Ministry of Justice

Increasing the Use of Mediation in the Civil Justice System

RESPONSE OF THE LONDON SOLICITORS LITIGATION ASSOCIATION

The LSLA was formed in 1952 and currently represents the interests of a wide range of civil litigators in London. It has over 3700 members throughout London among all the major litigation practices, ranging from the sole practitioner to major international firms. Members of the LSLA Committee sit on the Civil Justice Council, the Chancery Court Users Committee, the Rolls Building Users Committee, the Law Society Civil Litigation Committee and the Commercial Court Users Committee to name but a few. As a consequence, the LSLA has become the first port of call for consultation on issues affecting civil and commercial litigation in London, and it has on many occasions been at the forefront of the process of change. Representatives from the City of London Law Society and the City of Westminster and Holborn Law Society also sit on the LSLA Committee.

This document sets out the response of the London Solicitors Litigation Association to the Government's proposal to introduce a requirement to attempt mediation for all proceedings allocated to the small claims track of the County Court (the "Consultation").

There are a number of questions in the Consultation and this document responds to those that the LSLA feels it can provide a meaningful response to. Although members of the LSLA have some experience of dealing with small claims and of using the small claims mediation service, this is very limited and therefore we have not answered the questions which directly relate to small claims.

11. Does there need to be stronger accreditation, or new regulation, of the civil mediation sector?

In circumstances in which mediation is compulsory, both accreditation and regulation are desirable, in order to ensure a minimum quality standard. This will protect unrepresented or inexperienced parties, who are likely to assume that mediators are both accredited and regulated. It does not seem necessary to extend such requirements to areas beyond that, where party choice in relation to an entirely consensual process ought not be fettered. The existence of a formal accreditation scheme, is however, likely to encourage its voluntary adoption more widely, which also seems desirable.

12.Which existing organisation(s) could be formally recognised as the accreditation body for the civil mediation profession and why?

The Civil Mediation Council ("CMC") may be appropriate. It is a recognised authority in relation to civil mediation and is listed in the Chancery Guide as an appropriate place to find a mediator. It has an existing membership process, which has clear and transparent requirements for training and experience. Many of our members appoint mediators who are CMC registered.

13.What is your view on the value of a national Standard for mediation? Which groups or individuals should be involved in the development of such a Standard?

A national standard would be desirable, provided this does not become overly complex. It could be as simple as gaining an accreditation with an approved body followed by continuing professional development in the form of annual training or observation.

Existing ADR providers, together with frequent users of their services, such as solicitors and large in-house legal departments ought to be involved in developing this standard.

14. In the context of introducing automatic referral to mediation in civil cases beyond small claims, are there any risks if the government does not intervene in the accreditation or regulation of civil mediators?

The objective of introducing an automatic referral in civil mediation cases will be for a higher proportion of disputes to settle. If the government does not intervene in the accreditation or regulation of civil mediators, there is a risk that this objective will not be met and parties will be subject to an additional costs burden with the risk of there being no benefit. Without any regulation or accreditation requirement, quality may be sacrificed in favour of providing a cheaper service and in turn, mediation may become a tick box exercise for parties who do not wish to engage. Mediation for mediation's sake is not desirable. Mediation is desirable because it is often effective. The quality of the mediator is a significant factor in a successful mediation and that should not be overlooked.

15.Should mediators who are already working as legal practitioners or other professionals be exempt from any additional regulatory or accreditation requirements for their mediation activities given they are already regulated by the SRA?

Given solicitors are already regulated by the SRA, we do not consider that additional regulation is necessary or desirable. However, if members of the profession are assuming the role of mediator, we do consider that some compulsory training and a minimum amount of observation experience would be appropriate. This is especially the case where mediation is compulsory. If mediation is no longer a voluntary process and parties will not always have a choice of mediator, they ought to have the basic reassurance that all mediators have the appropriate skills and experience.

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