

A photograph of a woman with long blonde hair and a young boy with short brown hair. They are both looking intently at a book held by the woman. The woman is wearing a dark purple top, and the boy is wearing a green shirt. The background is a warm, out-of-focus indoor setting.

Publicly Funded Family Mediation : the Way Forward

The Legal Services Commission's Strategy for Family Mediation

Community
Legal Service



August 2008

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The Legal Services Commission's Strategy for Family Legal Aid

A Strategy Paper

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Foreword

This paper, 'Publicly Funded Family Mediation: the Way Forward' sets out our future direction for publicly funded family mediation. We outlined in our strategy for family legal aid *Making Legal Rights a Reality for Children and Families*¹ that we would use the recommendations of the National Audit Office to develop further our strategy for mediation. This paper sets out our future direction and builds upon the recommendations of both the National Audit Office and the Public Accounts Committee in their reports '*Legal aid and mediation for people involved in family breakdown*' and should be considered as part of our overall strategy for family legal aid.

Since 2000/01, the Legal Services Commission (LSC) has spent just under £100 million on publicly funded family mediation. In 2007/08, LSC funding allowed just over 17,250 clients to reach agreement over a family dispute through mediation. Nearly 70% of clients who attended mediation reached a full or partial agreement. However, despite this, only one in five legal aid clients who experience a family dispute opt for mediation. We want to increase this number and our strategy sets out ways to achieve this.



Carolyn Regan
Chief Executive
Legal Services Commission

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Summary of actions

- New contracting arrangements for family mediators
- New contracting and remuneration arrangements for solicitors providing incentives to refer to mediation
- Targeting resources to ensure mediation provision is improved in areas of limited access
- Financial incentives for mediation providers to expand their service especially in rural areas
- Improved information for clients and other stakeholders on availability and benefits of mediation
- Introduction of performance management systems for mediation providers
- Reviewing the scope of the scheme to incorporate new developments as appropriate

Publicly Funded Family Mediation: the Way Forward

Family disputes that are resolved through mediation can be cheaper, quicker and according to academic research, less acrimonious than those, which are settled through the courts. It is for these reasons that the LSC is committed to continuing to increase the number of family disputes that are resolved via mediation, beyond the 17,250 clients who reached agreement in 2007/08.

Our strategy focuses on 3 key areas and builds upon the recommendations of both the National Audit Office and the Public Accounts Committee. These 3 key areas are:

1. **Value** - Encourage an increase in the number of family disputes resolved through mediation, as mediation can be cheaper, quicker and less acrimonious for clients.
2. **Access** – Improve client access to family mediation (both information and services).
3. **Quality** - Improve the quality and effectiveness of family mediators.

1. Value

The LSC is committed to family mediation and are actively trying to promote wherever possible appropriate referrals to mediation, both from solicitors and other areas of the family justice system. The LSC already contracts with mediation services under fixed fee scheme, which ensures that value for money from mediation is maximised when it is attempted.

- New mediation contracting arrangements were introduced in October 2007, which brought into line the rates paid to For Profit and Not For-Profit mediation services.
- The new Family Fee scheme (Family Help) introduced in October 2007 encourages early amicable dispute resolution particularly through mediation and reduces incentives to resort to contested court litigation. The mandatory referral to mediation for solicitors will continue to take place before the issuing of proceedings, although we will encourage

flexibility so that referrals are made when it is most appropriate for the client.

- Family Help looks to address the implications of the previous funding arrangements, where solicitors had a financial incentive to undertake all work on the case and apply for a certificate. By paying fixed fees under Family Help we are rewarding efficiency. Solicitors will receive the fixed fee regardless of whether they make a referral to mediation or not. However, if they refer to mediation at an early stage and it resolves the dispute the firm's profit margins on the fixed fee will be maximised.
- We have reviewed the list of exemptions as part of our 'Legal Aid: a sustainable future' consultation on the new family and mediation fee structures. As a result, we have implemented changes to reduce the time limit where there are existing proceedings, and responsibility for considering whether domestic abuse is a bar to mediation will now pass to the mediator in a greater number of cases.

Future Actions

- We will monitor the impact of changes made to the family fee schemes and evaluate the impact on mediation referrals. If the scheme does not deliver against its aim, we will set stronger incentives to change provider behaviour, including considering implementing performance targets on the number of referrals made to mediation and on the number of cases settled prior to the issuing of proceedings.

