



Out of Court



A quarterly magazine from the Dispute Resolution Team

March 2010

Welcome to the 12th edition of Out of Court, bringing you the latest news from the Dispute Resolution Team of the Ministry of Justice.

This issue includes:

- Dispute Resolution need not be a trial
- An update on our in-house small claims mediation service
- Family Mediation goes on line
- The adoption of the EU Directive on mediation
- Ministry of Justice publishes 2008/09 ADR Pledge
- An update on the National Mediation Helpline

Dispute Resolution need not be a trial

We have been working with other Government Departments, the advice sector and court staff to develop internet-based information tools to help people involved in civil disputes. These information tools will be known as 'walkthroughs' and will be published on DirectGov during 2010.



The walkthroughs aim to help people understand what they can do to resolve their civil disputes out of court. If they do need to go to court as a last resort, the walkthroughs will explain the main features of the court process.

Themes covered include disputes over money, problems with a holiday, or mortgage arrears. Setting out the options that people may choose to take at different stages of a dispute can help inform their decisions. It can also highlight that while court action may be suitable for some disputes, it is not always necessary and there are other options that may be useful to them.

About the walkthroughs

The walkthroughs allow users to explore how a dispute might be resolved by providing information about:

- communicating with the other party and discussing the issue and options
- mediating or using a trade association or an ombudsman
- going to court, if court action is necessary
- taking action to try to enforce a court judgment should that be necessary
- sources of advice



The walkthroughs aim to join up information for members of the public involved in civil disputes. For example, people may not be aware that if they have a dispute with a bank and can't sort it out after complaining to the bank about it, the Financial Ombudsman Service has a free complaints procedure that they can use to complain further, removing the need to go to court. Also many people do not necessarily realise that they can still communicate with another party to try to resolve a dispute, even if the other party is threatening to start court action or where court action has already begun.

The walkthroughs allow the user to navigate a joined up journey through information about communicating, mediating and using the court and enforcement processes. Information about the court and enforcement processes includes:

- an overview of the main steps involved in court and enforcement action
- videos illustrating the mediation, court and enforcement processes
- court forms
- where court fees are payable and how to apply for fee remissions

Contact us

If you have any comments or questions about anything in this issue of Out of Court, please contact the Dispute Resolution Team:
pdrt@hmcourts-service.gsi.gov.uk
or Alex Seshie-Vanderpuije on 020 3334 3153

It is hoped that as well as helping people to understand and make use of the options available to them to resolve a dispute out of court, the walkthroughs will help to explain the court process.

We would welcome your views and ideas about raising awareness

of the walkthroughs to your customers, clients and colleagues. For example, you might have ideas on signposting people to the walkthroughs before a civil dispute escalates. Please send your views and ideas to Jackie.Sullens@justice.gsi.gov.uk

The Small Claims Mediation Service

Following the last update on the Small Claims Mediation Service (SCMS), we have now rolled it out across England and Wales and the take up rate has continued to increase.

The rolling 12 month figure as at March 2010 stands at:

- 10,000 mediations conducted with a settlement rate of 73%
- Mediation continues to provide a much quicker resolution to a dispute than waiting for the hearing.
- Recent survey figures gathered from over 5000 customer responses to our online survey show that 98% of respondents said that they were satisfied or very satisfied with the professionalism and helpfulness of the mediators and 94% said that they would use the service again. Both figures include responses from customers whose cases did not settle.

Although these figures show an encouraging growth in the overall quantity of mediations being conducted, this growth has not had a detrimental effect on the very high level of customer satisfaction with the service.

Family Mediation goes online on DirectGov

A new online Family Mediation multi-media webpage, supported by video clips, was launched on www.direct.gov.uk in August 2009. The project was aimed at raising public awareness of Family Mediation across England and Wales.



The Minister, Bridget Prentice MP, hosted a launch event attended by mediation organisations, the press and other stakeholders in support of the Government's commitment to Family Mediation.

