



Submission to Justice 2 Committee

Legal Profession and Legal Aid (Scotland) Bill

by Core Mediation, a division of the Core Solutions Group

We welcome the reference to mediation in section 6 of the Bill. This recognises that the approach to handling complaints can be viewed in a different context than in the past.

In our experience, and in the experience of others, many complaints, whether against the legal profession or others, arise because of frustration or lack of acknowledgement of difficulties which have arisen. Many are symptomatic of underlying problems. Many of these complaints could be addressed by a process which encourages early communication and discussion about the issues.

It is our submission that the use of mediation could be significantly expanded to deal with many complaints, at source and as they are handled by the new Scottish Legal Complaints Commission and the professional bodies. We submit that a significant number of complainants would be assisted by, and possibly content with, one or more of the following:

- An explanation of what happened
- Acknowledgement of difficulties which have arisen
- An expression of regret or apology for errors made
- Reassurance that it will not happen again to themselves or others
- Discussion about possible remedies
- Compensation if appropriate

Very often, in these situations, the involvement of a third party as conciliator or mediator can provide the necessary assistance to parties where a difference or dispute has arisen. We submit, therefore, that building into the complaints process the availability of mediation, not only at a stage when matters are referred to the Commission but at an early stage when matters are first referred to law firms or others, can provide many complainants with the opportunity they seek and enhance the possibility of greatly reducing the adversarial nature of the complaints handling process, its cost and the time involved.

We would suggest that using the word “complaint” to describe the Commission and the processes may be unhelpful. This immediately sets up an adversarial context, with a need to justify or defend positions. “Client Relations” or “Conduct and Services” provide examples of a potentially less polarised description.

Mediation in other cases such as these (such as banking and medical claims) has a good record of success, helping the parties to find common ground, engage in constructive discussion and achieve forward looking outcomes. ***We would submit that the Committee should actively encourage the use of mediation at each stage in the complaints processes, including when conduct matters are addressed by professional bodies.***

This will be consistent with the emerging culture of seeking consensus and co-operation as an alternative to, and certainly as a first option instead of, more traditional, adversarial approaches.

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John Sturrock QC, for Core Mediation