



LEEDS METROPOLITAN UNIVERSITY

**THE LEEDS COMBINED COURT  
CENTRE MEDIATION SCHEME**

**REPORT FOR  
LORD CHANCELLOR'S DEPARTMENT  
ON THE OPERATION OF THE SCHEME  
1 JULY 2000 – 31 AUGUST 2001**

**BARBARA COLLEDGE  
LEEDS METROPOLITAN UNIVERSITY  
SEPTEMBER 2001**

# CONTENTS

Preface .....	2
Introduction.....	3
Overview of the Leeds Mediation Scheme.....	3
Operation and Use of the Scheme.....	4
Feedback from Participants .....	6
Evaluation of the Outcomes of the Scheme.....	8
Conclusions and Recommendations.....	9

## APPENDICES

Appendix 1 .....	Leeds Mediation Scheme Details
Appendix 2 .....	Mediation Questionnaire
Appendix 3 .....	Mediator's Questionnaire
Appendix 4 .....	Central London County Court Mediation Scheme leaflet

# **THE LEEDS COMBINED COURT CENTRE MEDIATION SCHEME**

## **REPORT ON THE OPERATION OF THE SCHEME FOR THE PERIOD 1 JULY 2000 – 31 AUGUST 2001**

### **PREFACE**

The Lord Chancellor's Department (LCD) approved the establishment of a pilot Leeds Combined Court Centre Mediation Scheme in July 2000 with the aim of providing an alternative route for the resolution of disputes. This report provides an evaluation of the Scheme's operation up to September 2001. The Scheme is run in conjunction with the Law Society (Yorkshire & North East Regional Office) and the Association of Northern Mediators. From the Association of Northern Mediators, Andrew Callaghan and Paul Houghton have been instrumental in initiating the Scheme and Anthony Glaister in supporting both its implementation and its evaluation. From the Law Society, Ian Croft and Sirkka Goodhind have made a significant contribution to the Scheme through their involvement in the management of the Scheme and in the data collection process. My thanks are extended to each of these organisations for their assistance and support in producing this report. Finally, thanks should be recorded for those who participated in the Scheme, the parties and mediators in the disputes, whose experience of and feedback on the Scheme forms the substance of this report. Overall, the Mediation Scheme has been a success for those who have used it even where the dispute was unable to be resolved by this means. The challenge for the future is to extend use of such mechanisms for dispute resolution as an alternative to litigation.

**Barbara Colledge  
Leeds Metropolitan University  
September 2001**

# **THE LEEDS COMBINED COURT CENTRE MEDIATION SCHEME**

## **REPORT ON THE OPERATION OF THE SCHEME FOR THE PERIOD 1 JULY 2000 – 31 AUGUST 2001**

**Barbara Colledge – Leeds Metropolitan University**

### **Introduction**

The Lord Chancellor's Department (LCD) approved the establishment of a pilot Leeds Combined Court Centre Mediation Scheme in July 2000 with the aim of providing an alternative route for the resolution of disputes. The Scheme is run in conjunction with the Law Society (Yorkshire & North East Regional Office) and the Association of Northern Mediators and aims to provide parties to a dispute with a cost-effective, speedy alternative to formal judicial proceedings. This report provides an evaluation of the Scheme in the first phase of operation for the period 1 July 2000 to 31 August 2001.

The evaluation of the Scheme has been based on the following sources of information:

- Data provided by the Law Society on mediation requests;
- Questionnaire feedback from parties and mediators (received up to 19 September 2001);
- Comparative secondary research on mediation trends and the operation of similar schemes in Manchester and London.

The report provides a summary of the current Leeds Scheme, analyses its operation and use, considers feedback on the process from key participants (parties and mediators) and evaluates the outcomes of the Scheme making recommendations for its future operation.

### **Overview of the Leeds Mediation Scheme**

The Leeds Mediation Scheme commenced in July 2000 based on the Leeds Combined Court Centre. The Lord Chancellor's Department agreed to its implementation on a pilot basis with a review to be undertaken after an appropriate trial period. The Scheme itself is non-publicly funded but relies on parties being made aware of this alternative dispute resolution process by the Court. The Mediation Scheme details (Appendix 1) are distributed at the same time as the Court Allocation Questionnaire. It is for the parties to consider whether they wish to use this alternative dispute resolution process prior to the Court hearing and request a mediation appointment. These requests and mediator appointments are managed by the Law Society, Yorkshire and North-East Region. Appointments are made on a rota basis from the Association of Northern Mediators register (which includes both lawyer and non-lawyer mediators). Parties are able to request a mediator of a particular profession from the rota although in practice this is rarely done.

