

The Scottish Government's Scottish Court Fees 2024-25 Consultation

Citizens Advice Scotland Response – June 2024

Citizens Advice Scotland (CAS), our 59 member citizens advice bureaux (CAB) and the Extra Help Unit form Scotland's largest independent advice network. The Citizens Advice network in Scotland is an essential community service that empowers people through our local bureaux and national services by providing free, confidential, and independent advice. We use people's real-life experiences to influence policy and drive positive change. We are on the side of people in Scotland who need help, and we change lives for the better.

Background

The Scottish CAB Service informs people of their rights and responsibilities and empowers them to navigate often complex systems to resolve their issues, prevent detriment, and pursue recourse when things go wrong.

- In 2022/23, our public-facing online information and advice site '[Advice for Scotland](#)', which people can freely consult for self-help, registered more than 4.3m unique page views (UPVs) across all advice areas, with the 'Law and Courts' pages among the most viewed.
- In the same period, the Citizens Advice network in Scotland supported over 187,000 clients on a wide range of civil, administrative and criminal justice issues, providing holistic, person-centred advice on issues such as welfare benefits, debt, housing, employment, family and relationships, consumer issues, and legal proceedings.
- In an average month, bureaux provide more than 3,200 pieces of advice on legal proceedings across the country. In 2022/23, legal proceedings advice was most frequently sought in relation to benefits tribunals (19%), simple procedure, and solicitors/advocates (both 16% each). The next most common advice issue was summary cause proceedings (8%), while advice on legal aid amounted to 7% and criminal justice advice was at 5%.
- The network supported 1,829 clients at courts and tribunals, with 1,600 cases (87%) won or upheld.
- The economic value of advice provided by CAB on legal proceedings is an estimated £11.58m.

Based on client experiences and data, as well as expertise from across the Citizens Advice network in Scotland, CAS's policy work on Access to Justice aims to ensure that people's rights are protected and realised, that people in Scotland have equal access to the justice system and legal services regardless of who they are, where they live, their digital skill level, and the specialty of their legal issue; can navigate and engage appropriately in legal proceedings; and that processes are transparent and fair.

CAS welcomes this opportunity to respond this consultation on increases in Scottish court fees and will address questions to which we can provide an informed response.

Our response

Q1. Do you agree that court fees should rise by 10% commencing 1 November 2024?

CAS does not agree with the suggested minimum 10% increase across all court fees in Scotland from 1 November 2024. We have serious concerns about the negative impact of the proposed uplift in court fees on the realisation of the public's right of access to justice, especially for those on lower incomes, those who are vulnerable and/or share a protected characteristic.

The consultation paper sets out Scottish Government's concerns around sufficient funding for Scottish courts amid a "significant, largely unforeseen rise in inflation, budget constraints and the significantly increased costs of operating the courts system", and its belief "that those who make use of the services of the courts should meet, or contribute towards, the associated cost to the public purse where they can afford" to do so.

While it is legitimate for the government to impose fees for bringing court proceedings, **no-one should be excluded from accessing justice on grounds of cost.** Enabling everyone to protect and enforce their rights by seeking resolution before independent courts where necessary constitutes an essential component of the rule of law, which benefits society as whole. The constitutional right of access to the courts for all can therefore not simply be reduced to the potential benefit for the individual court user who should pay to use it.

Therefore, any (uprating of) court fees should be assessed against the real risk that people could effectively be prevented from having access to justice. Whether a minimum 10% uplift across all court fees in Scotland for 2024-25 is realistically affordable for all, must be considered in the context of significant inflationary pressures and the current cost of living crisis which continues to negatively affect the great majority of people in Scotland, even though unevenly.

- Recent public polling by YouGov,¹ on behalf of Citizens Advice Scotland, found that almost 1 in 4 people in Scotland regularly run out of money before 'pay day' (incl. benefit/pension payments etc.) and need to use credit, an overdraft facility or borrow money to get by,² with a further 20% saying this happened sometimes. Similarly, 26% of Scottish consumers said they don't have access to £500 to cover an unexpected, but necessary, expense, and 24% don't have enough money to repair or replace broken electrical goods. Asked whether they have enough money to save regularly (at least £20) for rainy days, 29% of respondents said they would like to but can't afford it.
- Our network data also shows the sustained impact of the cost of living crisis which for many has eradicated any financial resilience they may have previously had and is causing increased spread and levels of hardship. For example, in Q1-3 2023/24, views of our online advice pages for help with bills were up 156% compared to the previous year; and views of our online advice pages for people struggling with living costs were up 146%, while views of pages on food banks and crisis help were up by 39%.
- This also manifests in demand for advice at citizens advice bureaux where, throughout 2023/24, single parent families, disabled people and those living in SIMD1 areas were more

¹ YouGov Plc. Total sample size was 1005 adults. Fieldwork was undertaken between 9-11 April 2024. The survey was carried out online. The figures have been weighted and are representative of all Scotland adults (aged 18+).

