



**Consultation Response**

**Expenses and Funding of Civil Litigation Bill**

**Motor Accident Solicitors Society**

**April 2015**

## Introduction

This response is prepared on behalf of the Motor Accident Solicitors Society (MASS). MASS is a society of solicitors acting for the victims of motor accidents, including those involving Personal Injury (PI). MASS has 130 solicitor firm members and we estimate that member firms conduct approximately 500,000 PI motor accident claims annually on behalf of the victims of these accidents. The Society's membership is spread throughout the United Kingdom including a number of members in Scotland.

We are a not for a profit organisation, which requires specialism in motor accident pursuer work as a pre-requisite for membership. We also have Code of Conduct which member firms are required to abide by, which is directed to the best interests of the motor accident victims.

The objective of the Society is to promote the best interests of the motor accident victim. This is central and core to our activity. We seek to promote only those policy and other objectives which are consistent with the best interests of the accident victim. We seek to set aside any self interest in promoting these arguments, recognising that we are in a position of trust, and best placed to observe the best interests of motor accident PI victims first hand.

MASS has 14 member firms in Scotland and represent the majority of solicitors who deal with motor accident cases that occur in Scotland. Scotland is considered a separate region from the rest of the UK for the purpose of membership. Membership is by office rather than individual. The vast majority of Scottish member firms are volume businesses acting for victims of road traffic accidents and this response does not necessarily reflect the view of the individual member firms.

If you have any queries or would like further information, please contact Jane Loney at:

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## ANNEX C: CONSULTATION PAPER ON EXPENSES AND FUNDING OF CIVIL LITIGATION IN SCOTLAND BILL

### 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

Motor Accident Solicitors Society

Title Mr  Ms  Mrs  Miss  Dr  Please tick as appropriate

##### Surname

Russell

##### Forename

Elaine

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#### 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

(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

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

**(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**

# CONSULTATION QUESTIONS

## CHAPTER 1: PROPOSALS ARISING FROM SHERIFF PRINCIPAL TAYLOR'S REVIEW

### A. SPECULATIVE FEE AGREEMENTS

1. Do you think that a lack of cap on speculative fee agreements prevents potential pursuers of actions from obtaining access to justice? Yes  No

Please give reasons for your answers.

The Motor Accident Solicitors Society (MASS) supports the use of speculative fee agreements (SFAs) as a means by which injured people can obtain access to justice. We do not agree that the absence of cap on SFAs prevents potential pursuers obtaining that access. Our society's view is that people who are injured in road traffic accidents in Scotland should have access to justice and that it is important that the accident victim is compensated to restore his/ her pre- accident position, as far as is possible. There should be a fundamental right of access of justice for injured people and the excluded middle should have access to funding and thereby access to justice.

Our view is that the introduction of caps will not reduce competition in the Personal Injury market and a system whereby the consumer can have a clear indication of proposed charging is a fair and equitable system.

On higher value cases we believe that the proposed cap of 2.5% for settlement of over £500,000 is too low and should be increased. When firms within our organisation agree to run higher value cases these cases are run at a significant financial risk given the requirement to fund medical reports; financial burdens require to be carried for a longer period of time given the length and extent of injury and these disbursements cannot be funded by any other means given the lack of availability of After the Event (ATE) insurance in Scotland. See section 2(i) for more information regarding this.

2. What impact would the introduction of a cap on speculative fee agreements have on:

(i) Pursuers of actions

It is proposed that the Pursuer's solicitor should be required to meet Counsel's fees - given that the SFA will allow Pursuers to have increased access to justice MASS would support a system whereby recovery of fees for Counsel are made from the other side of an action - if those fees are not recoverable from the Defender then they should be the responsibility of the Pursuer, not the Pursuer's solicitor.

