



FIRST DIVISION, INNER HOUSE, COURT OF SESSION

**[2024] CSIH 29
CA29/21**

Lord President
Lord Malcolm
Lord Tyre

STATEMENT OF REASONS

issued by LORD CARLOWAY, the LORD PRESIDENT

in the cause

CENTENARY 6 LIMITED

Pursuers and Respondents

against

TLT LLP

Defenders and Reclaimers

**Pursuers and Respondents: T Young; Harper Macleod LLP
Defenders and Reclaimers: Paterson KC; Clyde & Co LLP**

19 September 2024

[1] Following upon the refusal of the defenders' reclaiming motion on 4 June 2024 and the allowance of the pursuers' cross appeal in part, the pursuers sought a number of orders relative to expenses. It was agreed that the pursuers should be awarded the expenses in the Outer House and that there should be an additional charge under heads (a) to (c) and (f) of paragraph 5.2 of the Taxation of Judicial Expenses Rules 2019. The court added head (e).

The percentage increase was set at 75%. The pursuers were awarded the expenses of the reclaiming motion, modified to 90%. The court granted an additional charge under heads (a) and (c). The percentage uplift was set at 30%. This statement is intended to clarify the manner in which such uplifts ought to be calculated.

[2] The pursuers' original motion was to allow a 300% uplift in the Outer House charge and 250% in the Inner House. They recognised at the hearing that these figures were somewhat extravagant. Nevertheless they referred to an instance in which the Auditor had allowed a 200% increase. In Macfadyen ed *Court of Session Practice* (Lord Carloway at L para [333]) reference had been made to a rule of thumb whereby an increase of between 10% and 15% would be given for each head. Thus, where a charge was given on three heads, an uplift of between 30% and 45% would be awarded. Doubt had been cast of this in *Philip v Scottish Minsters* [2021] CSOH 52 (Lord Braid at para [33]) in favour of a more refined approach.

[3] In his *Review of Expenses and Funding in Civil Litigation* (2013), Sheriff Principal Taylor concluded that in all commercial or case managed litigation, the maximum percentage uplift ought to be 100%. That was based on the assumption that the unit rate, which is fixed by the court for the purposes of the Taxation Rules (currently the equivalent of £164 per hour), represented reasonable remuneration for the average solicitor in the ordinary Court of Session case. Doubling that would amount to a considerable increase in the agents' income in a given case. The fixing of 100% as a maximum was considered by the Scottish Civil Justice Council. It was not taken forward because it was recognised that there may be exceptional cases in which a greater uplift was justified. There have been instances in which a greater uplift has been given (eg almost 150% in *Trunature v Scotnet* (1974) 2008 SLT 653).

Nevertheless, the court agrees in broad terms with the Taylor Review that, normally, 100% should be regarded as a maximum.

[4] The rule of thumb of 10% to 15% per head is a useful method whereby the court can reach a rational decision on the uplift quickly after determining the number of heads.

Although it could be said that a more refined approach may be appropriate, since different weight could be applied to different heads, it is important to recognise that a rule of thumb is just what it is. It is a broadly accurate guide, based on practice rather than theory. It may be departed from, if there is a good reason for doing so, in particular cases, but having such a guide will promote consistency in decision making. Its application is consistent with the outcomes in *Philip v Scottish Ministers* and *Foster v Foster No. 2* 2024 SCLR 124. It has been adopted in this case.