

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

Appendix 1

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.

Appendix 2

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.

Justice Committee

Alternative Dispute Resolution

Written submission from the Advisory, Conciliation and Arbitration Service

1. Alternative dispute resolution (ADR) lies at the heart of Acas¹ and the services it provides. There are many definitions of ADR with texts on the subject commonly referring to terms such as conciliation, mediation, arbitration, early neutral evaluation, expert determination etc. ADR has emerged as a generic term to describe independent, third party intervention. Acas has traditionally made an important distinction between conciliation, arbitration and mediation.

In addition to these services, Acas provides information and guidance on a range of issues related to disputes; non statutory mediation and workplace training in mediation to accreditation level.

2. Acas Conciliation

For Acas, conciliation takes two forms – collective and individual.

2.1 Collective Conciliation

Acas has a statutory duty to promote the improvement of industrial relations (set out in The Trade Union and Labour Relations (Consolidation) Act 1992) (TULRA 92). Under Section 210 of the Act, Acas has the power to offer collective conciliation to parties in dispute between groups of employees, usually represented by trade unions, and their employers. This area of work is described by Acas as collective conciliation.

This work on collective disputes is vital in avoiding the adverse effects of industrial action wherever possible and in helping rebuild productive workplace relations quickly.

In 2016-17, Acas Scotland was involved in collective conciliation in 146 cases across a diverse range of employment sectors.

As in previous years, collective conciliation remained highly effective in 2016-17, resolving matters or helping those involved move towards a resolution in nine out of ten cases.

In those cases where the parties fail to reach a resolution in collective conciliation, Acas has the power under TULRA Section 212 to arrange for a collective employment dispute to be referred to an independent arbitrator or arbitrators, or the Central Arbitration Committee (CAC), with consent of all parties, to seek to settle a case.

¹ The Advisory Conciliation and Arbitration Service (Acas) was established under the Employment Protection Act 1975. All data reported on business volumes in this note can be found in Acas' annual report :<https://www.gov.uk/government/publications/acas-annual-report-and-accounts-2016-to-2017>

It should be noted that participation in collective conciliation and arbitration is a voluntary process.

Most disputes in Scotland settle at collective conciliation stage, so the number of referrals to arbitration is small.

Acas in Scotland is also key to collective dispute resolution in the Scottish Prison Service and the Police Negotiation Board, where specific ADR services have been jointly agreed as the means of resolving all collective disputes.

User satisfaction with Acas collective conciliation is high, with an independent evaluation finding that 84% of employers and 89% of trade union representatives would use our services again².

Access to Acas collective conciliation and arbitration is at no cost to the parties.

2.2 Individual Conciliation

In addition to its collective conciliation work Acas also has a statutory duty under Section 18 of the Employment Tribunals Act 1996 to provide individual conciliation in cases submitted to the Employment Tribunal service.

In 2014, Acas introduced an Early Conciliation (EC) Service following a Government review of dispute resolution. The aim of EC is to require those that intend to make a claim in an Employment Tribunal, to notify Acas first, so that Acas may offer all potential tribunal claimants the chance to resolve disputes prior to submitting a formal claim, with the potential for a quicker and lower-cost alternative resolution than that provided in a judicial forum.

Where a case is not resolved within a month, then claimants wishing to submit an Employment Tribunal claim may do so, with Acas individual conciliation remaining available to parties once a claim is lodged.

Last year Acas received over 92,000 EC notifications (circa 6700 in our Scottish office), broadly the same number as in the previous year. Most notifications (95%) came from employees while 5% were initiated by employers. The take-up of the offer of Acas conciliation was high: 82% of contactable claimants with an in-scope claim agreed to participate and 86% of respondents contacted wished to proceed with conciliation.

In 38% of cases where people took part in EC, the issue was resolved; either formally settled through Acas or resolved informally without the need for a written Acas agreement (for example through payment of wages which were owing).

Around 19% of EC notifications progressed to an Employment Tribunal claim and Acas conciliation at this stage resulted in settlement and withdrawal of 73% of ET claims (55% settled by formal Acas agreement, 18% being withdrawn by the claimant).

² <http://www.acas.org.uk/media/pdf/1/b/Acas-collective-conciliation-evaluation-2016.pdf>

The volumes for 2016/17 were in a period where ET fees were charged. The recent High Court decision removed the requirement to charge fees for access to ET services. EC and ET volumes have risen since providing an early indication that those who may have been deterred by fees may now be more likely to convert into ET claimants following EC.

Acas has increased resource to meet the increasing demand.

Together these outcomes reflect an important endorsement of alternative dispute resolution.

Access to Acas individual conciliation is at no cost to the parties.

3. Acas Non Statutory Mediation

In addition to individual and collective conciliation and arbitration, Acas also offers a charged-for mediation service in individual employment disputes.

Mediation is often used in situations where the issue manifests itself as a breakdown in working relationships. There may be no actual or potential employment tribunal proceedings, but there may be adverse impacts on how people feel about their work. These breakdowns in relationships often have wider implications in the workplace and can affect many areas including absence rates and productivity levels.

Acas mediators help the parties in the relationship breakdown to jointly find more constructive and mutually agreed resolutions to their issues.

Resolution of workplace relationship issues through mediation is recognised by employers as a means of achieving high performance workplaces.

In recognition of the effectiveness to employers of workplace mediation, Acas has established a training programme of accreditation for workplace mediators. This accreditation leads to the award of a Certificate in Workplace Mediation (CIWM). The CIWM has attracted participation from both SME and larger organisations in both the public and private sectors.

The CIWM training is offered both in- company and to individuals nominated by their employer to attend our open access training courses.

Mediation is seen as an effective means of resolving issues but is not a replacement for the use of traditional discipline and grievance procedures where appropriate.

4. Advice Services

Acas believes that the provision of factual information can often lead to the resolution of workplace issues. We offer both Helpline and web based services in order to provide advice and information to employers, employees and employee representatives. This early stage intervention often leads to dispute resolution either

by providing factual information which resolves the issue or by providing guidance on alternative routes to resolution.

Noted below are the top issues dealt with by the Acas Helpline. These issues remain relatively constant, although their position on the hierarchy may change.

- Discipline, Dismissal and Grievance
- Contracts
- Redundancies, Layoffs and Business Transfers
- Wages and National Minimum Wage
- Holidays and Working Time
- Absence, Sickness and Stress
- Diversity and Discrimination
- Maternity, Paternity and Adoption

Independent evaluation shows that 89% of callers were satisfied with the service received; 62% of callers discussed their issue within their own organisation after calling Acas, and 48% applied or implemented changes recommended by Acas.

Both the Helpline and web based services are provided UK wide so discrete Scottish volumes are not available.

In 2016/17, the national Helpline answered 887,000 calls and our website recorded 11.8 million visits. Over 500,000 users asking 1.4 million questions on the automated 'Helpline Online' advice service.

ACAS

1 February 2018

Justice Committee

Alternative Dispute Resolution

Written submission from Core Solutions Group

1. Relevant Biography

John Sturrock QC practised at the Faculty of Advocates from 1986-2002. He had a wide-ranging and varied practice in civil cases of all sorts. He was appointed a Queen's Counsel in 1999. He served as the Faculty's first Director of Training and Education from 1994-2002. In that role he established the Faculty's advocacy training programme, at the time a world-leading initiative.

He served on Scotland's Judicial Studies Committee from 1997-2003 and conceived and delivered its practical judicial training workshops. In 1996, he trained in negotiation at Harvard (under the tuition of the author of *Getting to Yes*, Roger Fisher) and separately as a mediator. He left practice at the Scottish Bar in 2002 and established the mediation services and training provider, Core Solutions Group.

Since then, John Sturrock has acted as mediator in approximately 500 different matters, mostly in Scotland, and also in England, Ireland, mainland Europe and Africa. The subject matters range from personal injury to employment and workplace disputes, major construction and infrastructure projects to commercial contracts of all sorts, allegations of negligence in professional services (including lawyers, architects, surveyors, accountants, doctors, builders, bankers and others), financial claims, intellectual property issues, house purchases, landlord and tenant, agriculture, community land and other local issues, planning and environment, company and corporate matters, public policy, local government, national government, trades unions and management, Olympic sport and many more.

