

Accessing Social Justice in Stirling

examining the impact of legal aid cuts and the introduction of Employment Tribunal fees



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1. Introduction

1.1 The aim of this work was to examine the current status of accessing justice (primarily in matters of civil law) for the citizens of Stirling following recent changes to two key components of the national justice framework:

- Year-on-year decreases in legal aid funding by the Scottish Legal Aid Board ('SLAB').
- The UK Government's introduction of fees for employment tribunals in 2013

1.2 In order to set the context for this work, information and statistics relating to civil law cases and the context of legal aid provision in Scotland will first be discussed before issues relevant to Stirling are considered.

1.3 This analysis allows for a comparison to be made on these matters between the national situation and locally within Stirling, whilst the discussion on recent changes to legal aid provision demonstrates the Scottish Government's intention to widen access to justice for their citizens.

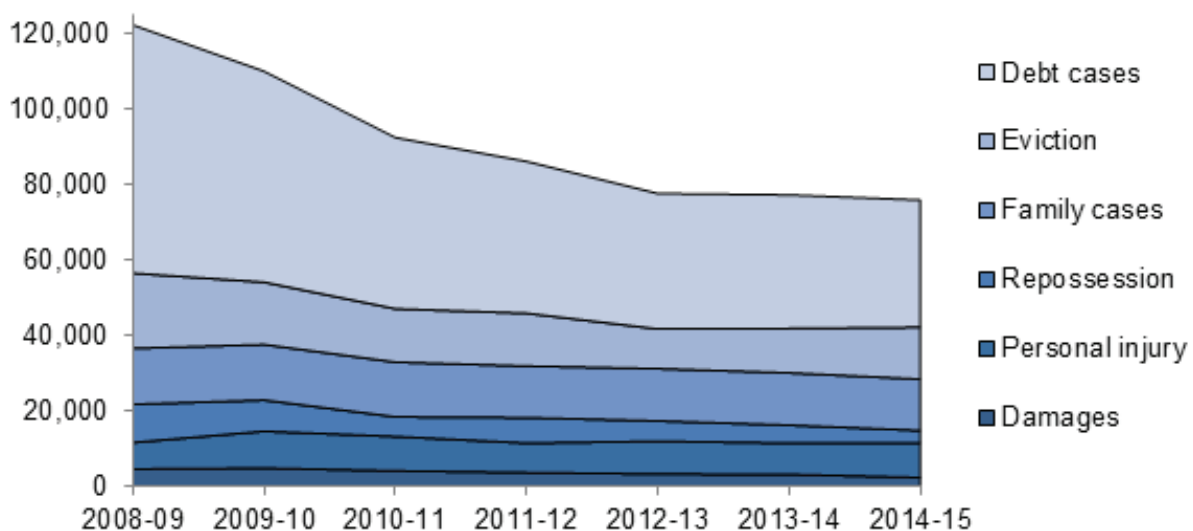
1.4 This report was produced by volunteers working in social policy and law disciplines at Stirling citizens advice bureau ('CAB'), where issues are identified and explored in order to better serve current and future clients of CABs, as well as contribute to wider discussions around particular social policy issues.

2. Civil Law Cases in Scotland

2.1 There were 76,769 civil law cases initiated across the Court of Session and sheriff courts in 2014/2015 (not including summary applications)¹. The number of cases initiated is at its lowest since this series of statistics began. This represents a decrease in numbers of 42% since 2008/2009 from a little over 120,000 cases (Figure 1). However, the number of cases initiated in 2014/2015 was consistent with figures from the previous 2 years, halting the downward trend².

2.2 The Scottish Government, which is responsible for gathering these statistics, surmised that the increased use of alternative methods of dispute resolution (e.g. mediation) and concern over costs for litigants may be some of the reasons behind the overall decrease.

Figure 1: Number of civil law cases initiated in Scotland by type of case



2.3 However, if each case type is considered as a proportion of all cases, it can be seen that, while some types have indeed decreased, in other cases there has been a relative increase: these figures are summarised in Table 1.

¹Civil Justice Statistics in Scotland 2014–15 (www.gov.scot/Resource/0049/00497242.pdf).

