

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.

on behalf of an organisation

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".)

No Response

Please select the category which best describes your organisation

Public sector body (Scottish/UK Government/Government agency, local authority, NDPB)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

The Scottish Legal Complaints Commission (SLCC) is the single gateway for all complaints against legal practitioners in Scotland. We investigate complaints about the service provided to clients by legal

Please select the category which best describes your organisation

practitioners. We offer mediation to parties in all services complaints which are deemed eligible for investigation and participation in mediation is on a voluntary basis.

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).

Scottish Legal Complaints Commission (SLCC)

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.

The SLCC notes the positive impact that mediation has on resolving disputes. In our own process we offer mediation to all parties involved in eligible complaints about the service provided by solicitors to their clients. In our operational year 2017-18 64% of cases which are mediated were successfully resolved without the need for further action or process and in 2018-19 that proportion rose to 71%.

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.

Subject to the excluded cases, we are of the view that informing those involved about mediation and the benefits would be beneficial to all involved. Our experience is that in 2017-18, in 40% of eligible services

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complaints both parties (the solicitors' firm and the complainer/client) agreed to participate in mediation. In 2018-19 this figure was 39%.

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)?

Please explain the reason for your response.

The SLCC does not feel appropriately placed to provide an informed view on this and would leave this to the expert groups who can provide more informed responses. We would say however in relation to general process that we have found that in our own process we, and parties involved in complaints are often frustrated by the lack of flexibility in a system which is heavily based on legislation without the opportunity to exercise appropriate discretion. For that reason our only comment would be that it may be helpful to allow for judicial discretion in cases, as well as specific legislative requirements.

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.

This is the model which the SLCC adopts and our experience is that mediation agreements are overwhelmingly adhered to and mark the conclusion of what can at times be stressful process for all involved. Our Mediation Settlements are confidential and allow all parties to move on from the complaint process quickly with peace of mind and with matters resolved.

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?

Fully supportive

Please explain the reasons for your response.

The SLCC are aware from our own experience of party litigants raising proceedings which ultimately lead to them becoming involved in lengthy and very costly proceedings without being fully aware of the potential consequences. We are of the view that the opportunity to mediate prior to taking court action may be of benefit, in particular to unrepresented individuals.

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.

The SLCC are of the view, from our own experience that the time and money invested in mediation can significantly save costs later in the process. Our estimate in relation to the cost of cases being resolved through our own mediation process, compared to cases which progress to later stages in our process (formal investigation and determination) is that cases resolved at mediation cost, on average less than half of those which progress to these later stages. In relation to the cost to individuals we would refer to previous comments regarding the costs incurred by litigants (both represented and unrepresented) in bringing about court processes which we have been involved in and the comparison were there to be an option to mediate prior to that stage.

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

No Response

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?

Unsure

Please explain the reasons for your response.

The SLCC is not aware of any concerns which have been raised within our own mediation process in relation to equality issues.

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

No Response

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

Please explain the reasons for your response.

The SLCC is of the view that, in order to ensure this use of technology would be advantageous to allow for remote access to mediation, through video or telephone conferencing for example, which is something which we currently offer.

General

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

No Response