

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
COSTS AND FUNDING COMMITTEE
27 OCTOBER 2025 AT 4.15 PM
JUDGES' CONFERENCE ROOM, PARLIAMENT HOUSE
MINUTES

Members Present: Lord Harrower (*Chair*)
Ian Dickson
Sheriff Jillian Martin-Brown (*by video*)
Robin Macpherson
Stewart Mullan
Alan Rogerson
Nicola Wilson - (*by video*) *alternate for Susan Black*
Sheriff Varney – (*by video*)

Apologies: Susan Black
Laura Blane
Susan Ower

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

SCJC Support: Craig McCorkindale
Jessica Flynn

Item 1 - Welcome and apologies

1. The Chair welcomed those present and noted the apologies tendered.
2. Members noted the recent update to the Council standing orders whereby all future papers will be “marked public” unless there is a good reason not to.

Item 2 - Previous meeting

Item 2.1 - Items by correspondence (Paper 2.1)

3. The content of paper 2.1 was noted

Item 3 - Work Programme

Item 3.1 - Implementing a simplified Table of Fees (Papers 3.1 & 3.1A)

4. *In May* - the Committee published a *Public Consultation* seeking feedback on the proposal to adopt the use of unit-based charging.
5. *In September* - the Committee published its *Consultation Analysis* on the nature of the feedback received.
6. To facilitate decision making on the planned implementation of that change the secretariat had circulated an initial draft *Consultation Response* document. The key points noted from discussion were:
 - *Access to Data* – there is an accepted absence of data on the total size of the market, the % mix of court and non-court revenue, and changes in the volume of commissions over time. That makes assessing the potential impacts on businesses and the number of suppliers problematic.
 - *Access to Justice* - it can be argued that the % reduction to support low value claims is already offset within the current instrument by fixing higher prices for the services provided at full price. Hence the real challenge is about how best to eliminate that “cross subsidisation”.
 - *Considering the potential for bias* – the majority of the 26 responses were from providers, with an element of repetition that reflects that being a member of SMASO is mandatory. That said, the one response that was received from a consumer perspective was supportive of the improved transparency that changing to unit-based charging will provide.
7. **The Committee agreed that:**
 - **The shift to unit-based charging with a baseline monetary amount starting at £6.10 per 6 minute unit will now be implemented and:**
 - **For the ‘enforcement’ workload the previous % reductions were an inappropriate policy response and should be withdrawn.**
 - **For the *service and intimation* workload the 33% reduction as consulted on should be reduced to 20% in recognition of the significant contraction in the overall size of the market.**
 - **The secretariat is to liaise with the Scottish Government on the suggestion made of a complete removal of the reductions for low value claims (*as that exceeds the scope set for this consultation*).**
 - **The secretariat is to instruct the preparation of draft rules based on the decisions conveyed within the Consultation Response (paper 3.1A).**

- The secretariat is to prepare an accompanying news release and publish the Consultation Response (paper 3.1A) on the SCJC website following the approval of these minutes.

Item 3.2 - Update on the reduction of inclusive charges (Paper 3.2)

8. The committee noted the update provided

Item 3.3 - The definition of outlays (Paper 3.3)

9. In practice it is widely understood that court fees are an accepted outlay in Scotland and entitled parties who are legally represented do always include those fees within their '*lodged account of expenses*'. As *Chapter 4 (Outlays)* of the taxation rules is silent on court fees as an accepted outlay there is a risk that potential litigants may not be aware they can claim back the court fees paid.

10. The Committee agreed to instruct an amendment to Chapter 4 of the '*taxation rules*' to more explicitly convey that court fees are a valid outlay.

Item 3.4 - Adjusting the monetary charge for judicial expenses (Paper 3.4)

The scope covered by these Fees Rules

11. Historically the regulation of fees did cover 2 categories of charges: "solicitor and client" and "party and party". That changed in 1992 when the regulation of fees was limited to the recovery of expenses on a "party and party" basis only. From 1992 onwards the heading used for this statutory instrument continued to refer to "Fees of Solicitors" until it was changed to "Judicial Expenses" in 2019. The policy objective was to reduce confusion by making it clearer the courts no longer regulate "solicitor and client" charging. The continued references being made by practitioners to "Fees of Solicitors" would indicate that some confusion remains.

Resourcing a future review of the 'units of work'

12. When setting the baseline monetary amount in 2019 the option of resourcing a comprehensive review of the *units of work* was considered and deferred. In choosing to only adjust the "monetary amount" it is implicit that the option for reviewing the units or work within this instrument has also been deferred.

Business Impacts

13. At present the BRIA is specific to making a change in methodology: to adopt unit-based charging. An updated BRIA that addresses the competition impacts from regulating fees in this small market would assist members when considering that draft rules instrument (*if further qualitative or quantitative data can be sourced*).

Offsetting Impacts

14. Whilst practitioners have gained some efficiencies in their business through digitisation and AI, members concluded they could not justify making a below inflation adjustment given the scale of the cost-of-living crisis and the need to avoid the entitled party in a case being shortchanged (if the status quo was to continue).

15. The majority decision of members, with one member dissenting, was that:

- **The “monetary charge” within the taxation rules of £18.00 per unit should now be increased to £21.80 per unit; and**
- **The secretariat should instruct the drafting of an amendment within the ‘*taxation rules* to put that 21% inflationary uplift into effect.**

Item 4 – AOB

Item 4.1 - Marking of papers

16. Members agreed that all papers should be ‘marked public’ and saw no reason for any of the papers provided to be ‘marked private’.

Item 4.2 - Next meeting:

17. The next meeting will be scheduled once the draft rules become available.