²For 2012/13 77,421 cases, 2013/14 77,072 cases and 2014/15 76,769 cases.

Table 1: Civil law case types as a percentage of all civil law cases in Scotland

	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015
Debt cases	50	47	47	47	46	46	44
Eviction	15	14	15	16	14	15	18
Family cases	11	13	15	16	18	18	18
Repossession	8	7	5	8	7	6	4
Personal injury	5	8	9	9	11	11	12
Damages	4	4	4	4	4	4	3
Total	100	100	100	100	100	100	100

2.4 Although there are clear decreases in debt, repossession and damages cases, when considered as a proportion of all civil case business the proportion of eviction, family and personal injury cases has increased.

2.5 The above data is interesting to compare broadly with recent national CAB service advice code statistics for the past 3 years (see Table 2) with the nearest comparable case type, e.g. eviction and repossessions would be included under the housing advice code category, while family would be included under relationships. While the CAB numbers in relation to debt do show a decrease in recent years (as they do in the civil law cases), it is of interest to note that the number of advice codes relating to housing and relationships has increased, with the proportion remaining static.

Table 2: CAB Level 1 advice code statistics 2012/13–2014/15

	2012-2013		2013-2014		2014-2015	
	No.	%	No.	%	No.	%
Debt	114,145	22	119,492	21	103,394	18
Housing	35,228	7	40,287	7	41,533	7
Relationship	18,587	4	20,133	4	21,880	4

2.6 To return to the civil justice statistics, what is certain is that there has been a marked decrease in civil law cases proceeding to court and this must have a direct bearing on applications for legal aid.

3. The Context of Legal Aid Provision within Legal Services

3.1 In Scotland help with legal problems is provided through a complex framework of providers across the private, public and third sectors.

3.2 Local authorities provide advice services such as debt and welfare rights advice directly. Organisations in the third sector, such as CABs, Shelter and money advice services, also provide advice and are funded from a range of public and charitable sources, including local authority grants and grants from the SLAB. Solicitors in private practice provide legal services paid for in a range of ways, including private fee arrangements, legal aid and legal expenses insurance. There are also solicitors in law centres who receive funding from various sources. In addition, the SLAB provides direct legal services through a small network of employed solicitors in the Public Defence Solicitors' Office and Civil Legal Assistance Offices.

3.3 There are also other advice and representation services, such as university law clinics, *pro bono* initiatives and trade union advice services. The SLAB fund is the biggest single funder of legal services, with the majority of legal aid expenditure being used on criminal matters, though this report focuses on matters of civil legal aid.

Civil Law Legal Aid

3.4 The SLAB administers legal aid, which is paid for out of public funds and helps towards the costs of legal advice and representation for those who would otherwise be unable to gain access to the legal system. Civil legal assistance makes up approximately one-third of the net total legal assistance expenditure in this regard.

3.5 There are two main types of civil legal assistance: advice and assistance (including advice by way of representation) and legal aid. Advice and assistance relates to advice from a solicitor on any matter of Scots law, while civil legal aid helps pay for a solicitor to act in court. Most civil legal aid grants (62%)³ are made for family cases, primarily contact/parentage and divorce/separation cases.

The Financial Challenges to Legal Aid Provision

3.6 The impact of austerity measures, as reflected in the year-on-year UK Government's comprehensive spending reviews, has meant that money allocated to the Scottish Government by the UK Government has caused financial pressures on most public services, including decreases in legal aid expenditure. This is evidenced by the SLAB's figures for total legal aid expenditure for the previous 5 years falling from £161 million to £138.6 million, a decrease of 14%⁴.

³http://www.slab.org.uk/common/documents/Annual_Report_2013_2014/A_-_Annual_Report_2013-14.pdf.

⁴<http://www.journalonline.co.uk/News/1021151.aspx#.V8gDmVL6uUk>

3.7 The decline in legal aid funding comes at an unfortunate time as the impact of UK Government-led welfare reforms coupled with financial austerity has resulted in increasing numbers of individuals suffering with its consequences, including issues with benefits payments, debt, housing and employment. Although the figures in relation to debt have declined in the CAB statistics in recent years, increases in the number of benefits, housing and employment issues being advised on have increased.

