

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
COSTS AND FUNDING COMMITTEE
MONDAY 4 DECEMBER 2017 AT 4.15PM
JUDGES CONFERENCE ROOM, LEVEL +2 PARLIAMENT HOUSE

MINUTES

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

Sheriff Thomas Hughes (SCJC member & Dundee Sheriff Court)

James Mure QC (Advocate)

Elena Fry (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: Drew Crombie, Auditor of Court, Glasgow Sheriff Court

Jane MacDonald (SCTS Legislation Implementation Team)
(Observer)

Christina Bardsley, Depute in Charge of Offices of the Court of Session (Observer)

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

Mandy Williams (Deputy Secretary to the Scottish Civil Justice Council)

Andrea Campbell (Policy Officer, Scottish Civil Justice Council)

Apologies: Lord Burns
Yvonne MacDermid (Chief Executive, Money Advice Scotland)
Brandon Malone (SCJC member)

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and in particular Elena Fry as a new member to the Costs and Funding Committee. She has recently become a member of the Scottish Civil Justice Council. The Chair also welcomed Drew Crombie who was attending the meeting in relation to Agenda Item 4 and Christina Bardsley who has been appointed as the alternative SCTS observer representative for the Court of Session.
2. The Chair also noted the apologies received.
3. The Chair noted that Iain Nicol's tenure expired on 24 November 2017. The Committee expressed thanks to him for his contribution to the Committee and wished him every success for the future.
4. **The Committee agreed not to publish the following papers: 2.2; 2.3; 3.2; 3.3; 4.1; 4.1A-C; 5.1; 5.1A; 6.2; 6.2A**

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

5. **Minutes from the previous meeting were approved by the Committee by correspondence on 7 July 2017.**

Item 2.2 – Progress of actions from previous meetings (Paper 2.2)

6. **The Committee noted the progress that had been made on actions since the last meeting.**

Item 2.3 – Items by correspondence (Paper 2.3)

7. **The Committee noted Paper 2.3**, which provided a summary of the outcome of consideration given to the following paper raised by correspondence since the last meeting.
8. This was issued to members on the 7 July 2017 and invited the Committee to approve the minutes of the previous meeting on 23 May 2017, and to consider a

revised draft Act of Sederunt concerning applications under section 19 of the Legal Aid (Scotland) Act 1986.

9. Minutes of the previous meeting on 23 May 2017 were approved and were published on the Council's website on Friday 14 July 2017.

10. The new rules introduced for applications under section 19(1) of the Legal Aid (Scotland) Act 1986 (applications for expenses out of the Legal Aid Fund) were made on 11 October 2017 and came into force on 13 November 2017.

Item 3: Work Programme

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

11. Hamish Goodall provided the Committee with an update on Scottish Government legislation.

12. Two of the Bills included in the Government's legislative programme – the Damages (Scotland) Bill and the Prescription (Scotland) Bill had yet to be introduced.

13. Mr Goodall advised the Parliament debated and passed the Contract (Third Party Rights) (Scotland) Bill at Stage 3 on 21 September 2017.

14. He intimated that the Limitation (Childhood Abuse) (Scotland) Bill was debated and passed at Stage 3 on 22 June 2017. The Bill received Royal Assent on 28 July 2017.

15. The Stage 1 report on the Domestic Abuse (Scotland) Bill was published on 21 September 2017 and the Bill is currently at Stage 2 of its Parliamentary passage.

16. John Finnie MSP had secured the right to introduce the Children (Equal Protection from Assault) (Scotland) Bill and Mr Goodall confirmed that the Scottish Government supported the general principles of the Bill.

17. He confirmed that the Justice Committee are taking evidence in relation to the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill on 5 December 2017.

18. The final and perhaps most relevant Bill is the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill. Mr Goodall advised the Committee that the Justice Committee had completed taking evidence and would be considering a draft Stage 1 report on 5 December 2017. Mr Goodall intimated that Stage 1 debate was provisionally scheduled for 21 December 2017. He has since advised the Secretariat that the debate will now take place in January.

Item 3.2 – Business Tracker (Paper 3.2)

19. **Paper 3.2, which provided an update of the Committee’s work, was noted.**

Item 3.3 – Gill recommendations - Taxation (Paper 3.3)

20. The Committee was invited to consider Paper 3.3 which set out the remaining recommendations of the Scottish Civil Courts Review (SCCR) that fall within the Committee’s remit but out-with the scope of the Rules Rewrite Project and that could be taken forward without the need for primary legislation.