He has also consulted with and trained hundreds of professionals, senior civil servants, business leaders and managers, consultants, sports leaders and others in mediation, negotiation and conflict prevention and resolution skills. He is recognised as a world-leading practitioner, thinker and writer in the field of dispute resolution, holds the position of Visiting Professor at the University of Edinburgh and is a Distinguished Fellow of the International Academy of Mediators, whose international conference is being held in Edinburgh from 10-12 May this year under John Sturrock's chairmanship.

He leads Collaborative Scotland, an initiative to bring respectful dialogue to Scottish politics and public affairs, and is the author of its Commitment to Respectful Dialogue.

John Sturrock first gave evidence about dispute resolution to the then Justice 1 Committee in 2003.

2. The Challenge

A significant part of what is referred to as “dispute resolution” in a civil (ie not criminal) context is disproportionately costly, time-consuming and uncertain and also often destructive of business, commercial, financial, community and personal relationships. This is seen at its most pronounced in the litigation system where formal procedures and the adversarial nature of court processes inevitably produce many of these symptoms. The same may be said for some tribunals, inquiries and other adjudicative processes, as well as protracted unresolved disputes which simply get stuck through want of opportunity and resources to resolve them constructively.

This is not a criticism as such, more a recognition of the limitations of processes which require parties to assert their own positions as right and seek to show that other positions are wrong. This binary, win/lose, black/white approach is suitable for those cases in which legal certainty and a judicial decision is necessary. However, it is recognised that these cases form a very small proportion of all matters which are disputed and certainly of all cases in the court system (figures often suggest that less than 5% of cases in the court system are actually decided by a judge). And yet, very significant resources are directed to this system (a cost-benefit analysis would be worthy of exploration).

There are thus significant direct costs (monetary and non-monetary) associated with such a system. Further, the costs to the economy and to society would seem to be significant too, in lost time, profit, opportunity and morale, as well as damage to community and personal relationships and so on.

3. The Opportunity

Recognising the issues addressed above, many countries and jurisdictions are embracing different ways to help resolve disputes. It is regularly said that we live in a “post-litigation” age as people everywhere see the benefits of resolving differences early and with less time and costs involved. Although the term “**alternative dispute resolution**” (“**ADR**”) was deployed twenty or more years ago to describe this development, the term is thought to be inappropriate. “Dispute Resolution” comes in many forms and these are better viewed as a variety of options, which will include litigation and tribunals (along with arbitration) in appropriate cases.

The key is to expand our knowledge, experience and skills in the range of options available for early and constructive resolution – and indeed for the prevention and/or management of disputes and differences. Most disputes are resolved without formal proceedings, and indeed without lawyers or other professionals, by negotiation, the most commonly used form of dispute resolution.

Negotiation enables parties to work out solutions for themselves which meet their **real interests** (including all the non-legal factors that inevitably exist) rather than being based on the **positions** that an adversarial process inevitably requires them to take. It

also emphasises autonomy and choice and reduces unnecessary dependence on others. It can preserve or rebuild relationships. Thus, it should be the most effective and efficient means of resolving disputes.

In recent years, it is certainly the case that many professionals have enhanced their negotiation competence to the benefit of many clients. This should, and will, lead to a reduction in court cases in the civil courts, among many other benefits. We need to continue to enhance the teaching, encouragement and use of “interest-based” negotiation in Scotland.

Mediation is an enhanced form of negotiation. Often, for a number of reasons now well understood in negotiation theory, behavioural psychology and economic analysis, it is not easy for parties (and their advisers acting on their behalf) to reach an agreed outcome based on mutual interests. This is just in the nature of things, who we are and our culture.

Mediation involves a trained and skilled third party enabling the disputing parties (with their legal or other advisers if appropriate) to work out a solution among themselves. A mediator provides a valuable and independent input into negotiations which, in the vast majority of instances, does help (and indeed empowers) parties to find a solution for themselves. Often this is achieved in one day, even in complex and long-standing disputes in court.

The overall success rate of mediation is frequently cited to be in the region of 80-90%, a striking statistic in any event and more so when research in Scotland has shown that the figure for successfully implementing court decrees is less. This is explicable by the consensual nature of agreements reached in mediation.

4. Some Questions

This submission argues for much greater use of interest-based negotiation and mediation in Scotland. In 2003, when John Sturrock last appeared before this Committee’s predecessor, mediation was much less known and tested in Scotland. We are well past that stage now. The growth in use of mediation invites the following questions:

- What kind of dispute resolution system do we wish to encourage in Scotland?
- What are the criteria which should be applied in reaching a decision on this?
- How should public money and resources be deployed to achieve dispute resolution?
- What changes do we wish to make or encourage in furtherance of these objectives?
- What would be the specific benefits of doing so?
- What role should mediation play in dispute resolution in Scotland?
- How can mediation be further encouraged?
- What are the first steps to improve the system?

5. Some Recommendations

1. Recognition that encouraging earlier, more effective and more efficient resolution of disputes in Scotland will be good for the economy, society and communities;
2. The setting of interest-based negotiation and skilled mediation in the wider context of useful social and economic benefits in Scotland;
3. Much greater emphasis on education in interest-based negotiation and mediation in schools, colleges and other educational institutions in Scotland in order to encourage earlier, more effective and more efficient resolution of disputes;
4. A significant programme to raise awareness among users of courts, and more generally through public bodies and institutions, of the benefits and availability of skilled mediation in Scotland;
5. Encouragement to business associations and trades unions to embrace the use of skilled mediation for matters of importance to business and the workforce;
6. The continuation of the incorporation of mediation and other interest-based processes into appropriate legislation emanating from the Scottish Parliament;
7. Encouragement to Audit Scotland to examine the costs and benefits of the civil justice system in Scotland from the point of view of early, effective and efficient dispute resolution;
8. Encouragement to the courts in Scotland to follow those in many other jurisdictions and actively encourage the use of early negotiation and mediation to promote earlier settlement of cases, with recognition of the impact on limited resources of a court users' refusal to do so;
9. The re-allocation of a small proportion of the justice budget in Scotland (say one senior judicial post and one sheriff's post per sheriffdom) to fund "*Early Dispute Resolution*" programmes in the Supreme and Sheriff Courts;
10. Rejuvenation, extension and better resourcing of the successful in-court mediation schemes in Edinburgh, Glasgow and Aberdeen Sheriff Courts;
11. Encouragement to the Justice Department of the Scottish Government to research and adapt where appropriate the many excellent schemes in other jurisdictions for the earlier, effective and efficient resolution of disputes arising from the provision of public services;
12. Commitment by the Scottish Government and local government to endeavour to resolve disputes in which they are involved by skilled mediation wherever possible.

6. An End Note

Mediation and associated concepts are sometimes viewed as “touchy feely” by professionals and parties inexperienced in their use. Nothing could be further from the truth.

Nearly all disputes have a human dimension which is very often ignored, and recognition of which is often a key to unlock a problem. Addressing this and the multitude of factors which are present in all disputes is in fact a very serious matter requiring a broad set of skills including but not limited to the legal, monetary or analytical.

That is (and should be) hard work, but the benefits for individuals, professionals, businesses and communities of a shift in culture have already been shown to be significant. We should build on this in Scotland.

Core Solutions Group
31 January 2018

Justice Committee

Alternative Dispute Resolution

Written submission from the Association of British Travel Agents

About ABTA

This response is submitted on behalf of the membership of ABTA – The Travel Association. ABTA was founded in 1950 and is the largest travel trade association in the UK, with almost 1,200 members operating from over 4,500 locations. Our Members range from small, specialist tour operators and independent travel agencies specialising in business and leisure travel, through to publicly listed companies and household names.

Annually, ABTA Members' turnover is in excess of £37 billion. ABTA's focus is ensuring that Members can operate their businesses in a sustainable and successful manner, enabling their customers to travel with confidence.

ABTA welcomes this opportunity to provide information to the Justice Committee around the availability of ADR and any barriers to its use, and we hope this briefing will prove useful.

