

## **Justice Committee**

### **Alternative Dispute Resolution**

#### **Written submission from Edinburgh Sheriff Court Mediation Service**

##### **Background**

Edinburgh Sheriff Court Mediation Service was established in 1998 and has had almost twenty years' experience of providing mediation to party litigants involved in Simple Procedure cases (formerly small claims and summary cause). The Mediation Co-ordinator is the initial contact for referrals and provides information about the mediation process before allocating the case to the Mediation Service's panel of volunteer mediators. All mediators are trained and accredited and bring their expertise to the Service. If a mediation proves to be successful, a settlement agreement is drawn up and the case remains in the court system until the agreement has been implemented. The Mediation Co-ordinator will then arrange for the case to be dismissed. If the mediation does not result in a settlement, the case proceeds to court. Around 75% of cases result in a settlement. The Mediation Service monitors cases which do not settle and have found that around half of these settle at a later date prior to an evidential hearing.

##### **Benefits of mediation**

Mediation offers party litigants the opportunity to resolve their disputes without going to court, with the aim of moving towards a solution that both parties can live with. Some advantages of this method as opposed to litigation are:

- Parties are in control of the outcome rather than having a judgement imposed on them; there are no 'winners' or 'losers.'
- The process is quicker; mediations can be arranged within a few weeks of a referral. If settlement is reached, an agreement is drawn up at the meeting.
- Flexibility to find creative and practical solutions to a dispute.
- Mediation is free and the process is likely to prove more cost effective for parties, particularly as expenses are capped in some Simple Procedure cases.
- There is a much higher rate of compliance with mediated agreements than with court decisions. An evaluation of Sheriff Court pilots in Aberdeen and Glasgow found that 90% of parties complied with mediated agreements against 67% for court judgements.<sup>1</sup>
- Mediation is more conducive to rebuilding and maintaining ongoing relationships.
- Confidentiality and privacy as opposed to a more formal hearing in a public court
- Mediation can take place by Skype or teleconferencing if preferred.

In addition to this, mediation is beneficial and cost effective to the court system by reducing the numbers of litigants in court.

## **Judicial referrals**

The majority of the Mediation Service's referrals come from Sheriffs following the lodging of a claim, but before a court hearing is assigned. English small claims guidance shows that judicial encouragement is a key factor in the success of mediation schemes.<sup>2</sup>The Sheriff issues an order to the parties that they should consider mediation; however, it is not mandatory to actually take part in mediation. In my view, it is important to maintain the voluntary nature of mediation so that parties attend in good faith with a willingness to compromise.

## **Barriers to mediation**

I have observed that there is a lack of information around court mediation and many court users are not aware of the process. If mediation is to become embedded in the court system, party litigants need to be in the position of making an informed choice as to which route they wish to take. I would like to see more information in the public domain about the benefits of mediation.

Despite the Simple Procedure rules encouraging the use of negotiation and mediation, and a corresponding increase in the numbers of referrals to the Mediation Service, provision of mediation around Scotland is patchy, with only two court mediation services at present.

## **Role of the Mediation Co-ordinator**

The role of the Mediation Co-ordinator is to be a gatekeeper and initially provide parties with the information they need to make an informed choice about whether they wish to attend mediation. Not all cases are suitable for mediation and the Co-ordinator is able to make an assessment on this. In addition to this, the Co-ordinator will provide some 'aftercare' to the parties following the mediation and acts as a point of contact in case there are any issues with settlement, as well as dealing with any court procedure relating to the case.

## **Volunteer mediators**

The Mediation Service is fortunate to have a team of highly skilled and committed volunteer mediators. However, if there are to be more court mediation services in Scotland it is difficult to see how these could be sustained on an ongoing basis by relying on volunteers. New mediators could gain experience by mediating a certain number low value claims and after a time progress to paid mediation. Paying court mediators would result in the profession being more highly viewed and recognised as a viable alternative to court litigation.

## **Conclusion**

Despite the positive developments of the Simple Procedure rules with regard to the encouragement of mediation, these do not go far enough when taking into account lack of provision of mediation services and the general lack of awareness amongst the public. More public access to court mediation services would result in early resolution of disputes, less acceleration of conflict and ultimately less cases reaching

court. The value and benefits of mediation are becoming more acknowledged in many different sectors in general. I would like to see mediation established as an integral part of the court system.

Edinburgh Sheriff Court Mediation Service  
31 January 2018

<sup>1</sup>Ross, M. and Bain, D. (2010) Report on Evaluation of In-Court mediation Schemes in Glasgow and Aberdeen Sheriff Courts, Edinburgh, Scottish Government Social Research, Paragraph 5.17

<sup>2</sup>Court mediation Service manual (2009) for England and Wales, available from: <https://www.judiciary.gov.uk/publications/court-mediation-service-manual/>