



Compass Chambers

ALL-SCOTLAND SHERIFF PERSONAL INJURY COURT AND PERSONAL INJURY UPDATE

Calum Wilson, Advocate
Compass Chambers

26 May 2017



Compass Chambers

ASPIC

- The Courts Reform (Scotland) Act 2014
- Received Royal Assent on 10 November 2014
- Extension of the exclusive jurisdiction of the sheriff court to all actions with a value up to £100,000 (with effect from September 2015)

- 22 September 2015
- Jurisdiction over the whole of Scotland
- ASPIC based in Edinburgh
- ASPIC deals solely with personal injury claims



ASPIC

- **The All-Scotland Sheriff Court (Sheriff Personal Injury Court) Order 2015** (SI 2015 No. 213) – in force 22 September 2015
- Jurisdiction in actions for damages arising from personal injuries or the death of a person where:
 - The sum sought exceeds £5,000, or
 - The proceedings concern a work accident for payment of a sum exceeding £1,000, or
 - A sheriff has certified that the importance or difficulty of the proceedings make it appropriate to transfer the proceedings to the SPIC
- PURSUERS, with actions meeting the above criteria, may CHOOSE whether to bring their claim in ASPIC **OR** at their local sheriff court



Compass Chambers

ASPIC - “The Team”

- Sheriff Fiona Reith, QC
- Sheriff Peter Braid
- Sheriff Gordon Liddle
- Sheriff Kenneth McGowan – Administrative Sheriff



ASPIC: The New Rules

- **Chapter 36**
- 36.G1(1) – on lodging defences the sheriff clerk will allocate a diet of proof no earlier than 4 months and no later than 9 months after the first lodging of defences and issue a timetable dealing with third party notices, commission for recovery of documents, adjustment, lodging a SOV, lodging a record, lodging a list of witnesses/productions and lodging a pre-trial minute
- Can enrol to vary “on cause shown”
- Pre-trial Conferences in the sheriff court are now to be known as Pre-trial Meetings (in line with current C of S terminology)
- Must be attended by parties in person OR by video conference
- A party who is not available must have a representative available and to whom instructions can be given in relation to settlement



ASPIC: The New Rules

MOTIONS

- Must be by email (unless application made for an opt out)
- In practice, delays were being experienced: staff shortages, higher than anticipated volume
- Must be precise regarding terminology and give sufficient information
- Based on most recent available data, of 1230 unopposed motions, 478 (38.9%) were granted and 752 (61.1%) were sent to Sheriff for consideration
- Monday 'motion' court



Compass Chambers

ASPIC: The New Rules

- Opposed Motions
- New arrangements as of 2 May 2017
- Short Opposed Motions
- Long Opposed Motions



Compass Chambers

ASPIC: The New Rules

PROOFS

- To be allocated to 2 week sitting
- Potential difficulties in citing witnesses?
- Initially 50 cases allocated per assize
- Increased to 150



ASPIC: Ch. 36A

Sheriff Court Case Management Procedure for certain injury actions (clinical negligence, catastrophic injury or complex cases)

–Compulsory procedural hearing following closing of the record to set further procedure

–Lodging of written statements of proposals for both parties 7 days before the procedural hearing (containing information about matters including identification of matters in dispute, state of preparedness, proposals for further procedure, identification of witnesses and the duration of their evidences, exchange of witness statements, expert reports, duration of proof, explanation for any disparity between the parties' valuations, etc

–Preparation of a full written statement of proposals will be required



ASPIC:Ch.36A

- Requires front loading of preparation with the targeting of the procedural hearing as essential
- Where a proof is allowed a timetable will be issued by the court specifying dates for a hearing, valuations, witness lists, productions, a pre-trial meeting and a further pre-proof hearing



