

## Justice Committee

### Alternative Dispute Resolution

#### Response from the Scottish Government

#### **Scottish Parliament Justice Committee report: “I won’t see you in Court: Alternative Dispute Resolution in Scotland”**

The Scottish Government thanks the Scottish Parliament Justice Committee for their report “I won’t see you in Court: Alternative Dispute Resolution in Scotland”.

The Justice Vision contains a commitment to “empowering our people and communities to exercise their rights and responsibilities, to resolve disputes and other civil justice problems at the earliest opportunity”. There is growing interest both within Scotland and internationally in the role of **mediation**, and others forms of Alternative Dispute Resolution. The Scottish Government wants to look at the evidence that is emerging across Scotland, and from other legal jurisdictions across the UK and from other countries, to shape and inform our thinking on possible changes that could be introduced here in Scotland as an effective mechanism for resolving disputes at the earliest opportunity.

#### **Scottish Government approach**

We are currently reviewing our policy on mediation to see if we can engender a cultural shift in Scotland towards mediation as a tool of choice to resolve civil disputes instead of litigation. **The Scottish Parliament report on Alternative Dispute Resolution provides valuable evidence and will be scrutinised in detail as part of that policy review.**

As the Committee mentioned in paragraph 118 to 121 of its report, the Scottish Government has consulted on family law, including whether the Scottish Government should do more to encourage ADR in family cases, and has announced that there will be a Family Law Bill in 2018/19. The responses to this consultation, and the findings of the Committee’s report, will help inform the Scottish Government’s approach to ADR in family cases.

#### **Process/Steps**

We are working collaboratively with colleagues across Scottish Government and with external stakeholders to collect, gather and analyse the evidence on mediation from across Scotland, across the UK and from other international legal jurisdictions (Republic of Ireland, Canada, US, Australia and England and Wales).

#### **Scottish Mediation Network**

We are providing a total amount of £110,000 to the Scottish Mediation Network in 2018/19 to promote mediation, support and facilitate the development of best practice and to support mediators in Scotland. The Scottish Mediation Network are

also undertaking a small short term scoping project aimed at providing a strong evidence base for promoting a significant increase in the use of mediation in the justice system in Scotland.

The Scottish Government also supports family mediation through its funding of Relationships Scotland and, as the Committee notes, there is some legal aid funding for mediation.

### **Expert Group**

The Scottish Mediation Network are in the process of setting up an external group of experts with an interest and expertise in mediation in the Civil Justice system. The Group will be jointly chaired between John Sturrock QC, and Alun Thomas, Chair, Scottish Mediation Network. The Group will consist of individuals with an expertise and interest in mediation and will include representatives from the Judiciary, legal profession, mediation practitioners, consumer interests, and academics. The Scottish Government will sit as an observer on the Group.

### **Timescale**

It is therefore appropriate to await the outcome of that review which can inform Scottish Ministers on the future of mediation in Scotland. We are working towards a timeline of completing all the internal and external work with a view to reaching a shared consensus on the way forward by the end of Summer 2019.

### **Family Mediation: Sensitivity**

Any changes would require careful consideration, not least in the context of domestic abuse cases where there is evidence that Mediation and other forms of alternative dispute resolution can put victims and children at further risk of harm. The Scottish Government agrees with the point made in paragraph 126 of the Committee's report that any move towards greater use of ADR must ensure that victims of domestic abuse and children are not put at risk.

I hope you find this helpful.

Ash Denham  
Minister for Community Safety  
29 November 2018