

Our ref.

JAM/FAG/PRO0055.72

Your ref.



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The Secretariat
Sheriff Court Rules Council
Scottish Executive Justice Department
Civil Court Procedure & Sheriff Court Jurisdiction
2 West
St Andrew's House
Edinburgh, EH1 3DG

Dear Sirs,

CONSULTATION PAPER ON THE SHERIFF COURT AND ALTERNATIVE DISPUTE RESOLUTION

We write in respect of the above matter and now detail our proposed comments and views in respect of the proposed recommendations. Property Managers Association Scotland Limited is the trade association of property managers and factors in Scotland. The Association has over forty member firms who collectively manage over 120,000 properties in Scotland.

We understand the aim of the Sheriff Court is to free up time that Sheriff's require to spend on what they will consider to be relatively minor cases, and thus subsequently free-up the court time by inviting parties to settle by mediation.

We believe key issues to consider are firstly, the ability of the appointed mediator to fully understand the issues at stake i.e. the principals of factoring and how much control they have over the defaulting party in the mediation process and secondly how binding would the final decision be on the debtor. The entire process will be time consuming and reliant upon the debtor acting in good faith.

In response to your questions, our comments detailed below correspond according to your initial numbering:-

- Q1.** The new Rules could provide for consensus and agreement and could assist parties whom operate from same office buildings. However, Rules are not necessary given that during the course of an Action, there is usually ample time for negotiation and settlement. Should either party insist on a proof then they would not want a referral to mediation.
- Q2.** The Rules by their nature require to be accepted by both parties voluntarily and a negotiated settlement reached. Compelling its use may adversely affect some participants' willingness.
- Q3** Referring to the availability of the procedure should be sufficient, however, only through use is it likely that parties will embrace the rules and agreements reached.

Part 2 /



Part 2

- Q4** Should the parties not wish to go through with arbitration, then it is likely that a debate or possibly appeal could ensue leading to further possible delays and procedure.
- Q5** The current Court timetable should be retained thus preventing delays.
- Q6** The referral should be an alternative to court resolution.
- Q7** The procedure for inspection of documents is currently only adequate summary applications as the procedure is informal and cheap and therefore in other causes would be inappropriate.
- Q8** Section 33.22 relates purely to Family Court matters and is a useful free-standing court power, therefore in other style cases it should not be pigeon-holed with mediation to achieve agreements on parental rights and responsibilities.
- Q9** The proposed procedure could lead to a debate on whether a party was to blame on not accepting a referral and may form part of the dispute and draw out proceedings thus defeating the purpose of the proposal
- Q10** The incidental hearings procedure is essential in ensuring the smooth operation of the service. Otherwise, it would take time and expense to set up a forum and pay for a mediator, also it could delay the proceedings.
- Q11** An open court can be daunting and discourage a full and frank exchange of views. Therefore, sections of the discussion being heard in private may assist the new process.
- Q12-Q22** No comment.
- Q23** In general, the new rules would not provide the pursuer with any great advantage, given that the case would still require to be booked through the court system in the usual way, therefore, the initial court fees would still remain. There would appear to be scope for the "professional" debtors to misuse the mediation mechanism. In the first instance where the Sheriff invites parties to settle by mediation it may weaken the pursuer's position in the event that there are to decline such an invitation. However, on the positive side there is potential for considerable savings in legal / court costs and also for a speedier resolution towards ultimate recovery of debt.

At this early stage, there are merits in the mediation process, in practice, I believe only a majority of small debt recovery actions would simply revert back to the formal court process in any event.

We have no objection to our comments being available to the public.

Yours faithfully

For Brodies LLP
Secretaries