

15 Month Overall Report for Scottish Government – January to March 2023.

Introduction

In its letter of 25 March 2022, the Scottish Government offered University of Strathclyde a project grant of £71,559 to support the work of its Mediation Clinic (“the Clinic”) for a period of 15 months from 1/1/22 to 31/3/23. The letter requires the Clinic to issue quarterly reports to the Project Management Board for monitoring and evaluation purposes. The quarterly reports have been submitted and we now submit our final report covering the 5 quarters.

This report covers the full grant period, from 01/01/2023 to 31/03/2023, in terms of the following reporting requirements:

- 1) Number of cases referred by the 18 sheriff courts the Clinic serves, including details of case type, case value and types of parties;
- 2) Number and details of cases where the Clinic offered mediation;
- 3) Number and details of cases where the matter was resolved through mediation;
- 4) Number and details of cases where the matter was unresolved through mediation;
- 5) Details of steps taken to seek parties’ views, including satisfaction survey data;
- 6) Any other information to assist in assessing the project.

Summary for the period January 2022 – March 2023

- *Referrals received from courts:* **389**
- *Cases mediated:* **234**
- *Cases settled:* **162 (4 pending)**
- *Estimated saving to SCTs:* **£157,212.80**
- *Average settlement* **48% (£1,129.99)**
- *Commonest case types* **Goods and services**
- *Consumers v non-consumers* **239 (51%) v 229 (49%)**
- *Unrepresented v represented* **419 (89%) v 49 (11%)**
- *Preferring remote mediation* **76% - (64/84 responses)**
- *Satisfied with outcome* **71% - (73/103 responses)**

This report shows that the Mediation Clinic is supporting unrepresented people, both consumers and small businesses, to achieve access to justice. Our work thus helps the courts to fulfil their responsibility under the Simple Procedure Rules to “ensure that parties who are not represented, or parties who do not have legal representation, are not unfairly disadvantaged.”¹ It also contributes to the ease of doing business in Scotland, particularly the speed, cost, and ease of enforcing contracts.²

¹ Sheriff Court Act of Sederunt (Simple Procedure) (SSI 2016/200) p. 17.

² There is no currently available figure for Scotland, but 2019 the UK ranked 34th out of 190 countries, with an average cost to enforce a contract of 47%:

<https://archive.doingbusiness.org/en/data/exploretopics/enforcing-contracts>

Detailed report

The Clinic has been gathering data for the past eight years and these historical statistics can be found in our Annual Reports.³ An Excel spreadsheet for the grant period accompanies this report. This report summarises several key findings for the Project Management Board.

Number and type of cases

In the 15-month grant period from January 2022 to March 2023 the Clinic received 389 referrals from 18 courts. 13 of these were unsuitable for mediation and 245 (63%) became Clinic cases.⁴ 234 mediated, of which 162 settled, a settlement rate of 70%.⁵ 21 cases settled without mediation.

In 57 cases one of the parties contacted the Clinic. 17 claimants and 13 respondents subsequently withdrew. 6 have agreed to mediate and 13 are currently with one of the mediators allocated to a particular court.⁶

Overall, 183 of the 389 cases have settled to date as a direct or indirect result of referral to the Clinic and will require no further court involvement. This will result in a saving of court time with an estimated value of **£157,212.80** for the 15 months of the funding.⁷ This figure could be increased by referring more cases to mediation and by providing mediation services more consistently across Scotland.

Non-engagement of parties

Most courts provide the Clinic with parties' details and we make initial contact by post or email within days. If no response is received after 14 days we send a second and final email asking parties to respond within 7 days, failing which we will assume they do not wish to participate in mediation and inform the court. Where a number is available the Clinic also attempts a follow up call.

A small number of courts does not provide parties' contact details, meaning the Clinic relies on at least one of the parties contacting us directly. We have no way of knowing how many parties miss out on the option of mediation through mis-hearing information or losing our details. Consistency among referring courts would be beneficial.

³ Annual Reports dating back to 2017 are available here:

<https://www.strath.ac.uk/humanities/lawschool/mediationclinic/> Earlier reports available on request.

