



RESPONSE BY

GOLDS SOLICITORS

TO

CONSULTATION PAPER
ISSUED BY

SHERIFF COURT RULES COUNCIL

ON

PROPOSALS FOR PROCEDURAL RULES FOR
PERSONAL INJURY ACTIONS
IN THE SHERIFF COURT



UK LAW FIRM OF THE YEAR

Golds Solicitors,
Stewart House, 123 Elderslie Street, Glasgow, G3 7AR;
St James Building, 79 Oxford Street, Manchester, M1 6FN
t: 0141 300 4300 f: 0141 300 4350 w: www.golds.co.uk



We have set out our responses to the Consultation Paper in the form of answers to the numbered questions in the Consultation Paragraph, as follows:

- 1(a). Yes.
- 1(b). In general terms, the Court of Session rules work well and encourage earlier settlement within the litigation process. These rules minimise Court time and the use of agents. The litigation process should mirror the pre-action protocol for personal injury cases which applies before litigation. The statements of valuation between the pre-litigation and post-litigation processes should be identical.
- 2(a). No.
- 2(b). It is our view that the rules should be adopted into the ordinary cause rules rather than the summary cause rules. Firstly, assurances have been made to the Scottish Parliament that personal injury actions will not be included within small claim procedure (and therefore by implication abbreviated Court procedure). We agree with that view as it is likely to significantly affect access to justice and would make it impossible, for our own part, to offer no-win no-fee service to individual customers. We are by far the largest provider of legal services to the public in respect of personal injuries arising from motor accidents. Moreover, for procedural reasons, we disagree with this proposition. The summary cause rules envisage a much simpler process than the ordinary cause rules. The abbreviated procedure outwith the ordinary cause rules is insufficient to allow the complex matters which may arise in personal injury actions to be adequately dealt with.
- 3(a). No.
- 3(b). We have made a point in relation to access to Jjustice under point 2(b) above. If personal injury actions were to be included within the Small Claim rules, tens of thousands of individuals in Scotland, with no straightforward access to legal representation, would require to commence paying for services which they are currently able to obtain at no cost. They would also be required to take risk for disbursements (such as medical report fees) from which they are currently protected.
- 4(a). Yes.
- 5(a). We have attempted to obtain a copy of Form P1 but have been unable to do so as we understand this has not yet been released.
- 6(a). This paragraph does not appear to cover the situation where we are unable to serve on the Defender. We assume that service by walls of Court and so on would be an acceptable method of service in this situation but it might be helpful to have this specifically clarified within the rule itself.
- 7(a). Yes.
- 8(a). Yes.
- 9(a). Yes in principle. However, we would ask whether both copies of the record are to be certified copies. We also note a potential discrepancy between their requirement that we
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- make a motion to allow a proof and the fact that in terms of Rule 6(a) a proof is assigned on receipt of defences.
- 10(a). Yes.
- 11(a). Yes. We think this is an excellent idea in principle but we would prefer that the procedure currently operated in Glasgow is made available more widely. In terms of this procedure an e-mail can be sent to the Court clerk and, as a consequence, an informal and free method of intimating to the clerk that a hearing will not be proceeding would be available and beneficial to all.
- 12(a). Yes in principle. However, we would wish there to be specific provision for lodging an amended statement of valuation should this be required. This would have a further consequence that the original statement of valuation would not be binding. It may be that revisions to the statement could be addressed by means of expenses, in the same way as amendment procedure under the Ordinary Cause Rules.
- 13(a). We are in agreement that any procedure which may expedite settlement or limit the scope and extent of any later proof is admirable. However, we foresee practical difficulties in that settlement of an insurance related matter, such as a personal injury claim, may be dependent upon instructions from more than one client, even if there is only one named pursuer. This is because of the doctrine of subrogation, in terms of which we may have included (correctly) in one court action, at the instance of the insured, losses sustained by both the insured and the insurer. In practical terms, there is little likelihood of us being able to have the insurance company client available at the pre-proof meeting. Moreover, it is commonly very difficult to be able to obtain instructions from certain insurance companies even on the telephone. Therefore, while we agree with the principle and aims of the provision, we foresee difficulties in practice which, through no fault of agents or the insured party, may be difficult to overcome.
- 14(a) – 22(a) We are in agreement with the proposed procedure for each of these provisions.

FURTHER INFORMATION

For further information, please contact **Mark Higgins** on:

Phone: 0141 300 4327

Fax: 0141 300 4350

E-mail: mark.higgins@golds.co.uk

www.golds.co.uk
