

Justice Committee

Alternative Dispute Resolution

Written submission from CALM and Relationships Scotland

Following the Justice Committee's evidence session on 6 March, this written submission provides further information on the Family Dispute Resolution Pilot proposed by CALM and Relationships Scotland to the Scottish Government and the Scottish Legal Aid Board in 2016.

Family Dispute Resolution Pilot

Proposal - Key Points

Aim of the Pilot

To ensure that parents/carers, who are in dispute over contact arrangements for their child/children, fully explore the different options available to them for resolving their differences. This will be done by way of a Family Dispute Resolution Information Meeting which will ensure that families, and particularly children, have the best possible chance of a positive outcome when their parents live apart due to separation, divorce or family re-structuring.

Contact Actions and Court Areas

The pilot will focus on contact actions raised in 4 court areas – Hamilton, Paisley, Dumbarton and Aberdeen

The Family Dispute Resolution Information Meeting

- a one to one session with a mediator who has undergone training to ensure that he/she has knowledge of the different processes involved and an awareness and clear understanding of domestic abuse and the impact of coercive behaviour/control.
- meetings would take place with each parent/carer individually at a different time from the other parent, usually with the same mediator unless there were issues with logistics. Where possible, the information meeting will take place in a location which is convenient for the parent/carer. When necessary, the Information Meeting could take place remotely by way of video call.
- would last for about an hour and no more than 90 minutes.
- would be carried out by a mediator on the Register of an organisation approved by the Lord President to provide mediation for the purposes of the Civil Evidence (Family Mediation) (Scotland) Act 1995. Currently the two organisations that fulfil this requirement are Relationships Scotland and CALM Scotland (Comprehensive Accredited Lawyer Mediators).

- the same cost to provide this service would be charged by both organisations and covered by Scottish Government/SLAB.
- would primarily be an information exchange and would include consideration as to the suitability of mediation or other forms of dispute resolution (including solicitor negotiation, arbitration and court). There would be no requirement or pressure to continue to a joint mediation session, there being a clear understanding between all those involved in the pilot that Mediation is a voluntary process and that the information being provided at the Information Meeting is to enable parents/carers to make an informed choice.
- The Information Meeting will take place as soon as practicably possible after the referral is made by the solicitor acting for the parent/carer, the aim being for such Information Meetings to take place within 2 to 4 weeks. Where parents/carers decide that they wish to attend Mediation to resolve matters, arrangements will be made for Mediation to commence as soon as practicably possible after the Information Meetings have taken place and ideally within a period of 2 to 4 weeks.
- During the Information Meeting, as well as providing information in connection with the different options available to resolve the issues arising, parents/carers will also be provided with information on organisations that can provide support.
- Prior to the Information Meeting parents/carers will be provided with an information pack containing written materials on the different processes available to resolve matters, as well as support available in their area. Information will also be provided on the importance of children's views being heard and the ways in which children can be provided with support.

All matters discussed at the Information Meeting would be confidential. Both parties and the mediator would sign a Confidentiality Agreement.

Once a parent/carer has attended an Information Meeting a letter will be sent by the Mediator to the instructing solicitor to advise that the parent/carer has attended the Information Meeting in order that SLAB can then process payment for the Information Meeting. No further information will be provided within this letter.

If for statistical reasons it was thought helpful for information to be produced showing why mediation was not suitable, such information will be recorded and collated on an anonymous basis.

Following the Information Meeting, it would be for the parties to determine how they wished to proceed. In those cases where Mediation took place following the Information Meeting, the relevant statistics would be ingathered by the Mediators and SLAB.

Parents would be encouraged to participate in Parenting Apart as appropriate.

Legal Aid and Funding

Where a parent/carer is in receipt of advice and assistance they will be able to attend a Family Dispute Resolution Information Meeting at any point prior to an application for civil legal aid being made. Where a parent/carer wishes to apply for civil legal aid, before the civil legal aid application can be processed, the person applying for civil legal aid will be required to attend or have attended a Family Dispute Resolution Information Meeting. Where a parent/carer is applying for emergency legal aid, such applications will be processed by SLAB whether or not the parent/carer has attended for an Information Meeting.

Template increases will be available under the Advice and Assistance Scheme to cover the cost of the Information Meeting. Once a template increase has been obtained, the solicitor acting on behalf of the parent/carer would contact the administrator of the pilot scheme to make arrangements for the parent/carer to meet with a mediator for the Information Meeting. An invoice would be rendered by the administrator of the pilot to the instructing solicitor who would then pay the fee as an outlay via the SLAB Reimbursement Scheme.

