

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
COSTS AND FUNDING COMMITTEE
MONDAY 13 DECEMBER 2021 AT 4.15 PM
VIA WEBEX**

MINUTES

Members Present: Lord Burns (Chair)

Ian Dickson

Susan Black

Andrew Henderson

Stewart Mullan

James Mure QC

Alan Rogerson

Sheriff Stoddart (retired)

Robin Macpherson

Lord Harrower

Support: Craig McCorkindale, Director of Strategy, SCJC

Graeme Welsh, Secretary, SCJC

Karen Stewart, Policy Manager, SCJC

Paula Preston, Policy Officer, SCJC

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and noted apologies from Sheriff Hughes, Diane Machin, Nicola Anderson and Ryan McRobert.
2. **Members agreed not to publish papers: Paper 4.1 and 4.1A.**

3. Lord Burns intimated his planned retirement at the end of this year and advised members that Lord Harrower has been nominated as his successor as chair of the committee. Members expressed their best wishes to Lord Burns.

Item 2: Previous meeting

Item 2.1 – Items by correspondence (Paper 2.1)

4. **Paper 2.1** provided a summary of the outcome of consideration given to two matters considered by correspondence since the last meeting:

Costs and Funding Admin Matters

- **Paper 2019/32** was issued on 23 December 2019 and invited members to approve the minutes of the previous meeting held on 09 December 2019.
- Responses were invited by close of business on 10 January 2020. One response was received proposing a typographical amendment and the minutes were revised in this regard. The approved minutes were thereafter published on the SCJC website.

Court Rules - Qualified One-Way Costs Shifting

- **Paper 2021/02** was issued on 15 January 2021 and invited members to approve a revised draft instrument which made rules provision regulating the procedures for handling applications to the court under the section 8 of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 relating to qualified one-way costs shifting (“QOCS”).
- Responses were invited by close of business on 29 January 2021. Eight responses were received agreeing most policy and drafting matters but noting some issues requiring further consideration with LPPO. The QOCS rules were subsequently approved by Council and came into force on 30 June 2021.

Item 3: Work Programme

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

5. Susan Black provided an update on legislative developments in the Scottish Government and advised that the Scottish Government is currently focussed on the Covid Recovery Bill and the UNCRC Bill. Work will continue on implementing the outstanding parts of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 and it is anticipated that a Gender Recognition Reform Bill will be introduced in early 2022 as well as legal aid fee regulations.

6. Craig McCorkindale advised members that the Scottish Government has recently launched a consultation on increases to court fees.

Item 3.2 – Establishment of Committee Working Group - Pre-action protocol fees
(Paper 3.2)

7. The chair introduced **Paper 3.2** and provided members with a summary of the background to the establishment of a cross-committee working group to take forward the development of suitable fees structures to support the ‘disease’ and ‘clinical negligence’ pre-action protocols (PAPs).
8. Members noted that PAPs for disease and clinical negligence cases have been developed and related Scottish Statutory Instruments are due to be considered by the Council before the end of the year. If the protocols are approved, it is intended that both instruments will be remitted to the committee to oversee the fees development work.
9. The membership of the working group is:
 - Sheriff Hughes, Chair
 - Darren Deary, solicitor, Drummond Miller
 - Andrew Henderson, solicitor, Thompsons
 - Michael Stewart, solicitor, CLO NHS Scotland
 - Lyn Beattie, solicitor, MDDUS
 - Alan Rogerson, consumer representative
 - Steven Carrie, SLAB
 - Stewart Mullen, Law Accountant
10. Members also considered a work timetable prepared by the Secretariat which would see this work begin in the next quarter.

Item 4: Rules request

Item 4.1 – Regulation of Fees : Request from Law Society of Scotland for uplift in fees
(Papers 4.1 and 4.1A-B)

11. The chair introduced **Paper 4.1 which** invited members to consider a request from the Civil Justice Committee of the Law Society of Scotland (“LSS”) (**Paper 4.1A**) seeking an increase to the fee levels contained in the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019/75.
12. Members noted that there is no review of solicitors’ fees planned under the Council’s current work programme and that the Committee will be overseeing the

development of fee tables for two pre-action protocols, scheduled per the Council's current business priorities.

13. Members noted that last fee uplift for solicitors came into force on 29 April 2019 following the Council's in-depth review supporting new rules for judicial taxation. Members noted that the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019/75 (**Paper 4.1B**) substantially recast the provisions relating to the taxation of accounts of expenses to take account of recommendations in the Taylor Review and reframed the tables of fees to provide for unit-based charging of solicitors fees.
14. Members considered and discussed **Paper 4.1A**, provided by the LSS. The paper set out the LSS proposals for increases to the chargeable unit fees in specific areas of the expenses tables as well as seeking an inflationary increase to the unit fee rate (currently £16.40) in line with the Consumer Price Index with Housing (CPIH) for the last 3 years across all aspects of the tables of fees. K
15. Members discussed the background of the previous fees review and the key policy underpinning the 2019 rules. It was agreed that the fee request provided by the LSS is based on assertion and lacks a robust evidence base against which the increase is sought.
16. In particular, members noted that the request includes no information on wider issues such as taking low value claims out of the equation or the potential efficiency savings arising from other policy changes e.g. the impact of QOCS. Members also observed that the inflation figures provided were inaccurate.
17. Robin Macpherson noted that the tables of fees contained within the 2019 Rules apply to actions raised post-2019 and that significant numbers of cases raised before this date are still in dependence. In this respect, it may be too early to fully understand the impact of the 2019 fee tables in the context of the overall expenses regime. It was noted that it is open to a party to provide detailed accounts rather than charging a block fee if this is felt necessary in a case.
18. Members agreed that the onus is on the applicant to set out a clear evidence base for any fee increase sought. In this regard, the Committee was of the view that there is insufficient information provided to enable it to consider the fees request at this time.
19. **The Committee instructed the secretariat to respond to the LSS setting out members' views on the fee request and inviting LSS to provide further**

information if so advised. A draft letter will be issued to members for their consideration.

Item 5: AOB

20. There were no other matters raised.

Item 6: Date of next meeting

21. The next meeting will be scheduled in due course and in accordance with business priorities.

Scottish Civil Justice Council Secretariat

December 2021