Core Challenge 2021 – Submission of Mitchell Abbott

"Nudging" towards more appropriate dispute resolution in Scotland

Processes shape outcomes; the choices that actors are presented with and the way in which those choices are presented influence decisions and ultimately outcomes. This is the case for the Scottish litigation system; the rules and procedures of the Scottish Courts default to the continuation of the adversarial process and as a result discourage parties from mediating. Instead, the Scottish litigation process should be changed into a dispute resolution process that "nudges" users into more *appropriate* dispute resolution. A series of nudges should be introduced at various points in the system to encourage active consideration of mediation. This low cost and non-coercive change could substantially increase the use of mediation in Scottish cases.

The "default" of the Scottish court system

At no point does the Scottish Court process or rules presume that parties are heading anywhere other than determination of their dispute by a Judge, Sheriff, or other party. Parties are not overtly presented with other processes for resolving their disputes nor encouraged to consider them. This is important as parties are therefore encouraged to continue to litigate, and discouraged from considering other possible methods of resolving their dispute, including mediation. Setting an outcome as the default strongly influences choices; to take a legal example, class action participation can greatly increase when an opt-out rather than opt-in system is adopted.[1] It is not unreasonable to think that the Scottish litigation system's default of continuing to litigate further discourages parties from mediation.

What is a nudge?

Nudging is the behavioural economics approach of designing the choices presented to individuals in such a way that encourages them to choose more beneficial choices. It has seen immense growth in popularity over the past decade,[2] and is used by institutions across the globe (including the UK Government's own "Nudge Unit").[3] Nudges are used in a variety of situations; to take a UK example, nudges have been used to increase the rates at which individuals pay their tax to HMRC.[4]

Nudges have two features that make them particularly appropriate for encouraging the use of mediation. Firstly, they are frequently cheap; they often simply involve re-framing a choice that an actor is faced with to encourage a beneficial outcome. As such, the introduction of nudges to encourage mediation in Scotland could require comparatively little public funding. Secondly, nudges are non-coercive; actors still have the option to litigate but instead are simply encouraged to mediate their disputes. In this way, party autonomy and the voluntary nature of mediation is preserved.

How the Scottish litigation system could change to nudge towards mediation

Changes to Scottish litigation do not need to be revolutionary or introduce a significant burden on lawyers and their clients – in fact it is preferable that the additional burden is minimal so that party autonomy is preserved. They also don't need to impose a financial penalty on those who decide not to mediate; nudges have been effective in other contexts without this coercion.

Lawyers as the gatekeepers of the dispute resolution process should be a key target of the nudges. While lawyers have professional obligations to consider mediation for ongoing cases, the under-utilization of mediation in Scotland suggests that lawyers are making sub-optimal choices. Lawyers should be

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[1] See a useful summary here: https://cms.law/en/gbr/publication/opt-out-class-actions-in-the-uk-are-we-entering-a-new-era-in-litigation

[2] Since its popularisation by scholars Richard H. Thaler and Cass R. Sunstein in their 2008 book "*Nudge: Improving Decisions About Health, Wealth, and Happiness*"

[3] Now known as The Behavioural Insights Team: https://www.gov.uk/government/organisations/behavioural-insights-team

[4] https://blogs.worldbank.org/voices/ongoing-impact-nudging-people-pay-their-taxes

encouraged to thoroughly consider mediation at multiple points throughout the litigation process; including at the start of the litigation, at procedural hearings, and just prior to proof. By encouraging lawyers to pause and actively consider mediation where they may not otherwise do so, participation rates will hopefully increase.

However, lawyers must be nudged in such a way so as to not reduce the exercise to form filling; the changes must encourage lawyers to invest in considering the merits of mediation for each individual case. One possible system would be for lawyers to submit a short explanation of why mediation is appropriate or is not appropriate to the Court, and for the Court to then discuss those submissions at a then upcoming procedural hearing. There should not be a requirement for these submissions to meet an objective standard of reasonableness on threat of financial sanction as is the case in England; mediation can be encouraged without this coercion.

