

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL  
COSTS AND FUNDING COMMITTEE  
MONDAY 30 JANUARY 2017 AT 4.15PM  
JUDGES CONFERENCE ROOM, PARLIAMENT HOUSE**

**MINUTES**

**Members Present:** Sheriff Charles Stoddart (Retired) (Chair)

Brandon Malone (SCJC member) (from item 4.2 and 3.1 onwards)

James Mure QC (Advocate)

Iain Nicol (Solicitor)

Stewart Mullan (Law Accountant)

Yvonne MacDermid (Chief Executive, Money Advice Scotland)

Ian Dickson (SLAB)

Hamish Goodall (SG)

**In attendance:** Jane MacDonald (SCTS Legislation Implementation Team) (Observer)

Fiona Robb, Head of Professional Practice Team, Law Society of Scotland (for item 4.1 only)

Sara Scott, Legal Services Consultant, Law Society of Scotland (for item 4.1 only)

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

Mandy Williams (Deputy Secretary, Scottish Civil Justice Council)

**Apologies:**

Lord Burns

Sheriff Thomas Hughes (SCJC member & Dundee Sheriff Court)

Alan Rogerson (Claims Manager, Aviva)

Kenneth Cumming (Auditor of the Court of Session)

Gillian Prentice (Deputy Principal Clerk of Session)

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

1. The Chair welcomed those present and in particular Hamish Goodall who has been appointed as the new Scottish Government representative on the Committee. The Chair advised that Gery McLaughlin has been appointed as the alternative SG representative. The Chair also noted the apologies received.
2. **The Committee agreed not to publish the following papers: 2.2, 3.2, 4.1, 4.1A, 5.1, 5.1A-C.**

**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.**

**Item 3: Work programme**

*Item 3.1 – Update from the Scottish Government on legislative developments (Oral)*

5. Mr Goodall advised there are three Bills within the Scottish Government's legislative programme that are likely to be of interest to the Committee. The first is the Limitation (Childhood Abuse) (Scotland) Bill which was introduced on 16 November 2016. He advised that the lead Committee is the Justice Committee. The second Bill is the Contract (Third Party Rights) (Scotland) Bill which is due to be introduced in February.

6. The final and perhaps most relevant Bill is the Expenses and Funding of Civil Litigation Bill, which is expected to be introduced later in the year.

*Item 3.2 CAFC Work Tracker (Paper 3.2)*

7. **The Committee noted Paper 3.2 which provided an update of the Committee's work.**

**Item 4: Regulation of Fees**

*Item 4.1 – Methodology for Fees Review (Papers 4.1 and 4.1A)*

8. The Committee further considered the draft consultation document developed by the Secretariat in relation to undertaking a periodic review of fees. **The Committee agreed minor amendments to the consultation document. It was agreed that a revised version be circulated by correspondence for approval. Thereafter, the Committee agreed that the revised proposals be submitted to the Council for approval.**
9. The Committee noted that the output from the Law Society's Financial Benchmarking Tool would be critical in reviewing solicitor fees. It was agreed that any consultation period should tie in with the timescales for the publication of the output report.

*Item 4.2 – The Law Society's Financial Benchmarking Tool (Paper 4.2)*

10. This item was taken after agenda item 2.2. The Chair welcomed Ms Robb and Ms Scott to the meeting and invited them to speak to the Law Society's new Financial Benchmarking Tool.
11. Ms Robb advised that the new survey replaces the previous Costs of Time Survey and is intended to serve more as a benchmarking tool for law firms to use to benchmark their work with comparable firms. She advised that the results of the survey will allow two different types of report to be produced. The first will allow for a comparison of the performance of categories of firm, according to size and type of work. It will be anonymised and will be published on the Law Society's website. The second report will be a bespoke report for each firm, which will allow them to benchmark their performance against the results in the first report. The intention behind the relaunched survey is to allow firms to have a better knowledge of how they are performing financially.

12. Ms Scott advised that it is anticipated that the survey be piloted in the next few weeks with the full survey being launched in March. It is expected that the initial report will be available around May 2017.
13. The meeting discussed the previous response rate in respect of the former Costs of Time Survey and noted that the changes are being made in order to encourage more firms to participate. Ms Scott advised that the previous response rate is higher than other jurisdictions.
14. In considering the detail of the survey, the Committee noted that it would be helpful if the survey could drill down into specific types of civil litigation being undertaken and suggested that the categorisation could be commercial; personal injury; family and other.
15. The Committee also discussed the quantitative information that would be available from the new survey and Ms Robb confirmed that there is a move away from looking at the traditional costs of time measure. The Committee advised that, to date, this is the evidence that has been relied upon by the Law Society in asking for a review of judicial fees and going forward this is what the Committee would expect to be included as part of any evidence to support future requests.
16. The Committee thanked Ms Robb and Ms Scott for attending to speak to the draft survey and providing the opportunity for the Committee to provide feedback on its content.

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

### *Item 5.1 Applications for Expenses out of the Scottish Legal Aid Fund (Papers 5.1 and 5.1A-C)*

17. The Committee was invited to consider draft rules and forms in connection with applications under section 19 of the Legal Aid (Scotland) Act 1986 (applications for expenses out of the Legal Aid Fund).
18. **The Committee discussed the content of the forms and agreed that a number of revisions were required in relation to the information to be provided by applicants. It was agreed that the matter be continued to the next meeting to allow the forms to be revised.**

## **Item 7: AOCB**

19. No other business was raised.

**Item 8: Dates of future meetings**

**20. The Committee noted the dates of future meetings:**

- Monday 27 March 2017 at 4.15pm and
- Tuesday 23 May 2017 at 4.15pm.

**Scottish Civil Justice Council Secretariat**

**January 2017**