

PE1784/B

Scottish Courts and Tribunals Service submission of 6 April 2020

Thank you for your letter, sent on behalf of the Public Petitions Committee, seeking the views of the Scottish Courts and Tribunals Service (“the SCTS”) on the above petition.

The petitioner’s question: “*whether the Scottish rules comply with Article 6 of the European Convention on Human Rights on the right to a fair trial*” – is not a matter that the SCTS can provide a view on.

However, I provide some factual information below on the current fees orders which operate in the High Court of Justiciary, the Court of Session, Sheriff Appeal Court, sheriff courts including the Sheriff Personal Injury Court, justice of the peace courts and the Office of the Public Guardian.

Legal background for current fees orders:

Section 107(1) and (2) of the Courts Reform (Scotland) Act 2014 provides that the Scottish Ministers may by order make provision for the charging of fees in respect of the carrying out of the functions of the SCTS or a relevant officer in connection with:

- proceedings in the Scottish Courts, or
- any other matter dealt with by a relevant officer.

An order by the Scottish Ministers may include (amongst other matters) provisions in relation to the charging of fees including:

- specifying, or for determining, the amount of fees,
- specifying, or for determining, the persons or types of person who are to pay the fees,
- specifying the times when, places where and persons to whom the fees are to be paid,
- for exemptions from the requirement to pay fees,
- for the remission of fees,
- for modification of fees

Policy:

The Scottish Government’s (the SG) policy note to the current fees orders states:

“Court fees and fees for services offered by the High Court of Justiciary, the Court of Session, Sheriff Appeal Court, sheriff courts including the Sheriff Personal Injury Court, justice of the peace courts and the Office of the Public Guardian (OPG) ensure that those who make use of the courts or the OPG meet or contribute towards the associated costs to the public purse where they can afford so to do.”

The policy note goes on to state:

“The Scottish Government has long had a policy to move toward fees which more fully reflect the cost of the processes involved, with a well-targeted system of fee exemptions to protect access to justice. This Order puts into effect that policy by raising court fees to ensure that the income raised reflects the costs incurred by the Scottish Courts and Tribunals Service (SCTS) in providing the civil court system...”

Current fees orders:

The current fees orders commenced on 1st April 2018 and provided for an increase in fees that took effect on the 1st April 2019, with a further increase taking effect from 1st April 2020.

Prior to making the current fees orders the SG consulted in 2017-18 and the SG noted in the response to that consultation that a further consultation on fees is scheduled to take place in 2020 with a view to considering further changes in 2021.

In addition, the policy note to the current fees orders states that an earlier review may be necessary in the context of the provisions of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill (now the 2018 Act).

Current exemptions:

Article 9 of the Sheriff Court Fees Order 2018 (2018 Order) sets out the “exemption of certain persons from fees: social security” criteria. In particular, article 9(1) (d) is in the following terms:

- *“the person or the person’s partner is in receipt of working tax credit, provided that—*
 - *child tax credit is being paid to the party, or otherwise following a claim for child tax credit made jointly by the members of a couple (as defined in section 3(5A) of the Tax Credits Act 2002(12)) which includes the party; or*
 - *there is a disability element or severe disability element (or both) to the tax credit received by the party;*

and that the gross annual income taken into account for the calculation of the working tax credit is £18,000 or less;”.

In addition, articles 8 and 12 of the 2018 Order provide further exemptions to persons in the context of legal aid and certain actions for specified interdicts and orders (as defined by article 12(2) (a) and (b) of the 2018 Order) respectively.

The above exemptions are also applied by the relevant articles of the fees orders for the High Court of Justiciary, the Court of Session, Sheriff Appeal Court, Sheriff Personal Injury Court, justice of the peace courts and the Office of the Public Guardian.

As set out above, the question of court fees and the exemptions to those fees are a policy matter for the SG. Any future consultation on the fees orders may provide

scope to consider whether the exemptions should be extended to include those matters highlighted by the petitioner.