Clients are different to lawyers in that they cannot be presumed to have prior knowledge of mediation. Instead, they could be encouraged to mediate by being issued a form outlining the benefits of mediation, then at the end of the form being asked if they would like to instruct their lawyer to try arrange for a mediation. Being asked this question in the context of just having the benefits of mediation outlined to them will act as a nudge to mediation.

It is key that once a party has decided to mediate, it needs to be quick and easy to arrange to do so. It should be simple to identify a mediator with appropriate experience. To this end, SCTS, the Law Society, or another body should maintain a directory of mediators in a similar fashion to how a directory of solicitors is maintained. If it is not quick and easy to arrange for mediation, parties will instead be nudged away from mediation

Final thoughts

These changes are in no way meant to be comprehensive suggestions of how the Scottish litigation process could be reshaped into a dispute resolution process. They are merely a broad and high-level outline of some of the possibilities. Nor are the changes proposed meant to suggest that any changes need to be static; as nudges add minor additional burden to litigation participants the nudges can be adjusted as data on their effectiveness is ingathered.

However, relatively inexpensive changes such as nudging parties towards mediation could have substantial effects. When lawyers begin seeing their peers chose to mediate rather than litigate, small nudges may snowball into substantial and long-lasting changes.

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15 February 2021

"What one change would make a real difference and increase the use of mediation in civil and commercial cases in Scotland?

Introduction

The pressure and back log faced by the court system in Scotland has never been in sharper focus than in the current times of a global pandemic. From a short-term perspective, the pandemic has forced the courts to radicalise how they operate, from conducting jury trials in cinemas, to moving most civil business to the online platform, Webex. Longer term, the courts will need to assess how to resolve the growing backlog of cases as quickly as possible. This is an enormous task, with the Scottish Courts and Tribunal Service's (SCTS) chief executive, Eric McQueen, estimating that it could take up to ten years for courts to return to pre-Covid levels.[1] With this in mind, my argument is that now, more than ever, mediation needs to be used by the courts as a viable, first port of call for those who seek redress through Simple Procedure actions.

Early Access to Information

Mediation is a quick, informal and cost-effective process. When people are involved in a dispute, however, they "probably already have an approach in their mind" about how it will be resolved.[2] Once an individual knows that they can have their 'day in court', it can be challenging for them to depart from this idea and take part in mediation. As such, it has been acknowledged that to increase the uptake of mediation, individuals need to be introduced to the option of mediation early, and before they "part-way down a track from which it is hard to retreat."[3] Whilst it is recognised that early access to information about mediation is imperative, more radical steps need to be taken for there to be real change.[4]

Increasing Uptake

I would argue that the best way to see an increase in the uptake of mediation, would be to integrate in-court mediation services into all sheriff courts across Scotland, and use them as a 'first port of call' for all actions raised through simple procedure. In essence, courts would operate on a 'presumption to mediate' basis, unless there were specific reasons why mediation would not be appropriate, for instance, in domestic abuse cases. Although summary sheriff's already have an express duty to encourage different forms of alternative dispute resolution (ADR) in simple procedure cases, the percentage of referrals to mediation differs greatly across sheriffdoms.[5] Moreover, "some sheriffs and judges appear to be more willing to encourage or refer parties to ADR than others."[6] It is clear, therefore, that different sheriffdoms have different approaches to mediation, and that these inconsistencies need to be addressed to ensure a better uptake across Scotland. By integrating in-court mediation services, a clear pathway is set for parties to explore, before they reach the last resort of having their case heard in a formal court setting.

