

Question 5 – With regard to annex 4, do you have a view on whether any of the current 60 line items shown are no longer required, or whether any of the baseline unit of work should be amended? If so why?

There are several line items which are outdated and should be amended.

The type of work carried out by Sheriff Officers has changed over time with the current table of fees relying heavily of the 1987 Debtor (Scotland) Act. In addition, wider issues in the debt recovery landscape have meant a continual decrease in “traditional” instructions as court users are reluctant to initiate proceedings with many cases having virtually no hope of recovery. These overall lower volumes impact the viability of servicing “Column A” cases which in truth, given these are largely instructed by Party Litigants, present an extremely time-consuming challenge.

As with all other professions, costs within Sheriff Officers businesses have increased dramatically with investment in training, technology, compliance, and human resources. We as a profession have been raising these issues for some time with the continued sustainability and viability of our profession being a real concern.

My suggestions are as follows:

Column A threshold and discount amount

As previously alluded to “Column A” fees no longer reflect the amount of work undertaken to complete these instructions. We understand this lower fee was implemented by Scottish Government to assist with “Access to Justice” however I cannot understand why this policy is being paid for by our members as private business owners. The cost of printing, preparing and serving a Simple Procedure Claim and its subsequent diligences is the same, regardless, if the claim is above or below £1500. The unintended consequence of continuing with a reduction for actions in “Column A” has a detrimental effect on Access to Justice with Sheriff Officers having to prioritise instructions which pay higher fees rather than these “Column A” cases.

I would strongly recommend this reduction disappears completely to prevent our members operating at a loss on these instructions.

Line Item 3 - Same Day Service

In other parts of the UK Process Servers will charge upwards of £200 for same day service, however there are no provisions in our regulations for an additional surcharge where service is requested to be carried out on the same day of receipt. I would recommend line item 3 be replaced with a regulation allowing for the surcharge of an additional 20 units for service within 24 hours or for orders for delivery, interdicts (including non-harassment orders) and anti-social behaviour orders.

Line item 8

Ejections are one of the most difficult and contentious instructions we as Sheriff Officers carry out on a regular basis and the current fee in no way reflects the complexity of carrying out such an instruction.

As has been pointed out to me the tradesmen who force entry and change locks at an ejection receive higher fees than the Sheriff Officer. I would recommend at least a 50% increase in these fees.

International Transmitting fee

Messengers-at-Arms & Sheriff Officers have recently been designated transmitting and receiving parties under the Hague Service Convention. There is a present no prescribed fee for transmitting. A fee which reflects the amount of work complex required should be introduced. I would recommend 47 base units as a line item for these instructions.

Line Item 4, 5, 6 & 7

The base fee chargeable on these line items no longer reflects the amount of time and work involved. In addition, the volume of these instructions has decreased significantly. This is largely down to the decrease in open market prices that goods now fetch when sold at auction. An attachment carried out today will be appraised at a much lower value than a comparable attachment 20 years ago, however the amount of time it takes to carry out the attachment remains the same. At present the base fee is in effect 24% higher than the fee for service of a document which in no way reflects the time involved in not only carrying out the attachment but the preparation and submission of the report of attachment. I would recommend an increase in the base value of at least 50% to allow these diligences to remain viable.

General Regulation 15

I would recommend that with the consolidation of our fees the regulation be amended to read “shall be calculated in accordance with the fees specified for an Ordinary action”. This reflects how the regulation was framed before the introduction of column A & B in 2011.

Unsuccessful Diligence costs

This issue has come into focus particularly in relation to Party Litigants. These individuals who have obtained Simple Procedure decisions are now faced with a “cat and mouse game” of trying to enforce these decisions. Many believe that once they have been granted these decisions, they have a right to recover their money however are then informed by Sheriff Officers, we have no access to information on bank accounts or employment details and that unless they have definite information on the Respondent then any enforcement measures are in effect speculative.

The Party Litigants find it difficult to grasp they require to spend more money with no guarantee of success. Whilst Information Disclosure Orders would go along way to rectifying these issues, it does not resolve the fact that every unsuccessful diligence still incurs an unrecoverable fee.

This concept reduces confidence in the legal process and impacts the overall numbers of court actions raised. I would recommend all previous diligence cost, both successful and unsuccessful be chargeable to the debtor. They have failed to comply with a court order and should be made to bear the costs of recovery.

Time units

Time units should be chargeable after the end of the first 30 minutes, not the first hour.