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Mediation Monitor 2007

Interim report

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Table of contents

Summary	1
1 Introduction	3
1.1 Objective and definition of the problem	3
1.2 Referral and financial facilities	3
1.3 Study methods	4
1.4 Set-up of this report	6
2 Management and financial facilities	7
2.1 Availability of mediators	7
2.1.1 Councils for Legal Aid	7
2.1.2 Netherlands Mediation Institute	7
2.2 Financial facilities	8
2.2.1 Incentive contributions	8
2.2.2 Mediation legal aid permit	8
3 The Legal Counter	11
3.1 Introduction	11
3.2 Mediation proposal	12
3.3 Familiarity with mediation	13
3.4 Motives for mediation	14
3.4.1 Parties' motives for mediation	14
3.4.2 Motives for mediation proposal	15
3.5 Mediation results	16
3.5.1 Agreement	16
3.5.2 Lead time, meetings and contact hours	16
3.5.3 Satisfaction of parties	18
3.5.4 Costs incurred by parties	18
4 The courts	20
4.1 Introduction	20
4.2 Study methods	23
4.3 Familiarity with mediation	24
4.4 Motives for mediation proposal	24
4.5 Development in number of mediations	25
4.6 Parties' motives	25
4.7 Mediation results	26
4.7.1 Agreement	26
4.7.2 Duration of mediation	27
4.7.3 Satisfaction of parties	30
4.7.4 Costs incurred by parties	31
5 Mediation outside referral facilities	32
5.1 Mediations involving a mediation legal aid permit	32
5.1.1 Parties' motives for mediation	32
5.1.2 Agreement	33

5.1.3	Satisfaction of parties	33
5.1.4	Lead times and contact hours	34
5.1.5	Costs incurred by parties	34
6	Conclusion	35
6.1	Familiarity with mediation and its use	35
6.2	Quality and results of mediations	36
6.3	Quality and availability of mediators	37
6.4	Financial facilities	38
6.5	Limitations and future studies	39
	Literature	40
	Appendices	
1	Monitoring committee	41
2	Definitions and terms	42
3	Statistical terms	44
4	Mediators' fields of affinity	45

Summary

Objective and methods

April 2005 the Dutch Ministry of Justice introduced policy measures (mediation facilities at the Legal Counters and the courts, as well as financial facilities) to promote citizens' familiarity with mediation and its use. This *interim report* sets out the current state of affairs for the period April 2005 up to and including December 2006 in respect of:

1. familiarity with mediation and its use;
2. the quality and results of mediations;
3. the quality and availability of mediators;
4. the appeal made to financial facilities.

The study aims to present facts and figures concerning the current state of affairs with respect to mediation and developments over time.

To collect the relevant data, a Monitor of Mediations Referred via the Courts and a Monitor of Mediations Referred via Legal Counters were developed. Data were collected by means of questionnaires completed by mediators and parties after taking part in mediation, and through administration records at the courts, the Legal Counters and the Councils for Legal Aid.

Results

The key results are:

Familiarity and use

- Following the roll-out of the referral facilities with the Legal Counters and courts in 2005 and 2006, the number of mediations increased. Of the mediations started, 565 had been referred via the Legal Counters and 2,721 via the courts. Another 395 mediations involving at least one party who had been granted a mediation legal aid permit had not been referred through either of these facilities.
- Some of the parties who took part in mediation had heard about it beforehand (20% with the Legal Counter and 45% with the court).
- Parties found the Legal Counter and the court an important source of information on mediation.
- The three key reasons parties gave for accepting the mediation proposal were that they expected that mediation would benefit the future relationship with the other party and that a non-legal procedure would yield faster or better results.

Quality and outcome of mediations

- For mediations referred via the Legal Counter, full agreement was reached in 71% of all cases and partial agreement in 8% of all cases. For mediations referred via the courts 55% ended in full and 9% in partial agreement.
- More than one quarter of all mediations referred via the Legal Counter was settled within two weeks. One quarter of all mediations was settled within four

contact hours and 40% within eight hours. Administrative cases were settled faster than civil cases. At the courts, 72% of all administrative cases was settled within four weeks (28 days). For civil cases 44% of all mediations was settled in that time. Some 7% of all civil cases was settled within two contact hours, compared with 42% for administrative cases.

- On average, parties were satisfied to very satisfied about the duration, the financial costs and the outcome of the mediation. Mediation parties who had reached full agreement were satisfied more than parties who had reached partial or no agreement.
- In general, parties would be prepared to opt for mediation again in the event of any future conflicts.

Quality and availability of mediators

- The Netherlands Mediation Institute (NMI) recorded 829 NMI Certified Mediators, including 534 mediators registered with the Councils for Legal Aid. There have been no indications of a shortage of mediators.
- In general, parties are satisfied to very satisfied concerning the quality of the mediators, in respect of their accuracy, impartiality and the manner in which the mediator guides the mediation.

Appeal to financial facilities

- A total of 1,050 incentive contributions (2,5 hours of free mediation) were paid for mediations referred via the courts.
- A total of 1,887 mediations were started involving at least one party receiving a mediation legal aid permit. A total of 2,908 mediation legal aid permits were granted.
- The availability of a mediation legal aid permit was (somewhat) relevant for 70% of the parties referred by the Legal Counters in their choice for mediation. The incentive contribution was (somewhat) relevant for 51% of the parties referred by the courts in their choice.

Restrictions

This interim report provides an insight into the current state of affairs concerning the use of, and familiarity with, mediation. However, this interim report can provide no more than a preliminary picture as the referral facilities were still in the process of being implemented during the study period. Future reports carried out as part of the Mediation Monitor will be able to present a more complete and extensive picture than the current interim report as more data and in-depth analyses will become available.

1 Introduction

1.1 Objective and definition of the problem

Mediation is a form of conflict settlement involving an independent and objective third party. This mediator guides the parties in reaching a jointly supported solution to their conflict that is in both parties' best interests. The Dutch Ministry of Justice aims to promote familiarity with mediation and its use by means of a number of policy measures (information, referral facilities with the Legal Counters and the courts, and financial facilities). This relies to a considerable degree of constant monitoring to determine whether mediations lead to satisfying results (in terms of success rate, speed, costs and satisfaction concerning the outcome) and to determine whether the quality and availability of mediators is adequate. Also, the Ministry wishes to have an insight into the use of the financial facilities (contribution for persons of limited means towards the costs of mediation, i.e. the mediation legal aid permit, or the temporary incentive contribution). This is the task of the Mediation Monitor, a multi-year series of reports, of which this interim report forms an integral part.

This report sets out the findings for the years 2005 and 2006. The questions in this study focus on the development of:

- 1) familiarity with mediation and its use;
- 2) the outcome of mediations;
- 3) the quality and availability of mediators;
- 4) the appeal made to financial facilities.

1.2 Referral and financial facilities

The Ministry of Justice aims to promote mediation by, amongst others, (a) proposing mediation at the Legal Counters and the courts and (b) offering financial facilities (Kamerstukken II, Vergaderjaar 2003-2004, 29 528, nr. 1).

Referral by the Legal Counters

The mediation referral facility with the Legal Counters was phased in from April 2005. Its implementation ran parallel to the roll-out of the Legal Counter offices set up within the framework of the newly adapted subsidised legal aid scheme. By late 2005 there were 20 offices, and by mid 2006 all 30 offices had been realised.

Referral by the courts

Also started in April 2005 was the phased implementation of a mediation referral facility at the courts, enabling parties in legal proceedings to opt for settlement of their dispute by mediation. By the end of 2005 the referral facility had been implemented in 8 courts, by the end of 2006 in 22 courts and by April 2007 in 26 courts. This completed the introduction of this structural referral facility to mediation at the courts, as scheduled.

Mediation legal aid permit

In order to prevent parties of limited means waiving their choice for mediation for financial reasons, the government introduced two types of financial facilities on 1 April 2005.

Firstly, all citizens of limited means qualify for a contribution towards the costs of mediation, referred to as a mediation legal aid permit. The implementation of this measure was brought in line where possible with the Legal Aid Act (*Wet op de Rechtsbijstand, WRb*) for persons seeking justice as well as mediators. To stimulate the use of mediation, the own contribution was set at half the own contribution for the lowest income group of people who under the Legal Aid Act qualified for a regular legal aid permit. In 2006 the own contribution was set at €45 for the first four hours. If the mediation took longer, another €45 was due (but not by the lowest income group). The compensation to the mediator was calculated by means of a flat-fee scheme based on a number of points times an hourly rate. A distinction was made between a short-term and long-term fixed sum. This hourly rate was brought in line with the hourly rate of regular legal aid. In the event either party was of sufficient means, the person with the most limited means was due the amount set out above, while the more affluent party paid the other half of the mediator fee. The above requires a legal basis for which the Legal Aid Act will incorporate a separate facility for a mediation legal aid permit.

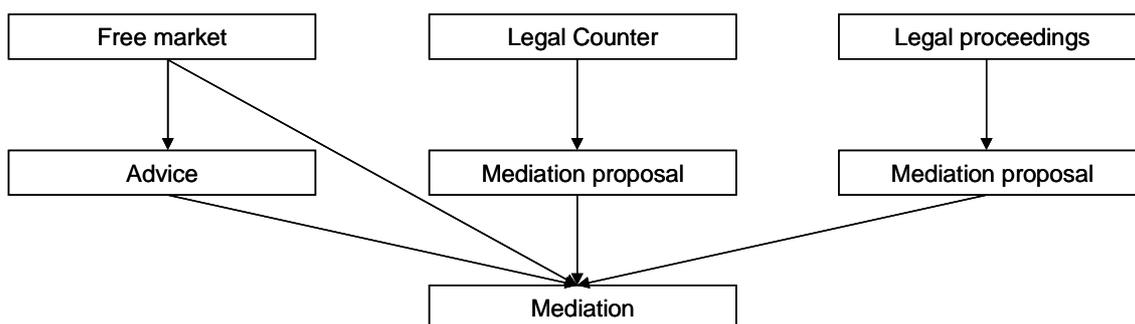
Incentive contribution

For parties accepting a mediation proposal from the judge, a so-called incentive contribution is available throughout the run-up period. The incentive contribution is a flat-fee sum of €200 (plus VAT) per mediation. The amount covers two and a half hours of free mediation. The Councils for Legal Aid, responsible for the measure, settle the amount immediately following the mediation with the mediator. The incentive measure does not apply to parties who qualify for subsidised legal aid. The contribution aims to cover the costs of the start-up phase of the mediation, to ensure parties will accept a referral more readily. The incentive contribution forms a bridge between parties' expectation that they are to be given a decision by the judge and the – for parties rather unexpected – proposal by that same judge that parties try to establish if there is any scope to find a solution themselves. The incentive contribution also aims to lower the financial threshold for parties who have already incurred costs starting the legal proceedings and who now find themselves faced with additional costs for mediation.

1.3 Study methods

This report sets out the results of the referral facilities with respect to the Legal Counters and the courts. These results relate to the number of mediation proposals, the resulting referrals, the mediation results and the parties' level of satisfaction. We also aim to provide an insight into the development of mediations unconnected with these referral facilities, i.e. 'free market' mediations not registered via the referral facilities of the Legal Counters or the courts (see Figure 1.1).

Figure 1.1 Roads to mediation



Depending on the road taken to mediation there are a number of ways to finance it (see Table 1.1). It is possible to qualify for a mediation legal aid permit via all three routes, provided the party is of limited means under the Legal Aid Act. Incentive contributions in the form of two-and-a-half hours free mediation is granted in legal proceedings only.

Table 1.1 Financial facilities

	Free market	The Legal Counter	Legal proceedings
Mediation legal aid permit	Yes, provided party is of limited means	Yes, provided party is of limited means	Yes, provided party is of limited means
Incentive contribution	No	No	Yes

To map out the roads to mediation referred to above, this Mediation Monitor uses a number of data sources.

Monitor of Mediations referred via Legal Counters

The Legal Counter administration records all mediation proposals made and how many are accepted by parties. Also, referrers complete a monitor form about, for instance, the reason for referral and case characteristics.

If either party applies for a mediation legal aid permit, the mediator and parties are asked to complete a monitor form after they take part in mediation. In the period between April 2005 and December 2006 a total of 565 mediations were started following referral via Legal Counters involving at least either party applying for a mediation legal aid permit. Not all mediations are completed. We currently have forms completed by 151 mediators and 301 parties.

