

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
COSTS AND FUNDING COMMITTEE
MONDAY 7 NOVEMBER 2016 AT 4.15PM
JUDGES CONFERENCE ROOM, PARLIAMENT HOUSE**

MINUTES

Members Present: Sheriff Charles Stoddart (Chair)

Ian Dickson (SLAB)

Stephen O'Connor (Scottish Government)

Kenneth Cumming (Auditor of the Court of Session)

Iain Nicol (Solicitor)

Alan Rogerson (Claims Manager, Aviva)

Stewart Mullan (Law Accountant)

Gillian Prentice (Deputy Principal Clerk of Session)

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

Mandy Williams (Deputy Secretary, Scottish Civil Justice Council Secretariat)

Susan Brodie (Policy Officer, Scottish Civil Justice Council)

Apologies: Lord Burns

Sheriff Thomas Hughes (SCJC member & Dundee Sheriff Court)

Brandon Malone (SCJC member)

James Mure QC (Advocate)

Denise Swanson (Manager of Policy & Development, Scottish Government)

Yvonne MacDermid (Chief Executive, Money Advice Scotland)

Jane MacDonald (SCTS Legislation Implementation Team)

Item 1: Welcome, apologies and agreement of private papers

1. The Chair, Sheriff Stoddart, welcomed all in attendance to this the sixth Costs and Funding Committee meeting this year and noted apologies received.
2. **The Committee agreed not to publish the following papers: 2.2, 4.2, 5.1, 5.1A, 6.1 and 6.1A.**

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

3. **The Committee was content to approve the minutes of the last meeting as amended.**

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

4. The Committee noted that this paper now follows a new format which includes a general update relating to the work of all the Council's Committees.
5. **The Committee found the new format very informative and noted the progress that had been made on actions of this Committee since the last meeting.**

Item 3: Proceedings

Item 3.1 – Membership (Oral)

6. The Chair informed the Committee that the Council at its meeting of 3 October 2016 had approved the extension of tenures to this Committee, for both himself and Alan Rogerson, for a further 3 years.

Item 4: Work programme

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

7. The Scottish Government announced on 6 September 2016 its programme for Government. Bills to be considered in this Parliamentary year are:

- a Bill to implement a Scottish Law Commission report on Third Party Rights in Contract;
- a Bill to remove the limitation period for survivors of historical child abuse and
- an Expenses and Funding of Civil Litigation Bill to implement the proposals by the Taylor review.

8. The Scottish Government is also considering a possible consultation on a Judicial Factors Bill, based on the Scottish Law Commission Report.

9. Commencement of Simple Procedure and the Increase of Court Fees Orders have both been laid and are expected to come into effect on the 28 November 2016.

10. In relation to the Expenses and Funding of Civil Litigation Bill, the Committee noted an interest in being consulted on its terms.

Item 4.2 CAFC Work Tracker

11. **The Committee noted this paper, which provided an update of the Committee's work.**

Item 5: Proposals for rules

Item 5.1 Pursuers' Offers (Papers 5.1 and 5.1A)

12. The Committee considered **Papers 5.1 and 5.1A**, which set out proposals for consequential amendments to the Tables of Fees in relation to Pursuers' Offers.

13. Members agreed that the charges allowed for work carried out in connection with Pursuers' Offers should generally be the same as the charges presently prescribed for the purposes of tenders. However, it was also agreed that there needed to be some restriction on the number of times that the charge for lodging a Pursuer's Offer would be allowed in any case. Members discussed the approach to achieving this and agreed that a charge for lodging a second or subsequent offer should only be allowed where the Auditor was satisfied that the offer involved a genuine attempt to settle the proceedings.

14. **The Committee agreed that LPPO produce draft fees instruments for consideration at the next meeting.**

Item 6: Costs and Funding Working Group

Item 6.1 Options and Methodologies for considering or reviewing fees provisions (Papers 6.1 and 6.1A)

15. Ian Dickson spoke to the paper provided by the working group (Paper 6.1A) which considered options for methodologies for approaching the Committee's work in relation to reviewing fees. The working group identified a number of factors to be taken into account when considering fees including transparency and openness, stakeholder management and engagement and proportionality. The Committee agreed that a review of fees should be undertaken on a periodic basis, with stakeholders being invited to make submissions for the Committee to consider as part of that Review. It was agreed that the Secretariat draft a review programme for the Committee to consider along with general draft consultation proposal.

16. The Committee agreed to commence the review process by looking at solicitor fees. It was agreed that the Secretariat would contact the Law Society to discuss timelines, having regard to the Society's regular Costs of Time Survey

17. As a number of significant changes impacting on expenses are expected to take place over the next few years, the Committee agreed that a wholesale review of fee structures would not be appropriate at this time.

Item 7: AOCB

Item 7.1 Judicial Rate of Interest (Oral)

18. The Committee was advised that the Scottish Government is in the process of obtaining information relating to a proposed consultation regarding judicial rate of interest and will provide an update to the Committee at its next meeting.

Item 8: Dates of future meetings

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

- Monday 19 December 2016 at 4.15pm
- Monday 30 January 2017 at 4.15pm

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

Scottish Civil Justice Council Secretariat

November 2016