

Please see Pinsent Masons response to your request for supplementary evidence:

**1. Looking more closely at both costs and potential savings, what financial impact would you expect the proposed Bill to have on the following specific groups: Government (including court services, legal aid etc); Businesses; Third Sector organisations; Mediators and mediation organisations; Individuals?**

As the Bill currently stands, we would anticipate significant increased costs to the public purse and significant increased costs to businesses involved in litigation. As we state in our response, proper preparation for a mediation, particularly in a complex commercial transaction, requires considerable work and little by way of cost saving on that required for a court action, beyond saving on actual court days; experts require to be consulted and report, witnesses interviewed and evidence assembled, in all but the simplest of cases. Any suggestion of mandatory mediation (where that is the practical effect) may simply add another layer of expense (and delay) for parties.

**2. Are there any specific areas in civil law that Pinsent Masons consider should be excluded from the requirements of the bill? For example, 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; employment disputes which are governed by statutory dispute-resolution processes; judicial review proceedings?**

We have not carried out an exhaustive study of areas which might be excluded should the Bill proceed. The question raises issues in relation to what might generally be described as matrimonial and personal disputes. We do not practice in that area but our general view is that in the main, matrimonial disputes are well suited to mediation, given the inherent nature of the problems which arise, the heat generated and the excessive time often taken in Court litigation over them. We accept, however, that there may be cases involving assault and other variations on that theme where it would be inappropriate to send a case to mediation.

We see no reason why judicial review proceedings should automatically be excluded, because many might be suitable for mediation. That is, however, more a matter for the public bodies in question to respond to, because while a private party may be prepared to mediate a compromise solution, a public body may or may not feel able to do so under the relevant statutory provisions.

So far as employment cases are concerned, as these are subject to automatic reference to ACAS before a tribunal, these would obviously not generate mediation references. However, if they are in the Courts there is no reason why they should be excluded.

**3. In the conclusion of your submission you highlight the importance of the Scottish Government's work with Scottish mediation on a mediation project. What are Pinsent Masons' thoughts on report recently produced by this project, Bringing Mediation into the Mainstream in Civil Justice in Scotland, and in what way do you think that the conclusions of this report should change or effect the proposals in the proposed Mediation (Scotland) Bill?**

We have not studied the Scottish Mediation work but insofar as it suggests any form of mandatory or compulsory mediation we would caution against that for the reasons already referred to. Our point was to highlight that the Scottish Government is engaged in looking at this matter and their

response to the wide ranging research being carried out for the project (which includes the Mediation in civil justice: international evidence review referred to) should be awaited, rather than pressing ahead with a proposal which does not benefit from that research and which may have unforeseen consequences. Our point essentially is that the Bill is premature and should await further conclusions and debate on the Scottish Government work.

4. ***Looking at one of the conclusions of that report specifically, what are Pinsent Masons thoughts on the report's recommendation (p.32) that compulsion should be part of changes to mediation provision in Scotland?***

We are opposed to "compulsory" mediation, whether as direct compulsion or by other forms of less obvious pressure.