Scottish Civil Justice Council

Consultation on the Review of Fees in the Scottish Civil Courts: Fees of solicitors

Analysis of Responses

September 2018

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Contents

1. INTRODUCTION

1.1 The Scottish Civil Justice Council ("the Council") conducted a Consultation on the Review of Fees in the Scottish Civil Courts: Fees of solicitors during the period from 21 September 2017 – 17 November 2017.

1.2 The consultation sought views and evidence from stakeholders on the table of fees for solicitors recoverable under awards of expenses made in the Court of Session, Sheriff Appeal Court and sheriff court. The responses were published on 28 November 2017.

1.3 Many respondents offered views on matters beyond the scope of the present consultation, primarily in anticipation of legislative reforms arising from the Taylor Review[1], including the enactment of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill[2] and related secondary legislation. Notably, one respondent expressed the view that the present consultation was premature, pending review of matters in light of the impact of any such legislation. To the extent that responses sought to address such broader issues, largely on a speculative basis, or otherwise sought to raise matters relating more generally to the procedures applicable to the recovery of judicial expenses, they have not been included in the analysis that follows. Reference should be made to the terms of individual responses in that regard.

[1] Sheriff Principal Taylor's Review of Expenses and Funding in Civil Litigation in Scotland – report available at: https://www.gov.scot/Resource/0043/00433831.pdf ("the Taylor Report")

[2] (now the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018, asp 10, which received Royal Assent on 5 June 2018: http://www.legislation.gov.uk/asp/2018/10/contents/enacted)

1.4 Separately, it may be noted that the Act of Sederunt (Fees of Solicitors in the Court of Session, Sheriff Appeal Court and Sheriff Court) (Amendment) 2018[3], which amends the fees prescribed in the tables of solicitors' fees in respect of work carried out in civil proceedings in the Court of Session, Sheriff Appeal Court and sheriff courts, was made on 6 June 2018 and is due to come into force on 24 September 2018. The general increases in prescribed fees thereby effected are not taken into account in the analysis that follows, and therefore the precise figures referred to in some responses may be superseded to that extent.

1.5 For ease of reference, the consultation questions are repeated below:

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. (hereinafter "***Proportionality***");

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. (hereinafter "***Better reflection of work undertaken***");

3. Are amendments required to the Table of Fees to reflect changes in practice and/or procedure? If yes, please detail the amendments proposed. (hereinafter "***Reflection of changes in practice and/or procedure***");

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. (hereinafter "***General modification of the level of fees***");

5. Is it necessary to consider any additional fees that are not currently included in the Table of Fees? If yes, please detail the additions proposed and provide any evidence you may have to support your proposal. (hereinafter "***Additional fees not currently included***").

[3] (SSI 2018/1086) available at: http://www.legislation.gov.uk/ssi/2018/186/pdfs/ssi_20180186_en.pdf

2. OVERVIEW OF CONSULTATION RESPONSES

2.1 Nineteen (19) consultation responses were received, of which 18 were submitted on behalf of organisations, and 1 was submitted by an individual. The respondents are identified in the Annex A to this report, except insofar as confidentiality has been requested.

2.2 The respondents may be grouped into the following general categories:

Category	**No. of responses**
Law firms	7
Lawyers' representative bodies	5
Insurers, claims managers and their representative bodies	4
Law accountants and their representative bodies	2
Individuals	1
TOTAL	19

2.3 A significant number of respondents (eight) presented submissions directed solely or substantially to issues arising in personal injury proceedings. Notably, five of those respondents appeared to draw support from a single set of underlying data (produced by one of them) in respect of the proportionality of "costs" to "damages" in personal injury claims litigated both pre-and post-launch of the All Scotland Personal Injury Sheriff Court ("ASPIC").[4] It was

[4] The data is said by one of the respondents, the Forum of Scottish Claims Managers ("FSCM"), to represent "two sets of data collection" undertaken by them: data collected "up to May 2015" (derived from 12,304 litigated cases) and data collected "since the launch of the All Scotland Personal Injury Sheriff Court" on 22 September 2015 (derived from 2,650 cases). However, the date from which data collection commenced is not known. It may be assumed (but is not known) that the data collection ceased within a reasonably short period prior to the closing date for submissions to the present consultation, insofar as there is no contrary indication that the data is to any substantial extent incomplete. It is presumed (although not stated explicitly) that the claims were litigated at all levels of the Scottish courts. FSCM and two other respondents have appended the relevant data to their

suggested[5] that the data demonstrates that "proportionality of *judicial expenses* does not presently exist"[6] in respect of low value personal injury claims.[7] A further six respondents raised specific issues concerning personal injury actions within more generalised submissions, which also addressed other types of claim. Overall, therefore, some three quarters of the total number of respondents expressed views in relation to this area of practice.

2.4 Three respondents focussed their submissions primarily on commercial proceedings. One other respondent observed generally that "there may be a more significant disproportionality in relation to commercial actions" than others, but offered no specification of the "research" that was said to support such a conclusion, nor any particular supporting reasons in abstract terms.

2.5 A number of further proposals were advanced in respect of amendments suggested to have general application, irrespective of the nature of the particular claim.

2.6 For the sake of convenience, therefore, the following detailed analysis of responses is set out generally according to these broad categories – namely, ***personal injury actions***, ***commercial actions***, and ***general litigation*** – within the parameters of which the particular consultation questions are addressed in turn.

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submissions. A fourth respondent appears to quote the same data "obtained by" the FSCM in support of its analysis, although the data has not been appended. A fifth respondent refers to "[a]n ongoing study by Aviva" in similar terms, which is also assumed to be a reference to the same data. According to Aviva, who explicitly rely on the data, "data on Aviva cases is included within the FSCM studies".

[5] (by FSCM)

[6] (emphasis added)

[7] (although the meaning of "costs" (eg judicial, whether on a party/party scale or otherwise, actual or agreed) and "damages" (eg sued for, awarded or agreed), referred to therein, is not entirely clear)

2.7 It should be noted that a significant overlap was evident amongst the responses to the questions posed, most notably where respondents adopted the same comments in response to multiple questions. Subject to the particular interpretation of proportionality adopted[8], for example, a single proposal may be intended to address proportionality as between actual and recoverable costs (Q1), by ensuring that the latter better reflect the work undertaken (Q2), such as by reflecting changes in practice and/or procedure (Q3), which may not yet be included in the table of fees (Q5), or by way of a general modification of the level of fees (Q4). The fact that respondents may have repeated the same submissions in response to multiple questions (and, indeed, different respondents may have categorised substantively similar proposals differently) somewhat undermines the significance of the categorisation or intended purpose of any particular response. Indeed, three respondents provided general narrative responses, with little or no precise reference to the particular consultation questions posed.

