



法律援助署

Legal Aid Department



Legal Aid & Mediation

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(A) Historical Background :

Pilot Scheme on Legal Aid for Mediation in Matrimonial Cases (2005 – 2006)



(1) Background

- in May 2000, the Judiciary launched a 3-year pilot scheme
- to test the effectiveness of mediation in resolving matrimonial disputes
- high users' satisfaction rate

- **high agreement rate**
- **saving of court's time**
- **conclusion : mediation was a viable option for family dispute resolution in HK**
- **Chief Justice's Working Party on Civil Justice Reform issued its final report in March 2004 : recommended LAD should have power to fund mediation in appropriate cases**

(2) Pilot Scheme

- modeled on the Judiciary's Pilot Scheme
- available to aided persons (AP) in matrimonial cases on a voluntary basis

- to encourage mediation, LAD funded the entire costs of mediation
- assigned solicitor (AS) would refer AP to the Mediation Coordinator's Office (MCO)

In order to assess the effectiveness of mediation, upon conclusion of mediation, the mediator had to report the outcome to LAD



Findings & Evaluation

(i) No. of cases

- total 6,297 legal aid certificates granted
- 297 indicated an interest to attempt mediation
 - 107 cases referred to mediators
 - 88 cases were mediated : 61 cases reached full (48) or partial (13) agreement

- **No. of cases not particularly high because majority were either**
 - **not suitable (e.g. involving domestic violence)**
 - **not necessary (e.g. no real issue in dispute)**
 - **or not possible (e.g. OP could not be located / refused to participate)**

(ii) Costs

- **average mediation fee for each case : \$5,413**
- **average time spent : 8 hours**

(iii) User Feedback

- **90% of those surveyed rated the Pilot Scheme positively**

(iv) Recommendations

- **the AJLS panel supported the Administration's proposal that mediation in legally-aided matrimonial cases should be established as a permanent feature of the legal aid service**

(B) CJR & Legal Aid for Mediation



(i) As a result of the implementation of the CJR and the introduction of Orders 1A, 1B and amended Order 62 of the Rules of the High Court and the Rules of the District Court, mediation became an integral part of civil litigation. LAD takes the view that the cost of mediation is costs incidental to the proceedings for which legal aid is granted

(ii) Is Mediation a Pre-Requisite for the Granting of Legal Aid?

- **No. Mediation will not be a mandatory pre-condition for the granting of legal aid**
 - **eligibility for legal aid : means and merits tests**

(C) Engagement of Mediators : Approval Criteria and Process

(i) Manual for Legal Aid Practitioners

- see paragraph 12 Chapter 7 –
Guidance Notes to Solicitors Handling Civil
Cases

“12. Engagement of Mediators

12.1 For suitable cases ready for mediation, you should write to the Director promptly to obtain approval so that timely mediation sessions can be arranged.



12.2 The information which the Director needs in order to approve your request for the engagement of a mediator includes the name of the mediator, the qualification and experience of the mediator, the hourly rate of the mediator, the estimated number of hours required for mediation and any other incidental expenses such as hiring of venue for mediation, the terms of payment of the costs of mediation and whether the aided person has been advised of the 1st charge implications.

12.3 If the aided person recovers or preserves property in the proceedings, mediation costs will form part of the 1st charge. It is your duty to explain this to the aided person and to obtain from the aided person written confirmation of such explanation.”

(ii) “Important Note to Assigned Solicitors”

- **attached to every assignment letter**

“

IMPORTANT NOTE TO ASSIGNED SOLICITORS

**LEGAL AID COVERS MEDIATION IN CIVIL LEGAL
AID CASES**

**Please note that legal aid covers the reasonable costs of the
aided person incurred in mediation.**

If the aided person wishes to undergo mediation as an alternative means to resolve the issues in dispute, and that the case is one suitable for mediation, as assigned solicitor, you should promptly write and obtain the approval of the Director of Legal Aid (DLA) before a mediator is engaged.

The information which the DLA needs in order to approve your request for the engagement of mediator includes the name of the mediator, the qualification and experience of the mediator, the hourly rate of the mediator, the estimated number of hours required for mediation and any other incidental expenses such as hiring of venue for mediation, the terms of payment of the costs of mediation and whether the aided person has been advised of the 1st charge implications.

If the aided person recovers or preserves property in the proceedings, mediation costs will form part of the 1st charge. This should be explained to the aided person and such explanation confirmed in writing by the aided person.

If you have any queries about legal aid for mediation, please contact the case handling officer.”

(iii) Information Needed

(a) AS to advise us the case is suitable for mediation

(b) AS to identify areas/issues in dispute to be mediated

(c) timing : AS to advise us the case is ready for mediation



(d) particulars of nominated Mediator

- **name**
- **qualification (CV attached)**
- **experience as mediator in the field of dispute**

(e) costs

- **hourly rate**
- **estimated no. of hours required**
- **incidental expenses**

e.g. hiring of venue

- **community hall**
- **some mediators will conduct**

mediation at their offices without additional charges

(f) terms of payment

- **flexible**
- **subject to parties' agreement**

- **Mediators' fees are treated as disbursements of proceedings**

The following options have been observed :

- **equally shared between parties to mediation irrespective of result**
- **costs in the cause**
- **borne by the opposite party in any event**

(g) subject to DLA's 1st charge / paid out of contribution paid / payable by AP

- **subject to DLA 1st charge if AP successfully recovers or preserves any property in the aided proceedings**

- **AS to advise AP of the implications on 1st charge / contribution**

Legal Aid is NOT Free

When you get or keep money or property with the help of legal aid, the Department will take back from such money or property all the expenses paid, including the costs which your opponent is ordered to pay but fails to do so.

