

# **RESPONSE BY MISS LESLEY DIANE MCDADE LLB**

## **TO THE CONSULTATION PAPER**

### **SCOTTISH CIVIL COURTS REVIEW**

#### **Introduction:**

I studied Law at Birbeck College, University of London and my dissertation in Jurisprudence was “you can lead a horse to water but you can’t make it drink” and related to the Woolf Reforms to the English & Welsh legal system. I have maintained an “independent” and academic stance concerning my findings and my latest paper is “ADR the ‘Achilles Heel’ of Democracy”. I have also done the “practical” by taking two cases through the system in England and been subjected to the Woolf Reforms as a litigant in person, the first case being against the firm of Masons and specifically Professor Richard Susskind OBE, who is the IT Adviser to the Lord Chief Justice, Lords Bingham, Woolf and now Phillips. Whilst I have not done the CPE/Bar Exams or articles I have practised as a fee earner paralegal at S J Berwin & Co and did intend the Bar route. The Judges on two litigations have stated I am “persistent and skilled” and that “I am to be deemed to have the experience of a practising solicitor”.

My view is that the Woolf Reforms are an academic failure/travesty and that having done the practical I have experienced only corruption from the judiciary in England & Wales. I am of the view that the reforms to the English & Welsh legal system and ancilliary supporting agencies are largely “nonsense and contemptible” and this is on the premis that the judiciary have “revealed” their negative methodology and that the issues are now criminal in effect. I also appear to be ignored/covered up by the European, Scottish and UK Governments. Whilst I appear not to have a right to a fair trial (and I currently have an “engineered” civil liberty issue because the judge is not in control of his courtroom and doing as I ask, processing respondents for contempt of court), I do enjoy freedom of expression and have published via a blog [www.leslevmcdade.blogspot.com](http://www.leslevmcdade.blogspot.com) from which you may glean I am having some fun. I consider I now have the highest mind in the world concerning my topic in Jurisprudence – the science and theory of human law. I moreover largely operate on my own efforts outside of the legal profession and am not supported by any person in my endeavours.

I therefore commend to you my studies in Jurisprudence for the purpose of my participation in this consultation to ensure that “Justice” and “Democracy” prevail in our “modern” society in the purest form : on the basis that my studies and efforts are “independent”, veritable pure original thought, profound and objective to “Justice” being the primary feature of a judicial system and that my responses are evidenced by what I have experienced and what I know on the premis of Jurisprudence as contained in my blog to the degree “scientific”.

This page, the Responses to Questions and Annexure 1 Paper and Table comprise my response to the Consultation on the Civil Courts Review. Please keep margins and colours as provided.

Regards  
Lesley

## Questions Chapter 1:

### 1. **Should the civil justice system be designed to encourage early resolution of disputes, preferably without resort to the courts? If so, what would be the key features of such a system?**

No. There would be no feature of such a system as it would be “ultra vires” – the courts are meant to be prima facie “public” in essence – they are therefore purposive to the light of day spotlighting the issues in the case, and subsequently not meant to be engaged in “privatising” societal problems by hiding them where the rule of law does not engage/intervene. A person existing in a democratic society where the rule of law is meant to be applied (as opposed to not applied (judicial corruption) should not be able to bypass the application of the rule of law and/or the rule of law should not be able to be undermined by a select few via the court procedures or statute. Moreover, they should not be engaged in promoting a two tier system : law applied to some and not to others (non-law). The “publicity” feature of the courts is meant to be uniformly applied for the benefit of everyone to ensure that standards exist, are maintained and reiterated and, if not reasonable, are raised viz-a-viz challenge. Furthermore, there is an issue of circularity – progress in society requires that judge driven case precedent (natural law) “signals” the need for the legislature to act and where the legislature has acted that the standards are acceptable to society in a uniform way and purpose to “good”/ the common good to ensure everyone exists in a safe and just society which should enable a “democratic” society (albeit I do not currently exist in a democracy). That is to say “natural law” through reasoning needs to occur to balance “posited” man made law – there is a balance in society (premised as the separation of the powers) which should not be unduly tipped towards the political legislature as “avoiding” natural law means that society IS NOT democratic or to any degree enjoying “freedom” of choice.

This question actually relates to mediation (See Annexure 1 – “ADR the ‘Achilles Heel’ of Democracy”). It is acknowledged that a “Letter before Action” is desirable and may prevent litigation. However, judges MUST NOT engage in sending parties to mediation (as they do the “opposite” of their function in society and are engaged in perverting/obstructing the course of justice in real terms – Mediation must be catered for as a “separate” entity in a safe and just society with everyone having the right to choose between a system that provides “Access to Justice” and “Justice” and a system that provides “Access from Justice” to “Compromise”. You either have rights or you don’t. If you compromise your rights, you risk having none. Mediation is neither “Access to Justice” or “Justice” and the judge is never a mediator and the mediator is never a judge – with mediation you do not have equality before the law; fairness; impartiality or justice – you may however, agree a 50:50 decision of a dispute which I call “contemporary equality” and the difference is the parties decide, rather than the judges decide – this issue is completely “spun” in the Woolf Report and promoted as Access to Justice – there has therefore been a blatant misrepresentation by Lord Woolf and the Woolf Reforms performed on the English and Welsh peoples. The European, Scottish and UK Governments have been aware of my research for some considerable time and continue to promote and pursue the Woolf Reform agenda in full knowledge that it is nonsense.

### 2. **Do you agree that the principles and assumptions discussed in paragraphs 1.11 to 1.14 are a sound basis for the development of the Review’s recommendations? Should they be supplemented by other factors?**

No. The overriding objective of the judiciary is “Justice”: not costs or proportionality. Moreover, proportionality is actually a superceded issue viz-a-viz Article 6 of the Human Rights Act which provides that everyone has a right to a fair trial. Furthermore, the issue of an unmeritorious case or vexatious or frivolous litigant is also superceded as they too enjoy the right to a fair trial via article 6 of the HRA 1998. The “public” nature of a case, may actually be the feature that is worth the effort, ie ensuring that you have a right – to access the “public” arena. The ‘Publicity’ feature of a justice system in a democratic society enables the socially excluded, marginalised, underdog to become “visible” / disempowered to empowered irrespective of whether a person actually receives or achieves “Justice”. The mechanism by which “private” becomes “public” is necessary (especially in England & Wales) where it is now actually necessary for the Human Rights Act 1998! as a consequence of the Woolf Reforms and Access to Justice Act 1999 enabling the judiciary to send a case to mediation (Halsey case).

On the issue of costs – the courts should be attainable by everyone. To put it in perspective: you do not need a judicial system in society – you can have a savage society. A judicial system is therefore desirable. For arguments sake, say the issue of a Writ is £500 court cost. In today's society you can purchase a gun for £500 and to hang the consequences. The issue then becomes £500 + time to get to trial (possibly 4-6 years) weighed against using the gun and being caught and getting (possibly 4-6 years)(and costing society £45,000 a year to keep a person in prison). What is certain is that via the gun, the problem is resolved = street justice.

Therefore the argument concerning “cost” is fallacious in the very real issue that street justice is inevitable when you do not get “justice” via the judiciary who should have a function of “guardian” of a safe and just society.

Therefore the real issue for consideration of the reforms to the Scottish legal system is “timeousness” – speeding up the system of access to justice to ensure “Justice” is attainable and that we therefore subsequently exist in a democracy and safe and just society fit for purpose for the 21<sup>st</sup> Century, ie greater use of IT systems/virtual court.

On the issue of supplemented by other factors – I do wonder why there is no post within the Judiciary or the Scottish Government or any government in the topic of Jurisprudence: it should not be an academic only subject!