Comparison with Employment Law Disputes

This idea is best illustrated by comparison to the model followed in employment law disputes. In these cases, individuals looking to make a claim to a tribunal must first contact ACAS, who will offer the party the option of 'early conciliation.'[7] It is only after this option is explored, that their claim can proceed. Simple procedure actions could follow a similar protocol, whereby if a party intends to raise an action, they must first be referred to a meeting with an in-court mediation service. During this meeting, parties would be informed about the purpose of mediation and its benefits, enabling them to make an informed decision about whether

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[1] "*Coronavirus: Courtroom backlog 'could take years to clear*", BBC News Scotland, 18 August 2020 https://www.bbc.co.uk/news/uk-scotland-53827037

[2] Justice Committee, Official Report 2 February 2018, col. 28.

[3] Ibid

[4] Justice Committee, "*I won't see you in court: alternative dispute resolution in Scotland*", 9th Report, 2018 (Session 5), para 38

[5] Scottish Mediation, "*Bringing Mediation into the Mainstream in Civil Justice in Scotland*" June 2019, para 56.

[6] Justice Committee, "*I won't see you in court: alternative dispute resolution in Scotland*", 9th Report, 2018 (Session 5), para 75

[7] ACAS, "Dispute Resolution" (ACAS.org.co.uk 20/10/2020) https://www.acas.org.uk/early-conciliation

mediation would be a viable alternative for them. If the parties are not willing to participate, they would be referred on to the court where the Sheriff would hear their case. This model would therefore encourage parties to settle their dispute at an early stage, whilst preserving the option to go to court and upholding the voluntary nature of mediation.

Implementation

Implementation of in-court mediation services would be complex and involve a significant amount of funding. Firstly, sheriff courts would need funding to create the in-house mediation facilities and support the mediators working there. Many in-house mediation facilities currently running depend on volunteer mediators or short term financing from Citizens Advice.[8] This is not a sustainable model and would need to be tackled with appropriate remuneration for mediators, to ensure that in-court mediation services are recognised for the valuable work which they do. One potential funding option could be to ear mark a proportion of the court fee paid to initiate a simple procedure claim towards funding in-court mediation services.

Compulsory Mediation in England

Law reform organisation Justice published a report in 2015 which assessed the trial of 'compulsory mediation' in England. The report concluded that "extensive research shows that mediation is rarely successful if it is made compulsory and imposed on unwilling parties."[9] This conclusion reinforces the very essence of mediation – that it is voluntary. My argument is not that parties should have mediation forced on them, but rather that they should be given the opportunity to learn how mediation could help them. Charlie Devlin commented on this report, noting that the research relied upon by Justice was based on a single study of "a particularly excoriating study of two previous in-court mediation schemes."[10] Taking this into consideration, the conclusions drawn from Justice's study should not deter Scotland from considering how mediation could be better implemented into the court system. In fact, mediation in Scotland is extremely successful, with the Edinburgh Sheriff Court Mediation Service reporting that around 75% of their mediations result in settlement.[11]

Conclusion

The impact of the Covid-19 pandemic has been felt far and wide. The pandemic has forced individuals, businesses and the government to innovate and develop a new way of living, despite the hurdles which the pandemic has presented. Maybe the pandemic was exactly what was needed, to encourage the court system to adapt and think outside the box, in terms of facilitating and delivering justice. There is a great deal of momentum around mediation at the moment, with the Draft Mediation (Scotland) Bill, as spearheaded by Margaret Mitchell MSP, being considered by the Scottish Parliament. It is my argument that this momentum should continue, and that now, more than ever, is time to push mediation into the forefront of ADR in Scotland, to help combat the ever-growing backlog of cases.

[8] Justice Committee, "*I won't see you in court: alternative dispute resolution in Scotland*", 9th Report, 2018 (Session 5), para 50
[9] Ibid, page 22.
[10] Charlie Devlin, *"Justice" Report for England and Wales: A Missed Opportunity for Radical Change"* Mediation.com, June 2015, https://www.mediate.com/articles/IrvineC7.cfm
[11] Written Evidence submitted by Edinburgh Sheriff Court Mediation Service to the Justice Committee, 'Alternative Dispute Resolution' 31 January 2018 ADR-ESCMediationService.pdf (parliament.scot)

What One Change Would Make a Real Difference and Increase the Use of Mediation?

