

For information

LegCo Panel on Administration of Justice and Legal Services

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

PURPOSE

This paper provides Members with an interim update on the progress of the Pilot Scheme on mediation of legally aided matrimonial cases (Pilot Scheme).

BACKGROUND

2. Following consultation with the Panel in February 2005, the Legal Aid Department (LAD) launched a one-year Pilot Scheme on 15 March 2005. From a legal aid policy perspective, the Pilot Scheme aimed to establish whether extending funding to cover mediation of legally aided matrimonial cases was justified on grounds of cost-effectiveness and the full implications.

3. As reported at the Panel meeting on 28 February 2005, the Pilot Scheme was modeled on the Judiciary's pilot scheme that took place from May 2000 to July 2003, and took into account the specific recommendations of the Civil Justice Reform (CJR) Report and the views of the Legal Aid Services Council. It operated using the Judiciary's existing facilities established for matrimonial cases since 2000 – a Mediation Coordinator's Office (MCO) and a panel of accredited mediators. The main features of the Scheme, which were set out in the above-mentioned panel paper, are at the **Annex**. The Pilot Scheme ended on 14 March 2006.

PROGRESS

Caseload as of 7 April 2006

4. Legally aided persons were invited to use the mediation service under the Pilot Scheme on a voluntary basis. They may do so at any stage as their cases progress.

5. Solicitors in 4,781 cases have reported to LAD whether mediation would be attempted by the legally aided persons. The legally aided persons in 194 cases have expressed interest to attempt mediation and have been referred to the MCO, while the remaining 4,587 cases have not been so referred. At preliminary count, for over 3,000 of these 4,587 cases, mediation was either obviously **not suitable** (i.e. domestic violence/child abuse was involved), or **not necessary** (i.e. there was no real issue in dispute), or **not possible** (i.e. aided person/opposite party was a mental patient, the opposite party could not be located/refused to participate). For the other cases, the legally aided persons have not opted for mediation because they preferred other means to resolve their disputes (e.g. by way of reconciliation or counseling or through their solicitors or court), or considered that mediation would not help, etc.

6. Of the 194 cases that have been referred to MCO, 68 cases were referred to mediators and 43 cases were still in process as of 7 April (e.g. awaiting for information sessions or parties' instructions). No referral to mediators were made in respect of the remaining 83 cases mainly because opposite parties refused to attend the information session or to mediate, or it subsequently transpired that there was no real issue in dispute between the parties.

7. For the 68 cases referred to mediators, 23 were still in process. For the remaining 45 cases, 24 completed mediation with full agreement; two with partial agreement; 12 without agreement, and mediation did not take place for seven cases.

8. Up to 7 April, LAD paid a total of \$168,770 to mediators for 33 cases, i.e. an average of \$5,114 per case. Average time spent per mediated case was 8.5 hours.

Panel of Mediators

9. The panel of 73 mediators are those on the MCO's panel list who agree to participate in the Pilot Scheme. The following is a breakdown of their background -

Social work	45
Legal	25
Counselling	2
Clinical Psychology & Psychotherapy	1
Total :	73

Publicity

10. The LAD has actively promoted the Pilot Scheme -
- (a) for legal practitioners, the LAD has requested the Law Society of Hong Kong to assist in publicizing the Pilot Scheme among its members, conducted a seminar for legal practitioners, distributed suitable briefing materials to lawyers assigned to represent aided persons in matrimonial cases, and required the assigned lawyers to advise the aided persons of the availability of mediation and the Pilot Scheme in accordance with the Court's Practice Directions and LAD's instructions;
 - (b) for the public and aided persons, LAD has made available posters, pamphlets and booklets at its offices, produced a video for viewing in the reception areas and in private, and provided information on LAD's website and telephone hotline. LAD staff would meet with legal aid applicants on matrimonial matters to explain and promote the Pilot Scheme; and
 - (c) to target the promotion at members of the public having matrimonial disputes, LAD has provided posters, pamphlets and booklets to the Duty Lawyer Service's Free Legal Advice Service centres for distribution when matrimonial cases were involved. It has also requested Social Welfare Department and a number of non-governmental organizations (NGOs) that are in touch with members of the public who have matrimonial disputes (e.g. Caritas-Hong Kong Family Service) to distribute similar materials.

PRELIMINARY OBSERVATIONS

11. As explained in paragraphs 4 to 7 above, although the Pilot Scheme ended on 14 March 2006, most of the cases are on-going and complete data will not be available for some time.

12. The Steering Committee overseeing the Pilot Scheme, which comprises representatives from the Administration Wing of the CS' Office, LAD, the Home Affairs Bureau and the Judiciary, has reviewed the data so far available and has made the following observations -

- (a) as described in the CJR interim report, mediation is an Alternative Dispute Resolution process which is an alternative or adjunct to civil proceedings in appropriate cases, and not a replacement for civil proceedings. Seen in this light, the Pilot Scheme has provided a viable option for legally aided persons;
- (b) similar to the Judiciary's pilot scheme, the percentage of cases that would use the mediation service under the Pilot Scheme was expected to be small. As seen from paragraph 5 above, there are indeed a large number of cases for which mediation is either not suitable, not necessary or not possible. The Steering Committee therefore observed that the small caseload thus far did not come as a surprise; and
- (c) a very, if not the most, relevant factor affecting the take-up rate of the Pilot Scheme is the Judiciary's on-going Pilot Scheme on Financial Dispute Resolution (FDR) which involves the reform of ancillary relief procedures in matrimonial proceedings. The FDR scheme covers all matrimonial cases involving claims for ancillary relief, except for those in which only nominal maintenance is claimed. Under the scheme, parties are required to make disclosure of their respective financial circumstances before the first appointment with the FDR judge. The judge's role is to explore possible grounds for, and where appropriate, attempt to facilitate early settlement. If parties cannot reach a settlement at the FDR hearing, the matter will then proceed for trial. A preliminary observation of the Steering Committee was that the FDR scheme had enabled quite a number of cases settled at an early stage.

As the CJR Final Report puts it, "judicial mediation" is an important feature of the FDR scheme. Both LAD's Pilot Scheme and the FDR scheme provide channels for settlement of the cases. It is therefore understandable that the number of cases that joined LAD's Pilot Scheme might have been affected. We are seeking the Judiciary's assistance in providing us with more information and data regarding the FDR scheme for further analysis.

WAY FORWARD

13. In tandem, we will take steps to examine the propriety of turning the Pilot Scheme into a standing feature of legal aid service. We will evaluate the resource implications of providing legal aid for mediation of matrimonial cases, including cost (e.g. mediators' fees and lawyers' cost) and the duration for completing the legally aided cases, as well as the operational and legislative requirements involved.

14. Most matrimonial cases take about two years to conclude. We are working towards conducting the final evaluation of the Pilot Scheme in around mid 2007, when hopefully about half of the relevant cases will have been concluded.

Administration Wing
Chief Secretary for Administration's Office

Legal Aid Department

May 2006

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

(A) Roles of different parties in the Pilot Scheme

LAD

LAD administers 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 also advises 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 assists 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 assists them to choose a mediator from a list of accredited mediators who have agreed to participate in the Administration's Pilot Scheme. The MCO also reports 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 is 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. The mediator fee is \$600 per hour, the same as that paid by the Judiciary under its 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 bears the mediators' fees for both sides. The mediators' fees incurred will not be recovered from the legally aided person.
