

Justice Committee

Alternative Dispute Resolution

Written submission from Scottish Mediation

The Availability of Mediation in Scotland

1. Introduction

Scottish Mediation are delighted to be invited to the Scottish Parliament Justice Committee Round table on access to ADR. Our mission is to promote mediation and mediating ways; demonstrate their use and benefits; increase their profile; and support excellence and innovation in the professional practice of mediation.

2. Civil Justice System

When looking at mediation in the civil justice system it is important to look at provision in the broadest sense as the flow of disputes to the courts can be influenced by disputes being resolved at earlier stages.

2.1 Courts

Within the courts mediation is available through a mixture of pro-bono services and through parties engaging mediators to facilitate resolution of their disputes.

For Simple Procedure actions pro-bono services are concentrated in courts including Edinburgh, Glasgow, Paisley and Hamilton and are run by the University of Strathclyde and Citizens Advice Edinburgh. Outwith these areas mediators are available through the Scottish Mediation Helpline for which charges are levied. There is a need for mediation services for Simple Procedure actions to be provided on a consistent and funded basis across Scotland.

The rules of Simple Procedure encourage the consideration of mediation as do the Commercial Court rules. In other areas the civil procedure rules are under Review and Scottish Mediation would welcome encouragement of the use of mediation as part of case management procedures and consideration of the arrangements for access to mediation.

2.2 Family

Family mediation services are provided across Scotland by Relationships Scotland through a number of local centres. CALM Scotland trains and holds a register of lawyer mediators who are based in legal practices across Scotland.

2.3 Employment

Employment mediation is provided by a range of mediators across Scotland.

2.4 Administrative Justice

Organisations such as the NHS and Scottish Legal Complaints Commission use panels of mediators appointed to deal with complaints for their organisations. Others will either go to the market themselves or come to bodies such as Scottish

Mediation to access people on the Scottish Mediation Register. Within the SPSO model complaints handling procedure there is an encouragement to consider mediation at the second stage of dispute resolution.

2.5 Alignment with Scottish Government Objectives

In the two attached appendices Scottish Mediation have outlined how mediation can help to deliver on justice objectives.

3. Mediation Supporting People in Communities

Scottish Local Authorities and SACRO provide community mediation services designed to help resolve community and neighbourhood disputes. In recent years these and organisations such as the Cyrenians/Scottish Centre for Conflict Resolution have successfully used mediation as an intervention to prevent homelessness.

Many local authorities have taken innovative approaches using their in house mediators to assist in resolving workplace disputes, pupils' attendance at school and to support multiple owner repairs enforcement.

4. Planning, Land and Environment

There is a current call for the greater use of mediation in the planning system through the planning bill, currently at stage 1 in the parliament. Mediation is being used to resolve disputes over land and in recent work by WWF Scotland to broker agreements on fishing quotas between key stakeholders.

5. Peer Mediation

Peer mediation is used in Scottish schools to resolve disputes and in the process help tackle bullying and harassment. Scottish Mediation provide training in this area and are currently undertaking a Big Lottery funded project to examine how the resilience of peer mediation can be enhanced. The skills imparted to young people practicing mediation are vital life skills around active listening, questioning, reframing all of which support better conversation.

6. Third Sector

Launched on 1 October 2015, the Third Sector Mediation Project provides free or low-cost mediation to small charities and voluntary organisations. Mediations are provided by 45 volunteer practitioners including 35 from the Scottish Mediation Register and 10 from the Department of Work and Pensions and Scottish Power under their community engagement programmes. In 2017 there have been 45 enquiries and 13 mediations.

7. Accessing Mediators and Standards

7.1 Scottish Mediation Register

It is estimated that there are over 2000 people who have been trained in mediation to the standard required by the Register with currently approximately 300 practicing. Some public bodies share mediators for employment purposes and depending on the size of organisations there are different models that could be adopted. If work exist for mediators it is not anticipated that there will be any difficulties in meeting demand. The register provides for a basic standard of mediation training, experience, complaints procedure, and continuous professional development from those listed.

7.2 Scottish Mediation Helpline

Scottish Mediation provides a public helpline to deal with enquiries about mediation and for people seeking to engage a mediator. People will be directed to different services based on their needs.

7.3 Scottish Mediation Website – www.scottishmediation.org.uk

The website provides information on how to access mediation through it's Find a Mediator Section, information about mediation and resources for mediators to assist them in their practice.

8. The Skills of Mediation

Many people who have trained in mediation use these skills as part of their work ethic or management style. Scottish Mediation regards the spread of mediating ways by people trained in mediation skills as a vital way of organisations dealing with difference in a positive way and can both prevent the escalation of conflict and lead to creative and innovative outcomes.