Table 3: Number of CAB advice issues 2012/2013–2014/2015

	2012-2013		2013-2014		2014-2015	
	No.	%	No.	%	No.	%
Benefits, tax credits and NI	203,813	40	207,875	37	220,000	38
Consumer goods & services	13,383	3	16,709	3	17,916	3
Debt	114,145	22	119,492	21	103,394	18
Education	2,405	0	2,859	1	3,294	1
Employment	44,128	9	46,540	8	50,625	9
Financial products & services	17,965	4	21,881	4	26,696	5
Health & community care	8,228	2	8,952	2	10,680	2
Housing	35,228	7	40,287	7	41,533	7
Immigration, asylum & nationality	4,154	1	4,445	1	4,480	1
Legal	22,583	4	24,958	4	27,569	5
NHS concerns or complaints	3,622	1	4,440	1	4,689	1
Relationships	18,587	4	20,133	4	21,880	4
Tax	7,417	1	18,990	3	21,393	4
Travel, transport & holidays	5,680	1	7,585	1	9,642	2
Utilities & communications	11,651	2	14,708	3	17,402	3
Total	512,989	100	559,854	100	581,193	100

Recent Changes to Legal Aid Provision in Scotland

3.8 Despite the financial pressures on legal aid, in 2007 the Scottish Government began a series of measures to increase access.

- Increasing financial eligibility for civil legal aid in 2009, so that those with disposable incomes of up to £25,000 could qualify, resulting in 70% of the Scottish population qualifying for civil legal aid.
- Funding the SLAB, thereby enabling it to work with the third sector in establishing innovative new services to help people with legal problems, including those associated with the economic downturn.
- Reforms to summary criminal legal aid in 2008.
- Improving civil legal aid fee structures for solicitors in 2009.
- Restructuring solemn criminal legal aid fees in 2010 and increasing them by 7%.
- Revising the table of fees for counsel in criminal appeal cases in 2010.
- The Legal Services (Scotland) Act 2010, which places a duty on the SLAB to monitor the availability and accessibility of legal services.

3.9 In addition, the Scottish Government's 2011 white paper *A Sustainable Future for Legal Aid* set out four overarching themes for further legal assistance reform.

- Focusing legal assistance on those who need it most.
- Ensuring wider access to justice: the right help at the right time.
- Maximising the value of legal assistance expenditure.
- Making the justice system more efficient.

3.10 In 2012 the Scottish Government's new Making Justice Work programme brought together a range of reforms to the structure and processes of the courts and tribunals and access to justice and administrative justice, which was developed and delivered with partners across the justice system, including the Crown Office and Procurator Fiscal Service, Scottish Court Service, the SLAB and the police.

3.11 Project 3 of the Making Justice Work programme – widening access to justice – is targeted at developing mechanisms that will support and empower citizens to avoid or resolve disputes and problems informally wherever possible and to ensure they have access to appropriate and proportionate advice and to a full range of methods of dispute resolution, including courts and tribunals, where necessary and appropriate alternatives.

Legal Aid Funding

3.12 In April 2014 a report by the SLAB⁵ cited three sources of public funds (the figures are for 2012/2013) and what each source was to focus its funds towards. The Scottish Government invested just under £4 million in advice and representation services by way of grants across a broad range of problem types and policy areas including welfare benefits and income maximisation, housing law, specialist immigration advice, education law, in particular around additional support needs, children's rights and some general legal advice to particular communities.

3.13 Local government collectively invested around £30 million in advice and representation by way of grants, contracts and through directly providing services primarily aimed at problems to do with money/benefits and with a main focus on income maximisation. Other areas of law covered by local authority investment in advice for individuals include consumer, housing and homelessness and mental health law.

3.14 The SLAB's gross expenditure on advice and representation services was £56 million, covering all areas of civil law. This funding was largely through case-by-case payment for mainly private practice solicitor services, known as the judicare model (£52.6 million), with a far smaller proportion allocated by way of a grant (£2.2 million) allocated to support directly employed solicitors (£1.2 million). Almost half of the expenditure was on family law cases, at £25 million in 2012/2013.

