

Governance

**Chief Governance Officer, Solicitor to the Council
and Council Monitoring Officer: David Mitchell**



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Mhairi Williams
Scottish Civil Justice Council
Parliament House
EDINBURGH
EH1 1RQ

Email: SCJC@Scotcourts.gov.uk

Dear Madam,

RESPONSE TO CONSULTATION ON DRAFT COURT RULES IN RELATION TO PROTECTIVE EXPENSES ORDER

On behalf of East Ayrshire Council please find the Council's response to the consultation on the draft rules in relation to protected expenses orders.

First, please find attached Annex B Respondent Information Form.

Second, turning to the question set out in Annex C Consultation Questionnaire and following their numbering the Council would respond as follows.

1. Do you agree that the rules should not define 'prohibitively expensive'?

No. While East Ayrshire Council notes that it is a principle of statutory interpretation that, where legislation is enacted to give effect to community law, terms used in legislation must be construed in accordance with the law, the Council nonetheless believes that it would be preferable to have set out in the Rules a clear framework of the relevant matters which should be considered, when such orders are sought. We also consider that the Rules should be worded in such a way that the list of matters is set out within a non-exhaustive list.

It is considered that such a framework, would provide helpful clarity to decisions makers and applicants.

2. Do you agree that the rules should not distinguish the question of prospects of success from the question of whether or not the proceedings are prohibitively expensive?

Yes. The Council agrees that the Rules should not distinguish between these matters, however for the reasons set out in the answer to question 1, we believe that the question of prospects of success should be set out as one of the relevant matters within the suggested framework we refer to.

3. Do you have any comments on draft Rule 58A.6 for the determination of an application?

No. The Council would however note, that a simple and accelerated procedure to deal with these applications, is extremely important in seeking to ensure that third parties have access to justice, and further that such access to justice is available in a timeous fashion, thereby ensuring that the legal challenge arising from the principal matter can be brought without delay.

4. Do you have any comments on draft Rule 58A.9 for the expenses of the application?

No.

5. Do you have any comments on draft Rule 58A.8 or expenses protection in reclaiming motions?

No.

6. Do you have any comments on the draft amendment to Rule 38.16?

No.

7. Do you have any other comments on the proposals contained in this paper?

No.

If there are any questions arising from East Ayrshire Council's responses to the consultation then please do not hesitate to contact the writer on the above number.

Yours faithfully,


Chief Governance Officer

