

Guidance on abbreviated pleadings

Introduction

1. Practice Note No. 1 of 2017, in paragraphs 13 and 14, explains that pleadings in traditional form are not normally required or encouraged in a commercial action. The default position is that pleadings should be in abbreviated form. If the requirements on pre-action communication have been complied with, parties will be aware of each other's position before the action has been commenced. The overriding requirement is one of fair notice: the purpose of the pleadings is to give notice of the essential elements of the case to the court and to the other parties to the action. Where a party's position on any matter is contained in another document, such as a Scott Schedule or the conclusions of an expert report, it is permissible to adopt the document, or a specified part thereof, as part of the party's case. Where an award of damages is sought, a summary statement of the claim or a statement in the form of an account will normally be sufficient.
2. There are four important practical considerations which underlie the points made in the Practice Note. These should be borne in mind when considering the content of the pleadings in a commercial action.
 - (i) There will normally have been pre-action correspondence and therefore the issues between the parties should already have been the subject of focus and refinement.
 - (ii) Rule of Court 47.3(2)(c) and (d) state that the summons in a commercial action shall summarise the circumstances out of which the action arises and set out the grounds on which the action proceeds. The reference to "summarise" is particularly relevant for present purposes.
 - (iii) Rule 47.3. (3) provides that there shall be appended to the summons in a commercial action a schedule listing the documents founded on or adopted as incorporated in the summons, which should also be lodged as an inventory of productions; These documents will commonly contain highly relevant details, much of which will not require to be repeated in the pleadings.

(iv) If a party considers that another party's abbreviated pleadings do not give fair notice of its case or the issue may be raised with the party, or if necessary with the court. In that event the court will normally allow time for further specification to be given, if it is thought to be lacking. Further, the authorities make it clear that, if need be, detailed notice may be given in ways other than formal averments:

"Commercial procedure is sufficiently flexible to ensure that fair notice is given of a party's position before a proof is heard, either through the recovery of documents or by ordering signed witness statements on specific issues." *Soccer Savings (Scotland) Ltd v Scottish Building Society Ltd* [2012] CSOH 104 *per* Lord Hodge at paragraph [26]

"I think the rules governing commercial actions give the court sufficient powers of case management to require timely disclosure of a party's case where the pleadings are not sufficiently specific, for example by the early disclosure of signed witness statements. I think that fair notice can be achieved by those means." *Symphony Equity Investments Ltd v Shakeshaft* [2013] CSOH 102 *per* Lord Hodge at paragraph [29]

3. Fair notice is the overriding requirement. Where there is a matter which is of material significance to the party's case, it should be the subject of averment. For example, if the dispute between the parties concerns the construction of a contract, and a party intends to rely on specific facts and circumstances extraneous to the contract itself as aiding the construction, that party must normally aver what those facts and circumstances are: *MRS Distribution v DS Smith (UK) Ltd* 2004 SLT 631 (*per* Lord Drummond Young, at para 14).
4. If prescription may be an issue then it may be important that the averments in the summons amount to a relevant claim in respect of each of the obligations which a party seeks to enforce. However, very brief reference in the pleadings (or in an report or document which is incorporated in the pleadings) to each such obligation will usually suffice (*see W M Morrison Supermarkets plc v LEM Estates Limited & Ors* [2020] CSOH, *per* Lord Doherty at paragraph 68).

5. The purpose of the present guidance is to give two examples of how the pleadings in a summons can be succinct, yet sufficiently comprehensive to comply with the objectives of the Practice Note and the Rules of Court. The examples are merely illustrations, given for guidance to assist in identifying the kind of matters which do not require to be set forth in detail in the pleadings.

Example 1: ABC Bank plc v XYZ Ltd

6. The first example is an action by a bank against a firm of property consultants, in which the bank seeks damages for breach of contract and fault on the part of the defender. The pursuer relied upon valuations given by the defender which are claimed to be erroneous. The material that has been cut from the longer version of the summons can be summarised as follows:
 - (i) Article 2 in the longer version sets out a substantial amount of detail contained in the letter of instruction given by the pursuer to the defender. As the letter is one of the core documents referred to in the schedule of documents annexed to the summons, detailed repetition of its terms is not required. Thus, article 2 in the abbreviated version identifies only the salient features of the instructions.
 - (ii) Article 3 in the longer version explains certain background points in more detail than is needed. In the abbreviated version again only the relevant matters are identified. The Facility Agreement is referred to in the schedule of documents, and the abbreviated version deals only with the essential points raised in that agreement.
 - (iii) Article 7 in the longer version refers to the Reservation of Rights letter which is again part of the schedule of documents and does not require to be articulated in any detail in the pleadings. Article 9 in the longer version is very lengthy and sets out in a somewhat unstructured format the allegations made

against the defender without linking these directly to issues of breach of contract or fault.

(iv) Article 10 in the longer version then sets out the allegations of breach of contract, which are relied upon also on the ground of fault and negligence in article 11. A much more condensed account of the allegations of breach of contract and fault is given in articles 7 to 10 in the abbreviated version.

(v) Article 12 in the longer version sets out in substantial detail the averments of loss. As is made clear in the Practice Note, and shown in Article 11 in the abbreviated version, that could all have been done in a schedule.

7. It will also be noticed that the abbreviated version contains sub-headings within the summons. That is not a requirement in a commercial action or any other action, and in a particular case it may well not be necessary or appropriate to include sub-headings. However, it will be clear to a reader of the abbreviated version that the headline points contained in the sub-headings are helpful in understanding the nature and purpose of the averments which appear under the sub-heading.
8. Overall, leaving aside the conclusions, pleas-in-law and standard averments on jurisdiction and pre-action correspondence, the word-count for the abbreviated version is some two-fifths of that in the longer version, but it sets out the pursuer's claim succinctly but with sufficient detail to provide fair notice.
9. The main lesson from the first example is that there is no need to rehearse the contents of documents which form part of the schedule of documents attached to the summons, although attention can be drawn to relevant points therein.

Example 2: John Doe v Alpha plc

10. The abbreviated pleadings omit unnecessary details which appear in the averments in the longer version. For example, unnecessary material has been omitted from articles 4, 5, 7 and 8 of the longer version. The abbreviated pleadings remove unnecessary repetition. They adopt a simpler structure and

use simpler language. For example the standard expression "as hereinbefore condescended upon" which appears in the longer version is omitted as unnecessary. The abbreviated pleadings contain sub-headings and they set out key points in numbered subparagraphs (see in particular in articles 5 and 6 in the abbreviated version). Article 9 in the longer version sets out a number of points arising from a letter dated 1 July 2015. As this is one of the core documents mentioned in the schedule of documents, such detail is unnecessary. A number of details in article 10 about what Mr Smith of the defender knew have also been omitted as not being directly relevant.

11. The headline points from example 2 are: the omission of unnecessary or irrelevant details; avoiding repetition; the omission of details which are provided in a core document and which do not need to be stated in pleadings; avoiding the use of standard expressions which are unnecessary; and, in general the taking of a simple, succinct, well-structured and readable approach. Again, the abbreviated version is substantially shorter than the longer version.