

For information

LegCo Panel on Administration of Justice and Legal Services

**Pilot Scheme on Mediation of
Legally Aided Matrimonial Cases**

PURPOSE

The Administration will launch a Pilot Scheme on mediation of legally aided matrimonial cases (Pilot Scheme). This paper informs Members of the arrangements.

BACKGROUND

2. Concerned by the increasing number of divorce petitions, the Judiciary launched a 3-year pilot in May 2000 to test the effectiveness of mediation in resolving matrimonial disputes. The Judiciary funded the mediation fees for 930 matrimonial cases during the period. The cost of the pilot scheme then, exclusive of staff costs, was \$6.2 million. The Judiciary's pilot scheme concluded that mediation helped produce a high users' satisfaction rate and high agreement rate and resulted in saving court time. In this regard, mediation is considered as a viable option for family dispute resolution in Hong Kong.

3. In tandem, the Chief Justice's Working Party on Civil Justice Reform has examined possible reform in, inter alia, the area of alternative dispute resolution, including mediation, and issued its final report in March 2004. To encourage greater use of mediation, one of its recommendations is for the Legal Aid Department (LAD) to have power in suitable cases, subject to further study by the Administration and consultation on the promulgation of the detailed rules for the implementation of the scheme, to limit its initial funding of persons who qualify for legal aid to the funding of mediation, alongside its power to fund court proceedings where mediation is inappropriate or where mediation has failed. The final report also notes the need for the Administration to conduct its own pilot scheme to evaluate the cost-effectiveness of the proposal before deciding on the way forward.

4. From a legal aid policy perspective, before the Administration considers extending funding to cover mediation of legally aided matrimonial cases, it needs to establish if the proposal is justified on grounds of cost-effectiveness and the full implications. Against this background, we propose to launch a pilot scheme on mediation of legally aided matrimonial cases.

THE PILOT SCHEME

Scope & Features of the Pilot Scheme

5. The Judiciary's existing facilities established since its pilot in 2000 – including a Mediation Coordinator's Office (MCO) and its panel of mediators with track record in providing the service, are designed for and apply to mediation service of matrimonial cases only. The Administration's Pilot Scheme will model on the Judiciary's pilot scheme, and takes into account the specific recommendations of the Civil Justice Reform report and the views of the Legal Aid Services Council. The Administration will also ensure that assigned solicitors comply with the Practice Directions issued by the court requiring solicitors to advise their divorcing/separating clients of the availability of mediation.

6. The Judiciary's MCO currently conducts information sessions for applicants and respondents of matrimonial proceedings and refers cases considered suitable for mediation to the accredited mediators on its panel. The Administration's Pilot Scheme will operate using the existing services provided by the MCO. Legally aided persons and the other parties will be invited to join the Pilot Scheme on a voluntary basis. Main features of the Scheme are set out in **Annex**.

Evaluation of the Pilot Scheme

7. There will be a Steering Committee comprising representatives from the Administration Wing, LAD, the Judiciary and the Home Affairs Bureau to oversee the Pilot Scheme. The Steering Committee will also evaluate the Pilot Scheme in the following areas –

- (a) The resources implications of providing legal aid for mediation of matrimonial cases, including individual cost components (e.g. lawyers' cost, mediators cost) as well as the duration for completing the legally aided cases; and

- (b) the operational and legislative requirements if the Pilot Scheme were to turn into a standing feature of legal aid service.

Implementation Timetable

8. We aim to launch the Pilot Scheme in the first quarter of 2005. The Pilot Scheme will last for one year, enabling us to collect data on about 120 cases for more detailed analysis.

9. Taking into account that a matrimonial case takes about two years to complete, we aim at completing the evaluation of about 120 cases covered under the Pilot Scheme by the first quarter of 2007.

WAY FORWARD

10. LAD will draw up a panel of mediators modeled on the Judiciary's pilot scheme. It will issue information leaflets to publicise the Pilot Scheme, and require assigned solicitors to advise legally aided persons of the availability of the Pilot Scheme and encourage them to use mediation to resolve family disputes. It will also request the assistance of the Law Society to help publicise the Scheme amongst its members particularly those who are also legal aid practitioners.

Administration Wing
Chief Secretary for Administration's Office

December 2004

**Proposed Essential Features of the Pilot Scheme
on Mediation of Legally Aided Matrimonial Cases**

(A) Roles of different parties in the Pilot Scheme

LAD

LAD will administer the Pilot Scheme. Its main roles are to –

- conduct the usual means and merits tests on the legal aid applicants and inform those who have passed the tests of the Pilot Scheme;
- assign solicitors to the legally aided persons as is the case now once it decides to grant legal aid;
- maintain a panel of mediators who are on the Mediation Coordinator's Office (MCO)'s panel of mediators and who accept the terms and conditions for assignments from LAD under the Pilot Scheme;
- approve funding beyond the specified hours of funded mediation in suitable cases;
- monitor the development of the cases concerned and ensure the assigned solicitors and mediators act in accordance with the requirements of the Pilot Scheme; and
- collect the necessary data for the evaluation of the Pilot Scheme.

Legally Aided person

2. The legally aided person and the other party involved in a matrimonial case are invited to join the Pilot Scheme on a voluntary basis. They may choose a mediator out of a list of those who are accredited and have agreed to participate in the Pilot Scheme. For cases considered suitable for mediation, they may join before or after the commencement of proceedings.

Assigned solicitor

3. The assigned solicitor is required to advise the legally aided person of the availability of mediation in accordance with the court's Practice Directions and of the Pilot Scheme . He will also advise the legally aided person in the course of mediation as and when necessary, and appear on behalf of him in subsequent court proceedings. Where the legally aided person has indicated his unwillingness to attempt mediation, the assigned solicitor will inform LAD of the reasons given by him.

Mediator

4. The mediator renders mediation service at a fixed rate per hour. He reports to LAD on the outcome of the mediation and, if necessary, seeks LAD's approval to extend the number of hours of mediation funded by the Pilot Scheme beyond the specified hours.

MCO

5. The Judiciary's MCO will assist in providing information sessions for the legally aided person and the other party, and assessing whether the case is suitable for mediation, based on the guidelines adopted in the Judiciary's pilot scheme. Should a case be identified as suitable for mediation and if the parties so agree, the MCO will assist them to choose a mediator from a list of accredited mediators who have agreed to participate in the Administration's Pilot Scheme. The MCO will also report to LAD on whether the parties agree to mediate, and if so, the name of the mediator chosen by the parties.

(B) Other logistical arrangements

Number of hours of mediation

6. In line with the Judiciary's pilot scheme, the number of hours for mediation under the Administration's Pilot Scheme will be capped at 15 hours per case. Based on the mediator's report, LAD may approve funding beyond the initial 15 hours in suitable cases (e.g. where it is considered that the extension would facilitate an agreement between parties concerned).

Level of mediators' fees

7. Under its pilot scheme, the mediator fee paid by the Judiciary was \$600 per hour. We understand from the Judiciary that it had little difficulty in engaging mediators at this rate. We will adopt the same rate for the Administration's Pilot Scheme.

Payment of mediators' fees

8. In order to encourage the legally aided person and the other party to adopt mediation and participate in the Administration's Pilot Scheme, LAD will bear the mediators' fees for both sides. The mediators' fees incurred will not be recovered from the legally aided person.