Alternative Dispute Resolution and the travel industry

Regulation 15 of the 1992 Package Travel Regulations (PTRs) places liability on package holiday providers for the proper performance of all services sold as part of the package (regardless of the fact that those services are supplied by third parties such as hoteliers and airlines). This is a long-standing regulation, and one that the industry values highly. The PTRs underpin the consumer confidence on which the industry relies as UK consumers are able to make claims against the organiser of their package holiday, rather than having to litigate in the holiday jurisdiction.

The UK government approves ABTA as a Consumer ADR body under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015. The ADR services described below are available to Scotland based consumers who have a complaint against an ABTA Member.

The ABTA Alternative Dispute Resolution (ADR) service

Before the consumer starts this process, they must first have been through the travel company's in-house complaints procedure.

ABTA's dispute resolution service is an online process and ABTA communicates with the consumer through our website, email and SMS text message (postal arrangements can be made for consumers unable or unwilling to use the online system). The purpose of this scheme is to bring consumers and ABTA Members together and ensure that the ABTA Member responds within set timescales to the consumer's complaint.

The ABTA ADR service is free of charge and can take on average up to 50 calendar days to conclude, depending on the information and documents supplied.

Further details of the process are available here:

<https://abta.com/assets/uploads/general/ABTA-complaints-process-large.jpg>

ABTA's Customer Support department opened 14,182 (12,962)¹ cases in relation to customer issues concerning ABTA Members during the period 1 July 2016 to 30 June 2017. The vast majority of these were resolved through the ABTA ADR service (see below for numbers of cases that went on to be resolved by arbitration).

Where an ABTA Member and its customer are unable to resolve their differences through the initial complaints process, ABTA provides an opportunity for the parties to have their dispute considered and managed through its arbitration or conciliation scheme. Both schemes are administered independently by the Centre for Effective Dispute Resolution (CEDR).

The ABTA Arbitration Scheme

Arbitration can be used to settle alleged breaches of contract and/or negligence between consumers and ABTA Members. If the claim includes an element of minor illness or personal injury then this can also be considered by the arbitrator, but is limited to £1,500 per person.

ABTA's arbitration scheme has helped consumers for over 40 years. The scheme allows consumers to resolve disputes without going to court; it is faster, less formal and costs less than instructing solicitors. Arbitration is conducted privately, based on written documentation and evidence. It is a mandatory requirement for ABTA Members to participate in the scheme.

To use the scheme, the consumer must have registered their complaint first, and have reached deadlock with the ABTA Member. A neutral, independent arbitrator considers evidence submitted by both parties and makes a decision about compensation. This decision is final and legally binding but can be appealed by either party within 14 days of the award being issued. If the consumer loses or is awarded less than previously offered by the ABTA Member, they will be ordered to pay an amount equal to their registration fee.

Current registration fees:

Value of claim	Fee
£1.00 – £2,999.99	£108.00
£3,000 – £7,499.99	£180.00
£7,500 – £25,000	£264.00

¹ Code of Conduct Report 2016-2017, published September 2017 (previous year figures in brackets)

https://abta.com/assets/uploads/general/Code_Report_2016-2017.pdf

The Rules of the Scheme can be found here:

https://abta.com/assets/uploads/general/ABTA_Arbitration_Rules_May_2016.pdf

During the period 1 July 2016 – 30 June 2017, there were 666 (431)² cases that were the subject of an arbitration award.

The ABTA Conciliation Scheme

The ABTA conciliation scheme was launched early in 2017 and handles disputes related to personal injury and sickness.

One of the reasons for launching the scheme was to offer consumers an alternative to claims management companies, who would take a proportion of the consumer's damages as their fee. ABTA supports a mandatory obligation for claims management companies to signpost the availability of any available ADR schemes to consumers, before a legal claim can be progressed. The relevant regulatory authority for oversight of claims management activities should enforce the obligation to notify consumers of available sources of ADR, as part of their authorisation process.

Conciliation is a process through which a neutral third party, the Conciliator, seeks to help both sides to a dispute come to a mutually satisfactory settlement by negotiation and compromise, but is limited to £10,000 per booking.

It is a voluntary process conducted on a "without prejudice" basis, meaning that any compromises made during the process cannot be used as evidence should the process not be successful and the matter proceed to court.

Conciliation is a flexible and confidential process whereby the Conciliator will actively facilitate negotiations between the parties, in an independent and impartial manner, working towards a settlement.

The conciliation process is conducted via telephone or in writing, which makes it flexible and efficient. During contact, the Conciliator will advise the parties of their role, the timeframes in which contact will be made and the things to consider which will assist the parties in reaching a settlement. In some cases, the Conciliator may propose a solution in an attempt to close the matter.

Where a settlement is agreed, the Conciliator will record the terms of the agreement and send it to the parties in the form of identical Confirmation of Outcome Statements for signature. There will be a short "cooling off" period to allow the parties to seek legal advice should they require it.

The settlement will only become legally binding once the Confirmation of Outcome Statements are signed by both parties and returned to CEDR.

Should the parties be unable to agree on a mutually acceptable outcome, the Conciliator may issue recommendations for settlement. The parties can accept the

² Code of Conduct Report 2016-2017, published September 2017 (previous year figures in brackets)

https://abta.com/assets/uploads/general/Code_Report_2016-2017.pdf

recommendation made by the Conciliator and both must confirm this in writing by returning the signed declaration to CEDR.

The fee for the conciliation will be paid by the ABTA Member and scheme rules can be found here:

https://abta.com/assets/uploads/general/The_ABTA_Conciliation_Scheme_Rules_21022017.pdf

Luke Petherbridge
Senior Public Affairs Manager
1 February 2018

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.¹
- 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.² 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

¹Ross, 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

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

Justice Committee

Alternative Dispute Resolution

Written submission from the Faculty of Advocates

1. Introduction

The Faculty of Advocates welcomes the opportunity to submit written evidence to the Justice Committee in regard to Arbitration. For the past year, we have been working hard to raise awareness and promote the benefits of arbitration. We believe that arbitration, as opposed to litigation through the courts, could provide improved access to justice and may resolve many of the most common complaints about court proceedings, namely delay, expense and uncertainty. The interest of the Justice Committee in this area and the invitation to attend this session is very much appreciated.

The dedicated arbitration group within the Faculty is known as Faculty of Advocates Arbitration (FOA Arbitration). This body is tasked with promoting and raising awareness of arbitration. We have 40 members in this group and they require qualifications and experience in arbitration to be eligible to join. We are developing new and exciting projects including Personal Injury Arbitration and Professional Negligence Arbitration; and strengthening and expanding the existing work being done in other fields, such as Family Arbitration and Commercial Arbitrations.

2. Use of Arbitration Globally

Arbitration is a developed and well used dispute resolution mechanism globally. Up to 90% of the world's disputes are resolved by this method. The increasing nature of cross-jurisdictional contracts and e-commerce makes arbitration attractive and the main choice for parties as the dispute resolution mechanism.

3. Importance to Scotland

In 2020 the global arbitration community is coming to Edinburgh. ICCA 2020 has awarded Scotland the honour of hosting its biennial conference. This is an enormous opportunity for arbitration in Scotland and will enable us to showcase our talents, experience, facilities and ability to host arbitration to a worldwide audience.

4. BREXIT and Arbitration in Scotland

We believe that BREXIT will not have any effect on arbitration in Scotland, nor in the UK. Arbitral Awards are recognised and enforced under the New York Convention 1958. Signatories to this Convention include 98% of the world's countries.

5. The Creation of a Specialised Arbitration Group in the Faculty of Advocates

Over the past year, FOA Arbitration has taken steps to educate and train members of Faculty and solicitors and to encourage arbitration in Scotland. We have trained

32 Counsel as Members of the Chartered Institute of Arbitrators (MCIArb). We are presently training 18 QC's and advocates on a dedicated Fellowship course, leading to the gold standard FCIArb qualification. We hosted an Arbitration Conference in the Balmoral Hotel last September involving international and high profile speakers, including the Chair of the Justice Committee, Margaret Mitchell MSP. Currently, there are over 30 arbitrations ongoing involving Advocates, who are conducting or participating in these arbitrations as Arbitrators or as specialist Arbitration counsel.

6. Leading by example - Contracts

The Faculty of Advocates has recently started putting arbitration clauses into its contracts with third parties. We encourage others to do so. We consider that it would set an example if the contracts entered into by all public bodies contained dispute resolution clauses, to a far greater extent than they do at present.

