



Ensuring effective access to appropriate and affordable dispute resolution

The final report of the Civil Justice Advisory Group

A summary

January 2011

About Consumer Focus Scotland

Consumer Focus Scotland is the independent consumer champion for Scotland. We are rooted in over 30 years of work promoting the interests of consumers, particularly those who experience disadvantage in society.

Part of Consumer Focus, our structure reflects the devolved nature of the UK. Consumer Focus Scotland works on issues that affect consumers in Scotland, while at the same time feeding into and drawing on work done at a GB, UK and European level.

We work to secure a fair deal for consumers in different aspects of their lives by promoting fairer markets, greater value for money, improved customer service and more responsive public services. We represent consumers of all kinds: tenants, householders, patients, parents, energy users, solicitors' clients, postal service users or shoppers.

We aim to influence change and shape policy to reflect the needs of consumers. We do this in an informed way based on the evidence we gather through research and our unique knowledge of consumer issues.

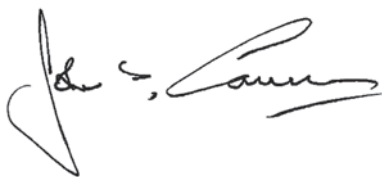
Chairman's Acknowledgements

Having had the privilege of acting as chairman of the Civil Justice Advisory Group in 2004 -5, I was very pleased to have the opportunity to continue as chairman of the reconstituted Advisory Group, following the publication of the civil courts review report in 2009. The work of the Group has been carried out in a very short time, considering the complexity of some of the questions arising, and with limited resources. Nevertheless, I hope that we have made suggestions which will contribute to the creation of a system which will encourage the resolution of disputes by agreement wherever possible, but also provide for an unintimidating and accessible, but efficient, court procedure where agreement cannot be reached.

I am very grateful to all the members of the Group for the time and effort which they have given to its work and for their valuable contributions.

I am also grateful to all those who took the time to give their views at our consultation seminar or to submit written comments. The comments made were thoughtful and wide ranging and have been invaluable in helping shape the Group's recommendations

I would also particularly mention the work done by the staff at Consumer Focus Scotland in providing policy and secretariat support to the work of the Group.



The Right Honourable Lord Coulsfield

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Introduction

The Civil Justice Advisory Group's original report, *The Civil Justice System in Scotland – a case for review?*, was published in November 2005. It recommended that there should be a review of some important aspects of the civil justice system in Scotland. In February 2007, the then Minister for Justice announced that Lord Gill, the Lord Justice Clerk, would lead a review of the civil courts in Scotland, which would focus on four of the six areas identified by the Group as in need of review.

The report of the civil courts review was published in September 2009. Its recommendations were wide-ranging, covering both structures and procedures in the Scottish civil courts. Following its publication, Consumer Focus Scotland reconvened the Civil Justice Advisory Group, under the continued chairmanship of the Right Honourable Lord Coulsfield, to consider the review's recommendations. Given the Group's instrumental role leading up to the review, we felt we were well placed to react to the proposals, and to make our own recommendations about future courses of action. We decided that our attention would best be focused on considering those aspects of the proposals that impact most directly on individual users of the courts, namely 1) those relating to claims of lower financial value, together with housing actions and some family matters and 2) those designed to improve access to justice such as self-help, public legal education, 'McKenzie Friends' and in-court advice.

In order to inform the development of our report, we were keen to engage with as wide a range of stakeholders as possible. We issued a consultation paper, outlining the key questions we were considering and held a consultation seminar to discuss the issues raised in the paper. Approximately 80 delegates attended the seminar, including members of the judiciary, solicitors, advice agencies, policy makers and members of the public. In addition, 16 written submissions were received from a variety of organisations and individuals.

A more detailed discussion of the issues contained in this summary report can be found in our full report, available from Consumer Focus Scotland or online at <http://www.consumerfocus.org.uk/scotland/>

Current Financial Context

Since the civil courts review report was published, the public spending climate of Scotland has substantially changed. This may well affect the assessment of the practicability of the review's recommendations. We are unable to comment definitively on questions of cost, the availability of premises or staffing issues involved in setting up new court structures. We have also been unable to estimate the cost implications of many of the recommendations we have made.

