

Scotland - Response to COVID-19

As is to be expected, the current COVID-19 crisis is affecting all aspects of commercial and administrative life. As lawyers working in the claims sphere, the current requirements for self-isolation; the non-availability of our own staff, together with our clients, counsel and experts; and restrictions on travel and contact with others, are all creating significant challenges.

We are supportive of the aims of maintaining a functioning court system, to continue to deliver access to justice. It is clear that it will not be possible to continue with 'business as usual' and we welcome the steps that have already been taken to mitigate the problems. The statements of policy from the Court of Session, Sheriff Appeal Court, and All-Scotland Personal Injury Court are appreciated. In particular, we welcome greater use of telephone facilities, the submission of electronic documents, and the use of written submissions, to avoid the need to attend court.

The current crisis requires all those involved in civil litigation to take account of the current circumstances in delivering upon the overriding objective.

APIL and the ABI have agreed a position in relation to cases where limitation would possibly be an issue in the next few months. A schedule is attached setting out the basis of the agreement.

Parties should take a consensual approach in relation to time limits and not seek to take unfair advantage of a party not complying with a procedural requirement. Particular regard should be had to service of an Initial Writ or Summons, and the lodging of a Notice of Intention to Defend or Defences.

We would like to emphasise that parties and their representatives are expected to behave sensibly in the current crisis and that we would hope that the judiciary will take a dim view of behaviour that seeks to abuse the situation.

We hope that the current crisis will be short-lived and that it will be possible to return to normal conditions as soon as possible. Until then we are committed to taking all steps to work effectively alongside the Scottish Court and Tribunal Service and the judiciary in maintaining effective dispute resolution.

APIL and FOIL



Schedule

AGREEMENT ON LIMITATION

1. The Parties

The Parties to this Agreement are listed on the ABI website here: <https://www.abi.org.uk/products-and-issues/choosing-the-right-insurance/motor-insurance/coronavirus-protocol/>.

2. Limitation

For the purposes of sections 17 and 18 of the Prescription and Limitation (Scotland) Act 1973 (“the 1973 Act”), in respect of any claim for damages for personal injuries which would otherwise “time bar” in accordance with the 1973 Act between 30 March 2020 and 17 June 2020 (“the limitation period”) no limitation defence will be raised by the parties in respect of said period.

3. Reviews

Given the uncertainty of the present situation, and the potential for an extension of the limitation period, Parties are agreed that this Agreement will be reviewed no later than week commencing 8 June 2020.

APIL and ABI

1 April 2020

Reviewed 19 May 2020