

REPORT

To: CORPORATE SERVICES COMMITTEE		Subject: Scottish Court Service - Consultation Paper on Review of Fees charged by the Court of Session, Sheriff Courts, Office of the Public Guardian, Accountant of Court and High Court
From: HEAD OF LEGAL SERVICES		
Date: 15 April 2008	Ref: AL LE GEN 0009/CH	

1. Purpose of Report

- 1.1. The purpose of this Report is to seek Committee homologation of the response made to the consultation on proposed increases to fees charged in respect of Civil Court cases and by the Office of the Public Guardian (OPG).
- 1.2. The detail of the Consultation Paper is available at
<http://www.scotcourts.gov.uk/CourtFees/b54943%20reviewR.pdf>.

A hard copy has been placed in the Members' Library.

2. Summary of Consultation Paper

- 2.1. The Scottish Court Service (SCS) is proposing to increase Civil Court and Public Guardian fees with the aim of reducing the level of public subsidy for these services and to ensure that the subsidy is distributed more equally between the Court of Session, Sheriff Courts and Office of the Public Guardian.
- 2.2. At present the taxpayer is subsidising the running of the Civil Courts and OPG by approximately £18 million per year. Capital charges and the cost of fee exemptions for litigants in receipt of Legal Aid or certain benefits amount to around £6.3 million of the overall subsidy. The remaining £13 million of subsidy is distributed unevenly across the services provided, with the Court of Session having the highest level of subsidy at 66%. This is largely due to previous decisions not to include judicial costs within set fees. It is the view of the SCS that the current level of subsidy afforded to the Court of Session is unfair and it is proposed to reduce the variation in the levels of subsidy across the service to 22% by 2010/11. Thereafter it is intended to consult on changes that are required to remove the subsidy altogether. The SCS is therefore proposing a one-off fee increase in 2008 to meet that target and then to hold fees steady until 2011.
- 2.3. The Scottish Government believes that fees should be set at a level that covers the full cost of services provided ('full cost recovery'). At present, Scotland has the lowest level of cost recovery in the UK at 53%. England and Wales achieved a 77% cost recovery in 2006/7 although it is expected that a new fees structure introduced there in October 2007 will lead to higher rate of cost recovery in future years. The cost recovery rate for Northern Ireland in respect of the same period was 60% and there has been a recent consultation on further fee increases.

- 2.4. It is recognised that the taxpayer will continue to make a contribution to the costs of running the Civil Court Service through the process of fee exemptions which affords litigants who have been granted assistance through Legal Aid exemption from fees. The SCS is not proposing any substantive changes to the exemptions that are currently available although it is intended that the Fees Order will be amended later this year to allow for the introduction of the new Employment and Support Allowance, which will replace Income Benefit and Income Support for claimants with a disability or health condition.
- 2.5. The consultation is taking place against the background of a comprehensive review of the civil courts headed by the Lord Justice Clerk, Lord Gill. That review, which is currently out to public consultation, is due to report to Scottish Ministers in 2009 and will consider whether to introduce substantial changes to the structure and jurisdiction of the Civil Courts. The SCS envisage that further increases to civil court fees will be required in light of Lord Gill's review.
- 2.6. The most recent Fees Order was introduced in July 2007 which was an increase in Court of Session and Sheriff Court fees of 13%, broadly in line with inflation since the last fees increase in 2002. It is proposed that the most substantial increases will apply to Court of Session fees and the SCS intend to reduce the current 66% subsidy to 30% by 2010/11. As a result, most fees charged by the Court of Session would be doubled and the hourly charge for outer and inner house hearings will be increased by 150% and 170% respectively. This would take the hourly charge for outer house hearings from £72 to £180 and the charge for inner house hearings from £148 to £400.
- 2.7. It is proposed to increase Sheriff Court fees by an average of 35%. The current fee in respect of Summons for Summary Cause actions and Initial Writs in Ordinary Cause actions would be increased by 48% and 40% respectively.
- 2.8. In order to reduce the current level of subsidy in terms of the OPG and Accountant of Court from an expected 21% in 2007/8 to 18% by 2010/11, it is proposed that an average 15% increase would apply to all such fees. The most recent Fees Order in respect of these services was made in 2007 and some fees were increased above the level of inflation at that time.