2.8 It is of particular note, too, that respondents have adopted differing interpretations of "proportionality" – in some cases, respondents appear to have construed the term as a reference to the relationship between the value of a claim and the level of expenses recoverable in respect of litigating that claim; in other cases, respondents have addressed the proportionality of recoverable expenses as against actual costs incurred (ie 'party/party' vs 'agent/client' expenses).

2.9 All that being so, the following detailed analysis reflects the overall substance of the responses received, generally arranged according to the issue to which

[8] See further, *infra*.

they appear most directly relevant, notwithstanding that the respondents themselves may have categorised the responses differently (or not at all). The dissection of particular proposals (eg a single proposal encompassing both new and amended elements) is generally avoided, where this may unduly sacrifice overall comprehension for the sake of accuracy. Some repetition may remain, where this is considered necessary for similar reasons.

2.10 Finally, it may be observed that many respondents offered general views in respect of perceived inadequacies of the existing tables of fees, often in the form of unsubstantiated assertion, and often without any attempt to suggest possible solutions to the issues identified or to propose specific amendments or supporting evidence. In many cases, respondents merely proposed that 'consideration ought to be given' to addressing the identified issues in some unspecified manner, or that an 'appropriate' increase or other adjustment ought to be made to prescribed fees to some unspecified extent. Nonetheless, the following analysis records those views expressed in generalised terms, notwithstanding the absence of specific proposals and/or supporting evidence, as sought in the consultation questionnaire.

3. DETAILED ANALYSIS OF RESPONSES

(A) Personal injury actions

(i) Proportionality

3.1 The general tenor of a significant number of submissions indicates that the existing fee structure is generally productive of fee recovery that is disproportionate to the value of claims, particularly in low value cases, and "susceptible to abuse" in a number of particular respects.[9] Accordingly, amendment (described in some instances as an "overhaul" of the current system) was said to be required in order to ensure proportionality to the level of damages involved.

3.2 A significant number of respondents (seven) proposed that a table of fixed or scale fees ought to apply, more extensively than at present, to low value claims. The vast majority of those respondents (six) indicated that relevant claims should be those valued at between £20,000 - £25,000, all but one placing reliance on the FSCM data produced.[10] The data would appear to demonstrate that damages begin to exceed costs only in cases with a value of between £20,000 - £25,000, and that costs are disproportionately greatest in respect of the lowest value claims. The remaining respondent appeared to restrict the proposal of fixed fees to claims with a settlement value of up to £10,000, drawing support from demonstrative summaries of recoverable expenses exceeding the value of such claims "in the majority of lower value

[9] See further, *infra*.
[10] See para 2.3, *supra*.

personal injury *and property damage claims*" in the preceding 12 months.[11] The two respondents who did not place reliance on the FSCM data proposed, in addition, that consideration ought to be given to the extension of fixed fees to claims up to a value of £100,000, citing the introduction of similar reforms in England and Wales.[12] Reference was also made, in passing, to the existence of similar provisions applicable in Northern Ireland.[13]

3.3 A widely expressed view considered that the introduction of fixed fees, to the extent currently provided, has led to disparity between recovery of costs in pre-litigation and litigated cases, causing access to justice concerns in terms of the affordability and predictability of costs in low value cases. Whilst fees at the pre-action stage are aligned to the value of claims, thereby largely ensuring proportionality, those in litigated cases are calculated according to the work done by solicitors.[14] Accordingly, the existing 'block fee' system ought to be extended in order to guard against inefficiency and the unnecessary prolonging of proceedings, including the need for taxation.[15]

3.4 Particular suggestions, in connection with fixed fees, included:

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[11] (emphasis added) The summaries tend to suggest that expenses exceeded the principal sum in around three-quarters of cases valued up to £3,000, and around two-thirds of cases valued between £3,000 - £10,000.

[12] See, eg, Lord Justice Jackson's Review of Civil Litigation Costs: Supplemental Report – Fixed Recoverable Costs available at: https://www.judiciary.uk/publications/review-of-civil-litigation-costs-supplemental-report-fixed-recoverable-costs/. Similarly, another respondent suggested the introduction of fixed fees, as an alternative to extension of 'sliding scale' percentage fee reductions in low value claims – as to which, see further, *infra* – generally in line with provisions in respect of 'fixed recoverable costs' in England & Wales (Civil Procedure Rules, Part 45): https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part45-fixed-costs.

[13] County Court Rules (Northern Ireland) Order 1981

[14] It was suggested that the issue may be compounded by current legislative provisions allowing for the recovery of fixed or "unrestricted" expenses in simple procedure cases, according to the statement of a defence prior to settlement, or otherwise: see s. 81(5) of the Courts Reform (Scotland) Act 2014; *Tallo v Clark* 2015 SLT (Sh Ct) 181; and *Graham v Farrell* [2017] SC EDIN 75.

[15] See, eg, Lord Justice Jackson, *Fixed Costs – The time has come,* IPA Annual Lecture, 28 January 2016, available at: https://www.judiciary.gov.uk/wp-content/uploads/2016/01/fixedcostslecture-1.pdf.

- the calculation of fixed fees by extension of the existing structure applicable under the compulsory pre-action protocol, based on a direct correlation between the damages and judicial expenses awarded;
- the fixing of fees according to "litigation milestones" reached prior to settlement, according to similar provisions in England & Wales;[16]
- the allowance of exceptions to fixed fees, in the exercise of shrieval discretion, based on complex issues of fact and/or law only; and
- in the absence of fixed fees overall, the introduction of 'block fees' or similar caps in respect of particular aspects of the proceedings.[17]

3.5 Similarly, it was suggested (as an alternative to an extended fixed fee structure, as outlined above) that the current system of capped and discounted fees, whether in absolute terms or according to a percentage "sliding scale" based on the settlement value of claims, ought to be extended. One respondent considered that there was no justification for the exclusion of personal injury/property damage claims from the existing regimes applicable to claims valued under £3,000.[18] Another respondent considered that the existing mechanism of percentage fee discounts ought to extend to all claims up to £5,000. A third respondent, echoing these views, specified a detailed "sliding scale" of percentage discounts, which was proposed to apply to claims up to £5,000.[19]

[16] (no specific citation is provided)

[17] See further, *infra*.