Nevertheless, in making our recommendations we have tried so far as possible to have regard to the current economic climate. It is tempting for discussion to focus only on the impact of this on the practicality and feasibility of future reforms to the civil justice system. What must not be forgotten is that the current economic climate has a real practical impact on individuals and will probably lead to people experiencing more, and more acute, problems. At the same time, however, reductions in central and local government finances will likely place further financial constraints on organisations which provide advice. Within this context, it is more critical than ever to ensure that people find appropriate help from the most appropriate source as early as possible.

Civil Justice Advisory Group Members

The Right Honourable Lord Coulsfield (Chairman)

Iain Armstrong QC

Vice-Dean, Faculty of Advocates

Richard Henderson

Chair, Scottish Committee of the Administrative Justice and Tribunals Council

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Secretary:

Gemma Crompton, Senior Policy Advocate (Legal Services), Consumer Focus Scotland

Colin McKay, Deputy Director, Legal System Division, Scottish Government attended the Group's meetings in an advisory capacity.

This report is intended to represent a consensus reached among the members of the Civil Justice Advisory Group, but the views expressed in the discussions varied quite widely and it should not be assumed that every individual or organisation represented is in agreement with every part of the report.

Summary of recommendations

1. A system-wide user-focused approach should be taken to future civil justice reforms, looking beyond the courts to the wider civil justice system.

The expression ‘civil justice system’ is often taken to refer only to the civil courts. There are, however, many means other than the courts to which citizens may resort for help in resolving their disputes. A realistic review of the means of access to justice must include these resources, rather than confine itself to the civil courts.

There has been little opportunity in the past to consider a system-wide approach to reforming Scotland’s civil justice system to ensure that disputes are resolved in ways appropriate to both the circumstances of the dispute and the needs and wants of the parties involved. Taking a system-wide approach to reforming the civil justice system now seems timely. In addition to the civil courts review, there has also been a recent review of administrative justice, as well as recent developments relating to the place of alternative dispute resolution in our civil justice system.

We strongly recommend that a system-wide approach be taken to reforming how civil disputes are dealt with in Scotland, to ensure that resources are invested in the most efficient and effective way. The focus should be on creating a civil justice system designed around those who use it, addressing the various needs which users have at each stage in the progress of their disputes, to ensure that these are resolved in the most effective way as early as possible. In taking the recommendations of the civil courts review and other recent reviews forward, it will be necessary to provide a range of solutions which may be appropriate for an individual and their problem(s) depending on their needs, wants and particular circumstances.

2. The civil justice system should be designed to permit a ‘triage’ approach to help inform and guide individuals in identifying the most appropriate route to dealing with civil justice problems at each stage of the ‘user’s journey.’

We approached our task by considering the various potential stages in the user’s journey through the civil justice system, including: what can be done to prevent a dispute arising in the first place; experiencing a problem and taking initial steps to resolve it; accessing dispute resolution processes; and using the proposed third-tier of civil jurisdiction. Each step in the user’s journey represents a different stage where decisions require to be made about a range of options that might be taken to resolve their dispute(s).

At the consultation seminar, Professor Dame Hazel Genn discussed the Australian approach to civil justice problems, including the application of ‘triage’. The Australian approach to triage encourages the early analysis of civil disputes, with the object of ensuring that at whichever point someone enters the justice system they are directed to the most appropriate

pathway of resolution for their circumstances and problem.¹ Delegates at the seminar were particularly interested in the concept of ‘triage’ and there was broad agreement that people should be assisted to identify and access the most appropriate form of resolution for their particular problem.

While, however, the concept of triage is an attractive and interesting one, and could have a key role in assisting people towards appropriate forms of dispute resolution, there are a number of ways in which the concept could be applied and there are issues to be resolved. These include where responsibility for the triage function should lie, at what stage it is to be exercised, and, as noted below, whether it should be linked with a formal process.

