

## INSIGHT

### Commercial Court Procedure in Scotland

An overview of commercial court procedure in Scotland, both in the Court of Session and the Sheriff Courts.

Court actions are often perceived to be an inherently slow, cumbersome and costly means of resolving disputes. The cost of catering for vast range of disputes which come before the courts is often the loss of expediency.

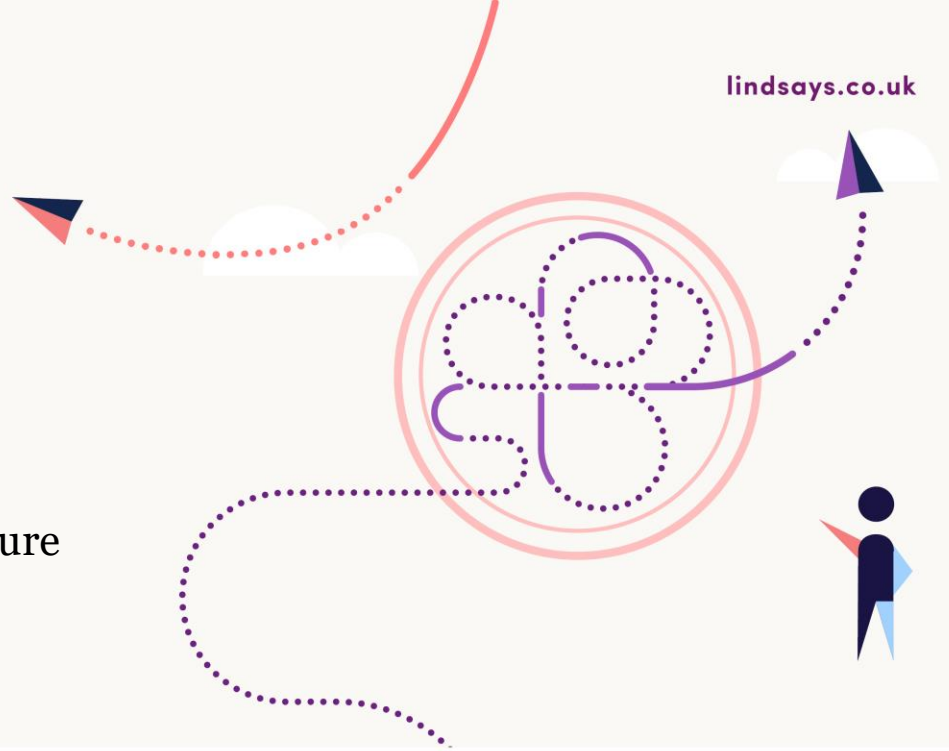
Commercial court procedure, both in the Court of Session and the Sheriff Courts, is an exception to that paradigm – designed specifically to expedite the resolution of commercially orientated disputes by means of specialisation, both in terms of the procedure itself and the judges (and Sheriffs) who preside over it.

#### **The Commercial Court of the Court of Session**

The Court of Session is the preeminent court for civil disputes in Scotland, sitting both as a court of first instance (in the “Outer House”) and an appeal court (in the “Inner House”).

The Commercial Court of the Court of Session was introduced in 1994. The Commercial Court is founded on a concise set of principles underpinning the nature of actions which come before it, the manner in which they are managed and the means by which they are resolved. Those include:

- Actions which come before the Commercial Court must arise out of or be concerned with a transaction or dispute of a commercial or business nature, contractual or otherwise (including, for example: commercial



## Commercial Court Procedure in Scotland

---

contracts/ leases; sale/ hire purchase/ carriage of goods; insurance; banking; financial services; construction contracts; etc.).

- All proceedings in a commercial action are presided over by a specialist commercial judge – appointed by the Lord President and with a particular expertise in commercial disputes.

Unique to commercial actions, the same commercial judge will manage the action from inception to proof (or other substantive procedure as appropriate), albeit, the proof itself may be presided over by a different commercial judge.

- Prior to raising an action in the Commercial Court (or transferring an action to it from another court) parties are ordinarily required, as a prerequisite, to have made efforts to sufficiently focus the issues in dispute by engaging in pre-litigation communications and investigation (including: substantive correspondence regarding the matters in dispute, exchanging pertinent documents, obtaining expert reports, etc.).

In addition, parties are now directed to have considered and discuss the suitability of alternative dispute resolution both prior to raising a commercial action and in advance of the preliminary hearing (which is the first occasion on which the action will call in court).

- The procedure itself in commercial actions is orientated toward expediency and pragmatism over the more traditional formalities which underpin ordinary actions.

For example: parties are encouraged to draft written pleadings in abbreviated form; the number of procedural hearings is kept to a minimum and their role is primarily to drive the action forward; commercial judges have a broad discretion to require parties to progress

the action and fix deadlines; emphasis is placed on parties agreeing uncontested evidence or evidence capable of agreement (including, expert evidence); written witness statements are permitted to stand as evidence-in-chief in place of oral evidence taken from witnesses at proof (albeit, witnesses can still be cross-examined by opposing Counsel); and technology is embraced with motions being enrolled by email and productions permitted to be lodged on USB memory sticks.

Due to the expediency and pragmatism of commercial actions and the flexibility afforded to facilitate a tailored approach to commercially orientated litigation, including the integration of IT, the Commercial Court has emerged as the most effective vehicle for resolving high value commercial disputes in Scotland.

### **Sheriff Court Commercial Actions**

The Sheriff Courts deal with the majority of litigated cases in Scotland with jurisdiction over a range of disputes, including, actions for payment valued under £100,000.

Most of the major Sheriff Courts in Scotland offer commercial procedure, including, Glasgow, Edinburgh, Aberdeen, Inverness, the Borders and Tayside Sheriff Courts.

Commercial procedure in the Sheriff Courts is subject to similar rules as the equivalent procedure in the Court of Session. Commercial actions must be of a commercial or business nature. Generally, commercial actions are presided over by specially appointed Sheriffs.

The court timetable is expedited significantly compared to ordinary actions in the Sheriff Courts. For example, defences require to be lodged within



## Commercial Court Procedure in Scotland

---

7 days of a Notice of Intention to Defend (NID) being lodged by the defender. Thereafter, a Case Management Conference will be fixed within 14 to 28 days. By comparison, an ordinary action would first call in court 10 weeks after a NID is lodged.

Unlike ordinary actions, after an action has become defended, the first major procedure milestone is a Case Management Conference – essentially a telephone conference call, avoiding the need for parties to attend court – at which the court has a wide discretion to make a variety of orders (including, requiring parties to exchange documents or agree evidence, etc.) to focus the issues in dispute or, indeed, resolve the action in an efficient manner.

The primary advantage of the commercial procedure over ordinary procedure in the Sheriff Courts is the relative speed and efficiency with which actions are managed and ultimately resolved.

Whereas, the main distinction between commercial actions in the Sheriff Courts and the Court of Session is cost – the former being significantly less expensive in terms of court fees for hearings, document lodging fees, etc.

Equally, the Commercial Court stands as an attractive option for prospective litigants throughout the UK with interests north of the border.

Whether in the Court of Session or the Sheriff Courts, the specialist commercial procedure offered by both stands as an attractive option for prospective litigants throughout the UK with interests north of the border.

April 2019

