

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
COSTS AND FUNDING COMMITTEE
MONDAY 09 DECEMBER 2019 AT 4.15 PM
JUDGES DINING, PARLIAMENT HOUSE

MINUTES

Members Present: Lord Burns (Chair)

Ian Dickson

Elena Fry

Hamish Goodall

Andrew Henderson

Sheriff Hughes

Stewart Mullan

James Mure QC

Alan Rogerson

Sheriff Stoddart (retired)

Yvonne MacDermid

In attendance: Christina Bardsley (Offices of the Court of Session)

Support: Ashleigh Pitcairn (Lord President's Private Office)
Karen Stewart (Scottish Civil Justice Council Secretariat)

Apologies: Nicola Anderson
Ken Cumming

Item 1: Welcome, apologies and agreement of private papers

1. The Chairman welcomed those present and noted apologies from Ken Cumming and Nicola Anderson.
2. Members agreed not to publish papers: **Paper 4.1 and 4.1A-C.**

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 outcome of consideration given to the following matters raised by correspondence since the last meeting:

A. Costs and Funding Admin Matters

- **Paper 2019/19** was issued on 24 September 2019 and invited members to approve the minutes of the previous meeting held on 09 September 2019 (**Paper 2019/19A**).
- Responses were invited by close of business on 08 October 2019. No formal responses were received. The approved minutes have subsequently been published on the SCJC website.

B. Regulation of Fees - Fees of SMASO

- **Paper 2019/21** was issued on 10 October 2019 and invited members to consider and provide comment on a preliminary report prepared by Stewart Mullan in response to SMASO's consultation proposals (**Papers 2019/21A-B**).
- Responses were invited by close of business on 24 October 2019. Two responses were received, requesting the matter be tabled for further discussion at the next Committee meeting.

Item 3: Work Programme

Item 4.1 – 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:
 - The Children (Equal Protection from Assault) (Scotland) Bill received Royal Assent on 07 November 2019.

- The Children (Scotland) Bill was introduced on 02 September 2019 and is being considered by the Justice Committee.
- The Civil Partnership (Scotland) Bill was introduced on 30 September 2019 and is being considered by the Equalities and Human Rights Committee.
- The Defamation and Malicious Publication (Scotland) Bill was introduced on 2 December and will be considered by the Justice Committee.

Item 4: Rules review and implementation procedures

*Item 4.1 – Request for uplift in fees from SMASO (**Papers 4.1 and 4.1A-C**)*

5. The Committee considered a preliminary report by Stewart Mullan on the Society of Messengers-at-Arms and Sheriff Officers' (SMASO) proposals for a fees consultation methodology and considered a letter from SMASO responding to the report.
6. Members discussed a number of issues in relation to the proposed use of Activity Based Costing proposed by SMASO. The Committee concluded that Activity Based Costing would not produce sufficiently robust results for the purposes of the Committee and so rejected this methodology.
7. The Committee concluded that in all the circumstances, the previous method of utilising external sources such as the Consumer Price Index would be a more realistic marker. In considering the proposals, the Committee was clear of the need to balance fairness to the industry with openness and accountability to court users. **In this regard, the Committee agreed in principle that a 'blended calculation', based on an average of 3 indices would be appropriate.**
8. Members considered and discussed a number of potential indices, including those proposed by SMASO, which could be used to calculate an appropriate rate. **The Committee asked Stewart Mullan and LPPO to conduct further research on points arising from the discussion.** Mr Mullen agreed to provide members with a note of calculations based on the various indices with a view to members agreeing the indices which will apply and approving an appropriate percentage increase rate for fees by 31 January 2020.

The Committee noted thanks to SMASO for their helpful and detailed input which has assisted members in considering all relevant issues.

Item 5: Date of next meeting

9. To be circulated in due course.

Scottish Civil Justice Council Secretariat

December 2019