

PAPER APART

for

CONSULTATION ON THE REVIEW OF FEES

IN THE SCOTTISH CIVIL COURTS

FEES OF SOLICITORS

RESPONSE TO QUESTIONS (2), (3) & (5)

2.

(2) ARE AMENDMENTS REQUIRED TO THE TABLES OF FEES TO ENSURE THAT THEY BETTER REFLECT THE WORK BEING UNDERTAKEN ?

(3) ARE AMENDMENTS REQUIRED TO THE TABLES OF FEES TO REFLECT CHANGES IN PRACTICE AND/OR PROCEDURE ?

(5) IS IT NECESSARY TO CONSIDER ANY ADDITIONAL FEES THAT ARE NOT CURRENTLY INCLUDED IN THE TABLES OF FEES ?

The following suggested amendments to the Tables of Fees to better reflect the cost of the work actually being undertaken and to bring the Tables of Fees in line with present practice and procedure.

COURT OF SESSION TABLES OF FEES

PART V AND PART V(a)

It is suggested that a fee be introduced to the Tables to cover the examination of opponent's productions. At present, there is a fee for considering the Inventory but in many cases the productions lodged are voluminous and a 15-minute charge does not reflect accurately the work required in considering productions. It is not, however, suggested that an open ended sum be allowed but a fee as follows:-

Fee/

/Fee for examination of opponent's productions £39.00 per 25 sheets of productions up to a maximum of a 1-hour charge. Additional time may be charged upon justification being shown to the Auditor of Court.

The approach to the fee we have adopted is similar to the fee for Appendices in Inner House business, although with an initial cap on the fee being included.

PART V (a) - STATEMENTS OF VALUATION OF CLAIM

It is submitted that a two-tier fee should be introduced to the Table of Fees to reflect situations where the Valuation is prepared by Counsel. It is suggested that a fee of one-half of the present fee should be introduced to cover the work involved by Agents where Counsel is instructed. Such an approach would bring the Table in line with the position adopted in the Sheriff Court Table of Fees.

MOTIONS

It is suggested that the present fees for opposed and unopposed Motions in the Tables of Fees do not accurately reflect or remunerate the actual work involved. At the present time, Starred and unopposed Motions are charged at the rate of £117.00 (to include the first 30 minutes attendance) and £39.00 respectively.

The following comparison on a Detailed basis of the basic work undertaken is as follows:-

OPPOSED/

/OPPOSED MOTION

Framing Motion - £19.50

Enrolling Motion - £9.75

Intimating Motion - £4.88

Noting Calling of case - £39.00

2-page letter of instruction (estimated) to Counsel: £39.00

Preparation for Motion – 15 minutes - £39.00

Attendance at Motion – 30 minutes - £78.00

Procuring, booking and checking Interlocutor - £39.00

2-page letter of Report to client - £39.00

TOTAL: £307.53

It is therefore suggested that Part 15 (b) of both parts of the Table of Fees be increased to a figure of £305.00

UNOPPOSED MOTIONS

Again, by comparison on a Detailed basis, the fee is understated:-

Framing Motion - £19.50

Enrolling Motion - £9.75

Intimating Motion - £4.88

Procuring, booking and checking Interlocutor - £39.00

Writing client with Report - £19.50

TOTAL: £92.63

It is therefore suggested that Part 15(a) of each part of the Table of Fees is increased to a figure of £90.00.

COPYINGS

It is suggested that the charges for copyings in all parts of the Court of Session Table of Fees be extended to make reference to scanning or printing attachments to reflect the digital aspect of Proceedings. It is also suggested that Part (b) of the various copying charges be extended/amended to better describe what defines exceptional or unusually numerous copyings together with an appropriate rate of charge.

It is also suggested that specific reference to waiting time should be contained within the Table of Fees in respect of all attendances.

