中環昃臣道 8 號
立法會大樓
司法及法律事務委員會秘書
馬朱雪履女士

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司法及法律事務委員會
2003 年 1 月 27 日的會議

有關你 2003 年 2 月 11 日的來函，我現向委員會滙報上述委員會會議記錄的續議事宜。

第 37 段

—— 現呈上由畢馬威會計師事務所撰寫的英國附屬濟助程序試驗計劃最後報告之行政摘要一份，供委員會參考。

根據該摘要第 1.4.1 段所述，該試驗計劃中處理案件的時間得以成功地縮短近 20%，這主要是由於能盡早編排首次約見的時間。

根據該摘要第 1.5.1 段所述，英國試驗計劃內的法庭所審理的案件有 85%達成“和解”，對照其他法庭所審理的案件，卻祇有 72%達成“和解”。這個數字印證了其試驗計劃能達到增加和解比率的目的。

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我想澄清一點，英國初時是基於有實務指示爲依據便足夠的理念而引入該試驗計劃。但是在推行試驗計劃較爲初期的時間，有人質疑祇憑實務指示來推行此計劃，是否合法。據我們所知，首席大法官辦公廳鑑於上述的質疑，迅速修改有關的規則，以便該項試驗計劃得以繼續實施。

考慮到上述事件和香港的法律情況，我們認爲爲了推行我們所建議的試驗計劃，現行的《婚姻訴訟規則》中有若干規則須予擱置。

很抱歉我在會議中未能清楚闡釋這點。

第 51 段

律師會和大律師公會將會就建議的試驗計劃進一步諮詢其會員。此外，我們正諮詢本港的婦女團體和服務機構，聽取他們的意見。我們亦會在婦女事務委員會下次於 2003 年 4 月舉行的會議上，諮詢該委員會。有關諮詢的結果會向貴委員會報告。

本人不勝感謝。

司法機構政務長
（潘婷婷代行）

2003 年 2 月 18 日

1 Executive Summary

1.1 Introduction

1.1.1 In November 1996, the Lord Chancellor's Department (LCD) commissioned KPMG to undertake a study of the Ancillary Relief Pilot Scheme. This scheme involves the application of a draft rule making a number of changes to ancillary relief procedure and timetables in a number of pilot courts, while the remainder of the courts continue to operate under their existing procedures. The purpose of the study was to evaluate the pilot scheme against criteria of:

- reducing duration of cases;
- increasing settlement rates;
- reducing costs.

1.2 Approach

1.2.1 KPMG undertook the study by means of a combination of quantitative and qualitative approaches. The quantitative side involved an examination of the progress, through as many stages of the relevant process as were undergone by a particular case, of a sample of nearly 1,000 cases drawn almost equally from 16 pilot courts and 16 control courts. These cases were selected by date of application, over a period from 1 October 1996 to 6 August 1997, and tracked up to KPMG's final data-gathering visits in June 1998. The qualitative side involved a series of in-depth structured interviews with key stakeholders including District Judges, court administrators and professional representatives. Emerging findings were discussed, at key points during the study, both with LCD and with the Ancillary Relief Advisory Group.

1.3 Constraints

1.3.1 Within the rigorous framework of the study, there were nonetheless some limitations to the data which it was possible to gather. In particular, the study was necessarily limited to cases in which a formal application was made, and no account is taken of time or costs spent in negotiation in cases which did not resort to the courts at all, or of pre-application costs for those cases which did end up in court. In some cases, particularly for example for information on costs and on reasons for adjournment, information was simply not available on the court file. Although a further study on costs was commissioned, this also, yielded only incomplete results, and no information is available to quantify the impact of the pilot scheme on the total costs including those incurred by the courts themselves. Finally, the wide range of practices in control courts, and the different purposes served by elements of the pilot and control process, have on occasions made direct comparison between the pilot and control less than straightforward.