When I read this question, I was instantly drawn to reply: “the mind-set of solicitors”.

When someone is in the nitty-gritty depths of a dispute they ultimately rely on their legal adviser to guide them. If their solicitor does not champion mediation as a means of resolving a dispute, the client, likewise, will be wary about its effectiveness.

Where Is The Issue?

I recently spoke at a discussion group with peers from across Scotland when the point was raised that many solicitors believe we ought to have the soft skills to assist our clients in reaching an agreement, and the question was raised: is resorting to mediation a failure on our part as solicitors?

This idea that bringing in external mediators implies some incompetence or “failure” is a fundamental issue that will continue to limit the use of mediation until that stigma can be overcome.

This “fear of failure” can result in a reluctance to go beyond the comfort zone, and simply rely on old options. Whether this fear is from “the unknown” or it has stemmed from negativity from peers, or unsupportive colleagues, it is clear that these perceptions must change from seeing mediation as a “failure” to a “success”.

How Might We Overcome It?

1) Remove the Unknown – by educating solicitors on mediation and the process to “demystify” it;

2) Highlight the Success – by demonstrating the solicitors’ key skills and expertise that can be invaluable during the process to dispel misconceptions of their failure;

3) Highlight the Failure – by explaining that the feared worst-case scenario, is, essentially, no different to the pre-mediation position; and

4) Focus on the Goal – by showing solicitors how mediation is an extension of the negotiations to reach the agreement they have already been striving for.

Whilst there exists a great deal of information and training to tackle the “unknown” factor, I haven’t seen many articles or seminars featuring the solicitor’s perspective to emphasise our role and what “success” looks like for us.

What Does Our Role Look Like?

Our clients come to us for guidance and, whilst we strive to help them reach an agreement, negotiations can become protracted and perseverance can result in delays which compound the already tenuous situations in which clients find themselves.

Court may feel like the only option, but the costs can quickly rocket and it puts the decision firmly in the hands of a third party.

Mediation, however, provides us with a framework to bring the parties together and discuss the issues, and essentially extend the negotiations we were in, so our role remains just as key.

Although mediators lead that process (and expertly so), solicitors continue to be very much involved in handling their respective clients, advising on the legal, tax and practical implications, and using those ever-relevant soft skills to get to that final agreement.

Having been through the mediation process, I can firmly attest to the fact there is still a lot of work, and soft skills, required in supporting and advising our clients through the process. It is not a case of handing the reins over and stepping back – quite the contrary!

A Success Story

I was involved in the mediation of a farming estate being passed down to the next generation in terms of a Will after over 15 years of negotiations and decisions from a Sheriff and Sheriff Principal. By the time I got involved, the next generation were aging and, as you can imagine, exhausted from the legal process.

Going back to court and putting this complex estate into the hands of judges with no real appreciation of the land or the family's concerns would not have been a "win" for anyone.

We agreed to mediate, and actually reaching the mediation and getting all parties in one room – for the first time in a decade – was itself a huge success.

The mediation was split over two (rather fraught!) days and we barely had a minute to breathe. With each new proposal came new legal or tax intricacies, counter proposals and ideas. The days were spent thinking on our feet whilst juggling between complex problem solving, client management and contingency planning. At the end of the first day, when several parties felt there was little hope of success and no point returning, each of the solicitors were instrumental in persuading their clients to stick with it.

Several hours into day two, when it was looking like everything would fall apart, a "round table" of the solicitors and mediators saw us frantically collaborating on the final sticking points, before each advising our clients and getting over that proverbial line. That evening, the family were sitting around the table, enjoying fish suppers and even joking with the mediators, whilst the solicitors were ushered away in another room furiously typing up the Mediation Agreement.

