

NEW PROCEDURES FOR PERSONAL INJURY ACTIONS IN THE COURT OF SESSION

On 1 April 2003, new rules and procedures for personal injury actions in the Court of Session will come into force. The new system for dealing with these cases is designed to be streamlined and should deliver considerable benefits in terms of time and cost both to parties and the profession.

Background

The new procedures implement recommendations of a Working Party, appointed by Lord President Rodger and under the Chairmanship of Lord Coulsfield, with a remit to consider whether a simplified procedure could be devised for personal injury cases. The Working Party considered that there is a group of personal injury cases, which forms a substantial proportion of the business of the Court of Session and might reasonably be described as routine. They took the view that a simplified procedure in these cases would eliminate unnecessary delay and expense for those involved and would make the most efficient use of the time of judges and court staff. Also reflected are the recommendations of a smaller Working Group constituted earlier this year at the request of Lord President Cullen to study further the question of the simplification of pleadings. The membership of that Group was drawn principally from the membership of the original Working Party and was also under the Chairmanship of Lord Coulsfield.

Deficiencies of the present system

Recent examination of a significant number of personal injury cases shows that, on average, such actions take almost two years to reach a resolution. This results in a considerable amount of delay and consequent expense for parties. Like all of those who have paused to consider the way reparation actions are presently dealt with, the Working Party was very much aware of the inconvenience caused by the large number of cases which settle either on the day of the proof or during the preceding week. Substantial numbers of witnesses are compelled to attend court unnecessarily. In the case of professional witnesses, substantial fees may be incurred in relation to cases which never start. As a result, at present a large number of people are assembled at the court on a Tuesday morning during the court term. A considerable amount of court time is also wasted. The confusion and associated delay can lead to cases extending into an additional expensive day. In addition, the circumstances can give rise to pressure to reach a hurried settlement, with an inherent risk of unfairness.

The way forward

In its report, the Working Party recognised that the conduct of litigation depends upon a degree of co-operation between all the parties involved. The Working Party believed that the great majority of those involved in litigation would like to see a system which encouraged early settlement of the cases which should settle and would be willing to work positively within a system which facilitated that end. It is very much hoped that the profession will embrace the new procedures and will strive to see them succeed and deliver the consequent benefits to all who are involved with this area of business.

The new procedures, which have been considered at length by the Court of Session Rules Council, have been devised on that basis. They will be supported by comprehensive Rules of Court. This article does not set out to give the detail of the new procedures or Rules. The procedures will be presented at a number of seminars, which are detailed below.

Some salient points of the new procedures

- Early and automatic recovery of documents;
- Simplified written pleadings;
- Early assignment of proof diet for a date around a year in advance;
- The generation of a timetable which specifies dates by which certain key actions must be taken;
- Exchange between parties of calculations of *quantum* and basis of the claim;
- A pre-trial meeting to identify the matters that remain at issue and explore the opportunities for settlement.

Seminars

The new procedures will, inevitably, have implications in the way in which the profession deals with personal injury cases. To ensure that the profession is fully apprised of the new procedures and how they will operate, seminars for solicitors will be held in Edinburgh, Glasgow and Aberdeen. The seminars will be free of charge and solicitors who engage in personal injury work in the Court of Session are invited - and urged - to attend. Seminars for advocates will be held separately. The following seminars will be held:

Edinburgh

Hilton Grosvenor Hotel, Grosvenor Street

- Tuesday 12 November at 2 p.m.
- Thursday 21 November at 2 p.m.

Glasgow

The Teacher Building, 14 St. Enoch Square

- Wednesday 13 November at 2 p.m.

Aberdeen

Hilton Treetops Hotel, 161 Springfield Road

- Monday 18 November at 2 p.m.

The seminars will be chaired either by the Lord President or by Lord Coulsfield and are expected to last for little more than one hour. A sandwich lunch will be available from 1.30 p.m. If you would like to attend one of the seminars, please send an e-mail to Mrs. Valerie Arthur at varthur@scotcourts.gov.uk giving your name and firm or organisation and the seminar you would like to attend, or telephone her on 0131 240 6734. The seminars are intended only for practitioners who are involved in this area of business.

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