



## ALL SCOTLAND SHERIFF PERSONAL INJURY COURT

### COVID-19

#### OPPOSED MOTIONS: REVISED GUIDANCE NOTE FOR PRACTITIONERS

##### **Introduction**

[1] This Guidance supercedes that issued on 21 May 2020 advising practitioners of arrangements for the disposal of opposed motions in proceedings in the All-Scotland Sheriff Personal Injury Court (ASSPIC) during the ongoing Covid-19 emergency.

[2] The trial period which commenced on 25 May 2020 has been terminated. Practitioners may now lodge opposed motions requiring an oral hearing and continue to lodge opposed motions which they are content to have dealt with by written submissions.

##### **Fixing hearings**

[3] Until further notice, all opposed motion hearings in ASSPIC (other than those dealt with on the basis of written submissions only) will be conducted remotely by telephone conference.

[4] Opposed motions should be lodged in the usual way as provided in OCR Chapter 15A. Due to significantly reduced staff resource, non-urgent matters will take longer than usual to be processed. Urgent matters will be prioritised.

[5] Each motion will be allocated a 30 minute hearing slot unless cause is shown as to why a longer slot is required.

[6] Parties will be advised by the clerk by email of the date and time of the teleconference and provided with joining instructions.

[7] On receipt of the joining instructions, parties must provide (i) details of participants and (ii) electronic copies of any documents to be referred to or relied on. To allow time for such documents to be processed by the clerk and sent to and considered by the presiding sheriff it is essential that these must be sent to the Court not less than 48 hours before the teleconference. A failure to comply with this requirement may lead to the hearing being postponed and/or have consequences in relation to expenses.

[8] The court cannot provide a prescriptive list of the type or number of documents which parties may wish to rely on, but practitioners are expected to exercise judgement about what is appropriate, taking account of the following:

- a. written submissions are helpful, but can often be kept to a summary or a series of bullet points;
- b. a timeline may be useful – see further below;
- c. supporting material must be apt (i.e. both relevant *and* proportionate);
- d. principle rather than precedent is the governing approach - tracing the development of the law or providing multiple examples of its application is neither necessary nor useful if the applicable principle(s) are well known or can be identified in an authoritative decision;
- e. where authorities, pleadings or any other documents are to be referred to, the relevant passage(s) should be clearly highlighted or identified;
- f. documents in excess of 30MB in size cannot be lodged by email.

## **The teleconference**

### *Conduct*

[9] Any party attending a court hearing by teleconference is expected to maintain equivalent standards of behaviour as if they were attending the Court physically. Parties must ensure a quiet and secure space for their participation in the remote hearing. As with

other court proceedings, the recording of a court hearing conducted by teleconference call is not permitted without the consent of the court.

[10] In order to allow the hearing to proceed as efficiently as possible, it is essential that there is a proper dialogue between the principal agent/counsel for the lodging party and principal agent(s)/counsel for the opposing party (or parties) as to (i) the basis for the motion; (ii) the basis of opposition thereto; and (iii) whether there is any scope for a compromise acceptable to all parties which means that the motion can proceed of consent or unopposed. This dialogue must take place in good time prior to the hearing. Last minute settlements mean that the slot for the cancelled hearing cannot be offered to other parties. This affects the court's ability to deal efficiently with opposed motions. A failure to comply with these requirements may have consequences in relation to expenses. Above all, agents are expected to appear in court knowing exactly what it is that they do not agree about, so that the matter which the court is being asked to determine is properly focused.

[11] Conference calls are expected to be concluded within the allocated time slot. For a 30 minute hearing slot, each party has no longer than 10 minutes for submissions. The party who has been called upon to address the court first may be permitted a brief right of reply (not longer than 2 minutes) by the presiding sheriff. The sheriff may then raise points with parties.

#### *Provision of timeline*

[12] Where the history of the case (including, the pre-litigation history) is relevant, parties are reminded that the sheriff is unlikely to have the process available during a teleconference conducted remotely from the court building. Furthermore, the court is not party to communications which have taken place directly between parties. Accordingly, where necessary, a written timeline with all relevant dates should be prepared, discussed and (so far as is possible) agreed between parties prior to any opposed motion calling.

#### *Decision*

[13] Normally, the sheriff will give a decision at the conclusion of the teleconference. When the sheriff continues consideration of the motion an interlocutor will be provided as soon as possible along with a brief statement of reasons.

## **Written submissions**

### *The application*

[14] When lodging an opposed motion, parties will be able to make a joint request that it be dealt with by written submissions.

[15] Where all parties have agreed to proceed by written submissions, the party lodging the motion is required to make that clear in paragraph 7 of the Form G6A, along the lines of:

“The parties have discussed this motion and have agreed that a request be made that it be disposed of by reference to written submissions.”

[16] Parties must lodge their finalised written submissions no later than close of business 7 days after the motion is lodged along with Forms G6A and G9A respectively, together with such supporting materials as parties wish the court to consider. The motion will then be passed to a Sheriff who will consider and determine it and arrange for an interlocutor disposing of the motion to be issued along with a brief statement of reasons. The Sheriff may require to hear parties on the motion and the clerk will contact parties to arrange for a hearing by teleconference.

### *Supplementary*

[17] It will be evident that not all types of opposed motion are apt to be dealt with by way of written submissions. Before seeking to proceed in that way, the Court expects there to be a proper dialogue between parties as to (i) the substance of the motion, so that there is clarity as to the matter(s) actually in dispute (see paragraph [10] above); and (ii) the suitability of the motion for determination on the basis of written submissions.

[18] The submissions must be cross-referenced to the supporting material by page or paragraph number, section etc., as the case may be. Practitioners should also take account of paragraph [8] (above) in relation to documents produced.

*Decision*

[19] An interlocutor disposing of the motion will be provided as soon as reasonably possible, along with a brief statement of reasons.

*Kenneth Mc Gowan*

**Kenneth McGowan**

**Administrative Sheriff**

**All Scotland Sheriff Personal Injury Court**

**5 June 2020**