

Conrad J. Chamberlain



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Malcolm MacMillan
Scottish Law Commission

Simple Procedure - needs REFORM!

Dear Mr MacMillan,

Complete overhaul of *Simple Procedure* and Giving Claimants Help with Procedure

The *Simple Procedure*, In practice, is anything but simple. **It is Not Fit for Purpose!** It is ridiculously **complex!** Let me give you my experience:

1. If you are not on-line, (40% of the populous are not), one needs the court's 'permission' to make a paper claim. This requires a 'grovelling' request to the court for permission. It asks you WHY a paper claim? Answer: I am not on-line! This is the beginning of many 'demeaning' steps in a process no-one will assist you with.
2. One then completes a 'long-winded' 11 page Claim Form. On receipt, the court clerk will 'proceed to find fault' with it. ie. The photocopies you enclosed, to be sent to the Respondent, are not perfect, but 99% so. After some *five* re-submissions, and a formal complaint, these are grudgingly accepted. A fee needs to be taken, but no-one will tell you what the fee is, so you have to find out. More delay and frustration.
3. There is no info. available on 'how' the procedure works, and the 'steps' up to, and including the Hearing. The clerk tells you staff cannot give you 'legal advice!, You say, you are not asking for legal advice, but 'Procedural advice'. They say: Go to Citizens Advice, who tell you, "*we are not lawyers*". So you go to a lawyer, pay him an exorbitant fee, and he tells you, he doesn't know, you need to ask a Lay person.
4. So you proceed - in the dark. Why isn't there a *Court Procedure Leaflet* explaining the steps? (Did I hear you say, THAT would be helpful?)
5. Eighteen months on, you need to call witnesses How Is this done? Do they have to be cited, and what does this mean? So you make an Application to request 'directions' from the Sheriff. This annoys him because he/she doesn't know either. So the Sheriff responds by dis-allowing the Application, in case he gets it wrong.
6. There is an eventual CMD to see if the parties are ready for a Hearing. You say "*How can I bring witnesses to court unless I know how to do this?*" He says "*Find out!*" You point out that under Rule 1.4 (2) it is the Sheriff's responsibility to ensure that an *un-represented party is not disadvantaged*. Not knowing how to bring witnesses to court is. a disadvantage! Sheriff Diane Turner, refused to order the Respondent to disclose the contact details of 'witnesses' I wanted to call. I said I would 'cite' them then, and her retort was: "I shall refuse you"!
7. Where in the Rules is a Sheriff allowed to act in a 'protectionist' role by dis-

allowing the claimant's witnesses attending court?

8. You want to call an Expert, so you write to him, and immediately invoke the sheriff's wrath. {Sheriff McGlennan}. He orally 'orders' you not to contact witnesses. Nothing in the rules about this. So how do you call your expert, and how do I get his Report 'admitted' in evidence? Do you know? Nor does anyone else!

9. Half-way through the Hearing, {Lo and Behold}, the Sheriff 'realises' a problem. Witnesses for the claimant are 'conspicuous' by their absence! So, the hearing has to be 'Paused' to allow me to contact witnesses; obtain Statements of Truth; - except for the two witnesses Sheriff Turner refused permission to be called. The Sheriff 'hearing the case' would not overturn Sheriff Turner's odd decision. And odd it is!

The uncomfortable question arises: *Why was Sheriff Turner so determined I could not bring crucial witnesses to court?* This flies in the face of all the rules! So what can be done? Nothing apparently! She is the sheriff and I, an un-represented commoner! So I am proceeding with a claim having been denied access to two crucial witnesses and an Expert. What do you think this has done for my prospects of success? That is what Sheriff Turner is hoping, but WHY?!

10. . How can witnesses be 'called' when their contact details have been denied?

12. How do you 'call' an Expert when you have been ordered not to contact him?

13. How can his report be admitted in evidence?

14. What does it mean for a witness to be led? How is this done?

15. If the respondent's witnesses decline to give evidence, how can their witness statements - taken as their 'evidence in chief' - be challenged, or 'admissions' brought to the court's attention?

16. How can one then 'bring out' evidence from those W.S. if the witness is not there to speak to it? What does it mean to 'speak to' something? Can a document stand as evidence without being 'spoken to'? I don't know either.

17. In a case in which I am both claimant and Lay Rep. ought not the Sheriff have made it clear which role I am to assume at each stage? I am wearing one hat one moment, but he thinks I am wearing another! It prevents evidence from being heard.

18. I frequently receive Orders by post on, or after the day for compliance.

You may by now, appreciate that the *Simple Procedure* is anything but Simple! The procedure is like a blind man walking a path full of pits, flanked by precipices.

19. The subject of 'judicial expenses' arose at the Hearing, and the solicitor for the Respondent misled the Sheriff {as they do}, by stating that expenses in a £5,000 claim are capped. He is wrong! Not since 2016. So I asked the clerk, Jill McClintock, to clarify. She sent me rules for UN-disputed cases, where 'allowable' expenses are grotesquely nominal. The only 'help' you get from the court is 'DIS-information!! She also failed 'up-load' photos onto the court file, so the Sheriff did not see them. Please reply to the points raised, and radically reform the whole confusing procedure.

Yours bewilderedly,

C J Chamberlain