⁴ A case is opened when both parties make contact with the Clinic and agree to take part in mediation.

⁵ In 4 cases the outcome is pending. The settlement rate is thus $162/(234-4) = 70.4\%$.

⁶ This figure is higher when the report immediately follows the period in question.

⁷ No data is available for the cost of court time in Scotland. However, the equivalent figure for a day of court time in England & Wales was £2,692 for 2016/17 (see <https://www.lawsociety.org.uk/topics/research/cost-of-day-in-court-new-analysis-by-law-society>). On the conservative assumptions that Scottish court costs in 2022/3 are similar and that Simple Procedure evidential hearings last 2 hours (two fifths of a day), each one would cost the court (£2,962 x 40%) = £1,076.80. If 80% of these 183 cases (146) proceeded to an evidential hearing the cost to the Scottish Courts and Tribunal Service would have been $146 \times £1,076.80 = \mathbf{£157,212.80}$.

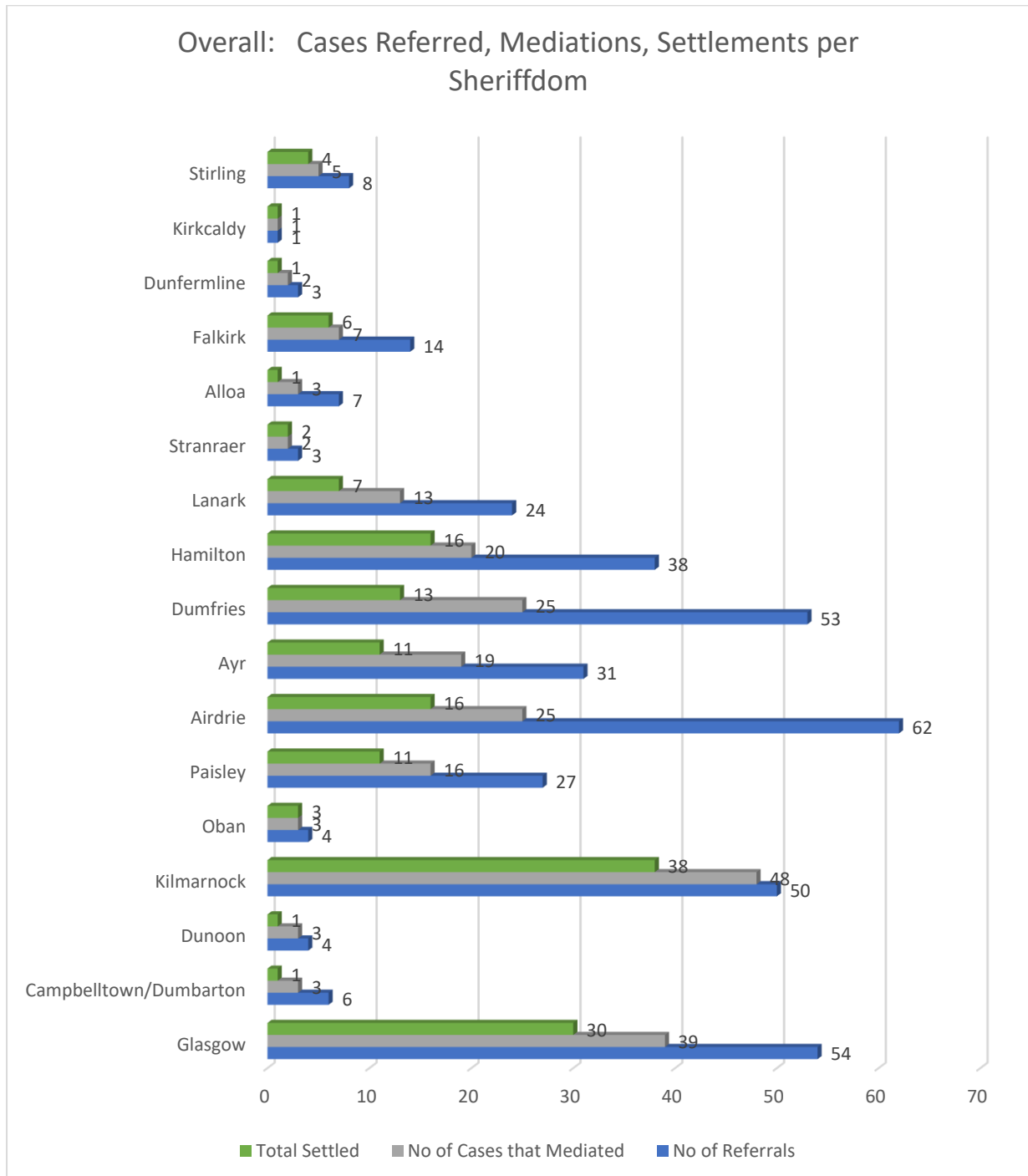
By Sheriffdom

The picture varies significantly by Sheriffdom. Listed below are the totals for each of the four Sheriffdoms the Clinic serves.

Court	Referred	Case Opened	Mediated	Pending	Settled	Settlement Rate %
Glasgow	54	42 (78%)	39	1	30	79
North Strathclyde	91	76 (84%)	73	1	54	75
South Strathclyde, Dumfries & Galloway	211	106 (50%)	104	2	65	64
Tayside, Central and Fife	33	20 (63%)	18		13	72
TOTALS	389	245 (63%)	234	4	162	70

While referrals from Glasgow Sheriff Court have been steadily declining since 2019 they rose slightly in the fourth quarter of 2022 before decreasing again in the last quarter. South Strathclyde, Dumfries & Galloway began collaborating with the Clinic in 2021 and now refers more