Mediators' Perspectives on the Family Mediation Voucher Scheme

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Abstract:

This article reports the findings of a study into mediators' perspectives on the Family Mediation Voucher Scheme. The voucher scheme aims to encourage more families to resolve family disputes relating to children through mediation. The study aimed to gather data from mediators to establish how the voucher scheme has impacted rates of participation with mediation and rates of settlement in cases where a voucher was used. It also aimed to gather qualitative data so that the reasons underlying its impact could be ascertained. This article outlines the key themes which emerged from the study and discusses how these findings could impact future policy development.

Keywords:

Family Mediation Voucher Scheme, mediation, dispute resolution, mediators, Family Mediation Council.

Overview

The Ministry of Justice (MoJ) launched the Family Mediation Voucher Scheme in March 2021. The scheme, [1] which is administered by the Family Mediation Council (FMC), enables families to access a financial contribution of up to £500 per eligible case to help cover the costs of mediation.[2] The voucher scheme was launched on 26 March 2021 and was set to come to an end in August 2021.[3] However, before the scheme ended the MoJ announced that the scheme would be extended and pledged a further £800,000 of funding to enable it to operate for longer. It was then extended again in January 2022, following the allocation of a further £1.3 million of funding. The scheme is, at the time of writing, still in operation.[4]

The MoJ has stated that the aims of the scheme are two-fold. The first aim is for the scheme to act 'as an immediate measure to try to reduce the backlogs in family proceedings which have been exacerbated by the coronavirus pandemic'.[5] The primary aim of the voucher scheme is therefore to encourage more families to resolve family disputes through mediation, in order to reduce the volume of cases being dealt with by the family courts. The second aim of the scheme is to 'provide an evidence base around the effectiveness of providing a financial incentive to encourage disputes to be resolved via mediation rather than through the courts'.[6] The evidence

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[1] In this article references to 'the scheme' or 'the voucher scheme' refer to the Family Mediation Voucher Scheme.

[2] Family Procedure Rules 2010, SI 2010/2955, Practice Direction 36V, 3.1516. Eligible cases are defined as 'private law proceedings relating to children, as specified in paragraph 12 of Practice Direction 3A; or proceedings for a financial remedy, as specified in paragraph 13 of Practice Direction 3A, where the person is also a party to proceedings, or prospective proceedings, relating to children, as specified in paragraph 12 of Practice Direction 3A'. See also, www.familymediationcouncil.org.uk/mediation-vouchers/, last accessed 13 June 2022.

[3] In this article this period is referred to as the initial period of operation.

[4] 'Family mediation voucher scheme extended' Family Law [2021] Fam Law 1578.

[5] www.gov.uk/guidance/family-mediation-voucher-scheme, last accessed 13 June 2022. See also, Family Procedure Rules 2010, SI 2010/2955, Practice Direction 36V, 3.1516.

[6] Ibid.

base, which is currently being compiled by the FMC/MoJ, will be comprised of anonymised data provided by mediators in cases where a voucher was used. The data will include information about whether an agreement was reached and, if an agreement was reached, whether it will be formalised by a court. This is intended, in time, to be used to inform future policy development. The independent study which is the subject of this article was conducted to collect information from mediators about their perceptions of how the voucher scheme has impacted rates of participation and resolution in eligible cases.

Background to the study

The family justice system is comprised of various institutions 'whose primary purpose it is to define, protect and enforce the legal rights family members have, and to resolve conflicts family members have concerning those rights'.[7] The resolution of family disputes is, therefore, a key function of the family justice system. Traditionally, such disputes were 'resolved in court, or by negotiation by lawyers in the shadow of court proceedings'.[8] Solicitors were, therefore, typically the 'first port of call' for those experiencing family problems.[9] In recent years, however, there has been a sustained effort to promote the use of non-court-based methods of dispute resolution in civil cases more generally.

There are various schools of thought as to the underlying basis for this. On the one hand, the non-adversarial nature of alternative dispute resolution is thought to enhance autonomy by empowering parties to make their own decisions, be quicker and cheaper than traditional court proceedings, contain and reduce conflict, and produce agreements which are 'better' and more creative than those typically imposed by a judge.[10] Such benefits were considered to be of particular importance in the family justice context.[11] On the other hand, the promotion of non-court-based methods of dispute resolution is also consistent with neoliberal ideology which favours private ordering and the scaling back of state intervention.[12]

Whatever the reasons, the fact remains that there has been a notable drive to promote the use of non-court-based dispute resolution services in private family matters and, in particular, to encourage parties to settle disputes through mediation. As Lisa Parkinson has observed, it 'seems to be generally accepted now that mediators and other practitioners of dispute resolution have a place in the family justice system, since their objective is to promote the settlement of disputes in the context of potential or actual court proceedings'[13] and to provide support to families as their matter progresses towards judicial determination.