Monitor of Mediations Referred via the Courts

Each court records the number of referrals to mediation made. A total of 2,927 referrals were registered over the study period, 2,721 of which finally resulted in mediation. Of the mediations started, 1,711 were completed between April 2005 up to and including December 2006.

All referrals realised via the courts are monitored. All parties involved (court mediation office, parties, mediator and, if applicable, referring judge and lawyer) have to fill in specially developed monitoring forms. For 1,120 of the completed mediations, information from the monitoring forms was entered into the mediation monitor database of the Netherlands court-connected mediation agency (*Landelijk bureau Mediation, LBM*), from where it was coupled to data from the court case administration. Accordingly, the LBM Mediation Monitor provides an

insight into both aspects of procedural matters (such as case characteristics, manner of referral, throughput times, number of contact hours) and substantive matters (such as the level of satisfaction of parties concerning the mediation, motives of judges to refer a case to mediation). The data for the above 1,120 mediations form the basis for the analyses presented in this report.

Monitor of mediation legal aid permits outside the referral facilities

For mediations involving a mediation legal aid permit, but not referred by the referral facilities at the Legal Counters or the courts, parties and mediators were also asked to complete a monitor form. In the period between April 2005 and December 2006 a total of 395 mediations involving a mediation legal aid permit were started outside the referral facilities. Not all mediations were completed. We currently have monitor forms completed by 80 parties and 48 mediators.

Netherlands Mediation Institute Monitor

To gain an insight into the development of the number of mediations realised outside the referral facilities, we based ourselves on the Netherlands Mediation Institute (NMI) Monitor. Started in early 2007, this Monitor does not yet provide any data for the years 2005 and 2006. It will be used in future, however.

Availability of mediators

We base the rate of availability of mediators on the number of mediators registered with the Councils for Legal Aid in January 2007. In order to qualify for an incentive contribution or a mediation legal aid permit, parties referred by a court or Legal Counter, as well as parties opting for mediation at their own initiative, must work with a mediator registered with the Councils for Legal Aid. In order to get an insight into the availability of mediators operating in the free market, we used the data from the NMI Register of Mediators.

Incentive contributions and mediation legal aid permits

The use made of incentive contributions and mediation legal aid permits is monitored by the administration units of the Councils for Legal Aid, which act as payment centres. Registration of mediation legal aid permits in the Legal Aid Computerisation System (*Gefinancierde Rechtsbijstand Automatiseringssysteem, GRAS*) was first started in November 2006. This study is therefore relying on manual registrations of completion forms over the study period April 2005 to end 2006. During that period details for 1,887 mediations involving at least one party with a mediation legal aid permit were recorded (such as manner of referral, type of case, agreement percentage, own contribution, number of cases involving a mediation legal aid permit).

1.4 Set-up of this report

Chapter 2 sets out the availability of mediators and the use of financial facilities. Chapters 3, 4 and 5 focus on the referral and mediations. These chapters describe familiarity with mediation, mediation proposals and the results of mediation. Chapter 3 deals with referrals from the Legal Counters, Chapter 4 with referrals from the courts and Chapter 5 with mediations outside the referral facilities.

2 Management and financial facilities

2.1 Availability of mediators

2.1.1 Councils for Legal Aid

Courts and Legal Counters make their referrals to mediators registered with the five Councils for Legal Aid. These mediators must meet a number of quality standards. Only NMI-certified mediators are admitted.

In January 2007 534 mediators were registered with the Councils for Legal Aid. The average hourly rate is €187 (inclusive of VAT), although large differences between hourly rates for mediators exist. The mediators have different professional backgrounds and are active or have expertise in a range of fields. Appendix 4 sets out the professional backgrounds and so-called fields of affinity as recorded by the mediators.

In addition to the management of mediators registered with the Councils for Legal Aid, the Councils for Legal Aid are also responsible for issuing mediation legal aid permits and incentive contributions. Paragraph 2.2 describes the use of these financial facilities.

2.1.2 Netherlands Mediation Institute

The task of the NMI is to promote the quality of mediation in the Netherlands. As such, NMI manages a public register of qualified mediators: the NMI Mediators Register. The mediators recorded in the register are exclusively entitled to carry the title *NMI Mediator* (mediators who are not certified) or *NMI Certified Mediator* (mediators who are certified), enabling people looking for a mediator to easily find and recognise a qualified mediator.

Mediators are registered after completing a mediator training/ study at a NMI-recognised institute and passing the knowledge test. In order to maintain this registration as NMI Mediator, mediators must meet the requirements of permanent education. In order to become a NMI-Certified Mediator, mediators must take the knowledge test referred to as well as a skills test. To maintain their certification, they must hold at least nine mediations (of at least four contact hours on average) every three years, of which at least two per year, in addition to meeting the requirements for permanent education. The requirements for permanent education for NMI Certified Mediators are twice as strict as for NMI Mediators.

In January 2007, 829 certified mediators were registered with NMI, including 534 mediators registered with the Councils for Legal Aid. Appendix 4 sets out the professional backgrounds and affinities of these mediators.

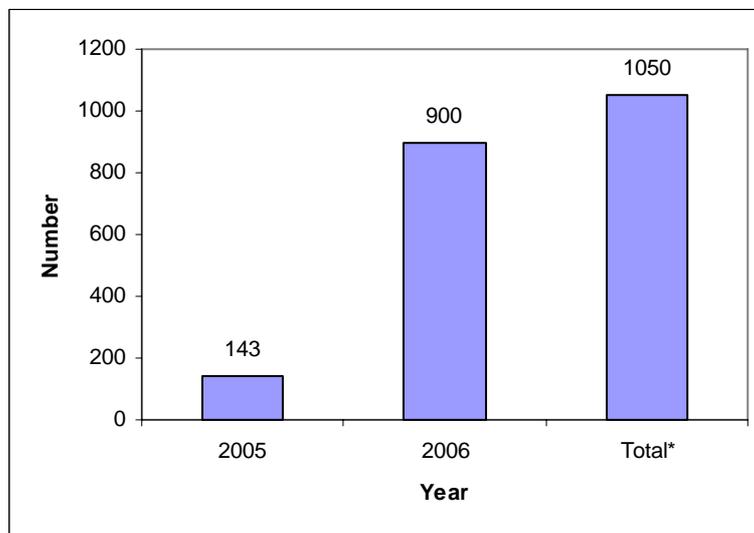
2.2 Financial facilities

2.2.1 Incentive contributions

As set out in Chapter 1, parties who accept a mediation proposal from the judge qualify for an incentive contribution that covers the first 2.5 hours of mediation. The incentive contribution does not apply to parties who use subsidised legal aid.

The Councils for Legal Aid issued incentive contributions for in total 1,050 completed mediations between April 2005 and end 2006 (see figure 2.1),¹ of which 143 in 2005 and 900 in 2006.² The Councils settle the incentive contribution immediately following the mediation with the mediator.

Figure 2.1 Number of incentive contributions issued for completed mediations per year



* No date is known for 7 incentive contributions
Source: Councils for Legal Aid

2.2.2 Mediation legal aid permit

As set out in Chapter 1, parties of limited means may apply for a mediation legal aid permit.

Mediation legal aid permits were first registered in the registration system of the Legal Aid Computerisation System (GRAS) of the Councils for Legal Aid in November 2006. The data in this report are therefore taken from the manual mediation records kept by the five Councils based on completed forms. For this purpose, the paper records at four Councils were consulted. This registration provided a reliable image of the number of mediation legal aid permits. For one of the Councils, its electronic files were consulted, which is likely to have led to an underreporting on the number of mediation legal aid permits.

¹ Compare: during the study period 1,711 mediations were completed that had been referred by the courts. These may include mediations that did not involve an incentive payment, but that did involve two parties with a mediation legal aid permit.

² No dates are known for seven incentive contributions.

Between 1 April 2005 and 1 January 2007 there have been a total of 1,887 cases involving a mediation legal aid permit (see table 2.1). Some 44% of the mediations was referred via the courts, 30% was realised via the Legal Counters and 21% outside these referral facilities.

Some 91% of the mediation cases for which a mediation legal aid permit was granted, touches upon law of persons and family law; these cases usually concern divorce (see table 2.2).

Table 2.1 Number of cases involving at least one mediation legal aid permit, as to source of referral, 2005-2006

Source of referral	Year unknown	2005*	2006		Total		
	number	number	%	number	%	number	%
Legal Counter	10	18	8	537	33	565	30
Court	14	159	70	649	40	822	44
Outside referral facilities	3	42	19	350	21	395	21
Unknown	2	8	3	95	6	105	6
Total	29	227	100	1,631	100	1,887	100

* from 1 April

Source: manual administration of mediation legal aid permits at Councils for Legal Aid

Table 2.2 Number of cases involving at least one mediation legal aid permit, as to branch of law, 2005-2006

Branch of law	number	%
Law of persons and family law	1,718	91
Employment law	30	2
Law of obligations	18	1
Social facilities	13	<1
Landlord and tenant law	8	<1
Law of succession	7	<1
Social insurance	5	<1
Other	7	<1
Unknown	81	4
Total	1,887	100

Source: manual administration of mediation legal aid permits at Councils for Legal Aid

The total number of mediation legal aid permits is higher than the number of mediations involving a mediation legal aid permit, because several parties in a case may apply for a mediation legal aid permit. Table 2.3 shows that the number of mediation legal aid permits issued between 2005 and 2006 increased from 356 to 2,509. For 43 mediation legal aid permits the year of issue is not known. A total of 2,908 mediation legal aid permits was granted in these two years.

Table 2.3 Number of mediation legal aid permits as to source of referral, 2005-2006

Source of referral	Year Unknown	2005*	2006		Total		
	number	number	%	number	%	number	%
Legal Counter	15	27	8	858	34	900	31
Court	22	249	70	974	39	1,245	43
Outside referral facilities	4	71	20	537	21	612	21
Unknown	2	9	3	140	6	151	5
Total	43	356	100	2,509	100	2,908	100

* from 1 April

Source: manual administration of mediation legal aid permits at Councils for Legal Aid

Parties pay an own contribution of €45³ towards a mediation legal aid permit, entitling them to the services of a mediator for a maximum of four hours. If they need more than four hours, the mediator may apply for an extension with the Legal Aid Council. If the parties fall in the lowest income bracket, they are not required to pay an extra own contribution. If they do not, they pay another €45 contribution. Parties referred by the court who already receive a regular legal aid permit, pay €0. If parties do not receive a regular legal aid permit, for example in administrative or subdistrict court cases, they do pay the contribution.

Table 2.4 sets out the parties' contribution towards a mediation legal aid permit, in cases where this contribution had already been established. There were 1,240 mediation legal aid permits in total. 51% of all mediation legal aid permits involved a €0 contribution. This is largely attributable to the referrals from the courts, where parties already received a regular legal aid permit. In 39% of all mediation legal aid permits the own contribution was set at €45 and at €90 in 9% of all cases.

Table 2.4 Own contribution established as to source of referral

Source of referral	€0 number	€45 number	€90 number	Total number
Legal Counter	42	297	46	385
Court	440	63	18	521
Outside referral facilities	47	110	43	200
Unknown	8	19	7	34
Total number	637	489	114	1,240
Percentage %	51	39	9	100%

* Source: manual administration of mediation legal aid permits at Councils for Legal Aid

³ Own contribution in 2006. This amount is indexed annually.

3 The Legal Counter

3.1 Introduction

The Legal Counter offers citizens first-line legal advice and information. Legal Counter staff can answer any questions posed by persons seeking justice, and provide free information and advice either instantly or during a consultation meeting.

The 'referral to mediation' facility at the Legal Counters was first implemented in 2005. This implementation ran parallel to the roll-out of the new Legal Counter offices following the changes in the subsidised legal aid system. By the end of 2005 there were 20 offices up and running and by mid 2006 there were 30 Legal Counter offices.

The original service aimed at *legal* information and advice only. The implementation of the referral to mediation facility made it necessary to expand the service. This required, amongst other things, a partially adapted approach to clarifying the issue, working method and/or client approach, adaptations to knowledge management, and investments in staff support. This development was uniformly approached for all staff across the 30 offices, to ensure clients were guaranteed the same qualitative and quantitative proposal at every Legal Counter.

