Civil Litigation/D_Aberdeen Council
The Civil Litigation (Expenses and Group Proceedings)

Consultation

1. Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

Aberdeenshire Council did not take part in the consultation.

2. If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?

N/A

3. Did you have sufficient time to contribute to the consultation exercise?

Yes.

Costs

4. If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

They have been outlined in the FM but it appears that little attempt has been made to quantify the impact. This might be because contributors to the initial consultation were not able or forthcoming about numbers of relevant cases. From which numbers, an inferential impact could have been drawn.

5. Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

Other than the fact that no specific costs and savings are specified in numerical form, most savings are speculative. It appears that cost-impact is based on assumptions of effect rather than an analysis of the introduction of similar provisions in other jurisdictions, such as the USA. One curious conclusion was the observation with regards to Qualified One-way Cost Shifting (“QOCS”).

The basis of this is on a sample in Lord Justice Jackson’s preliminary review which Sheriff Principal Taylor referred to and endorsed as representative of Scotland. The sample was from an insurer which evinced that they only recovered costs in 0.1% of claims notified to them. This is allowing for the fact that only 6.22% of cases actually make it to service of proceedings, and a yet smaller percentage of these actually proceeded to trial.

The FM draws the conclusion that few defenders recover costs anyway. The FM anticipates that QOCS will encourage more out of court settlements. If pursuers are not concerned about an award of expenses against them, and the defender rarely recovers costs anyway, it is not clear where the nexus is between this anticipation
and the cause is. It may more reasonable to conclude it will have a negligible effect, but it could also be inferred that QOCS will increase the number of claims made and therefore a proportionate increased number of cases will go to trial. Which will in the end be more costly to the defenders.

6. If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

This is difficult to answer as there are many unknowns.

7. Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?

It certainly outlines the limitations of anticipating any resulting costs, but does not outline a timescale over which an effect might be felt.

Wider Issues

8. Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

It captures those which might be incurred by Local Authorities.

With regards to S. 11 - Awards of expenses against legal representatives – It does not outline how often the existing rules been used by the courts. It does not address whether this codification removes any ambiguities which otherwise limited their use. If this is known, it does not address is whether there would be any move in the legal profession to indemnify solicitors with regards to this. Whether Local Authorities would be able to meet this change in the industry and stay competitive as a recruiter.

9. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

It is perceived with regards to the power to regulate the cap on legal expenses that, depending on the cap size, it may make claims more or less likely. It is not possible to quantify the costs. However it may be helpful to know whether Sheriff Principal Taylor’s suggested table of caps will be followed or adjusted in the first instance.