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I won't see you in court: alternative dispute resolution in Scotland

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To consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice.

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Introduction

1. Earlier this year, the Justice Committee held two evidence sessions on alternative dispute resolution in civil (i.e. non-criminal) cases. The term "alternative dispute resolution" (ADR) is traditionally used to describe a collection of methods, such as mediation or arbitration, designed to enable people to resolve disputes outside the civil court system.

2. Evidence to the Committee emphasised the potential for ADR to encourage the earlier and more effective resolution of disputes in a variety of settings – from businesses and workplaces, to families, schools and communities.

3. However, despite a range of ADR initiatives and schemes, ADR remains underused in Scotland. Provision and funding of ADR is patchy and, even where ADR is available, uptake remains limited.

4. The Committee heard that more information on ADR should be publicly available, and that funding of ADR should be more consistent. However, some evidence argued that more fundamental action is required to facilitate a step-change in the uptake of ADR in Scotland.

5. In particular, it was suggested that people could be required to attend a meeting to find out more information on ADR before proceeding with a court action. While not requiring people to participate in ADR, this approach could help to ensure that people are able to make an informed choice about how to resolve their dispute. The Committee also heard that introducing legislation similar to the recent Irish Mediation Act could encourage a cultural shift towards greater use of ADR.

6. Any such changes would require careful consideration, not least in the context of domestic abuse cases where there is evidence that ADR can put victims and children at further risk of harm.

7. Nonetheless, it is clear that previous efforts to encourage greater use of ADR have been of limited success. **In the Committee's view, the introduction of information meetings or wider ADR legislation are both options worth exploring further.** This is an issue that the Committee may return to, in the context of the Scottish Government's upcoming family justice reforms.[i]

Membership changes

8. Jenny Gilruth replaced Fulton MacGregor on 19 April 2018.

9. Fulton MacGregor and Shona Robison replaced Mairi Gougeon and Ben Macpherson on 6 September 2018. The membership size of the Committee was reduced from 11 to 9 Members on 6 September 2018, and consequently George Adam and Maurice Corry resigned as Members of the Committee.

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i Cover image provided by Scottish Courts and Tribunals Service.

Justice Committee consideration

10. The Committee took evidence on ADR at two meetings:

- on 6 February 2018, it held a round-table evidence session with representatives from 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;

- on 6 March 2018, the Committee held an evidence session focused on ADR in family law cases with representatives from CALM Scotland, the Family Law Arbitration Group Scotland (FLAGS), Relationships Scotland and Scottish Women's Aid.

11. The Committee received 16 written submissions during its work on ADR. The Committee is grateful to all those who provided evidence.

What is alternative dispute resolution?

12. "Alternative dispute resolution" (ADR) is the term used to describe a collection of methods designed to enable people to resolve disputes outside the court system.

13. There are various types of ADR. In general, ADR involves a third party helping to resolve a dispute. With some forms of ADR, the third party will decide how the dispute should be resolved (e.g. arbitration). With other forms of ADR, the third party will help the people involved in the dispute to negotiate their own solution (e.g. mediation).

14. With some forms of ADR, the outcomes are legally binding (e.g. arbitration). Others are not, without further steps being taken by the people concerned (e.g. mediation).

15. The main types of ADR currently used in Scotland are explained below.

Main types of ADR in Scotland
Mediation: Mediation involves an independent and impartial person helping two or more individuals to negotiate a potential solution to a problem in a confidential setting. The people involved in the dispute, not the mediator, decide the terms of any agreement. The outcome is not legally binding, without further steps being taken by the people concerned. Mediation is used in Scotland in relation to families; neighbours and communities; consumers; education; additional support needs; and employment. People can decide to mediate on their own initiative or they can be referred to mediation by a court.
Conciliation: Conciliation is similar to mediation (and the terms are sometimes used interchangeably). However, a conciliator is more interventionist than a mediator and may make recommendations as to how to solve the dispute. Any outcome is, however, not legally binding without further steps being taken by the parties. Conciliation is used in Scotland in employment and consumer disputes, as well as in the context of disability discrimination.
Arbitration: In arbitration, a third party, who often has specialist expertise or knowledge, will decide how the dispute should be resolved. The outcome is legally binding. Arbitration is mainly used in Scotland in commercial disputes and employment disputes but can be used in family cases. The law relating to arbitration in Scotland was significantly reformed by the Arbitration (Scotland) Act 2010. The 2010 Act includes rules governing the conduct of, and procedure associated with, arbitration. It also covers a range of other issues, including the relationship between arbitration and the courts, and how an arbitration award can be enforced.
Adjudication: Adjudication is sometimes used as an umbrella term to describe some types of ADR and litigation. However, in certain types of dispute, adjudication is recognised as a particular form of ADR. An example is construction, where the Housing Grants, Construction and Regeneration Act 1996 contains a right to refer a dispute to adjudication. Certain things distinguish adjudication from arbitration in this context, including a fast-track approach. Adjudication is also used in Scotland, for example, in relation to additional support needs and tenancy deposit protection in private rented housing.
Ombudsmen: Ombudsmen are impartial 'referees' who adjudicate on complaints about public and private organisations. There are both public and private sector ombudsmen.

An alternative to what?

16. ADR is traditionally thought of as an alternative to the resolution of a dispute through the civil courts. However, ADR can also be thought of as an alternative to the process of informal negotiation that takes place in relation to disputes (with or without the involvement of lawyers). Some people may prefer informal negotiation to the formality of court action or the formality of ADR.

17. Some evidence to the Committee suggested that the terminology of alternative dispute resolution is no longer appropriate. John Sturrock QC, for example, argued that it implied that the options for dispute resolution are "in some way in competition with one another". Instead of using the expressions "ADR" and "alternative dispute resolution", he described it as "a range of options by which people who have a

dispute that is unresolved and which they have been unable to resolve themselves can be assisted in the early, effective and efficient resolution of the dispute". [1]

18. Similarly, Robin Burley, representing Scottish Mediation, suggested that dispute resolution should be viewed as a spectrum:

> At one end of a spectrum, we have interest-based systems of coming to an agreement, and at the other end of the spectrum, we have rights-based systems. Arbitration is very much at the rights-based end, and mediation is very much at the interest-based end.
>
> Source: Justice Committee, Official Report 6 February 2018, col. 8.

19. Others, such as Angela Grahame QC representing the Faculty of Advocates, emphasised the importance of not excluding litigation. She suggested that "dispute resolution" should be used as an umbrella term to cover various forms of ADR, including mediation and arbitration, as well as litigation. [2]

20. While the terms "alternative dispute resolution" and "ADR" are still in common usage in Scotland, and have therefore been used in this report, the Committee considers there may be merit in moving away from this terminology. Dispute resolution methods should not be seen as competing with one another; as is discussed later in this report, what is important is that people are able to make an informed choice about how to resolve their individual dispute. It may, therefore, be more helpful to think about "appropriate dispute resolution" or simply "dispute resolution" in its broadest sense, rather than "alternative dispute resolution".