3.15 In order to get a sense of the areas of civil law in which solicitors operate for which they receive legal aid payments (judicare), Table 4 outlines the amount of expenditure paid by the SLAB to solicitors across Scotland (the figures are for 2012/2013, the most recent available). As stated earlier, family and relationships cover nearly half of all cases, while issues on matters such as benefits, employment and debt represent very small percentages in their caseloads, since it is expected that local authorities provide such help.

⁵Making Justice Work. Enabling Access to Justice Project – Landscape Review of Publicly Funded Legal Assistance. (http://www.slab.org.uk/export/sites/default/common/documents/about_us/research/Patterns_Supply/PFLA_landscape_review_FINAL.pdf).

4. Legal Aid Provision in Stirling

Table 4: Total civil legal assistance judicare expenditure (2012/2013)

	Total gross expenditure ^a £	Proportion of spend %
Benefits & tax credits	1,438,000	3
Compensation & damages	5,386,000	10
Complaints & claims against professions	573,000	1
Consumer problems	311,000	1
Death-related matters	144,000	0
Debt, money & tax	669,000	1
Discrimination & human rights	23,000	0
Education	26,000	0
Employment	459,000	1
Family & relationship matters	25,161,000	48
Protective orders	1,532,000	3
Housing & homelessness	1,116,000	2
Immigration & nationality	4,661,000	9
Mental health welfare & adults with incapacity	4,951,000	9
Other	6,159,000	12
Total	52,609,000	100

^aExcluding VAT.

Source: SLAB figures⁶.

4.1 According to the SLAB website's list of advice services, the Stirling Council Advice Partnership was listed as the only local provider under this heading. Following the partnership's dissolution last year, it is likely that there is now some unmet demand for the services it once provided. This situation may also have some bearing on the findings contained in an annual report for the Scottish Government produced by the SLAB⁷ that identifies trends and issues within legal services. In the recent report (February 2016), it states the following with regard to civil legal aid and homelessness:

"In terms of the number of homeless applications made, the average figure for Scotland was a fall of 4%, when comparing the period 2013–14, and 2014–15. A fall in the number of homeless applications made was registered in 19 of the 32 local authorities. The overall figure masks variation in the levels of homelessness seen in local authorities, however: Aberdeen, Falkirk, and Stirling all saw over 10% increases in the number of applications."

⁶http://www.slab.org.uk/export/sites/default/common/documents/about_us/policy/PlanningCoordination/event_presentations.pdf.

⁷Monitoring of Availability and Accessibility Services (<http://www.slab.org.uk/about-us/what-we-do/policyanddevelopmentoverview/Accessstolegalservicesreferencegroup/>).

4.2 Stirling is thus identified as one of the few areas where civil legal applications for homelessness are increasing, against national trends and that there is the possibility that, because of the absence, they state, of legal clinics (which have expertise in homelessness) that this demand is being unmet.

4.3 Further evidence of unmet demand in relation to heritable actions handled by Stirling sheriff court is also reflected by evidence supplied by the court to a request posed by Stirling CAB to the clerk of that court. For example, for the period January 2015 to January 2016, of the 143 summary cause (values between £3,000 and £5,000) heritable actions in Stirling sheriff court, 46 were party litigants, denoting that 32% of clients were unrepresented.

4.4 To discover whether local solicitors were attempting to meet this demand a search was made of the SLAB's database of local solicitors. This revealed that, of the 16 city centre law firms, nine were registered with the SLAB for legal aid and, of these, eight firms received payment in 2014/2015 (see Table 5)⁸.

Table 5: Legal assistance paid to Stirling solicitors in 2014/2015 by SLAB, with case type

	Civil	Criminal	Children	Total (£)	VAT (£)	Total inc. VAT (£)
Barton & Hendry ^b	112,700	1,400	300	11,440	23,200	137,600
Dalling Solicitors	55,700	258,800	16,900	331,400	66,400	397,800
GWT Murphy	10,500	8,400	1,300	20,200	4+,000	24,200
Hill & Robb Ltd	46,600	0	3,700	50,300	10,100	60,400
Jardine Donaldson ^c	88,400	0	1,200	89,600	18,200	107,800
McReady & Co ^d	30,100	197,300	12,900	240,300	48,300	288,600
Pollock Ross	7,000	61,800	1,800	70,600	14,300	84,900
Virgil Crawford	52,000	219,800	11,700	283,500	57,000	340,500
AMI Law ^a	0	0	0	0	0	0

^aAlthough registered with the SLAB no fees were paid. The company advertises itself as a specialist in trusts, wills and tax planning.

