

SCOTTISH CIVIL JUSTICE COUNCIL

COSTS AND FUNDING COMMITTEE

MONDAY 18 JANUARY 2016 AT 4.15PM

JUDGES CONFERENCE ROOM, LEVEL +2 PARLIAMENT HOUSE

MINUTES (Approved)

Members present: Sheriff Charles Stoddart (Chair)
Sheriff Thomas Hughes (Dundee Sheriff Court)
Denise Swanson (Manager of Policy & Development, Scottish Government)
Ian Dickson (SLAB)
Yvonne MacDermid (Chief Executive, Money Advice Scotland)
James Mure QC
Kenneth Cumming (Auditor of the Court of Session)
Alan Rogerson (Claims Manager, Aviva)
Iain Nicol (Solicitor)

In attendance: Gillian Prentice (Deputy Principal Clerk of Session)
Jane MacDonald (Policy and Legislation Branch, SCTS)

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

Video Conference: Eric Baijal unable to participate due to problems with the remote access connection at Wick sheriff court

Apologies: Lord Burns

Item 1: Introduction, welcome, apologies and private papers

1. The Chair welcomed all in attendance and informed the Committee he would be chairing in Lord Burns absence.

2. **Members agreed not to publish the following papers:**

2.1, 2.2, 3.1, 3.1A, 4.2, 5.1, 6.1, 6.1A, 6.1B, 6.2, 6.2A, 6.2B & 6.2C

Item 2: Previous meeting

Item 2.1: Minutes of previous meeting (Paper 2.1)

3. **The Committee approved the minutes of the previous meeting with the agreed amendment at paragraph 14; “The Committee agreed to inform SMASO of the outcome of the CAFC’s deliberations and to put forward a draft fees instrument, to the SCJC for consideration, by way of correspondence, with a view that the instrument may come into force on 1 April 2016”.**

Item 2.2: progress of actions from previous meetings (Paper 2.2)

4. Susan updated the Committee regarding point 4 of **Paper 2.2.**
5. **Members approved the progress of the actions upon Paper 2.2.**

Item 3: Proceedings

Item 3.1 Membership (Papers 3.1 & 3.1A)

6. **The Chair** took this opportunity to welcome Denise Swanson as a newly appointed member to the Committee and he gave a general update of what **Papers 3.1 & 3.1A** entailed.
7. **Members of the Committee noted Papers 3.1 & 3.1A.**

Item 4: Work Programme

Item 4.1: Update from Scottish Government

8. Denise explained that this was her first update to this Committee, she was happy to take feedback on what information members of CAFC required.
9. Denise advised that it was likely that Ministers would wish to extend the Court’s power to regulate fees to include the fees of advocates and solicitor advocates, but that no timescale had been set. With regard to Child Welfare Reporters, Denise advised that the Government wanted to assess the impact of the new rules before deciding if there was a case for the regulation of their fees.
10. Sheriff Hughes commented he had previously had experience of a local authority asking for a fee from the court when producing a child welfare report. Denise noted this and will relate this back to SG.

11. Denise provided an update relating to the Taylor Review, explaining that SG are in the process of drafting a Bill with a view to inclusion in the next parliamentary legislation programme, and that SG have set up a stakeholder reference group who are currently considering a paper. Denise confirmed she would forward this paper onto the members of this Committee for information. Denise explained that there were various meetings set up, including with the Scottish Courts & Tribunal Service (SCTS) and she would share with this committee the outcome of these meetings.

Item 4.2 CAFC Activity Tracker (Paper 4.2)

12. Members noted the progress of the actions to date.

Item 4.3 Update CAFC working group

13. Ian Dickson reported that letters have been sent to key stakeholders. There have been three acknowledgements and no responses at the moment however; the closing date for responses is end of business Friday 26 February 2016. Correspondence has been received from two other parties showing an interest to be included in the information gathering exercise nevertheless, it is too early to expand the exercise and these parties have been informed that their interest has been noted.

Item 5: Implementation of the Recommendations of the Taylor Review

Item 5.1 Summary Assessment Paper & Form N260 (Papers 5.1 & 5.1A)

14. Committee members discussed the possibility of introducing a system for the summary assessment of expenses. Having considered the extent of changes that would have to be made to introduce such a system, the disadvantages that would be associated with such a system, and the limited potential benefits, Members concluded that the case for introduction had not been made.

15. Members of the Committee thanked John for putting this paper together and members agreed to take no further action regarding this Taylor Review recommendation, at this stage.

Item 5.2: Expert Witnesses

16. Ian Dickson informed members that he had been updated verbally regarding the response to the consultation SLAB had recently carried out and he hopes to provide this Committee with a written report on the findings for the next CAFC meeting. However, he felt that it had become clear that it was unlikely that the outcome of that consultation would advance the Committee's own deliberation regarding the regulation of the fees of expert witnesses.

17. Members of the Committee discussed how to progress this issue and **agreed that it was simply not practicable to implement either Taylor's recommendation that, when certifying an expert, the judge should set a limit on recoverable fees, or the alternative of a table of fees. Members agreed that these conclusions should be included in the proposed policy document to be reviewed by the Committee at a future meeting.**

Item 6: Regulation of Fees (Papers 6.1, 6.1A & 6.1B)

Item 6.1: Regulation of fees of Messengers-at-Arms and sheriff officers in the Court of Session and sheriff courts (Papers 6.1, 6.1A & 6.1B)

18. **Members of the Committee noted Papers 6.1, 6.1A & 6.1B and were content for these papers to be put before the Council by way of correspondence for consideration.**

Item 6.2: Solicitors Fees in the sheriff court – Power to increase or reduce inclusive fees and Law Society Remuneration Committee response (Papers 6.2, 6.2A, 6.2B & 6.2C)

19. **Members of the Committee after further discussion agreed that the draft instrument at Paper 6.2A should be put forward to the Council for consideration.**

20. Committee members discussed the issues raised within Paper 6.2C and after further consideration, agreed the Committee's decision from the meeting of Monday 12 October still stands. Members considered the impact of the new simplified procedure and pre-action protocols, as these areas should be considered in line with the areas highlighted by the Remuneration Committee.

21. **Members of the Committee confirmed this area will be kept under review and the Remuneration Committee may make further representations in future, after information is collated about the actual levels of taxed expenses within ASPIC.**

22. **The Chair of today's meeting will draft a letter to be sent to the Remuneration Committee informing them of the outcome of CAFC's deliberations.**

Item 7: Proposals for rules

Item 7.1 Judicial Rate of Interest

23. John informed the Committee that the Ministry of Justice (MOJ) and SG are in the near future, launching a joint consultation concerning the factors that should be taken into account in setting the default rate of interest on decrees. The outcome of this may result in SG approaching SCJC with proposals of reducing the current default rate of interest, which will then fall to this Committee to consider.

24. Committee members noted the information provided.

Item 8: AOCB

Item 8.1: Pursuers Offers

25. John informed the Committee that the Lord President was concerned about the issue of late settlements of actions, and that he would like the CAFC to give consideration to the possible reintroduction of a system of Pursuer's offers.

26. John proposed and members agreed, that he should prepare an options paper on Pursuer's offers for members to consider at the next CAFC meeting in March 2016.

Item 8.2: Members Expenses

27. Sheriff Stoddart asked Committee members to ensure all Committee expenses are put forward to the SCJC Secretariat, for this financial year, before the end of March.

Item 9: Future Business

Item 9.1 Date of next meetings

Members were asked to note the following dates:

- Monday 21 March 2016
- Tuesday 24 May 2016
- Monday 27 June 2016
- Monday 7 November 2016
- Monday 19 December 2016