**D.RAFT Minutes of Meeting**

WebEx at Edinburgh Sheriff Court held a meeting of the Edinburgh Sheriff Court Personal Injury Users Group on **22 August 2023 at 4.15pm**

Present:

Sheriff Fife, Chair

Sheriff Campbell KC

Sheriff Dickson

Sheriff Mundy

Sheriff Primrose KC

Richard Poole

Morag Shepherd, NHS Central Legal Office

Kate Bennett, Advocate

Eoin Quinn, Keoghs

Simon Hammond, Digby Brown

Catherine Currie, BTO

Peter Crooks, Lanarkshire Accident Law

Bruce Shields, Thompsons Law

Andrew Lothian, DWF

Greg MacDougall

Craig Anderson, Court of Session PIUG member

Dave Young, Senior Executive Officer, Edinburgh Sheriff and Justice of the Peace Court

Fiona Pryke, Higher Executive Officer, Edinburgh Sheriff and Justice of the Peace Court

Daniel Malloy, PI Clerk

Naomi Porter, PI Clerk

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| **1.**  **2.**  **3.**  **4.**  **5**    **6.**  **7**.  **8.**  **9**.    **10**.  **11.** | **Apologies etc.**  Gordon Tolland, Dave Young and Sheriff Keir  Sheriff Fife announced the appointment of Sheriff Iain Nicol as a new ASSPIC Sheriff starting on 11 September 2023.  **Minutes of Previous Meeting**  No amendments were proposed. The minutes were approved.  **Matters Arising from Minutes not otherwise on the Agenda**  No matters  **Stats between April 2023 and July 2023**  Writs warranted – 1580  Motions lodged – 3503  Opposed motions lodged – 374  Proofs/PBAs/debates proceeded – 9  Proofs discharged due to lack of court time – 2  Sheriff Fife noted there is an increasing trend for the year with just under 1600 registrations in the last 4 months. We had 4000 registrations last year; if the current trend continues we are looking at potentially 4500-4750 registrations this year. This is an increase on the year of potentially 500-750 new registrations against last year. This is very encouraging for ASSPIC.  1 proof a week proceeding on average.  Only 2 proofs discharged due to lack of court, which is modest with the number of proofs, allocated each week.  The stats for proofs discharged due to lack of court time continue to be low.  **Civil Online Update**  Sheriff Fife had checked with Gary White. Work had started with case tracking for ordinary actions. For PI actions, solicitors will be able to access all documents lodged in the case, all interlocutors and see any upcoming hearings and, as per Simon Hammond’s request, the timetable will be accessible.  Civil Online are aiming to have case tracking available late this year or early 2024;  Simon Hammond is a member of the Civil Online User Group and noted it looks good from the demo. The addition of the timetable will be a really useful feature.  Sheriff Fife mentioned that Gary White is happy for his email address to be passed on to anyone who is interested in what case tracking will look like or if anyone would like more information – please contact Sheriff Fife in the first instance.  **Motions and Opposed motions**  The team are up to date with no motions waiting to be processed of those lodged today.  There will be a few changes in the coming weeks in the motions team, but experience will be replaced with experience and there will be continuity within the team. This will be monitored by management to ensure ASSPIC continues to run smoothly.  **Opposed Motions**  There are increasing numbers of Opposed Motions being lodged. We are allocating hearing 5+ weeks ahead. This is down from 6 weeks, but still not where we hope to be in terms of assigning hearings.  Sheriff Fife is determined to get the waiting time down to 3 weeks as per the previously agreed timescale. The court can accommodate earlier hearings if parties require this, dependant on availability of counsel/agents.  ASSPIC are currently working on a loading of 15 opposed motions each procedural court, 9 in the morning and 6 in the afternoon. We can add 1 or 2 urgent motions where necessary, however this can be a heavy load for PI Sheriffs both to prepare for and to hear.  We are actively looking at additional Opposed Motions courts and meantime have assigned the following Tuesday afternoon sessions: 12 September 2023, 26 September 2023, 10 October 2023 and 24 October 2023.  We are hoping to see if this will assist in reducing the timescale from 6 weeks to 3 weeks in terms of assigning Opposed Motion hearings.  Sheriff Campbell KC noted that any documents being relied upon for the opposed motion hearings should be lodged with the court well ahead of time and not on the morning of the hearing.  (\*Note from the clerks – documents for the Monday ASSPIC court should be lodged no later than 12:30pm the Friday prior to the hearing, anything required for the extra opposed motion court for the Tuesday afternoon should be lodged no later than 12:30pm the Monday prior, going forward)  **Proofs**  We continue to allocate 70 plus proofs a week; this week it was 65 proofs; last week it was 75 proofs allocated. On Tuesday of last week, 5 proofs were still looking to go ahead, 4 then went off over the course of the morning and the court ran 2 debates and a priority proof that week.  No further issues or comments in respect of proof – all running smoothly.  Daniel Malloy made a point regarding joint bundles being lodged for proof and noted they should be paginated and bound in a folder so the sheriff and witness copies are easy to navigate and utilise.  Sheriff Fife commented the joint bundle should only include what is **actually** required to be referred to for the proof.  **QOCS**  Sheriff Fife had an exchange of views with a representative group of members. There is a consensus in how we will deal with incidental expenses i.e. no expenses, expenses reserved or no mention of expenses at all.  An example given was a pursuer’s motion for a minute of amendment.  If the motion makes no mention of expenses, there will be no reference to expenses in the interlocutor  There was a general recognition by defenders’ agents that the bar was now set higher in respect of obtaining an award of expenses against a pursuer and although there may be a review of QOCS in the coming year, there is no expectation that is going to change.  Over time, there will be further clarification of QOCS as PI Sheriffs issue more decisions.  Sheriff Fife mentioned an unreported decision in a QOCS case where the defender was successful in the disapplication of QOCs (the decision has since been appealed)  An increasing number of QOCS motions are being heard in ASSPIC. There are complexities with some of these motions. Further decisions are likely to be published in due course.  **Procedural Court**  Sheriff Fife reiterated that parties should have early discussions on opposed motions so Sheriffs do not have to prepare opposed motions that inevitably end up being discharged.  **AOCB**  **Use of Affidavits?**     * There seems to be a lack of enthusiasm for the use of affidavits in PI cases. Sheriff Mundy had previously mentioned they could be useful in cases where there is non-contentious evidence. Sheriff Fife has had no feedback since the last meeting, but all to note just to keep in mind for future reference in cases where affidavits might save some court time. * Recovery of expert report fees under the Protocol and Joint Remits to the Auditor (Simon Hammond) was discussed in respect of the Note from Mark Traynor, law accountant at Alex Quinn and Partners. There was consensus across user group members that a joint remit is the correct approach in most instances and that expenses should be paid whether that be an agreed fixed sum or that they are to follow success in the usual manner. * Sheriff Fife mentioned the recent decision of Lord Sanderson in Rose v WNL Investments Limited [2023] CSOH 49 and his views on health and safety regulations; he has also commented on a couple of PI judgments.   Sheriff Mundy – this was Sheriff Mundy’s last meeting; Sheriff Fife thanked him for his work in ASSPIC and his fine judgments and decisions. Sheriff Mundy thanked everyone.  **Date of next PIUG meeting: In person at Edinburgh Sheriff Court**  Tuesday 21 November 2023 at 4:15pm |  |

