

# 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

Commercial organisation (company, business)

**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).**

Workplace mediation, Scottish Mediation accredited mediator training, training in conflict resolution and providers of online-mediation and advanced courses for University of Aberdeen

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).

The Mediation Partnership

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.**

Having worked in mediation for over 20 years, we realise that simple encouragement is frequently not enough to persuade people of the benefits of mediation. We often find that the clients are most reluctant to participate in mediation, but decide to go ahead nevertheless, ironically, can gain most out of it.

## 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.**

A lot of people who refuse mediation initially, do so because they have insufficient information and as a result do not have a clear understanding of what mediation is and how it can benefit them.

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

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

We feel that making it compulsory to complete a self-test for the first two situations, where someone has been the victim of any kind of assault would run the risk to re-victimising them. It should be entirely the victim choice whether they wish to find out anything about mediation. We are unsure about number 3 as we do not practice family mediation.

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.**

It's been a long time coming!

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.**

It would cut down on court time/costs and stress if people had the option to mediate prior to going to court and sufficient information to make an informed decision.

## 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	

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

<b>(c) Third Sector organisations</b>					X	
<b>(d) Mediators and mediation organisations</b>						X
<b>(e) Individuals</b>					X	

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

Mediation is a quicker and more cost-effective option. In our experience from our involvement in the Aberdeen Sheriff Court Mediation Pilot, levels of client satisfaction were significantly higher for clients who used mediation - as reflected in the evaluation report carried out by Professor Margaret Ross and Douglas Bain at the University of Aberdeen.

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

The Aberdeen Court Mediation Pilot operated a system of pairing volunteer mediators, who were looking to gain experience, with experienced, paid mediators. There are currently many trained mediators looking to build their experience portfolio. This would be especially relevant when using a co-mediation model, which is the best established model for court mediation, for many reasons.

## 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?

Positive

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

Mediation is a much more accessible process than court, which can seem overly formal and very intimidating.

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

Using a mixed panel of mediators to reflect the wider population e.g., gender, ethnicity, disability etc., ensuring any mediation meetings are fully accessible to the participants.

## 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 current system is not a shining example of accessibility or economic use of resources. Whereas, mediation has proven to be time efficient, cost effective and has a very high success and satisfaction rate.

## General

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

Congratulations to Margaret Mitchell for taking this initiative and we wish you every success in your endeavours. If we can be of any further help, please do not hesitate to contact us.