^bBarton Hendry's main office operates in Cumbernauld, while the Stirling office is part-time. The figures are the total for both offices.

^cJardine Donaldson operates in Stirling and Alloa. The figures indicate the total for the two offices.

^dAlthough having an office registered in Stirling no website exists for the company. Companies House records indicate the firm was incorporated in February 2014.

⁸www.slab.org.uk/common/documents/Annual_report_2014_2015/Firm_earnings_2014-15.pdf

4.5 The information held by the SLAB contained expenditure figures only and not the numbers of cases undertaken by legal firms. In addition, the above figures break down the legal aid for each firm into the main types, i.e. civil, criminal and children, so unfortunately they do not categorise further. The only figures that could be found that categorised all civil legal aid case applications for Stirling were those last produced by the SLAB in 2011/2012⁹ and these are total figures combining applications, whether these be via solicitor or local authority advice services. These are outlined in Table 6.

Table 6: Civil legal aid applications on behalf of people located in Stirling

	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	Change ^a
Compensation & damages	24	27	30	9	6	-75.0
Consumer problems	1	3	2	1	0	-100.0
Debt, money & tax	7	6	4	5	1	-85.7
Discrimination & human rights	0	0	1	0	3	-
Family & relationship matters	100	127	157	126	151	51.0
Protective orders	16	30	46	34	20	25.0
Housing & homelessness	15	29	28	20	10	-33.3
Immigration & nationality	0	1	0	1	0	-
Mental health welfare & adults with incapacity	13	17	26	29	37	184.6
Other	19	16	17	16	30	57.9
Overall	174	223	269	215	231	32.8

^aChange from 2007/2008–2011/2012.

Actions in Stirling Sheriff Court

4.6 As mentioned previously, the SLAB's most recent statistics on civil legal aid applications by geographic area date back to 2011/2012 and a search of the Scottish courts' website revealed that they also did not keep records for such applications. Thus, it was decided that, in view of the national data indicating a downturn in the volume of civil law cases (see above), this study should investigate whether Stirling sheriff court replicated this trend.

4.7 In order to determine the situation in Stirling a freedom of information (FOI) request was therefore made on 3 March 2016 to Stirling sheriff court requesting the caseload of Stirling sheriff court by category of case type: in response the court provided the information shown in Table 7.

⁹http://www.slab.org.uk/export/sites/default/common/documents/about_us/research/Patterns_Supply/Patterns_of_supply_2011_12/Stirling_Patterns_of_supply_2011_12.pdf.

Table 7: Stirling sheriff court registered civil cases 2012/2013 to 2014/2015

	2012/2013	2013/2014	2014/2015
Adults with incapacity	68	84	77
Family action	426	409	378
Liquidation	49	31	36
Miscellaneous	749	710	602
Ordinary action	268	223	209
Personal injury	117	106	92
Proceeds of crime	6	11	10
Sequestration	67	58	69
Small claims miscellaneous	21	24	13
Small claims payment	812	830	802
Summary cause heritable	129	183	253
Summary cause miscellaneous	15	8	8
Summary cause payment	154	119	133
Summary cause personal injury	59	81	96
Total	2,940	2,877	2,778

4.8 The data provided indicates that, in general, the caseload at Stirling sheriff court has decreased slightly. The reasons are unknown but may include the recent legal aid cuts. The number of family actions has also been decreasing, which may be a result of encouragement to have such matters settled by mediation rather than taking family disputes to court with all the costs that this entails. Cases relating to adults with incapacity, proceeds of crime, summary causes concerning heritable property and summary causes concerning personal injury did not show a drop in the number of their case types registered in Stirling sheriff court.

