

**NORTH LANARKSHIRE COUNCIL Response to the PROPOSALS for PROCEDURAL RULES
for PERSONAL INJURY ACTIONS in the SHERIFF COURT**

Question

(1)

(a) Yes.

(b) The Council do consider that the Court of Session Rules for personal injury actions could be suitably adapted for use in the Sheriff Court. The Council are of the view that the principals of the 'right to a fair trial' place a responsibility on all of those concerned in personal injury actions to ensure the expeditious progress of a case. It is the Council's experience that the Court of Session Rules have resulted in a speedier resolution to cases which is of benefit to all parties. Unfortunately, whilst the Court of Session personal injury rules have resulted in earlier settlements or decisions than under the previous ordinary procedure there does remain, in the experience of the Council, too many cases being settled in the few weeks immediately prior to the Proof.

(2)

(a) Yes.

(b) The Council's views are mirrored to those in answer Question 1 (b).

(3)

(a) Possibly subject to the Council's observations in Question 3 (b).

(b) The Council is acutely conscious that given the level of expenses normally recoverable under the Small Claims Rules these are unlikely to be sufficient to meet an individual's legal expenses. Accordingly, party litigants are common in small claims procedure. The Council are of the view that the introduction of the rules may place an additional burden upon party litigants which does not currently exist.

(4)

(a) Yes.

(b) Not applicable.

(5)

(a) Not applicable as proposed Form P1 is to the knowledge of the Council not yet drafted.

(b) Not applicable.

- (6)
- (a) Yes subject to the understanding that the Council has not yet seen Form P3 and it is understood that this is yet to be drafted.
 - (b) Not applicable.
- (7)
- (a) It appears that upon the granting of a warrant for citation an order granting commission and diligence for the production and recovery of any documents mentioned in a Specification of Documents shall be deemed to have been granted. The Council are of the view that an opportunity should be given to parties to oppose, where appropriate, the recovery of documents which may not be relevant or may not have been granted had the Defenders had an opportunity to object to the documents the recovery of which was being sought.
- (8)
- (a) Yes.
 - (b) Not applicable.
 - (c) In general terms the 28 day timescale is acceptable, however there may be circumstances where it becomes clear that the case is not suitable for the rules outwith the 28 days and accordingly it may be appropriate to adjust the rule to allow such motions outwith the 28 day period on cause shown.
- (9)
- (a) Yes.
 - (b) Not applicable.
- (10)
- (a) Yes.
 - (b) Not applicable.
 - (c) The Council have no comment on the 7 day timescale proposed.
- (11)
- (a) Yes.
 - (b) Not applicable.

(12)

- (a) Yes.
- (b) Not applicable.
- (c) No comment.

(13)

- (a) In principle the Council are supporting of the pre-proof meetings. However, in terms of Rule XX10(4) each representative to the action shall, as rules are presently drafted, have access to a person who has authority to commit the party in settlement of the action. There are occasions where local authorities require to take instructions from various persons and perhaps external parties such as insurers.
- (b) As above.
- (c) The Council is of the view that 6 to 8 weeks would be more appropriate to avoid the Proof settling in the 4 weeks prior to the Proof hearing date.

(14)

- (a) Yes however the Council would highlight that a Defender should have an opportunity to lodge full Defences before a decision is made in relation to interim payments of damages. Accordingly, it would be of some concern to the Council if interim damages were to be sought as a matter of course following the lodging of skeletal Defences which may not disclose the particular defence which ultimately the Defender may rely upon.
- (b) As above.
- (c) The suggested 14 day timescale seems appropriate.

(15)

- (a) Yes.
- (b) Not applicable.

(16)

- (a) Yes.
- (b) Not applicable.

- (c) No comment.
- (17)
- (a) yes.
 - (b) Not applicable.
- (18)
- (a) Yes.
 - (b) Not applicable.
- (19)
- (a) Yes.
 - (b) Not applicable.
- (20)
- (a) Yes.
 - (b) Not applicable.
- (21)
- (a) Yes.
 - (b) Not applicable.
- (22)
- (a) No.
 - (b) Whilst the Council agree that where a connected person subsequently brings a separate action against the same Defender that they should not be awarded expenses except in cause shown this does not take into account the additional expense that a Defender would be put to as a result of the connected person failing to list himself as an additional Pursuer to the action. The Council are of the view that the rule should go beyond the non awarding of expenses to that party and make an award of expenses in favour of the Defender in respect of any additional expenses incurred through the connected person's failure to enter the previous action.