Seeing what mediation can achieve, the utter relief for the clients, and finally signing an Agreement they had been desperate to reach for so many years, was, undoubtedly, a success.

“Calling in the cavalry” was never seen as a “failure”. Our clients (and colleagues) appreciated the value that mediation added, which, together with our skills and expertise allowed us to achieve that “win”. It was very much a collaborative process and both the mediators and solicitors were an absolute necessity to reach that agreement. Had the solicitors not championed mediation, however, we may never have got everyone in that room to have that opportunity.

So What Makes the Difference?

If mind-sets can change and shed this notion of “failure”, I believe we would see an increase in mediation. That said, it can take a great deal of courage to advocate for mediation given the pressures we are often under from clients, peers and the business needs around us. I just hope that this gives my peers an insight into one solicitor’s “success” and perhaps the confidence to step out their comfort zone and try mediation.

Sarah-Jane Macdonald

"What one change would make a real difference and increase the use of mediation in civil and commercial cases in Scotland?"

Increasing the use of mediation in Scots civil and commercial cases would doubtless be of great benefit to parties to disputes, in the form of saved time and legal fees, and indeed to the wider justice system. This entry sets out one possible method of encouraging greater uptake of mediation: ensuring that transactional documents and other civil agreements include reference to mediation wherever possible.

This entry firstly outlines how reference to mediation could be included in the drafting of documents, and then considers two benefits of this approach: improving awareness of mediation, and the possibility of reframing potential disputes. It concludes with some brief comments on the importance of ensuring that the benefits of mediation are known to both disputes and transactional solicitors.

Jurisdiction and dispute resolution clauses

In the author's (limited) experience of commercial agreements, jurisdiction clauses tend to briefly provide that the document in question and any disputes arising out of it are governed by Scots law and that the Scottish courts accordingly have jurisdiction. Generally speaking, no provision is made for resolving potential disputes by way of mediation.

An updated jurisdiction clause could provide that, whilst the courts of Scotland have jurisdiction, the parties will agree to attempt to mediate or at least consider mediation prior to raising court proceedings. Alternatively, the parties could insert a brief dispute resolution clause stating that the parties will firstly consider mediation and, wherever possible, enter into the mediation process in good faith. These clauses could be included in commercial agreements as well as other civil documents, such as cohabitation agreements.

References to mediation would not require to take the form of a sophisticated multi-tier dispute resolution clause (although that may be appropriate in the context of complex commercial agreements), and would not impose a significant burden on drafters of transactional documents. Indeed, reference to mediation could also be included as an optional clause within key standardised documents, such as the Property Standardisation Group's suite of leases and associated documents.

Improving awareness of mediation

Including mediation clauses will improve awareness of mediation among parties to all types of civil legal documents. Parties unfamiliar with mediation clauses would likely initially query this with their solicitor, or their solicitor would provide a brief note on mediation together with the draft document for review. This would encourage conversations about mediation long before the possibility of a dispute between the parties.

It is also likely, in the process of drafting the documents, that the parties to the document and their solicitors would discuss the benefits of mediation, including potential savings in time and expense, and the opportunity to preserve or even improve the relationship between the parties in the event of a dispute. The parties would, as a result, have a positive impression of mediation and would hopefully be amenable to the inclusion of a mediation clause.

Reframing potential disputes

An improved awareness of mediation and its benefits would likely mean that the parties would be more willing to consider mediating in the event of a dispute. The mediation clause would mean that the availability of a non-adversarial option, and the parties' prior consideration of mediation, would be at the forefront of the parties' minds at the outset of a dispute. The reminder, in their transactional document(s), that they had agreed to attempt mediation may lead to the parties reframing the dispute as an opportunity to find common ground.

In contrast, it may be difficult to encourage parties with no knowledge of mediation to attempt to mediate after a dispute has arisen. Once already embroiled in a dispute, parties may be unwilling to be seen to engage in a process designed to find common ground. In the absence of a mediation clause in the parties' agreement, the party suggesting mediation may be concerned that doing so will undermine their position. Similarly, the other party may be suspicious that the 'opposition' is simply trying to extract information prior to raising court proceedings.

