

REPORT

To: GENERAL PURPOSES COMMITTEE		Subject: CONSULTATION ON THE SHERIFF COURT AND ALTERNATIVE DISPUTE RESOLUTION	
From: DIRECTOR OF ADMINISTRATION			
Date: 15 August 2006	Ref: WBK/AH		

1. INTRODUCTION AND PURPOSE OF REPORT

- 1.1. The Mediation Committee of the Sheriff Court Rules Council has carried out a review as to what the function of the Court should be in relation to the use by parties to an action of alternative resolution procedures and have made a number of recommendations. Views are being sought on these recommendations from all Court users.

2. BACKGROUND

- 2.1. The Sheriff Court Rules Council was set up by Section 33 of the Sheriff Courts (Scotland) Act 1971 to keep under review procedures and practice in civil proceedings in the Sheriff Court. It regularly prepares draft rules for procedure and submits them to the Court of Session for approval and enactment.
- 2.2. The remit given to the Mediation Committee by the Sheriff Court Rules Council was to consider what the function of the Court should be in relation to the use by the parties to an action of alternative dispute resolution procedures and in particular to consider (a) whether the Court should be required to encourage parties to use such a procedure; (b) if so at what stage or stages of the Court action the Court should be required to do so; (c) whether the Court should also be required to facilitate the use of such procedure; and (d) if so, by what means the Court should facilitate the use of such procedure.
- 2.3. The Sheriff Court Rules Council is seeking views on four recommendations made by the Mediation Committee.

3. THE CONSULTATION PAPER

- 3.1. The Consultation Paper which the Sheriff Court Rules Council has published can be found at http://www.scotcourt.gov.uk/sheriff/rules_council/index.asp.
- 3.2. The draft response which is set out in the Appendix to this report has been prepared and is recommended for adoption as the Council's response to the consultation.

4. CORPORATE CONSIDERATIONS

- 4.1. The issues contained in this report do not substantially impact on the Council's overall policies and resources.

5. **RECOMMENDATIONS**

- 5.1. The Committee is recommended to approve the proposed draft response to the Sheriff Court Rules Council on the Consultation Paper issued regarding the use by parties to an action of alternative resolution procedures.

Walter B. Kilgour
p. Director of Administration

Members seeking further information on the contents of this report are asked to contact Aileen Howson, Chief Solicitor on extension 2526.

PAPER APART

Note of Comments by North Lanarkshire Council in respect of the 4 Recommendations made by the Mediation Committee of the Sheriff Court Rules Council.

Recommendation 1

That there be incorporated into each set of rules applicable to the conduct of civil business in the Sheriff Court a new rule concerning mediation.

1. North Lanarkshire Council consider that such a rule is desirable as Court time could be saved and legal costs reduced.
2. The rules should encourage rather than compel parties to seek resolution of matters in dispute by way of alternative dispute resolution "ADR" as ADR to be effective should remain a voluntary process.
3. The Court should have power to require parties to an action to consider ADR which will encourage the use of and raise the profile of the procedure.
4. Parties to an action should be required to give notice with reasons in writing as to whether or not they consent to a referral to mediation as this will formalise the procedure and ensure that consideration of the referral takes place within the constraints of the current Court timetable.
5. North Lanarkshire Council have no further comments to make in relation to this part of the recommendation.
6. North Lanarkshire Council do not think it appropriate to have an express reference in the rule relative to the awarding of expenses. They are of the view that this would give an undesirable implication that mediation is intended to be a procedural default option. In any event the Court already has such an inherent power.
7. North Lanarkshire Council feel that it is appropriate to include a reference to ADR in each set of Court rules.
8. Rule 33.22 should not be deleted from the Ordinary Cause Rules. As this rule relates to referral to family mediation in a family action they are of the view that it should be retained as the interests of the child are often best met through parties agreeing a satisfactory resolution through mediation rather than a shrieval determination following adversarial procedure.

Recommendation 2

That a new paragraph 5A be inserted into the Ordinary Cause Rule 3.1 which provides that an article of condescendence shall be included in the initial writ averring the steps taken by the parties prior to the raising of the action by other forms of dispute resolution with a view to avoiding the need for litigation.

9. North Lanarkshire Council are of the view that this paragraph should be inserted into the Ordinary Cause Rules in the interest of fair notice, parties being given the opportunity to respond and the benefit of a formal detailed record of pre-litigation negotiation. The provision should be incorporated into all Court rules.

Recommendation 3

Subject to questions of cost and practicability, the use of mediation or another form of dispute resolution should be facilitated in relation to disputes at all levels by the provision of an in-Court mediation service in the manner piloted in the Sheriff Court Houses of Edinburgh, Glasgow and Aberdeen.

10. North Lanarkshire Council welcome this recommendation but with the caveat that mediation is a highly skilled activity and if it is to be carried out in accordance with this recommendation, appropriate resources must be made available and suitably experienced and qualified staff should be available to carry out the mediators' role.

Recommendation 4

Rule 8.3 of the Summary Cause Rules and Rule 9.2 of the Small Claim Rules 2002 should be amended to allow a Sheriff to hold discussions with parties in private and not in open Court.

11. North Lanarkshire Council are of the view that such an amendment should be made but with the proviso that all discussions and negotiations are carried out on a without prejudice basis and any concessions made solely for the purposes of achieving settlement could not be referred to in any formal proceedings should negotiated settlement be unsuccessful.

**Director of Administration
North Lanarkshire Council
August 2006**