

## **BRODIES RESPONSE TO SCJC CONSULTATION ON SIMPLE PROCEDURE RULES**

### **Consultation question 1**

**Do you have any comments on the way in which a claim is made using simple procedure or the forms associated with this stage?**

#### **General comments**

The identity of parties, the nature of the action and the sum sued for are not apparent from the front page of the claim form. This information was readily available on the front of the old small claim and summary cause summonses. Our view is that clearly identifying the parties and purpose of the proceedings at the start of the claim form would help a respondent to understand the claim form - particularly given the amount of paperwork a respondent will receive.

The paperwork required when serving a claim is considerable. A respondent may receive a claim form (11 pages plus a paper apart in some cases), a response form (8 pages), a timetable (1 page), a time to pay form (5 pages) and a notice of claim (2 pages). The volume of paperwork received by a respondent may risk overwhelming a respondent and may easily be misunderstood.

#### **Section D**

When a claim form is completed some courts are content that D1 is answered by way of a separate paper apart document with box D1 reading "see D1 paper apart". However, other courts insist the box is used to capacity before starting a paper apart. There is lack of consistency in approach. The situation is made more confusing by the current difficulty that the online form will accept more text in box D1 than may be shown on a print of the form. That has resulted in a notice appearing on the SCTS site recommending use of a paper apart.

Box D2 is where jurisdiction is to be averred. The question asks where the events took place but that question is not appropriate for all cases. In relation to consumer credit agreements for example, jurisdiction is based on domicile of the respondent. That is potentially confusing for a respondent. For example, a claimant may state in D2 that the respondent has resided at their home address for the past 3 months but is often met with a "defence" that the home address is irrelevant since that the goods were purchased at a retailer within the jurisdiction of another court.

#### **Section E**

Section E of the claim form requires the claimant to name witnesses and detail documents/evidence. In our view this is premature. Where we act for financial institutions the identity of a suitable witness to speak to

documents is not necessarily known at the stage of raising the claim. Although some courts are happy for the box to remain empty, others are not.

### **Consultation question 2**

**Do you have any comments on responding to a claim, the way in which time to pay may be requested or the corresponding forms?**

Our feeling is that the financial information sought in the time to pay application form is too basic. It is much less detailed than the creditor in a regulated consumer credit agreement would generally require from a debtor to enable the creditor to properly consider the question of affordability in order to fulfil FCA requirements.

### **Consultation question 3**

**Do you have any comments in relation to the ways in which forms and documents may be sent or formally served in a simple procedure case?**

No comment

### **Consultation question 4**

**Do you have any comments on what can happen to a case after the last date for a response, or the Application for a Decision Form?**

No comment

### **Consultation question 5**

**Do you have any comments on the way in which applications can be made in simple procedure, including any of the prescribed forms?**

Some sheriff courts are permitting parties to send applications to the court by email. That is helpful even though it is not permitted by rule 6.6. We think it is confusing that parties can intimate to each other using email and the court can send something by email to parties but the parties cannot send something by email to the court.

We appreciate that when civil online goes live the need for email intimation may be less significant.

**Consultation question 6**

**Do you have any comments on documents, evidence or witnesses, or the forms associated with Parts 10 and 11?**

We have experienced no difficulties with these parts of the rules and the associated forms. They are straightforward and seem to work well.

**Consultation question 7**

**Do you have comments on the rules and forms relating to hearings and decisions, including the recall of a decision?**

No comment

**Consultation question 8**

**Do you have any comment on any other aspect of the Simple Procedure Rules, or any general comments about the rules or forms?**

Expenses are dealt with only in general terms in Part 14 of the rules.

The simple procedure rules have been designed for use by parties without legal representation. It does therefore seem a little odd that parties need to consult other primary and secondary legislation (plus case law interpreting that legislation) merely in order to find out the expenses which might be awarded in favour of a party in a simple procedure claim.

In the light of recent judicial decisions we do consider that the issue of expenses payable in simple procedure requires to be reviewed. At present, the position is confusing and unnecessarily complicated.

We appreciate that mere amendment of the simple procedure rules may not provide a complete solution although “signposting” the relevant statutory provisions in the rules could be considered. Amendment to the table of fees/general regulations might assist but amendment of the Sheriff Court Simple Procedure (Limits on Award of Expenses) Order 2016/388 may also be necessary.

There are two particular expenses issues which we consider need to be addressed:

**Calculation of the statutory cap in defended cases**

The general statutory rule is that awards of expenses in defended cases are capped at a maximum of either £150 or 10% of the value of the claim. However, even in the most straightforward defended simple procedure claim there is uncertainty as to how the cap operates.

Some sheriffs allow recovery of court fees, outlays and, where applicable, sums in respect of VAT, over and above the cap figure. Others do not. There are currently conflicting sheriff court decisions on this point.

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The guidance available for court users on the SCTS website makes no mention of recovery of any sums beyond the statutory cap.

Clarification of the position would be of considerable assistance to parties.

**Not proceeding with a defence: dis-application of the statutory cap in defended cases which settle**

The simple procedure rules explicitly encourage parties to settle their differences and reach a compromise. That laudable aim is not reflected in the current approach of the courts to the dis-application of the statutory cap on expenses. Where a claim is initially disputed but is then resolved either by extra-judicial agreement or by way of tender and acceptance it has been decided that the defender is to be considered as not proceeding with their defence. As a result a claimant is entitled to recover uncapped simple procedure expenses on the scale provided for in chapter V of the table of fees.

Respondents choose to settle claims for a variety of reasons. Claims are often settled for economic reasons even though their defence on liability has merit. Some claims are not disputed on the merits but are defended only on quantum. Consideration should be given to the question of whether a respondent who takes a responsible attitude to conduct and settlement of the dispute in such cases should lose the protection of the statutory cap.

Brodiess LLP

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