

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
PERSONAL INJURY COMMITTEE
MONDAY 04 APRIL 2022 at 4.30PM
VIA WEBEX
MINUTES**

Present: Lord Armstrong (Chair)
Ronnie Conway, Solicitor
Lisa Davidson (Scottish Government)
Sheriff R D M Fife
Marie-Louise Fox (SLAB)
Amber Galbraith QC
Maria Maguire QC
Campbell Normand
Alan Rogerson
Fraser Simpson
Sheriff Principal Stephen

Attending: Craig Anderson (Offices of Court of Session)
Mark Kubeczka (SCTS Legislation Implementation Team)

Support: Jessica Flynn (Secretariat Business Manager)
Kelly Jack (Policy Officer)

Karen Stewart (Policy Manager)

Ian Vickerstaff (Deputy Legal Secretary, LPPO)

Apologies: Lord Boyd of Duncansby

Gordon Keyden

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and noted apologies from Lord Boyd of Duncansby and Gordon Keyden.
2. **The Committee agreed not to publish the following papers: 4.1, 4.1A, 4.2, 4.2A, 4.3 and 4.3A.**

Item 2: Previous meeting

Item 2.1 – Items by correspondence (Paper 2.1)

3. Lord Armstrong provided members with an update on items considered by correspondence since the last committee meeting: One matter has been considered by correspondence since the last meeting:
 - Item 2021/21 was issued on 15 October 2021 and invited members to approve draft minutes of the Committee meeting on 11 October 2021. Responses were invited by close of business on 29 October 2021 with a nil response indicating consent. No responses were received. The draft minutes were approved and published on the Council website.
4. **The Committee noted the update.**

Item 3: Work Programme

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

5. Lisa Davidson provided the Committee with an update on legislative developments in the Scottish Government:

- Noted that the Group Proceedings and Qualified One-Way Costs Shifting provisions of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 are in force but it's still too early to evaluate. Work continues on implementing the pro-bono and third party funding provisions.
- Noted that work is ongoing in respect of the legislative programme announced by the First Minister at the Programme for Government in 2021, which included a Bill on legal aid reforms.
- The Scottish Government consultation on Court Fees closed in March 2022, responses are currently being considered; and
- Work continues on support for the recovery, renewal and transformation process post Covid-19 pandemic.

6. **Members noted the update.**

Item 3.2 – Damages (Investment Returns and Periodical Payments) (Scotland) Act 2019 Working Group update (Oral)

7. Kelly Jack and Maria Maguire Q.C provided an update on the membership and remit of the working group set up to consider implementation of the 2019 Act.
8. Members noted that the working group met in March 2022 and discussed issues around the requirements for making a Periodical Payment Order at the sole discretion of the Court; how the court becomes aware of a parties desire for a PPO; and, the process for assignation of portions of the payment.
9. A further working group meeting is to be scheduled where it is intended members will discuss how the rules operate in England and Wales and what information the court requires before making a PPO (given the Court doesn't have independent financial advice on the pursuer's claim).
10. **Members noted the update.**

Item 4: Rules review and implementation of procedures

Item 4.1 – Motions to Sist in Court of Session Personal Injury actions (Papers 4.1 and 4.1A)

11. Amber Galbraith discussed **Paper 4.1** and **Paper 4.1A** which was provided by the Court of Session Personal Injuries User Group ('PIUG').
12. **Paper 4.1A** noted that practitioners have been experiencing practical problems with the sisting of actions and the subsequent issue of a revised timetable. Ms Galbraith noted that generally, when a motion to sist is made in an action where a timetable has been issued, the motion should also include a request to

vary the outstanding events in that timetable to specific dates after the expiration of sist. Where necessary, there should be a request that the proof also be discharged and assigned of new, by the Keeper of the Rolls. Documents such as valuations or a record should not be lodged during a period of sist.

13. Members discussed the varying practice across the Court of Session, All-Scotland Personal Injury Court ('ASPIC') and the sheriff court regarding applications to sist and the variation of timetables. Members noted the provisions of the ASPIC Practice Note, which details the court's approach to such motions. Members agreed there was a need to ensure consistency across all civil procedures.
14. Mr Vickerstaff noted that Practice Note 2/2003 for the Court of Session is still in force and that it does not permit the variation of timetables as a matter of routine.
15. **The Committee remitted the matter to the Lord President's Private Office for consideration and consultation with the Lord President as to whether amendment of the Practice Note is required or whether a rule may be beneficial.**

Item 4.2 – Chapter 42A of the Rules of the Court of Session – exchange of draft valuations (Papers 4.2 and 4.2A)

16. Maria Maguire discussed **Paper 4.2** and **Paper 4.2A**, provided by the PIUG and which explained problems relating to the exchange of draft valuations under the Chapter 42A rules introduced in March 2020.
17. Members noted that considerable care had been taken when developing these rules to make the new provisions clear. Members agreed that it would be beneficial for a Practice Note to provide procedural clarification so that the rules are not misunderstood or misrepresented.
18. **The Committee remitted the matter to the Lord President's Private Office to prepare a Practice Note, which will clarify what is expected from parties.**

Item 4.3 – Rules Request – Specification of Documents in Personal Injuries Actions (Papers 4.3 and 4.3A)

19. Members considered the content of the papers and Ronnie Conway discussed the rules request set out in Paper 4.3A. In particular, he explained

the practical issues he has encountered on occasion with the forms used for the recovery of evidence in Personal Injuries actions.

20. Mr Conway explained that he has encountered problems when medical records obtained under a specification request disclosed “voluminous entries” relating to a pursuer’s unrelated medical condition.
21. Members noted that if a GP practice was asked to redact certain records, this could potentially lead to relevant information being removed in error. Members considered that there may be necessity for a wider review of how personal information is passed between havens, the court and the legal profession to avoid breach of personal information issues.
22. The Chair proposed that this particular rules request be closed at this time but that the wider issue be kept under review. Members agreed with this approach.
23. **The Committee agreed that the matter should be kept under review within the scope of the Rules Rewrite Project under the umbrella of recovery of evidence.**

Item 5: AOB

24. There was no further business raised.

Item 6: Date of next meeting

25. A meeting will be scheduled when there is substantive business for consideration.

Scottish Civil Justice Council Secretariat

April 2022