Mediation Symposium Report – 5 March

Executive Summary

The symposium brought together people from across Scotland's justice sector to examine how mediation can be expanded and integrated more effectively into civil justice. Speakers from Scotland, Ireland, New Zealand, and England & Wales presented compelling evidence that mediation can offer improved access to justice, a substantial reduction in costs and delays experienced by parties and the courts, and arguably enables more humane, creative and sustainable outcomes than might be achieved via traditional litigation alone.

Key messages emerged:

- Models in other jurisdictions demonstrate that mediation might move from integrated to integral when supported by clear judicial powers and knowledge about the benefits of mediation, structured rules, early case-management expectations and meaningful cost consequences for refusal to explore mediation.
- Simple Procedure in Scotland provides proof of concept: where judicial encouragement is embedded and mediators are integrated into court processes, mediation uptake and settlement rates rise.
- Cultural and structural barriers to mediation in Scotland remain significant, including adversarial legal traditions, lack of awareness, misconceptions, reluctance toward compulsion, and inconsistent frameworks across case types.
- There is growing acknowledgement in different parts of the system that mediation should form an integral part of civil in Scotland, including Ordinary Cause and commercial actions. Expanding in these areas will require senior judicial buy-in and leadership.

Participants agreed that Scotland has a critical opportunity to build on existing pockets of success and move toward a more modern, accessible and people-centred justice system.

Purpose of the Symposium

The event was convened to explore how mediation can be better embedded across Scotland's civil justice landscape, noting what appears to be a puzzling slow pace of progress in spite of clearly identified benefits. Opening remarks emphasised psychological safety, open dialogue and the unique opportunity to learn from other jurisdictions and from Scotland's own recent experience.

Other jurisdictional perspectives (presentations)

Three exceptional speakers, each holding very different influential roles in other national and international jurisdictions presented valuable insights about how mediation operates in their jurisdiction and the factors for its success. Each of them is a qualified mediator.

In Ireland, Judge Marguerite Bolger explained that the courts have well-established powers to invite parties to engage in mediation and, in certain limited circumstances, to compel it. Whilst legislation was in place to support mediation as early as 2010, the Mediation Act of 2017 has been a significant driver of progress. Judges have the power to compel parties to mediation. However, Judge Bolger noted that there is a general reluctance amongst the judiciary to impose mediation on parties unless there is a cost implication. The statutory framework, among other things, places duties on solicitors: before litigation can proceed, they must advise their clients about mediation and file a formal declaration confirming that this has been done. This enables informed decision-making by parties.

In Ireland, cost penalties can be imposed where a party unreasonably refuses to mediate, reinforcing the seriousness with which the system treats early dispute resolution. The Irish state itself makes active use of mediation in complex and sensitive matters, demonstrating confidence in the process. Throughout her remarks, Judge Bolger emphasised the importance of informed choice and maintaining high standards of practice to ensure mediation remains credible and effective.

Turning to New Zealand, Australia and Canada, Mark Kelly, barrister and now full time mediator in New Zealand, highlighted the varied but increasingly supportive and successful approaches taken across these jurisdictions. In New Zealand, mediation is already firmly embedded in the lower courts. Senior courts currently lack a formal framework of powers to encourage mediation. However, expanded powers are now being considered to encourage or direct parties toward it. Australia

offers perhaps the clearest example of successfully mainstreamed mediation: across all states, it functions as the default dispute resolution mechanism, supported by comprehensive statutory powers and strong cost-sanction regimes. In Canada, the picture varies by province, but, for example, Ontario's long-standing mandatory mediation programme, introduced in 1999, has significantly reduced both time to resolution and overall case costs, offering compelling evidence of the model's effectiveness.

Dr Anna Howard, a senior academic from University College London, offered an overview of England and Wales which underscored the pivotal role of senior judicial leadership in driving the expansion of mediation. The *Churchill v Merthyr Tydfil County Borough Council* decision, followed by reforms to the Civil Procedure Rules in October 2024, confirmed that courts have clear authority to order parties to participate in Alternative Dispute Resolution (increasingly referred to in more neutral terms such as Effective or Negotiated Dispute Resolution), most commonly in the form of mediation. Early mandatory mediation pilots have produced positive results, although their lower-than-usual settlement rates may partly reflect the limited format: typically a single one-hour telephone session. Importantly, mediation in England and Wales is now seen as part of a broader shift toward a more modern, digitally supported and integrated dispute-resolution system that blends court processes with early resolution methods.

Benefits of Mediation

Speakers and table groups highlighted a range of clear advantages offered by mediation. They noted that mediation often produces more creative, flexible and relationship-preserving outcomes than traditional litigation, allowing parties to explore solutions that courts are not empowered to provide. It also creates a space in which apologies, explanations and other restorative forms of communication can take place: an important aspect of dispute resolution that is rarely achievable in a courtroom setting.

Participants emphasised that mediation can significantly reduce the stress and emotional burden associated with disputes, offering a process that is generally faster and usually far less costly than proceeding through full litigation. Crucially, mediation gives parties the opportunity to have their voices genuinely heard and to play an active role in shaping the resolution of their own dispute, thereby increasing their sense of agency and control.

From a systemic perspective, mediation improves access to justice, helps reduce court backlogs, and allows the courts to focus their time and resources on cases that genuinely require judicial determination. These benefits echo both international evidence and Scotland's own positive experience under Simple Procedure, where mediation has proven to be an effective and valued part of the civil justice process.

Challenges and Barriers

Despite the clear benefits, and the recognition that nearly any type of dispute can be mediated, participants identified several obstacles to the expansion of mediation use in Scotland.

