

SCOTTISH CIVIL COURTS REVIEW

Response by Sheriff Fiona L Reith QC, Sheriff of Lothian and Borders at Edinburgh to Consultation Paper

Introduction:

I am grateful for the opportunity to respond to this important consultation exercise. I do so against the background of having served as a sheriff in a small court (Tayside, Central and Fife at Perth) and at two large courts (Glasgow and Strathkelvin at Glasgow and now Lothian and Borders at Edinburgh).

I also do so against the background of having been a member of the Civil Justice Advisory Group (CJAG) chaired by Lord Coulsfield, which published its final report in November 2005 and which was the effective precursor to the present Review. Chapter 8 of that final report comprised the conclusions and recommendations of the CJAG. The issue of the need for research was highlighted by the CJAG at paragraphs 5 through to 9 of chapter 8. At paragraph 5 of that chapter the following was recorded: “We do...have to emphasis early in this chapter that in a number of very significant respects it is hard to establish exactly what is happening in the working of the Scottish legal system. The lack of empirical evidence was a common theme throughout the process, and it is difficult to see how a review body could give adequate consideration to possible reforms unless this deficiency is addressed.”

The extent to which this deficiency has as yet been addressed is not entirely clear from the consultation paper for the current review.

With those introductory remarks, I turn to my response to the chapters and questions in relation to which I have particular concerns:

CHAPTER 1: INTRODUCTION

Question 2. Do you agree that the principles and assumptions discussed in paragraphs 1.11 to 1.14 are a sound basis for the development of the Review's recommendations?

In general terms, yes. However, I do have a concern about the requirement in paragraph 1.12, which by implication appears to have been accepted in paragraph 1.13, that access to justice should be dependent upon the pursuer having a "meritorious" case. This strikes me as being a potentially high test – certainly higher than that applicable at present, for example, in relation to applications for legal aid. It is also not at all clear how – or by whom - it is envisaged that any such pre-requisite would be determined at the outset of any proceedings, and before it was known whether or not those proceedings were to be defended.

Question 3. Are there any matters within the Review's remit about which you have concerns but which are not dealt with in this paper?

Yes. Chapter 6 is entitled "Working methods in the civil courts". One additional aspect of the operation of the civil courts in the sheriff courts which I would suggest as being worthy of consideration is the question of the recording of proceedings in open court, whether they be procedural or substantive hearings. At present, the only situation in which a short-hand writer is present to record the evidence, and anything said or asked by those present, is in proofs in ordinary actions in the sheriff court. A short-hand writer may also be instructed where there is an evidential hearing in summary application proceedings where this is considered to be appropriate. However, there is no record of things said in any other proceedings. For example, other than the note kept by the presiding sheriff, there is no record of anything said in the course of hearings at summary cause and small claim level (which is likewise the position in summary criminal trials). The current Judiciary and Courts (Scotland) Bill includes proposals for a complaints procedure in relation to the judiciary. As I understand it, many other jurisdictions, including the courts in the Republic of Ireland, have a complete recording system in

relation to all court proceedings (both civil and criminal). A particular advantage associated with this is that, if a complaint is made in relation something alleged to have been said by the presiding judge in court, it is possible to resolve any factual easily, expeditiously and at far less potential cost (both in financial terms and in terms of stress to all concerned) than would be likely to flow from any need to resolve a factual dispute such as by an evidential disciplinary hearing.

It would appear that the issue of enforcement may be outwith the remit of the Review. If so, this would be unfortunate. I have had personal experience of being asked by party litigants in court, after having granted decree in their favour, when they can expect to get their money back, on the assumption that the court will be arranging this. They are, perhaps understandably, almost invariably surprised and not a little dismayed to learn that they have to go about enforcing their own decree.

CHAPTER 2: ACCESS TO JUSTICE

Question 6. Is there a case for a new method of dealing with low value cases? If so, should this be within the existing court structure or separate from it? What kind of cases would be suitable for such treatment?

