



Scottish
Civil Justice
Council

Consultation on the Review of Fees in the Scottish Civil Courts

Fees of solicitors

September 2017

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RESPONDING TO THIS CONSULTATION

The Scottish Civil Justice Council (“the Council”) invites written responses to this consultation by **17 November 2017**.

Please send your response with the completed Respondent Information Form (see "How we will treat your response" below) to:

scjc@scotcourts.gov.uk

or

Andrea Campbell
Scottish Civil Justice Council Secretariat
Parliament House
Edinburgh
EH1 1RQ

If you have any queries, please contact Andrea Campbell on 0131 240 6778.

Please use the consultation questionnaire (Annex B) to provide comments or clearly indicate in your response which questions or parts of the consultation paper you are commenting on. This will ensure it is clear which questions your comments relate to.

This consultation paper, and all other Council consultation documents, can be found on the consultation pages of the Council’s website at:

<http://www.scottishciviljusticecouncil.gov.uk/consultations>

How we will treat your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public.

Please complete and return the Respondent Information Form (Annex A) with your response. This will ensure that we treat your response appropriately.

If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

However, all respondents should be aware that the Council is subject to the provisions of the Freedom of Information (Scotland) Act 2002. The Council would require to consider any request for information made under the Act about responses to this consultation exercise.

Where respondents have given permission for their response to be made public, responses will be published on the Council’s website.

What happens next?

Following the closing date, all responses will be analysed and considered along with any other available evidence. This will help the Council to reach a view about solicitor fees in the Scottish civil courts.

The Council anticipates it will publish a consultation report on its website in in due course.

Feedback

If you have any comments about how this consultation exercise has been conducted, please send them to:

Andrea Campbell
Scottish Civil Justice Council Secretariat
Parliament House
Edinburgh
EH1 1RQ

0131 240 6778

E-mail: scjc@scotcourts.gov.uk

SECTION 1 INTRODUCTION AND PROCESS OF REVIEWING FEES

Introduction

1. The functions of the Scottish Civil Justice Council (“the Council”) are set out in the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013. An amendment to that Act took effect on 1 April 2015 which had the effect of extending the functions of the Council to include the preparation and submission of ‘draft fees rules’. These are defined as rules made in exercise of the power to regulate fees conferred on the Court of Session by sections 105 and 106 of the Courts Reform (Scotland) Act 2014 (Annex C). At present the fees in question are the fees of solicitors, messengers-at-arms, sheriff officers, witnesses and shorthand writers.
2. The Council has delegated the exercise of this function to its Costs and Funding Committee (“the Committee”). In considering the approach to reviewing fees, the Committee undertook an information gathering exercise and a working group was set up to consider the matter further.
3. The Committee has now agreed a review programme to ensure that a review of fees is undertaken on a periodic basis.

Process of reviewing fees

4. The Committee has agreed that the process of reviewing fees should:
 - be open and transparent;
 - involve stakeholder engagement; and
 - proceed where possible on the basis of evidence or data.
5. Historically, the various categories of regulated fees have been reviewed in different ways. For example, proposals for changes to the levels of the prescribed fees for solicitors have previously been considered by the Lord President’s Advisory Committee on Solicitors Fees (LPAC), a non-statutory committee first established in the 1980s. The practice had been for the Law Society of Scotland to make periodic representations about fee levels to LPAC. This can be contrasted with the approach for fees for shorthand writers. There has not previously been a body with responsibility for making recommendations regarding the fees of shorthand writers and there is also no professional body to represent their interests.
6. The Committee has agreed that one method of review should be adopted for all fees.

7. In order to make the fee review process transparent and open, the Committee has agreed that stakeholders' interests should be considered when reviewing each table of fees. Rather than target specific stakeholders, open consultations will take place, published on the Council's website, to allow all interested parties to make submissions to the Committee. Those responses will then be collated, analysed and considered by the Committee as part of the review process.

8. The Committee welcomes the inclusion of any documents that respondents may wish to provide in support of their response. All information provided will be treated confidentially and respondents will be asked to confirm whether they are content that their response is published. Respondents will be asked separately to confirm whether they are content for supporting evidence to be published along with their response.

SECTION 2 CONSULTATION

9. In accordance with the principles identified for the review methodology, the Committee is carrying out this consultation exercise to seek views and evidence from stakeholders. **This consultation focuses solely on fees of solicitors.** A separate consultation exercise will take place in respect of the other categories of fees regulated by the Court of Session.
10. The fees in question are those prescribed in the Tables that are used to determine the solicitors' fees that can be recovered under awards of expenses in the Court of Session, Sheriff Appeal Court and sheriff court. The consultation is not concerned with Legal Aid fees, or with the fee arrangements that operate between solicitors and their clients.
11. The Committee will be considering the overall reasonableness of the level of fees prescribed in each Table and whether there should be any general increase or reduction in the level of fees prescribed. In relation to the individual entries in each Table, the Committee will also consider representations regarding the inclusion of new fees, the omission of existing fees, the modification of the narrative accompanying fees, and modification of individual fee levels.
12. When considering what evidence to submit in support of any proposed change, consultees should bear in mind that the Committee will have regard to-
 - the impact of affordability on access to justice;
 - the proportionality of the judicial expenses incurred by paying parties;
 - any changes in the agent and client costs being incurred by litigants;
 - any changes in the costs solicitors incur in representing litigants;
 - whether inclusive fees reflect the time typically engaged in carrying out the associated work; and
 - the extent to which solicitor and client costs are recovered under awards of expenses in different categories of cases.

SECTION 3 CONSULTATION QUESTIONS

1. Are amendments required to the Tables of Fees to ensure that fees recoverable are proportionate?

If yes, please detail the amendments proposed and provide any evidence you may have to support your proposal.

2. Are amendments required to the Tables of Fees to ensure that they better reflect the work being undertaken?

If yes, please detail the amendments proposed and provide any evidence you may have to support your proposal.

3. Are amendments required to the Tables of Fees to reflect changes in practice and/or procedure?

If yes, please detail the amendments proposed.

4. Is there a requirement for a general modification of the level of fees provided for in the Tables of Fees?

If yes, please specify the modification proposed and the circumstances justifying the modification and provide any evidence you may have to support your proposal.

5. Is it necessary to consider any additional fees that are not currently included in the Tables of Fees?

If yes, please detail the additions proposed and provide any evidence you may have to support your proposal.

SECTION 3 NEXT STEPS

1. At the end of the consultation period, all non-confidential responses will be published on the Council's website.
2. Responses will be analysed and the Council will consider fees in the Scottish civil courts in light of the responses received. It is anticipated that this work can be done early in 2018.
3. The Council will publish a report on this consultation along with the approved rules in due course.