

INTRODUCTION

As Ken has said in his introduction, I am Maria Maguire, I am a member of the Faculty of Advocates. I have been a Queen's Counsel since 2002. I practice mainly in the fields of Personal, Injury, Medical Negligence and Judicial Review. I have participated as a member of the Personal Injury Committee since its very first meeting on 2 September 2013.

It is a privilege for me to be delivering this speech in what has been a very important year for the Committee. I propose to address you on the work of the committee in two parts. I will first of all outline what the Committee has achieved over the past year and then provide a brief summary of what it intends to do in the coming year.

WHAT HAS THE COMMITTEE ACHIEVED?

All-Scotland Personal Injury Court

A great deal of work has been carried out regarding the all-Scotland Personal Injury Court.

Over the past year, the work of the Committee has focussed primarily on developing rules to implement the provisions of the Courts Reform (Scotland) Act 2014 in relation to the creation of a specialist personal injury court with civil jury trials.

The 2014 Act allows Scottish Ministers to provide by order, and with the consent of the Lord President, that the jurisdiction of a sheriff in a specified sheriff court extends throughout Scotland for the purpose of dealing with specified types of civil proceedings. The appropriate order has been laid in the Scottish Parliament and will come into force on 22 September.

The Order details that a sheriff of the sheriffdom of Lothian and Borders sitting at Edinburgh Sheriff Court has jurisdiction throughout Scotland in 3 situations. The first is for actions of damages for, or arising from, personal injuries for claims exceeding £5000. The second is for proceedings concerning an accident at work where the claim is for over £1000. And the third situation is where the claim concerns an accident at work for under £1000 but the local sheriff has certified that the importance or difficulty of the proceedings make it appropriate to transfer the proceedings to the Personal Injury Court.

These reforms also introduce an exclusive competence for sheriff courts of £100,000.

The new rules adjust existing provisions and insert new provisions in the Rules of the Court of Session and the Ordinary Cause Rules. It should be noted that, under section 73 (1) of the 2014 Act, all proceedings raised in the PI Court will be subject to ordinary cause procedure. Our aim was to ensure that the rules are as clear and easy

to understand as possible and modern drafting practice has been used in so far as possible within the confines of the existing rules.

In developing the rules, members initially considered and approved draft policy instructions to provide for the procedure and practice which will apply following the establishment of an all-Scotland personal injury court with civil jury trials; allow motions to be intimated and enrolled in the PI court by email and introduce an equivalent procedure to that in Chapter 42A of the Court of Session Rules 1994 to allow for active case management in complex cases in the new personal injury court and in local sheriff courts.

Amendments made to the Ordinary Cause Rules on jury trials, e-motions and active case management closely follow equivalent provisions in the Court of Session Rules. Where the amendments to the Ordinary Cause Rules depart from current Court of Session procedure, the Court of Session Rules have, where appropriate, been revised to achieve consistency.

Some of the main issues considered by the Committee were the form of the initial writ in order to make it clear that the action was being raised in the all-Scotland court; the list of matters to be covered at the Procedural Hearing being added to both the new rules and the existing Court of Session rules; the test for withdrawing from personal injury procedure and the application process for jury trial procedure.

The Committee worked hard to comply with the planned schedule and, as a result, the rules considered by the Committee and subsequently approved by the Council have been laid in the Scottish Parliament and will come into effect on 22 September 2015.

Pre-Action Protocols

A very important issue considered by the Committee was that of Pre-Action Protocols

A significant piece of work undertaken by the Committee in this regard was the information gathering exercise around the current use of voluntary pre-action protocols and the possible introduction of compulsory pre-action protocols. This was carried out to assist our consideration of the relevant rules should the proposed powers which would allow for this in the then Courts Reform (Scotland) Bill become law.

In total 24 responses were received and the Information Gathering Exercise on Pre-Action Protocols – Report on Responses was published on the Scottish Civil Justice Council website on 13 November 2014.

The 2014 Act received Royal Assent on 10 November 2014. It gives the Court of Session the power to make provision for or about the procedure and practice to be followed in civil proceedings in the sheriff court, including provision encouraging settlement of disputes and the action to be taken by prospective parties before proceedings are raised.

This power paved the way for the introduction of rules which require parties to follow compulsory pre-action protocols before raising a case with the courts.

Following on from that, the Committee considered the application and timing of the introduction of a compulsory pre-action protocol.

Members agreed that a compulsory personal injury pre-action protocol should be applied to all local sheriff courts as well as the specialist personal injury court and that these should be introduced ideally no more than one year after the establishment of the all-Scotland personal injury court.

They also agreed that consideration of detailed policy matters be postponed to enable the Rules Rewrite Drafting Team to focus on the development of rules for the establishment of an all- Scotland personal injury court.

Cross - Cutting Issues

In addition to the work of the PI committee there has also been consideration of other issues which impact on PI actions. In this regard the PI has liaised with the Costs and Funding Committee.

Members of the PI Committee attended a meeting of the Costs and Funding Committee by invitation to assist them by providing their views in relation to the impact of various proposals in Sheriff Principal Taylor's Review on Expenses and Funding in Civil Litigation in Scotland, as they would pertain to Personal Injury Actions. This Joint Meeting was a worthwhile exercise.

WHAT THE COMMITTEE WILL DO NEXT

I now turn to address what the Committee will do next.

Compulsory Pre-Action Protocols

Now that the rules for the personal injury court have been made and laid, the Committee is focussing on the development of rules for compulsory pre-action protocols which we anticipate will be introduced in September 2016.

The responses to the Information Gathering Exercise will inform this work. A small reference group of Committee members with direct experience of working with voluntary pre-action protocols will be working closely with Secretariat and Rules Rewrite Drafters over the summer with a view to developing policy in this area and agreeing a recommended protocol for consideration and approval by the full Personal Injury Committee later this year.

It is worthy of note that the consideration of compulsory pre- action protocols will encompass specialist areas such as clinical negligence and that the reference group will have the benefit of input from highly experienced specialist practitioners in that field.

Personal Injury Simple Procedure

The Committee will also be turning its attention to developing simple procedure personal injury rules which will, as far as is possible, adopt the style and language of the new simple procedure rules being developed by the Access to Justice Committee. Until those rules are finalised the existing summary cause rules will continue to apply to PI actions raised in local sheriff courts.

Other Issues

Members will continue to take a keen interest in the work of the Costs and Funding Committee in relation to the recommendations on sanction for the employment of counsel and additional fees.

CONCLUSION

Thank you very much for listening to what I have had to say about the work of the Personal Injury Committee. It is certainly a dynamic and effective Committee of which to be a Member.

I hope you will agree that the Personal Injury Committee has made a significant contribution, in a short space of time, to taking forward important areas of work, not least in the development of the rules for the introduction of the new all- Scotland personal injury court in September this year.

This would not have been possible without the leadership and guidance of the Chair, Lord Jones, and the commitment and drive shown by each individual Committee member.

I am sure that the forward work programme will prove to be equally challenging for members and I am looking forward to playing a part in progressing that work.

I will now pass you over to Judge Joseph d'Inverno who will address you regarding the work of the Access to Justice Committee.