Scotland faces a range of cultural, institutional and structural barriers that continue to limit the wider use of mediation within the civil justice system. Culturally, the legal landscape is shaped by long-standing adversarial traditions and the dominance of formal written pleadings, which may entrench positions rather than encourage early dialogue and innovation. Many parties still perceive mediation as a sign of weakness or capitulation, and there remains a strong psychological and symbolic pull toward having a "day in court." These factors are compounded by widespread misconceptions about mediation and generally low public awareness of its purpose, process and benefits.

Institutionally, resistance persists among some legal professionals, particularly around any form of compulsion to mediate. Concerns about income streams, professional identity and the perceived erosion of traditional litigation roles contribute to hesitancy. In areas heavily influenced by external stakeholders, such as insurers, the structure of litigation itself can discourage compromise, reinforcing an adversarial mindset. Unlike England and Wales, Scotland lacks an "overriding objective" that formally promotes proportionality, efficiency and early resolution, leaving mediation without an equivalent procedural anchor in many case types.

Structural and practical barriers also play a significant role. Mediation remains insufficiently embedded across legal education, from undergraduate programmes through to professional training, resulting in patchy understanding among practitioners. Frameworks are inconsistent. Simple Procedure has made meaningful progress, but other case types lack comparable rules or encouragement mechanisms. Parties and advisers often remain uncertain about the cost implications of mediation, which can deter engagement. Finally, while the Scottish Courts and Tribunals

Service holds substantial data, mediation-related information remains fragmented or insufficiently analysed, making it difficult to build a strong evidence base or track system-wide outcomes.

Scottish Experience and Opportunities

In the context of Simple Procedure, speakers highlighted that mediation has already demonstrated its value in several measurable ways. Settlement rates have been notably high so far. Success has been reinforced by strong judicial leadership and engagement, which in turn has increased confidence among practitioners and parties. Both online and in-person mediation models have proved effective, offering flexibility that accommodates a wide range of circumstances. Over time, these practices have contributed to a gradual cultural shift within the sheriff courts, with mediation increasingly viewed as "how we do things around here." This has supported greater efficiency within the courts and has consistently produced improved outcomes for the individuals involved.

Looking ahead, there is significant opportunity to extend these benefits beyond Simple Procedure. A proposal to amend the Ordinary Cause Rules is currently under consideration, creating a pathway to embed mediation more systematically in more complex and higher-value disputes. Should this reform proceed, it could provide a basis for similar changes at the Court of Session, allowing the principles that have worked well in lower-value cases to influence the broader civil justice landscape.

Professional and public confidence in mediation is also growing. Examples were shared of complex disputes, some of which had been active for years, being resolved within just a few hours through mediation. Such cases illustrate both the efficiency and the practical relevance of mediation across diverse subject areas. Judicial attitudes are also shifting. Sheriffs in Glasgow, in particular, expressed strong support for mediation, noting its positive impact on court management, case flow and overall party satisfaction. This judicial endorsement further strengthens the case for expanding mediation's role within Scotland's civil justice system.

Overall Conclusions

The symposium revealed a strong degree of consensus amongst participants regarding the future role of mediation in Scotland's civil justice system. There was

clear recognition that mediation is already delivering meaningful benefits across the country, particularly in areas where it has been actively integrated into court processes and where its use is actively encouraged by judicial leaders. Participants also acknowledged that outwith Scotland, experience consistently demonstrates the importance of clear procedural rules, robust judicial powers, structured cost frameworks and effective education in normalising the use of mediation and embedding it as a routine and integral part of dispute resolution.

Against that backdrop, Scotland now finds itself at a strategic juncture. The essential foundations are already in place, and momentum is building toward a more integrated, forward-looking civil justice system in which mediation plays a central role. A clear path forward exists: one that involves strengthening the relevant rules, enhancing education for both professionals and the public, improving data collection and analysis, elevating professional standards within the mediation community and embedding mediation earlier and more consistently across all categories of civil cases.

Recommended Actions / Next Steps

These consolidated actions reflect discussions across panels and table groups.

A. Reform Rules and Procedure

1. Progress adoption of **Ordinary Cause Rule changes** to formally integrate mediation.
2. Explore parallel reforms for **Court of Session Rules**.
3. Make mediation a **default early consideration**, built into case management.
4. Align pre-action protocols with clear mediation expectations.

B. Strengthen Judicial Leadership

5. Develop structured judicial training on:

- Litigation costs
- Mediation benefits and case suitability
- How to integrate mediation into caseflow

6. Provide regular data and feedback to sheriffs and judges to support visible leadership.

C. Enhance Public and Professional Education

7. Update Law Society of Scotland guidance requiring neutral, informed client advice on mediation.
8. Integrate mediation learning into schools, undergraduate degrees, PEAT 1 and PEAT 2.
9. Develop balanced public information that promotes understanding without overselling.

D. Build Mediation Capacity and Professional Standards

10. Establish tiered accreditation pathways for complex or court-connected mediation.
11. Develop common quality standards and protocols for court-referred mediation.
12. Support mediators with ongoing training, peer support and practice development.

E. Improve Data and Digital Systems

13. Strengthen and gain access to SCTS systems for collecting and analysing mediation outcomes.
14. Explore digital and AI-enabled tools to support better data interrogation and reporting.
15. Create a national framework for transparency and evaluation.

F. Engage Key Stakeholders

16. Work with insurers, local authorities, and major litigators to address incentives and myths.
17. Promote collaborative approaches where mediation is seen as complementing, not replacing, judicial determination.