



PRACTICE NOTE
No. 2 of 2003
PERSONAL INJURIES ACTIONS

The following notes are designed to explain how the Courts will approach the application and interpretation of the new rules for personal injuries actions. For the most part, they are arranged by reference to the rules in the Act of Sederunt. Practitioners may find it helpful to refer to the Report of Working Party chaired by Lord Coulsfield, issued in 1998 and to the Supplementary Report issued in 2002, both of which are available on the Scottish Courts Website www.scotcourts.gov.uk.

Rule 43.1 Application and interpretation

Personal injuries actions are defined as actions of damages for or arising from personal injuries or the death of a person from personal injuries and personal injuries are defined as including any disease or impairment, physical or mental. It is not intended that actions of defamation or any actions which are not, in ordinary parlance, concerned with personal injuries should be covered by these rules. Any such actions are likely to be transferred to the ordinary roll if they are raised under Chapter 43.

Rule 43.2 Summons and pleadings

The question of pleadings was discussed in the original Working Party Report and in the Supplementary Report on pleadings. In the original report it was pointed out that, in the past, it had proved difficult to restrict pleadings even though it had for very many years been the rule that pleadings should be short and simple. It was therefore emphasised that for the purposes of these rules pleadings should be kept to a basic minimum. The Working Party stated:

"The discussions in the Working Party tended to the conclusion that, realistically speaking, what it is required in most cases in relation to liability is the briefest description of the events on which the claim is based, together with a brief indication of the ground of fault alleged

and a specific reference to any statutory provision which may be founded upon."

In the Supplementary Report, it was stated that the Committee remained of the view that the approach of the Working Party was correct, notwithstanding some observations which had been made upon it. The Committee stated:

"Essentially, therefore, we agree that what is necessary is a method of pleading which encourages brevity and simplicity and discourages technicality and artificiality."

Rule 43.4 Specification and recovery of documents

Specifications for recovery of medical records should not be intimated to the Lord Advocate. The specification should be sent directly to haver.

The question has been raised as to the action to be taken if documents are not returned after the pursuer has finished with them. Any such situation is dealt with under the existing rules applicable to ordinary procedure, namely that application may be made to the Court for an order requiring the pursuer to return the documents.

Rule 43.5 Applications to dispense with timetable

(a) Motions

In general, the rules as to motions are those which apply in ordinary actions. Certain motions will be placed before a judge and may be granted, in accordance with existing practice, if sufficient information is before the judge in writing. It should, however, be noted that motions for sist, for removal of the case to the ordinary roll and for the alteration of a timetable will not be granted, even if made of consent, unless information to justify them, in accordance with the terms of the rules, is before the judge. Such motions will be starred if there is objection to them or if there is insufficient material placed before the judge to satisfy the requirements of the rules.

(b) Dispensing with the timetable

It should be noted that a motion to dispense with the timetable is to be made within 28 days. This rule is intended to be strictly observed. Further, it should be noted that it is not to be granted unless there are exceptional reasons, and that an interlocutor granting or refusing a motion under this rule may be reclaimed against only with leave of the Court within fourteen days. It should be understood that if a case is regarded as suitable for the procedure under this Chapter (that is, if a motion for removal to the ordinary roll is not made or not granted) a motion to extend a period of time under the timetable (Rule 43.8) is most unlikely to be granted.

(c) Sist

It should be noted that the timetable is set from the lodging of defences. Wherever possible, an application for sist should be made before or at the lodging of defences in order to avoid the issue of a timetable which may later require to be changed. It is

provided in the rules that a sist will be for a fixed period, and the Court will take account of all the circumstances of the case in fixing the period and, whenever possible, will avoid any delay to any timetable which may have been issued.

The Court will expect parties to consider at the earliest possible stage whether they may require to make an application to the Scottish Legal Aid Board, such as in respect of sanction for an expert witness or for work of an unusual nature. Delay in making an application for legal aid or in applying for a sist, may lead to the motion being refused. Generally, the Court will expect parties to adhere to guidance issued by the Scottish Legal Aid Board.

Rule 43.6 Allocation of diets and timetable

(a) Timetable

This rule provides for the issue of a timetable. The rules do not set out specific periods to be entered in the timetable for most purposes. The periods which will be followed, so far as possible, will from time to time be prescribed by the Lord President. The table in the Appendix to this Note incorporates the periods which, as at the date of issuing of this Practice Note, it is envisaged will be so prescribed.

A party who is concerned that a step of procedure has not been complied with timeously, or that a party is not complying with the spirit of the procedures, and that failure is threatening to cause delay to or prejudice the settlement of the action, should:

- if the matter relates to a stage in the timetable, approach the Keeper of the Rolls with a view to having the case put out By Order; or
- if the matter is outwith the control of the timetable, enrol a motion to bring it before the court.

(b) Third Party Notices

The timetable provides a limited period for the service of third party notices. Parties should be aware that this period, like other periods in the timetable, will be strictly insisted on. If timeous application is not made, any question of third party involvement may require to be raised in a separate action.