A revised Family Mediation Helpline leaflet was unveiled at the event, which was later distributed to all family courts in England and Wales. The leaflet can be accessed at: http://www.hmcourts-service.gov.uk/HMCSCourtFinder/GetLeaflet.do?court_leaflets_id=1069

What is family mediation?

Family Mediation is a voluntary and confidential process that enables parties to a family dispute discuss their needs and concerns with each other in the presence of an independent third party – the family mediator – so that they reach an agreement between themselves. It can be helpful in resolving disputes before, during or after court proceedings.

James Rustidge now heads HMCS Small Claims Mediation Service



James Rustidge is the new Head of the HMCS Small Claims Mediation Service. He was once hailed as the "smooth talker" for his success in "inventing the application of telephone mediation"* during a pilot scheme for small claims mediation at Manchester county court.

James a rugby player and a former police officer joined HMCS in April 2005. He piloted the small claims mediation scheme at Manchester county court where he successfully used telephone mediation to settle more than 83% of cases he dealt with. The Manchester pilot was later rolled out to cover all of England and Wales.

In October 2008, James accepted the European Crystal Scales of Justice Award on behalf of the Small Claims Mediation Service. James now heads the 22 mediators covering all HMCS areas.

We wish him well in his new role as head of HMCS Small Claims Mediation Service.

For more information about the Small Claims Mediation Service, please contact James at: James.Rustidge@hmcourts-service.gsi.gov.uk

* The Law Society Gazette, 11 January 2007pp 26-27

EU Directive on mediation

The EU Directive on mediation was formally adopted on 21 May 2008, aiming to bring together certain aspects of mediation in cross-border disputes where at least one of the parties is domiciled or habitually resident in a Member State other than that of any other party or parties, at the time when mediation is agreed. The Directive requires Member States to legislate on or before May 2011.

The key components of the Directive are:

- **Mediation/mediator quality and awareness:** by ensuring that mediators in such cases operate under published voluntary codes of conduct, and that training and public information standards are encouraged;
- **Enforceability of mediated settlements:** by ensuring that written settlements negotiated at mediations must be capable of speedy court enforcement;
- **Mediation confidentiality:** by protecting mediators and mediation provider organisations from being compelled to give evidence, subject to specified exceptions; and
- **A limitation holiday while mediating:** by ensuring that no party can be prevented from initiating proceedings because a limitation period expired "during the mediation process".

The Ministry of Justice is actively working to implement the Directive within the given timescales.

For further information, please contact Ken Lewis-Allagoa on 020 3334 3154 or email Ken on ken.lewis-allagoa@justice.gsi.gov.uk

Family Mediation can help reduce hostility and improve chances of long-term co-operation where this is necessary, for example in agreeing arrangements for child contact. It can be cheaper than litigation, parties control the length of the process and the issues they would like to discuss.

Family Mediation Council

The Government is working with the Family Mediation Council (FMC) and their membership bodies to build on existing accreditation schemes to ensure the public profile of the mediation profession accords with professionalism and quality.

Compulsory information session

The Department for Children, Schools and Families Green Paper was launched on 20 January 2010 titled – Support for All: the Families and Relationships Green Paper. The Ministry of Justice made a contribution on family mediation in the Green Paper. It considers whether compulsory

mediation assessment would improve the take-up of family mediation. The closing date for response is 21 April 2010. Further information about the consultation paper can be obtained by visiting the following website: <http://www.dcsf.gov.uk/supportforall/>

Family Mediation Helpline

This is a public service designed to provide general information on family mediation, suitability of cases, information on eligibility for public funding and facilitates referrals to family mediators local to callers. The helpline number is 0845 60 26 627. A supporting website is at <https://www.familymediationhelpline.co.uk/index.php>

The Helpline operators can also signpost callers to other advice services including Citizens Advice Bureau, Relate, the Domestic Violence Helpline, Parentline Plus and debt/addiction counselling services, where this is required.

Ministry of Justice publishes the Annual Pledge Report 2008-09



The Ministry of Justice has officially published the Annual Pledge Report for 2008-2009.

