

## INTRODUCTION

Thank you Joseph for that introduction.

I am currently a Director and Head of Litigation at BBM Solicitors. I mainly undertake commercial litigation work, with a particular emphasis on corporate insolvency related matters.

I've been a member of the Costs and Funding Committee since its first meeting on 24 February 2014. I am delighted to deliver to you an overview of what this Committee has done since then.

## WHAT HAS THE COMMITTEE ACHIEVED?

The Committee's work has been in two main areas:

### Taylor

We produced the, **“CAFC Report on Implementation of the Report and Recommendations of Sheriff Principal Taylor's Review of Expenses and Funding of Civil Litigation in Scotland”**. This is a long heading so for purposes of clarity and time keeping, the Taylor Report is Sheriff Principal Taylor's review and the Council's Report on Taylor is the report this Committee produced.

The main focus from the first meeting in February 2014 to the committee's meeting in March this year; was consideration of the Taylor Report and the production of Council's Report on Taylor.

The Taylor Report made 85 recommendations and each recommendation was discussed and deliberated at the Committee meetings and by way of correspondence. Consultation with others also took place and the Committee was very grateful for the input of the Consultative Committee on Commercial Actions. The first draft of the Council's Report on Taylor was produced at our meeting in December last year and after some finer amendments, put before the Council for approval at its meeting of 16 March this year.

Implementation of many of the recommendations will require changes to primary legislation, and you may be aware that the Scottish Government has recently consulted on proposals for a 'Taylor Bill'. For its part, the Committee has now moved on to giving detailed consideration to the implementation of those recommendations that do not depend on changes to primary legislation. These are being considered on a themed basis. This process has recently involved a joint meeting attended by members of the Personal Injury Committee.

### **Courts Reform (Scotland) Act 2014**

A key feature of the reforms introduced by the Courts Reform Act is the increase in what used to be known as the 'privative limit'. As you know, the sheriff court is now to have exclusive jurisdiction where the 'value of the orders sought' is less than £100,000. Rules of court can provide for how an order sought in proceedings is to be valued for the purpose of the new limit. The development of these draft rules fell to this Committee.

After discussion, draft rules for exclusive competence were prepared during our meeting of 30 March this year. Further draft rules were circulated to all members of the Committee by way of correspondence. Some members of the Committee carried out consultation exercises with the Law Society, Faculty of Advocates Costs and

Funding Committee and the Sheriffs' Association. This enabled the production of Act of Sederunt (Rules of the Court of Session 1994 Amendment) (No. 3) (Courts Reform (Scotland) Act 2014) 2015.

### **Remit and Membership**

Until recently the Council's functions had not included consideration of the rules that regulate the fees charged by solicitors and other groups. The committee has therefore only had a watching brief in this area. However, with effect from 1 April, the Council's functions have been extended to include consideration of the fees that can be regulated under sections 105 & 106 of the Courts Reform Act, that is to say the fees of solicitors, Messengers-at-Arms, sheriff officers and shorthand writers.

In the light of this the Council has extended the committee's own remit, and has also adjusted the committee's membership to reflect its extended role, most notably through the addition of the Auditor of the Court of Session.

### **WHAT THE COMMITTEE WILL DO NEXT**

Moving onto what we will do next, the Committee will continue to consider the implementation of those recommendations from the Taylor Report that do not require changes to primary legislation. The Committee will then report its detailed recommendations to the council, and I anticipate that the Council in turn will want to consult further before plans are finalised.

As a result of the Committee's extended remit it will now fall to it to keep under review the fees that are regulated by the Court. In particular the Law Society's annual representations on the subject of the fees of solicitors will in future be considered by the Committee in the first instance. More generally, the Committee

will also be considering how the whole process of reviewing fee levels should be approached in future.

The on-going implementation of the Courts Reform Act will undoubtedly involve a role for the Committee – in particular in relation to the expenses regimes in the Sheriff Appeal Court, and under the new Simple Procedure.

Looking further down the line, the Rules Re-write Project will inevitably involve significant changes to the existing tables of fees, and the committee is also likely to have a significant role in the implementation of any legislation arising from the Scottish Government's recent consultation.

## CONCLUSION

I hope you will agree that the Costs and Funding Committee has made a substantial contribution to the work of the Council and has much more to do, taking into consideration the work that's involved in carrying out the implementation of the Council's Report on Taylor.

The work carried out would not have been possible without the guidance, experience and participation provided by all the members of the Committee. However, most of all let me pay tribute to the hard work of our secretariat. Anything we have achieved would not be possible without them. We are fortunate to have their assistance.

Thank you for listening and hopefully you have found this informative and interesting.

I will now like to introduce Lynda Brabender who is a member of the Council's Family Law Committee.