

SCOTTISH CIVIL JUSTICE COUNCIL
COSTS AND FUNDING COMMITTEE (CAFC)
MINUTES (APPROVED)

PARLIAMENT HOUSE, 4.15PM, MONDAY 12 OCTOBER 2015

Members present: Lord Burns (Chair)
Sheriff Charles Stoddart (Retired)
Sheriff Thomas Hughes (Dundee Sheriff Court)
James Mure QC
Stephen O'Connor (Manager of the Expenses and Funding of Civil Litigation Bill Team, Scottish Government)
Yvonne MacDermid (Chief Executive, Money Advice Scotland)
Ian Dickson (SLAB)
Kenneth Cumming (Auditor of the Court of Session)
Alan Rogerson (Claims Manager, Aviva)

Law Society

**Remuneration
Committee**

**Members present
for Item 2:**

Sydney Smith (Remuneration Committee member)
James Flett (Remuneration Committee member)
Fiona Robb (Secretary to the Remuneration Committee)

In attendance:

Graham Crombie (Deputy Legal Secretary, Rules Rewrite Drafting Team)
John Thomson (Deputy Legal Secretary to the Lord President)
Jane MacDonald (Policy and Legislation Branch, SCS)
Susan Brodie (Policy Officer, SCJC Secretariat)

Apologies:

Iain Nicol (Solicitor)
Eric Baijal (Solicitor, SCJC member)
Gillian Prentice (Deputy Principal Clerk of Session)

Item 1: Introduction, welcome, apologies and private papers

1. The Chair welcomed all in attendance and noted apologies.

2. **The Committee agreed not to publish the following papers: 2.1, 2.1A, 4.3, 5.1, 5.1A, 5.1B. Papers sent to Committee members from the Deputy Secretary of SCJC on 7 October 2015: 3.2, 3.3, 3.3A and 3.3B are also not for publication.**

Item 2: Regulation of Fees

Item 2.1: Solicitors Fees in Sheriff Court Personal Injury Actions [Papers 2.1 & 2.1A]

3. The Chair firstly addressed the members of the CAFC, confirming that members of the Law Society's Remuneration Committee would be attending the meeting to speak in support of the Law Society's Remuneration Committee's submission on personal injury fees.
4. The Chair welcomed members of the Law Society's Remuneration Committee.
5. Fiona Robb first updated the CAFC on the tendering process currently being carried out by the Law Society to select the provider for a revised version of the Cost of Time Survey, also known as the Financial Benchmarking Programme. Fiona stated that, as the programme is in its early stages, the Law Society's Remuneration Committee would welcome any input from the CAFC working group that may assist the future procedure of reviewing solicitors' fees. The CAFC working group are currently researching the methodologies for reviewing the process of regulating prescribed fees in terms of section 106 of the Courts Reform (Scotland) Act 2014.
6. Sydney Smith addressed the CAFC in support of the Remuneration Committee's proposals, and both he and James Flett answered questions posed by members. They stated that the existing differences between the Court of Session and sheriff court fees tables could result in recoverable fees being between £1500 and £1900 lower for any given case in the sheriff court than the Court of Session. They suggested that this might result in costs being passed on to claimants, thereby inhibiting access to justice.
7. Sydney clarified that the table of fees proposed by the Remuneration Committee was only intended for use in the All Scotland Personal Injury Court (ASPIC), and was not intended to apply to cases raised in reliance on the sheriff court's conventional jurisdiction.
8. After further discussions the Chair thanked the members of the Law Society's Remuneration Committee for attending the meeting.

9. **In the light of certain incidental issues raised by the Remuneration Committee, members (a) asked Stephen O'Connor to enquire and advise about the proposed arrangements for the taxation of judicial accounts in the ASPIC, and (b) asked the SCJC Secretariat to confirm the position on digital recording within the ASPIC.**
10. **Having considered the Remuneration Committee's proposals, members decided not to recommend any changes to the prescribed fees for personal injury proceedings in the sheriff court. However, it was agreed that consideration should be given to giving sheriff court auditors the power to increase or reduce inclusive fees in appropriate circumstances, in line with the position in the Court of Session. It was agreed that the Lord President's Private Office (LPPO) should prepare a draft amendment to the sheriff court fees tables for consideration at a future meeting.**
11. **Members agreed that the issues raised should be kept under review and that the Remuneration Committee could make further representations in the future, once information is collated about the actual levels of taxed expenses within ASPIC.**
12. **In the meantime members of the CAFC agreed that a letter should be sent to the Remuneration Committee informing them of the outcome of CAFC's deliberations.**