SFAs backed up with ATE insurance can be an effective means by which Scottish accident victims are permitted access to justice, where other funding means are not available and where the consumer cannot afford to pay costs privately. The ATE market has recently changed and the main source of ATE funding not provided by a Claims Management vehicle has indicated their withdrawal for scheme ATE funding for Scottish cases. The reasoning behind this is that the performance of their insurance book in Scotland is currently unprofitable at current premiums, yet to increase the premiums to a level that would make it commercially viable would make ATE insurance too unattractive and often unfeasible for the consumer. Since the end of February 2015 that provider has ceased all scheme ATE business in Scotland.

Given the recent reduction of availability of ATE insurance to injured people in Scotland, our society supports the introduction of Qualified One Way Costs Shifting (QOCS) to ensure that people have access to justice and are not deterred from pursuing their claims.

and why, and what would they look like

Our organisation would like to see the 2.5% for settlements above 500k increased. See the answer given in 1 for more details. A cap would protect Pursuers from unreasonable deductions, give them a degree of certainty in relation to what would be deducted by way of the SFA and may reduce the uptake of more marginal claims – we believe that reward should be commensurate with the work and risk undertaken in pursuing more difficult claims in terms of causation, liability and / or quantum.

A cap that is too restrictive might reduce the amount of high value cases that can be brought to court. Solicitors firms offering SFAs accept that a certain percentage of claims they take on will not be successful and so they will not be paid for their work. They can afford to do this as they are entitled to take a higher fee on cases where they are successful. To impose too restrictive a cap on the deductions means some of these firms may turn away cases with a greater litigation risk or those cases that require a higher than average number of hours work. This may act as a barrier to justice which contravenes the principles of our organisation.

While on the face of it this may be seen as a positive thing it could have a detrimental effect on not only the Pursuer concerned, but on the development of law. Legislation and common law are constantly changing and an important part of this is judicial interpretation. Solicitors and advocates will work together to test and develop new laws through litigation, which brings progress and certainty for all users of the legal system.

(ii) Defenders of actions

We believe that the cap would have little impact on Defenders.

and why, and what would they look like

We believe that the introduction of a capped system would regulate the Pursuer and agent relationship. A consequence might be that the Pursuer may be less inclined to take their case to proof and may therefore be more agreeable to conceding or compromising their case.

Our organisation would welcome a reduction of cases being defended and resolution being achieved earlier in the lifecycle of an injury case.

(iii) You or your organisation

See answer given in 2 (i).

and why, and what would they look like

MASS represents people who are injured and vulnerable and our objective is to promote the best interests of the motor accident victim. The introduction of the cap system would give those people access to justice, certainty regarding recovery of damages and ensure that specialist solicitors represent their interests. MASS has 14 member firms in Scotland and represent the majority of firms of solicitors who deal with motor accident cases that occur in Scotland. All firms in our organisation have specialist expertise in relation to Personal Injury and are firms of differing sizes. It is important to our organisation that the consumer has a choice of solicitor and that a system is not created whereby only larger firms in Scotland can operate, given the amount of outlays required to be carried by firms for larger cases.

(iii) Other organisations:

and why, and what would they look like

3. Which group of individuals/organisations are likely to benefit most from a cap on speculative fee agreements?

We believe that Pursuers will be most likely to benefit from the cap for the reasons outlined above.

Please explain how these benefits will accrue, and their likely extent if possible

See above

4. Which group of individuals are likely to be most disadvantaged from a cap on speculative fee agreements?

See above.

Please explain how these disadvantages will accrue, and their likely extent if possible

See answer in 2 (i).

5. What measures could be considered to both identify and mitigate against disadvantages from a cap on speculative fee agreements?

MASS supports the introduction of a code of practice which sets out the gold standard in order to regulate the behaviour of firms that represent Pursuers.

## **B. DAMAGES BASED AGREEMENTS**

6. Do you think that the inability of solicitors in Scotland to enter into damages based agreements with their client prevents potential pursuers of actions from obtaining access to justice? Yes  No

Please give reasons for your answers.

MASS believes in specialist representation for victims of road traffic accidents and it is important they have access to independent and specialist legal services and thereby justice. The inability of solicitors in Scotland to enter damages based agreements (DBAs) and the current practice of claims management companies being able to do so means that firms of solicitors with specialist skills are unable to operate on a level playing field. Claims management companies are unregulated in Scotland and it is important to people who are injured and vulnerable that they are able to obtain justice and their entitlement to damages, so far as is reasonably practicable.