The aim of the Scheme is to provide a cost-effective, speedy alternative to litigation. Consequently, a set scale of fees applies for mediator appointments via this route, ranging from £125 to £500 per party. Once appointed, it is for the mediator to manage all arrangements for the mediation. All participants are requested to provide feedback on the mediation process via a standard questionnaire (Appendices 2 and 3). These forms are collected by the Law Society on behalf of the Court. This feedback is important for monitoring the effectiveness of the Scheme's operation and for informing improvements to the current process. These questionnaires are central to the evaluation of the Scheme by Leeds Metropolitan University.

### **Operation and Use of the Scheme**

The Scheme commenced operation in July 2000. Take up of the mediation process in the first phase of operation has been slow. In total, fifteen appointments have been made. In addition to these, a further four enquiries were received that either did not proceed to mediation or were unable to be processed. Details are provided in Table 1.

Total Mediation Enquiries (No.)	Enquiries not able to be processed (No.)	Enquiries proceeding to mediation appointments (No.)
19	4	15

Table 1: Analysis of mediation enquiries 1 July 2000 – 31 August 2001

The main reasons for enquiries being unable to be processed were either that only one party had completed the form or that proceedings were taking place outside the Scheme's geographical area. The total number of appointments under the Scheme has been relatively small in comparison with other mediation appointments in the region. For example, 142 mediations arising from existing litigation were undertaken in the region in 2000 (Association of Northern Mediators Survey Data of Mediations in the North of England in 2000). The relatively low interest in the Scheme to date therefore raises a number of issues that warrant further analysis in the next phase of operation:

#### ***Information to Parties***

It should be considered whether the information and guidance available to parties is sufficient. The matters raised above suggest that some parties did not fully understand the details of the Scheme for example with regard to the location of their dispute or the need for agreement by both parties of the wish to mediate. Further, the relatively low level of interest in the Scheme suggests a possible need for improvements in the communication of the potential benefits of this alternative dispute resolution mechanism. The literature made available to parties at the time of the allocation questionnaire comprises a short leaflet outlining the Scheme and its benefits (Appendix 1).

Parties are referred to other sources of information that are available on request, such as the LCD Brochure (Resolving Disputes Without Going To Court - December 1995). However, in comparison with the information made available for parties in London (Appendix 4), the information for the Leeds Scheme is relatively brief and does not provide sufficiently detailed information on the mediation process. Additionally, unlike the London Scheme, (which is hosted and run by the Court) the Leeds Combined Court or Lord Chancellor's Department does not appear, from the nature and design of the literature made available to the parties, to actively encourage the use of mediation as an alternative. This is partly because the London Scheme is managed by the Central London County Court with a designated officer appointed to do so at least on a part-time basis. Nevertheless promotion of mediation to the parties might usefully be undertaken at an earlier stage and a more general leaflet/brochure on mediation produced that might be available from the court. For example, the updated LCD brochure and/or the general brochure produced by the Association of Northern Mediators, which gives the contact details of other agencies available to appoint mediators.

It is unclear from the evidence available whether the information available is a factor in the parties' decision making. Equally, it could be argued that in any case, the timing of the provision of information on the Scheme at the allocation questionnaire stage is too late in the process. It may be appropriate to consider whether the parties should be asked to declare at the allocation questionnaire stage whether mediation has been considered and their reasons for not pursuing this option. Further qualitative analysis of parties' views is needed together with statistical comparisons of cases proceeding to litigation or settlement via mediation or other means during the period in question to inform this.

### ***Cost of the Scheme***

It is unclear whether the cost of the Scheme is influencing the parties' decision not to proceed to mediation or whether there are other factors, such as lack of confidence in the process or the nature of the dispute in question, that are impacting on the low number of enquiries. Further analysis of these factors might usefully be undertaken. From the evidence available from feedback questionnaires, it does not appear that users of the Scheme consider the cost of the Leeds Scheme prohibitive. A lesser scale of charges might not attract many mediators most of whose normal charges would exceed the Schemes scale costs. However, in comparison to the London Scheme, the cost of the Leeds Scheme is greater and without public subsidy.

### ***Appointment Records***

The records available relating to enquiries, appointments and the use of the Scheme are not extensive. This arises primarily because of the low take up of the Scheme with very few mediator appointments having been made. However, irrespective of this, the data available on the appointments made and the subsequent outcome could be enhanced. For example, details of the nature and size of the dispute might be collected at the time of enquiry. Equally, the mechanism for obtaining feedback on the outcome of the mediation warrants some improvement. At present, the records rely on the return of questionnaires by either the mediator or the parties. This does not always occur which results in lack of data as to the success or otherwise of the mediation process. This presents difficulties in the evaluation of the Scheme and would benefit from review.

