

MINUTE of MEETING of CONDITIONS
SUB-COMMITTEE of S.P.T.A. held
at 25 SOUTH METHVEN STREET,
PERTH, at 2.00 p.m. on THURSDAY,
6th JANUARY, 1994.

PRESENT: Messrs. D. Stewart, L. Milne, G. Brass, J. Robertson and J. Swinton, along with the Association Secretary, Mr. R.D. Hunter.

APOLOGY: An apology for absence was intimated on behalf of the Association President, Mr. Bob Doig.

CHAIRMAN: In the absence of the Association President Mr. Stewart occupied the Chair.

ARBITRATION PROCEDURES: Mr. Hunter reminded the meeting that Council of the Association had asked the Sub-Committee to review Arbitration Procedures under the "Conditions" recommended by the Association. Mr. Hunter added that it was criticism of these Arbitration Procedures both from Council Members and from the N.A.S.P.M. which had prompted Council to seek the review.

Mr. Hunter suggested that as a first step the Sub-Committee should decide whether or not S.P.T.A. should introduce Arbitration Rules instead of "Guidelines" as at present. With this in mind Mr. Hunter suggested that the Sub-Committee should first consider in detail to revised Arbitration Rules and Guidelines recently introduced by the N.A.S.P.M. The Sub-Committee proceeded to go through the N.A.S.P.M.'s Arbitration Rules and Guidelines. Mr. Hunter highlighted the main areas where the N.A.S.P.M. Rules and Guidelines were different from S.P.T.A.'s Arbitration Procedures. These differences were as follows:-

- (a) In an N.A.S.P.M. Arbitration there would appear to be no Arbiters' Clerk. After discussion it was the opinion of the Committee that S.P.T.A. Arbitrations should continue to have a Clerk.
- (b) N.A.S.P.M. allow for an Appeal Procedure to other lay people whereas S.P.T.A. Procedures do not allow any Appeal. It was the opinion of the Sub-Committee that S.P.T.A. should not alter its Procedures to allow for Appeals.
- (c)/

- (c) N.A.S.P.M. Procedures allow for either a sole Arbitrator or three Arbitrators whereas S.P.T.A. Procedures allow for two Arbitrators and an Oversman. It was the opinion of the Sub-Committee that S.P.T.A. Procedures should not be altered.
- (d) N.A.S.P.M. Arbitrations are governed by the law of England whereas S.P.T.A. Arbitrations are governed by the law of Scotland. Mr. Hunter commented that although English Arbitration law is largely based on statute and Scottish Arbitration law is based on Common Law, in practice the Arbitration laws in England and Scotland are very similar.
- (e) N.A.S.P.M. does not allow for legal representation at a Hearing unless with the consent of the Arbitrators. S.P.T.A. Arbitrations at present do permit legal representation at the Hearing. After discussion the Sub-Committee felt that expenses of Arbitrations could be reduced if the N.A.S.P.M. Procedures in this respect were adopted. The Sub-Committee Members considered that it should be sufficient, provided that there is a competent Arbitrators' Clerk, for the parties to obtain legal advice with regard to the documentary preparation of the Case to be presented to the Arbitrators.
- (f) The N.A.S.P.M. Arbitration Rules include a "Tender" Procedure whereby if one of the parties to the Arbitration makes an offer in settlement which exceeds the ultimate Arbitrators' Award expenses are awarded against the other party. The Sub-Committee considered that this would be a beneficial addition to S.P.T.A. Arbitration Procedures.
- (g) N.A.S.P.M. provide for a fairly comprehensive schedule of costs in connection with the Arbitration. The Sub-Committee considered that a schedule was a useful guideline.
- (h) The N.A.S.P.M. Guidelines encourage the "Consolidation of Actions". The Sub-Committee considered that this might be useful in saving time and costs. Mr. Hunter stated that whereas N.A.S.P.M. state that this can only be achieved if all the parties agree, it may be possible to make this compulsory by writing into the Conditions of Sale and Conditions of Purchase a clause whereby the parties accept in advance the principle of Consolidation.

Mr./

Mr. Hunter stated that he felt that the N.A.S.P.M. Rules might in certain circumstances "tie" the hands of the Arbiters too much. Mr. Hunter expressed the opinion that Comprehensive Guidelines for Arbiters might be more appropriate. He pointed out that at the commencement of the Arbitration the Arbiters could, if they thought it appropriate, incorporate the Guidelines as "Rules" in connection with a particular Arbitration.

Mr. Hunter expressed the opinion that the criticism of S.P.T.A. Arbitration Procedures was perhaps being exaggerated and it was only isolated Arbitrations that were causing problems. Mr. Hunter stated that he believed that any problems with S.P.T.A. Arbitration Procedures could be overcome by implementing the earlier decision of the Chairman's Committee to draw up a Panel of competent Arbiters who would be trained and to draw up a Panel of competent Arbiters' Clerks. With regard to training of Arbiters Mr. Hunter confirmed that there was a Chartered Institute of Arbitrators (Arbiters) Scottish Branch which he could contact regarding training. With regard to the drawing up of a Panel of Arbiters' Clerks Mr. Hunter reported that he had spoken to the Editor of the Scottish Law Society Journal (a monthly publication going to all Scottish Solicitors) who had agreed to accept the invitation for potential Clerks to contact S.P.T.A. to be included in the Journal as a Contribution as opposed to a Classified Advertisement (for which payment would be required).

It was agreed to making any firm decisions regarding Arbitration Procedures until after a Report had been received from S.P.T.A.'s observer who will be attending the N.A.S.P.M. Arbitration Training Course to be held in London on 12th January, 1994. Mr. Hunter stated that he was aware that Mr. Hollywood had reserved a place on the Training Course but that he may not be able to attend for business reasons. It was agreed that in the absence of Mr. Hollywood, Mr. Ken McKenzie should be invited to be S.P.T.A.'s observer at the N.A.S.P.M. Arbiters Training Course.

A vote of thanks to the Chairman terminated the Meeting.