

Civil Court Fees

Introduction

1. On 3 September 2024, as part of its work programme discussion, the Committee agreed to hold an evidence session exploring the proposal by the Scottish Government to increase civil court fees.

Background

Scottish Government consultation

2. The Scottish Government recently [consulted on increases to court fees](#). The proposal is to increase all court fees by 10%, with some targeted increases of an additional 10%.
3. The Scottish Government states that additional increases are needed because of inflationary pressures on the Scottish Courts and Tribunals Service, coupled with increased expenditure relating to the COVID pandemic. The consultation suggests increases will be put in place for 1 November 2024.
4. The previous practice of the Scottish Government has been to consult – and then introduce – court fee increases every three years. [Following consultation in 2021](#), a 2% increase was set each year from 2022 to 2025.
5. Increases have been in the region of 2% per year for the past 10 years. However, there were significant additional increases in November 2016. The justification at the time was the need to recover more of the money spent on delivering court services because of the budgetary constraints put in place by the UK Government.

Exceptions from court fees

6. People on low incomes are exempt from paying civil court fees, as are people on low and moderate incomes who qualify for legal aid. The SCTS's website [explains these exemptions in more detail](#).
7. Broadly speaking exemptions are available for people who are claiming a range of means tested benefits, people who are receiving civil legal aid, certain types of court action for example those relating to a domestic abuse situation and additional types of court action in the Court of Session including challenging behaviour on the grounds that it breaches environmental law.
8. In England and Wales, [entitlement to an exemption from court fees](#) is based on income (although thresholds are lower than they are for Civil Legal Aid). It is also possible to [apply for fee remission on grounds of exceptional hardship](#) where the

applicant doesn't qualify on any other grounds. This is sometimes referred to as the Lord Chancellor's exceptional power and is considered a key protection for access to justice.

Paying fees at the end of the case

9. The current model of paying civil court fees is sometimes described as a "pay as you go" model. The fees have to be paid in advance of the procedure required. This means as a case advances, more fees become payable.
10. Thompsons Solicitors are among those calling for a change to this system. They see upfront fees as a financial barrier to access to justice. Instead, they suggest a model where people pay court fees at the end of court action.
11. Where someone has won their claim, they will usually be entitled to have their legal expenses paid by the losing party. This will include any court fees. Thus, many people will be in a better position to pay fees at this stage.
12. However, the current system, which requires payment before a procedure can be accessed, is very effective at ensuring timely payment.

Potential impact of increased court fees

13. A number of respondents to the Scottish Government consultation highlighted concerns about the impact on particular equality groups. These include disabled people, black and minority ethnic groups and women
14. There have been calls for more research into the impact of court fees on access to justice. Particular issues include people who have low incomes but do not qualify for any of the current exemptions and people who may be more likely to need to take legal action as a result of a protected characteristic.

Evidence session

15. At today's meeting, the Committee will hear evidence from:
 - Hyo Eun Shin, Senior Policy Officer, Citizens Advice Scotland
 - Aaliya Seyal, Chief Executive, Legal Services Agency Ltd
 - Rachel Walker, Partner and Head of Mental Health Department, Legal Services Agency Ltd
 - Julie Hamilton, Civil Justice Committee Member, Law Society of Scotland, and
 - Patrick McGuire, Equity Partner, Thompsons Solicitors.

Format

16. The evidence session will be held in person and broadcast on [SPTV](#).

Topics

17. This session will provide an opportunity for the Committee to explore topics such as:

- The potential impact of a 10 to 20% fee increase on service users and concerns in relation to access to justice.
- Views on proposals to target particular fees for a 20% increase.
- Views on whether current fee exemptions work well and if not, what improvements should be made.
- Views on whether there should be a way to protect access to justice in the same way as England and Wales.
- Views on the current exemption from court fees for environmental cases in the Court of Session and whether there should be more exemptions.
- Whether there is a better way of paying fees rather than the current system of paying in advance.
- Whether particular groups or communities are likely to be more negatively impacted than others.

Next steps

18. The Committee will consider the evidence it has heard at today's session in private and agree on next steps.

Clerks to the Committee
September 2024