cases to mediation than any other sheriffdom, by a significant margin. The percentage of parties engaging from that sheriffdom is gradually increasing, in part thanks to a recent change where a single Lead Mediator is allocated to some of the busier courts. This model borrows from the successful approach taken in Kilmarnock Sheriff Court, where 100% of parties engaged and 96% went on to mediate. Across the whole Clinic the settlement rate remains steady at around 70%, though it is the experience of most mediation services that such figures vary somewhat over time.

Table 1: totals referred, mediated and settled for each court and sheriffdom.



Settlements

This section addresses the value of each case and the value of the corresponding settlement.⁸ Sums claimed ranged between £130 and £5,000 with an average claim of £2,287.78. Of the 162 cases reaching a resolution, sums claimed totalled £374,010.38 and financial settlements totalled £180,128.90, an average of 48%. Settlements ranged from zero to £6,000⁹ with an average settlement of £1,129.99.

It is often asserted that mediation enables parties to negotiate creative solutions to their disputes. The Clinic's records support this, with 56 (35%) of the 162 settlements including non-monetary terms. 31 of these (19%) were for payment plus additional terms, the most common being social media stipulations (5), apology (4) and repairs being carried out (3). 25 cases (15%) settled on the basis of non-monetary terms only. 9 of these settled on the basis of repairs being carried out, 3 on provision of replacement goods and 5 were simply withdrawn after the mediation.

Below are some specific examples of non-monetary settlements:

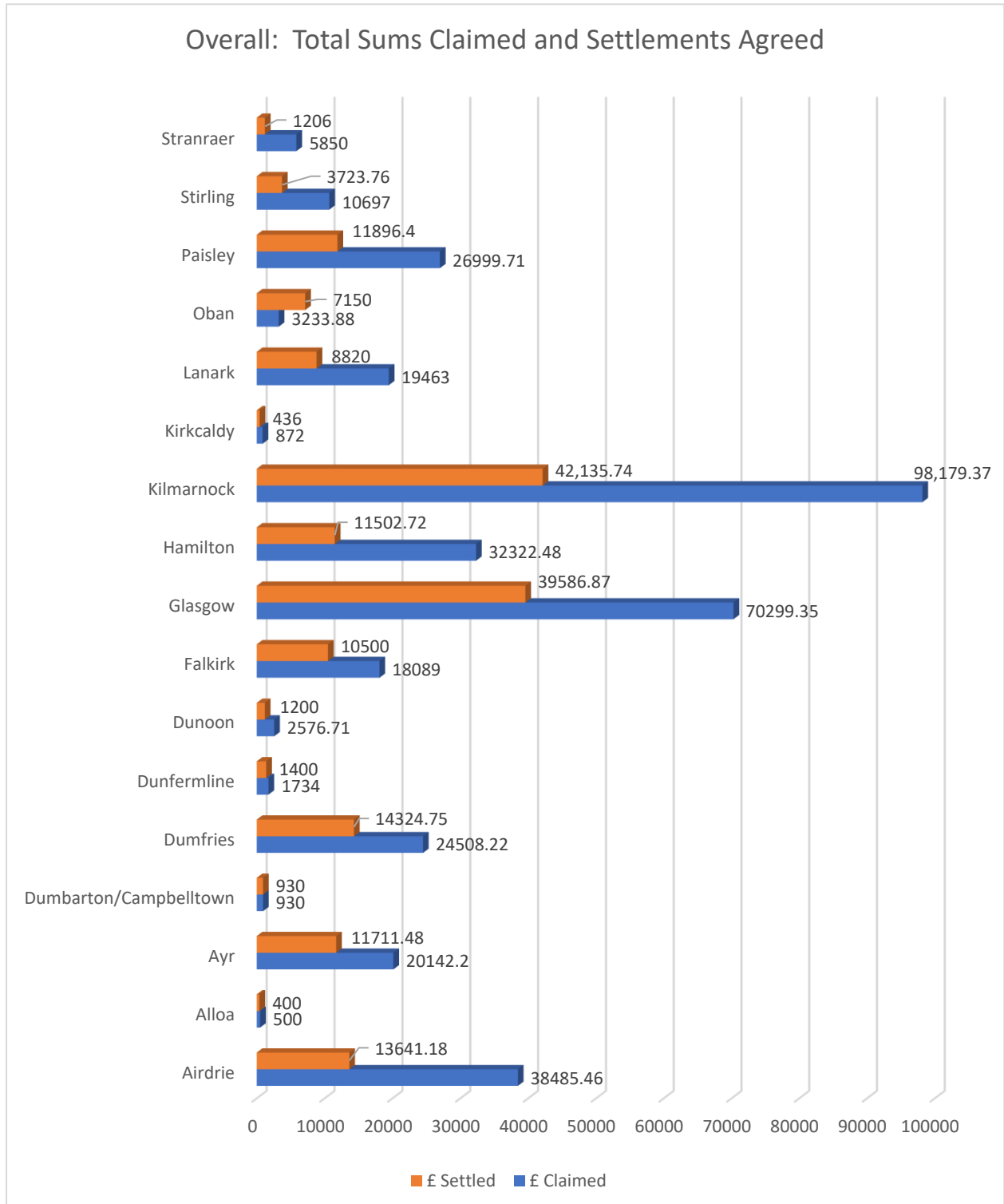
- Party B would attend to the interment of the ashes of the deceased.
- Released from Contract
- Respondent to pay and oversee install of new decking for claimant.
- Letter of apology; replacement door to be fitted at respondent's cost.
- Respondent to replace one side of shed subject to specification
- Cost of court claim to be deducted from recovery costs. Split 50/50 repair bill for car.
- Cladding to remain property of claimant.
- Respondent or respondent's family not to make negative comments about claimant's business on social media.
- Respondent to ascertain if £930 is owed; if so payment of full amount.
- Instalments if work finished to standard by 30.04.2022.
- Building renovations to be completed to standard by November 2022
- Return of two prams
- Remedial works within a year plus 50% of court costs
- Rectification of any further issues with fan at no cost. Warranty to be supplied.
- Delivery of water cooler; Claimant to remove negative reviews from social media
- Replace defective doors; supply replacement part
- £200 to be paid within 24hrs of mediation session
- No admission of liability
- Staged schedule of works for complete by agreed date.
- Supply of paperwork
- Several instances of payment by instalments

65 cases did not settle. Amounts claimed total £179,342.15 with an average claim of £2,788.67.