Item 3: Minutes of previous meeting

Item 3.1: Minutes of previous meeting [Paper 3.1]

13. **The Committee approved the minutes of the previous meeting.**

Item 4: Forward Work Programme

Item 4.1: Update from Scottish Government

14. Stephen O'Connor provided an oral update from the Scottish Government. In particular, he advised that the analysis of the consultation on Expenses and Funding of Civil Litigation Bill was produced in August 2015 and the Taylor Bill is not within the Scottish Government's legislative programme for 2015/16. This may be considered within the year 2016/17 however, the Scottish Government plan to engage with stakeholders regarding aspects of the proposed Bill. Stephen informed the Committee that spaces remain within the stakeholder list, if members are interested, to contact Stephen for more information.

15. **Stephen confirmed that he would forward relevant links, regarding the consultation, responses and analysis reports of the Expenses and Funding of Civil Litigation Bill to Committee members.**

Item 4.2 SCJC updates

16. **Susan Brodie** provided an oral update on the activities of the SCJC and SCJC Secretariat.

Item 4.3 CAFC Activity Tracker [Paper 4.3]

17. **Susan** provided a general overview of the CAFC activity tracker and explained this is for information of the committee, with a view this paper ought to be discussed if anyone has any queries regarding the content, at future meetings.

18. **Members noted the progress of the actions to date.**

Item 5: Proposals for rules

Item 5.1 Draft Fees for the Sheriff Appeal Court (Civil) [Papers 5.1, 5.1A & 5.1B]

19. **Graham Crombie** spoke to Paper 5.1. Graham confirmed that, in order for fees to apply from the point at which the Sheriff Appeal Court assumes its civil jurisdiction and competence, the act of sederunt has to come into force on 1 January 2016. As it is subject to the negative procedure in the Scottish Parliament, it must be laid by 18 November 2015.
20. **Members considered that certain fees relating to appeals from summary causes had been included in error, as the procedure to which they relate would not arise in such an appeal. Accordingly, they instructed that those fees be omitted. The Committee was otherwise content with the draft instrument. The Committee agreed that it was content for the draft instrument to be submitted to the SCJC to be considered by way of correspondence, with a view to being brought into force on 1 January 2016.**

Item 6: AOCB

Item 6.1 CAFC Working Group

21. **Ian Dickson** gave an oral update on the progress of the CAFC working group. Members were advised of meetings that had taken place with some of the Law

Society's members of the Remuneration Committee and a further two meetings with members of the working group. Ian plans to produce a paper for discussion by the Committee at its next meeting in November. Ian informed members there were a lot of issues to consider when regarding new methodologies and a single process may be difficult to achieve and views may have to be gathered.

22. Members noted the oral update and the progress made by the CAFC working group.

Item 6.2 Standing Orders for the Council and its Committees and SCJC expenses scheme update [Papers 3.2, 3.3, 3.3A & 3.3B sent to members by Deputy Secretary of SCJC dated 7 October 2015]

23. Committee members were sent **Papers 3.2, 3.3, 3.3A and 3.3B** by Deputy Secretary of SCJC dated 7 October for consideration. These explained the changes to the Standing Orders and an update of the Expenses Scheme of the SCJC, which have been agreed by Council at its meeting of 28 September 2015. Committee members were invited to note these papers.

24. Committee members were content to note these papers and the relevant changes.

Item 6.3 Regulation of Fees

25. The Chair confirmed that a formal invitation would be sent to representatives of the Society of Messenger at Arms and Sheriff Officers (SMASO) to attend the CAFC meeting of 16 November to support the review of fees of Sheriff Officers and Messengers at Arms.

Item 7: Future Business

Item 7.1 Date of next meetings

Members were asked to note the following dates:

- Monday 16 November 2015
- Monday 18 January 2016
- Monday 21 March 2016
- Tuesday 24 May 2016