

CONSULTATION DOCUMENTS:

<https://www.parliament.scot/parliamentarybusiness/Bills/111864.aspx>

PREVIOUS VICTIM SUPPORT SCOTLAND RESPONSE:

Not Applicable

1. Which of the following best expresses your view of legislating to increase the use and consistency of mediation services for civil cases in Scotland?

Partially supportive

Victim Support Scotland support the option to use mediation services for civil cases in Scotland, but this must be offered to victims on an opt-in basis, rather than become the default route to settlement.

The process of mediation is required to meet a delicate balance – victims need reassurance that the process can be carried out over as many sessions as required in order for them to feel satisfied with the outcome and that justice has been achieved. However, this process should not be unduly drawn out and result in the re-traumatisation, or repeated traumatisation, of the victim or indeed hinder the recovery process in any way. It must be recognised that the mediation process will differ vastly between victims and cases and therefore not be prescriptive. For Victim Support Scotland, it is paramount that victims do not feel pressured to reach a settlement through mediation, and instead feel empowered to pursue litigation should that be the route they wish to go down.

The cost of mediation should be eligible for legal aid. The financial cost of mediation where it proves unsuccessful would also need to be clearly communicated to all parties involved.

The mediation process should be initiated by the court, with responsibility for the appointment of the mediator falling to the court. Support must be available to victims before the mediation process begins and once it has concluded for as long as they consider necessary.

Victims should be made aware of the process to resume litigation at any point should mediation prove unsuccessful before mediation begins.

Mediators appointed via the courts should have received accreditation from the Law Society of Scotland through its family and commercial law mediation accreditation team in order to ensure a parity in the standard of mediation across jurisdictions.

2. 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

Victims should be made aware as early as possible of the process to resume litigation at any point in the mediation process, and any costs associated in doing so. Should the victim decide they no longer wish to pursue mediation through the self-test questionnaire or in advance of the mandatory Mediation Information Session, this should be respected, and the litigation process allowed to proceed.

Victim Support Scotland would like to seek assurances that full consideration will be given to the provision of a psychological assessment element of the self-test to ensure that victims are resilient enough to deal with the mediation process.

Support to complete the questionnaire for those with disabilities or who do not use English as their first language, should be provided.

3. 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**

None of the cases stated should be exempt from completion of the self-test questionnaire and attendance of a Mediation Information Session. The compulsory self-test and information session would allow victims to consider whether they feel confident in pursuing mediation rather than litigation in their case and feel informed about the process before it begins.

4. 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?

Partially supportive

All Mediation Settlement Agreements should be made a decree of court. Doing so would provide clarity to victims what course of action is available to them should the Agreement be breached and how this will be enforced.

5. 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?

Unsure

More consultation required on this specific proposal.

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

- **Government (including court services, legal aid, etc)**
- **Businesses**
- **Third sector organisations**
- **Mediators and mediation organisations**
- **Individuals**

Significant increase in cost/some increase in cost/broadly cost-neutral/some reduction in cost/significant reduction in cost/unsure

Government – some reduction in cost – Should mediation prove successful; it is anticipated that there would be a decline in court costs. However, where mediation has been unsuccessful and litigation is required, costs are likely to be higher as a result of this additional process.

Mediators and mediation organisations – broadly cost-neutral – The expense of undergoing Law Society accreditation for mediation would be offset by the increased demand and uptake of mediation services.

Individuals – some reduction in cost - Should mediation prove successful; it is anticipated that there would be a decline in court costs. However, where mediation has been unsuccessful and litigation is required, costs are likely to be higher as a result of this additional process.

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

Victim Support Scotland holds the view that mediation should only be used if it will provide the best route for the victim and will provide them with a sense of justice. It should not be pursued on the grounds of offering savings to the courts.

We are concerned that victims will be placed under undue pressure to accept mediation rather than pursue litigation purely on the basis of a cost-benefit analysis to the criminal justice system.

8. 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?

Slightly negative

As identified in the consultation document, mediation has the potential to disadvantage people who do not speak English as a first language or who have accessibility issues.

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

The negative impacts for people who do not speak English as a first language and/or have accessibility issues could be offset by providing resources in a variety of formats; such as braille, easy-read, or audio files; interpreters; and provision of additional support for those who require it.

10. 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

Increase in the use of mediation services would likely reduce costs associated with the court system, resulting in an economic benefit.

Where mediation is successful and litigation is avoided, victims could see a potential social benefit from not being exposed to the stress of a court situation and receiving mediation in a less formal setting. This may also be more expedient than the traditional route through the criminal justice system. However, where mediation proves to be unsuccessful and litigation must resume, victims are likely to feel let down, or under pressure to reach an early settlement.

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

Nothing further at this time.