⁸ Further details are contained in the accompanying spreadsheet named Settlements Report.

⁹ The settlement figure covered all future liability for fees.

Table 2: Overall sums claimed and settlements agreed by sheriff court



Case Types¹⁰

The most common cases were disputes over goods and services (116), followed by building disputes (72). 62 were listed as “unknown”, some because they are difficult to categorise and some because the mediators have not yet returned the information. Complex matters may cut across two or more overlapping categories. For example, a small building company may supply and fit a kitchen; the resulting Simple Procedure case could include a building dispute, a contract dispute (for non-payment) and a dispute over goods and services (such as unsatisfactory white goods).

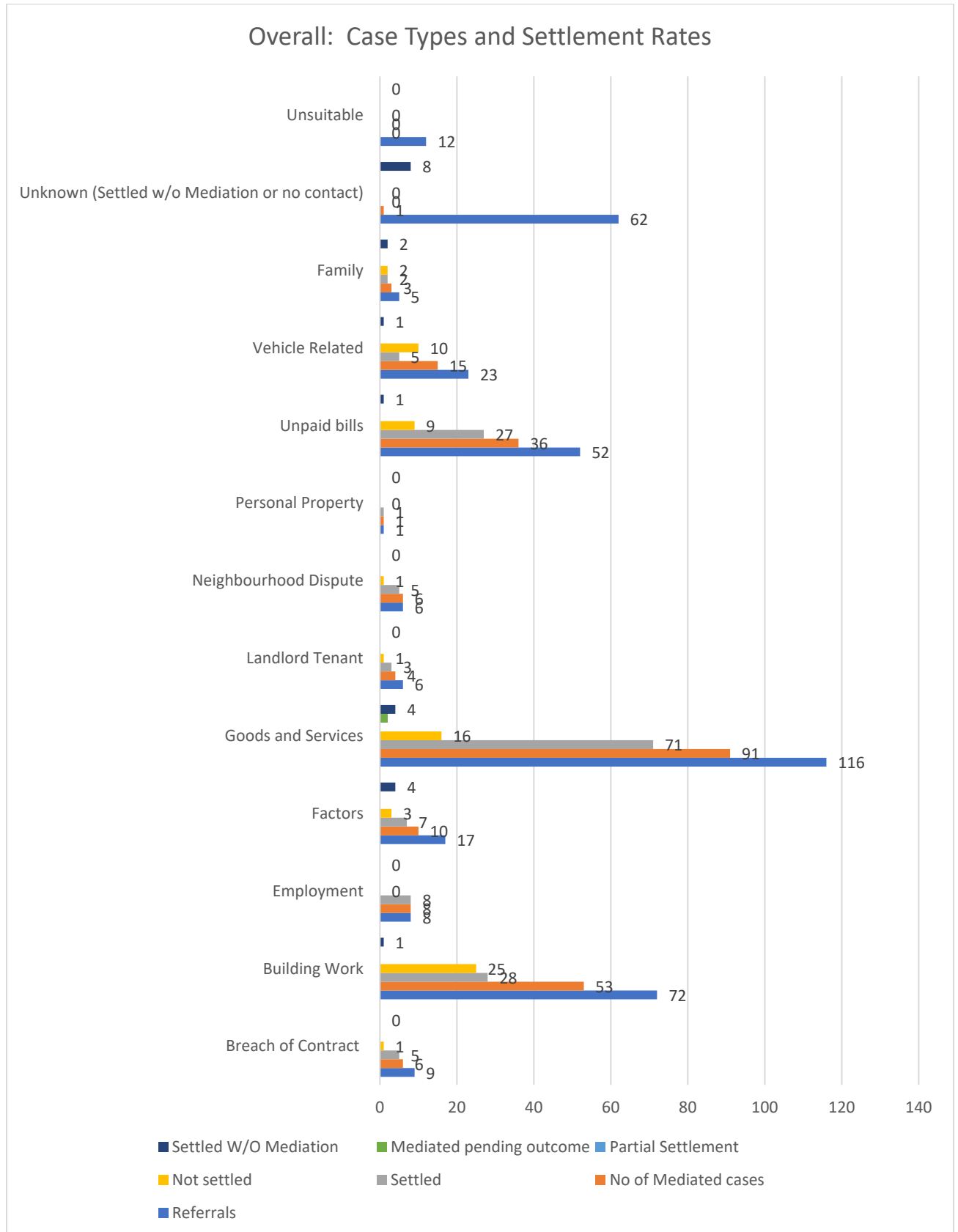
When it comes to cases that mediated, 70 of the 89 disputes over goods and services settled (79%), along with 26 of the 34 disputes over unpaid bills (76%). Somewhat lower settlement rates applied to building work (28 of 50 cases - 56%) and factor disputes (3 of 6 - 50%), while vehicle disputes seem the most challenging of all (5 of 14 - 36%). It’s clear that mediators are dealing with a diverse range of situations and people, calling for a great deal of flexibility. It is important to stress that not all cases should settle: parties may have strongly opposing views, or the law may be unclear and require a sheriff’s input.