The Pledge Report monitors the effectiveness of the Government's commitment to using alternative dispute resolution across Government departments and agencies.

On 23 March 2001, the Lord Chancellor published a formal pledge committing government departments and agencies to settle legal cases by alternative dispute resolution techniques in all suitable cases whenever the other side agreed to it. These annual reports summarise the effectiveness of that pledge.

During 2008/09, alternative dispute resolution has been used in 314 cases, with 259 leading to settlement, saving costs estimated at £90.2 million.

For a full text of the 2008/09 Pledge Report please visit MOJ website at: <http://www.justice.gov.uk/latest-updates/alternative-dispute-resolution-2008-09.htm>

National Mediation Helpline



National Mediation Helpline

This year marks the sixth anniversary of the Ministry of Justice, formerly the Department for Constitutional Affairs launching the National Mediation Helpline (NMH) in 2004. The aim of the scheme was to provide an accessible mediation service for higher value civil disputes.

At the time when the Helpline was launched, it was envisaged that the Department would fund the scheme for an initial 12 month period. By this time it was anticipated the scheme would become commercially viable, for the service providers and the Civil Mediation Council (CMC) to take over all or part of the running costs of the Helpline operations.

Since its inception, the take up rate of the National Mediation Helpline has been on the increase. The Helpline continues to provide valuable service to members of the public who prefer to settle their disputes out of court.

During 2005, the DCA worked with the CMC to introduce a pilot accreditation scheme for mediation providers. The DCA used this accreditation scheme in the re-launching of NMH in 2006, expanding the helpline rotas to include local, regional and national mediation organisations, provided that they had been accredited by the CMC. Also, guidance was developed and cascaded to all county courts and judges, to enable the courts and judiciary to take a more proactive approach in referring court users to this service.

The next major reform of the NMH came in 2009 when the Ministry of Justice (MoJ) put the central Helpline service out to tender, and Clerksroom were awarded the contract. An agreement was reached between the MoJ and NMH mediation providers on how the Helpline was to be funded in the future. The mediation providers would contribute to the cost of running the Helpline by levying a fee on each mediation conducted. The levy was set as £90 + VAT on all mediations conducted with a case value greater than £5,000. At the same time the Helpline was converted from the old structure of 42 HMCS areas into the new 23 civil areas.

A new website was developed to support the re-vamped Helpline and it was officially launched in April 2009.

The Helpline receives, on average, in excess of 10,000 calls per year. NMH mediators conduct between 600 and 800 mediations per year, with a settlement rate of 66%.

For more information on the NMH, please visit the website at www.nationalmediationhelpline.com

Or contact Tajinder Bhamra on 0203 334 3161, e-mail tajinder.bhamra1@justice.gsi.gov.uk



Jeremy Tagg

Jeremy Tagg wins The Lord Slynn's Prize for 2009

The Chairman of the Civil Mediation Council (CMC), Sir Henry Brooke at the AGM on 15 December 2009, announced that the Slynn Prize for 2009 should be awarded to Jeremy Tagg, of the Ministry of Justice, for his quite outstanding services in the development of mediation in England and Wales over the last three years.

In October 2008, The Ministry of Justice Small Claims Mediation service under Jeremy won the 2008 European Crystal Scales of Justice Award, which is given biennially by the European Commission and Council of Europe for the best innovative practice which contributed to the quality of civil justice in member states.

The following month the team again won an award from the Centre for Effective Dispute Resolution (CEDR) in the Sector category for the growth and success of the service in the past two years. The citation on that occasion recognised that the service had quickly become the largest single mediation service in the UK.

A recent survey has shown that 94% of users were satisfied with the service, saying that they would use the service again.

Quite apart from these outstanding achievements, Jeremy co-operated closely and constructively with the CMC over issues concerned with the National Mediation Helpline. He was also involved in working with the CMC to organise the raising of awareness on alternative dispute resolution (ADR) among the judiciary at leading courts. Jeremy was also a very active member of the CMC's Public Relations Committee.