

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL**  
**COSTS AND FUNDING COMMITTEE**  
**MONDAY 29 JANUARY 2018 AT 4.15PM**  
**JUDGES CONFERENCE ROOM, LEVEL +2 PARLIAMENT HOUSE**

**MINUTES**

**Members Present:** Lord Burns (Chair)

Sheriff Charles Stoddart (Retired)

Sheriff Thomas Hughes (SCJC member & Dundee Sheriff Court)

James Mure QC (Advocate)

Brandon Malone (SCJC member)

Elena Fry (SCJC member)

Alan Rogerson (Claims Manager, Aviva)

Stewart Mullan (Law Accountant)

Yvonne MacDermid (Chief Executive, Money Advice Scotland)

Andrew Henderson (Thompsons)

Ian Dickson (SLAB)

Hamish Goodall (SG)

**In attendance:** Drew Crombie (Auditor of Court, Glasgow Sheriff Court)

Jane MacDonald (SCTS Legislation Implementation Team)  
(Observer)

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

**Support:** John Thomson (Deputy Legal Secretary, Lord President's Private Office)  
Andrea Campbell (Policy Officer, Scottish Civil Justice Council)

**Apologies:** Kenneth Cumming (Auditor of the Court of Session)

### **Item 1: Welcome, apologies and agreement of private papers**

1. The Chair welcomed those present and in particular Andrew Henderson as a new member to the Costs and Funding Committee and Christina Bardsley who has replaced Chris Fyffe as the SCTS observer from the Offices of the Court of Session.
2. The Chair also welcomed Drew Crombie who was attending the meeting in relation to Agenda Item 4.
3. The Chair advised members that the Council had also approved the re-appointment of Kenneth Cumming for a further period of three years from 29 January 2018 and also noted the apology received from Kenneth Cumming.
4. The Committee agreed not to publish the following papers: **2.2; 3.2; 4.1; 4.1A-C; 4.2; 4.2A; 5.1; 5.2; 5.2A**

### **Item 2: Previous meeting**

*Item 2.1 – Minutes of previous meeting (Paper 2.1)*

5. **The minutes were approved.**

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

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

### **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 Scottish Government legislation.

8. The Domestic Abuse (Scotland) Bill will have its Stage 3 debate on 1 February 2018.
9. Mr Goodall advised that the Prescription (Scotland) Bill will be introduced in February 2018 and Stage 1 scheduled for May 2018. The Damages (Scotland) Bill will be introduced later before the summer recess this year. Mr Goodall confirmed the Children (Equal Protection from Assault) (Scotland) Bill is expected to be introduced in May.
10. He advised the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill passed Stage 1 on 25 January 2018.
11. Mr Goodall advised the Committee that the Justice Committee unanimously agreed the general principles of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill at the Stage 1 debate on 16 January 2018. The Bill will move to Stage 2 of its Parliamentary passage in February 2018 and Government amendments will be laid on 19 February 2018 with Stage 3 proceedings scheduled around March or April 2018.

*Item 3.2 – Business Tracker (Paper 3.2)*

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

**Item 4: Justice System reform**

*Item 4.1 – Implementation of Taylor Recommendations – Civil Taxation Rules (Papers 4.1 and 4.1A-C)*

13. **Lord Burns thanked the members of the Working Group comprising of Kenneth Cumming, Drew Crombie and Stewart Mullan for developing the draft rules and associated tables contained within the Papers.**
14. **Papers 4.1B and 4.1C, which invited the Committee to consider how the charges in the tables of charges for sheriff court ordinary causes should be adjusted to take account of the proposed abolition of the process fee, were considered. The proposed adjustment to other charges in the table to achieve this on a cost-neutral basis was approved.**
15. The Committee resumed consideration of **Paper 4.1** and the draft rules at **Paper 4.1A**, both of which had been before the Committee at the previous meeting. **Paper 4.1A** invited the Committee to consider the Working Group’s proposed approach to the development of the draft rules and tables.

16. **The proposals by the Working Group in Papers 4.1 and Paper 4.1A were approved. It was agreed that the rules would be further revised by the drafter for consideration at a future meeting.**

17. The Committee considered that it would be beneficial for the Working Group to be retained and that it should not be formally wound up at this stage.

*Item 4.2 – Simple Procedure expenses (Papers 4.2 and 4.2A-B)*

18. **Paper 4.2A**, which had been prepared by Alan Rogerson, was considered. The paper invited the Committee to consider the implications of the judgment in *Graham v Farrell* at **Paper 4.2B** in relation to expenses in simple procedure cases.

19. **As the issue concerns the terms of the Courts Reform (Scotland) Act 2014, and is not one that can be addressed by rules, it was agreed that the Council should be invited to consider the matter.**

20. **The Committee was content for Alan Rogerson to share the details of the case at Private Papers 4.2A-B with the Law Society of Scotland.**

**Item 5: Rules review and implementation procedures: Regulation of Fees**

*Item 5.1 – Review of Solicitors' Fees (Paper 5.1)*

21. **Paper 5.1**, which provided the Committee with general feedback of the Secretariat's initial scrutiny on its Consultation on the Review of Fees in the Scottish Civil Courts: Fees of solicitors, was considered.

22. Nineteen consultation responses were received and four key areas identified: *Commercial Actions, Personal Injury Actions, Fixed Fees, Hourly Rate and other miscellaneous issues.*

23. **The Committee agreed these areas should be considered further. A first step was agreed to invite a representative from the Law Society of Scotland to the next Committee meeting to seek the Law Society's input in relation to these four key areas following the Law Society's 2017 Financial Benchmarking Survey. It was agreed that Secretariat would circulate the Law Society's Benchmarking Survey before the next meeting.**

*Item 5.2 – Request for uplift in fees from SMASO (Paper 5.2 and 5.2A)*

24. At the December 2017 meeting, the Committee had given initial consideration to a written submission from the Society of Messengers-at-Arms and Sheriff Officers requesting an increase in the fees of Sheriff Officers and Messengers-at-Arms.

25. **The Committee resumed consideration of the request and agreed the terms of its recommendation to the SCJC. The Committee also approved for submission to the SCJC the draft Act of Sederunt at Paper 5.2A.**

**Item 7: A.O.C.B.**

26. No other business was raised.

**Item 8: Dates of future meetings**

27. The Committee noted the dates of future meetings:

- Monday 19 March 2018 at 4.15pm
- Monday 28 May 2018 at 4.15pm
- Monday 23 July 2018 at 4.15pm
- Monday 24 September 2018 at 4.15pm
- Monday 26 November 2018 at 4.15pm

**Scottish Civil Justice Council Secretariat  
February 2018**