Yes. I favour the view that cases of low monetary value (possibly under about £5,000 in value) should be dealt with in a new tier of lower court or tribunal(s) outside the sheriff court but with a right of appeal to that court. I agree with the suggestion made by some that this would be potentially suitable for debt, consumer and housing cases. At paragraph 1.11 of the Consultation paper, it is recorded that one of the principles which is thought should underpin any proposals for reform is that of proportionality. An aspect of that is that the judicial resources applied to an issue should be proportionate to the importance and value of the issue to the parties and to society in general. Where party litigants are involved, it is not at all uncommon for the presiding judge or sheriff in effect to have to take the evidence of the witnesses, including the parties, by questioning them and taking them through any productions. This is because few party litigants are familiar

with how to give evidence themselves (if there is no-one other than the judge or sheriff to ask questions), how to ask questions of their own witnesses and how to ask questions of the opposing party and any witnesses for that opposing party. It is therefore very difficult for the sheriff or judge to do other than become involved in framing and asking questions, as well as noting them. This exercise is more difficult and time-consuming for the judge or sheriff than just listening to and noting the evidence. The judge or sheriff also has to be constantly mindful when framing any questions not to step – or even appear to step – outwith their strictly impartial judicial role. It is also rare for party litigants to be in a position to assist in making focussed and appropriate legal submissions. The upshot of this is that the “judicial resources” devoted to many small claims and summary cause actions (as these are the cases in which party litigants are much more likely to appear) is likely to be greater than in higher value ordinary actions. In my view, this can mean that a disproportionate amount of “judicial resources” is expended on small claims and summary causes. I would question whether this is the best use of sheriffs. It also has to be said that if litigants have the benefit of legal assistance, this almost always reduces this disproportionate use of judicial resources, including the time taken in court. It might seem a surprising state of affairs if the cost of provision of such legal assistance to litigants were to be greater than the cost of provision of “judicial resources” in its widest sense.

CHAPTER 4: THE STRUCTURE AND JURISDICTION OF THE CIVIL COURTS

Question 1. Do you agree that the conduct of the civil business of the courts is adversely affected by the pressure of criminal business?

I would have thought that the answer to this question is likely to be “yes” in most courts, although to differing degrees depending on the size of the court and the nature and pattern of business coming to that court.

The greater part of judicial time is allocated to criminal business rather than civil business due to the time limits to which criminal cases are, for good reasons, subject. However, it does seem to me that, provided that there is good organisation to take account of business locally, it should be possible to avoid undue disruption. I would suggest that part of any such “good organisation” should include the court having much greater control in relation to the conduct and pace of civil litigation.

However, what would amount to good organisation in one court might not be good organisation in another court. It would I think all depend upon local circumstances. For example, in a larger court such as Edinburgh Sheriff Court it might well be possible to arrange for one or more sheriffs to share for periods of time all or part (for example, family cases) of the civil business coming to the court. The arrangement at such a court might be for cases to be allocated to an individual sheriffs, much as happens at present in relation to family cases at Glasgow Sheriff Court, with those cases then remaining with the sheriff concerned. I say more about this in answer to Question 4 below.

Another obvious way in which to avoid disruption to civil business is to seek to avoid setting down adjourned diets in criminal cases for civil business days. So far as I am aware, real efforts are made to avoid this happening if at all possible.

One difficulty which does arise is that of over-running cases. This is I think at least in part due to the fact that there are sometimes quite unrealistic underestimates of time given by parties when proofs are fixed. If the courts were to have greater control in relation to the conduct and pace of litigation, as I think they should have, I would suggest that this could only help in relation to this problem.

I note in passing that there is a statement in paragraph 4.20 to the effect that in a typical week at Edinburgh Sheriff Court only one sheriff out of eighteen (there are in fact 17 sheriffs, including one floating sheriff, at Edinburgh Sheriff Court) is scheduled to hear “civil proofs”. By way of information, it is perhaps worth mentioning that, although that is the case in relation to proofs in ordinary actions, this is only a part of the picture in

relation to civil business there. It may therefore be appropriate to record that a number of other sheriffs are also allocated (1) to hear small claims and summary cause cases (including what are in effect proofs), (2) to preside over the Ordinary Civil Court (comprising civil (procedural) hearings which include motions, options hearings, interdict hearings, applications under the Adults with Incapacity (Scotland) Act 2000 and child welfare hearings) which is held each day of the week, (3) to prepare for the Ordinary Civil Court the following day and (4) to deal with adoption hearings.

Question 2. Should (a) some judges of the Supreme Courts and (b) some sheriffs be designated to deal with civil business?

Question 3. Should the sheriff courts be separated into civil and criminal divisions? What would be the advantages and disadvantages of such separation?

