

# **Response by Digby Brown to the Scottish Civil Courts Review Consultation Paper**

## **1.1 Introduction**

It may assist the Review in understanding our responses to some of the specific points raised in the Consultation Paper if we initially set out our views in general terms. These broad views inform our stance on many of the specific issues and we intend to refer to them throughout the Response. While this firm handles a small amount of non-personal injury litigation, our areas of expertise are personal injury and clinical negligence and we therefore propose to concentrate largely on those fields. We are strongly of the view that civil justice cannot be viewed as a single entity. Each area has its own distinct features and measures which may be appropriate in one area may not apply across the board. In relation to personal injury it is crucial that the Review is aware of the particular features which have shaped and influenced the current practice.

## **1.2 Historical Background**

We would suggest that in order to understand properly why personal injury litigation has developed as it has, particularly in the Court of Session, it is necessary to examine the factors which have driven the growth in personal injury litigation in recent years. In particular, it is important to understand the significant changes which have taken place in the insurance industry over the past 20 years or so. Prior to the 1990s, pre-litigation negotiation of claims tended to be conducted by experienced insurance claims inspectors. In general, they had a good understanding of the liability and quantum issues. They also had reasonable limits of authority which allowed them to settle claims at fairly high levels, sometimes into

six figures. The practice was for claims inspectors from most of the major insurers to meet with pursuer's agents on a regular basis. Large/..

Large numbers of files were discussed at meetings and it was common for a significant percentage of claims to be negotiated to a conclusion. A degree of trust existed between claims inspectors and pursuers' agents and, as a result, a significant proportion of claims could be amicably negotiated at realistic levels. From the 1990s onwards, for reasons which have more to do with cost-accountancy than claims handling, those experienced claims inspectors were gradually replaced with relatively inexperienced claims handlers. It is now unusual for insurers to meet with claimants' solicitors and claims tend to be processed largely by correspondence. In practice, it is often difficult to discuss a claim by telephone. Our experience is that claims handlers generally have a poor understanding of the issues in relation to liability and quantum and they tend to have low limits of authority.

**1.3** Increasingly, insurers are making use of quantum software programmes, the best known of which is *Colossus*. These programmes value particular injuries not on the basis of judicial awards, but on the basis of what insurers have been able to settle similar claims for. They adopt the lowest settlement figures and, in some cases, apply a further discount. The starting figure tends towards the level at which the least competent pursuer's agent has been prepared to recommend settlement. Claims handlers openly accept that they are bound by the settlement level produced by the software package and that they have no authority to

exceed a figure. In many cases pre-litigation offers fall well below what could be regarded as the “common law” value of a claim as per the Judicial Studies Board Guidelines. Pre-litigation offers are frequently made at a level which no responsible solicitor could recommend to his client and the result has been to force claims, which would at one time have settled amicably, into Court. We would refer to Ronald Conway’s article in the Journal of the Law Society of Scotland January 2008, which is Appendix A.

1.3 A Voluntary Pre-Action Protocol was introduced in Scotland in January 2006 following discussions /..

discussions between Scottish insurers and the Law Society of Scotland. That protocol provided for detailed allegations of fault, early exchange of information and a timetable within which Insurers had to complete their enquiry. The Protocol is now used in the vast majority of Scottish claims. It has however clearly failed to address the fundamental problem of unrealistic pre-litigation offers. This firm has recently completed a study of more than 2000 litigated cases which settled between January 2005 and December 2007. That study revealed that in more than 50% of cases no admission or denial of liability and no offer had been made prior to litigation. Pre-litigation offers were made in just over 20% of the sample cases. The damages obtained after litigation exceeded, on average, the pre litigation offers by a factor of 2.9 in the Court of Session and 2.0 in the Sheriff Court. In 27% of cases the insurers had concluded their investigations and had denied liability. Those cases settled after litigation at a total in excess of £22 million. We attach as Appendix B, a copy of an article by Graeme Garrett which appeared in The Journal of the Law Society of Scotland February 2008. We believe that these

statistics demonstrate forcibly that in many cases, we, a specialist personal injury practice, are unable to obtain fair compensation for our clients without litigation.

