



SUMMARY

1 Family disputes that are resolved through mediation are cheaper, quicker and, according to academic research, less acrimonious than those that are settled through the courts. Despite these advantages, only some 20 per cent of people who are funded by legal aid for family breakdown cases (excluding those involving domestic violence) currently opt for mediation. This report examines the reasons for the low take-up and makes recommendations to the Legal Services Commission (the Commission), which administers legal aid in England and Wales, to help increase the number of mediations.

Main findings

- In the period October 2004 to March 2006,¹ some 29,000 people who were funded through legal aid attempted to resolve their family dispute through mediation. In the same period 120,000 family disputes involving finances and children were completed through court proceedings or bilateral negotiation between solicitors. There were a further 30,000 completed cases settled through the courts that involved domestic violence.

- It is the duty of the solicitor or legal adviser to advise their legally-aided client of the option of mediation in family law cases, although currently there is a financial disincentive to do so as it will result in the loss of potential fees. In response to our survey of recipients of legal aid, 33 per cent said that they had not been made aware by their adviser that mediation was an option. Of those who were not told about mediation, and so did not try it, 42 per cent said they would have been willing to. This represents, potentially, some 14 per cent more cases overall; and even higher rates of take-up might be possible if the option of mediation were better understood by clients.
- The average cost of legal aid in non-mediated cases is estimated at £1,682, compared with £752 for mediated cases, representing an additional annual cost to the taxpayer of some £74 million. Not all cases are suitable for mediation, however, for example, where there has been a history of domestic abuse. Nevertheless, if 14 per cent of the cases that proceeded to court had been resolved through mediation, there would have been resulting savings equivalent to some £10 million a year.²
- Mediated cases are quicker to resolve, taking on average 110 days, compared with 435 days for non-mediated cases.
- Most people who live in or near major urban areas have a mediator relatively near by but there are some parts of the country, particularly in rural areas, where individuals might have to travel considerable distances. Some 78 per cent of the population live within five miles of a professional mediator and less than one per cent would have to travel more than 15 miles. Travelling distance may nevertheless be a disincentive to participate in mediation for people on low incomes or those reliant on public transport.
- Our survey of mediators found that there is capacity among many mediators to take on more cases; and 94 per cent of mediators reported that the average waiting time for the first appointment was two weeks or less. There is, however, substantial variation in the success rate achieved by different firms of mediators, measured in terms of the proportion of cases which reach agreement.
- The Commission's current fee structure results in different amounts being paid for mediation to not-for-profit organisations compared with that paid to solicitors (an average of £611 and £463 respectively), which is likely to weaken further the incentives solicitors have to promote mediation.

Overall conclusions

There is scope to improve the value for money achieved from the legal aid budget through increasing the take-up of mediation. In addition to financial savings, this would bring potential benefits for those involved in family breakdown in terms of outcomes that are less acrimonious, quicker, and longer lasting than might otherwise have been achieved. In order to achieve this, the Commission should publicise the benefits of this option to the general public so that they are aware of and have confidence in it as a means of resolution, and remove the disincentives to solicitors of recommending this option to their clients.

- 2 We recommend that the Legal Services Commission:
 - a actively promote mediation and reflect this in the guidance and information the Commission provides online and in leaflets and information packs for solicitors and their clients, whether legally-aided or not. Information about mediation should be made available in places such as libraries, council offices and doctors' surgeries, where people can read about it before they enter the legal process;
 - b reflect in contracts between solicitors and the Commission a presumption that mediation should normally be attempted before other remedies are tried;
 - c assess the arrangements that solicitors have in place for providing mediation services and review the number of cases that are resolved by this means. Solicitors who have significantly lower numbers of mediated cases should be investigated to ascertain the reasons for the low take-up and, where these prove unsatisfactory, should have their contracts curtailed;
 - d review the list of exemptions from using mediation and the way exemptions are being applied;
 - e assign a unique identifier to track individuals across its three separate databases from start to finish of their cases. This would enable them to produce management information on the number and cost of mediated and non-mediated clients in receipt of legal aid;
 - f extend the provision of mediation to areas of the country that are not well covered, either by supporting extension of the existing provision of outreach services or by providing reasonable travel expenses to those living in areas with less access to a mediator;

- g** incorporate into the quality assurance regime it applies to mediators undertaking legal aid work measures such as the proportion of cases where agreement is reached, and the proportion of cases which do not return to court, and apply sanctions to poor performers;
- h** revise the funding structure for mediators so that fees for not-for-profit and independent mediators will be brought into line; and
- i** the Commission already funds assessment meetings for both parties where only one party is currently entitled to legal aid. As part of this review of the funding structure, the Commission should assess the cost-effectiveness of funding mediation for both parties, where only one party is currently entitled to legal aid, because currently the average cost of a mediated case is less than half that of a case in which mediation had not been tried.