

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
COSTS AND FUNDING COMMITTEE
MONDAY 21 MARCH 2016 AT 4.15PM
COURT 9 JURY ROOM, PARLIAMENT HOUSE**

MINUTES APPROVED

Members Present: Lord Burns (Chair)

Ian Dickson (SLAB)

Sheriff Thomas Hughes (SCJC member & Dundee Sheriff Court)

Sheriff Charles Stoddart (Retired)

James Mure QC (Advocate)

Kenneth Cumming (Auditor of the Court of Session)

Iain Nicol (Solicitor)

Alan Rogerson (Claims Manager, Aviva)

Yvonne MacDermid (Chief Executive, Money Advice Scotland)

Stewart Mullan (Law Accountant)

In attendance: Jane MacDonald (SCTS Policy and Legislation Branch)

Support: John Thomson (Deputy Legal Secretary, Lord President's Private Office)

Susan Brodie (Policy Officer, Scottish Civil Justice Council)

Apologies: Denise Swanson (Manager of Policy & Development, Scottish Government)
Eric Baijal (Solicitor and SCJC member)
Gillian Prentice (Deputy Principal Clerk of Session)

Item 1: Welcome, apologies and agreement of private papers

1. The Chair introduced Mr Stewart Mullan to the Committee, welcomed those present and noted apologies.
2. **The Committee agreed not to publish the following papers: 2.2, 4.2, 6.1, 6.1A, 6.2 and 6.2A.**

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

3. **Members agreed the minutes from the previous meeting, as amended within paragraphs 6, 11 and 19.**

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

4. **Members noted the progress that had been made on actions since the last meeting.**

Item 3: Proceedings

Item 3.1 – SCJC Strategy Meeting Update (Oral)

5. **The Chair provided the Committee with a general update of the SCJC Strategy meeting which took place Monday 14 March 2016.**

Item 4: Work Programme

Item 4.1 – Update from the Scottish Government on legislative developments (Oral)

6. No update as apologies received from member of Scottish Government.

Item 4.2 CAFC Work Tracker

7. **Members noted this paper.**

Item 4.3 Update CAFC Working group (Oral)

8. Ian Dickson gave an update of work carried out by the CAFC working group (working group). The working group carried out 2 information gathering exercises.

9. The first exercise was correspondence sent to seventeen bodies asking for general feedback on options in relation to methodologies for assessing or reviewing fee provisions, to which 6 responses have been received.

10. The second exercise consisted of correspondence sent to bodies in ten other jurisdictions enquiring of their processes and experience of recovering legal costs, to which 4 responses have been received.

11. Ian Dickson informed the Committee that, although the responses to both exercises were quite low, the information received has been interesting especially from other jurisdictions.

12. **The Committee agreed that:**

a) the information to be collated and distilled by the Secretariat;

b) the working group then consider the information; and

c) the working group present any findings emerging which might assist the work of establishing a methodology to the Committee at its meeting on 27 June.

13. **The Committee agreed all points and thanked the working group and Secretariat for the work carried out so far.**

14. **The Committee invited Stewart Mullan to become a member of the CAFC working group and Stewart agreed to attend a future meeting when fixed.**

Item 5: Regulation of Fees

Item 5.1 – Regulation of Fees of Shorthand Writers (Oral)

15. **The Secretariat informed the Committee that a meeting with Verbatim Shorthand Writers is taking place on Thursday 24 March and an update of said meeting will be provided at the next Committee meeting on 24 May.**

Item 6: Proposals for rules

Item 6.1 Pursuers Offers Options (Papers 6.1 & 6.1A)

16. The Committee considered **Paper 6.1A**, a discussion paper regarding options for a proposed reintroduction of a system of Pursuer's offers within Scottish civil courts.

17. **Following discussions, the Committee proposes:**

- **a formal system of pursuers' offers should be introduced in both the Court of Session and sheriff court;**
- **if the outcome of an action is equally favourable or more favourable, to the pursuer than the settlement terms offered, the defender's liability to the pursuer in expenses should be uplifted by 50% of the fees element of the expenses incurred from the date by which the offer could reasonably have been accepted;**
- **the same consequences should ensue where a pursuer's offer is accepted later than the date by which it could reasonably have been accepted;**
- **rules should seek to replicate the common law position in relation to tenders where it is up to the court or the Auditor to determine on a case by case basis how quickly the pursuer's offer could reasonably be accepted;**
- **the court should have a discretionary power to disapply or modify the penalty for late or non-acceptance, if satisfied that it would be unjust to impose a penalty;**
- **subject to the following, rules should allow for the use of pursuer's offers in the same circumstances as a defender's tender;**
- **in view of technical difficulties identified, the normal effects of a pursuer's offer should not apply in cases where multiple defenders are convened in respect of distinct causes of action;**
- **further consideration will be required regarding the impact of Pursuer's offers in cases subject to Qualified One-Way Costs Shifting;**
- **while any rules produced at this stage should be restricted to introducing a system of pursuers' offers, it was noted that the rules rewrite project may provide an opportunity to introduce a comprehensive code for all formal offers in settlement.**

18. **In addition the Committee agreed that the Lord President's Private Office (LPPO) prepare a paper for discussion to be put forward to the Personal Injury Committee (PIC) for consideration at its meeting on 25 April and to produce a draft instrument for the Committee to consider at its meeting on 27 June.**

Item 6.2 Pre-action Protocols (Papers 6.2, 6.2A & 6.2B)

19. The Committee considered papers produced by the PIC inviting the Committee to provide views on the level of expenses in claims subject to the proposed Personal Injury Pre-Action Protocol (the Protocol) which settle entirely under the Protocol and in cases where settlement under the Protocol has not been reached.

20. **Following consideration the Committee agreed to produce response papers for the next PIC meeting on 25 April.**

21. **The Committee agreed to consider papers regarding pre-litigation fees at its next meeting on 24 May.**

Item 7: AOCB

Item 7.1 Membership

22. Committee members considered a letter from STUC, addressed to the Chair, regarding committee membership.

23. **The Committee agreed a response to be sent to STUC, by the Chair, in due course.**

Item 9: Dates of future meetings

24. **Members noted the dates of future meetings:**

- Tuesday 24 May at 4.15pm
- Monday 27 June at 4.15pm
- Monday 7 November at 4.15pm
- Monday 19 December at 4.15pm