

Consumer Credit Counselling Service Scotland – Response to Scottish Government Review of Fees Charged by the Court of Session, Accountant of Court, Sheriff and Justice of the Peace Courts, High Court, Office of the Public Guardian

Introduction

Consumer Credit Counselling Service (CCCS) Scotland is a charity which provides free, effective advice to consumers struggling with problem debt. In 2011 we counselled almost 5,000 clients on the telephone and over 12,000 online, offering a range of solutions to those looking to address their financial difficulties.

People approach CCCS for help with very often severe financial problems involving multiple debts and creditors. Some of these creditors will resort to Court action, seeking a decree which would allow them to recover their debt or apply for a diligence. Therefore CCCS Scotland welcomes this opportunity to comment on the Scottish Government's *Review of Fees Charged by the Court of Session, Account of Court, Sheriff and Justice of the Peace Courts, High Court, Officer of the Public Guardian*.

Although CCCS Scotland has concerns that above inflation fee increases will disproportionately affect employed consumers who do not qualify for fee remission but may not have money available to fund any Court action, in this response the charity will chiefly address two wider issues with Court fees we believe are detrimental to the Scottish population suffering debt problems:

1. Ensuring that Court fees do not become a barrier preventing people from raising an action against their creditor on the basis of consumer protection legislation
2. The Scottish Government's "full-cost pricing" agenda could lead to a gradual increase in Court fees pricing consumers out of justice

Consumer protection legislation

CCCS Scotland has a specific concern about charging consumers Court fees to access help from consumer protection legislation such as the Unfair Terms in Consumer Credit Contract Regulations 1999 (UTCCCRs) or the 'unfair credit relationship' provisions under section 140A of the Consumer Credit Act 1974.

The UTCCCRs give consumers certain legal rights in respect of unfair terms and allow them to take legal action against creditors on the grounds of a

significant imbalance in the parties' rights and obligations under a contract. A term found by a Court to be unfair is not binding on consumers.

Section 140A of the Consumer Credit Act 1974 covers unfair relationships between creditors and debtors and allows the Court to:

- Alter the terms of the credit agreement or a related agreement;
- Reduce the amount payable by the borrower;
- Require the lender to refund money to the borrower;
- Remove any duty placed on the borrower under the agreement; or
- Impose requirements on the lender or an associate

We are concerned that increased fees for raising actions on the above grounds may create additional barriers that prevent consumers from applying for court based consumer protection. We are particularly concerned that people in financial difficulties may be deterred or prevented from using consumer protection legislation to challenge unfair business practices or contract terms imposed by one of their creditors.

The charity appreciates that the Scottish Government sees the necessity of enabling access to justice for lower income consumers by either reducing or remitting Court fees. In its response to the Scottish Civil Courts Review the Government emphasised the necessity of not preventing people accessing justice:

“A system of civil justice - affordable, efficient and fair - is essential to the health of any nation. It is a pre-requisite for the achievement of the Scottish Government's core purpose, to focus public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth. A more efficient, affordable and fair system of civil justice holds public authorities to account and underpins the rule of law which, in turn, supports a fairer Scotland with stronger communities in which people are helped to live full lives and reach their potential.”

Here we note that the Scottish Government has provided that people in financial difficulties should not have to pay to apply for key remedies such as a time to pay direction or a time order under Section 129 of the Consumer Credit Act 1974.

We also understand that consumers do not have to pay a fee to defend an action in Court and this would include a case where the defence relies on consumer protection legislation such as the two provisions described briefly above.

However we can see a situation where consumers might find themselves facing Court fees that might prevent them from accessing consumer protection legislation.

We understand that consumers would have to pay a Court fee to use their consumer protection rights pro-actively and before their credit had issued a

claim. It seems inconsistent that some consumers could find themselves waiting for a creditor to take action before being able to ask for the protection of the Court in respect of an unfair practice by that creditor.

Data on CCCS clients suggests that for people with some form of unsecured debt who are not exempt from fees (for whatever reason), 26 percent have no available per month surplus *once all living costs have been accounted for* debt. If they wish to exercise their consumer protection rights they may struggle to do so.

Therefore CCCS Scotland recommends that the Scottish Government consider the case for exempting from Court fees any applications from consumers in respect of statutory consumer protection measures that require an intervention by the Court. This would help to ensure that all Scottish consumers are able to pro-actively access statutory consumer protection measures when they need to do so.

Full cost pricing

We are concerned that a full cost pricing agenda policy could see court costs rising significantly where there is a downturn in overall Court business. Scottish Government figures already show there has recently been a reduction in the usage of Civil Courts, with a 16 per cent reduction in cases initiated in the Court of Session between 2009- and 2010-11 and a 17 per cent fall in cases initiated in the Sheriff Courts over the same period. There is perhaps a danger here that a full cost recovery policy could begin to drive a trend where high fees produce lower Court business, which in turn produces higher fees.

Here we note that the number of cases in Court is likely to further reduce if the proposals contained in the recent *Bankruptcy Law Reform* consultation come to pass. For example, these would see the administrative bankruptcy process transferred from the Sheriff Court to a stand-alone division of the Accountant in Bankruptcy. In time the creation of the new Financial Conduct Authority may also have an impact, improving standards of creditor forbearance and debt collection practice for instance that would result in there being less recourse to the Courts to enforce debt.

CCCS Scotland believes that this could have adverse consequences for people facing severe financial difficulties. In addition to possibly higher barriers to consumer protection described above, any increased in Court fees for creditors are likely to be passed on to debtors where credit agreements allow creditors to add such costs to the balance outstanding. This could increase the overall size of debt of financially vulnerable households, adding further to the pressure of unmanageable debt problems.