



# **Scottish Civil Justice Council**

## **Analysis of responses to the questionnaire on the mandatory use of Civil Online**

**Access to Justice Committee**

**June 2020**

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*Annex A – List of Respondents*

## SECTION 1: INTRODUCTION

### Purpose

1. The purpose of this report is to provide an analysis of the responses received from the Access to Justice Committee's questionnaire on the Civil Online rules. The questionnaire was issued on 23<sup>rd</sup> February 2021 and allowed eight weeks for responses, closing on 13<sup>th</sup> April 2021.

### Background

2. Civil Online is an online portal, operated by the Scottish Courts and Tribunals Service (SCTS), which is available to all court users for submitting or responding to a Simple Procedure case. The SCTS also offers an accompanying Application Program Interface ("API") which can enable professional firms to submit Simple Procedure claims in bulk, should they wish to do so.
3. The questionnaire sought views on the rules contained within the *Act of Sederunt (Simple Procedure Amendment) (Civil Online) 2020* which came into force on 1<sup>st</sup> December 2020 and is due to expire on 30<sup>th</sup> September 2021. The rules are available on the [Legislation.Gov website](#).
4. The rule change temporarily modified the existing Simple Procedure rules, so as to require all simple procedure claims to be submitted using Civil Online. The rules provide an exception that any court user unable to submit a claim online may, with the permission of the Sheriff, be permitted to submit their claim on paper.
5. The intention of the questionnaire is to help inform the Access to Justice Committee on the effectiveness of the temporary rule change. The views received will also assist the Scottish Civil Justice Council in considering whether to extend or adjust the temporary rules when they expire on 30<sup>th</sup> of September 2021.

### Responses Received

6. The questionnaire was published on the Council's website and was open to members of the public, the judiciary, professional users and any others with an interest in the civil court rules and procedure. It was also sent directly to key stakeholders and publicised on the Council's social media channels.
7. The Committee received 12 responses. 8 respondents indicated that they were content for their responses and address to be published on the Council's website. 1 respondent indicated they were content for their response to be published but withheld their address. 9 responses in total were published on the Council's website on 12<sup>th</sup> May 2021 and those respondents are listed in **Annex A**. 3 respondents indicated that they wished for the content of their response and their details to remain confidential.

## SECTION 2 – SUMMARY OF RESPONSES

8. This section summarises the responses received in line with the 19 questions that were posed within the questionnaire:

### User Experience of the Digital Interfaces

*Q1 - Do you have any general comments about using Civil Online to submit claims?*

9. There were 8 responses to this question, with 4 respondents making no comment. There was generally positive feedback on using Civil Online but some practical issues were identified by professional firms who have decided not to take up the options for bulk claims, and there were further practical issues with lodging documents, especially with large files.
10. A key theme was the known concerns regarding mandating any digital system for use by those who are digitally excluded and unable to access online services for reasons including disability, older age and general confidence in completing online forms. Even where a user is confident in using IT systems, they may still not feel confident in engaging with a complex legal process.
11. Two respondents also referenced a 2018 news release from SCTS where they had concluded that a commitment had already been given that there would "always be an alternative" provided to using Civil Online<sup>1</sup>.

*Q2 - Were there benefits to using Civil Online to submit your claim and if so what were these?*

12. There were 5 responses here, with 2 respondents indicating that the benefits include that it is more efficient and easy to access documents digitally, as well as being able to submit a claim at any time. 3 respondents did not see any benefits and noted that the process can actually take longer than paper submission in some cases.
13. Some suggested opportunities for improvement included that:
- Submissions should be allowed in different languages; and
  - There should be interactive assistance for people with disabilities

*Q3 - Did you have any difficulties using Civil Online when submitting a claim? If so what were these?*

14. There were 5 responses to this question, of which 3 of were a simple "no". There were 2 substantive responses, including 1 highlighting inconsistencies in court practice when reviewing submissions. For example, one response notes that some claims are rejected unless supporting documents are submitted at the same time; or on jurisdiction, despite indicating within the

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<sup>1</sup> Available from - <https://www.scotcourts.gov.uk/about-the-scottish-court-service/scs-news/2018/02/15/launch-of-simple-procedure-online-case-tracker>

body of the claim that jurisdiction is based upon performance of payment. Another respondent commented on some limitations in functionality, especially when lodging documents.

15. One response also suggested there should be an option to upload a completed PDF form instead of the civil online form.

