DLA Piper Scotland LLP
Collins House
Rutland Square
Edinburgh
EH1 2AA
DX ED271 Edinburgh 1
T +44 (0)131 242 5597
F +44 (0)131 242 5577
W www.dlapiper.com

The Secretariat
Sheriff Court Rules Council
Scottish Executive Justice Department
Civil Court Procedure and Sheriff Court Jurisdiction
2 West St Andrews House
EDINBURGH
EH1 3DG

Your reference

Our reference
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18 October 2006

Dear Sirs

SHERIFF COURT RULES COUNCIL CONSULTATION PROPOSALS FOR PROCEDURAL RULES FOR PERSONAL INJURY ACTIONS IN THE SHERIFF COURT

As you may be aware DLA Piper are an international firm of solicitors with a significant practice in Scotland. I, with another partner head the insurance department in Scotland which comprises 25 individuals who handle personal injury actions on a day to day basis on behalf of major insurers and the Office of the Solicitor to the Scottish Executive. I would like to take this opportunity to set out our views on the consultation paper. I propose simply to follow the numbering in the questionnaire:

1A We are in favour of uniform rules for personal injury actions for the Court of Session cases and those proceeding under the ordinary cause rules in the Sheriff Court. We would go further in that we believe there are benefits to be gained in there being a uniform set of Court Rules in both the Sheriff Court and the Court of Session for consistency, simplicity and also to improve access to the Court system. There is scope then for a much more uniform approach to be taken to procedural matters.

We also believe that there is an opportunity for reform in the Sheriff Court to lead the way to additional reform in the Court of Session. In our view a significant difficulty with the current Court of Session procedure is that the same timetable applies to all cases regardless of value or complexity. The length of time between defences and proof has reduced significantly over the life of the new rules. It is now frequently this case that there is a six or seven month period between defences and trial. While that, or indeed a lesser time, is appropriate for low value less complex cases it does not suit higher value more complex matters. In our view, there should be a bespoke timetable for each case set by the Court in a case management conference at the outset of the case. In the absence of a protocol for pre-action conduct which has sanctions for non-compliance, it is often extremely difficult to gather the information necessary to defend a case in a relatively short fixed timescale.

2/2B We do not believe it would be economic for the Court of Session Personal Injury Rules to be imported into the rules for summary cause cases. The cost for example of a pre-trial meeting and the adjustment of pleadings would add needlessly to costs. There are aspects, however, of the procedure which could be adopted for summary cause cases. We have in mind a requirement on the pursuer to provide a valuation at the very outset of a case accompanied by a medical report with the defender obliged to provide a counter-valuation with the defence. This would assist a swifter resolution of cases at this level.

3A/3B We do not believe it would be appropriate for the Court of Session Rules to be adapted for small claims cases. These cases are not intended to involve legal practitioners and complicating the procedure is likely to deter individuals from handling their own cases as the system intends.

4A In our view the proposed XX.1 is satisfactory with the exception that it will still in our view be desirable for short pleas in law to be incorporated as part of the pleadings to ensure that parties have fair notice of the case being put against them. The reality is that despite the abolition of pleas in law in the Court of Session, such pleas are routinely made in the body of the defences rather than as a separate item. We wish to avoid over complicating the pleadings in cases but still believe there should be a requirement to provide sufficient pleading to allow parties to understand exactly what the issues are in a particular case.

5A/5B We assume that the form is in identical terms to the equivalent form in the Court of Session. We broadly agree with the form proposed but with the proviso that it should be made clear that not only should sufficient facts necessary to establish the claim be pleaded but also sufficient facts to give fair notice of the case in liability and quantum being made against the defender. We endorse the proposal that the names of medical practitioners and hospitals from whom the pursuer has received treatment should be set out in the writ.

6A/6B Yes.

7A/7B We believe that the procedure for recovery of documents is broadly reasonable but in our view there should be a requirement on the pursuer to attach a specification of documents to the writ to cover the medical records referred to at rule XX.2 and an obligation to lodge the recoveries at court so they can be accessed by the other party. It should also be a requirement that pre-accident records should be covered by this specification to avoid the cost of motions for those records later in the litigation and to increase the speed at which cases are resolved. Recovery of records is currently a significant reason for delay.

8A/8B/8C We believe it would be preferable for all personal injury actions to be dealt with within one procedure rather than there be provision for more complex actions to be removed from the procedure. We feel it would be appropriate to have early case management by the Court as is seen in commercial actions in the Court of Session setting out a bespoke timetable and requirements for each individual case which would dispense with the need for any actions to be withdrawn from the personal injury procedure. If it is decided to proceed with the rule in its current form, we propose a 28 day period for a motion to withdraw an action from the personal injury procedure.

9A/9B We believe it is a weakness of the current Court of Session procedure that a proof date is allocated when defences are lodged. As we mentioned above this date is often unsuitable for the more complex cases. We believe that an alternative approach would be to have an automatic timetable of the kind envisaged in the draft rule for cases up to a value of £25,000 with the ability for parties to seek to vary that timetable in appropriate cases. We can envisage sensitive actions involving public bodies which would not be suitable for a truncated timetable. In general a short timetable with a fixed trial date set at the outset will be suitable for cases up to this value and we propose that the value limit be reviewed by the Rules Council at regular intervals. For all other cases our view is that the rules should provide for an early case management conference at the end of the adjustment period when the Court can then give suitable directions including a mechanism for fixing a proof date with an adequate number of days allowed for the case. In addition, we consider that these case management hearings could be dealt with as telephone hearings, per the Glasgow pilot, hence involving the principal agents who have full knowledge of the case.

10A/10B/10C We believe that this proposal is sensible and the above rule could be applied to any default by a party on the timetable fixed by the Court automatically at the outset of a case or following a case management conference.

11A/11B Under the procedure which we suggest above, the need for a sist would be very rare and in our view the rules should be framed in a way that make it exceptional for there to be a sist once an appropriate timetable has been fixed in a case. It is, however, reasonable in our view for there to be provision for variation of whatever timetable is fixed by the Court to take into account unforeseen events and a variation should be granted in our view on cause shown rather than special cause shown.

12A/12B/12C We are in broad agreement that there should be a requirement for the pursuer to lodge a statement of valuation in all personal injury cases. We consider, however, that a valuation should be served with the writ and every writ should also be accompanied by a medical report, all of which is intended to give as much notice as possible as to the claim to be made. Equally, there should be an obligation on a defending

party to serve a counter-valuation with the defences with the proviso that the timetable should permit revised valuations by both parties at a later stage in the case.

If the rule remains in broadly its current format we suggest that it is revised to make it incumbent on a party to provide the other party with any expert reports in their list of documents at the same time as the valuations are supplied. We accept that there may be other voluminous documents, for example, medical and personnel records which it would not be reasonable for a party to copy to another automatically. The rule gives provision for a party receiving a list of documents to request documents from the list. We see no reason why there should be any time limit on the right to inspect.

13A/13B/13C We believe that pre-proof meetings are suitable for this type of action but it would be desirable if these meetings took place six to eight weeks before the proof at the latest in order to minimise expense and avoid court door settlements.

14A to 22B We agree with all of the proposed rules which deal with more technical matters, principally in relation to claims in respect of a death and we have no further general comments to make beyond those set out above.

We would be happy to participate further in this consultation process and if you would like any further information or assistance in relation to our views, please do not hesitate to contact me.

Yours sincerely

CAMERON MCNAUGHT
PARTNER
DLA PIPER SCOTLAND LLP