



Law Society
of Scotland

Consultation Response

Scottish Civil Justice Council – Civil Online Questionnaire

April 2021



Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Access to Justice and Civil Justice committees welcome the opportunity to consider and respond to the Scottish Civil Justice Council consultation on Civil Online. We have the following comments to put forward for consideration.

Questions

1. Do you have any general comments about using Civil Online to submit claims?

The requirement for social distancing to protect public health has seen significant restrictions on the provision of face-to-face services and has required the acceleration of technology programmes in the justice system to meet the challenges that this has caused. This has seen a fundamental change in the ways in which access to justice is provided and out of necessity because of the current crisis. A key question is whether the steps taken in the last year should be reconsidered as public health protections are lessened, as in the current circumstances.

The justice system must be accessible to all. For simple procedure, as many claims are of lower value, there may not be professional representation sought or legal aid available. There remains a persistent digital divide, which is a challenge to principles of access to justice. Across the UK, the Office for National Statistics estimated in 2019 that 10% of the population has either never used the internet or have not used it in the last three months¹. In Scotland, it had been suggested that the digital divide was wider, with 21% of the population lacking basic digital skills². It is unclear what the impact of the pandemic has been around

¹ Office for National Statistics, *Exploring the UK's digital divide*, 2019 (<https://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/articles/exploringtheuksdigitaldivide/2019-03-04/pdf>)

² Scottish Council of Voluntary Organisations, *Tackling Digital Exclusion in Scotland*, 2017 (<https://storage.googleapis.com/digital-participation-charter/tackling-digital-exclusion-in-scotland-a4.pdf>)

the digital divide: it is possible that as many services and facilities have moved towards online delivery through the current pandemic, so people across Scotland have done the same through necessity.

There is an exception to the mandatory use of Civil Online for simple procedure, that the claim form is accompanied with a note explaining why it could not have been submitted this way. If the sheriff is satisfied with this explanation, the claim form will be registered. The circumstances in which a claim form could not be submitted online are very limited, though the circumstances in which an individual may struggle with the online process may be broader, though on the face of the rules, such difficulty would not be sufficient reason to register a paper claim.

There may not have been many cases where claim forms have been submitted on paper with a note explaining the reasons why since the rules changed. Without access to the courts through the pandemic to obtain a paper claim form, and potentially without the digital skills or equipment to print a claim form, there may be people who have not claimed as a result. Even as the lockdown eases, there are practical questions around what would constitute reasons that a claim form could not be submitted online. For instance, as digital support services at local libraries and other locations resume, it is not clear whether a person would be required to use these facilities to submit online rather than submit a paper form and explanation, or whether a person attending a court building to request a paper form would receive one.

The experience from our members and their clients has been that Civil Online has been beneficial in submitting claims quickly and efficiently. It has proved to be particularly effective during the lockdowns when firms have required staff to work from home. A number of firms have adapted their case management system to complement the use of Civil Online.

One major drawback is that the final PDF Claim Form that can be downloaded from Civil Online is not capable of being edited. While we appreciate the necessity of original documents being recorded for accuracy, the problem which arises is that should the Claim Form require to be amended, a full duplicate Claim Form must be created from the beginning (with the proposed amendment shown on it). There is no easy option to amend the version of the claim form on Civil Online; the only option involves conversion to Word and back again which completely undoes all formatting.

2. Were there benefits to using Civil Online to submit your claim and if so what were these?

For many individuals submitting claims through Civil Online, there are potential benefits. The ability to submit a claim at any stage, and to track the progress of this case online, may provide more immediate access to justice. A Civil Online system that allowed submission in a number of commonly used languages across Scotland, or which provided interactive assistance to people with disability, could provide new opportunities to improve the experience of people looking to resolve civil disputes.

Further observations around the benefits of Civil Online include:

- The layout of questions and answers is well structured and easy to follow.

- The ability to review a PDF prior to submitting the finalised Claim Form for warranting is useful.
- The turnaround time in uploading a Claim Form to civil online to receiving the warranting of citation appears to be quicker than email/postal submissions.
- The progression makes it less likely to miss out any boxes in the Claim Form as it is not possible to move to the next page without filling in all the boxes.

3. Did you have any difficulties using Civil Online when submitting a claim? If so what were these?

There appears to be inconsistencies by the Courts in reviewing the submitted document. For example, some claims are rejected unless supporting documents are submitted at the same time; or on jurisdiction, despite indicating within the body of the claim that jurisdiction is based upon performance of payment. It is suggested that the individuals who are reviewing documents submitted via Civil Online are provided with further training to make them more familiar with the Court process.

The system takes time to navigate. For example, when reaching the stage of reviewing the PDF for submission, if a mistake is spotted or some revision is required, there is no easy way to navigate to the relevant section. The only option is to click back through every page in reverse order, make changes and then proceed to click through every page to reach the review stage again.

If the claim and/or pleadings are complex and/or involves reference to voluminous documents, the time-out function is problematic. All work is lost when Civil Online times out for lack of activity. We do not consider the time limit currently allowed is always sufficient.

A functionality to allow a finalised Claim Form to be transferred from Civil Online onto a firm's case management system would be a welcome addition.

Although not to do with Civil Online per se, different approaches taken by different Courts to the same processes can be problematic. For example, if focusing on the commencement steps, some Courts have rejected Claim Forms when evidence is included in the submission, despite the Civil Online process prompting for it to be uploaded when the Claim Form is submitted. Some Courts insist upon a postal manifest for proof of service rather than a recorded delivery slip and signature from the recipient.

4. If you tried to raise a claim but did not do so because of Civil Online, could you explain why and what happened?

Not applicable.