² This happened 'always' to 10% of respondents, and 'most of the time' to 14% of respondents.

likely to require crisis support than all clients. However, other demographic groups also sought cost of living related advice, particularly crisis and food insecurity advice at a higher rate than they sought advice generally. These groups included council tenants, those unable to work or experiencing unemployment, as well as single person, working-age households.

- At the same time, full-time employed people were disproportionately requiring advice on non-priority debt like credit cards. This suggests that even people in work who previously used to be relatively shielded from financial crises are struggling with everyday essential spending and relying on consumer debt to pay bills and buy essentials, likely leading to a legacy of debt that may last well beyond the current crisis.

Therefore, at a time when there are many people having to make difficult decisions about heating or eating, about keeping the lights on or using medical equipment necessary to manage chronic illness, paying their bills or their rising rents and mortgages, **many potential litigants would likely struggle to raise the current court fees, regardless of the proposed 10% increase to fees.** It is important to emphasise that **access to justice is not only at risk where access to the courts is completely impossible but also where fees could render it practically futile or irrational to bring an arguable claim or defend one's rights and seek justice before the courts.**

The consultation document is unclear about whether the suggested 10% uplift in court fees is to be calculated from the level of fees applicable in March 2024 or based on the fees applicable since 1 April 2024.³ In any case, with regard to some fees, at first, the 10% uprating to a particular court fee may appear numerically small, such as the fee for submitting a simple procedure claim for payment of money of £300 or less which would rise from £20 to £22, or from £112 to £123.20 for all other claims.

However, it should be noted that the fee structure requires payment of fees at various stages of proceedings. This means, the increases can add up quite significantly as proceedings progress, not least as some fees are suggested to increase by a further 10% (see Q2). The consultation document is also vague about whether this additional 10% rise for certain fees would be calculated from current fee levels (amounting to a 20% increase) or from a level of fees which would already have been raised by 10% (effectively a 21% increase).

For example, assuming that the additional 10% increase for a number of fees in Sheriff Court is based on current fee levels,

- the fee for lodging an initial writ at Sheriff Court in an ordinary action would rise from £141 currently to £169.20 (proposed 20% increase);
- after the defender lodges their defences (again upon their separate payment of a fee), the pursuer would then have to pay a fee for lodging of the record, currently costing £126 which would rise to £151.20 (again 20% uplift);
- cost of fixing proof would rise from £60 to £66,
- and each day of proof or hearing would cost £281.60 (instead of £256 currently).
- The cost of any further written motion would add £59.40 (currently £54), etc.

While proceedings and the costs incurred will vary from case to case, just by way of example using these selected fees, **court fees currently adding up to £637 would jump to £727.40 from**

³ Since the publication of the consultation on 18 March 2024 court fees have increased on 1 April 2024.

November 2024 onwards under the proposals, thus likely further contributing to existing barriers to accessing justice.

The real-terms fee increases would be even starker in court action in the Court of Session, such as for Judicial Review, the vital judicial route to remedy against unlawful decisions or actions by a public body. The cost implications of a Judicial Review, often amounting to more than £50,000⁴ already are a major barrier to access to justice for any potential petitioner, not least due to court fees which “can be a considerable figure to be factored into the overall costs, usually over a thousand pounds for a day’s hearing in the Outer House”.⁵ These would have to be paid alongside significant fees for legal advice and representation and the risk of having to pay the winning organisation’s legal expenses in relation to the case on top of their own – especially given the fact that some of these fees have to be raised within the short time limits for lodging a Judicial Review. The hearing fee alone is currently £225 per 30 minutes (during normal hours) before a bench of one or two judges; £565 for every 30 minutes (during normal hours) before 3 or more judges, payable by each party, rising to £678 out of hours – a 10% uplift would add up to significantly higher court fees, placing judicial review even more out of reach for most.