The drive to encourage families to resolve disputes without resorting to court proceedings was reflected in law in a number of ways. To encourage participation in mediation in appropriate cases, the President of the Family Division introduced a pre-application protocol whereby the majority of private law applicants were required to attend a meeting to learn about mediation before they took their case to court.[14] The Pre-Action Protocol stipulated that parties were expected to attend a Mediation Information and Assessment Meeting (MIAM) in order to

[7] M Maclean, J Eekelaar and B Bastard, *Delivering Family Justice in the 21st Century* (Bloomsbury Publishing Plc, 2017), 2.
[8] A Barlow, R Hunter, J Smithson and J Ewing, *Mapping Paths to Family Justice: Resolving Family Disputes in Neoliberal Times* (Palgrave MacMillan, 2017), 3
[9] Ibid, 20.
[10] Ibid, 4.
[11] Ibid.
[12] J Mant, 'Neoliberalism, family law and the cost of access to justice' [2017] 39(2) JSWFL 246, 247
[13] L Parkinson, 'The Place of Mediation in the Family Justice System' [2013] 25(2) CFLQ 200, 200.
[14] FPR 2010 Practice Direction 3A (Pre-Application Protocol on Family Mediation Information and Assessment Meetings), Annex A – The Pre-Application Protocol (MoJ, 2011).

receive information about mediation.[15] The MIAM allows the mediator to convey information to the client(s) so that they understand what mediation entails and are able to decide whether to use mediation to resolve their dispute(s). Mediators also assess clients' suitability for mediation based on the information disclosed during the MIAM.

The expectation that parties attend a MIAM applied from April 2011 but was not consistently or widely enforced.[16] The Family Justice Review Final Report therefore recommended that the use of dispute resolution services, particularly mediation, should be more strongly encouraged in private family law cases.[17] Although the Report did not go so far as to propose making mediation compulsory, it did recommend that attendance at a MIAM 'should be required of anyone wishing to make a court application (subject to relevant exemptions)'.[18]

In response to this recommendation, the Government set out proposals to introduce a requirement for all prospective applicants seeking an order in children and financial remedy cases to first attend a MIAM, unless an exemption applied.[19] This requirement was given legislative effect by virtue of section 10 of the Children and Families Act 2014. It is therefore now the case that an applicant submitting a court application in respect of a private law dispute concerning children or finances must prove that they have attended a MIAM unless one of the specified exemptions applies. This requirement is intended to ensure that prospective applicants are aware of the dispute resolution services which are available to resolve their dispute(s) which should, in turn, increase the use of mediation in cases where it is considered to be an appropriate method of dispute resolution. Families have therefore been subject to increasing degrees of encouragement to resolve their disputes through mediation.

Concurrent to the introduction of measures to promote the use of mediation, the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) brought about extensive reforms to legal aid provision in England and Wales. These reforms drastically reduced the availability of legal aid funding for private family law cases. Since the Act came into effect in April 2013, public funding to facilitate court-based resolution of family disputes has only been available for a restricted range of private family law cases.

As Liz Trinder has explained, the 'severe cuts to family legal aid reflect a combination of both financial and ideological drivers'.[20] On the one hand, 'the Ministry of Justice was seeking to reduce its budget by almost a quarter following the global economic crisis'.[21] On the other hand, the cuts to legal aid in private family cases reflected 'a particular neoliberal ideology towards the state's role in relation to families, emphasising individual responsibility rather than state intervention'.[22] As Anne Barlow has observed, governmental policy was also underpinned by an 'anti-lawyer rhetoric'.[23] This rhetoric reflected a 'distorted image of lawyers… aiding

[15] Ibid.
[16] R Hunter, A Barlow, J Smithson and J Ewing, 'Paths to Justice in Divorce Cases in England and Wales' in M Maclean, J Eekelaar and B Bastard (eds), *Delivering Family Justice in the 21st Century* (Bloomsbury Publishing Plc, 2017), 147
[17] D Norgrove, *Family Justice Review: Final Report* (Ministry of Justice, 2011), paras 119 and 120
[18] Ibid.
[19] *The Government Response to the Family Justice Review: A system with children and families at its heart*, Cm 8273 (2012), para 69.
[20] L Trinder, 'Taking Responsibility? Legal Aid Reform and Litigants in Person in England', in M Maclean, J Eekelaar and B Bastard (eds) *Delivering Family Justice in the 21st Century* (Bloomsbury Publishing Plc, 2017), 223.
[21] Ibid.
[22] Ibid.
[23] Barlow et al, above n 8, 24.

and abetting their clients to exploit the availability of legal aid funds.'[24] This failed to 'accurately reflect the practice and ethos' of many family law practitioners who had already adopted a 'less adversarial, settlement-focused approach' which had enabled many families to resolve disputes without recourse to court proceedings. [25]

Despite 'the mounting evidence to the contrary', the proposals for the reform of legal aid claimed that legal aid funding could 'be used to support lengthy and intractable family cases which may be resolved out of court if funding were not available' and suggested that parties should be 'encouraged to settle using mediation, rather than protracting disputes unnecessarily by having a lawyer paid for by legal aid'.[26] There was, therefore, a 'persistent dichotomy drawn between resolving disputes by mediation and going to court, as if these were the only available options'.[27] The result was that whilst the LASPO reforms restricted legal aid funding for litigation of family disputes, legal aid funding was retained for mediation of family disputes.[28] Consequently clients who are unable to privately fund family proceedings 'now have only one out-of-court family dispute resolution option available to them: mediation.'[29] As Rosemary Hunter has observed '[t]he withdrawal of legal aid for anything other than mediation in private family law matters (with limited exceptions) was another nudge, albeit one closer to the 'hard shove' end of the spectrum of persuasion' to encourage families to resolve their disputes through mediation.[30]

