I firstly attach the respondent information form which I confess was about the only document related to the consultation which I easily understood!

I am rarely involved in the Court of Session and have therefore limited my response to the proposed changes to the Ordinary Cause Rules in the Sheriff Court.

I am further restricting my response to Question 10 for reasons explained in the response:

The proposed Rules are far too cumbersome and complex and I have some doubt they would work well in practice.

For example, if a change from the presumed mode of hearing is to be intimated by Motion, will there be sufficient time between the date of intimation of the hearing and the hearing date itself, in which to have a hearing on the Motion? What happens when the reason for a change of mode only arises 'at the last minute'?

I would propose that all hearings should be presumed to be handled electronically (either written, oral or video), unless:

(i) the Court indicates at the outset or any subsequent stage of the case that any particular hearing be treated as 'live' or hybrid;

(ii) Either party, after consultation with the other party or parties, and from which consultation there is no agreement, applies to the Court by electronic written Submission (not Motion) for a live hearing; or

(iii) Both or all parties submit a joint Submission for a live hearing; after consultation between them where an agreed position is reached.

In respect of (ii) and (iii), the Court could either fix a hearing (electronic or live) to discuss the mode of hearing, or resolve the matter without further consultation (though I wonder if thought has been given to a right of appeal?)

This would give flexibility to a system which has yet to be tested. Once the system beds in, consideration could then be given to prescribing certain hearings as live or electronic. What is proposed *at this stage* is too rigid in my view. I suspect the detail is designed to cover all bases, but in doing so, it's in danger of simply confusing everyone!

It is trite to state the following, but I will anyway: the purpose of any form of communication in a court (or anywhere else for that matter) is *effective* communication. The way in which that communication is relayed is secondary to that purpose. The proposed rules suggest to me that the authors have put more importance on the method of communication rather than the effect of communication.

Regards

Graham A Fordyce

Solicitor & Notary Public