5. Stirling CAB

5.1 A search was made of Stirling CAB's database in order to ascertain the trends in clients presenting at the bureau with issues relating to legal services, namely legal aid, representation at court and requests for advice/representation from local solicitors. Table 8 indicates the patterns in these categories for the previous 3 years.

Table 8: Stirling CAB: clients presenting at the bureau

	2013–2014	2014–2015	2015–2016
Legal aid	26	30	22
Help with court proceedings	91	87	81
Finding solicitors	113	143	104

Legal Representation (Court Action) in Stirling

5.2 For the purposes of this report it was determined that, in order to get a clearer picture of the areas of civil law where unrepresented cases proceed through Stirling sheriff court, a FOI request was made to the Scottish Courts and Tribunal Service (SCTS) on 17 March 2016 requesting the numbers of unrepresented cases (previous 2 years) for each of the categories of civil law recorded in SLAB datasheets, namely compensation and damages, consumer problems, debt, money and tax, discrimination and human rights, family/relationships, protective orders, housing and homelessness, immigration, mental health and other.

5.3 In their reply on 14 April, a representative of the SCTS explained that the cost to retrieve and then provide this information would be prohibitive and, therefore, under section 12 of the FOI Act (Scotland) 2002 they were not obliged to supply them. A second FOI request was made (14 April) requesting just the total number of cases for each of the previous 2 years and this was also declined (19 April) for the same reason.

6. Employment Tribunals

6.1 The second part of this discussion focuses on the impact on Scottish citizens following the UK Government's decision to introduce fees in 2013 for the facilitation of tribunals.

Employment Tribunal Fees

6.2 The UK Government introduced fees payable in relation to claims brought to an employment tribunal in July 2013. Parties have to pay an upfront fee in order to raise a claim (£160 or £230 depending on the complexity of the case) and a further 'hearing' fee, again based on the complexity of the case, of either £250 or £950. A remission system operates to exempt people on low incomes from having to pay the full fees. The effect that the introduction of fees has had on workers seeking redress from employers via employment tribunals can best be demonstrated by a few publicised facts.

- The Ministry of Justice published figures¹⁰ in March 2014 comparing the number of cases lodged in employment tribunals with the same corresponding quarter (January to March) of the previous year (when no fees existed) and the official figures revealed that applications to tribunals had fallen by 81%.
- In March 2015 the University of Strathclyde and Citizens Advice Scotland (CAS) teamed up to publish a survey-based report titled The Price of Justice¹¹ on the consequences of the introduction of fees on CAB clients and the work undertaken on employment issues by advisors. The report found that, for CAB clients liable for paying full or partial fees, the following applied.
 - Fees act as a disincentive for CAB clients to make a claim in an employment tribunal.
 - The merit of a claim is not the key driver in deciding to take a claim to the employment tribunal, but that the decision has become a financial one.
 - Employment tribunal fees negatively alter the power balance between workers and employers.
 - The fees have created additional difficulties for CAB advisors, bringing an increased responsibility to the often voluntary role and increased stress.

For CAB clients eligible for fee remission the following applied.

- The flux in a client's financial situation makes determining their eligibility for remission complex.

¹⁰www.gov.uk/statistics/tribunal_statistics_quarterly_january_to_march_2014.

¹¹www.cas.org.uk/publications/price_justice.

- Providing the evidence required for remission is often difficult as a result of the client's situation.
 - Determining their eligibility for remission at two points in time can leave clients in an unpredictable situation and penalise clients who manage to find other employment before the case makes it to a hearing.
 - Group claims are sometimes compromised when some of the group qualify for remission and others do not.
- On 11 September 2015 the *New Law Journal*¹² reported that the Employment Lawyers Association had likewise commissioned a survey of its 6,000 members to canvass their views and reported that 85% responded that fees had been detrimental to access to justice, 30% thought they should be abolished and 41% thought they should be reduced.

6.3 One particular area of law that the introduction of employment tribunal fees has had a drastic impact on is that of sex discrimination in the workplace. Christina McKelvie SNP MSP, commenting in an article written in *The Herald* on 12 June 2015, stated that government figures indicated that sex discrimination claims brought before employment tribunals had fallen by 85% since the introduction of fees¹³.