3. Access

The LSC will continue to improve levels of client access to mediation services where it is necessary to do so. At the moment 78% of the population live within 5 miles of a mediation service, 21% of the population live within 5 –15 miles and less than 1% have to travel more than 15 miles. We are looking at ways to develop additional capacity where necessary through service expansion of their existing provision of outreach services, especially in rural areas. We are also keen to address the wide variation in the volumes of mediation work

undertaken by different services. Currently, 2% of providers (4 services) do 10% of all mediation work, 20% of providers do 55% of all mediation work and 50% of providers do 88% of all mediation work. The smallest 20% of providers do less than 1% of the work. The LSC is keen for services to expand and where necessary, will work with services to ensure that there are incentives to expand to provide consistent access nationally.

Future Actions

- We are currently inviting expressions of interest from those services, which are interested in applying for a new mediation contract or expanding their current service through outreach. We are particularly targeting areas of identified need in order to improve access. Once we have a more detailed understanding of the areas providers are keen to deliver mediation services in, we will make strategic decisions on the best way to improve access, with the use of Bid Rounds where necessary.
- To pilot the expansion of the LSC Training Contract Grant Scheme to include family mediators. A total grant fund of £100,000 will be made available to services in 2008/09 to cover core mediation training and the completion of the competence assessment portfolio, a LSC requirement under the Mediation Quality Mark Standard. The LSC is keen to support mediation service growth and to help services attract the next generation of mediators.
- To work with the Family Mediation Council to develop and enhance the current competency assessment process and fast track those with relevant experience and skills in other related disciplines.

As well as improving clients' access to mediation services, we also need to improve clients' access to information on mediation and its benefits.

The LSC will continue to promote and increase awareness of the availability and benefits of mediation through the following channels:

- A revised Family Mediation CLS leaflet will be available to download from our Community Legal Advice website www.communitylegaladvice.org.uk and to order by calling 0845 3000 343. The LSC will also have regular month long family mediation feature campaigns on the website, which is visited by over 3 million people a year.
- The Commission's Community Legal Advice helpline has, since 1 October 2007, offered a specialist family telephone advice service and advisors refers clients to a mediator or the Mediation Helpline where it is appropriate to do so. The helpline currently receives over 3,000 family related queries a month.
- We are also continuing to assist the Ministry of Justice (MoJ) with: the Family Mediation Helpline (0845 6026627) and dedicated website; the MoJ funded 'Advice Now' promotional campaign led by the Advice Services Alliance. There is a greater mediation presence on the Government Direct website www.direct.gov.uk as well as mediation related pod casts.
- The Commission has produced briefings on publicly funded mediation to CAFCASS and to the President of the Family Justice Division to promote the more flexible use of mediation during court proceedings. We have also supported the MoJ with a number of family mediation seminars across the country to raise awareness more widely amongst court staff.

3. Quality

The LSC is committed to ensuring that mediators provide the best possible service in terms of quality and effectiveness. Obtaining the best possible outcomes for the optimum number of clients via the use of mediation can only be achieved through the skills and expertise of the mediators we contract with.

- The LSC has implemented a mediation provider Contract Management Review Criteria (CMRC) Report, which will provide reports on individual mediation service performance. This tool will allow the LSC to work with mediation services to improve performance relating to conversion rates and outcomes achieved and take remedial action where it is appropriate.

Future Actions

- We will monitor provider trends in conversion rates and outcomes and we will consider introducing key performance indicators into future contracting arrangements or as part of any bid round criteria.
- We will work with the Family Mediation Council and the Solicitor Regulation Authority (SRA) to develop a more rigorous complaint procedure to ensure client satisfaction levels increase.

Although the focus is on quality, access and value, the LSC is keen to accommodate new mediation models where it is effective in resolving disputes, is in the best interests of clients and provides value for money. We are exploring the use of direct consultation with children and the use of mediation in child abduction cases. We believe it is important to ensure that the voice of the child is heard in family disputes in accordance with the UN Convention on the Rights of a Child where it is appropriate for the child in terms of their age and level of understanding.

- Mediation services are able to provide direct consultation with children under our contracting arrangements and adjustments to the fee scheme have been made to better accommodate this practice.
- In October 2007 we amended our reporting requirements to capture information on when direct consultation with children is used; to build our understanding on its impact on average mediation length and outcomes.
- We are funding the use of co-mediation in child abduction cases where mediators have a specialism in this field and are collecting management information on its use and effectiveness.

We will review the additional information collected on direct consultations after 12 months and child abduction cases after we have a sufficient number of cases. This will form the evidence basis on which to develop our future policy direction and the development of appropriate funding arrangements. In developing future policy in this area we will work appropriately with the Office of the Children's Commissioner and other stakeholders representing children's interests.

Legal Services Commission
85 Gray's Inn Road
London WC1X 8TX
DX:328 London

www.legalservices.gov.uk