



Forum of Scottish Claims Managers (FSCM) response to Consultation Paper:

Courts Reform (Scotland) Bill – Consultation on the treatment of civil appeals from the Court of Session

<http://www.fscm.org.uk>

Section 1 Who are the Forum of Scottish Claims Managers and who do we represent?

Section 2 Consultation Response Document



About the Forum of Scottish Claims Managers (FSCM)

The Forum exists as a lobbying organisation on behalf of its members and to represent their interests in the handling of insurance claims.

1. The Forum aims to promote improvements to the law to enable consumers easier and quicker access to justice.
2. The forum membership covers a number of major insurers, financial institutions together with claims handling companies and Local Authorities.
3. The individual members of FSCM are all senior professionals being Claims Managers or equivalent within their respective organisations with a wealth of experience in Insurance claims matters.
4. To provide some context of the size and scale of our membership:
 - We directly employ approximately 5,550 people in Scotland, solely in insurance
 - We generate over £1.9 billion annually in respect of insurance premiums collected in Scotland (Personal and Commercial business premiums)
 - Solely on claims, we spend £1.257 billion annually in Scotland
 - Glasgow is the largest insurance centre in the UK, outside London and is seen as core pool of talented resources
5. Insurance companies exist to provide financial protection for consumers and businesses in the event that the unforeseen happens.

It is the Forum's desire to be actively engaged, with all interested parties, in discussions and debate relating to Third Party claims** in Scotland including Pre and Post-litigation.

Alan Rogerson
Chairman of the Forum of Scottish Claims Managers

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**** Third Party Claims definition:**

Personal Injury or damage to Property 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

Membership:

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	Pearl Privilege Prudential PSV Claims Bureau Ltd QBE RAC Insurance Royal & Sun Alliance Travelers Insurance UKI Insurance Zurich Municipal Zurich Insurance Plc Glasgow City Council North Lanarkshire Council Motor Insurers Bureau
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COURTS REFORM (SCOTLAND) BILL - Consultation on the treatment of civil appeals from the Court of Session



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

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

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

(c) 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

- (d) 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 QUESTIONS

Questions - The treatment of civil appeals from the court of session to the United Kingdom Supreme Court

Q1A. Do you agree that the current procedures for appeals to the UK Supreme Court under section 40 of the Court of Session Act should be replaced with a leave stage? If not, why?

Yes No

The Forum of Scottish Claims Managers believe that the current procedures should be replaced with a leave stage as the current Section 40 of the Court of Session Act 1988 is open to circumvention by parties by simply obtaining certification from two Counsel that such an appeal is 'reasonable'.

This has been used on various occasions to advance cases put forward to the Supreme Court where there is simply an argument on the merits of the particular case and no actual new areas of law to be explored nor is the case of a precedent setting nature – the case is essentially prolonged for negotiation reasons only with the threat of going before the Supreme Court hanging over the parties.

What can also occur (one of our members reports this happening twice in the last year) is that legal aid will be sought to fund cases as described above to the Supreme Court so not only prolonging cases for simple negotiation reasons, but also relying on the public purse to meet the cost of doing so.

Introducing a leave stage will cut down on such frivolous appeals and associated legal aid applications

Q1B. If you agree, on what basis do you consider leave should be granted? Why?

Yes No

Leave should be granted where there is an important point of principle at stake, there are new areas of law falling to be considered or cases where the subject matter of the case will involve setting a wider precedent for other cases.

The Supreme Court have also made it clear that they should only become involved where there is a case as outlined above with new areas of law or the case is precedent setting, or the case has Human Rights implications.

Q1C. What impact do you consider the Scottish Government's proposals will have on future civil appeals to the UK Supreme Court? Why?

Yes No

The proposals would hopefully bring an end to parties simply marking an appeal to the Supreme Court to continue a negotiating position. It will hopefully have the result that the cases being put forward to the Supreme Court are done so in the hope that the Supreme Court will provide overriding guidance in the case and similar cases and not simply as a means to prolonging a case unnecessarily.