

COURT OF SESSION

PRACTICE NOTE

No. 2 of 2022

Personal Injuries Actions under Chapter 42A

1. This Practice Note has effect from 29th April 2022.
2. This Practice Note applies to actions to which Chapter 42A (Case management of certain personal injuries actions) of the Rules of the Court of Session applies. Its purpose is to provide further guidance to court users regarding rule 42A.5 which provides that information must be exchanged by parties, in stages, in advance of the first case management meeting. It is consistent with and complements Practice Note No. 2 of 2019.
3. Rule 42A.5(2)(a) provides that parties must exchange reports, in draft form, from all skilled persons upon whose evidence the parties anticipate relying. Rule 42A.5(3)(a) provides that parties must exchange statements of the provisional valuation of the claim, in draft form, together with any available vouching. This must be done no later than 3 weeks or 7 weeks, respectively, after the date on which the closed record is lodged or, where an application for debate has been made, under the timescale set out in rule 42A.3(6) or 42A.3(7).
4. In some actions, parties have been insisting on exchange of draft reports from quantum experts, along with liability reports, and a full valuation at this stage in the proceedings when liability or causation may be live, a motion for a split proof may follow, and the requested material may not be available.
5. Care and attention was taken during the policy development of the rules to reduce the burden on parties to produce the type of valuation that is expected later in the procedure. Rule 42A.5(3)(a) does not require parties to exchange a full valuation of the claim at this stage in the proceedings. There is no expectation by the Court, and the rules do not provide, that parties should have completed quantum investigations by the date on which the record closes. There is an expectation only that parties will, where possible, provide early indications of any likely quantum issues.

6. The aim is to encourage the early disclosure of the potential heads of claim and values together with any **available** vouching and for the defenders to respond with an early assessment of those potential heads and values, in so far as is possible, and to disclose such material as is available and upon which they intend to rely.

7. Rule 42A.5(6) provides that documents, when in draft form, must not be lodged with the Court or put in evidence at proof or used in any other way, unless with the consent of the parties. This applies to the exchange of statements of provisional valuation under rule 42A.5(3).

CJM Sutherland

Lord President

Edinburgh

28th April 2022