



## AMENDED PRINCIPLES TO BE APPLIED TO THE CHARGING OF COURT FEES IN GROUPS OF CASES

You may be aware that questions have arisen in respect of fees charged for substantive hearings where a group of cases, neither conjoined nor with a test case appointed, were before the court and each was charged the full hearing fee in terms of the Fees Order, the *Court of Session etc. Fees Order 2015*<sup>1</sup>.

The relevant Fees Order, the *Court of Session etc. Fees Order 2015*, (from 25 April 2018, the *Court of Session etc. Fees Order 2018*<sup>2</sup>) is framed in unambiguous terms. There is provision in the enabling legislation to provide, in fees orders, for the remission of fees, and Parliament has chosen not to provide for remission in these circumstances. Nevertheless, there remains an obligation on the part of SCTS, in terms of administrative law, to exercise discretion – for example, where a strict application of the fees set out in the Fees Order would produce a manifestly unfair outcome. Given this need to exercise discretion, in these limited circumstances, some guiding principles will be followed. Generally speaking, the exercise of discretion would involve restricting the fees which would otherwise be charged in terms of the relevant Table of Fees.

### PRINCIPLES TO BE APPLIED

These principles relate only to charging of fees for proofs, debates or other **substantive hearings** in the Court of Session where a group of cases are heard together, generally with the attention of the court focussed on one principal case. The principles are **not** retrospective.

The issue should not arise in groups of cases where there is a test case, or where cases are conjoined. If parties have identified a test case, and agreed to be bound by its outcome, then typically all other cases will be sisted. The test case will be charged fees in the usual way and the others will not, because they are sisted, incur fees. Where cases are conjoined there is, notionally, only one case, and one set of interlocutors, and thus only fees in the single case will be charged.

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<sup>1</sup> SSI 2015/261

<sup>2</sup> SSI 2018/83

Difficulties may arise where the court is asked to deal with a group of cases, all proceeding at the same time. There will typically be a principal case and a number of other cases. The principal case will address the main issues. There may well be variations in the facts and legal issues in those other cases such that each, singly or in sub-groups, needs individual attention from the court once the principal case has addressed the main issues. For these reasons, conjoining the cases or appointing a test case may not have been practicable. In these circumstances, if the hearing fees are likely to be very substantial relative to the actual amount of court resources employed, and there is a concern that charging full fees would bring about a manifestly unfair result, there is scope to exercise discretion in the charging of those fees.

How this discretion is exercised will depend on the particular circumstances. The principal case will almost always be charged full fees. Where other cases within the group have taken up some of the court's time, then it might be appropriate to remit the usual fee in each of those cases by a factor of, say, 80%. Thus, in a typical case, the principal case would attract a full fee, and all the other cases would be charged at 20% of full fees.

It is neither necessary nor practicable to try to calculate precisely what proportion of the court's time has been taken up by those cases other than the principal case, and to calculate percentage remissions accordingly. Any remission offered is **not** based on a precise calculation of the court time involved.

## **ACTION REQUIRED**

It will be for parties' agents to nominate a principal case or cases, as soon as possible. Parties' agents will require to enrol a motion, in advance of the hearing or hearings in respect of which remission is sought, for a specific case to be identified as the principal case for the purposes of handling that group of cases in court, and for the possible remission of hearing fees. It will be sufficient if the motion is enrolled in the prospective principal case, *provided* all other cases in the group are listed in the motion. A style of motion to nominate a principal case and for possible remission of fees is annexed.

Each party's agent is responsible for enrolling a motion for those cases in which he is instructed. Such a motion, if granted, will have no effect on any other party's liability for hearing fees. A joint motion may be appropriate in many cases. An

agent's failure to enrol a motion at the appropriate time is likely to preclude the exercise of discretion to remit the fees in the cases for which he is responsible.

The fact that a party's agent has nominated a principal case, and such a motion has been granted in respect of the handling of the group of cases, does not guarantee that any element of the fees chargeable will be restricted. That will always depend on circumstances.

In many cases it will be possible for the judge hearing the motion to decide at the time whether to allow a remission of fees. If the judge wishes to hear the evidence or submissions in the case first, that part of the motion in respect of the question of remission of fees may be continued to a later date. In these circumstances it will be for the relevant party's counsel to move for the remission of fees at that time.

**March 2018**

**Form of motion for designation of principal case and remission of court fees,  
where cases grouped together**

**PART I**

Name of pursuer/petitioner\* .....

Name of first defender/respondent\* .....

Name and nature of petition (*e.g.* John Smith's curatory) .....

Court case number ..... Date of last interlocutor .....

Is case due in court during the next seven days? Yes/No\*

(If Yes, state reason)

**PART II**

Name of firm enrolling motion .....

Agent for ..... Ref No. ....

Rutland Exchange No. .... Town .....

Tel. No. .... FAX No. ....

Date of enrolment of motion .....

Has motion been intimated? Yes/No\* If yes, give date .....

THE MOTION IS (state terms of motion; if necessary, use a separate sheet):-

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On behalf of the pursuer / defender / petitioner/ respondent (as the case may be) in respect that the cases referred to below cannot be conjoined or have a test case appointed,

- (i) to designate AB against CD, reference number ( ) as the principal case in the group of cases listed, to make such order in respect of that case, and the other cases listed below, in relation to the management of those cases, as shall seem proper; and,
- (ii) to remit the court hearing fees due in respect of the cases listed below, to the extent of 80% of the usual fees in each case, or such other percentage as the court considers appropriate, by reason that (*specify reasons*) and to make such order as shall seem proper.

EF against GH – reference number

IJ against KL – reference number

MN against OP – reference number

*(Signed by counsel or other person having a right of audience)*

\* Delete as appropriate