



## Consultation on the Simple Procedure Rules

May 2018

*Citizens Advice Scotland (CAS), our 61 member Citizen Advice Bureaux (CAB), the Citizen Advice consumer helpline, and the Extra Help Unit, form Scotland's largest independent advice network. Advice provided by our service is free, independent, confidential, impartial and available to everyone. Our self-help website Advice for Scotland provides information on rights and helps people solve their problems.*

*In 2016/17 the Citizens Advice network in Scotland helped over 310,000 clients in Scotland alone and dealt with nearly one million advice issues. With support from the network clients had financial gains of over £140 million and our Scottish self-help website Advice for Scotland received over 4 million unique page views.*

*The Citizens Advice Service is the largest provider of independent debt advice in Scotland. In 2016/17, citizens advice bureaux in Scotland advised on 91,000 new debt issues for clients in Scotland, worth a total of almost £128m. The client financial gain as a result of this advice was almost £28m.*

### **Introduction**

Citizens Advice Scotland (CAS) is pleased to be able to respond to this consultation on the simple procedure rules.

CAS welcomes the simplification of the legal process brought about through simple procedure; however we see some room for improving processes so that they are easier to work with for consumers.

We would also suggest that the volume and size of forms and how they are transmitted should be reviewed to fit with the aim of resolving cases "as quickly as possible, at the least expense to parties and the courts" as per rule 1.1.

We gratefully acknowledge the assistance of the In Court Adviser at Edinburgh Sheriff Court in drafting this response.

## 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

CAS has concerns regarding debt claims being made by some creditors. CAS members have assisted clients with cases where the debt has clearly prescribed on the basis of the factual background information provided in the claim. In other cases the claimant has not been able to produce copies of agreements or a notice of assignment to evidence their right to pursue the debt, when requested.

The prescription issue appears to be addressed in the new Prescription (Scotland) Bill, section 14 (2) which says, “If a question arises as to whether the obligation or right has been extinguished by the expiry of the applicable prescriptive period, it is to be presumed that the obligation or right has been so extinguished unless the contrary is proved by the creditor.”

In line with the Bill, CAS would recommend that the guidance next to box D1, in the claim form 3A, provides a reminder for the claimant to explain their evidence to the contrary, where it appears that the obligation has been extinguished.

## 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?*

### Comments

The respondent receives multiple forms from the court (copy claim form, response form, notice of claim, timetable, time to pay). The aims of simple procedure may not be met here as respondents can be intimidated by the volume of paperwork and some will choose not to respond, even if they have a valid dispute. CAS would suggest that the forms are examined by a working group of lay people to see whether they can be combined, reduced in size and simplified further.

In 4.2 (How do you respond to a claim?) (2) the respondent has to send copies of their completed forms to the claimant by the last date for a response. We think that this could be a deterrent to some respondents to take action if they do not have the facilities to print, copy or upload the forms, or the financial wherewithal to pay for next day, recorded delivery postage to send the documents, as per the rules. An alternative option for the respondent to be able to hand their documents to the sheriff clerk's office to copy and transmit would aid some of our worst off clients.

In terms of the flowchart options (4.3 What responses can you make? (3)), currently the respondent can admit the claim and ask for time to pay or dispute the claim, if they can't settle the debt in full. But in our members' experience some respondents may have legitimate queries relating to the claimants right to pursue them, or the amount owed. Unless correspondence is very efficient and timeous prior to the last day for a response, the respondent can be pushed into the position of unwillingly admitting the claim in full and asking for time to pay, or disputing the claim to seek a simple clarification on a matter which they later accept. The latter is particularly concerning because if the respondents do not proceed with their defence after points of clarification are provided they are potentially liable for uncapped expenses. Our members suggest that a fourth option to allow an initial one-off pause for queries to be resolved would help avoid unnecessary court time and expense.