With regard to the implementation of the uniform national referral mediation facility, investments were made in the Legal Counters in 2005 and 2006, focusing on:

1. Promotion of expertise
All legal staff took part in a three-day basic training. Another 150 legal staff were trained in the expertise and skills required to make an adequate indication and mediation referral. Every Legal Counter office now has legal staff available and can refer cases to mediation. In order to allow mediation to become an integral part of the wide range of options available to settle disputes, the remaining legal staff will undergo additional training in 2007. In addition, training is given to further develop and maintain expertise and skills on a structural basis.
2. Adaptation in automation
For the monitoring and collection of management and customer information, the Legal Counter automation system was updated.
3. Production
Realising pre-set objectives as regards the number of proposals to mediation made and referrals to mediators is a monthly part of management and implementation.
4. Internal and external communication
The Legal Counters are investing in a range of resources spotlighting mediation and the referral facility both internally and externally. This is expected to increase familiarity with mediation in the Netherlands. Communication concerns both practical and substantive information such as brochures, presentations and a website, and information that appeals to people's imagination. For instance, the Legal Counter took part in the production of a regional television series on mediation.

This Chapter focuses on the mediations referred by the Legal Counters to mediators registered with the Councils for Legal Aid. Data are available only if at least one of the parties in the proceedings received a mediation legal aid permit. No data were collected on mediations involving only clients of sufficient means.

The following questions were central:

- To what extent is mediation being used?
- To what extent were users already familiar with mediation?
- What were the mediation results?

The data in this Chapter relate to the period from 1 April 2005 up to and including 31 December 2006 and are based on the following sources:

- four-monthly report on the Legal Counters 2005 and 2006;
- 73 monitor forms completed by referrers at the Legal Counters;
- 301 monitor forms completed by parties following mediation;
- 151 monitor forms completed by mediators following mediation;
- manual registration of mediation legal aid permits at the Councils for Legal Aid.

Since we have only a limited number of completed monitor forms for the year 2005, the analyses of these data do not distinguish between the years 2005 and 2006.

3.2 Mediation proposal

Mediation may come up for discussion during the initial contact with the Legal Counter or during the free consultation. Usually, the free consultation is used to establish if mediation would be suitable and if the parties involved would accept the proposal. If this is the case, the person seeking justice or the mediation officer will contact the other party. If the other party agrees with the mediation proposal, the two parties are referred to a mediator. After the mediation officer has contacted a mediator, the mediator will invite the two parties for a first meeting.

The number of proposals for mediation has increased between 2005 and 2006, largely attributable to the increase in the number of referral facilities. In 2005 there were 783 contacts between clients and mediation officers, a number that grew to 6,386 in 2006.⁴ The number of mediation proposals accepted by the two parties increased from 134 to 1,217 in the same period. These data relate to referrals to mediators registered with the Councils for Legal Aid.

Figure 3.1 sets out the process from proposal to referral in 2006. Of all clients being offered a mediation proposal, 49% accepted the proposal. Mediation proposed to the other party met with a positive response in 58% of all cases. Of the total number of proposals for mediation, 19% was ultimately referred to a mediator recorded on the Councils for Legal Aid list. Another 3% was referred to a mediator not registered with the Councils for Legal Aid – e.g. a local district mediator – while 6% of all parties solved the problem without a mediator.⁵ Of the other mediation

⁴ Source: four-monthly report Legal Counter January to December 2006

⁵ Source: four-monthly report Legal Counter January to December 2006. Data for 2005 are limited. In 2005 17% of all referrals ended up with a mediator of the Councils for Legal Aid, not significantly different from data for 2006 (19%).

proposals the person seeking justice either refused in first instance (51%), or the other party refused (17%), or no decision has been reached as yet (4%). The data above the dotted line in Figure 3.1 were derived from the four-month reports. Below the dotted line are the data taken from the monitor forms involving at least one party with a mediation legal aid permit. Of the 1,217 proposals accepted in 2006, 537 mediations commenced with mediation legal aid permit were recorded in the Councils for Legal Aid registration. The other proposals accepted, as appears from a small in-depth study carried out by the Councils, related to paying clients not eligible for legal aid who were not included in the monitor. Some referrals did not result in a mediation proposal, or parties decided not to start mediation for whatever reason, for instance because they had already reached a solution. Finally, please note that the number of 537 legal-aid mediation cases is somewhat low, as the manner of registration in one of the Councils is likely to underrepresent the actual number of mediations.

3.3 Familiarity with mediation

Of the parties referred to mediation via the Legal Counters, 20% was already familiar with mediation.

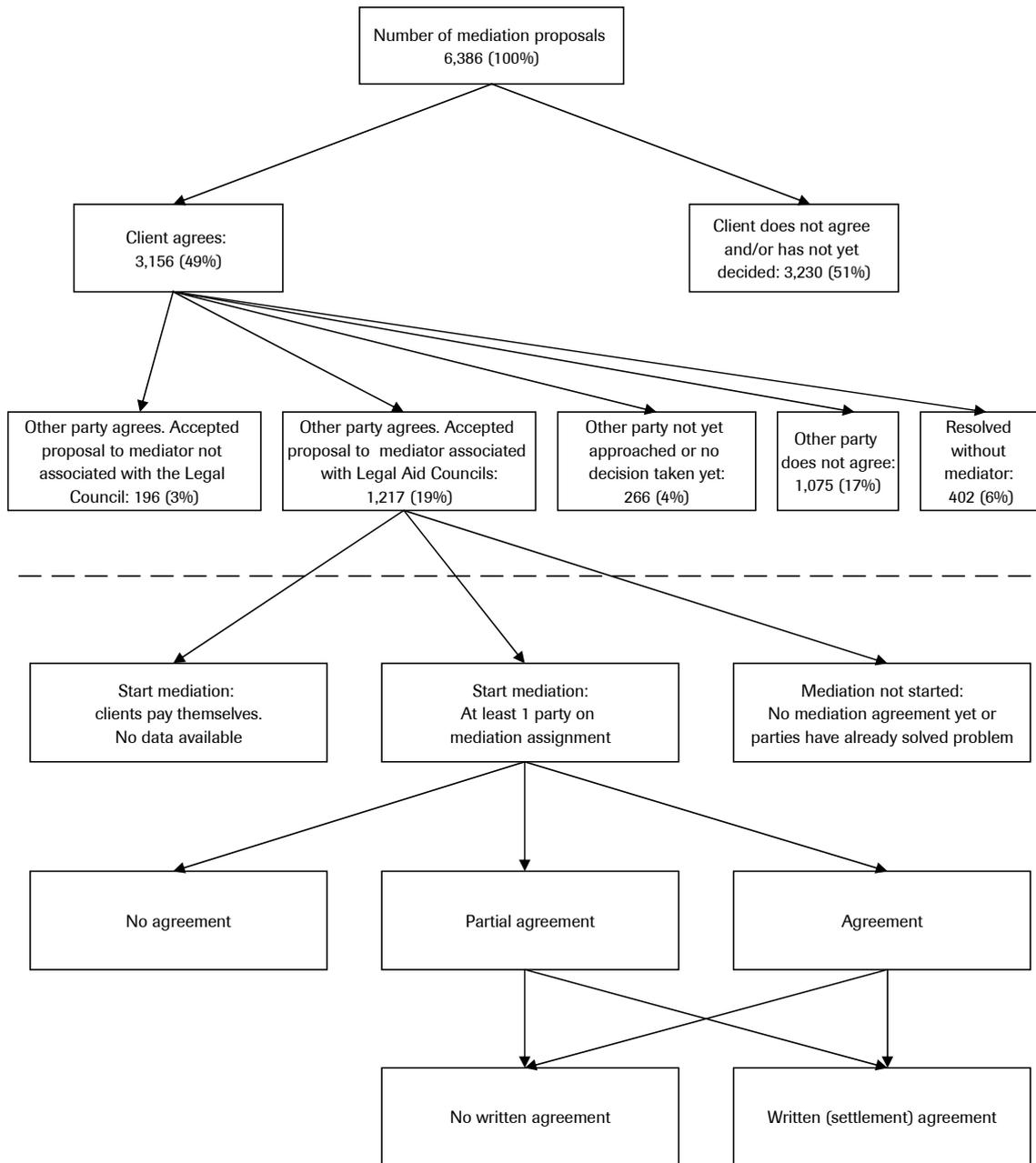
Parties were asked where they had learnt of the option of mediation, by choosing from a range of information sources. The Legal Counter was referred to the most as source of information (see table 3.1).

Table 3.1 Information sources for parties, Legal Counters (%)

	Total %
Brochure	8
Legal Counter	73
Lawyer	4
Court	0
Media	6
Other	22
Total	301

Source: Party form (P7)

Figure 3.1 Referral to mediation by the Legal Counters 2006.
Percentages in respect of number of mediation proposals



3.4 Motives for mediation

3.4.1 Parties' motives for mediation

The most important reason why parties said they had accepted the mediation proposal was that they expected this to benefit future relations with the other party (see Table 3.2). Not as important, but still high on the list were motives including keeping control of the solution, the expectation that the mediation would lead to a better, faster or cheaper solution, or because the Legal Counter advised mediation.

Table 3.2 Parties' motives to opt for mediation, Legal Counters (%)

Parties' motives	Not applicable	Not important	Somewhat important	Very important
Expected better solution than a court ruling would offer	15	5	21	60
Expected faster solution than a court ruling would offer	13	9	20	58
Wanted to keep control of solution	9	4	26	62
Cheaper than legal proceedings	11	9	25	56
The possibility to apply for a mediation legal aid permit	19	10	27	43
Better for future relationship with the other party	9	6	14	71
My lawyer advised mediation	84	5	5	6
The Legal Counter advised mediation	19	4	20	57
The other party proposed mediation	62	7	13	18
N	270-291			

N varies slightly depending on the motive as parties have not answered all questions.

Source: Party form (P8)

3.4.2 Motives for mediation proposal

Mediation officers were asked why they had referred the case (table 3.3). The reasons they mentioned most often were that they believed that mediation leads to a faster solution and that parties will need to work together in future. Remarkable is also that in 29% of all cases (one of the) parties suggested mediation.

Table 3.3 Motives of mediation officers to make a mediation proposal (%)

Motives of mediation officers	Not applicable	Somewhat applicable	Entirely applicable
A purely legal approach does not solve the dispute	10	56	34
Parties will need to work together in future	10	44	47
Mediation provides a faster solution	1	43	56
Party suggests mediation	71	13	16
N	56-73		

N varies slightly depending on the motive as not all questions on every form have been completed.

Source: Referral form (D2)

Mediation officers refer (virtually) no cases where they assume that parties' willingness to negotiate is low or the scope for negotiation is limited (see Table 3.4). Cases that have escalated to a considerable degree are referred. This was the case in 14% of all referrals.

Table 3.4 also shows that the broader the scope for negotiation, the more cases resulted in full agreement. No significant results were found as to the degree of willingness to negotiate and the degree of conflict escalation.

Table 3.4 Characteristics of the referred case (%) and correlation with degree of agreement

Characteristics of the case	Low	Not low/ not high	High	Correlation with degree of agreement
Degree to which parties are prepared to negotiate	3	52	45	.14
Degree of escalation of the conflict	19	67	14	-.18
Scope for negotiation	0	72	28	.29*
N	71-73			

N varies slightly depending on the motive as not all questions on every form are completed.

Source: Referral form (D3)

* $p < .05$

3.5 Mediation results

3.5.1 Agreement

The manual registration of mediation legal aid permits shows that 71% of all mediations resulted in full agreement and another 8% in partial agreement (see Table 3.5). If (partial) agreement is realised, the agreements made may be laid down in writing in a settlement agreement. According to the data provided by the mediators, settlement agreements were signed in 88% of all mediations that had ended in (partial) agreement.

