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## **Prize “The Crystal Scales of justice”**

**The European prize for innovative practice  
contributing to the quality of civil justice**

**2008 Edition**

### **Entry form**

**(Please note that this file - without the appendices –  
once completed should not exceed 6 pages)**

To be returned to the European Commission or Council of Europe by 1 <sup>st</sup> June 2008	
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#### **1. Details of entrant (institution/organisation)**

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**2. Represented by**

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**3. Scheme submitted**

**Title:** The Small Claims Mediation Service

**Date of introduction:** April 2007

**4. Please attached to the entry form, preferably, in English or in French or, where this is not possible, in one of the other official languages of the European Union:**

- a. A description of the scheme (*maximum 1 page*)
- b. A description of the effects of the scheme on the workings of the court (*maximum 1 page*)
- c. Any possible future additions which might improve the results of the scheme (*maximum 1 page*)
- d. Any documents, press articles, evidence from members of the public, etc, relating to the scheme (*with a brief summary in English or French*)

#### 4(a) Description of the scheme

The small claims mediation service provides free mediation to parties wishing to settle disputes out of court. Each case is assessed on the facts and the mediator encourages open-minded discussions with the disputing parties to arrive at a range of possible settlement outcomes, which are not exclusively financial.

Cases are either referred to the mediation service by the judiciary or the parties themselves opt for the service simply by ticking the appropriate box on the court form.

Though mediation is encouraged and supported by the Civil Procedure Rules, this is an entirely voluntary service. Parties interested in trying mediation will contact the mediator so that a mutually agreeable time can be arranged. The mediation itself can be arranged as a traditional face-to-face appointment, or as a telephone appointment.

Although there is no restriction on the time made available, the mediations generally last about an hour. In that time, around 68% of cases have settled. If the case settles at the mediation, the case is de-listed (taken out of the court system).

Although the service only began in April 2007, the mediators have been able to build up significant expertise in mediation and settlement options as part of their professional development. Over the past 12 months, the mediators have conducted in excess of 4,000 mediations.

The service provides an efficient service because the mediators work closely with Court Managers, Judges, Area and Regional Directors and other local stakeholders. The mediation service has been recognised as one of the Lord Chancellor's "breakthrough commitments" for Her Majesty's Courts Service (HMCS).

The service has grown significantly in a very short time. It began at Manchester County Court, as one of three pilots that were tested during 2005/06. That pilot had such high settlement and satisfaction rates, that nine similar mediators were appointed in April 2007, and a further eight in October 2007. From May 2008, each geographical area of Her Majesty's Court Service will be served by one of 22 small claims mediators, providing a free service to all courts users anywhere in England and Wales.

#### 4(b) Description of the effects of the scheme

Unlike higher value claims, where parties are generally legally represented, the vast majority of parties with small claims (those valued less than £5,000) are unrepresented. Consequently, many more of these cases tend to go on to a hearing before a judge. As a result, small claims hearings represented some 72% of all hearings in the county courts of England and Wales in 2006 (46,836 out of 64,520).

Since it can cost as little as £25 to issue a small claim in the courts, it is unrealistic to expect small claims users to pay for mediation. Nevertheless, there is evidence that many of the disputes falling into the small claims track could be settled prior to the hearing. This would be a good result for the parties, but also for HMCS as the cost of processing defended small claims cases is not fully recovered through fees.

The Small Claims Mediation Service was therefore set up as a free service to court users, providing the opportunity to settle disputes at an early stage. This makes good sense for users, and also frees up judicial time, enabling the judiciary to concentrate on those cases that require the specialist knowledge and expertise of a judge. Over the past 12 months, small claims mediation has freed up an estimated 3,000 hours of judicial time.

Mediation is a speedier process than a full court hearing. Taking a small claim to a full court hearing takes several months, while most mediations can be arranged and concluded in a few weeks. Mediation provides an opportunity for parties to discuss their issues in a less formal environment, to resolve differences and agree to a settlement.

Settlements reached through mediation can be more flexible than those available to a judge. There have been a number of innovative settlements, including donations to charity, apologies, a courtesy car during repair work, and re-activation of business contracts. Although all court users with a small claims matter will have to pay an initial court fee, using the mediation service comes at no further cost and if unsuccessful users can still have their dispute heard by a court.

The quality and compliance of settlement outcomes is also higher because the parties shape the terms of the settlement agreement. So, unlike a court hearing, where 12-13% of cases require some form of follow-up enforcement action, the settlements reached following a small claims mediation are complied with in 99% of cases.