7. Costs as a Barrier

At present, there is no legal aid available to fund arbitrations. FOA Arbitration has made a submission to the Independent Strategic Review of Legal Aid and we are soon to meet with SLAB. Legal Aid would only provide a partial solution and would not be available for the larger or commercial cases and so some alternatives are required. To this end, we are also in constructive dialogue with third party funders.

In our view, the most significant barriers to increased use of arbitration remain lack of awareness of the benefits; lack of education; and lack of funding.

Faculty of Advocates
2 February 2018

Justice Committee

Alternative Dispute Resolution

Written submission from the Family Law Arbitration Group Scotland

The background

Following the Arbitration (Scotland) Act 2010, the Family Law Arbitration Group Scotland (FLAGS) was set up to promote the use and growth of arbitration as a means of resolving family law disputes. FLAGS are a group of nearly 50 solicitors, counsel and former members of the judiciary who have undergone training to act as family law arbitrators under the FLAGS scheme, using our own bespoke rules for arbitration in family law cases.

We offer arbitration services in relation to any disputes arising from the breakdown of a relationship between two parties. The issues in dispute are usually in relation to financial matters or the arrangements for care of children of a relationship. We can offer arbitration on discrete issues, such as the amount of maintenance to be paid, or on all issues that are in dispute when a relationship breaks down. This could include, for example: the fate of the matrimonial home, the lump sum to be paid by one spouse to another on divorce, the amount of spousal maintenance to be paid (and for how long) and the amount of time the children of a relationship should spend with each parent.

The advantages of arbitration in family law disputes

- Arbitration can be faster than the court process.
- The procedure can be as simple or as complex as the dispute requires. For example, procedural hearings can be done by telephone or online.
- Arbitration can be a cheaper alternative to court.
- The parties select the arbitrator and there is flexibility when and where the arbitration is heard.
- The process is confidential, unless the parties agree otherwise.
- Arbitration in family law cases will help reduce the burden on the courts.

Barriers to the use of arbitration in family law disputes

The uptake of arbitration in family law disputes is disappointingly low. This is for a number of reasons, including a lack of knowledge of the availability of arbitration for family law disputes, the fact that some Sheriff Courts offer specialist family courts with very experienced family law sheriffs, as well as the issue of cost, whether that be perceived or real.

Overcoming these barriers

- All potential users of family law arbitration should be made aware of its availability, its cost and the process. This requires support from various bodies including the Scottish Courts and Tribunals Service, the relevant mygov.scot pages and the CAB.

- Educating solicitors and the public that with the civil court process is not, as many still think, free or negligibly cheap compared to the cost of paying for an arbitrator.
- For legal aid to be made available for arbitration.

Family Law Arbitration Group Scotland
30 January 2018

Justice Committee

Alternative Dispute Resolution

Written submission from Relationships Scotland

1. Background: The Courts Reform (Scotland) Act 2014 was passed in October 2014. The Bill followed on from recommendations in the Report of the Scottish Civil Courts Review published in 2009 and led by Lord Gill. The Review examined, “the provision of civil justice by the courts in Scotland, including their structure, jurisdiction, procedures and working methods having particular regard to the cost of litigation to individuals and the public purse; *the role of mediation and other methods of dispute resolution in relation to court process*; the development of modern methods of communication and case management and the specialisation of courts or procedure, including the relationship between the civil and criminal courts (italics ours).
2. Relationships Scotland acknowledges the support and encouragement that the Scottish Government already gives to mediation and the use of ADR where appropriate, but believes that additional action is required to secure a step change in the uptake of mediation for family actions, especially in relation to separation, divorce and child contact.
3. There has been a rule of court referral to mediation in Scotland (Sheriff Court Rule 33.22) for family actions since 1996. Relationships Scotland’s Family Mediation services have been helping families to resolve disputes arising from separation or divorce since 1984. We currently mediate over 2,000 cases per year. There are about 10,000 divorces each year in Scotland, and an unknown but likely equivalent number of separations leading to around 18,000 family law actions per year. Many more people could be helped to avoid the acrimonious and adversarial court process by being encouraged to find out more about family mediation as early in the process as possible.
4. Relationships Scotland is asking the Scottish Government to build on the support that they have provided to date and to take the next step in ensuring greater understanding and proper consideration of alternative methods of resolving disputes, particularly for family cases where an on-going parenting relationship is needed for the sake of the children.
5. Relationships Scotland would like to see the introduction of mandatory information meetings with a mediator, to find out more about the mediation process and how it might help, prior to hearing a family case in court. There would be no compulsion to mediate, only to find out more about the options available for resolving disputes. We believe this would deliver a step change in the use of family mediation, resulting in better outcomes for children and families. This would also deliver a significant saving to the Scottish Court system and the Scottish legal aid bill.
6. We recognise that there are some cases where mediation is not appropriate, for example when domestic abuse is an issue, and processes would be set up to

respond to that appropriately. We also appreciate that there needs to be confidence in the competency and professionalism of the mediators. We are fortunate in Scotland in already having a system in place to ensure that mediators are trained, assessed and working appropriately. The Lord President of the Court of Session approves organisations to accredit mediators for the purposes of the Civil Evidence (Family Mediation) Scotland Act 1995 and there are rigorous procedures in place to ensure standards are maintained. Relationships Scotland family mediators, of which there are about 80 working across the country, are all professionally trained and our current course has been credit rated by Napier University at SCQF level 9. Our mediators are required to undertake a minimum number of hours of casework per year. They are also required to participate in clinical supervision and on-going training (Continuing Professional Development) in order to remain on the Register of practicing mediators within the network. Mediators work to the Relationships Scotland Code of Professional Conduct for Family Mediators and to a number of National and local policies including those relating to equality, safety and protection. Relationships Scotland's National Office reports annually to the Lord President's office and participates in a three yearly approval process as an organization approved to accredit mediators.

7. Relationships Scotland already has a process in place to assess, manage and monitor risks, including those arising from domestic abuse and child protection concerns. Parties are all offered an initial separate intake meeting with a trained worker where issues are explored and the appropriateness of mediation is discussed. There is no requirement to proceed to mediation. Where it is decided that mediation is not appropriate the mediation service assumes responsibility for the decision and informs any referring agencies, including the court. Parties are supported to make contact with other agencies that can help.
8. Around 15% of Relationships Scotland's mediation cases are currently referred from the courts. Practice varies throughout the country, however, with some sheriffs choosing to use the rule of court referral (33.22) and others not. In one area 40% of cases are referred from the court, in others it is nearer 2%. If it became standard practice that all sheriffs would refer parties to consider family mediation it is likely that this option would be investigated earlier in the legal process, leading to fewer family actions and better outcomes for families.
9. By referring family cases to Relationships Scotland services parties are also able to explore other support services that might help, for example relationship counselling and child contact centres. Parents often find that using a child contact centre is a stepping stone to establishing contact with a non-resident parent and they can subsequently make their own arrangements without reverting to the courts. 23% of Relationships Scotland's child contact centre cases are currently referred from the courts.
10. Many respondents to previous consultations have felt that ADR 'should not be compulsory or mandatory and/or that there should not be sanctions to compel individuals to make use of ADR'. Relationships Scotland agrees that there should not be compulsion to make use of ADR, but that some level of compulsion to find out about mediation, and perhaps other services such as

Parenting Apart Groups (which are run by Relationships Scotland), in order to make an informed choice would be of significant benefit.

11. Stuart Valentine, Chief Executive of Relationships Scotland has previously written on this subject and his article, published in the Scotsman in Feb 2014, is included in Appendix 1 for reference.

Stuart Valentine,
Chief Executive
Relationships Scotland
2 February 2018

Appendix 1 – Mandatory Mediation for Scotland?

Article published in the Scotsman, 12 Feb 2014.

Stuart Valentine, Chief Executive of Relationships Scotland, presents the case for some level of automatic compulsion from the Scottish Courts system to be introduced to increase the use of family mediation.