**3. Are there any matters within the Review's remit about which you have concerns but which are not dealt with in this paper?**

Yes. Justice and Democracy. Street Justice. Compromise. Directive on Mediation. Why the Scottish Government will not engage with me. The ability to bypass the rule of law if the Woolf Reforms implemented in Scotland by enabling ADR to be contained in procedural rules of court / permitting lawyers/barristers/judges to practice ADR when there sole purpose in society should be to “apply the rule of law”. ADR should be a “separate” system in society with a professional body of mediators akin to the Law Society/Bar Council and there should be a mediation centre in every town/city to ensure standards of audit and evaluation and gathering of statistical data to ensure there is some balance to society by “competition” premised on freedom of choice of the parties. Scope for Legal Aid to cover all areas of law via a threshold system and/or a cab rank case pick up by all law firms in Scotland for pro bono work.. Downgrading of some categories of law to a pro forma based IT system/virtual court call centre facility possibly processed by Clerks rather than judges and accessed by email especially where law is being reiterated (statute based) rather than challenged. Document Image Processing in an electronic court case. Electronic case management downloadable court documents/uploadable case management to CD Rom public archive. Automatic Electronic Case Managed “Contempt of Court” – fine/prison and/or perversion of the course of justice to prevent parties abusing system via process and procedural rules. Access to Appeal structure – better to take time to get it right first time, than to get it wrong – speed up procedures to get to substantive quicker by streamlining to what is necessary and prevent parties using procedure to delay case.

Scottish legal system is unique in the world as opposed to English legal system replicated in USA, Russia, Israel, Australia etc, etc. Therefore why look to systems in England, USA, Canada, Australia etc – you have your own home grown talent, use it. Moreover, Denmark have abstained from the Directive on Mediation, with my research being known in Scotland – why would you follow English system after Clinton promoted ADR in global systems, including Jordan, when my research highlights a deficiency in intellect at judicial level. Without wishing to suggest the Scots are in danger of joining the ranks of the spoon fed ... it might be wise to use your brains and focus on the “cause”/ “effect” / “outcomes” and “consequences” of the reforms, ie the reality and practicality of what you actually implement as opposed to theory and ensure that it is followed up by an evaluation exercise purposive to “jurisprudence”.

**Questions Chapter 2:**

## 1. What contribution can public legal education make to improving access to justice?

All pupils in schools should know what a statute and what a case precedent looks like prior to leaving school. They should have a clear understanding of the Human Rights Act 1998 possibly employment law and banking law and the Data Protection Act 1998 and how the EU system works as essential knowledge in society. They should understand how the laws that regulate them are made and why they would access the courts or mediation. Therefore a mixture of legal knowledge and methodology and jurisprudence should be taught in schools at a basic level of knowledge in society possibly as a basic law and politics module(s) to develop research skills/debating skills ie Moot, for “Modern Studies”.

Develop “Jurisprudence” in all categories of law, ie the Mental Health Tribunal System is so basic there is no jurisprudence which means the system is open to abuse / largely “hidden”/privatised by making this court system “inferior”.

Judges should order lawyers/barristers for supervision and retraining where they are (a) obviously inept before them; (b) are abusive to the other side of the case or doing sharp practices and / or refer them to be struck off the register where they are involved in corruption be it perversion / obstruction of the course of justice, nobbling witnesses, or fraud, misrepresentation or defamation, etc. Lawyers/Barristers have a duty to the court and especially where they are representing lawyers/barristers the threat of being struck off / suspended should install fear to the degree that they behave ethically and professionally to the otherside. The judge must provide equality before the law and be in control of the court room and everyone should experience it.

## 2. Are there any particular geographical or subject areas in which there are gaps in provision in relation to civil legal advice or representations? If so, where?

The Skye Bridge fiasco a few years ago springs to mind, whereby the Islanders had to attend court on the Mainland and were effectively criminalised for not paying tolls. The situation should never have developed to the degree it did and circularity and legislature should have acted more quickly perhaps via a class action. In the 21<sup>st</sup> Century you should not be able to criminalise a sector of the population albeit a geographical sector concerning the Skye Bridge fiasco – the potential for street justice is just too high. Judges must accept that they are guardians of safe and just society and that “Justice” is fundamental to democracy. One case/class action should have resolved the issue for all. Insult to injury was added by forcing the hearings on the mainland when there is an island based court – such cases should go to the Court of Session on a first instance premis where the impact affects a sector of population.

The Mental Health Tribunal system does not work properly (a) difficulty getting a lawyer; (b) papers being served on parties by the Tribunal an hour before the hearing; (c) delay in getting independent consultations reports; (d) no review of decision procedure with a 3 month delay in an appeal to the Sheriff Principal; (e) no automatic release of the taped transcript and no authority provided as to why not upon request – the latter two are civil liberty issues/human rights issues under article 6 of the HRA 1998.

## 3. To what extent is it (a) desirable or (b) feasible to design court procedures with a view to enabling litigants to take part in the process without legal representation?

Greater use of IT: Electronic Case No and electronic case management schedule. Download of pro forma documents which can then be uploaded to Electronic Case No and electronically case managed via email, ie cross in the box to notify judge and other parties that papers are served, with automatic case marshalling notifying judge when papers not served on time and no request for reschedule of time agreed, electronic automated contempt of court notification triggered or party hauled before court on perversion / obstruction of course of justice issue if deliberate procedural abuse occurring. Electronic only what is necessary: Writ and PDF Evidential bundle as discovery, Acknowledgement, Defence and/or Counterclaim with PDF evidential bundle, Witness Statements, Experts, Any Adjustments, Case stated – Trial date – Judge case manages the entire process on a monthly schedule and where possible if documents in : move to next stage – the simple issues given above would potentially take 6-12 months. My experience of litigation has been 6 years per case with lawyered and

barristered up teams abusing the procedural rules at every opportunity. Automatic electronic case management would prevent this from occurring.

**4. What contributions, if any, can (a) “self-help” services for party litigants and (b) court based advice services make to improving access to justice?**

ACAS, Citizen Advice Bureau, Edinburgh University Students Legal Practice, Pro Bono work via lawyers/Bar pupillage could facilitate the completion of pro forma style court documents, and upload data to Electronic Case No, assist PDF Electronic Discovery of evidence, discuss othersides downloadable documents, etc by way of advice rather than actual representation, ie Advice and Assistance to party litigants to prepare their case with the party litigant representing the case in court.

**5. Are there any other issues which impact on access to justice in Scotland which the Review should consider?**

Make sure you are not deluded about the Woolf Reforms : my blog substantively. Access to Justice must mean Access to Justice, not the opposite, ie Access from Justice, Access to Compromise. Litigation and Mediation are opposites therefore process them correctly : Justice is fundamental to democracy. If ADR is contained “within” Justice system, no longer democratic. Also Masonic activity / Escoteric activity ensure it is processed as conspiracy to pervert/obstruct the course of justice.

**6. Is there a case for a new method of dealing with low value cases? If so, should this be within the existing court structure or separate from it? What kind of cases would be suitable for such treatment?**

There is a need to look at the thresholds for civil cases: £50,000 and/or complex and below. There is a lot of cases where the issue at stake is the “reiteration” of the rule of law be it case precedent or statute based. Where there are low value cases which are only “reiterating” what the law “is” as opposed to “challenging” the rule of law, then they could be conducted in a “virtual” court processed by Clerks and overseen by a judge, with a right of appeal to a higher court if needs must. Ie Licensing; Enforcement of judgments; new Insolvency for LILA claims, Housing issues, ambulance chasing contingency fee low level insurance claims processed by paralegals – the sort of caseload where it is the same information time after time using the same forms and whereby the court effectively rubber stamps the papers and the case management could be virtual downloadable pro forma : pdf evidence all uploadable and dealt with by email by a court that is based on the Isle of Mull for instance, ie a call centre virtual court either specialist to a given practise area or general for a particular “threshold” caseload. Possible to create “package fee” if using a lawyer – downgrade legal costs.

Simplify the process, give it a threshold, make it electronic and virtual, call centre in a remote location style, keep costs down, not necessary for lawyers to be involved, parties do it themselves.