We fully support the premise that DBAs and SFAs should operate as similar funding vehicles. MASS welcomes a system of justice whereby solicitors are encouraged to offer DBAs in low value cases. MASS members wish to ensure that there is an affordable funding system to allow all consumers, on an equal basis, access to justice and good quality, independent legal advice.

7. What is the likely impact on you or your business of allowing damages based agreements to be enforceable by solicitors in Scotland?

Please quantify, if possible.

MASS members will be able to offer DBAs to their clients which will mean that our member firms operate on a level playing field with claims management companies whilst ensuring that access to justice, specialist advice and greater transparency of the legal process and funding is achieved. This will mean that it is more likely that consumers will choose to turn to specialist firms for legal services, increase availability to independent legal services and should lead to increased service delivery to those injured in motor accidents in Scotland.

8. Do you think that a lack of cap on damages based agreements prevents potential pursuers of actions from obtaining access to justice? Yes  No

Please give reasons for your answers.

Our organisation believes that there should be an identical cap which operates in relation to DBAs and SFAs. See answers given in the section relating to SFAs.

9. What impact would the introduction of a cap on damages based agreements have on:

(i) Pursuers of actions

See answer 2 (i).

and why, and what would they look like

See answer 2 (i).

(ii) Defenders of actions

See answer 2 (ii).

and why, and what would they look like

See answer 2 (ii).

(iii) You or your organisation

See answer 2 (iii).

and why, and what would they look like

See answer 2 (iii).

(iii) Other organisations:

We believe that those operating claims management companies currently in Scotland will be disadvantaged due an imposed cap as the amount of cap they are currently able to charge Pursuers is unregulated.

and why, and what would they look like

See above.

10. Which group of individuals/organisations are likely to benefit most from a cap on damages based agreements?

See answer 3.

Please explain how these benefits will accrue, and their likely extent if possible

See answer 3.

11. Which group of individuals are likely to be most disadvantaged from a cap on damages based agreements?

See answer 4.

We believe that those operating claims management companies currently in Scotland will be disadvantaged due an imposed cap as the amount of cap they are currently able to charge Pursuers is unregulated.

Please explain how these disadvantages will accrue, and their likely extent if possible

See answer 4.

12. What measures could be considered to both identify and mitigate against disadvantages from a cap on damages based agreements?

See answer 5

13. What impact would these proposals have on excessive charging under damages based agreements?

We advocate the introduction of a system of capping which does not allow excessive charging as this is contrary to the objectives of our organisation. A capping system set at an appropriate level would lead to consumers being able to retain more damages than some current DBA agreements entered into between claims management companies and consumers.

### Claims Management Companies

14. Do you agree that the proposed statutory controls should apply to anyone offering a damages based agreement? Yes  No

Please give reasons for your answer.

Claims management companies operating in Scotland are wholly unregulated, unlike their English and Welsh counterparts. If claims management companies are to continue to be entitled to enter into DBAs then a regulatory or licensing regime requires to be instigated to protect the accident victim. The regulation of claims management companies should be introduced as soon as is reasonably practicable. Legal services provided to the victims of road traffic accidents should be quality driven and monitored to ensure that a gold standard is achieved by those offering legal services.

Since the introduction of the ban on referral fees by solicitors in England and Wales our members have noted that claims management companies have increased their focus on the Scottish market. Our members report being approached by claims management companies south of the border who are targeting Scottish people who have personal injury claims. Some of these claims management companies have entered into agreements with consumers prior to approaches being made to Scottish solicitors – those can result in a Pursuer being left with very little of their damages. With this recent change in behaviour of claims management companies MASS is concerned that those injured in road traffic accidents in Scotland are protected by a system that is regulated and fair and negative behaviours are subject to sanctions.

