

**CONSULTATION ON THE REVIEW OF FEES
IN THE SCOTTISH CIVIL COURTS**

FEES OF SOLICITORS

**RESPONSE
by
ALEX QUINN & PARTNERS LTD
LAW ACCOUNTANTS**

NOVEMBER 2017

ALEX QUINN & PARTNERS LTD, Law Accountants, (AQP) have been established since 1971 and are recognised as being the largest Law Accountancy firm in Scotland. AQP have a particular interest in Personal Injury Litigation and are in the privileged position of representing the interests of the majority of the principal Personal Injury Solicitor firms in Scotland.

AQP has a long history of being involved in such Consultations and regularly assists the Law Society of Scotland in such matters. The Chairman, James S Flett, was recognised as one of the Law Society of Scotland's representatives who regularly appeared before the Lord President's Advisory Committee prior to it being replaced by the present Costs and Funding Committee, for the purposes of providing advice and suggestions by way of the historic "Shopping List".

AQP also act on behalf of a number of prominent Defender Legal firms and are therefore able to adopt a reasonable and measured approach to the Tables of Fees without promoting one side over the other.

We would be delighted to assist the Committee and its Working Party in any respect or any matter arising out of this Response and any queries should be addressed, in the first instance, to:- **James S Flett, Chairman, Alex Quinn & Partners Ltd, Law Accountants, The Matrix, 62 Newhaven Road, Edinburgh, EH6 5QP (DX ED50) (Tel: 0131 555 3552) (email: JamesFlett@alexquinn.co.uk)**

GENERAL COMMENT

AQP welcomes the opportunity to respond to the Consultation on the Review of Fees in the Scottish Civil Courts – Fees of Solicitors.

It is our view that the present system, subject to the following comments, works in principle for both pursuers and defenders and that no radical overhaul of the current system is required. A system based on actual work undertaken, regardless of value, in our view, has to be the fairest system both to the receiving and paying party at one and the same time.

That said, we recognise that the present rates of recovery in Party/Party litigation is now some distance from the rates recoverable on an Agent/Client, Client-paying basis. Since the abolition of the Law Society's General Business Table of Fees, there is now no guidance provided insofar as Agent/Client, Client-paying costs are concerned, and these are purely commercially driven. Accordingly, year on year, the Agent/Client rate of charge and, indeed, the work now chargeable, against the static Judicial rate of recovery (last increase March 2014), only serves to widen the gulf between what is payable on an Agent/Client basis compared to what is recoverable on a Party/Party basis.

It is submitted that that has an impact on the affordability of access to justice in that it is a serious consideration for litigants as to how the shortfall is to be funded, particularly in low value cases.

We/

/We would therefore submit that an increase in the Party/Party hourly rate (and the knock-on effect to the remaining fees in the Tables of Fees) is the only mechanism for lessening the shortfall between the Agent/Client mode of recovery and the Party/Party mode of recovery.

Indeed, we would submit that unless there is an increase in the Table of Fees generally, particularly the Block Fee Table of Fees, then the likely outcome will be the preparation of considerably more Detailed Accounts of Expenses rather than Block Fee Accounts of Expenses. It is further submitted that a substantial increase in the number of Detailed Accounts requiring preparation and taxation would simply serve to slow down considerably the Taxation process with such Detailed Accounts taking up much more time at Taxation. Indeed, we would suggest that the preparation of Detailed Accounts would take much longer, as would any possible adjustment process of the Account and, finally, have a knock-on effect to the time required to be dedicated to such Accounts at Taxation.

CONSULTATION QUESTIONS

(1) ARE AMENDMENTS REQUIRED TO THE TABLES OF FEES TO ENSURE THAT FEES RECOVERABLE ARE PROPORTIONATE ?

It is submitted that proportionality should not be a factor insofar as amendment of the Tables of Fees is concerned. Indeed, it is submitted that there already exists a form of proportionality with the differing Tables of Fees already in existence for the particular forum of Litigation as follows:-

Court of Session Table of Fees to reflect those cases generally regarded as the most valuable and complex.

Sheriff Court matters above £5,000 being chargeable in terms of the Ordinary Cause Table of Fees.

Lower value cases being charged in terms of the Summary Cause Table of Fees.

The lowest value cases being charged on the Summary Cause Table of Fees but subject to the percentage restrictions depending on value.

Accordingly, the differing Tables of Fees to a large extent take into account the value of the claim, thus being proportionate to the sums recoverable.