9. Future Plans to Promote Mediation

9.1 Scottish Mediation Charter

Scottish Mediation plan to launch a Scottish Mediation Charter in 2020 which we intend should become an inclusive mark by organisations across the private, public and third sectors of their support for the use of mediation in dispute resolution and their commitment to mediating ways to tackling differences and promoting constructive dialogue in their work.

9.2 Scottish Year of Mediation

Scottish Mediation plan to make 2020 the Scottish Year of Mediation and to co-ordinate activities across the whole field of mediation described in this paper with a view to putting mediation and mediating ways at the heart of the Scottish way of life in education, business, government and civil society.

Graham Boyack
Director
1 February 2018

Alignment with Scottish Government Justice Vision and Priorities

Outcome 1

Our vision is for a safe, just and resilient Scotland where people live in communities that feel safe and are safe, allowing individuals, families and businesses to thrive.

Work to develop mediation directly supports a safe, just and resilient Scotland. Through the development of mediation as an option for court users parties are given a wider range of ways to resolve disputes that can help to deliver just outcomes. Allowing people's story to be heard helps to lead to a greater likelihood that agreements to end disputes will be sustained.

By bringing forward the resolution of disputes using mediation and the skills of mediation resilience is improved as vital time and energy are not diverted from organisations' key goals and objectives.

Outcome 2

Prevention and early intervention are at the heart of what we do to further reduce crime, prevent offending and improve life chances.

We have a clear and persistent focus on addressing the root causes of disadvantage, enhancing our provision for the people and places experiencing vulnerability and disadvantage.

We work collectively with our education and employment partners to promote wellbeing and improve the futures of looked after children and care leavers.

We empower our people and communities to exercise their rights and responsibilities, to resolve disputes and other civil justice problems at the earliest opportunity.

We work with others to improve our response for those who experience poor mental health or are in distress, recognising that many people have co-existing physical health challenges.

Mediation and mediating ways have a significant role to play in supporting empowerment in communities and in promoting early dispute resolution. Through work with key agencies in this area, particularly through community mediation and across the Third Sector Scottish Registered Mediators are doing vital work.

Outcome 3

Our criminal, civil and administrative justice systems work effectively. We improve the experience of the justice systems for victims, witnesses and everyone who comes to court. We manage cases efficiently and effectively. And we protect the rights of children and vulnerable witnesses.

Mediation can play a key part in providing those who attend court an experience that deals with their concerns both through the process and by its ability to provide solutions not available through law. It can also support effective case management by freeing court time and by helping to clarify the key points of dispute.

Outcome 4

Overall, our services and interventions now and in the future, are designed around people. They are delivered with care and compassion by a confident and professional workforce who have the right opportunities for continuous professional development.

We embrace technological change and innovation to deliver excellent standards of service relevant to the needs of 21st Century Scotland and its citizens.

We contribute to inclusive economic growth by enhancing cyber-security, reducing the impact of serious organised crime, ensuring people can access the advice they need to protect and pursue their rights and improving opportunities to meaningful activity and jobs in the sector.

And we support our economy and communities to prepare for, respond to and recover from existing and emerging risks and threats, including terrorism and cyber-enabled crime.

The use of mediating ways can help the development of a professional workforce with the appropriate skills to deliver services designed around people. The skills around listening reframing and facilitation are key people skills in this regard.

Supporting the Justice Department 17-18 Delivery Plan

Priority 3

We will modernise civil and criminal Law and the justice system to meet the needs of people in Scotland in the 21st Century.

Our priority is to improve our civil, criminal and administrative law and justice systems including legal aid, so that they are up to date, transparent, fair and respect the rights and diverse needs of users.

Family Justice Modernisation Strategy

Legal Aid System Review

Support the work of the Scottish Law Commission to simplify, modernise and improve Scots Law

Exploring opportunities to improve how people resolve disputes and access justice using technology.

Reform the tribunal system to benefit efficiency and access to justice.

Scottish Mediation provides opportunities to explore with key stakeholders how mediation can play a positive role in the modernisation of the civil justice system. We have contributed to discussions and reviews around legal aid, legal services and how court rules support parties.

A part of modernisation includes disputes being dealt with in the appropriate place and the use of mediation and mediating ways to resolve disputes prior to court can enhance the ability of the civil justice system to work more effectively.

Mediation currently plays a positive role in many tribunal settings and Scottish Mediation can develop and share that experience.

Mediation is well suited to online platforms that can assist in providing better access to justice. Scottish Mediation has and will continue to work with those leading the digital justice agenda in Scotland in helping to realise practical ways in which this can be delivered.