3. Summary of the Council's Response to the Consultation

- 3.1. The most significant fee increases would be applied to Court of Session actions. The Council notes that that it does seem inequitable for taxpayers to fund the litigation costs of well resourced enterprises. On the other hand, it is acknowledged that the principle of full cost recovery does not recognise the collective benefit to society in the administration of civil justice and that a significant increase in civil court fees may stifle access to justice for financially disadvantaged members of society who do not meet the criteria for legal aid.
- 3.2. Furthermore, it seems unreasonable to impose further fee increases to public guardian fees when the level of subsidy afforded to this service is currently less than the 22% 'across the board' subsidy which the consultation seeks to achieve. It is worthy of note that the proposals involve an increase in the cost of registering, renewing or varying Guardianship or Intervention Orders from £60 to £70. It is understood that twenty one such applications were made by the Council during the 2006/7 financial year and therefore the cost implications of the proposed fee increases are likely to be minimal.

- 3.3. The Consultation Paper proposes a one-off fee increase in 2008 which would enable fees to be frozen at that level until 2011. Views are sought on whether incremental fee increases should be made in 2009 and 2010 to cover the effects of annual inflation. It is noted that a series of incremental fee increases would mitigate the financial impact upon the Council.
- 3.4. The Consultation Paper states that the current charge in respect of Summary Cause Summons had been set at a level which took into account the value of the claim that was being pursued. Due to the new jurisdictional limits relating to court actions which came into force in January 2008 it is the view of the SCS that the fee relating to a summons should be increased to better reflect the work effort associated with the increased value of that claim. The Council does not agree that a claim which is higher in value necessarily imposes a greater work effort to court staff.
- 3.5. The Council's response to the consultation paper is appended to this report. This has been submitted on the Council's behalf as the response was due by 6 May 2008.

4. **Recommendation**

- 4.1. That the Committee homologate the response made to the consultation on the proposed fee increases.


Head of Legal Services

Response to the Scottish Court Service Consultation Paper on Review of Fees charged by the Court of Session, Sheriff Courts, Office of the Public Guardian, Accountant of Court and High Court

Consultation Questions

Q1 Recognising the need to reduce subsidy in order to meet operational costs and invest in improvement, do you agree that we should have a one-off increase in 2008 to enable us to hold fees steady until 2011 or do you think there should be Fees Orders in 2009 and 2010 to cover the effects of annual inflation? Please give reasons for your view.

A1 The Council favours incremental fee increases as this would mitigate the financial impact.

Q2 Do you agree that it is inequitable for there to be such a high subsidy for the Court of Session? Do you agree with our proposals to even out this inequity by increasing fees to arrive at an overall 22% subsidy?

A2 It seems inequitable, from a taxpayer's point of view, to fund the litigation costs of well resourced enterprises. On the other hand, however, it could be argued that the principle of full cost recovery fails to recognise the collective benefit to society as a whole in having access to civil justice.

It is open to a pursuer to choose the forum in which their action will be heard. Given that in reparation actions the Council finds itself in the position of defender more often than pursuer, the choice between the Court of Session and Sheriff Court determining the action is not one which is open to it.

The Consultation Paper states that it is necessary to increase the cost of a summary cause summons to reflect the higher level of work associated with the increased limits of summary cause claims. The Council does not agree that this is necessarily the case. A claim which is of low monetary value could involve a novel point of law and involve greater resources than a relatively straightforward claim of a higher value.

Q3 Do you agree with our proposals for more modest increases in fees for the Office of the Public Guardian, averaging around 15%?

A3 Given that the OPG subsidy is currently 21% and the aim of the consultation is to reduce the subsidy across the board to 22%, it seems unreasonable to impose further fee increases on OPG services to cross- subsidise the cost of litigation.

Q4 Do you have any suggestions for ways to improve the fairness of the system of exemptions without introducing further bureaucracy? How can we ensure that the system of exemptions is well understood?

A4 The Council has no comment to make.