

PE1784/E

Petitioner submission of 24 July 2020

I am Gordon Edwards, the petitioner for this petition regarding a review of Sheriff Court fees order 2018 and I consent to this submission being published on the petition committee website.

In preparing this submission, I have been given the opportunity to review the submissions presented by the Scottish Government, Faculty of Advocates, Equality and Human Rights Commission and the Scottish Courts and Tribunals Service. I would like to take this opportunity to thank them for their time in preparing these submissions and I would also like to take the time to thank the public petitions committee in taking the time to consider this petition.

I agree with the observations of the EHRC in relation to the statistics for the potential for the lack of an exemption system to affect disabled people. I also note that the commission stated in their submission that legal aid is available in some circumstances and there are other forms of exemption. This is partially true however I have represented myself as a party-litigant on many occasions through the simple procedure (a streamlined court procedure designed to make the courts accessible to party-litigants) and through the summary procedure too. I have approached multiple firms on issues to do with cases that have required litigation such as enforcement of subject access requests, judicial review claims, and I have approached Drummond Miller LLP, Balfour + Manson LLP and Legal Spark solicitors and I have not found a firm that has been able to take on cases that I have actually won as a party-litigant having found the confidence to represent myself in court.

This is a substantial shortcoming in the justice system as it supports the fact that court fees have been a barrier previously to claimants who have cases that have merit but cannot access legal aid due to law firms refusing to represent them. I should also note that the simple procedure still has fees that are unpayable by some claimants, such as those on low incomes and legal aid is not available for simple procedure cases where the cost is under £1000.00.

There are cases involving debt litigation where citizen's advice bureaus and local welfare rights services can represent claimants or defend them on cases if it involves housing law (arrears enforcement proceedings) however if it is a case concerning data protection law where an organisation has infringed the rights of an individual by unlawfully retaining data/sharing data unlawfully without consent then most data protection claims under £1000.00 will not be able to be eligible for representation from a legal aid solicitor firm. This is due to the fact that the judgement of [Halliday V Creation Consumer Finance Limited \[2013\] EWCA 333 CA](#) sets the limit for compensation in cases for £750.00 or below where no psychiatric condition has been diagnosed but distress has been caused by unlawful disclosure of information. Under these circumstances, claimants would need to pursue a claim under simple procedure as it is a "small value claim" and this means a court fee may be required if a claimant is not in receipt of universal credit or ESA or other benefits. I am a student social worker and I am on personal independence payment for myself and that means I am ineligible for other benefits due to being a student and PIP is a non means-tested benefit and this means that I have to pay for a court fee whereas in

England, I would automatically qualify for a fee exemption due to the fact I am on a low income regardless of the benefits I am claiming.

I was involved in a case in 2019 as a party-litigant against the Secretary of State for Transport as the Driving and Vehicle Licensing Agency (DVLA) awarded me a one-year provisional driving licence with a review in six months of receiving this licence. I challenged this decision through the summary application procedure in the Sheriff Court at Livingston and I approached Drummond Miller LLP, Balfour + Manson LLP, Allcourt solicitors LTD and none of these firms took my case on because I wasn't eligible for legal aid. I wanted to secure legal aid representation to avoid paying £129.00 for a court hearing and potentially having to pay further fees for fixing proof hearings and then attending the proof hearing. Had I not paid the £129.00 fee which I had to take out of my student bursary, an injustice would have occurred as the sheriff awarded me a three-year licence with consent from the solicitors representing the secretary of state for transport. This is a prime example of how important it is for claimants to have access to the courts and tribunals service and to not be put through hardship by pursuing injustices through our courts. There are few law firms now taking on civil litigation cases on a legal aid basis which are cases that I have ended up winning in court as party-litigant due to my own knowledge of the law and it is vitally important that there is a fee exemption system so claimants can pursue injustices through the courts and uphold their right to access a remedy pursuant to Article 6 of the European Convention of Human Rights.

I have reviewed the response from the faculty of advocates and I note they have said that I am silent on the issue of accessibility to legal aid and I have commented on this during this submission. The faculty of advocates also stated under ***“questions raised by the petition”*** on page 5 that there are alternative avenues open to me which depend on my situation, I have explored this matter a few months ago on a separate matter for which I was a party-litigant and the sheriff clerk depute confirmed there was no protocol in place for them to grant a fee exemption unless I was in receipt of one of the qualifying benefits. I had to use money out of my student bursary in order to pay for this fee which was £129.00 and then there was the costs of fixing proof but luckily the proof hearing didn't proceed as a settlement was reached in my favour.

I agree with the faculty of advocates submissions that the fee exemption system in England & Wales is more generous for party-litigants however Scotland has provision of legal aid however as explained, this is not an absolute right and I have found it extremely difficult to obtain legal aid on litigation matters but have found it easier to obtain it on clinical negligence matters which are heard before the personal injury court. This is despite the fact that I have gone on to win successful damages awards in simple procedure cases where I have represented myself despite the law firm refusing to take on my case. I welcome the faculty of advocates submission that the Scottish government should review the fees order to include the matters raised within this petition.

I agree with the Scottish courts and tribunals service submissions that the Scottish government is responsible for administering and setting the fees order and I also welcome their submission that the Scottish government should review the fees order to include the matters raised within this petition.

I agree with the Scottish Government that personal independence payment is not a means-tested benefit and is therefore not indicative of a low income however there is no low-income test in Scotland for a fee exemption application.

Claimants/Petitioners/Applicants/Appellants must be in receipt of a qualifying benefit or legal aid to be able to claim a fee exemption, the courts do not have jurisdiction to be able to award fee exemption on an exceptional ground, such as those on a low income and I would recommend the committee considers petitioning the Scottish government for a review of the sheriff court fees to consider including a low income test where someone's income/savings is below a certain threshold then no contribution to court fees is required. This of course does not prevent an opposing party from being able to recover their fees if the other party loses as it is an expectation unless the fees are capped that the losing party pays the legal fees of the other party's legal team or pecuniary costs caused in pursuing the case if a party-litigant.

The Scottish government stated in their submission that those involved in civil litigation would be entitled to recover their fees from the losing party however as I have stated, this is not the case if the case is involved in the simple procedure process as fees are capped which means that they cannot fully recover the money that a party-litigant has invested into a case and therefore this argument cannot be sustained. I therefore do not support the submissions presented by the Scottish government as it over-relies on the availability of legal aid which I have stated is not absolute and I have on many occasions approached legal aid firms to represent me on cases where I have been on a low income to avoid paying a court fee from my own limited income of a student bursary and my personal independence payment award which is meant to be spent on improving my quality of life for my disability. I have spent the money and won nearly all of the cases I have represented myself on however there has been cases where a damages award is not appropriate and a declaration is and these are the circumstances where I would have benefitted from fee exemption.

I would like to take this opportunity to conclude my submissions and thank the stakeholders for their detailed and comprehensive responses and I would also like to take this opportunity to thank the committee once again for considering my petition and invite them to take the opportunity to ask me to attend a committee meeting to talk about my experiences in being a party-litigant as this is something I would be most keen on doing as I am somebody who believes in changing social policy for the better and there is nothing more precious in life than having the right to have a remedy where an injustice has occurred as everybody has human rights irrespective of race, religion, disability or sexuality.