15. What should the sanction be for non-compliance with the statutory controls?

Safeguards should be put in place to provide consumer protection by driving malpractice out of the claims management industry. There should be the introduction of a robust complaints handling process. Non-compliance should result in sanctions being imposed including monetary fines and, where the non-compliance is significant, restriction on the conduct of business.

16. If any of the provisions of the rules are breached then should the agreement become voidable? Yes  No

Please give reasons for your answer.

If an agreement does not comply with a framework to safeguard consumers then MASS considers these agreements should be voidable in order to protect Scottish consumers.

### Future Loss

17. Do you agree that the future loss from the success fee should not be ring-fenced? Yes  No

Please give reasons for your answer.

MASS firmly believes that ring-fencing future losses could incentivise delay for those injured in road traffic accidents. We support a system of justice that encourages early resolution of claims and promotes settlement.

For all road traffic cases MASS advocates the use of specialist representation for

consumers and as outlined previously there is a financial risk for our member firms in running larger value cases. We hope that the introduction of appropriately determined caps and the introduction of QOCS would expediate settlement for clients and deliver quicker justice to those involved in road traffic accidents.

18. What impact would not ring-fencing future loss have on:

(i) Pursuers of actions

This should deliver swift justice for Pursuers and result in the recovery of losses more quickly than is currently achieved. Victims of road traffic accidents are entitled to be put back in their pre-accident position as soon as is practically possible. Firms within our organisation represent people who through no fault of their own are unable to work and as a result they are vulnerable and in need of financial assistance. It is imperative that victims of road traffic accidents are delivered resolution in a quick and equitable manner.

and why, and what would they look like

See above.

(ii) Defenders of actions

Resolution of the case and payment of damages would be quicker so this means that more efficiency is delivered for Defenders. If there is a sum of money to be paid to the Pursuer that is just and reasonable then it is inequitable for the Defenders to retain that sum of money for a significant period of time.

and why, and what would they look like

See above

(iii) You or your organisation

See answer 18 (i).

and why, and what would they look like

See answer 18 (i).

(iii) Other organisations:

and why, and what would they look like

### Information and Good Guidance

19. Do you agree that a new code of good practice, applying to all persons and businesses offering damages based agreements, should be developed? Yes  No

Please give reasons for your answer.

We believe that a justice system should operate in relation to recovery of costs from Defenders and any deduction from Pursuers damages is transparent. We agree that there should be a standard, easy understandable document that is sent to consumers who are entering into DBAs (and SFAs) that has a 14 day cooling off period to ensure that the consumer is protected.

20. Should a new code of good practice be statutory  or non-statutory  (please check box as appropriate)?

Please give reasons for your answer.

Despite the recommendation to Scottish Government that the code of good practice be

non- statutory, MASS supports the introduction of a good practice guide that is based on statute.

For a number of years MASS has supported the introduction of a mandatory Pre-Action Protocol and the fact that the current Pre-Action Protocol has been voluntary has led to the operation of undesirable behaviours and judicial time being expended considering the operation of the Protocol. This illustrates why it is important that any new code of good practice is statutory. In addition the introduction of a statutory based code would have a positive impact on consumers.

The code would require to be clear, regarding the extent of sanctions and stipulate what the requirements are in terms of the extent and purposes of the code.

21. Should the development of a new code of good practice be sector-led? Yes  No

Please give reasons for your answer.

It is important that the new code of good practice has input from the sectors that operate in this market on a practical level.

### C. QUALIFIED ONE-WAY COST SHIFTING

22. Do you think that introducing a system of qualified one-way costs shifting will increase access to justice? Yes  No

Please give reasons for your answer

The introduction of QOCS could make a significant difference to injured people and their fundamental right of access to justice.

23. What impact would the introduction of a system of qualified one-way costs shifting have on:

(i) Pursuers of actions

The introduction of QOCS would allow those who do not have access to appropriate funding to bring their cases without the risk of being exposed to adverse costs - these costs can sometimes run to tens of thousands of pounds.

As previously outlined in Section 2 (i), the landscape and availability of ATE cover in Scotland has changed since Sheriff Principal Taylor outlined his recommendations and supports his view that the availability of ATE insurance is indeed a 'sellers' market'. MASS believes that this recent change in the ATE market supports the need for the introduction of QOCS.

