

## **Justice Committee**

### **Limitation (Childhood Abuse) (Scotland) Bill**

#### **Supplementary written submission from the Forum of Insurance Lawyers**

Thank you very much for your email of 23 February 2017. I have had the opportunity to discuss the contents with the FOIL Scottish sub-group on childhood abuse. I respond in light of searches of my own files and discussions with other member firms.

Where a pursuer abandons an action, it may then be disposed of by way of decree of dismissal or decree of absolvitor. A pursuer is entitled to decree of dismissal if they meet the defender's expenses. If they do not, then the defender is entitled to insist on decree of absolvitor.

In the vast majority of childhood abuse cases in which we have acted, the pursuer was legally aided. There was no prospect of recovering expenses, nor did our clients intend to seek their expenses.

We were contacted by the pursuers' agents who asked whether we were prepared to agree the cases could be abandoned on the basis that no expenses were paid by either party. We confirmed to them that we had instructions to that effect. The pursuers' solicitors proposed to draft joint minutes to dispose of each action. They then provided us with joint minutes which provided for decree of absolvitor.

I have been in contact with other FOIL firms and they have confirmed the same: the pursuers' solicitors drafted joint minutes which provided for decree of absolvitor.

That addresses cases which were abandoned by the pursuer and accounts for the vast majority of childhood abuse cases with which we have dealt. A small number of cases were settled without admission of liability but with payment of damages to the pursuer.

In those cases, payment was expressly on the basis that the pursuer would consent to decree of absolvitor. Indeed I would go further: it would be professionally negligent of a solicitor acting for a defender to accept decree of dismissal in those circumstances. Only decree of absolvitor marks the definitive conclusion of a case and provides both parties with certainty that the action is entirely concluded.

I trust these comments are of assistance. If I can clarify any point, do let me know.

Graeme D Watson  
3 March 2017