

Pilot Scheme on Family Mediation

Introduction

This paper takes stock of the performance of the Pilot Scheme on Family Mediation and sets out the main findings of the Evaluation Study on the Pilot Scheme. It also examines the way forward for family mediation services.

Background

2. The 3-year Pilot Scheme on Family Mediation was launched in May 2000. It was administered by the Mediation Co-ordinator's Office of the Judiciary.

3. The Pilot Scheme aimed at helping separating/divorcing couples to reach their own mutually acceptable agreements regarding their arrangements for their children and/or any other issues. It was a voluntary process in which a trained and impartial mediator would assist both parties in communicating and negotiating issues in a confidential setting.

4. The Pilot Scheme ended in July 2003. To assess the workability and effectiveness of the Pilot Scheme, the Judiciary had commissioned the Hong Kong Polytechnic University to conduct an evaluation study. The Research Team released its Final Report in January 2004, a copy of which has been sent to Panel Members by the Judiciary Administrator.

Performance of the Pilot Scheme

5. For couples interested in seeking family mediation, the Mediation Co-ordinators's Office would invite them to attend an information session, at the end of which, the Mediation Co-ordinator would conduct an initial assessment on the suitability of their cases for mediation having regard to the nature of the dispute.

6. A total of 660 information sessions were held under the Pilot Scheme for 3,460 persons. Among these sessions, 559 were conducted in Cantonese, 95 in English and 6 in Putonghua.

(a) Caseload and success rate

7. The Pilot Scheme was intended to cover 1,000 to 1,200 cases over the three-year period. Users of family mediation services could choose their own mediators whose fees were borne by the Judiciary subject to a maximum of \$9,000 per case.

8. The Pilot Scheme ended up with a total of 1,085 cases. Of such cases, about 15% fell through at the intake stage. The main reason was that one or both parties did not turn up at the first appointment with the mediator.

9. Of the 930 cases which completed the mediation process, 637 reached full agreement and 91 had partial agreement. The success rate was about 78% (with about 68% achieving full settlement and about 10% achieving partial settlement).

(b) Case distribution among mediators

10. Family mediation services were provided by mediators accredited by the Hong Kong International Arbitration Centre. Over the period of the Pilot Scheme, 73 qualified mediators had registered with the Mediation Co-ordinator's Office.

11. Among the 1,085 cases referred to mediators by the Mediation Co-ordinator's Office, 257 (23.7%) selected mediators from the Social Welfare Department (SWD), 388 (35.8%) selected those from the Non-Governmental Organisations (NGOs) and 440 (40.5%) selected those in private practice (who were mostly lawyers).

(c) Costs

12. The total costs of the Pilot Scheme, exclusive of staff costs, were about \$6.2 million.

Evaluation Study

13. Together with the launching of the Pilot Scheme, the Judiciary also commissioned the Hong Kong Polytechnic University to conduct an evaluation study on the effectiveness of the Pilot Scheme. The study was carried out between May 2000 and April 2003, covering almost the entire duration of the Pilot Scheme. The Research Team released its Final Report in January 2004, setting out the research methods used in the study, public

perceptions of the Pilot Scheme, the profiles of the users of the mediation service, the mechanism of the delivery of the service, the opinions of both the users and providers of the service, and some recommendations on the approach to be taken in providing mediation services in Hong Kong.

14. The following paragraphs highlight some aspects in the Evaluation Study.

(a) Profiles of the service users

15. The Research Team observes that a majority of the service users had been married for 5 to 14 years, had children and were in their thirties and forties. The median incomes for male and female users were \$10,650 and \$5,400 a month respectively.¹

16. On an analysis of 1,824 service users, the Research Team notes that about 43% were legally represented for the divorce proceedings. Of this group, about 50% were legally aided.²

(b) Users' satisfaction

17. The results of a Users' Satisfaction Survey conducted by the Research Team show that the service users were on the whole positive about the mediation service. Of the 804 respondents surveyed, 80.5% were "satisfied" or "very much satisfied" with the mediation they had received³. Besides, in-depth interviews with the service users revealed that many had positive experience in using the service such as saving time and money, reducing tension between the parties and facilitating dialogue between the parties on matters related to divorce⁴.

(c) Acceptability of family mediation in Hong Kong

18. The Research Team concludes that there should be a place for mediation in resolving family disputes in Hong Kong. It indicates that there is considerable evidence from the data collected that family mediation is a viable option for dispute resolution. It recommends that people should be encouraged, as far as possible, to use mediation other than litigation to settle their family disputes⁵.