**Questions Chapter 3:**

**1. What, if any, information can you give the Review about levels of legal expenses in litigation, and how such expenses, compare with sums awarded by the court or settlement figures?**

I have taken two top 20 London law firms through the courts. I initially instructed a solicitor and moreorless wasted £2000 on a City of London lawyer (as opposed to City of Westminster lawyer) whose fees are less. My total court fees to the House of Lords was £700 plus copying of about £300. I also stayed in a hotel during the court case with a witness and spent approx £500. I also incurred Barrister fees of £1,250 and again this was a pure waste of money. I ended up doing the case myself, because my solicitor brought an unprepared case forward by 6 months and then came off the record 17 days to trial and refusing to instruct my barrister even although all fees were paid to date and my barristers fees minus refresher fee was on trust via my solicitor. I thereafter did the case myself. That case to the House of Lords cost me approx £4,250 most of which I was capable of doing myself and I actually did the case preparation and court representation myself. I did lose the case, however, I would say that the judge was not in control of the court room, the lawyered and barristered up team were intent

on perverting the course of justice and that a conspiracy existed on the case due to the profile of the person I was suing a Professor of Law and Philosophy. Even if I had been lawyered/barristered up I would not have won the case because of corruption – even although if you actually read the papers in the case it is clear I did indeed win the case against a top 20 London law firm inhouse lawyered and barristered up. At the EAT level it became evidentially certain that there was a perversion of the course of justice occurring and this is “knowable” because the decision fails to record cited case law, verbatim reading of the ratio decidendi, legal arguments on the ultra vires doctrine and points of evidence in a contract at all. There were 5 case citations in papers, 3 statutory references and 3 contractual clauses at common law. None are in the judgment.

Whilst the substance of papers wrecked my LLB degree and legal career it only cost £4,750 to establish that the IT Adviser to the Lord Chief Justice / Professor of Law and Philosophy is a criminal, is involved in corruption and has conspired with others. He could have settled at any point in time, he chose not to. For the princely sum of £4,750 respondents have revealed all of their secrets and methodology as have the Lord Chancellor’s Department now Ministry of Justice and I have published them on a blog as a form of street justice. I cannot be sued for defamation, slander or libel even if they wanted to as all information is true. (I would like to do a Phd in the papers at some point in time or permit someone else to do so as they are historically important and there is public interest issues). Whilst I am seriously out of pocket and the damages I have experienced are also very serious – to date I have received nothing, I have had an opportunity to do what I had a natural bent to do anyway – and the information supports my thesis on the Woolf Reforms so it has been worth it. My second litigation cost even less – photocopying and travel expenses and I think I might have spent £200 on court costs twice at the Court of Appeal. Probably less than £1,000. On my third litigation to date I have spent £1000 on court costs, and probably about £500 on copying and travel expenses. If needs must I am aware of hardship funds concerning court fees. All cases are in the English courts.

I therefore do not consider court costs to be excessive – lawyers and barristers fees are excessive when they fail to do as you ask and thereby jeopardise the case : obviously I am not a green behind the ears student and it would be helpful if I was in a courtroom with competent judiciary in control of their courtroom, wise to lawyered/barristered nonsense and strategies as well as not inherently bent themselves (all to date bar one).

Of relevance to the Scottish Reforms concerning my English litigations – I spent £500 on a Petition to the House of Lords. The Woolf Reforms were implemented, ie Access to Justice Act 1999 which I argued technically made Lane v Esdail a 100 year old case obsolete as without leave I had the right to “access to justice” which presumably included the House of Lords!. I succeeded to the degree that prayers were said twice by two Bishops. My case was then deemed inadmissible by three Law Lords, two of whom had impartiality issues that I know about and failed to declare them. One even went against his public statement on a university website concerning justice by dismissing my case.

However, the point at issue – I am not in the habit of spending £500 on a product or service that I do not in fact receive. The product and service I paid £500 for was “Justice”, not “access to justice” which is what I got. I am of the view I have been short changed by a profession who should “know” better. I am of the view that I have every right to do “street justice” to any degree I choose and I am also of the view at this current time, the parties I am against are worth more to me alive than they are dead: someone else experiencing what I have experienced I have no doubt would do the opposite. Whilst this is not quite the information you were expecting, I ask you to consider the court costs in a different light one where a party has chosen street justice and will be in prison for at least 3-6 years at the cost of £45,000 per year. The dispute will certainly be resolved and the probable time involved will be the same under the current court procedures to trial.

## **2. To what extent does the cost of litigating deter people from pursuing or defending cases in court?**

For me there is no deterrent, as I intended to be a barrister / legal academic and enjoy litigation as a participatory means to regulate society. I have a scientific outlook concerning society and justice as jurisprudence.

I suspect people who can access the Legal Aid fund have a deep rooted reason to litigate purposive to “Justice”. I suspect also that people who are very Christian in belief also litigate purposive to “Justice”. I note that there tends to be a low take up of mediation and mediation really has not taken off to the degree envisaged. I also consider that the disputes market is still more or less the same regardless of how watered down the system of justice has become and I work for CAB so see a lot of employment issues/debt issues.

The income bracket above the legal aid threshold is likely to be less likely to litigate because they cannot afford to. Moreover, some categories of law just are not covered by legal aid, so there may be less likelihood of litigation in these categories. Whilst there are a few ambulance chasing no win: no fee contingency fee firms I don't consider this has too much of an impact on access to justice and the cost of litigating.

I consider the cost of litigating would deter a pursuer, but not a person defending a case.

**3. Does the current system of levying court fees affect access to justice? If so, how and in what kinds of cases?**

No, court fees are reasonable. Usually costs are in the cause.

**4. Are the current rules for recovery of judicial expenses satisfactory?**

N/A

**5. Are the current arrangements for the taxation of judicial accounts of expenses satisfactory?**

N/A

**6. To what extent and in what respects does the availability of legal advice and assistance and legal aid affect access to justice?**

Ensures that cases go the distance, Justice and Democracy prevail: reassures people, calms them down. Empowers the disempowered, socially excluded, marginalised, ensures the issues affecting ordinary people are regulated by society. Ensures it is not just a service for the rich.

**7. Are there specific areas in which you believe there is a particular problem in obtaining funding for litigation?**

Lord Woolf broke the link in personal injury claims and mental health issues in England & Wales to the legal aid fund: would like to see that restored, however, if this link is available in Scotland then keep it.

**8. What impact have speculative fee arrangements had on access to justice?**

There is some ambulance chasing law firms, but I would not have thought it was a huge impact. Claims in these firms tend to have a set scale award system in the courts, ie X for an arm. So massive awards are not going to happen in the majority of cases. However, these law firms “cherry pick” the cases, rather than there is a cab rank system. Hard cases or complex cases are less likely to be engaged with over easy cases.

**9. Should legal expenses insurance, including “before the event” and “after the event” insurance, have a greater role to play in the funding of litigation in Scotland?**

I have not come across this insurance. However, insurance is probably a good thing. Could be the difference for people above the legal aid threshold to access justice.

**10. What impact would the ability to recover “after the event” insurance premiums from unsuccessful parties have on litigation?**

I have no knowledge of this type of insurance.

#### Questions Chapter 4:

1. **Do you agree that the conduct of the civil business of the courts is adversely affected by the pressure of criminal business?**

Yes

2. **Should (a) some judges of the Supreme Courts and (b) some sheriffs be designated to deal with civil business?**

Yes

3. **Should the sheriff courts be separated into civil and criminal divisions? What would be the advantages and disadvantages of such a separation?**

Yes, should be separate courts. Employ and train judges specific to each category. Enable Electronic Case Management and case marshalling thereby enabling better access to the courts, reduce waiting times/lawyers fees, speed up the procedural system, if case settles able to fill the gaps, give trials the time they need, give cases a judge specific procedural case handler, ie akin to a Master in England.

4. **Should there be a greater degree of specialisation within the civil courts in Scotland? If so, in what types of case and in which courts?**

No, but the threshold for cases should be raised to below £50,000 and above £50,000 or complex

Court of Session should be court of first instance for above £50,000 or complex or appeal court. The Court of Session should also offer out its services as a court of any jurisdiction in the world for internal case law as a “neutral” court system: ie a jurisdiction for difficult cases to be heard on an international rostras where there is a need for a trial, but where a country is not sufficiently stable at judicial level to hear a sensitive case – remove case to another international court system as a “neutral” provider of justice.