Although the Family Justice Review Final Report recognised that parties should be able to 'choose the service they think would be most helpful to them'[31], whether this be mediation 'or another dispute resolution service'[32], there is a clear policy preference in favour of mediation. The policy reforms discussed above clearly aimed to remove 'as many private family law disputes from the court arena as possible' whilst also making mediation 'the default' dispute resolution service in private family law matters.[33]

However, some commentators have questioned whether the policy preference for mediation is justified. For example, the Mapping Paths to Family Justice research project concluded that 'our research suggests that one size does not fit all when it comes to family dispute resolution, and that the absolute policy preference for mediation is not justified' because 'there are a number of circumstances in which mediation is unlikely to be an appropriate method of resolution for the particular parties or the particular dispute, and these circumstances extend well beyond the narrow categories of exemption from attending a MIAM and continued eligibility for legal aid for legal representation and court proceedings'.[34] Furthermore, Hunter has argued that 'policy-makers' enthusiasm for family mediation has always outstripped demand for mediation on the part of potential clients' and has questioned why the family mediation sector is being 'propped up' by the government. [35] Despite this, however, evidence shows that mediation is the favoured method of alternative dispute resolution of policy makers.

[24] R Hunter 'Inducing Demand for Mediation – before and after LASPO' (2017) 39(2) JSWFL 189, 192.
[25] Barlow et al, above n 8, 24.
[26] Ministry of Justice, *Proposals for the reform of legal aid in England and Wales,* Cm 7967 (2010), para 4.211.
[27] Barlow et al, above n 8, 24.
[28] Ibid.
[29] Ibid, 148.
[30] Hunter, above n 24, 193.
[31] Norgrove, above n 17, 153, para 120.
[32] Ibid, paras 4.14, 115, 118 and 120.
[33] Barlow et al, above n 8, 79. See also Mant, above n 12, 250.
[34] Ibid, 161. See also Hunter, above n 24.
[35] Hunter, above n 24, 200.

However, the Government's sustained effort to encourage families to resolve their disputes through mediation has not resulted in the desired reduction of private law cases which are still referred to court. In fact, the volume of private law cases being dealt with by the family courts has remained consistently high. The Equality and Human Rights Commission found that 'the number of private family law proceedings in the family courts has not fallen significantly since the introduction of LASPO'.[36] Private law cases accounted for 54,638 of the 265,308 cases started in the family courts between January and December 2021.[37] Although the situation was compounded by the impact of the Covid-19 pandemic,[38] the number of private law cases instigated in the family courts in 2021 is consistent with pre-pandemic figures in 2019.[39]

As was predicted,[40] a larger proportion of parties in private law proceedings are unrepresented because of the lack of funding available post-LASPO. The most recent MoJ statistics show that between October to December 2021, 'the proportion of disposals where neither the applicant nor respondent had legal representation was 38%, increasing by 24 percentage points since January to March 2013'.[41] There was a corresponding reduction in the proportion of cases where both parties had legal representation, 'from 41% in January to March 2013 to 21% in October to December 2021'.[42] This long-term trend appears to have impacted the average length of time it takes for cases to reach a final order. This is because 'in general, cases where either both parties or the respondent only had legal representation took longer to be disposed of than those cases where only the applicant was represented or where both parties were without legal representation'.[43]

There has also been an upward trend in the length of time it takes to dispose of private law matters. In 2021 private law cases took 41 weeks on average to reach final order, compared to 32 weeks in 2020.[44] The Law Society has expressed concern at the 'significant backlogs' in family proceedings and the impact delays have on the timeliness of disposals in family law matters.[45] Timeliness issues contribute to the backlog of cases working through the family courts. Furthermore, the need to avoid delay in cases concerning children is encapsulated in the principle of no delay laid out in section 1(2) of the Children Act 1989, the importance of which was acknowledged by the President of the Family Division in The Road Ahead document published in 2020.[46]

It is against this backdrop that the MoJ launched the Family Mediation Voucher Scheme. The scheme enables families to access a financial contribution of up to £500 towards the cost of mediation in eligible cases. Access to the voucher is not means tested. Eligible cases are defined

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[36] Equality and Human Rights Commission, '*Research Report 118: The impact of LASPO on routes to justice'* (2018), 11.
[37] https://data.justice.gov.uk/courts/family-courts/, last accessed 13 June 2022.
[38] Family law court system still facing backlogs and delays | The Law Society, last accessed 13 June 2022. See also, A McFarlane, '*The Road Ahead'* (Courts and Tribunals Judiciary, 2020).
[39] 54909 private law cases started in the family courts between January 2019 and December 2019, n37 above.
[40] Norgrove, above n 17, para 4.180.
[41] www.gov.uk/government/statistics/family-court-statistics-quarterly-october-to-december-2021/family-court-statistics-quarterly-october-to-december-2021#fnref:3, last accessed 13 June 2022.
[42] Ibid.
[43] Ibid.
[44] https://www.gov.uk/government/statistics/family-court-statistics-quarterly-october-to-december-2021/family-court-statistics-quarterly-october-to-december-2021#further-information, last accessed 13 June 2022
[45] www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/cut-family-court-backlog-by-restoring-legal-aid-for-early-advice, last accessed 13 June 2022. See also, www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/mediation-funding-is-only-one-solution-to-family-court-backlog, last accessed 13 June 2022.
[46] McFarlane, above n 38, paras 10–12.