ASPIC: Remit to COS

- Where the sheriff court has exclusive jurisdiction (i.e. under £100,000)
 - A request to remit can be made by a party
 - A 2 stage process
 - (i) if the sheriff considers that (a) the importance or (b) the complexity of the proceedings make it appropriate to do so, a remit request to the C of S MAY be allowed (a discretion): and
 - (ii) Once a remit request is lodged with the C of S, a hearing before a judge in the Outer House will be determinative of the question of remit
 - The decision of the Sheriff and the Judge can be appealed
 - B v NHS Ayrshire & Arran [2016] CSOH 120; 2016 SLT 977



Compass Chambers

ASPIC

- In 2016, based on the last set of statistics available, average monthly figure of actions raised: 226
- Increase from 156 previously
- Up at almost same rate as being raised under Chapter 43 in Court of Session



Compass Chambers

ASPIC

Breakdown of actions raised by type 1 March to 31 May 2016

Accident at Work	264	38.9%
Asbestos	11	1.6%
Chapter 36A	6	0.9%
Clinical Negligence	24	3.5%
Live Mesothelioma	0	
Other	132	19.5%
Pleural Plaques	68	10%
Post Mesothelioma	0	
Relatives Claim	0	
Repetitive Strain Injury	0	
Road Traffic Accident	168	24.7%
Vibration White Finger	6	0.9%
Total	679	



ASPIC: COST

Fees payable from 22 September 2015:

- Initial writ - £210 compared to £94
- Defences - £210 compared to 394
- Motion or minute (or written opposition) - £53 compared to £47
- Fixing proof/trial/debate/hearing on merits - £58 compared to £53
- Hearing fee - £75 compared to £65
- Record (personal injury case) - £105 **compared to £111**
- Citation of civil jury - £292
- Certified copy of document - £18



Pitfalls

- Delays continue to be experienced in procedural matters
- Be careful therefore in any motions to vary a timetable
- Many motions are calling even when unopposed
- Beware the non productive PTM !
- Lodge paper apart with any motion of substance
- Timelines
- Lists of Authorities



Pitfalls – some cases

- *Smith v Lothian Supply Company Ltd*, Sheriff Mackie, 14 September 2016
- *CM v Aviva Insurance UK Ltd* 2017 Rep.L.R. 32
- *Devine v Lawrie* [2016] SC EDIN 83, 2016 G.W.D. 40-712



Sanction for Counsel

- S108 of Court Reform (Scotland) Act 2014
- *Dow v M&D Crolla Ltd* 2016 Rep.L.R.50
- *J's Parent and Guardian v M&D (Leisure) Ltd* 2016 Rep.L.R. 54
- *Brown v Aviva Insurance* [2016] SC Liv 84
- *Cumming v SSE plc* 2016 Rep LR 75 – [2017] SAC(Civ) 17



- “Section 108 requires the court to consider whether it is reasonable to sanction the employment of counsel in all the circumstances of the case. If the court considers it reasonable it must grant sanction. Accordingly, the court has discretion to consider each case on its own merits. ...we do recognise that the statutory compulsitor requiring the court to grant sanction, if it is reasonable (section 108(2)) is curiously otiose...It may simply be emphasis signifying the intention that counsel would play a real and meaningful role in the work of the sheriff court in its new and expanded jurisdiction.”



Compass Chambers

- Sanction for Senior Counsel?



Civil Jury Trials

- First one took place May 2017 before Sheriff Mackie
- Damages agreed at £15,000 at the PTM.
- The jury returned a verdict in favour of the pursuer by a majority BUT
- Found Contributory Negligence on the part of the pursuer's son – unanimous.
- Jury found the child had contributed to the accident to the extent of 96.5% - unanimous.

Personal Injury Update (1)

Discount Rate

- The Lord Chancellor announced a new discount rate under the Ogden Tables – 27 February 2017
- Previously 2.5%
- Changed to -0.75%
- Changed in England and Wales as from 20 March 2017



Compass Chambers

- The Damages (Personal Injuries) (Scotland) Order 2017 – 27.03.17
- Changed in Scotland to -0.75%.
- As of 28.03.17
- Ongoing Consultation.