Table 3.5 Number of mediations according to agreement reached

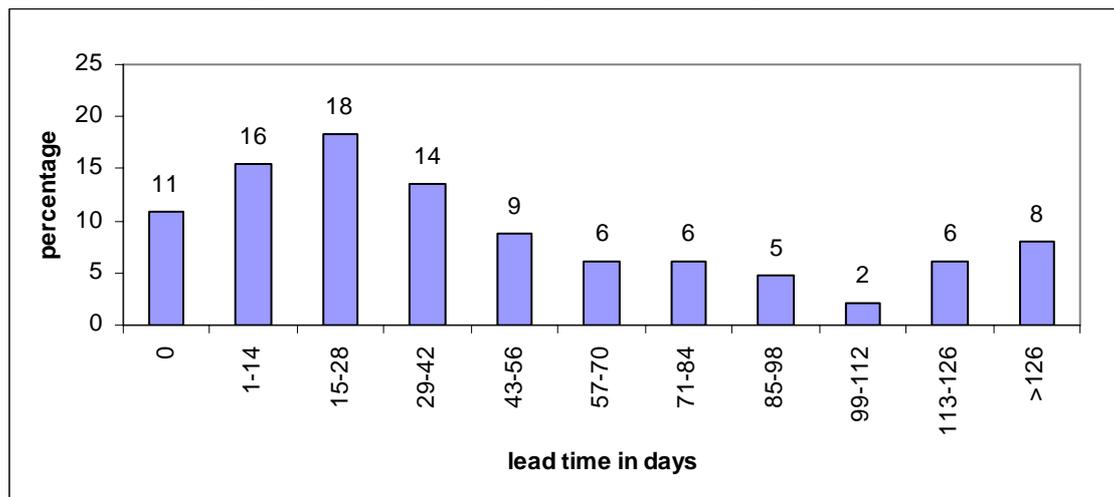
Agreement reached	number	%
Full agreement	175	71
Partial agreement	19	8
No agreement	53	21
Total	247	100
Unknown / still open	318	

Source: Manual registration Councils for Legal Aid

3.5.2 Lead time, meetings and contact hours

The *lead time* of mediation is defined as the number of days between the first and the last mediation meeting. The lead times for 147 cases are known, ranging from 0 to 217 days. Figure 3.2 sets out the division of lead time in days. Some 11% of all mediations was settled within one day, more than one quarter (27%) was completed within fourteen days. Another 32% of all mediations lasted between two and six weeks and 15% between six and ten weeks. More than one quarter (27%) of all mediations lasted longer than ten weeks.

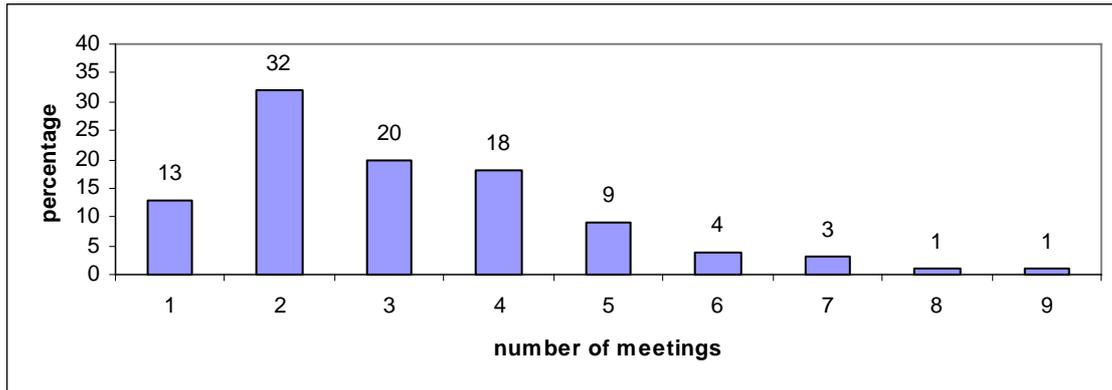
Figure 3.2 Percentage of mediation cases, as per lead time in days



Source: Mediator form M8 and M9

Figure 3.3 sets out the number of *meetings*. Some 45% of all mediations was completed in two meetings.

Figure 3.3 Number of meetings (%)



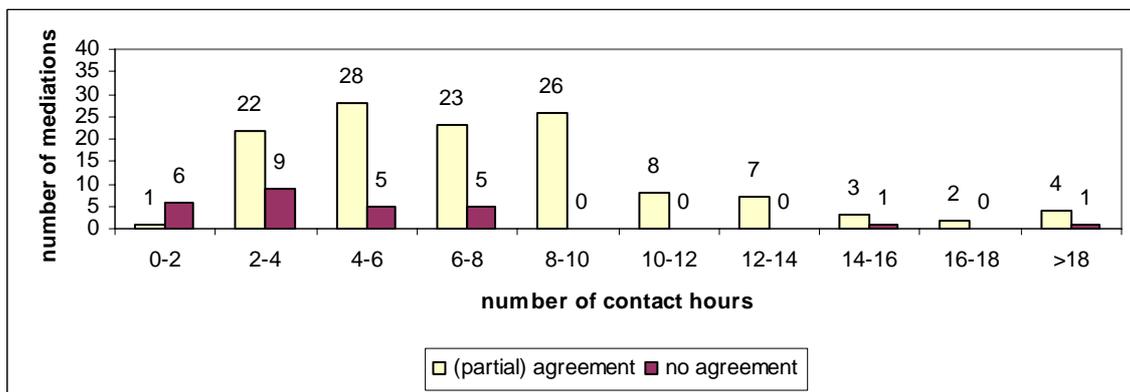
Source: Mediator form (M10)

Looking at the duration of mediations in respect of the number of *contact hours*, it transpires that 25% of all mediations was settled within four hours. Another 40% took between four to eight hours. Some 35% of all mediations took more than eight hours.

It should be noted that mediators are paid for four or, in the event of an extended mediation legal aid permit, eight hours under a flat-fee system. In other words, mediators may record four or eight hours for each mediation while they have actually spent more or less contact hours on the mediation. The figures in Figure 3.4 must therefore be interpreted with some caution. Figure 3.4 does at least show that not all mediators record four or eight hours as a standard rule.

Figure 3.4 sets out how many contact hours the mediations took, with or without agreement. In view of the limited number of mediations for which we have data, absolute numbers are given. Mediations that took more than eight contact hours led to (partial) agreement in almost all cases, with the exception of two. Mediations with (partial) agreement took on average almost eight contact hours and without agreement more than five hours.⁶

Figure 3.4 Number of mediations with and without agreement as to number of contact hours



Source: Mediator form (M11)

⁶ $p < .05$

3.5.3 Satisfaction of parties

Table 3.6 sets out satisfaction levels for the parties following mediation concerning the mediator and the duration, costs and result of the mediation. Parties that reached (partial) agreement were generally ‘satisfied’ to ‘very satisfied’ concerning the mediator and the various mediation aspects. Parties who reached no agreement were in particular less satisfied as regards the result of the mediation (as is to be expected), the duration of the mediation and the manner in which the mediator coached the process.

Table 3.6 Satisfaction of parties (average on a scale of 1 to 5)*

	(partial) agreement	no agreement
Duration of mediation	4.1	3.0
Financial costs	4.1	4.1
Result of mediation	4.2	2.1
Impartiality mediator	4.3	4.1
Coaching of mediation by mediator	4.3	3.9
Accuracy mediator	4.3	4.2
N	244-248	33-36

* 1 = very unsatisfied, 2 = unsatisfied, 3 = neither satisfied nor unsatisfied, 4 = satisfied, 5 = very satisfied

N varies as not all questions on every form were completed

Source: Party form (P9 and P10)

Asked if parties would again opt for mediation in similar conflict situations, 79% of all parties that reached (partial) agreement answered yes (see Table 3.7). 2% of all parties with (partial) agreement answered that they would not again opt for mediation. Of the parties that reached no agreement, 49% said they would opt for mediation again and 16% indicated that they would no longer opt for mediation.

Table 3.7 Opting again for mediation by parties

	(partial) agreement	No agreement
	%	%
Yes	79	49
Perhaps	19	35
No	2	16
Total	100	100
N	253	37

Source: Party form (P11)

3.5.4 Costs incurred by parties

Paragraph 2.2 showed that a mediation legal aid permit was granted 900 times in the 565 subsidised mediations. In 59% of all cases two mediation legal aid permits were granted. The manual registration of the Councils shows that the own contribution was determined for 395 cases in which a mediation legal aid permit was granted (see table 2.4). In 75% of all mediation legal aid permits this involved an own contribution of €45. Despite the fact that the majority of all mediations lasted more than four hours, 12% of all parties paid an own contribution of €90. The reason for this was that the lowest income groups did not need to pay an own contribution of €45 if mediation was extended. In 11% of all mediation legal aid

permits the own contribution was set at €0, if the party had already paid an own contribution for a regular legal aid permit.

Parties were asked if they found the costs reason to opt for mediation or not. Table 3.8 sets out that for 69% of all parties these costs were taken into account when considering mediation again. Also, 3% of all parties indicated that the costs were reason not to opt for mediation.

Table 3.8 Costs as a consideration in opting for mediation in future, Legal Counter (%)

	%
Reason to opt for mediation	69
Reason not to opt for mediation	3
Don't know	28
Total	100
N	291

Source: Party form (P12)

4 The courts

4.1 Introduction

The structural referral facility for mediation at the courts was phased in as planned from 1 April 2005 (see Table 4.1). The courts received support from the Netherlands court-connected mediation agency (*Landelijk bureau Mediation, LBM*). In April 2005 the referral facility was introduced at 8 courts (phase 1). Up to and including 2006 the referral facility was implemented at another 14 courts (phase 2 to 4). By the end of 2006 the referral facility was operational at 22 courts.

In a fifth phase, outside the study period covered by this interim report, the referral facility was implemented in another four courts in early April 2007. This fifth phase completed the implementation of the referral facility with the courts. From April 2007 all courts in the Netherlands offer the option of choosing for mediation during a legal procedure.

From the implementation of the referral facility, mediation officers are working in the relevant courts that organise, coordinate and report on the work associated with the referrals.

Table 4.1 Phased implementation referral facility

Phase	Date	Courts
1	1-4-2005	District Courts of Alkmaar, Amsterdam, Haarlem, Utrecht, Arnhem, Zwolle, Assen and Court of Appeal Arnhem
2	1-10-2005	District Court of Roermond
	1-1-2006	District Court of Almelo
3	1-3-2006	District Courts of Zutphen, Den Bosch and Dordrecht
4	1-9-2006	District Courts of Breda, Den Haag, Middelburg, Rotterdam, Maastricht and Groningen; Courts of Appeal Den Bosch and Den Haag, and the Trade and Industry Appeals Tribunal
5	1-4-2007	District Court of Leeuwarden, Courts of Appeal Amsterdam and Leeuwarden, and the Central Board of Appeal

Source: list provided by LBM

Activities

From April 2005 up to and including December 2006, the LBM initiated and guided a number of activities to permanently embed the referral facility in the courts for its effective and efficient use, resulting in sustainable and complied with solutions of the disputes suitable for settlement through mediation. This involves the following activities:

1. Organisation of the referral facility with the courts

Courts are supported in the organisation of the referral facility by instruction manuals, information meetings for court staff, mediators and lawyers, and a help-desk providing support in solving practical and substantive issues. Also, the LBM has provided the courts with automation tools to register, administrate, and monitor the mediations and to generate management information and best-practices. Also, consultation forums have been set up for the exchange of experience and knowledge at various levels.

2. Promotion of expertise

Courses were organised for judges, secretaries, and mediation officers to enhance the support and knowledge of courts with regard to mediation. During the study period more than 1,600 people were trained, including some 700 judges and about as many secretaries. The organisation of these courses and the embedding of the theme of mediation in existing training courses are to be transferred to SSR (Dutch Training and Study Centre for the Judiciary) in 2007.

3. Enhancing support

The LBM organised a number of events, including two theme meetings and three expert meetings, in order to enhance the internal and external support for court-related mediations. More than 240 judges, lawyers, and mediators were able to exchange expertise and generate new expertise on matters related to mediation. Also, a vision on referral to mediation as part of the tasks of the courts was developed. Finally, courses were developed in cooperation with the Netherlands Bar Association for lawyers instructing them on their tasks during and upon the start of mediation. Presented in all court districts, the meetings were attended by some 2,000 lawyers. An information film was made providing information and instructions on the lawyer's tasks (in choosing mediation). This film has also been offered to the Netherlands Bar Association for training junior lawyers.

4. Communication

In 2005 and 2006 various means of communication were developed to stimulate people's familiarity with court-related mediation and making the various parties involved familiar with the wide range of mediation options available in connection with cases brought to court. The information material developed comprised, amongst other things, sector-specific folders, information films for different target groups, posters, the *www.rechtspraak.nl* website, an intranet website, and self-test cards enabling parties to determine if mediation offers opportunities to solve their conflict based on a number of key questions.

5. Quality and availability of mediators

Throughout the study period, the LBM held consultations at various levels with, for instance, the Councils for Legal Aid, the Central Mediators Council, the NMI, the Ministry of Justice and the courts, in order to promote the quality of the mediators registered with the referral facility and the number of mediators registered per area of jurisdiction. This resulted in clear agreements between the various organisations on subjects including the quality standards that are required of mediators, and the schemes regarding the incentive contribution. Specific recruitment actions ensured that by the end of 2006 all courts where the facility had been introduced had a sufficient number of high-quality mediators available.

