

INSIGHT

The Court of Session: how does it work?

Procedures in Scotland's supreme civil court, the Court of Session, which hears cases at first instance and at appeals

The Court of Session is Scotland's oldest court, officially founded in 1532 and based in Parliament House, Edinburgh.

As well as hearing cases at first instance (in the "Outer House") and appeals (in the "Inner House"), the Court of Session deals with all judicial reviews. Clients must ordinarily be represented in the Court of Session by an advocate or a solicitor-advocate, or appear on their own behalf.

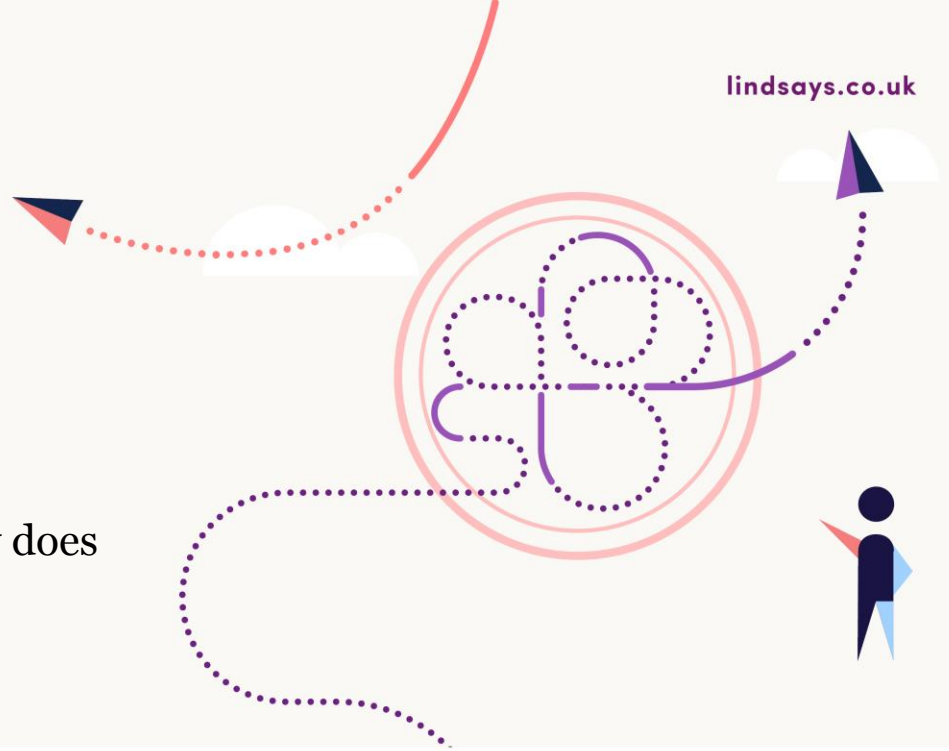
Claims for payment started in the Court of Session must be for at least £100,000; smaller claims must be started in the [Sheriff Court](#) or in Scotland's Tribunal system, depending on the type of case.

Starting a case in the Court of Session

Prior to starting court proceedings it is worth considering alternative methods of resolving the dispute.

Rules and procedures for Court of Session cases depend on the type of case. Cases that do not have their own specific rules are known as "ordinary cases", and we concentrate on this type here.

To start an ordinary case in the Court of Session, the person making the claim (the "Pursuer") must physically present a summons to the court's general department. The summons must be in correct form,



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and must state who the parties are, what the claim is for, and the facts relied upon for why it should succeed.

The court then stamps the summons and returns it to the Pursuer. This stamp is a warrant that allows the Pursuer to serve the summons on the person they're making the claim against ("the Defender"). The summons is usually served by recorded delivery post, by messengers-at-arms (similar to sheriff officers and process servers), or by the Defender's solicitors accepting it on their client's behalf.

The Defender then has a period of 21 days after service of the summons within which to decide whether or not to defend the claim. However, in some circumstances – which our solicitors can explain – the Defender may be allowed to respond to the summons late.

After the summons has been served

If the Defender does not respond to the summons, the Pursuer can ask the Court to issue a decree granting the claim. Once the litigation expenses have been dealt with, that is the end of the Court process. All that needs to be done is to [enforce the decree](#).

If the Defender does respond to the summons, the Court will issue a timetable with the date for when formal written defences to the summons must be lodged. Once defences are lodged, they are combined with the summons into a single document called the "open record".

There is then a period of (usually) eight weeks during which the parties can adjust what they write in the open record. At the end of this period, the record is "closed". Only with the permission of the judge can changes thereafter be made to the pleadings in the "closed record".

After the record is closed

At this point, the parties should agree what happens next. In general, there are four options:

- Another period for adjustment of the record is sought and allowed. This can happen where, for

example, one party requires a few more weeks to investigate the claim and obtain evidence.

- The case is put on hold ("sisted", known in England as "stayed"). This can happen where a much longer time is required for investigations, or because the parties believe they can resolve the dispute by other means.
- A legal debate (a "procedure roll" hearing) is fixed. This happens when the dispute revolves around the law governing the case, and a judge's ruling will resolve all or most of the case without the need for evidence or calling witnesses. The judge will decide which party wins, and what will happen next to the case. The judge can grant a decree allowing or refusing the claim, or specify that a proof should take place (see the next option, below).
- A proof (or "proof before answer") is fixed, because the dispute centres on the facts of the case, and evidence will need to be taken from both parties' witnesses. There may also be argument about the law. The judge will determine which party wins and issue a decree allowing or refusing the claim.

If the parties cannot agree about which of those options is used, a hearing will be fixed to allow the judge to decide.

After the case is decided

The main outstanding point is now the issue of litigation [expenses](#). Usually the successful party is entitled to judicial expenses.

Judicial expenses are assessed in accordance with a statutory Table of Fees and do not usually cover all of a party's costs: often only 50-70 per cent is recovered. The expenses are determined according to a standard scale and, if the parties cannot agree them, the issue may have to go to a hearing ("taxation") before the Auditor of the Court.

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