

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

PARLIAMENT HOUSE, 4.15PM, MONDAY 16 FEBRUARY 2015

Members present: Lord Burns (Chair)
Sheriff Charles Stoddart (Retired)
Sheriff Thomas Hughes (Dundee Sheriff Court)
James Mure QC
Ian Dickson (SLAB)
Stella Smith (Legal Services Team Leader, Scottish Government)
Alan Rogerson (Claims Manager, Aviva)
Iain Nicol (Solicitor)
Lord Tyre (Consultative Committee on Commercial Actions)(until 4.2)

In attendance: Stephen O'Connor (Scottish Government)
Jane MacDonald (Policy and Legislation Branch, SCS)
John Thomson (Deputy Legal Secretary to the Lord President)
Inez Manson (Deputy Legal Secretary to the Lord President)
Susan Brodie (Policy Officer, SCJC Secretariat)

Apologies: Lindsay Montgomery (Chief Executive, SLAB)
Julia Clarke (Principal Advocate, Which?)
Gillian Prentice (Deputy Principal Clerk of Court of Session)
Eric Baijal (Solicitor, SCJC member)
Kenneth Cumming (Auditor of Court of Session)

Item 1: Introduction, welcome, apologies and private papers

1. The Chair informed the Committee that Mr Kenneth Cumming, the Auditor of the Court of Session has accepted the Committee's invitation to become a member of this Committee. Unfortunately due to previous commitments, Mr Cumming is unable to attend today's meeting.
2. The Chair welcomed Lord Tyre as a representative of the Consultative Committee on Commercial Actions (CCCA) and Mr Stephen O'Connor from the Scottish Government (SG) who will assist with the oral presentation of the proposed Costs

and Funding of Civil Litigation Consultation. Mr O'Connor is the team leader who produced the consultation paper.

3. **The Committee agreed not to publish the following papers: 4.1, 4.1A, 4.2 and 4.2A.**

Item 2: Minutes of previous meeting

Item 2.1: Minutes of previous meeting [Papers 2.1]

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

Item 3: SCJC Update [Oral]

5. Susan Brodie provided an update on the activities of the SCJC, SCJC Secretariat and an update of the activities of other SCJC Committees.

Item 4: Taylor Report Progress

Item 4.1 Response by Consultative Committee on Commercial Actions (CCCA) [Papers 4.1 & 4.1A]

6. Lord Tyre spoke to **Paper 4.1A**. Lord Tyre informed the Committee he was happy for the CCCA to be approached in future by the CAFC should it require the CCCA's input into any discussion papers or recommendations prior to those being put before the Council. **Members of the Committee agreed to build the observations of the CCCA into the CAFC Report on Implementation before putting it forward to the SCJC at the Council meeting on 16 March 2015.**

Item 4.2 Observations between Iain Nicol and Stella Smith re CAFC Report on Implementation, paragraphs 84, 87, 88, 89 & 92. [Papers 4.2 & 4.2A]

7. Iain Nicol spoke to the content of **Paper 4.2A**, explaining to the members his and Ms Stella Smith's findings. **Members agreed that amendments should be made to the sections of the CAFC Report on Implementation which relate to Taylor recommendations 45, 49 and 67 to reflect Mr Nicol's comments. These amendments will be sent to members by way of correspondence for comment or approval within allocated time limits specified, to enable the final CAFC Report on Implementation to go before the SCJC for consideration at the next meeting of 16 March 2015.**

Item 4.3 Consultation on proposed Expenses and funding of Civil Litigation Bill [Oral]

8. Mr Stephen O'Connor provided background to the SG's consultation process. **The Committee thanked Mr O'Connor for his presentation. Following discussion, members agreed that the Committee would not submit a response to the consultation paper. Instead, members agreed that a copy (perhaps adapted) of the CAFC Report on Implementation would be provided to the Scottish Government since some of the issues discussed in the Report are relevant to the consultation paper. It was noted that several members (or the bodies that they represent) would most likely submit a response addressing their own respective interests.**

Item 5: Joint Committee Meeting between CAFC and Personal Injury Committee (PIC) [Oral]

9. The Chair of the PIC, Lord Jones, raised the question of a joint PIC and CAFC meeting at the PIC meeting of 9 February 2015. The PIC agreed a joint meeting may be worthwhile, but asked for some suggestions of issues that the CAFC would like to discuss. **Members of the CAFC agreed Sanction for Counsel, Additional Fees, and Exclusive Competence as topics for discussion. The Committee agreed to propose these topics to the PIC and arrange a joint meeting.**

Item 6: Expansion of CAFC [Oral]

10. The Chair opened up discussions regarding whether to further expand membership of the CAFC. **Members agreed to discuss this further when its new member, the Auditor of the Court of Session, is present at the next meeting.**

Item 7: AOCB

11. The Chair brought to the Committee's attention the email sent to the members of all of the SCJC's committees from SCJC Secretariat on 9 February 2015, regarding Records Management Plan and FOI guidance. **Members noted these papers and agreed to raise any matters regarding this information at the next meeting under AOCB.**

Item 8: Future Business

12. The Chair informed the Committee that Sheriff Stoddart is Chairing the next meeting on 30 March. The Chair also noted Monday 25 May 2015 is a public holiday in some areas. Since there are several public holiday Mondays in May, the Chair suggested that the meeting should go ahead on 25 May as planned.

13. Future dates are:

- **Monday 30 March 2015 – Sheriff Stoddart to Chair**
- **Monday 27 April 2015**
- **Monday 25 May 2015**

All meetings set down for 4.15pm start.

Scottish Civil Justice Council Secretariat

February 2015