It is, nevertheless, absolutely clear that it is fundamental to the application of a ‘triage’ approach to civil justice problems to ensure that at each stage of the ‘user’s journey’ people have the necessary information and support to make informed decisions about how best to resolve their disputes. In order for such ‘triage’ to operate effectively, it must be ensured that:

- sufficient sources of information on dispute resolution options are available, including assistance allowing people to ‘self-help’;
- advisers and others who come in contact with those with disputes undertake their necessary role effectively, providing information and advice on the full range of options available or signpost to such available sources;
- there is sufficient availability of services for people to be referred to.

Many of our recommendations are designed to ensure that such an infrastructure is in place, in order to create an environment where disputes are resolved in the most appropriate way, on the basis of informed decisions. This should be viewed as an important priority in improving access to justice.

It was also suggested to us that the application of triage might be more closely linked to the proposed new simplified procedure and integrated into a formal process, for example by a ‘multi-door courthouse’ procedure or options hearing. Due to time constraints, we have been unable to give full consideration to this proposal, including how it might operate in practice or be paid for. We are not in a position to make a formal recommendation about this, except to suggest there may be merit in further considering how a preliminary independent assessment of the merits of a dispute at an early stage might operate in practice. It might also be prudent to pilot some different models to assess their effectiveness.

¹ Australian Government (2009) *A Strategic Framework for Access to Justice in the Federal Justice System*, available at [http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(8AB0BDE05570AAD0EF9C283AA8F533E3\)~A+Strategic+Framework+for+Access+to+Justice+in+the+Federal+Civil+Justice+System+-+Report+of+the+Access+to+Justice+Taskforce..pdf/\\$file/A+Strategic+Framework+for+Access+to+Justice+i+n+the+Federal+Civil+Justice+System+-+Report+of+the+Access+to+Justice+Taskforce..pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(8AB0BDE05570AAD0EF9C283AA8F533E3)~A+Strategic+Framework+for+Access+to+Justice+in+the+Federal+Civil+Justice+System+-+Report+of+the+Access+to+Justice+Taskforce..pdf/$file/A+Strategic+Framework+for+Access+to+Justice+i+n+the+Federal+Civil+Justice+System+-+Report+of+the+Access+to+Justice+Taskforce..pdf)

3. The principle of ‘getting it right first time’ should be encouraged wherever possible.

The civil justice system is often left to resolve issues that arise due to the decision making of other branches of government. There is a need for different local authority departments, such as social work, housing benefit and housing departments, to work better together in the provision of services. The Administrative Justice Steering Group recognised the importance of public bodies ‘getting it right first time’ and considered that this was ‘the most significant improvement that could be made to administrative justice within both Scotland and the UK as a whole.’²

We believe the principle of ‘getting it right first time,’ should be a key objective of both public and private sectors. Cases should not be brought to court unnecessarily. There is evidence in relation to eviction actions, for example, that court action is being used to compel tenants to pay arrears, rather than to actually evict them.³ We are concerned that some organisations, particularly those who are bulk users of the courts, may tend to use court as a first, rather than last resort. We believe such organisations should be encouraged to consider whether their traditional approach to resolving disputes is the best way to achieve their objectives, or whether alternative methods might be preferable. This may require a substantial culture change within these organisations. The pre-action requirements introduced by the Home Owner and Debtor Protection (Scotland) Act 2010 provide a useful example of how parties can be encouraged to resolve problems prior to coming to court. While it is important to ensure that pre-action requirements do not become a means of enabling debtors to delay unreasonably in meeting their obligations, we nevertheless think that there may be some potential for an increased role for pre-action requirements in facilitating a cultural change in how certain types of disputes are approached and resolved.

4. A web-based system should be created, bringing together information on rights, responsibilities, sources of self-help and advice and options for dispute resolution, which would guide people through the dispute resolution process.

It is clear from research that many people with civil disputes lack the necessary knowledge, skills and confidence to deal with their problems effectively. They may not be able to recognise that they have a problem; that it has a potential solution through the justice system; or that there are sources of advice or redress available to them.

