

## Consultation on Simple Procedure Rules

I would like to comment on the proposed Simple Procedure rules in general terms. I have read the consultation information and draft rules, but feel I cannot really complete the consultation response form as proposed. I would prefer my details were not disclosed.

On a positive note, I agree that there really is no reason why Small Claim and Summary Cause procedures should not be merged. However, I recall that when designed, both were originally thought to be “simple”, “user friendly” and capable of being dealt with by the lay person.

Turning to the proposed changes:

### 1. Parties and vocabulary generally.

I do not consider that “responding party” is a simpler term than “defender”, nor is it more easily understood. Whatever the term, I do consider it should be a single word. Likewise, “applicant” for a Third Party is not an obvious term. Are we simply substituting one set of technical terms for another?

### 2. Language, Guidance and Rules

The very length of the guidance given, no matter what its content, is likely to be perceived as “difficult” by those not confident in dealing with extensive paperwork. I suspect that, as with the current system, the vast majority of cases will eventually be dealt with by solicitors or other providers of advocacy services.

Much of the guidance appears to be restating the current position, albeit in different language.

I have noted that in the later part of the proposed rules, the vocabulary used is increasingly similar to that in the present rules.

### 3. Forms

While the principles appear clear, the claim form is not, to my mind, simpler than the current principal summons, although the response form is at least shorter than the present version - a welcome change. However, the plethora of other forms referred to give a greater impression of complexity than the present system whereby one form, an Incidental Application, does duty for many purposes.

Also, do we really need all of the declaration of principle on every form? I assume that this system is intended to be in place for a number of years; would a separate information sheet or cover sheet not serve the same purpose, with the actual claim and response forms being limited to the information supplied by the claimant and respondent respectively?

I accept that guidance in completing the forms would be helpful to a lay person and this is conveniently placed on the forms.

#### 4. ADR

The assumption appears to be that in all cases there must be a dispute which is capable of resolution by negotiation. However, I question how amenable parties will be to negotiation, where the advantage to one party is in delay, and to the other party in speedy resolution. Presumably if parties could have settled without court action, they should have done so; court action implies that one party does not wish to do so. I accept that the truth or otherwise of this point will only be shown in practice.

#### 5. Tribunals

My particular interest is in disputes involving private rented housing, which are of course to go to the new Tribunal in due course. Will the new Tribunals use the same forms as the new Simple Procedure? If not, why are actions for possession of heritable property included in the list of case types? (this question would of course apply to any other type of claim moving from the Sheriff Court to another forum).

Thanking you for your consideration.