It would allow the middle layer of litigant who is not eligible for Legal Aid or cannot fund their case privately to have peace of mind that they will not have exposure to adverse costs. However it would appear that the Pursuer may be potentially exposed in relation to their own disbursements incurred in pursuing their claim. Whilst there could be ATE policies to cover their exposure, in reality MASS believes there will be serious commercial viability concerns for ATE insurers.

MASS advocates a system that builds safeguards for Defenders against vexatious and fraudulent litigants. It is important that if it is found that the Pursuer is vexatious or fraudulent that the burden of adverse costs falls to be paid by the Pursuer and not the Pursuer's representative in order to drive positive consumer behaviour.

The introduction of QOCS would engender a more balanced equality of arms to exist between the Pursuer and Defender as so far as is possible.

and why, and what would they look like

See above.

(ii) Defenders of actions

The removal of QOCS where there was a fraudulent or vexatious litigant would act as a deterrent to negative behaviours. It would drive Defenders to make offers sooner within the process, encourage positive behaviours and move the focus towards early resolution of claims.

and why, and what would they look like

See above.

(iii) You or your organisation

MASS supports the introduction of QOCS. See answer 23 (i).

and why, and what would they look like

See above.

(iii) Other organisations:

and why, and what would they look like

24. Which group of individuals/organisations are likely to benefit most from the introduction of a system of qualified one-way costs shifting?

MASS believes those most likely to benefit from the introduction of QOCS will be Pursuers who have been injured and are vulnerable - they deserve a system whereby they have access to justice, better equality of arms and are protected to a reasonable degree against adverse costs.

Please explain how these benefits will accrue, and their likely extent if possible

See answer 23 (i).

25. Which group of individuals are likely to be most disadvantaged from the introduction of a system of qualified one-way costs shifting?

MASS believes those most likely to be disadvantaged will be Defenders but we believe that any disadvantages would be outweighed by the introduction of positive behaviours. Given that a road traffic victim and the insurance industry currently operate in a David and Goliath context, our organisation supports a system whereby this imbalance is shifted.

Please explain how these disadvantages will accrue, and their likely extent if possible

See answer 23 (ii).

26. What measures could be considered to both identify and mitigate against disadvantages from the introduction of a system of qualified one-way costs shifting?

There should be a removal of the disadvantages that currently operate as barriers to people who have been injured and are unable to gain access to justice. It is incumbent upon the Defenders and the insurance industry that good behaviours are standard - these include early resolution of cases and the Pursuer having to litigate to gain access to justice due to inertia by Defenders.

27. Do you agree that the test for losing the benefit of qualified one-way costs shifting should be fraud, abuse of process and in cases of Wednesbury unreasonable behaviour? Yes  No

Please give reasons for your answer.

MASS believes that where a consumer has acted unreasonably and in line with the 'Wednesbury' principles there should be the loss of one way costs shifting. Our organisation represents people who are injured and vulnerable and it is important that a strict sanction is applied to those abusing a process and that tests are applied consistently across all stages of litigation and in all courts.

## **DAMAGES BASED AGREEMENTS, SPECULATIVE FEE AGREEMENTS AND QUALIFIED ONE-WAY COSTS SHIFTING – OVERALL IMPACT OF PACKAGE**

28. What is your view on the argument that the reform package removes all risk to pursuers of actions?

Our organisation does not agree that all risks to pursuers are removed. There are still risks in terms of a tender - the pursuer may reject the tender on the advice being given by the Pursuer's solicitor. Given the inconsistency of judicial decisions prevalent in awards being made in road traffic cases we believe the introduction of QOCS is a risk reduction as opposed to risk removal.

29. What is likely to be the overall impact of the package on you or your business? Please quantify, if possible.

Overall we assess the impact on our organisation as a positive one subject to appropriate commensurate caps being applied to SFAs and DBAs. We consider that these proposals are a first, much needed step in seeking to address the inequality of arms that exist in the present system and to allow those people represented by our organisation to gain access to justice.

