



Scottish Court Fees 2024-2025

About JustRight Scotland

JustRight Scotland is a registered charity (SC047818) established by an experienced group of human rights lawyers. We use the law to defend and extend people’s rights, working collaboratively with people and communities to change broken systems as well as individual people’s lives.

We provide legal advice and representation on human rights and equalities issues across a range of legal areas including: women’s legal justice, trafficking and labour exploitation, EU citizen rights, migration and citizenship, disability and trans legal justice.

Whilst our work is specific to Scotland, our work covers both devolved and reserved policy areas, and as such we endeavour to respond to policy consultations across both Scotland and UK, where appropriate.

As public lawyers for people who face systemic inequalities, discrimination and disadvantage, we use the provisions of the Human Rights Act 1998 (HRA) in our work, daily. In addition to providing direct legal advice to clients, we also run outreach legal surgeries and helplines, deliver rights information, training and legal education, and contribute to research, policy and influencing work.

About Human Rights Consortium Scotland

The Human Rights Consortium Scotland is Scotland’s civil society network to defend and promote human rights. We have over 200 network member organisations from across Scotland and across issues, as well as many more individual supporters.

<p>JustRight Scotland is a Scottish Charitable Incorporated Organisation (SC047818) which provides legal services through its limited liability partnership, JustRight Scotland LLP which trades as JustRight Scotland (SO305962). This firm has been authorised to act as solicitors by the Law Society of Scotland (Registered No 53703).</p> <p>Suite Room 1, 1st Floor, Libertas House, 39 St Vincent Place, Glasgow, G1 2ER</p>	<p>▶ www.justrightscotland.org.uk ▶ @justrightscot</p>	<p>Human Rights Consortium Scotland is a Charity Registered SCIO: SC050099</p> <p>66 Hanover Street, Edinburgh EH2 1EL</p>	<p>▶ www.hrcscotland.org ▶ @HRCScotland</p>	<p>Scottish Association of Law Centres (SALC) is the national body for the not-for-profit legal sector in Scotland.</p>	<p>▶ https://lawcentres.scot/ ▶ @lawcentresscot</p>
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We work towards two outcomes: to ensure that civil society has the resources it needs to protect human rights throughout all of its work; and to be a strong collective civil society voice on human rights.

About Scottish Association of Law Centres

The Scottish Association of Law Centres (SALC) is the national body for the not-for-profit legal sector in Scotland, and in particular, for community-based law centres across Scotland. We are an independent group, established to support our members to ensure the provision of free and accessible legal and related services to people, and communities, especially those who are marginalised and excluded, and who experience discrimination and disadvantage.

Our Response

Our response to the Scottish Government consultation on Scottish Court Fees 2024-2025.

As law centres and civil society organisations working on human rights, we welcome the opportunity to respond to the Scottish Government consultation on Court Fees in Scotland. We acknowledge that there are numerous types of legal cases in our courts and that not all litigation is the same; as such, we will be speaking specifically to our area of expertise outlined above – human rights, equality law, and public interest litigation.

Question 1. Do you agree that court fees should rise by 10% commencing 1 November 2024?

We do not agree that court fees should rise by 10% for human rights, equality law or public interest related cases, including for cases taken under the UNCRC (Incorporation) (Scotland) Act 2024, and indeed, we do not agree with court fees being applied to these cases at all.

The Scottish Court System must comply with Article 6, of the European Convention on Human Rights (ECHR), the right to a fair trial.

Article 6(1) of the ECHR guarantees everyone has the right to a fair hearing in the determination of civil rights and obligations or criminal charges, before an unbiased and independent judge. A fair hearing includes a right of access to a court, and if individuals are prevented from accessing a court due to the requirement to pay increasing court fees, they might be unfairly prevented from accessing that right.

The Scottish Civil Court System should also comply with Article 13 of the ECHR, the right to an effective remedy. This right is guaranteed in most international human rights treaties and requires States to ensure the existence of remedies for human rights breaches that are *accessible, affordable, timely, and effective*. This is known as the AATE framework¹. Remedies can provide redress to people whose rights were breached and prevent future violations by requiring structural change. For that to happen, remedies need to be accessible and affordable.

However, court fees are a financial barrier that makes human rights remedies inaccessible and unaffordable. Currently, many people are priced out of being able to seek effective redress for rights violations and court fees are one element of that. A core principle of the international human rights framework is that access to justice and accountability on rights should not be affected by the ability to pay. There should be no possibility of human rights legal protections being more accessible for those who are wealthy than those who are not. Without affordable and accessible routes to accessing justice, the State will have impunity to breach the rights of those who cannot afford to challenge it.