## Feedback from Participants

Feedback on the Scheme is obtained from participants in the process using a short questionnaire. Separate questionnaires are used for the mediator and the parties. The completion of these is voluntary, however all mediators appointed via the Association of Northern Mediators are encouraged to ensure that a questionnaire are returned. In the period to 19 September 2001, a total of fourteen questionnaires were returned from the fifteen mediation appointments made. However, these related to only seven mediation appointments, with data on the remaining eight still not available. Given the small sample of completed questionnaires, any conclusions drawn from the evaluation can only be tentative. However, the feedback does enable some apparent trends to be identified.

### *Respondents to the Questionnaire*

From the fourteen questionnaires received, the following number of responses were received from the parties to the process and the mediators:

Mediator Responses	Claimant Responses	Defendant Responses	Total Responses
6	3	5	14

Table 2: Analysis of responses received up to 19 September 2001

Of these, responses were received on seven mediations.

### *Profile of Participants*

The majority of mediators were CEDR registered (with others also registered with the RICS, the CI Arb. and the Academy of Experts). Each had previous experience of mediation with two citing between 10 and 20 mediations. The following professional occupations were represented:

Solicitor	Barrister	Chartered Accountant	Academic
3	1	1	1

Table 3: Analysis of professional occupation of mediators

The parties were a mix of companies privately funded and individuals either privately funded or with legal aid. Most parties were represented in the mediation by a solicitor.

### ***Nature of the Dispute***

All the disputes apart from one were contractual with other matters such as Intellectual Property Rights, Partnership or Landlord and Tenant being cited occasionally. Only one dispute concerned negligence (medical). The amounts in dispute were varied as indicated in Table 4:

Value in dispute	£5,000-15,000	£15,000-100,000	£100,000+
Number of disputes	1	4	2

Table 4: Number of disputes by value.

### ***Agreement to Mediate***

The feedback from the parties indicates that normally it was their solicitor/representative or the other party who recommended mediation. Only one party indicated that they had learned about the Scheme from the leaflet. In all other cases it was their solicitor who had advised them of the Scheme. This is a significant factor in raising parties' awareness of the alternatives to litigation and should be considered further in any future information dissemination strategy.

The decision to proceed to mediation was primarily based on solicitor's advice or a belief that it would be quicker and cheaper. Only two parties' indicated that it was based on previous experience of dispute resolution processes with this being of mediation or court.

### ***The Mediation Process and Outcome***

Overall, all parties were satisfied (feeling either content or very good) with the mediation process, even where they failed to settle their dispute. In total, based on the responses received, four of the seven mediations settled (see Table 5). Data on the outcome of the other eight mediations is not available due to questionnaires not having been received.

Where a settlement was not reached, the reasons given were (1) the stance of one of the parties (for example not prepared to aver from a previous offer) or (2) one party choosing to continue with the court proceedings. Where the mediation failed, some of the parties still considered the process to have been valuable. For example, one indicated that the process was satisfactory even though the stance of the other party was not. Another indicated that the mediation had assisted in defining and narrowing down the points in conflict and was instrumental in establishing the framework within which a settlement was subsequently reached. All parties except one stated that they would consider using mediation again.

## Cost

In each case, the fees in the mediation were considered to be reasonable. These ranged significantly for a half-day mediation from £250 to £650 plus VAT and £1,600 including accommodation. In six out of eight cases, the parties thought that the mediation had saved them money on the total potential cost of resolving the dispute.

Value in dispute	£5,000-15,000	£15,000-100,000	£100,000+
Disputes settled	1	2	1
Disputes not settled	-	2	1

Table 5: Outcome of dispute by value.

## Evaluation of the Outcomes of the Scheme

Overall, given both the low adoption of the Scheme and the small number of questionnaire responses, any conclusions reached may be premature. However, it is evident from the limited data available that the Scheme has been of value to those parties that have chosen to use it and that the use of mediation would be considered in the future. Court Mediation Schemes offered in London and Manchester indicate a similar pattern of interest. Professor Hazel Genn's report on the Central London County Court Pilot Mediation Scheme and the Court of Appeal statistics indicated a take up rate of around 5% since its commencement in 1996. In the first six months of 2001, 53 appointments were been made under the London Scheme. In Manchester the Scheme has resulted in 11 mediation appointments since February 2001.

