

## UPDATE ON THE REDUCTION OF INCLUSIVE CHARGES

### Purpose

1. To provide a progress update on the clarifications required to taxation rule 3.7.

### Background

2. Members previously considered the content of taxation rule 3.7 under item 3.3 of the agenda for the September 2024 CAFC meeting. The minutes of that meeting (*refer Annex 1*) set out the conclusions reached regarding how to minimise the apparent confusion that had arisen amongst some practitioners.

3. The *drafting instructions* issued for the amendment of taxation rule 3.7 were:

*HEADING* – To change the heading of rule 3.7 from “*Simple Procedure*” to “*Reduction of Charges*” so that a) it more expressly conveys the purpose of this particular rule and b) that heading provides consistency with the heading used for the preceding rule 3.6 “*Modification of charges*”.

*RULE 3.7 (1)* – To omit the current wording and substitute: “*This rule applies in any simple procedure case where expenses fall to be taxed or assessed by reference to a table of charges in schedule 5.*”

*RULE 3.7 (3)* – to omit the words “...allowed by the Auditor...” as that duplicates the reference to paragraph 2 that appears later in rule 3.7 (3).

4. The *drafting instructions* issued to clarify the taxation rules in general were:

*DISPENSING WITH TAXATION* – the courts power to dispense with taxation should be narrated within the body of the Taxation of Judicial Expenses Rules (rather than the relevant court procedure). If that dispensing ability had been visible within the body of the taxation rules it may have helped to counter false assumptions being made.

### *Putting the drafting instructions on hold*

5. In November 2024 those drafting instructions, and the suggested discussions with the President of the Sheriff Appeal Court, were put on hold as Cabot Financial had initiated a further appellate action. The subsequent appellate timeline has been:

- *Jan 2025* – the appeal hearing took place in front of a 3-judge bench of the Sheriff Appeal Court.

- *May 2025* – the Sheriff Appeal Court published its judgement<sup>1</sup>.
  - *Aug 2025* – the Sheriff Appeal Court issued an interlocutor rejecting leave for Cabot Financial to make an onwards appeal to the Court of Session.
  - *Oct 2025* – an interlocutor issued by the procedural judge refused leave for Cabot Financial to make an onwards appeal directly to the Court of Session.
6. Both the Sheriff Appeal Court and the Court of Session have now concluded the onwards appeal would not “raise an important point of principle or practice”.
7. Hence the working assumption made is that the latest interlocutor issued by the Court of Session should now bring the appellate process to an end. On that basis the secretariat has asked the LPPO to reactivate the above *drafting instructions* with a view to having an amending rules instrument available for consideration by members later in this 2025-26 planning period.

## Recommendations

8. It is recommended that the Committee:
- **Notes that the request for leave for an onwards appeal has now been rejected by both appellate courts; and**
  - **Notes that the Committees drafting instructions seeking changes to taxation rule 3.7 have now been reactivated.**

**Secretariat to the Scottish Civil Justice Council  
October 2025**

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<sup>1</sup> <https://www.scotcourts.gov.uk/media/0kto3g2z/2025sacciv13-cabot-financial-uk-ltd-against-jordan-walls.pdf>

**ANNEX 1 – EXTRACT FROM THE CAFC MINUTES (OF 30 SEP 2025)**

This extract is taken from the full minutes of the Committees meeting of 30 September 2024 which are available [here](#).

*Item 3.3 - Reduction of Inclusive Charges*

14. The Committee noted that the interpretation of rule 3.7 of the Taxation of Judicial Expenses Rules 2019 had been commented on in a recent unreported court opinion, which is surprising given that those 25% and 50% reductions have been in place since 1976 when the summary cause rules were first introduced
15. In making their arguments, the pursuer's agent appears to conflate a) certain elements of the *capped expenses regime* provided by the Scottish Ministers under section 81 of the Courts Reform (Scotland) Act 2022 with b) the taxation rules covering *inclusive charges* as regulated by the court under section 104 of the same Act. In other word parts of section 81 are taken out of context which does beg the question of whether some confusion may arise from the brevity of the heading used for section 81. There was also a recognition that the heading of rules 3.7 could better convey "what it says on the tin".
16. **To reduce potential confusion the Committee agreed:**
  - **To amend the heading of rule 3.7 from "*Simple Procedure*" to "*Reduction of Inclusive Charges*"; and**
  - **To suggest to the Scottish Government that the heading of section 81 of the 2014 Act could be extended from "*Expenses in Simple Procedure*" to "*Limits on Expenses in Simple Procedure*" when practicable.**
17. The points discussed within that unreported court opinion have been the subject of ongoing debate. The conclusion reached was that this policy issue does warrant further enquiries being made a) to clarify the original policy intent behind the reductions and b) how those reductions fit within an inquisitorial procedure. Those enquires should include a discussion with the President of the SAC.
18. **The Committee instructed the secretariat to make further checks on the way in which rule 3.7 is being interpreted and report back to members.**