Why do people use alternative dispute resolution?

21. The Committee heard that there are several advantages to using ADR, particularly when compared with going to court:

- it can be quicker, cheaper and less stressful
- it is more flexible, both in terms of the process (e.g. it can be undertaken online or over the telephone) and the outcome (e.g. people can receive an apology)
- parties feel at the centre of the process and that they have an opportunity to be heard
- it is confidential
- it can help maintain and rebuild relationships
- a third party can be used who has relevant experience and skills
- there is a higher rate of compliance with agreements.

22. The Committee also heard that ADR does not just benefit the individuals involved but, through the earlier and more effective resolution of disputes, can bring wider

benefits for businesses, communities and the Scottish economy as well as reducing pressures on the court system.

23. On the other hand, some evidence to the Committee suggested that some forms of ADR would exacerbate power imbalances between the parties. This was a particular concern in the context of domestic abuse cases, which is discussed further later in this report.

Barriers to the uptake of alternative dispute resolution in Scotland

24. ADR services in Scotland are currently provided by a wide range of public, private and third sector organisations, as well as by private individuals. Accurately measuring the extent and uptake of ADR services is difficult, due to gaps in the publicly available figures.

25. Research published by the Scottish Legal Aid Board (SLAB) in 2014 identified that there were then 103 ADR services in Scotland, across a wide range of dispute areas. While there were several Scottish-based services, the majority of schemes identified were consumer schemes, most of them with UK coverage and based in England. The report concluded:

> The picture painted by the research is a complex and busy one, with multiple types of ADR being provided by a huge range of organisations.
>
> Source: Scottish Legal Aid Board, Overview report of Alternative Dispute Resolution in Scotland (November 2014), paragraph 7.

26. From available figures and other evidence, the report also found that the uptake of ADR varied enormously from scheme to scheme, as well as between different types of ADR provision. Moreover, the research suggested that the availability of ADR would not automatically lead people to use it.

27. Evidence to the Committee suggested this picture has not changed much in recent years. A number of reasons for this were highlighted, including:

- lack of information on the availability and benefits of ADR
- inconsistency in the provision and funding of ADR
- inconsistency in referrals to ADR from the courts.

Information on alternative dispute resolution

28. The Committee consistently heard that people need to be able to make an informed choice about which dispute resolution method is most appropriate for them. Witnesses emphasised that there could be no 'one size fits all' approach and that people need access to genuine choice. Angela Grahame QC, representing the Faculty of Advocates, told the Committee that different ADR methods all have advantages and disadvantages, and not all would be appropriate for every individual. She emphasised that each option should be carefully considered and the best method, tailored to the individual's needs, should be selected. [3]

29. It appears some progress has been made over recent years to improve the availability of information on ADR. For example, the mygov.scot website now contains a section on alternatives to court with information on how people can access ADR. Law Society Guidance provides that solicitors, who are often seen as the 'gatekeepers' to ADR, should be able give advice about the different methods of

dispute resolution that are available to clients. This guidance is non-mandatory, but solicitors may be required to justify any departure from it in the case of a complaint.

30. John Sturrock QC told the Committee that he had "no doubt that the provision of information is better now than it has ever been, and that many advisers now include in their advice to clients the fact that there are options other than litigation". [4]

31. Nonetheless, the overwhelming view of witnesses was that more is required to ensure that people can make an informed choice about which dispute resolution method to use. For example, Andrew Mackenzie, representing the Scottish Arbitration Centre, argued that there is "still more to do on educating the wider public about the options and, indeed, encouraging solicitors to do more to make sure that they are very clear on the options for their clients". [5] Nicos Scholarios, representing CALM Scotland, also suggested that, while solicitors are required to advise their clients on ADR, there is no oversight or enforcement of that requirement and the extent to which it happens in practice is "fairly patchy". [6]

32. ADR is also currently covered at various parts of the route to qualifying as a solicitor. [7] However, some witnesses suggested that more training should be available to law students and qualified solicitors on ADR to encourage a shift in culture among the legal profession.[ii]

33. Other evidence suggested people should be able to access information as early as possible, even before they have approached a solicitor. Colin Lancaster, representing SLAB, told the Committee:

> There is a culture in which the default mode for many people is to go to see a solicitor. By the time they do that they probably already have an approach in their mind and it is difficult to move them from that if they have a particular focus on wanting to litigate the matter or to be proven right. That approach is not the most amenable to mediation, so it is important to get information to people early when they are considering their options and before they are part-way down a track from which it is hard to retreat.
>
> Source: Justice Committee, Official Report 2 February 2018, col. 28.

34. The Committee welcomes the positive steps that have been taken to improve the information available to the public on alternative dispute resolution (ADR) and to require solicitors to advise their clients on all options open to them.

35. However, it appears that information on ADR is not routinely available at an early stage and, as a result, people may end up proceeding with litigation and even a court action when another dispute resolution method may be more appropriate. The Committee therefore considers that there should be a co-ordinated programme to raise public awareness of the benefits and availability of different ADR methods in Scotland.

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ii See e.g. Andrew Mackenzie, Scottish Arbitration Centre (Justice Committee, Official Report 6 February 2018, col.12) and Robin Burley, Scottish Mediation (Justice Committee, Official Report 6 February 2018, col.30).

36. The Committee considers that it would be helpful for the Law Society to review the content of the route to qualification as a solicitor in Scotland to ensure that sufficient focus is given to ADR during legal education and training.

37. The Law Society should also consider whether it can put in place more robust requirements on solicitors to advise their clients on the range of dispute resolution methods available to them. This could, for example, require solicitors to keep records of when they have provided advice on ADR which could then by audited by the Law Society.

38. It is important that people have access to information on ADR as early as possible, and not just if and when they approach a solicitor. Any programme to raise public awareness should therefore also consider how advice on ADR can be accessed through bodies such as citizens advice bureaux, local councils and GP surgeries as well as elected representatives.

Funding of alternative dispute resolution

39. While greater information and advice on ADR is undoubtedly important, the Committee also heard that more consistent funding of ADR is needed to improve the availability of ADR services across Scotland.

40. There are currently three main funders of ADR in Scotland:

- public authorities, both central and local government and others such as the NHS
- businesses and tradespeople**,** for example, consumer schemes run by trade associations and ombudsmen schemes, funded through levies on member companies
- individuals and businesses who pay for ADR when they opt to use it instead of, or as well as, traditional litigation.

41. The pattern of public funding of ADR in Scotland shows a mixed picture with mediation being most heavily favoured as a means of resolving disputes, particularly within families, schools and communities.

42. Two main issues relating to funding were raised in evidence to the Committee:

- the availability of legal aid for ADR
- funding and provision of in-court ADR.