In comparison, the Leeds Scheme outcomes appear to be broadly consistent although overall, the take up is low. It is unclear whether this arises because of stronger direct access to mediators or as a result of the way in which information is made available to prospective users. For example, the London Scheme employs a full time Court administrator. Similarly, information on the Scheme has been made available by His Honour Judge Butler QC on the London Court web site ([www.open.gov.uk/lcd/civil/adrpilot.htm](http://www.open.gov.uk/lcd/civil/adrpilot.htm)).

To set this in context, nationally and regionally mediation trends have been increasing albeit from a low base. A survey in January 2001, undertaken by the Association of Northern Mediators of mediation appointments between January and December 2000 in the north of England, indicates a growth in the use of mediation (90 in first six months and 124 in the latter part of the year). Of the total (214), over half (142) of the mediations arose from existing litigation although only 10 of the mediations arose from Court Schemes. As Anthony Glaister suggests in his article, (Glaister A. (2001) Mediation Trends in the North" Journal of ADR Negotiation and Mediation Issue 3) mediation activity is increasing but "*the threshold still remains dismally low given the numbers of cases where mediation was presented as an option to the parties*".

The value of mediation for the settlement of disputes is recognised by Government and is to be promoted more widely for use by Government departments and agencies. In March 2001, the Lord Chancellor, Lord Irvine, announced that mediation, together with other alternative dispute resolution methods where feasible, shall be adopted for the resolution of government disputes. Furthermore, the Second Report of the Commercial Court Committee Working Party on ADR (Court Service 2000) confirms the continued practice of making ADR orders in Commercial Court proceedings. This indicates that the *“saving of costs to the parties and judicial time for the Court amply justifies continuation of the jurisdiction”*. Further, *“in the vast majority of cases where ADR orders have been made, successful mediation or settlement has followed.”* (During the period from June 1996 to July 1998, ADR Orders were made in approximately 67 cases. In only 7 of these was ADR not used or a settlement not reached). The report also confirms the necessity for clarity of explanation to parties who often have little knowledge or experience of ADR in practice. This provides support for the continued operation of the Leeds Mediation Scheme. However, there may be value in reviewing the nature and timing of guidance on mediation provided to the parties.

Equally, respondents to the Lord Chancellor’s Department document, Alternative Dispute Resolution: A Discussion Paper (November 1999), provide broad support for the benefits of ADR and mediation in particular, with time, cost and convenience being cited as the main advantages. This accords with the responses in relation to the Leeds Scheme. Further insight into the perceived value and suitability of mediation is provided in the report together with comment on the operation of Court Attached Schemes and ADR in the process of litigation. For example, the responses suggest that reference to ADR should be made at later stages in litigation after the allocation stage (55 out of 66 respondents). Indeed, one respondent suggested consideration of ADR at the allocation stage to be too late. This practice warrants further consideration in the context of the Leeds Scheme.

## **Conclusions and Recommendations**

The Leeds Pilot Mediation Scheme has been in operation for fourteen months with take up being relatively slow. Despite this, the Scheme has been well received by users and participants, although feedback and associated data collection is somewhat limited. This report therefore provides an evaluation of the Scheme in operation based on the current data and evidence available. Further analysis is recommended over a longer period of operation together with a strengthening of data collection methods.

The key strengths of the Leeds Court Mediation Scheme comprise:

- The Scheme is supported by the Judiciary and the Lord Chancellor’s Department.
- The satisfaction with the mediation process that has been expressed by the parties.
- The cost effectiveness of the scheme which uses minimum public funding and has a reasonably low fee scale.
- The reasonably high success rate with 57% of those disputes proceeding to mediation achieving settlement.
- The use of an independent appointing agency with quality assurance of mediations facilitated through the use of registered lead mediators.
- The inclusive nature of the mediators listing with a range of professional occupations represented.

The following recommendations are proposed for further consideration:

- The Scheme should continue to be monitored with a further report being produced after 24 months.
- The collection of data and feedback via the questionnaire process should be reviewed and strengthened. Consideration should be given to the gathering of qualitative feedback from interviews with a sample of participants.
- The guidance and information made available to the parties should be reviewed and enhanced.
- Further analysis of the factors influencing the parties decision not to proceed to mediation needs to be undertaken. Issues such as perceived cost, lack of confidence in the process or the nature of dispute need further analysis.
- The collection of data relating to enquiries, appointments and the use of the Scheme warrants review.

# APPENDIX 1

## LEEDS MEDIATION SCHEME DETAILS

## APPENDIX 2

# MEDIATION QUESTIONNAIRE

## APPENDIX 3

### MEDIATOR'S QUESTIONNAIRE

APPENDIX 4

CENTRAL LONDON  
COUNTY COURT  
MEDIATION SCHEME LEAFLET