

Approved

## **Minutes of Sheriff Court Rules Council Extraordinary Meeting**

**6 February 2007**

### **PRESENT**

Sheriff Principal Sir S S T Young, Bt, QC (Chairman)  
Sheriff Principal B A Kerr, QC  
Sheriff W Holligan  
Sheriff M Fletcher  
S Brand  
P Cackette  
R Conway  
C Flannigan  
G Way  
S Di Rollo, QC  
J Murphy  
S O'Neill  
D Headrick  
E Samuels  
S McCourt (Secretary)  
A Oxley (Assistant Secretary)

#### **1 Welcome and Apologies**

The Chairman and members extended their thanks to both Sheriff Principal Kerr and Mr McCormick who have resigned from the Council Mr Way was welcomed in place of Mr McCormick. Ms Headrick and Mrs Samuel from the Scottish Executive Analytical Services Division were also welcomed to the meeting.

Apologies - Sheriff Peebles, A Johnston, J d'Inverno, R Young

#### **2 Personal Injury Actions and ADR Consultations**

The Council agreed that Mr McCourt would report to the Court of Session Personal Injuries Users Group on the outcome of the meeting today.

Ms Headrick, SE Researcher reported to the meeting on difficulties experienced with the external researchers commissioned to provide the Council with analysis reports on both consultations.

Mrs Samuel, SE Researcher provided the meeting with a verbal report on her research into the new rules for personal injury actions in the Court of Session.

The Council then considered the paper of 29 January 2007 which the Chairman had prepared in order to focus the issues which required consideration and decision upon. The Council answered the questions posed as follows:

#### **Personal Injuries Actions**

**1. Does the Council consider that it would be premature to consider introducing new procedural rules for personal injury actions in the sheriff court?**

**Answer:** No

**2. Does the Council consider in principle that the Court of Session rules for personal injury actions, suitably adapted for use in the sheriff court, should be adopted into the Ordinary Cause Rules?**

**Answer:** Yes

**3. Does the Council consider in principle that these rules, suitably adapted for use in the sheriff court, should be adopted into the Summary Cause Rules in place of the existing Chapter 34 of the Summary Cause Rules 2002?**

**Answer:** No

**4. Does the Council consider in principle that these rules, suitably adapted for use in the sheriff court, should be adopted into the Small Claim Rules 2002?**

**Answer:** No

**5. Is the Council content that the Ordinary Cause Committee should consider the detailed comments from respondents on the proposed new rules with a view to issuing drafting instructions so that a revised draft Act of Sederunt incorporating necessary changes to the Ordinary Cause Rules should be brought before the full Council in due course for consideration and, if appropriate, approval?**

**Answer:** Yes

**6. Is the Council content that the Ordinary Cause Committee should consider and instruct necessary changes to the Summary Cause Rules 2002 to give effect to the Court of Session rules for personal injury actions, all with a view to a draft Act of Sederunt being brought before the full Council in due course for consideration and, if appropriate, approval?**

**Answer:** Superseded by Answer 3

**6A. Does the Council consider that a Users' Group should be established to monitor the new rules (if introduced) and, if so, who should be the members of this Group and what should be the terms of its remit?**

**Answer:** The Council agreed to defer consideration on this question meantime

#### **Mediation and other forms of ADR**

**7. Ought the Council even to consider in principle whether there should be a rule in one or more of the four procedures available in the sheriff court to the effect that the sheriff should have a discretion in appropriate cases to encourage or require parties to refer their dispute to mediation or some other form of dispute resolution, or should the Council in the alternative take the view that this is a question which should be addressed in the first instance by the Scottish Executive and, ultimately, the Scottish Parliament?**

**Answer:** Yes the Council should consider whether there should be such a rule.

**8. Does the Council consider that it is in any event premature to consider whether or not there should be a rule in any of the forms of procedure in the sheriff court to the effect that the sheriff should have a discretion in appropriate cases to encourage or require parties to refer their dispute to mediation or some other form of dispute resolution?**

**Answer:** No

**9. Does the Council in principle consider that there should henceforth be a provision in one or more of the sets of rules applicable to civil business in the sheriff court which encourages, but does not compel, parties to seek resolution of matters in dispute between them by resort to mediation or some other form of dispute resolution before committing themselves finally to full-blown litigation?**

**Answer:** Yes by a majority (8 v 4)

**10. Does the Council consider that a provision along the lines of the proposed Chapter 9A should apply, subject to any exceptions identified in response to question 11, to all types of action, procedure in which is governed by the Ordinary Cause Rules?**

**Answer:** Yes

A proposal was made that such a provision should apply only at the stage of an Options Hearing rather than generally at any stage in an action.

- By a majority (8 v 4) the Council voted against this proposition.