APPLICATIONS FOR LEAVE TO APPEAL TO THE SUPREME COURT

At present, any work in connection with an Application for leave to appeal to the Supreme Court falls within two stools and there is no specific provision for the procedure involved in that regard. It is therefore submitted that fees should be introduced to the Table of Fees to reflect such procedure, including taking instructions, framing Application and any attendance before the Court.

SHERIFF COURT TABLE OF FEES

CHAPTER 2 - ORDINARY CAUSES

We/

/We would reiterate the suggestion of a specific fee for examining opponent's productions.

It is suggested that reference to "or such lesser sum as in the opinion of the Auditor is justified" should be removed from the Pre-Litigation fee in order that parties can seek to recover fees which reflect the actual work undertaken, where justified, and at the discretion of the Auditor. Indeed, the level of work now being undertaken during the Pre-Litigation stages is considerably greater and as well as the removal of the wording, an increased fee in the region of £1,170, ie, equivalent to 7.5 hours work, should be considered.

ADJUSTMENT FEE

It is submitted that Part 6 of the Ordinary Cause Table of Fees should be expanded to introduce a fee to remunerate Agents to cover a situation where a new pursuer is being brought in as a result of the death of the existing pursuer. It is submitted that fees of £234.00 and £156.00 be allowed if the pursuer is brought in after or before the Options Hearing similar to the fees presently allowable for existing pursuers.

CHAPTER 36 (a) PROCEDURE

There are presently no fees for Agents framing Statements of Proposals for Further Procedure in terms of Rule 36 (a).8 or for considering opponent's statements. It is submitted that Part 10 (a) of Chapter 2 should be expanded to include a fee for preparing the Statement of Proposals of £156.00 with a Consideration fee in respect of an opponent's statement of £78.00 being introduced.

AMENDMENT OF THE RECORD

It is submitted that a perusal fee for Answers should be introduced for multi-party Actions where the Answers are not from the opponent, ie, so that provision is made for one defender considering another defender's Answers to a pursuer's Minute of Amendment. A fee similar to the level already allowed for the perusal of an opponent's Answers is proposed.

It is submitted that the existing fee for the preparation of Answers is inadequate to remunerate the actual work undertaken. Again, by comparison on a detailed basis, it is submitted that a minimum fee, equivalent to one hour's work, is appropriate:-

Meeting client discussing amendment and obtaining information to enable preparation of Answers – 30 minutes: £78.00

Framing Answers – 2 sheets: £39.00

Signing Answers: £9.75

Lodging Answers: £9.75

Intimating Answers: £4.88

Writing client reporting: £19.50

TOTAL: £160.88

MOTIONS

We would reiterate our comments in connection with the level of the fees for opposed and unopposed Motions and would suggest the fees be increased to similar levels previously proposed in the Court of Session Table of Fees.

In addition, the present fee covers the initial attendance at Court for an opposed Motion regardless of how long that Motion lasts for. Accordingly, a 5-minute appearance attracts the same fee as a Motion lasting a full day. It is therefore suggested that the initial fee should only cover the first 30 minutes' attendance, with provision being made for each 15 minute attendance thereafter at the prevailing hourly rate.

In addition, there is presently no provision for attending a Continued Motion and, again, it is submitted that a time charge should be introduced to cover such continued appearances.

HEARING LIMITATION FEE

It is again suggested that reference to "not exceeding" should be removed from the fee in order that additional work can be claimed if justified, subject to the Auditor's discretion.

PROOF PREPARATION FEE

It is submitted that the present two-tier fee should be removed from the Table of Fees with one fee being introduced to cover Proof Preparation which would thereafter be subject to the Auditor's discretion, depending on the amount of work undertaken.

At present, a lesser fee is recoverable if the Action settles more than 14 days before the Proof Diet. However, in many cases, if not the majority of cases, it is necessary to have witnesses under citation, the List of Witnesses prepared and lodged, the witnesses' attendance timetabled, etc, well before 14 days of the Proof and, therefore, the majority of the Proof Preparation/

/Preparation takes place at an early stage. It is therefore suggested that a fee akin to that presently available in the Court of Session Chapter 43 Procedure, both in narrative and in amount, be introduced to the Ordinary Cause Table of Fees.