Question 2 comments continued

Our members also think that it would be helpful if the rules allowed for a partial admission of a claim and time to pay, where there is a legitimate query with regard to the amount owed. We would suggest that this could work by asking the claimant to accept or reject the partially admitted claim, along with the offer of payment, under the time to pay process. Currently the respondent would have to dispute the claim if they disagreed with the amount owed and as a consequence would lose the opportunity for time to pay.

In terms of the forms, we note that the time to pay form sets out the legal position in regard to the Debtor's Scotland Act and Consumer Credit Act, but it does not help the respondent to decide which of these applies to their situation. Nor does it ask which time to pay the respondent is actually requesting. So the form as currently set out may not be helpful to the respondent. Some practical guidance to the respondent regarding which time to pay is suitable for them, what is "reasonable" to offer the claimant and some advice on linking the offer of payment to the disposable income on the form may help make the process more efficient.

Finally, our members are concerned that the response form is not clear enough for party litigants in terms of the expenses that could be awarded against them, if they submit a defence or request time to pay. The form also does not mention that respondents might be liable for court costs and outlays even if they choose to settle. CAS would suggest more notes should be provided on form 4A, to advise party litigants of their potential liability for court costs, outlays and expenses. Our members also find that the levels of expenses are difficult for respondents to understand. Party litigants can assume "small claims" levels apply, whereas actually they may be at risk of unlimited expenses for claims between £3,000 and £5,000. CAS would suggest that expenses should be simplified under the simple procedure and ideally capped.

**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?*

Comments

In general, the stipulation that a next-day recorded postal service is used for sending items adds unnecessary costs to the transmission of documents. This is because the Royal Mail does not guarantee next day delivery on its cheapest recorded service, so in practice claimants and respondents have to use special delivery on top of large envelope postage costs, to stay on the right side of the rules. CAS would recommend that this is changed to a first class, recorded delivery service, wherever next day delivery appears in the rules.

**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

Our members have some concerns that the process of applying for a decision may be overlooked by some claimants, particularly party litigants. It would be helpful if the claimant was reminded of the need to apply for a decision on the claim form 3A, and ideally by the sheriff clerk after the last date for a response has elapsed (without response).

**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
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**Consultation question 6**

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

Comments No
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**Consultation question 7**

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

Comments

Under 13.5 (When can a decision of the sheriff be recalled) (3) it says that “a party may apply for recall at any time before the decision of the sheriff has been fully implemented”. Party litigants may not understand the meaning of this and we would suggest that this is more clearly defined.

13.6 (How can a party apply to have a decision of the sheriff recalled?) (3) specifies that a multiple page response form needs to be sent with the application to recall, if the sheriff made a decision following an “application for a decision”. The summary cause and small claims recall processes that were replaced had a one page form which encapsulated both reason for not appearing and a proposed defence. Again the respondent has to have the facilities to print and copy forms and the financial means to send them by post if they are not online. We would suggest looking at ways to combine the recall form and response form to ensure that one is not accidentally forgotten, and to reduce costs in printing and sending.

In paragraph (5) (b) the sheriff has the powers to refuse an application for recall. The previous small claims and summary cause process did not allow a sheriff to refuse the recall. Whilst we can see that this allows the sheriff to potentially weed out spurious applications, it may also have the unintended effect of eliminating applications from parties whose first language is not English, or who are unable to explain their position clearly in writing, but may still have a good reason for recall. We would recommend that either the conditions for the sheriff refusing recall are laid out in the rules or that the right to refuse recall is removed all together.



**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

In terms of giving advice to clients the use of different terminologies in simple procedure, summary cause and ordinary cause does create some difficulties. CAS would recommend that a universal terminology is used across all levels of court for claimant (pursuer), respondent (defender), sist (pause), decree (decision) to make the court system as a whole more accessible.

As mentioned already, a review of the forms, by a panel of lay members may help the courts to refine them, make them shorter and more accessible to members of the public.