

# Court Fee Consultation



## RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

### 1. Name/Organisation

Organisation Name

Forum of Scottish Claims Managers (FSCM)

Title Mr  Ms  Mrs  Miss  Dr  Please tick as appropriate

Surname

Rogerson

Forename

Alan

### 2. Postal Address

c/o Aviva Insurance

139 West Regent Street

Glasgow

Postcode G2 2SG

Phone 0141 301 3122

Email

[alan.rogerson@aviva.co.uk](mailto:alan.rogerson@aviva.co.uk)

### 3. Permissions - I am responding as...

Individual

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate  Yes  No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(a) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate  Yes  No

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate  Yes  No

## CONSULTATION QUESTIONNAIRE



[www.fscm.org.uk](http://www.fscm.org.uk)

### **Who we are**

The Forum represents the claims management operations of its members which include insurers, claims handling companies and local authorities. We aim to:

- achieve the efficient and cost effective management of insurance claims,
- support easier and quicker access to justice for insurance claims,
- promote awareness of the claims management sector in Scotland, and
- work with stakeholders involved in pre and post-litigation third party insurance claims arising out of a party's negligence – be it a personal (consumer) matter or a commercial (business) matter, road traffic accidents, and accidents in the workplace.

Approximately 90% of our Personal Injury claims settle pre-litigation – in other words, settle without the need for intervention by the Courts. However, when our cases do reach the Courts, in terms of current civil court usage in Scotland we fund or have a financial interest in approximately 80% of cases which makes us the single largest user group of the Courts in Scotland.

We want to work with policymakers and stakeholders in the claims management process to improve the current system under Scots law. We are keen to share our experience to support any proposed changes to the law, legal processes or pre-litigation practices and conduct in Scotland to the benefit of the consumer.

We want to play an active and constructive part in the legal services reforms which will affect our business, in order that we can contribute to a better quality of legislation, regulation and claims management processing. We want to share our knowledge and experience with policymakers covering subject such as flood management, health and safety, investment, road safety and young drivers, and civil justice.

## Who we represent

The Forum membership includes the following major insurers, financial institutions together with claims handling companies and Local Authorities

<p>ACE European Group Ltd  Allianz  Aviva Direct  Aviva Insurance  AXA  Chartis  Churchill  Direct Line  Eagle Star Direct  Esure  Equity Red Star  Halifax  Liverpool Victoria  More Than  NFU Mutual  NIG</p>	<p>Pearl  Privilege  Prudential  PSV Claims Bureau Ltd  QBE  RAC Insurance  Royal &amp; Sun Alliance  Travelers Insurance  UKI Insurance  Zurich Municipal  Zurich Insurance Plc</p> <p>Glasgow City Council  North Lanarkshire Council  Motor Insurers Bureau</p>
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**Please provide your response to the following questions:**

<b>Question</b>	<b>Response</b>
<p>Q1 Are any of the fee proposals likely to have a disproportionate effect on a particular group? If so, please specify the group and the impact. (Note that an initial impact assessment has been undertaken at Annex D and this will be updated based on responses to this consultation)</p>	<p>Insurers work in the background by funding 80% of Civil Litigation in both the Sheriff Court and Court of Session.</p> <p>This is because the Defender in the court action has a policy of insurance which covers the consequences of road traffic accidents or accidents at work etc.</p> <p>As such, Insurance Companies are key stakeholders and will be directly impacted by the proposed fee increases as normally the court fees are ultimately borne by the defender if the pursuer is successful in whole, or in part.</p> <p>The initial impact assessment at Annex D should be updated to reflect this accordingly.</p> <p>As insurance is a mechanism of risk transfer, it is the case that if outlays increase then it</p>

	<p>follows that this would reflect in insurance premiums increasing accordingly.</p> <p>This would ultimately lead to higher insurance premiums payable by Consumers and Small businesses etc.</p>
<p>Q2 In what circumstances should some or all of the cost of the courts in civil litigation be borne by the taxpayer, rather than the parties?</p>	<p>FSCM agree with the basis of the consultation and believe that the taxpayer should be relieved of 100% of the cost of civil litigation</p>
<p>Q3 Do you have any other comments?</p>	<p>They key issue for FSCM is the principle outlined at 4.6 on page 9 of the Consultation document. (namely the charge for cancellation of court hearing by party/ies)</p> <p>Because insurance policies allow insurance companies to conduct the litigation on behalf of the Defender, the Insurers bear the cost of the litigation.</p> <p>In any case where a Pursuer is even partially successful, the full expense is recoverable from the Defender. (and therefore, paid by Insurers)</p> <p>As such, the proposal as set out in the consultation would not of itself encourage earlier settlement or provide the court service with any more notice of cancellation of court hearings than the levels presently.</p> <p>However, FSCM believe that some minor alterations to the court timetable and rules could be carried out to ensure that the aim of greater transparency and periods of notice cancellation for the court service can be achieved.</p> <p>The required alterations (<i>and reasons for these</i>) are:</p> <ul style="list-style-type: none"> <li>• witness lists and productions lodged</li> </ul>

12 weeks prior to Proof/Trial (*this allows both parties reasonable notice of how many witnesses are required, who those witnesses are and the evidence of the case – for example this could be the first notice to a defender that the pursuer is introducing something new to the cause like a claim for psychiatric injuries or extended heads of claim. The defender has notice at this stage because the psychiatrist would feature on the witness list and their report would appear in the productions. If there were far more witnesses and evidence than anticipated, then the court could be informed far earlier than presently that a longer trial diet is required*)

- Pre-Trial Meeting must take place 8 weeks prior to Proof/Trial (*The Pre-Trial minute must also be more detailed and specific than it is at present and to have a full rationale as to why settlement was not achieved or issues agreed. If specific information was lacking or not provided then the minute should reflect this to assist the court when determining expenses. If a party delays settlement unnecessarily then that party ought to bear the associated cost consequences*)
- This then allows a further 4 week notice period to free up the court time and allow the court service greater transparency into cancellations

We would welcome any opportunity to provide any additional information required or assist in forming any associated new rules or guidance.

The closing date for comments is Wednesday 25 July 2012. Please send your response along with a copy of the Respondent Information Form to: -

Pamela Russell  
The Scottish Government  
Legal System Division  
Floor 2 West  
St Andrews House  
Regent Road  
Edinburgh  
EH1 3DG

Or by email to [Pamela.russell@scotland.gsi.gov.uk](mailto:Pamela.russell@scotland.gsi.gov.uk)

**Thank you for taking the time to respond to this consultation.**