Legal aid

43. A person’s costs associated with mediation (where carried out by accredited mediators for a fee) can be funded out of the legal aid budget for civil cases. At present, only solicitors can apply for legal aid; mediators cannot. Additionally, the

sums that are usually claimed for mediation are less than those cases which involve court proceedings. In his evidence to the Committee, Colin Lancaster of the Scottish Legal Aid Board (SLAB) suggested that funding of mediation through legal aid had not had a significant impact on uptake:

> There was a great hope that making funding available through legal aid would unlock mediation because a lack of funding had been holding it back, but I do not think that was the case.
>
> We have been funding mediation now for more than 20 years and the take-up has not been enormous.
>
> Source: Justice Committee, Official Report 6 February 2018, col. 26.

44. In his view, there were other "structural or cultural barriers" to greater uptake of ADR, including attitudes of local sheriffs and solicitors. [8]

45. When a person is applying for civil legal aid, SLAB will look at whether the person has fully considered other ways of resolving the problem before bringing a court action. However, this again seems to have had limited impact on the uptake of ADR.[iii]

46. Legal aid is not currently available for other forms of ADR, such as arbitration. The Committee heard that this could force people to go to mediation, even if another form of ADR would be more suitable.[iv] As Angela Grahame QC, representing the Faculty of Advocates, argued, "a lack of legal aid funding for arbitration limits parties' choice". [8]

47. Colin Lancaster told the Committee that SLAB was meeting with the Faculty of Advocates, and had previously met with the Scottish Arbitration Centre, to discuss the possibility of legal aid funding for arbitration. However, he suggested that this could be more challenging than providing legal aid for mediation:

> Mediation sometimes exists alongside litigation proceedings, which are what legal aid is available for, whereas arbitration really is an alternative to litigation. It sits distinct form litigation, so its ability to be integrated into the legal aid system, particularly as it is directed towards litigation, is a bit more of a challenge.
>
> Source: Justice Committee, Official Report 2 February 2018, col. 27.

48. The Committee considers that, by limiting the availability of legal aid funding to mediation, people who qualify for legal aid could feel they have no choice but to use an alternative dispute resolution method which is not appropriate for them, or to take the case to court. The Scottish Government and Scottish Legal Aid Board should therefore review how funding works and consider making legal aid available for other forms of alternative dispute resolution.

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iii See e.g. Nicos Scholarios, CALM Scotland (Justice Committee, Official Report 6 March 2018, cols. 36-37).

iv See e.g. Isabella Ennis, Family Law Arbitration Group Scotland (Justice Committee, Official Report 6 March 2018, col. 31)

In-court services

49. The Committee heard more consistent funding and provision of in-court ADR services is required to encourage greater uptake of ADR across Scotland, and to ensure that people have a genuine choice about how to resolve their disputes.

50. It appears that there is currently only public funding (from the Scottish Legal Aid Board) for an in-court mediation service in Edinburgh Sheriff Court. This service, run by Citizens Advice Edinburgh, employs a mediation co-ordinator but otherwise relies on mediators working on a pro bono basis.

51. The University of Strathclyde, through its Mediation Clinic,[v] currently provides mediation in six sheriff courts. All work is done on a pro bono basis, with the co-ordination subsidised by the university.

52. In the rest of Scotland, there are no in-court mediation or other ADR services. People can instead be referred to the Scottish Mediation helpline, and then to a mediator who may charge a fee.

53. Evidence to the Committee highlighted that, where in-court mediation is available, this can help to resolve cases without going to an evidential hearing. For example, according to its written submission, around 75% of cases referred to the Edinburgh Sheriff Court Mediation Service result in a settlement agreement. Of those cases which do not settle at mediation, around half subsequently settle prior to any evidential hearing. The written submission also points to the results of a pilot of in-court mediation services in 2010, which found that 90% of parties complied with mediated agreements compared with 67% for court judgments.

54. Similarly, a written submission from the University of Strathclyde's Mediation Clinic reported high settlement and compliance rates from its mediations. The Clinic has been offering small claims mediation in Glasgow Sheriff Court from 2014. In the first year of the project it conducted 39 mediations, with 79% of cases settling. The terms of settlement were fulfilled in 95% of those cases. The Clinic continued to provide small claims mediation during 2015 and 2016, mediating 32 and 22 cases respectively, with settlement rates averaging 70% and compliance rates of over 95%.

55. However, despite the success of these projects, the Committee heard that relying on volunteers is not a sustainable model for in-court ADR services. As John Sturrock QC argued:

> If mediation and mediators are to be perceived as a valuable part of the dispute resolution framework, there comes a point at which some value must be placed on the provision of those services and an appropriate level of remuneration must be made available, not least if we want people to develop those skills and their careers in that way.
>
> Source: Justice Committee, Official Report 6 February 2018, cols. 28-29.

56. He suggested that a small proportion of the justice budget in Scotland should be re-allocated to fund early dispute resolution programmes in the courts. [9]

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v In the Clinic Postgraduate students studying a Masters in Mediation and Conflict Resolution work alongside experienced 'Lead' mediators.

57. Evidence also emphasised that extended and more consistent funding of in-court ADR services is particularly necessary as a result of the new simple procedure rules, which require sheriffs to encourage parties to consider ADR. This issue is explored further below.

The role of the court

58. Another suggested barrier to wider uptake of ADR was the varied approaches of sheriffs and judges in encouraging parties to consider ADR.

59. Existing court rules make different provision in relation to ADR. In commercial actions, for example, court rules encourage the speedy resolution of a dispute.[vi] Furthermore, a Practice Note which applies to commercial cases in the Court of Session encourages parties to consider ADR.[vii]

60. Since 1996 there has been a court rule empowering, but not requiring, a sheriff or judge to refer family cases relating to parental rights and responsibilities[viii] to mediation at any stage of the court action where appropriate to do so.[ix]

61. The decision to refer the case to mediation is, however, a matter of discretion – there is no compulsion on the judge or sheriff to refer. The rule also does not contain any guidance on when participation in mediation would not be appropriate (e.g. in domestic abuse cases – an issue explored in greater detail later in this report).

62. Where the court does refer a case to mediation, it usually requires people to attend an information session with a mediation provider, rather than requiring people to participate in mediation.[x]

63. Evidence to the Committee emphasised that, although this rule has been in place in family cases for some time, referrals have been patchy with some sheriffs more favourable towards mediation than others.[xi] As Rosanne Cubitt, representing Relationships Scotland, told the Committee:

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vi Court of Session Rules, rule 47.11; Ordinary Cause Rules, rule 40.12.

vii Practice Note 1 of 2017.

viii The law of parental rights and responsibilities covers private disputes between parents about issues including who a child should live with (residence cases) and whether a parent who does not live with a child should have contact with that child – and, if so, under what arrangements (contact cases).

ix Court of Session Rules, rule 49.23; Ordinary Cause Rules, rules 33.22 and 33A.22.

x Telephone conversation between SPICe and Relationships Scotland, September 2016.

xi See e.g. Colin Lancaster, Scottish Legal Aid Board (Justice Committee, Official Report 6 February 2018, col.24) and Nicos Scholarios, CALM Scotland (Justice Committee, Official Report 6 March 2018, col. 39).

