

General Authority for the Deployment of Mediators in Legally Aided Non-Family Intra-Litigation Civil Proceedings.

This General Authority allows for mediation to be funded for legally aided parties in non-family civil cases where:

- Litigation has commenced and is on-going;
- A Full Certificate has been issued for representation lower or representation higher; and
- The mediator is accredited by one of the listed bodies.

The General Authority sets out the hourly rates available, number of hours, travel rates and venue costs allowed without the need for prior authority to be sought from the Legal Services Agency (LSANI). It includes the allowance for solicitor attendance at the mediation and how this will be funded.

The guidance in this General Authority also outlines the circumstances in which prior authority must be sought from the LSANI before the deployment of mediation.

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1. Overview

- 1.1 The Legal Services Agency (LSANI) issues a General Authority under Regulation 37(4) of the Civil Legal Services (General) Regulations (NI) 2015.

2. Extent of the General Authority

- 2.1 The General Authority will apply from 14 February 2022 and run on a pilot basis for a period of 12 months.
- 2.2 The General Authority covers the deployment of mediation in Non-Family civil cases in which there are intra-litigation proceedings and where a full certificate has been issued for representation lower or representation higher.
- 2.3 The General Authority does not extend to Children Order cases where prior authority is still required.
- 2.4 The use of mediation is not compulsory in resolving disputes under legal aid. It is entirely voluntary, and mediation should only be pursued with the agreement of both parties. In considering whether to recommend mediation to resolve the dispute, either to the other party, or the court, the solicitor for the legally aided party should be satisfied that the client is content to deploy mediation and will be competent to participate in the mediation process.

3. Rates Allowed Under the General Authority

- 3.1 Under this general authority a mediator may be deployed at the rates below;
 - Mediator preparation and attendance £80 per hour
 - Mediator Travel Time £33.50 per hour
 - Mediator Mileage 35.7p per mile
- 3.2 A legally aided party will be limited to their proportion of the total costs of the mediation, divided equally among all parties to the dispute (up to a maximum of 50% of the total costs).
- 3.3 In cases where the other party to the mediation is not legally aided and they wish to deploy more expensive mediators, the contribution of a legally aided party will be limited to their portion of the rates allowed

above. Any costs above this level will be paid by the non-legally aided party.

- 3.4 Where the value of a case is estimated to exceed £250,000, LSANI will consider a request for prior authority for the mediation fees to be allowed, which may exceed £80 per hour where this can be justified due to the value or complexity of the case.
- 3.5 Should the case where mediation is deployed involve claims for damages, such as in a personal injury case, and the case is won or settled in favour of the legally aided party then the full costs of the mediation will be paid by the defendant under the normal liability on the defendant to pay the plaintiff's costs, under the 'costs follow the event' principle. This should be made clear to the respondent before mediation is entered into.

4. Hours Allowed

- 4.1 The General Authority sets a cap on the number of hours allowed for a mediation at 10 hours for the mediation itself and 3 hours of preparatory work. Prior authority must be obtained from LSANI if the amount of hours required for the mediation will exceed this amount.
- 4.2 This 10-hour limit for the mediation may be exceeded in the following specific circumstances - If during the mediation process it becomes apparent that the matter is close to resolution but will exceed the 10-hour limit, and it would harm the process if the mediation is interrupted to seek an extension of hours, the limit may be exceeded. Should this occur, the LSANI should be informed immediately after the mediation is concluded via LAMS.

5. Travel and Subsistence

- 5.1 Travel and mileage for the mediator will be paid in accordance with the rates under the General Authority and will cover travel within Northern Ireland only. Travel costs will not be paid for mediators to travel to Northern Ireland.
- 5.2 Where necessary, reasonable parking to be vouched on assessment will also be payable.
- 5.3 Only the legally aided party's proportion of travel and subsistence costs will be covered, divided equally among all parties to the dispute.

6. Venue Costs

- 6.1 The legally aided party's contribution to the venue costs for the mediation, including refreshments, may be paid up to a maximum of £200 for their proportion of the costs, with the bill split evenly between the parties to the dispute.

