

Ensuring effective access to appropriate and affordable dispute resolution –
A consultation by the Civil Justice Advisory Group, July 2010

Consultation Response from

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Background

Relationships Scotland was formed in 2008 through the merger of Family Mediation Scotland and Relate Scotland. Through our network of 22 affiliated local services covering all of mainland and island Scotland, families in Scotland are supported through the provision of relationship counselling, family mediation, child contact centres and other related forms of family support.

We have been working with families experiencing relationship breakdown for over 20 years. Family mediation helps parents, particularly in the context of separation and divorce, to put their children's needs first, to resolve their differences and to make decisions for the future that are in the child's best interest. Family mediation works effectively alongside the legal structures in this context.

Aligned with the Children (Scotland) Act 1995, we believe that, in general, parents are the best placed to make decisions about their families' future, rather than solicitors or the courts. Sometimes parents need help though, and family mediation provides the support that parents need to empower them to resolve their differences and to make good decisions in line with their parental responsibilities. Many families resolve their disputes through mediation and avoid court involvement altogether.

The effectiveness of Family Mediation as a form of dispute resolution

The National Audit Office (2007)¹ confirmed that outcomes for families who attend mediation are less acrimonious and longer lasting than would have been achieved without mediation. They estimated that if only 14% of cases that proceeded to court had been resolved through mediation, there would have been a resulting saving of around £10m each year.

Family mediation also brings about a quicker resolution for separating couples than for those who do not undergo mediation. The National Audit Office found that on average a mediated case took over 300 days *less* to resolve than a non-mediated case. Research in Scotland (1999)² indicated that agreement is reached on all or most of the issues discussed in family mediation in 78% of cases.

Consultation

Relationships Scotland welcomed and participated in the Scottish Civil Courts Review (2009)³ and supports the broader focus of the Civil Justice Advisory Group on the wider civil justice system, not just the court system.

¹ *Legal Aid and Mediation for People Involved in Family Breakdown*, National Audit Office (2007)

² *The Role of Mediation in Family Disputes in Scotland*, Scottish Office Central Research Unit, Lewis (1999)

³ *Scottish Civil Courts Review*, Report of the Scottish Civil Courts Review, Edinburgh (2009)

We support the view that a range of measures are necessary to ensure appropriate, affordable and fair dispute resolution. We believe strongly that mediation is an effective form of dispute resolution, not just in family cases but in a range of civil disputes. This has been indicated in the recent evaluations of the in-court mediation pilots in Scotland⁴. There is a significant issue in the lack of awareness, knowledge and understanding about mediation among the general public however. It is not until a dispute arises that options for resolving the dispute are considered. The vast majority of civil disputes do not 'make it to court' but are settled privately or, in many cases, not pursued. Increased awareness and understanding about mediation as an option would encourage people to seek a fair resolution to their problem and at an early stage. Whilst early intervention is most effective for mediation, we suggest that courts make it a requirement that parties are asked whether they have used mediation. The fact that the sheriff will ask this question would encourage earlier consideration of the process and would help to integrate mediation within the justice system. Our experience is that even reluctant parties, on referral to mediation, have found out more about the process and have found it to be an effective intervention.

We endorse the proposals in the recent Consumer Focus Scotland report⁵ for making civil justice more accessible: a public legal education strategy, joined up and appropriate advice services, an emphasis on informal means of resolving disputes and more user-friendly formal dispute resolution processes.

We appreciated the opportunity to participate in the Civil Justice Advisory Group Consultation Seminar on 13th September. We were able to input to discussions and feedback sessions on the specific questions raised by the consultation. We have restricted our written response to specific comments on mediation as a form of alternative dispute resolution and how this might be linked to the court system.

Recommendations

- A wide dissemination of information and advice about mediation at all stages in the dispute resolution process, and through a range of communication channels and locations, including websites, leaflets, in-court and out of court advice services
- Public education about mediation to increase awareness prior to disputes arising
- Rule of court referral to mediation, as routine, for civil cases to ensure that parties have at least found out about mediation and considered it as an option.

This response has been prepared by Rosanne Cubitt, Head of Professional Practice and Stuart Valentine, Chief Executive, Relationships Scotland. We would welcome any further opportunities for discussion and comment.

⁴ *In Court Mediation Pilot Projects*, Scottish Government Social Research, Ross & Bain (2010)
Supporting Court Users: the In Court Advice and Mediation Projects in Edinburgh Sheriff Court, Research Phase 2, Scottish Executive, Legal Services Research Findings 38, Samuel (2002)

⁵ *Making Civil Justice Work for Consumers: The consumer perspective on making the civil justice system in Scotland fit for the 21st century*, Crompton (2010)