

RESPONSE BY
SHERIFFS PRINCIPAL BOWEN, DUNLOP,
TAYLOR AND LOCKHART

TO

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

This response to the Rules Council Consultation document on Procedural Rules for Personal Injury Actions in the Sheriff Court is submitted on behalf of those Sheriffs Principal who are not members of the Sheriff Court Rules Council.

We wish to respond in general terms only to propositions 1A, 2A and 3A. We do not wish to comment on the remaining questions.

In our view the introduction of rules along the proposed lines would be premature. There are three reasons which to some extent are dealt with in the covering letter from the Assistant Secretary to the Rules Council dated 19 July 2006. We note that the proposed changes to the Sheriff Court Rules follow closely the Court of Session model. We note from the terms of the letter of 19 July that the report on the evaluation of the personal injury rules in the Court of Session will shortly be available and “will be favourable in the main”. If the inference to be drawn from this is that part of the report will not be favourable we have difficulty in seeing the advantage to be gained by giving detailed consideration to, and proceeding to implement, a set of rules for the Sheriff Court without the benefit of seeing the Court of Session evaluation. It may be that the Rules Council will take those detailed findings into consideration but we would have thought that it was preferable for the findings to be available for wider assimilation and consultation before any important step is taken.

We entertain reservations, in any event, as to whether the fact that such rules may have proved successful “in the main” in the Court of Session would necessarily have been suitable for the Sheriff Court. There exists in the Court of Session a specialist reparation bar, or at least a specialist pursuer’s reparation bar which is not present in the Sheriff Court. In setting up the pilot Personal Injury Court in Glasgow Sheriff Court the view was taken that it would be more appropriate for there to be a greater degree of judicial involvement in the procedure than exists in the Court of Session model because of the relative absence of such expertise. Judicial case management in the Sheriff Court may be of added significance in those courts where relatively few

personal injury cases are brought. In our view there ought to be a proper opportunity afforded to evaluate the Glasgow pilot. We are aware that the pilot has recently been extended to actions with a value exceeding £10,000. The effect of that change in terms of numbers has yet to be experienced or its benefits evaluated.

Lastly, indications have been given at Ministerial level of a review of Civil Justice, in relation to which an announcement had been expected this summer. There can be little doubt that any review of civil justice will look at the whole issue of personal injury litigation and the appropriate forum for such. We consider that there would be benefits in awaiting the outcome of that before seeking to introduce a further set of rules into Sheriff Court procedure.