

RESPONSE OF SHERIFF NMP MORRISON QC
to

SHERIFF COURT RULES COUNCIL
Consultation on Proposals for
PROCEDURAL RULES FOR PERSONAL INJURY ACTIONS



Question 1

I had had my doubts about the Court of Session procedure because I thought the court was ducking out of its case management responsibilities. From what I understand, it works in relation to the run of the mill reparation cases (which ought to be in the sheriff court anyway).

I think that the rules for personal injury actions should be the same in the Court of Session and in sheriff court ordinary actions. There should be harmonisation where possible in the rules of both courts. I see no reason in principle why the sheriff court ordinary cause rules should not be the same as the Court of Session Rules for reparation actions.

Question 2

The special procedure should not be available in summary causes. My reasons are as follows. Summary cause procedure is already a simplified procedure for certain types of action or actions of low value. It should not be complicated by a set of further elaborate rules for a particular type of action. Summary causes require simple rules.

There should not be both summary cause and small claims rules in the sheriff court in any event. Everything should be done to eliminate one of them. If small claims are to be kept in the sheriff court, then summary causes should be abolished.

Question 3

This special procedure should not be available in the Small Claims Rules. If it should not be available in summary causes, then *a fortiori* it should not be available in small claims. A very simple single procedure is provided for small claims. An elaborate and expensive procedure should not be grafted on. Small claims are for causes of very low value, to be dealt with in the simplest way possible. Party litigants frequently appear on both sides. The special reparation procedure is unsuitable in that situation.

Question 4

I think that the Court of Session rules have been deficient in providing express rules for the form of a summons, but nothing for the form of defences. I think that the sheriff court rules should provide for the form of defences in a rule dealing with defences: it should not be an adjunct to the rule about application and interpretation.

It is not satisfactory to provide a rule about pleas in law not being required without saying how preliminary matters such as time-bar are to be dealt with in the defences.

Question 5

No form was attached to the consultation paper I received.

Question 6

An initial writ is not executed, but service or citation is. Draft rule XX.3 should begin “Where service of an initial writ...”

Question 9

If the sheriff principal is to specify periods by which a timetable is to be calculated, it requires some formality: everyone is entitled to know what they are. It should be by practice note, and that should be stated in the rule.

In draft rule XX.6(5), “make a motion” should be “apply by motion” to be consistent with phraseology elsewhere in the rules.

4th October 2006.