> My experience of 15 years is that, although mediation has been around as an option in family cases since the mid 1980s, its uptake is still pretty poor. … There is a rule of court referral. In some areas sheriffs use that, but in other areas they do not.
>
> Source: Justice Committee, Official Report 6 March 2018, col. 36.

64. This variability in the approach of the judiciary was also highlighted in Relationships Scotland's written submission:

> 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%.
>
> Source: Relationships Scotland, written submission.

65. In its written submission, Scottish Mediation noted that the Scottish Civil Justice Council is currently involved in a Rules Rewrite Project which aims to rewrite all of Scotland's civil court rules. It suggested that this was an opportunity to encourage the use of mediation as part of case management procedures.

66. Based on the most recent annual report of the Scottish Civil Justice Council (published in July 2018) it seems that work on ADR is ongoing. The report states:

> Alternative Dispute Resolution – this was originally allocated to the Access to Justice Committee to progress and was flagged at the Council's strategy meeting as being a priority for 2017/18. A literature review was undertaken in 2014. However, this matter had been put on hold pending the Committee's work on Simple Procedure and on lay representation. The work, which is restricted to the issue of what the court rules should require or recommend about the promotion of alternative dispute resolution options, is also now included in the Rules Rewrite Project and is being progressed under work stream 5.
>
> Source: Scottish Civil Justice Council, Annual Report 2017/18 and Annual Programme 2018/19, page 12.

Simple procedure

67. The simple procedure came into force on 28 November 2016, replacing small claims and summary cause actions. The new simple procedure rules require sheriffs "to encourage cases to be resolved by negotiation or alternative dispute resolution, where possible" (rule 1.4(3)).

68. The Committee heard that different courts have taken different approaches to the new rules. [10] In its written submission, the University of Strathclyde's Mediation Clinic emphasised that the simple procedure rules "allow sheriffs considerable discretion". Moreover, the submission suggested that, prior to the rules coming into force, no information was provided by the Scottish Government or the Scottish Courts and Tribunals Service about how ADR would be made available for simple procedure cases.

69. Since the introduction of the simple procedure rules, the Clinic has been offering mediation services across six sheriff courts (Glasgow, Paisley, Falkirk, Kilmarnock,

Airdrie and Dumbarton Sheriff Courts). According to its written submission, the Clinic has received a significantly greater number of referrals since the introduction of the new simple procedure rules – with 241 referrals in the first 15 months. It has provided 99 mediations, of which 54 settled (57%). The submission states:

> While numbers remain modest compared to the total number of cases it is clear that sheriffs are increasingly taking time to weigh up the most appropriate way to deal with disputes and referring a proportion of matters to mediation.
>
> Source: University of Strathclyde Mediation Clinic, written submission.

70. However, the written submission also set out several problems that have emerged since the introduction of the simple procedure. These include:

- inconsistency in resources and funding of court mediation services (as discussed earlier in this report). The Clinic's submission argued that “reliance on unpaid mediators cannot be a sustainable model”. It also highlighted recent difficulties that the Clinic has had in recruiting sufficient numbers of experienced practitioners to act as lead mediators and mentor students. The submission suggested that a proportion of the £100 court fee for simple procedure should be used to fund regional mediation services throughout Scotland. This could contribute to a service similar to the Edinburgh Sheriff Court model, with a salaried mediation co-ordinator.

- variation in the approaches of sheriffs. According to the submission, “some sheriffs strongly encourage parties to speak to the mediators; others appear unaware of the option and make no mention of it”.

71. During its work on ADR, the Committee requested further information from the Lord President's Private Office on current training provided to the judiciary in relation to ADR. The reply suggests that some training is provided by the Judicial Institute, although this varies from year-to-year and is usually as part of a broader course. For example, simple procedure training courses in 2016 and 2017 highlighted the obligation on courts to consider ADR. A Simple Procedure Toolkit is also available to the judiciary, which includes guidance on the appropriateness and availability of mediation. However, the response from the Lord President’s Private Office noted that it has not been possible to provide an online resource showing the availability of different mediation services. The response stated that:

> the patchy nature of the coverage of mediation, and the difference in the services provided even where mediation was available, meant that there was no purpose in providing such a resource.
>
> Source: Lord President's Private Office, written submission.

72. The submission from the University of Strathclyde’s Mediation Clinic suggested that there is a need for additional training in ADR for sheriffs and summary sheriffs to enhance consistency between the courts.

73. The Clinic’s written submission also noted that the settlement rate for its mediations has come down since the introduction of simple procedure. It suggested this could be for a number of reasons, but that Clinic mediators “often report one or both parties being unwilling to compromise because they believe they will be 100% successful in court”. This appears to be a particular problem where the court refers

parties to mediation in writing, before any attendance at court for a Case Management Discussion. According to the submission:

> At Case Management Discussions the sheriff generally comments on the legal issues and the practical and procedural challenges of proving a claim. This 'dose of reality' can help parties make more informed decisions about what is an acceptable settlement.
>
> Source: University of Strathclyde Mediation Clinic, written submission.

74. Again, the submission highlighted that different courts have taken different approaches as to when referrals to mediation take place.

Conclusions on the role of the court

75. The courts have a central role to play in ensuring the effective and early resolution of disputes. However, existing court rules take different approaches towards alternative dispute resolution (ADR). Moreover, some sheriffs and judges appear to be more willing to encourage or refer parties to ADR than others. The Committee heard that this inconsistency in approach is acting as a barrier to wider uptake of ADR. While accepting that there needs to be some flexibility on a case-by-case basis, there also needs to be more consistency shown by the judiciary in relation to the use of ADR.

76. The Committee considers that the Rules Rewrite Project being undertaken by the Scottish Civil Justice Council provides an opportunity to ensure that court rules consistently encourage sheriffs and judges to refer cases to ADR. Rules should provide sufficient guidance on when referrals would not be appropriate, such as in domestic abuse cases. The Committee also considers that there needs to be more systematic and regular training for the judiciary in ADR, and that this should be reviewed by the Judicial Institute. This should include sheriffs and judges spending time with mediators, arbitrators and other providers of ADR to observe sessions and to better understand when it would be appropriate to refer parties to ADR in practice.

77. The Committee welcomes the introduction of the requirement in the new simple procedure rules for sheriffs to encourage parties to consider ADR. However, this will have limited impact on uptake while the funding and availability of ADR, including in-court services, remains patchy. It is also not sustainable to continue to rely largely on volunteers for the current limited provision of in-court ADR services. The Scottish Government and the Scottish Courts and Tribunals Service should therefore consider how in-court ADR services, particularly for simple procedure cases, could be funded and provided on a more consistent basis throughout Scotland.

Is it time for compulsory alternative dispute resolution?

78. While the Committee heard broad support for the changes discussed earlier in this report, such as the provision of more information on ADR and increased funding for in-court ADR services, some evidence argued that these changes would not be sufficient to facilitate a "step-change" in the uptake of ADR in Scotland. As John Sturrock QC told the Committee, "other stimuli and incentives may be necessary". [5]

Court as a last resort?