Two factors affect the figures:

- a) the Clinic allocates cases from some courts directly to particular mediators, who then conduct their own intake calls. There may be some delay in reporting (14 cases are currently with these mediators);
- b) the end date of March is recent, meaning some cases are still open (17 at the time of writing.)

¹⁰ These figures are based on the 389 referrals rather than 234 cases mediated, hence the higher numbers.

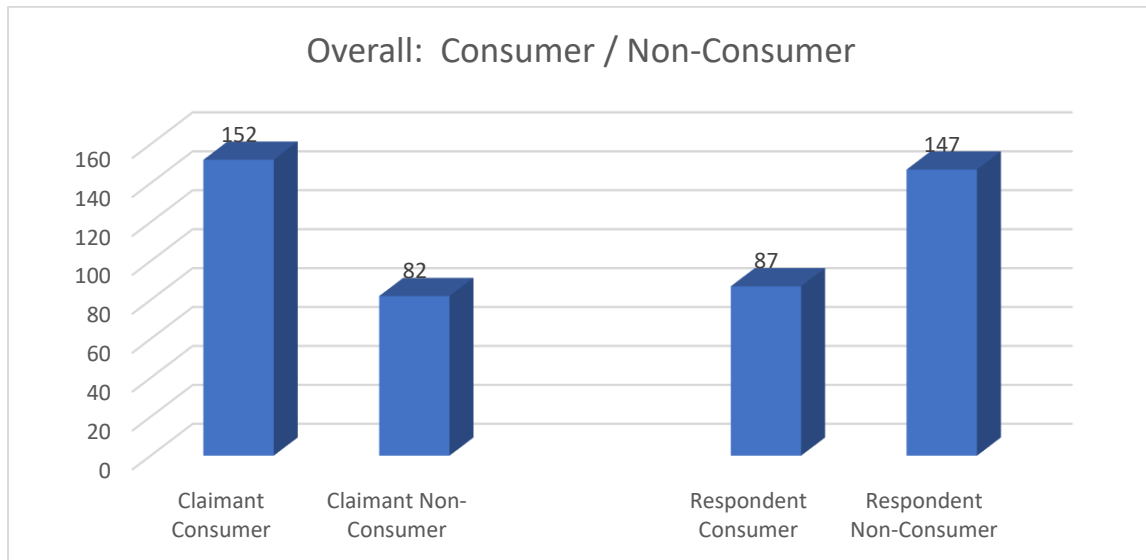
Table 3: case types and settlement rates



