

ESTABLISHMENT OF WORKING GROUP – FEE STRUCTURES SUPPORTING PRE ACTION PROTOCOLS FOR DISEASE & CLINICAL NEGLIGENCE

Purpose

1. To advise members that a working group has been established to take forward the development of suitable fees structures to support the 'disease' and 'clinical negligence' pre-action protocols ("PAPs").

Timing

2. This work features in the Council's current business priorities and it is anticipated that work on developing the fees structures will commence in the next quarter.

Background

3. As members may be aware, the Council's Personal Injury Committee has been working for some time to develop PAPs for 'disease' and 'clinical negligence' following upon previous work which implemented a PAP for personal injury actions.
4. The 'disease' and 'clinical negligence' protocols which PIC have now developed are currently undertaking the relevant clearance procedures and the next stage of the work will see the Council remit the PAPs to the Costs and Funding Committee for the development of a suitable fees structure.
5. The Chair has convened a cross-committee working group made up of those with suitable expertise to develop the underpinning policy for the fees regime. The members appointed to the working group are attached at **Annex A** and include some individuals who have worked on development of the PAPs.
6. The Secretariat has drawn up a timetable of work at **Annex B** which allocates resources aimed at securing significant progress on this work in the next quarter and will be liaising shortly with the Chair of the working group to agree meeting dates.
7. Information about the establishment and work of the working group will be published on the Council's website in due course.

Recommendation

- 8. Members are invited to note this paper**

Scottish Civil Justice Council Secretariat

December 2021

Annex A

PAP Fees Working Group Members

- Sheriff Hughes, Chair
- Darren Deary, solicitor, Drummond Miller
- Andrew Henderson, solicitor, Thompsons
- Michael Stewart, solicitor, CLO NHS Scotland
- Lyn Beattie, solicitor, MDDUS
- Alan Rogerson, consumer representative
- Steven Carrie, SLAB
- Stewart Mullen, Law Accountant

Annex B**Pre-action Protocols Fees: Work Timetable ***

Date	Lead	Actions	Meeting / IBC / Other	Comments
Mid Nov	LPPO	<ul style="list-style-type: none"> • Disease-PAP drafting onto SSI 		
By mid December 2021	Secretariat	<ul style="list-style-type: none"> • Issue disease/ clinical negligence PAPs to SCJC for approval (2 weeks for response) 	IBC to SCJC	
By mid Nov	Secretariat	<ul style="list-style-type: none"> • Agree set up of working group 	Consult Lord Burns	
By end Nov	Secretariat	<ul style="list-style-type: none"> • Appointments to be agreed by Chair 		
Dec	Secretariat	<ul style="list-style-type: none"> • Policy development – research and prepare discussion paper(s) 		
January	Working Group	<ul style="list-style-type: none"> • Policy development – discuss & agree policy principles 	WG Meeting	
February	Secretariat	<ul style="list-style-type: none"> • Rules instruction – first draft 		
February	LPPO	<ul style="list-style-type: none"> • Rules drafting – first draft 		
March	Secretariat	<ul style="list-style-type: none"> • Policy development – prepare meeting papers/draft fees 		
March	Working group	<ul style="list-style-type: none"> • Finalise policy principles • Finalise fees model 	WG Meeting	

As may be required	Secretariat	<ul style="list-style-type: none"> Rules instruction – 2nd draft 		
As may be required	LPPO	<ul style="list-style-type: none"> Rules drafting – 2nd draft 		
April	Secretariat	<ul style="list-style-type: none"> Receive and check rules – prepare clearance papers and consult LPPO 		
April	Secretariat/LPPO	<ul style="list-style-type: none"> Consider final draft Consider consequential amendments 		
April	Working Group	<ul style="list-style-type: none"> Consider & approve protocol fees 	IBC/WG Meeting (as appropriate)	
25/4/22	SCJC	<ul style="list-style-type: none"> Protocol and Fees tabled for SCJC consideration 	SCJC meeting	
As may be required		<ul style="list-style-type: none"> Prepare policy note 		

***Timescales are subject to change should a consultation be required or in relation to prioritisation of policy/legal resources**