The Association of Personal Injury Lawyers (APIL) was formed by pursuers’ lawyers to represent the interests of personal injury victims. APIL is a not-for-profit organisation with 24 years’ history of working to help injured people gain the access to justice they need. APIL currently has around 4,000 members, 185 of whom are in Scotland. Membership comprises solicitors, advocates, legal executives and academics whose interest in personal injury work is predominantly on behalf of pursuers.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- to promote full and just compensation for all types of personal injury;
- to promote and develop expertise in the practice of personal injury law;
- to promote wider redress for personal injury in the legal system;
- to campaign for improvements in personal injury law;
- to promote safety and alert the public to hazards wherever they arise; and
- to provide a communication network for members

Introduction

1. APIL has been involved in all stages of consultation on civil courts reform and our submissions to date have focussed primarily on arguments of principle rather than specific commentary on any financial assumptions made, although we have consistently made the point that personal injury cases are a valuable source of income for the Court of Session.

2. The Bill has no financial implications for APIL. We are, however, extremely concerned about many of the assumptions in the financial memorandum to the Bill, and inconsistencies in terms of statistics. We have pointed out our key concerns in our evidence to the justice committee, some of which is reproduced below for ease of reference, along with our additional concerns.

3. We have always supported the prospect of change to make the civil court system more efficient, but the proposed exclusive competence of the sheriff court of £150,000 will effectively end the Court of Session as a court of first instance for personal injury. This would be a critical change, affecting thousands of vulnerable injured people, yet it appears that many of the assumptions on which this change is proposed are at best vague and at worst misleading. APIL has recommended a limit of £30,000 based on evidence collected, and arguments outlined in the evidence to the justice committee. We refute absolutely the assumption at paragraph 75 of the financial memorandum that only 80 per cent of personal injury cases will move to the sheriff court as a result of this Bill – our reasoning for this is also set out in the evidence to the justice committee. The assumptions in the financial memorandum to the Bill need to be scrutinised and many practicalities need to be addressed before reform should be implemented.
4. Our specific concerns cover several of the questions in the call for evidence, so we have made our points based on subject matter rather than the questions as set out.

Sheriffs

5. Under the terms of this Bill, around 2,700 cases will be transferred down from the Court of Session, most of which will be personal injury cases. At the same time, court closures inevitably mean additional pressure on remaining sheriff courts. Yet, according to the financial memorandum to this Bill, there are to be no extra sheriffs to deal with the influx of cases in a system which APIL members report is already creaking at the seams and in desperate need of proper modernisation.

6. Everyone who practises in the sheriff court knows the time pressures and constraints under which they currently operate. Criminal work takes priority, then any case involving the welfare of children, and rightly so. But these create precisely the problems of delay, adjournment and inefficiencies identified by Lord Gill in the Scottish Civil Courts Review. The idea that a system already creaking can seamlessly accommodate nearly 3,000 additional cases is hopelessly optimistic. The proposition could very well result in the complete collapse of the new system.

Information technology

7. Technology in the sheriff court requires significant improvement and investment. Much of the administrative work in the Court of Session is carried out by email, and the e-motion procedure is particularly effective. This really should be available, not just in the specialist personal injury court, but also in the other sheriff courts dealing with personal injury cases. In addition, electronic recording of evidence, which is currently available in the Court of Session, should be extended to the sheriff court, where parties still have to pay for a shorthand writer to note evidence. Yet, according to the financial memorandum, only £10,000 is to be set aside for the Scottish Court Service to make ‘minor updates to one of its IT systems’.

Savings to the Scottish Legal Aid Board (SLAB)

8. Assumptions about savings to SLAB in reparation cases are based mainly on the anticipated reduction in the use of counsel once cases move from the Court of Session to the sheriff courts. The costs in the financial memorandum are barely penetrable and appear, we submit, to be based almost entirely on guesswork. At the very least, these figures require clarification as the discussion about when counsel should be available is not assisted by what we suspect is a misleading suggestion that there are substantial savings to the public purse to be made.

