

COURT OF SESSION

PRACTICE NOTE

No. 1 of 2013

Personal Injuries Actions

1. It has been almost ten years since the Chapter 43 rules (actions of damages for, or arising from, personal injuries) came into force and whilst there is much to commend about their usefulness it appears that there has, of late, been some relaxation in their application, by both the court and those appearing before it. The purpose of this practice note is, therefore, to inform practitioners of the court's renewed approach to several procedural matters and, in turn, of what the court expects from them. It also presents the opportunity to introduce and explain the new Chapter 42A (Case management of certain personal injuries actions) procedure. Practice Note No. 2 of 2003 remains in force.
2. Rule 43.8 (applications for sist or variation of timetable order) provides that an application to sist an action or vary the timetable shall be granted only on special cause shown. The purpose of this provision is to ensure that timetables are not easily varied and diets of proof consequently discharged. Accordingly, motions enrolled under this rule, including those of consent, must disclose what the special cause being relied upon is. Where it is not clear to the court that special cause has been shown the court will, ordinarily, star the motion.
3. Rule 43.9 (statements of valuation of claim) practitioners are reminded that these must contain figures. The practice of stating "TBC" (to be confirmed) will cease.

4. Rule 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 meeting and it is the obligation of each party to take all such steps as are necessary to comply with the letter and the spirit of the rule. Where it is apparent to one of the parties that this has not been done, then that party should not sign the joint minute in Form 43.10, thus triggering the case being put out By Order. Practitioners are also reminded of the importance of section 2 of Form 43.10 and are encouraged to make use of the procedure provided for in Chapter 28A (notices to admit and notices of non-admission).
5. Blanket Denials. Practitioners are reminded that, 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 and does so to serve both the court and the parties. The court will, ordinarily, bear this in mind when faced with a motion for summary decree.
6. Act of Sederunt (Rules of the Court of Session Amendment No.3) (Miscellaneous) 2013 will come into force on 1 May 2013.
7. Chapter 42A will apply to clinical negligence cases withdrawn from Chapter 43 and other complex personal injuries actions, including catastrophic injury cases. The purpose of the Chapter is to allow the court, at a procedural stage, to identify and resolve issues that are known reasons for seeking the variation of the timetable or the discharge of the proof diet at a later date. This “frontloading” of the action will allow the court to make more informed case management decisions when it comes to fixing further procedure at the hearing on the By-Order (Adjustment) Roll. The timing of some of the actions to be completed in advance of this hearing may seem demanding but the court is of the view that as the adjustment period can be extended in

appropriate circumstances there will be sufficient flexibility to allow for the completion of these actions. Further, in order to allow the court to fix a date for the proof at the hearing on the By-Order (Adjustment) Roll practitioners are reminded to liaise with the Keeper's Office in advance of the hearing regarding potential dates for proof.

8. Practitioners should note the terms of rules 42A.4 (5) and (6) which provide that the Lord Ordinary may fix a further hearing on the By-Order (Adjustment) Roll and may make such orders as he thinks necessary to secure the speedy and efficient determination of the action, in particular, to resolve any matters arising or outstanding from the written statements (for further procedure) lodged by the parties in advance of the first hearing on the By-Order (Adjustment) Roll. The court will use this power to ensure that parties are ready to proceed to proof and provide an accurate estimate of the time required, before fixing a proof diet.
9. Practitioners should also note the terms of rule 42A.5, which increases the role of the Lord Ordinary in respect of the pre-proof timetable.
- [10. Practitioners should note that under the transitional provisions of the Act of Sederunt the Lord Ordinary may, having given all parties an opportunity to be heard, direct that Chapter 42A is to apply to an action raised before 1 May 2013. Parties seeking to have actions appointed to Chapter 42A are encouraged to apply as early as possible under the transitional provisions. The court will use the powers under Chapter 42A to make such orders as necessary to secure the speedy and efficient determination of the action irrespective of the stage at which the action has reached.] *

Brian Gill

Lord President

Edinburgh

24 April 2013 (*and 17 June 2013)

* **Note:** Paragraph 10 was inserted on 17 June 2013.