

**THIS GUIDANCE APPLIES TO ALL COMPLAINTS AND APPEALS LODGED WITH THE TRIBUNAL ON
OR AFTER 1 SEPTEMBER 2024.**

Summary

This guidance will apply to all cases to which the Tribunal's new Procedural Rules apply ([Scottish Solicitors Discipline Tribunal Procedure Rules 2024](#)). This means that this guidance will apply to all Complaints and Appeals made to the Tribunal on or after 1 September 2024.

- 1. The award of expenses is a matter for the discretion of the Tribunal;**
- 2. While the starting point will be that expenses are more likely to be awarded to the successful party, the Tribunal will have regard to all of the relevant circumstances of the case, how it is conducted and relevant authorities, including case law;**
- 3. Where expenses are awarded, the party and party scale is the starting point, taking parties' submissions into account, and subject to the Tribunal's discretion;**
- 4. Awards of expenses which do not specify a sum are likely to be based on the Act of Sederunt (Taxation of Judicial Expenses) Rules 2019 as amended;**
- 5. Awards of expenses may be restricted in the case of party litigants or non-solicitor representatives at the discretion of the Tribunal.**

Background

In February 2021, the Tribunal consulted on the way it awards expenses. Following the consultation, the Lord President raised concerns about the Tribunal's proposal to continue using the agent and client, client paying scale in most of its cases. In February 2023, the Tribunal consulted on the proposal to use the party and party scale instead as a starting point when considering awards of expenses. The Tribunal sought information from the Law Society of Scotland, the Legal Defence Union and others on the financial implications of using the party and party scale and the broader impact on the profession at large. The Tribunal is very grateful to those who responded. Following careful consideration of those responses, the Tribunal will apply the approach to expenses which is outlined in this guidance to Complaints and Appeals lodged on or after 1 September 2024.

Tribunal's discretion

Awards of expenses are always a matter of the Tribunal's discretion, having regard to the specific circumstances of the case. The relevant statutory provisions can be found at [paragraphs 19-23 of Schedule 4 to the Solicitors \(Scotland\) Act 1980](#).¹

Expenses to successful party

The Tribunal's long-established practice has been to find unsuccessful parties liable in the expenses of the other party and the expenses of the Tribunal. It is helpful for parties to know the Tribunal's usual approach on expenses to help inform their submissions at the appropriate time, particularly if they wish the Tribunal to consider an alternative approach in any case. Parties can, for example, move the Tribunal to make no award of expenses, or make an award against the successful party. They can suggest that a party is only liable for a proportion of the expenses or that expenses should be capped at a specific limit, or amount agreed by the parties. It is important to emphasise that expenses are always a matter of the Tribunal's discretion, having regard to the specific circumstances of the case.

Decisions on expenses will be made on a case-by-case basis. While its starting point is that expenses follow success, the Tribunal can depart from this approach in appropriate cases. The outcome of the case is one of the factors considered by the Tribunal, but it will also have regard to any other

¹ [Paragraphs 19-23 of Schedule 4 to the Solicitors \(Scotland\) Act 1980](#).

relevant factors such as the conduct of the litigation and any relevant case law.² Parties can move for expenses at any appropriate time. The Tribunal will seek submissions from parties on the appropriate award of expenses at the conclusion of every case.

Party and Party Scale

From 1 September 2024 the usual scale employed by the Tribunal with regard to expenses will be the party and party scale. However, the Tribunal may depart from this in appropriate cases. The Tribunal will exercise its discretion in each individual case. If parties wish the Tribunal to award expenses on a different scale, submissions to that effect should be made at the appropriate time.

Act of Sederunt (Taxation of Judicial Expenses) Rules 2019

The [Act of Sederunt \(Taxation of Judicial Expenses\) Rules 2019](#) as amended, applies to expenses relating to Sheriff Court, Sheriff Appeal Court and Court of Session actions started on or after 29 April 2019 (but not summary cause proceedings). The Rules make provision regarding the taxation of accounts of expenses as between party and party in civil proceedings. Fees are recoverable on the basis of a six-minute unit. At the time of writing, each unit is currently worth £18.00, but this is amended from time to time.³ The Schedules to the Rules contain a number of tables relating to applicable charges in different cases. Schedule 1 of the Rules contains the table of detailed charges which will be used by the Tribunal. The Act of Sederunt 2019 is accessible to all parties, allowing them to make more informed decisions about potential costs. It is routinely used by solicitors, law accountants and auditors. Other Tribunals allow accounts to be taxed by auditors on the basis of Acts of Sederunt.⁴ Therefore, for all cases where the Complaint or Appeal was lodged on or after 1 September 2024, the Tribunal will use as its starting point, the Act of Sederunt (Taxation of Judicial Expenses) Rules 2019, rather than the last published Law Society's Table of Fees for general business which it has used in the past.

The unit rate the Tribunal applies will be that set in the [Act of Sederunt \(Taxation of Judicial Expenses\) Rules 2019](#) as amended. At the time of writing, the unit rate is £18.00 and will increase

² Which includes at the time of writing, [Baxendale-Walker v Law Society \[2008\] 1 WLR 426](#), [Ahmed-Sheikh v Scottish Solicitors' Discipline Tribunal \[2019\] CSOH 104](#) and [CMA v Flynn Pharma and Others \[2022\] UKSC 14](#).

³ Rule 3.2 of the 2019 Act of Sederunt as amended by the [Act of Sederunt \(Fees of Solicitors in the Court of Session, Sheriff Appeal Court, and Sheriff Court\) \(Taxations of Judicial Expenses Rules\) \(Amendment\) 2023](#).

⁴ See [Rule 10 of the First-Tier Tribunal \(Tax Chamber\) Rules 2020](#) and [Rule 78 of the Employment Tribunals Rules of Procedure 2013](#)

whenever the unit rate for judicial expenses is updated by the Court of Session, rather than being set by the Tribunal.

Party litigants and non-solicitor representatives

It is competent for parties to represent themselves before the Tribunal or to be represented by someone who is not a solicitor, or a solicitor who does not hold a practising certificate. Consistent with the general position in civil proceedings in Scotland, party litigants would not usually be expected to recover the same level of expenses as a solicitor. Similarly non-solicitor representatives before this Tribunal would not be expected to recover the same level of expenses as a solicitor. The knowledge and expertise (and business overheads) of non-solicitor representatives varies. However, each case will turn on the circumstances of the individuals involved.

The Tribunal in its discretion may restrict awards of expenses in the case of party litigants or non-solicitor representatives. This means that party litigants or non-solicitor representatives may not receive as much in the way of expenses as a solicitor. The expertise and qualifications of non-solicitor representatives will be a relevant factor. Parties should address the Tribunal on this at the appropriate time.

Arguments about the appropriate scale and whether the award ought to be restricted in the case of party litigants or non-solicitor members must be made before the Tribunal, not the Auditor. The Auditor will apply the decision set out in the Tribunal's interlocutor. The interlocutor sets the scale and the unit rate and the Auditor determines the quantification of charges to be allowed within that scale.

Miscellaneous

Parties who wish the Tribunal to grant sanction for counsel or expert witnesses should continue to address the Tribunal on this when making submissions on expenses.

At an early stage in proceedings parties may wish to consider taking independent legal advice on their case generally and in relation to expenses. Parties should be ready to address the Tribunal on expenses at the conclusion of the case. Occasionally parties may also be invited to address the Tribunal on expenses part-way through a case, particularly if proceedings have been lengthy and a discrete part of the case has been determined.