If the other parent/carer is not in receipt of advice and assistance, it is hoped that the cost of such a parent/carer attending the Information Meeting will be met by SLAB. If so, there will be an additional template available to the instructing solicitor to meet the costs of the non-legally aided parent attending the Information Meeting.

If a parent/carer does not wish to attend an Information Meeting it would be for SLAB to determine whether or not this is reasonable given the circumstances of the case. A parent/carer deciding not to attend an Information Meeting will not, of itself, be considered by SLAB as a reason to refuse civil legal aid.

Stakeholders

Prior to the commencement of the pilot, CALM Scotland and Relationships Scotland will make contact with stakeholders including the Family Law Association, the Law Society of Scotland, Scottish Women's Aid, Families Need Fathers Scotland, One Parent Family Scotland, Parenting Across Scotland, Fathers Network Scotland, the Children and Young People's Commissioner Scotland, The Judicial Institute and the Scottish Women's Rights Centre to explore with them the purpose of the pilot and to engage with solicitors and other organisations in the pilot areas.

Commencement and Training

The pilot would commence once funding is available. During the first six months of the pilot, the mediators who will conduct the Information Meetings within the four Court areas will undergo appropriate training, including training in the different processes for resolving issues around contact, domestic abuse, the impact of control/power imbalance, child protection and risk assessment. There will be a proactive approach to domestic abuse and the impact of control/power imbalance to ensure that there is

appropriate screening at the Information Meetings and that information is given to parents/carers about organisations which can provide advice and support. Training will be co-ordinated by CALM and Relationships Scotland with input from Scottish Women's Aid, experienced Family Law solicitors and experienced Mediators.

Duration of Pilot

In order to evaluate the effectiveness or otherwise of the pilot, the Information Meetings will take place until there have been 1000 individual Information Meetings. Thereafter each case will be monitored for follow up information on how cases have concluded and the longevity of any resolution reached. It is anticipated that there will be three main stages for the pilot namely (1) the period to conclude 1000 Information Meetings (2) analysis of the outcomes six months after the final Information Meeting has taken place and (3) analysis of the outcomes for those parents/carers who attended the Information Meeting 2 – 5 years after the Information Meetings took place.

Mediators

24 mediators (consisting of both CALM and Relationship Scotland mediators) will participate in the pilot – 10 mediators in Hamilton, 10 mediators in Paisley/Dumbarton and 4 mediators in Aberdeen. At the conclusion of the pilot, there will be a period of six months for evaluation and review of the pilot and for initial statistics to be analysed. Ongoing statistics will be ingathered to analyse the long term effectiveness of the pilot.

Gathering of Information

During the pilot period when Information Meetings are taking place, information will be gathered by the mediators, SLAB and the parents/carers who attended the Information Meetings completing approved forms. These forms will detail the information required to assess the project, including the following:

- The date when the referral was made to the pilot project for an Information Meeting to take place.
- When the Information Meeting took place.
- How matters were then taken forward - mediation, solicitor negotiation, arbitration, court etc.
- If mediation was not deemed suitable, the reasons for this, on an anonymous basis.
- If the parents/carers thereafter attended mediation and, if so, if mediation was concluded.
- If the parents/carers resolved matters by agreement, if so, how this was achieved e.g. agreement with each other/solicitor negotiation.
- If matters proceeded to court.

- If known, whether or not matters were resolved.
- The costs incurred in having the case concluded.
- If possible, follow-up would take place within 2 to 5 years of the pilot to ascertain whether or not any further disputes arose between the parents/carers who took part in the pilot regarding contact arrangements which were put in place during the life of the pilot.

Administration of Pilot

When the level of funding for the pilot is known, an Administrator would be appointed to oversee the pilot, liaise with SLAB and the Scottish Government and gather the statistics necessary to make the relevant reports at the conclusion of the pilot. It is anticipated that the statistics ingathered from the pilot will be of interest not only in Scotland but beyond. It is recognised that it will be crucial to the ingathering of statistics that there is academic support for the pilot and that the ingathering of statistics is rigorous. It is important that sufficient funding is available to ensure that statistics are ingathered in a comprehensive and suitable way. It is also hoped that information will be available from SLAB regarding the outcomes of similar cases in the jurisdictions which were not part of the pilot.

Cost Savings

Based upon SLAB statistics, the average cost of a contact case which requires to proceed to Court is £3,200. In many of these cases a Bar/Child Welfare Report is called for, the average cost of which is £2,700.

Based upon these figures, if 10% of the parents in the pilot project do not proceed to Court, there is confidence that the savings made from the reduction in legally aided court actions would mean that the funding required for the pilot would be cost neutral. Potentially, the pilot could, more than likely, result in net savings to the public purse.