We believe there is scope for IT to play a significant role in facilitating ‘self-triage’, especially if directly linked into other sources of help and means of dispute resolution. We agree with the civil courts review report that there is a need for more information to be available online about rights, responsibilities and methods of dispute resolution. We envisage such a web-based system as much more than a portal for written information. It should be interactive, providing more sophisticated advice about the options available to people in relation to their particular circumstances, and guiding them through the dispute resolution process through the use of information, multi-media and intelligent questions. It is also important that opportunities for using the web-based system at each stage in the user’s journey are

2 Consumer Focus Scotland (2009) *Administrative Justice in Scotland – the Way Forward: The final report of the Administrative Justice Steering Group*, Glasgow: Consumer Focus Scotland

3 Shelter Scotland (2010) *Evictions by Social Landlords in Scotland 2009-10*, Edinburgh: Shelter Scotland

explored and, in particular, whether it could be used as a portal for undertaking elements of dispute resolution, such as the lodging of forms online. This web-based system should be a resource not only for the public, but also for solicitors and other advisers, to enable them to undertake their triage function.

In order for the web-based system to effectively meet the needs of users and be navigable by ordinary individuals, we recommend a wide range of expertise is involved in designing the system, including users and lay representatives, systems analysts, and expert advisers and lawyers.

We recognise that, given the 'digital divide' in Scotland, a web-based system will not be sufficient on its own. Additional services will be required, for example a helpline and hard copy materials in a variety of locations, such as libraries, Citizens Advice Bureaux, doctors' surgeries and the courts. There may be merit in exploring whether a broader service, including the web-based system and an accompanying helpline, offering information and advice about rights, responsibilities and appropriate means of redress would be a feasible way forward. In any event, concern about the digital divide should not hold up the development of a web-based system.

5. The Scottish Government should ensure that its digital strategy includes consideration of the use of IT in delivering justice services.

The Scottish Government has recently committed to developing a digital strategy, which we expect to be published early in 2011. In its paper 'A Digital Ambition for Scotland,' the Scottish Government outlined its desire to see more public services delivered online.⁴ As was explicitly recognised by the previous Scottish Executive⁵ and by the civil courts review,⁶ the civil justice system provides a public service. The paper does not, however, discuss the potential to deliver justice services online. If the use of IT within the justice sector is to keep pace with developments in other sectors, we believe it is essential that the Scottish Government's digital strategy includes consideration of the use of IT in delivering justice services.

6. Funding should be made available to pilot more proactive public legal education initiatives to build legal capability amongst particular population groups.

We recognise that web and telephone services may not meet the needs of all consumers in building their legal capability to ensure they can recognise potential problems and either avoid them or deal with them effectively when they arise, whether by taking action themselves or seeking advice. Consultation respondents identified a number of particular groups which may require more proactive interventions.

4 Scottish Government (2010) *A Digital Ambition for Scotland* available at <http://www.scotland.gov.uk/Resource/Doc/127313/0105923.pdf>

5 Scottish Executive (2007) *Modern Laws for a Modern Scotland: A Report on Civil Justice in Scotland*, Edinburgh: Scottish Executive

6 Scottish Civil Courts Review (2009) *Report of the Scottish Civil Courts Review*, Edinburgh: Scottish Civil Courts Review

There are a variety of organisations, both legal and non-legal, which have extensive experience of working with vulnerable groups. We believe funding should be provided to pilot proactive public legal education initiatives to build legal capability amongst particular population groups, or those experiencing certain types of problems. We know that one criticism of public legal education initiatives is that there is insufficient empirical evidence of their effectiveness. We therefore recommend that these pilots should be properly evaluated and used to build the evidence base on the benefits of such initiatives.

7. Court rules should be introduced which would encourage, but not compel, parties to seek to resolve their dispute by mediation or another form of alternative dispute resolution, prior to raising a court action.

