

# POA

## Legal Advice Scheme

### Scotland



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# POA

## Legal Advice Scheme

### 1.0 General

- 1.1 The purpose of this document is to bring together in one place all issues relating to the Legal Aid Scheme. This circular will be updated on a regular basis to improve the service provided and to ensure the best use of resources.
- 1.2 This document contains both mandatory instructions and advice as to the best way to use the scheme. If you have any suggestions for changes or improvements, then please put them in writing to the Secretary of the Legal Aid Committee at Cronin House.
- 1.3 All applications for legal aid will be dealt with on the basis of this circular. All members who apply for assistance will be subject to the provisions of this document. Please ensure any member requesting legal advice has access to this circular to ensure that they are aware of their obligations and/or entitlements.
- 1.4 Please ensure that your branch copy of the Legal Advice Handbook is kept updated at all times and available for members, who should read its contents before submitting a claim. If for any reason the handbook is not up to date, then please request copies of any missing editions from Cronin House or download them from the POA Website .
- 1.5 Any guidance notes are not a substitute for legal advice they are there to assist members and Branch Officials to decide when an application is appropriate. Members should read the relevant guidance note/s which can be viewed on the POA's website or Thompsons' website in respect of the complaint before completing an application form.
- 1.6 All evidence or supporting documentation, as is available at the time, should be forwarded to Cronin House with the application form (see 1.7 below in relation to Personal Injury and Stress Claims). Requests for further information must be complied with in accordance with the rules of the scheme.
- 1.7 All members applying for legal assistance in relation to a Personal Injury or Stress claims ~~must~~ report these claims directly to the Unions Solicitors (Thompsons). Applications can be made by telephoning Thompsons free phone number on **0800 089 2050**.

## 2.0 The Rules

**2.1** The basis upon which the Legal Aid Scheme is run is set out in the POA's Rules and Constitution. For ease of reference the relevant rules are set out below and are as agreed at Annual Conference.

## 2.2 Rule 19 Legal Advice & Assistance

### Legal Aid Committee

Rule 19.1 The Union will have a legal aid committee comprising;

- (a) A Vice Chair (as Chairman)
- (b) The General Secretary
- (c) A National Executive Committee member nominated by the National Executive Committee;
- (d) Any Assistant Secretary nominated by the General Secretary.

The Legal Aid Committee may delegate functions to any of its members. The Legal Aid Committee will not consist of more than three members of the Executive and members of the Executive can stand in for individuals who are on authorized absences.

### Administration

Rule 19.2 The Legal Aid Committee will:

- (a) administer the Union's legal advice and assistance scheme in accordance with these Rules;
- (b) deal with all queries and concerns relating to the legal advice and assistance scheme and individual cases.

Rule 19.3 If there is any query or concern relating to the legal advice and assistance scheme or an individual case:

- (a) it shall be referred first to the Legal Aid Committee; and
- (b) appeal from any decision of the Legal Aid Committee is to the National Executive Committee (whose decision is final).
- (c) If any member wishes to appeal the decision of the Legal Aid Committee, they must do so within 3 months of the date of the written notification of the Legal Aid Committee's decision, by informing the General Secretary of the intention to appeal and supply the grounds for the appeal in writing.

### Advice and Assistance

Rule 19.4 All requests for initial legal advice on any work-related matter will be considered by the Legal Aid Committee. The Legal Aid Committee will deal with disputes over whether initial legal advice on work related matters is appropriate, in accordance with Rule 19.3 if the Legal Aid Committee approves the application:

- (a) It will refer the matter to the Union's Solicitors, unless a conflict of interest makes this inappropriate; in which event it will refer the matter to other Solicitors agreed with the member, but subject to the Legal Aid Committee fixing an appropriate level of cost;

- (b) the advice will be preliminary only and the Union will not be liable for further costs, unless legal assistance is approved by the Legal Aid Committee under Rule 19.5.

Rule 19.5 Any full member may apply for legal assistance in relation to any legal, quasi-judicial or disciplinary proceedings related to the members work. If the Legal Aid Committee approves the application, it will refer the matter to the Union's Solicitors, unless a conflict of interest makes this inappropriate - in which event it will refer the matter to other solicitors agreed with the member, but subject to the Legal Aid Committee fixing an appropriate level of costs and conditions.

