

ITEM 6.1: COSTS AND FUNDING COMMITTEE**Purpose**

- 1) To seek the Council's approval of the proposed remit and membership of the Costs and Funding Committee

Background

- 2) At its meeting on 23 September 2013 the SCJC agreed in principle that a Costs and Funding Committee should be established to consider the implications of the recommendations of Sheriff Principal Taylor's Review, the judicial rate of interest and the calculation of the "value" of the privative limit.
- 3) It was agreed that in the interests of time the Committee should be established by correspondence. However, in taking this forward following the SCJC meeting, it became clear that detailed consideration of the appropriate demarcation of work between the Lord President's Advisory Committee (LPAC) and the Costs and Funding Committee would be required, which has resulted in a delay in bringing proposals to the Council for approval.

Discussion

- 4) At its last meeting, the SCJC agreed that a Costs and Funding Committee, with a remit to include consideration of the recommendations of Sheriff Principal Taylor's Review, should be established at the earliest opportunity.
- 5) Sheriff Principal Taylor has recommended that:

"...the SCJC form a sub-committee to deal with the level of fees for litigation which may be recovered as expenses. Membership should include the users of the system (such as the existing members of the Lord President's Advisory Committee on Solicitors' Fees), the funders of the system (by which I have in mind a representative of the insurance industry and also a representative of the Scottish Legal Aid Board), a sheriff court auditor, a sheriff, a law accountant, a lay person who may well be an economist and someone to represent the interests of the consumer." (Recommendation 14)

LPAC

- 6) The Lord President's Advisory Committee on Solicitors' Fees (LPAC) considers proposals for changes to the rules relating to solicitors' fees in civil court actions and makes recommendations to the Lord President. The Committee prepares draft rules in this regard for the consideration of the Court of Session to make by way of Act of Sederunt. Further information on the functions and membership of LPAC is provided at

Paper 6.1A. Consideration is being given to extending the LPAC membership to include sheriff and a sheriff court auditor to join LPAC on a transitional basis, with a view to reconsidering the joint membership more widely if and when the SCJC's functions are extended.

Links between LPAC and the Costs and Funding Committee

- 7) We are currently discussing with Scottish Government officials which aspects of the Taylor recommendations require enabling primary legislation for their implementation. The Secretariat is of the view that it would be desirable, if not necessary, to and are of the view that primary legislation would be desirable, if not necessary, to give full effect to Recommendation 14. The legal analysis is provided at **Paper 6.1B**.
- 8) It is considered that many of Sheriff Principal Taylor's recommendations in relation to solicitors' fees can be taken forward by LPAC. Indeed, LPAC is presently considering draft fees instruments which may implement in part certain of the early recommendations.
- 9) It is considered that an appropriate way forward at this stage would be to establish a Costs and Funding Committee with a limited membership and a remit including consideration of those aspects of the Taylor Report which do not fall within the remit of LPAC. We would suggest that the two groups should, however, collaborate. This would allow the two groups to be subsumed into the SCJC structure as a single committee once primary legislation was in place to extend the SCJC's functions, should that be considered appropriate following formal consideration of Sheriff Principal Taylor's Recommendation 14.

Membership

- 10) The proposed remit of the Committee is attached at **Paper 6.1C**.
- 11) The Chair has recommended that the committee membership is as detailed in **Paper 6.1D**. This draws on a range of experience from users of the justice system and those that have expressed an interest in serving on such a committee. To assist with managing the business between LPAC and the Committee, and to ensure collaborative working arrangements, Lord Burns, Chair of LPAC, is proposed as Chair.
- 12) Should the Council agree to these proposals, letters will be issued to the proposed members of the committee advising them of the membership and remit of the committee and arranging a meeting in due course.

Recommendation

13) Members are invited to consider and approve the Committee's remit and membership

**Scottish Civil Justice Council Secretariat
November 2013**