I do not favour the proposition that judges and sheriffs should be divided such that some would be dealing solely with criminal business and others would be dealing solely with civil business. For many members of the judiciary the variety of work is regarded as positively healthy and stimulating as it ensures that one has a fresh and different perspective. The quality of decision-making is I think thereby enhanced. It also tends to militate against one becoming either “case-hardened” (which might be a potential concern if one was to be allocated solely to criminal business) or having too narrow a perspective. It may be that some potential candidates for judicial office are currently deterred by the need to deal with both criminal and civil business, preferring the notion of being allocated to one or the other exclusively. However, if the judiciary were to be separated into civil and criminal divisions, this would in my view be equally likely to deter others for whom a variety of work would be much more desirable. This would also have potentially serious implications for the composition and operation of courts at appeal court level in the future. As recognised in the consultation paper, the other obvious knock-on effect of any such separation would be the loss of the current flexibility in the system which enables judges and sheriffs to move between the criminal and civil courts in a cost effective way.

Question 4. Should there be a greater degree of specialisation within the civil courts in Scotland? If so, in what types of case and in which courts?

As pointed out in the final report of the CJAG, I would suggest that there is an important distinction to be drawn here between specialist *decision-makers* (such as judges and sheriffs) and specialised *procedures*. I would respectfully suggest that there is much to be said for having specialist *procedures* where this is appropriate and practicable, with a view to the same judge or sheriff being allocated to a case throughout. Detailed familiarity with particular procedures, and allocated cases, should speed up the process for all involved. However, the extent to which it might be possible for this to be provided at a particular court would depend on the size of the court and the nature and pattern of business coming to that court. What might work in one of the larger courts, such as those at Glasgow, Edinburgh, Hamilton or Aberdeen, would simply be impracticable in a small court.

If it were to prove possible to provide specialist civil procedures at the larger courts mentioned, with the allocation of cases to one or more sheriffs nominated to the particular area of work concerned (such as family cases), there could then be rotation of those roles to others after periods of time appropriate to the court concerned. In that way, a variety of work would still be undertaken by all sheriffs albeit following a different, rotational, pattern.

I would also suggest that it would also be important for those taking part in providing such specialist procedures, for whatever periods were deemed appropriate, to continue to share with colleagues what might be perceived as being the more “routine” work. For example, at Glasgow Sheriff Court where a number of sheriffs are allocated to family cases, my understanding of the current position is that that work tends to take up about 25% of such a sheriff’s time. However, the rest of their duties comprise the wider range of work that all sheriffs undertake, including (as I would suggest is only fair and appropriate) taking a share of what might be described as the “routine” work.

I would suggest that the types of civil case in relation to which there might be specialist procedures in the larger sheriff courts mentioned might include commercial cases, family cases, personal injuries cases, adoptions, bankruptcies, liquidations and applications under the Adults with Incapacity (Scotland) Act 2000.

I am, however, much less persuaded about the merits of having non-rotational specialist *decision-makers*. It seems to me that knowledge of the substantive law should be something that an experienced judge or sheriff should be able to pick up relatively easily. If, in contrast to having specialist procedures, there were to be non-rotational specialist decision-makers, there would I think then be the risk of the problems mentioned in answer to Questions 2 and 3 above as this would lead to judges and sheriffs in effect being earmarked for narrow areas of work only, with those judges and sheriffs remaining in such roles rather than there being rotation of those roles.

In relation to the possibility of “specialist sheriffs”, I note that it is suggested at paragraph 4.38 of the consultation paper that such might either rotate around the smaller courts as and when “required” or that “specialist centres” might be created. I do have concerns about this. I would suggest that if this were to happen the implications for standing of the local resident sheriff could be serious. I find it difficult to see that such a system of “specialist sheriffs” could other than undermine his or her professional standing – not to mention the potential for causing them no little irritation that they have in effect been determined by someone (an important question would be who?) not to be sufficiently “competent” to hear what would otherwise be a local case. I think that there is also a real risk that this would prove to be divisive, causing resentment and a loss of morale for some, if not many, sheriffs effectively to be deemed “ordinary” sheriffs by virtue of being excluded from all areas of work earmarked for “specialist” sheriffs. Indeed, if a number of “specialisms” were to be created, it is not clear to me what the resident sheriff would be left with as being “competent” to hear other than what might be regarded as being “routine” work.

It occurs to me that unless there was to be a system of rotation of roles, coupled with a continued sharing of the “routine” work, there is likewise a risk that this would also be the consequence in relation to the other sheriffs in a large court who were not designated as such “specialist” sheriffs.