5. **What are the key factors which influence the decision to raise an action in either the Court of Session or the sheriff court where jurisdiction is concurrent?**

I would have thought it would relate to the degree of damages that can be awarded or the complexity of the case and how easy it is to use the Court of Session ie Edinburgh, for someone whose location enables using the local sheriff court only, ie a travel issue. As I live in Edinburgh if I had a choice I would use the Court of Session as the judgment would carry more weight and if I needed to appeal the House of Lords would be available to me. This is probably also pertinent to accessing EC Law via Article 234 preliminary references to the ECJ. In England, Art 234 preliminary references at the Court of Appeal stage are “discretionary”, whereas at the House of Lords level they are “automatic”. I would imagine but do not know that this is the same scenario via the Court of Session and the House of Lords – so why I would use a sheriff court as a court of first instance is not something I would realistically consider doing unless there was a threshold issue.

6. **In what, if any, types of case should (a) the Court of Session (b) the sheriff court have exclusive jurisdiction?**

Court of Session : above £50,000 or complex or EC Law or “neutral” international civil court

Sheriff Court : below £50,000

(However, would prefer a separate “criminal court” structure from civil court for both thresholds).

7. **Should the jurisdiction of the Court of Session and the sheriff court be unified to create a single court?**

No.

8. **Should the Court of Session become a court of appeal only or should it retain a first instance jurisdiction? If so, for what types of action and why?**

First instance and appeal court for civil cases only. Threshold £50,000 and/or complex / EC Law and “Neutral” International jurisdiction

Computer disputes; construction disputes; Mergers and Acquisitions, large divorce disputes, Equity, Trusts, Private Client and Charities work. Employment disputes, Personal Injury claims, Military issues.

9. **If the current structure of the courts is retained, at what level should the privative jurisdiction of the sheriff court be set?**

I am presuming this relates to family law : below £50,000 and not complex.

10. **Are the current powers to transfer cases between sheriff courts and between the Court of Session and the sheriff court satisfactory?**

Probably not. You should not need “leave” to appeal, if the premise is “Access to Justice” in a court system. You should have freedom of choice if you want to appeal and have the where with all to do so – its not easy if the Judge is very very good AND APPLIES THE RULE OF LAW in the lower court: thereby taking the wind out of your sails.

Moreover, it is very very difficult to do a “miscarriage of justice” which requires a lack of evidence and inadvertence by a judge.

Which is wholly different from a judge “not applying the rule of law” and not controlling the parties before him/her which is a deliberate act and is corruption.

11. **Given the range in value and complexity of civil business in the sheriff court, should there be a tier of civil court below the level of the sheriff court?**

Yes, a virtual call centre style court somewhere in Scotland – could be remote, accessible only via email and website for cases that are £5,000 and below and are not complex : use simplistic pro forma downloadable and uploadable documents and pdf evidence bundles. Are serviced by Clerks / trainee Judges. And which only seek to “reiterate” the rule of law as it is, as opposed to “challenging” the rule of law which should go to the Sheriff Court if below £50,000 and to the Court of Session if above £50,000 etc as above.

12. **Alternatively, should there be another level of judiciary within the sheriff court to deal with “third tier business?**

Prefer Scotland wide virtual court call centre rather than third tier business.

13. **Does the current division of the sheriff court into distinct geographical jurisdictions present difficulties or does it have advantages?**

Has advantages – gives a sense of community serviced by local solicitor population.

14. **Are the current arrangements for dealing with undefended actions satisfactory?**

This question sounds like a non sequitur – presumably if the case is undefended you deliver up a judgment for enforcement. A judgment is a historical snapshot in time of the issues that affect the populace of the day. Therefore a judgment is still necessary for an undefended action, even for statistical purposes to enable accuracy of data of which the fact the claim was undefended will be the data.

**15. Are the current arrangements for the disposal of cases raising issues of public or administrative law satisfactory?**

I have no idea – but the issue in this sector is the ultra vires doctrine. Ensuring the “publicity” of cases in a judicial system are “public” where litigated or “private” where arbitrated is cast in stone is of paramount importance to the application of the rule of law in society. Electronically archiving material in a judicial archive accessible by the public might be a good idea.

**16. Are there types of business in the sheriff court which could more efficiently or appropriately be dealt with by administrative rather than judicial process? For example, are the current arrangements for the disposal of commissary business satisfactory?**

Below £5,000 and not complex actions which only “reiterate” what the law is could go to a virtual court call centre for the whole of Scotland utilising a simplified pro forma court procedure via email and be processed as “administrative” rather than judicial process with a right of appeal if necessary.

Difference between a dispute which “reiterates” the rule of law as it “is” and a dispute which challenges the rule of law to what it “ought” to be – this category must have the opportunity to go the distance to Justice at every level as it enables “democracy”.

**17. Is there a case for a national sheriff court which would allow cases to be raised at sheriff court level anywhere in Scotland? If so, what appeal arrangements should there be?**

No. There are too many cases below a threshold of £50,000 for one court to process as a court of first instance. Moreover, different communities have different issues that affect them. For instance, the islanders might have more fishing disputes, whereas the mainland is more farming, etc, etc. Best for the court nearest to deal with the local issue and local issues are not going to be above a £50,000 threshold whereas city based disputes are more likely to be over the £50,000 threshold.

**18. Is there a case for all sheriffs to have an all-Scotland jurisdiction?**

I was unaware that they did not. It makes sense. There should be a judicial circuit.

**19. If the sheriff court becomes the primary court of first instance, should there be a power of transfer from the Court of Session to the sheriff court and a power for the sheriff to seek the leave of the Court of Session to transfer a case there? If so, what factors should be taken into account?**

If there is a threshold category, then this rather deflates the issue, however, I cannot see why a case is not automatically transferred from the Sheriff Court to the Court of Session where it becomes obvious the case is too complex to be dealt with by the Sheriff Court or where the threshold means that the case must be transferred. I cannot see a reason why a case at first instance in the Court of Session subject to a threshold would be transferred down to a Sheriff Court.

**20. Are the existing appeal arrangements satisfactory?**

In a system premised on “Access to Justice” there should be no “leave to appeal” requirement necessary. If you have the where withal to appeal than that should be fine – a judge’s judgment should be so good, it prevents the need for appeal – it should be very very rare that an appeal occurs, else the judge is not up to much intellectually. If a judge’s caseload is regularly being appealed then he should be suspended for retraining and supervision purposes.

A statistical approach to appeals should be used for Judge's education and training/supervision and appraisal.

21. **Should the office of sheriff principal be retained or should an alternative office be created? Should that office be judicial or administrative or both?**

Retained and both. An intelligent person should not be suffocated by administration, however having a dual role would enable direction and organisation/structure to the courts own business/training etc. It is presumed that a Sheriff Principal has more experience than a Sheriff and as a consequence, if so, having more learned experience should make for interesting judgments.

22. **Should the majority of statutory appeals continue to be dealt with by the Inner House of the Court of Session?**

Merge the Inner/Outer House into one Court of Session to deal with threshold court business above £50,000, complex, ECJ and "neutral" international court criteria.

23. **Should there be a limit to the number of levels of appeal through which an action can progress? If so, how many levels would be appropriate? What provision, if any, should be made for exceptional cases and how should these be defined?**

Courts of First Instance, Virtual or Sheriff or Court of Session – threshold issue – appeal structure from all. Thereafter House of Lords and from their European Court of Human Rights having exhausted all national level jurisdictions.

In a judicial system premised on "Access to Justice" – all appeal levels to be available without hindrance – Article 6 of the Human Rights Act 1998 – right to a fair trial – if appealing : there is a reason in relation to fairness in the court below.

24. **What are the advantages and disadvantages of reliance on temporary judges and part-time sheriffs?**

Advantages: they fill gaps at short notice, they could break white private educated male dominated ethos by enabling more women, minorities, and less privileged people to get onto the judicial circuits, gain experience; may enable judges who wish to retire an opportunity to keep their hand in or for those who have retired to keep their hand in on areas of particular interest/specialism to them.