79. John Sturrock QC argued that Scotland remains "out of step" with other jurisdictions, where going to court is viewed as a last resort. [11]

80. For example, while England and Wales has stopped short of making ADR compulsory, statutory provisions and court rules operate together to give ADR, particularly mediation, a greater role in the civil justice system than is currently the case in Scotland. For example:

- the court can take into account a party's conduct, including any unreasonable refusal to participate in ADR, when determining who should pay the legal costs of a court action.
- in family cases, parties are required to attend a Mediation Information Assessment Meeting (MIAM) before making an application to court for a child arrangements order[xii] and certain other orders.[xiii] There are some specific exceptions to the requirement to attend a MIAM, for example, where there is evidence of domestic violence or a risk of domestic violence.

81. In John Sturrock's view, consideration needs to be given to whether similar measures are necessary in Scotland to shift away from an adversarial culture. He told the Committee:

> Significant costs are attached to a justice system. … If, as the evidence suggests, mediation can help to resolve a large percentage of cases that might otherwise be in the civil justice system, there is at least a discussion to be had about whether people should be encouraged, incentivised or even compelled to try that process in advance of using the justice system.
>
> Source: Justice Committee, Official Report 6 February 2018, col. 14.

82. He also emphasised that, even if people were compelled to try mediation, they would not be compelled to reach an agreement – they could go on to use other processes if they wished to do so. [5]

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xii The broad equivalent in England and Wales of contact and residence orders in Scotland.

xiii See section 10 Children and Families Act 2014.

83. Nicos Scholarios representing CALM Scotland similarly suggested that access to the adversarial system "is still too easy" and that there needs to be a "sea change in attitude and approach". He went on to argue:

> There has to be some compulsion – although I hesitate to use that word, because I appreciate that is a whole different discussion – to at least make people stop and think and explore other options before they jump into the adversarial process.
>
> Source: Justice Committee, Official Report 6 March 2018, col. 37.

84. Other evidence to the Committee, however, expressed concern about any move towards compulsory ADR, emphasising that access to the courts is a fundamental requirement of the civil justice system. For example, Craig Connal QC argued:

> I would be disappointed if we headed down a route similar to the one that has been taken south of the border, where there is a pretty firm drive to keep people out of the courts. In this jurisdiction, at least so far, the courts have been perceived as part of a public service to which everybody should have access in an efficient and cost-effective way.
>
> Source: Justice Committee, Official Report 6 February 2018, cols. 5-6.

85. He went on to suggest that:

> Broadly speaking, in England and Wales, parties in civil litigation are in effect told that they must mediate under pain of being penalised in costs if they do not. That is an oversimplified picture but, even when a party considers that they have a cast-iron, open and shut case, they feel obliged to go through a mediation process in order to avoid the ire of the judge later on.
>
> Source: Justice Committee, Official Report 6 February 2018, col. 20.

86. In response to these points, John Sturrock QC told the Committee:

> The proposition is that there is a benefit to wider society in having a justice system and compelling people to use the courts. I understand the proposition in theory, but we need to think about each individual case. Why should each individual litigant be compelled to use a court system for the benefit of wider society if that individual litigant could find an easier, more effective and quicker way of resolving disputes by negotiation? We must be careful about preserving a system for its own sake and recognise the needs of individuals and the value to them of having a more effective system.
>
> Source: Justice Committee, Official Report 6 February 2018, col.17.

A mandatory information meeting on alternative dispute resolution

87. One option suggested to the Committee, without going as far as to make participating in ADR compulsory, was to require parties to attend a mandatory information meeting on ADR before going to court. Evidence, including from Scottish Mediation and CALM Scotland, suggested this would be an appropriate

level of compulsion while not undermining the voluntary nature of ADR (particularly mediation).[xiv]

88. During its second evidence session on ADR, the Committee heard strong support for this approach in certain family law cases. Rosanne Cubitt of Relationships Scotland argued that, while court might be an appropriate option in some cases, there needed to be a more formal requirement for people to fully investigate all their options. In her view, this is necessary to ensure a "cultural shift" towards a more collaborative approach to resolving disputes. [12] She also suggested that the information meeting should take place as early as possible, before views become "entrenched" through the adversarial process. [13]

89. In its written submission, Relationships Scotland stated that introducing mandatory information meetings in family cases would result in better outcomes for children and families, as well as deliver savings for the Scottish Courts and Tribunals Service and Scottish Legal Aid Board.

90. In 2016, CALM Scotland and Relationships Scotland submitted a joint proposal to the Scottish Government and Scottish Legal Aid Board to pilot a requirement for parents/carers in dispute over contact arrangements to attend a Family Dispute Resolution Information Meeting. This would involve each parent/carer meeting individually with a trained mediator to be given information on mediation and other forms of dispute resolution, but without any compulsion to participate in ADR. Rosanne Cubitt told the Committee that the proposal is being considered by the Scottish Legal Aid Board. [6] A written submission from CALM Scotland and Relationships Scotland provided further details on the proposed pilot.

91. Rosanne Cubitt also suggested that lessons could be learned from the introduction of Mediation Information Assessment Meetings (MIAMs) in England and Wales. However, she emphasised the different context for the introduction of MIAMs in England and Wales – in particular, that this had sat alongside reforms to legal aid – and that this made it more difficult to assess the impact of MIAMs. [14] An unexpected consequence of the reforms in England and Wales was that the number of mediations actually fell dramatically in the first year after the reforms. An evaluation suggested this could be due to the fall in the number of solicitor referrals to mediation, following the removal of legal aid for family cases.[xv]

Legislation on alternative dispute resolution

92. Another suggested option to encourage greater uptake of ADR was the introduction of legislation similar to the Mediation Act recently introduced in Ireland.

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xiv See e.g. Robin Burley, Scottish Mediation (Justice Committee, Official Report 6 February 2018, cols. 13, 15); Nicos Scholarioas, CALM Scotland (Justice Committee, Official Report 6 March 2018, col. 44); Edinburgh Sheriff Court Mediation Service written submission.

xv Mediation Information and Assessment Meetings (MIAMs) and mediation in private family law disputes: Quantitative research findings (Ministry of Justice, 2015)

93. The Irish Mediation Act (the Act) entered into force on 1 January 2018. According to the website of the Irish Government's Department of Justice and Equality, the Act is intended to provide a comprehensive framework to promote the resolution of disputes through mediation as an alternative to civil court proceedings with the aim of "reducing legal costs, speeding up the resolution of disputes and reducing the stress and acrimony which often accompanies court proceedings".