[18] See, eg, general regulation 14(f), Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment and Further Provisions) 1993 (SI 1993/3080), schedule 1.

[19] The proposed "sliding scale" is as follows, according to the value of the claim: £4,000 - £5,000: 20% reduction; £3,000 - £4,000: 30% reduction; £2,000 - £3,000: 40% reduction; £1,000 - £2,000: 50% reduction; and less than £1,000: 60% reduction. The proposal may be considered to extend beyond personal injury to all claims.

3.6 A related suggestion would see the existing caps on recovery of expenses in simple procedure cases[20] applying only where one or both parties are party litigants.

3.7 A contrary view was expressed by two respondents. One such respondent considered that the increased use of fixed fees was "not the answer", having regard, *inter alia*, to the "irreducible minimum" amount of work involved in bringing a successful claim, irrespective of value.[21] The other such respondent suggested that there was no need for greater recognition of proportionality in the existing fee structure.[22] One such respondent suggested that the concept of proportionality was a "euphemism for cutting back" on recoverable judicial expenses, and was recognised sufficiently by: the introduction of existing compulsory pre-action protocols; the lower rates of recoverable fees in the lower courts, and *vice versa;* and the well-understood concept of reasonableness of recovery inherent in the taxation process.

(ii) Better reflection of work undertaken

3.8 A number of general observations were made to the effect that existing provisions are inadequate to properly reflect the work undertaken by solicitors. However, differing views were apparent, as to whether the current tables of fees allowed for too little or too great recovery, broadly according to what might be expected generally to reflect the interests of pursuers or defenders respectively.

[20] (assuming recovery of the greater of £150 or 10% of the settlement figure, in respect of which clarification was said to be required)

[21] A similar view was expressed by respondents in relation to proportionality in the context of general litigation, *infra*.

[22] *Ibid*

3.9 Thus, those apparently representing the interests of defenders/insurers placed emphasis on the predominance of work being carried out at the pre-litigation stage by virtue of mandatory pre-action protocols, and the significance and greater use of technology and automated processes in order to streamline and increase the cost-efficiency of litigation procedures thereafter, such as in the preparation of precognitions/statements, motions, and statements of valuation of claims. No specific examples, or proposals, were provided, but the overall impression was of a general need to reduce the recovery of costs as a consequence, at least during the litigation phase.

3.10 Conversely, those apparently representing the interests of pursuers appeared to suggest that pre-litigation recovery was inadequate to reflect such increased levels of work at that stage. One respondent indicated the current level of recovery was believed to be around 55 – 60% of actual costs incurred, which was suggested to represent a barrier to the raising of claims.[23] A significant amount of "background work" was said to be carried out by solicitors but not reflected in the current provisions, although further specification was not provided. Whilst the current provisions were said to be no longer entirely "fit for purpose", the particular impact of the "front loading" of work was not specified, and no specific amendments were suggested to reflect pre-litigation work more accurately. It was merely observed that greater recovery of pursuers' costs could be expected to "shape defenders' behaviour" and encourage extra-judicial settlement.

[23] Reference was also made to indications in the Taylor Report, apparently to the effect that the level of recovery of judicial expenses was between 50 – 80% of costs actually incurred.

3.11 Two respondents indicated the related concern that the current level of instruction fee was "totally inadequate" (under specific reference to ASPIC) or "completely inadequate" (with particular reference to workplace accidents, where lengthier pleadings may be required in order to establish liability at common law[24]) to reflect the amount of work involved in drafting an initial writ. One such respondent suggested that a recoverable fee reflecting 1½ hours' work would be more realistic, subject to the auditor retaining discretion to increase or decrease the particular fee in complex/high value or straightforward/low-value cases.

3.12 Similarly, one respondent expressed the concern that pre-litigation fees ought to be recoverable at the same level as fees in respect of compliance with the compulsory pre-action protocol, where cases settled extra-judicially, in order to encourage defenders/insurers to engage effectively with the pre-action protocol.[25] A contrary view was also expressed, however, that the current rules were susceptible to abuse insofar as they potentially allowed for the double-recovery of fees in respect of work truly carried out at a pre-litigation stage (eg statements of valuation of claim intimated immediately upon intimation of defences).

3.13 An apparently similarly contentious issue concerned the appropriate basis for charging in respect of precognitions and inventories of productions. One respondent considered that the current charging scheme in respect of precognitions was reasonable, accurately reflected the amount of work

[24] Per section 69 of the Enterprise and Regulatory Reform Act 2013 (exclusion of civil liability from health and safety legislation)

[25] (It was observed that, currently, pre-litigation fees will always be less than fees in respect of the compulsory pre-action protocol.)

involved, and ought not to be changed, subject to the safeguard of taxation in respect of precognitions of excessive length.[26] Another suggested that ASPIC 'block fees', which allow 15 minutes to consider an inventory of productions irrespective of volume, were "completely inadequate".

3.14 Other respondents, however, indicated concerns regarding the recovery of excessive fees, according to sheetage, in respect of supplementary precognitions, which the paying party was unable to interrogate effectively without sight of the relevant content. Similar concerns were expressed regarding the recovery of excessive fees as a result of the lodging of artificially separate inventories of productions (described by one respondent as "a well-known tactic" to increase fees). Thus, it was suggested that 'block fees' might be more appropriate in respect of the preparation of all precognitions (in order to avoid "abuse" of sheetage charges) and inventories (in order to avoid "piecemeal" lodging and to encourage early disclosure).[27]

3.15 Similarly, two respondents expressed concerns in respect of the recovery of excessive fees as a result of the lodging of unnecessary specifications of documents (eg notwithstanding the existence of a mandate in respect of hospital, GP or employment records). Thus, it was suggested that fees associated with specification procedure ought to be allowed only where a relevant mandate cannot be obtained or has not been complied with.