In addition, court fees are payable irrespective of success. When added to a liability to pay the other side’s expenses on a losing party, the suggested minimum 10% increase across all court fees would likely act as a further barrier to access to justice for many.

Fee exemptions

The consultation document reiterates the Scottish Government’s commitment “to continuing to ensure that access to justice is protected through a well-funded system of exemptions from the requirement to pay court fees and the provision of legal aid” (para 10).

We agree that the ability to seek exemption from paying court fees is one way of ensuring that everyone, including those on lower incomes, who are vulnerable and/or share a protected characteristic, can realise their right of access to justice. The current system enables the granting of exemptions to persons in receipt of certain enumerated state benefits as well as those receiving civil legal aid.

However, advisors in our network highlight that court fees which can be mitigated through an exemption scheme can cause additional paperwork, stress and worries for those seeking to pursue their claim(s) in often difficult circumstances and might act as a deterrent for some. Similarly, with regard to exemptions from court fees due to legal aid eligibility, in some circumstances, people need to contribute from their own income towards the costs of legal services they receive, with contributions increasing as income increases. As a result, people who, on the face of it, qualify for legal aid can be put off from applying for legal aid or pursuing their case altogether.⁶

Furthermore, advisors in citizens advice bureau across our network point to a growing justice gap where households are unable to afford a lawyer and court fees but are unable to qualify for legal aid or fee exemptions.⁷ The detriment experienced by clients is often particularly grave where they

⁴SPICe Briefing: [Judicial Review \(parliament.scot\)](https://www.parliament.scot/2022-06-27/judicial-review) (27.06.2022), p. 37.

⁵SPICe Briefing: [Judicial Review \(parliament.scot\)](https://www.parliament.scot/2022-06-27/judicial-review) (27.06.2022), p. 37.

⁶ See also SPICe Briefing: [Legal Aid - How it Works](https://www.parliament.scot/2021-08-19/legal-aid-how-it-works). (19.08.2021).

⁷ A separate but related issue are serious concerns about a lack of legal aid solicitors which makes access to much needed legal advice and representation very challenging for many clients of citizens advice bureaux, which we continue to highlight. For example, see <https://www.cas.org.uk/publications/access-justice-cas-supporting-evidence-equality-human-rights-and-civil-justice>.

find themselves in a situation where they need to defend themselves against a claim, as the following Citizens Alerts⁸ illustrate:

A West of Scotland CAB alerts us of concerns about clients' difficulties to pay the fee to apply to recall Decrees in Summary Proceedings⁹. These are clients who are being evicted because they have been unable to maintain their mortgages and are being asked to pay the fee to recall in urgent or emergency circumstances where they may not be able to manage the fee because of their financial difficulties while they're also not exempt from paying the fee. The rules around exemptions seem not clear enough or generous enough to assist in every case, and some court applications are made by people who are struggling financially.

An East of Scotland CAB reports the case of a client who has received an Ordinary Cause initial writ seeking to recover a significant loan guaranteed by the client. This client had acted as guarantor for a friend and her husband, but the couple have since separated and stopped paying the loan. The client has been unable to respond to the action having been unable to obtain legal advice. The client resides with her estranged partner and their three children aged twelve to sixteen in a mortgaged property. The client works full-time for a low wage while managing mental ill health. Although her home is at risk due to the action, the client does not qualify for a fee exemption, and she is unable to afford the [then] £137 to lodge a Notice of Intention to Defend.

Even if a client qualifies for a fee exemption, they may be liable for the other party's court fees as part of the rule that expenses follow success, when a claim is successfully brought against them.

A West of Scotland CAB highlights the case of a client, a single parent with 4 children, who came to this bureaux with letters from the Sheriff Court regarding an unpaid debt of some £2,000. This has originated from a utility debt from a previous home where she lived with her then partner and father of her children. She left this home due to domestic abuse around 5 years prior, but the debt (alongside some others) was in her name which she did not dispute. The previous year her ex-partner died and many of his debts had been left to the client. The client is not working just now and gets Universal Credit, Child Benefit and DLA/Carer's Allowance because her son has been diagnosed with autism. She was looking for a way to resolve the debt issue via a payment plan as she couldn't pay the total amount in one go. Unfortunately, she had missed the time limit to prevent the Simple Procedure claim from reaching court. The bureau assisted the client to agree a repayment plan of £20 per month for a debt of £2,434.23, of which £363.53 was court fees.