It also seems more likely than not that such a situation might well have consequences for the extent to which the position of a resident sheriff not designated as a “specialist” would remain an attractive one in terms of future recruitment if the position was that they were never to have the prospect of undertaking, or even gaining experience in, other than what might be regarded as routine work. I would also suggest that there would be a risk that the best candidates would be deterred from applying for such positions, to the longer term detriment of the judiciary.

In addition, either possibility envisaged at paragraph 4.38 would mean that the local connection would be broken as the case would be heard by someone other than the resident sheriff. In my view, one of the important features of the local sheriff court is that the resident sheriff or sheriffs has or have an understanding of local circumstances and local customs and practices. I would suggest that the importance of this should not be underestimated. If, for example, parties to a case do not have confidence that local customs and practices have been taken account of by the court, there is a risk that the standing of the justice system in that locality would suffer.

Ultimately, I would suggest that it would be more important for a court user to have access to a local court where necessary than to a “specialist” court that may be a long way away.

Question 5. What are the key factors which influence the decision to raise an action in either the Court of Session or the sheriff court where jurisdiction is concurrent?

I would expect the key factors to be whether the client wishes to employ counsel, for example due to the complexity, importance and value of the case, including the novelty of any legal issues arising.

Questions 6. In what, if any, types of case should (a) the Court of Session and (b) the sheriff court have exclusive jurisdiction?

I would have thought that there is probably a good argument for saying that any action with a monetary value of less than about £50,000 should only be capable of being raised in the sheriff courts, subject to there being a power of transfer between the court of Session and the sheriff courts in appropriate cases - particularly having regard to the complexity, or otherwise, of the case and the importance and/or novelty of the legal issues arising.

However, if there is then a question arising as to whether cases with a monetary value over such a figure should be capable of being raised in either forum, I would suggest that parties should have the choice of forum – albeit, again, subject to a power of remit in appropriate cases. If the consumer were to be deprived of such choice, parties would be obliged to go to the Court of Session, with all the expense (of employing counsel or a solicitor with extended rights of audience in addition to an instructing solicitor, travelling expenses and, if need be, overnight expenses), inconvenience and delay associated with that. This would also have detrimental consequences for the current business of the sheriff courts, including the (successful and well regarded) commercial court at Glasgow, and therefore the provision of “access to justice” at local level.

Question 7. Should the jurisdiction of the Court of Session and the sheriff court be unified to create a single civil court?

Question 8. Should the Court of Session become a court of appeal only or should it retain a first instance jurisdiction? If so, for what types of action and why?

I am not persuaded that there are sufficient arguments in favour of the creation of a single, unified, civil court for Scotland. I would suggest that the Court of Session should retain a first instance jurisdiction, albeit that this should be for cases of high value and/or on account of the complexity, importance and value of the case, including the novelty of any legal issues arising.

I would favour judicial reviews continuing in the Court of Session in so far as raising important points of public or administrative law. However, it is perhaps more difficult to see why a judicial review raising what is essentially a private law dispute should not be capable of being dealt with in the sheriff court if this is, for example, more convenient to parties.

Question 9. If the current structure of the courts is retained, at what level should the privative jurisdiction of the sheriff court be set?

As mentioned in my answer to Question 6, I would suggest a figure of the order of £50,000.

Question 10. Are the current powers to transfer cases between sheriff courts and between the Court of Session and the sheriff court satisfactory?

No. I would suggest that a sheriff should have the power to remit a case in either situation either on the application of either or both parties or *ex proprio motu*. However, it may be that the Court of Session should not be obliged to accept such a remit if it is not satisfied that it is appropriate to do so.

Questions 11. Given the range in value and complexity of civil business in the sheriff court, should there be a tier of civil court below the level of the sheriff court?

Question 12. Alternatively, should there be another level of judiciary within the sheriff court to deal with “third tier business”?

As indicated in my answer to Question 6, under Chapter 2, I favour the view that cases of low monetary value (possibly under about £5,000 in value) should be dealt with in a new tier of lower court or tribunal(s) outside the sheriff court, but with a right of appeal to that court. As suggested at paragraph 4.50, a “third tier” might have the advantage of providing a less formal means of resolving such cases. I agree with the suggestion that this would be potentially suitable for debt, consumer and housing cases.

If, however, the view were to be taken that such cases should remain within the sheriff court, I would commend the availability in the courts of an equivalent to the in-court advice project and the in-court mediation service currently available at Edinburgh Sheriff Court. Both have proved to be very successful.