Rule 19.6 The Legal Aid Committee has discretion to approve initial legal advice or legal assistance to:

- (a) a retired member;
- (b) an honorary life member;
- (c) the dependant of any member; or
- (d) the estate of any deceased member;

if the Legal Aid Committee considers this is in the interests of the Union.

Rule 19.7 The Legal Aid Committee may:

- (a) impose conditions (either of general application or relating to a particular case) on the provision of advice or assistance; and
- (b) withdraw advice or assistance when it considers appropriate.

## **Limitations**

Rule 19.8 Initial legal advice and legal assistance will not be provided to any new or re-joining member for any proceedings initiated (or subject to investigation) before the member joined or re-joined

Rule 19.9 The Union is not responsible for any costs incurred by any Branch or member in respect of legal advice or assistance:

- (a) before advice or assistance is approved by the Legal Aid Committee;
- (b) after approval is withdrawn by the Legal Aid Committee; or
- (c) if the Branch or member wilfully misrepresented, or failed to disclose, any material fact.

Rule 19.10 The Union is not responsible for any costs or damages awarded against any Branch or member but the Union may agree to pay costs only awarded against a Branch or member where all of the following apply:

- (a) legal assistance was granted by the Legal Aid Committee under Rule 19.5 in respect of the relevant legal proceedings,
- (b) there has been full compliance with all Union requirements, directions and obligations in relation to those proceedings,
- (c) the legal proceedings were funded by a Collective Conditional Fee Agreement (CCFA) pre 1<sup>st</sup> April 2013, between the Union and the solicitors instructed (or other arrangement with the solicitors instructed which the Union has in writing agreed to) where the wording of that CCFA or, in the case of other arrangements, of the Union's written communication, clearly and unambiguously confirm that the Union shall pay those costs,

- (d) at the time when Court proceedings were commenced the solicitors' formal assessment of the case met the Union's criteria or, where they did not, the Legal Aid Committee had been informed in writing and had agreed to the commencement of Court proceedings and
- (e) the award was made by a Court in which the normal rule is that the losing party (whether claimant, defendant or otherwise) pays the costs of the winning party

**Note**

By reason of Rule 19.9 and 19.10 if a member wilfully misrepresents or fails to disclose any material fact to the Union's Solicitors then he or she will become liable under the rules of the POA's Legal Aid Scheme for any costs which become payable to either the other sides Solicitor and/or to the Union's Solicitors where these costs are incurred as a result of the member's failure to disclose or his or her misrepresentation. The POA will not indemnify any member in these circumstances.

## **3.0 Requests for Legal Advice**

### **3.1 Request for Assistance on the Legal Form**

Requests for initial legal advice on work related matters (excluding Personal Injury and Stress Claims) must be submitted by using the Legal Form from the Legal Advice Handbook. The member is responsible for providing sufficient information and documentation to identify the problem to allow the Legal Aid Committee to assess the merits of the request and allow the Solicitors to consider the facts relevant to the issue about which advice is sought. Members must be aware of the strict time limits when submitting applications for legal advice.

### **3.2 Application Forms**

An application form from the Legal Advice Handbook must be fully completed, signed by the member and sent with the Legal Form either electronically to legal@poauk.org.uk or to Cronin House or, in the case of a Personal Injury or Stress Claim, submitted to the Union's Solicitors directly using the free phone number **0800 089 2050**.

### **3.3 Documents**

If there are any documents, which are relevant to the enquiry, then the documents must be copied, and the copies sent with the Legal Form. Following the abolition of the statutory grievance procedures and the introduction of the ACAS Code on Disciplinary and Grievance Procedures on 6 April 2009 the POA still recommend that a member raises a grievance as to not do so could result in any compensation being reduced by up to 25%. If the member has submitted a grievance a copy of the grievance must be sent with the application.

### **3.4 Multiple Applications**

If the request for initial legal advice is made on behalf of more than one member all the members' names should be entered on the Legal Form and each member must comply with the process as outlined in paragraphs 3.1 to 3.3 inclusive.

### **3.5 Dealing with Requests**

Requests for legal assistance to pursue a claim will initially be considered by the Secretary to the Legal Aid Committee, with the exception of Personal Injury and Stress Claims which must be directly reported to the Unions Solicitors (Thompsons). See Paragraph 1.7.

