

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
COSTS AND FUNDING COMMITTEE
MONDAY 09 SEPTEMBER 2019 AT 4.15PM
JUDGES CONFERENCE ROOM, LEVEL +2 PARLIAMENT HOUSE**

MINUTES

Members Present: Lord Burns (Chair)

Kenneth Cumming (Auditor of the Court of Session)

Ian Dickson (SLAB)

Elena Fry (SCJC member)

Hamish Goodall (SG representative)

Andrew Henderson (Thompsons)

Yvonne MacDermid (Chief Executive, Money Advice Scotland)

Stewart Mullan (Law Accountant)

Alan Rogerson (Claims Manager, Aviva)

Sheriff Charles Stoddart (Retired)

In attendance: David Smith (SCTS LIT observer)

Support: Andrea Campbell (Secretariat Business Manager, Scottish Civil Justice Council)

Roddy Flinn (Legal Secretary to the Lord President)

Apologies: Sheriff Thomas Hughes (SCJC member & Dundee Sheriff Court)

James Mure QC (Advocate)

Nicola Anderson (SCTS LIT observer)

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

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and noted the apologies received from Sheriff Hughes, James Mure QC, Nicola Anderson and Christina Bardsley.
2. The Committee agreed not to publish the following papers: 4.1; 4.1A-B; 4.2; 4.2A-B; 5.1; 5.1A-B

Item 2: Previous meeting

Item 2.1 – Items by correspondence (Paper 2.1)

3. **Members noted Paper 2.1** which provided a summary of the consideration given to the following two matters raised by correspondence since the last meeting:

Paper 2019/09, issued on 09 May 2019, invited members to consider and approve the items below. Responses were invited by close of business on 17 May 2019.

A. Admin Matters

- **Paper 2019/09A** invited members to approve the minutes of the previous meeting held on 04 February 2019. One response was received, approving the minutes of 04 February 2019. The minutes have subsequently been published on the SCJC website.

B. Civil Litigation (E & GP)(S) Act 2018: Section 8 – draft rules on qualified one-way costs shifting

- **Papers 2019/09B-D** invited members to consider and approve a draft instrument making rules provision to implement Section 8 of the Act and to submit it to Council for consideration and approval. **One response was received approving the draft rules.**

Item 3: Work Programme

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

4. Hamish Goodall provided the Committee with an update on legislative developments in the Scottish Government. He advised that in the Children (Equal Protection from Assault) (Scotland) Bill, a Member's Bill by John Finnie, Stage 3 was expected in late September/early October. The Children (Scotland) Bill (formerly the Family Law (Scotland) Bill) had been introduced on 02 September

2019 and the Civil Partnership (Scotland) Bill was expected to be introduced in late September 2019.

5. The Scottish Government will respond to its consultation on the draft Bill on Gender Recognition (Scotland) Bill by the end of 2019.

6. Also in the Programme for Government, announced last week, there will be the Defamation and Malicious Publications Bill which is due to be introduced in December, Brexit permitting, and the Redress (Survivors of In Care Abuse) Bill.

Item 4: Scottish Legislation: Civil Litigation (Expenses and Group Proceedings (Scotland) Act 2018

Item 4.1 – Section 9: Pro Bono Representation (Papers 4.1 and 4.1A-B)

7. Roddy Flinn introduced these papers. **Paper 4.1** invited the Committee to consider and comment on the draft Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules, Ordinary Cause Rules, Summary Cause Rules and Simple Procedure Rules Amendment) (Awards of Expenses – Free Representation) 2019. **The Committee considered and agreed that consideration should be given to introducing a chapter on Summary Applications or a glossing paragraph.**

8. **The Committee approved the draft instrument at Paper 4.1B for submission to the Council subject to that issues and agreed that a policy note was required to accompany this draft instrument.**

Item 4.2 – Section 11: Awards of Expenses Against Legal Representation (Papers 4.2 and 4.2A-B)

9. Roddy Flinn introduced these papers. **Paper 4.2** invited members to consider and comment on the draft Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules, Ordinary Cause Rules, Summary Cause Rules and Simple Procedure Rules Amendment)(Awards of Expenses against Legal Representatives) 2019.

10. **The Committee approved the draft instrument at Paper 4.2B for submission to the Council and agreed that a policy note was required to accompany this draft instrument.**

Item 5: Rules review and implementation procedures

Item 5.1 – Request for uplift in fees from SMASO (Papers 5.1 and 5.1A-B)

11. The Committee had previously received 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 at its February 2019 meeting. The Committee had written to SMASO to invite them to provide the Committee with an evidence-based written submission as to why it considers that an increase is appropriate and what that increase should be, and had received a copy of a draft proposal, framed by management consultants, to provide such a submission. The Committee discussed the draft.

12. The Committee agreed that further consideration will be given by committee members.

Item 5.2 – Taxation Rules and Taxation Procedure (Oral)

13. The Committee noted that stakeholders had expressed concerns re the exclusion, from the scope of the Act of Sederunt (Taxation of Judicial Expenses) Rules 2019 of Chapter 36A of the Ordinary Cause Rules and Chapter 42A of the Rules of the Court of Session, and agreed that this matter should be looked at afresh.

Item 6: Dates of future meetings

14. Members noted the date of the next meeting:

- Monday 09 December 2019 at 4.15pm

**Scottish Civil Justice Council Secretariat
September 2019**