¹ Evaluation Study on the Pilot Scheme on Family Mediation, para. 6.1.

² Ibid., Appendix B, Table B17.

³ Ibid., para. 8.1.

⁴ Ibid., para. 8.7.

⁵ Ibid., para. 12.2.

(d) Fee charging

19. The Research Team asked 118 users of the Pilot Scheme whether they would use family mediation services if fees were charged. 63 of them said they were prepared to pay an amount ranging from \$100 to \$20,000, the average being \$2,980.⁶ On the basis of its findings, the Research Team is of the view that some fee-charging would be acceptable to users and might increase their motivation to co-operate in making the service work and, therefore, the effectiveness of the service. It recommends the introduction of a fee-charging mechanism for users able to afford the service, with exemption of all or part of the fees for those who could not afford it.⁷

(e) Service Model : Unity vs Plurality

20. The Research Team notes that under the Pilot Scheme, family mediation services were provided by mediators in the SWD, NGOs and those in private practice. The Research Team observes that different service providers attracted different service users. For example, service users coming from a working class background tended to choose a mediator in the Social Welfare Department, probably because many of them had prior experience with the Department.

21. The Research Team considers that a pluralistic model in terms of agencies and professional backgrounds of the mediators, is more likely to meet the needs of a diverse clientele and preferable to a unitary model that provides users with few or no choices.⁸

Family Mediation Services upon the expiry of the Pilot Scheme

22. As the Pilot Scheme has proved to be effective in helping users resolve their disputes, the Judiciary has continued to maintain the Mediation Co-ordinator's Office since the expiry of the Pilot Scheme out of its own funds. The Mediation Co-ordinator's Office continues to hold information sessions on family mediation and to assist couples in seeking family mediators.

⁶ Ibid., para. 8.18

⁷ Ibid., para. 12.5

⁸ Ibid., para. 11.16

23. From August 2003 to February 2004, 75 information sessions were held, of which 64 were conducted in Cantonese, 9 in English and 2 in Putonghua. 60 cases have been referred to mediators, 22 of these cases have completed the mediation process, with 18 reaching full agreement. The success rate is 81%.

24. Family mediation services are now provided on a fee-charging basis. However, there are fee exemption and reduction schemes for those with financial difficulties. Among the 61 mediators currently providing services, 10 do not charge any fee and another 24 offer free services to recipients of Comprehensive Social Security Assistance or those with a monthly income of less than \$4,000.

25. Furthermore, the Social Welfare Department has included family mediation as a value-added service into its Funding and Service Agreement with the NGOs to facilitate them to continue to provide mediation services. Moreover, the SWD has agreed to consider using the Trust Funds for essential and emergency proposals to cover mediation fees payable by financially vulnerable families who will clearly benefit from family mediation.

26. There have been no complaints that people have been deprived of using family mediation services due to financial difficulties.

Way forward

27. The Chief Justice's Working Party on Civil Justice Reform has examined possible reforms in the areas of Alternative Dispute Resolution, which includes mediation. In its Final Report, released on 3 March 2004, the Working Party recommends that litigants be provided with better information and support by the Court with a view to encouraging greater use of purely voluntary mediation in conjunction with other appropriate measures to promote court-related mediation.⁹

28. In considering whether mediation should be made a condition of legal aid, the Working Party understands that the Administration may need to satisfy itself as to the cost-effectiveness in funding legal aid cases and saving public resources. It thus recommends as follows :

⁹ Final Report on Civil Justice Reform, p.442, Recommendation 138.

“The Legal Aid Department should have power in suitable cases, subject to further study by the Administration and consultation with all interested institutions and parties on the development and promulgation of the detailed rules for the implementation of the scheme, to limit its initial funding of persons who qualify for legal aid to the funding of mediation, alongside its power to fund court proceedings where mediation is inappropriate and where mediation has failed.”¹⁰

29. The Working Party on Civil Justice Reform relates to civil rules and procedures in the High Court¹¹. As such rules and procedures apply with the necessary modifications to matrimonial proceedings, the Judiciary believes that the two recommendations referred to in paras 27 and 28 above apply to matrimonial proceedings.

30. Pending the consideration and implementation of the above recommendations made by the Working Party, the Judiciary will continue to assist parties in seeking family mediation services under the arrangements as set out in paragraphs 22 to 25 above.

Judiciary Administration
15 March 2004

¹⁰ Final Report on Civil Justice Reform, p.448, Recommendation 141.

¹¹ Rule 3 of the Matrimonial Causes Rules Cap 179.