

INSIGHT

Using Tenders in the Scottish Courts

Defenders can lodge a Tender to encourage settlement in a litigated case and keep a lid on their expenses. We can advise you on strategies and procedures

A "Tender" is a formal offer from a Defender (Defendant) to a Pursuer (Plaintiff) to pay a specific sum of money plus expenses up to the date the Tender is made. A Tender (also called a "Minute of Tender") can be used in the [Sheriff Court](#) and the [Court of Session](#), and must be lodged with the Court using correct procedures.

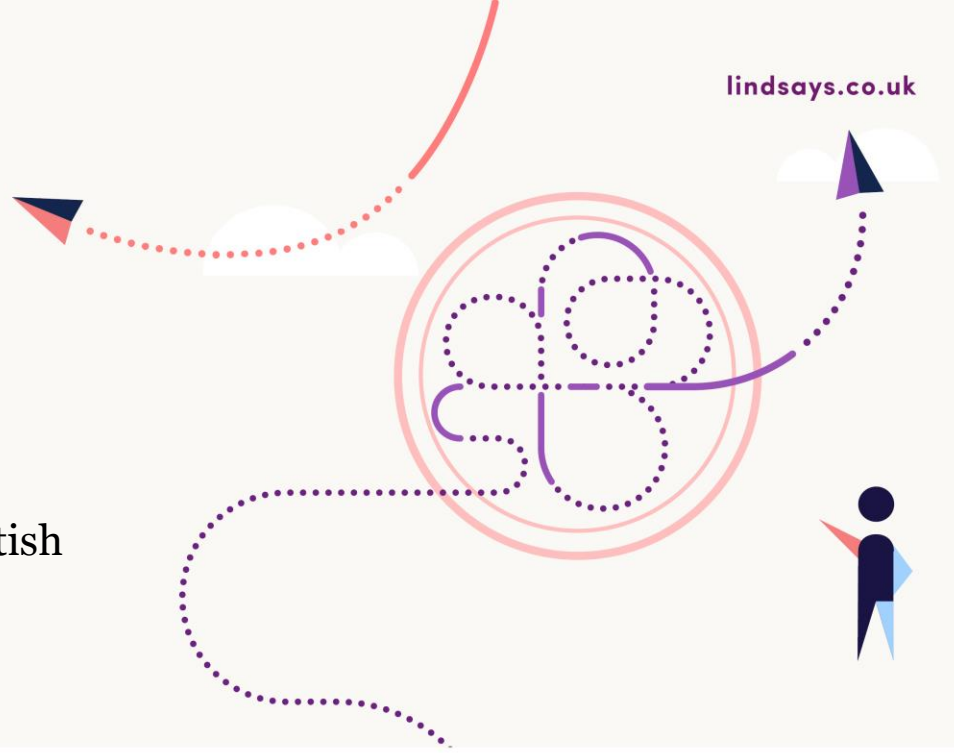
Because the use, acceptance or rejection of a Tender have implications in terms of [expenses](#), good decision-making around this is important. Our Dispute Resolution and Litigation team can take you through the decisions around the timing and the amount of the Tender – whether you are based in Scotland or in another jurisdiction.

What happens if a Tender is rejected?

Rejecting a Tender has implications for the level of expenses payable by the Pursuer, so is not a decision made lightly.

Let's say the Pursuer rejects the Tender, and the case proceeds to Proof (a trial).

If the Pursuer fails to beat the Tender – ie, the Pursuer is awarded the same amount as the Tender or less – the expenses from the date the Tender was lodged right up until the end of the case would be awarded against the Pursuer.



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This makes the Pursuer:

- liable for the Defender's expenses from the date the Tender was lodged
- only able to recover their own expenses from the Defender up to the date of the Tender – not afterwards.

This is based on the view that the Pursuer acted unreasonably in rejecting the Tender and the Court hearing was avoidable and ultimately unnecessary, so the expenses should reflect that.

If, on the other hand, the Pursuer rejects the Tender and then beats it – ie, is awarded more than the amount offered in it – the Tender has no effect, and the Court should assess the expenses payable by the Defender in the normal way.

Is there an equivalent for Pursuers?

Since 2017, Pursuers in the Court of Session and in Sheriff Court Ordinary Cause actions in Scotland have the opportunity to make a "[Pursuer's Offer](#)".

This allows Pursuers to encourage Defenders to settle before the case proceeds to Proof.

The Lindsays' Dispute Resolution and Litigation team can steer you through the pros, cons, procedures and tactics involved in making, accepting or rejecting a Pursuer's Offer, whether you are based in Scotland or in another jurisdiction.

What to do if you receive a Tender?

It should be clear from the above that accepting or rejecting a Tender can be risky and costly. If you receive a formal Tender, we can advise you on whether you are likely to receive a higher amount at Court, and therefore how to respond to it.

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