Initially the expectation was that small claims mediation would only be supplied as a face-to-face service. However, telephone mediation began to be introduced where one of the parties lived at a distance from the court. It soon became clear that parties preferred settling their disputes by phone. Now almost 97% of mediations are by phone, enabling parties to resolve their disputes without having to travel to court, saving time and expense. It is particularly useful in areas that are inaccessible or poorly served by public transport, and has also been helpful to those who are elderly, have a disability or have caring responsibilities.

To date more than 1000 customers have given their views about the service to an online customer satisfaction survey. This shows that 98% are satisfied or very satisfied with the professionalism and helpfulness of the mediators, with 94% saying that they would use the service again - even 85% of participants, whose cases did not settle at mediation, said they would use the service again. Users have also commented that the service is quicker, cheaper and less stressful than the normal court process.

#### 4(c) Any possible future additions which might improve the results of the scheme

Over the past year we have continually adapted the service to ensure that it meets the needs of users, and improves the service offered.

One aspect of the scheme that had initially concerned members of the judiciary was that if cases did not settle at a face-to-face mediation, the parties would have to attend court twice - one for the mediation and again for the court hearing. However, the increased use of

telephone mediation has effectively resolved this potential problem. Now, parties need not attend court at all if their case settles by telephone mediation - as the vast majority do.

The reliance on one in-court mediator per Court Area initially meant a discontinuity of service if the mediator took sick leave unexpectedly. However, we have been able to respond to that as the pool of mediators has grown, so that cover can be provided by mediators in adjoining geographical areas, and even by mediators further afield, conducting telephone mediations.

We have also been able to increase the effectiveness of the mediators by providing them with dedicated administrative support. As demand for the service has grown, the support officers have been able to make the initial introductions and arrangements with customers, leaving the mediators more time to concentrate on the actual mediations, and thereby increase their capacity.

We have also recognised that the mediators need professional support. We have therefore appointed one of the mediators as a lead mediator, responsible for the continuing professional development of the mediators, enabling them to build on their experience with additional knowledge. This has ranged from regular get-togethers to discuss difficult cases, to mediation conferences and seminars to keep them up-to-date with mediation practises to improve accountability and overall service delivery.

Feedback questionnaires and forms are a useful way to evaluate how the service is running and how it can be improved. We have used both an online customer service feedback questionnaire as well as a hard copy questionnaire for those who do not have access to a personal computer.

4(d) Any documents, press articles, evidence from members of the public relating to the scheme

**Extracts from the Customer Survey**

<b>How satisfied or dissatisfied were you with the following aspects of your contact with the Small Claims Mediation Service?</b>			
	<b>Satisfied/ Very satisfied</b>	<b>Neither satisfied nor dissatisfied</b>	<b>Dissatisfied/ very dissatisfied</b>
Written information received about the service	94.4%	4.3%	1.3%
How easy was it to get in touch with the service	91.6%	6.4%	2.1%
Explanation of how the service could help me out	96.3%	3.3%	0.5%
Helpfulness of the mediator	98.0%	1.1%	0.9%
	<b>answered question</b>		<b>1074</b>

<b>How satisfied were you with the following aspects of the mediation?</b>			
	<b>Satisfied/ Very satisfied</b>	<b>Neither satisfied nor dissatisfied</b>	<b>Dissatisfied/ very dissatisfied</b>
Your opportunity to participate and express your views	96.4%	3.5%	0.1%
The time allowed for the mediation	94.4%	5.4%	0.2%
The professionalism of the mediator	98.2%	1.5%	0.4%
Facilities for the mediation(face to face mediations only)	82.1%	17.9%	0.0%
<b>answered question</b>			<b>1071</b>

<b>Would you be prepared to use the mediation service again?</b>	
<b>Answer Options</b>	<b>Response Percent</b>
Yes	94.0%
No	1.4%
Don't know	4.6%
<b>answered question</b>	
	<b>1065</b>

