

Legal Post LP2 EDINBURGH 7

Sheriff Court Rules Council

Ext No. 269

Fax Number: (0131) 225 3705

Your Ref:

Our Ref: TCM/EC/CS

27 September 2006

Dear Sir/Madam

**SHERIFF COURT RULES COUNCIL – CONSULTATION ON THE SHERIFF
COURT AND ALTERNATIVE DISPUTE RESOLUTION**

I refer to the above matter and send herewith the response to consultation on behalf of the Scottish Legal Aid Board.

You will see that not every question has been answered. Answers are provided only to those questions on which the Board feels that it has any comment to make. In some questions the Board does not feel that it has any locus to respond.

Yours faithfully

Tom Murray
Director of Legal Services and Applications

Consultation Response

1. (a) Do consultees consider that such a rule is necessary or desirable?

Yes, the Scottish Legal Aid Board considers it desirable.

(b) Please provide comments to explain your reasons.

It is SLAB policy to encourage but not to compel parties to ADR. The rationale behind this is that ADR is only likely to achieve successful result where parties have voluntarily agreed to participate.

2 (a) Should the rule encourage rather than compel parties to seek resolution of matters in dispute by way of ADR before resorting to litigation?

As stated above, SLAB endorses the proposal to encourage but would not support any proposal to compel parties to ADR.

(b) Please provide comments to explain your reasons.

Compelling parties is unlikely to lead to successful ADR which would simply lengthen proceedings.

3. (a) Should the court have the power to require parties to an action to consider ADR?

Yes, SLAB would hope that such a power would be exercised consistently and in appropriate cases.

(b) Please provide comments to explain your reasons.

4. (a) Should the parties to the action be required to give notice with reasons in writing as to whether or not they consent to a referral to mediation?

Yes. This is in line with SLAB's requirement that when applying for civil legal aid applicants indicate what steps have been taken to avoid proceedings.

(b) Please provide comments to explain your reasons.

Providing reasons is in line with SLAB's requirement that when applying for civil legal aid applicants indicate what steps have been taken to avoid proceedings.

5. Do consultees have any comments to make in relation to this part of the recommendation?

6. (a) Do consultees consider if appropriate to have an expenses provision in the rule relative to the awarding of expenses?

SLAB does not consider that it is inappropriate to have an expenses provision. The Board would hope that any cost to the Fund in cases where ADR has not been successful would be offset by a saving to the Fund where ADR is successful.

(b) Please provide comments to explain your reasons.

7. (a) Is it appropriate to include a reference to ADR in each set of court rules namely

Ordinary cause rules

Summary, Applications, Statutory Applications and Appeals etc. Rules 1999

Summary Cause Rules 2002

Small Claims Rules 2002?

(b) Please indicate with reasons whether the reference should be incorporated into all, some or none of the court rules.

SLAB has no difficulty with the incorporation of the rule into ordinary procedure but has no particular locus to comment re Summary Cause or Small Claims Rules.

(c) If you think that the reference should only be incorporated into some of the court rules please indicate, with reasons, which set(s) of court rules.

8. (a) Do consultees consider rule 33.22 should be deleted from the OCR in event of the all encompassing rule being introduced?

(b) Please provide comments to explain your reasons.

9. (a) Do consultees have any comments to make in relation to this recommendation?

(b) Please indicate, with reasons, whether this provision should be incorporated into

All

Some, or

None of the court rules.

Please see answer to 7(b).

10. Consultees are invited to provide comments on the terms of the recommendation three.

SLAB notes that existing in court mediation services are not all funded in the same manner. Would the newly created services operate on a voluntary basis?

11. (a) Please indicate, with reasons whether a new paragraph in the terms outlined above should be incorporated into both:

Rule 8.3 of the Summary Cause Rules 2002; and
Rule 9.2 of the Small Claim Rules 2002?

(b) If you think that the reference should only be incorporated into one set of the court rules please indicate, with reasons, which set(s) of court rules.

- (c) **Do consultees have any views on the recommendation that the said rules 8.3 and 9.2 should otherwise remain for the time being unaltered?**

For the reasons previously mentioned, SLAB does not feel that any comment is appropriate.

- 12. Do consultees have any comments about the proposed rule as drafted? It should be clear to which part(s) of the rule the comments relate.**

9A.3(2) SLAB notes that the court order may refer some or all of the matters in dispute to mediation. To what extent will the Sheriff be required to set out the scope of matters for ADR?

- 13. Do consultees have any comments to make on the proposed form or notice? It should be clear to which part(s) of the notice the comments relate.**