



SHERIFFDOM OF LOTHIAN AND BORDERS

COVID-19

FURTHER GUIDANCE IN RESPECT OF FORTHCOMING PROOF DIETS SCHEDULED FOR AUGUST 2020 IN THE ALL SCOTLAND SHERIFF PERSONAL INJURY COURT

Introduction

[1] Further to the guidance dated 19 June 2020, this document contains more information for practitioners in relation to proof diets in the All Scotland Sheriff Personal Injury Court (ASSPIC) due to take place between Tuesday 4 August and Friday 28 August 2020, inclusive. This guidance may be applied *mutatis mutandis* to cases in which proofs had been assigned to dates between 17 March and 31 July 2020.

Mode of hearing

[2] At the present time it is not practicable to have significant numbers of persons present in person at court at one time. Therefore, proofs will proceed on a remote basis using Webex technology unless the court otherwise directs. The capacity of ASSPIC to conduct live hearings will be kept under review in line with restrictions easing and the availability of staff resource. There will be no civil jury trials meantime

Suitability of cases for hearing by video conference

[3] The suitability of cases for hearing by video conference (“VC”) will be considered by the court on a case by case basis.¹ It is of the utmost importance that parties consider

¹ There are not yet any reported Scottish cases, but practitioners may find it useful to refer to *A Local Authority v A Mother* [2020] EWHC 1086; *A Local Authority v A Mother* [2020] EWHC 1233; and *SC (a child) v University Hospital Southampton NHS Foundation Trust* [2020] EWHC 1445 (QB).

carefully whether a case is suitable for such and provide the court with appropriate and timely information to enable a decision to be taken.

Pre-proof timetable

[4] The following steps will be superimposed on the timetable.

- a. Without prejudice to a party's right to seek the discharge of a proof diet in the normal way at any stage, the parties must advise the court jointly not later than 4 weeks prior to the date fixed for the commencement of the proof, whether they are agreed that (i) the proof diet is to be retained with a view to being assessed by the court as suitable for a hearing by VC; (ii) the proof diet is to be retained as a notional proof diet only²; or (iii) the proof diet is to be discharged to a later date.
- b. In cases where parties seek a proof by VC, they shall lodge a joint note setting out the information listed in Appendix 1 hereto, not later than 21 days prior to the date of commencement of the proof diet.
- c. Thereafter, the court may fix a procedural hearing by telephone-conference or VC prior to the proof to discuss any issues arising.

Factors to be taken into account

[5] While it is not possible to create a definitive list, it is likely that the following will be relevant to determining the suitability of any one case for hearing by VC.

Number of issues to be tried

² As with proof diets due to take place from 23 June to 31 July, the timetables will remain in force but the proof diets, while retained, will not proceed and in the absence of settlement or discharge at the instance of parties will be discharged by the court 5 days before the diet and the cases re-programmed for early 2021.

[6] The extent of agreement or disagreement over primary liability (duty, breach thereof, causation); contributory negligence; and quantum. (Practitioners may wish to consider whether in some cases a liability only proof would be of assistance).

Scope and nature of issues to be tried.

[7] Are all the issues to be tried clear and well defined or is there a risk of a hearing punctuated by objections?

Number of parties

[8] A case with multiple parties, especially if this increases the number of issues to be tried e.g. disputes between or among defenders as well as between the defenders and the pursuer.

Sources of evidence

[9] What is the evidence that is to be adduced and assimilated by the court e.g. is it written or oral, given by a skilled or lay witness, contested or uncontested, or factual or expert evidence?

Number of witnesses

[10] A large number which increases witness management and scheduling problems for the parties and the court.

Duration of proof

[11] Proofs which are likely to extend to multiple days or exceed the court days allocated.

Type of witnesses

[12] Involvement of party litigant.

[13] The involvement of lay witnesses who have communication or language issues.

[14] The giving of evidence of a sensitive or private nature (see below).

[15] Evidence from multiple skilled persons and/or which is of a highly technical or complex nature or requires reference to multiple documents.

Connection and privacy

[16] Witnesses who cannot access suitable phone internet connection and appropriate location where they can participate undisturbed. Experience indicates that WIFI strength and bandwidth are important for successful VC proof.

Public or Private Hearing

[17] The need for evidence to be heard in private.

Documents

[18] The requirement for large numbers of documents to be put in evidence or referred to.

Conclusion

[19] The approach outlined in this guidance will be kept under review and may be revised in the light of experience. Further information and guidance will be issued in due course in respect of any cases selected to proceed to proof by VC.

K.J. McGowan,

Administrative Sheriff

All-Scotland Sheriff Personal Injury Court

26 June 2020

Appendix 1

| Information to be provided to court in respect of personal injury proof diet which parties consider is apt for VC hearing | |
|---|--|
| Case Number | |
| Case Name | |
| Date of commencement of proof | |
| Length of proof diet allocated | |
| Estimated duration of proof | |
| Liability List of all matters in dispute - Occurrence of accident Existence of duty Breach of duty Causation Other | |
| Quantum | |
| List all heads of claim | |
| Heads of claim not agreed | |
| If valuations show significant disparity, what is the explanation? | |
| Agreement of evidence - what averments remain in dispute? | |
| Are parties ready to proceed to proof? | |
| Witnesses | |
| Total number to be called | |
| Which averments is each speaking to? | |
| Estimate of how long the evidence of each will take (evidence in chief, cross-examination and re-examination) | |
| Where will witnesses be located when giving evidence? | |
| Skilled witnesses | |
| The nature and extent of the dispute between skilled persons | |
| Can agreement be reached between the parties on the relevant literature upon which skilled persons intend to rely | |
| Whether there has been a meeting between skilled persons, or whether such a meeting would be | |

| | |
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| useful | |
| Scope of proof | |
| Would a proof on a particular issue allow scope for the matter to be resolved? | |
| Documents | |
| Can a bundle of documents to be used at the proof be agreed? | |
| Procedural Hearing | |
| Do parties consider that a procedural hearing is required? | |
| If so, on what matters do they wish the court to give direction? | |
| Any reason(s) why should this proof be treated as the priority proof? | |