

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL

COSTS AND FUNDING COMMITTEE

26 May 2025, at 4.15 PM

Judges Conference Room, L+2, Parliament House, Edinburgh

MINUTES

Members Present: Lord Harrower (*Chair*)

Ian Dickson

Laura Blane

Stewart Mullan

Susan Ower

Alan Rogerson

In attendance: Eleanor Brown (*Court of Session*)

SCJC Support: Craig McCorkindale

Jessica Flynn

Sarah Jane McNicol

Paula Preston

Apologies:

Susan Black

Robin Macpherson

Sheriff Jillian Martin-Brown

Sheriff Varney

Chris Fyfe (*Court of Session*)

Emma Scott (*Legislation Implementation Team*)

Item 1: Welcome, apologies and agreement of private papers

1. The Chairman welcomed those present and noted the apologies tendered.
2. **The Committee agreed to publish: papers 2.1, 3.1, 3.2, 3.3 and 3.4**
3. **The Committee agreed not to publish: papers 3.1A-D, 3.5 and 3.5A**

Item 2: Items by correspondence (Paper 2.1)

4. **The Committee noted the content of paper 2.1.**

Item 3: Work Programme

Item 3.1 - Consulting on a simplified Table of Fees (Papers 3.1 & 3.1A-D)

5. The Committee discussed the proposed change to “unit based charging” as set out in the draft consultation paper and its accompanying impact assessments. The suggested amendments were:
 - To amend the BRIA, and the consultation paper, to highlight this proposals significance for the digitisation of services given that some tax accountants are actively seeking to improve their processes by using tools such as barcoding to automate the preparation of an account of expenses;
 - To add a consultation question seeking views on whether there are any other aspects of the regulation of fees that should be modernised; and
 - To add a consultation question seeking views on whether there would be any unintended consequences from making this change.
6. **Subject to those suggested amendments being made, the Committee agreed these consultation papers should now be published.**

Item 3.2 - Withdrawal of Postal Copies (Paper 3.2)

7. The rules currently oblige ‘officers of court’ to send out additional ‘postal copies’ following personal service of those same documents. That point had previously been considered by the Rules Rewrite Committee (RCC) at paragraph 2.22 of the Procedural Narrative they published in August 2022 (*to support the drafting the New Civil Procedure Rules*). Their policy decision was to exclude that current obligation to send postal copies. The question for this Committee was whether it would be appropriate to withdraw that obligation from the rules now rather than await those new civil procedure rules
8. **The Committee agreed to instruct amended rules to withdraw the obligation on ‘officers of court’ to send out Postal Copies after the Personal Service of those same documents.**

Item 3.3 - Notice Periods for Exceptional Attachment (Paper 3.3)

9. Given that the 7 day and 14 day notice periods have now been specified within the primary legislation the Committee considered whether both notice periods should also be replicated in rule 19 of the diligence procedures that cover ‘exceptional attachment’. Normal practice would be for court rules to only add information not already covered within the primary legislation. In this instance members noted the serious consequences that arise for anyone that only reads the diligence rules and does not consider the content of the primary legislation. To cover that gap it would be preferable to repeat both notice periods within the diligence rules.

10. **The Committee agreed to instruct amended rules that would reword Rule 19 of the diligence procedures for ‘exceptional attachment’ to retain the existing 7 day notice period and add a new 14 day notice period.**

Item 3.4 - Serving a Schedule of Arrestment (Paper 3.4)

11. The Committee noted the proposed rule changes that arise from Bankruptcy and Diligence (Scotland) Act 2024 which provides a statutory basis for the electronic transmission of schedules of arrestment, and for seeking sanction should an arrestee fail to provide information on why their arrestment was unsuccessful.
12. **The Committee agreed to instruct amendments to:**
- **RCS rules 16.1, 16.3, 16.4 and OCR rule 6.1 to insert ‘Electronic Transmission’ as an option for messengers at arms and sheriff officers when serving a Schedule of Arrestment on a bank or employer; and**
 - **Rule 65A and form 59A of the 1988 rules¹ on “Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987” in order to recognise that creditors can now apply for sanction if an arrestee fails to disclose reasons why an arrestment was not successful.**

Item 3.5 – Reduction of Inclusive charges (Paper 3.5)

13. The Committee noted the recently reported opinion the Sheriff Appeal Court that has overturned the decision in Cabot v Johnstone. That latest case precedent supports the Committees policy position that the reductions of 10%, 25% and 50% available under taxation rule 3.7 (1) are applicable in both defended and undefended cases. The Committee was advised during the meeting that Cabot Financial have now lodged an “application for permission to appeal to the Court of Session”. Members considered it would be premature to propose changes to taxation rule 3.7 (1) until the outcome of that application is known.

Item 4: AOB

14. There was no other business raised.

Item 5: Date of next meeting

15. To be scheduled

**Secretariat to the Scottish Civil Justice Council
May 2025**

¹ <https://www.legislation.gov.uk/ukSI/1988/2013/contents/made>