

## **RESPONSES**

### **5.1**

The objectives of the procedure which would set the tone of the rules and the culture for the civil courts should be stated as

1. Encouraging and facilitating early settlement on mutually acceptable terms;
2. Promoting a sense of reasonable proportion and procedural economy in respect of how cases are litigated;
3. Increasing cost-effectiveness in the court's procedures;
4. Promoting greater balance between parties;
5. The expeditious disposal of cases;
6. Distributing the court's resources fairly, always recognising that the primary aim of judicial case management should be to secure the just resolution of the parties' dispute in accordance with their substantive rights.

### **5.2**

I consider that encouragement rather than compulsion is the appropriate way of proceeding. It is my view that the Court should provide sufficient information to enable parties to consider mediation properly and arrive at an informed decision as to whether or not this would be an appropriate way of proceeding.

I consider that it would be appropriate that Litigants would require to satisfy the Court that all options for settlement had been considered, including mediation, and that a decision had been reached with a full understanding of that process.

### **5.3**

Whilst mediation should be available as an option at any stage in a dispute, it is submitted that there would be most benefit for all concerned in this being considered early on in the process.

### **5.4**

Whilst mediation is suited to all natures of dispute it is unlikely to be suited to situations where precedent is required, where an Interim Interdict or another form of summary judgement is sought or where one of the parties is a vexatious litigant.

### **5.5**

It is suggest that for small claims action, mediation should be free to users and funded through the Scottish Court Service budget. For all other forms of Court action, mediation would be required to be paid for by the users. Information on mediators could be provided by bodies such as the Scottish Mediation Network/Scottish Mediation Register.