

**Legislative Council
Panel on Administration of Justice and Legal Services**

**Evaluation of
The Pilot Scheme for Building Management Cases
in the Lands Tribunal**

PURPOSE

The purpose of this paper is to brief Members on the findings of the evaluation of the Pilot Scheme for Building Management Cases (“the Pilot Scheme”) in the Lands Tribunal and the proposed way forward.

BACKGROUND

2. At the meeting on 13 December 2007, Members were briefed on the launching of the one-year Pilot Scheme on 1 January 2008. Members were also informed that a review would be conducted to evaluate its effectiveness after 31 December 2008.

3. With a view to completing the evaluation of the Pilot Scheme, the Pilot Scheme has been extended for another six months from 1 January 2009 to 30 June 2009.

THE PILOT SCHEME

4. The aim of the Pilot Scheme is to facilitate the efficient, expeditious and fair disposal of building management (“BM”) cases in the Lands Tribunal. The Pilot Scheme seeks to achieve its aim by:

- (a) more active case management through the adoption of automatic and paper directions and checklists. Unnecessary hearings would be cut down when the Lands Tribunal would give directions on paper without any oral hearing in circumstances where it is appropriate to do so. Unnecessary interlocutory applications would be discouraged and in appropriate cases, costs sanctions would be imposed; and
- (b) Alternative Dispute Resolution (“ADR”) through the encouragement of the use of mediation.

Scope

5. The Pilot Scheme applies primarily to cases with legal representation on both sides. In appropriate cases, with suitable modifications, the Tribunal may also apply some features of the Scheme to other cases by specific direction made in the course of the proceedings.

Case Management - Automatic and Paper Directions and Checklists

6. Cases under the Pilot Scheme have to follow automatic directions as prescribed in relation to the filing and serving of (i) evidence, (ii) statement of mediation, and (iii) checklists. If a party fails to comply with any of the automatic directions, the Tribunal may give further directions on paper for proper preparation of the case.

ADR - Mediation

7. One of the aims of the Pilot Scheme is to encourage parties to use mediation as an efficient and cost-effective means to resolve BM disputes, either before or after they commence proceedings in the Lands Tribunal.

8. In support of mediation under the Pilot Scheme, the Judiciary has set up a BM Mediation Co-ordinator's Office ("BMMCO") in the Lands Tribunal. The BMMCO provides information and enquiry services for parties who are willing to attempt voluntary mediation before or after they commence proceedings in the Tribunal. The actual mediation service would be provided by private mediators outside the Judiciary.

OUTCOME OF THE PILOT SCHEME

9. For the purpose of the evaluation, data were collected from a variety of sources, including data and records from the Lands Tribunal and the BMMCO, a users' satisfaction survey on mediation service and the feedback from mediators.

Case Management

10. During the period from 1 January to 31 December 2008, there were altogether 140 cases where the case management feature was applied, including 59 represented cases and 81 unrepresented cases.

These accounted for around 47%¹ of the BM cases filed in the Lands Tribunal a year. For these 140 cases, a total of 416 paper directions had been given, i.e. on average three paper directions per case. While they took about 39 hours for the Judges and Judicial Officers to prepare these paper directions, they saved 416 direction-hearings. Based on the average time taken for one direction-hearing, which is 30 minutes, the total court time saved was equal to 208 hours, around 38 court days². Accordingly, litigation time and costs were saved for the parties concerned and the Tribunal.

11. With the use of the checklist, properly prepared cases can be listed for trial without any call-over hearing. Solicitors acting for the parties in pilot scheme cases are required to file the checklists within 14 days of the application to list for hearing. Nevertheless, not many parties have complied with this requirement. Seven cases had been directed by the Tribunal to file the checklists. Two of these cases had fully complied with the Tribunal's direction and in another case, one party (the Solicitor for the Applicant) had filed the checklist as directed. The checklist was designed to facilitate the Tribunal to give paper directions (thus saving costs and time for unnecessary court attendances). Apparently, compliance with this obligation on the part of the solicitors has to be enhanced in the future.

Mediation

(a) Caseload and success rate

12. 185 cases were handled by BMMCO during the pilot period. These included cases filed in the Lands Tribunal, cases filed in/referred by other courts, and cases in which the parties made their approach on their own initiative. A total of 145 information sessions were held for 546 persons. Subsequently, 95 cases were referred to the mediators.

13. Of the 70 cases which were concluded, seven eventually had not used the mediation service because one of the parties had not turned up. Of the 63 completed mediated cases, 19 reached full agreement and seven partial agreement. The success rate was about 41%.

14. On average, it took five hours to reach a full agreement and three hours to reach a partial agreement.

¹ The average number of cases filed in the Lands Tribunal a year is 300.

² It is assumed that each court is in hearings for 5.5 hours a day.

(b) Case distribution among mediators

15. 140 private mediators had registered with the BMMCO. The majority of them (118, 84%) indicated that they would offer pro bono service.

16. Amongst the 63 completed mediated cases, all selected pro bono service.

(c) Duration of the cases

17. No correlation could be drawn between the use of mediation and the duration of the cases. Many factors affected the overall duration of BM cases, e.g. the nature of disputes, the degree of complexity and the parties' attitude.

