

Debt recovery - Scotland

INFORMATION ABOUT PROCEDURE AND COSTS

(in accordance with Law Society of
Scotland price transparency guidance
and the SRA Transparency Rules)

Pricing Information

While the high quality of the legal services we provide is important, we also understand that cost efficiency, value for money, transparency and having control of your legal spend will be important to you. At Burness Paull, we believe that we offer excellent value for money without compromising on quality.

Our Dispute Resolution Team offer a full range of services including in relation to all aspects of commercial and consumer debt collection. We offer fast, bespoke, cost-effective and efficient services at different levels. Our team is led by our Legal Director, Julie Greig who has 20 years' experience in commercial litigation, commercial contracts and debt recovery. The team includes solicitors, trainee solicitors (appropriately supervised) and a dedicated paralegal (currently on maternity leave).

We have summarised below, the typical steps taken in a straightforward debt recovery matter (typically arising out of the supply of goods and / or services)¹ along with the charges that will apply for claims brought before the Sheriff Courts in Scotland in **undefended** actions (ie where the debt is not disputed).

All fees stated are exclusive of VAT. VAT will be charged on all legal fees at the rate of 20%.

¹ Note: this excludes debt recovery arising out of leases or licences for the use of heritable property

Pre-litigation: Demand Letter

The issue of a formal demand for payment is typically the first step taken.

Upon instruction by you we will review the contractual documentation and unpaid invoices and will prepare and issue a letter seeking payment of the outstanding sums within a specified period – usually 7 or 14 days.

If payment is made following the issue of the demand, no further steps will be taken.

If your contract provides for late payment interest, we will seek to recover that in addition to the outstanding sums; otherwise, we will seek to recover late payment interest and compensation under the Late Payment of Commercial Debts Interest Act 1988 (as amended), where applicable.

Fees:

DESCRIPTION OF WORK	LEGAL FEE
Service of Demand Letter Includes: taking your instructions; reviewing documentation including the contract and unpaid invoices; calculating interest; issuing the demand letter by email and recorded delivery and follow up with you in relation to whether payment made.	£100 - £250

Note: our fee for the demand letter assumes that the contract and all relevant documents are provided to us at the point of instruction along with an accurate calculation of the sum due. If additional work is required to establish the legal basis to recover the debt and / or to calculate the sum due additional charges may be made.

Pre-litigation: Statutory Demand

Statutory Demands are a formal request for the debt to be paid. They must contain certain information which is set down in legislation. They allow the debtor 21 days in which to make payment, which failing they can be used as a basis for a petition for Bankruptcy (for an individual) or a petition for Liquidation (winding up) (for a Company).

Statutory Demands require to be served by Sheriff Officers. Their fees are payable in addition (see Disbursements below).

We can provide an estimate or fixed fee for the preparation and service of a Statutory Demand on request.

Court Action

If no response is received to the demand letter, the next step is to raise court proceedings.

For claims up to £5000 a Simple Procedure claim is raised. Typically, in an undefended Simple Procedure action, it will take between eight and twelve weeks for the court to grant the Decision (ie the Decree or Judgment) and a further four weeks before the Decision can be enforced against the Debtor.

For claims £5000 and over, an Ordinary or Commercial action is raised. Typically, in an undefended Ordinary or Commercial action, it will take between eight and twelve weeks from the point of receiving your instructions to the point of obtaining the Decree (ie the court document that entitles you to payment).

In either case, if the action is defended, or if further steps are required to enforce the Decision or Decree against the debtor, the matter will take longer to resolve.

