

Conrad J. Chamberlain

4 August 2022

Charles Garland
Interim chief executive
Scottish Law Commission

Your ref: A/5/11/1G

Dear Mr Garland,

I write further to your letter to me dated 15 July '22 in regard to the small claims 'Simple Procedure' - which is anything but simple!
I say this because even the learned Sheriff at the Appeal Court confessed in one his decisions that the "*Simple Procedure is unnecessarily complex and excessively dispersed across complex primary and secondary legislation*". So what chance does a Lay Claimant have? That is why I described Simple Procedure being "Unfit for Purpose". Under Article 6.1 of the Human Rights Act 1998, "a Citizen is entitled to bring his dispute before a 'competent' court un-represented".
The Simple Procedure in Scotland makes this quite impossible.

This fact explains the very disturbing statistic of only 8% of all such claims being successful. This is not acceptable in a civilised society. In England, the success rate is 60% - nearly eight times greater. So something must be wrong with the justice system.

The cap on expenses needs to be abolished, as it is ridiculous. The successful party ought to be reimbursed his reasonable expenses. Further, it encourages a respondent to settle early and so save expense. £106 of the £150 cap is swallowed up by the Issue Fee. Nothing for legal advice, or reasonable time spent formulating and lodging the claim in duplicate. What is left only covers postage and photocopying.
I strongly urge you to scrap the present 'complex' procedure in favour of a sensible 'simple' one it was intended to be. Where is the justice in a 'successful' claimant being out-of-pocket many hundreds of pounds?

The claim form consists of *eleven pages* whereas the equivalent claim form in England is a single A4 sheet containing essentially the same information.
I know trees are plentiful in Scotland to produce paper, but eleven pages...?
Nearly half a page is taken up with the claimant's name. This should take one line.
The Incidental Application Form is three pages long, mostly waffle, but the box for explaining reasons for making the Application is so tiny it cannot be used. This requires you to add an extra page as a 'Paper-Apart'. Crazy!

I trust you will ensure a complete overhaul of this 'un-workable procedure' which all too often fails to deliver justice - where Just claims frequently fail, not for want of merit, but a failure to navigate and understand the "Unnecessary complexities" involved as referred to by the Appeal Court.

Yours sincerely,

C J Chamberlain