Disadvantages: dependency on this group, rather than ensuring adequate judicial posts are filled, not enough consistency in judgments – substandard service; training issues – expensive to train; potential for increased appeals, complaints and HRA claims; promotion and equality of opportunity may be difficult as this group may not want to take up posts even if selection on merit, career progression.

## Questions Chapter 5:

1. **Should the rules of civil procedure have an overriding objective or statement of philosophy and, if so, what should the main elements of that overriding objective or statement of philosophy be?**

Yes.

Jurisprudence is the science and theory of human law. It is both "natural law" case precedent as judicial reasoning and "posited law" contained in a statute as manmade law via the legislature. The only objective of a judicial system is "Justice" and thereby "Democracy" via equality, fairness, impartiality and justice. Safe and just society is enabled by ensuring and maintaining standards of reasonableness with uniform application via "reiteration" or by "challenge" of the rule of law – this later category is fundamentally necessary to ensure democracy and progress in society. Litigation is "public" and Arbitration is "private" application of the rule of law in a judicial system. Access to Justice must mean

Access to Justice, not access from justice by doing the “opposite”, ie access to mediation, ie compromise, therefore mediation must not be contained “within” a judicial system as it has the ability to bypass or undermine the rule of law and societal safeguards are not apparent as the judge is never a mediator and the mediator is never a judge. Mediation as a concept can over-privatise the legal system causing a “hidden” privatised society. Therefore mediation should be catered for as a separate system of dispute settlement “outside” the judicial and legal profession in order to “compete” by providing freedom of choice to the parties by bilateral consent to choose to litigate, arbitrate or mediate rather than giving the judiciary an ability to unilaterally direct a party out of the judicial system which is neither safe, nor just. Mediation does not apply the rule of law. Access to Justice means you have rights and responsibilities in society for which you will be held accountable to a standard of reasonableness either because that “is” the rule of law or because there is a challenge to what the rule of law “ought” to be. The difference between litigation and mediation is that the judge decides the case as opposed to the parties deciding the case. Whilst the judiciary are obligated to provide traditional equality before the law, where mediation permits the parties to decide it is unlikely that equality will be achievable albeit it is possible to settle the dispute on a 50:50 basis, “contemporary equality” if you like. The role of the judiciary is as guardians of society and their only requirement is that they “apply the rule of law” that they discover it rather than create it which is qualified to the degree that they may not “not apply the rule of law”. The difference is “progress” or corruption and the impact is whether the judiciary are seen to be independent applying law without fear or favour. Justice must be done and be seen to be done. Litigation is the purest form when the rule of law is “challenged” and the judges reasoning is wise and sharp. There is a universal symbol of Justice, there is now in the 21<sup>st</sup> Century a need for a universal symbol of Compromise too, mediation is not access to justice and dispute settlement in this forum is not Justice.

OR

What would you have in the Raven’s nest, but the raven itself?  
Gíod a b’aill leat fhaighinn an nead an fhithich ach am fitheach fhein?  
Gaelic Prophecy

Relevancy to Natural Law : In a Judgment you should find a rule of law.

**2. Should the court (a) encourage, (b) require or (c) in some other way facilitate the use of mediation or other methods of dispute resolution?**

No, mediation MUST be a separate institution from a judicial system.

Arbitration applies the rule of law but is “private” within a judicial system. Arbitration is acceptable in a judicial system, albeit litigation is the purest form of Justice because it is “public”. Justice must be done and seen to be done.

**3. If so, how should this be done and at what point or points in the progress of a dispute?**

The judiciary must not have a unilateral ability to direct a case towards mediation – it does the opposite of access to justice and effectively bypasses the rule of law in the “natural law” form. The ability to unbalance society towards the legislature is unsafe and unjust, moreover if ADR is contained in a statutory clause then the rule of law is completely undermined and a two tier society exists of which one tier is “hidden” and gagged by confidentiality clauses.

Judges must not confuse mediation as a form of access to justice or justice, it is in essence “compromise” of rights and is a private domain concept to assist dispute settlement, rather than dispute resolution according to the rule of law. There are no safeguards in mediation other than that the parties agree to participate in “good faith”. The mediator is a “neutral” in proceedings. Psychological techniques are used in the process and the parties may or may not be aware of them.

Mediation can exist in society accessed only as a freedom of choice issue via bilateral consent.

What courts can do procedurally is enable a discretion to all parties choosing to mediate the opportunity to delay issuing or stay proceedings pending the outcome of a mediation and in that regard, I would support making the Statute of Limitations and any limiting legislation/procedural rules obsolete in order to facilitate “competition” between litigation/arbitration and mediation.

**4. Are there particular kinds of disputes in which the use of mediation or other methods of dispute resolution is not appropriate and in which a judicial determination is essential? Please specify.**

All disputes issuing a writ are essential to Justice, some will settle through proceedings but all are potentially able to achieve “Justice” and thereby ensure democracy and a uniform standard of reasonableness.

Disputes with an “in the public interest” issue are fundamental to Justice. Disputes where the parties are “challenging” the rule of law to what it “ought” to be are absolutely necessary to Justice and Democracy. Class actions are also necessary to Justice. Disputes where there are abuses of Human Rights are also fundamental to Justice and Democracy. Medical cases where there is an ethical issue or where the degree of professionalism is poor are necessary to Justice and Democracy. Personal Injury cases are necessary to Justice and Democracy especially concerning Health and Safety issues. Environmental cases are necessary to justice and democracy. Race, Age, Gender, Religious Belief, Sex Discrimination and Disability Discrimination are all necessary to Justice and Democracy. This is not an exhaustive list.

**5. What form should mediation or other methods of dispute resolution take and how should this be funded?**

Mediation should exist in its own mediation centre and there should be a mediation centre in every town and city where there is currently a civil court.

Lawyers, barristers and judges should be banned from practising mediation. Mediators should be made accountable to a professional body akin to the Law Society / Bar Council.

There should be funding along the lines of the Legal Aid Fund with a threshold criteria related to income and expenditure.

**6. In what respects can modern communications and information technology be harnessed to improve access to the civil courts?**

Courts provide an electronic case number and electronic case management case marshalling. Courts provide pro forma downloadable court documents and a necessary list of pro forma documents to progress the case by the case marshalled dates on the case management system. Downloadable pro forma are then uploaded to the electronic case number record sheet as pleadings with PDF/scanned document image processed evidence scheduled up and paginated as discovery documents relevant to evidence in your knowledge, possession and control where possible with other items scheduled up. Witness statements and experts reports are uploadable. Where a party does not comply with the fixed electronic schedule then the electronic record emails the judge and other side and an automatic contempt of court is issued with fine/prison or more seriously perversion / obstruction of the course of justice/attempt. Where the documents are correctly uploaded then the system emails the otherside and judge who can then alter the electronic schedule if applicable to speed the case up to the first available date, etc, etc. Where an extension of time is necessary a request be emailed to the electronic record which then emails the judge and other side, when and if agreed the case management system is altered to an applicable date. The emphasis should be on using IT to objectively progress a case in its simplest form: writ plus evidential bundle; acknowledgement; defence/no defence (and counterclaim) plus evidential bundle; witness statements, experts reports, requests for discovery documents; adjustments; statement of truth; ready for trial form. There should not really be any need for any other procedural rules such as faffing about doing “agreed” court bundles – each side delivers up what they have of relevance. Also things like Affidavits are not really necessary, further and better particulars, etc,

skeleton arguments are a waste of time. Providing the evidence early on to support the writ or defence, etc may enable settlement rather than waiting to do discovery.  
The entire court record is electronically archived as a public access archive.

## 7. **To what extent should the court control the conduct and pace of litigation?**

Judge should always be in control – IT should make this efficient by (a) automatically issuing contempt orders / perversion/obstruction orders (ie automation does not allow for discretion – a lot of nonsense would be stopped overnight and would ensure equality before the law); if parties wanted to go fast, then the sooner both sides upload their data, the sooner the judge can bring forward the next case marshalled deadline to comply with his first available gaps in his itinerary where other cases have settled or been resolved.

Pace is either at the the direction of the Judge or can be speeded up by the parties acting responsibly in accordance with the Judge’s overall itinerary.