Therefore, court fees should not be applied to human rights or discrimination claims at all, let alone increasing these fees by a further 10%. This stands in stark contrast

¹ [Scottish Human Rights Commission, written evidence 2022](#)

to high value commercial litigation, where it is entirely appropriate for both commercial parties to pay for judicial resolution of their business dispute.

We note that court fees are one element of a whole system of financial barriers limiting access to remedy and redress. We acknowledge that legal aid is available to some, covering court fees. However, the current system of civil legal aid excludes many people who do not meet the financial eligibility limits, but who cannot afford to fund a court action themselves. They must pay court fees themselves, whether hundreds or thousands of pounds, in addition to covering solicitor and Advocate fees, and running the risk of having to pay the other side's legal expenses if they are unsuccessful.

The current legal aid system also fails to provide equal access for people who face specific barriers to securing justice, for those requiring legal assistance in specialist areas of law, and across key geographies. This gap has disproportionately restricted access to legal advice for groups in vulnerable and marginalised situations, including survivors of gender-based violence, migrants, disabled people, children, and older people.

In the context of a legal aid system that is crumbling and not fit for purpose, an increase to court fees would only exacerbate the inaccessibility of legal routes to individuals attempting to secure a remedy for breach of their human rights, challenge discrimination or pursue public interest litigation and would have a disproportionate impact on disadvantaged groups.

Charging court fees is in contrast to the approach taken by Scottish tribunals, such as Additional Support Needs Tribunals and Mental Health Tribunals that do not charge fees.

With regard to Employment Tribunals, an individual does not have to pay any fee to raise a claim. This follows a landmark Supreme Court decision which found that the fees charged for raising employment tribunal claims acted as an unlawful barrier to accessing justice. The Supreme Court noted that it is not enough that courts exist, but people must be able to access them, otherwise the law can become a dead letter². It noted that the courts do not provide a public service like any other, they perform a special role in ensuring the law can be tested and clarified and that rights on paper can be given effect in practice, in the interests of the individual and the public interest.

² [R \(on the application of UNISON\) \(Appellant\) v Lord Chancellor \(Respondent\) \[2017\] UKSC 51](#)

In January 2024, the UK Government launched a consultation to reintroduce fees for bringing claims to the Employment Tribunal and the Employment Appeal Tribunal. We are concerned that re-introducing fees would create an additional barrier to individuals accessing justice via the tribunal system. Access to justice is critical to the rule of law, and we urge the Scottish Government to oppose those proposals if they remain on the agenda of the newly elected government.

We note that court fees have not been stagnant over recent years but have instead continually increased. Court fees increased by 2% in 2022, and again by a further 2% in 2023 and 2024.

The explanation for past and proposed increases to court fees is that of inflation; however, it must be noted that individuals overwhelmingly bear the cost of inflation. As inflation peaked at over 10% in Scotland, households saw bills go up, but importantly wages did not go up in the same way. The consultation document relies on the Consumer Prices Index (CPI) for inflation percentage. The inflation percentage is an average of many things, and as such does not always directly reflect the real-life cost-of-living. In contrast, total real pay has only increased by 1.6% between December 2023 and February 2024³. Thus, it is inappropriate to increase court fees for human rights, equalities, and public interest litigation by 10% citing inflation as a justification, without taking into account the real-term wage cut suffered by most people in Scotland which will contribute to limiting their access to justice.

Those faced with the prospect of having to suffer a breach of their rights with no hope of remedy may make unreasonable cuts to their living expenditure to cover court fees. This prospect was a factor in the Supreme Court decision referred to above, on employment tribunal fees, *Unison (R (Unison) v Lord Chancellor)*.

Lord Reed stated in the judgment:

*'Where households on low to middle incomes can only afford fees by sacrificing the ordinary and reasonable expenditure required to maintain what would generally be regarded as an acceptable standard of living, the fees cannot be regarded as affordable'*⁴.

We believe that this directly echoes the situation of many of those who bring human rights, equalities law, and public interest litigation cases to Scottish Courts, and will only be compounded by the proposed increase of 10%.

³ [Office for National Statistics, Average weekly earnings in Great Britain: April 2024, \(14 May 2024\)](#)

⁴ *Supra* note 2.

In conclusion, a 10% increase in court fees for human rights, equalities law, or public interest litigation cases would be detrimental and indeed, such cases ought to be exempted from court fees altogether. It is also important to highlight that the UNCRC Act and the upcoming Human Rights Bill broaden 'standing' - a term for a set of legal rules which establish who has the right to take a judicial review - to anyone with sufficient interest, opening the way for NGOs to take strategic cases to court to advance human rights. In light of this, court fees must not stand in the way of access to justice on human rights, including for cases taken under UNCRC.

Question 5. Do you have any other comments on the subject of this consultation paper or on the future direction of policy considerations for court fees in Scotland?

