

SCOTTISH EXECUTIVE: JUSTICE DEPARTMENT

**CIVIL COURT FEES IN THE COURT OF SESSION AND THE SHERIFF
COURT**

A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

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CIVIL COURT FEES IN THE COURT OF SESSION AND THE SHERIFF COURT

1. The Association of Personal Injury Lawyers (APIL) was formed in 1990 and represents around 5000 solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants. We currently have 106 members in Scotland who, in all likelihood, act for the majority of claimants in the jurisdiction. The aims of the association are:
 - To promote full and prompt compensation for all types of personal injury;
 - To improve access to our legal system by all means including education, the exchange of information and the enhancement of law reform;
 - To promote health and safety;
 - To alert the public to dangers in society such as harmful products and dangerous drugs;
 - To provide a communication network exchanging views formally and informally.

2. APIL welcomes this opportunity to respond to the Scottish Executive's consultation on civil court fees in both the Court of Session and the Sheriff Court. In summary, whilst we are not opposed to inflationary increases in the current civil court fees, we are opposed to the significant fee increases proposed which would reflect the actual costs of the service provided to the public. We should stress that we can only submit views on court fees in so far as they relate to personal injury litigation and in so far as they impact upon the victims of personal injury.

3. The level of court fees is directly related to the ability of injured victims to achieve access to justice. Court fees generally become payable before the settlement or other conclusion of a claim. At the moment, personal injury solicitors usually pay the court fees due on behalf of their injured clients on the basis that when the claim is successfully concluded, those fees will be

recovered from the losing defender(s). If the case is lost and the fees are not recovered, those solicitors will rarely, if ever, pursue the injured client for the fees paid.

4. This practice is only sustainable, however, if the court fees are maintained at a relatively low level, as at present. If the court fees are significantly increased to reflect the actual costs of the court service provided, as proposed, there is a significant risk that personal injury solicitors would be unable to bear the financial burden of the fees due whether they are ultimately recoverable from the defender(s) or not. Injured clients would, therefore, have to meet the expense of court fees directly. Not all clients may be able to meet those costs, especially if their injury has resulted in being unable to work or has led to increased expenditure. If injured victims cannot afford the relevant court fees, they may not be able to continue their claim and their access to justice will be impeded.
5. As noted above, we do not believe it is acceptable for access to justice to be impeded in this way and it is for this reason that we believe the court service should predominantly be funded by taxpayers. We are not opposed, however, to court users being required to make a contribution to the court service they are using, as required, for example, by users of the NHS dentistry service, provided the required contributions are set at an affordable level. Whilst, therefore, we would not be opposed to an inflationary increase of the current court fees, we are strongly opposed to the significant increases proposed.

Fees in the Court of Session

6. For the reasons outlined above, whilst we would not be opposed to an inflationary increase of the current fees in the Court of Session, we are opposed to the proposals that:
 - the fee per half hour in the Outer House should increase from £13 to £32.50 for each party;

- the equivalent fee for the Inner House should rise from £26 to £65 for each party.

Other Fees in the Court of Session and Sheriff Court Fees

7. APIL is not opposed to the proposal that the other fees for Court of Session procedures and Sheriff Court fees should be increased by the rate of inflation for each year since the last increase.

Exemptions from Fees for People in Receipt of Means Tested State Benefits

8. We support the proposal that injured clients in receipt of means tested state benefits should be exempt from civil court fees as this will assist in ensuring that access to justice is achieved. It is important to note, however, that it is not only those in receipt of means tested benefits that may have difficulties accessing justice if civil court fees are significantly increased. We should point out, however, that some injured clients who are in receipt of means tested benefits have their cases funded through a third party. This can occur where, for example, the injured client had a pre-existing legal expenses insurance policy. In this situation, the client would not require the same protection through exemption on fees. To avoid fee exemptions in cases where it is not necessary we suggest, therefore, that clients on means tested benefits should be required to sign a declaration that their claim is not being funded by a third party.