*Q4 - If you tried to raise a claim but did not do so because of Civil Online, could you explain why and what happened?*

16. There were no responses to this question.

*Q5 - Do you have any comments about using the API for Civil Online to submit bulk claims?*

17. 4 respondents provided a comment to this question. There were 2 comments from respondents who have not used the API but who made a general observation that it is likely to assist those who submit claims in bulk.

18. For the 2 respondents that did have experience of using the API, it was generally found to be a helpful improvement but they were experiencing some issues with inconsistency in working practices. For example, some courts are asking for supporting documents when claims are submitted, whilst others are not. There was one example given of having to adapt submissions dependent on the court that they are submitting to i.e. Aberdeen and Glasgow.

*Q6 - Were there benefits to using Civil Online API for submitting bulk claims and if so what were these?*

19. There were 2 responses to this question. The API was identified as useful in reducing paper documentation, as well as being more efficient in exchanging claims and timetables (as opposed to doing this through post).

*Q7 - Did you have any difficulties in using the API for Civil Online to submit bulk claims? If you did, what were these? Please include any issues you may have had integrating the API with your own computer system, case management system or general way of submitting claims.*

20. There were 2 responses to this question. 1 response highlighted that some firms have spent a lot of time and money on adapting own case management systems to accommodate the use of the API. There were some functional issues identified such as using the ampersand character, but these are not seen as a significant barrier for using the system.

## **Support for Users**

*Q8 - If you needed support to use either of the digital portals, who did you ask for support?*

21. There were 5 responses to this question - all respondents stated they had sought support from SCTS. 1 respondent specifically mentioned contacting SCTS via email as the initial call handler was unable to assist. 1 response stated that they addressed queries to the relevant Sheriff Clerk.

*Q9 - Was it easy to find information about what support was available to you?*

22. There were 4 responses to this question. Each respondent found information about available support easy to find, with one stating it was "reasonably easy".

*Q10 - Was the support provided helpful to you?*

23. There were 4 responses to this question and each respondent stated they found the support provided helpful.

*Q11 - If you play a role in providing support to court users, do you have any comments on any practical issues arising from the rule change?*

24. There were 4 responses to this question. 2 respondents mentioned that issues could arise with elderly clients or those who do not use English as a first language. 2 responses also observed that there are potential issues of party litigants not seeing justice "being done" if it is done virtually and not in a physical courtroom.

25. Citizens Advice Scotland provided a comprehensive view on this question, noting that simple procedure is not a particularly straightforward process to engage with. This means that in their view, there are both barriers to digital access and understanding of legal systems and forms. They provided anecdotal evidence of cases whereby party litigants have relied on a trusted lay person to help with IT issues. They also identified issues with fees stating that if a client is not physically present, that causes difficulties with processing payments. They suggest access to payment systems should be the same for their agents as the solicitors who use the system. They also referenced one instance where a client was advised incorrectly that paper submissions could not be used at all - this was rectified by SCTS but it is still a concern for them.

26. Reference was also made to the barriers that go with virtual proceedings more generally and the impact these have on party litigants. For example, the ability to share notes and provide "real-time advice" is difficult even in a physical hearing where social distancing is required. Overall, Citizens Advice Scotland noted that using video calls for proofs, where evidence is taken, does not allow for sufficient support which in turn safeguards the rights of party litigants.

*Q12 - What effect, if any, has the rule change had for your service and service users?*

27. There were 4 responses to this questions. 2 respondents, both of whom represent professional court users, stated there were no impacts for them

specifically but they expect that issues may arise for party litigants. One respondent, who wished to remain anonymous, highlighted the inefficiencies caused when Civil Online interacts with their own case management system.

28. There was 1 substantive comment from Citizens Advice Scotland on the impact on users of their service that are digitally and socially excluded in some way. They state that the rule change has had a negative impact on their ability to effectively support users, especially since face to face contact has been paused due to Covid-19 and the fact local bureaux's had to close. They highlighted that some cases involving their clients have been dismissed without parties knowing about it, leaving parties having to lodge appeals against dismissal or lodge fresh proceedings where they have been informed of dismissals after the fact.

*Q13 - Are you aware of any cases whereby individuals have decided not to engage with the court under the new rules? If so, how often has this happened and do you know the reasons why?*

29. There were 3 responses to this question, with 2 noting that public may take the service writ more seriously if delivered by a sheriff officer rather than email. 1 respondent had received their own feedback and was aware of a client being concerned with the online process however did not expand on what these concerns were and if they continued once they had engaged with the online systems.

