Introduction

1. The Bakers Food and Allied Workers Union (BFAWU) is the largest independent Trade Union in the food sector in the British Isles. First established in 1847, we have over 175 years of experience in representing employees in the food sector from production and factories through to sales and shops.

2. Our belief is that our employees should feel secure and safe in their workplace. Our experience teaches us that to achieve this goal we must be ready to support our members through the civil litigation process. We recognise that bringing individual claims for compensation on behalf of our injured members can and does have a positive impact upon health and safety in individual workplaces and across entire sectors. The rules in relation to civil litigation expenses are therefore very important to the BFAWU. We therefore welcome the opportunity to make this submission in relation to the Civil Litigation (Expenses and Group proceedings) (Scotland) Bill.

3. We broadly welcome the Bill. We agree with and support its overarching policy objective to improve access to justice. We welcome the Scottish Government’s intention to implement the recommendations of Sheriff Principal Taylor particularly in relation to Qualified One Way Cost Shifting (QOCS) and Group Proceedings. We also support the provisions in relation to the Auditors of the Court.

4. However as currently drafted, we have concerns that the Bill does not adequately implement Sheriff Principal Taylor’s recommendations in relation to QOCS. We fully support QOCS and it is essential the language of the Bill is correct.

5. Our submission is restricted to areas of our concern to help sharpen the drafting of the Bill. They relate to Sections 8 and 10.

6. We will also comment upon court fees.

Whether the Bill will achieve the policy aim of improving access to justice by creating a more accessible, affordable and equitable justice system

7. In our submission, the recommendations of Sheriff Principal Taylor would improve access to justice by creating a more accessible, affordable and equitable civil justice system. However, we do not think the Bill as currently drafted sufficiently reflects those recommendations and we accordingly do not think that on its current drafting that those policy aims will be achieved fully. In particular we would submit:
   - Section 8(4)(a) requires to be amended
   - Section 8(4)(b) requires to be amended
• Trade Union legal assistance should be expressly excluded from Section 10.

Section 8(4)(a) – Makes a fraudulent representation in connection with proceedings

8. The drafting is too flexible and imprecise. In our submission the balance struck with this form of words is incorrect. The drafting of the Section will not provide pursuers or defenders with certainty. We believe that defenders will rely upon the section to seek to remove the benefit of QOCS from a pursuer in many instances where such an outcome was not intended by Sheriff Principal Taylor such as where the pursuer is simply found to be incredible or “over egging matters”. The benefit of QOCS should only be removed in our submission where the fraudulent misrepresentation relates to a material part of the case.

Section 8(4)(b) – Behaves in a manner which the court considers falls below the standards reasonably expected of a party in civil proceedings

9. In relation to the reasonableness of the pursuer's behaviour Sheriff Principal Taylor clearly recommended that QOCS should only be removed where the behaviour is “Wednesbury” unreasonable. We believe that the current drafting of the Bill will see QOCS removed in relation to unreasonable behaviour which is significantly less that Wednesbury unreasonableness.

Court Fees

10. The Bill recognises that exposure to defenders’ legal expenses can represent a significant barrier to access to justice. It fails to recognise that court fees can also represent a significant barrier to access to justice. The Bill should read court fees and expenses in the same way. Both should be subject to QOCS.

BFAWU
18 August 2017