However, the last paragraph of clause 5.2 the test of proportionality ... “ causes me concern: proportionality is I consider superceded by article 6 of the Human Rights Act. Everyone has the right to a fair trial – it is therefore not about costs or resources or degrees of knowledge of the parties to deal with legal proceedings or unmeritorious, frivolous or vexatious claims it is about “Justice” of which Article 6 of the HRA 1998 is fundamental.

The judiciary may intervene in a case in one direction only – progressively (law applied), not digressively (law not applied) or regressively (non-law) mediation, for the sole purpose of achieving justice and thereby establishing democracy. If the parties choose to settle through court process prior to trial then that resolves the dispute to a degree.

The issues of proportionality, cost and mediation as expunged by the Woolf Report are in essence anti-judiciary; anti-democratic; deficient in intellect; abusive of human rights potentially nazi; Jewish sympathetic – money; unjust law; nonsense. A judge makes parties equal through participation purposive to justice. Need to not follow the Woolf Reforms which are a travesty – the role of a judicial system is to apply the rule of law, not to avoid doing so or create a two tier system in society. A justice system is meant to be accessible to the ordinary man in the street for his benefit not for a few who can afford it or a playground for lawyers / barristers. The reasonable man on the Clapham Omnibus is the ordinary standard of reasonableness. If the judicial system cannot accommodate that degree of intellect and participation then it is not fit for purpose. Any judge who thinks otherwise should depart the bench.

However, the quote on page 47 is utter rubbish and I find it hard to believe that the judiciary “admit” to stopping a case. Justice is an inherent power for which the judge is guardian. This statement admits that a judge is incompetent, not wise, not intelligent and begs the question why is the person a judge. Two parties bring the action one wins, one loses, one is truthful, the other lies, avoids, covers up. If the judge is powerless then remove from the bench. If the judge is powerless then he is probably bent.

A judge has an inherent power to bring the case to an end by “reason” which is “natural law”: there is a natural and logical flow to circumstances (cause) to consequences (effect) – they are not reversible.

Concerning the second quote on page 47 a judge is meant to “discover” the law not create it, else it is likely to be unjust or bad law.

Clause 5.11 threw up something interesting ... A sheriff’s statutory powers only limit the exercise of the inherent jurisdiction to the extent that it cannot be exercised in a way that is inconsistent with statute law or statutory rules of court”.

I therefore find this clause inconsistent with clause 5.23 and a draft Act of Sederunt for mediation rules ... as presumably this draft is inconsistent with the HRA 1998 and Article 6 and the right to a fair trial – the HRA 1998 is statute law and must be deemed to be embedded into statutory rules of court via article

6 : therefore to my mind, you cannot alter the Act of Sederunt to the detriment of the overriding objective of article 6 of the HRA 1998. Legal Opinion and public debate is necessary on this issue.

The Judge should be interventionist but solely for the purpose of applying the rule of law and thereby ensuring article 6 of the HRA 1998 is fundamentally achieved, ie Justice thereby democracy. Anything else, is utter nonsense and deficient in intellect. Also case precedent (Halsey 2004).

Very pleased with clauses 5.29 to 5.35 and moreorless 5.36 to 5.50.

**8. What types of case would benefit from (a) judicial case management and what types of case would benefit from (b) case-flow management?**

All cases would benefit from Judicial case management. It is essential that judges are in control of their courtroom and that they provide equality before the law. An automated system using a “cross in the box” to let the otherside and judge know by email the documents were available and also an automatic notification triggered by a deadline on a case management itinerary system would stop a lot of nonsense, ie lawyered / barristered up teams attempting to delay proceedings would automatically be processed for contempt / obstruction / perversion and could also be referred to their professional body for supervision, retraining or strike off relative to the degree of mischief. Monies captured through fines could go back into the system or into a hardship fund.

Case flow management should be a separate system whereby each judge has his own yearly schedule. Where cases settle or resolve the judge should be required to fill the gap as a first available date criteria. Also with electronic uploading of documents and data by set dates by the judge, the parties should submit statements of truth and a ready for trial form enabling judges to assess the case and set down the time necessary to deal with the case substantively. The judge is more likely to be realistic about how long he needs to process the case and write up a judgment, ie it should not take 9 months to write up a reserved judgment (as did happen on my second litigation).

Case flow management especially useful for litigation where there are more than two parties/third parties: where there are class actions; where there is a floodgate issue.

Also using an electronic system, may mean that a judge can work from home, or on the train home, on holiday: the electronic case record should be accessible to the public via the internet. If parties to a litigation do not want the public accessing their cases, then they should opt for arbitration. This may also prove to be a reason why people don't defend an action; or settle on receipt of the defence (or counterclaim) and sight of evidence and thereby be a disincentive to litigation as all court documents pass from the private to the public domain and no longer attract the safeguards of the Data Protection Act or privacy under the Human Rights Act.. In some instances, that would in itself be a reason to litigate in order to pass information to the public domain where there is a public interest issue, human rights, civil liberty issue! My blog is a good example of an uploaded case: if an itinerary case management system was attached to this I feel sure it would work.

**Questions Chapter 6:**

**1. What are the advantages and disadvantages of pre-action protocols?**

Advantages: A “letter before action” is a good idea and may lead to early settlement of the action by providing an opportunity for the parties to discuss the issues / meet. This is the only pre-action protocol that I would support.

Disadvantages: Article 6 of HRA 1998 is probably abused.

**2. Should there be a greater use of pre-action protocols? If so, in what courts and for what types of action?**

No. Freedom of choice for the parties to litigate, arbitrate or mediate. Keep litigation and arbitration separate from mediation in order for them “naturally” to compete. To allow mediation “within” judiciary has the effect of doing the opposite, neither is mediation access to justice or a form of justice, it is compromise.

**3. Should compliance with pre-action protocols be voluntary or compulsory?**

Voluntary – Letter before Action

**4. Should there be a greater requirement for leave to bring or to take steps in proceedings? If so, at what points in proceedings and what criteria should the court apply in deciding whether leave should be granted?**

No, article 6 of the HRA 1998. No issue of applying for leave. A right to a fair trial means access to justice is automatic in any and every court and is inclusive of justice occurring.

**5. Are the current arrangements for making the rules of civil procedure satisfactory? Please give reasons for your views.**

Need to simplify the process: embed process into an electronic system with a case management system running alongside it. Need to enable “public” access to the case via internet / public archive for the benefit of the public. Also need to collect statistical data in order to drive forward improvements, codification to millennium of legislation and case precedent.

**6. Should there be a single set of rules of civil procedure in both the Court of Session and the sheriff court?**

Yes, good idea – simplify and process electronically.

**7. Should there be a single initiating document for (a) all types of action and/or (b) at all levels of the court structure? If so, what format should that document take?**

Yes, difference only viz-a-viz threshold and/or complexity. The format should be electronic, ie to create an electronic case record with case management system attached, accessible by the internet, for parties to upload pro forma pleadings and pdf/document image processed evidence.

**8. To what extent should a system of abbreviated pleadings be introduced?**

Bullet points sufficient. Plain English requirement.

**9. Are the current arrangements for summary disposal satisfactory?**

No, Summary disposal is inconsistent with Article 6 of HRA 1998.

**10. Should routine procedural matters in both the Court of Session and the sheriff court be dealt with by judges (perhaps at a more junior level) designated for that purpose?**

The Judge’s Clerk could probably deal with procedural issues or a junior judge : especially if it is electronic, via email or scanned document/pdf.

**11. Are the current arrangements for dealing with routine procedural business satisfactory?**

Probably not. Probably need a 21<sup>st</sup> Century makeover using IT.

**12. Should the court have a greater degree of input in allocating the length of time to be set aside for a hearing? Should hearings be time limited or conducted by reference to a timetable determined by the court?**

Yes, the judge should set the duration of the hearing as he will have had an opportunity to assess both sides of the case and know his own abilities in processing the substantive issues in accordance with Article 6 of the HRA of course! – hee hee : over-egging the pudding/stating the obvious.