The Secretary to the Legal Aid Committee is responsible for the day-to-day administration of the Legal Aid Scheme, even if claims have been submitted directly to Union's Solicitors. He or she may approve the application on the basis of the authority delegated to him or her in which case the papers will be sent to the Union's Solicitors or he or she may return the application on the grounds that it does not comply with the requirements laid down in this circular (see paragraphs 3.2 to 3.4). He or she may also reject the application if it is clearly outside the scope of the scheme or he or she may refer the matter to the Legal Aid Committee who will determine whether the application will be processed.

The Solicitors will assess the merits of the claim and will report to the Legal Aid Committee. If the claim is progressed and at any time the prospects of success fall below the set criteria the Union's Solicitors are under a duty to report that fact to the Legal Aid Committee. The Union's appointed Solicitors are required to keep the Legal Aid Committee up to date with the progression of a case, at all times and will provide it with any relevant documentation, including letters of advice and Counsel's opinions. Members may also be required to sign any other relevant documents as necessary, during proceedings. Such documentation provided to the Union



will be kept securely and will only be used for the purpose of making decisions about the funding of legal proceedings.

### **3.6 Appeals to the Legal Aid Committee/National Executive Committee**

Any eligible member whose request for assistance is refused at the outset or during the currency of the action has the right of an appeal to the Legal Aid Committee and the National Executive Committee, whose decision is final. In accordance with Rule 19, any appeal to the NEC must reach Cronin House within three months of the date of the written notification of the decision from the Legal Aid Secretary. It is the member's responsibility to ensure their position is protected by issuing their own legal proceedings or complying with any directions issued by a Tribunal/Court/third party pending the outcome of the appeal.

### **3.7 Independent Solicitors**

If a member believes that the Union's Solicitors should not provide the advice required because there is a potential conflict of interest, they should draw this to the Secretary to the Legal Aid Committee's attention when submitting the application, stating clearly why it is believed there is a conflict. The Legal Aid Committee will consider the request and decide whether it is appropriate for independent legal advice to be approved. The same procedure will apply if the Union's Solicitors believe there is a conflict of interest.

### **3.8 Appointment of Independent Solicitors**

If independent legal advice is approved the member and the independent Solicitors appointed will be advised of the conditions applicable to their engagement and any conditions imposed in accordance with the Rules & Constitution.

### **3.9 Initial Advice**

When the POA receives a properly completed Legal Form requesting initial legal advice, (with the exception of Personal Injury and Stress Claims) and supporting documentation the Union will allocate a reference number. In the case of Personal Injury and Stress Claims, following notification from the Unions Solicitors that a claim has been received, the Legal Department at Cronin House will then allocate a reference number to the file, having completed the appropriate checks on membership. The POA will send an acknowledgement to the member and the branch. If an acknowledgment is not received within 10 working days of the member submitting their request they should contact a Branch Official and/or Cronin House to ensure the application has been received. If the advice has been requested by an individual the Solicitors will send the advice to the individual at the establishment from which the query arose or the home address if requested. The Solicitors will also send a copy of the advice to the Secretary to the Legal Aid Committee. If the advice affects others then they may also receive copies of that advice.

### **3.10 Further Advice and Assistance**

When the initial advice has been given no further legal advice will be authorised unless sanctioned by the Legal Aid Committee or its Secretary. If there is any doubt whether the case meets the current criteria then the matter will be referred to the Legal Aid Committee. The appeals procedure in respect of the decision on the continuing of legal assistance is the same as set out in paragraph 3.6 and as set out in the Rules & Constitution.