There is clear evidence that parties who have engaged in mediation to resolve a dispute often find both the process and the result more satisfactory than those who have proceeded to litigation. There was general agreement both in the consultation responses and at the seminar that mediation and other forms of alternative dispute resolution can offer advantages. Some respondents, however, warned that mediation should not be seen as always advantageous nor as a universal solution, with one pointing out that in some cases, such as family disputes involving a risk of domestic violence, immediate recourse to the courts must be available. There was no general support for making mediation compulsory in any class of disputes. Nevertheless, there was general agreement that steps should be taken to ensure, so far as possible, that parties to a dispute have been made aware of the possibility of alternative dispute resolution and have thought about whether or not to use it.

We believe that as part of the application of triage, those with disputes should be able to access information about the range of options for resolving them, allowing them to make informed decisions about how to progress. A common theme from both the seminar and the consultation responses was whether there should be some more formal means of ensuring people had considered the different options for dispute resolution before proceeding to litigation. A number of consultation responses explicitly called for a rule of court to be introduced which would require parties to an action to state whether they have considered and/or used mediation.

We recommend that court rules should be introduced which would encourage, but not compel, parties to seek to resolve their dispute by mediation or another form of alternative dispute resolution, prior to raising a court action. This follows the approach agreed in principle by the Sheriff Court Rules Council in 2007. We also recommend that this rule should be supported by a requirement for advisers, including solicitors, to discuss the range of available dispute resolution options with their client.

8. A mediation scheme should be available which could be accessed before a court action is raised, as well as being available to the court.

If the process of 'triage' is to operate in such a way that those with disputes are given information about different forms of dispute resolution, it is essential that sufficient services are available, should they choose to access them. We believe 'triage' could best operate if the different dispute resolution processes available were better integrated. While our consultation sought views on how closer links could be developed between the courts, alternative dispute resolution and administrative justice, most consultation responses focused on how mediation could play a bigger part in the civil justice system.

The civil courts review report recommended that free court-based mediation schemes be available for claims of under £5000. While there are attractions in having mediation services available in each court, it seems unlikely that in the current economic climate, resources and potential case load would justify such a course of action. It is also our view that if triage operates effectively, cases should be directed to mediation *before* court action is considered, limiting the role of widespread in-court mediation services. The need for an affordable, easily accessible and sustainable pre-court mediation process should therefore be explored.

While we would hope that people would find out about their options or seek advice about this at an early stage, we recognise that in some cases this may not happen. We therefore believe that triage should be applicable at all stages, and that mediation could be suggested during the court process if this is felt to be appropriate. It must be possible to access mediation schemes from within the court process, either via an area-based mediation service, or by ensuring that any pre-court mediation scheme can receive referrals once a court process has started. How this might work in practice would require substantial modelling, including consideration of the fees that might be charged both for use of the mediation service itself and for raising or defending a court action, and how consideration of sufficient availability and quality of mediators could be ensured.

9. There should be a clear separation between civil and criminal business in the proposed third-tier of civil jurisdiction.

One of the key aims of the civil courts review's proposal for a third-tier of civil jurisdiction was to lessen the impact of summary criminal work on ordinary civil business in the sheriff court. Estimates suggest, however, that approximately 70-80% of cases heard by District Judges would be summary criminal cases.⁷ A very clear feeling emerged from both the seminar and the consultation responses that a third-tier so constituted would be ineffective, replicating the current problems in the sheriff court.

One of the key conclusions emerging from the consultation responses and the seminar was that there should be separation between civil and criminal court functions within the third-tier. We support this conclusion, both for practical reasons, and reasons of perception. In particular, we have serious concerns that evidence suggests that many people perceive

⁷ Scottish Government (2010) *Scottish Government Response to the Report and Recommendations of the Scottish Civil Courts Review*, Edinburgh: Scottish Government

courts as institutions that deal with crime, which impacts on their willingness to engage with the civil justice system.

We recognise the potential difficulties that separating civil and criminal business presents. We do, however, think this separation between civil and criminal business could be achieved in the third-tier by developing closer links between third-tier civil business and tribunals where possible, including the use of shared premises and shared judicial personnel.