Fees for standard undefended court proceedings:

DESCRIPTION OF WORK	LEGAL FEES	COURT DUES	RECOVERABLE EXPENSES
Actions up to £1500 Includes: drafting Simple Procedure claim form; obtaining order of court, service of claim form by recorded delivery, lodging confirmation of service, applying for a Decision	£280	£106	£219 - £246 inc. court dues
Actions between £1501 and £5000 Includes: drafting Simple Procedure claim form; obtaining order of court, service of claim form by recorded delivery, lodging confirmation of service, applying for a Decision	£350	£106	£246 - £275 inc. court dues
Actions over £5000 Includes: drafting Initial Writ; obtaining warrant to serve, service by recorded delivery, lodging certificate of citation, minuting for Decree	£500 - £750	£132	£287 plus court dues

Note: the recoverable expenses are approximate and may vary depending on the value and circumstances of the case.

Enforcement Action

Once the court has issued a Decision or Decree, if the debtor has not made payment, it may be necessary to take steps to enforce the Decision or Decree against the debtor.

We will discuss the most appropriate way of enforcing the Decision or Decree with you. This will depend on the solvency of the debtor and the information available. Property searches and / or company searches may require to be carried out at extra cost (which will be notified to you in advance).

Sheriff Officers require to be instructed to enforce a Decision or Decree. Their fees are payable in addition (see Disbursements below).

DESCRIPTION OF WORK	LEGAL FEES
Charge for Payment Includes: instructing Sheriff Officers to serve; calculation of interest if required and reporting to you	£100 - £250
Arrestment Includes: instructing Sheriff Officers to serve and reporting to you, dealing with automatic release of funds	£125 - £350
Inhibition Includes: instructing Sheriff Officers to serve and register the inhibition; reporting to you	£125
Attachment Includes: instructing Sheriff Officers to serve and reporting to you; dealing with the auction of items attached and reporting further	£125 - £500

We can also instruct Earnings Arrestments and Exceptional Attachments where appropriate and can provide fixed fees in respect of same on request.

Should a petition for Bankruptcy (for an individual) or for Liquidation (winding up) (for a Company) be necessary, we will discuss the further work required with you and will provide information about costs, including any outlays payable.

Disbursements

The fees referred to above exclude disbursements. These are costs that may need to be paid to third parties. We will handle payment of disbursements on your behalf but may require you to put us in funds before payment of such disbursements. VAT will be charged at 20% on disbursements. Disbursements will then be included as an outlay on our invoice.

Disbursements may include:

- Court dues – these are fees payable to the court for the lodging and processing of certain court documents. A fee is payable to the court prior to the initiation of any claim. These are reviewed and increased annually, with any increase being charged immediately.
- Sheriff officers' fees – these are fees which may be payable to sheriff officers for service of any formal or court document within Scotland. Typically, service costs in the region of £150 - £175 per document per party.
- Property Searches in the Land Register of Scotland
- Tracing fees (if whereabouts of debtor are not known)
- Credit searches
- Counsels' fees

Non straightforward debt recovery / Defended Actions

If the facts and / or circumstances underlying the debt are unusual and / or complex, or if the other party disputes the debt at any point, the fixed fees above will not apply.

We will discuss further work required with you, and will provide you with information about costs which may be either (i) fixed fees for specific pieces of work (for example: drafting a letter of response; preparation of adjustments;) or (ii) hourly rates.

Our hourly rates vary as a result of a number of pricing factors, but these typically range from £135 to £510 per hour depending on the qualification and experience of the person dealing with the matter, the complexity of the matter and other factors, including for example, the nature and urgency of the instruction.

We will ensure that your work is carried out efficiently and cost effectively and will allocate resource appropriately. The hourly rates will reflect the skill and experience of the allocated team member as well as the complexity and value of the matter.

You will be notified of the team members allocated to the matter, along with their contact details and hourly rates, in writing.

Details of services not included within Fixed Fees

- A claim in the Court of Session
- Instructing counsel
- Dealing with debtor queries
- Negotiating with the debtor
- Specific strategic advice
- Court appearances
- Negotiation and preparation of Settlement Agreement
- Company searches
- Property Searches
- Insolvency searches
- Registering a Decision or Decree obtained in Scotland, in England (or vice versa)
- Lodging a claim in an Insolvency



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