30. What do you think the impact of the overall package will be on:

a) The general level of claims?

We believe that the impact of the overall package on the general level of claims will be negligible - our experience of fraudulent claims is limited and we do not believe that there will be a significant increase in the claims pursued. We believe that the inequality of arms that currently exists within the claims process will be assisted by the introduction of QOCS but the overall volume of claims pursued is unlikely to change in any significant way.

b) The general level of litigation?

These proposals coupled with the introduction of a mandatory Pre-Action Protocol should engender a reduction of the amount of litigation. However this is based on positive behaviours being exhibited by Pursuers, Defenders and the organisations that represent them. MASS supports a system of continued access to justice whereby cases are kept out of court by incentivising insurers and Pursuers to settle without the need for a court hearing.

c) The trajectory of claims, and settlement rates?

We believe that the lifecycle of claims may be reduced by the introduction of these proposals and settlement rates will increase. Again this is subject to the behaviours that these recommendations seek to encourage being used in practice.

See answer 30 (b).

d) Pursuers of actions?

MASS believes these proposals will assist access to justice. There will be a greater level of equality of arms within the claims process, more certainty in terms of costs for consumers and the discouragement of fraudulent or vexatious litigants.

See previous answers for more information.

e) Defenders of actions?

Our organisation would welcome an increase in positive behaviours and an earlier resolution of claims for the victims of road traffic accidents.

See previous answers for more information.

f) Pursuers solicitors?

MASS perceives the lack of ATE funding in Scotland as a challenge but the introduction of QOCS should assist with this. Pursuer solicitors will be more able to operate on a level playing field in terms of different funding offerings and this should drive positive behaviours including transparency and enhanced client care.

g) Defenders solicitors?

See answer 30 (e).

h) Insurance companies?

See answer 30 (e).

i) Case management companies?

Our organisation seeks to encourage the regulation of claims management companies and this, coupled with reasonable sanctions for non-compliance, should encourage positive behaviour and change.

j) The courts?

These proposed changes coupled with the introduction of a mandatory Pre-Action Protocol should decrease the amount of litigation and cases requiring judicial hearing time.

k) Scottish Legal Aid Board?

Some of our member firms operate personal injury claims on the basis of legal aid. The experience of some of our firms is that it is a challenge to deal with the Scottish Legal Aid Board and report behaviours as obstructive and contrary to access to justice.

Our clients are subject to overly onerous conditions in terms of documentation to be produced and our experience is that the introduction of stage reports hinders the solicitor and the progress of the case. We have experience of sanction for reasonable and fundamental medical reports being refused.

l) The general public?

We believe these reforms will have a positive impact on the general public.

m) Others?

## D. COUNSEL'S FEES

31. Do you agree that there should be a table of fees introduced for counsel in the Court of Session?  
Yes  No

Please give reasons for your answer

MASS supports the introduction of a table of fees for Counsel in the Court of Session and in the Sheriff Courts. This will ensure that there is certainty and reasonableness in relation to fees.

We support a system that is based on transparency so that both sides of a case can see clearly and unequivocally what fees have been incurred and on what grounds.

32. Do you agree that there should be a table of fees introduced for counsel in the sheriff court for those cases where sanction for counsel has been granted? Yes  No

Please give reasons for your answer

See answer 31.

33. Do you agree that solicitor advocates should be included in this table of fees? Yes  No

Please give reasons for your answer

Solicitor advocates provide expert legal opinion and should be included for that reason.

34. Do you agree that the Scottish Civil Justice Council is best placed to develop and maintain the table of fees? Yes  No

Please give reasons for your answer

There were significant delays in implementing a table of fees within the summary cause process which resulted in significant debate about the level of fees due and issues arose between firms representing Pursuers and Defenders in relation to what should be paid. Given our experience of this we believe it is important that any introduction of new fees or the basis of new fees coincides with the new procedures.