[26] Cf Taylor Report, para 77. A typical 3-page precognition was said to involve costs which, on a detailed basis, would be charged in the region of £250 - £275, commensurate with prevailing recoverable rates of £78/sheet.

[27] See related proposals in respect of precognitions and inventories of productions in commercial actions, *infra,* at para 3.26, and general litigation, *infra,* at para 3.40.

3.16 Otherwise, the following particular concerns were highlighted regarding the inadequacy of the existing provisions to reflect the work carried out, which are set out summarily for ease of reference:

- **Statements of valuation of claim:** 'block fees' in ASPIC in respect of the preparation of statements of valuation of claim, and consideration of opponents' statements, ought to be "tiered" rather than "one size fits all", in order to allow higher recovery in higher value cases; separately, it was proposed that a "two-tiered" fee system ought to be introduced in the Court of Session, to reflect statements being prepared by counsel (eg ½ present fee allowed to agents, where counsel are instructed), in order to bring fees into line with the sheriff court; and
- **Adjustments:** fees should be increased to the "old" rate, previously applicable under Ch.43 of the Rules of the Court of Session, in order to reflect the increased work of solicitors in ASPIC cases, where counsel are not instructed.

3.17 One respondent expressed general concerns that the recovery of 'block fees' did not necessarily reflect the work done, such as allowing for excessive recovery in the case of merely "formal" adjustments; and observed, in particular, that where counsel are instructed, the recovery of solicitors' fees for preparation may be excessive. No specific proposals were advanced, however, whether in respect of the continued use of 'block fees' subject to appropriate amendment, or otherwise. In a similar vein, another respondent suggested that "complete discretion" ought to be conferred upon the auditor,

such that "fees shown [in the table of fees] should be a *maximum* with the ability to modify downwards".[28]

(iii) Reflection of changes in practice and/or procedure

3.18 Responses to reflect changes in practice and/or procedure are encompassed generally in the responses set out elsewhere.

(iv) General modification of the level of fees

3.19 It was suggested generally that judicial expenses (unlike court fees) were "disproportionately low" in ASPIC, and ought to be broadly equivalent to rates of recovery in the Court of Session. The current disparity was said to result in the work of solicitors being undervalued, and a more expensive system for pursuers. This view was supported by two other respondents, who considered that additional work was being done by agents in ASPIC, without the assistance of counsel, for lesser recovery.

3.20 More specifically, one respondent complained that the 'block fees' recoverable in ASPIC were lower than those recoverable in the Court of Session in respect of the same (or, in some cases, less) work, apparently without explanation.[29] Accordingly, one respondent suggested that the table of fees currently applicable in the Court of Session ought to be adopted in ASPIC, and a newly increased table ought to be introduced in the Court of Session, in order to produce "a greater sliding scale having regard to value and complexity".

[28] (emphasis added)
[29] (A comparative table was provided.)

(v) Additional fees not currently included

3.21 One respondent expressed the general view that the addition of fee components would only serve to compound the problems in respect of proportionality highlighted above. Instead, the focus should be on "altering the dynamics of how litigated fees work in practice in Scotland".

3.22 Otherwise, the following particular suggestions were made in respect of additional items of work not currently provided for, set out summarily for ease of reference:

- **Specification of Matters/Property:** to introduce fee as currently exists in respect of specifications of documents; and
- **Proposals for further procedure:** to introduce fee in respect of framing statements of proposals for further procedure and considering opponents' statements, where none currently provided in the sheriff court.[30]

[30] (eg £156/£78 respectively)

(B) Commercial actions

(i) Proportionality

3.23 All three respondents, whose responses were directed particularly to commercial proceedings, addressed proportionality in the sense of recoverable versus actual costs, rather than the relationship between costs and the value of any claim.

3.24 One such respondent observed that, whilst proportionality was generally reflected in the differing levels of fees recoverable in respect of the particular court procedure adopted, and the value of the particular claim, the assessment of proportionality had to take account of the actual legal costs incurred, which may be disproportionately low in commercial actions. Another such respondent observed that this was the "more common concern" in commercial litigation. Yet another suggested that a proportionate rate of recovery of commercial costs would be around 80%, whereas actual rates of recovery were more realistically around 50%. However, no evidence in support of the alleged rates of recovery was explicitly founded upon.

3.25 One such respondent simply called for the "various solutions" proposed in the Taylor Report to be revisited, insofar as they had not yet been taken forward.

(ii) Better reflection of work undertaken

3.26 All three respondents indicated that amendments were generally required in order for recoverable costs to more closely reflect actual costs incurred, including in relation to (some or all of) the following specific matters:

- **Pre-litigation:** an additional "pre-litigation fee" (separate from the existing fee in respect of work done in contemplation of litigation) should be provided, covering the "increased levels of work which are now carried out by solicitors pre-litigation", including correspondence and exchange of documents calculated to identify and resolve issues in dispute, the instruction of expert reports, and alternative dispute resolution;
- **Precognitions, affidavits and witness statements/summaries:** fees in respect of the preparation and lodging of such documents, and the collation of associated productions, were said not to represent "a proper reflection of the amount of work which is required" (described as "extremely time consuming", particularly in connection with the cross-referencing of witness statements and productions and associated hyperlinking, which generally requires solicitor input or review of any external providers' work, and is generally restricted or abated in full [31]), where such documents were routinely ordered and, in most cases, stood as evidence-in-chief;[32] nor does the restriction of associated travelling time[33] reflect the potential efficiency of a solicitor travelling to meet multiple witnesses at a single location, or combined with a site visit, or to accommodate the limited availability of participants in senior commercial roles within applicable (and generally tight) court deadlines;[34]

[31] (One respondent indicated that illustrative examples could be made available upon request.)

[32] A similar observation was made in respect of general litigation, where it was proposed that an increased rate ought to apply in order to reflect the actual time spent in respect of even a "fairly basic" witness statement. An illustrative example is provided, in terms of which it is suggested that increased rates of £156 (block basis) and £78 (detailed basis) ought to apply.

[33] (to 50%)

[34] See, also, related proposals in respect of precognitions in general litigation, *infra,* at para 3.40.

