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GSK/MF

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Dear Sirs

**Sheriff Court Rules Council Consultation  
Proposals for Procedural Rules for Personal Injury Actions in the Sheriff Court**

I refer to the Sheriff Court Rules Council's request for views and comments on the proposed adaptation of the Court of Session Rules for actions for personal injury for use in the Sheriff Court. On behalf of this firm I would respond as follows.

In general, as a firm we would respond in the affirmative to all of the questions posed in the Consultation Questionnaire but we wish to add the following comments which arise from our experience of working with the similar rules which have been in force in the Court of Session, now, for a number of years:

- As a general observation we would favour the introduction of the proposed New Rules in the Sheriff Court for two main reasons: firstly, to achieve a consistency between the Rules for Personal Injury Actions in both the Court of Session and the Sheriff Court; and secondly because in our experience the Personal Injury Rules in the Court of Session work well and generally have been shown to have achieved what they set out to achieve, namely the earlier disposal of Personal Injury actions rather than, as was previously the case, settlements being achieved on the morning of the Proof. The introduction of the concept of Pre-Trial Meetings in particular has assisted that exercise.

However we would add the proviso that it is our experience that the standard of pleadings in the Sheriff Court is not always particularly high and as defenders agents we would be concerned about the fact that the shortened form of the proposed Initial Writ will do nothing to improve that situation. We would therefore favour inserting in proposed Rule XX2(1) wording to the effect that the pursuer must give fair notice of the factual basis of his case, and the duties of care or statutory provisions relied upon.

- Another concern we have is with regard to the length of the proposed period of the time table, i.e. the anticipated length of time between the lodging of Defences and the date fixed for the Proof. Currently that period of time in the Court of Session is running at a little short of a year which was always the anticipated "target" period as envisaged by the Coulsfield Report. What we are concerned about is whether it is the intention that in the Sheriff Court there should be a similar period of time, whether it is going to be possible to achieve a consistency in that regard between the different Sheriff Courts, and indeed how that fits with the fairly diverse nature of personal injury actions in the Sheriff Court where one can be dealing with a relatively straightforward and low value road traffic accident on the one hand, but a high value complex personal injury action on the other. Furthermore is it anticipated that the Diet of Proof, when fixed, will be of standard duration as it currently is in the Court of Session (four days) and if so what period is anticipated and how can consistency be achieved between different Sheriffdoms where numbers of cases and available sources can vary markedly?

Our own view would be that a standard period of nine months between the lodging of Defences and the Proof Diet would be reasonable, and would of course always be open to variation, by Motion, according to circumstances. Similarly we would have thought that in an ideal world the appointment of the Proof to a two day diet would suit the vast majority of personal injury actions.

- So far as statements of valuation of claim and pre-trial meetings are concerned, experience in the Court of Session suggests these procedures work well, but that the procedures could be refined further in order to ensure that they work even better. In particular our experience is that the statement of valuation of claim by the pursuer would often warrant revisal in advance of the pre-trial meeting and there may be a strong argument for suggesting that parties should be obliged to lodge up dated statements of valuation of claim in advance of the pre-trial meeting. It may also be the case that the pre-trial meeting should be required to take place rather longer than four weeks before the proof diet and it may be a period of six or even eight weeks would be more appropriate.

We are also mindful of the fact that in Court of Session actions pre-trial meetings tend to take place in Edinburgh. The practicalities of such meetings may be rather harder where one is dealing with actions in Sheriff Courts which may not be geographically convenient to the parties representatives. It might be advisable to provide that the pre-trial meeting between the parties and/or their representatives can take place by telephone or video conferencing facilities.

- Finally, we would suggest that the model of the Personal Injury Users Group in the Court of Session could be usefully replicated in relation to the new Sheriff Court Rules when introduced. The existence of that Group has proved to be of assistance in identifying, and where necessary modifying, the way in which the rules operate.

I hope that the Council will find these comments to be of assistance in their deliberations.

Yours sincerely

**Gordon S Keyden**  
**Partner**