A significant amount of business will move from the Court of Session to the Sheriff Courts as of 1 September 2015 and our organisation supports there being a coherent and practical basis for fee charging as of this date to ensure that there is no ambiguity. Some guidance, if not by primary legislation, requires to be in place for 1 September - it is important that the new jurisdiction limits come into force at the same time as new table of fees.

35. What do you think the impact of introducing a table of fees will be on:

a) Pursuers of actions?

There will be certainty for consumers and solicitors and protection from unreasonable fees.

b) Defenders of actions?

See answer 35 (a).

c) Solicitors?

See answer 35 (a).

d) Solicitor advocates?

They will be given a level of certainty regarding what can be recoverable and this allows those who represent Pursuers to predict costs more accurately. The fees require to be reasonable and properly reflect the work done.

e) Counsel?

See answer 35 (d).

f) Scottish Legal Aid Board?

See answer 35 (a).

g) Others?

## CHAPTER 2: PROPOSALS ARISING FROM LORD GILL'S SCOTTISH CIVIL COURTS REVIEW

### A. MULTI-PARTY ACTIONS

#### Option 1

36. What would the impact be on access to justice of introducing a procedure along the lines of option 1?

MASS is a society which represents solicitors acting on behalf of victims of road traffic accidents. Accordingly, only those questions which are directed to road traffic accidents will be answered.

37. Who would be most affected by option 1 and what would that impact look like? Please give reasons for your answers.

MASS is a society which represents solicitors acting on behalf of victims of road traffic accidents. Accordingly, only those questions which are directed to road traffic accidents will be answered.

#### Option 2

38. What would the impact be on access to justice of introducing a procedure along the lines of option 2?

MASS is a society which represents solicitors acting on behalf of victims of road traffic accidents. Accordingly, only those questions which are directed to road traffic accidents will be answered.

39. Who would be most affected by option 2 and what would that impact look like?

MASS is a society which represents solicitors acting on behalf of victims of road traffic accidents. Accordingly, only those questions which are directed to road traffic accidents will be answered.

40. Do you have any observations on the technical and funding issues raised in relation to option 2? Please give reasons for your answers.

MASS is a society which represents solicitors acting on behalf of victims of road traffic accidents. Accordingly, only those questions which are directed to road traffic accidents will be answered.

#### Option 3

41. Is there a need for 3<sup>rd</sup> party bodies without a direct legal interest to have the right to bring class actions on behalf of the group they represent or are existing regulatory mechanisms sufficient? Yes  No

Please give reasons for your answer

MASS is a society which represents solicitors acting on behalf of victims of road traffic accidents. Accordingly, only those questions which are directed to road traffic accidents will be answered.

42. Should 3<sup>rd</sup> party bodies without a direct legal interest have access to public funding for litigation through the proposed multi-party action fund? Yes  No

Please give reasons for your answer

MASS is a society which represents solicitors acting on behalf of victims of road traffic accidents. Accordingly, only those questions which are directed to road traffic accidents will be answered.

43. What would the impact be on access to justice of introducing a procedure along the lines of option 3?

MASS is a society which represents solicitors acting on behalf of victims of road traffic accidents. Accordingly, only those questions which are directed to road traffic accidents will be answered.

44. Who would be most affected by option 3 and what would that impact look like?

MASS is a society which represents solicitors acting on behalf of victims of road traffic accidents. Accordingly, only those questions which are directed to road traffic accidents will be answered.

45. Do you have any observations on the technical and funding issues raised in relation to option 3. Please give reasons for your answers.

MASS is a society which represents solicitors acting on behalf of victims of road traffic accidents. Accordingly, only those questions which are directed to road traffic accidents will be answered.

46. Do you support multi-party action option 1  option 2  or option 3  (please check box as appropriate)?

Please give reasons for your answers.

MASS is a society which represents solicitors acting on behalf of victims of road traffic accidents. Accordingly, only those questions which are directed to road traffic accidents will be answered.

## **B. AUDITOR OF COURT**

47. What impact will the proposal to make the post of the Auditor of the Court of Session a salaried public appointment have on:

a) The Auditor of the Court of Session?

