

ANNEX B CONSULTATION QUESTIONNAIRE

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?

Comments

As an employment lawyer I note the difference in approach which is taken here in relation to the encouragement of parties to engage in mediation.

Under the regime in the Employment Tribunal a claimant is not permitted to proceed with a claim without having triggered the ACAS pre claims procedure.

Whilst I note that Sheriffs have a duty to encourage ADL under the simple procedure and solicitors have their duties to consider the use of ADL there is no consistent approach or provision across Scotland to ensure that mediation is actually available for parties who embark upon a Simple Procedure case.

Consideration might be given to what has been learned from the Employment Tribunals experience of the ACAS scheme and whether more might be provided to parties before a claim is actually raised

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?

<p>Comments</p> <p>Respondents are not given any guidance or encouragement at this stage in the process to indicate that they would be willing to engage in mediation rather they are forced to decide whether they defend the claim or do not.</p> <p>An option to explore mediation might be indicated at this stage and the claimant put on notice that a refusal to consider mediation might have a bearing on the question of expenses if the case proceeds to a hearing.</p>
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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?

<p>Comments</p> <p>No</p>

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?

Comments
No

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?

Comments
No

Consultation question 6

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

Comments
No

Consultation question 7

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

Comments
No

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?

Comments

I have serious concerns that the encouragement to explore the use of ADR which lies as a formal duty of the Sheriff is not supported by any consistent provision of either advice relating to mediation or the provision of mediation services.

It seems to me, unjust that those who litigate in urban centres such as Edinburgh, Glasgow and Dundee where there are currently pro-bono mediation services available are able to access mediation services at no cost, whilst those in more rural communities do not have access to such services and where there is any information made available it is left to parties to explore.

I believe that a uniform system by which the Court provides consistent access to mediation services would be a fairer and preferable system. I believe that properly resourced funded mediation services would significantly reduce the cost of judicial, clerical and administrative time and would be a more efficient use of public resource.

I have concerns that the current expenses regime leaves parties who, having commenced litigation, come to a view that they would rather agree to settle than to proceed with their case, are left exposed to adverse findings of expenses .