In order to guarantee the sustained implementation of the facility, the LBM developed a multi-year plan laying down the manner in which the referral facility is to be embedded within the courts and the activities and structures which are to be implemented and maintained by the various organisational units in future.

The process

Figure 4.1 illustrates how mediations can be set up via the courts. Within the legal system parties may receive a proposal for mediation in a number of ways. There

are three forms: a) a written proposal (by letter or by decision/ruling) b) a verbal proposal (by the judge at court) and finally, mediation can commence c) at the parties' own request.

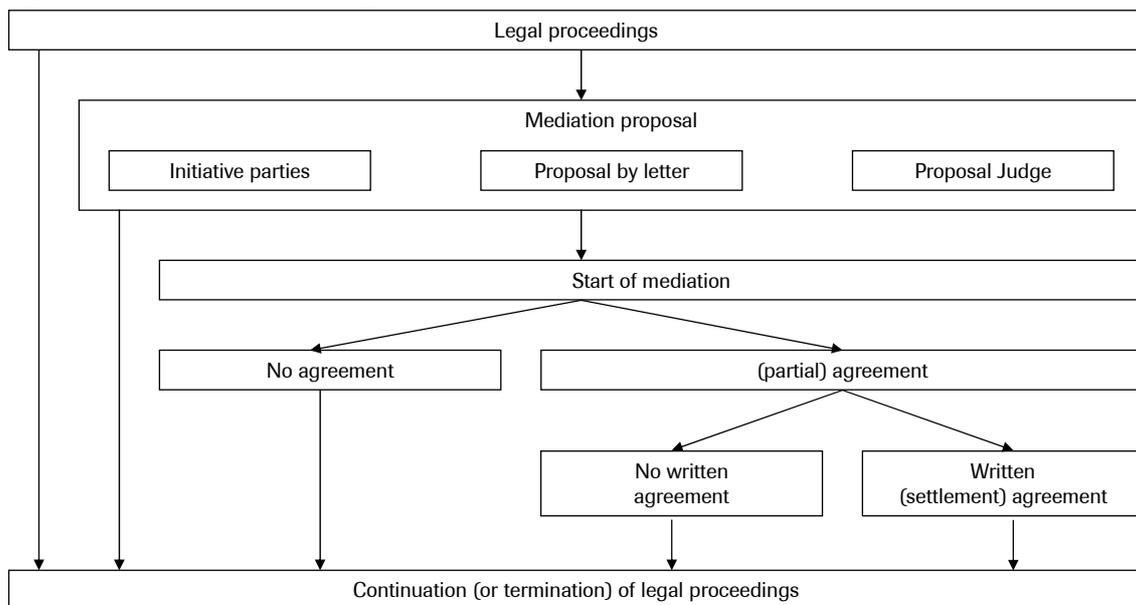
The mediation proposals are registered as follows:

- a. All proposals made in writing are registered, as is the acceptance of the proposal.
- b. Written proposals made by decision or ruling and the proposals by the judge during the court session are registered only if they result in a referral. In the latter case the judges complete a questionnaire indicating why they proposed to the parties that they should opt for mediation.

A proposal for mediation results in referral if it is accepted by both parties. Not all referrals result in an actual mediation. In some cases no mediation is started as the parties conclude upon the intake that they would like to continue the action after all, or because they have already settled the matter themselves. For accepted referrals the follow-up is registered via the mediation administration, including case characteristics. Following completion of the mediation all monitor forms are included in the mediation monitor database. These are coupled to data from the case administration.

Mediation may result in a number of outcomes, such as full, partial, or non-agreement between parties. If no agreement is reached, the court case is usually continued. If (partial) agreement is reached, the agreements made may be recorded in a written settlement agreement. Following the mediation parties may return to the court for an enforceable order to be granted on the settlement agreement, to place any remaining conflicts before the judge, or to terminate the legal proceedings.

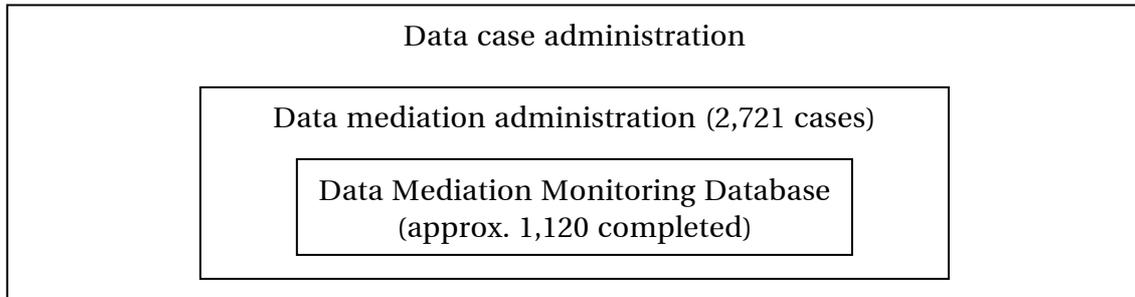
Figure 4.1 Mediation and its process at the courts



4.2 Study methods

The data used in this report relate to the period 1 April 2005 to 2006 inclusive. The data used have been derived from three separate sources (see Figure 4.2): case administration, reports based on the administration of the court mediation offices and data from the LBM Mediation Monitor.

Figure 4.2 Data sources



Records kept by the mediation offices revealed that during the study period there had been 2,927 referrals, ultimately leading to mediation in 2,721 cases. Until the end of December 2006, 1,711 of said procedures were completed by means of mediation.

All cases completed by means of mediation, with or without agreement, have been extensively monitored based on five monitoring forms. The information from these forms is included in the LBM Mediation Monitor, where the data are coupled to case-relevant data from the case administration. Detailed monitoring data are now known for 1,120 proceedings.⁷

Of these 1,120 procedures some had been referred by the judge, and for 600 cases information was available from monitoring forms completed by the referring judges.⁸

Also, data for 1,124 mediators were included in the LBM Mediation Monitor, which is more than the number of completed mediations included in the database as a number of cases involved a co-mediator. For 1,119 cases the data were known for one or more parties involved. In total, 2,404 party monitoring forms were completed and processed.

The data reported in this Chapter are mostly based on data from the LBM Mediation Monitor. For part of the procedures the monitoring data were not yet complete at the start of 2007, and they could not yet be incorporated in the LBM Mediation Monitor. The future report of the Mediation Monitor will also look in greater detail at data from the case administration and the administration of the mediation offices.

⁷ Numbers for the mediation administration forms (1,120), mediators (1,124) and parties (2,404 from 1,119 cases) correspond to about 65% of all mediations known from the mediation office reports (1,711). For mediations completed in 2005 the number of mediator forms (347) corresponds with 84% of all mediations known from the mediation office reports(414).

⁸ A monitor form also exists for legal aid providers who were present during the mediation. Since this involved relatively small numbers, these forms are not yet used in this interim report.

4.3 Familiarity with mediation

Parties were asked if they were already familiar with mediation. For the two year-period about 45% of all parties confirmed that they had been familiar with mediation before the start of the legal proceedings.⁹

Parties were also asked how they had learnt of mediation, and several answers were possible. Table 4.2 sets out the percentage for the parties who became aware of mediation through various sources of information. Almost three quarters of the parties named the Judge of the court as their source of information, and one quarter their lawyer. In the years 2005 and 2006 shifts occurred in the interests of various information sources. Relatively speaking, the Judge of the court was more often a source of information for mediation than in 2005 (from 67% to 75%). Proportionally, lawyers' relevance as source of information for mediation for parties fell (from 30% to 22%). Family and friends, work or colleagues also appear less frequently, relatively speaking, as source of information in 2006 than in 2005 (from 11% to 8%).

Table 4.2 Sources of information concerning mediation of parties (%)

	%
Brochure	8
Lawyer	26 ^a
Judge or court	71 ^b
Press, media, trade literature	12
Municipality or province	3
Other party	1
Family, friends, work or colleagues	10 ^c
Other	6
N	2.388

^a Drop over 2005 and 2006 from 30% to 22% (p<.001; N=2388)

^b Increase over 2005 and 2006 from 67% to 75% (p<.001; N=2388)

^c Drop over 2005 and 2006 from 11% to 8% (p=.008; N=2388)

Source: Party forms (P6)

4.4 Motives for mediation proposal

There are a number of ways in which mediation may be proposed via the courts. Roughly speaking, there are three forms: a) in writing (by letter or by decision/ ruling) b) verbally (by the judge during a session) c) at the parties' own request. Judges who propose mediation during the trial in court were asked for their motivation (see Table 4.3). The motives they mention most often as most applicable are "parties have to work with each other in future" and "a legal decision does not solve the real problem". "Mediation provides a faster solution" is mentioned less often as a motive. The motivation "parties themselves proposed mediation" did not apply according to the majority of judges who referred parties to mediation during a session.

⁹ Party forms (P5); N=2.362; No significant difference between the years.

Table 4.3 Motives of referrers during a court session (%)

Motives	Not applicable	Somewhat applicable	Fully applicable	Total
A court decision does not solve the real problem	5	33	62	100
Parties need to work together in future	11	18	71	100
Mediation provides a faster solution	31	34	36	100
Parties themselves proposed mediation	59	28	14	100

Source: Referrers (D5); N=536 tot 573.

Table 4.4 sets out the extent to which referrers say parties are prepared to negotiate, the escalation and the scope for negotiation.¹⁰

Table 4.4 Characteristics of cases referred by the judge during a court session (%)

	Low	Not low/ not high	High	Total
Degree to which parties are prepared to negotiate	10	70	20	100
Degree of escalation of the conflict	6	49	45	100
Scope for negotiation	6	69	25	100

Source: Referrers (D6); N = 559-567

4.5 Development in number of mediations

The progressing implementation of the referral facilities at the courts is visible in the number of mediations started and completed (see Table 4.5). In 2006 about 2.5 times as many mediations were started than in 2005. The number of mediations completed tripled from 2005 to 2006. In total, more than 2,700 mediations were started from April 2005 to December 2006, of which more than 1,700 have since been completed.

Table 4.5 Development in number of mediations

	2005 (from April)	Year 2006	Both years
Mediations started	778	1,943	2,721
Mediations completed	414	1,297	1,711

Source: report mediation offices to LBM.

4.6 Parties' motives

Table 4.6 sets out the relevance of the various motives for parties to opt for mediation. A majority of the parties finds the expectation of an improved relationship with the other party, the advice from the judge, and the expectation of a better and faster solution important. Keeping control over the solution and the incentive contribution of 2.5 hours free mediation is considered (somewhat) important by a majority of the parties. A little less than half of all parties finds the advice from the lawyer, or mediation as a cheaper alternative to legal proceedings (somewhat) important. 20% of the parties considered the other party's proposal for mediation (somewhat) important in their choice for mediation.

¹⁰ As the conflict has escalated more, the chance of reaching full agreement following mediation is smaller ($p=.013$).

Table 4.6 Motives of parties to opt for mediation (%)

Motives of parties	Not applicable	Not important	Somewhat important	Important	Total
Expected <u>better</u> solution than a court ruling would offer	16	8	20	56	100
Expected <u>faster</u> solution than a court ruling would offer	14	14	17	55	100
Wanted to keep control of the solution	22	14	26	39	100
Cheaper than legal proceedings	28	29	16	27	100
First 2.5 hours mediation are free	18	31	17	34	100
Better for future relationship with the other party	10	12	17	61	100
My lawyer advised mediation	48	9	15	28	100
The judge advised mediation	19	6	16	58	100
The other party proposed mediation	65	14	9	11	100

Source: Party forms (P7); N varies from 2,208 to 2,304 as not all questions are completed by parties.

