



To: The Sheriff Courts Rules Council

## CONSULTATION PAPER ON THE USE OF INFORMATION TECHNOLOGY IN CIVIL CASES IN THE SHERIFF COURT

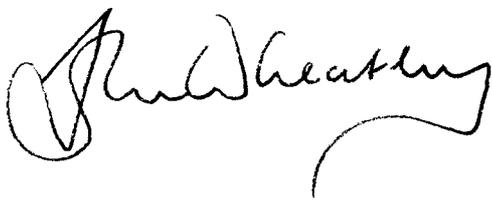
I very much welcome the general approach taken by these proposals by the Sheriff Courts Rules Council and consider the broad thrust of them to be both necessary and imaginative. Having been away from sheriff court practice for about four years, I do not feel qualified to make detailed comments on these proposals, but I would like to make some general points which I am sure have been considered but which I offer here for the sake of completeness. These comments are made in something of a vacuum because I am somewhat out of touch; accordingly I will not feel in any way offended should the Council consider my comments to be irrelevant.

1. In the near future, applicants for judicial office in England will require to be IT literate. Failure to have an appropriate level of IT skills will be a bar to such appointment. This is not yet the position in Scotland, but may soon be. I am uncertain at this stage as to whether sheriffs will require training to accommodate these new proposals if they come into effect. If they do, the Judicial Studies Committee are not currently in a position to offer such training. If such training becomes necessary the Judicial Studies Committee would be happy to offer such assistance in training along with the Council and the Council of the Sheriffs Association, should this be thought to be appropriate. However, as much notice as possible of any requirement in this area would be desirable.
2. The possibility of more judicial management of cases is generally something which is at present being considered. Judicial management is extensively practised in some other jurisdictions. The scope of such management in the relatively small jurisdiction in Scotland may be limited, but nonetheless this is something which the Council may wish to bear in mind when putting these proposals into effect. Clearly the scope for judicial management might particularly apply to ordinary causes as opposed to other kinds of action. If this is thought to be a realistic concern, then a number of considerations might be borne in mind. In particular, any IT system should, if possible, contain features which would facilitate such management practices. The capacity of the system to demonstrate the progress of ordinary causes, and the ability to retrieve information about that progress on a number of bases, would be extremely helpful. It would be useful if the system could, for example, show up all cases in which nothing had happened for a particular period, cases where proofs were outstanding, and cases grouped under generic headings. There are of course a number of other features that an IT system might contain which would be useful tools in the management process. It might be useful to consult more widely on what those particular features might be. Even if there is to be no judicial intervention, such features might prove extremely helpful to sheriff clerks' staff and others in arranging for the management and disposal of all such business.

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3. I think that it is extremely important that care and attention is given to the framing of interlocutors which will be produced electronically in terms of these proposals. Interlocutors which fully and accurately reflect the history of the case are essential to the proper progress of the case through the court and to a proper understanding of what has happened in the case at any given point. Experience suggests that some standard stereotype interlocutors do not properly always reflect what has happened in court and this can cause significant difficulties. The adherence to a few generalised styles of interlocutors is wholly insufficient, particularly in complex and protracted cases. Opportunity for "bespoke" interlocutors that can be fed into the system would be extremely helpful, and indeed essential, for the system to work properly and effectively.
  
4. Party litigants are now much more common than formerly, and this trend is likely to accelerate. It is, I think, important that courts have complete confidence that party litigants are fully aware of everything that happens in the course of a case. The use of electronic means of communication may remove the opportunity of sheriffs to explain fully the circumstances and consequences of things that happen in the course of any action. Many party litigants may not be in possession of the necessary equipment or understanding to use an electronic system. It may be that paper systems will require to be in place for such situations. In particular, so far as party litigants are concerned, electronic signatures may not always be appropriate.

If any of these proposals are of interest, I would be happy to discuss them more fully at any suitable time.



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