In the commercial context, demand letters, even those taking a relatively 'soft touch', can appear blunt, as they necessarily involve stating one party's position on the matter (with the inference that the other party is somehow in the wrong). Referring to a mediation clause in the context of a demand letter might serve as a reminder to the parties that they have committed to resolving disputes amicably wherever possible, and assist in opening a dialogue between the parties.

Concluding remarks

It may take time for mediation clauses to 'catch on' in the legal profession. This could however be furthered by engaging transactional lawyers in discussion about mediation to ensure that the benefits to clients are well-known. Many transactional lawyers will have a sophisticated knowledge of mediation, but (generally speaking) it is likely that the mechanics and advantages of mediation will be better-known among those practicing dispute resolution. Disputes solicitors must, if transactional lawyers are to be persuaded to include mediation clauses in their documents, communicate the benefits of mediation to their colleagues.

It is hoped that, over time, the benefits of mediation would become better known throughout the legal profession, such that including a brief mediation clause would be considered vital in civil agreements.

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What one change would make a real difference and increase the use of mediation in civil and commercial cases in Scotland?

One change that would make a real difference and increase the use of mediation in civil and commercial cases in Scotland is for the Scottish Courts to introduce a requirement on parties to prove mediation has been considered prior to substantial proceedings/hearings being set by the courts. This would include the parties having to demonstrate their attempts to mediate the dispute(s). This would be similar to the pre-action communication protocol which applies to commercial actions in the Court of Session under Practice Note No. 1 of 2017 and somewhat less involved than that proposed by the Mediation (Scotland) Bill.

Such requirements would mean that court actions could still be raised, with parties having to demonstrate at procedural hearings (or the equivalent) that mediation had been considered and attempted. This would mean that parties are still afforded access to the court system, whilst ensuring parties are sufficiently clear on their dispute. In addition, such requirements may ease pressures on the court system, allowing for actions to be sisted to allow for mediation, or in certain cases potentially dismissed, where parties have not fully considered alternative options.

I acknowledge that this change would not come without its challenges and there may be instances where parties are not in a position to mediate. Taking this into consideration, it may therefore be appropriate that such requirements would be compulsory for a certain level and type of dispute. For instance, it may be that court actions of a certain value would not have to comply with such requirement, as it is likely not appropriate that (e.g.) Summary Cause actions in Sheriff Courts be held to the same directions as Court of Session. In any event, this could become a moot point should the Mediation (Scotland) Bill come into force. In addition, other types of cases would have to be considered. For example, enforcement actions would not likely fall into such a category.

Overall, this would make a real difference to both commercial and civil cases in Scotland. It seems that all too often, parties raise proceedings – be that in civil or commercial courts – without *at least* considering whether they would benefit from alternative dispute resolution, particularly mediation. Often, involving an independent third party can be the means to unlocking disputes. Of course, there is a concern that such a requirement would merely mean parties go through the motions, "ticking" the box with the court. However, there is a potential that such a change would allow for parties to discuss disputes, with the assistance of an independent third party and would significantly increase the use of mediation throughout Scotland. Even where mediation did not resolve the dispute between parties during this process, it would ideally go some way to assist the parties, bringing them together, understanding the key issues and progressing matters prior to substantial time and costs being incurred by way of court hearings. This step would also compel parties to truly consider whether mediation, or other alternative dispute resolution, would be beneficial in their circumstances.

Before such a change was brought in, consideration would have to be given to the structure and policing of such requirements. However, as above, this could simply be done early in court processes, when discussing procedural steps. With the requirements setting out clear guidance of how parties can prove such steps have been taken (e.g. copies of correspondence) by way of new court practice notes or updating the Rules of Court.