### **1.5 The Position Post-Coulsfield**

The post litigation position has been transformed by the implementation of the Coulsfield report on personal injury actions and the introduction of Rule 43 procedures in the Court of Session. There has been a dramatic acceleration of the settlement process. Once a case is litigated, experienced defenders' agents and counsel become involved and generally parties are able to move towards early settlement at realistic levels. Our experience is that the majority of cases settle well before the pre-trial meeting and that the majority of cases which proceed to a pre-trial meeting tend to settle shortly thereafter. While the use of counsel has decreased across the board, we consider they still have a valuable contribution to make in a significant number of cases. In/..

In the great majority of cases there is little or no judicial time involved. The number of proofs allocated each week has increased from a figure of about 30 pre-Coulsfield to a current figure of about 80 – 90. Only a very small percentage of personal injury actions in the Court of Session proceed to Proof or Trial. It is our strong view that the Coulsfield rules have enhanced the Court of Session's position as a centre of excellence for personal injury work. They provide an effective framework within which specialist counsel and agents are able to resolve a large volume of cases speedily and efficiently. While we welcome the extension of the Coulsfield rules to the Sheriff Court it should not be assumed that they will achieve similar levels of success as the critical components of specialist counsel and agents are present to a lesser extent in that forum.

**1.6** The speedier settlement of litigated cases has resulted in a significant reduction in judicial expenses. Our figures show that on average judicial expenses in our Court of Session actions have fallen by some 15% per annum over the past two years.

**1.7** Our statistics show that our success rate in litigated cases is in excess of 99.5%. The obvious question is why so many cases which cannot be resolved pre-litigation are settled soon after the raising of proceedings. Our view is that the negative factors which operate pre-litigation are the policy adopted by many insurers of deliberately seeking to under-settle claims. The existing system in the Court of Session operates extremely effectively. We note that the principal remit of the Civil Justice Review is to improve access to justice in Scotland. We would suggest that the current arrangement in the Court of Session should be seen as a centre of excellence which achieves efficient and cost effective resolution of disputes. We believe that any significant transfer /..

transfer of personal injury business to the Sheriff Court should be deferred until such time as the shrieval system has the resources to cope with this additional work without any consequent reduction in levels of service.

We now turn to dealing with the specific questions in the Consultation paper.

## **Chapter 1 – Introduction**

1. We agree that the civil justice system should be designed to encourage early resolution of disputes, preferably without resort to the courts. We would make the point however that it is an important element of any civil justice system that the pursuer be able to litigate freely and properly should that be necessary. Certain cases require to be litigated at an early stage. As indicated above, personal injury pursuers are often left with little choice but to raise proceedings to obtain fair compensation. Any changes which restrict access to the courts would have an adverse impact upon claimants.

The key features of a system designed to encourage early resolution of personal injury disputes would include:-

- Encouraging the use of pre-action protocols as they assist in identifying issues in dispute;
- Providing for early and full exchange of information to enable decisions to be taken as early as possible;
- Ensuring that rules which govern expenses assist in facilitating early settlement at the full value of the claim.

2. Proportionality and value for money are important principles, but as identified in the consultation/..

consultation paper, access to justice is the paramount aim. In personal injury litigation, there are certain inherent costs in preparing a case properly. A successful party should be able to recover the full cost of litigation. If pursuers are unable to recover full expenses, this is likely to be a major disincentive to litigation and they will be forced to accept inadequate pre-litigation offers. Compared to

other jurisdictions, for example England, expenses in Scottish cases are modest. The expenses rule is a key factor in the high settlement rate in the Scottish Courts. It is also worth emphasising that there is no correlation between the value of a claim and its complexity. Cases of relatively modest value can involve detailed consideration of complex statutory provisions or medical complexity.

3. We would raise at this stage the issue of third party capture. This process whereby insurance companies approach victims, and their families, seeking to resolve potential claims without affording them the opportunity of taking independent legal advice is an affront to all principles of fairness and equality of arms.

## **Chapter 2 – Access to Justice**

1. Public legal education can be of considerable importance in increasing people's awareness of their rights and ability to resolve certain disputes. It is important that people who are injured through the fault of others are made aware of their entitlement to claim compensation and to obtain independent advice.

2. The availability of expert advice in the personal injury field tends to be restricted to the main population centres. Claimants in rural areas will struggle to find good quality advice locally. The existence of the Court of Session as a centre of excellence in personal injury work plays a major/..

major role in minimising and mitigating the impact of this gap in representation. There is concern that if access to the Court of Session is restricted then gaps will appear and an inequality of arms will result. If non-specialist agents are denied

access to the Court of Session, and thereby forced to litigate in the sheriff court, the reality is that they will be picked off by experienced defenders' agents and counsel.

