

## **Mediation (Scotland) Bill Consultation**

**Name:** Scottish Arbitration Centre

### **Questions**

#### **Do you have any comments or suggestions on the proposal?**

The Scottish Arbitration Centre welcomes Margaret Mitchell MSP's aim to encourage increased mediation and alternative dispute resolution in the justice system. The Centre believes that work towards this aim should primarily be through the development of better informed user choice and greater awareness of the different dispute resolution methods.

In the foreword of the consultation, Ms Mitchell states that there has been 'little progress in the last 15 years to actively raise awareness about, promote and use the various forms of ADR'. The Centre would challenge that assertion.

The Centre was established in March 2011 with the purpose of promoting arbitration to the Scottish business community as an alternative to litigation, and Scotland to the world as a place to conduct international arbitration. It has over the past eight years worked hard in pursuit of this purpose. Due to the confidential nature of arbitration, it is difficult to measure the growth of arbitration however the Centre has been informed that arbitration business in Scotland is generally on the increase. The Scottish Arbitration Rules and the Centre as an appointing body is being inserted into contracts which indicates greater awareness of arbitration. Furthermore, the Centre has been raising awareness of Scotland as a jurisdiction for dispute resolution and has been nominated for various awards. Our success in promoting Scottish arbitration has been rewarded with us winning our bid to host the ICCA Congress 2020 in Edinburgh, the largest and most prestigious international arbitration conference. This will be the largest dispute resolution conference to be held in Scotland and will make a significant contribution to the practice of arbitration in Scotland.

The Centre does acknowledge however that more can be done to raise greater awareness and use of the different dispute resolution methods, such as arbitration and mediation, in Scotland. The Scottish Parliament Justice Committee published 'I won't see you in Court: Alternative Dispute Resolution in Scotland' in October 2018. This report provided an assessment of the ADR landscape in Scotland. The report suggested that people should be required to attend an information meeting to find out more about ADR before proceeding with a court action. The Centre supports this suggestion which would allow people to make a more informed decision about how to resolve their dispute. The proposed Bill focuses solely on mediation despite the report being concerned with several ADR methods, including arbitration, conciliation and adjudication. This apparent focus on mediation takes attention away from the other dispute resolution methods which in some cases may be more suitable.

Court reform and the establishment of the Scottish Civil Justice Council has increased the consideration of arbitration and mediation. 'Methods of resolving disputes which do not involve the courts should, where appropriate, be promoted' (s.2(3)(d) of Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 Act) is one of the guiding principles which the Scottish Civil Justice Council must adhere to when carrying out its functions. This

demonstrates the drive in civil court reform to encourage consideration of all dispute resolution methods, not just mediation. The introduction of the proposed Bill could serve to dilute the current legislation by focussing solely on mediation.

We acknowledge the potential benefits to mediation listed, but note there is no mention of any potential drawbacks. Mediation is not always the most appropriate method of dispute resolution. Furthermore, it does not always lead to an agreement. If no agreement is reached by the end of the mediation then the parties often need to pursue an alternative dispute resolution method, such as arbitration or litigation, so, in some cases, could be costly and time consuming.

The Justice Committee's report noted that the steps that have already been taken to improve public awareness of ADR need to be improved upon. The report also recommended that members of the legal profession should be encouraged to routinely advise their clients on ADR and that the Law Society of Scotland should review the route to qualification and whether sufficient focus is given to ADR. We support that approach. Our general concern with the proposed Bill is that it focuses on only advising users on mediation, meaning that users will not be fully informed about all the dispute resolution available to them. This puts them at a significant disadvantage as mediation is not always the most appropriate solution. People need to be able to make an informed choice about which dispute resolution method is most suitable for them.