

NOTE OF MEETING
CAFC WORKING GROUP ON PRE-ACTION PROTOCOL FEES
06 JULY 2022 at 4PM VIA WEBEX

Present

- Sheriff Hughes (Chair)
- Alan Rogerson
- Michael Stewart
- David Tait
- Lynn Beattie
- Andrew Henderson
- Stewart Mullen
- Fraser Simpson
- Steven Carrie

Support

- Karen Stewart
- Graeme Welsh
- Paula Preston

Apologies

- Darren Deary

Note of Discussions & Outcomes

Welcome, introductions and agreement of private papers

1. The chair welcomed members and noted an apology tendered from Darren Deary. Members agreed the following papers would remain private: 2 – 6 inclusive.

Previous meeting

2. Members noted Paper 1 which provides a note of the outcomes of the previous meeting and has been published on the SCJC website.

Work programme

3. Members noted progress on the following action points from the previous meeting:
 - Fraser Simpson, Alan Rogerson, David Tait undertook data gathering of judicial accounts with a view to fees modelling utilising the proposed disease frameworks.
 - Darren Deary, Lynn Beattie, Michael Stewart undertook data gathering of judicial accounts with a view to fees modelling utilising the proposed clinical negligence frameworks.

- Stewart Mullan provided practical expertise to assist the sub-groups in their deliberations and provided a report on progress to the Chair. Mr Mullan's report incorporated a note of key issues to be addressed by the sub-groups. The Chair approved further time for completion of this work.
- The Secretariat updated the work timetable to include all actions points and issued a note of the meeting outcomes to members.
- Both sub-groups provided papers detailing their findings and fee proposals to the secretariat. These papers are tabled for discussion at today's meeting.

Implementation timetable

4. Members considered the updated work timetable provided in **Paper 2** and discussed progress to date. Changes to the timetable to incorporate additional policy work were discussed and agreed. The secretariat will issue a revised timetable to members.

Discussion Papers

- Paper 3: Clinical Negligence sub-group – fee proposals
- Paper 4: Disease sub-group – fee proposals
- Paper 5: Report by Stewart Mullan
- Paper 6 : Disease sub-group – supplementary note

5. The Chair expressed thanks to all members for their considerable ongoing efforts to firm up policy proposals on these complex issues.
6. The Chair reminded members that the key aim of the PAPs and their supporting fee regimes are to create policy solutions which will increase extra-judicial settlement in these types of personal injury actions. Members discussed the papers produced and agreed that any fee regime will require to incorporate 'incentives' to settlement if this overarching policy aim is to be realised effectively.
7. The proposals to date set out in the papers have taken initial ideas from each sub-group forward into a more structured framework. Each sub-group noted it was content with prospective fee models being applied in cases up to £100K. It was noted that some underpinning aspects of each fee model need firming up in order that agreed policy proposals can be issued to the CAFC for consideration.
8. In particular, the Clinical Negligence Sub-Group is invited to consider whether or not it wishes to adopt the Disease Sub-Group approach to uplift/variables or adhere to their existing proposals (set out in Paper 6).
9. Members agreed that it would be beneficial to the CAFC when considering any fee model, if each sub-group could provide a table incorporating prospective figures to accompany the fee

model. This would be assist the Committee in understanding the practical aspects of how any prospective fee model could work in practice. In this regard:

- Both Groups are invited to produce final proposals identifying fixed figures for each of the fee elements within their respective fee models. It was noted that they may have different values but it would be helpful to the CAFC to have a common approach to how they are calculated.

10. Members agreed that clarification of these points would enable each Sub-Group to put forward specific proposals on:

- The Investigation Fee element
- What the uplift criteria would be and how that would apply to the Investigation Fee element
- The Settlement Fee element (identifying the range and the % values that would apply)

11. Mr Mullan noted that it would be helpful if the Sub-Groups could reach consensus (or 'agree to differ') on how to evaluate matters in multi-party claims.

12. Subject to clarification of these matters, Mr Mullan agreed to conduct a modelling exercise on a range of scenarios looking at how different settlement figures/numbers of participants would impact upon the fee element of recoverable expenses. Mr Mullan anticipated he could proceed thereafter to provide information on how these figures would compare with the corresponding Judicial Tables of Fees.

13. The sub groups noted that the question of finding a suitable mechanism for resolving disputes about expenses had yet to be fully resolved.

Action Points

14. The following actions were noted:

- Each sub-group will continue work on policy development with a view to finalising fees frameworks. This is with a view to a modelling exercise being carried out which will apply a range of figures to indicate how the fee regimes could work in practice.
- Stewart Mullan will provide practical expertise to assist the sub-groups in their deliberations and will carry out the modelling exercise of the final fees frameworks.
- The sub-groups and Mr Mullan will provide a paper detailing their findings to the secretariat **by 19 August 2022.**
- The Secretariat will update the work timetable to include the above actions and will issue a note of this meeting to members.
- The Secretariat will liaise with the Chair on the timing of the next Working Group meeting and will consult Lord Harrower with a view to scheduling a meeting of the Costs and Funding Committee.

AOB

15. There was no other business.

Date of next Meeting

16. The next meeting will be confirmed in due course.

**SCJC Secretariat
July 2022**