## 4.0 Police/NHS Fraud Investigations

### CRIMINAL LAW REPRESENTATION SCHEME STANDARD OF SERVICE PROTOCOL

1. All requests for representation in criminal proceedings will be received directly from Legal Department of the POA. Instructions may be received by letter, fax, email telephone or email. Any instructions received out of normal working hours, via Thompsons 24-hour criminal help line on **07718 416084**, should be reported to the Legal Department by email the next working day.
2. Thompsons will acknowledge receipt of the instructions by email to the legal team at [legal@poauk.org.uk](mailto:legal@poauk.org.uk) within 24 hours. The acknowledgement will be addressed to and will confirm which solicitor has conduct of the case, the contact details for that solicitor and Thompsons' case reference number.
3. Thompsons will make telephone contact with the member within 24 hours of receipt of the instructions and a letter confirming instructions to represent the member will be sent. This letter will confirm which solicitor has conduct of the case, the contact details of that solicitor and Thompsons case reference number.
4. Following the member being charged or summonsed with a criminal offence, Thompsons will assist the member in the criminal/other proceedings on work related matters.
5. Thompsons will notify both the member and the Legal Department immediately, in writing, if the Solicitor with responsibility for the case changes.
6. Thompsons will provide written reports to the Legal Department at key stages in the case, namely;
  - Upon charge
  - Upon a plea being entered
  - Upon the member withdrawing his/her instruction
  - Within 7 days of the conclusion of the case.
7. Thompsons will quote the legal department reference number in all correspondence and on all invoices to the Union.
8. This protocol will be reviewed on a regular basis, to ensure that it continues to meet the quality of services and operational requirement of both parties.

#### 4.1 How to Start the Ball Rolling

Request for legal advice where there is a Police/NHS fraud investigation on work related criminal matters this will often require immediate action. In such circumstance a Branch committee member or the member must complete the Legal Form which can be faxed or emailed to Cronin House. In exceptional circumstances, where it is not possible to complete the form the member or their representative should contact Cronin House and the form will be completed on their behalf provided this is during normal office hours. A member of staff at Cronin House will contact the Union's Solicitors who in turn will try to arrange the attendance at the appointed time for the interview. **If Cronin House is closed**

or the request is made out of normal hours, members should contact Thompsons on **0800 587 7530**, available 24 hours. **Note assistance is only given where the member is interviewed under caution and the matter is work related. Anyone to be interviewed as a witness will not be represented unless there are exceptional circumstances and the matter has been approved by the Legal Aid Committee.**

## **4.2 Appointment of a Solicitor**

If it is not possible for a Solicitor from Thompsons to attend at the interview, the member should be advised to request the assistance of the duty solicitor. The costs of the attending solicitor or agent will be paid for under the Legal Aid Scheme.

## **4.3 The Information Needed**

The minimum information required when requesting legal advice in relation to Police/NHS fraud investigations work related criminal matters is as follows:

1. Name of the member or members:
2. Member's contact details e.g. home phone or mobile number:
3. POA membership number or numbers:
4. Branch:
5. Name and contact number of the Official or committee member dealing with the application:
6. Date of the incident:
7. Brief details of the allegation:
8. Name of the inmate and Prison number or other person who has made the complaint:
9. The date of the proposed Police/NHS fraud on work related criminal matters interview:
10. Time of the proposed interview:
11. Place of the interview, preferably the Police station or other venue if it is NHS fraud investigation:
12. Interviewing officer's name:
13. Investigating Officer
14. Contact No for Investigating Officer:
15. Contact details of the local Official:
16. Members home address
17. Date of Birth

## **4.4 After the Interview**

When the interview has been carried out, if any immediate action needs to be taken at that stage the POA will be informed and arrangements made to ensure those steps are taken.

## **4.5 What Happens Next?**

In most cases the Police/NHS Fraud Investigators will inform the member at interview that they intend to carry out further enquiries and then report the facts to the Crown Prosecution Service (CPS) or relevant agency. It is generally the CPS who will make the decision on whether to prosecute or not. The Solicitor will inform the member as soon as they know the outcome of the enquiry.

## **4.6 Local Protocols**

Many prisons or local primary care trusts have agreed a local protocol, which defines the way in which allegations of assault etc are investigated in their area. You should obtain a copy of that protocol from the Police Liaison Officer or the Governor or from the HR department/HRBP so that you can provide the information to any member who is subjected to the process. Members should also ensure the provisions of Managing Crime in Prisons and guidance on Impact Statements are

complied with. All members have a right to refer assaults to the police.

#### **4.7 Delays in the Decision on Prosecution**

After the interview has taken place there is often a delay before the Solicitor and the member are informed whether any criminal charges are to be pursued. If the member is concerned about the delay he or she should contact either the Solicitor, or the Secretary to the Legal Aid Committee who will attempt to obtain an update wherever possible.

#### **4.8 If Charges are Laid**

If the matter is to be prosecuted and proceeds to Trial in the Magistrates or Crown Court, then the member's means may be accessed by the Court.

