

EXTRACT: REVIEW OF EXPENSES AND FUNDING OF CIVIL LITIGATION IN SCOTLAND**Review of level of fees for litigation**

94. The Tables of Fees are made under statutory authority by LPAC. We asked in our Consultation Paper whether LPAC, as currently constituted, is an appropriate body to review the level of fees for litigation which may be recovered as expenses and, if not, what alternative body should carry out this function and what should be its composition.

95. More than half of the respondents considered that LPAC was an appropriate body to carry out this function. One respondent observed that it is a specialist body with considerable expertise in the particular field and which works reasonably well in keeping the Rules of the Court of Session and the sheriff court up to date and in constantly reviewing the charge out rates for party and party accounts.

96. One quarter of respondents, however, did not consider that LPAC was an appropriate body to review the level of fees for litigation which may be recovered as expenses. The majority of these respondents considered that LPAC's role should be taken over by the Scottish Civil Justice Council. In their opinion it was important for legal expenses reform to be dealt with in tandem with court reform. This was best dealt with by one body, the Scottish Civil Justice Council, which was to encompass a wide range of views and interests. In addition, it was thought that one body responsible for the creation of rules, policy and the review of fees would ensure consistency.

97. One respondent, however, was of the view that the Scottish Civil Justice Council as a whole would not be an appropriate body, but it might be appropriate for it to form a

subcommittee to deal with this issue. Another respondent suggested that LPAC should be placed under the control of the Scottish Civil Justice Council. One respondent did not agree that the responsibility for the review of fees should be passed to the proposed Scottish Civil Justice Council as it is a very specialised area, better dealt with by those sitting on LPAC.

98. Other respondents suggested the creation of: a new body under the guidance of the Auditor of Court; a separate working party; or an independent office funded by a stakeholders' levy.

99. LPAC is chaired by a Judge of the Court of Session, currently Lord Burns, and its membership comprises the Auditor of the Court of Session, a representative nominated by the Faculty of Advocates and three solicitors from different geographical locations with experience of Court of Session and sheriff court practice, nominated by the Law Society of Scotland. Concern was expressed to us regarding the narrowness of the membership and, in particular, the fact that there is no consumer representation. We therefore asked in the Consultation Paper what should be the composition of the body charged with reviewing the level of fees for litigation which may be recovered as expenses.

100. Respondents suggested that membership should include an independent law accountant, a sheriff court auditor, a sheriff, an economist and a representative from the Scottish Legal Aid Board. In particular, several respondents considered that in order for there to be a more balanced body there should be a fair representation of the actual users of the court system to include not only legal professionals but representatives from the insurance industry, trade unions and consumer groups. Some respondents considered that there should be representation from commercial consumers of legal services, such as banks

and insurance companies, as they require to meet findings of expenses on a regular basis.

101. As far as consumer representation is concerned, some respondents were against this on the basis that consumer representation is unlikely to be of particular assistance in the relatively technical function of assessing appropriate recoverability of expenses. Another respondent pointed out that although the desire to have a stakeholder's presence on LPAC, or any alternative to LPAC, is understandable, if the stakeholder presence looks to reduce the expenses recoverable, this will be responsible for creating a greater gap between the cost of litigation and the recoverable expenses. This, in turn, will increase the disincentive to litigate.

102. I agree that it is important for one body to be responsible for the creation of court rules and court reform policy, including the review of expenses. I consider that the Scottish Civil Justice Council is the appropriate body to carry out that role. **I recommend that the Scottish Civil Justice Council form a sub-committee to deal with the level of fees for litigation which may be recovered as expenses. Membership should include the users of the system (such as the existing members of the Lord President's Advisory Committee on Solicitors' Fees), the funders of the system (by which I have in mind a representative of the insurance industry and also a representative of the Scottish Legal Aid Board), a sheriff court auditor, a sheriff, a law accountant, a lay person who may well be an economist and someone to represent the interests of the consumer.**