- *There are 10,000 divorces each year in Scotland, with an annual total of around 18,000 family law actions. 45% of all separating couples, whether married or not, seek the professional help of a solicitor or family mediator.*
- *Relationships Scotland is the sole voluntary sector provider of family mediation in the country. Their local services support over 2,000 people each year who are separating to agree the future care of their children.*
- *It is estimated that around 70% of family mediations end in full or partial agreement.*

Family mediation helps resolve issues between separating couples more quickly and more cheaply than those cases that go through the courts. Family mediators work directly with separating partners to improve communication, reduce conflict and to help the couple themselves agree on practical, workable arrangements for the future care of their children. It is estimated that around 70% of mediations result in an agreement being reached.

Mediation is currently receiving high levels of media attention across the UK, The Westminster government is currently progressing legislation to require separating couples involved in parenting or financial disputes to meet with a mediator prior to going to court. The new Children and Families Bill will, however, only apply to England and Wales. Scotland has a different legal system in the area of family law and currently there is no level of automatic compulsion for separating couples to consider family mediation. This often leaves court action as the default route for many, resulting in longer, more expensive and more damaging disputes between separating couples.

No one would dispute that divorce and separation are a challenging process for all concerned, and that children are often caught in the middle of a war that is raging around them. Parents often lose their focus on their children as they battle with their ex-partner to determine who gets what, and who the children are going to live and spend their time with.

Lawyers are the first port of call for many separating couples, and legal advice is important. It can, however, further polarise separating couples as each solicitor acts in the best interest of their own client. By the time the case gets to court accusations will often have been made, positions may have become entrenched and conflict will have frequently escalated.

There is, however, a better way to resolve disputes, and this has been recognised by the Scottish Government and judiciary for some time. The proposed reforms to the Civil Justice system in Scotland, through the Courts Reform Bill, include the increased use of alternative dispute resolution (or ADR) processes including mediation, and for a range of issues not just family cases. There has been a rule of court referral to mediation in Scotland (sheriff court rule 33.22) for family actions

since 1996. Judges may refer couples to a mediator to encourage them to resolve their disputes themselves. Additionally, the Civil Evidence (Family Mediation) (Scotland) Act 1995 ensures that the matters discussed in mediation cannot be used as evidence in court, where the mediation has been conducted by a mediator accredited to a specified mediation organisation. This means that people can talk more openly in mediation without the concern that what they say will be used against them in court. In Scotland the only two organisations approved to accredit mediators for the purposes of this Act are Relationships Scotland and the Law Society of Scotland.

But there is still a problem in Scotland. The level of awareness and understanding about family mediation remain low. Many people haven't heard about mediation, haven't needed to use a mediator and aren't sure what the process involves. When crisis hits, many couples will automatically think that their first port of call is to see a solicitor. Making it compulsory for couples to see an accredited family mediator before going to court, to determine if mediation is right for them, would ensure that they had considered all the options open to them. In Scotland, if introduced, the mandatory requirement would be to attend an information meeting where the individual's situation can be explored, the mediation process would be explained, and a decision made as to the best option for resolving the dispute – which may or may not be mediation.

There are certain situations, for example where there are domestic abuse issues or child protection concerns, where mediation would not be appropriate and in such cases there would be no requirement for couples to explore the potential of family mediation. Mediation is, essentially, a voluntary process in which people need to be prepared to listen, discuss and negotiate. Compulsory referral to mediation, to find out what it is all about, would however shed light on a process that could lead to better outcomes for many families.

The UK government is encouraging families in England and Wales to resolve their disputes without recall to the court process, wherever possible. Relationships Scotland believes that this is better for children and families. The Scottish government is also supporting families to work together in the best interests of their children, however we believe it could go further in ensuring greater understanding and proper consideration of alternative methods of resolving disputes. Mandatory meetings with a mediator, to find out more about the mediation process and how it might help, prior to hearing a family case in court, would deliver a step change in the use of family mediation, resulting in better outcomes for children and families. This would also deliver a significant saving to the Scottish Court system and the Scottish legal aid bill.

Anyone wanting to find out more about family mediation and the work of Relationships Scotland can go to www.relationships-scotland.org.uk or call 0845 119 2020.

Justice Committee

Alternative Dispute Resolution

Written submission from Safeguarding Communities – Reducing Offending

Introduction

Safeguarding Communities – Reducing Offending (Sacro) is a Scotland-wide voluntary organisation, committed to providing services that contribute to positive transformational changes in the lives of its service users. Sacro works independently and collaboratively within Scotland's communities to provide support, prevent conflict and challenge offending behaviour wherever the need arises. Sacro's services are based on research evidence, service user feedback, international standards of good practice and a commitment to development and innovation.

Alternative dispute resolution can be used to address disputes without going to court where both sides agree to the intervention. Alternative dispute resolution includes mediation, arbitration and ombudsmen. Sacro provide mediation services in Fife, Aberdeen and Moray.

Mediation

Mediation is aimed at assisting in the resolution of disputes through a process of skilled and principled intervention. As a process it differs from other methods of dispute resolution in some very important respects:

- Mediators are impartial – they are there to help everyone reach an agreed resolution and to increase mutual understanding.
- The mediation process gives everyone involved the opportunity to be fully heard.
- Mediators do not pass judgement or impose solutions – the people involved are helped to voluntarily take responsibility for finding a practical way forward.
- Mediation is a private process involving only the mediators and the parties to the dispute, and mediators act under a detailed policy of confidentiality.
- An important part of the mediator's job is to identify and help resolve the underlying causes of a conflict as well as the symptoms – mediation agreements are aimed at long-term solutions
- While mediation usually involves discussion of issues around past events, its main focus is on what is going to happen and how people will behave towards one another in the future.
- Because mediation is informal it can be a quick and comparatively cheap method of resolving disputes.

Mediation Provision Across Sacro

Mediation services across Scotland have changed both in the approach to commissioning and their availability. Sacro has seen a decrease in the commissioning of community mediation services over the last 10 years, with a decrease from 10 services in 2008 to currently 3 services in 2018. We have also worked in partnership with some local authorities, for example in Fife, to develop

new services that take a mediation approach and have built this into their community planning partnership to support community safety. Sacro's Fife Community Safety Support Service, funded by Fife Council, provides a range of support that includes mediation between families and parties in dispute, witness support and restorative work. This innovative service is based on individual needs assessments and personalised action plans. This service has proved to be very popular over the last 12 months since it was established and has worked with over 350 cases of dispute.

In Aberdeen and Aberdeenshire mediation had a long history of resolving neighbourhood disputes. These disputes have been focused on issues such as noise, children's behaviour, boundary or property dispute, racial harassment, other antisocial or abusive behaviour. In these cases we find that all parties engage in mediation for approximately 70% of cases referred.

Although it is difficult to draw comparisons across all the mediation services, Sacro's experience of mediation outcomes is that of those referrals suitable for mediation, more than half (50%) result in a full agreement or other positive outcome for all parties involved. **Appendix 1** provides a case study example of a mediation case, illustrating the process and outcomes.

Capacity Building and Workforce development for Mediation

Sacro has delivered mediation and awareness raising training and development sessions to a variety of community activists, volunteers, and public sector staff since 2000. Over this period we have delivered both generic and bespoke training and awareness raising sessions, tailored to specific audiences to support the development of skills and knowledge for mediation. This can be understood as an approach to community capacity building for mediation skills. We have also provided specialist training to support staff in particular roles where conflict resolution and mediation takes place in a complex environment e.g. hate crime, honour based violence.

Sacro delivers an accredited and well-respected five day Mediation Skills course. The course is accredited by Edinburgh Napier University at SCQF level 6. Now in its nineteenth year, it is offered to both members of the public and organisations. This accredited course has developed the skill base of over 1200 people to use mediation approaches and in the current period 2017-18 we are due to deliver this training at nine events to a total of approximately 90 learners. Feedback from learners is very positive, often highlighting the opportunity it provides to learn and practice new skills in a safe and supported environment. Of the nine events running in the current period, five have been especially commissioned; previous commissioners have ranged from the majority of the local authorities across Scotland, to third sector organisations such as Inspiring Scotland, Scottish Community Development Centre and the Private Rented Housing Panel.

Restorative Practice

Sacro is a leading provider of training and restorative practice services in Scotland. We deliver training to schools, local authorities and other organisations to reduce conflict, repair harm and support communities. We provide services in partnership

with a number of local authorities for both young people and adults as diversions from prosecution, including facilitating communication between victim and offender and supporting offenders through victim awareness programmes.