as private law disputes/applications regarding a child and disputes/applications regarding family financial matters where the parties are also involved in a dispute/application relating to a child.[47] The scheme launched on 26 March 2021 and is still in operation. The underlying premise of the scheme appears to be that providing a financial incentive to encourage prospective clients to engage in mediation should increase rates of uptake which should, in turn, increase the number of disputes being settled out of court, thus reducing the number of cases which proceed to judicial determination.

As has been outlined above, the MoJ has stated that a primary aim of the voucher scheme is to build an evidence base to demonstrate that financial incentives are an effective mechanism for encouraging the use of non-court methods of dispute resolution in family cases. The FMC, who operate the scheme, has reported initial 'promising results'.[48] It has stated that '[of] the first 2,000 cases using the vouchers, more than three-quarters (77 percent) reached either a whole or partial agreement outside of court. Nearly half (49 percent) say they would not have considered mediation if the voucher had not been on offer'.[49] However, it did not define what it meant by agreement or indicate why the availability of the voucher had encouraged take-up.

The present study aimed to gather quantitative and qualitative data from mediators to ascertain their perspectives on how the voucher scheme has impacted rates of uptake and rates of settlement in eligible cases. This data should, therefore, complement the data being collected by the FMC on behalf of the MoJ and contribute to the wider debate concerning the role of mediation in private family law matters. The following section outlines the way in which the study was conducted, the methods used and the way in which the data gathered was analysed.

The study

This study, which was approved through the researcher's institution's ethics review and approval procedure,[50] was conducted by gathering and analysing information collected using an online questionnaire. The questionnaire was administered through a survey platform called Qualtrics, a subscription service which enables surveys to be created and distributed securely. The Qualtrics platform allows responses to be held securely and provides tools which enable quantitative data to be analysed by the researcher. It was then subject to a pilot stage, which was designed to ensure that the survey functioned correctly and to ensure no biased or leading questions were included in the questionnaire. After successful completion of the pilot phase, the questionnaire was released to the designated audience.

All participants in the study were required to read and complete a participant consent form before they were able to proceed and respond to the questionnaire. The consent form outlined the aims and intended purpose of the study and advised participants that they could withdraw their consent at any time before submitting their questionnaire responses. Participants were only able to submit their responses to the questionnaire if they provided their consent on the participant consent form.

The questionnaire asked participants to provide information about their experiences and perceptions of the Family Mediation Voucher Scheme. The use of an online questionnaire enabled the researcher to gain access to as wide a range of research subjects as possible, taking into account other practical limitations such as time and resource limitations of the researcher.

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[47] Family Procedure Rules 2010, SI 2010/2955, Practice Direction 36V, 3.1516.

[48] www.gov.uk/government/news/family-mediation-scheme-to-help-thousands-more-parents, last accessed 13 June 2022.

[49] Ibid.

[50] University of Sunderland Research Ethics Group.

The use of questionnaires is regarded as a valuable mechanism for gathering information from larger target audiences.[51] Questionnaires do, however, have limitations. They generally have 'notoriously low response rates'[52] and do not allow for the level of nuance and depth of research which other methods, such as interviews, can provide.[53] Nevertheless, questionaries remain a useful tool for gathering valuable data.

With regard to the participants in the study, only mediators authorised by the FMC are eligible to participate in the voucher scheme. As such, only those mediators listed on the FMC's register, published on the FMC's website, were invited to complete the questionnaire. In total, the survey was successfully disseminated to 859 recipients. 180 of those recipients participated in the survey. The overall response rate for the survey was therefore 20.95 percent.

It is therefore important to note that the study findings presented in this article cannot be taken to represent the views of FMC accredited mediators more generally. The survey did not invite mediators to provide information about their background and so it is not possible to assess whether those who responded were typical of FMC accredited mediators in view of their geographical spread, years of experience or type of practice. Nevertheless, the response rate represented around one-fifth of the designated audience. It is therefore submitted that the findings of the study provide a valuable insight into mediators' perceptions of the impact of the voucher scheme on the use of mediation to resolve family disputes in eligible cases.

The questionnaire consisted of both open and closed questions. This allowed the researcher to gather both quantitative and qualitative data, which allowed for a more in-depth evaluation of the data collected. Collecting quantitative data enabled the researcher to identify trends and patterns in the responses. However, the inclusion of open questions allowed the participants to explain and provide context to their responses, which enabled the researcher to gain a valuable insight into why respondents gave the answers that they did. This data also revealed patterns and areas of commonality which enabled the researcher to engage in a thematic analysis of the data collected.