Agenda

**Personal Injury User Group Meeting**

**Tuesday, 22 August 2023 at 4:15pm via WebEx**

1. Apologies
2. Minutes of previous meeting
3. Matters arising, not otherwise on agenda
4. Stats update
5. Civil Online update

* IT any news?

1. Motions/Opposed motions

* hearings – delay/increased slots/additional courts

1. Proofs
2. QOCS

* update on exchange of views

1. Procedural Court

* loadings

1. AOCB

* training of young solicitors update
* use of affidavits – further feedback
* vacancy in PIUG for a representative( defence agents)
* Recovery of expert report fees under the Protocol and Joint Remits to the Auditor (Simon Hammond): see note below

**Background Note Mark Traynor, law accountant at Alex Quinn and Partners**

*“This has been going on now for several years with periodic bursts of challenging outlays.  It appears to be the same insurers and the same solicitors who go through periods of taking issue and then go quiet for a period of time.*

*When this first raised its head the view was taken that we would take a few of these to taxation via Joint Remit with no mention of expenses of doing so in the hope that would nip things in the bud.  On each occasion we have dealt with such a taxation we have successfully recovered the outlay in full.  The insurers and solicitors are fully aware of that yet continue periodically to refuse to meet outlays for the same experts, at the same level of charge which has been allowed by the Auditor time and time again.*

*I am led to believe that a number of firms simply agree to the proposed abatement to get money in for cash flow purposes and that may be what is perpetuating this behaviour.  They are also relying on the fact that it is time-consuming and costly to take these outlays to taxation, thus are continuing to push these in the hope everyone eventually gives up and bows to their tune.*

*It is, of course, entirely appropriate that where there is a legitimate concern over the level of an outlay incurred, that taxation by way of Joint Remit is an option open to parties, however in that instance the unsuccessful party should be liable for the costs of that process.  That prevents spurious challenges being taken.  There is no suggestion at all that the costs of the joint remit should always fall in favour of the receiving party, the suggestion is that whoever is successful on taxation should be reimbursed for the costs they have been put to in vindicating their position.  In other words, if the defender is successful in reducing the outlay to the level proposed, the costs of taxation should be met by the pursuer.*

*The Joint Remits now being sent out include allowance for expenses to be met over and above, however invariably, the same insurers and solicitors are refusing to sign such Joint Remits leaving you with no where else to go.  In such circumstances there is no consensus in relation to settlement of the case, as settlement includes payment of reasonable expenses.  Where the Defenders refuse to then sign the Joint Remit, there is no agreement and no mechanism for resolving the dispute other than raising proceedings to secure a remit to taxation.”*

1. Date of next meeting

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|  | APRIL | MAY | JUNE | JULY | TOTAL |
| Registration | 256 | 421 | 457 | 446 | 1.580 |
| Motions lodged | 730 | 896 | 942 | 935 | 3.503 |
| Opposed motions | 68 | 91 | 108 | 107 | 374 |
| Proofs that (ASSPIC only ) proceeded | 1 | 2 | 4 | 2 | 9 |

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| Proofs disch. April – July  lack of court time | 2 |