

ANNEX B CONSULTATION QUESTIONNAIRE

1. Are amendments required to the Tables of Fees to ensure that fees recoverable are proportionate?

If yes, please detail the amendments proposed and provide any evidence you may have to support your proposal.

Question 1

- (1) Standing the amount of costs a successful party recovers in Low Value Claims it is suggested that a cap on the amount of fees that can be recovered from the unsuccessful party should apply. For example:-
- (a) Cases which settle or where an Award of Damages for a sum under £10,000 should not be entitled to attract fees in excess of £3,000.
 - (b) Cases which settle or where an Award of Damages for a sum in excess of £10,000 up to £15,000 should not be entitled to attract fees in excess of £5,000.
 - (c) Cases that settle or are awarded Damages for a sum in excess of £15,000 up to £20,000 should attract a fee not exceeding £7,500.
 - (d) Cases that settle or are awarded Damages in excess of £20,000 up to £30,000 should attract a fee not exceeding £10,000.
 - (e) Cases that settle or are awarded Damages in excess of £30,000 up to £40,000 should attract a fee not exceeding £12,500.
 - (f) Settlements or Damages awarded in excess of £40K should continue to enjoy the attracted fees laid down by the Rules of Court.

2. Are amendments required to the Tables of Fees to ensure that they better reflect the work being undertaken?

If yes, please detail the amendments proposed and provide any evidence you may have to support your proposal.

Hourly Rate

The hourly rate charged of £156.00 per hour in the Court of Session is on the low side and we would suggest that the hourly rate element only be increased to a figure of £170.00 per hour.

The above mentioned comments are in relation to the Court of Session but we would be further proposing similar changes within the Sheriff Court, albeit the hourly rate should be lower to reflect the Process Fee of 10% that is presently available.

Inventory of Productions

In personal injury actions, we suggest that one block fee is introduced for the lodging of productions throughout the proceedings. This would discourage the lodging of productions piecemeal and potentially encourage early disclosure.

Taxation Procedure

We would also recommend a change to the Taxation Procedure in that a Note of Objections should be lodged some 7 days prior to Taxation, with Responses thereto within 3 working days, with the Auditor then deciding whether he wishes to hear parties on the Note of Objections/Responses which is likely to result in considerable time being saved in attending Taxations and allow the Auditor more time to complete the Taxation process. In addition introduction of taxation by telephone or video conference should be considered.

Additional Fee

In the event of an Additional Fee being agreed between parties or awarded by the Court, such percentage increase should not exceed 100% in line with the recommendations of Sheriff Principal Taylor, with reference being made to paragraphs 78, 79 and 80 of Chapter 2 (Pages 24 and 25) of his Report.

Precognitions

It is recommended that where lengthy precognitions are charged within an Account, that the present Block Fee (within the Court of Session) of £78.00 should be tapered to reflect the sheetage of precognitions, particularly lengthy ones, in line with the recommendation of Sheriff Principal Taylor in Paragraph 77 (Chapter 2 – Page 24) of his Report.

For the first 10 sheets of precognition, 100% of the fee per sheet should be allowed, 50% for the following 10 sheets and 25% for the remaining sheets all subject to the normal party party accounting rules.

Consideration should be given to disclosure of the precognitions to the paying party. As party party elements alone are recoverable at taxation then there is no reason why redacted copies could not be produced.

3. Are amendments required to the Tables of Fees to reflect changes in practice and/or procedure?

If yes, please detail the amendments proposed.

Hearing Limitation fee

The hearing limitation fee requires to be removed as it has become superfluous due to changes in practice and procedure. The exchange of documents, reports etc. is a requirement of the voluntary and compulsory pre action protocols. The rules for commercial, ordinary and personal injury actions are all now designed to encourage parties to disclose material, agree facts and limit as many issues in dispute between the parties as possible. Pre-proof conferences and pre-trial meetings are arranged with the sole purpose of trying to limit the matters in dispute.

4. Is there a requirement for a general modification of the level of fees provided for in the Tables of Fees?

If yes, please specify the modification proposed and the circumstances justifying the modification and provide any evidence you may have to support your proposal.

Not if proportionality is addressed as suggested in answer 1.

5. Is it necessary to consider any additional fees that are not currently included in the Tables of Fees?

If yes, please detail the additions proposed and provide any evidence you may have to support your proposal.

No.