Sacro currently provides Restorative Justice (RJ) Services in Dundee, Perth, Fife, South Lanarkshire, North Lanarkshire and Aberdeen. The services are offered both to adults and young people, however RJ is predominately used in youth services. The availability and use of RJ in adults is sporadic and on a much smaller scale, this may be that RJ is not being embedded in adult criminal justice processes and policies. Sacro has 2 Adult RJ services nationally which are based in Aberdeen and Motherwell. The services in Motherwell is being decommissioned and will cease from end March 2018.

Restorative justice (RJ) is a voluntary process which brings those harmed by crime and those responsible for the harm together, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward. In the restorative justice scenario, the terms commonly used are person harmed and person responsible. RJ is part of a wider person centred approach to conflict resolution and harm reduction called restorative practice (RP).

Sacro Restorative Justice Referral routes

Many types of Youth Justice Services receive referrals through Early and Effective Intervention (EEI) local processes. These have been established to ensure young people receive proportionate and timely support to tackle and improve their behaviour. EEI support does not result in a criminal conviction. Disposals from EEI can include police direct measures and a referral to an intervention to change behaviour. A young person's eligibility for diversion is at the discretion of the Procurator Fiscal, the rationale being that a diversionary intervention will have a more positive impact in reducing future offending behaviour, hence improving future life chances. Sacro Youth Justice Restorative and Adult Restorative Justice services are funded by local authorities. The Youth Justice Service supports young people (aged 8—17yrs) who have either been charged with an offence or identified as being involved in risky/concerning behaviour in the community.

The main route for offence related referrals are as follows:

- Early and Effective Intervention group
- Young person on supervision diverted from the Children's Hearing System
- Local Authority Anti-social Behaviour Team
- Police
- Education
- Procurator Fiscal
- Locality Child Care Children and Families Teams

Restorative Justice Outcomes

Sacro finds that in general terms, a letter of apology or shuttle dialogue is an agreed outcome in 60 % of cases and a face to face intervention through a restorative meeting an agreed outcome in approximately 40 % of cases. In some of our services, there is the opportunity for a financial payment from the person responsible

to the person harmed to provide reparation for harm, this at times could be paid to a charity of choice of the person harmed or directly to them to repair harm done.

All persons responsible attend a Victim Awareness Programme. Consistent feedback from Sacro RJ services is that over 90% of person's responsible feel that they are more aware of the harm that they have caused and taking part in the RJ process has made them want to change their future behaviour. For persons harmed the feedback is generally very positive, with again over 90 % of persons harmed agreeing to engage in the RJ process, and again over 90% of them felt that the apology they received as a result of the RJ intervention seemed sincere.

Appendix 1 - Case Study

Mediation Case Study from Sacro Service

Background to conflict

Archie is the landlord of a privately rented tenement flat. He now lives and works in London and rents out his flat to a young professional couple- Jane and Michael. The rent barely covers Archie's mortgage. James owns the flat below Archie's and is being "driven mad" by the noise of Jane and Michael "stomping" about their home, furniture being moved and strange noises that James is convinced are Jane and Michael rolling a ball about their living room and banging loudly to annoy him. He feels they are retaliating to his complaints about the noise. Jane and Michael claim they are living normal lives in their home. They do not have wild parties or play loud music. They are fed up of constantly being contacted by their landlord to "tone down the noise" and the "dirty looks" James gives them in the landing. They are considering moving out of the property. Archie is annoyed as he cannot afford to lose his good tenants and doesn't have the time to deal with James' complaints. James just wants the noise to stop. Before Archie moved to London, he renovated his flat to make it more attractive to tenants. As part of this renovation he put down laminate flooring throughout and ceramic tiles in the kitchen and bathroom.

Case Progression

Mediation generally looks to involve all parties living in a household, rather than landlords. Landlords are generally responsible for the building and ultimately for their tenants but where disputes are around "lifestyle" issues- it is best to involve the people living in the household as they have the biggest power to make a change to the situation. A mediation meeting was therefore arranged between James, Jane and Michael who were all keen to get together and talk about the situation.

Mediation Meetings & Outcomes

The meeting between James, Jane and Michael essentially focussed on noise and the deliberate aspect that James was feeling. James was able to discover during the meeting that the floor coverings had been changed shortly before Jane and Michael had moved in. James had not realised this as he had been on holiday when the work had been carried out. This came as a surprise to James and helped him appreciate that a good part of the noise he was experiencing could have been down to floor coverings. A full and frank discussion was held where James explained the level of disturbance he was experiencing. Jane and Michael were horrified to learn that James could hear so much. Taking time to describe situations in full detail helped the parts to work out together than the "rolling ball" Michael was hearing was actually a computer chair on wheels being pushed back. The "deliberate banging" was a television remote falling onto the floor. Both parties were able to appreciate together than the biggest source of the noise was the flooring in the property. By this time, James, Jane and Michael had broken down barriers and were able to work together to decide how this may be tackled. Jane and Michael did not have authority to change floor coverings so it was decided that a further meeting would be held between James and Archie to take this further with the backing of Jane and Michael.

James and Archie met and discussed what had happened during the meeting with Jane and Michael. Although Archie was concerned to hear that the change in floor coverings seemed to be the main source of the noise, financially he did not feel able to change the situation. Although he empathised with James' situation- he did not see why he should have to spend money replacing the floor when essentially Jane and Michael were doing no wrong- just living their lives. A discussion as then held about what might happen if the situation were left as it was. Archie was able to see that he might lose his tenants or face complaints about future tenants. James was able to appreciate that it may not matter who was in the flat- the problem may not go away. By focussing on how the future would look in the way, James made a suggestion that Archie consider buying rugs for the laminated areas of flooring and that if Archie were willing to consider changing the ceramic tiles to lino in the kitchen and bathroom- he would meet half the cost. This suggestion was accepted by Archie.

Outcomes

A written agreement was made between James and Archie about replacing the floor coverings and how this would be paid for. Floor coverings were replaced and following a review of the situation 3 months later, the situation has vastly improved and everyone reports being happier about the situation.

Sacro
1 February 2018

Justice Committee

Alternative Dispute Resolution

Written submission from the Scottish Arbitration Centre

The Scottish Arbitration Centre is grateful to the invitation from the Justice Committee to provide written and oral evidence in respect of its round-table session on ADR.

Arbitration

Arbitration is a private dispute resolution method, often used in cross-border commercial disputes, but can be used in a variety of matters, including family disputes. Parties have to agree to such a method, usually by way of written contract, but arbitration can also stem from legislation. An arbitrator will act as private judge and decide on the matter. Proceedings are usually confidential and decisions (or Awards) can be enforced under the New York Convention, an international treaty. Arbitration offers a flexible and often more cost-effective method of dispute resolution. It also provides finality, unlike mediation.

Scottish arbitration

Scotland has a separate arbitration system to England and Wales, with no appeal to the Supreme Court in London. This makes Scotland a neutral jurisdiction for arbitration, allowing us to market Scotland with its independent arbitration system. The Arbitration (Scotland) Act 2010 was modelled on the English Act and the Scottish Courts have opined that English case law on similar provisions would be persuasive in Scotland. The Scottish Act does have some improvements though, with a breach of confidentiality being actionable here and anonymity for parties in respect of any Court involvement in the arbitration, such as where there is an appeal of the Award. This is attractive to parties looking for a jurisdiction where their dispute can remain between themselves.

Scottish Arbitration Centre

Background and services

The Centre was established in 2011, following the SNP Manifesto commitment of 2007 to set up such a body and on the back of the establishment of the Arbitration (Scotland) Act 2010, as a long term investment strategy to promote arbitration as an effective alternative to litigation and Scotland as a destination to conduct international arbitration. The Board is made up of Directors from each of our Member Bodies: the Chartered Institute of Arbitrators; the Law Society of Scotland; the Royal Institution of Chartered Surveyors; and the Scottish Government. Brandon Malone is the Chairman of the Board of the Centre. The Chief Executive is Andrew Mackenzie, a solicitor on secondment from the Scottish Government. Sir David Edward QC is the Centre's Honorary President.

