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Building a Brighter Future
for Injured People

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By email only: CourtFeeConsultation2024@gov.scot

Dear Sir/ Madam,

Scottish court fees 2024 to 2025: consultation

APIL welcomes the opportunity to provide comments to the Scottish Government regarding proposals to revise court fees in Scotland.

We do not object to the 10% increase proposed as a one-off uplift in court fees to reflect inflationary fluctuations. We understand that the unforeseen rise in inflation in 2022 led to budget constraints. However, these inflationary pressures must be acknowledged across the board. We believe the Scottish Government should review and increase solicitor and judicial fees. It is important to note that APIL only supports this 10% increase as a one-time adjustment. The Consumer Price Index (CPI) was 3.2% as of March 2024, and it is anticipated that inflation will eventually return to around 2% by the end of this fee order.

We emphasise that court fees must not be increased above inflation and there should not be over-recovery. We also maintain that the level of service within the court system should be reflective of the fees paid.

APIL disagrees with the suggestion in paragraph 14 of the consultation that court users should meet the costs of using the court system. APIL maintains that the fee policy of 'full cost recovery' should not be the primary objective when setting court fees. This is a flawed approach – the court system is a public service from which the whole of society can benefit and should, primarily, be funded through taxation. For example, most people go to work safely, knowing that if they are negligently injured in the course of their employment, they are protected by both the law and the impartiality of the court system that enforces it. A person does not choose to be injured through another's negligence. Therefore, the court service, which assists them in obtaining redress, should be primarily funded by taxpayers, with users making a contribution towards the service they receive. The entire society benefits from the functions of the court, not just the direct users. For instance, just as schools are not paid for by pupils, and hospitals are not maintained by the sick, the civil court should not rely on court users as their main source of revenue. Justice, like education or healthcare, cannot be limited to those who can afford it.

We also have concerns about the proposal to implement an additional 10% targeted increase on some Sheriff Court fees. While the proposed increases in all fees are meant to

address budget constraints and the rise in running costs, we do not see the rationale for a further targeted increase in some fees. Continuous increases in fees will be a potential barrier to access to justice. The costs of litigation are a primary consideration for pursuers when deciding whether to seek justice through the courts, and court fees should not be so high as to prohibit this decision. Increased court fees may also lead to rises in insurance premiums, including car insurance and after-the-event insurance (ATE), because of the higher potential expenses involved in losing a case. Higher court fees may pose a significant barrier to access to justice, especially if solicitors' fees remain static, since most court fees are paid upfront by the pursuer's solicitor, who may become increasingly reluctant to take on cases due to the potential financial risk involved.

As mentioned above, the financial constraints caused by the COVID-19 pandemic and the invasion of Ukraine in 2022, must be recognised across the board. Legal professionals and firms are also facing business pressures, with lower profit margins and increased employee wages. If court fees are to keep pace with inflation, so should the expenses paid to solicitors.

Furthermore, APIL believes that the table of judicial fees, as currently structured, often fails to account for the full scope of work involved in cases, resulting in certain processes remaining unremunerated. The table should be updated to better reflect modern practices, as there are still gaps where the existing fee structure does not cover all the necessary steps taken in a case.

We hope our comments prove useful.

Yours sincerely,

A handwritten signature in cursive script that reads 'Ana Ramos'.

Ana Ramos

Legal Affairs Assistant

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