

INSIGHT

Actions of Accounting – Count, Reckoning and Payment

What do you do when you are owed money but you cannot tell how much?

Situations can arise when someone has control of money that is due to you, but their dealings make it impossible for you to work out what they are up to and how much you are owed.

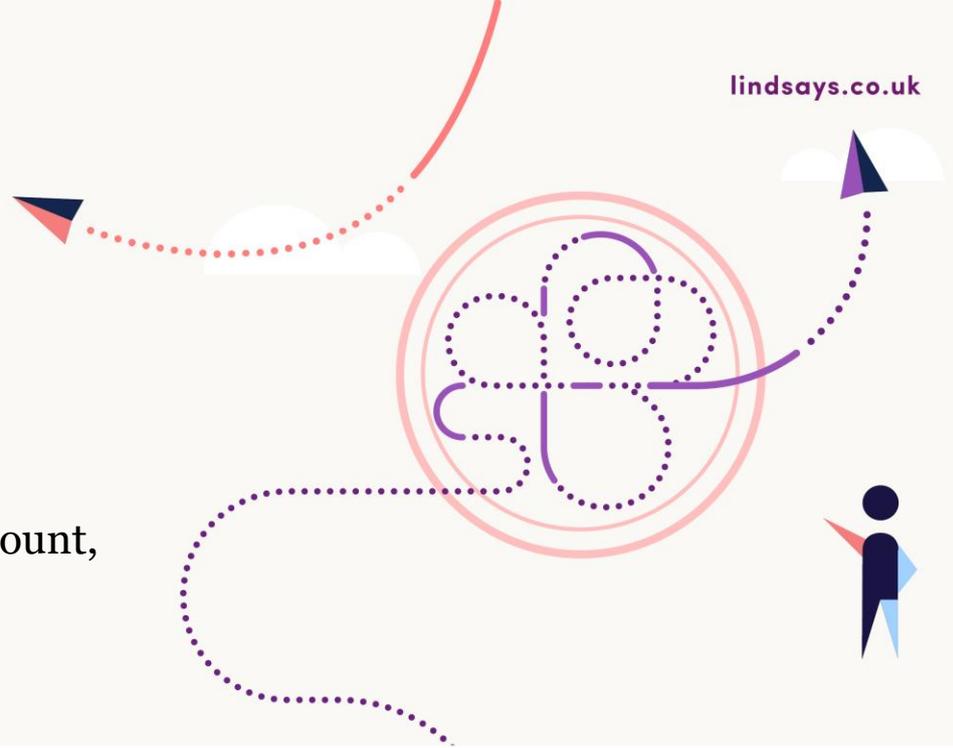
Scots law provides a remedy if you are owed money but do not know how much, it is called an action of accounting – this is also traditionally known as count, reckoning and payment.

This remedy is available when the person 'accountable' for funds is a fiduciary or in a position of trust. Examples of such a relationship might include that of an executor, a trustee, a business partner or someone who is acting in the capacity of an agent.

How to tell if count, reckoning and payment is right for your situation

Can you answer yes to the following?

1. Are funds belonging to you being controlled by the defender?
2. Does the defender pay, receive or otherwise handle money belonging in whole or in part to you?
3. Have you asked the defender to account to you?
4. Is the defender refusing to tell you what is due, or do you think they are providing you with the wrong figures?
5. Are you unable to ascertain the extent or value of sums due to you?



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If yes, what do I need to do?

If you can calculate what is due to you then your remedy is to sue for that sum. The remedy of count, reckoning and payment is only used when you need to force a defender to 'give an account'.

There are 2 stages to the process.

Stage 1

This involves establishing that the defender has a legal duty to account to you.

An action is commenced by way of a writ in the [Sheriff Court](#), or a summons in the [Court of Session](#). You should ask that the defender provide a full account of the handling of your funds over a set period. You should also seek i) payment of the balance found to be due to you; and/or ii) a specified sum, if the accounts are not disclosed. At this stage the case is only concerned with addressing the defender's liability to account; the defender is expected to provide you and the court with the sum they believe you are due.

Stage 2

If there is a contest as to what is due the court will require the defender to lodge an account.

Once this account is produced you are entitled to make objections which in turn require to be answered by the defender. This process is overseen and controlled by the court. Because a defender needs to be kept on a tight rein we find that there is an advantage to having this before a [commercial court](#).

The remedy of 'count, reckoning and payment' can be cumbersome, but it is the best process that the Scottish system provides, and it does force a defender into revealing what is owed.

Sometimes it can be complicated to determine whether your remedy should be 'count, reckoning and payment', rather than a simple action [for debt](#). We can guide you down the right path.

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