4.7 Mediation results

4.7.1 Agreement

Table 4.7 sets out the results of the mediations. According to the records provided by mediators on the monitor forms, 55% of all mediations ended in full agreement and 9% in partial agreement.^{11 12} There is a difference in the chances of agreement being reached depending on the type of case. According to the data provided by the mediators full agreement was reached in 46% of all civil cases and in 75% of all administrative cases.¹³ Analysed jointly, no significant trend becomes visible in the degree of agreement in mediations. However, the degree of agreement in mediations in civil law cases fell from 50% full agreement in 2005 to 42% in 2006.¹⁴

Table 4.7 Agreement in mediations according to mediator data, by type of case (%)

	Type of case			All
	Civil	Administrative		
Full agreement	46	75		55
Partial agreement	10	6		9
No agreement	44	19		37
Total	100	100		100
N	794	323		1,117

Source: Result proposal Mediator forms (M15); Court and type of case from Case administration

The form of the mediation proposal also determines the chances of reaching agreement in mediations (see Table 4.8). Mediations following a proposal by letter result in agreement more often than in other forms of mediations.¹⁵ On the other

¹¹ The mediation offices' reported to the LBM register full agreement in 53% of all mediations and partial agreement in 7% of all cases (N=1,711). In the case administration of the courts, full agreement was reached in 49% of all cases and partial agreement in 6% (N=1,653). However, for this report we are using the agreement as registered in the monitor forms, in view of the fact that the information source on agreement at the mediation offices and case administration is not clear at present.

¹² Full agreement is reported more often by mediators in cases where there is no record of any mediation proposal via the courts, (64%; N=165), compared with cases where there is a record of a mediation proposal by the court (53%; N=952; $p = .007$).

¹³ $p < .001$

¹⁴ $p = .014$

¹⁵ $p < .001$

hand, agreement is reached less often following mediation proposed by the judge at court compared with other mediations.¹⁶

Table 4.8 Agreement in mediations according to mediator data, as to mediation proposal (%)

	Form of mediation proposal			
	Letter	Judge during court session	Judge following interlocutory decision	Parties' own initiative
Full agreement	65	43	48	53
Partial agreement	5	12	12	8
No agreement	29	44	40	39
Total	100	100	100	100
N	335	471	65	129

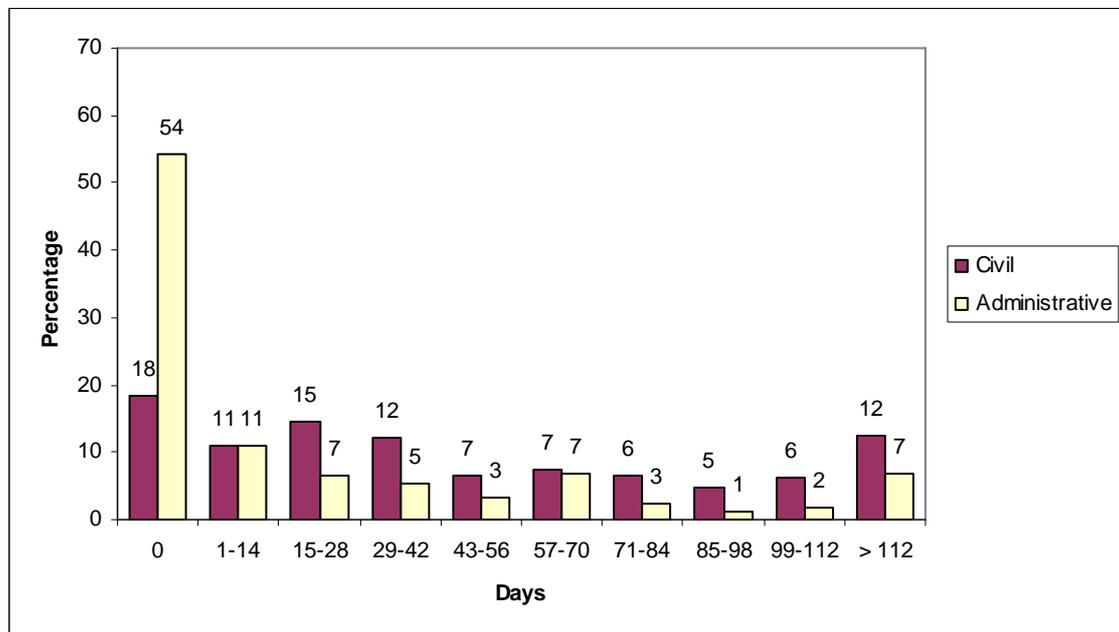
Source: Result proposal mediator forms (M15); Mediation proposal form from case administration

4.7.2 Duration of mediation

Lead time

Half of all mediations was settled within 27 days (from the day of the first meeting to the last meeting). There was a difference in the lead times for civil law and administrative law procedures (see Figure 4.3). 54% of all administrative cases were settled within one day, compared with 18% of civil case mediations. 72% of all administrative cases were completed within four weeks (28 days), compared with 44% of all civil cases.¹⁷

Figure 4.3 Lead times for mediations in days, by type of case (%)



Source: Lead times from mediator forms; Type of case from case administration

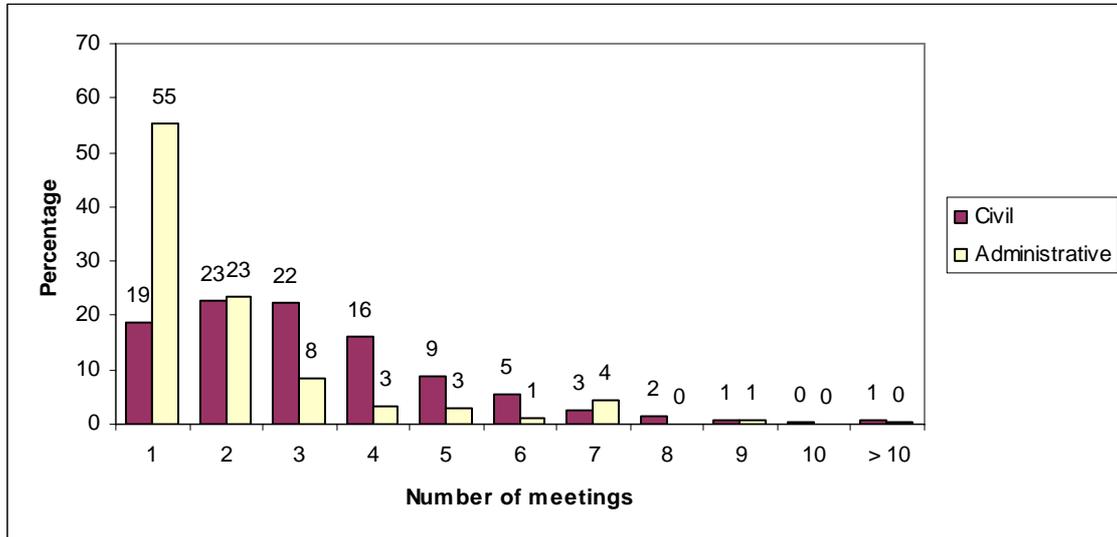
¹⁶ p<.001

¹⁷ p<.001

Number of meetings

Half of all mediations was settled within two meetings (see Figure 4.4). As for the lead times, there was a difference between civil and administrative cases. More than half (55%) of all administrative law cases was settled in one meeting. In civil law cases half of all mediations was settled in three meetings.¹⁸

Figure 4.4 Number of mediation meetings, by type of case (%)



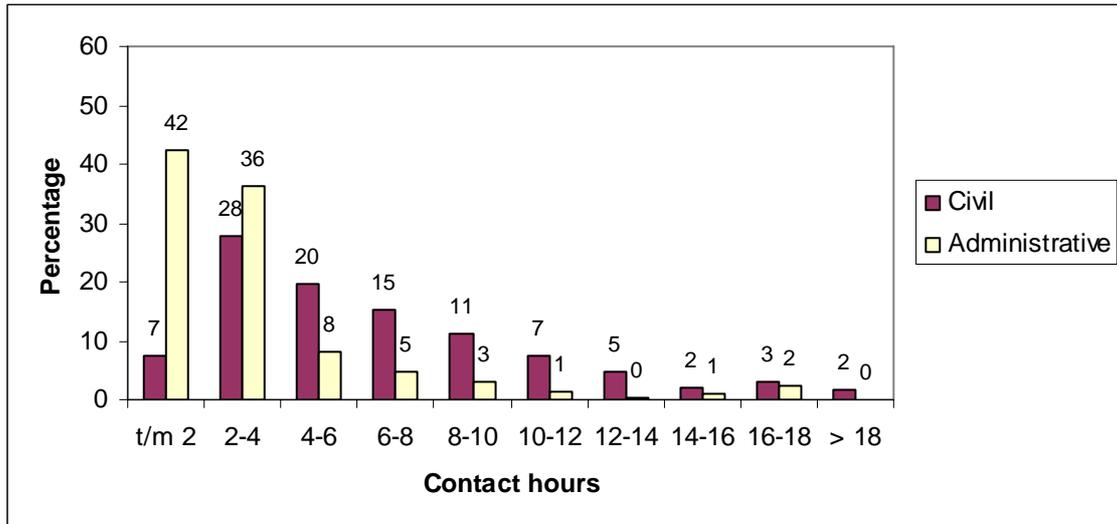
Source: Number of meetings from mediator forms; Type of case from case administration

Contact hours

Half of all mediations was settled within 4.5 hours. As for lead times, there was again a difference between civil and administrative cases. Mediations referred from civil procedures revealed a higher number of contact hours than mediations originating from the administrative sector (see Figure 4.5). Some 7% of all civil cases was settled within two hours, compared with 42% for administrative cases. Of all administrative cases 78% was settled within four hours. 35% of all civil cases was terminated within that period.¹⁹

¹⁸ $p < .001$
¹⁹ $p < .001$

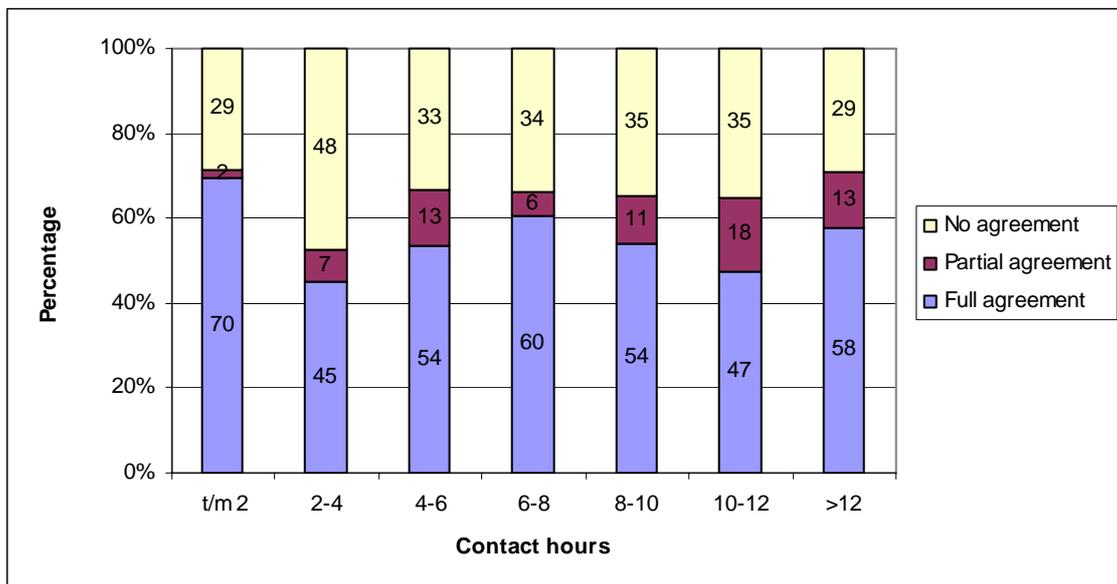
Figure 4.5 Contact hours for mediations, by type of case (%)



Source: Number of contact hours from mediator forms; Type of case from case administration

Figure 4.6 sets out the mediation results grouped by the number of contact hours. Short-term mediations (up to and including 2 contact hours) have the biggest chance of ending in full agreement.²⁰ Looking also at full and partial agreement, long-term mediations (more than 12 contact hours) appear to have an equally large chance of agreement as short-term mediations (up to 2 contact hours).

