

**MEDIATION IN NON-FAMILY CASES –
COVER PROVIDED BY LEGAL AID**



Revised guidelines October 2004

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The costs of non-family mediation may be allowed as an outlay in a solicitor's account under advice and assistance or civil legal aid, provided certain conditions are met.

Since 1995 the cost of mediation in family cases has been allowed in certain circumstances as an outlay in a solicitor's account. The reimbursement of these costs has been sought in relatively few cases. Nevertheless, we recognise mediation as an option that may be preferred by some individuals in certain circumstances. We are aware that mediation may also be available in non-family cases. Although the level of demand for mediation in such cases is unclear, we consider that it should be given the same recognition as mediation in family cases. Accordingly, we will now consider requests for increases in expenditure under advice and assistance or for sanction in civil legal aid cases to cover the costs of mediation in non-family cases.

There is no restriction on the type of case which can be considered suitable for mediation, but the Board's consideration of requests will be based on the criteria set out below.

As with family mediation cases, the costs of mediation in non-family cases will be regarded as an outlay in a solicitor's account under advice and assistance or civil legal aid. This will, of course, apply only to the client's own share of the total mediation fee, and not any share which is to be borne by an opponent or opponents. If the opponent is also receiving legal aid or advice and assistance, s/he should seek sanction or an increase in authorised expenditure to cover his/her share of the cost.

The Board will normally only consider requests for mediation involving mediators accredited by the Association of Mediators, the Centre for Dispute Resolution (CEDR) or the Law Society of Scotland under its Accord scheme, although we may also agree to the use of other accredited specialists. The Board has recently approved Core Solutions Group as an organisation accrediting mediators and Core Mediation as a suitable body to provide mediation services.

Where solicitors wish to make use of mediation facilities, they must:

- obtain the Board's approval for unusual expenditure before incurring the outlay in civil legal aid
- request an increase in authorised expenditure to cover the cost of the mediation proceedings in advice and assistance. An initial increase of £500 will normally be considered reasonable.

Before we can consider a request for sanction or an increase in authorised expenditure, we need the following information:

- the form that the mediation will take and, in particular, whether there will be legal representation on both sides

- details of the fees the mediator will charge and whether this will be at a flat rate, regardless of the duration of the mediation, or at an hourly or daily rate
- an estimate of the time to be spent by the solicitor on advising the assisted person before and after the mediation
- the prospects of success and the likelihood of being able to resolve the dispute by way of mediation
- the client's attitude towards the mediation and the likelihood of both parties accepting the outcome of any mediation
- where possible, the costs that will be avoided should the mediation go ahead, for example, avoiding a proof or other court hearing.

Under the advice and assistance payment scheme or where someone has a civil legal aid certificate which is to be paid on a time and line basis the Board will also consider paying the solicitor's fees to attend the mediation if it can be demonstrated that this would be reasonable, necessary and would assist the process of mediation.

We would normally expect the parties to enter into a legally binding agreement at the conclusion of the mediation. Solicitors should provide the Board with information on the outcome of the mediation and, if it was not successful, the reason why not. We will need the latter information if a further increase is sought, or a civil legal aid application is submitted after the mediation has taken place. Where the case concludes following the mediation, the solicitor should indicate in the narrative of their account whether the mediation resulted in a settlement.

To date, the Legal Aid Board has received four requests for non-family mediation under the advice and assistance scheme and all four requests have been granted by the Board.

All intimations and applications concerning mediation will be dealt with by the Board's Legal Services Department. If you have any queries regarding these guidelines, please contact Catriona Whyte, Solicitor, ext 276 or Elizabeth Cuschieri, Solicitor, ext 373, on 0131 226 7061.