The Department would pay the fees of your lawyers and all other expenses when your case is being litigated. In doing so, the Department is merely providing you with a loan for the purpose of litigation. In the end, it is you who will pay for such fees and expenses out of the money or property that you get or keep.

In this circumstance, your financial position is the same as a litigant using his own money to litigate.

To ensure that you will benefit from the aided proceedings, you must pay special attention to and consult your assigned lawyer on the following matters:

- the costs of the aided proceedings
- the value of the money or property that you wish to get or keep
- whether the court would order your opponent to pay your costs and expenses
- whether your opponent has the ability to pay



Legal Aid Department



(h) AP' written consent

- **AS to explain the aforesaid especially the costs implications to AP and to take instructions**
- **AP's instruction and confirmation of AS's explanation in writing**

(D) Statistics



No. of cases (counted by court action) with approval given to AS to engage mediator since CJR (as at 31.3.2010) :

Case Type	2009 Q1	2009 Q2	2009 Q3	2009 Q4	2010 Q1	Total
MAT			5	7	9	21
ECC			1		6	7
MPI		2	2	4	30	38
RD					5	5
MLT		1		4	7	12
MDN			1			1
MMN				1	3	4
MPN				1		1
M		1		8	10	19
Total	0	4	9	25	70	108



Mediation costs paid for assigned-out cases since CJR (as at 31.3.2010) :

	2009 Q1	2009 Q2	2009 Q3	2009 Q4	2010 Q1	Total
Mediation costs	\$0.00	\$0.00	\$5,096.00	\$73,841.50	\$79,618.50	\$158,556.00



Outcome of mediation (as at 31.3.2010) :	
Successful	11
Partially Successful	1
Unsuccessful / Mediation not proceed with	26
Pending	70
Total	108

(E) Experience Sharing : Successful Cases

Case No. 1

Successful Matrimonial case

- **issues in dispute : custody and maintenance for child**
- **quoted hourly rate : less than \$150**
- **estimated no. of hours : 11**
- **no incidental expenses**

- comprehensive Chinese settlement agreement dealing with custody, daily care and control, child's miscellaneous expenses, pocket money, HOS flat and wife's nominal maintenance
- shortly thereafter the parties re-engaged the same mediator and signed a supplementary mediation agreement on child's daily care
 - total mediation fees paid : <\$1,000

Case No. 2

Successful Matrimonial case

- issues in dispute : divorce, custody, access and maintenance
- quoted hourly rate : \$400
- additional charge : \$400 for drafting mediation agreement and another sum \$400 as adm. fee
- venue : free



Case No. 3

Successful Matrimonial case

- **issues in dispute : custody, access and maintenance**
- **quoted hourly rate : \$250**
- **additional charge : Nil**
- **venue : free**
- **total mediation fees paid : \$2,125**
(4 sessions)

Case No. 4

Successful ECC and connected MPI case

- issue in dispute : quantum (liability admitted)
- charges : \$5,000 for the 1st day and each subsequent day
- parties jointly prepared a Summary of Case and a Position Statement
- estimated no. of hours : ½ day

- **payment terms : costs in the cause**
- **global settlement and costs to AP,
to be taxed if not agreed**
- **total mediation fees paid : \$5,000**

Case No. 5

Successful Professional Negligence case

- quoted hourly rate : \$1,500
- venue : \$2,200
- total mediation fees paid : \$13,100



Even though not all mediations result in full settlement, sometimes the parties are able to narrow down their differences during the course of mediation and come up with a full settlement at a later stage.

Case No. 6

Unsuccessful Personal Injuries case

- quoted hourly rate : \$2,000
- end of mediation : dispute over settlement sum narrow down
- case settled shortly after mediation
- settlement sum : amount slightly > amount advised by counsel

(F) Practical Tips & Frequently Asked Questions



(i) Extend / amend legal aid certificate to cover mediation?

- **not necessary**
- **as mediation is part of the litigation process, the legal aid certificate does not need to be extended to cover mediation.**
- **but need LAD's prior written approval to engage a mediator and incur the cost of mediation (as with the case of engagement of experts)**



(ii) Choice of Mediator

- **belong to AP in consultation with AS**
- **role of AS : render necessary advice to AP e.g. costs implication , suitability of mediator so that AP can come to a choice**
 - **for matrimonial cases : AP can also approach Family Mediation Co-ordinator's Offices for information**

(iii) Hourly rate and no. of hours for mediation

- **consider on a case-by-case basis**
- **reasonable in all the circumstances**
- **factors to be considered :**
 - (a) nature and complexity of the disputes in question**
 - (b) experience of mediator in the field of dispute**

(c) the value of the matters under mediation

(d) the benefits to be obtained in proportion to the costs involved

(e) DLA's 1st charge / amount of contribution paid by AP

- **quotation from other mediator for comparison where appropriate**
- **usually not more than 15 hours**
- **paramount consideration : AP's interest**
- **protect public fund as well**

(iv) Pro bono mediators

- **not LAD's policy to require pro bono mediator**
- **when the mediation's costs is disproportionate to the amount claimed**

(G) New Insurance Mediation Pilot Scheme (NIMPS)



- managed by the Hong Kong Federation of Insurers
- to encourage settlement of work-related personal injuries claims between insurance companies and injured workers
 - NIMPS Fund will be responsible for the first 16 hours of mediation

- for legally aided work-related PI cases where quantum is not substantial or borderline cases or case involving high contributory negligence (CN), AS should consider whether NIMPS is appropriate
 - for details, please contact HKFI

Q & A

THANK YOU