Thematic analysis is a 'method for identifying, analysing, organizing, describing, and reporting themes found within a data set' which can produce 'trustworthy and insightful findings'.[54] It is a flexible and helpful way of considering multiple research participants' perspectives, highlighting similarities and differences, and generating unanticipated insights.[55] However, with this flexibility also comes risk of inconsistency and lack of coherence when developing themes derived from the research data.[56] In order to mitigate this risk, the researcher applied the method for conducting thematic analysis set out by Lorelli and others.[57] This method involved reviewing all of the data from the open text boxes of the questionnaire, and coding it

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[51] W Chui, 'Quantitative Legal Research' in M McConville and W Hong Chui (eds), *Research Methods for Law* (2nd edn, Edinburgh University Press 2017), 65.
[52] C Chatterjee, *Methods of Research in Law* (2nd edn, Old Bailey Press 2000), 34.
[53] M Doherty, 'Getting Down and Dirty: The Case for Empirical Legal Research', in L Cahillane and J Schweppe (eds), *Legal Research Methods: Principles and Practicalities* (Clarus Press, 2016), 139.
[54] S Lorelli, S Nowell, JM Norris, DE White, and NJ Moules, 'Thematic Analysis: Striving to Meet the Trustworthiness Criteria' (2017) 16 *International Journal of Qualitative Methods*, 1, 2. See also, V Braun and V Clarke, 'Using thematic analysis in psychology' (2006) 3 *Qualitative Research in Psychology* 77.
[55] N King, 'Using templates in the thematic analysis of text' in C Cassell and G Symon (eds), *Essential guide to qualitative methods in organizational research* (Sage Publication Limited, 2004).
[56] I Holloway and L Todres, 'The status of method: Flexibility, consistency and coherence' (2003) 3 *Qualitative Research* 345, 346
[57] Lorelli et al, above n 54, 2.

using NVivo, a programme designed to assist with both efficiency and reliability of the coding process.[58] Once the data was coded, a number of themes developed. The following sections discuss each of the key themes which developed from the data gathered in turn.

Factors impacting mediators' participation in scheme

Although all FMC accredited mediators are eligible to participate in the voucher scheme, the responses showed that not all eligible mediators participated in the scheme during its initial period of operation.[59] 66 percent of survey participants engaged in the voucher scheme in the initial period of operation between the end of March 2021 and the end of August 2021. Those mediators who participated in the scheme during this period generally said that they did so because they could see clear advantages to removing financial barriers to mediation for prospective clients, particularly in the light of the financial pressure that many families experienced as a result of the Covid-19 pandemic. The most common reason for engaging in the voucher scheme was that it presented an opportunity to offer mediation as a viable option for clients who were not eligible for legal aid but would have struggled to afford to meet the costs associated with mediation.

The open questions elicited useful contextual data from the mediators who did not initially participate in the scheme. Some respondents explained that they did not engage in the scheme because their clients were primarily privately funded clients who did not need financial assistance to meet the costs of mediation. Other mediators stated that there were practical reasons for not engaging in the scheme, such as not being accredited by the FMC at the time the scheme was launched. A small number of mediators commented that they did not participate because they did not feel that clients who could afford to pay for mediation should receive a financial contribution towards the cost of mediation. Some mediators stated that they were initially reluctant to participate because they were concerned that participation in the scheme would involve a significant administrative burden which may not have been worthwhile, particularly given that the scheme was originally set to end in August 2021.

However, it is interesting to note that many of the mediators who did not participate in the scheme in the initial period of operation did register and participate in the scheme at later date. The qualitative data suggested that some of the mediators who were initially concerned about the administrative burden involved in participating in the scheme seemed to have been reassured by the experience of other mediators and others stated that they were willing to participate in the scheme once it was extended and information about the scheme was more widely available. This upward trend of participation in the scheme is reflected in the number of mediation services now registered to participate. According to the FMC's website some 324 mediation services are now participating in the scheme.[60] It is submitted that this is good evidence that the scheme is having a positive impact in practice, with increasing numbers of eligible mediators overcoming their initial reluctance to take part by subsequently registering to participate.

Mediators' perspectives on the value of the voucher

A further key theme which was explored by this research was the value of the voucher itself, whether it was sufficient, not enough, or too much. The FMC states that 'FMC Registered

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[58] R Hoover and L Koerber, 'Using NVivo to Answer the Challenges of Qualitative Research in Professional Communication: Benefits and Best Practices' (2011) 54(1) *IEEE Transactions on Professional Communication.*
[59] The initial period of operation was 26 March to 28 August 2021.
[60] www.familymediationcouncil.org.uk/mediation-services-participating-in-the-voucher-scheme/, last accessed 13 June 2022.

Mediators charge an average of £140 per person per hour for mediation sessions and drafting documentation' but it also highlights that the charge rate varies depending on the nature of the case and where the mediator is based.[61] Most participants in this study felt that the value of the voucher was satisfactory. 60 percent of participants supported an increase in the value of the voucher but the majority of those mediators felt that it should only be increased for clients who had limited financial resources, for complex cases or for Child Inclusive Mediation. In these types of cases, participants felt that further financial provision should be available to help clients cover the cost of mediation sessions. Some respondents suggested that mediators should be able to apply for an additional 'top up' for clients in cases where they felt the additional funding was required to enable the clients to reach a resolution or where the family wanted to try Child Inclusive Mediation. Mediators highlighted that Child Inclusive Mediation is, by its nature, more costly and felt that the £500 voucher scheme did not take that fact into account. Some mediators therefore felt that additional funding should be available to encourage the use of Child Inclusive Mediation. This may be something for consideration were the scheme to expand further.

