



THE CIVIL COURTS REVIEW

Report of the Scottish Civil Courts Review contains two Volumes and 15 Chapters. In the initial Chapters the Review Body explain that the aims of the Review were to give greater accessibility to the Courts in Scotland to all. It was also an aim to make the Rules fair and encourage early resolution of disputes. Also, to consider the use of information technology, mediation and pre-action protocols with the introduction of a system of formal offers. Existing problems which exist are delays in Civil Actions, a lack of specialisation and the cost of litigation.

PROPOSALS

1. It is proposed to raise the limits in the Court of Session to a minimum of £150,000 upwards and to extend Sheriff Court Actions up to that figure. It is recommended that jurisdiction in Civil Actions in the Sheriff Court be shared between Sheriffs and District Judges, which is a new appointment. These District Judges will hear Actions for less than £5,000 value, Housing Actions and Appeals and Referrals from Children's Hearings.
2. It is also recommended that all Civil business will be heard by designated Sheriffs and subject to the Active Case Management. Most Sheriffs will be designated in one or more specialist areas. At the Case

Management Hearing the Court will decide what form of Case Management is appropriate.

3. It is recommended that the existing Chapter ? under the Court of Session Rules for Personal Injury Actions be extended to the procedure in the Sheriff Court so that litigants can benefit from it. New Rules to this effect are due to come into force by an Act of Sederunt in November 2009.
4. It is also recommended that an all Scotland jurisdiction be confirmed in a specialist personal injury Court in the Sheriff Court. All Personal Injury Actions with a value of over £5,000 may be raised in this Court which may sit in any Sheriff Court on cause shown. It would be initiated in Edinburgh Sheriff Court where machinery for case flow management and for monitoring compliance of the timetable would be used and where the Court would normally sit.
5. It is recommended that there should be a single new set of Rules for cases of £5,000 or less. The new Rules for low value cases should be based on a problem solving or interventionist approach, for which the Court should identify issues and specify what it wishes to see or hear by way of evidence or argument.

6. Insofar as Small Claims Actions are concerned, it is recommended that the Rules be drafted for Party Litigants rather than Practitioners. It is proposed that Actions for Personal Injury up to £5,000 currently dealt with as Summary Cause Actions should be raised under the simplified procedure.

EXPENSES

It is recommended that there be separate tables of expenses, one for claims up to £3,000 and another for claims between £3,001 and £5,000 to include all Housing cases, regardless of the amount of any arrears. There would be a separate table of expenses for any Action which includes a claim for damages for personal injury.

INFORMATION TECHNOLOGY

The recommendations encourage the increased use of IT to support the work of the Civil Courts in Scotland. The use of email as a means of communicating with Courts and Judiciary should be encouraged. The proposed pilot of an online Small Claims and Summary Cause system should be actively pursued. Video and telephone conferencing should be encouraged and consideration given to means of encouraging Court users to communicate electronically. All evidence in Civil cases should be recorded digitally.

MEDIATION AND OTHER FORMS OF DISPUTE RESOLUTION

The Court should raise awareness of different options available and should be supported by mechanisms to enable litigants or their advisors to find a provider of the type of ADR service which they use. They recommend the Scottish Government consider providing a similar type of service in Scotland for claims of £5,000 or less. The service could be run by a co-ordinator with a panel freelance mediator.

It is also recommended the Scottish Government consider establishing an information service by telephone helpline.

PRE-ACTION FACILITATING SETTLEMENT

1. Greater Use of Pre-Action Protocols

It is recommended where a Pre-Action Protocol is adopted compliance with it should be compulsory and the Court should have the power to make orders in relation to expenses and interest for non-compliance.

2. Offers in Settlement

It is recommended that a system should be introduced whereby a Pursuer can put to the Defender a formal offer to settle which would also cover offers made in advance of litigation. It is recommended that either party can make such an offer before the commencement of proceedings.

3. Disclosure of evidence

Earlier and wider disclosure of evidence should be facilitated by a system of active judicial case management backed up by judicial continuity.

4. Use of Witness Statements

Brevity in pleadings should be encouraged.

5. Expert evidence

It is recommended a rule be introduced which clarifies that the overriding duty of an expert witness is to assist the Court – possible power to direct experts to confer.

6. Summary Disposal

It is recommended there be an amendment to the current procedure for Summary Decree open to both Pursuers and Defenders.

7. Managing Time

Time estimates

8. Use of Outline Arguments

To enable parties to agree in advance of the Hearing what points are contentious and narrow scope for submissions.

9. Sanctions for Non-Compliance

Extended powers to dismiss Action, grant Decree and make an award of expenses, disallow a party from amending, order caution for expenses, order immediate payment of expenses, etc.

10. Fixations Litigants

A Civil Court should have powers similar to those in England in relation to Civil Restraint Orders.

11. Delay in Issuing Judgments

A register of cases awaiting written Judgments should be established in which Judgments have been outstanding for more than three months. The Judge should be required to provide an explanation for the delay.

12. Expense of Litigation

It is recommended a Civil Justice Council for Scotland be established and the cost of litigation should form part of the body's remit – it is recommended the current Judicial Tables be reviewed to address concerns about recovery rates. Working group to look at judicial tables, possible reform of block fees for pre-litigation activity and proof preparation, the introduction of a judicial table of fees for Counsel.

A Civil Justice Council for Scotland should be established with responsibility for drafting the Rules of Court.