3. While there may be certain areas of civil justice where party litigants are to be encouraged, we do not feel that personal injury work is such an area. Equality of arms is an important principle and as identified by Elaine Samuel in her study, "In the Shadow of the Small Claims Court" it is crucial that personal injury litigants have access to advice and representation.

4. In so far as personal injury is concerned, we do not feel that there is much contribution that can be made.

5. We would simply repeat our comments in relation to the use by insurers of settlement software systems, and the issue of third party capture.

6. As previously pointed out, certain lower value cases can be legally complex. We take the view that personal injury should be regarded as a separate area and that one set of rules should apply to all personal injury cases, irrespective of forum.

We should perhaps at this stage deal with the suggestion that a body, akin to the Personal Injuries Assessment Board (PIAB) established in the Republic of Ireland in 2004, should be established. We submit that the introduction of PIAB was due to a particular set of circumstances which do not exist in Scotland. PIAB deals with claims where liability is admitted. Experience has shown that /..

that while it was designed to avoid the use of lawyers, in reality, over 90% of claimants still instruct a solicitor, at their own expense, to deal with their claim. The net effect of this is that the cost of instructing a solicitor has been transferred from the insurance industry to the individual claimant. Our own research has shown that many cases require to be litigated because either liability is denied, or no response in relation to liability is received from an insurer. We would regard any system which requires unrepresented claimants to deal with the insurance industry, either directly or through an agency, as fundamentally unfair and objectionable. The success of the Coulsfield rules would suggest that these are the ideal mechanism for dealing with personal injury claims, of whatever value, and whatever nature.

### **Chapter 3 – The cost and funding of litigation**

1. In general, a successful pursuer will recover around two-thirds of the expenses incurred in a case from the defender. There are inherent costs in every litigation. If a case is to be prepared properly then these require to be incurred. We calculate that, on average, we will recover about £4000 by way of fees in a personal injury action in the Court of Session. This figure has reduced since the introduction of the Coulsfield rules as a result of the efficiency of these rules, and early settlement. There clearly is also the cost of counsel but, likewise, their fees are reducing given the nature of early settlement. While proportionality might be seen as a worthy objective, in reality there is frequently little or no correlation between the value of a case and its complexity. For example, even a low value case brought under the Control of Substances Hazardous to Health Regulations 2002 is likely to involve input from expert witnesses such as chemists and

occupational hygienists as well as medical experts. Unless such cases are to be inadequately prepared, an imbalance between cost and complexity is inevitable. If proportionality is to become the mantra, practitioners face the unwelcome prospect of having to advise clients with complex cases of limited value, either they cannot agree to act, or if they do act the case cannot be prepared properly.

2. As far as personal injury work is concerned, cost is not a significant deterrent. The high success rate of personal injury cases means that in the vast majority of cases pursuers are able to recover the bulk of their expenses from defenders. The availability of specialist advice, and in particular, the increasing nature of speculative fee arrangements provided by specialist firms, enables pursuers to proceed with litigation. Any dilution of the specialist bar or nature of specialist advice would restrict access to justice.

3. In general, defenders meet court fees. Consequently there is no real impact upon pursuers. Indeed it may be that the level of court fees is perhaps regarded as a disincentive to frivolous litigation.

4. No. We argue for full recoverability of judicial expenses, on an agent client, third party paying basis. There is currently a poor return for pre-litigation work and parties should be encouraged to carry out early preparation and front loading of cases to enable decisions to be taken at as early a stage as possible. The expenses rule has been an important feature of facilitating settlement in the vast majority of personal injury cases and a move towards full recoverability would only accelerate this trend.

5. We feel that it is appropriate for Auditors of Court to be salaried employees. It might be seen as an anachronism in the current climate that a court officer has a direct financial interest in the cases before him. The Review should perhaps consider whether more than one Auditor in the Court of Session is required.

6. While we think that the provision of legal advice and assistance and legal aid is an important part of maintaining access to justice, we are concerned about the increasing numbers of people who are ineligible and restrictions in relation to personal injury work.

7. While there has been an increase in the provision of "after the event" insurance, this tends only to be available, at reasonable cost, through firms with a proven track record. Certain categories of claim are excluded, for example clinical negligence. Across the board, appeal proceedings tend to be routinely excluded, including cases where the pursuer has been successful at first instance.