FINAL PROCEDURE FEE

It is submitted that this fee should be brought in line with the fee presently allowable for Personal Injury Actions, ie, a fee of £97.50 being introduced for a case which settles outwith 14 days of the Proof Diet.

Subject to further comments later in the Paper Apart, it is submitted that an increased Account fee should be re-worded to simply reflect the preparation of the Account of Expenses. It is thereafter suggested that separate fees be introduced to cover preparation for the Diet of Taxation and attendance thereat at the prevailing 15-minute rate, thus bringing the Table in line with the Court of Session Table.

COPYINGS

We reiterate our suggested expansion and clarification of the Copying charge.

INSTRUCTION OF COUNSEL

It is submitted that a fee should be introduced to reflect Counsel's instruction to attend a Pre-Trial Meeting and that the fee should be at the level of £195.00, ie, similar to the fee for instructing Counsel to attend Court.

A lesser Preparation fee is presently allowable in cases where Counsel or a Solicitor-Advocate is involved but there is no provision for the instruction of Counsel.

PERSONAL INJURY TABLE / ASPIC

PRE-LITIGATION FEE

We would reiterate our earlier comments regarding the Pre-Litigation fee both in narrative and in amount.

PRODUCTIONS

We would again reiterate our suggestion regarding the examination of opponent's Productions for an allowance to be made for same.

ADJUSTMENT FEE

We would suggest an increase in the Adjustment fee where the Record closes. Previously, Agents could recover a fee of £780.00 under the Court of Session Chapter 43 Table. Since the advent of ASPIC, in cases not involving Counsel, Agents are having to undertake more work than was historically required in that they are now having to deal with the preparation of Adjustments, etc, themselves and it is submitted that the Adjustment fee should be increased to the "old" rate of £780.00.

We would reiterate our suggestion regarding the introduction of fees to cover the introduction of a new pursuer following upon the death of the existing pursuer.

We would also suggest the introduction of a fee for arranging Consultations with Counsel in relevant cases to reflect the additional work which has historically been unchargeable, involved in the checking of Counsel availability and the marking of Counsel's diary as well as liaising with the pursuer in connection with the proposed Consultation.

MOTIONS

We would again reiterate our suggested approach to the charging of Motions.

AMENDMENT OF THE RECORD

Our views in connection with the introduction of a further fee for perusal of Answers are reiterated along with our comments in connection with an increase in the fee for preparation of Answers.

HEARING LIMITATION FEE

Again, we would recommend removal of the words "not exceeding" from the Hearing Limitation fee to reflect the Auditor's overall discretion over the Block fees.

PROOF PREPARATION

We would again state our suggestion regarding a revised and increased Proof Preparation fee as set out previously.

COPYINGS

We would again reiterate our suggestion regarding the revision of the Copying fee.

INSTRUCTION OF COUNSEL

We would suggest that a fee of £195.00 be introduced to the Table to reflect the instruction of Counsel to conduct the Pre-Trial Meeting in light of the restricted Preparation fee to Agents in that regard.

ACCOUNTS

We would again suggest a splitting of the Account fee so that Preparation and Attendance is chargeable separately.

ADVOCACY

In both Block Fee Tables, under Chapter 2 of the Sheriff Court Table of Fees, we would suggest that Advocacy should carry a greater charge than General attendances. A rate of 1.5 times the present rate is suggested.

It is also suggested that waiting time should specifically be provided for in connection with each attendance over both Tables.

GENERAL REGULATIONS

In terms of General Regulation 4, all Summary Applications must be charged on a Detailed basis. However, it is a procedure in which Block fees could be taken on many occasions and it is submitted that the General Regulation either be removed completely, or altered, in order that the charging of Block fees under Chapter 2, where appropriate, is an option.