### **Submitting a Note to the Sheriff**

*Q14 - If you have provided a note to the Sheriff asking to submit your claim on paper please comment on the process. For example - is it straightforward or complicated? Did you encounter any problems and if so please explain?*

30. There were no responses to this question.

*Q15 - If you requested to submit a claim on paper and NOT through either digital interface (Civil Online or the API) please explain the main reasons why? (Please do not include any personal information which could identify you or your case)*

31. There were no responses to this question.

*Q16 - Did you need any support or further information to submit the note, if so, why did you feel you needed support? Where did you go to for support to complete the note and was this helpful?*

32. There were no responses to this question.

### **Review of the rules**

*Q17 - Do you think the rules to make the use of Civil Online mandatory for Simple Procedure Cases should remain in place? If yes, why? If no, why?*

33. There were 11 responses to this question, with no consensus on whether the rules should remain in place.
34. The 5 respondents supporting rules staying in place each have caveats, primarily that there are improvements to the systems and the exception test is maintained. This included one response from a member of the judiciary (submitting an independent view) who also supported the rules, pending improvement to the system for users.
35. There were 4 respondents who were against the rules remaining in place, due to access to justice issues and the fact the rules were implemented as a result of Covid-19 and that crisis is now began to subside somewhat.
36. Citizens Advice Scotland did not think that there are sufficient safeguards in place for party litigants within the rules, especially given the restrictions that are currently in place for providing face-to-face support. Without the ability to provide this face-to-face support, they do not support continued application of the rules and feel that Civil Online being the default method of submission “can and has been detrimental” for party litigants.
37. 1 anonymous response stated that the system was not designed with the judiciary in mind and that it is not user friendly in considering productions, with another anonymous response noting that if documents are not organised well, the system is not quick or simple to use.

*Q18 - If the rules continue to be in force past the 30th of September 2021, are there any changes to them that you think could usefully be made and if so, why?*

38. There were 7 responses to this question. 2 responses states that no changes are required. There were 2 responses that noted that whilst some other rules would benefit from continuing after Covid-19, for example the “walls of court” being available online, these specific rules should not. Those that did provide suggestions made the following;
- Inserting an option to proceed via mediation/Alternative Dispute Resolution;
  - Conducting an updated Equality Impact Assessment (EQIA);
  - Using shrieval discretion with large volume documents and allowing it to proceed on paper;
  - Having a prescribed form for the exceptions test with options as to why a paper submission is being sought.

*Q19 - Please provide any further comments on the rules under review regarding the submission of claims through Civil Online or the API*

39. There were 7 responses to this question. 3 reiterate their opposition to Civil Online remaining mandatory. 1 respondent stated no further comment. The

Scottish Equality and Human Rights Commission provided a substantive comment on general equality considerations and having due regard to the Public Sector Equality Duty (PSED) when reviewing the rules.

40. The general comments made included points regarding:

- Conducting an updated EQIA and making suitable adjustments/further research to better understand the barriers to using Civil Online
- Making improvements to the Civil Online system for all users
- Consideration of the PSED and access to justice for those with disabilities and the elderly
- Reviewing the size of documents that can be lodged
- Retaining freedom of choice for litigation and avoiding barriers to justice.

41. There were also further comments provided on the simple procedure rules that are not within the scope of this particular rules review exercise. These views will be submitted to the policy team leading the ongoing review of the core simple procedure rules.

### **SECTION 3 – FURTHER INFORMATION**

42. This section provides further information relevant to the committee's deliberations about whether to extend the temporary changes made to the rules.

#### **Digital Exclusion**

43. Throughout the policy development of these temporary rules in 2020, both the Committee and the Council were mindful of the potential negative impact of the rules on party litigants. In particular, where digital exclusion could create access to justice issues for a proportion of party litigants.

44. These concerns were reflected by respondents to the questionnaire who made comments regarding how vulnerable users, including the elderly, the disabled and those who do not use English as a first language would use Civil Online to submit claims, and the practical access and health issues that may act as additional barriers to submitting claims online.

45. It appears from responses that Covid-19 has created further difficulties for some users seeking support to access online services. Specifically, users requiring support in accessing devices and/or Wi-Fi have been unable to do so because face-to-face support was unavailable due to social distancing requirements. That has also negatively impacted support providers as they have been unable to effectively support their client groups to access digital services.

