

SCOTTISH CIVIL JUSTICE COUNCIL

COSTS AND FUNDING COMMITTEE

MINUTES

PARLIAMENT HOUSE, 4.15PM, THURSDAY 4 DECEMBER 2014

Members present: Lord Burns (Chair)
Sheriff Charles Stoddart (Retired)
Sheriff Thomas Hughes (Dundee Sheriff Court)
James Mure QC
Lindsay Montgomery (Chief Executive, SLAB)
Alan Rogerson (Claims Manager, Aviva)
Iain Nicol (Solicitor)
Eric Baijal (Solicitor, SCJC member)

In attendance: Graham Crombie (Deputy Legal Secretary, Rules Rewrite Drafting Team) – until item 3.1
John Thomson (Deputy Legal Secretary to the Lord President)
Inez Manson (Deputy Legal Secretary to the Lord President)
Susan Brodie (Policy Officer, SCJC Secretariat)
Carmen Murray (Policy Officer, SCJC Secretariat)

Apologies: Gillian Prentice, Deputy Principal Clerk of Session
Jane MacDonald (Policy and Legislation Branch, Scottish Court Service)
Stella Smith (Legal Services Team Leader, Scottish Government)

Item 1: Introduction, welcome, apologies and private papers

1. The Chair welcomed those present to the third meeting of the Costs and Funding Committee.
2. The Chair welcomed Iain Nicol as a solicitor member for this Committee and welcomed John Thomson, Deputy Legal Secretary to the Lord President who will be working with Inez Manson, Deputy Legal Secretary to the Lord President, taking over from Graham Crombie. The Committee expressed its thanks to Mr Crombie for his work. The Chair welcomed Susan Brodie, SCJC Secretariat who has taken over from Neil Robertson.

3. Apologies were received from Gillian Prentice, Jane MacDonald and Stella Smith.
4. **The Committee agreed not to publish the following papers: 3.1, 3.2, 3.3 and 3.5.**

Item 2: Proceedings

Item 2.1: Minutes of previous meeting [Papers 2.1]

5. **The Committee agreed the minutes of the previous meeting, subject to one minor change to paragraph 19. The Committee agreed that paragraph 19 should read “After discussion, the Committee agreed that it was in favour of recommendations 6, 7, 9 and 13.”**

Item 3: Exclusive Competence of the Sheriff Court

Item 3.1 Exclusive Competence of the Sheriff Court [Paper 3.1]

6. Graham Crombie spoke to **Paper 3.1**, which provided the Committee with an initial paper on the power conferred by section 39(7) of the Courts Reform (Scotland) Act 2014 to make provision about determining the value of an order, as a consequence of the reforms to the exclusive competence of the sheriff court.
7. **The Committee agreed this area required further consideration and that further research was necessary. Members agreed to put areas of concern forward to Mr Crombie by 19 December 2014 and Mr Crombie agreed to prepare a paper for the next meeting of the Committee.**
8. **Members also took the view that it would be useful to consult on any draft rules made under section 39(7). It instructed Mr Crombie to prepare a paper for the 26 January meeting of the Scottish Civil Justice Council setting out the Committee’s views and inviting the Council to agree that a consultation be carried out in due course. Mr Crombie agreed to circulate a draft of this paper to members by 19 December 2014.**

Item 3.2: Consideration of Sheriff Principal Taylor’s Report

Item 3.2 Report to the SCJC on implementation of Sheriff Principal Taylor’s Recommendations [Paper 3.2]

9. The Committee expressed its thanks to Ondine Tennant as the author of this report.

10. The Chair informed the Committee that the Consultative Committee on Commercial Actions is to meet on 10 December 2014, to discuss various paragraphs of the report and will provide feedback to this committee.
11. **Having considered the draft report, the Committee instructed revisions to the following paragraphs- 33 and 34 (additional fees), 49 and 52 (counsel), and 91 (qualified one-way cost shifting). Thereafter members agreed to review the revised draft as an Item by Correspondence to enable the report to go before the SCJC meeting of 23 January 2015.**

Item 3.3: Cancellation and Commitment Fees

Item 3.3 Cancellation and Commitment Fees [Paper 3.3]

12. The Committee expressed its thanks to James Mure QC for the production of **Paper 3.3** which Mr. Mure spoke to. The Committee noted that this paper would be useful in the consideration of its future work. **Differing views were expressed as to whether commitment fees ought to be allowed and no concluded view was reached at the meeting.**
13. **The Chair, with Mr Mure’s agreement, asked that the paper headed “Non Paper on EU and other Issues” be circulated to members for reference.**

Item 3.4: Fees of Experts

Item 3.4 Fees of Experts [Paper 3.4]

14. The Chair referred the Committee to **Paper 3.4**, guidance for instruction of experts in civil claims in England and Wales, for information.
15. **Members noted Paper 3.4 and agreed to keep the position in England and Wales under review.**

Item 3.5: SLAB – Fees of Experts

Item 3.5 SLAB – Fees of Experts [Paper 3.5]

16. **The Committee discussed and noted the content of Paper 3.5 on discussions with SLAB in relation to fees of experts**

Item 4: A.O.C.B

Update from Scottish Government

17. In Stella Smith's absence, the Chair read out an update of the Scottish Government's position on chapters 6 – 13 of the Taylor Report.

18. It was noted that Scottish Government is focussing on chapters 7 – 9 and are aiming to consult on proposals for primary legislation in January 2015.

Faculty of Advocates Costs and Funding Committee

19. The Chair advised members that the Faculty of Advocates' Costs and Funding Committee had expressed an interest in building relationships between the two committees in light of shared interest.

Item 5: Date of Next Meetings

20. Members noted that the next meeting may take place in the last 2 weeks of January and that the Secretariat would take forward arrangements to confirm the meeting date.

**Scottish Civil Justice Council Secretariat
December 2014**