



Informing Progress - Shaping the Future

FOIL UPDATE 27th July 2022



Government Consultation: Increasing the use of mediation in the civil justice system

This consultation opened on 26th July and relates to the Government's proposal to introduce automatic referral to mediation for all proceedings allocated to the small claims track of the County Court, i.e., it applies to most types of claims valued under £10,000, although the level is lower for personal injury and housing disrepair claims.

Under the Government's proposal, unless an exemption is granted by the court, all parties to a defended small claim (the phrase 'parties' includes both the 'claimant' and 'defendant' in a case) will be required to attend a free mediation appointment with HMCTS before their case can progress to a hearing.

The proposal is expected by the Ministry of Justice to help an additional 272,000 parties every year to access the opportunity to resolve their dispute consensually through mediation and avoid the time and cost of litigation. It is also expected to divert up to 20,000 cases each year from the court system, freeing up judicial resources to be used for complex cases.

The Government is also considering whether a requirement to mediate should be expanded beyond small claims. To achieve this, it would need to refer parties to external mediators outside the court service. As such, the Government is seeking stakeholders' views on the right approach to strengthening oversight of external mediators and ensuring that the market is providing high-quality and accountable mediation services outside the court system. Both of these initiatives form part of the Government's broader efforts and ambition to help parties realise the benefits of consensual dispute resolution processes, such as mediation, and integrate these processes as a key step within the justice system. The Government welcomes views from court users, the mediation profession, the legal profession, the judiciary, the advice sector, and all those with an interest in the resolution of civil disputes.

The consultation sets out 16 questions: five relate to the proposal to introduce automatic referral to mediation for small claim; five relate to expanding the Small Claims Mediation Service; five to strengthening the civil mediation sector; and a final question seeks views on whether there any measures that the Small Claims Mediation Service could take to ensure equal access for all to their services, considering any specific needs of groups with protected characteristics and vulnerable users.

Responses are required by **4th October 2022**. FOIL will be providing a response, following consideration, in particular by the ADR SFT.

The full consultation document may be found at: [Increasing the use of mediation in the civil justice system \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/107142/increasing-the-use-of-mediation-in-the-civil-justice-system.pdf)

This publication is intended to provide general guidance only. It is not intended to constitute a definitive or complete statement of the law on any subject and may not reflect recent legal developments. This publication does not constitute legal or professional advice (such as would be given by a solicitors' firm or barrister in private practice) and is not to be used in providing the same. Whilst efforts have been made to ensure that the information in this publication is accurate, all liability (including liability for negligence) for any loss and or damage howsoever arising from the use of this publication or the guidance contained therein, is excluded to the fullest extent permitted by law.