In circumstances where a member has to make a contribution to their defence by order of the Court, the member has the right to apply to the NEC to indemnify these costs. The LAC and or NEC consider all applications on a case-by-case basis providing the members claim meets the unions criteria (tenable defence) and the member pleads not guilty. Funding is withdrawn once a member pleads guilty to any criminal offence.

# 5.0 Fatal Accident Inquiry

## 5.1

In the event of a death in the establishment it is essential that a member of the local committee completes the Legal form without delay no matter what the circumstances of the death are, this document should be completed and sent to Cronin House.

The local committee member should ensure that as much information as possible is provided when the form is submitted and that any further information is made available when the information is to hand or requested. The Official should retain a copy of any documents sent with the Legal Form for safe keeping. If an acknowledgment is not received within 10 working days of the Official submitting their request, they should contact Cronin House to ensure the application has been received.

## 5.2 Dispatching the Form

The completed Legal Form should be sent to the Secretary to the Legal Aid Committee at Cronin House as soon as it is established that a self-inflicted death has taken place. Please note that a Legal Form must always be completed when the inmate was in custody of the Prison Service even if the death occurred outside the establishment i.e. in a hospital. Please ensure that all documentation that is available is copied and accompanies the form.

## 5.3 Natural Causes

If the Branch is aware or become aware that the death was down to natural causes this should be recorded on the Legal Form, or the Legal Department at Cronin House advised as soon as the information is known.

## 5.4 Staff Interviews

If staff are required to give a statement to the Governor, Police PPO, or an investigating officer, it is important that a chronological sequence of events is available to them to assist in completing their written statement. Staff should not be pressurised into giving a statement at a time when the trauma of the event is foremost in their minds. If any member is to be interviewed by the Police, they must refer to Section 4 of the Legal Advice Handbook and follow the procedure as laid down. Members are required to give evidence to the PPO if asked. In the vast majority of cases legal representation is not required, however, if members are unsure, they should seek advice from the secretary to the LAC in the first instance.

## 5.5 Appointment of Solicitors

Subsequent to completing and submitting the Legal Form, the papers will be passed on to the Union's Solicitors who will, collate the information, liaise with the appropriate authorities to represent the member, and provide legal advice at each stage as and when necessary.

## 5.6 Employers Solicitors

The major responsibility for representing the Prison Service at the Inquest rests with Employers Solicitor and their counsel. If there is no conflict of interest between the Prison Service and the staff, then there will be no requirement for separate legal representation and the Prison Service will arrange for representation for the members of staff through the Employers Solicitors. If, however, there is a potential for conflict then separate representation will be arranged where appropriate.

## **5.7 Prison Service Procedures**

All members and local committees should ensure they are familiar with internal procedures and policies and draw these to the attention to their Solicitor.

## **5.8 Prison and Probation Ombudsman (PPO) Investigation and Report**

It is fundamental that local Branch Officials attend the initial meeting with the PPO so that they can have input into the investigation and access to the report once completed. Local Committees should seek to introduce a local protocol with the local management team for dealing with a death in custody. A copy of the report will generally also be sent to the Union's Solicitors who will share the report with the branch where appropriate.

## **5.9 Deaths in a Non-Prison Workplace**

Where a death occurs outside of a Prison, for example in a secure Healthcare Unit, and a member or members are involved, the employer's local procedures and policies should be made available to the Union's Solicitors as well as the completed Legal Form so that appropriate representation can be put in place. The principles outlined in 5.1 to 5.7 will apply.

## 6.0 Criminal Injuries Compensation Authority (CICA)

### 6.1 Limitation

The limitation period for submitting a CICA claim is two years from the date of the incident but the application must be received at CICA HQ before the two years limitation period expires.

### 6.2 Making a Claim

Any member who suffers an injury as a result of an assault at work should complete a CICA application form online at [www.cica.gov.uk](http://www.cica.gov.uk). A copy of the application should be forwarded to the Legal Department at Cronin House along with the CICA reference number.

