

Credit Services Association

Response to Scottish Civil Justice
Council's consultation on the
Simple Procedure Review

1. Credit Services Association - overview

- 1.1 The Credit Services Association (CSA) is the only national trade association in the UK for organisations active in the debt collection and purchase industry. The CSA, which has a history dating back to 1906, has around 300 member companies which represent 90% of the industry, and employ 11,000 people. The membership also comprises specialist tracing agencies, in-house collection departments of large banks and utility companies, accountancy firms, law firms and all three major credit reference agencies.
- 1.2 The clients of CSA members include major financial institutions (such as banks and building societies), credit grantors, government departments and local authorities, utility companies and mail order businesses.
- 1.3 At any one time, the CSA's members hold up to £60 billion for collection, returning nearly £3 billion in collections to the UK per annum. As the voice of the collections industry, our vision is to build confidence in debt collection by making the entire process clear, easy to understand and less stressful for all those involved. Further information on the CSA can be found at: <http://www.csa-uk.com>.
- 1.4 The functions performed by CSA members are vital to the operation of the various sectors in which they operate. Unpaid debts cause damage to lenders / suppliers and to borrowers by adding costs to the system which result in higher prices for credit or goods/services. Serious problems with unpaid debt may also lead to restrictions in the availability of credit, particularly to consumers who may otherwise find it difficult to obtain cost-effective credit and therefore have a detrimental impact in the overall growth of the economy.

2. Consultation questions

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?

- 2.1 The Form 3A Claim Form could be formatted better. It is not clear from the front page of the form who the Claimant and Respondent are or what the action relates to. The Respondent's details do not even appear until page 3 and the details of the claim do not start until page 5.
- 2.2 At box D2 the question posed is "Where did this take place?" This is the question intended to establish jurisdiction of the court. However, for example, where jurisdiction is based on the domicile of the respondent in a consumer credit agreement, the answer often does not make sense to the lay person and is regularly queried.
- 2.3 The amount of paperwork to be served on a Respondent when serving a claim seems inordinately substantial since the following all must be served:
 - a) a copy of the Claim Form, (11 pages)
 - b) any Further Claimant Forms or Further Respondent Forms, (2 or 3 pages)
 - c) a blank Response Form (8 pages)
 - d) a copy of the Notice of Claim, (2 pages)
 - e) a copy of the Timetable, (1 page)

- f) if the respondent can apply for time to pay, a blank Time to Pay Application, (5 pages)
 - g) any other document approved by the sheriff principal in that sheriffdom.
- 2.4 This is further complicated for respondents by the Response Form, which is very long and cumbersome to complete (see question 2 for more detail).
- 2.5 In addition to this, the forms themselves appear very similar, which can make it difficult for respondents to know which form requires their attention.

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?

- 2.6 The Form 4A Response Form could be better formatted. It is 8 pages long but it is not clear from the front page who the Claimant and Respondent are or what the action relates to
- 2.7 The Time to Pay Form 5A is also lengthy at 5 pages long, yet the income and expenditure information is relatively basic in comparison to what a creditor would generally request to enable it to properly assess affordability.
- 2.8 The Response Form contains references to both a Time to Pay Application and a CCA Time Order application, which can cause confusion. It would be helpful to clarify these references so the intention is clear to all parties and forms are not processed incorrectly.
- 2.9 The inability to make a counterclaim limits the options of a respondent.

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?

- 2.10 We do not have any comments on this.

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?

- 2.11 Rule 7.6(1)(a) permits the sheriff to remit the case to ADR. However, access to mediation varies from sheriffdom to sheriffdom.
- 2.12 This may partially explain why the new procedure does not appear to have led to an increased use of ADR. We would welcome some clarity on whether measures will be taken to address the limited use of, and access to, ADR.
- 2.13 There has also been concern that Courts are not applying ADR decisions as they should, particularly in relation to Return of Goods actions. It is our understanding that the Sheriff should grant the Return of Goods Order with a monies order as an alternative but this is not

happening; instead, Sheriffs are granting the Return of Goods Order and sisting the monies part. This results in additional, unnecessary procedure and cost for both parties.

- 2.14 When applying for a Decision, there does not appear to be a clear section for expenses and outlays to be detailed.

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?

- 2.15 In circumstances where cases are paused but eventually settle, we are not aware of any form that can be signed jointly by both parties to confirm settlement has been effected and dismiss the action.

Question 6

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

- 2.16 The Form 10A List of Evidence Form is cumbersome. Often more than one form may be required if there are a number of items of evidence. It seems that a straight forward Inventory of Productions may be preferable and easier to work with for all parties.

Question 7

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

- 2.17 We do not have any comments on this.

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?

- 2.18 The Simple Procedure Forms are generally cumbersome and it seems the information should be capable of being better set out so that the pertinent details of a case can be gleaned from the front page of the form. For example, in the Form 3A Claim Form the details of the Claimant, Respondent and the crave should appear on the front page.
- 2.19 The fact that a Decision cannot be enforced until 28 days after receipt can have a significant effect on clients, particularly SMEs. We are aware that some courts are experiencing particularly lengthy backlogs, which is preventing orders from being issued as quickly as they should be. In circumstances where Courts fail to produce decisions in a timely manner, some clients have found themselves having to wait 2-3 months from application before they can enforce a Decision.
- 2.20 The inconsistency of application of the Procedure across Scottish Courts is also proving an issue, particularly for law firms dealing with large volumes of work and trying to adapt case management systems pending the procedure moving online.

- 2.21 Considering that the process was designed to be online and the fact that this has not yet happened, we would welcome some clarity on the intentions in this area and what efforts are being made to move the process to an online environment.
- 2.23 We would also appreciate clarity around the position on expenses in defended actions, which appears to vary from Court to Court.

Contact us

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