(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 ?

The answer to both Questions (2) and (3) is Yes – Amendments are required to better reflect the work being undertaken and present practice and procedure. The Committee is referred to the attached Paper Apart which details our suggested improvements to the Tables of Fees which reflect our answer to both questions.

(4) IS THERE A REQUIREMENT FOR A GENERAL MODIFICATION OF THE LEVEL OF FEES PROVIDED FOR IN THE TABLES OF FEES ?

AQP are of the view that no general modification of the level of fees should be provided for unless in an upward direction. As aforementioned, there has been no increase in the Tables of Fees since March 2014 and it is submitted that a substantial increase is required to reflect inflation rises over those years to bring the Tables of Fees up to levels which simply reflect the passing of time. Once such an increase has been introduced, it is submitted that that should be the starting point for any further increase or modification.

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/In addition, with the Agent/Client rates ever increasing, it is submitted that a general modification of the level of fees in a downward direction would simply enlarge the gulf between the two modes of recovery and, as a result, affect Litigant's access to justice by having to fund substantial shortfalls from any damages recovered.

Further, it is submitted that with the advent of the digital age, Agents are now having to spend considerably more time in managing clients throughout a Litigation by way of general telephone discussions and, in particular, email correspondence. It is, of course, the case that a Block fee covers a particular tranche of work during a particular stage of the Litigation. By way of example, the Record or Adjustment fee covers all work from the lodging of Defences to the closing of the Record and not simply the work involved in the actual preparation of Adjustments. During that particular period, Agents are now requiring to deal with much more communication from Litigants due to the ease of emails, etc and it is submitted that a general increase in all Block fees to cover that general communication, historically covered by the Session Fee in Court of Session matters. In Sheriff Court matters, such work is covered by the Process Fee and we would suggest an increase in the percentage charge to reflect the additional communications now being handled by Agents generally.

In addition, with the advent of the All Scotland Personal Injury Court (ASPIC), it is submitted that Agents are requiring to undertake more work as a result of changes in procedure which is not reflected in the present Table of Fees governing the recovery of expenses in ASPIC matters.

In reality, many cases which would have historically been run in the Court of Session with the assistance of Counsel and would have attracted the Court of Session Scale of Expenses are now being run by Agents without Counsel for a lesser recovery with the present Sheriff Court Table of Fees.

For example, historically, Agents would recover a fee of £780 in connection with all work undertaken from the lodging of Defences to the closing of the Record, including all adjustment work undertaken. In addition, Counsel's charges for the preparation of Adjustments would be recoverable over and above. However, in ASPIC matters, Agents are now only recovering a fee of £351 for having to undertake sometimes considerably more work in preparing Adjustments themselves in cases where Counsel is no longer involved.

Subject to the proposed changes in the attached Paper Apart, it is submitted that in ASPIC matters, the Court of Session Table of Fees for Chapter 43 Procedure should be adopted, with a new increased Table of Fees being introduced for Court of Session proceedings.

That would, in our view, provide greater proportionality as per Question (1) in that an increased Table of Fees would be introduced for those cases in the Court of Session which are deemed to be of higher value and of greater complexity with the present Court of Session Table being adopted for ASPIC matters, and thereafter the existing Table of Fees for Sheriff Court matters and Summary Cause cases remain in place. That would provide a greater sliding scale having regard to value and complexity.

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

Again, reference is made to the Paper Apart insofar as specific fees are concerned.

ADDITIONAL COMMENTS

Reference is made to the Paper Apart insofar as specific fees are concerned. It is, however, submitted that consideration should be given to a revision of the General Regulations in the Sheriff Court Table of Fees. Reference is made to General Regulation 12A: *The Auditor may also allow fees of Counsel or a Solicitor-Advocate and of the Instructing Solicitor for Consultations reasonably required in relation to the work for which sanction is granted, but except on Cause shown, fees for only two Consultations in the course of the Cause are to be allowed.*

It is submitted that such a Regulation is outdated and does not reflect present practice following upon the advent of ASPIC. It is suggested that General Regulation 12A be removed from the Table of Fees, with no substitute Regulation, thus leaving the recovery of any Consultation to be governed by General Regulation 8 of the Table of Fees: “..... *only such expenses shall be allowed in the Taxation of Accounts as are reasonable for conducting it in a proper manner*” and, in turn, the discretion of the Auditor at Taxation.

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