8. Speculative fee arrangements have improved access to justice for personal injury litigants. We take the view that this is a good example of a major gap being filled in access to justice, given the reduction in numbers of people eligible for Legal Aid, and also contracting union membership.

9. While "before the event" legal expenses insurance can be of assistance, there are certain concerns. Panel Solicitors are instructed by the insurers and care requires to be taken to ensure that no conflict of interest develops between the

Solicitors and the client. Few “before the event” insurers allow clients to choose a non-panel solicitor. Premiums for this type of insurance are usually extremely low but as a corollary, insurers can impose restrictive conditions, particularly in relation to litigation. Consideration also requires to be given to the limit of indemnity which can be too low in certain situations. “After the event” insurance has assisted in improving access to justice. As indicated above, this tends to be only available, at reasonable cost, through specialist firms with a proven track record.

10. Any change to enable recovery of insurance premiums would, in our view, be detrimental. /..

detrimental. The significant increase in satellite litigation in England and Wales should serve as a warning. Premiums in England and Wales rocketed and the cost of litigation also increased due to insurers attempting to recoup the cost of damages by increased premiums. We would also make the point that we can see no logical reason why personal injury pursuers or litigants should be given total exemption from costs. This may act as a disincentive to frivolous claims. Scotland has avoided some of the worst excesses of the English claims agency industry precisely because premiums and success fees are not recoverable. Any change to this practice is likely to fuel an influx of such companies to Scotland.

#### **Chapter 4 – The structure and jurisdiction of the Civil Courts**

1. It is self-evident that civil business is adversely affected by the pressure of criminal business. We understand that more than 80% of judicial time in the Supreme Court is taken up with criminal business. This has a serious impact on the Court’s ability to deal with civil cases. Any proposed reforms in relation to civil

business are likely to be futile unless and until the question of criminal business is addressed.

2. We agree that some judges and some sheriffs should be specifically designated to deal with civil business. Similarly we would suggest that certain sheriffs and Judges be designated to deal with criminal business. As specialisation increases, it is appropriate that cases are dealt with by specialists in that particular field.

3. If certain judges and sheriffs are allocated to deal with either exclusively criminal business, or exclusively civil business, then it would seem appropriate that separate civil and criminal divisions be established. The principal advantage would be the benefits that specialisation brings in improving efficiency. The principal disadvantages may however relate to the cost of providing the appropriate/..

appropriate facilities for such a system, and reduced flexibility.

4. We agree there should be a greater degree of specialisation within the civil courts. Within the Court of Session, there are already designated Commercial judges. We would like to see specialist Personal Injury judges. As far as the Sheriff Court is concerned, we would suggest that family cases, commercial cases, and personal injury cases, be dealt with by specialist sheriffs.

5. The Court of Session is widely regarded as a centre of excellence in relation to personal injury cases. It produces high quality and consistent decisions. The

Coulsfield rules have been extremely successful in improving the already high level of settlements achieved without the need for a proof or trial. A substantial majority of personal injury cases are dealt with without the need for any court appearance whatsoever. The vast bulk of cases settle well before the designated proof diet and well within a year of the action being raised. Litigants on both sides have access to specialist solicitors, a specialist bar and if required, specialist Judges. Should a case require to go to proof, the Court of Session is able to provide consecutive days for the hearing, in contrast to the position in many sheriff courts. Our practice has been, and remains, that any case with a value in excess of the privative limit is raised in the Court of Session. The centre of excellence argument is set out above. As presently constituted, there are widely varying levels of consistency and experience within the shrieval system, and we have little doubt that our clients' interests are best served in the Court of Session.

6. Consideration should perhaps be given to whether the Court of Session should have exclusive jurisdiction in relation to clinical negligence cases. These are complex cases and benefit from being dealt with by specialist agents, counsel, and judges should a Proof be required. While slightly outwith the bulk of work carried out by this firm, we would suggest that judicial review remain/.. remain within the exclusive jurisdiction of the Court of Session.

In relation to the Sheriff Court, the recent rise in jurisdiction limits will lead to a significant proportion of personal injury cases transferring to the Sheriff Court by default.

7. We do not think that the Court of Session and Sheriff Court should be unified. We do not see that there is any urgent requirement that a single civil court be created.

8. We are strongly of the view that the Court of Session should retain first instance jurisdiction in relation to personal injury actions. The experience of the Coulsfield rules demonstrate that minimal judicial time is required to deal with these cases. Personal Injury work in the Court of Session post-Coulsfield has been a major success story. We also would point to the body of case law which has developed in relation to personal injury actions, and which is highly regarded, not only in Scotland, but across the United Kingdom.