**13. In the conduct of substantive hearings should there be greater use of written rather than oral arguments?**

Greater use of written arguments : also requirement that a statement of truth be provided to the court accompanying all written pleading. Written arguments can also lead strategically to the “actual” evidence in support. This process can be tied together as a procedural rule, ie Writ + evidential bundle in support: Defence (and counterclaim) + evidential bundle in support. Both pleading documents can relate via paginated page numbers to the evidence. This may facilitate early settlement, but if not, an opportunity to do discovery should be given then after the Witness Statements and Expert Reports, the parties should be given the opportunity to “Adjust” their pleading positions to narrow down issues at trial: ie issues substantiated; issues not substantiated with the potential for “perjury” if the parties have not been truthful or reasonable towards each other by delaying settling a case, or delaying progressing a case by playing fast and loose with the court process. Would stop a lot of nonsense.

Greater use of written arguments would enable electronic case management via uploaded pro forma documents / pdf/scanned image processed evidence (and if there was any doubt about authenticity of document on substance, then the original be discovered). This would also mean that people could do their cases from the comfort of their own home, whilst on holiday, out and about town in internet cafes or professionally through their lawyer. It would also save on the requirement to provide 3-5 paper copies of pleadings and evidence bundles to the court, it would also enable public access via the internet to the court record potentially and also public access to historical archive material

**14. To what extent should there be an earlier and/or wider disclosure of evidence?**

Earlier, as soon as writ issued evidence bundle supplied specifically relating to the action contrariwise as soon as Defence (and counterclaim) issued evidence also supplied. Opportunity to do discovery of anything further that is necessary to the case in the “knowledge, possession and control”; thereafter issue of adjustment and statement of truth prior to request for set down to trial.

**15. To what extent should the court have control over the use of expert and other evidence?**

One expert each on specialist issue: if cause stipulates two different issues then two experts each, ie if there is an expert required to deal with issue of health and another expert required to deal with financial affairs, etc.

**16. Should a system of pursuers’ offers be introduced into the civil courts procedure? If so, what features should such a system have?**

No reason not to. Details notified to the judge plus reason for the level indicated. Also, if accepted reason, if not accepted reason.

Email: Note on pleading record – offer received. Offer not accepted and why. Offer accepted and reason effectively archiving the case.

**17. Should civil jury trials be retained?**

Yes, issue of Justice and Democracy. Need for the system to be tested from time to time. Judiciary can get too comfortable and set in their ways. Potentially televised.

**18. Should written judgments be required in all cases?**

Yes, issue of Justice and Democracy/corruption.. Also issue of jurisprudence requires certainty of statistical gathering; case precedent are historical slice of time concerning the issues affecting the populace, need to know all cases on a subject, public record archive material, also evaluation of system as each case precedent affirms existing rule of law, signposts improvements for a future case precedent (obiter dicta); makes previous case law obsolete possibly setting new direction (ratio decidendi); challenges statute and case law and sets new standard; can be bad/unjust law need to monitor. Enables codification. Also article 6 of the HRA 1998 provides for a fair trial, which presumes that Justice and the rule of law is applied: Justice therefore needs to be done and is seen to be done. Moreover, all cases are potential appeals. Furthermore, some cases are “miscarriages of justice”, ie where there is a lack of evidence and the judge is inadvertent. However, some cases (ie my two litigations) are corrupt where the judiciary is deliberately involved in perverting the course of justice / obstructing the course of justice and the judgments do not reflect the law and evidence and arguments put before the court, which is judicial corruption. I have referred my cases to the Prime Minister who referred them to the Ministry of Justice who failed to install a Chinese wall where there is an obvious conflict of interest, ie the papers should never have gone further than the Prime Ministers Office, whereupon they were sent to the HMCS who claimed “independence of the judiciary” where it is quite clear the judiciary have not been independent nor acting without fear or favour. The democratic process requires the Prime Minister to deal by bringing the judges before Parliament, neither can I get a select committee or any committee to deal, nor my MP, nor can I get the Police to deal or any complaints body to deal. People should be being held accountable and responsible, the corporate veil is raised, and people should be being removed for either not being beyond reproach whilst holding public office, or for bringing the legal profession into disrepute on the grounds of professional and ethical conduct. I do seem to experience a lot of spooky escoterism and if they can find the time to do that, they can also find the time to sit down in a meeting to discuss issues face to face. I do not appear to exist in a democracy. A judgment is fundamental to Justice and is fundamental to democracy.

**19. Should the courts have greater powers to impose sanctions for non-compliance with court rules or where a party or his representative has behaved unreasonably? If so, what should these be?**

Definitely yes. Judge should be in control of courtroom and court process. Therefore contempt of court orders and perversion/obstruction of the course of justice orders and perjury orders should all be available to the judge and if available used when requested / when a mischief is obviously occurring. Judge should be interventionalist on these issues.

Possible via electronic case management to make these issues automatic removing the discretion of the judge via a case management system triggering the relevant form to be emailed out to the party doing the mischief.

Issue of Equality before the law.

**20. What measures should be available to the court to identify and manage unmeritorious causes or appeals brought by party litigants?**

None, article 6 of the Human Rights Act provides for a right to a fair trial. Uniform to everyone: an unmeritorious case would speedily be resolved by getting it to trial quickly.

**21. Is the current legislation on vexatious litigants in need of reform and, if so, how should that be done?**

Yes, article 6 of the Human Rights Act 1998 provides for a right to a fair trial. Speed the case through the process.

**22. Should a person without a right of audience be entitled to address the court on behalf of a party litigant and, if so, in what circumstances?**

Yes, as a lay representative for the benefit of the party litigant especially where there is a disability impeding a person from speaking for themselves. Just because someone has an impediment of speech

or communication or learning disability or dyslexia or has a mental or brain injury or has limited English or is deaf or mute or someone operating equipment or turning the pages, etc it does not automatically follow that they cannot understand court proceedings, nor that they cannot participate in court proceedings to any degree without the assistance of someone to make the representations on their behalf. People with visible and invisible disabilities can be very intelligent people. Even an able bodied person may need assistance in court from a lay person who they know. If a lay person can assist the court to state a party's case in order to achieve justice then that should be the only requirement to permit a right of audience where a party litigant is concerned. At the end of the day, what is important is that the case is stated and that a judgment is received. How you do it is not overly important save that the parties must be equal before the law. The Disability Discrimination Act may be relevant (I have not checked – people can ask for “reasonable adjustment” under this Act).

**23. Would it be desirable to introduce separate procedures for multi-party litigation?**

Such cases should be automatically deemed “complex” and go to the highest court of first instance, ie the Court of Session regardless of any threshold issue. They should also have a very strict deadline case management system covering them as the opportunity to delay proceedings or stall proceedings is great. Otherwise, there is not really any need for separate procedures.

**24. Is the rule governing the procedure to be followed for judicial review satisfactory?**

No. I would split the issues into two camps:

Miscarriage of Justice – inadvertence by a judge – civil review. Issue nobody could have foresaw the case had gone wrong : trust and decency.

Corruption – deliberate perversion / obstruction of the course of justice by a judge in favour of a party including abuse of public office – criminal review

(Reason, if the Prime Minister refuses to bring Judges before Parliament when they are clearly not independent, then the criminal system needs to kick in – the issue is perversion of the course of justice not abuse of human rights when the law is deliberately not applied).

This issue is a serious issue as people will (a) do street justice and may direct the issue at the lawyers/barristers, at the parties or at the judge or anyone else with serious consequences; (b) the consequences may be desirable in themselves: short jail sentence; (£45,000 per annum to keep someone in prison for a year) and may signal to others that it is worth taking the law into your own hands rather than engaging with the judicial system, ie society has a lack of confidence in the judiciary per se, do not use the system and society stagnates to the political domain without being able to progress through natural law or degenerates towards savage/feral society as there is no reason to engage with the system or respect authority.

# **Annexure 1**

## ADR the "Achillies Heel" of Democracy

We have all heard the terms "separation of the powers" and "Justice must be done and seen to be done". But do we really know why these axioms exist in civilised society?