- **Joint bundles and inventories of productions:** fees in respect of the similar preparation and lodging of working/electronic bundles of pleadings, productions and authorities (sometimes required alongside hard copies) according to current practice requirements, which one respondent described as involving additional work "as between the parties", together with the costs of any court-ordered "operator" (such as a trainee or qualified solicitor) to manage the electronic presentation of evidence during any proof, should be specifically provided for, being an "established part of commercial litigation"; similarly, it was suggested[35] that a separate fee might be added to reflect the marking up of authorities and ensuring that documents are accessible and suitably hyperlinked where USB sticks are required, all of which is not reflected in the existing 'block fees';[36] and
- **Preliminary/procedural hearings:** fees in respect of preliminary and procedural hearings should be "substantially increased" in order to recognise their significance;
- **Notes of argument, statements of fact or issues, and proposals for further procedure:** fees in respect of such documents should be "increased significantly" as it was said that the current fees do not reflect their importance and significance, or the (unspecified) input required from solicitors;
- **Technology:** fees and disbursements in respect of related technological management, such as updating any "case extranet" (ie electronic case management portals), reformatting of electronic materials as may be

[35] (in the context of general litigation)

[36] (See the related proposals in respect of inventories of productions and joint bundles in the context of general litigation*, infra,* at para 3.40.)

required, or use of conference call facilities to enable efficient meetings, ought to be specifically provided for.

3.27 It was suggested that the foregoing matters might be addressed by way of the introduction of a standalone chapter regulating the recovery of fees in commercial proceedings, which failing a general uplift in the form of a prescribed minimum, subject to the discretion of the court or auditor to allow a higher percentage, if appropriate. Further consideration of the relationship between any such uplift and existing 'additional fees' would be required, but no specific proposals were offered in this regard.

3.28 It was observed that a similar uplift should be provided in respect of the similar work required in sheriff court commercial actions, as in Court of Session proceedings.

(iii) Reflection of changes in practice and/or procedure

3.29 A significant concern (of two respondents), specifically in relation to Court of Session proceedings, was that the existing 'block fees' do not reflect the fact that "[a]lmost all commercial cases of significant value are now conducted by a legal team which will vary in size and composition depending on the nature and value of the case".[37] Rather, the 'block fees' assume that the work will be carried out by a single solicitor. Therefore, any additional solicitor attendances at consultations or court, or "project management" time spent by a partner or senior associate, is unlikely to be recovered.

[37] (see, eg, Scottish Civil Courts Review (2009), ch. 14, para 41)

3.30 It was observed that the involvement of a legal team, of a size and composition appropriate to the nature and value of the case, will generally be required in order to comply with the timescales and technological requirements currently prescribed, and that there was a "gap" between the level of work that was recoverable in terms of the relevant table of fees and the expectations of the relevant Practice Note.[38] Similarly, fees in respect of drafting correspondence were said to be inadequate to reflect the modern approach to commercial litigation, involving greater analysis by a legal team rather than solely by counsel. Accordingly, it was proposed that there ought to be specific provision in this regard, rather than leaving matters to the discretion of the auditor, due to the lack of predictability of recovery following upon taxation of detailed accounts. The use of 'additional fees', in particular, to 'bridge the gap' only resulted in greater uncertainty.

3.31 Another respondent suggested that a clearer definition of the relevant value of claims (eg whether the sum sued for, awarded, or agreed is indicated) might also increase the predictability of recoverable costs, insofar as they may be assessed on that basis.

(iv) General modification of the level of fees

3.32 Responses to reflect changes in practice and/or procedure are encompassed generally in the responses set out elsewhere.

(v) Additional fees not currently included

[38] Court of Session Practice Note No. 1 of 2017

3.33 Responses to reflect changes in practice and/or procedure are encompassed generally in the responses set out elsewhere.

(C) General litigation

(i) Proportionality

3.34 Similarly to proposals made in respect of personal injury actions, one respondent proposed that there should be a general capping of costs applicable to all types of claims, rising incrementally according to their value up to £40,000, with the existing rules in respect of recovery of detailed costs applicable thereafter.[39] No evidence was suggested to support the particular figures proposed.

3.35 It was observed generally that the proportionality of recoverable fees was reflected to a large degree in the system of taxation of accounts, although an element of disproportionality may be inevitable insofar as certain minimum levels of work would be necessary to instigate any claim, irrespective of value.

3.36 Another respondent observed that the current system worked for both pursuers and defenders, with no radical overhaul being required. The fairest system to both receiving and paying parties was said to be based on the actual work undertaken, regardless of the value of claims. Therefore, "proportionality should not be a factor" in the amendment of the table of fees, as differing levels of recovery were already provided in respect of Court of Session and sheriff court proceedings, and in the lower fees chargeable in respect of the lowest value claims in the latter case.

[39] The proposed costs capping is as follows, according to the settlement value of claims: under £10,000 – costs capped at £3,000; £10-15,000 – costs capped at £5,000; £15-20,000 – costs capped at £7,500; £20-30,000 – costs capped at £10,000; £30-40,000 – costs capped at £12,500; over £40,000 – existing rules apply.

3.37 Other respondents indicated that there was no serious disproportionality at present, but that provision ought to be made in order to avoid recoverable fees from "lagging too far behind" actual costs incurred (particularly where any discrepancy may be perceived by clients as overcharging on the part of solicitors), and there should be no "lowering" of fees as a generality (particularly where this may disincentivise engagement with pre-litigation correspondence and settlement).

(ii) Better reflection of work undertaken

3.38 The general observation was made, as elsewhere, that solicitors are required to undertake "significantly more work at the pre-litigation stage than has traditionally been the case", and that "much of this work" is not recoverable as judicial expenses. Similar observations are made in respect of work carried out "at the outset of any litigation". No further specification of the particular type of pre-litigation work is given, however, and no specific amendments are proposed.

