

PAPER APART

Consultation question 18

Do you have any comments on the approach taken in Part 5: Sending and service?

Comments

The Society of Messengers-at-Arms and Sheriff Officers was established in 1922 and is the designated professional association for Officers of Court. We are the representative body of all commissioned Sheriff Officers in Scotland. One of our members official functions is to execute citation or serve any document required under any legal process. Our members, commissioned by the Sheriff Principals, carry out these duties without fear or favour to the highest standards to ensure that parties are lawfully cited in accordance with the rules of court. All documents served by hand, with a few rare exceptions, are served by Sheriff Officers. It is our members who will be significantly responsible in serving Claim Forms and it is therefore with both the technical and practical experience in the area of citation that we make the following comments regarding Part 5.

Our general view in relation to Part 5 is that citation or serving is a technical matter which can only be carried out by suitably qualified persons with the appropriate technical knowledge. It is not an area that either needs to be or should be over simplified. The precision of the rules of service is what helps Officers of Court ensure that proper and effective citation has taken place which we consider essential to the administration of justice. It would be far better if the methods of service adopted were similar to what is detailed in Rule 16.1 of the Court of Session Rules 1994 with the inclusion of the method; Leaving it at that person's dwelling place or place of business in such a way as it is likely to come to the attention of that person as detailed in Ordinary Cause Rule 5.4(3) (b). This would seem to us to be more consistent with the Rules Rewrite ethos of where possible applying a degree of standardisation across all the rules. We would also argue that the current Sheriff Court rules requirement, which has been included in 5.3(a), of sending a further copy by ordinary post of the document served by a Sheriff Officer is unnecessary. This is a needless duplication given that in order to serve the document the Sheriff Officer must have conducted diligent enquires. It can also cause confusion for respondents when they receive a further copy and from an environmental point of view is a waste of paper.

In addition to our general view we also note the following points from the draft rules.

In 2.2 the second line should be amended to read, (such as sheriff clerks, sheriff officers or solicitors).

We are generally concerned about the reference to 'sending' in this part with regards to how the sending of a document would be authenticated. However it is 3.1 (a) which we are particularly concerned at. We do not consider parties hand delivering documents to each other as reliable or secure. Litigation by nature is contentious and while Sheriff Officers serving documents are impartial and experienced in diffusing confrontational situations the same is not necessarily the case for a party litigant. The prospect of party litigants hand delivering documents to each other, in the midst of what potentially could be an acrimonious and emotive court action, is unwise and a risk to public safety. The Society considers that in the event of documents being sent by hand delivery it should be Sheriff Officers who conduct that role.

In order to ensure that postal service is effective we would recommend an additional requirement is made in 4.3 to provide proof of delivery. The postal receipt only demonstrates that the document has been posted, not that it has been received by the respondent. It is relatively straightforward nowadays to easily check online if a signed for document has been received and a copy of this should be included in addition to the postal receipt. This would help ensure that parties had received the proper notice of proceedings against them and reduce the need for rescheduling court time to allow for re-service as this would be identified far earlier.

With regards to the notices in 4.7 and 5.3 (b) which are to be written on envelopes we recommend using the existing Notices found in Ordinary Cause Rules 5.3(3) and 5.4(6). This allows for a standardised approach to be taken across the rules which in itself reduces confusion for respondents. In addition from a practical point of view having 4 different notices would require Sheriff Officers to produce 4 different styles of envelopes which as they essentially say the same thing is unnecessary.

We would also point out that the use of the word 'in' at 5.1 (b) and 5.2 (b) is not appropriate and should be "at". There also does not appear to be a requirement to place the form in an envelope if serving by 5.1 (b) and (c) which is inconsistent with current practice in the Court of Session, Ordinary Cause, Summary Cause and Small Claim rules.

We welcome the proposal in 6.2 for advertisement to be on the Scottish Courts and Tribunals Service website. The Society recommends that consideration be given to expanding this innovation to encompass all Sheriff Court citations, intimations and charges where whereabouts are unknown.

It is noted that 7.1 makes reference to 'person' and it would be helpful if this was changed or there was a definition of the meaning of this word, in particular addressing the issue of non natural persons, similar to what is found in Section 1 of the Sheriff Court (Scotland) Act 1907.