

Should there be a mediation privilege?

In exploring the debate over mediation privilege, William Wood QC highlights the “sheer complexity of the law in this area”.

It is this complexity which explains the lack of consensus between practitioners and the legal profession in developing the debate.

Referenced to a growing body of case law and statutes, William Wood asks the following questions:

- Why do mediators care about the scope of confidentiality and privilege?
- When will the Courts permit the disclosure of documents or discussions that are generated at mediations?
- Should mediators be worried or is the present state of the law acceptable?
- Do we need legislation to introduce a new “mediation privilege”?
- Do the overseas jurisdictions offer any obvious solutions?
- Will the new EU Mediation Directive be the means to trigger any necessary legislation?
- How do we take the debate forward and how in the short-term should mediators conduct themselves given the present state of the law?

He challenges us as mediators “to be very clear about **why** we deserve it (mediation privilege) and **how** it would help us”.

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