3.39 A number of respondents expressed concern regarding the proper reflection of work undertaken in respect of the preparation and conduct of motions and other court appearances. It was generally proposed that fees ought to be increased in order to reflect the work undertaken in respect of opposed and unopposed motions[40] on a detailed basis.[41] On one view, the initial fee ought to cover only the first 30 minutes of court attendance, with provision for each 15 minutes thereafter at the prevailing hourly rate (whereas the existing

[40] (including motions in ASPIC, and summary cause appearances)

[41] (eg increase from £39/£117 to £90/£305 respectively; illustrative examples provided)

regime was observed to attract the same level of fee for a 5 minute or a full day motion hearing), and subsequent attendance at continued motion hearings should be charged on a detailed time basis. An alternative proposal sought to increase the current fee[42] to equate to 1½ hours' work, to allow for proper consideration of the motion, instruction of counsel, preparation and reporting to the client, with court attendance charged separately, all at prevailing rates in the respective tables of fees.[43] Two respondents, in particular, indicated that the current "flat fee" applicable to motions in ASPIC ought to be replaced with fees "accurately reflecting the length of the motion and waiting time" in all cases.[44] It was suggested that such fees ought to be charged similarly to fees recoverable in respect of consideration of material produced in terms of specifications of documents. The related suggestions were made, that time spent conducting advocacy ought to carry a greater (eg 1.5 times) charge than general attendance at court, with specific provision for recovery of waiting time in addition.[45]

3.40 Various proposals were advanced in respect of particular aspects of procedure, in some cases expressly intended both to better reflect the work undertaken and also to bring the existing table of fees into line with current practice and procedure, including:

[42] (in respect of 15 minutes' preparation, in addition to the first 30 minutes' court attendance)

[43] (See, also, illustrative examples provided by another respondent, in support of the similar proposition that the lodging or consideration of an opponent's straightforward motion was likely to exceed the 15 minutes currently provided, and therefore the fee ought to be increased.)

[44] It was observed that, currently, additional time may be charged only in the case of continuation of the motion.

[45] This proposal was directed, in particular, at personal injury actions and, to the extent of waiting time, to Court of Session proceedings, but may be considered to have more general application.

- **Precognitions:** "tapered" fees ought to apply in respect of lengthy precognitions[46], and consideration ought to be given to requiring disclosure of (redacted) precognitions to the paying party, in order to facilitate critical evaluation of the reasonableness of fees sought;[47] separately, there was said to be ambiguity as to the proper interaction of fees in respect of "Precognitions and reports", "Work before action commences", "Instruction" and "Adjustment"[48], notably the extent to which it is permissible to charge fees in respect of the precognition(s) of one's own client;
- **Joint bundles and inventories of productions:** the recovery of fees in respect of preparation of inventories of productions and joint bundles (eg productions or authorities)[49], and consideration of opponents' productions, ought to take account of the number and volume of productions within the inventory in question, based on sheetage rather than 'block fees', similar to the existing fee in respect of Appendices in reclaiming motions and appeals in the Court of Session[50], in order to reflect their often-extensive nature; one respondent suggested that an initial 'cap' might apply, with additional fees requiring justification before the auditor[51]; separately, it was

[46] The tapered fees proposed are as follows, according to the percentage of recoverable fees allowed based upon the number of precognition sheets produced: in respect of the first 10 pages – 100%; following 10 sheets – 50%; any remaining sheets – 25%.

[47] See, also, related proposals in respect of precognitions in personal injury actions, *supra,* at paras 3.13 and 3.14.

[48] Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment and Further Provisions) 1993 (SI 1993/3080), Chapter II, part II

[49] (and, specifically in the context of personal injury actions, in respect of the production of joint bundles of medical records in the sheriff court, as presently exists in Ch.42A of the Rules of the Court of Session)

[50] (ie an additional fee in respect of preparation or revisal of every 50 pages thereof)

[51] The suggested 'cap' was, eg, £39 per 25 sheets/up to a maximum 1 hour. See, also similar proposals in respect of personal injury actions, including ASPIC.

observed that a single fee in respect of the lodging of productions, irrespective of the number of separate inventories, may be more appropriate in lower value (commercial) claims;[52]

- **Specification of documents:** to resolve apparent inconsistency by providing for the recovery of fees in respect of documents recovered by "informal means" in ordinary, family and commercial actions, as already provided in respect of personal injury actions;[53]
- **Proof preparation:** one respondent expressed a general concern related to the recovery of fees in respect of litigating low value claims to a conclusion (eg proof preparation fees), which ought to be recoverable in the absence of settlement at pre-proof/trial conference/meeting, thereby encouraging settlement; others proposed that a single fee ought to apply in respect of proof preparation in the sheriff court[54], including ASPIC, irrespective of the number of days prior to proof by which settlement occurs, subject to increase or abatement as the auditor considers reasonable – the current "staged" or "two-tier" fee regime, subject to settlement at least 14 days prior to proof or otherwise, was said effectively to penalise early settlement and well-organised conduct of cases, insofar as preparation (eg citation of witnesses) could be expected to have been completed sooner than 14 days prior to the diet;

[52] (See, also, similar proposals in respect of personal injury actions, *supra*, at para 3.14.)
[53] (ie by adding the words "(or by informal means)", as necessary)
[54] (including ASPIC)

- **Debates and Options Hearings:** the respective rates of recovery ought to be adjusted, to reflect more accurately the greater level of work generally required in respect of the former by comparison with the latter;[55]
- **Additional fees:** the percentage increase of recoverable costs, by way of the allowance of an additional fee, ought not to be allowed to exceed 100%[56];
- **Copyings:** to extend the scope of recovery to expressly include the scanning/printing of documents, in order to reflect the digital aspects of proceedings; and to better define exceptional or unusually numerous copyings, together with specification of an appropriate rate in respect thereof (albeit none was suggested);[57]

3.41 The following proposals were directed specifically to sheriff court proceedings, albeit that some may be considered to have more general application:

- **Pre-litigation:** to remove provision in respect of downwards-only[58] taxation of fees, and thereafter to increase the specified fee[59], in order to allow recovery of "significantly greater" levels of work being undertaken during the pre-litigation stage;
- **Answers:** to increase the existing fee, which was said to be "inadequate" to remunerate actual levels of work undertaken;[60] and, in the particular context of multi-party actions, introduce a perusal fee in respect of

[55] (eg £312 and £273 respectively, adjusted to £400 and £185 respectively)
[56] (see, eg, recommendations of the Taylor Report, pp 24 and 25)
[57] (also proposed specifically in relation to personal injury actions, including ASPIC)
[58] (ie removal of the wording "or such *lesser* sum as in the opinion of the Auditor is justified")
[59] (eg in the region of £1,170, equivalent to 7.5 hours' work)
[60] (eg minimum 1 hour's work, in the region of £160; illustrative example provided; see, also, similar proposals made in relation to personal injury actions, including ASPIC)

Answers of 'non-opponents'[61], similar to existing fees applicable in respect of opponents;[62]