MASS supports this post being a salaried public appointment. Judges, sheriffs and sheriff clerks are salaried public appointment posts and are deemed to be independent and reasonable assessors who work in the public interest. In addition, greater independence of Auditors can only have a positive impact on all parties involved in the claims and litigation process.

b) Staff of the Auditor of the Court of Session?

MASS supports this post being a salaried public appointment. Judges, sheriffs and sheriff clerks are salaried public appointment posts and are deemed to be independent and reasonable assessors who work in the public interest. This will ensure that consistency of decision making is delivered.

c) Pursuers of actions?

There will be little impact on Pursuers on the basis that the posts are properly resourced and there is a consistency of service.

d) Defenders of actions?

See Answer 47 (a). In addition, greater independence of Auditors can only have a positive impact on all parties involved in the claims and litigation process.

e) Solicitors?

See Answer 47 (a).

f) Counsel?

See Answer 47 (a).

g) Scottish Legal Aid Board?

See Answer 47 (a).

h) Other?

Please give reasons for your answers

See above answers

48. What impact would the proposal to make the post of auditor in the sheriff court a salaried public appointment have on:

a) Sheriff court auditors?

Our comments are the same as those given in answers to the court of session (see above).

b) Independent practitioners who currently hold commissions as auditors?

Our comments are the same as those given in answers to the court of session (see above).

c) Pursuers of actions?

Our comments are the same as those given in answers to the court of session (see above).

d) Defenders of actions?

Our comments are the same as those given in answers to the court of session (see above).

e) Solicitors?

Our comments are the same as those given in answers to the court of session (see above).

f) Counsel?

Our comments are the same as those given in answers to the court of session (see above).

g) Scottish Legal Aid Board?

Our comments are the same as those given in answers to the court of session (see above).

h) Other?

Please give reasons for your answers

Our comments are the same as those given in answers to the court of session (see above).

### C. CONDUCT OF LEGAL REPRESENTATIVES

49. Do you support the proposal to make legal representatives personally liable for expenses occasioned by their own conduct? Yes  No

Please give reasons for your answer.

MASS believes that it would be unreasonable to financially sanction a solicitor who has represented a consumer and has acted in the best interests of justice and in good faith.

Solicitors behaviour is currently regulated by the Law Society of Scotland and the Scottish Legal Complaints Commission and there is liability for inappropriate conduct - there is already a means by which to sanction solicitors if there is unsatisfactory behaviour occasioned by their own conduct.

50. What impacts do you think that the proposal to make legal representatives personally liable for expenses occasioned by their own conduct will have on you or your organisation?

Our member firms fight for those who have been injured in road traffic accidents and we have a high standard of conduct that our member firms have to adhere to and exhibit.

Due to the nature of our instruction we often act for people who are vulnerable at a very challenging time of their lives and that requires considerable expertise in relation to

management of client behaviour and expectations. The potential for personal sanction arising from the conduct of these individuals may discourage solicitors taking cases for challenging individuals who require assistance in obtaining access to justice.

### CHAPTER 3: LEGAL AID PROVISIONS

#### A. LEGAL AID FOR LEGAL PERSONS

51. Do you agree that these legal aid for legal persons provisions should be taken forward?  
Yes  No

Please give reasons for your answer.

52. Do you agree that the Scottish Legal Aid Board should be required to apply the financial eligibility tests set out in paragraph 187 above? Yes  No

Please give reasons for your answer.

#### B. Funder of Last Resort

53. Do you agree that the Legal Aid Fund should only be used as a funder of last resort in respect of civil litigation? Yes  No

Please give reasons for your answer

### CHAPTER 4: ASSESSING THE IMPACT

#### EQUALITY

Please tell us about any potential impacts, either positive or negative, you feel any of the proposals for the Bill may have on particular groups of people, with reference to the "protected characteristics" listed above.

#### BUSINESS AND REGULATION

Please tell us about any potential costs or savings that may occur as a result of the proposals for the Bill, and any increase or reduction in the burden of regulation for any sector. Please be as specific as possible.