

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:

I wrote my dissertation "you can lead a horse to water but you can't make it drink" in 1997 whilst at Birbeck College, University of London. I have subsequently continued to write academic standard papers in Jurisprudence the latest being "ADR the Achilles Heel of Democracy" published on my blog www.lesleymcdade.blogspot.com. My jurisprudential stance is that ADR/IDS/informal justice or mediation should not be used in the public domain because by its very essence and nature it is a private domain concept and will always remove the dispute to the private domain via gagging orders.

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).

www.lesleymcdade.blogspot.com

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 opposed

Please explain the reasons for your response.

Mediation harms society when it is used in the public domain due to it removing the dispute to the private domain where gagging clauses are used. When mediation is used you know there is a cover up going on. Some issues especially in the public domain need to be in the public domain. Mediation harms democracy because it undermines the rule of law which is supposed to be universally applied in a democracy. Mediation is about compromise - if you compromise your rights too much you soon have none or an imbalance in society.

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 opposed

Please explain the reasons for your response.

It goes against the reason for having Justice in society and also undermines the potential impact of

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?

European law via the courts via preliminary enquiries. Mediation is not justice it is compromise. Compromising the rule of law is to undermine it. Therefore in order to live in a safe and just society one needs to ensure the rule of law is applied universally not compromised. Universal application of the rule of law ensures democracy through justice.

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)?

None of the above

Please explain the reason for your response.

All cases commenced in the public domain of litigation should not be subject to mediation at the judges behest as that is to undermine the reason for a judge being a judge. Moreover all lawyers should be engaged in the "application of the rule of law" not its non-application and compromise.

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.

Mediation can exist in a just society outside the rule of law in the private domain. It is inconsistent to use mediation in the public domain because the dispute by its very essence and nature removes itself to the private domain. We have litigation (public domain) and arbitration (private domain) as regards the application of the rule of law. Mediation is about compromise and a distinction needs to be made between the role of litigation/arbitration/mediation in a just society and should not undermine the one with the other. Mediation came to the UK as REDACTION and the Woolf Reforms in England. It was promulgated by New Labour the Blair Government via Arlene McCarthy MEP via the European Union where it hit the system running rough shod over myself who was arguing for a competition model not a coercive regime model as per the Woolf Reforms. I support mediation in society because it can do 50:50 which I call "contemporary equality" which is compromise and different from 50:50 traditional equality through the courts but I am aware that traditional equality through the courts has been usurped in England & Wales and does not form part of the CPR Rules of court open to judges since the Woolf Reforms were implemented as the "Access to Justice" Act 1999 where it is ambiguous in that Act as mediation/ADR/IDS/informal justice is not "Access TO Justice" but "Access FROM Justice" as it is Access to Compromise.

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 opposed

Please explain the reasons for your response.

Mediation undermines the rule of law and is about compromise not justice and should not be used in the public domain of litigation where it is necessary for the rule of law to be applied universally in order to live in a safe and just society with rights respected and upheld.

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.

I took part in a mediation in England under the Woolf Reforms. It cost me £1000 for a 4 hour mediation and we did not reach a conclusion and was a waste of money. It cost me £1,800 for trial and a miscarriage of justice occurred not dealt with on appeal as the Woolf Reforms are a broken justice system and refusal to use the justice system until it is fixed was pursued as an activist in jurisprudence see www.lesleymcdade.blogspot.com - worth reading the blog in its entirety.

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

Not pursuing mediation via litigation or arbitration because they are supposed to be about the application of the rule of law not compromise. Mediation should create its own domain and not seek to over extend into other domains. It is the equivalent of a boy with a digestive biscuit and a boy with a chocolate biscuit eating all of the chocolate biscuit and then eating the digestive biscuit as well: mediation/IDS/ADR/informal justice came at us as an REDACTION in 1999 under the Woolf Reforms and needs to be seen for what it is - compromise of rights and processed as such. It is not access TO Justice neither is it Justice.

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?

Negative

Please explain the reasons for your response.

The Equality Act provides rights for all of these categories. mediation compromises those rights when

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?

used in the court process. It is not all about saving money which is a non-sequitur as it may cost more or be a wasted cost in comparison to justice through the courts.

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

By not letting mediation/ADR/IDS/informal justice over reach in to litigation and undermine the rule of law by compromising it.

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?

No

Please explain the reasons for your response.

Mediation needs to be packaged in its own domain - see Access to Justice table attached to my article "ADR the Achilles Heel of a Democracy" which shows mediation pre Woolf and post Woolf in England and Wales via my blog www.lesleymcdade.blogspot.com as a work of Jurisprudence.

General

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

Scrap it.