### 6.3 The Paperwork

Additional documentation that may be required is:

- A copy of the entry in the accident book: DB11 registration: (The POA is not responsible for the representation of members at DB11 appeals)
- Any witness statements:
- Accident investigation report (HMPS Accident Assault or Near Miss Report):
- Photographs or sketch plan:
- Record of hearing and Adjudication form (HMPS F256):
- Hospital or doctor's appointment card and any correspondence in relation to the treatment received for the injury and the hospital reference number:
- The Crime Reference No: (the incident must be reported to the police as soon as is practicable)

### 6.4 Medical Treatment

It is important that members who are assaulted receive medical treatment from either their GP or a hospital and their treatment plan and aftercare complies with the requirements of the CICA scheme. Therefore, any member who has been assaulted should read the CICA guidance notes which outline the basic requirements for medical treatment following an assault. The guidance notes are available from the CICA website.

### 6.5 Submission to the CICA

It is important that once an application is completed on line at [www.cica.gov.uk](http://www.cica.gov.uk) the following is entered to ensure the POA is identified as your representative.

- Are you the injured person? No.
- Are you acting as a representative? Yes
- Name of organisation? POA
- Preferred communication e-mail
- E-mail address [legal@poauk.org.uk](mailto:legal@poauk.org.uk)
- Telephone number 0208 8030255
- Should we correspond with you? No
- Are you a Claims Management Co. No
- Address POA, 245 Church Street, Edmonton, N9 9HW

When you move to the next section “Injured Persons Details” please ensure you complete your own details in this section, unless you are completing the form on behalf of the member, but enter the POA e-mail address and our contact telephone number as above as required.

You or the member will be allocated a reference number which must be forwarded to the Legal department as soon as possible.

Upon receipt of this information, a standard letter will be forwarded to the member and Branch and the union will then administer the claim.

## **6.6 The Award**

When the matter has been considered the CICA will write to the POA and confirm their assessment of the award. That notification will be sent to the member with a covering letter which will explain:

- (a) the award can be accepted, or
- (b) if the member wants a review of the decision, upon receiving the members written request the papers will be sent to the Union’s Solicitors for an opinion. The CICA allow 56 days to accept or appeal the decision. Any member seeking a review must advise the POA within the first 30 days period. This is to facilitate an assessment by the Union’s Solicitors who will normally advise the member within the remaining period so that the member can either accept the award or for an appeal/review to be lodged within the 56-day limitation period. If the award is not accepted or the CICA do not receive notification of a review/appeal within the limitation period the award may be withdrawn by the CICA.

## **6.7 Applying for a Review and/or Appeal**

If on receiving the advice the member decides to apply for a review the Union’s Solicitors will write to the member setting out the procedures for the lodging and progressing the review and the POA’s arrangements with regard to the costs of the review.

## **6.8 Funding of a Review and/or Appeal**

Before pursuing the appeal the member will be required to sign and return a copy of the letter signifying agreement to the funding arrangements. The letter specifies that the costs of pursuing the appeal will be met by the POA but that in the event that the appeal is successful costs in accordance with the scale set out below will be deducted from the award. Note that the amount deducted will never exceed the costs incurred in pursuing the appeal.

## **6.9 Scale of Recoverable Costs**

### **Level of increase in the award**

£ 0 – 1,000  
£ 1,001 upwards

### **Costs contribution**

Nil  
The actual costs and disbursements incurred in pursuing the review up to a maximum of 50% of the increase of the award excluding the first £1,000 of such increase.

## **6.10 Changes to the CICA Scheme**

The current 2012 scheme has introduced a number of new eligibility criteria in relation to claims. There are also reductions in the scope and levels of award made under the scheme.



Eligibility will depend on establishing that an incident falls within the definitions of the scheme. There are also requirements in relation to the residency and conduct of an applicant and the reporting of an incident. Failure to specifically report the incident to the police as soon as is reasonably practicable will disqualify a claim.

The basis and extent upon which claims for loss of earnings can be made has also been significantly restricted. The CICA can also deduct £50 from an award for the costs of obtaining medical evidence.

# 7.0 Personal Injury and Stress Claims

## 7.1 The Limitation Period

The time limit for submitting a personal injury claim is three years from the date of the incident or knowledge of illness, but to allow the unions solicitors to assess the merits of any claim, members must report the claim as soon as possible and no later than two years and six months after the incident directly to the Unions Solicitors (Thompsons) by ringing the free phone telephone number **0800 089 2050**. If you cannot obtain all of the requested information as outlined in paragraph 7.2 the application should not be delayed.