In that event also, I would suggest that in relation to such claims, the current small claims and summary cause procedure is unsatisfactory for two specific reasons. The first reason is that it is a procedure which, in terms of Rule 9.2, requires the sheriff to perform what are, in my opinion, two incompatible roles. The sheriff first of all has to act as some sort of mediator. However, if that does not work, the sheriff then reverts to his or her judicial role. I would therefore suggest that, if claims of low monetary value were to stay in the sheriff courts, any new procedure should not repeat this pattern.

The second reason is that, as I understand it, the original thinking behind the original small claims procedure was to provide for some sort of summary “palm tree justice”, as it were. That might not be a bad idea in principle but it simply cannot work in terms of the present Small Claims – or Summary Cause – Rules because, the moment an appeal is lodged, the decision of the sheriff must stand up to scrutiny according to both the substantive law and the usual rules of evidence and procedure. The sheriff conducting a small claim proof therefore has to see to it that the normal rules of evidence apply. All too often, party litigants appear with bundles of letters or reports but without any witness to speak to them and think that all he or she has to do is to produce that bundle of papers for the sheriff to wade through. It is also unusual for a party litigant to be able to focus

on what may be the legal issues arising. It seems unlikely that it would be appropriate to dispense with an appeal mechanism. It may therefore be a matter for consideration whether, for example, the rules of evidence should remain the same in relation to cases of such a nature.

Question 13. Does the current division of the sheriff court into distinct geographical jurisdictions present difficulties or does it have advantages?

Question 17. Is there a case for a national sheriff court which would allow cases to be raised at sheriff court level anywhere in Scotland?

Question 18. Is there a case for all sheriffs to have an all-Scotland jurisdiction?

In paragraph 4.56 it is said that the present pattern of sheriffdoms creates “haphazard” boundaries between sheriff courts that are close to one another. One example is then given. My understanding (from *The Laws of Scotland: Stair Memorial Encyclopaedia*, volume 6, paragraphs 1022-1027, and other sources) is that the arrangements for the division of the country into sheriffdoms, and the location of courts within those sheriffdoms, have been arrived at as a process of evolution over time, with the opportunity being taken, when the system of local government changed in 1975, to cause sheriff court districts to coincide, so far as possible, with the new local government districts.

The position is that there is a concurrence of sheriffdom boundaries with local police force boundaries and with local social work departments. It seems to me that has very obvious advantages. The local sheriffs and sheriff principal are familiar with the local concerns, and there can be liaison between them and representatives of the police and others as appropriate in relation to local issues.

An example is given in paragraph 4.56 of two sheriff courts close to one another. If there are such areas of difficulty, and there may well be, it might seem surprising if these were

not capable of being addressed in a way proves to be a good deal less drastic than the dismantlement of the entire system of local sheriffdoms and the setting up of a centralised system in their place.

The current position is that OCR 26.1 confers on the sheriff the power to transfer a cause to another sheriff court in certain circumstances. At the moment, this power is only available if one or other party asks the court to order such a transfer. I would suggest that a sheriff should have the power to transfer a case either on the application of either or both parties or *ex proprio motu* having regard, for example, to the convenience of parties and their witnesses.

At paragraph 4.57, mention is made of the possibility of the transfer of cases being of particular benefit in courts in the central belt where the M8, for example, would enable litigants and witnesses to travel to other courts in the conurbation “without undue inconvenience and perhaps with even greater convenience overall”. As someone who commuted daily for over six years between Edinburgh and Glasgow, I regret to say that I have to seriously question the extent to which this could be regarded as being a realistic practical proposition.

I accordingly remain unpersuaded that there are any compelling reasons for departing from the current arrangements whereby there is a concurrence between sheriffdom boundaries with local police force boundaries and local authority boundaries. I therefore do not favour the creation of an all-Scotland sheriff court with all sheriffs having an all-Scotland jurisdiction.

Question 19. If the sheriff court becomes the primary court of first instance, should there be a power of transfer from the Court of Session to the sheriff court and a power for the sheriff to seek the leave of the Court of Session to transfer a case there? If so, what factors should be taken into account?

I would suggest that there should be a power of transfer from the Court of Session to the sheriff court having regard to the complexity, importance and value of the case, the convenience of parties and their witnesses, and the question of the potential costs involved should the case proceed in the sheriff court as compared with remaining in the Court of Session.

I would suggest that it should not be necessary for the sheriff to seek leave of the Court of Session to transfer a case there before making such an order. However, it may be that the Court of Session should not be obliged to accept such a remit if it is not satisfied that it is appropriate to do so. I would suggest that the factors which might appropriately be taken into account might include the complexity, importance and value of the case, including the novelty of any legal issues arising.