Employer Non-compliance with Employment Tribunal Awards

6.4 Compounding the problem of access to justice in the area of employment law is the non-compliance of employers in paying compensation to workers who have been awarded such by tribunals.

6.5 The situation is particularly poor in Scotland, as figures released by the Department of Business Innovation and Skills in September 2013¹⁴ and reported in the press (*The Herald* 21 September 2014) indicated that 46% of awards went unpaid (compared to 34% in England) and another 13% were only part paid. There are a number of reasons for this that are beyond the scope of this report, though one of the common loopholes to the situation is that of employers closing the business in order to emerge as a 'phoenix company' doing business from the same location, but with no liability to pay the employee what they are owed, as reported in the CAS briefing debate¹⁵.

¹²<http://www.newlawjournal.co.uk/content/tribunals-trouble>.

¹³<https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-january-to-march-2015>.

¹⁴https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/253558/bis-13-1270-enforcement-of-tribunal-awards.pdf.

¹⁵Protecting Employee Rights and Access to Justice, Scottish Parliament 11 June 2015.

Employment Tribunals and the Smith Commission

6.6 On 2 September 2015 the Scottish Government announced¹⁶ its intention to abolish employment tribunal fees in Scotland in line with some of the powers being transferred to Holyrood as recommended by the Smith Commission and intends to consult on 'how best to support people's access to employment justice'.

6.7 Although welcome news, negotiations between the Scottish and UK Governments continue on this issue, though concerns over this issue have already been raised. For example, one employment law expert¹⁷ stated that, as rules currently stand, if an employer has a place of business in Scotland as well as in other parts of the UK, current jurisdictional rules allow claims to be brought before employment tribunals in Scotland irrespective of where the subject of the grievance took place or the employee actually worked.

6.8 Thus, if Scotland were to abolish employment tribunal fees whilst the rest of the UK allowed them to continue, theoretically an 'individual could raise a claim against an employer headquartered in Scotland even if the individual is based elsewhere in the UK'. The author of this article warns that such a situation could

"..increase claims lodged in Scotland causing the cost of administration to the public purse to increase accordingly. This may lead to revision of the rules around jurisdiction. There is also a real risk that some businesses will put Scotland and the UK into the 'too difficult' box if there are different legal positions north and south of the border*

The Small Business, Enterprise and Employment Act 2015 and Employment Tribunals

6.9 This act was passed by Parliament in March 2015 and, in terms of employment (part 11 of the act), it contains provisions such as prohibiting exclusivity clauses in zero-hours contracts, amending the National Minimum Wage Act 1998, requiring businesses with over 250 employees to publish details of gender pay and, of interest to this report, the introduction of an enforcement system for unpaid tribunal awards.

6.10 An enforcement officer would give an employer 28 days to pay an award followed by a penalty notice (if unpaid) requiring the employer to pay a fine to the Secretary of State of between £500 and £5,000. This change took effect in April 2016.

¹⁶ <http://news.scotland.gov.uk/Speeches-Briefings/Programme-for-Government-2015-16-1c80.aspx>.

¹⁷Stuart Neilson (Pinsent Masons), Employment Tribunal Fees to be Abolished in Scotland, Scottish Government Announces, September 2015 article on the website www.out-law.com.

Stirling CAB: Applications to Employment Tribunals

6.11 The number of clients coming to Stirling CAB with support to pursue employers has declined considerably, as seen in Table 9.

Table 9: Stirling CAB clients presenting at the bureau in relation to support regarding employment tribunals

	2013–2014	2014–2015	2015–2016
Clients seeking employment tribunal support	56	62	30

6.12 Whilst the fall has not been as sharp as the national figure of 81% as previously mentioned, the number in Stirling stands at just over half of what it stood at in 2013 when the fees were introduced.

6.13 It should also be mentioned that, in conversations with the two employment law advisors working at Stirling CAB, that they also have a number of cases of employees that have won their cases at tribunals, but have been unable to obtain the settlement they were awarded by the tribunal for the reasons that were indicated in the abovementioned CAS report.