## 7.2 The Paperwork

Any member who wishes to make a claim should report the incident and or illness to the Unions Solicitors by telephoning the Thompsons Free phone number on **0800 089 2050**. If the claim is stress related the member must report the illness by telephoning the Thompsons freephone number on **0800 089 2050**.

- Accident book entry:
- DB11 registration: (The POA is not responsible for the representation of members at DB11 appeals)
- Witness statements describing the incident:
- Accident investigation report (HMPS Accident Assault or Near Miss Report):  
Photographs/sketches:
- Staffing levels:
- RMP:
- Reasons why you think employer is liable
- Details of lost wages or expenses incurred by reason of the accident:
- Details of the medical person consulted as a result of this incident together with any relevant reference number:
- Any other information that is relevant to the claim.

## 7.3 Progressing the Claim

The Union's Solicitors are required to keep the Legal Aid Committee up to date with the progression of a case at all times and will provide it with any relevant documentation. It is in the member's interests to supply any information requested by the Union's Solicitor as quickly as possible or advise them if the member is unable to obtain the information from their employer. In these circumstances the Union's Solicitors will try and obtain the information.

## **8.0 Employment Law Claims**

### **8.1 The Limitation Period**

The time limit for most employment law claims is **three months less a day**. **ALL APPLICATIONS MUST BE SUBMITTED TO CRONIN HOUSE WITHIN TWO MONTHS, OTHERWISE YOUR CLAIM MAY BE REJECTED.**

### **8.2 Use of the Grievance Procedure**

Since 6 April 2009 it is no longer a requirement that the Grievance Procedure has to be engaged before a claim is issued in an Employment Tribunal. However, members who fail to comply with the new ACAS Code on Disciplinary and Grievance Procedures by not raising a grievance with their employer in writing before a claim is issued in an Employment Tribunal may result in any award of compensation, reduced by up to 25%. It is the Union's position that members should raise a grievance in relation to any work-related matter.

### **8.3 Forms to be Completed**

When a member wants to make a claim in relation to an employment law issue a Legal Form must be completed. The Legal Form and copies of all relevant documents must be submitted to Cronin House as soon as it has been completed.

### **8.4 Member -v- Member**

The Union's Equal Opportunities policy makes it plain the POA opposes all forms of discrimination. In pursuance of that policy the POA will support any member who wishes to take proceedings through a court or tribunal against either the employer or the employer and the harasser(s) in respect of an act or acts of unlawful discrimination. All requests for assistance will be submitted to the Union's Solicitors who will advise the Legal Aid Committee on the merits of the claim on the basis of the papers submitted. The Legal Aid Committee, or the Secretary to the Committee in cases of urgency, will consider the assessment of the claim provided by the Solicitors and then decide on whether to grant assistance in accordance with Rule 19.7 and on the basis of the merits of the claim.

### **8.5 Support for One Side Only**

Once the POA has decided to support one party to a claim it will not offer support, other than for initial advice under rule 19.4, to another party to that action unless funding is approved by the National Executive Committee on appeal by the member.

# 9.0 Bolt on Services

## 9.1 The Bolt-on Services

POA members in Scotland and their relevant family members have the benefit of 2 bolt on services. The two bolt-on services are the Consumer Law and Civil Protection bolt on service; and the non-work related criminal law bolt on service. These services shall be accessed by calling the Union's solicitors directly on the Freephone telephone number **0800 089 2050**.

## 9.2 Family Members who Benefit from Bolt-on Services

For the purposes of the two bolt-on services the relevant family members who may access the service are:

- The member's spouse or partner
- The member's children under the age of 25, including stepchildren, adopted children and foster children
- The parents and grandparents of the member and the member's spouse or partner; all normally resident with the member

## 9.3 Consumer Law and Civil Protection Service

The following issues are covered by the Consumer Law and Civil Protection Bolt-on Service:

- (a) Breach of contract issues for goods or services - including motor vehicles - bought or sold for non-business use, provided the contract was signed on or after 1 April 2018.
- (b) Actions for damages against local or public authorities, provided the index incident giving rise to the action occurred on or after 1 April 2018.
- (c) Defence of civil proceedings arising from data protection legislation
- (d) Defence of proceedings arising from data protection legislation

The following issues are not covered by the Consumer Law and Civil Protection Bolt-on Service

- (a) Actions for damages or breach of contract issues against private individuals
- (b) Actions for damages or breach of contract issues related to property purchases or disputes.
- (c) Defence of civil proceedings, except where they relate to data protection issues or discrimination legislation.