94. In summarising its main provisions, the Department of Justice and Equality explains that the Act:

- introduces a statutory obligation on solicitors and barristers to advise parties to civil disputes[xvi] to consider using mediation as a means to resolve them. If court proceedings are instituted on behalf of a client, the solicitor/barrister must include a statutory declaration confirming that these obligations have been discharged in respect of the client (i.e. that the client has been advised of the possibility of using mediation)
- provides that a court may, on its own initiative or on the initiative of the parties, invite the parties to consider mediation as a means of resolving the dispute
- contains general principles for the conduct of mediation by qualified mediators
- provides that communications between parties during mediation shall be confidential
- provides for the possible future establishment of a Mediation Council to oversee development of the sector
- provides for the introduction of codes of practice for the conduct of mediation by qualified mediators.

95. The Act does not apply to certain types of civil proceedings, including proceedings under the Child Care Acts or Domestic Violence Acts.

96. The Act provides that participation in mediation must be voluntary at all times. It does, however, allow courts to award costs in respect of court proceedings where this is justified based on the unreasonable failure by a party to consider using mediation or to attend mediation. The aim behind this provision is to incentivise parties to seriously consider mediation before going to court. The Act also gives the Minister for Justice and Equality the power by order to set up a scheme for the delivery of so-called "mediation information sessions" in family law and certain succession proceedings. These sessions are intended to outline the potential benefits of mediation as an alternative to adversarial court proceedings.

97. The Act contains provisions on various other aspects of mediation including rules on the role of the mediator, the enforceability of mediation settlements, and the fees and costs of mediation.

98. In a written submission to the Committee, Paul Kirkwood, a solicitor and commercial mediator, suggested similar legislation could be introduced in Scotland to facilitate the earlier and more effective resolution of disputes.

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xvi The definition of "proceedings" in section 2 of the Act limits the Act to civil proceedings.

99. Other witnesses also thought that consideration should be given to introducing legislation on ADR in Scotland. Rosanne Cubitt, representing Relationships Scotland, told the Committee:

> I think that we often bring about cultural change by having a change in legislation … When there is a clear intent in legislation, we are more likely to bring about culture change. A mediation act would show an intent to encourage the use of alternative dispute resolution.
>
> Source: Justice Committee, Official Report 6 March 2018, col. 51.

100. Nicos Scholarios, representing CALM Scotland, agreed, stating:

> To effect the kind of significant change that we are talking about, there is no question but that primary legislation would be needed.
>
> Source: Justice Committee, Official Report 6 March 2018, col. 52.

101. Robin Burley of Scottish Mediation, while not discussing specifically the option of a mediation act, emphasised that greater consideration should be given to incorporating mediation in legislation. He told the Committee:

> Two areas in which I think that mediation has been successful, in terms of its take-up and use, are the Scottish Legal Complaints Commission and young people's special education needs. The legislation in both contexts contains sections on mediation.
>
> Providing for mediation in legislation can be a constructive way for the Parliament to add to what is there and maybe to take away some of the obstacles that get in the way of mediation, given that in many cases the obstacle is that the opportunity for mediation is simply not well known. Legislative provision helps to raise mediation's profile and make it available.
>
> Source: Justice Committee, Official Report 6 February 2018, col. 22.

Domestic abuse

102. In its evidence to the Committee, Scottish Women's Aid raised significant concerns about any move towards greater use of ADR without full consideration of the implications of this in the context of domestic abuse. In its view, ADR is inappropriate for family actions in the context of domestic abuse, as "ADR approaches assume equality in power between its participants, an equality that does not exist in cases of domestic abuse". [15]

103. Evidence from Scottish Women's Aid emphasised that women can be pressured to participate in ADR, putting themselves and any children at risk:

> We are aware that there will be times where women participate in a mediation process because they are unaware of their right not to; they believe that they will lose custody of their children; they fear repercussions from the perpetrator or purely because they are not in an empowered state of mind sufficient for them to assert their rights. …
>
> There is also the issue that in child contact cases, women can be advised not to disclose domestic abuse, or are afraid to bring this issue before the court, on the grounds that they will be seen as "difficult" or trying to influence the child's views on the matter. As a result, women who have not previously disclosed abuse may be forced into mediation.
>
> Source: Scottish Women's Aid, written submission.

104. In oral evidence, Marsha Scott of Scottish Women's Aid told the Committee that there is "quite a sizeable evidence base that shows that women and children can be put at risk and, in fact, harmed in the mediation process when domestic abuse is part of the picture". [16] She went on to say that Scottish Women's Aid receives regular reports of inappropriate referrals to mediation and that women were "often pressured into mediation by a variety of mechanisms, be it through their partner, through their lawyer or through the way in which the whole civil justice system works". [17] She emphasised that any penalties for failure to undertake mediation would "place women in an impossible situation". [18]

105. Scottish Women's Aid considers that "wholesale "system change"" is needed "so that there is a real and cogent understanding of domestic abuse and a clear competence of the issues demonstrated". Its written submission argued:

> Courts should not be encouraged to use "early negotiation and mediation to promote earlier settlement of cases"; no steps should be taken to incorporate mediation into legislation or court rules, appoint specialist sheriffs or expand in–court mediation schemes until a full, independent and comprehensive examination of the issue has been undertaken.
>
> Source: Scottish Women's Aid, written submission.

106. Scottish Women's Aid also suggested there is a need for further training for sheriffs hearing family law cases on the dynamics of domestic abuse and the impact of this on women and children in relation to cases involving child welfare, contact and residence.

107. Other evidence to the Committee, including from Relationships Scotland, agreed that mediation is not appropriate when domestic abuse is an issue. According to its written submission, it has processes in place to assess risks in relation to domestic abuse and child protection and offers parties an initial separate meeting with a trained worker to consider the appropriateness of mediation.

108. Nicos Scholarios of CALM Scotland, however, argued that mediation should not be discounted in all cases where domestic abuse is a factor. He told the Committee that CALM mediators currently received training from Scottish Women's Aid on domestic abuse and, while he accepted this could be enhanced and the screening process could be made more robust, in his view:

> There are many cases in which women who are subject to domestic abuse still need to get matters resolved, whether those matters are to do with children and child contact or financial issues. Mediation can offer assistance with that, subject to the right model being chosen and the appropriate safeguards being put in place.
>
> Source: Justice Committee, Official Report 6 March 2018, col. 33.

109. Both Rosanne Cubitt and Nicos Scholarios emphasised that they would expect mediators to use their judgment and experience, and to stop any mediation where they witnessed, for example, coercive and controlling behaviour. [19]

110. Marsha Scott, however, argued that a one-meeting assessment process is not sufficient to assess the risk of domestic abuse and the appropriateness of mediation. She told the Committee:

> It is highly unlikely that a woman who has few resources and who is being assessed for whether there is domestic abuse will disclose that in a one-off meeting with somebody who probably does not have an enormous amount of training in assessing that. With coercive control rather than physical violence, in most cases, there is probably not a police record that can be referred to, so it is highly unlikely that the system will be sensitive enough to establish safety in the mediation.
>
> Source: Justice Committee, Official Report 6 March 2018, col. 32.

