

Dear Sirs

Herewith some thoughts which I hope will be helpful. They are based on our experience as the managers of the Glasgow and Aberdeen in-court mediation pilots, the report on which recently suggested it was welcomed by all and indeed missed by Court staff when the pilots finished !

Some points of principle. Any mediation provision as part of the Civil Justice system should ideally

- 1) Be available to members of the public before they enter the court system.
 - a. This saves both the individuals and Scottish Courts Service time and expense. This is essentially a financial benefit to the public purse and members of the public. It addresses the point of “affordability”.
 - b. Parties would be able to access the system through the Scot Govmt, Scot Courts and CAB websites, plus general awareness amongst all solicitors, with support from the Law Soc etc etc. If a party chose this route, they would have decided it was “appropriate”.
 - c. Mediators should be available on a list, the Register, through a recognised, independent body, such as SMN, and their fee rates would be tied to an agreed publicised value for different values of case. Govmt could choose whether or not to boost the lower fee bands financially.
 - d. This would avoid the English Courts problem of adding the staff and operating costs in each court from employing mediators, plus the cost to Govmt of training new mediators to meet demand. Again addressing “affordability”.

- 2) Be available to members of the public after they enter the court system.
 - a. The court mediation pilot research clearly demonstrated the benefit to members of the public and court staff of having an in-court mediation co-ordinator. Although this attracts cases after parties and the Court system have incurred cost, it is still possible that a Coordinator could provide a significant number of parties with a more acceptable alternative and reduce the cost to the Court system.
 - b. The IN Court co-ordinator would be able to develop relationships with solicitors and their agents and being present in court might be able to divert a case to mediation while at any stage during it’s trial timetable.
 - c. Mediators would be available as above.
 - d. Scottish Govmt could choose between
 - i. following the English model of funding the service and attracting fee income to cover the costs. The attached business plan, based on published data from the Court system, suggests such a scheme could be self funding within a few years.
 - ii. Following their pilot scheme strategy of tendering for organisations to run the in court service for either the whole of Scotland or specific sheriffdoms.
 - iii. Or funding the Network to employ the staff and run the service across Scotland. In this instance the attached business plan would apply.

Arguments against such a provision and some rebuttals.

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| Parties approach the courts for a judgement and it is not the court’s role to turn them away to another process. | Many parties are unaware that an alternative exists, especially if they are so advised by their lawyers. |
| | They are not turned away – merely offered an |

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| | alternative with the ability to return to the court if they cannot reach a consensual agreement. |
| The use of mediation would reduce case law. | <p>In reality an incourt service would draw cases primarily from:</p> <ul style="list-style-type: none"> • Cases which would probably settle by negotiation anyway. The benefit of the service is that this could be achieved sooner and at lower cost to both Party and Courts Service. • Cases which have entered the trial timetable, and where the Judge believes the points of law or fact are insufficient to draw a reasonable conclusion. |
| The savings to the Civil Court Service would be negligible. | This obviously depends on the number of cases diverted to mediation. A more accurate point might be to say that such a diversion would make the Court system more efficient, by releasing time that could be used to reduce the delays experienced by some cases which do go through a trial process. This argument applies specifically to the Sherriff Courts, where time saved in say a Small Claims Court could be used to allocate a Sheriff to hearing Criminal cases. |
| An in court service would be an unacceptable drain on the public purse. | We do not attempt to define or justify “unacceptable” here, but the attached business model would suggest that a self financing service would be possible on reasonable assumptions. |