

RESPONSE TO THE SHERIFF COURT RULES COUNCIL CONSULTATION ON PROPOSALS FOR PROCEDURAL RULES FOR PERSONAL INJURY ACTIONS IN THE SHERIFF COURT

Introduction

The Scottish Legal Aid Board (The Board) welcomes the opportunity to comment on the Rules Council Consultation. The Board's response is limited to commenting on the legal aid issues arising.

Response

The Board is broadly supportive of procedural changes which would improve the efficient conduct and resolution of publicly funded civil litigation. However, there are a number of operational and legislative implications for legal aid arising from the proposals:

➤ *Volumes*

It appears that between a quarter to one-third of ordinary actions for damages for personal injury in the Sheriff Court may be legally aided. In addition, there will be further cases raised under the special urgency provisions of regulation 18 of the Civil Legal Aid (Scotland) Regulations 2002 to beat timebar where an application for civil legal aid is subsequently refused. In 2004/05 there were 2,373 applications for civil legal aid, of which 1,227 were granted. Although it has been possible to fast track Court of Session applications and post certificate sanction requests (for example to employ senior counsel or an expert witness) to meet the Court of Session timetable, the higher volume of Sheriff Court applications presents a greater operational challenge. Any fast tracking which may be required will have to be balanced against the expectations of applicants in family cases, who may equally perceive urgency in the disposal of their cases. There is also a risk of inconsistency if different Sheriffdoms implement different timetables, as appears to be possible.

➤ *Early Preparation*

It would appear that in order to maximise the efficient progress of cases, much fuller early preparation will be required prior to commencing proceedings. For financially eligible clients, this would mean a greater use of Advice and Assistance than may have historically been the case. The cost of Advice and Assistance paid from the Scottish Legal Aid Fund could rise if more work is done on cases which are either not litigated or are ultimately unsuccessful.

➤ *Motions to Sist*

The Board notes that it is proposed that motions to sist shall only be granted on special cause shown. Where civil legal aid has not been obtained prior to the raising of an action, there may well be a motion to sist the cause to allow the applicant to apply for civil legal aid. This could occur where proceedings have been raised using the special urgency provisions of regulation 18 of the Civil Legal Aid (Scotland) Regulations 2002 to beat timebar, or where there has been a change of circumstances during the lifetime of the case. To avoid conflict with the court timetable, it is likely that solicitors will require to submit applications for civil legal aid much earlier than may be the case at present.

➤ *Fees*

The Board presumes that a new Table of Judicial Block Fees would be introduced to match the new procedures. The Board is happy to discuss the content of such a Fee Table, as changes will require to be made in tandem to the legal aid block fees to match the procedure. Sufficient time will also be required to discuss changes to those fees with the Law Society of Scotland. Potential supply problems may arise if solicitors do not find remuneration for the simplified procedure sufficiently attractive, or general practices (particularly in rural areas) are unwilling to do personal injuries cases.

➤ *Multi-Party Actions*

The Board notes the proposed Rule XX.6(9) which would allow a Sheriff to appoint one of a number of causes arising out of the same cause or action to be a leading cause. Whilst this may go part of the way to deal with the problem of multi-party actions, the position remains complex, particularly where cases are funded by a variety of methods, (ie. some may be legally aided, whereas others are privately paying or covered by legal expenses insurance).

➤ *Small Claims*

Given that there is no civil legal aid for small claims, changes to the small claims Rules at present would have no impact on legal aid. However, any increased preparatory costs under Advice and Assistance might well be out of all proportion to the sum in issue, with the result that there would be little or no cost benefit to the applicant. If the question regarding small claims changes is posed within the context of possible jurisdictional changes in the civil justice system, further discussion will be required as to how actions presently classed as small claims will be dealt with.

Conclusions

The Board is happy to provide the Rules Council Secretariat with any further information it may require, and liaise with its Sponsor Division regarding issues raised by this consultation.