

Scottish Civil Justice Council Costs and Funding Committee
Options and Methodologies for assessing or reviewing fee provisions



A response by the Association of Personal Injury Lawyers
February 2016

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a 25year history of working to help injured people gain access to justice they need and deserve. We have around 3,800 members across the UK and abroad, committed to supporting the association's aims and all of which sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

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.

Any enquiries in respect of this response should be addressed, in the first instance, to:

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Introduction

APIL welcomes the opportunity to respond to the Costs and Funding committee information gathering exercise on options and methodologies for assessing or reviewing fee provisions. We believe that the costs and funding committee is the right vehicle for setting and reviewing fees, but suggest that there should be several sub committees to feed into the main costs and funding committee to ensure that the right level of fees are set depending on the type of work carried out. For reasons highlighted by Sheriff Principal James Taylor in his report, there should not be a “basic universal procedure” for assessing or reviewing fees.

Do you have any view regarding the procedures that apply whether within your field or within your role, or otherwise? Do you think a different procedure would be better and if so what key steps would you like to see incorporated?

APIL believes that the costs and funding committee is the correct vehicle to take over from the Lord President’s Advisory Committee on Solicitors’ Fees (LPAC), to determine fees for solicitors. Different types of litigation require different levels of fee to be set to reflect the amount of work carried out. In Chapter 2 of the *Review of Expenses and Funding of Civil Litigation in Scotland* (the “Taylor Review”), it was recognised that commercial litigation is a different beast to personal injury litigation, for example. Specialists across the different areas will be best placed to recommend the level of fees to be set. We therefore recommend that the costs and funding committee should have overall responsibility for the assessment and reviewing of fees, but that there should be a number of specialist sub-committees to make recommendations in relation to different areas of litigation. These sub-committees could be general litigation (including judicial review) dealing with cases in the sheriff court, Court of Session and ordinary actions, personal injury (including a representative with experience in clinical negligence claims), and commercial litigation, for specialist litigation in the commercial courts.

In relation to the Personal Injury sub-committee, we strongly suggest that the group should consist of an equal number of pursuer and defender representatives (we suggest a minimum of two from each side, including one APIL representative and one FOIL representative). There should also be at least one pursuer representative experienced in clinical negligence claims. We suggest that the committee should also contain at least one law accountant, and two counsel. This subgroup should meet, discuss, and then put together a report of recommendations to present to the Costs and Funding Committee of the Scottish Civil Justice Council. If there is disagreement within the subcommittee, there should then be a hearing in front of the Costs and Funding committee, who would be required to arrive at a sensible conclusion.

We are extremely concerned that there should not be a move to universal fees - there is to be a move towards specialisation, following the reports of Taylor and Gill (Lord Gill's review leading to the establishment of the specialist personal injury court, and Taylor acknowledging within his report that different types of litigation attract different levels of costs). In light of this push towards specialisation, a "one size fits all" approach to costs is simply not appropriate.

When setting the appropriate level of fee for solicitors, current court fee levels must also be considered. Court fees in the specialist personal injury court are set at a level comparative to fees in the Court of Session (£214 from April 2016). Despite this, practitioners' fees have remained at low levels.

How might the process operate to ensure that CAFC is made aware of wider impacts of fee changes and ensure the interests of all stakeholders and affected persons/organisations are effectively considered?

As above, we recommend that several sub-committees should be established to make recommendations on the setting of fees for different areas of litigation.

What factors should be considered regarding the timing or occurrence of fee reviews?

It is important that fees are reviewed annually.

- Ends -

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