111. In relation to MIAMs in England and Wales, Marsha Scott told the Committee that Scottish Women's Aid had found that the exemption for domestic abuse was only being applied where evidence such as a police report could be provided to the judge. [14] Nicos Scholarios suggested that, under the Family Dispute Resolution Information Meeting pilot proposed by CALM and Relationships Scotland, there would not be a requirement for such evidence. [20]

112. Marsha Scott also emphasised a need to scrutinise whether training is delivering competence. As noted above, during its work on ADR, the Committee sought information from the Lord President's Private Office on current training provided to the judiciary in relation to ADR. The Committee specifically requested information on whether such training covered the appropriateness of ADR in the context of domestic abuse. The Committee has previously recognised the importance of training for the judiciary in relation to domestic abuse, during its Stage 1 consideration of the now Domestic Abuse (Scotland) Act 2018. [21]

113. The response from the Lord President's Private Office does not provide detail on any specific training on domestic abuse in the context of ADR. While some courses provided by the Judicial Institute covered family law and mediation, it is not clear whether these courses contained any consideration of domestic abuse. The response from the Lord President's Private Office simply stated:

> The only context in which a judge might play a role in relation to family mediation is in approving a referral to family mediation. This would only occur if parties have indicated a willingness to attend or made a request for a referral.
>
> Source: Lord President's Private Office, written submission.

The voice of the child

114. A further issue raised by Scottish Women's Aid was the extent to which children's voices are heard during any dispute resolution process. Marsha Scott told the Committee that:

> Scottish Women's Aid is constantly worried about the lack of children's and young people's voices in decisions that are made about their lives. In the context of mediation, we have a lot of exploration to do on how children's voices can be reflected not as a one-off but as real participation in decision making.
>
> Source: Justice Committee, Official Report 6 March 2018, col. 31.

115. She referred to ongoing work with the Children and Young People's Commissioner Scotland to look at alternative models to hearing children's voices, such as the specialist domestic abuse children's rights officer who produces reports for the local sheriffs in West Lothian. In her view, similar approaches could be used in the context of ADR. [22]

116. Rosanne Cubitt told the Committee that some Relationships Scotland mediators have undertaken additional training to work with children. If parents agree and it is appropriate, those mediators can meet the child and feed their views back into the mediation process. [23]

117. Isabella Ennis, representing Family Law Arbitration Group Scotland (FLAGS), emphasised that, in arbitration, the welfare of the child is the paramount consideration when the arbitrator is making a decision. Moreover, before making a decision the arbitrator must have explored whether the child has a wish to express a view and, if they do, what that view is. [6]

Scottish Government consultation on family justice

118. After the Committee's evidence sessions on ADR, the Scottish Government launched a consultation on Part 1 of the Children (Scotland) Act 1995 and the creation of a family justice modernisation strategy. Part of that consultation considered whether the Scottish Government should do more to encourage the use of ADR in family cases.

119. Options suggested in the consultation paper included:

- better signposting and guidance on ADR. The consultation paper suggested this has the advantage of "leaving it to the individual to decide if this is the best option for their situation" but does mean that "there is no guarantee that people seeking to raise family actions in court will read guidance encouraging the use of ADR" (paragraph 11.36).

- introducing Mediation and Information Assessment Meetings similar to those introduced in England and Wales. The consultation paper stated that this would make parties aware of the availability of ADR, but noted that research

published by the UK Government in 2015 suggested that people only attended a MIAM in 19% of cases (paragraph 11.35).

120. The consultation paper also emphasised that if the Scottish Government is to encourage further use of ADR in family cases, there would need to be an exclusion for victims of domestic violence (paragraph 11.33). Consideration would also need to be given to how well ADR allows for the views of the child to be heard (paragraph 11.34).

121. The consultation closed on 28 September 2018. Following the outcome of this consultation, the Scottish Government intends to introduce a Family Law Bill as part of its legislative programme for 2018-19.[xvii]

Conclusions on compulsory alternative dispute resolution

122. The Committee agrees with the majority of the evidence it heard that, on balance, people should not be compelled to participate in alternative dispute resolution (ADR). To do so could undermine the benefits derived from the voluntary nature of ADR. Moreover, in some cases going to court may be the most appropriate form of dispute resolution and parties should remain free to choose that option if they so wish.

123. Nonetheless, as set out earlier in this report, previous efforts to encourage greater use of ADR have had limited effect. The Committee considers that more fundamental changes which could facilitate a step-change in the uptake of ADR in Scotland should now be explored.

124. The Committee recommends that, save in domestic abuse cases, mandatory dispute resolution information meetings should be piloted. While this approach would not compel parties to participate in ADR, it could help to ensure that people are better aware of the options available to them and are able to make an informed choice about how to resolve their dispute. Additionally, where mediation does take place, a rethink of the support and resources available to people to help them prepare for ADR is needed if this course of action is to have the best chance of success.

125. Consideration should also be given as to whether broader legislation, similar to the recent Irish Mediation Act, is necessary to promote and regulate greater use of ADR. Incorporating ADR into specific legislation as was done, for example, in relation to additional support needs, could also promote greater use of ADR.

126. It is, however, crucial that any move towards greater use of ADR must ensure that victims of domestic abuse and children are not put at risk. There must be clear and workable exceptions for domestic abuse cases, without requiring victims to, for example, provide police reports as evidence. Processes to assess

xvii Scottish Government Programme for Government 2018-19.

and monitor risks relating to domestic abuse and child protection must be robust and proper assessments undertaken before any use of ADR.

127. There is also a pressing need for further system-wide training and awareness-raising for the judiciary and legal profession, as well as providers of ADR, on domestic abuse. This is an issue that the Committee has raised previously and it was therefore concerned by the response from the Lord President's Private Office which suggests that limited, if any training, has been provided on domestic abuse in the context of ADR. The Committee intends to write to the Lord President on this issue, and the issue of judicial training more generally, as it has been a recurring theme in the Committee's work.

128. The Committee is aware that the Scottish Government has recently consulted on reforms to family justice, including options for encouraging greater use of ADR in family cases. The findings of this report should be considered by the Scottish Government in its response to that consultation, and the Committee may return to these issues in more depth in the context of the proposed Family Law Bill.

Conclusion

129. Going to court is, and should remain, a fundamental part of the civil justice system in Scotland. However, alternative dispute resolution (ADR), such as mediation and arbitration, can offer a quicker, cheaper, more flexible and less stressful option in many cases. As the Committee heard, encouraging the earlier and more effective resolution of disputes has benefits not only for the individuals involved, but also businesses, families and communities as well as the wider Scottish economy.

130. While progress has been made to encourage greater use of ADR, availability and uptake across Scotland remains patchy. This report therefore suggests a number of changes which could address existing barriers to using ADR, including:

- a co-ordinated programme to raise public awareness of the benefits and availability of different ADR methods in Scotland, and ensuring that bodies such as citizens advice bureaux, local councils and GP surgeries, as well as elected representatives, have the resources to advise people on ADR
- a more robust duty on solicitors to advise their clients on the range of dispute resolution methods available to them, for example a requirement to keep records of this advice which can then be audited by the Law Society
- legal aid for other forms of ADR, as is currently available for mediation
- reviewed training for the judiciary to encourage a more consistent approach to court referrals to ADR
- consistent provision and funding of in-court ADR services, particularly for simple procedure cases.