As highlighted in our response to question 1, there is a significant and increasing shortage of legal aid solicitors in Scotland, particularly outside the central belt.

The Law Society of Scotland noted that the shortage of legal aid solicitors is causing people to be deprived of civil justice and that the legal aid crisis "specifically impacts society's most deprived and vulnerable, perpetuating further disadvantage."⁵

Legal aid can only be obtained through a registered legal aid solicitor, so if individuals cannot locate a legal aid solicitor, willing and able to take them on as a client, they cannot access state-funded legal advice and the only possibility may be to represent themselves, but for most that will not be a real option due to the complexity and inaccessibility of Scotland's civil and administrative justice system.

In addition to reforming legal aid, significant improvements could be made to access to justice by introducing new rules protecting those pursuing human rights and equality claims from the possibility of having to pay the other side's legal expenses. This was recently done for personal injury claims, recognising the imbalance between an individual pursuer in a personal injury claim, and the defending company or employer, who will usually be backed by insurers. A similar power imbalance exists for individuals pursuing human rights and equality claims against the state or government. Detailed consideration ought to be given to the introduction of special rules for human rights claims, to protect people from the risk of having to pay the other side's legal costs.

⁵ <https://www.lawscot.org.uk/for-the-public/what-a-solicitor-can-do-for-you/legal-aid/>

Question 6. Do you consider that any of the proposals in this consultation paper are likely to have a disproportionate effect on people or communities who face discrimination or social exclusion owing to race, age, gender, disability, sexual orientation, or any other factor? If so, please specify your views on the possible impact.

Yes.

There are numerous financial barriers to accessing justice within Scotland, but these are felt more severely along the intersections of society.

We believe the financial barriers to accessing legal remedies have a greater impact on communities that are already facing harsher socio-economic realities, also exacerbated during and following the pandemic.

A report by the Coalition for Racial Equality and Rights (CRER) 'Ethnicity and Poverty in Scotland 2020' found that in Scotland, someone from a Black and minority ethnic (BME) background is around twice as likely to experience poverty as someone from a white Scottish/British background⁶.

The 2024 Report from the First Minister's Advisory Council on Women and Girls found that women are overrepresented in households most negatively affected by the cost-of-living crisis, by rising food and energy costs, and are on average on lower income and less secure employment⁷.

Inclusion Scotland also reported that 49% of all those living in poverty in the UK, are either disabled people or live in a household with a disabled person⁸.

These are only a few examples of the inequality within Scottish society owing to somebody's personal identity. As such, by increasing financial barriers to accessing justice – in the form of increasing court fees for human rights, equalities law, and public interest litigation cases – the proposals will disproportionately impact individuals and communities who already face financial instability, compounded by interdependent systems of discrimination.

At the time of writing, the Equality Impact Assessment for the review of court fees is yet to be published. This, as well as a Child Rights and Wellbeing impact

⁶ CRER [Ethnicity and Poverty in Scotland 2020. Analysis and reflection on the impact of Covid-19](#)

⁷ [First Minister's National Advisory Council on Women and Girls 2024 Report](#)

⁸ Inclusion Scotland [Cost of living crisis: What's the impact on disabled people](#)

assessment, must be published as soon as possible, and reasons provided for why these were not published alongside the consultation.

We note that the Equality Impact Assessment for the 2017 consultation states that *“the Scottish Courts and Tribunals Service (SCTS) will continually monitor cost recovery from the courts. In addition, there will require to be a comprehensive review of court fees in the years to come. This will be informed by the data available from the newly operating Integrated Case Management System recently launched by SCTS and by an assessment of the impact of the court reforms such as the new Simple Procedure”*⁹.

However, data such as this from SCTS was *not* included in the document for this consultation.

There is an urgent need to expand the evidence base around the impact that court fees have on people who are on low incomes but who are currently outside the eligibility criteria for exemptions, the impact on particular communities and protected groups, and the impact on organisations, particularly charities with an interest in seeking legal remedies through the courts.

We urge the Scottish Government to undertake and publish a comprehensive data analysis before the next review of Scottish Court fees.

We reiterate our ask for the Scottish Government to remove court fees for human rights, equalities law, and public interest litigation cases. This could be achieved through an exemption from court fees for those bringing a case regarding human rights law, equalities law, or public interest litigation. An exemption should also be granted to Individuals in receipt of Personal Independence Payment (PIP) or Disability Living Allowance (DLA). Unfortunately, receipt of these benefits does not ensure access to legal aid. While that is the case, people receiving these benefits ought to be exempt from court fees, as are those who receive legal aid.

For further information, please contact JustRight Scotland at:
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⁹ [Scottish Court Fees Scotland 2018-2021 consultation: equality impact assessment](#)