5. Do you have any comments about using the API for Civil Online to submit bulk claims?

The experience of our members in using the API for bulk submissions is that this has been helpful and an improvement rather than having to complete every single Claim via the court portal. However, firms are still experiencing inconsistencies with courts, for example, some courts are asking for supporting documents at the time of submission; and seeking the figures for the principal sum and expenses be split with others asking for a total figure. For firms that draft many Simple Procedure claims, where at all possible it is important for such actions to follow identical formats to ensure they gain the maximum benefit from their case management systems.

A number of firms assisted the Scottish Courts and Tribunal Service (SCTS) with the development of their Application Program Interface to enable Civil Online to facilitate the multiple submission of court actions.

Whilst the technological developments have been largely successful, problems are still being experienced with different Courts insisting on different requirements with the actual information which they require inputted into the simple procedure forms. It has been reported to us that recent submissions have meant firms have still required to adapt their submissions for both Glasgow and Aberdeen Sheriff Courts.

It is emphasised that all Courts must be consistent otherwise the whole point of the API becomes diluted.

If there is an aspiration to use best technology, then all Scotland's Sheriff Courts will require to adopt identical requirements for the completion of claim forms.

6. Were there benefits to using Civil Online API for submitting bulk claims and if so what were these?

It has been reported to us that experience of using the API for bulk submissions is that this has been helpful and an improvement rather than having to complete every single Claim via the court portal.

7. Did you have any difficulties in using the API for Civil Online to submit bulk claims? If you did, what were these? Please include any issues you may have had integrating the API with your own computer system, case management system or general way of submitting claims.

Initial experience of using the API in the early stages was that some firms encountered technical issues, for example, recognising the Ampersand character. We are aware that considerable time and expense has been spent by firms in adapting their Case Management systems to the API service which has been successful.

8. If you needed support to use the either of the digital portals, who did you ask for support?

For firms with support issues, there has been considerable interaction with the SCTS IT team to resolve issues.

9. Was it easy to find information about what support was available to you?

From our experience, the advice from individual courts advice is to contact the Civil Online Helpdesk.

10. Was the support provided helpful to you?

The extent of support was that the Courts involved referred our members to the Civil Online helpdesk.

11. If you play a role in providing support to court users, do you have any comments on any practical issues arising from the rule change?

We have no comment to make.

12. What effect, if any, has the rule change had for your service and service users?

We have no comment to make.

13. Are you aware of any cases whereby individuals have decided not to engage with the court under the new rules? If so, how often has this happened and do you know the reasons why?

We have no comment to make.

14. We are not aware of any cases. If you have provided a note to the Sheriff asking to submit your claim on paper please comment on the process. For example - is it straightforward or complicated? Did you encounter any problems and if so please explain?

We have no comment to make.

- 15. If you requested to submit a claim on paper and NOT through either digital interface (Civil Online or the API) please explain the main reasons why? (Please do not include any personal information which could identify you or your case)**

We have no comment to make.

- 16. Did you need any support or further information to submit the note, if so, why did you feel you needed support? Where did you go to for support to complete the note and was this helpful?**

We have no comment to make.

- 17. Do you think the rules to make the use of Civil Online mandatory for Simple Procedure Cases should remain in place? If yes, why? If no, why?**

Yes, together with the exception to remain in place for paper submission where required so as to not limit the access to justice. Considerable investment has been incurred by many firms with a change in working practices to accommodate using Civil Online.

- 18. If the rules continue to be in force past the 30th of September 2021, are there any changes to them that you think could usefully be made and if so, why?**

We understand that the rule change to require submission through the Civil Online did not conduct an equality impact assessment at the stage of its introduction. Because of the necessity of the pandemic, many changes had to be made at speed to protect public health. Should this rule continue beyond 30 September 2021, it is important that this assessment be carried out. If there are adjustments that can be made to mitigate the effect on people with protected characteristics, these actions should be taken where practicable. The current approach to paper submissions, with the approach of accepting these where a submission cannot be made using Civil Online, may not be sufficient to deal with any reasonable adjustments which are required, where the test is whether there is a disadvantage.

Other suggestions would include, if a paper submission requires to be made, an accompanying Court form with relevant options to select as to why that is necessary would seem to be more efficient than requiring a

supportive paper apart and may provide easier access to justice for those unfamiliar with the process. Additionally, it is suggested the period of notice before the grant of an application could be reduced.

19. Please provide any further comments on the rules under review regarding the submission of claims through Civil Online or the API.

We have highlighted the need for an equality impact assessment to take place should the rule be extended and believe that this also important if both paper and online submissions are to be allowed. This would allow for the identification of adjustments required. Because many of the people submitting simple procedure claims are unrepresented, we believe that research into the experience of these court users would also be helpful in understanding barriers and developing services. There may be an opportunity, for instance, to introduce questions to the Scottish Government's Crime and Justice surveying to appreciate what further steps could be taken.

We have no difficulty in principle with the rules coming into force permanently, subject to retaining the exception for papers submission when necessary. Other practical suggestions would include a notification alert when something has been lodged rather than the onus being on the user to check Civil Online for their cases along the lines of the current ICMS-NoReply@scotcourts.gov.uk notifications.

There is a limit on the size of documents that can be uploaded. If there was a larger limit or no limit then this would resolve the uncertainty about how these documents can be lodged, whether by paper or submission by email. Consistency across all Courts is required. For example, currently productions contained within a List of Evidence (Form 10A) may exceed the permitted size. Some Courts may accept the document being split as separate attachments, productions numbers 1-5 and productions numbers 6-10 or others require firms to send by hard copy explaining in a covering letter why they are being submitted in a paper format.





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