Well the separation of powers is between law and politics. That is to say "natural law v posited law". Natural law is the little bit of reasoning (ratio decidendi) of a case precedent. Posited law is the rule of law contained in a Statute as made by the legislature on the back of the people (citizens/subjects of a country). Natural law is what the law "ought" to be and posited law "is" the law. Simple you might think from time immemorial.

Unfortunately, if the balance between judicial reasoning and legislature does not happen, then I argue, neither does democracy. Why, if no cases challenge or reiterate the rule of law at common law (case precedent) or as contained in a statute, then law stagnates and becomes political "is" law. Assuming the will of the people is always adhered to then law "should" be "good" law to regulate all citizens. However, not all politicians are ultimately good and not all societies are ultimately good either.

Therefore, to unbalance democracy all you need to do is to prevent either Justice not occurring or the legislature to not occur. But it is not as simple as that. Justice is fundamental to democracy. Why, because "Justice" sets the standard of reasonableness to what the rule of law "ought" to be and this can occur objectively or subjectively via the equitable discretion of the judge. In a democracy, the standard of reasonableness is determined to be equality, fairness, impartiality and justice. Therefore Justice is the "ultimate" and is "fundamental" to democracy. Stop "Justice" and you prevent equality, etc.

Currently in England & Wales, and America a Japanese concept called ADR (Alternative Dispute Resolution) is being contained "within" the judiciary and legal profession. It is being premised as "access to justice" and is contained in a Directive on Mediation which is going to impact on the Scottish and European legal systems, except Denmark who have abstained. The problem with ADR is that it does the "opposite" and removes the case from the path of access to justice, where the parties may not experience equality, fairness, impartiality or justice. The difference is that the judge is never a mediator and the mediator is never a judge. As such, something is occurring to democracy that is being falsely premised, the issue remains – why?

We have had "regimes", "regime change" and "change management" in the last decade within UK politics – from what to what? (Liberalisation!). Now ADR is a Japanese concept and as such it is used culturally to "save loss of face". In Japan litigation is a "last resort" concept. Japanese culture is based on confidentiality agreements and gagging clauses covering up who knows what. Japanese society is therefore largely "hidden". This by contrast is not how Western society is, our courts are "public" and the light of day shines into its darkest reaches most of the time.

Anyway, I recently spoke to a Scottish mediator and he informed me "but 97% of cases settle without trial": therefore 3% make it to Justice and impact uniformly on society. Just 3% is necessary in order to ensure that British society exists as a democratic society where society is deemed to be civilised, safe and just. (I am surprised, maybe closer inspection needs

to occur concerning this statistic!) Therefore why do ADR'sts want to have ADR "within" the judiciary and legal profession and potentially impact on 3% of cases that fundamentally must go the distance when ADR "outwith" the judiciary and legal profession and with freedom of choice and the equilibrium of the dispute market they have potential to access 97% of cases: that should be sufficient.

If, 97% of disputes "settle" before trial, this presumably is why Woolf claims (1) equality and (2) access to justice. Settlement is potentially divided into judiciary ("traditional equality") and mediators ("contemporary equality"). Either the judge decides or the parties decide the outcome of the dispute. Therefore contemporary equality is 99:1; 60:40; [50:50]; 30:70; 1:99. The fact that it is possible for traditional equality and contemporary equality to be 50:50 presupposes that mediation does have some "good" quality, howsoever, unlikely the parties will settle on this outcome may be in reality. With mediation there is disempowerment especially where psychological techniques are used: "gold will be left on the table" – there must fundamentally be a benefit to all parties – win/win rather than win/lose via the judiciary. The difference is that judicial equality provides compensation (monetary value), mediation may provide redress, ie the remedy may have a different weight.

As such, I advocate the "Competition model" for Scotland and Europe:

Judges, lawyers and barristers NOT permitted to practice ADR – because their sole role in society is to uphold the rule of law!

A professional body of mediators akin to the Law Society/Bar Council

A mediation centre in every town/city where there currently exists a court

That is to say, that the competition model would separate litigators from mediators. The market would determine who got the disputes and in what percentage on the basis of freedom of choice. ADR would exist in a democracy and so would the rule of law.

However, of concern to me is how ADR is being processed in society. The English & Welsh model was processed by the Woolf Report which became the Access to Justice Act 1999 and CPR Rule 26 processed ADR "within" the judiciary. The Woolf Report stupidly in my view informed "litigation will be avoided whenever possible" ambiguously in a report entitled "Access to Justice" (Annex 1). Therefore it is clear that something intellectually was deficient concerning the processing of ADR within English/Welsh society – or was it? If we are being "change managed" to some other political state then the judicial and political elite would be acting deliberately rather than inadvertently.

Furthermore, the Scottish Executive have been processing the Directive on Mediation at European level. A consultation paper on the subsidiary principle via Arlene McCarthy MEP saw 2 out of 27 published responses interviewed and as my response proposed the Competition model and was not therefore the proposed model, it was perhaps biased or prejudicial to not also interview me on the premis that you ought democratically to interview for and against your proposal. 5 further "experts"! were also interviewed, effectively rubber stamping an already settled outcome.

Therefore, it would appear to me that I am making the case that "democracy" is being dispensed with politically as well as judicially. – because of ADR - Why?

Surely, there is a need to take a step back and look at the models (do an evaluation) – English & Welsh, American, Japanese and for good measure the Danish before impacting on Scotland and Europe.

So to recap – ADR is the "achillies heel" of democracy because:

It is being processed as something it is not and never can be because it is "opposite" to Access to Justice, ie Access FROM Justice: compromise.

It upsets the finely balanced mechanism between natural law and posited law and if judges do not "reason" then society stagnates in a political quagmire.

Even the political domain cannot process a consultation fairly proving that "standards" in society have subsequently lowered.

ADR "undermines" the rule of law because it gags society at the individual level and prevents law being uniformly applicable.

The Japanese process ADR as a cultural feature to their society, we are processing it because it is cheaper and quicker than litigation (not necessarily true) – so revamp the litigation process to the 21st Century using IT! and "improve" on a 3% statistic.

Do you want to exist in a safe and just society – with ADR contained "within" the judiciary – just what society are you expecting? What should the international symbol of "Compromise" look like?

References:

[Woolf Report - Access to Justice](#)

[Published responses to the Consultation Paper on the Subsidiary Principle concerning the Directive on Mediation Com \(2004\) 718](#)

**EQUALITY (THE HIGHEST FORM OF ORDER IN A DEMOCRACY) – OR NOT?**

**ACCESS TO JUSTICE  
Pre-Woolf Reforms (26 April 1999)**

NON-LAW		LAW		
Private		Public	Private	Effect
Alternative Dispute Resolution (ADR)		TRIAL (Substantive Justice) * equality, fairness, impartiality, justice	Arbitration	<b>DISPUTE RESOLUTION</b>
		Process (Procedural Justice) equality, fairness, impartiality, justice		<b>DISPUTE SETTLEMENT</b>

**ACCESS TO JUSTICE  
Post-Woolf Reforms (26 April 1999)**

NON-LAW		LAW		
Private		Public	Private	Effect
↘		TRIAL (Substantive Justice) °equality, expedition, economy, proportionality	Arbitration	<b>DISPUTE RESOLUTION</b>
		Process (Procedural Justice) equality, expedition, economy, proportionality	Alternative Dispute Resolution (ADR) (MEDIATION)	<b>DISPUTE SETTLEMENT</b>

**ACCESS TO MEDIATION  
Post-Woolf Reforms (26 April 1999)**

NON-LAW		LAW (applies legal norms and legal principles)		
Private		Public	Private	Effect
↘		TRIAL (Substantive Justice) equality, expedition, economy, proportionality	Arbitration	<b>DISPUTE RESOLUTION</b>
		Process (Procedural Justice) equality, expedition, economy, proportionality	Alternative Dispute Resolution (ADR) (MEDIATION)	<b>DISPUTE SETTLEMENT</b>

\* TRADITIONAL PRINCIPLES : equality, fairness, impartiality, justice

° CONTEMPORARY PRINCIPLES : equality, expedition, economy, proportionality

NON-LAW (does not apply legal norms or legal principles)