21. In its Annual Programme for 2017-18, the Scottish Civil Justice Council noted that further work will be undertaken at Committee level to identify what recommendations are still relevant and thereafter agree proposals for what should and should not be taken forward for consideration by the Council.

22. **The Committee agreed that recommendations 197, 198 and 199 of the Scottish Civil Courts Review should be considered further and it was agreed that a policy paper would be prepared for consideration at a future meeting.**

Item 4: Justice System reform: Courts Reform

23. The Committee noted that the Scottish Government is currently consulting on Scottish Court Fees for 2018-2021. The consultation follows the normal three year cycle approach, proposing that court fee levels are increased over the three year period to reflect inflationary pressures. In 2016, that pattern was departed from and the consultation was on an increase to achieve full cost recovery for the civil justice system. The Committee was informed that modelling work is ongoing to support the move to a full cost recovery system.

24. Given the Committee’s remit, the Committee discussed whether it should be responding to future consultations and it was noted that it was open to members to respond individually. **The Committee noted that the current consultation is due to close on 12 January 2018 and agreed that a position paper should be considered in due course for reference at future consultations on court fees.**

Item 4.1 – Implementation of Taylor Recommendations – Civil Taxation Rules (Papers 4.1 and 4.1A-C)

25. **Sheriff Stoddart thanked the members of the Working Group comprising of Kenneth Cumming, Drew Crombie and Stewart Mullan for developing the draft rules and associated tables contained within the Papers.**

26. **The Working Group noted thanks to John Thomson for the valuable work and assistance carried out in preparing the meeting papers.**

27. John Thomson spoke to Papers 4.1 and 4.1A which invited members to consider a revised draft of the proposed unified Civil Taxation Rules.

28. Stewart Mullan spoke to **Papers 4.1B and 4.1C** which invited the Committee to consider how the charges in the tables of charges for sheriff court ordinary causes should be adjusted to take account of the proposed abolition of the process fee.

29. **The Committee provided comments on paragraphs 1-29 of the Drafting Notes and agreed to resume consideration of the remaining draft rules at the next meeting.**

Item 5: Scottish Legislation: Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill

Item 5.1 – Consequential provisions in rules of court (Papers 5.1 and 5.1A)

30. John Thomson introduced these papers. Paper 5.1 identified the provisions in the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill (“the Bill”) (Paper 5.1A) which, if enacted, may call for consequential provision in rules of court and invited the Committee to consider which should most appropriately be included in the Committee’s own work programme.

31. **The Committee agreed that it was appropriate that it should consider the provisions of the Bill concerned with Success Fee Agreements, Third Party Funding and Awards against Legal Representatives, and that it and the Personal Injury Committee should both have an involvement in relation to the provisions concerned with Qualified One-Way Costs Shifting.**

Item 6: Rules review and implementation procedures: Regulation of Fees

Item 6.1 – Review of Solicitors’ Fees (Oral)

32. Andrea Campbell provided the Committee with an update on its Consultation on the Review of Fees in the Scottish Civil Courts: Fees of solicitors which closed on the 17 November 2017.

33. The responses will now be formally analysed and a paper will be provided for the Committee to consider at the next meeting.

Item 6.2 – Request for uplift in fees from SMASO (Paper 6.2 and 6.2A)

34. The Committee considered a written submission from the Society of Messengers-at-Arms and Sheriff Officers (SMASO) requesting an increase in the Tables of Fees for Sheriff Officers and Messengers-at-Arms. **It was agreed in principle that an increase appeared to be justified and the Committee would invite the Council to consider the appropriate level of increase.**

Item 7: A.O.C.B.

Item 7.1 – Simple Procedure expenses (Oral)

35. Alan Rogerson advised the Committee of a recent decision in the case of *Ian Douglas Graham v Paul Farrell [2017] SC EDIN 75* which highlighted a potential issue in relation to Simple Procedure expenses

36. **It was agreed that the details of the case would be circulated to members to allow the matter to be considered more fully at the next meeting.**

37. No other business was raised.

Item 8: Dates of future meetings

38. The Committee noted the dates of future meetings:

- Monday 29 January 2018 at 4.15pm
- Monday 19 March 2018 at 4.15pm
- Monday 28 May 2018 at 4.15pm
- Monday 23 July 2018 at 4.15pm
- Monday 26 November 2018 at 4.15pm

**Scottish Civil Justice Council Secretariat
December 2017**