

Citizens Advice Scotland (CAS) response to the consultation on Scottish Court Fees 2022-2025

March 2022

Introduction

Scotland's Citizens Advice Network 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.

Each year, Citizens Advice Bureaux provides tens of thousands of pieces of advice on legal issues to the public. Consumers look for advice on a variety of legal issues, including legal aid, accessing help from legal professionals, Alternative Dispute Resolution, Simple Procedure, and tribunals.

- In the first eleven months of 2021, Citizens Advice Bureaux collectively provided over 35,000 pieces of advice on legal proceedings.
- Between April-December 2021, our Law and Courts pages had 655,076 unique page views. Our taking legal action page had 126,057 unique page views, and our helping with legal costs page had 12,717 page views. All page views are on course to be higher than those from 2020-21 and 2019-20.
- In 2020-21, the network helped clients in relation to more than 3,206 tribunal and court outcomes; and 92% of these cases were won/upheld.

Citizens Advice Scotland (CAS) has concerns regarding the impact of court fees on those who are on lower incomes and/or have vulnerable characteristics. The Financial Conduct Authority (FCA) has stated that a vulnerable customer is someone who, due to their personal circumstances, is especially susceptible to harm. Research conducted by the FCA during the pandemic demonstrated that 53% of the UK population had at least one characteristic of vulnerability¹.

CAS firmly believes that no-one should be excluded from accessing justice on the grounds of cost. The ability to seek exemption from paying court fees is one way of ensuring that financially vulnerable consumers can have continued access to justice. We believe it is vital that the criteria for exemption from paying court fees is futureproofed and fit for purpose.

Q1 - Do you agree that court fees should rise by 2% in the financial year commencing 1 April 2022 and by a further 2% in each of the following two financial years commencing 1 April 2023 and 1 April 2024?

With the rising cost of living and pressures on household incomes, it is vital that any increases in the court fees payable are balanced with sufficient safeguards for those with vulnerabilities and/or on low incomes.

¹ [FG21/1: Guidance for firms on the fair treatment of vulnerable customers \(fca.org.uk\)](https://www.fca.org.uk/guidance/fg21-1)

Polling by YouGov for CAS has found that over 1.4 million people in Scotland have run out of money before pay day in the last year. This polling found that 32 per cent of people ran out of money either 'always', 'most of the time', or 'sometimes'. Taking into account Scotland's adult population that works out to 1.42 million people².

Further polling by YouGov for CAS has found that more than one in three people in Scotland find energy bills unaffordable³. 2022 has also seen a rise in inflation levels with rising food prices and with National Insurance contributions set to increase, this places consumers under an increasing financial burden. While CAS recognises why the 2% rise for the next three financial years is being proposed, we believe greater consideration must be given to the challenging financial circumstances that many consumers find themselves in. With the potential annual increase of 2% in court fees for the next 3 financial years, an effective system of court fee exemptions will be vital to ensure that consumers on lower incomes or who have other vulnerabilities are not put under further financial pressure and are not excluded from seeking access to justice.

Q2 - Do you have any views on the operation of the fee exemptions system? In particular, we would welcome comments on the impact of fees in relation to access to justice for party litigants with a disability.

CAS believes that there is a need for greater support for consumers who have a disability in relation to court fees and exemptions. Consumers with a disability are disproportionately more likely to be impacted by civil law issues than the general public. The Scottish Government acknowledges this themselves in their latest *Vision for Justice* which states:

*"Some groups in the population were more likely to experience civil law problems than the general population. For example, an estimated 36% of those who are disabled experienced a civil law problem compared with 26% of those who are not disabled"*⁴.

Given that those with disabilities are disproportionately impacted by civil law issues, it is CAS's view that more help is required to assist them in accessing justice. This is especially true for those who are party litigants who do not have the benefit of legal representation and the experience and expertise of a legal professional to support them.

CAS notes that Personal Independence Payment (PIP) is not included in the list of current fee exemptions and that the Scottish Government "*is not minded to make PIP a criterion for exemption*". CAS recognises that PIP is not an income related benefit, and that it is not a recognised ground for fee exemptions in other legal jurisdictions in the UK. However, we believe there may be merit in considering including PIP in the list of exemptions, given that it is used to support the income of those with disabilities. We would ask Scottish Government to consider whether those with disabilities require further support, including possible fee exemptions, to ensure that they can continue to access the justice system.

² Total sample size was 1032 adults. Fieldwork was undertaken between 20th - 25th May 2021. The survey was carried out online. The figures have been weighted and are representative of all Scotland adults (aged 18+).

³ The total sample size was 1011 adults. Fieldwork was undertaken between 11th - 15th November 2021. The survey was carried out online. The figures have been weighted and are representative of all Scottish adults (aged 18+).

⁴ [The Vision for Justice in Scotland 2022](#), P.10

Q7- 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?

As noted in our response to Question 2, CAS would wish to see improved support for those with disabilities when accessing justice, especially if they are a party litigant.

While not all party litigants will have one of the designated protected characteristics, we have concerns about whether party litigants, particularly those who are disabled, are sufficiently protected under these proposals. This is not a new issue as we note the petition to the Scottish Parliament, PEO1784 (lodged on 05 February 2020), raised questions about access to justice for those who are disabled and wished to conduct their case as a party litigant. We would ask Scottish Government to look further into what other protections could be given to party litigants regarding court fees.

We would also urge the Scottish Government to consider how these proposals may affect party litigants who may have awards of judicial expenses, including court fees, made against them in the course of unsuccessfully conducting their civil cases. Other litigants who are represented or who are claiming legal aid may well be shielded by other protective measures such as qualified one-way cost shifting, insurance policies or success fee agreements which limit liability for expenses. However, we have concerns around whether unrepresented party litigants are now being left in a situation where they are disproportionately exposed to awards of costs (which may include substantial court fees, especially if proceedings take place in the upper courts).

As part of the measures to ensure there are no disproportionate effects on vulnerable consumers, CAS would recommend that a Fairer Scotland and Equalities Impact Assessment should 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 court fee exemptions.