



## Scottish Consumer Council

response to sheriff court rules  
council consultation paper on  
proposals for further extension of  
the use of information technology  
in civil cases in the sheriff court

November 2004

#### About the Scottish Consumer Council

The Scottish Consumer Council (SCC) was set up by government in 1975. Our purpose is to promote the interests of consumers in Scotland, with particular regard to those people who experience disadvantage in society. While producers of goods and services are usually well-organised and articulate when protecting their own interests, individual consumers very often are not. The people whose interests we represent are consumers of all kinds: they may be patients, tenants, parents, solicitors' clients, public transport users, or simply shoppers in a supermarket.

Consumers benefit from efficient and effective services in the public and private sectors. Service-providers benefit from discriminating consumers. A balanced partnership between the two is essential and the SCC seeks to develop this partnership by:

- carrying out research into consumer issues and concerns;
- informing key policy and decision-makers about consumer concerns and issues;
- influencing key policy and decision-making processes;
- informing and raising awareness among consumers.

The SCC is part of the National Consumer Council (NCC) and is sponsored by the Department of Trade and Industry. The SCC's Chairman and Council members are appointed by the Secretary of State for Trade and Industry in consultation with the Secretary of State for Scotland. Future appointments will be in consultation with the First Minister. Martyn Evans, the SCC's Director, leads the staff team.

Please check our web site at [www.scotconsumer.org.uk](http://www.scotconsumer.org.uk) for news about our publications.

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The SCC assesses the consumer perspective in any situation by analysing the position of consumers against a set of consumer principles.

These are:

#### ACCESS

Can consumers actually get the goods or services they need or want?

#### CHOICE

Can consumers affect the way the goods and services are provided through their own choice?

#### INFORMATION

Do consumers have the information they need, presented in the way they want, to make informed choices?

#### REDRESS

If something goes wrong, can it be put right?

#### SAFETY

Are standards as high as they can reasonably be?

#### FAIRNESS

Are consumers subject to arbitrary discrimination for reasons unconnected with their characteristics as consumers?

#### REPRESENTATION

If consumers cannot affect what is provided through their own choices, are there other effective means for their views to be represented?

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The Scottish Consumer Council welcomes the opportunity to respond to this consultation by the Sheriff Court Rules Council. The purpose of the Scottish Consumer Council is to make all consumers in Scotland matter. We do this by putting forward the consumer interest, particularly that of disadvantaged groups in society, and by working with those people who can make a difference to achieve beneficial change. Accordingly, we have an interest in the potential impact of the proposals on court users, particularly those who are unrepresented.

We welcome the move towards greater use of technology in the courts, which should help to increase efficiency, and reduce costs to court users. We also hope that the increasing use of electronic recording will ensure greater consistency across courts than in the past in terms of data collection. This is essential in ensuring the accurate collection of court statistics. It is very important that relevant and accurate data is collected to allow assessment of the effectiveness and operation of new policy initiatives affecting consumers – for example, the recent and forthcoming debt and diligence reforms. This is particularly relevant in light of the current Scottish Executive consultation on civil judicial statistics.

While the increased use of technology is to be welcomed, it is important, as the paper recognises, that while electronic services should be made available to party litigants, they should not be required to use these. While some people will find such services convenient, others will be unable to use them due to a lack of access to and/or knowledge of email and the internet. While internet access and use are increasing all the time, and use of electronic services is therefore increasing, there remains a substantial proportion of the population which is currently excluded from such services.

Recent figures suggest that 41% of households in Scotland now have home internet access, but the proportion is much lower for those on low incomes.<sup>1</sup> Scottish Consumer Council research published in 2003 found that certain disadvantaged groups – those aged over 55, those not in employment, council tenants, those without formal qualifications, and those on low incomes – were much less likely than others to have internet access.<sup>2</sup>

We welcome the proposals to introduce electronic submission of the summons and other documents in small claims and summary case cases, again subject to the proviso that this initiative should not disadvantage individual court users. Many party litigants are currently deterred from using the court process through lack of information and advice and/or because they perceive the courts and court procedures as intimidating, remote, complex and expensive.

In particular, many party defenders fail even to respond to the summons, while of those who do some fail to turn up at the court hearing. It is likely that a large proportion of defenders will belong to the disadvantaged groups who

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<sup>1</sup> Source: *Scotland's People; Scottish Household Survey Annual Report, 2003*

<sup>2</sup> *Knowledge of Consumer Rights in Scotland; Scottish Consumer Council, 2003*

do not have internet access. While we can see clear attractions in the proposed 'virtual court', particularly for represented parties, it is essential to ensure that any such changes do not further dissuade party litigants from engaging in the court process.

We note that in the proposed 'virtual court', cases will be dealt with entirely electronically where they are undefended. This makes sense where both parties are legally represented, as it will keep down costs, and prevent undefended cases from clogging up the courts. We assume, however, that the defender will still be able to submit their response to the summons in paper form. The consultation states that cases will continue to be heard in court where they are defended or 'would otherwise require a hearing'. We assume that this means that where a defender is applying for time to pay there will be provision for a hearing, to allow the sheriff to hear the debtor's offer and take into account all of the circumstances.

We note the proposals with regard to electronic signatures, and we agree that this is a sensible way forward. However, while we can see that this could be implemented where solicitors who are regular users of the court are concerned, we would suggest that this may be more difficult to achieve in relation to party litigants who may use the courts on only one occasion.