(c) Productions

Where any productions are sought to be lodged late, permission will be granted only by the Court and subject to such order, in particular as to expenses, as the Court may consider appropriate.

a. Order for further procedure

Rule 43.6(5) deals with the making of an order for further procedure after the lodging of a record. It should be stressed, consistently with what has been already said in regard to written pleadings, that it is anticipated that an order for inquiry will be made at this stage. If the defender does not agree with the pursuer's motion, he should oppose it. If a party seeks a debate then full notice of the grounds will require to be

given in writing. In particular, if the specification of the pursuers' case is criticised, details of the averments which ought to be made and which have not been made should be included in the grounds for the motion so that the pursuer may have an opportunity to consider whether to meet any such objections in advance of the hearing of the motion. A motion for Procedure Roll will not be granted lightly. Normally any question of specification will be dealt with on the motion roll hearing.

Where a party enrolls for jury trial, where practicable the diet assigned in the original timetable will, where practicable, be adhered to. A party opposing such a motion will be expected to specify fully, in the notice of opposition, the grounds on which the motion is opposed.

A party seeking inquiry who estimates that the allocation of four days is not appropriate should communicate with the Keeper with a view to the making of any necessary additional arrangements.

Rule 43.7 By Order hearings

Where under the rules any matter is put out to be heard By Order, the hearing is to take place and parties are to be represented even if, for example, any document not timeously lodged or any step not timeously taken has been lodged or taken prior the hearing. The object of this requirement is to enable the Court to insist upon, and consider, any explanation for failure to act timeously.

Rule 43.8 Motions for variation of timetable

Reference has been made earlier with regard to motions to dispense with the timetable (R.43.5(2)). Rule 43.8(1) deals with motions to vary the timetable. Variation may be by either extension or acceleration. Such motions should be made as soon as the timetable has been issued. Motions for extension are most unlikely to be granted. However, the Court would look with considerable sympathy on any application for acceleration of the timetable where the pursuer has a life expectancy which does not exceed the duration of the timetable that has been issued by the Keeper.

A motion to vary the timetable should give full details of the grounds on which the motion is based and where relevant be accompanied by supporting medical evidence. Any party opposing such an application will be required to demonstrate that their opposition is well founded. When hearing the motion the judge will give such directions as he or she considers appropriate.

Rule 43.9 Statements of valuation of claim

The statements of valuation required by this rule are not binding upon the parties who make them. It is, however, intended that these statements should reflect a real assessment of the value of the claim and accordingly it will be open to either party to found upon the making of its own statement of valuation or upon that of the other party.

Parties' attention is drawn to the terms of rule 43.9(7), which provides for either the dismissal of the action or an award of expenses where a statement of valuation is not lodged timeously.

Rule 43.10 Pre-trial meetings

The object of the rule is to ensure that a pre-trial meeting takes place in accordance with the recommendations of the Working Party. The Working Party stressed that in order to be of value the meeting must be a real meeting, that is a meeting conducted by the legal advisers who are in charge of the conduct of the case, along with each of the parties or someone who has the complete authority to act on behalf of a party at the time. The Working Party stopped short of laying down formal requirements for the meeting since to do so would possibly interfere with the professional requirements of the parties' advisers. Accordingly the Working Party was prepared to contemplate that meetings might be carried out, for example, by video conferencing. It should however be understood that it is the obligation of each party to take all such steps as are necessary to comply with the letter and the spirit of the rule. Similarly, the obligation to sign a minute of the meeting is placed upon counsel or solicitor-advocate acting in the case. It has to be clearly understood that in signing such a minute the signatory is accepting responsibility to the Court for the conduct of the meeting and the recording of what took place at it.

Electronic Communication

It is already the case that under Practice Note 2 of 2001 parties may enter appearance by e-mail. Generally parties are encouraged to supply the necessary references and addresses when entering appearance to make it practicable to utilise electronic communication to the maximum practicable effect.

W. DOUGLAS CULLEN

Lord President

APPENDIX

Stage in proceedings	Date
Motion for 3 rd party notices, additional defenders to be lodged by	(defences +28 days)
Commission under rule 43,4 to be executed by	(defences +28 days)
Motion to withdraw from this procedure and appoint to Ordinary Roll to be lodged by	(defences +28 days)
Pursuers valuation to be lodged by	(defences + 8 weeks)
Adjustment period ends on	(defences + 8 weeks)
Record to be lodged and motion enrolled for proof or jury trial by	(defences + 10 weeks)
Defenders valuation to be lodged by	(defences + 16 weeks)
Productions/ lists of witnesses to be lodged by	(proof – 8 weeks)
Pre-trial minute to be lodged by to be lodged by	(proof – 21 days)
Diet of proof/jury trial	Defences + 12 months*

* This date may be adjusted to reflect periods of Vacation and loading at the discretion of the Keeper of the Roll with the approval of the Lord President