131. While these changes could result in more people using ADR, the Committee considers that more fundamental options should also be explored. In particular, mandatory information meetings on ADR prior to court action should be piloted, save in domestic abuse cases. Consideration should also be given to introducing legislation similar to the Irish Mediation Act or incorporating ADR in specific legislation as was done, for example, in relation to additional support needs. These options could help to encourage the cultural shift the Committee heard is necessary to ensure a step-change in the uptake of ADR in Scotland.

132. However, the Committee is also of the view that there will be cases where the use of ADR may not be appropriate. This is particularly so in the context of domestic abuse, and any move towards greater use of ADR must ensure sufficient safeguards are in place to protect domestic abuse victims and children.

133. The Scottish Government's upcoming family justice reforms, including the proposed Family Law Bill, may provide the Committee the opportunity to consider in greater depth the role of ADR in family law cases.

Annex A - Extracts from the minutes

Extracts from the minutes of the Justice Committee and associated written and supplementary evidence

3rd Meeting, 2018 (Session 5) Tuesday 23 January 2018

Work programme (in private): The Committee considered its work programme and agreed to hold evidence sessions, on 6 February 2018, on remand and, in round-table format, on alternative dispute resolution.

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

Alternative dispute resolution: The Committee took 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.

Daniel Johnson declared an interest as his wife is a practising solicitor at Pinsent Masons. Ben Macpherson declared an interest as being registered on the Scottish roll of solicitors. Liam McArthur declared an interest as his wife is a mediator at Relationships Scotland.

Work programme (in private): The Committee considered its work programme and agreed (a) to consider at a future meeting its approach to scrutiny of the police and fire services; (b) to undertake further work on alternative dispute resolution; (c) to undertake further work on remand; and (d) to write to the Scottish Government seeking an update on its response to the Scottish Law Commission's report on defamation.

Written evidence

Core Solutions Group

Edinburgh Sheriff Court Mediation Service

Faculty of Advocates

Scottish Arbitration Centre

Scottish Mediation

8th Meeting, 2018 (Session 5) Tuesday 6 March 2018

Alternative dispute resolution: The Committee took evidence from—

Nicos Scholarios, Secretary, CALM Scotland;

Isabella Ennis, Chair, Family Law Arbitration Group Scotland;

Rosanne Cubitt, Head of Practice Mediation, Relationships Scotland;

Dr Marsha Scott, Chief Executive, Scottish Women's Aid.

Liam McArthur declared an interest as his wife is a mediator at Relationships Scotland.

Work programme (in private): The Committee considered its work programme and agreed to seek written evidence from the Convention of Scottish Local Authorities, the Law Society of Scotland, the Lord President and the University of Strathclyde in relation to alternative dispute resolution, and to consider the issue again at a future meeting.

Written evidence

CALM Scotland and Relationships Scotland

Family Law Arbitration Group Scotland

Relationships Scotland

Scottish Women's Aid

22nd Meeting, 2018 (Session 5) Tuesday 11 September 2018

Alternative dispute resolution (in private): The Committee considered a draft report. Various changes were agreed to and the Committee agreed to approve the final report to the Parliament by email correspondence.

Liam McArthur declared an interest as his wife is a mediator at Relationships Scotland.

Annex B - Written evidence

List of other written evidence

Advisory, Conciliation and Arbitration Service

Association of British Travel Agents

Kirkwood, Paul

Law Society of Scotland

Lord President's Private Office

Safeguarding Communities - Reducing Offending

University of Strathclyde Mediation Clinic

All written evidence received can be accessed on our webpage.

[1] Justice Committee. (2018, February 6). Official Report, cols. 6-7. Retrieved from http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11357&mode=pdf

[2] Justice Committee. (2018, February 6). Official Report, cols. 8-9. Retrieved from http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11357&mode=pdf

[3] Justice Committee. (2018, February 6). Official Report, col. 9. Retrieved from http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11357&mode=pdf

[4] Justice Committee. (2018, February 6). Official Report, col. 11. Retrieved from http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11357&mode=pdf

[5] Justice Committee. (2018, February 6). Official Report, col. 12. Retrieved from http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11357&mode=pdf

[6] Justice Committee. (2018, March 6). Official Report, col. 37. Retrieved from http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11399&mode=pdf

[7] Law Society of Scotland. (2018, April). Written submission. Retrieved from http://www.scottish.parliament.uk/S5_JusticeCommittee/Inquiries/ADR-LSS.pdf

[8] Justice Committee. (2018, February 6). Official Report, col. 26. Retrieved from http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11357&mode=pdf

[9] Core Solutions Group. (2018, June). Written submission. Retrieved from http://www.scottish.parliament.uk/S5_JusticeCommittee/Inquiries/ADR-CoreSolutionsGroup.pdf

[10] Justice Committee. (2018, February 6). Official Report, col. 24. Retrieved from http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11357&mode=pdf

[11] Justice Committee. (2018, February 6). Official Report, col. 7. Retrieved from http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11357&mode=pdf

[12] Justice Committee. (2018, March 6). Official Report, col. 36. Retrieved from http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11399&mode=pdf

[13] Justice Committee. (2018, March 6). Official Report, col. 45. Retrieved from http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11399&mode=pdf

[14] Justice Committee. (2018, March 6). Official Report, col. 43. Retrieved from http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11399&mode=pdf

[15] Scottish Women's Aid. (2018, February). Written submission. Retrieved from http://www.scottish.parliament.uk/S5_JusticeCommittee/Inquiries/ADR-SWA.pdf

[16] Justice Committee. (2018, March 6). Official Report, col.28. Retrieved from http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11399&mode=pdf

[17] Justice Committee. (2018, March 6). Official Report, col. 28. Retrieved from http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11399&mode=pdf

[18] Justice Committee. (2018, March 6). Official Report, col. 50. Retrieved from http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11399&mode=pdf

[19] Justice Committee. (2018, March 6). Official Report, col. 46.. Retrieved from http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11399&mode=pdf

[20] Justice Committee. (2018, March 6). Official Report, col. 44. Retrieved from http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11399&mode=pdf

[21] Justice Committee. (2017, September 21). 16th Report, 2017 (Session 5): Stage 1 Report on the Domestic Abuse (Scotland) Bill, paragraph 116. Retrieved from https://digitalpublications.parliament.scot/Committees/Report/J/2017/9/21/Stage-1-Report-on-the-Domestic-Abuse--Scotland--Bill

[22] Justice Committee. (2018, March 6). Official Report, col. 35. Retrieved from http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11399&mode=pdf

[23] Justice Committee. (2018, March 6). Official Report, col. 31. Retrieved from http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11399&mode=pdf