

**FEES CHARGED BY THE COURT OF SESSION,
ACCOUNTANT OF COURT, SHERIFF & JUSTICE OF THE
PEACE COURTS, HIGH COURT, OFFICE OF THE PUBLIC
GUARDIAN, PERSONAL INJURY COURT AND THE SHERIFF
APPEAL COURT**

A CONSULTATION



A response from the Association of Personal Injury Lawyers (APIL)

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Introduction

The Association of Personal Injury Lawyers (APIL) was formed by pursuers' lawyers to represent the interests of personal injury victims. APIL is a not-for-profit organisation with 25 years' history of working to help injured people gain the access to justice they need. APIL currently has around 4,000 members, 183 of whom are in Scotland. Membership comprises solicitors, advocates, legal executives and academics whose interest in personal injury work is predominantly on behalf of pursuers.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- to promote full and just compensation for all types of personal injury;
- to promote and develop expertise in the practice of personal injury law;
- to promote wider redress for personal injury in the legal system;
- to campaign for improvements in personal injury law;
- to promote safety and alert the public to hazards wherever they arise; and
- to provide a communication network for members

The strategic approach

We disagree with the stated aim of the Scottish Government that the civil court system should be self-financing. APIL's long standing position has been that the court service should be a resource of the state and funded by taxation.

In our view the state is under a duty to provide its citizens with recourse to redress when wronged and the civil judiciary represents the cornerstone of social justice. A court service is not something an injured person chooses to use. It is a necessary legal mechanism which enables the pursuer to enforce his legal rights.

Fee increase

During the parliamentary passage of the Courts Reform (Scotland) Act, APIL consistently expressed concerns about how the new national personal injury court would be funded. We gave evidence in committee to the effect that there would be an estimated £2 million loss in fee income from the removal of personal injury cases from the Court of Session. We expressed concerns that the shortfall would be met with a hike in fee income elsewhere.

We note the Government's proposal to impose an above-inflation increase in court fees of two per cent in addition to the inflationary increase of two per cent. Our primary concern, however, is the level at which the fee to begin an action in the new personal injury court has been set.

In giving evidence to the justice committee of the Scottish Parliament as it examined the Courts Reform (Scotland) Bill last April, Eric McQueen, chief executive of the Scottish Court Service, was asked about the impact of the reforms on court fees. He said:

“At the moment, the cost of taking a personal injury case forward in the sheriff court is £90 or £95. In the Court of Session it is around £200. Once the specialist personal injury court – which will operate throughout Scotland – is created, we will look at the appropriate fee level for that court, which will be *somewhere between* the £95 and £200.” [emphasis added].

In fact, we now know from the consultation paper that the fee to lodge an action in the personal injury court will be £210 by the end of this year, rising to £218 by April 2017. The explanation for this in the consultation paper is that the personal injury court is being set up to ‘meet or exceed’ the service provided by the Court of Session. While this is undoubtedly reassuring, it does not justify the fact that the cost of raising an action in the new court will be exactly the same as beginning a case in the Court of Session and double the cost of raising an action in the sheriff court, according the appendices to the paper.

So, a case worth (for example) £95,000 which can currently be started in front of a judge in the Court of Session will, in the future, be started before a sheriff in the personal injury court, for exactly the same fee. Injured people in Scotland could be forgiven for thinking they have been short-changed.

In his introduction to the Report of the Scottish Civil Courts Review, Lord Gill said “The Scottish civil courts provide a service to the public that is slow, inefficient and expensive.”

While we hope the new court will be efficient once it is properly established, what is clear is that it will, in fact, still be expensive, and that the burden of paying for it will fall on injured people.

A two-tier system

APIL has always supported the introduction of specialist sheriffs and we acknowledged during the passage of the Courts Reform (Scotland) Act that, while it is preferable for cases to be heard in the specialist court, specialist sheriffs outside the personal injury court would help to reduce the inevitable strain on the new court which will be required to deal with an influx of around 2,700 cases as a result of the Act.

There is, however, a real risk that injured people and their representatives will choose to take their cases to local specialist sheriff courts rather than the personal injury court, because of the significant discrepancy in the level of court fees. Even without the service levels which are expected to be available in the new court, paying half the court fee without the need to travel to the new court is bound to tempt people to have their cases heard in the sheriffdoms, which will undermine the new court from the outset.

- Ends -

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