

19 July 2012

Ms Pamela Russell
Scottish Government
Legal System Division
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St Andrews House
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Edinburgh
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By e-mail pamela.russell@scotland.gsi.gov.uk

Dear Ms Russell,

Review of fees charged by the Court of Session, Accountant Court, Sheriff and Justice of the Peace Courts, High Court and Office of the Public Guardian

The Association of Personal Injury Lawyers (APIL) was formed by pursuers' lawyers with a view to representing the interests of personal injury victims. It is a not-for-profit organisation with over 20 years history working to help injured people gain access to justice they need and deserve. APIL currently has over 150 members in Scotland. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants.

APIL has a long history of liaison with other stakeholders, consumer representatives, governments and devolved assemblies across the UK with a view to achieving the association's aims, which 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;
- To provide a communication network for members.

APIL's long standing position has been that the court service should primarily 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 that an injured person uses because he wants to. It is a necessary legal mechanism which enables the pursuer to enforce his legal rights. That said we understand that this paper is not consulting upon the rights or wrongs of the Scottish Governments policy on full-cost pricing.

APIL's remit relates only to personal injury law (including clinical negligence) and our response is limited to this area of law and practice.

Fee proposals- Court of Session hearing fees

We know that very few personal injury cases run to proof. Personal injury actions raised in the Court of Session and as Ordinary Cause in the Sheriff Court are now subject to a case-flow model of procedure. This model has been extremely successful since its introduction in the Court of Session in 2003. Members report that around 20-30 cases per year go to proof, from a total of around 2,500-3,000 cases being raised. Therefore, the vast bulk of personal injury cases take up little, if any, judicial time. Those cases that do go to proof and require determination by the court are by their very nature cases involving more novel points or cases where defenders refuse to narrow the issues in the case or attempt to under settle the case, the effect of the government's proposals on will double the fees payable in these cases.

It is unfair in our view to make a small minority of individuals, who are forced to use the courts, pay for the benefits gained by the collective. Whilst it has been the practice in the past for solicitors to initially fund clients' court fees, as fees increase pursuers may find their solicitor unable to pay their court fees. This will leave the individual to fund potentially thousands of pounds in fees themselves or refrain from taking the case to proof or trial. It will be the private individual who is most affected by doubling hearing fees and not the corporations or the insurers who have sufficient funds.

Cancellation fees

It is proposed that the cancellation fee payable in an inner house court case, where the hearing is cancelled within 28 days, is increased substantially to 50 per cent of the planned cost. Whilst we support in principle the Scottish Court Service encouraging better use of court time, it seems unfair to penalise the parties for settling a case within 28 days of the hearing date we would therefore suggest a period of 14 days.

We are grateful for the opportunity to provide input to this consultation if you require any further information, please do not hesitate to contact me.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Abi Jennings', with a stylized flourish at the end.

Abi Jennings
Head of Legal Affairs

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