SECTION 1(2) DAMAGES ACT 1996

- June 2001 Lord Chancellor fixed rate of 2.5% based on ILGS. Applied in Scotland as from 2002
- S 1(2) court may take a different discount rate if any party “shows that it is more appropriate in the case in question.”
- If there are exceptional circumstances which justify it

Personal Injury Update (2)

Pursuers' Offers

- A device whereby a pursuer can offer to settle an action at a particular sum
- The incentive to do so ? You can get more in expenses if the defenders fail to “beat” the tender
- Previously tried in the 1990s but withdrawn after the Inner House held the previous provisions to be *ultra vires* –in Taylor v Marshall Food Group Ltd 1998 SC 841 in terms of s5 of the Court of Session Act 1988 but that section has been repealed



Compass Chambers

Pursuers' Offers

- Reintroduced without any fanfare by the Scottish Civil Justice Council
- Came into force on 3 April
- Effective in both the the Court of Session and the Sheriff Court



Pursuers' Offers

- Pursuer seeks to settle at a fixed sum, inclusive of interest, together with expenses
- Defender has a period of time to accept the offer. It must do so by the “appropriate date” which means the date by which a pursuer’s offer could reasonably have been accepted
- If not then expenses implications...
- “...is a sum corresponding to half the fees allowed on taxation of the pursuer’s account of expenses, in so far as those fees are attributable to the relevant period, or in so far as they can reasonably be attributed to that period”
- Seems to be no choice but to allow the 50% uplift other than on cause shown
- Assumes that “the court is satisfied that the pursuer’s offer was a genuine attempt to settle the proceedings”
- What does that mean ?

When best to choose a pursuer's offer?

- With recalcitrant defenders or perhaps where multiple defenders squabbling amongst themselves as to who is liable
- If multiple defenders, offer will probably only “bite” once they all accept although any one defender could accept the offer meantime
- Should thought be given to allowing a similar uplift for defenders when their tenders are accepted late or not beaten ?

Personal Injury Update (3) Guidance to Juries)



Compass Chambers

- *Hamilton v Ferguson Transport (Spean Bridge) Ltd*
2012 S.C. 486
- *Bridges v Alpha Insurance A/S* [2016] CSOH 114
- *Stanger v Flaws* (17 June 2016 Lord Clark)
- Practice Note (No. 1 of 2016)

Personal Injury Update (4)

Fatal Jury Awards

- *Stanger v Flaws*, 17 June 2016, Lord Clark presiding
- Deceased aged 64
- Range of awards to family from trial judge
- Widower aged 72 at trial- £80,000 - £120,000
- Adult sons in their 40s - £30,000 - £70,000
- Teenage granddaughters - £12,000 - £28,000
- Awards :
- Widower – £120,000
- Children - £50,000
- Granddaughters - £15,000 and £20,000



Possible standard ranges ?

- For the loss of spouse/partner - £80,000 - £120,000
- For the loss of a parent - £30,000 - £60,000
- For the loss of a grandparent - £12,000 - £20,000
- What for the loss of a child ?
- Possibly £60,000 - £100,000

Personal Injury Update (5) “Relatives”

- D v Graham’s Dairies Ltd [2016] CSOH 151
- Hunter’s Executrix Nominate v Advocate General for Scotland 2016 SLT 1287



Compass Chambers

ALL-SCOTLAND SHERIFF PERSONAL INJURY COURT AND PERSONAL INJURY UPDATE

**Compass Chambers
Parliament House
Edinburgh
EH1 1RF
DX 549302, Edinburgh 36
LP 3, Edinburgh 10
www.compasschambers.com**

**Calum Wilson
Advocate
Mobile: 07739 639328
Calum.wilson@compasschambers.com**

**Gavin Herd
Practice Manager
Phone: 0131 260 5648
Fax: 0131 225 3642
gavin.herd@compasschambers.com**