

## 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

The Claim Form (Form 3A) could be set out in a better format. In particular, 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 appear until page 3, and the details of the claim do not start until page 5.

At box D2 the question posed is "Where did this take place?". This question is intended to establish the jurisdiction of the court. However, since the jurisdiction of the court can be established on a number of different bases, the answer which the Claimant required to provide here does not always fit well with the question asked. For example, where jurisdiction is based on the domicile of the respondent in a consumer credit agreement, the answer given here often does not make sense to the lay person (given the terms of the question) and is regularly queried.

In addition, an inordinate amount of paperwork requires to be served on a Respondent when serving a claim. All of the following 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);
- and
- (g) any other document approved by the sheriff principal in that sheriffdom.

## 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 Response Form (Form 4A) could be set out in a better format. In particular, it is not clear from the front page who the Claimant and Respondent are or what the action relates to.

Despite being 5 pages long, the income and expenditure information required by the Time to Pay Form (Form 5A) is relatively basic in comparison to what a creditor would generally request to enable it to properly assess affordability.

## 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

Rule 7.6(1)(a) permits the sheriff to remit the case to alternative dispute resolution. However, access to mediation varies from sheriffdom to sheriffdom.

**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

**Consultation question 6**

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

Comments

The List of Evidence Form (Form 10A) is very cumbersome and is of doubtful utility to the parties or the court. In cases where there are a relatively large number of productions, several forms may be required, and completing these can take some time. However, the boxes on the form are often too small to adequately describe an item of evidence or its relationship to the case. The party completing the form is then forced to try to abbreviate the description or explanation to fit within the box at the cost of precision and coherence. We consider that a straightforward Inventory of Productions may be preferable and easier to work with for all parties.

**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

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 Claim Form the details of the Claimant, Respondent and the crave should appear on the front page.

The Case Management Discussion also requires reform. Due to the volume of business, the Sheriff often has a limited opportunity to engage with the substance of the dispute and whether it can be determined there and then on a point of law. We have experienced a clearly defective case proceeding to a full evidential hearing only for the Sheriff to dismiss the case without any evidence being heard on the basis that the claim was fundamentally flawed. By that stage our client had incurred the time and expense of preparing for a full hearing and witnesses had been inconvenienced by requiring to attend. This is perhaps an inevitable consequence of having only one type of hearing, being the full legal and evidential hearing envisaged by Part 12 of the Simple Procedure Rules. It may be desirable to introduce other types of hearing, such as a 'mini-debate'-style hearing where the Sheriff could consider points of law alone before deciding whether evidence requires to be heard at a later date.

Further consideration should also be given to how parties should clarify and refine their positions after lodging the Claim Form and Response Form. Points often emerge from the Case Management Discussion which require further thinking. Ordering parties to prepare short submissions ahead of a hearing would assist lay persons in their preparation and also assist the Sheriff to understand the dispute.