Parties

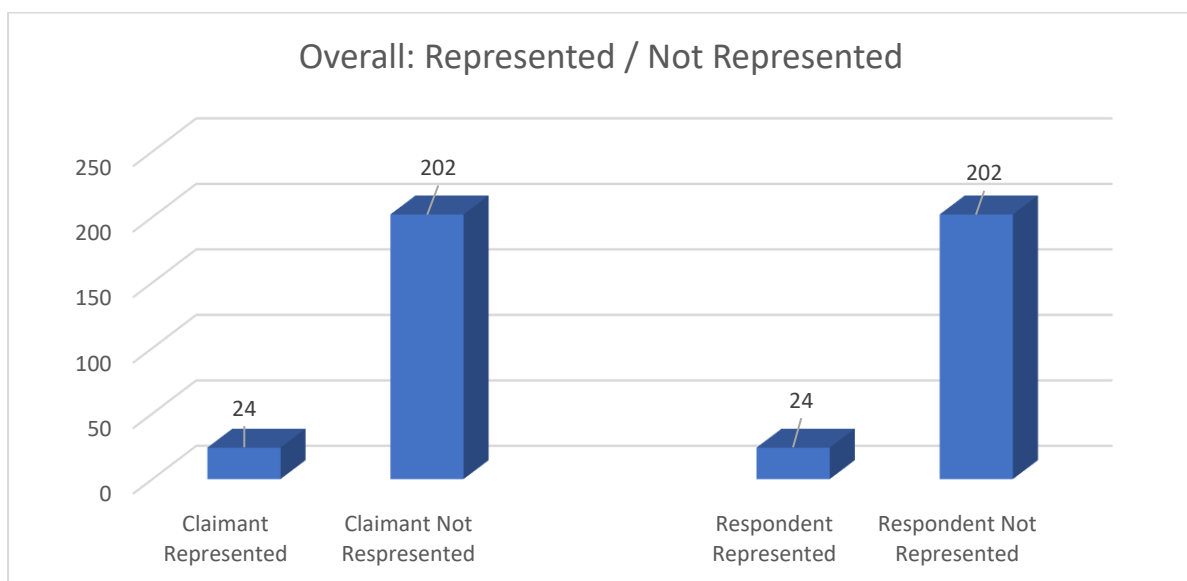
239 of the 468 mediation parties (51%) were consumers and the remaining 229 (49%) were involved in a Simple Procedure action in the course of a trade or business. 65% of claimants who took part in mediation were consumers (152 out of 234). Respondents were more likely to be non-consumers (147 out of 234, or 63%).

Table 4: Consumers/non-consumers



We also ask parties if they are represented. Representatives are either solicitors or those acting on behalf their employers; friends and supporters are not counted as representatives. Of the 226 mediation parties, 404 (89%) were unrepresented.

Table 5: Represented/not represented



These tables illustrate that the Clinic and its mediators improve access to justice for both consumers and businesses. For most consumers and many small business (including sole traders) the costs of legal representation are unaffordable or uneconomical for the value in dispute. As noted above, the Clinic supports the courts in fulfilling their responsibility to ensure unrepresented people are not disadvantaged.

Parties' views

The Clinic routinely seeks feedback from mediation participants. The accompanying report shows the results for the period January 2022 to March 2023.

- After an initially slow start, the response rate has gradually improved. By March 2023 107 parties had completed the survey. Not all participants answer all questions.
- 74 were individuals, 25 were acting on behalf of an organisation and 7 were legal representatives.
- 64 preferred Zoom, finding it convenient, comfortable and less confrontational; 8 would have preferred face-to-face because, for example, it would be less stressful or the other party was avoiding the issues or being coached; 14 expressed a preference for a face to face meeting and 6 didn't mind either way.
- 65 agreed or strongly agreed that mediation was an efficient way to resolve their dispute;
- 97 agreed or strongly agreed that the mediators understood the issues, and 100 agreed or strongly agreed that they were impartial.
- Only 29 of 105 agreed that mediation had improved relations with the other party (though 47 neither agreed nor disagreed.) 29 disagreed. Limited text comments alluded to the mediator's objectives and 4 hours being a waste of everyone's time;
- 73 agreed or strongly agreed that they were satisfied with the outcome while 15 disagreed and 15 neither agreed nor disagreed.
- 66 agreed or strongly agreed that the outcome was fair while 16 disagreed. 21 neither agreed nor disagreed.