46. Recent statistics<sup>2</sup> illustrate that in January to February 2020, 96% of households in Great Britain had internet access, up from 93% in 2019 and 57% in 2006, when comparable records began. Internet connections in households with one adult aged 65 years and over have increased by seven percentage points since 2019 to 80% however, these households still had the lowest proportion of internet connections.
47. In the months between January and March 2020, it was estimated that around 15% of 65-74 year olds in the UK had not used the internet in the last 3 months and neither had 46% of 75+ year olds. 18.6% of those who self-assess that they have a disability in line with the Equality Act definition of disability are also estimated to have not used the internet in the last 3 months in the same time period<sup>3</sup>.
48. Research also shows that adults over the age of 65 consistently made up the largest proportion of non-users of the internet since 2011<sup>4</sup>, whilst it is reported that in 2017, 56% of adult internet non-users were disabled. This is much higher than the proportion of disabled adults in the UK population as a whole, which in 2016 to 2017 was estimated to be 22%<sup>5</sup>.
49. A lack of skills and confidence in using IT is a known barrier to using digital services which can become far greater when paired with navigating complex and unfamiliar legal systems and forms. For example, the Carnegie Trust found that an individual's view of and attitude towards technology is a significant factor in predicting whether or not they are likely to be online. Their study, based in Glasgow in 2013<sup>6</sup>, found that the most significant barriers to digital participation is the draw of the offline world; a fear of specific aspects involved in trying to go online; and the cost of getting online.
50. Overall, the Lloyds Bank UK consumer Digital Index for 2020 highlights digital inclusion as a "concern" in Scotland and that it may be one of the regions in the UK with the highest proportion of digitally disengaged people.
51. A more recent report<sup>7</sup> from Which? looked specifically at Scottish consumers and their views of doing "administrative tasks" online as a result of Covid-19. The report found that more people were using online services for their administrative tasks and highlights;

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<sup>2</sup> Available from -

<https://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/bulletins/internetaccesshouseholdsandindividuals/2020>

<sup>3</sup> Available from -

<https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/datasets/internetusers>

<sup>4</sup> Office for National Statistics – Exploring the UK's digital divide – 4 March 2019 [most recent release]

<sup>5</sup> See Family resources survey 2016/17

<sup>6</sup> Available from <https://www.carnegieuktrust.org.uk/publications/across-the-divide-full-report/>

<sup>7</sup> "Consumers in Scotland 2021" – Which?

*“28% of respondents in Scotland said the crisis had pushed them to learn to do new administrative tasks such as banking and utility management online. The consequence of this is that almost all (91%) of our (online) panel now do these tasks online at least sometimes. This means that more people are now taking advantage of the opportunities that online services can offer.”*

52. However, the research also makes an important observation regarding the availability of in person services. The research found that;

*“There may also be harm if the pandemic leads to a permanent reduction in the demand for physical services, such as bank branches, and a resultant cut in the provision of these as there remain a number of consumers who would prefer to manage their affairs offline. **14% of people told us they want to switch to completing such tasks offline as soon as possible.**” [Emphasis added]*

53. The findings of this research appear to indicate that whilst the Covid-19 crisis has moved society to more online working, and most feel comfortable doing so, a small number of users wish to use alternative methods of accessing services as opposed to using digital means.

## **Digital Uptake**

54. The temporary rule change makes it mandatory for party litigants and professional firms to submit Simple Procedure claims using either Civil Online or the API, unless the exception test applies i.e. the user provides an acceptable reason to a sheriff as to why they cannot submit claims digitally.

55. Recent data from SCTS on the volume of cases registered digitally indicates that:

- In March 2020:
  - 87% of claims were submitted to the court on paper; and
  - 13% of simple procedure claims were submitted via Civil Online
- In March 2021:
  - 1% of claims were via paper submission and
  - 99% of claims were submitted via Civil Online (*of which 21% were bulk uploads via the API*)

56. In terms of users submitting their claim correctly in the first instance, 7% of the claims submitted in March 2021 were rejected and sent back to the claimant for correction and resubmission.

57. It should be recognised that there may also be a number of potential litigants who may simply have opted out of raising civil proceedings as they may have been put off by the complexity of the legal process and/or a reluctance to proceed online. That cohort will remain absent from the data and do not feature in this data set. Therefore, there is a need for further research to be

undertaken in that area if the scope and scale of that issue is to be better understood.

## **The Provision of Digital Services**

58. The questionnaire generated a wide range of useful feedback on user experience from those who are using Civil Online and the API, along with some suggestions for improvement. Assessing whether or not those suggestions have merit in terms of the service design that is used for Civil Online is a matter for the SCTS who will no doubt scrutinise the individual responses to the questionnaire in detail as well as this report.
59. For the purposes of this analysis the secretariat provides the following summary of areas for further consideration:

### *Working Practices in Courts*

**CONSISTENCY** – some firms reported varied requirements in individual courts, which in some cases has led to them adapting their submissions for different courts.