All of the above being said, I would be remiss if I did not mention that I believe that more than one change will be required to increase the use of mediation (both in civil and commercial cases) in Scotland. More widely, parties' preconceived notions of mediation, and how one might "sell" it to clients, also needs to be

challenged and altered. As the times progress, so too should our consideration and understanding of alternative dispute resolution and the options available to parties in dispute.

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The Core Challenge
What one change would make a real difference and increase the use of mediation in civil and commercial cases in Scotland?

Hikari Saito
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My short answer to the Core Challenge given by Mr John Sturrock, is stimulating more discussions on when and how to use mediation on civil and commercial cases in order to share such knowledge among potential users and develop the culture of mediation in Scotland.

As discussions on mediation in England and the US have flown into Scotland, there are a number of lawyers and in-house councils who are aware of how mediation works. Many mediation training courses are organized for practitioners and students in Scotland. Moreover, most universities in Scotland have provided courses to teach undergraduate law students about the dispute resolution mechanisms, including mediation. At postgraduate level, some universities provide courses specialized in mediation with role-play and notably students observe or co-mediate at the Mediation Clinic at the University of Strathclyde.

There is a big question here, whether lawyers and potential users in Scotland know when and how to use mediation. People do not try a new product until they are attracted by its quality. This attraction mostly comes from good advertisement or families' or friends' recommendations. As the Expert Group on Mediation in Civil Justice in Scotland rightly mentioned as one of its recommendations in the report, "business and public and other bodies should be targeted directly through sector-led initiatives to build awareness of mediation as a constructive choice for dispute resolution."[1] Unfortunately, the Expert Group did not elaborate this point as much as other recommendations. Therefore, I would like to add my personal views on how we can utilize this point as 'the one change' would make a real difference and increase the use of mediation in Scotland.

First, experiences of civil and commercial mediation are shared by the users and lawyers who are involved in mediation, not only by mediators. Especially, the timing of use of mediation, the strategies they had in mediation, and practical advices for future users. Recommendations from users and lawyers would help others to persuade their colleagues, companies, and law firms if they wish to attempt mediation. Such information sharing at the industry level can be beneficial as each industry has slightly different perspectives and timings to deal with dispute resolution. Accumulation of mediation experience in each industry would sophisticate the understandings and skills of mediation and would lead to a change in the dispute resolution clause in their own model contracts and its practice.

Second, conferences and events are the key platform to share experience and stimulate further discussions. These events do not need to be organized as stand-alone events to share experiences and discuss mediation. It would be more ideal to organize it as part of a conference or an event to invite people who have never thought mediation is an effective dispute resolution mechanism. Importantly, it is a good commercial advertisement for mediation institutions,

[1] Scottish Mediation, 'Bringing Mediation into the Mainstream in Civil Justice in Scotland, (June 2019) Recommendation 23 <https://www.scottishmediation.org.uk/wp-content/uploads/2019/06/Bringing-Mediation-into-the-Mainstream-in-Civil-Jutsice-In-Scotland.pdf> accessed 15 February 2021.

mediation training centres/companies, law firms, industry organizations. These events could be organized by these stakeholders of mediation.

Third, these conferences and events could be co-organised or co-sponsored by the Scottish Government. In this way, the Government does not need to make any financial contribution but provides credibility to these events. This support would be an effective way to show the willingness of the government to promote mediation in civil and commercial cases. The government's support has been the key element of success in the development of Hong Kong and Singapore as the dispute resolution hub in Asia.

Last, the intense repetition of such events is essential to gain more and more supporters for mediation. For example, the Singapore International Arbitration Centre organized small events in Tokyo almost every month with big Japanese law firms in 2018. Now it has become one of the most popular arbitration institutions for Japanese companies.

In conclusion, stimulating more discussion on mediation through conferences and events to share mediation experiences by users and lawyers would increase such knowledge among potential users and develop the culture of mediation. I believe this will make a difference and increase the use of mediation of civil and commercial cases in Scotland.