

PRICE TRANSPARENCY GUIDANCE

GENERAL COURT LITIGATION

Mackinnons are obliged to set out guidance on likely fees and costs arising through any litigation embarked upon by our clients. That is something that we have always done even before the price transparency guidance was introduced in February 2021 and is an important aspect of any litigation work.

Inevitably, within a litigation process, each case will differ greatly in facts and circumstance than another and costs are therefore only possible to assess as the case develops.

Simply as a general guide, we hope that the undernoted information will be of use to prospective clients when considering whether to embark on such a route. Our litigation team will be very happy to provide a more detailed estimate and fee quotation when instructed and when we are able to more properly evaluate the likely commitment that your case will involve.

We do not undertake Legal Aid work and the most likely areas where we will look to provide service to individual clients are within the following sectors:-

- Personal injury claims.
- Debt recovery/enforcement of a contractual term.
- Property disputes/legal rights under statute or common law.
- Interdicts/neighbour disputes.
- Landlord/tenant disputes.
- Employment law related matters.
- Road traffic/criminal matters.
- Health & Safety prosecutions - defence thereof.
- Sequestration/liquidation related matters.

PROFESSIONAL HOURLY RATES

Like all solicitors, we must charge our fees based on an hourly rate. This time is generally recorded in 6 minute incremental units and presently our hourly rates will range between £150 to £250 depending on the individual who is acting on the matter. Ultimately, a partner will assume overall responsibility for works and he/she will be assisted by consultants, associates, assistants and trainees depending on the levels and importance of work required.

In addition to these hourly rates, our fees will include an additional 20% of VAT and, unless otherwise agreed, we always consider that regular fee billing to clients is important in order to ensure that the costs of litigation are fully appreciated.

OUTLAYS

As with any litigation process, consideration has to be given to third party costs which will need to be met by the client. These can range from Scottish Court & Tribunal Service costs (warranting fees) and all associated Court fees, such as Motion fees, Court attendance fees and Proof fixing fees through to fees for expert reports. Sheriff Officers' fees are also commonplace in litigation where documents require to be served on an opponent.

Another key feature of litigation is the role and instruction of advocates. Scotland is fortunate to have a strong pool of advocates within the Faculty of Advocates based in Edinburgh. Mackinnons pride ourselves in having built up relationships with many exceptional Junior and Senior Counsel, who we may consider instructing in assisting clients where the need arises. Again, this would be a matter to be discussed within any Court action and with clients and it is important that the cost of such a service is taken into account when considering litigation.



As an experienced firm of solicitors, Mackinnons are skilled in handling matters directly without the involvement of advocates and our principal aim is to ensure that we offer value for money to clients as far as possible.

Both advocate and expert witness fees will range considerably depending on levels of expertise and length of service.

SHERIFF COURT, COURT OF SESSION AND TRIBUNAL CLAIMS

Mackinnons provide services in all areas of litigation, both civil and criminal, and costs will vary dependent on the forum and nature of the case.

UNDEFENDED COURT ACTIONS

Where a civil Court action is raised and is not defended, this is probably the most cost effective outcome for clients. As a general estimate, we would anticipate fees of somewhere between £1,500 and £2,000 plus VAT and outlays for obtaining a decree in absence or where the other party chooses not to defend same. There will be additional costs arising from any enforcement of such a decree and, again, these will vary greatly, but the most likely outlays will involve Sheriff Officers' fees and steps taken to secure payments from the Defender. We would estimate an undefended action could resolve within somewhere between 2 to 3 months.

DEFENDED ACTIONS

These are inevitably the hardest to give any fee estimates upon.

The Court of Session has jurisdiction to hear cases only greater than £50,000 in value. Much depends upon whether our clients are the Pursuer or Defender in a Court action, but we will guide and advise on the best forum.

Employment matters are dealt with through the Employment Tribunal system and a similar position applies in relation to landlord/tenant disputes. The Court fees payable to Scottish Courts & Tribunals Service vary according to this.

When instructed on a litigation process, it is reasonable to estimate that this could take anywhere between 6 months to in excess of a year to resolve depending on the complexity and factors at stake.

The majority of cases are dealt with in terms of a Court/Tribunal timetable and dates will be followed and adhered to by all the parties. Although Tribunals do not presently charge Court fees for Hearings, the Sheriff Court and Court of Session do make such charges and these are determined by the SCTS and are issued on conclusion of any Hearings. The costs of a full day in Court are chargeable to all parties to a litigation and details of these sums are available on the SCTS website.

The Sheriff Court has exclusive jurisdiction to deal with cases up to £50,000 and these are described as ordinary actions. Actions below £5,000 in value are called simple procedure actions. The associated Court costs vary, as do the expenses which may be awarded at the conclusion of such an action.

Generally, we would not recommend clients to pursue simple procedure actions through ourselves, as the prospect of recovery of solicitors' fees are limited.

Cost estimates for litigation will depend how long the action runs for and any point of settlement. As a ball-park figure, solicitors' fees in such litigation matters can vary greatly. It would not be likely that a defended litigation would cost less than £7,500 to £10,000 plus VAT and outlays. Inevitably, the cost of a very lengthy and complicated action could far exceed such numbers and, for that reason, rather than putting any further figures in this guidance, we would discuss and outline costs at anticipated stages of a litigation to assist all clients.



JUDICIAL COSTS

The nature of litigation is adversarial and, although awards of expenses for Tribunal claims such as employment matters or landlord/tenant disputes are rare, that is not the case in Court actions. Expenses will follow success and the unsuccessful party must pay the expenses which are awarded by the Court at the conclusion of a litigation.

What a party pays his/her solicitor in order to pursue or defend a litigation is called solicitor/client expense. That is quite separate and distinct from judicial expenses which the Court may award at the conclusion of litigation. These costs are based on a set of scale fees and, except in unusual circumstances, they will be far less than the costs which a party has incurred to his/her solicitor. Again, we would estimate that these costs might be in the region of around 2/3 of the costs expended by that party, meaning that, even in a successful litigation, there will be a significant cost to the client which cannot be recovered. That is an important factor to balance and take account of before embarking on litigation.

FEE RENDERING/PAYMENTS TO ACCOUNT OF FEES

Our practice is generally to issue interim bills to clients and, as per our terms of engagement, we would expect these to be met at that time. Inevitably, some cases will involve very large financial commitments by clients. Again, this is something on which we will advise as claims progress, but arrangements must be put in place for payments to account to be made in order to cover such eventualities. These will particularly apply in respect of outlays, for example to instructed Counsel and for covering Court fees and witness fees in attending at Proofs/Evidential Hearings.