The Centre offers an arbitral appointments service, where the selection of an arbitrator is made by our arbitral appointments committee, which acts independently from the Board of the Centre. We have made both domestic and international appointments in recent years. We do not administer arbitrations, so are not acting as a private court at this stage. However, we provide administrative services to the School Closure Review Panel.

We are also involved in the provision of training events and hold a training day every year. Our events are attended by international practitioners and Annabelle Ewing MSP, the Minister for Community Safety and Legal Affairs, spoke at our annual training day in September, demonstrating the Scottish Government's continued support to the work of the Centre. We also have a research project on energy arbitration with the University of Dundee.

Our premises on Princes Street in Edinburgh offers modern, centrally located, and affordable facilities for arbitration, mediation and other dispute hearings, and for conferences, events and meetings.

Achievements

The Centre is focused on promotion of Scottish arbitration and Scotland as a jurisdiction and venue for dispute resolution. Since our establishment, we have pursued the development of international commercial arbitration in Scotland with energy and enthusiasm and have grown and developed international recognition. There is also anecdotal evidence suggesting that there is an increase in arbitration in Scotland and the Scottish Government and others using arbitration as their default dispute resolution method.

The Centre and Scotland has been recognised by Global Arbitration Review, being nominated for various international awards over the last few years.

We are currently involved in the committees of the International Bar Association, the International Chamber of Commerce and the Alliance for Equality in International Dispute Resolution. Brandon Malone is also chairing a project on cybersecurity in international arbitration. All this ensures Scotland has a voice within these key international bodies.

We also worked with the Court on establishing an Arbitration Court User Group. Lord Clark launched the group in September, which emphasises the importance the Court places on ensuring its approach to arbitration remains supportive. This is an important step in ensuring Scotland is viewed as an attractive seat for both domestic and international arbitration.

The Centre was successful in its bid for Edinburgh to host the International Council for Commercial Arbitration (ICCA) Congress in 2020, seeing off stiff competition from the other cities on the shortlist: Copenhagen; Mexico City; Stockholm; St Petersburg; Vancouver; and Vienna. This prestigious event will attract over 1,000 delegates from all over the world to Scotland, which will undoubtedly enhance Scotland's presence in international arbitration. VisitScotland estimates that this will boost Scotland's economy by more than £2 million. The legacy of ICCA 2020 to the Scottish

economy can be huge and the opportunity of having the key people in the arbitration sector here in Edinburgh is one that we must take full advantage of in 2020 and beyond, as we try to develop a new industry in international arbitration for Scotland.

Availability of ADR in Scotland and any barriers to use

Availability of ADR

There are various practitioners involved in arbitration and mediation in Scotland, including advocates, solicitors and surveyors. There are also a number of bodies, such as the Centre, appointing arbitrators on request. We have facilities for hosting arbitration hearings and mediations. There are some public ADR schemes, such as the in-court mediation scheme in Edinburgh. There are also private schemes in Scotland and across the UK, such as consumer schemes where arbitration or mediation might be involved. However, ADR is not widely used in Scotland yet and there are no bodies based here currently administering cases.

Barriers to use

Alternatives to court, such as arbitration and mediation, might be more appropriate methods of dispute resolution than litigation in some cases. However, barriers to increased use exist, such as lack of knowledge of the benefits and a mind-set that disputes are only for courts. Arbitration, mediation and litigation, including the association fees and costs, should be known and understood by all potential users. This requires support from various bodies and practitioners, ensuring that users can access information and advice services.

Persons seeking to use arbitration cannot apply for legal aid to cover related costs, whereas legal aid can be used for mediation. This is a barrier to the wider use of arbitration, which might be more suitable for certain disputes than court or mediation. If the only choice for legal aid is litigation and mediation, users will go down those roads, despite the fact that court or mediation might be more expensive and less suitable than arbitration. Opening legal aid up to arbitration might actually save the public purse.

Encouraging greater use

The Centre believes that alternatives to court often provide more effective means of resolving disputes. Arbitration and mediation might be quicker and more cost-effective than litigation and the potential appeals. Such options can be facilitated by telephone or online. Arbitrations can be done on papers or online, so without a hearing if appropriate. Indeed, we welcome the Scottish Government's Justice Digital Strategy which committed the government to establishing an online dispute resolution platform for arbitration and mediation. All such approaches save money in terms of venues and transport costs. This is particularly beneficial to those living in rural areas, where the nearest court might be as much as 100 miles away.

We would like to see an arbitration or ADR strategy in Scotland and more being done to encourage the use of arbitration, which would benefit individuals in dispute, ease the burden on the courts and benefit the wider Scottish economy. Attracting

international arbitration to Scotland continues to prove challenging given competition from nearby established arbitration seats in London, Paris, Geneva, and Stockholm. As a jurisdiction, Scotland must do more to make itself more appealing to international parties looking to locate dispute resolution work.

The Centre welcomed the previous Lord President's proposal to consider a specialist energy and environment court, and consider there is merit in promoting Scotland's expertise in energy law. A separate English law court might also be attractive to international parties and such courts are being established in other European jurisdictions, partly on the back of Brexit.

There are potential advantages for arbitration in terms of Brexit. At present, a choice of Scottish court jurisdiction will be upheld throughout the EU, subject to a limited number of exceptions, and a Scottish court judgment will be recognised and enforced throughout the EU under the reciprocal Brussels Regulation regime. This will not be the case post-Brexit, unless the EU and the UK enter into a new agreement to replicate the existing rules on jurisdiction and reciprocal recognition and enforcement. However, choosing a Scotland-seated arbitration agreement provides the comfort of resolving the dispute under the supervisory jurisdiction of the Scottish courts but with the enforcement benefit of the New York Convention. All EU member states are contracting states to the Convention, and Scotland-seated awards will be recognised and enforced across the EU (and, of course, beyond) post-Brexit. We encourage the promotion of Scottish arbitration over litigation in EU cross-border contracts given the uncertainty around Brexit.

We would urge the public and private sector to use arbitration as the default dispute resolution method in all its contracts. We welcome the fact that arbitration is the default method in Scottish Government goods and services contracts. We would also encourage the use of arbitration as the dispute resolution method in legislation, where appropriate and in cases where court is not essential. The Centre also wants to see the implementation of the remaining sections of the Arbitration (Scotland) Act 2010. At present, the provisions on statutory arbitration are not in force.

All political parties should recognise the role that dispute resolution plays in Scotland's economy and the need to promote alternatives to court, such as arbitration, and Scotland as a jurisdiction and venue for both domestic and international disputes.

Scottish Arbitration Centre
31 January 2018



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

5th Meeting, 2018 (Session 5)

Tuesday 6 February 2018

The Committee will meet at 9.45 am in the Mary Fairfax Somerville Room (CR2).

1. **Decision on taking business in private:** The Committee will decide whether to take item 7 in private.
2. **Subordinate legislation:** The Committee will take evidence on the Human Trafficking and Exploitation (Scotland) Act 2015 (Support for Victims) Regulations 2018 [draft] from—

Michael Matheson, Cabinet Secretary for Justice, Peter Hope-Jones, Human Trafficking Team Leader, and Louise Miller, Directorate for Legal Services, Scottish Government.

3. **Subordinate legislation:** Michael Matheson (Cabinet Secretary for Justice) to move—

S5M-10054—That the Justice Committee recommends that the Human Trafficking and Exploitation (Scotland) Act 2015 (Support for Victims) Regulations 2018 [draft] be approved.

4. **Alternative dispute resolution:** The Committee will take evidence, in round-table format, from—

John Sturrock QC, Chief Executive and Senior Mediator, Core Solutions Group;

Heloise Murdoch, Mediation Co-ordinator, Edinburgh Sheriff Court Mediation Service;

Angela Grahame QC, Vice-Dean, Faculty of Advocates;

R. Craig Connal QC, Partner, Pinsent Masons;

Andrew Mackenzie, Chief Executive, Scottish Arbitration Centre;

Colin Lancaster, Chief Executive, Scottish Legal Aid Board;

Robin Burley, Chair, Scottish Mediation.