9. The privative jurisdiction level was recently raised to £5000. Research conducted by the Association of Personal Injury Lawyers (APIL) suggests that around 60% of personal injury cases settle for less than this amount. This firm's own experience would support that view and consequently it will be important to assess the impact of this recent change on the workings of the Sheriff Court. We are of the view that the limit should remain at its current level of £5000.

10. As far as personal injury cases are concerned, we think the current powers are satisfactory.

11. While it may be appropriate for there to be a lower tier to deal with consumer disputes or similar, /..

similar, we do not think that it would be appropriate to deal with personal injury cases. As indicated, we take the view that the Coulsfield rules should be extended to cover all personal injury cases.

12. No.

13. The current system can present difficulties in personal injury cases where sheriffs in certain areas do not have experience in that field. While we take the view that personal injury cases should be dealt with in a centre of excellence, if there is to be a significant transfer of cases into the Sheriff Court then there is merit in establishing specialised regional centres.

14. Insofar as personal injury actions are concerned, yes.

15. As stated above, we take the view that judicial review should remain within the exclusive jurisdiction of the Court of Session.

16. We have no comment to make in relation to commissary business as it lies out with our expertise.

17. We take the view that the establishment of a national Sheriff Court would depend upon the extent to which, if any, specialised Courts are established.

18. Once again this would depend on whether specialised Courts are established.

19. We believe that in such a situation, there should be a right of transfer to the Court of Session from the Sheriff Court. Grounds for transfer would include complexity, importance to the client, for example in relation to fatal cases.

20/21/22/23.

We plan to deal with the above questions in the one answer as they relate to appeals. The right of appeal to a Sheriff Principal can be an efficient and cost effective way of disposing of appellate business. One of the principal difficulties in appeals being taken to the Court of Session is the length of time between the initial decision and the appeal being heard. A significant number of Sheriff Court appeals go no further than the Sheriff Principal and are resolved within a relatively short period of time. It would be appropriate for any appeal from the Sheriff Court to the Court of Session to be subject to a sifting process. This would assist in identifying those appeals which clearly have no merit. We do not consider that leave to appeal is required to the House of Lords. The financial implications of such an appeal tend to cause parties to consider this step very carefully. The office of Sheriff Principal, if retained, should cover both administrative and judicial responsibilities.

24. One issue to be considered is the relevant experience and knowledge of the Temporary Judge or part time sheriff. Their increasing use tends to accentuate the problems caused by non- specialist judges. We come back to the point we have made in relation to specialisation.

## **Chapter 5 – Principles for reform to civil procedure and key procedural issues**

1. We do not see what any statement of philosophy or objective would add to the existing process.
  
2. While we accept that mediation, in certain cases, can be an appropriate tool capable of resolving a dispute, we are firmly of the view that it should not be made compulsory, nor should the Courts seek to “encourage” parties to utilise it with possible sanctions in expenses. In the vast majority of personal injury actions, mediation would simply be an expensive layer of additional procedure. The Coulsfield rules provide for parties to hold a Pre-Trial Meeting in the latter stages of the litigation and these have proved to be extremely successful in enabling parties to reach settlement, if that has not already been achieved. The reality is that practitioners already “mediate” cases to settlement.
  
3. Mediation should only take place where both parties consent to it.
  
4. As set out in Answer 2, we take the view that in most personal injury cases, mediation is not appropriate. Once an action has been raised, the use of a Pre-Trial Meeting effectively takes the place of mediation. Prior to litigation, the effective use of protocols can assist in achieving an early settlement.

5. The costs involved in mediation are a difficult issue. It is an expensive process and in personal injury cases, insurers would effectively require to commit themselves to funding this for both sides.

6. We see no reason why court documents cannot be submitted electronically nor do we see why there cannot be increased use of electronic communication to progress cases as well as the use of video technology should that be required.

7. We take the view that the Coulsfield rules have established an excellent model for dealing with personal injury cases. The principle of case-flow management has proved to be extremely effective. Recourse to the court is available should that be required, but in the majority of cases it is not.

8. While we can see that certain types of cases, for example commercial actions, may benefit from judicial case management and direct intervention, we do not feel that is appropriate in personal injury cases. Case-flow management has proved to be extremely effective. We take the view that a similar set of rules should be developed for clinical negligence cases, incorporating the principle of case-flow management, albeit allowing for certain aspects, particular to those type of cases.