An East of Scotland CAB reports the case of a client aged 18-24 who has a small outstanding balance with her energy provider of £416 for gas arrears. The energy supplier has progressed with court action to recover debt, rather than pursuing less aggressive and more cost-effective means of recovering debt such as a payment plan. As a result, the client may be liable for court costs in addition to outstanding balance which they will clearly struggle to afford.

As these cases indicate, for example, for people being pursued for a debt in court, the suggested 10%-20% increase in court fees could add quite considerable amounts to the amounts they

⁸Citizens Alerts, a real-time case reporting system operated by the Citizens Advice network in Scotland allows citizens advice bureaux to submit case evidence to CAS demonstrating the impact of policies and services which they feel are failing to meet their clients' needs.

⁹The court fee for which would currently be £141.

already owe, further entrenching or prolonging situations of (financial) hardship, even where they themselves would be exempt from paying court fees.

Therefore, while we, in principle, do not oppose considerations of an increase in court fees to account for inflation or higher costs of operating the Scottish court system, **an evidence-based approach to the issue of fee increases is required. A balance has to be struck between genuinely incurred cost increases on the part of the courts system and the implications of any suggested fee increases on those who need to seek access to the courts. We believe introducing a minimum 10% uplift to all Scottish court fees from 1 November 2024 would likely act as a substantial barrier to accessing justice. The proposal should, therefore, be abandoned.**

Q2. Do you agree that there should be a further targeted 10% increase on the specified limited number of civil court fees?

We do not agree with the proposed additional 10% on certain civil court fees. In addition to our response to Q1, it remains unclear why these specific fees have been selected for a further uplift and what the additional 10% increase is based on. No explanation or justification is offered in the consultation paper.

Q5. Do you have any other comments on the subject of this consultation paper or on the future direction of policy considerations for court fees in Scotland?

In addition to our response to Q1, we would like to reiterate that considerations around increases in court fees should be assessed in the context of urgently required wider access to justice reforms in Scotland. We continue to advocate for strengthening early intervention and prevention approaches which can reduce the case load reaching courts and lead to earlier, less stressful and less costly resolution of disputes and issues. We are concerned that while Scottish Government is suggesting a minimum 10% uprating of court fees, grant funding which enables third sector advice organisations to provide much needed advice and support has not seen an uplift for several years, resulting in a real terms cut to their funding.

Q6. Do you consider that any of the proposals in this consultation paper are likely to have a disproportionate effect on people or communities who face discrimination or social exclusion owing to race, age, gender, disability, sexual orientation, or any other factor? If so, please specify your views on the possible impact.

CAS believes that there is a need for greater support for particular groups in relation to court fees and exemptions. For example, disabled people are disproportionately more likely to be impacted by civil law issues than the general public. Official figures show that, for example, an estimated 39% of those who are disabled experienced a civil law problem compared with 24% of those who are not disabled.¹⁰ Similarly, victims of crime suffered a higher prevalence of civil law problems (45%) compared with non-victims (26%). More research is required to explore whether victims of crime belong disproportionately to groups with protected characteristics or live in deprived areas with concentrations e.g. of people from minority ethnic groups, with precarious immigration status, on low incomes, with disabilities and long-term health issues. We are also concerned about the

¹⁰ [3. Civil justice problems - Civil justice statistics in Scotland 2022-23 - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/consultation-papers/civil-justice-problems-civil-justice-statistics-in-scotland-2022-23/).

effect of increased court fees on women who are experiencing or have experienced domestic abuse in relation to navigating civil court proceedings, e.g. with regard to divorce proceedings or in relation to safeguarding the rights of their children.

Generally, more targeted help is required to assist these particular groups of rights-holders in accessing justice. This is especially true for those who are party litigants and do not have the benefit of legal representation and the experience and expertise of a legal professional to support them. As noted in our response to Q1, we are concerned about unrepresented litigants who might be left disproportionately exposed to awards of costs, which may include substantially increased court fees, especially if proceedings take place in the upper courts.

As part of measures to ensure there are no disproportionate effects on people or communities who face discrimination or social exclusion, CAS would urge that a Fairer Scotland and Equalities Impact Assessment be carried out, to allow Scottish Government to understand the full range of measures which are in place to alleviate any adverse socio-economic impacts of increased court fees and to review and monitor how the exemption scheme works in practice.

For any inquiries, please contact:

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