There may also be options for more innovative solutions such as ‘mobile courts’ or for flexible options such as the use of local authority premises.

Where there are currently insufficient court or tribunal premises available to provide for such a separation of criminal and civil business, we believe there are other relatively simple ways of creating greater separation, including courts sitting in the evenings or at weekends.

10. There should be a specialist jurisdiction to deal with housing cases.

The creation of a specialist housing forum was expressly rejected by the civil courts review. We are not convinced by the argument that the issues at stake in housing cases are of such importance that they require to be dealt with by a court. While of course cases involving their home are vital to the lives of those involved, immigration tribunals, for example, make decisions that may have life-threatening consequences. In contrast, a large proportion of housing actions concern non-payment of rent and result in agreements to repay arrears.

Our recommendation that greater links should be forged between the civil business of the third-tier and tribunals again raises questions as to whether there should be a specialist jurisdiction to deal with all housing disputes. We think there would be value in reconsidering this issue. While the exact modelling of how this might work in practice requires further consideration, we recommend that all housing cases be brought together to be dealt with by a single specialist housing forum. At the root of many housing problems lie more complex issues and we think it is important that such a forum should operate in an interventionist way to ensure those underlying issues can be identified and resolved.

11. The Scottish Government should review the way in which family cases are dealt with, including the rules and procedures which should apply.

The civil courts review proposed that the third-tier should have concurrent jurisdiction with the sheriff court for family actions, and that it should deal with appeals and referrals from children’s hearings. There is some uncertainty, however, about the intended role of the third-tier in relation to family matters, and there was opposition within some consultation responses to the proposal to include family cases and children’s hearing appeals within the third-tier. One respondent thought there was a failure to recognise the complex issues often involved in such cases, and scepticism was expressed about the ability of District Judges to develop the appropriate expertise given their other responsibilities. Concern was also expressed that enabling family cases to be heard by all three tiers of court would complicate the process.

We are of the view that there is a real need to revise family procedures generally. Repeated cases have demonstrated that family cases can get out of hand, involving many days in court, many reports and witnesses and very substantial expense. While many family cases are dealt with without undue trouble or expense, the difficulties caused by those cases where things do go wrong can be considerable. We have reached the conclusion that this report cannot fully address this problem: we can only suggest that consideration should be given to a more interventionist approach, possibly involving the use of specialist judges and/or court experts to reflect the often social rather than legal complexities of these cases. We therefore recommend that the Scottish Government should review the way in which family cases are dealt with, including the rules and procedures which should apply.

12. The third-tier should operate within a simplified process, with plain English, user-friendly rules, and clear, simple forms. Efforts should also be made to ensure the culture of the third-tier is not intimidating for litigants.

It was integral to the civil courts review's proposed third-tier of civil jurisdiction that this level of business should operate in a much more user-friendly manner than the present system. For this to happen, however, there needs to be a substantial cultural change within the courts. Participants at the seminar pointed to a number of ways in which litigants can be made to feel like 'outsiders' in the process, unfamiliar with its customs and language. While some element of dignity and authority may be necessary to the functioning of a court, formality should be kept to a minimum.

The primary objectives for the third-tier should be simplicity and accessibility. If a case requires to be resolved through court processes, it should be dealt with efficiently and without delay. Introducing a new tier of court provides an opportunity to rethink procedure fundamentally. We believe that introducing plain English and user-friendly rules and forms would be a key means of making the court process more accessible. Representatives of prospective users and other lay interests should be involved in writing the rules and designing the processes. These could, for example:

- (a) permit the court to take an active role in identifying and investigating the issues in the case;
- (b) provide for a preliminary assessment of the merits of the case at a very early stage; and
- (c) empower the court to refer any suitable issue to a court-appointed expert.

