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The Secretariat Sheriff Court Rules Council
Scottish Executive Justice Department
Civil Court Procedure & Sheriff Court Jurisdiction
2 West St Andrew's House Edinburgh EH13DG

Dear Sir or Madam

Consultation on The Sheriff Court and Alternative Dispute Resolution: A response from SCOTSS

The Society of Chief Officers of Trading Standards in Scotland is the professional body representing the lead officers for Trading Standards in Scottish local authorities. I welcome the opportunity to respond to the document of June 2006.

Trading Standards services based in Scottish Local Authorities have worked extensively to resolve consumer disputes, where possible without court intervention. For that reason I welcome the scope of the SCRC consultation on the draft rule change to encourage the use of ADR as a method that will be of benefit to consumers and traders who are party to such actions. Note that this response throughout is confined only to actions involving consumer disputes.

Responses to individual questions in the document are appended below. I trust that you find these comments constructive. Please do not hesitate to contact me with any further queries you have on this issue.

Yours sincerely

Ken Daly
Chairman SCOTSS

Recommendation One

That there be incorporated into each set of rules applicable to the conduct of civil business in the sheriff court a new rule concerning mediation in the terms set out in the draft rule below (section 3) or in terms similar thereto, adapted as necessary to the context of the set of rules in which it appears. Rule 33.22 of the Ordinary Cause Rules 1993 (OCR) would thereby be superseded.

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

Q.1b Please provide comments to explain your reasons.

SCOTSS would support that the inclusion of such a rule is highly desirable. It reflects Scottish Executive Policy as well as measures proposed in the Dept. Of trade and industry white paper "Extending Competitive Markets".

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

Q.2b Please provide comments to explain your reasons.

Encouragement rather than compulsion should be rule as the consultation rightly identifies that ADR must be a voluntary process.

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

Q.3b Please provide comments to explain your reasons.

SCOTSS would suggest that the court makes every effort to encourage parties to an action to consider ADR. A critical part of this is to notify parties in advance of the availability of mediation services and how this could assist them. It would be good practice for the court officers to supply parties with written advice signposting them towards accredited mediation services when they lodge paperwork initiating civil action.

It may be outside the scope of this consultation but SCOTSS would recommend further action with the SCRC the Scottish Courts Service and providers of mediation to compose written advice.

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

Q.4b Please provide comments to explain your reasons.

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

While supporting ADR in every possible circumstance it should not be seen as a barrier to prevent party litigants from receiving a full hearing where appropriate. Examples might include parties with a previous bad experience of mediation. SCOTSS would therefore caution the use of a flag for “unreasonable conduct”.

Q. 6a Do consultees consider it appropriate to have an express reference in the rule relative to the awarding of expenses?

Q. 6b Please provide comments to explain your reasons.

There is no necessity to have reference towards the award of expenses.

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

- . Ordinary Cause Rules 1993
- . Summary Applications, Statutory Applications and Appeals etc. Rules 1999
- . Summary Cause Rules 2002
- . Small Claim Rules 2002?

Q. 7b Please indicate with reasons whether the reference should be incorporated into all, some or none of the court rules.

Q.7c If you think that the reference should only be incorporated into some of the court rules please indicate, with reasons, which set(s) of court rules.

SCOTSS would support a reference that will encourage ADR in each set of court rules but stress that this is only in relation to the resolution of consumer disputes.

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

Q. 8b Please provide comments to explain your reasons.

Other parties will be best placed to judge the effect of alteration in the Ordinary Clause Rules for the instance given in relation to family mediation.

Recommendation Two

That a new para (5A) be inserted into OCR 3.1 in the following terms:-

"(5A) An article of condescendence shall be included in the initial writ averring the steps taken by the parties prior to the raising of the action by other forms of dispute resolution (whether by way of mediation, negotiation or otherwise) with a view to avoiding the need for litigation. "

A similar provision should be inserted into each of the other sets of rules applicable to the conduct of the civil business in the sheriff court, adapted as necessary to the context of the set of rules in which it appears.

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

Q. 9b Please indicate, with reasons, whether this reference provision should be incorporated into:

- (a) All or**
- (b) Some or**
- (c) None of the court rules.**

Q. 9c If you think that this provision should only be incorporated into some of the court rules please indicate, with reasons, which set(s) of court rules.

SCOTSS would support the inclusion of the clause as drafted into all sets of court rules.

Recommendation Three

That, subject to questions of cost and practicability, the use of mediation or another form of dispute resolution should be facilitated in relation to disputes at all levels by the provision of an in-court mediation service in the manner piloted in the sheriff courthouses of Edinburgh, Glasgow and Aberdeen.

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

SCOTSS would strongly support this recommendation and further we would stress endorsement for the inclusion of professionals with a consumer complaint

mediation background to be available through all in-court mediation services. This recognises that there might be resourcing implications for local authorities who employ consumer advisers. However as above we would stress that potential litigants be advised of all sources of accredited mediation available.

Recommendation Four

That rule 8.3 of the Summary Cause Rules 2002 and rule 9.2 of the Small Claim Rules 2002 should be amended by the incorporation into each of a new paragraph in the following terms:-

"8.3(2A)/9.2(2A): In carrying out the duties referred to in paragraph (2) (b), the sheriff may hold discussions in private and not in open court." and that otherwise the said rules 8.3 and 9.2 should remain for the time being unaltered

**Q. 11a Please indicate, with reasons, whether a new paragraph, in the terms outlined above, should be incorporated into both:
Rule 8.3 of the Summary Cause Rules 2002 and
Rule 9.2 of the Small Claim Rules 2002?**

Q.11b If you think that the reference should only be incorporated into one set of the court rules please indicate, with reasons, which set(s) of court rules.

Q. 11c Do consultees have any views on the recommendation that rules 8.3 and 9.2 should otherwise remain for the time being unaltered?

SCOTSS agree with the recommendation and agree with the committee that there should be an option for the Sheriff to use discretion when discussing matters with the parties involved. In relation to consumer disputes we would encourage the incorporation in Summary and Small Claim Rules.

Q12 and 13 SCOTSS would consider both the proposed draft rule and the proposed form of notice to be adequate.



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