Question 20. Are the existing appeal arrangements satisfactory?

Not entirely. I would suggest that a litigant should only be able to appeal directly to the Inner House with leave, perhaps from the sheriff principal. Likewise, if someone was to seek to appeal to the Inner House following an appeal to the sheriff principal, I would suggest that this should require the leave of the sheriff principal.

Question 21. Should the office of sheriff principal be retained or should an alternative office be created? Should that office be judicial or administrative or both?

It follows from my response to Questions 13, 17 and 18 that my view is that the office of sheriff principal should be retained. I take the view that it should continue to be both judicial and administrative. The sheriff's principal collectively perform what I would suggest is a vital role in both respects. The sheriffs principal are, for example, aware of local concerns and are in a position to discuss these with representatives of local authorities, the police and other bodies as appropriate. In addition, consistent with my earlier responses in relation to the importance of the maintenance of the provision of

“access to justice” at a local level – in terms of convenience for the litigant, lower costs and speed of disposal – I would suggest that the current provision of a mechanism for the disposal of appeals by the sheriffs principal has a great deal to recommend it. I would further suggest that it would be detrimental to any concept of the provision of “access to justice” to deprive litigants of the choice of being able to pursue such an appeal at local level.

CHAPTER 5: PRINCIPLES FOR REFORM TO CIVIL PROCEDURE AND KEY PROCEDURAL ISSUES

Question 2. Should the court (a) encourage, (b) require or (c) in some other way facilitate the use of mediation or other methods of dispute resolution?

As indicated in my response to Chapter 4, Question 12, if the view were to be taken that cases of low monetary value should remain in some form within the sheriff court, I would commend the availability in the courts of an equivalent to the in-court advice project and the in-court mediation service currently available at Edinburgh Sheriff Court. Both have proved to be very successful.

I would suggest that any such provision should be facilitated and encouraged rather than being made mandatory. If someone is entirely against the notion of mediation, I would suggest that it would be inappropriate and unfair to force them to undergo this step – particularly if delay, inconvenience and expense, including the need to time off work, were to be associated with such an additional step.

Question 7. To what extent should the court control the conduct and pace of litigation?

I would favour the court having much greater control in relation to the conduct and pace of litigation. At present, the options hearings in the ordinary procedure in the sheriff court have at best mixed success because the solicitors appearing are frequently not the

principal agents for the parties. It is not at all uncommon to find that the time required for a proof has been seriously underestimated, or perhaps even understated, by the agents. One reason for this is very likely to be that the principal agents have not properly addressed such questions as the identification of the matters really at issue and the evidence, and number of witnesses, required at a sufficiently early stage. I have also heard it suggested on occasion that there is a possibility that some agents may understate the time likely to be required in order to be allocated an earlier diet. Whatever the position may be, it is not uncommon to find out at the diet of proof that the time allocated is insufficient, with it then being necessary to have a part-heard proof and further dates many weeks, or even months, later. This is wholly unsatisfactory for all concerned. The relatively recent introduction of a provision (OCR 28A.1) for pre-proof hearings in ordinary cases in the sheriff court is welcome, albeit coming at a late stage in the proceedings. However, I take the view that control by the court (in the form of judicial case management or in the form of case-flow management, depending on the context) should be from an early stage in any proceedings.

CHAPTER 6: WORKING METHODS OF THE CIVIL COURTS

Question 18. Should written judgements be required in all cases?

No. At present, the sheriff generally gives an *ex tempore* judgment following small claims and summary cause hearings, including those at which evidence has been led although there is provision for a written decision to be issued if the sheriff wishes to take this course. If there is an appeal, the sheriff prepares a stated case. If cases of low monetary value were to remain in the sheriff court in some form, I would suggest that this format should continue. Any requirement for judgments in such cases to be issued in written form would add substantially to the workload of the sheriff and I would suggest that it is questionable whether this could be regarded as a proportionate application of judicial resources in relation to such cases.

I would also suggest that in relation to ordinary civil cases also – particularly following a debate but perhaps also a proof – it should be possible for a sheriff or judge to decide to issue an *ex tempore* judgment if they consider this to be appropriate unless either party asks for a written judgement. Decisions are issued verbally by the sheriff following summary trials and following debates in criminal cases in both solemn and summary procedure and it is perhaps difficult to see why that should not at least be possible in all civil cases, particularly if all parties are content with that.

Fiona Reith

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