

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
COSTS AND FUNDING COMMITTEE
MONDAY 28 MAY 2018 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)

Andrew Henderson (Thompsons)

Brandon Malone (SCJC member)

Stewart Mullan (Law Accountant)

James Mure QC (Advocate)

Alan Rogerson (Claims Manager, Aviva)

Sheriff Charles Stoddart (Retired)

Support: Andrea Campbell (Policy Officer, Scottish Civil Justice Council)

John Thomson (Deputy Legal Secretary, Lord President's
Private Office)

Apologies: Nicola Anderson (SCTS LIT observer)

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

Yvonne MacDermid (Chief Executive, Money Advice Scotland)

Not present: Sheriff Thomas Hughes (SCJC member & Dundee Sheriff
Court)

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and noted the apologies received from Nicola Anderson, Yvonne MacDermid and Christina Bardsley.
2. The Chair advised members that the Council had approved the re-appointment of Yvonne MacDermid for a further period of three years from 6 July 2018.
3. The Chair noted that Nicola Anderson had been appointed as the SCTS LIT representative, replacing Jane MacDonald.
4. **The Committee agreed not to publish the following papers: 2.2; 3.2; 3.2; 4.1; 4.1A; 5.1; 5.1A-B; 6.1; 6.1B.**

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

5. **The Committee agreed the minutes from the previous meeting.**

Item 2.2 – Progress of actions from previous meetings (Paper 2.2)

6. **The Committee noted the progress that had been made on actions since the last meeting.**

Item 3: Work Programme

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

7. Hamish Goodall provided the Committee with an update on legislative developments in the Scottish Government. In particular he advised Stage 3 of the Civil Litigation Bill (“the Bill”), which was unanimously passed by Parliament on 1 May 2018, has still to receive Royal Assent.

Item 3.2 – Business Tracker (Paper 3.2)

8. **Paper 3.2, which provided an update of the Committee’s work, was noted.**

Item 4: Proposals for rules: policy development

Item 4.1 – Review of Solicitors’ Fees (Papers 4.1 and 4.1A)

9. At the March 2018 meeting, the Committee agreed to recommend an increase to the underlying hourly rate to fees of solicitors’ and draft rules were instructed on that basis.

10. **The Committee resumed consideration and agreed the terms of its recommendation to the Council. The Committee also approved the draft Act of Sederunt at Paper 4.1A for submission to the Council.**

Item 5: Justice System reform: Courts Reform

Item 5.1 – Amendment of Taxation Procedure (Papers 5.1 and 5.1A-B)

11. At the December 2017 meeting, the Committee indicated that an outstanding recommendation made by the Scottish Civil Courts Review relating to the taxation of ordinary cause accounts should be progressed further.

12. John Thomson introduced **Paper 5.1**, which invited the Committee to consider if rules regulating the procedure in relation to Ordinary Cause and Sheriff Appeal Court taxations should be brought in line with Court of Session procedure.

13. **The Committee agreed Paper 5.1 was a good approach and that the drafter should prepare a draft Act of Sederunt, taking into account any points raised by members, for consideration at a future meeting.**

Item 6: Scottish Legislation: Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill

Item 6.1 – Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill (Papers 6.1 and 6.1A-B)

14. John Thomson introduced these papers. **Paper 6.1** invited the Committee to consider its policy for rules of court consequential on Parts 1 and 2 of the Bill as amended at Stage 3 at **Paper 6.1A**.

15. **The Committee considered that the existence of a success fee agreement should not be added to the list of factors that the court requires to take into account when considering an application for an additional fee.**

16. **The Committee was content for an initial draft of rules relating to Qualified One-Way Costs Shifting to be prepared for consideration on the basis of the PIC policy recommendations.** The Committee discussed concerns

regarding the proposal that the benefit of costs protection should be lost where a pursuer abandons; however the majority view was that an exception to costs protection in the event of abandonment was appropriate provided that the court retained ultimate discretion in relation to the question of expenses.

17. Hamish Goodall agreed that a policy paper will be prepared setting out the Scottish Governments position of the effect of section 10 of the Bill (third party funding). A representative from the Scottish Government will speak to this paper at the 23 July 2018 meeting.

18. The Committee considered section 11 of the Bill (awards of expenses against legal representatives). It was agreed that rules should be drafted to limit the power conferred to a power to award expenses in so far as occasioned by the breach of duty and should guarantee the representative a right to appear and be represented in relation to any motion for expenses. Members did not consider it appropriate to rule out the possibility of an award of expenses in favour of the representative's own client or necessary to make provision in rules regarding conflicts of interest.

19. It was agreed that draft rules of court should be prepared and considered at the next appropriate meeting.

Item 7: A.O.C.B.

20. No other business was raised.

Item 8: Dates of future meetings

21. The Committee noted the dates of future meetings and change to the September date:

- Monday 23 July 2018 at 4.15pm
- Monday 5 November 2018 at 4.15pm

Scottish Civil Justice Council Secretariat

May 2018