

Justice Committee

Alternative Dispute Resolution

Written submission from the Lord President

Thank you for your email of 26 March 2018 to the Lord President's Private Office. You indicated that the Justice Committee was interested in the judicial training currently offered in relation to ADR and whether any such training covered issues relating to domestic abuse.

The Judicial Institute is charged by the Lord President with responsibility for judicial training in Scotland. I attach details of the programmes the JI has delivered since 2014 and which have addressed mediation, details of the Civil Benchbook, and copies of relevant course programmes.

The JI assesses judicial learning needs on an ongoing basis and this work informs the development of an annual curriculum. From each annual curriculum each member of the judiciary selects courses in line with their business and learning needs. The Civil Benchbook is a resource available on the Judicial Hub around the clock and on the bench.

No concerns about the provision of training in this area have been raised with the JI.

The only context in which a judge might play a role in relation to family mediation is in approving a referral to family mediation. This would only occur if parties have indicated a willingness to attend or made a request for a referral.

Andrew Campbell
Head of Legal Secretariat
23 April 2018

JIS and Mediation

From 2014, the JIS has addressed mediation as follows:

2014

We held two courses on **Children in Court** which covered the court as “conductor or referee,” as well as a contribution from Catriona Whyte at SLAB. The availability of mediation was a feature of the course.

One **Case Management** course made reference to alternative dispute resolution, looking at how matters are dealt with in England and Wales and in the employment tribunal jurisdiction where mediation is a significant feature.

2015

We held a course on **Family Law and Mediation** which had a specific session from Relationship Scotland about the principles and availability of mediation in family cases.

We held two courses on **Case Management** which again considered mediation in the context of efficient case management, looking at the English experience. Ian Dickson from SLAB also contributed.

We held a specific course on **Mediation**, developing the skills of the participants and giving pointers to the type of case which are apt for mediation. The focus was family work, but the course was not limited to that.

In 2016

We ran a course on **Contact and Residence** cases; the course touched on mediation as one of the means of attempting to resolve, or at least limit, such family disputes.

Our **Simple procedure** courses (run in both 2016 and 2017) have highlighted the obligation on courts to consider alternative dispute resolution including mediation. This component of the course was delivered by Charlie Irvine of Strathclyde University, a well-known figure in mediation circles. Our Judicial Hub hosts a “Simple Procedure Toolkit” which includes a video of Mr Irvine’s presentation and a separate resource “**Guide to the effective use of mediation in court actions**” which gives guidance to sheriffs about the appropriateness and availability of mediation.

In preparing the toolkit we worked with Graham Boyack of the Scottish Mediation Network, the idea being to provide an online resource showing what mediation services are available; unfortunately the patchy nature of the coverage of mediation, and the difference in the services provided even where mediation was available, meant that there was no purpose in providing such a resource.

In addition we assisted with the **Local Sherifdom Conference** in North Strathclyde, where there was a session on mediation, again with a view to the introduction of the new Simple Procedure Rules.

2017

Our course on **Relocation** considered mediation as a possible option, again looking at the experience in England and Wales and the requirement for mediation in some cases.

The **Adults with Incapacity** course will discuss mediation as a potential course of action, currently underused in that jurisdiction.

General

The civil bench book, available on the hub as an e-publication, refers to the powers to remit to mediation in family cases.