



Stewart K (Karen)

From: McKeand G (Glynis)
Sent: 02 November 2004 12:54
To: 'Margaret Gibson'
Cc: Stewart K (Karen)
Subject: RE: Sheriff Court Rules Counsel - Consultation Paper

Many thanks for this response. A more formal acknowledgement will follow in due course.

Kind regards,

Glynis

-----Original Message-----

From: Fiona Blyth [mailto:FBlyth@Paul-Williamsons.co.uk] On Behalf Of Margaret Gibson
Sent: 02 November 2004 12:42
To: McKeand G (Glynis)
Subject: Sheriff Court Rules Counsel - Consultation Paper

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Dear Sirs,

Sheriff Court Rules Counsel
Consultation Paper

Thank you for distributing a copy of this Consultation Paper.

First Recommendation

We, as a firm, approve of the first recommendation that there should be progression towards the creation of an electronic office with electronic filing of relevant documentation.

We think as part of this, however, it is critical that an adequately secure system is developed and that there is a system of receipts. It is our experience when lodging paper material with the court that it is vital to obtain a receipt to avoid the inevitable questions which can arise, should a document go missing at any stage in the process.

It will also be important to have appropriate protocols in relation to the format, heading and dating of documents to be lodged in this fashion. We have in mind, in particular, Closed Records which often require to be lodged on a number of different occasions during a process and there is scope for confusion in relation to a Record which has, in particular, been amended on more than one occasion.

Finally, on this head we agree that electronic transmission and storage of productions should be dealt with at a later stage. That involves particular difficulties, not least the requirement to have access to scanning technology which may not be available to all on which to access the proposed electronic office.

02/11/2004

### Second Recommendation

We agree in principal that interlocutors should be transmitted electronically. There will be an issue, however, in respect of such interlocutors as are required for formal purposes, for example, a Motion approving commission and diligence or more fundamentally, a decree. It may be necessary to consider at this stage of the law governing electronic documents whether documents which have binding implications for third parties will require to be transmitted in paper format, the electronic version being restricted to intimation of dates, for example, a Form G5.

### Third Recommendation

We did not feel qualified to comment on the correct system by which the proposed electronic office should be operated. We have set out earlier the essential requirement of positive confirmation of receipt. The issue of security is, in our view, paramount.

### Fourth Recommendation

We would agree with this recommendation providing that there is the necessary investment in training within the court system itself. In order for this system to work efficiently, it would be necessary not only for solicitors who require to access courts to be familiar with its *modus operandi* but also the various Sheriff Clerks across the Sheriff Court districts. Providing there is an assurance of adequate training, we would agree that the system should be introduced across all courts in as short a timescale as can be achieved.

### Fifth Recommendation

We agreed that there requires to be some overlap with the existing paper system. It will be necessary for there to be clarity, however, in relation to the issue of electronic or hard copy communication to avoid a situation where there is uncertainty as to whether a document has been lodged or where it might be accessed. We wonder whether in each case parties acting could be required to advise whether they propose to work electronically or in paper and to be committed thereafter to that choice. We foresee a difficulty within the court system itself if some documents were available electronically and others only in paper form, or indeed in reverse. So far as the expiry of the two year period is concerned, some thought may need to be given to live cases which have started in paper format which will still be in existence when the two year period expires. There will need to be thought given to court hearings themselves during which the "process" is often referred to. Will the Sheriff and agents have access to terminate?

### Sixth Recommendation

We agree. Thought may require to be given to relevant statutory provisions where, as we have set out earlier, documents are used for service on third parties.

### Seventh Recommendation

We incline to agree that at this stage, permitting parties to view online would lead to difficult issues of security. We are further not clear that there should be such a requirement where documents are correctly being copied to other parties. It may be sensible, however, to create a facility where the court file could be inspected, as is presently the case, at the Sheriff Clerk's office. It is not unusual for there to be a case where there is a question mark on whether, for example, Defences for another Defender have in fact been lodged in process or a need to identify by means of a Notice of Intention to Defend lodged by another party who

that other party is being represented by. It does seem to us, however, that such information could be gained from a personal visit to the Sheriff Clerk's office as presently occurs.

#### Eighth Recommendation

We entirely agree that Small and Summary Causes should be centralised. There does seem to us to be sufficient significant duplication between the Sheriff Clerk functions within the various courts and indeed a central system works very well within the employment tribunals system, cases only being remitted to their local tribunal at the point when a hearing is going to be fixed.

#### Ninth Recommendation

Again, we agree that the Sheriff Clerk should serve. There should be a significant time saving on this and again at a cause of the existing employment tribunal practice. It does, however, crucially depend on the reliability of the court service and the revision of adequate training to the Clerks who are to operate this system. We do think it will also require confirmation to agents that service has been effected and indeed the date on which service has been effected. Such time limits are critical when, for example, matters are being diarised for the point of view when checking when or if any intention to defend is being lodged.

It may be necessary to consider whether there should be an automatic minute for decree if no Notice of Intention to Defend has been intimated of the appropriate notification being sent to agents.

I trust these comments are of assistance.

Yours faithfully,

**Margaret M. Gibson**

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