

Simple Procedure – It's Complicated

The recently launched Justice In Scotland – Vision and Priorities has as one of its ambitions “to modernise civil and criminal law and the justice system to meet the needs of people in Scotland in the 21st Century.” One of the big changes in civil law introduced at the end of last year was Simple Procedure which is designed to herald a major change in the way that, what were previously Small Claims and Summary Cause cases, are dealt with. There is a new fee structure, more of a case management approach, the language has been simplified (although there is more work to do on this) and there is an encouragement to use alternative dispute resolution mechanisms, where appropriate, to provide a more party focused and proportionate approach.

As Director of Scottish Mediation, you would think I'd be welcoming this change wholeheartedly, and I do. But as I say above, it's complicated.

On one hand, I welcome the approach, as from my experience as a pro-bono mediator at the Edinburgh Sheriff Court Mediation Project, I have seen numerous cases settled where the parties are given an opportunity to discuss how they feel about their case with the other party, and then come to a settlement that they have both constructed. Having watched similar cases in court I think it is important that people have a choice on how they can resolve their disputes and this choice should be available across Scotland.

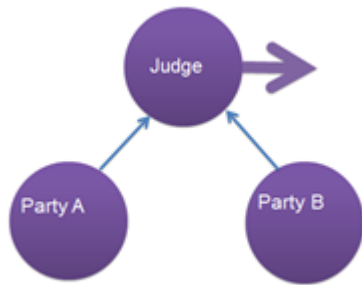
On the other hand, whilst there are now good resources available online through the mygov.scot website, which you can link to from the Scottish Courts website, accessing mediation is not yet an integral part of the system. Until it is, I think it is unlikely that there will be a great level of take up.

So how is Simple Procedure designed to work?

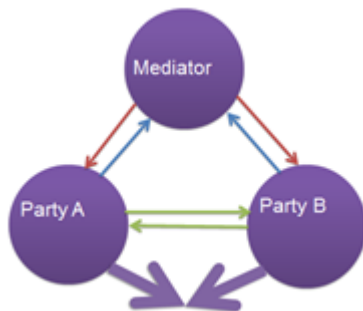
The new Simple Procedure rules will apply to all civil cases where the money being claimed is less than £5000, and replaces the old Small Claims and Summary Cause rules.

The applicant fills out one of the new Simple Procedure Claim Forms and pays the appropriate fee. Once the form is received, the Sheriff decides how the claim will progress and may decide as part of that to hold a discussion with the parties. At any point the option using mediation may be suggested.

Should the case not be resolved, the final part of the procedure would be for a hearing in the court.



Traditional Court Model



Mediation Model

So how are parties accessing it?

Perhaps the biggest challenge around Simple Procedure and the main reason for me that "it's complicated" is that the provision of mediation via the courts is not as it should be.

There are currently two projects where mediation is provided through pro-bono services at Edinburgh Sheriff Court via Citizens Advice and at Glasgow Sheriff Court via the University of Strathclyde Mediation project. They both are successful projects enjoying great feedback from those using mediation and settlement rates of 70% and above. In both projects, Sheriffs will often ask parties if they would like to consider mediation and either an appointment will be made for a mediation, or it will be done there and then.

Aside from these projects, mediators and information about mediation can be accessed by contacting Scottish Mediation via their Helpline or their website.

So far the take up has been mixed and there is some resistance from parties where an additional cost has to be paid to access mediation.

So, what does the future look like?

To fulfil the government's ambition, what's needed is a more integrated system. From the perspective of Scottish Mediation there are several opportunities to do this and they could include: making mediation available as part of the court fee; having resolution centres based in every court that offer support on all aspects of dispute resolution and advice before and during the time cases go to court;

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and, establishing easy access to telephone and online mediation so that parties do not have to travel to court to resolve their disputes.

We shouldn't be afraid to learn from others and there are great examples of mediation integrated into civil justice systems across the globe that we can learn from in Scotland. Alberta in Canada and Ohio in the United States are just two that come to mind that work very successfully.

Such work will help us in Scotland to develop a truly Simple Procedure that matches the governments ambition of delivering a person centred, modern and affordable justice service.

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