5. **Remand:** The Committee will take evidence from—

Karyn McCluskey, Chief Executive, and Keith Gardner, Head of Improvement, Community Justice Scotland;

Thomas Jackson, Head of Community Justice, Glasgow City Council, representing the Convention of Scottish Local Authorities;

Tom Halpin, Chief Executive, Safeguarding Communities - Reducing Offending;

Kathryn Lindsay, Chief Social Work Officer, Member of Social Work Scotland.

6. **Remand - witness expenses:** The Committee will be invited to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses in the evidence session.

7. **Work programme:** The Committee will consider its work programme.

Peter McGrath
Clerk to the Justice Committee
Room T2.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5195
Email: peter.mcgrath@parliament.scot

The papers for this meeting are as follows—

Agenda items 2 and 3

Paper by the clerk - Human Trafficking and Exploitation (S) Act 2015 (Support for Victims) Regulations 2018 J/S5/18/5/1

Agenda item 4

Paper by the clerk - alternative dispute resolution J/S5/18/5/2

Private paper - alternative dispute resolution J/S5/18/5/3 (P)

[Written submission from Core Solutions Group](#)

[Written submission from Edinburgh Sheriff Court Mediation Service](#)

[Written submission from the Scottish Arbitration Centre](#)

[Written submission from Scottish Mediation](#)

[All written submissions received](#)

Agenda item 5

Paper by the clerk - remand J/S5/18/5/4

Private paper - remand J/S5/18/5/5 (P)

[Written submission from Community Justice Scotland](#)

[Written submission from the Convention of Scottish Local Authorities](#)

[All written submissions received](#)

Agenda item 7

Private paper - work programme J/S5/18/5/6 (P)

Justice Committee

5th Meeting, 2018 (Session 5), Tuesday 6 February 2018

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following affirmative instrument:

- [Human Trafficking and Exploitation \(Scotland\) Act 2015 \(Support for Victims\) Regulations 2018 \[draft\]](#)

Introduction

2. This instrument is made under sections 9(2)(b)(i) and 10(1) of the Human Trafficking and Exploitation (Scotland) Act 2015.

3. The Regulations specify a period of 90 days during which Scottish Ministers must secure for an adult the provision of such support and assistance as they consider necessary given the adult's needs, where there are reasonable grounds to believe that an adult is a victim of an offence of human trafficking and exploitation.

4. Further details on the purpose of the Regulations can be found in the policy note attached at **Annexe A**.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

4. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 23 January 2018 and agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

JUSTICE COMMITTEE CONSIDERATION

5. The Justice Committee is required to report to the Parliament on the instrument by 1 March 2018. The Cabinet Secretary for Justice has lodged motion S5M-10054 proposing that the Committee recommends approval of the instrument. The Cabinet Secretary is due to attend the meeting on 6 February to answer any questions on the instrument and to move the motion for approval.

6. It is for the Committee to decide whether or not to agree to the motion, and then to report to the Parliament by 1 March 2018. Thereafter, the Parliament will be invited to approve the instrument.

7. The Committee is asked to delegate to the Convener authority to approve the report on the instrument for publication.

Policy Note

Human Trafficking and Exploitation (Scotland) Act 2015 (Support for Victims) Regulations 2018 [draft]

Policy Objectives

Relevant period

1. Section 9(2)(b)(i) empowers the Scottish Ministers to specify the period during which the Scottish Ministers must secure for the adult the provision of such support and assistance as they consider necessary given the adult's needs, where there are reasonable grounds to believe that an adult is a victim of an offence of human trafficking and exploitation, an offence under section 1 of the Act.
2. These Regulations specify the period to be 90 days.
3. As part of the consultation on the Trafficking and Exploitation Strategy at the end of 2016 the Scottish Government commissioned two events with adult victims of human trafficking. These highlighted that survivors value: safety, security, recovery of self-respect and a prospect of a better future life as outcomes of support. Many stakeholders were of the view that the current 45 days of support provided were insufficient to begin to deliver this, proposing 90 days instead.
4. In June 2017 the Cabinet Secretary for Justice announced that, having considered all the factors, Regulations should be brought forward setting out a relevant period of 90 days.

Support and assistance: victims of an offence under section 4 of the Act

5. Section 10(1) of the Act empowers the Scottish Ministers to make provision about providing support and assistance to an adult who is, or appears to be, a victim of an offence under section 4 of the Act (slavery, servitude and forced or compulsory labour). In terms of section 10(2), these Regulations may contain provision about the method of determining whether an adult is, or appears to be, a victim of an offence under section 4, the period during which support and assistance must be provided, the period during which support and assistance may be provided, the types of support and assistance to be provided, and the manner in which the support and assistance is to be provided.
6. The Trafficking and Exploitation Strategy contains a commitment that the Scottish Government will consider how victims of an offence under section 4 should be identified and supported. The policy intention is that the process of determining whether an adult is a victim of an offence under section 4; the support and assistance provided; and the period for which it is provided should be identical to that for a victim of an offence of human trafficking and exploitation.

Consultation

7. The consultation on the relevant period under section 9(2)(b)(i) ran from 3 November to 23 December 2016. 31 written responses were received.
8. The consultation on support and assistance for victims of a section 4 offence ran from 15 September to 30 October 2017. 28 written responses were received.
9. Both issues were also discussed at the 10 consultation events that were held around Scotland although the primary focus of the consultation events was the Trafficking and Exploitation Strategy.

Commencement date

10. These Regulations are subject to the affirmative procedure. The proposed commencement date is 1 April 2018.

Impact Assessments

11. An Equality Impact Assessment was carried out for the Human Trafficking and Exploitation (Scotland) Act 2015 and for the Trafficking and Exploitation Strategy in May 2017.

Justice Committee
5th Meeting, 2018 (Session 5), Tuesday 6 February 2018
Alternative Dispute Resolution
Note by the clerk

Introduction

1. At its meeting on [23 January 2018](#), the Committee agreed to hold a round-table evidence session on Alternative Dispute Resolution (ADR).
2. This is the Committee's first consideration of this issue and the round-table evidence session is an opportunity to have a free-flowing discussion about ADR in Scotland. Issues which might be considered include the advantages and disadvantages of ADR, the current availability of different types of ADR in Scotland, and any barriers to the use of ADR.

Justice Committee consideration

3. At its meeting on 6 February 2018, the Committee will take evidence, in round-table format, from representatives of the Edinburgh Sheriff Court Mediation Service, the Faculty of Advocates, the Scottish Arbitration Centre, the Scottish Legal Aid Board, and Scottish Mediation, as well as Craig Connal QC, Partner, Pinsent Masons LLP, and John Sturrock QC, Chief Executive and Senior Mediator, Core Solutions Group.
4. Written submissions have been received from the Edinburgh Sheriff Court Mediation Service, the Scottish Arbitration Centre, Scottish Mediation and John Sturrock QC.
5. Written submissions were also sought from others not giving oral evidence. A submission was received from the Family Law Arbitration Group Scotland (FLAGS).
6. All written submissions received, including any late submissions, can be found on our [webpage](#).

Justice Committee
5th Meeting, 2018 (Session 5), Tuesday 6 February 2018
Remand
Note by the clerk

Introduction

1. At its meeting on 16 January 2018, the Committee held a round-table session on remand. The purpose of the round-table was to explore issues around the use of remand in Scotland as well as the experience of prisoners held on remand.
2. The Committee heard from the Crown Office and Procurator Fiscal Service, HM Chief Inspector of Prisons for Scotland, the Scottish Prison Service, and the Scottish Working Group on Women's Offending.
3. The Official Report from the meeting can be found [here](#) and all written submissions received prior to the round-table session can be found [here](#).
4. Following the round-table the Committee agreed to hold a further evidence session on remand to consider in more detail some of the issues raised. Such issues included: the reasons for remanding a person into custody; the information available to the court to inform its decision on remand; and the availability of alternatives to remand, such as bail supervision, across Scotland.

Justice Committee consideration

5. At its meeting on 6 February 2018, the Committee will take evidence from representatives of Community Justice Scotland, the Convention of Scottish Local Authorities (COSLA), Safeguarding Communities – Reducing Offending (Sacro), and Social Work Scotland.
6. Written submissions have been received from Community Justice Scotland and COSLA and can be found [here](#). Any late submissions received will also be posted on that [webpage](#).