## **Chapter 6 – Working methods of the Civil Courts**

1. Pre-action protocols can be an important tool in achieving early settlement of cases. When properly followed, they allow an early exchange of information

and are designed to enable parties to focus on the real issues in dispute. It is important however that parties abide by the protocol. As indicated above, our experience is that, in many cases, insurers do not tend to make reasonable offers until proceedings are raised. In practice we find that full disclosure of information does not always happen and that only adds to delay, and the likelihood of proceedings being raised.

2. We agree there should be an increased use of the pre action protocol in relation to personal injury actions and it should be extended to cases above the value of £10,000. We also welcome the introduction of a protocol in relation to disease cases and note that a further protocol in respect of mesothelioma cases is in progress.

3. Making the pre action protocol compulsory would assist in encouraging parties to take the protocol seriously. Breach of the protocol would require to be a factor in assessing any impact on expenses should litigation subsequently ensue.

4. We do not feel that there is any requirement to seek leave in personal injury actions. The expenses rule is an important factor in considering whether to raise proceedings.

5. We support the continuing role of the Rules Councils. These comprise experienced members of the judiciary, bar, and solicitors' profession who are well placed to assess procedural difficulties and suggest suitable improvements.

6. As far as personal injury actions are concerned, we take the view that the Coulsfield rules should apply to all actions whether in the Court of Session, Sheriff Court ordinary level or summary cause level.

7 & 8. We do not agree that there should be a single initiating document for all types of action. We feel that it is incumbent upon a pursuer to set out the basis of his or her claim and to provide adequate notice to a defender as to the basis of the claim, and the heads of damage that are sought. Similarly, we feel that it is the responsibility of a defender to set out their position candidly and to assist in identifying the issues in dispute at as early a stage as possible.

9. We have no comment to make.

10 & 11. While we agree that routine procedural matters could be dealt with by specifically designated Judges, in personal injury actions, there are relatively few appearances required.

12. In the Court of Session, personal injury cases, a proof diet is allocated at the time defences are lodged. Generally four days are adequate for most proofs. There is a responsibility on parties to advise the court if that estimate is inaccurate. Given the extremely high rate of settlement, we do not feel that the court requires to have any further input in relation to allocation of time. We do not agree that hearing should be time limited. Should the court take the view that there has been an unreasonable length of time taken in a case, there should be a discretion in relation to expenses relating to the party who caused that delay.

13. There has been an increasing use of written submissions in substantive hearings over the last few years. Generally in cases which go to proof, written submissions are prepared in relation to quantification. If there is a delay between the conclusion of the evidence and the submissions, then written submissions in relation to both the merits and quantum should be encouraged. These submissions should be exchanged between parties.

14. The pre-action protocol in relation to personal injury actions provides for an early and wide disclosure of information. There have been recent decisions allowing defenders access to a pursuer's medical records in their entirety. We take the view that this should be reciprocated with a full disclosure by defenders of relevant records in relation to, for example, prior accidents.

15. We have concern over the court influencing the use of a single expert. There are many cases where there is a genuine divergence of views. Parties should retain the right to instruct an expert whom they feel provides assistance to the court.

16. We believe that pursuers offers should be re-introduced. They were an effective tool in resolving disputes. Any sanction must relate to expenses. This could be reflected in the provision of an additional fee or by way of a penal rate of interest.

17. We take the view that civil jury trials are a fundamental feature of the Scottish Civil Justice system. They are a valuable barometer of the public's view on levels of damages and have been instrumental, particularly in fatal cases, in closing the gap between judicial awards and public opinion.

18. We take the view that written judgments should be produced in all substantive hearings. While in certain cases *ex tempore* judgments are welcome, a written record of all judgments is required.

19. We take the view the court's current powers are sufficient.

20. The court currently requires to grant leave to a party litigant to bring an action. While we appreciate that at the outset of an action, a litigant may be represented and then subsequently become a party litigant, it may be appropriate for the court to reconsider the position at the point a party's status changes. Any appeal to be brought by party litigants should be subject to a sift as discussed in the previous chapter.

21. We have no comment to make in relation to vexatious litigants.

22. We think that the current rules are sufficient.

23. We do not see any immediate difficulty with the current rules in relation to multi-party litigation.

24. We take the view the current rules in relation to judicial review are satisfactory and that it should remain within the exclusive jurisdiction of the Court of Session.