

COURT OF SESSION

PRACTICE NOTE

No. 4 of 2017

Personal Injuries Actions under Chapter 43

1. This Practice Note has effect from 24 July 2017. It replaces Practice Note No. 4 of 2015 (Personal Injury Actions). Practice Note No. 2 of 2003 remains in force.
2. The purpose of this practice note is to inform practitioners of the court's approach to several procedural matters relating to actions of damages for, or arising from, personal injury. It covers matters relating to Chapter 43 of the Rules of the Court of Session ("RCS"), and takes into account changes made to the RCS by Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No.2) (Personal Injury and Remits) 2015.

Chapter 43

3. RCS 43.8 (applications for sist or for variation of timetable order) provides that an application to sist an action or vary the timetable shall be granted only on cause shown. The purpose of this provision is to ensure that timetables are not varied as a matter of routine and diets of proof consequently discharged. Accordingly, motions enrolled under this rule, including those of consent, must specify the cause relied on. Where it is not clear to the court that cause has been shown the court will, ordinarily, star the motion. The recent removal of "special" from "special cause" is to offer some flexibility where there has been a failure to adhere to the timetable as a result of inadvertence which may be regarded by the court as excusable, having regard to the relevant circumstances. It is not to reverse the court's approach to such matters as expressed in *Smith v Greater Glasgow and Clyde NHS Health Board* [2013] CSOH 178.
4. A motion to vary the timetable to allow an application for a third party notice to be made, even where cause has been shown, may be refused if granting it will endanger the proof diet.
5. RCS 43.9 regulates statements of valuation of claim. These must contain figures. The practice of stating "TBC" (to be confirmed) is not acceptable.
6. RCS 43.10 (pre-trial meetings) provides that there will be a pre-trial meeting between the parties to discuss settlement and to agree matters not in dispute. As explained in Practice Note No. 2 of 2003, the meeting must be a real one (although it can be held

by video-conference). It is the obligation of each party to take all steps as are necessary to comply with both the letter and the spirit of the rule. Where it is apparent to one of the parties that this has not been done, that party should not sign the joint minute in Form 43.10. This will trigger the case being put out By Order. The importance of section 2 of Form 43.10 is stressed. Practitioners are encouraged to make sure of the procedure provided for in Chapter 28A (notices to admit and notices of non-admission).

7. Unless there is good reason for their deployment, such as incomplete instructions or lack of access to factual information, blanket denials or skeletal defences are not an acceptable starting point in the pleadings. The duty of candour exists at all times. It does so to serve both the court and the parties. The court will, ordinarily, bear this in mind when determining a motion for summary decree.

Edinburgh

22 June 2017

*CJM Sutherland*

Lord President