The Consumer and Civil Protection service is subject to a merits assessment of at least a 50% chance of success in the opinion of the Union's solicitors. The service is also subject to a proportionality assessment. Where the union's solicitors consider the cost of pursuing the case to be disproportionate to the likely recovery should the case succeed the case will not pass the proportionality assessment.

## 9.4 Non-Work Related Criminal Defence Service

The non-work criminal defence bolt-on service covers advice and representation following the issue of a charge or charges or a plea of not guilty is to be entered. The bolt-on service includes fixed penalty driving offences and parking offences. For continued access to the bolt-on service the member must continue to have at least a stateable defence.

# 10.0 The Legal Aid Committee

## 10.1 Constitution

The constitution and remit of the Legal Aid Committee is set out in the Rules. See Rule 19.1. It is responsible for administering the Legal Aid Scheme and dealing with all matters and issues arising from the operation of the scheme. The Secretary to the Legal Aid Committee is appointed to administer the scheme on a day-to-day basis and act as Secretary to the Committee.

## 10.2 Meetings

The Legal Aid Committee normally meets on a monthly basis to consider any issues relevant to the Legal Aid Scheme. If you have any suggestions, proposals or complaints about any aspect of the Legal Aid Scheme or in relation to a particular case then please write to the Secretary to the Committee at Cronin House. Your correspondence will be placed on the agenda for the next meeting of the Committee for its consideration. If you endeavour to raise any issue relating to the Legal Aid Scheme in any other forum without first raising it through the Legal Aid Committee the matter will be referred by the person or body to whom you have complained to the Legal Aid Committee.

## 10.3 Exercise of Discretion

In administering the Legal Aid Scheme the Committee has a constitutional responsibility to ensure that the POA receives the best possible value for money and that the members' subscriptions are not wasted on pursuing fruitless claims. In order to be able to assess the merits of the issues, which they need to decide the Legal Aid Committee will be provided with all relevant information for them to decide upon the issues. To assist the Committee in exercising the powers delegated to it the Committee has developed a number of principles, which it will follow when exercising its discretion. It should be noted that these are merely guidelines and they do not cover all the circumstances, which may arise.

## 10.4 Guidelines

Subject to exceptional circumstances, either related to the general importance of the issues or the facts of a particular case, legal assistance will not generally be granted or continued where:

- (a) The prospects of succeeding in the claim do not warrant support.
- (b) The claim is one that would be dealt with under the small claims procedure in the County Court.
- (c) The member has not pursued the internal remedies available.
- (d) The member has refused without good cause to engage in mediation of the dispute, or the member wishes to take proceedings against, the Union itself or the Union's Solicitors.
- (e) The member wishes to pursue a course of action in circumstances where there was or is an equally effective or cheaper course of action available.
- (f) The purpose of the advice is to assist in relation to a complaint to the Certification Officer.
- (g) The member wishes to change his legal representative where the Legal Aid Committee is of the view that there is no good reason for such a change.
- (h) The cost of pursuing the claim is disproportionate to the benefit to be gained from the action.
- (i) The member has failed to co-operate with the Solicitor or the Legal Aid Committee.
- (j) The member is subject to internal disciplinary proceedings.
- (k) The member is abusive to any staff employed or seconded to the Union or the Union's Solicitors

**Note:**

For the avoidance of doubt the criteria for support to member's legal claims in respect of employment law issues is as follows:

- The value of the claim must be £1000.
- The claim must have a better than 50% chance of succeeding.
- The value of the claim must not be disproportionate to proceedings.
- The Legal Aid Committee and or National Executive Committee in accordance with the Rules may exercise discretion on any claim they see fit.

**Note:**

The exercise of the Legal Aid Committee's discretion not to grant assistance or not to continue support for a claim, does not prevent the member from continuing with the claim on his/her own behalf or through other Solicitors at his or her own expense. Furthermore, a refusal or withdrawal of support does not mean that the individual does not have a claim that he/she could pursue, it merely means that the claim no longer meets the criteria laid down by the Committee.

A member may appeal against any decision of the Legal Aid Committee to the National Executive Committee whose decision is final.

## **11.0 Contact Details:**

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