

# 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 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".)

Professional with experience in a relevant subject

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

I have been a civil court mediator in Scotland for 10+ years and am self - employed as a mediator trading as CoxMediation.

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).

Christopher Cox

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 provision of mediation in a consistent way (with adequate Governmental financial support) in our Civil Courts would, I believe, lead to quicker, cheaper and less intimidating access to Justice. This would also lead to fairer outcomes, less determined by the parties' ability to pay lawyers or to formally articulate their own cases. It would (in the majority of cases) take away the backlog of casework for sheriffs. Longer term, less sheriffs' time (at higher cost than mediators) should mean an overall net saving to the public purse would result.

## 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.**

Mediation isn't well understood. Whilst not all cases are suitable (and I believe the parties should still have a choice whether to have it afterwards), an information session would enable an informed choice and may present an opportunity to informally settle their dispute afterwards.

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

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

The victims in sexual type situations and dissolution of marriage may require special provision which 'normal' mediation (where the parties usually meet face to face) would be inappropriate. There could be an extension of mediation, perhaps using mediators as 'go-betweens' and video links but this would need careful adaptation and could be introduced later as a separate extension to the main legislation. Currently, employment tribunals have long waiting lists, so earlier mediation should help.

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.**

Same reason as given to previous answer.

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.**

Currently, in Edinburgh Sheriff Court, judges can refer after reading the submissions. However, those who attend mediation sometimes only do so because their case has been referred. This means that they attend but they may have no intention of participating in the process. The proposal above should avoid this waste of time and money.

## 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.**

Over time there should be fewer court hearings so those cases that need a hearing will reach court with less delay and less time spent by court services. Mediation costs are significantly lower and a far higher percentage of settlements are honoured by payment so less chasing of debts would be necessary. In Edinburgh and Glasgow, mediators currently provide pro bono arrangements. However, it means that their services, although often sought elsewhere, are not universally available in all sheriff courts and therefore inequality of provision exists. Quicker settlements with equal opportunities to have mediation could result (as well as cost saving for all involved) if mediation briefings and mediation could be introduced throughout our civil courts.

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

If the pre-court mediation briefing sessions were universally introduced as proposed then there would need to be extra court mediator staff employed to undertake the initial briefings and monitor the survey questionnaires. This could be a good way forward as it would ensure consistency. However, to save on cost, a court administrator could deal with the surveys but an approved self-employed mediator appointed on a rota basis to conduct the briefing. If the parties then decided to go on to mediation they could be asked to decide (via a post-briefing questionnaire to the court administrator) whether they wanted the same mediator who undertook the briefing to conduct the mediation. I think that in most cases they would decide to go forward to a mediation and choose the same mediator who (assuming that the mediator agreed that mediation was appropriate and they wanted to do it) could save time as they would already have gained the background knowledge of the case. In these circumstances, I would expect there to be separate standard fee rates for: 1. giving a briefing; 2. a mediation; 3. giving a briefing and the associated mediation. I would also expect that 3 would be less than the sum of 1 plus 2 and therefore result in a further saving to the parties.

## 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

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?

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

It would ensure equality across the civil courts where mediation is currently very patchy in its provision. Mediation, by its nature is non-adversarial and informal. A mediator should allow those who could not afford lawyers at a court hearing to put their case fully by 'drawing out' the less articulate and (by questioning and other techniques) allowing both parties to reflect on the issues and problem solving to find solutions rather than entrenching their existing positions. By this means each party's view of their equality of status is enhanced. Acceptance of the fairness of any settlement is more likely and this will result in greater adherence to it.

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

Passing a bill is not enough; indeed, it must then have a clearly defined process to implementation. Introducing change always demands attention to detail and preparation. If it is introduced 'on a shoestring' without adequate training of those involved or registered, qualified mediators, standards of mediation provision will continue to suffer as will the reputations of all involved and mediation itself will suffer too. There also needs to be an adequate infrastructure with a dedicated court administrator and two sound-proofed rooms available for each mediation with enough space to sit comfortably around a low coffee type table and a large white board in each room, although these facilities could be provided by approving non-court venues.

## 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.**

It would be best to introduce it in a phased way starting with all civil courts at the £5,000 maximum as a modification to the Simple Procedure but this could have a review at the end of, say, 3 years and then, if successful (as I think it would be), extended to other mediation areas.

## General

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

Please also refer to 'Bringing Mediation into the Mainstream in Civil Justice in Scotland' report by Scottish Mediation.