JOINT BUNDLES

Whilst there is provision under the Chapter 42A Procedure for the making up and pagination of Joint Bundles of Medical Records, it is submitted that such a fee should be introduced to the Sheriff Court Tables of Fees to reflect the provision in the Sheriff Court Rules for Joint Bundles. There is no provision presently for the preparation of Joint Bundles of Productions or Authorities. Further, it is submitted that the fee presently in the Court of Session and any fee to be introduced to the other Tables of Fees should be amended to reflect the Appendix fee, ie, that a fee per 50 sheets is allowed to reflect the sometimes extensive nature of the Joint Bundles requiring preparation. The time engaged in the preparation of such Bundles can be extensive in some cases. It is further submitted that a similar provision should be introduced to the Table of Fees for Inner House matters to cover the collation and lodging of Authorities.

SUMMARY CAUSE

It is submitted that the provision for attendances at Court should be changed to reflect a charge, at the prevailing rate, to reflect 15-minute blocks of time rather than, in some instances, a Block fee of £71.00 regardless of the duration of the attendance.

COPYINGS

Our previous comment regarding the amended wording of the Copying Table is again reiterated in connection with Summary Cause matters.

ACCOUNT/

/ACCOUNT FEE

It is further submitted that an increased Account fee is required to reflect the work involved in the preparation of an Account of Expenses. In particular, separate provision, on a time basis, should be allowed for attendance at the Diet of Assessment and Diet of Approval if necessary.

Whilst it is perhaps not a matter for this Committee, it is submitted that consideration should be given to the Taxation process in Summary Cause matters and, in particular, the need for a Diet of Approval following upon the Assessment. It is submitted that the Taxation process should follow that in Court of Session and Sheriff Court matters where the Auditor's Finding is binding on parties and any Appeal can be taken by way of a Note of Objections.

**TABLE OF FEES OF SOLICITORS IN THE SHERIFF APPEAL COURT –
SCHEDULE 2 PART 1****PREPARATION FOR APPEAL HEARING**

It is submitted that the Preparation fee inadequately remunerates Agents for the work involved in preparing for the Appeal, particularly when the present fee includes the instruction of an Advocate or Solicitor-Advocate to conduct the Hearing. Under the Ordinary Cause and Personal Injury Table of Fees, the instruction of Counsel alone to conduct a Proof or Hearing attracts a fee of £195.00. It is therefore suggested that the present Preparation fee should/

/should be re-worded to remove “including instruction of Advocate or a Solicitor-Advocate to conduct the Hearing” and, in addition, the fee increased to reflect 2.5 hours’ work, being a fee presently of £390.00.

Thereafter, a restricted fee at the present level should be included in cases where Counsel is instructed.

MOTIONS AND MINUTES

Our previous submissions in regard to Motions are referred to.

PART 2 - APPLICATIONS FOR NEW TRIAL OR TO ENTER JURY VERDICT

PREPARATION FOR HEARING

Our previous submissions in connection with the Preparation charges are reiterated herewith

MOTIONS AND MINUTES

Our previous submissions in connection with the level of Motion fees are reiterated herewith.

LAW ACCOUNTANTS’ CHARGES

It is now common, if not usual, practice for Agents to instruct Law Accountants in the preparation of Accounts of Expenses. In order to reflect that procedure, it is submitted that the/

/the recovery of Law Accountants' charges should be allowed as part of the overall Judicial recovery subject, of course, to the question of reasonableness and the Auditor's discretion. It is therefore suggested that in all Tables of Fees, under the Account fee, that specific reference be made to the recovery of Law Accountants' charges as an outlay. There is, of course, precedent for such an approach in Supreme Court matters where the Costs Draftsman or Law Accountants' fee is recoverable as an outlay over and above the Agents' work involved in instructing and checking the Bill.

If such a procedure was to be adopted, we would suggest that a restricted Account fee be introduced to the Table in circumstances where a Law Accountant is instructed with the present Account fees being enhanced considerably to reflect the actual work undertaken in the preparation of an Account of Expenses if that is done by an Agent.

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LAW ACCOUNTANTS

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