7. Solicitor Attendance at Mediation

- 7.1 The legally aided party's solicitor may attend the mediation under the General Authority. They will be paid in accordance with the Civil Legal Services (Remuneration) Order (Northern Ireland) 2015 for the type of case and court tier, which might include a composite or standard fee, in which case the solicitor would not be entitled to extra costs from the legal aid fund for attending the mediation. For cases under the County Court Scale Fee the solicitor may claim for mediation under 'additional days' which allows 50% of the solicitor's scale fee on the amount claimed or decreed, as appropriate, not exceeding £600.
- 7.2 The travel time and mileage rates in the Remuneration Order will also apply.
- 7.3 The attending solicitor must be fully qualified and no other persons, such as a paralegal may attend at a cost to the public purse.

8. Counsel Attendance at Mediation

- 8.1 The process of mediation does not normally require advocacy and the presence of counsel at mediation will not normally be appropriate. Prior authority will be necessary for counsel to attend and would need to be justified due to the value of the case or the complexity of the case.

9. Accreditation of Mediators

- 9.1 It is important that all mediators being deployed are properly accredited by an appropriate body that requires approved training, supervision and ongoing Continuing Professional Development (CPD). They must also require members to have the requisite insurance to practice and have a robust mechanism for investigating complaints.

9.2 A mediator being deployed under this General Authority must be accredited as a mediator by one of the following bodies.

- UK College of Mediators
- The Mediators Institute of Ireland
- The Law Society NI
- The Bar NI
- Mediation NI
- Chartered Institute of Arbitrators
- Centre for Effective Dispute Resolution

9.3 Further bodies who meet the criteria may be added to the list on application.

10. Prior Authority

10.1 Prior authority is required to be requested from the LSANI in the following circumstances.

- Where the value of the case is estimated to be more than £250,000;
- Where the mediation rates exceed £80 per hour and this can be justified due to the value and complexity of the case;
- Where the hours of mediation will exceed 10 hours, or more than 3 hours of preparatory time is required;
- Where legal representatives, other than the client's solicitor are to attend the mediation at a cost to the public purse; and
- Where the legal aided parties share of the venue costs will exceed £200.

10.2 In considering whether additional legal representation should be allowed, the following factors will be taken into account: the complexity of the case; the court tier; the standing of the other party to the dispute; the legal representation for the other party; the financial assets under dispute or amount of damages at stake; and any other relevant circumstances as appropriate.

10.3 Prior authority requests should be made to the LSANI via the LAMS system.

11. Payment of Bills

11.1 To enable payment of bills, the solicitor should submit to the LSANI the following:

- a copy of the mediator's bill;
- any car parking receipts as required;
- a copy of the bill for venue costs;

- proof of the mediator's appropriate accreditation;
- the bill should contain a separate disbursement fee line for the mediator's costs, including travel, and venue costs when submitting their claim for payment in line with the guidance in LAMS;
- the evaluation form on the outcome of mediation; and
- An attendance note or other evidence of the Solicitor's attendance at the mediation should they be claiming costs.

12. Evaluation of the Outcome of Mediation

- 12.1 The solicitor should also submit to LSANI a prescribed form advising whether the mediation had been successful in resolving the dispute, or in narrowing the issues at dispute, or whether the mediation had been unsuccessful. The conduct of the parties during the mediation will not be a matter for the evaluation and will remain confidential.

13. Evaluation of General Authority

- 13.1 The General Authority will run on a pilot basis for a calendar year from the 14 February 2022 to 13 February 2023. It will be evaluated at the end of this period and a decision taken as to whether the provisions of the General Authority will continue, or need amended, or if the general authority should be withdrawn. The evaluation may touch on any or all aspects of the operation of the general authority. There should therefore be no expectation that any provision of the general authority will continue in operation beyond the end date of the pilot. In addition, the operation of the general authority will be monitored on an ongoing basis throughout the period of the pilot, and the provisions of the general authority may be amended or withdrawn during the pilot period in response to information gathered through that monitoring.
- 13.2 This evaluation will also inform consideration of the benefits and success of mediation in resolving civil disputes for wider policy consideration.