

RESPONSE ON BEHALF OF ABERDEENSHIRE COUNCIL TO CONSULTATION ON THE SHERIFF COURT AND ALTERNATIVE DISPUTE RESOLUTION

Question 1.

There is an awareness amongst practitioners of the alternatives to litigation. Parties and parties representatives are (or should be) aware of these when commencing or progressing court proceedings. Sheriffs already take a proactive role in proceedings and the new proposals do not offer a party any more rights or entitlements than it has at present. I would not be in favour of such a rule. If parties wish to resolve the dispute themselves they can do so. Otherwise it is for the court to determine the dispute.

Question 2

If there is to be a rule, encouragement rather than compulsion should be the route to be followed. Too much encouragement to try alternative resolution procedures or mediation may be seen by some to be passing the decision onto someone else. Generally if a case is capable of being settled or resolved to the satisfaction of both parties it will be before a judicial decision is reached.

Question 3

No - see above

Question 4

No - see above for reasons. If parties were prepared to mediate they have the opportunity to do so.

Question 5

If there is compulsion to mediate/ use ADR it seems likely the court timetable will require to be extended. Will the unavailability of an acceptable mediator/arbitrator be deemed to be good reason for not proceeding? Will an agreement to use mediation but failure to agree on the arbitrator be the subject of adverse criticism?

Question 6

The Sheriff has general discretion regarding awards of expenses. There would not seem to be any reason why this should not extend to any mediation.

Question 7

Ordinary Cause rules – see previous comments.

Summary applications etc – the majority of summary applications the Council deal with require judicial determination. It is difficult to see what alternative dispute resolution there could be in, for example, a summary application for guardianship or an appeal against revocation of a shotgun certificate. If the intention is to have someone other than a Sheriff make a decision on these types of cases, then the rule should state this.

Summary Clause Rules/Small Claim Rules – in both procedures Sheriffs are meant to adopt a more involved role – it again is difficult to see what purpose alternative dispute resolution/mediation may serve. Parties are far more likely to consider points/criticisms put by a Sheriff and I would suggest far more likely to accept what a Sheriff tells them about their case rather than a mediator.

Question 8

No. Family actions should continue to have their own mediation rules. If the all encompassing rules are introduced then there would not seem to be a need for rule 33.22.

Question 9

If the new rule was introduced then this would make sense. It would need to be recognised that there are some cases where ADR may be inappropriate prior to litigation e.g interdict proceedings

Question 10

If there is a desire to use mediation then the provision of an in-court mediator would be of assistance. This would require parties to be present at court as well as their representatives. This may be impractical. One way round the difficulty may be to compel all parties to attend options hearings if in-court mediation is planned. This would cause difficulties with regard to court space and would require full time mediators.

Question 11

This would seem reasonable.

Question 12 –

See previous comments.

Question 13 –

See previous comments.