

To: Scottish Court Rules Council  
Date: 24 October 2006  
Our Ref:GMcB/LL  
Your Ref:

Please contact: Gordon McBean

Dear Sirs

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

I note below the views expressed by myself and Clare Macpherson, both Partners of Thorntons Law LLP undertaking Pursuer Reparation work.

Apologies for the missed deadline which is my fault. I do hope that the views expressed in this document will however be taken into consideration.

Answers to part 1 - General Proposition

Q.1A - Yes. Any procedure which purports to speed up the Sheriff Court process and/or identify agreed issues with a view to restricting or limiting the scope of Proof and/or areas of dispute is to be seen as a step in the right direction. Further the nature of restricted written pleadings in support of grounds of fault should hopefully allow for the more efficient handling and progression of cases. Lastly the ability to recover certain documentation at an early stage will be of benefit.

Q.2A - No. Simply put, why should we, as Solicitors, require to undertake a similar level of work including that on a prelitigation investigatory basis for restricted fees at Summary Cause level? Notwithstanding the lesser value, from experience a near identical amount of time, save for more complex actions, is expended on such cases.

Q.3A - Absolutely not. Members of the public cannot be expected to comply with these procedural rules without the benefit of legal advice. The absence of any such legal advice would materially prejudice a Pursuer's case. That aside, personal injury actions can be complex in nature in respect of assessing heads of claim, determining what amounts to a fair and reasonable award etc.

Answers to Part 2 - Proposed New Chapter XX of the Sheriff Court Ordinary Cause Rules

Generally speaking a near replication of the Court of Session Personal Injury Procedure Rules is appropriate. The obtaining of dedicated Proof dates is the foundation on which this procedure rests. Are the Sheriff Courts set up to cope with this?

In terms of proposed Rule XX.6, it is noted that in the Court of Session one is given a notional date. When the Record is lodged one then decides further procedure

namely jury trial or the notional date and three additional days. Will the notional date and three additional days apply in respect of Sheriff Court procedure?

Yours sincerely

Gordon McBean  
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For Thorntons Law LLP

**THORNTONS**  
**Solicitors**