

Direction

No. 2 of 2015

Personal Injury and/or Product Liability Actions relating to the use of Vaginal Tape & Mesh

In exercise of the Lord President's functions under section 4(2) of the Judiciary and Courts (Scotland) Act 2008, and by virtue of the powers conferred on the Lord President by paragraph (2) of rule 2.2 of the Rules of the Court of Session 1994, having consulted the parties to proceedings already raised to which the direction applies and being of the opinion mentioned in paragraph (1) of that rule, I hereby make the following direction.

1. This direction applies to all actions for damages arising from the use of vaginal tape and female pelvic mesh to treat stress urinary incontinence and pelvic organ prolapses.
2. This direction applies to any actions already raised as well as to any new actions and has effect from 22 September 2015.
3. Expressions used in this direction which are also used in the Rules of the Court of Session 1994 have the same meaning here as they have in those Rules.
4. At the coming into effect of this direction, all actions already raised under the provisions of Chapter 43 of the Rules of the Court of Session 1994 are deemed to be appointed by the Lord Ordinary to the procedure in Chapter 42A, in terms of Rule of Court 42A.1.(2). The pursuer in any new action shall be deemed to have been granted authority for the cause to proceed as an ordinary action to which Chapter 42A applies, in terms of Rule of Court 43.1A.(3)(a), without the necessity of applying by motion for such authority, in terms of Rule of Court 43.1A.(1).

5. The provisions set out in this direction apply to the period up to the closing of the record.

6. Following the entering of appearance on behalf of the defenders, the pursuer shall enrol a motion to sist the action for six months. If the pursuer wishes the action to remain sisted after the expiry of six months - and the pursuer has obtained the consent of each of the defenders – the pursuer may, immediately prior to the expiry of the six month period, lodge a letter in the general department that:
 - (a) confirms that all of the defenders’ consent;
 - (b) confirms the period sought, up to a maximum of six months;
 - (c) sets out the progress in assembling the pursuer’s pack (see paragraph 7);
 - (d) states any difficulties encountered in obtaining the required information for the pack;
 - (e) confirms the likely time needed to complete the pack;
 - (f) states any other reason why the action should remain sisted.

That action may remain sisted for the period agreed among the parties and on the authority of the court without need for further procedure. Any party may seek recall of the sist on cause shown.

These procedures shall also apply to any existing action in which the defenders have entered appearance.

7. During the period of sist, the pursuer shall assemble and deliver to each of the defenders the “pursuer’s pack”. This shall comprise:
 - (a) A document identifying all medical practitioners or institutions from whom the pursuer has received treatment;
 - (b) A copy of the pursuer’s complete up-to-date medical records, scans and x-rays;

- (c) In respect of those actions that are based solely on, or include allegations of, product liability:
 - (i) copies of any product identification labels for any tape or mesh product in respect of which an action has been brought or, where such a label is not available, evidence of the identity of the type of product alleged to have been used;
 - (ii) a document confirming whether any of the product has been explanted, whether any of the product has been retained and, if so, its whereabouts;
 - (d) Where relevant and insofar as not already specified in the summons, a note of adjustments specifying:
 - (i) the advice, warnings and/or counselling which the pursuer contends were given to her;
 - (ii) the advice, warnings and/or counselling which the pursuer contends should have been given to her;
 - (iii) the decision which the pursuer would have made had she been given advice, warnings and/or counselling in the terms specified;
 - (iv) the detailed basis of the pursuer's statutory case or cases including a full description of any defect alleged in the product;
 - (v) the basis of the pursuer's common law case against the defenders involved in the case; and
 - (vi) the pursuer's case on how the alleged defect and/or negligence caused the pursuer's alleged injuries.
8. The pursuer shall thereafter within seven days enrol a motion to recall the sist in that action.
9. In the case of actions which have been raised and are sisted when this Direction comes into force, the pursuer's pack shall be assembled and delivered to each of the defenders within six months of the date on which this Direction comes into force.

10. Substantive defences shall require to be lodged in the action by the date six months (or such longer period as the court may order on cause shown) after the date on which the sist is recalled. Skeletal defences will not be acceptable.
11. If the pursuer considers that any part of her medical records (including scans and x-rays) should not be disclosed as part of the pursuer's pack, the pursuer shall: (a) include in the pursuer's pack only such records as the pursuer considers should be disclosed; and (b) intimate to the defenders that the pursuer has withheld a portion of the records. The records withheld shall be produced to the court in an electronic folder marked "confidential medical records" when the motion to recall the sist is enrolled, with a note setting out the reasons why the records have been withheld. The court shall determine, on the application of any party, whether that part of the records should be disclosed.
12. So far as reasonably practicable, the nominated judge will discharge the Court's management function with the aim of securing the efficient disposal of the action.
13. The nominated judge shall give early consideration to whether it is appropriate to identify a lead action or actions to be progressed at an advanced rate in order to give guidance on any generic issues in the actions. The nominated judge will not identify such action or actions without first giving all interested parties the opportunity to appear and make representations.
14. On a regular basis, and not less than every six months, the nominated judge will review any action that remains sisted, in order to avoid unnecessary delay in the determination of those actions.