Participants also commented that the extent to which the voucher covered the costs associated with mediation varied significantly. This was attributed to several factors. The first was that the cost of mediation sessions varied across different providers and areas. This meant that for some clients the £500 voucher covered the cost of two or three mediation sessions whereas for other clients it only covered one session and a proportion of the second session. One participant explained 'it would cover just under 2 hours mediation work for most mediators bearing in mind current private hourly rates - this can soon be spent - but maybe that is best to focus minds from the outset'. Another stated that the 'benefit of the voucher scheme is linked to the charge out rate of the mediator. The voucher scheme covers approximately one session at my charge out rate. I think the voucher scheme should be able to cover at least two sessions'. A number of mediators also stated that the voucher made much more of an impact in cases where one client was entitled to legal aid funding and the other was privately funded. In these cases, mediators reported that the voucher had covered all or most of the costs of mediation. The data suggests that the extent to which the voucher covered the cost of mediation varied according to the complexity of the matter, the type of mediation used, whether one of the clients was eligible for legal aid funding and the mediator's charging rate.

The data collected also revealed that many mediators felt that the costs associated with drafting agreements should be covered by the voucher in all cases or in cases where the clients had limited financial resources. A small number of mediators did not feel that vouchers should be available to families who were able to meet the costs of mediation themselves and felt that limiting access to vouchers in those cases would free up resources to invest in supporting families with limited financial resources. Additionally, 64 percent of participants felt that the voucher should be able to cover the cost of the MIAM, however the majority of those mediators thought that funding should only be available on a means tested basis. There was a general concern that making mediation wholly or mostly subsidised could result in mediation being undervalued as a dispute resolution service.

It was also clear that many mediators were also concerned about the potential misuse of funded MIAMs. This view was based on the belief that some clients attend a MIAM simply to satisfy the legal obligation which requires applicants to attend a MIAM before commencing court proceedings unless an exemption applies. Mediators felt that this misuse would be exacerbated if MIAMs were, in effect, free to all clients. Interestingly, the qualitative data collected revealed that many mediators feel that it is desirable for clients to have some level of financial

[61] https://www.familymediationcouncil.org.uk/family-mediation/cost/, last accessed 09 November 2022.

commitment to mediation. Those mediators felt that some degree of financial investment by the client(s) helped to encourage client engagement with mediation as this helps to encourage clients to take mediation seriously and try and reach a resolution.

Generally speaking, the mediators who participated in the survey felt that the £500 voucher represented a valuable and fair contribution towards the costs of mediation. One participant stated that '[t]here isn't an infinite amount of money available and £500 is generally seen as a fairly generous contribution by clients'. Of the mediators who participated in the scheme in its initial period of operation, 60 percent thought that the voucher covered all or the majority of the costs of mediation in cases where a voucher was used and a further 20 percent felt it covered around half of the cost of mediation. These findings are consistent with participants' perceptions that the voucher had made mediation a much more accessible dispute resolution option, discussed in the section below.

Mediators' perceptions of the effectiveness of offering financial incentives to encourage the use of mediation

The primary purpose of the voucher scheme is to offer prospective clients a financial incentive to encourage them to participate in mediation. Although most prospective private law applicants are required to attend a MIAM, discussed above, attendance at a MIAM does not necessarily result in further engagement in mediation. The scheme therefore aims to incentivise parties to engage in mediation as a process.

There are a range of factors which may impact rates of uptake with mediation. In some cases mediation is not deemed to be appropriate, either by the parties or by the mediator.[62] This could, for example, be because of concerns about an imbalance of power between the parties. Furthermore, not every case or party is suitable for mediation. For example, research has indicted that one or both parties may lack the emotional readiness to mediate, may feel that the cost of mediation is unaffordable or may feel unable or unwilling to mediate without having had access to legal advice.[63] In such cases, mediation may not be a suitable method of dispute resolution. It is also important to note that mediation is voluntary process. It 'takes two to mediate'[64] therefore the unwillingness of one party to engage in mediation may rule it out as a viable option. Research also suggests that some clients' motivations for attending a MIAM are 'strategic' and are driven by the need to overcome the 'hurdle' of proving attendance at a MIAM so that they can proceed to make a private law application to court or so that they appear to have been prepared to engage with mediation.[65] In such cases, increasing conversion rates is likely to remain a challenge.

The survey asked mediators whether they felt that the voucher scheme has had any impact on the uptake of mediation. The majority of mediators who took part in this study felt that the voucher scheme had increased participation with mediation, with 83 percent feeling that the scheme had positively impacted the uptake of mediation in eligible cases. Respondents were asked to explain the reasons why they felt the scheme had/had not impacted on uptake of mediation. A number of common themes emerged in the data collected and these are explored below.

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[62] Barlow et al, above n 8, 152.
[63] Ibid, 127.
[64] Ibid, 108.
[65] A Bloch, R McLeod and B Toombs, 'Mediation Information and Assessment Meetings (MIAMs) and mediation in private family law disputes: Qualitative research findings' (Ministry of Justice, 2014), 12.