9. In relation to legal aid, it is suggested there might be an ongoing saving to the public purse of £1.2 million a year (ie half of legal aid payments to counsel on an annual basis) or £1.32 million if expected savings from the Sheriff Appeal Court are

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1 Courts Reform (Scotland) Bill, Financial Memorandum, paragraph 88.
2 Courts Reform (Scotland) Bill, Financial Memorandum, paragraph 97.
taken into account. In paragraph 95, however, it is acknowledged that around 85 per cent of legally aided cases in this area are successful. These cases will result in a full recovery of costs including counsel’s fees from the other side, generally an insurance company.

10. It seems unlikely that the £2.4 million referred to in the memorandum as payments to counsel\(^3\) represents the net cost after recoveries are taken into account. It is difficult to be clear about these figures because the Legal Aid Board’s own published figures for 2012-2013 show a total (gross) cost of reparation actions to be £6,337 million but with recovered costs of £4,989 million, making a net cost of £1,348 million for the whole reparation budget. Medical negligence shows total (gross) cost of £3,013 million with recovered costs of £2,020 million making a net cost of £993,000. There seems no correlation anywhere with the figures in the financial memorandum which say that the Board paid out a total of £4.9 million, of which £2.4 million was paid to counsel (paragraph 97).

11. SLAB already operates its own control sanctions for the sheriff court where stringent tests on value, complexity etc. have to be met to its satisfaction. It already controls sanction in the Court of Session by only granting a Court of Session certificate for cases which are demonstrably worth more than £50,000. So the use or abuse of counsel for modest value legal aid cases does not apply at present to the public purse.

**Impact on the commercial court**

12. The commercial court has three dedicated judges, a number of dedicated clerks and works on a model which is very resource-intensive, involving active judicial management. It produces around a tenth of the fee income produced by personal injury cases in the Court of Session.\(^4\)

13. At the same time, the use of judicial resources makes the commercial court very expensive. It is, in effect, subsidised by personal injury cases in the Court of Session, which, when run properly, involve no use of judicial time except when a case goes to proof (which is very unusual in personal injury cases). Even allowing for the fact that almost half of commercial actions are likely to move to the sheriff court under the proposals in the Bill\(^5\), the financial viability of running the rest of them in the Court of Session once the fee income from personal injury cases is lost will be considerable. This does not appear to be recognised in the financial memorandum.

**Judicial salaries and sitting days**

14. It is clear that a number of sheriffs will be replaced with summary sheriffs, who will be paid lower salaries. While this will undoubtedly generate savings in the long

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\(^3\) Ibid, paragraph 96

\(^4\) Result of freedom of information request on Court of Session exemptions and fees charged from 2010-2-12, attached as Appendix A

run, the integration of summary sheriffs into the system will be done gradually, as sheriffs retire, which means there will be no short term gain.

15. Paragraph 83 of the financial memorandum assumes a considerable annual saving due to the use of sheriffs rather than judges yet, as far as we can see, there will be no difference in the number of judges, or in their salaries. We submit this assumption requires further clarification.

**Fee income**

16. Paragraphs 30-31 of the financial memorandum, are highly ambivalent. Paragraph 30 reports that the Scottish Court Service (SCS) ‘has highlighted that the falling level of demand for civil business **will** have an impact on the overall fee income’ (emphasis added).

17. Paragraph 31 refers to the fact that the SCS Board has also said that the cost of change may have an effect on the implementation of some of the reforms if there is a reduction in fee income. It then says that the current fee income is on track to ensure the costs of reforms can be met.

18. It is difficult to understand how, if it is anticipated that there will be an impact on fee income, and that this may have an impact on the implementation of reforms, the fee income can currently be on track to meet the costs of reforms. It stands to reason that fee income will need to increase to cover the anticipated losses, but the extent to which court fees will need to be increased to meet that need is not addressed in the financial memorandum.

19. Appendix A shows that more than £2 million a year is paid to the Court of Session in court fees, in personal injury cases. Fee income from the sheriff court will be significantly less. This fact alone will affect fee income, even without all the other issues raised in this document. We submit the SCS should be asked for detailed projections in relation to court fees and fee income. If there is to be a fee increase in the sheriff court for personal injury work, we should be informed. It is our submission, however, that such an increase for a new system which, on current evidence, we believe cannot possibly work in practice would be completely unjustified.
Appendix A: Freedom of Information request: Court of Session exemptions and fees charged

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