

SCOTTISH CIVIL JUSTICE COUNCIL
COSTS AND FUNDING COMMITTEE (CAFC)

MINUTES

PARLIAMENT HOUSE, 4.15PM, MONDAY 30 MARCH 2015

Members present: Sheriff Charles Stoddart (Chair)
Sheriff Thomas Hughes (Dundee Sheriff Court)
Colin Lancaster (SLAB)
Stephen O'Connor (Manager of the Expenses and Funding of Civil Litigation Bill Team, Scottish Government)
Alan Rogerson (Claims Manager, Aviva)
Iain Nicol (Solicitor)
Kenneth Cumming (Auditor of the Court of Session)
Eric Baijal (Solicitor, SCJC member)

In attendance: Jane MacDonald (Policy and Legislation Branch, SCS)
Gillian Prentice (Deputy Principal Clerk of Session)
Graham Crombie (Deputy Legal Secretary, Rules Rewrite Drafting Team)
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: Lord Burns
Lindsay Montgomery (Chief Executive, SLAB)
James Mure QC

Item 1: Introduction, welcome, apologies and private papers

1. The Chair welcomed Kenneth Cumming, the Auditor of the Court of Session to his first meeting, Stephen O'Connor from Scottish Government, who has been appointed in place of Stella Smith, Colin Lancaster who is representing SLAB in Lindsay Montgomery's absence and those present including Eric Baijal who joined the meeting via Video Conference. Apologies from members noted.
2. **The Committee agreed not to publish the following papers: 3.4, 4.1, 4.1A, 4.1B, 5.1 and 5.1B.**

Item 2: Minutes of previous meeting

Item 2.1: Minutes of previous meeting [Papers 2.1]

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

Item 3: Forward Work Programme

Item 3.1: SCJC response to proposed CAFC response to SP Taylor's Review

4. Susan Brodie informed the committee members that the CAFC report was put before the members of the SCJC at their meeting of 16 March 2015. Council thanked the Committee and SCJC Secretariat for their work on the report, approved the report and publication of the report upon the SCJC website and remitted the report back to the CAFC for implementation.

Item 3.2 Update from Scottish Government

5. Stephen O'Connor provided the committee with an oral update for Scottish Government. The Expenses and Funding of Civil Litigation consultation finishes on 24 April 2015.
6. Regarding courts reform implementation, the second commencement order to commence measures in the Courts Reform (Scotland) Act 2014 will come into force on 1 April 2015. The Scottish Courts and Tribunal Service will be established and new functions for the SCJC and powers for the Court of Session will commence in time for court rules to be made and implemented.
7. The Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill introduced on 19 March implements certain recommendations from Lord Cullen's review of the Fatal Accident Inquiry Legislation. The Scottish Parliament's Justice Committee issued its call for written evidence on the Bill on 24 March and respondents have until 28 April to respond. The Justice Committee will take oral evidence on the Bill during May.

Item 3.3 SCJC update

8. Susan Brodie provided an update on the activities of the SCJC, SCJC Secretariat and an update of the activities of other SCJC Committees. **Members of the CAFC expressed an interest in attending the SCJC visit to the Judicial Institute to learn more about judicial training. It was agreed SCJC Secretariat would inform members of any likely spaces for this visit.**

Item 3.4 Implementation of the Recommendations of the Taylor Review

9. **Members agreed they would prefer to discuss this paper when James Mure QC and members of the Personal Injury Committee (PIC) were available to discuss. Paper 3.4 will now be raised at the CAFC meeting of 25 May 2015.**

Item 3.5 Joint Committee Meeting between CAFC & Personal Injury Committee (PIC)

10. Susan Brodie advised members that Lord Jones raised the matter of a joint meeting between CAFC and PIC at the PIC meeting of 23 March 2015. PIC members agreed it would be suitable for the advocate and solicitor members of PIC to attend the CAFC meeting of 25 May 2015, to discuss Sanction for Counsel, Additional Fees and Exclusive Competence. **Members agreed with this arrangement and asked SCJC to invite Sheriff Kathrine Mackie to the CAFC meeting of 25 May 2015.**

Item 4: Proposals for Rules

Item 4.1 Exclusive Competence of the Sheriff Court Rules for Determining the Value of an Order

11. Graham Crombie addressed **Papers 4.1, 4.1A and 4.1B.**

The Committee considered the draft rules in Paper 4.1A and discussed the extent to which they accorded with the principles in Annex A of Paper 4.1B.

The Committee considered whether rule 14B.2(4) was sufficiently clear in relation to the exclusion of judicial interest in determining the value of an order. It took the view that the drafting of the rule should be revisited to see if it could be made clearer.

The Committee agreed that where the Court was considering dismissing a cause because the aggregate total value of the orders sought in it was less than £100,000 parties should have the opportunity to make submissions first. It accordingly instructed that rules 14B.4(4) and 14B.6(2) be revised to give effect to that decision.

In relation to rule 14B.6, the Committee discussed whether the rules should specify the test to be applied by the Court in determining the value of an order or the aggregate total value of all orders sought. The Committee concluded that the test should not be specified at this stage, but agreed to keep a watching brief and revisit the matter once the rules are operational should any concerns arise. Iain Nicol expressed his dissent to this decision.

Members agreed that the draft rules should be revised and circulated to the Committee by way of correspondence. Thereafter it was agreed that members would carry out informal consultations on these rules. In particular, it was agreed that Eric Baijal should consult with the appropriate committee of the Law Society; James Mure should consult with the Faculty of Advocates' Costs and Funding Committee and Sheriff Hughes and Sheriff Stoddart should consult with the Sheriffs' Association.

The Committee agreed that the informal consultations should be completed in time for the draft rules to be sent to SCJC's meeting of 11 May 2015.

Item 5: Committee Remit and Membership

Item 5.1 Review of Committee remit and membership

The Chair updated the Committee regarding the current membership status. **The committee agreed to put forward to the Chair of the SCJC a proposal for a consumer member for CAFC. Members agreed to delay any other proposals of membership until the matter of the Committee's remit was confirmed.**

John Thomson invited the Committee to postpone consideration of Paper 5.1B as the LPPO would like to fully review the remit of the Committee. **Members agreed and following this suggested that LPPO approach the Lord President to confirm arrangements regarding the winding up of the Lord President's Advisory Committee (LPAC) and how this may impact on CAFC remit. It was agreed the remit of CAFC should be considered at the next CAFC meeting.**

Item 7: AOCB

12. None.

Item 8: Future Business

13. Future meeting dates are:

- Monday 27 April 2015 (to be confirmed)
- Monday 25 May 2015

All meetings set down for 4.15pm start.

Scottish Civil Justice Council Secretariat
March 2015