Most participants felt that the voucher scheme had positively impacted the uptake of mediation because the availability of financial support either enabled or encouraged clients to engage in mediation. It is important to note that prospective clients feeling unable to participate and prospective clients feeling disincentivised from participating in mediation, in fact, reflect two different barriers to engagement. The findings of this study provide some interesting perspectives on the way in which the voucher scheme has impacted on these two barriers.

Many mediators stated that the high threshold for legal aid rendered mediation unaffordable for many low-income families and that, therefore, they felt that the availability of financial support through the scheme made mediation a viable option in cases where clients were unable to afford to meet the costs associated with mediation themselves. This finding is consistent with earlier research which has indicated that some prospective clients felt that the cost of mediation was prohibitive.[66] The data collected in this study revealed that many mediators felt that the voucher scheme made mediation a more 'affordable' option for families with limited financial resources. This data also suggests that many mediators believe that some families who would be willing to participate in mediation do not do so because they do not feel that it is an affordable option. In these cases, the voucher scheme seems to have *enabled* such families to engage in mediation when they would not have otherwise been able to afford to do so, thus removing a key barrier to participation. This therefore represents an area in which the scheme appears to be having a positive impact.

The provision of financial support to enable parties to utilise mediation because they wish to do so and because it is an appropriate method of dispute resolution for their matter is welcome. There is, however, some cause to be concerned about the extent to which parties with limited financial resources are being 'encouraged' and 'incentivised' to resolve disputes through mediation. As has been discussed above, mediation has a valuable role to play in the resolution of private law disputes, but research also demonstrates that mediation is not 'a one-size-fits-all solution' and there may be legitimate reasons parties would prefer to use another method of dispute resolution. Furthermore, previous research has indicated that parties with limited financial resources have, in reality, limited choice about which dispute resolution services they can access. There is a risk that the provision of financial support for mediation induces some parties to engage in mediation simply because it is the only affordable method of non-court dispute resolution available to them. This arguably undermines 'the voluntariness of participation in mediation, which is one of the central tenets of the philosophy on which the process is founded'.[67] Furthermore, it could result in mediation being utilized in cases where it is not a suitable method of dispute resolution.

The voucher scheme appears to have had a positive impact because it has enabled more families to engage in mediation when they would not otherwise have been able to afford to do so, and this is welcomed. However, policymakers should be mindful of the risks outlined above and take steps to ensure that the barriers which prevent families accessing other dispute resolution services are reduced or removed so that parties are able to choose the dispute resolution service which is most appropriate for their circumstances. It is submitted that such an approach is more likely to achieve the policy aim of increasing engagement with non-court dispute resolution services, thus reducing the number of cases requiring judicial determination, whilst also ensuring that those with limited financial resources do not feel compelled to engage with mediation simply because it is the only affordable option available to them. Such an approach

[66] Barlow et al, above n 8, 125.

[67] A Barlow, 'Rising to the post-LASPO challenge: How should mediation respond?', (2017) 39(2) JSWFL 203, 204

would also be more consistent with research that demonstrates that the strong policy preference in favour of mediation lacks a justifiable basis, discussed above.

The data collected also revealed that in some cases mediators felt that the voucher scheme *encouraged* clients to engage in mediation. In these cases, mediators felt the financial incentive altered the mindset of some prospective clients. Some mediators stated that their clients had indicated that they felt they had ‘nothing to lose’ by participating in mediation and were therefore persuaded to try mediation when they would not have otherwise done so. This was further supported by some mediators reporting that clients had specifically stated that they would not have participated in mediation if the voucher had not been available. Mediators also felt that clients, particularly respondents, were more likely to engage in mediation because they did not have an ‘excuse’ not to. This data supports the contention that offering a financial incentive can be an effective mechanism for encouraging some clients to engage in mediation when they would not otherwise do so. Interestingly, the data also revealed that a number of mediators felt that the availability of financial support was particularly effective at encouraging mediation in cases where only one client was eligible for legal aid. Mediators reported that a common reason for non-continuation with mediation was that in cases where only one party was eligible for legal aid, the privately funded client is often unable or unwilling to pay for subsequent mediation sessions. A number of mediators reported that in these cases, the voucher scheme had increased rates of engagement.

A similarly positive theme which emerged from the qualitative data collected in this study was that mediators generally felt that the impact of the scheme had improved over the course of time as it became more established and was more widely publicised. Several mediators stated that, in their view, the scheme was not adequately publicised in the first few months of its operation and that initially clients tended to discover that they could access a voucher after making contact with a mediation service or attending a MIAM. For this reason, some mediators felt that the initial increase in rates of uptake of mediation was more likely to represent better conversion for those who had attended a MIAM or were already considering mediation, rather than representing a significant increase in new referrals to mediation.

Overall, the majority of respondents felt that reducing parties’ liability for meeting the cost of mediation enabled or encouraged a greater number of clients to engage with mediation. The study findings indicate that the scheme is having a positive effect on those who otherwise would be unable to afford mediation or previously would have been unwilling to consider participating in it. The scheme therefore appears to have had a positive impact on reducing barriers to participation. The study demonstrated that mediators felt that a range of other factors also impacted on parties’ willingness to participate in mediation. Those other factors, and respondents’ views on the extent to which the scheme has addressed them, are outlined in the following section.