#### **Qualitative Feedback to the online survey**

- I was dealing with my wife's illness and under stress owing to financial and family business. The help from the mediator and his staff was invaluable. Being 88 years of age the advice was appreciated and will be a need with other people with problems at the court. I am disabled and have problems walking - it helped to discuss the case on the 'phone.
- Initially very sceptical due to the intractable stance of the other side. It proceeded well via telephone conversations and quickly resolved to my satisfaction.
- An excellent opportunity to sort out problems before going into court. I would happily have paid a percentage to the mediator.
- I would recommend this procedure to anyone who finds themselves in a similar circumstance. The courtesy and understanding I received was refreshing to say the least.
- As I am 68 years old, it would have been difficult for me to travel from London to Manchester. The settlement was accepted. Very easy to get in touch with the service, the mediator was extremely helpful & pleasant.
- Really good service, very fair and impartial. I hope I never have to use it again, but would recommend it to anyone. I had been trying to sort out my case for 12 months. It was all done in less than one hour to both parties' satisfaction.
- I find the service very effective. It allows the claimant an opportunity to see what their claim will sound like before a Judge. It is very good at exposing weaknesses in their claim and encouraging settlement - rather than wasting the Court's time with a full trial hearing.

### **Extracts from received in letters from users of the service**

- I would just like to thank you for all your help and let you know how much I appreciate the work you have done for me. The whole process was dignified and fair, and I think your service is invaluable to people such as myself that have no idea relating to the law and seem to spend most of our time banging our heads against a wall. I know I was the bad guy in this case, but at no time was I made to feel as such and it made everything that much easier to come to an agreement. Your service is greatly needed and although you must feel that it is a thankless task at times, please be assured that you are doing a great job.
- I am writing to thank you for your invaluable services and all your help at the mediation. I particularly appreciated your re-arrangement of your diary and your willingness to travel to Northampton on such a busy day. Thank you again for facilitating a successful conclusion to this case.
- I would like to express my thanks to the court office staff for their patience and efficiency. I am also very grateful to X [the mediator] for her friendly but highly professional assistance over what has been a very stressful time.
- We have today completed a process with the assistance of X, the Small Claims Mediator; and although we have completed the on-line survey as requested, we felt it important to write to praise the service we have received. X was approachable, efficient and exceptionally professional throughout the whole process; and from the time of our initial contact to today's outcome, she made a difficult issue more bearable to deal with.
- Thank you very much for your excellent and very patient mediation this morning! It is really very much appreciated.
- We were extremely pleased with the mediation, which we thought was professionally and cleverly brought to a resolution.
- Thank you for your help and understanding - it made the process a lot easier than I had imagined it would be.

### **5. Does the scheme have the support of the responsible public authorities in the Country?**

The responsible public authority, HMCS, is an executive agency of the Ministry of Justice, which oversees all courts in England and Wales. The roll out of the service across England and Wales had Corporate and Ministerial approval and is also supported the Lord Chancellor's Breakthrough Strategy, where the presumption is that all but the most complex small claims can be dealt with by mediation.

## **6. Do you believe the scheme to be usable in other courts in European States?**

There is no reason why a free - or relatively low-priced - small claims mediation scheme based on the above model could not be put into operation in most European States.

However, any member state interested in setting up a scheme would need to take account of the following:

- The efficiency of the existing small claims process. If the existing processes are efficient, there might be some reluctance in introducing an untested mediation service. We too faced some initial reluctance in England and Wales, but the judiciary were willing to work closely with us in designing a workable scheme.
- Financial limits for small claims will vary across Europe, and if the limit is too low, there may be insufficient throughput of cases. To make a scheme viable.
- Throughput of cases - are there sufficient cases per annum to justify an in-court scheme?
- Referrals - will there be sufficient cases referred to the service by the judiciary and self referral by the parties themselves?
- Accommodation - are there suitable offices for the mediator and rooms to conduct mediations?
- Settlement Rates - the mediator needs to achieve high enough settlement rates to divert enough cases from the court system to free up court resources in order to make offsetting savings.
- Support of the Judiciary - high level of judicial engagement is required for the scheme to be publicised amongst the judiciary and to ensure sufficient judicial referrals.
- Training/Recruitment/Accreditation of mediators - the mediators should be trained/assessed in order to ensure they meet the quality standards adopted by other mediation providers in the State.
- Support/Cover for mediators - procedures need to be put in place to ensure continuity of service during absences, such as sick leave, annual leave and maternity leave.

For now, it is possible for parties based in other European States involved in a small claims dispute with a party based in England and Wales to access the mediation service here by telephone. Indeed, the small claims mediators have been able to settle cases with parties overseas by both telephone and email.

**I, Jeremy Tagg, representing the aforementioned institution/organisation, declare that I am aware of the rules of the competition, which I undertake to comply with.**

**Done at  
On (date) 29 May 2008**

**Signed**