The survey also asks three open questions: "What were you hoping to achieve?" "What did mediation achieve?" and "Suggestions for improvement." The majority of those responding simply sought settlement or resolution with some wishing "closure to an ongoing dispute." One mentioned avoiding court and achieving "peace of mind". Three parties said it had achieved nothing.

Two longer responses highlight benefits beyond settlement:

- *The respondent did in fact want to settle, and an agreement was reached. I was very pleased with the way the mediation was handled. It felt very professional and*

impartial, but also reassuring - I have never raised a legal action before and the way it was approached helped put me at ease.

- *The mediation enabled direct communication with the respondent who had previously ignored any correspondence I had sent to the company. With the services of the mediator my problem was resolved in just over one hour after I had been trying to sort things out for one year. I am most grateful to be given the opportunity to use the mediation service and to finally have peace of mind.*

When asked about potential improvements to the service, most were positive. “the mediation service was very good in facilitating an agreement between the two parties”; “I cannot think of any way in which the service I received could be improved”; “They were absolutely professional and brilliant”. One felt the mediators were looking for “settlement rather than justice,” suggesting the mediator role could be explained more clearly.

There may be a correlation between not reaching settlement and negative responses to some of the questions above, though it is not possible to test this via the Clinic’s anonymous survey software. Further research could usefully address the factors contributing to both positive and negative evaluations of the service received.

Intake calls

When sheriffs refer parties to mediation intake calls provide the first opportunity to speak to someone about their case. Mediation remains unfamiliar and, on occasion, unwelcome to litigants. Nearly 90% of the Clinic’s clients are unrepresented and many are unclear about the court process and mediation’s place in it. Some have overoptimistic views about their prospects for success.¹¹ Early in the Clinic’s involvement in small claims it became clear that a pre-mediation conversation to understand and address these issues is vital, and we began offering an intake call in every case.

The purpose of the intake call is to gather details from the parties in their own words and explain how mediation works in practice. The calls conclude by asking if they are willing to take part in the process. Some people call us directly, some send a message asking for a call-back and some respond after the Clinic has made first contact. The phone or Zoom calls take an average of 20 minutes and are conducted by volunteer mediators and undergraduates.

Details of the number and average length of intake calls are contained in the table below. They show the Clinic providing a significant additional service to support unrepresented people, involving over 600 calls and at least 200 hours of volunteer time over 15 months.

¹¹ For more on addressing overoptimism and encouraging parties to mediate, see Charlie Irvine, [A nudge to mediate: new report from England and Wales](#) Kluwer Mediation Blog, 18/4/23.

Period	Jan- March22	April- June22	July- Sept22	Oct- Dec22	Jan- March23	OVERALL TOTAL
Total Referrals	97	81	65	72	74	389
Potential Calls (2 per case)	194	162	130	144	148	778
Actual Calls with Claimant	92	74	60	64	47	337
Actual Calls with Respondent	72	63	48	60	39	282
Total no of actual calls	164	137	108	124	86	619
Total no of minutes (average 20 mins per call)	3280	2740	2160	2480	1720	12380
No of hours spent on calls	54.7	45.7	36.0	41.3	28.7	206.3

Conclusion

This report summarises what Strathclyde Mediation Clinic has achieved with 15 months of Scottish Government grant funding. We conducted significantly more mediations than the previous year, with a higher settlement rate.¹² The accompanying spreadsheet and survey report provide additional detail.

The figures paint a nuanced picture of case types, party characteristics and settlement amounts. It seems clear that greater use of mediation for Simple Procedure cases will enable more parties to resolve their disputes without resorting to evidential hearings, with no resultant reduction in their satisfaction with the system. As noted above this is likely to result in significant cost savings, estimated at approximately £157,212.80 for the grant period, while freeing up court time to deal with more serious matters. The Clinic's work contributes more widely to the Scottish economy by helping individuals and businesses achieve a speedy and mutually acceptable resolution to disputes.

We hope this report will enable policymakers to make informed decisions about mediation's future role in the Scottish justice system.

Charlie Irvine
Clinic Director
3/5/2023

¹² 234 in 15 months equates to 187 per annum. In the previous 12 months the Clinic provided 125 mediations.