Figure 4.6 Result of mediations, by contact hours



Source: Number of contact hours and result mediation from mediator forms

²⁰ $p < .001$

4.7.3 Satisfaction of parties

Table 4.9 sets out the average satisfaction levels of parties in respect of the mediation and mediator. The majority of all parties was satisfied about the duration, cost and result of the mediation. The large majority of all parties was satisfied about the mediator regarding impartiality, operation method and carefulness. As expected, parties were more satisfied following a mediation ending in full agreement than in partial or no agreement.²¹

Table 4.9 Satisfaction of parties (average on a scale of 1-5)*

	Agreement reached			
	Full	Partial	No	All
Duration of mediation ^a	3.9	3.2	3.2	3.6
Financial cost	3.7	3.4	3.3	3.6
Result of mediation ^b	4.0	2.7	3.1	3.3
Impartiality mediator	4.2	3.9	4.0	4.1
Coaching of mediation by mediator	4.2	3.8	3.8	4.1
Accuracy mediator	4.2	3.9	3.9	4.1
N	1,277-1,345	188-199	733-771	2,219-2,340

* 1 = very unsatisfied, 2 = unsatisfied, 3 = neither satisfied nor unsatisfied, 4 = satisfied, 5 = very satisfied

^a Average satisfaction increased from 3.6 in 2005 to 3.7 in 2006 ($p=.012$).

^b Average satisfaction increased from 3.2 in 2005 to 3.3 in 2006 ($p=.003$).

N varies slightly depending on the question as not all questions were filled in for every form.

Source: Satisfaction from party forms (P8; average P9 and P10); agreement from Mediator forms (M15)

Satisfaction with regard to the duration and result of mediation was higher in 2006 than in 2005.

Another indicator of the level of satisfaction is whether parties would again opt for mediation in a similar conflict situation (see Table 4.10). Just over half of all parties confirmed they would once again opt for mediation. Another 38% said they might opt for mediation again. In total, 89% of all parties indicated they might consider mediation again in future. During the study period the percentage of parties who said they would opt for mediation again increased from 46% in 2005 to 56% in 2006.²² This increase occurred mostly with parties reaching full or partial agreement.²³ As expected, parties who had reached full agreement were more likely to opt again for mediation than those who had reached partial or no agreement.²⁴

²¹ $p < .001$ for all measurements of satisfaction

²² $p < .001$

²³ The percentage 'Yes' increased for full agreement from 58% in 2005 to 68% in 2006 ($p < .001$); for partial agreement from 28% in 2005 to 47% in 2006 ($p = .008$).

²⁴ $p < .001$

Table 4.10 Parties opting for mediation again (%)

	Agreement realised			
	Full	Partial	No	All
Yes	63	36	34	51
Perhaps	33	46	46	38
No	4	18	20	11
Total	100	100	100	100
N	1,329	197	780	2,329

Source: Opting for mediation again from party forms (P11); Agreement from Mediator forms (M15)

4.7.4 Costs incurred by parties

Table 4.11 sets out the costs of the mediator for the parties. More than two in five parties indicated they did not incur any costs for the mediator. There are a number of reasons for this. If parties use the incentive contribution, mediation is free if completed within 2.5 hours. Also, parties using a mediation legal aid permit and who have already paid a contribution at an earlier stage for a regular mediation legal aid permit incur no extra costs for mediation. The costs for parties in 2006 were lower on average than in 2005.²⁵

Table 4.11 Costs incurred by parties (%)

	%
No costs	43
Less than € 200	10
€ 200 to € 400	9
€ 400 to € 600	4
€ 600 to € 800	3
€ 800 to € 1000	3
€ 1000 and up	7
Don't know	21
Total	100
N	2,247

Source: Party forms (P13)

Parties were asked if the costs of mediation were a point for consideration when opting for mediation (see Table 4.12). 41% of all parties confirmed that this was indeed reason to opt for mediation. This percentage was higher in 2006 (43%) than in 2005 (39%).²⁶

Table 4.12 Cost as a consideration in opting for mediation in future (%)

	%
Reason to opt for mediation	41
Reason not to opt for mediation	10
Don't know	49
Total	100
N	2,235

Source: Party forms (P14)

²⁵ $p=.029$; category 'no costs' grew from 41% in 2005 to 44% in 2006.

²⁶ Significant increase from 2005 to 2006 ($p=.041$)

5 Mediation outside referral facilities

In addition to mediations referred via the court or Legal Counter, mediations also take place outside these two referral facilities. We will report on these mediations based on two data sources, neither one of which provides a complete image of all mediations realised outside the referral facilities. First of all we have the data for mediations (not referred by the Legal Counters or the courts) involving a mediation legal aid permit granted to either process party, for which parties and mediators were asked to complete a questionnaire, and which case was registered with the Councils for Legal Aid. Secondly, data are being collected for mediations involving NMI-registered Mediators (certified or otherwise). This NMI Monitor was started in January 2007 and its data are therefore not yet incorporated in this report. All NMI-registered Mediators were asked if they were willing to cooperate in the monitor study. This requires them to complete a questionnaire via the Internet on the case in hand for *all* mediation cases they perform over a particular period. Cases referred via the Legal Counters or the courts can be filtered out. In order to stimulate the cooperation, a module was incorporated into the records, enabling the mediator to view his position and compare it with other mediators.

5.1 Mediations involving a mediation legal aid permit

Paragraph 2.2 revealed that the Councils for Legal Aid registered a total of 395 mediations that took place outside the referral facilities, involving 612 mediation legal aid permits. Not all mediations have since been completed. We have at our disposal 80 questionnaires completed by the parties and 48 questionnaires by the mediators. In view of the limited amount of data, the results must be interpreted with some care.

5.1.1 Parties' motives for mediation

Parties were asked what they considered the most important reason to opt for mediation. They responded: the future relationship with the other party and keeping control of the solution.

Table 5.1 Parties' motives to opt for mediation (%)

	Not applicable	Not important	Somewhat important	Very important
Expected <i>better</i> solution than a court ruling would offer	14	5	23	59
Expected <i>faster</i> solution than a court ruling would offer	15	13	21	51
Wanted to keep control of the solution	11	5	16	68
Cheaper than legal action	11	18	27	44
Opportunity to apply for a mediation legal aid permit	13	15	27	45
Better for future relationship with the other party	7	4	14	75
My lawyer advised mediation	62	7	9	22
The other party proposed mediation	58	3	17	23
N				66-79

N varies slightly depending on the motive as not all questions on every form were completed.

Source: Party form (P8)

5.1.2 Agreement

The registration of the Councils for Legal Aid shows that 78% of all mediations led to full agreement and 7% to partial agreement. Finally, 15% of all cases led to no agreement (see Table 5.2).

Table 5.2 Number of mediations, by agreement

	number of	%
Full agreement	95	78
Partial agreement	9	7
No agreement	18	15
Total	122	100
Unknown/ pending	273	

Source: Manual registration Councils for Legal Aid

5.1.3 Satisfaction of parties

Table 5.3 sets out parties' satisfaction about certain aspects of the mediation and the mediator. Parties who reached agreement were on average satisfied to very satisfied about the mediator and the duration, costs and result of the mediation. Parties who did not reach agreement were reasonably satisfied – save for the outcome of the mediation, although less so than parties with (partial) agreement.

Table 5.3 Satisfaction of parties (average on a scale of 1-5)*

	With (partial) agreement	Without agreement
Duration of mediation	4.1	3.5
Financial costs	4.1	3.9
Result of mediation	4.2	2.3
Impartiality of mediator	4.3	3.9
Coaching of mediation by mediator	4.3	3.6
Accuracy mediator	4.4	3.9
N	49-51	12-13

* 1 = very unsatisfied, 2 = unsatisfied, 3 = neither satisfied nor unsatisfied, 4 = satisfied, 5= very satisfied

N varies as not all questions on all forms were completed

Source: Party form (P9 and P10)

When parties were asked if they would again opt for mediation in a similar conflict situation, 82% of all parties with (partial) agreement responded positively, compared with 23% of all parties without agreement (see Table 5.4).

Table 5.4 Parties opting for mediation again (%)

	(partial) agreement	No agreement
Yes	82	23
Perhaps	18	54
No	-	23
Total	100	100
N	51	13

Source: Party form (P11)

5.1.4 Lead times and contact hours

The lead time for mediation is the number of days between the first and last mediation meeting. The lead times are known for 47 cases, ranging from 0 to 254 days. Half of all cases was settled within 37 days. Also, half of all cases was settled within 3 meetings. Finally, 8% of all cases was settled within four contact hours and 57% within eight contact hours. Some 43% of cases required more than eight hours (up to a maximum of 18 hours). For these percentages, too, please remember the note we made in paragraph 3.5.2 concerning the possible influence of the flat-fee system on the number of contact hours recorded by mediators.

5.1.5 Costs incurred by parties

As said above, the Councils for Legal Aid registered 395 mediations outside the referral facility, involving 612 mediation legal aid permits. This means that there were two mediation legal aid permits in 55% of all mediations. The own contribution for the person seeking justice has been established for 200 mediation legal aid permits (see table 2.4). 23% of all mediation legal aid permits involved a €0 contribution, 55% a €45 and 22% a €90 contribution.

For 2005 and 2006 61% of all parties indicated that they regard the costs incurred reason to opt for mediation, 38% said they did not know and 1% indicated that the costs were reason not to opt for mediation (see Table 5.5).

Table 5.5 Cost as a consideration in opting for mediation in future (%)

	%
Reason to opt for mediation	61
Reason not to opt for mediation	1
Don't know	38
Total	100
N	77

Source: Party form (P12)

6 Conclusion

The referral facilities with the Legal Counters and the courts were phased in from April 2005. This process was completed for the Legal Counters by the end of 2006 and for the courts in April 2007.

This Chapter summarises the key findings from the monitoring data for the period from April 2005 to the end of 2006. We present the state of affairs for:

1. familiarity with and use of mediation;
2. the quality and results of mediations;
3. the quality and availability of mediators;
4. the appeal made to financial facilities.

This is an interim report which in some cases is based on a limited amount of data. In order to present developments over time, the two-year time span is too short. Moreover, the growth of the number of mediations and the use of financial facilities still depend to a considerable extent on the phased implementation of the referral facilities.

6.1 Familiarity with mediation and its use

Familiarity

The monitor data show that some of the parties who took part in mediation were already familiar with the facility beforehand. This applied to 20% of all parties referred by the Legal Counters and to 45% of the parties referred by the courts. Besides the information they received through the referral facilities, parties also learnt of mediation via lawyers, the media, their circle of friends, or a brochure. Also, parties in both the Legal Counters and the courts opted for mediation at their own initiative, another indication that mediation enjoys familiarity among citizens as a way to solve disputes. Future monitor data are to show the development of this familiarity and the number of parties that opt for mediation at their own initiative.

In addition to these data, the Justitie Issue Monitor²⁷ shows that familiarity of mediation has increased between 2004 and 2005 (Intomart GfK, 2005). In 2004 36% of all Dutch citizens reported they had heard, seen or read something about mediation. In the spring and autumn of 2005 this percentage was 45% and 41% respectively. This study is to be repeated in 2007, through which the familiarity of mediation amongst Dutch citizens can be monitored.

Number of mediations

The increase in the number of referrals and mediations reflects to a considerable part the roll-out of the referral facilities.

In total, the Legal Counters made 1,351 referrals to a mediator registered with the Councils for Legal Aid. In 2005 they made 134 referrals and in 2006 1,217. Also, there were 715 cases where mediation was proposed and the cases were solved without mediation or referred to a mediator not registered with the Councils for Legal Aid. Of the referrals mentioned above, only a part of these shows up in the

²⁷ A telephone survey amongst 400 Dutch citizens aged 18 years and older.

Councils for Legal Aid monitoring. Only in cases where at least one of the parties applies for a mediation legal aid permit, is this referral registered by the Councils, whereby parties and mediators are then requested to complete a questionnaire. No data are available for the other referrals, for example when a case involves two paying parties. Eventually, 565 mediation cases were registered with the Councils for Legal Aid in 2005 and 2006 (18 of which in 2005) referred by the Legal Counters, involving at least one party receiving a mediation legal aid permit.

In 2005 (from April) 778, and in 2006 1,943, mediations were started via the courts, of which 1,711 were completed by the end of 2006.

Moreover, 364 mediations were completed, compared with 42 in 2005, which had not been referred by any court or Legal Counter, but for which a mediation legal aid permit had been applied.

Reasons to choose for mediation

The key reasons parties give to accept the mediation proposal is that they expect that mediation benefits their future relationship with the other party or that a non-legal procedure offers a faster and better solution. This applies to both parties referred through the Legal Counters and through the courts. Parties referred via a Legal Counter also find it important that they can maintain control of the solution when they opt for mediation. In addition, for both referral facilities the advice given by the Legal Counter or the judge also forms an important motive.

