

Question number	Response
1a	Yes
1b	Required to position ADR as an integral part of the justice system, and to provide consistent approach to its use by Sheriffs
2a	The rule should <b>not</b> refer to ADR “ <b>before</b> resorting to litigation” as not all cases are defended. ADR would provide no additional benefit to Parties if the Defender does not intend to defend the action.
2b	Should be requirement for solicitors to have discussed the use of ADR with client in defended actions; if client refuses to participate in ADR, then solicitor should provide explanation to the Court
3a	Yes, with a rider (as noted in following response)
3b	<p>Limited reasons for a Party to say no:</p> <ul style="list-style-type: none"> <li>• Point of law involved</li> <li>• Offer of full refund refused by Pursuer</li> <li>• One Party lives abroad or is travelling for an extended period</li> <li>• One Party is physically or mentally unable to participate in ADR, even by telephone</li> <li>• One Party has breached a previously negotiated agreement to settle</li> </ul> <p>We suggest that a Sheriff explain to Parties that the above reasons are really the only ones which should prevent a Party from participating in ADR. If Parties were just told they <b>had</b> to participate, it is likely that one or both would not come to ADR “in good faith” – a necessary element of ADR.</p>
4a	No
4b	<p>Solicitors should provide verbal response to Sheriff as per Q2b above.</p> <p>Party litigants often have little or no understanding of the potential court process, or of ADR. They are not usually in a position to make an informed decision re whether or not to consent to ADR. (For example, Party litigants in the Edinburgh Sheriff Court Small Claims &amp; Summary Cause court, will say they have tried to negotiate but without success. In reality, this often means that when the Parties shouted at each other down the phone, nothing was resolved!)</p>

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5	<p>In defended Small Claims &amp; Summary Cause actions, there is only one week between Return Date and Hearing Date. In practice this is too short a time for the Mediation Co-ordinator to contact each Party to explain mediation, seek agreement to participate, confirm an acceptable date and carry out the mediation. Usually the Parties in such actions appear for the preliminary hearing at which they may then agree to mediation.</p> <p>Feedback from participants in mediation shows that a large number would prefer to be able to go to mediation before the preliminary hearing. (Many thought that the case was going to be resolved by a Sheriff at this first hearing.)</p> <p>It may be appropriate to adjust the timings between Return Date and Hearing Date to allow for Parties to consider the option of mediation and other ADR before the preliminary hearing.</p>
6a	No
6b	<p>If expenses were used as a threat, then our point in Q3b about good faith comes into play. The current resolution rate for mediated cases in the Edinburgh Sheriff Court is 80%. We gather that, where in England the threat of increased expenses channels litigants into mediation, the success rate drops to around 56%.</p>
7a	<p>We are not familiar with the rules referred to. However ADR should be available and encouraged for Ordinary, Summary Cause, and Small Claims actions.</p>
7b	No comment
7c	No comment
8a	No comment
8b	No comment
9a	Please see our response to Q2b
9b	No comment
9c	No comment

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10	<ul style="list-style-type: none"> <li>• The Edinburgh Sheriff Court Mediation Service is funded by the Scottish Executive. (2006 – 2007 budget is £22,069). This amount allows for the Mediation Co-ordinator post to be funded for 20 hours a week. The Service only works so successfully because volunteer mediators regularly assist the Co-ordinator.</li> <li>• If the number of referrals to mediation were to increase significantly, the Service would not be able to cope.</li> <li>• It is inappropriate for mediators to go unpaid for their services.</li> <li>• One solution may be that full-time mediators are employed. However, it should be noted that the volunteers currently supporting the Edinburgh Service, bring extensive business and life experience to the mediations. A full-time mediator with a similar background would be likely to command an above average salary for his or her experience.</li> <li>• A better option would be to offer “retainers” to experienced mediators for a certain number of mediations per year at a fixed fee. This would allow the Service to continue to offer high quality mediation within a controllable budget.</li> <li>• The post of Co-ordinator would need to be a full time one and would need to be remunerated adequately to attract a suitable candidate.</li> <li>• There may be a lack of suitably qualified and experienced mediators in some Sheriffdoms.</li> <li>• Current funding is channelled through the Edinburgh Central Citizens Advice Bureau. It would be more appropriate for it to be part of an increased Court budget.</li> </ul>
11a	No comment
11b	No comment
11c	<p>We are not in a position to comment on the Rules themselves. However we make the following observation of the use of mediation as one of the ADR options:</p> <p>One of the key benefits of mediation is that the Parties have control over the outcome. Initially many find this a difficult concept to understand and look to the mediator to make a decision. The mediator then explains that he/she is impartial and is not there to decide the outcome. If Sheriffs were to act as mediators, they would have to make it crystal clear that the outcome was in the hands of the Parties. This may cause confusion for Party litigants.</p>

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12	<p>9A.1 &amp; 9A.2 – no comment</p> <p>9A.3 – If the Parties have to lodge another form following the first calling date, then this will delay the process further. Even if the Parties don't have to appear in Court to hear that the matter has been sisted and that ADR will take place, there will be delays as the ADR co-ordinator contacts each Party to arrange a mutually acceptable time. The current approach in Edinburgh is that the Mediation Co-ordinator provides the Sheriff Clerk with times and dates for mediations. During the court proceedings, and if the matter is referred to mediation, the Clerk advises the Parties of the appointment time. If either Party knows then that he/she cannot attend that day, the Clerk offers another date. This approach streamlines the setting of mediation appointments and allows for better utilisation of the available meeting slots.</p> <p>9A.4 Sisting a matter can provide additional confusion for Party litigants. The practice in Edinburgh is to continue the matter (date provided to the Sheriff Clerk by the Mediation Co-ordinator). If the dispute is settled at mediation, the Parties sign an authorisation allowing the Co-ordinator to crave the Court to dismiss the matter. This approach streamlines the court paperwork flow and allows for better use of Court and Sheriff time.</p> <p>9A.5 If “unreasonable conduct” is taken into account in awarding expenses, then a Party's attitude to ADR should be only one of the factors considered by the Sheriff.</p>
13	See comments for Q12 (9A.3) – the proposed form seems superfluous.