

PE1784/D

Scottish Government Submission of 17 July 2020

Calling on the Scottish Parliament to urge the Scottish Government to conduct a review of the Sheriff Court Fees Order 2018 to make self-litigation more accessible to disabled people

Thank you for your correspondence of 10 March 2020, addressed to Michael Paparakis, Committee Liaison Officer, seeking the Scottish Government's view on the above petition.

Firstly, I would like to offer my sincere apologies for the delay in responding and now provide the views of the Scottish Government.

Background

Court fees have generally been reviewed every three years, with the last full round being implemented in 2018.

The wider context of pressure on public finances, brought about by significant reductions to the funding Scotland receives from the UK Government, meant that in 2016 the Scottish Government concluded that it was necessary to move further towards full-cost recovery in the courts, which has been the policy of the current and previous governments for some time.

As a result an ad-hoc Fees Order (the Court Fees (Miscellaneous Amendments) (Scotland) Order 2016) was laid before the Parliament and came into force on 28 November 2016. This order raised the level of fees significantly, although certain fees, such as those in the Sheriff Personal Injury Court, were frozen in order to protect access to justice. The overall effect was intended to bring the level of fees to the point at which they cover the costs of the civil justice system.

The Scottish Government published a Consultation on Court Fees in October 2017. The proposals consulted on were for increases of court fees to take account of projected inflation for the three years 2018 to 2021. In addition it departed from the inflation only rises in a few cases and made relatively minor amendments to fee narratives in order to improve consistency and take account of the experience of a number of court reforms that were introduced. The consultation closed on 12 January 2018 and as a result of the consultation the final proposals were revised.

These revisions were:

- Raising the level of income that can be earned whilst still qualifying for the social security related court fee exemptions.
- Introducing a new exemption for those in receipt of emergency welfare funds
- Introducing new exemptions for those applying for civil protective orders related to domestic abuse
- Raising the value of claim at which the lowest level of court fee applies.

The Scottish Government intends a full review of court fees this year. This is scheduled for later in 2020 although there is a need for a fuller reflection of the implications of the Covid-19 emergency upon volumes of business and SCTS' income.

Policy

Whilst the Scottish Government believes that the costs of the civil courts should be borne by court users rather than by the taxpayer, we are committed to ensuring that there is protection for those who are unable to pay court fees. This protection is provided for by a generous, extensive and easy to access range of exemptions that are offered to those on lower incomes. The exemptions regime ensures that court users with limited means are not being denied access to justice.

In practice, in the majority of those who qualify for exemption do so because they qualify for legal aid.

Personal Independence Payment (PIP) or its predecessor, Disability Living Allowance (DLA) are not income related benefits and as such, are not by themselves, an indicator of low income. To achieve the policy intent the exemptions were crafted to ensure those on a definable low income were protected.

Currently, those persons in receipt of civil legal aid, passported benefits and Working Tax Credit (including child tax credit, or the disability element, or the severe disability element) with gross annual income of £18000 or less are exempt from paying court fees. This annual income level was raised from the 2016 level to match the Scottish Living Wage.

In considering the impact of court fees on specific groups, the Scottish Government considers that affordability would be the main issue. If some groups identified by race, religion or belief, disability, age, caring responsibilities, gender or sexual orientation typically earn less than average, the Scottish Government considers that assistance from legal aid and the available exemptions ensure that these groups do not suffer particular disadvantage and so the Scottish Government considers that they would not be discriminated against as a result of the current court fee structure.

For persons who are not eligible for exemption from fees, if they are the successful party in civil litigation they will be entitled to have court fees and other outlays reimbursed to them by the losing party. In some cases, pursuers (claimants) may not in practice have to pay court fees because a law firm or claims management supporting them, or a trade union backing them, may be in a position to pay the fees.

Further, the Scottish Government in the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 provides that a pursuer using a "success fee agreement" (broadly, a no-win-no-fee agreement) should not be liable to make any payment for court fees or other outlays and that the cost of these should be borne by the provider.

The Act also provides for a form of class action to be known as group procedure which would mean that in the case of multi-party litigation, instead of multiple claims

each bearing court fees there would be a single action. This provision will commence on the 31 July 2020

The policy contributes to the Scottish Government's Wealthier and Fairer and Safer and Stronger objectives, through the following national outcomes.

- Our public services are high quality, continually improving, efficient and responsive to local people's needs;
- We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others; and
- We live our lives safe from crime, disorder and danger.

I hope this reply is helpful in outlining the Scottish Government's position.