(d) Profiles of the service users

18. Of the 63 cases which had used mediation service, over half (56%) of the service users were in their forties and fifties. 94% of them had secondary education or above. The median income was \$15,500 a month. Almost all (97%) had legal proceedings commenced when using the mediation service and 52% were legally represented. Out of the 63 cases, there were 21 cases where both parties were legally represented and 24 with only one party represented. In the other cases, the parties were not represented. Among all users, 25% of them were members of incorporated owners and management committees, 7% came from estate management companies and 68% were owners/tenants.

(e) Users' satisfaction

19. The service users were on the whole very positive about the mediation service:

- (i) Of the 73 respondents surveyed, 74% were "satisfied" or "very much satisfied" with the mediation service they received.
- (ii) The majority (77%) considered that the mediation service had helped to save time and litigation cost.
- (iii) 82% of them agreed that the mediation service had helped to avoid tension and conflict in litigation and was an effective alternative in resolving disputes in building management.

20. About the performance of the mediators, the respondents also gave relatively high ratings:

- (i) 82% were satisfied with the mediator's overall performance.
- (ii) 84% commented that the mediator had given full opportunities and ample time for the parties to express their views and to discuss the matters in dispute.
- (iii) 77% considered that the mediator was impartial and fair.

21. Even for cases where no agreement was reached, 80% of the users who responded to the survey still commented that mediation service had helped both parties to understand the matters in dispute and mediation was an effective means in resolving disputes.

22. Although a free service was welcome, 61% of the respondents were ready to pay a certain amount in fees for the mediation service (mostly not exceeding \$1,000).

(f) Mediators' feedback

23. Amongst the 32 mediators (84% of the mediators involved) who had responded in the survey, 84% of them considered that mediation was an effective way to assist the parties to resolve their disputes on building management and 91% of them agreed that the process of referral from BMMCO was smooth.

(g) Saving of time

24. Time was saved for the parties as a result of mediation. The time saved amounted to 25 court days³. This also saved court hearing time.

RECOMMENDATIONS

25. From the above findings, it can be concluded that the Pilot Scheme was effective. The high level of satisfaction among the users of the mediation service also suggests that the service was well received. Mediation resulted in the reduction of time and costs for the parties

³ 19 cases fully settled x 6 hours (average court sitting time per trial) + 7 cases partially settled x 3 hours (average court sitting time per trial / 2) = 135 hours (~ 25 court days)

concerned. Court time was also saved. Judging from the relatively small amount of time involved in reaching full/partial agreement, it proves that mediation is an efficient and economical way to resolve BM disputes. Hence, it is recommended that with effect from 1 July 2009, the Lands Tribunal will adopt the measures taken in the Pilot Scheme as the standard practice.

26. As regards the use of automatic direction and checklist, it is recommended that these features will only be applicable to cases where both parties are legally represented as litigants in person may have difficulties in fully understanding and complying with them.

27. It is also recommended that as provided for in the checklist, solicitors should explore mediation with their clients in all represented BM cases in the Lands Tribunal. For unrepresented cases, on the application of a party or on its own motion, the Tribunal may consider at a suitable stage whether mediation is appropriate. Where the Tribunal considers that mediation is appropriate, the Tribunal may give directions that the parties should follow the relevant procedure. This follows what has been taking place under the Pilot Scheme. It will also be consistent with the arrangements which will be applicable to all civil proceedings in the Court of First Instance and the District Court which is scheduled to take effect from 1 January 2010.

CONSULTATION

28. The Judiciary has consulted the two legal professional bodies and the relevant ADR organizations on the findings of the evaluation and the recommendations above. Except the Hong Kong Bar Association which has not yet responded, all the others have agreed that we should take the above recommendations forward.

29. The Judiciary noted that since the Law Society of Hong Kong last responded at the end of March, it has now made further comments on the evaluation. The Judiciary's response is as follows:

- (a) The Judiciary notes that the Law Society of Hong Kong generally supports the objectives of this Pilot Scheme.
- (b) As regards the checklist requirement, the Judiciary agrees that there is a need to enhance its compliance. As a matter of fact, for parties who have failed to comply with the checklist

requirement, the Lands Tribunal has given further directions as appropriate.

- (c) Having regard to the consensual nature of the use of mediation under the Pilot Scheme, the Judiciary considers it appropriate to use the 63 concluded cases as the basis for calculation. The use of the annual total of 300 cases handled by the Tribunal is misconceived. This is because not all cases are suitable for mediation and the parties may choose to resolve disputes through means other than mediation.
- (d) The Judiciary does recognise that consensual mediation provides an efficient and effective alternative means in resolving disputes in suitable building management cases. Some cases however may not be suitable for mediation. As such, there is no question of mediation being promoted as a “cheap form of justice”, despite the fact that pro bono services are applied in Pilot Scheme cases.
- (e) It is noted that the Law Society of Hong Kong agrees with our recommendations that the case management features, namely the use of automatic direction and checklist, will be applicable to cases where all parties are legally represented and that mediation should be explored in all represented cases and if appropriate, in unrepresented cases as well.
- (f) The technical comments given by the Law Society of Hong Kong on the Practice Direction will be considered and taken into account when finalizing the details for implementation.

WAY FORWARD

30. In view of the positive outcome of the Pilot Scheme, it is planned that with effect from 1 July 2009, the Lands Tribunal will adopt the measures in the Pilot Scheme as the standard practice. The Judiciary would keep the relevant professional bodies informed and give the necessary publicity.