

# Proposed Mediation (Scotland) Bill

## Introduction

A proposal for a Bill to increase the use and consistency of mediation services for certain civil cases by establishing a new process of court-initiated mediation that includes an initial mandatory process involving a statutory duty mediator. The consultation runs from 29 May 2019 to 20 August 2019. All those wishing to respond to the consultation are strongly encouraged to enter their responses electronically through this survey. This makes collation of responses much simpler and quicker. However, the option also exists of sending in a separate response (in hard copy or by other electronic means such as e-mail), and details of how to do so are included in the member's consultation document. Questions marked with an asterisk (\*) require an answer. All responses must include a name and contact details. Names will only be published if you give us permission, and contact details are never published – but we may use them to contact you if there is a query about your response. If you do not include a name and/or contact details, we may have to disregard your response. Please note that you must complete the survey in order for your response to be accepted. If you don't wish to complete the survey in a single session, you can choose "Save and Continue later" at any point. Whilst you have the option to skip particular questions, you must continue to the end of the survey and press "Submit" to have your response fully recorded. Please ensure you have read the consultation document before responding to any of the questions that follow. In particular, you should read the information contained in the document about how your response will be handled. The consultation document is available here: [Consultation document Privacy Notice](#)

I confirm that I have read and understood the Privacy Notice attached to this consultation which explains how my personal data will be used

## About you

Please choose whether you are responding as an individual or on behalf of an organisation. Note: If you choose "individual" and consent to have the response published, it will appear under your own name. If you choose "on behalf of an organisation" and consent to have the response published, it will be published under the organisation's name.

an individual

Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose "Member of the public".)

Member of the public

**Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:**

Law student at Strathclyde (mature student, also former qualified chartered accountant and member of chartered institute for personnel and development CIPD, specialism training)

Please select the category which best describes your organisation

*No Response*

Please choose one of the following:

I am content for this response to be published and attributed to me or my organisation

Please provide your name or the name of your organisation. (Note: the name will not be published if you have asked for the response to be anonymous or "not for publication". Otherwise this is the name that will be published with your response).

Brenda Boyd

Please provide details of a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. We will not publish these details.

## Aim and approach

Q1. Which of the following best expresses your view of legislating to increase the use and consistency of mediation services for civil cases in Scotland?

Fully supportive

**Please explain the reasons for your response.**

Access to justice requires users to be fully informed of all options available to resolve disagreement/conflict, particularly where there are longer term implications. Win/lose litigation can sow more seeds for future conflict.

## Details of the proposal

Q2. Which of the following best expresses your view of requiring the parties to a civil court case (unless it is an excluded case) to complete a self-test questionnaire and attend a mandatory Mediation Information Session with a duty mediator?

Fully supportive

**Please explain the reasons for your response.**

Information collected whether parties go ahead or not would be useful for research and cost benefit analyses.

Q3. Which of the following cases (if any) do you agree should be excluded from the requirement to complete a self-test questionnaire and attend a Mediation Information Session (tick all that apply)?

proceedings relating to the Abusive Behaviour and Sexual Harm (Scotland) Act, the Domestic Abuse (Scotland) Act and any other proceedings relating to domestic abuse and sexual harassment cases

any proceedings relating to civil actions for rape and other sexual offences

certain proceedings under the Family Law (Scotland) Act 2006, such as declarations of validity or dissolution of marriages

proceedings under the Arbitration (Scotland) Act

judicial review proceedings

**Please explain the reason for your response.**

Where risks to parties outweigh benefits or if it's duplication of effort eg. Arbitration

Q4. Which of the following best expresses your view of giving parties who agree to mediate access to a process that can lead to a Mediation Agreement and, where appropriate, a Mediation Settlement Agreement?

Fully supportive

**Please explain the reasons for this response.**

Makes it more 'official and professional', offers legitimacy to the process. Efforts should be made that mediation is not seen as law on the cheap, a paper exercise or tick box process to convey a false sense of cooperation.

Q5. Which of the following best expresses your view of giving the Scottish Ministers power to extend the mandatory part of the process (the self-test questionnaire and Mediation Information Session) so that it applies to potential litigants who are yet to go to court?

Neutral (neither support nor oppose)

**Please explain the reasons for your response.**

It would also depend on the enforcement mechanisms. Because it is 'new' it needs people to try it. Once established a voluntary process may be more applicable. Volume may also be a risk as to effectiveness/quality. If you can't afford to do it properly, could be risky to make it mandatory. Perhaps start on smaller scale on certain types of cases.

## Financial implications

Q6. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

	Significant increase in cost	Some increase in cost	Broadly cost-neutral	Some reduction in cost	Significant reduction in cost	Unsure
(a) Government (including court services, legal aid etc.)					X	
(b) Businesses					X	
(c) Third Sector organisations					X	
(d) Mediators and mediation organisations	X					
(e) Individuals					X	

**Please explain the reasons for your response.**

Mediators are not paid well or pro bono. This lends a sense of 'cheapness' and poor quality to the scheme. Monkeys/peanuts... get what you pay for implications.

Q7. Are there ways in which the Bill could achieve its aim more cost-effectively (e.g. by reducing costs or increasing savings)?

Perhaps funding for it could be based on a percentage of calculated savings from the public purse. Use other countries research or commission research for initial calculation baselines. I don't think people will agree to it if they have already paid £100 court fees. I wouldn't and I think mediation should be taught like the 3 Rs in schools to improve the way the members of society relate to each other.

## Equalities

Q8. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, maternity and pregnancy, marriage and civil partnership, race, religion or belief, sex, sexual orientation?

Neutral (neither positive nor negative)

Q9. In what ways could any negative impact of the proposed Bill on equality be minimised or avoided?

It needs some kind of PR campaign/public awareness. Online wouldn't be prohibitively expensive. Why should the public pay more to the public purse when they are saving the public purse money by not going to court and making the effort to solve their own disputes potentially by 'horse trading' when one of them would have 'won' at the other's expense.

## Sustainability

Q10. Do you consider that the proposed Bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?

Yes

## General

Q11. Do you have any other comments or suggestions on the proposal?

No.