMENT HOUSE**

**MINUTES**

**Members Present:** Lord Burns (Chair)

Sheriff Charles Stoddart (Retired)

Sheriff Thomas Hughes (SCJC member & Dundee Sheriff Court)

James Mure QC (Advocate)

Iain Nicol (Solicitor) (until item 7.1)

Brandon Malone (SCJC member)

Stewart Mullan (Law Accountant)

Alan Rogerson (Claims Manager, Aviva)

Kenneth Cumming (Auditor of the Court of Session)

Ian Dickson (SLAB)

Hamish Goodall (SG)

**In attendance:** Chris Fyffe, Clerking Services Manager, Offices of the Court of Session (observer)

Drew Crombie, Auditor of Court, Glasgow Sheriff Court

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

Norman Munro (Deputy Legal Secretary, Rules Rewrite Drafting Team)

Mandy Williams (Deputy Secretary, Scottish Civil Justice Council)

**Apologies:** Yvonne MacDermid (Chief Executive, Money Advice Scotland)  
Jane MacDonald (SCTS Legislation Implementation Team)  
(Observer)

**Item 1: Welcome, apologies and agreement of private papers**

1. The Chair welcomed those present and in particular Chris Fyffe who has been appointed as the new SCTS observer from the Offices of the Court of Session. The Chair also welcomed Norman Munro who was attending the meeting in relation to Agenda Item 6.1 and Drew Crombie who was attending in relation to Agenda Item 7.1. The Chair noted the apologies received.
2. **The Committee agreed not to publish the following papers: 2.2, 2.3, 4.2, 5.1, 5.1A-D, 6.1, 6.1A, 7.1 and 7.1A-B.**

**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 that had been made on actions since the last meeting. It was noted that the work of other Committees will be of relevance to this Committee going forward.**

*Item 2.3 – Items by correspondence (Paper 2.3)*

5. **Members noted Paper 2.3**, which provided a summary of the outcome of consideration given to matters by correspondence since the last meeting.
6. One matter had been considered by correspondence. This was issued to members on 24 February 2017 and invited members to note the final revised fees review consultation document in advance of it being submitted to Council.

7. The Committee noted that the consultation document will be tabled for consideration at the Council's May meeting.

### **Item 3: Proceedings**

#### *Item 3.1 – Membership (Oral)*

8. The Committee formally noted that Chris Fyffe has replaced Gillian Prentice as the SCTS observer from the Offices of the Court of Session.
9. The Chair advised members that the Council had also approved the re-appointment of James Mure QC to for a further period of three years from 10 March 2017.

### **Item 4: Work programme**

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

10. Mr Goodall updated the Committee on Bills currently before the Scottish Parliament. He advised that the Justice Committee has taken evidence for Stage 1 of the Limitation (Childhood Abuse) (Scotland) Bill. He also advised that the Delegated Powers Committee will shortly begin taking evidence in relation to the Contract (Third Party Rights) (Scotland) Bill.
11. He confirmed that it is still intended that the Expenses and Funding of Civil Litigation Bill will be introduced later this year.
12. Mr Goodall also advised the Committee that the Damages (Personal Injury) (Scotland) Order was made earlier in the day and would come into force on 28 March 2017. He provided members with a copy of the Order and confirmed that the Order amended the rate of return referred to in section 1(1) of the Damages Act 1996 to minus 0.75 per cent.

#### *Item 4.2 CAFC Work Tracker (Paper 4.2)*

13. **The Committee noted Paper 4.2 which provided an update of the Committee's ongoing work.**

## **Item 5: Proposals for rules**

### *Item 5.1 – Applications for expenses out of the Scottish Legal Aid Fund (Papers 5.1 and 5.1A-D)*

14. The Chair thanked Mr Dickson for his additional paper provided at **Paper 5.1D**, which helpfully focused the issues raised at the last meeting. The Chair also thanked Sheriff Stoddart for his research on the matter.
15. The Committee discussed the paper alongside the papers produced for the last meeting (Papers 5.1A-C). The Committee was broadly content with the new procedure proposed but there was extensive discussion as to how prescriptive the application form should be in relation to the applicant's finances. The Committee agreed that the form should advise the applicant to provide as full a picture as possible on the basis that the information provided may be used to reach a decision without further submissions being made. The Committee agreed that there was no need for the form to contain an oath by the applicant but that it should contain a warning in relation to false statements.
16. **It was agreed that the form be further revised by the drafter for consideration at a future meeting.**

## **Item 6: Justice system reform: Courts Reform (Scotland) Act 2014**

### *Item 6.1 – Fees for Simple Procedure Special Claims (Papers 6.1 and 6.1A)*

17. Norman Munro introduced these papers, which relate to proposed fees for solicitors in the sheriff court for new simple procedure (special claims) actions. He advised that the procedural rules have been developed in conjunction with the Council's Personal Injury and Access to Justice Committees. Mr Munro advised that the Personal Injury Committee has had sight of the draft fees provisions and wanted to feed back to the Committee their view that, in relation to the Personal Injury Pre-Action Protocol, a balance should be struck between allowing work to be appropriately charged and the need to avoid encouraging litigation. **The Committee endorsed this approach and agreed that it would be useful to review the fees awarded in Simple Procedure cases generally at a future date.**
18. Mr Munro advised that one of the key aims of the new Simple Procedure is to provide an inexpensive process and accordingly would expect fees to form part of the Access to Justice Committee's formal review of the rules, which will take place next year.

## **Item 7: Justice system reform: Taylor Review**

### *Item 7.1 - Rationalisation of rules (Papers 7.1 and 7.1A-B)*

19. John Thomson introduced these papers which invited members to further consider options for combining the implementation of the Taylor recommendations in the sheriff court with a wider rationalisation of the rules regulating the expenses that fall to be allowed on taxation of an account of expenses and associated applications to the court.
20. **The Committee thanked Mr Thomson for all the drafting work that has been undertaken so far.**
21. The Committee provided comments on the issues raised in the Drafting Notes provided at **Paper 7.1B**.
22. **The Committee agreed to the establishment of a Working Group comprising of Kenneth Cumming, Drew Crombie and Stewart Mullan to develop the draft rules and consider the associated tables.**
23. **It was agreed that the Working Group would provide updates on its work at future Committee meetings.**

## **Item 8: AOCB**

24. No other business was raised.

## **Item 9: Dates of future meetings**

### **25. The Committee noted the dates of future meetings:**

- Tuesday 23 May 2017 at 4.15pm
- Monday 10 July 2017 at 4.15pm
- Monday 25 September 2017 at 4.15pm; and
- Monday 04 December 2017 at 4.15pm.

**Scottish Civil Justice Council Secretariat**

**March 2017**