Procedures should be designed from the starting point that in the future, access to the courts will primarily be through electronic means. For example, the potential for greater use of electronic forms, including 'tick-box' forms, should be explored to minimise the number of times a case requires to call in court prior to its hearing. The approach, however, should not involve writing or adapting a version of current methods and trying to devise an internet-based means of carrying it out. Specialist technical advice should be part of the process of designing civil procedures from the start to ensure that processes are designed in such a way that they can operate electronically. Such an approach could also integrate with the web-based triage system proposed in recommendation 4, providing a seamless service for those seeking to resolve their disputes. While the requirements of that group of potential litigants who do not currently have internet access should not restrict the scope of designing a new procedure in the future, thought will require to be given to how they can best be engaged.

We support the civil courts review's recommendation that the third-tier should operate in an interventionist manner. The desire to create an accessible, user-friendly, interventionist culture must inform the development of new court procedures and influence the approach to the selection and training of District Judges.

13. In-court advice services should be rolled out nationally, although these need not necessarily be based within individual courts.

There is strong evidence that in-court advice services, where they exist, have been viewed as a great success by all involved, including clients, sheriffs, solicitors, advice agencies and court staff.⁸ The provision of in-court advice was viewed both at our seminar and in the consultation responses as offering a valuable service and had strong support.

We therefore support the recommendation of the civil courts review that in-court advice services be extended and developed to be more widely available, particularly for cases dealt with in the third-tier, including housing. There should be clear and consistent protocols for referrals to and from other sources of assistance should the in-court adviser be unable to help. We believe in-court advisers have an important role to play, not only in providing assistance to unrepresented litigants during the court process, but also in performing a triage function in directing litigants or potential litigants to other appropriate sources of advice or methods of dispute resolution.

We accept that financial and practical considerations make it unlikely that in-court advisers could be permanently based within all courts. We would suggest that it might be more feasible for in-court advisers to cover a range of courts. There may also be scope for links to be made between in-court advice services and any future area-based mediation services. Consideration of how in-court advice services might best be developed should be taken forward as part of the current Scottish Government, Scottish Legal Aid Board and COSLA work to implement a strategic approach to publicly funded legal advice.

14. The outstanding issues from the Civil Justice Advisory Group's original report identified as being in need of review should be considered by the Scottish Government as part of its system-wide approach to reforming civil justice.

The civil courts review examined four of the six areas identified by the original Civil Justice Advisory Group's report as being in need of review. The two outstanding issues are:

- (a) the way in which lawyers' remuneration is assessed and particularly its impact on the costs recoverable in litigation; and
- (b) whether enforcement of court judgment can or should be left to the parties or whether there should be some public role in ensuring that judgment are observed.

⁸ Samuel, E. (1998) *Supporting Court Users: the Pilot In-Court Advice Project in Edinburgh Sheriff Court*, Edinburgh: Scottish Office; Samuel, E. (2002) *Supporting Court Users: the In-Court Advice and Mediation Projects in Edinburgh Sheriff Court, Research Phase 2*, Edinburgh: Scottish Executive; Morris, Richards et al (2005) *Uniquely Placed: Evaluation of the In-Court Advice Pilots (Phase 1)*, Edinburgh: Scottish Executive

We believe these issues remain in need of review and recommend that the Scottish Government should consider these as part of its system-wide approach to reforming civil justice.

15. The full range of relevant interests should be given the opportunity to provide sufficient input to future civil justice reform.

We recognise we have been in the fortunate position of being able to take a whole system approach to examining civil justice. In particular, our consultation seminar provided the opportunity to gain the views of a wide range of civil justice stakeholders, including the judiciary, solicitors, advisers, ADR practitioners, tribunal representatives, court staff and members of the public who have used the system. There are few other opportunities to bring together such a diverse range of interests for an exchange of views.

We believe there is a need for policy and reform to be discussed in a forum which is not limited to the judiciary and lawyers. It is therefore important that any future Civil Justice Council for Scotland should have significant user and lay representation to ensure sufficient regard is had to the widest range of interests when undertaking its functions.

We do think the need to engage with a wide range of interests goes beyond simply having user and other lay representation on any Civil Justice Council for Scotland, however. To ensure there is sufficient opportunity to debate and discuss civil justice issues in the future, some means should be found to regularly bring together the full range of different interests, including regular court users and members of the wider public.



**Fòcas Luchd-
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