- **Third party procedure:** additional provision should be made in respect of work required upon the introduction of third parties (eg following upon death of existing pursuer), such as amendment/adjustment of the record;[63]
- **Final procedure fee:** to align provision in respect of ordinary actions with personal injury actions;[64]
- **Preparation – appeal hearings (Sheriff Appeal Court), and applications for new jury trial/to enter jury verdict:** to increase fees in order to adequately reflect the work undertaken by agents, to reflect 2 ½ hours' work[65] and remove the inclusive fee in respect of the instruction of counsel, thereafter applying a restricted fee[66] where counsel are instructed to conduct the hearing;[67]
- **Account fee:** to increase and reformulate fees in order to reflect preparation of accounts of expenses, with separate provision in respect of preparation for diets of taxation and attendance at the prevailing rate[68], thereby aligning the sheriff court with existing provision in the Court of Session;[69] separately, to specify law accountants' fees as recoverable

[61] (eg first defender considering Answers of second defender in response to pursuer's Minute of Amendment)
[62] (also proposed specifically in relation to personal injury actions, including ASPIC)
[63] (eg £234/£156 subject to introduction before/after Options Hearing; proposal also made specifically under reference to 'block fees' applicable in ASPIC)
[64] (ie £97.50 for settlement outwith 14 days of proof diet)
[65] (ie in the region of £390)
[66] (eg the presently specified fee)
[67] (cf instruction fees applicable in ordinary actions and personal injury actions)
[68] (per 15 minutes)
[69] (also proposed specifically in relation to personal injury actions, including ASPIC)

outlays in respect of preparation of accounts of expenses[70], subject to restriction of the account fee where law accountants are so instructed; account fees ought, in any event, to be "enhanced considerably" where preparation of accounts is undertaken by agents; and

- **Objections to Auditor's report:** to extend binding nature of the auditor's findings to summary cause proceedings, as in sheriff court and Court of Session, with appeal by note of objections only.

3.42 One respondent appeared to suggest that, in order to ensure that recoverable fees reflected the work undertaken as a generality, regard should be had principally to the time reasonably taken in respect of the particular work, with reasonableness assessed according to the responsibility and risk involved. The fees applicable in respect of appeals from summary causes, small claims and simple procedure cases were said to be "very low indeed" having regard to the potential responsibility involved. Notwithstanding their low value, it was observed that such cases might concern housing, consumer credit and other potentially complex and important cases, leading to decisions that are binding throughout Scotland. No specific complaint or remedial amendment was, however, advanced in respect of the current provisions.

3.43 More specifically, the recoverable fees in respect of work before an action commences were said to be capped in most cases at a level representing around 3 hours' work, on an agent/client charging basis, which "may be a completely inadequate amount" to investigate a dispute and take steps to avert litigation. Whilst it was said that the figure should not be restricted to such a low level, no specific amendment is proposed.

[70] (cf, eg, recovery in respect of preparation of bills of costs before the UK Supreme Court)

(iii) Reflection of changes in practice and/or procedure

3.44 The observations made in respect of personal injury and commercial actions, in respect of the need to reflect the additional work incurred in the lodging of pleadings and productions in electronic form, often in addition to hard copy documents, together with joint bundles, applied similarly in relation to other proceedings.

3.45 Differing views were expressed in respect of the hearing limitation fee applicable in sheriff court proceedings. Two respondents considered that it ought to be removed or amended as superfluous, due to the prevailing requirements in respect of pre-action disclosure and pre-proof/trial conferences/meetings to limit the matters in dispute, in respect of which separate fees may be claimed. The contrary suggestion was that reference to "not exceeding" ought to be removed[71], in order to allow additional work to be charged under the hearing limitation fee, subject to the auditor's discretion, although there was no indication of the nature of any particular work that might be persistently irrecoverable under the existing provision.

3.46 With regard to judicial review proceedings, in particular, it was suggested that the "front-loading" of preparations was not reflected in the existing 'block fees'. More appropriate provision would reflect the fees applicable in respect of the raising of commercial proceedings.

3.47 Before the Inner House, in particular it was suggested that an increased fee ought to apply in respect of preparation for the summar roll hearing, in order

[71] (also proposed specifically in relation to personal injury actions, including ASPIC)

to take account of the increased requirements of the relevant procedural timetable.[72] A review of the current level of fee was proposed, although no specific substitute figure was advanced. Alternatively, reference to notes of argument ought to be removed from the general preparation fee currently provided, in order that it they may be charged separately.

(iv) General modification of the level of fees

3.48 A commonly held view suggested that the level of fees ought to be subject to inflationary increase, whether 'automatically' or on a regular basis, in order to address the perception of the shortfall between recoverable and actual expenses increasing year on year.[73] Seven respondents expressed such a view, across the personal injury, commercial and general litigation spheres. Particular mention was made of anticipated inflationary increases to court fees on an annual basis, and the lack of any such increase in recoverable expenses since March 2014.[74] One respondent observed that a "substantial increase" was now required, as the starting point for any future increases or modification.

3.49 Similarly, three respondents expressed the view that increased hourly rates were necessary to ensure that recoverable rates were reflective of prevailing

[72] (illustrative example provided)

[73] Whilst one such respondent observed that "previous research carried out in this area" suggested that judicial expenses represent between 50 – 80% of actual costs, in the majority of cases towards the lower end of that range, such research was not cited or produced. (Cf similar reference to the Taylor Report, at n 23, *supra*.

[74] (See, now, Act of Sederunt (Fees of Solicitors in the Court of Session, Sheriff Appeal Court and Sheriff Court) (Amendment) 2018 (at n 3, *supra*).

rates chargeable to clients.[75] Of those respondents, two proposed, in addition, that 'block fees' ought to be subject to general increase in order to be reflective of the costs of modern litigation, including the "knock on" effects of increased hourly rates, although no specific increase was suggested. In the absence of such increases, greater reliance on detailed accounts was said to be expected, with consequent delays to the taxation process.

3.50 One respondent expressed the contrary view, however, that existing hourly rates compare "very favourably" with chargeable rates to clients, and so there was no justification for any greater recovery.