1.3.2 However, we believe that the study has produced robust and significant conclusions and these are summarised below.

1.4 Duration

1.4.1 Of those cases where a final order had been granted, the average time to final order in the pilot courts was 208 days as against 256 in the control courts. This result is statistically significant and demonstrates that the pilot scheme has been successful in reducing the duration of cases by nearly 20% largely because of the earlier timetabling of the First Appointment. It is particularly significant that the pilot appears to have an especially marked effect in reducing the time taken in cases where the assets are of relatively low value.

1.5 Settlement

1.5.1 85% of cases in the pilot courts had "settled" (ie had a final order granted) by the date of KPMG's last visit, as compared to 72% in the control courts. This result is statistically significant and confirms that the pilot scheme is meeting its objective of increasing settlement rates. This is largely due to the sharper focus on issues within the tighter timetable of the pilot scheme. Interestingly, the difference in rates of settlement with consent (86% in pilot, 82% in control) is not statistically significant, suggesting that the pilot scheme's impact on what are already very high rates of settlement by consent is neutral.

1.6 Costs

1.6.1 As discussed in more detail in the body of the report, costs data were particularly difficult to track down. In many cases, no information at all was recorded on the court files - even in pilot courts where such disclosure is, in theory, mandatory - and the results of a supplementary exercise to obtain costs information direct from solicitors were not as comprehensive as might have been hoped.

1.6.2 The small sample size on which the costs analysis was performed makes extrapolation of these results to a larger data set unreliable. However, the qualitative interviews yielded the view that the pilot scheme is broadly cost neutral, with no suggestion that pilot scheme costs were significantly higher. Some support is lent to this view by a comparison of the median overall case costs.

1.6.3 On the wider issue of court time, it seemed clear that the pilot scheme is more demanding of time from District Judges, who have to manage the more structured approach and whose volume of material to read is increased. Equally, however, it seems that better use is being made of court time, in that the pilot scheme requires more systematic and easily studied preparatory documents to be submitted.

1.7 Good practice

1.7.1 KPMG identified a number of features of good practice which contribute to a more effective process for dealing with ancillary relief cases. These features were demonstrated in control courts as well as in pilot courts, and it is particularly interesting to note that all of the process-related features are embodied in the pilot scheme itself:

- a fixed timetable for the early stages of the process;
- attendance of parties at each court hearing;
- making cost estimates available;
- concentration on the issues at an early stage;
- a prescribed form of disclosure;
- consistency of approach and procedures;
- regular communication between District Judges and local practitioners and between District Judges and court staff;
- effective and speedy sanctions in the event of failure to comply with court rules.

1.8 Conclusions

1.8.1 We believe that the case has been made for rolling out the pilot scheme nationally. The objectives of improving settlement rates and reducing time taken have both been secured. The costs implications appear to be broadly neutral. The pilot scheme offers clarity to the parties and their representatives about the factual basis of the case, a structured approach to disclosure, and a clear timetable to plan the progress of the case.

1.8.2 We believe that the following amendments need to be made to the pilot scheme to enhance its effectiveness:

- the Schedule of Documents and Questionnaire should be combined, or turned into an annex to the Statement of Issues, to focus more clearly on the relevance of the requests for disclosure;
- a single Form E should be retained, but with amendments to take into account the following:
    - question 4c on the contribution to the family assets should be re-worded. At present it is misleading, particularly if one partner has contributed to the marriage by, for example, paying bills, whilst the other has paid for assets such as the family car;
    - asking the party to state the value of their interest in the matrimonial home is prejudicial and should not form the basis of calculation of net assets;
    - details of expenditure requirements would be better in the form of weekly or monthly totals rather than in annual sums;

- the conduct question should be recast so as not to encourage parties to raise conduct where it is not appropriate. A District Judge suggested the following wording - "Do you intend to raise conduct as an issue in this case?";

- there should be flexibility as to whether to apply the pilot rules to variation orders and maintenance pending suit;

- there should be explicit flexibility to move straight to Final Hearing (ie. without Financial Dispute Resolution) in cases where it is clear to the court that an FDR would, in the particular circumstances, serve no useful purpose;

- compliance with the timetables and disclosure requirements of the pilot scheme should be supported by sanctions, including penal notices, in the event of failure to comply.