

## 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.**

Yes.

The recoverable fees are not proportionate. The hourly recoverable rate on an account prepared on a detailed basis does not reflect the fees that solicitors are charging.

If we assume a relatively modest hourly rate being charged by solicitors of £200 per hour (the amount recoverable on an agent/client basis), the current hourly recovery rate judicially is only £156. That represents a 78% recovery on a party to party basis. If we assume that even on a party basis an individual is only able to recover around 60% of their actual legal fees (much work 2 solicitors etc is not recoverable) at taxation that breaks down to percentage of legal fees actually recoverable in practice to be 46.8% (60% of 78%). That is before we consider the VAT payable by an individual on their legal fees – an individual can only recover the VAT payable on the account of expenses they are awarded. There is no facility to reclaim the VAT they have paid on their actual legal fees though.

In 2004 (the last time fees were governed by the Law Society General Business Table) the agent to client rate that was recoverable was £113 per hour. The judicial recovery rate was £112.80 per hour.

Solicitor's fees have risen at a greater rate than the judicial recovery rate meaning that the fees recoverable are not proportionate. This leads to difficulties when considered against access to justice. Even if an individual (or company) is completely vindicated in court they are still likely to only recover around 50% of their legal fees. The reality being that this makes litigating unaffordable for many individuals and companies – knowing that even if they are completely correct, they will still be substantially out of pocket for doing so. This is perverse and against natural justice.

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.**

Yes.

### Change of jurisdiction of Court of Session

Since the jurisdiction of the Court of Session was changed to £100,000 more business is now being conducted in the Sheriff Court. The Sheriff Court fees recoverable have not been amended to reflect this. Previously solicitors conducting litigations were doing so with the assistance of counsel – that assistance has largely been removed but the fees recoverable do not reflect the amount of work now required to be undertaken by the solicitor in terms of preparatory work, considering matters, compiling lists of authorities etc. It would be reasonable to bring the fees in line with the current Court of Session tables.

### Inventories of Productions

Preparation of a pursuer's inventory of productions is recoverable at £78 for a block rate. It would be more appropriate to allocate the fee based on the amount of sheets lodged which is in line with the recoverable fee for the lodging of appendices in the Inner House. An inventory of productions is an essential part of any claim and the recoverable fee does not reflect the work undertaken. We would suggest a fee of £97.50 per 50 sheets for preparing or lodging an inventory.

### Witness Statements

The fees recoverable for witness statements/precognitions/affidavits in no way reflect the work undertaken by the solicitor in preparing them. On a recovery based on a detailed account you are entitled to £19.50 per sheet, which breaks down to a recovery rate of roughly six minutes per sheet (assuming the rate of £200 per hour).

Taking a fairly basic witness statement (4-5 pages) involves:

- Considering what their statement needs to cover and the questions required to obtain that information – 30-45mins
  - Writing to client outlining what is required – 15-20mins
  - Speaking with client confirming meeting/telecom call to take statement – 5mins
  - Call/meeting with client taking statement 90mins
  - Framing statement – 180mins
  - Sending draft statement to client – 5 mins
  - Revising and confirming content accurately reflects the clients' position 60mins
- = roughly 6.5 hours. (6.5 x £200 = £1,300)

(We stress that the above is for a fairly basis statement. It is not unusual for a witness statement to be four or five times the length with the corresponding increases in time spent on them.)

The current block rate for a witness statement is £78 per sheet and the fee per sheet on a detailed account £39 and a lower rate of £19.50 for a precognition. These bring out figures of £390 on a block fee basis and between £500 and £600 on a detailed basis in comparison with the agent/client fee of £1,300. We would therefore suggest that the precognition fee on a block basis goes up to £156 per sheet and £78 on a detailed basis.

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

**If yes, please detail the amendments proposed.**

Yes.

Changes to productions

Courts now direct solicitors to produce joint bundles of productions, marked up (highlighted) authorities and USB sticks with documentation on them.

These are all procedures that are designed to limit the hearing but are not reflected in the block rates that can be claimed. The maximum recoverable block rate is £780 which is under four hours of work. This in no way reflects the reality 'on the ground' for compiling joint bundles and marked up authorities which can be extremely time consuming and an expensive process for a client – even when the task is delegated to a trainee.

We would submit that the fee recoverable for the preparation of a joint bundle should be awarded on the basis of pages. There should be a separate fee for the marking up of each authority and a fee for ensuring that documents are accessible with the correct links from the contents page on a USB stick. Again we would propose this is brought in line with the appendix fee of £97.50 per 50 pages.

Judicial Reviews

Since the change to the rules for judicial reviews much more work is required at the outset of raising of the proceedings. You have one chance to get the pleadings correct or you run the risk of not getting permission to proceed with the judicial review. The front loading of work is not reflected in the block

amounts recoverable for these types of actions. A more appropriate fee in commercial actions would be £5,000.

**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.**

Yes.

There needs to be an increase in the ways fees are recovered on both a detailed account and on the block basis.

It seems to us the most straightforward way of having an account prepared is for it to be done on the block basis. Doing it this way reduces the amount of time a legal accountant spends preparing the account. It also greatly reduces the amount of time spent at taxation. It would lead to more accounts being settled and agreed between solicitors as they are much more easily digestible. This can only be a good thing for a client who requires to meet all of these costs. Regrettably the block fees recoverable do not come close to covering the fee the client has paid to their solicitor for that work.

Inevitably because of the insufficiency of block fees most accounts for larger litigations are prepared on a detailed basis and go to taxation with all of the work and money required for same. This is more expensive and more time consuming and ultimately delays the payment of expenses to the successful party.

In the circumstances where detailed accounts are necessary the hourly rates simply do not reflect the costs of modern litigation. Reference is made to answer 1 above.

**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.**

Parties are encouraged to come together and use alternative forms of dispute resolution. As things stand there is no way to recover any of the costs required for that if the process is ultimately unsuccessful. It cannot be right that parties are encouraged to seek resolution themselves, which in itself can be costly and time consuming, with no way of recovering those fees if the process fails.

The table of fees should include an entry for mediation or failed ADR.

There is no provision for site visits in the table of fees either. These can be essential part of the preparatory work of a solicitor/counsel and there should be an ability to recover costs for that generally.

If a site visit is directed by the court then the time spent doing so should be fully recoverable and that should be accounted for in the table of fees. We would suggest that these are recoverable on an hourly rate basis in line with court hearings.