3.51 Other suggested modifications, which would have a similarly general effect, include:

- a general increase to "all block fees" to reflect the increase in general communication now demanded by clients, particularly in the form of email correspondence; and
- an increase in the process fee applicable in the sheriff court, described as "unrealistic and outdated" and no longer reflective of the amount of time and work involved, for similar reasons. (The contrary view, however, suggested that the process fee in the sheriff court, no longer being charged in the Court of Session, is unjustified and should be removed.)[76]

[75] One such respondent suggested that the recoverable rate prevailing in the Court of Session might be increased from £156 per hour to £170 per hour, with the sheriff court rate subject to a similar, albeit lower, increase to reflect the availability of a process fee. Another respondent observed that a "modest rate" of £200 per hour was chargeable to clients, of which the recoverable rate (of £156 per hour) represented only 78%. Subject to anticipated recovery of around 60% of actual costs, on a party/party basis, an actual rate of recovery of around 47% is indicated.

[76] Three respondents advocated general increases, and two respondents advocated removal.

3.52 Separately, it was suggested that, in the context of the increased exclusive jurisdiction of the sheriff courts, recoverable fees no longer reflected the (increased) work done by solicitors in cases where counsel are "no longer" instructed, such as preparation, considering matters, and compiling lists of authorities.[77] Therefore, it was proposed to be reasonable "to bring fees in line with" those recoverable in the Court of Session, although the overall extent and effect of such a proposal is unclear.

3.53 Other respondents suggested, more generally, that "a holistic review of fees and expenses in Scotland" was required, or that there was no need for any general modification provision at all.

(v) Additional fees not currently included

3.54 It was suggested that, whilst alternative dispute resolution is generally encouraged, additional provision is required to allow for recovery of the costs associated with any unsuccessful process, whether mediation or otherwise.

3.55 It was also suggested that the current limitation on the recovery of fees in respect of only two consultations with counsel, except on cause shown, was said to be "outdated"[78] and its removal without substitution was proposed in order to allow reasonable recovery.[79] Separately, it was suggested that new fees ought to be provided in respect of the making of necessary arrangements

[77] The implication would appear to be that such levels of work would not generally be undertaken in relation to sheriff court proceedings (whether falling within the concurrent jurisdiction of the sheriff court and Court of Session or otherwise) where counsel were not instructed; and/or that that counsel would not now be instructed in relation to sheriff court proceedings, albeit that they would have been instructed had the same proceedings been raised, as a matter of choice, in the Court of Session.

[78] See general regulation 12A, Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment and Further Provisions) 1993 (SI 1993/3080), schedule 1

[79] (per general regulation 8, *ibid*.)

to consult with counsel (to reflect the additional work involved in checking counsel's availability, marking diaries, and liaising with the client in respect of any proposed consultation), and in respect of the instruction of counsel to conduct any pre-trial meeting[80] (similar to instruction of counsel to attend the Court of Session) where a lesser preparation fee was allowed to solicitors upon the instruction of counsel but no separate instruction fee was currently provided.

3.56 Various miscellaneous additions were also proposed:

- **Summary applications:** the optional charging of 'block fees', where appropriate, ought to be introduced, so that fees no longer required to be charged on a detailed basis;
- **Undefended divorce: t**here was said to be "no clear provision" in respect of the fees applicable to divorce actions proceeding to undefended proof;[81] no specific addition is, however, proposed;
- **Site visits:** attendance at site visits, which could amount to essential preparatory work for solicitors and counsel, ought to be recoverable on an hourly rate basis, commensurate with attendance at court hearings;[82] and
- **Applications for leave to appeal to the United Kingdom Supreme Court:** specific provision should be introduced in respect of the procedure involved, which was described as currently 'falling between two stools', including taking instructions, framing the application and any attendance at court.

[80] (eg £195)

[81] Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment and Further Provisions) 1993 (SI 1993/3080), Chapter I, parts I and II

[82] (also proposed specifically in respect of personal injury actions, such as locus/site inspections to understand how an accident occurred, where such attendance may be justified before the auditor)

4. CONCLUSION

4.1 Overall, respondents indicated a desire for general increases to the absolute rates of recoverable fees specified in the relevant tables of fees, such as on an inflationary basis, together with various particular amendments to the calculation of fees in respect of particular procedural aspects.

4.2 Whilst a large number of respondents purported to address personal injury actions in particular, many proposals were common amongst responses in respect of personal injury, commercial and other actions alike, with a view to better reflecting the work undertaken by solicitors, whether by amended or newly introduced fees.

4.3 A notable concern was the general need to reflect the impact of technology, insofar as recoverable fees may not adequately take account of increasing requirements in respect of the management of electronic documents. A divergence of views was otherwise apparent, in particular, as to the extent to which 'fixed fees' ought to apply in respect of low value claims and/or particular aspects of claims, notably contentious examples being precognitions, inventories of productions and joint bundles. The recovery of adequate fees in respect of preparation and actual time spent appearing (or waiting) in court were also of particular concern.

4.4 To some extent, such concerns may be alleviated by the effects of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 and Act of

Sederunt (Fees of Solicitors in the Court of Session, Sheriff Appeal Court and Sheriff Court) (Amendment) 2018.

Jacqueline Fordyce

for **the Scottish Courts and Tribunals Service (on behalf of the Scottish Civil Justice Council)**

September 2018

5. Next Steps

5.1 The Costs and Funding Committee ("CAFC") will look at the responses in depth and make recommendations to the Scottish Civil Justice Council ("SCJC") as to the policy which should be adopted.

5.2 The SCJC is grateful to all the individuals and organisations who responded to the consultation. The responses have been of great assistance to the SCJC in its further consideration of the matter.

ANNEX A

LIST OF RESPONDENTS

1. Respondent and response confidential
2. Forum of Scottish Claims Managers (FSCM)
3. Clyde & Co
4. Alex Quinn & Partners Ltd
5. Davidson Chalmers LLP
6. Aviva
7. Brodies LLP
8. Thompsons Solicitors
9. DWF LLP (Response confidential)
10. Forum of Insurance Lawyers (FOIL)
11. Association of Personal Injury Lawyers (APIL)
12. CMS (Response confidential)
13. Zurich
14. Association of Independent Law Accountants (AILA)
15. Association of British Insurers (ABI)
16. Watermans Solicitors (Response confidential)
17. Glasgow Bar Association
18. Law Society of Scotland
19. Society of Solicitor Advocates

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