**11. Does the Council consider that such a provision should be excluded in the case of (a) commercial actions governed by Chapter 40 of the Ordinary Cause Rules, (b) family and civil partnership actions governed by Chapters 33 and 33A respectively, (c) personal injury actions governed by the Chapter incorporating new personal injury rules into the Ordinary Cause Rules, and (d) any other type of action governed by the Ordinary Cause Rules?**

**Answer:** (a) Yes  
(b) No  
© Yes  
(d) No.

**12. Does the Council consider that in principle there should be a rule in the same terms as the suggested rule 9A.1, or in terms similar thereto?**

**Answer:** Yes by a majority (7 v 5)

**13. If so, is the Council satisfied with the terms of the suggested 9A.1 in its present form and, if not, in what way should it be amended?**

**Answer:** Yes

**14. Does the Council consider that in principle there should be a rule in the same terms as the suggested rule 9A.2(1), or in terms similar thereto?**

**Answer:** Yes by a majority (7 v 5)

**15. If so, is the Council satisfied with the suggested rule 9A.2(1) in its present form and, if not, in what way should it be amended?**

**Answer:** Yes

**16. Is the Council content with the proposed new rule 9A.2(2) and, if not, in what way should it be amended?**

**Answer:** Yes

**17. Leaving aside the question whether reasons should be given, does the Council consider that in principle there should be a rule in the same terms as the suggested rule 9A.3(1), or in terms similar thereto?**

**Answer:** Yes

**18. Does the Council consider that the suggested Form 011 should require parties to state their reasons for consenting or not consenting, as the case may be, to a referral to mediation or another form of dispute resolution?**

**Answer:** No

**19. Does the Council consider that reasons should be given where all parties consent to a referral to mediation or another form of dispute resolution?**

**Answer:** No

**20. If the answer to question 17 is in the affirmative, is the Council satisfied with the suggested rule 9A.3(1) in its present form and, if not, in what way should it be amended?**

**Answer:** Yes subject to deletion of references to reasons in Form 11

**21. Is the Council otherwise satisfied with the suggested Form 011 and, if not, in what way should it be amended?**

**Answer:** Yes subject to the deletion of references to reasons in Form 11

**22. Is the Council satisfied that in principle there should be a rule in the same terms as the suggested rule 9A.3(2), or in terms similar thereto?**

**Answer:** No

**23. If so, is the Council satisfied with the wording of the suggested rule 9A.3(2) in its present form and, if not, in what way should it be amended?**

**Answer:** Superseded by Answer 22

**24. Is the Council satisfied that in principle there should be rule in the same terms as the suggested rule 9A.4, or in terms similar thereto?**

**Answer:** Yes. Agreed that the Ordinary Cause Committee should consider wording of rule.

**25. If so, is the Council satisfied with the wording of the suggested rule 9A.4 in its present form and, if not, in what way should it be amended?**

**Answer:** Superseded by Answer 24 both in relation to rules 9A.4(1) and 9A.4(2)

**26. Is the Council satisfied that in principle there should be a new rule in the same terms as the suggested rule 9A.5, or in terms similar thereto?**

**Answer:** No by a majority (9 V 3)

**27. If so, is the Council satisfied with the wording of the suggested rule 9A.5 in its present form and, if not, in what way should it be amended?**

**Answer:** Superseded by Answer 26

**28. Is the Council satisfied that in principle there should be a new rule in the same terms as the suggested rule 3.1(5A), or in terms similar thereto?**

**Answer:** No

**29. If so, is the Council satisfied with the wording of the suggested rule in its present form and, if not, in what way should it be amended?**

**Answer:** Superseded by Answer 28

**30. Does the Council consider that there ought to be a new rule in the Ordinary Cause Rules to the effect that the expenses of a mediation or other form of dispute resolution should be treated as expenses in the cause and so recoverable as part of an award of expenses?**

**Answer:** No

**31. Does the Council consider that the existing rules 33.22 and 33A.22 should be deleted from the Ordinary Cause Rules?**

**Answer:** No

**32. Does the Council consider that in principle there ought to be inserted into the Summary Applications etc Rules 1999 a rule to the effect that the sheriff in appropriate cases may in his discretion encourage or require parties to consider mediation or some other form of dispute resolution?**

**Answer:** Yes

**33. If the Council considers that in principle there should be a rule along the lines suggested in the preceding question, is the Council**

**content that the detailed rules required to give effect to this decision should be in the same terms as those proposed for the Ordinary Cause Rules and, if not, what amendments should be made to the latter to fit them into the Summary Applications etc Rules 1999?**

**Answer:** Yes

**34. Does the Council consider that in principle there should be imported into the Summary Cause Rules 2002 a rule to the effect that in appropriate cases the sheriff should have a discretion to encourage or require parties to consider mediation or some other form of alternative dispute resolution?**

**Answer:** Yes

**35. If so, does the Council consider that rules as nearly as may be in similar terms put to those proposed for the Ordinary Cause Rules should be imported into the Summary Cause Rules 2002 and, if not, what amendments should be made?**

**Answer:** Yes

**36. Does the Council consider that in principle a rule as suggested in question 34 above should be imported into the Small Claim Rules 2002?**

**Answer:** Yes

**37. If so, does the Council consider that rules as nearly as may be in similar terms put to those proposed for the Ordinary Cause Rules should be imported into the Small Claim Rules 2002 and, if not, what amendments should be made?**

**Answer:** Yes

**38. Does the Council agree that rule 8.3 of the Summary Cause Rules 2002 and rule 9.2 of the Small Claim Rules 2002 should be amended by the incorporation into each of a new paragraph in the following terms:**

**“8.3(2A)/9.2(2A): In carrying out the duties referred to in paragraph (2)(b), the sheriff may hold discussions in private and not in open court”?**

**Answer:** Yes subject to both rules being amended to include the words “if parties consent”

**39. Does the Council agree that otherwise rules 8.3 and 9.2 should remain for the time being unaltered?**

**Answer:** Yes

#### **Employment of counsel etc**

**40. Does the Council agree that the Faculty’s proposals should be discussed at a forthcoming meeting?**

**Answer:** Yes

## Approved

The Council agreed that the Ordinary Cause Committee should meet to consider rules for both Personal Injury Actions and ADR. The date and venue to be confirmed.