6.2 Quality and results of mediations

Result

In view of the agreement percentages mediation has proven an effective way to solve disputes for the majority of all parties. In mediations referred via the Legal Counters, (partial) agreement was reached in 79% of all cases, with a 71% agreement rate on all points of the dispute.

Of all mediations referred by the courts, 55% ended in full and 9% in partial agreement. Administrative cases resulted in agreement more often than civil cases. Civil cases ended in full agreement in 46% of all cases and in partial agreement in 10% of all cases, compared with 75% and 6% respectively for administrative cases.

The fact that the agreement percentages for mediations referred via the courts were lower than those referred via the Legal Counters, corresponds with the findings from the evaluation of the mediation projects with the financed legal aid and judiciary in 2003. This difference can be explained by, among other things, the greater degree of juridification and escalation of conflicts referred by the courts (see Combrink-Kuiters, a.o., 2003, p. 170).

The agreement percentages with the two referral facilities are comparable to the results from the previous evaluation study, where 78% and 61% respectively of all mediations ended in a (partial) agreement (see Combrink-Kuiters, a.o., 2003). In the current situation the chance of an agreement does not seem to be reduced in the early phase of the broader implementation of the referral facilities and with the increase of the number of mediations.

Duration

Some 11% of all mediations referred via the Legal Counters was completed within a day. More than a quarter ended within fourteen days. A total of 59% of all mediations was completed within six weeks. The number of contact hours shows that some 25% of the mediations was completed within four hours, while another 40% took between four and eight hours. About 35% of all mediations took more than eight contact hours.

Half of all mediations referred via the courts was settled within 27 days, two meetings or 4.5 contact hours. On average, administrative cases had a shorter lead time and fewer contact hours than civil cases. The number of contact hours did not impact on the chance of agreement in mediations realised via the courts. In cases referred via the Legal Counters the mediations without agreement lasted 2.5 hours shorter on average than mediations ending in agreement.

Costs

Contrary to the situation during the previous project period in which mediation was free, parties may face certain costs in the current situation. The majority of all parties was satisfied to very satisfied concerning the actual financial costs incurred for the mediator. This could be explained by the fact that costs were limited for some parties. Parties who qualified for a mediation legal aid permit never paid more than the €90 contribution. For referrals by the courts a mediation legal aid permit could be applied for or use could be made of the incentive payment, ensuring the first 2.5 hours of mediation are free. Administrative cases referred via the courts were completed within 2.5 hours in almost half of all cases. For these parties, mediation involved no extra costs. Even if parties in legal proceedings were already receiving a regular legal aid permit, they did not incur any extra costs for a mediation legal aid permit. According to the registration kept by the Councils for Legal Aid this was the case for 440 parties in the period 2005-2006.

Satisfaction

More than half of all parties was 'satisfied' to 'very satisfied' about the duration, the financial costs and the results of the mediation. Following a mediation ending in full agreement parties were more satisfied than in the event of partial or no agreement.

In general, parties seemed prepared to opt again for mediation in future conflicts. However, a minority of all parties indicated that they would not opt for mediation next time. For parties referred via the Legal Counters, this percentage was 4% and for parties referred via the courts 11%.

6.3 Quality and availability of mediators

Parties qualify for a mediation legal aid permit or an incentive contribution only if they use a mediator registered with the Councils for Legal Aid. These mediators are certified NMI mediators who are obliged to meet extra quality standards set by the Councils for Legal Aid. NMI has registered 829 certified mediators, including 534 mediators registered with the Councils for Legal Aid. For now, there have been no indications suggesting a shortage of mediators.

Parties were generally satisfied with the quality of mediators. Most parties were 'satisfied' to 'very satisfied' about the impartiality and carefulness of the mediator and the manner in which the mediator led the mediation. Following a mediation ending in full agreement parties were more satisfied than in the event of partial or no agreement.

6.4 Financial facilities

Incentive contributions

The number of incentive contributions grew from 143 in 2005 to 900 in 2006. A total of 1,050 incentive contributions²⁸ were granted in cases referred via the courts.

Mediation legal aid permits

2005 and 2006 saw a total of 1,887 mediations involving at least one party receiving a mediation legal aid permit. The number of mediation legal aid permits totalled 2,908, this is due to the fact that more than one party per case may qualify for a mediation legal aid permit. Most mediation legal aid permits went to parties that were referred by the courts to mediation, namely 43%, followed by referrals via the Legal Counters (31%) and mediations realised outside the referral facilities (21%). More than 90% of all mediation legal aid permits concerned law of persons and family law, this usually concerns divorce cases.

Financial facilities in parties' consideration

Parties were asked to what extent the financial facilities played a role in opting for mediation. The availability of these facilities proved to be (somewhat) relevant for most parties in their choice. Some 81% of all parties referred via the Legal Counters, found it (somewhat) important that mediation was cheaper than legal proceedings, while 70% found it (somewhat) important that they were given the option to apply for a mediation legal aid permit. For 10% the mediation legal aid permit was not important and for the remaining 19% of all parties this option was not applicable as they were probably not of insufficient means. Also, 69% of all parties indicated that they found the costs reason to opt for mediation again. This is not surprising, as the parties referred via the Legal Counters usually received a mediation legal aid permit and the costs were therefore low.

Of all parties referred via the courts to mediation, 43% found the motive "mediation is cheaper than legal proceedings" (somewhat) important. The incentive contribution did not apply for 18% of all parties since they probably received a mediation legal aid permit. For 51% of all parties the motive "the first 2.5 hours mediation free" was (somewhat) important in their choice for mediation. 41% of the parties referred via the courts found the costs reason to opt for mediation in future.

²⁸ No date known for 7 incentive contributions

6.5 Limitations and future studies

This interim report presents an image of the developments related to the referral facilities, financial facilities and the associated mediations. This regards preliminary results based on data available in early January 2007. During the study period running from 1 April 2005 to 31 December 2006 the implementation of the referral facilities was still ongoing. Also, we did not yet have monitor forms for all mediations. Future reports within the framework of the Mediation Monitor will be able to present a more complete and broader image than the current interim report, thanks to the availability of more data and the execution of more in-depth analyses. Also, the NMI monitor, which was started in early 2007 and uses similar questionnaires as for the ones for the referral facilities, will be used in future to obtain a picture of mediations realised outside the referral facilities.

Literature

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Hilversum, Intomart GfK

Kamerstukken II

Vergaderjaar 2003-2004, 29 528, nr. 1

Appendix 1

Monitoring committee

Chair

C.J.M. Klaassen professor of Civil Law and Civil Procedural Law,
Radboud University Nijmegen

Members

C. C. J. M Koetsenruijter	policy assistant, Netherlands Mediation Institute
M. A. H. Leers	project manager mediation, Councils for Legal Aid
J. R. Mantz	senior policy assistant, Judicial System Department, Ministry of Justice
S. N. Morbé	national project manager mediation, the Legal Counter
E. Nieuwenkamp	senior policy assistant, Judicial System Department, Ministry of Justice
M. Pel	director Netherlands Court-connected Mediation agency

Appendix 2

Definitions and terms

The interpretation of some of the definitions and terms used frequently in this report may lead to differences of opinion. For this reason, we have defined a number of terms relevant for the study, followed by an explanation of the choices made.

(Mediation) proposal

This study report uses the term (mediation) proposal particularly to refer to: a proposal made by the courts or the Legal Counters to parties involved in a conflict, involving their lawyer or otherwise, to use mediation. This comprises all possible forms, ranging from a concrete proposal made by the judge in court to a written proposal by letter. The use of the term 'mediation proposal' does not relate therefore to the acceptance by (one of the) parties, and moreover it also it does not relate to the conclusion of contact with the mediator or mediation officer.

Referral

The definition of referral causes a lot of confusion as regards interpretation. This report talks about referral if both parties have accepted the mediation proposal. Please note that the terminology used in this report has been changed from previous WODC reports to align it with terminology used by the courts and the Legal Counters. Combrink-Kuiters, Niemeijer and Ter Voert (2003) used the term referral for what is called a mediation proposal in this report.

Realised referral

This report uses the term realised referral if a referral has actually led to a mediation, regardless of the end result.

Full agreement

There is full agreement following mediation if both parties reach agreement on all points of dispute, regardless of the compliance to the agreements made.

Partial agreement

Mediations with partial agreement reach agreement on at least one of the points of dispute, but not on all.

No agreement

This report talks about mediations without agreement if parties failed to reach agreement on any point in the mediation. The term failed mediation is avoided here, as there may well be some progress, either with regard to the time required for a follow-up procedure, the clarification of the viewpoints, the repair of the communication and/or (a start of) insight into each others' viewpoints. The term mediations without a written (settlement) agreement is not quite suitable either, as a deliberate choice may sometimes be made not to record the agreements made in a written (settlement) agreement.

Settlement agreement

The agreement reached is laid down in a written settlement agreement. Section 7:900 of the Dutch Civil Code determines that this agreement may deviate from mandatory law.

Appendix 3

Statistical terms

This report frequently uses statistical terms. This appendix explains these terms in greater detail.

N

N represents the number of observations (e.g. number of cases, mediations, or parties).

p

The *p*-value is the chance of an observed difference. A *p*-value of .05 for instance tells us that there is a 5% chance that a difference found between two groups was found accidentally. On the other hand, one can also say with 95% certainty that there really is a difference. In this report only differences with a $p < .05$ are regarded as significant.

Correlation

The correlation indicates the degree to which two variables are related to each other. The correlation runs from -1 to +1, where -1 indicates that there is a full negative correlation between two variables (the higher a, the lower b), 0 indicates that there is no correlation between two variables and 1 indicates that there is a full positive correlation between two variables (the higher a, the higher b).

Appendix 4

Mediators' fields of affinity

Background of mediators, Councils for Legal Aid

Table 1 Areas of affinity of Mediators, Councils for Legal Aid

Area of affinity (with legal specialism)	%
<i>Civil</i>	
- Employment	12
Employment conditions	21
Dismissal	34
Absenteeism due to illness*	5
Management conflicts*	2
Partnership conflicts *	1
- Rent and lease	4
Rent private parties	4
Rent business premises	7
Other*	1
- Business conflicts	3
Contracts	17
Dissolution legal persons/ end of partnership/ cooperation	14
Automation	10
Business takeover and succession	11
Construction	7
Agriculture	6
Other*	0
- Private conflicts	5
Neighbours	18
Consumer law	4
Unlawful act damage	4
Medical acts	4
Personal injuries	2
Insurance	1
Financial services	2
- Health*	1
<i>Family law</i>	
- Non financial	27
Divorce	48
Authority and parental access	47
- Financial	17
Alimony	38
Division of estate	43
Inheritance	18
- Combination financial - non financial	19
<i>Administrative law</i>	
- Taxes	1
- Civil servants cases	7
- Subsidies	13
- Social security	1
- Environment	5
- Spatial planning	4
- Spatial planning	6
N	534

NB: percentages include double counts.

* not on BAR list.

Background of mediators, Netherlands Mediation Institute (NMI)

Table 2 reflects the professional backgrounds of certified mediators. Mediatorship is considered the main profession by 48%. Furthermore, three professional categories can be distinguished. The first group (45%) comprises legal professions, such as lawyers, legal advisors, judges, arbiters or civil-law notaries. The second group (32%) comprises the organisation and management professions, such as manager, organisation consultant, employment expert, entrepreneur or public administration official. The third group (17%) are social and care providing professions, such as psychologists, therapists and social workers.

Table 2 Professional background of certified mediators, NMI (%)

Profession	Certified mediators %
Legal	44
Organisation and management	32
Social services	17
Mediator	48
Number of mediators	531

NB: the analysis concerns only mediators whose professional background is known.

Table 3 shows the percentages of NMI Certified Mediators who have affinity with the various areas of attention.

Table 3 Areas of affinity of mediators, NMI (%)

Affinity (with area of legal specialism)	Certified mediators %
Family	
Divorce	46
Heirs	13
Family relations	46
Parental access	27
Other family	7
Health	
Treatment	8
Injury	4
Other health	17
Environment	
Neighbours	28
Local area	9
Environment and spatial planning	10
Other environment	8
Government	
Taxes	5
Police and Justice	9
Other Government	17
Work	
Employment conditions	34
Relations	44
Dismissal	31
Absenteeism	29
Management conflicts	33
Other work	13
Business	
Contracts	21
Consumer transactions	13
Cooperation	39
Automation	5
Business takeover and succession	14
Other business	23
Other (S031 / SC08)	22
N	829

NB: the analysis only concerns mediators whose area of affinity is known.