6.14 The following examples come from clients coming to Stirling CAB for support in relation to employment tribunals.

- Client 1 had a strong case for unfair dismissal. She had worked for the company for some 15 years and was told, without warning, that there was no work for her and she must leave that day. We felt that the chances were high of her succeeding in a claim for unfair dismissal, notice pay and redundancy pay. The client and her husband were elderly and had very little income. She should have been eligible for fee remission, but she had £6,000 in savings for her funeral expenses. I tried to encourage her to pay the fees from her savings, but she refused, despite the fact that she was likely to get a sizeable award from the employment tribunals.
- Client 2 had been a chef in a hotel for 9 years. When it came under new management he was dismissed for reasons of a breach of trust and confidence. The client had a possible case for unfair dismissal and race discrimination. He was advised that his case was not very strong. He decided not to pursue it mainly because he could not afford the fees.

7. Conclusions

Legal Aid Cuts

7.1 Information nationally and from both Stirling sheriff court and the CAB database indicates a decline in the total number of cases proceeding through court. The court's figures reveal a drop from 2,940 to 2,778 over the previous 3 years and it may be that the legal aid cuts are the reason for this decline and/or the cost of litigation and/or the greater use of alternative methods of dispute resolution.

7.2 Unfortunately no recent year-on-year figures are available from the SLAB indicating the total applications for legal aid. The last figures available are those for the years 2007/2008–2011/2012 and indicate a rising trend in legal aid applications for that period.

7.3 The Scottish Government's changes to legal aid were undertaken in order to increase access to legal aid and this may account for the rise in applications in Stirling for the years 2007/2008–2011/2012 (Table 6), but the drop in SLAB expenditure may have stemmed the uptake of the receipt of legal aid.

7.4 The dissolution of the Stirling Council Advice Partnership, formerly registered with the SLAB, the small percentages of legal aid cases taken on by local solicitors in such areas as debt and housing and the SLAB's identification of an issue with homelessness civil legal aid applications all indicate an unmet demand that could be potentially fulfilled by Stirling CAB, particularly if registered with the SLAB.


Impact of Employment Tribunal Fees

7.5 The evidence both nationally and locally indicates that the introduction of fees for employment tribunals has resulted in a large decrease in clients pursuing employers via tribunals. In Scotland, on a nationwide basis, there has been a decline of 81% in applications, while in Stirling (using CAB figures) the decline has only been less than 50%.

7.6 There has also been a problem locally (as nationally) of clients not being paid money they were awarded by tribunals. Legislation has been passed by Parliament to address these concerns - the specific provisions of which were enacted in April 2016.

Legal Representation

7.7 Neither the SLAB nor the SCTS publish regular figures pertaining to unrepresented cases and figures taken from the bureau's database do not display a clear picture of the number of unrepresented cases proceeding through the court system. The only figures that the researchers of this report were able to obtain in this regard were those available on summary cause heritable action supplied by Stirling sheriff court, which indicate 32% of such actions are unrepresented.



7.8 Stirling CAB figures (Table 8) show a steady decline in the number of clients presenting at the bureau for help with court proceedings, but any relationship to this and people appearing at court locally could not be substantiated as the FOI request to the SCTS was declined.

7.9 The very fact that there has been a continued downturn in the total number of civil legal aid applications since 2008 could have, as one of its factors, the reason that clients unable to obtain representation would rather not risk taking action in court than attend court unrepresented.

7.10 There remains no definitive answer on the question of the numbers of unrepresented citizens proceeding through the court system either nationally or within Stirling.

Stirling & District Citizens Advice Bureau are members of The Scottish Association of Citizens Advice Bureaux: Scotland's largest independent advice network. CAB advice services are delivered using service points throughout Scotland, from the islands to city centres.

The CAB Service aims:

to ensure that individuals do not suffer through lack of knowledge of their rights and responsibilities, or of the services available to them, or through an inability to express their need effectively

and equally

to exercise a responsible influence on the development of social policies and services, both locally and nationally.

The CAB Service is independent and provides free, confidential and impartial advice to everybody regardless of age, disability, gender, race, religion and belief and sexual orientation.

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