**PAPER COPIES** – some respondents noted a preference for reverting to paper copies in those cases that involve extremely large documents.

### *Civil Online System:*

**ACCESSIBILITY** – it could be useful to have access to Civil Online in multiple languages, and improved interactivity for disabled users.

**DISMISSALS** – it appears some cases are being dismissed without parties being aware of it. That leaves parties having to lodge appeals against dismissal or lodge fresh proceedings if they are informed of dismissals after the fact.

**DATE /TIME STAMPS** - the confirmation screen shown at the end of the procedure to lodge a document is not date/time stamped and does not mean the document has been uploaded/linked to the case file.

**FILE SIZE** – the current file size limit forces users to split a large document into multiple smaller uploads. That resultant need to open and review multiple files rather than one document is causing frustration for the judiciary and the parties when considering the evidence submitted.

**FILE NAMES** – users currently upload files with random names which is acceptable for cases with one or two documents. Where a case is larger and has multiple documents uploaded there may be merit in providing guidance that ensures “meaningful names” are used. That would minimise the

navigation issue that arises for the judiciary and the parties when considering the evidence submitted.

INTERNAL REFERENCE NUMBERS – some users commented on an inability to find relevant cases through an inability to see/search by their own firms internal reference numbers.

PERFORMANCE – some users commented on Civil Online being slow.

NAVIGATION - if an error is spotted or revision is required, users have to click back through each section, make the change then click each page again to reach the final review stage.

SIGNING IN - The one time sign in process and one time link means some users may repeat the sign in process a lot during one day.

TIMING OUT - work is lost if Civil Online times out for lack of activity.

TIMELY NOTIFICATIONS - there is no specific notification when a Time to Pay Application is lodged, meaning these case may not be identified in time to have them completed in the 14 day period required.

#### *Working Practices in Law Firms*

DUPLICATION – there is a frustration with any perceived duplication of work e.g.:

Response Forms - completing the data entry on Civil Online rather than simply uploading a PDF of the form they created on their own system

Claim Forms – amending a claim form requires the full form to be created again (because the original one is locked in as a PDF when created and cannot be edited)

60. A copy of this report has been shared with the SCTS so that they may address the relevant feedback that has been provided by the end users of their digital services.

### **Keeping the System under Review**

61. A number of respondents took the opportunity to provide feedback on items that were out with the scope of this particular rules review, but are relevant to the council's wider function of keeping the civil justice system under review. For completeness that feedback has been summarised as follows:

ALTERNATIVE DISPUTE RESOLUTION (ADR) – there was feedback on how mediation and ADR could perhaps be integrated into digital services. This may require further research and consideration in due course.

BACKLOGS – Concerns were noted with regard to the impact that the response to the Covid-19 pandemic has had on the processing of court business, and the delays arising. This is a factor to be considered by SCTS.

DIGITISATION - A number of the comments made relate to the digitisation of the courts in general and reflect a range of varying perspectives that are already in the public domain such as:

- justice may be perceived as more legitimate if it is in a physical court room, rather than online
- party litigants may not realise the seriousness of a claim if it is delivered to them via email, as opposed to being physically delivered and handed over by a Sheriff Officer
- being in a building and standing in court focusses the mind more in comparison to using a phone or answering an email
- there can be a “disconnect” between the seriousness of court and virtual proceedings or phone calls that do not have that same “gravitas”
- party litigants may not gain a full understanding of the consequences of their proceedings during telephone or video hearings

SIMPLE PROCEDURE – there was feedback on how other areas of this court procedure work in practice, including how the approach to cost awards is handled. Those comments will be fed into the separate Rules Review exercise which the Council is progressing.

#### **SECTION 4: NEXT STEPS**

62. The Access to Justice Committee will use the content of this report to assist it in making recommendations to the Scottish Civil Justice Council relating to the mandatory use of Civil Online for Simple Procedure cases.
63. It is anticipated that the Council will then reach a decision on whether current rules relating to mandatory use of Civil Online for simple procedure cases should continue in force beyond the 30th of September 2021.

## **ANNEX A - LIST OF RESPONDENTS WHO GAVE PERMISSION TO PUBLISH THEIR RESPONSE**

- Scottish Law Agents Society
- Summary Sheriff Livingston (responding as an individual)
- Equality and Human Rights Commission (Scottish branch)
- Citizens Advice Scotland
- Summary Sheriffs' Association
- Clyde & Co
- Law Society of Scotland
- Scottish Mediation
- Society of Solicitor Advocates