

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

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

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

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

In cases where the parties are encouraged by the Sheriff to Mediation. There are different ways in which this is happening.

In some courts this is done as an order of the Sheriff posted out to the parties, which at first reading implies that doing so is compulsory. Some courts have collaborated with a local mediation service to produce information to the parties about mediation, how it works and what happens if they do not decide to use it. In other courts the information is inadequate and needs to be improved. The take up of mediation in cases where the communication is in the form of first written orders is less than those referred at a case conference.

All parties would benefit if information about Mediation were sent with the order along with how using it fits with the overall Simple Procedure and what happens should they choose not to engage.

In other cases, the referral is carried out at a case conference where the parties are present and the decision is explained, sometimes with some indication from Sheriff about the cases as put by both parties. This can be helpful to the parties as they have a better sense of their options. The case conference also can provide a degree of expectation management for the parties, if such comments could somehow be made in first written orders this may help parties to engage with mediation.

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?

Consultation question 6

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

Comments

Consultation question 7

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

Comments

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

Availability of Mediation

The availability of mediation in courts, where it is provided, is currently based on volunteers taking on cases, this is not a sustainable in the long term.

For cases referred where no local provision mediation is available, parties often use the Scottish Mediation Helpline who provide mediators at a cost of £100 per hour shared between the parties. Many self-represented party litigants express the concern that they have already paid £100 for their case to be heard by the Sheriff and so are not encouraged to take up mediation. An integrated system where fees include either option would save on court time and allow parties to make a choice on the options.

Funding needs to be addressed in order that parties can access. and Sheriffs refer people to mediation. There are several options to achieve this including funding for referral services via the £100 court fee, using volunteers up to a limited amount, say £1000, and funding provision above this level. This would be helped by the introduction of similar encouragement to consider mediation in cases above £5000 as it would help establish a more balanced market. Scottish Mediation would be delighted to assist in bringing all the key stakeholders together to help take some of these ideas and develop a plan for Scotland.

Expenses

Many parties are not clear about how the expenses rules operate, particularly on those cases above £3000 which are covered by the old Summary Cause rules. There are significant cost risks for parties particularly where one side is legally represented and other is not. There is a need to include information about expenses for the parties that will allow them to understand those risks. The ultimate solution may be to reform the expenses rules so that the parties can have greater certainty.

Understanding of Mediation

To create more consistency on how cases are referred to mediation, further training for Sheriffs and Summary Sheriffs should be commissioned.

Process

When the new online portal is introduced information on mediation should form core information on all the options available, including mediation, for parties on how to take their claim forward.

Accommodation

The availability of dedicated space for mediations can be an issue and needs to be addressed. Ideally such space is best located in the court however online and telephone provide an opportunity to add convenience and flexibility for parties.

