



RESPONSE TO
CONSULTATION ON
SCOTTISH COURT FEES

THE SCOTTISH GOVERNMENT

Introduction

- 1 The Institute of Chartered Accountants of Scotland (ICAS) is the oldest professional body of accountants and represents over 21,000 members who advise and lead business across the UK and in almost 100 countries across the world. ICAS is a Recognised Professional Body (RPB) which regulates insolvency practitioners (IPs) who can take appointments throughout the UK. We have an in-depth knowledge and expertise of insolvency law and procedure.
- 2 ICAS's Charter requires it to primarily act in the public interest, and our responses to consultations are therefore intended to place the public interest first. Our Charter also requires us to represent our members' views and protect their interests. On the rare occasion that these are at odds with the public interest, it is the public interest that must be paramount.
- 3 ICAS is interested in securing that any changes to legislation and procedure are made based on a comprehensive review of all of the implications and that alleged failings within the process are supported by evidence.
- 4 ICAS is pleased to have the opportunity to submit its views in response to the Scottish Government consultation on court fees. We shall be pleased to discuss in further detail with the Scottish Government any of the matters raised within this response.

Response

- 5 We understand the desire to remove unnecessary burden on the public purse especially at this time of budgetary pressure across Government. We do not however consider that full cost recovery as a matter of policy should be pursued under all circumstances. Access to appropriate judicial processes should be available to all and we are concerned that substantial increases in court fees will reduce access to legal recourse in some instances.
- 6 We are concerned that significant increase in court fees will potentially result in economic harm for businesses in Scotland. In many situations the total cost of pursuing litigation is such that the decision to pursue legal action in the civil courts is not economic to pursue. Significant increases in court fees will further exacerbate this situation. In certain circumstances the lack of redress could have serious financial implications for the business.
- 7 We are particularly concerned that fees payable to the court arising out of statutory requirements in insolvency proceedings should be significantly increased resulting in reduced dividends to creditors. The court system is integral in many functions of insolvency practitioners acting as office holders in insolvency proceedings. Proposals to increase court fees (particularly under Option 2) would result in significant increased costs for what could be considered as routine or mainly administrative functions by the court in relation to insolvency proceedings.
- 8 Where cost recovery is to be pursued, subject to considered decisions around preserving access to justice, then we would suggest that the costs should be reflective of direct costs plus an appropriate share of overheads. The consultation paper does not provide any evidence (particularly in relation to Option 2) that cost recovery is calculated on this basis. As a result, there is a significant risk that costs are not borne by the beneficiary of the service being provided and that cross subsidisation will occur in many instances.
- 9 Accepting that the consultation is broadly a choice between implementing a flat rate across all fee or targeted increases, our preference would be for option 1 (flat rate increase) to be pursued in the absence of a more detailed exercise to consider each fee against the activity cost.

12 October 2016

Direct contact for further information:

David Menzies

Director of Insolvency

E-mail: dmenzies@icas.com

TEL: +44 (0)131 347 0242