



Legal Aid Department

Mediation in Legally Aided Non-Matrimonial Civil Cases

Introduction

Litigating through the courts can be lengthy and expensive. For this reason, the Judiciary encourages litigants to resolve their legal disputes through mediation.

This leaflet provides information on legal aid for mediation in civil (non-matrimonial) cases. ^(Note 1)

Are parties to proceedings obliged to mediate?

The courts require parties to proceedings including legally aided parties to explore the possibility of mediation before pursuing litigation. Unreasonable refusal by a party to mediate may result in a costs order against that party. Parties have to file certificates stating that they have been advised about mediation, whether mediation has been attempted and if not, the reasons for not doing so.

Who will pay for the cost of mediation?

As mediation is an integral part of civil litigation, the reasonable cost of mediation can be claimed as expenses incidental to the court proceedings, for which legal aid is granted and will be paid for by the Legal Aid Department. Depending upon the agreement you may reach with the other parties or any orders of the court, you may have to pay back some or all of the mediation costs out of your contribution or from any money/property you get or keep in the proceedings because of the Director of Legal Aid's First Charge. ^(Note 2)

^(Note 1) Detailed information on what is mediation, the roles of mediators and the advantages of mediation can be found in the leaflet "What is mediation" published by the Judiciary.

^(Note 2) For detailed information regarding Director's First Charge, please refer to the leaflet "Contribution towards Costs of Legal Aid Case and Director of Legal Aid's First Charge" published by the Legal Aid Department.



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How do I attempt mediation?

There is no need for you to do anything in particular. The lawyer having conduct of your case will discuss and advise you whether mediation is appropriate in your case. If mediation is considered to be appropriate, your lawyer will help you choose a suitable mediator. He/she will explain to you the fees charged and the qualifications and experience of the mediator, the number of hours required for mediation and the 1st charge implications. With your agreement, your solicitor will write to the Director of Legal Aid to obtain approval so that timely mediation can be arranged.

What happens if mediation fails?

If no agreement or only a partial agreement can be reached through mediation, the litigation process will continue and all the issues in dispute or some of the issues still in dispute can proceed to be tried by the court if necessary.

What if I do not wish to attempt mediation?

The court encourages the parties in proceedings to attempt mediation to resolve their dispute. Therefore if you unreasonably fail to engage or refuse to engage in mediation and cannot give a good explanation, you may be ordered to pay costs.

The Department supports the use of mediation. Failure or refusal to engage in mediation without proper reason may therefore amount to conduct that makes it unreasonable for legal aid to be continued, in which case, your legal aid certificate may be discharged.

Dissatisfaction with mediators

If you are not satisfied with the conduct/service of the mediator, you may bring it to the attention of the mediation organization from which the mediator is accredited for appropriate action, if any, to be taken against the mediator. You may also advise the Legal Aid Department of your complaint but the Department, not being the regulatory body, is not in any position to take any disciplinary action.