Other factors which impact on parties’ engagement in mediation

The underlying premise of the voucher scheme is that providing financial support to clients will encourage them to engage with mediation and enable them to resolve their dispute(s) without the further involvement of the court. To test this premise, the survey aimed to gauge mediators’ views on the extent to which the availability of financial support was a significant factor that impacted clients when they were deciding whether to participate in mediation. A significant minority – 46 percent – of respondents felt that the provision of financial support is an important factor which directly impacts the uptake of mediation. A further 8 percent felt that it is the most important factor that clients considered when deciding whether to participate in mediation. However, 38 percent felt that it was only one of many factors which influenced a client's decision to use mediation as a method of dispute resolution.

Survey participants were encouraged to provide further information to enable the researcher to identify other factors which mediators believed prospective clients consider when determining whether to participate in mediation. Such data can contribute to the wider discussion on whether financial incentives are likely to encourage uptake and engagement with mediation. The qualitative data unearthed a range of factors which mediators believed impacted on clients' decision-making and these factors can be broadly grouped as follows; the clients' desire to be as efficient as possible with their resources, the clients' need or desire for legal advice, and the clients' perception of the benefits of using mediation. Each of these themes are discussed in turn below.

The first sub-theme which emerged from the qualitative data was that of clients' desire to be as efficient with their resources as possible. Participants commented on clients' general concerns that their investment of both time and money in mediation would not yield a guaranteed result, particularly for clients with limited financial resources. Some mediators felt that some clients believed that acting as a Litigant in Person in court proceedings was the most cost-effective route to the resolution of their family dispute. In such cases, mediators thought that clients believed that court proceedings represented a low-risk option because the money that they invested would guarantee that their dispute would be resolved whereas they did not think the same was true of mediation. Interestingly, on the other hand, some mediators felt that clients who previously may have been more likely to litigate were more willing to try mediation because they were aware of delays in the family courts and wanted a timely resolution to their dispute.

This suggests that the backlogs and delay in matters being heard by the family court is having a material impact on some parties' willingness to mediate, not necessarily because those parties see any more value in the mediation process or because the scheme has incentivised or encouraged them to participate, but because the delay in matters being listed for judicial determination is intolerable. The implication is therefore that, for those clients, court remains the preferred method of resolving disputes, with their decision to engage in mediation being informed by their primary objective to engage with the most efficient method of dispute resolution available to resolve their matter. It will be interesting to see, through further research, the extent to which any reduction in the delays to matters being heard by the court has a material impact on the numbers of parties engaging in mediation, even with the financial incentive provided by the voucher scheme.

The second sub-theme which emerged was that some mediators felt that some prospective clients were reluctant to engage in mediation as they had not had the benefit of legal advice. Since LASPO came into effect an increasing number of clients have struggled to privately fund legal advice in respect of private family law disputes.[68] The Impact of LASPO on Routes to Justice report, produced and published by the Equality and Human Rights Commission, concluded that participants in its study 'were more likely to have tried to get legal advice and representation from a solicitor for family law problems than for other areas of law. However, cost was a significant barrier and participants described unsuccessful attempts to engage a solicitor without legal aid, with no alternative means to pay'.[69] The report also found that in some cases parties experienced mental health issues and debt issues as a result of not being

[68] E Hitchings and J Miles, 'Mediation, financial remedies, information provision and legal advice: the post-LASPO conundrum' (2016) 38(2) JSWFL 175, 188.
[69] Equality and Human Rights Commission, above n 38, 21.

able to access affordable legal advice. The reality is that following LASPO parties are now expected to mediate without legal advice 'despite the evidence that this is felt to be important by many parties'.[70] The findings of the Mapping Paths to Family Justice study were consistent with earlier research in that it found that 'when parties separate they want specific legal advice tailored to their own situation'.[71] There appears to be a well-established enduring demand for legal advice in respect of private family law matters. However, many parties are unable to privately fund access to such advice and 'opportunities for free legal advice for family matters are scarce and cannot meet the demand'.[72] The findings of this study suggest that parties' lack of access to legal advice was a factor that impacted whether parties were willing to attempt to resolve their dispute(s) through mediation.

In this study some mediators reported that some prospective clients felt nervous about resolving their dispute through mediation because they had not been able to access legal advice. Those mediators reported that some of their clients felt that they needed legal advice in order to feel comfortable with resolving their dispute through mediation but were unable to afford to pay for it. As Emma Hitchings and Joanna Miles have argued, the receipt of legal advice to support clients using mediation to resolve family disputes is important. They have argued that:

> Some might feel that mediation is a paramount example of private dispute resolution in which parties can be free to fashion their own solutions to the practical problems that arise on relationship breakdown; that it is above all about party autonomy… But in a society governed by law… we should be concerned that parties who have what is, on one level, a legal dispute should have at least a basic understanding of what the law would suggest as an appropriate settlement outcome or range of outcomes. Otherwise, the autonomy apparently exercised in mediation devolves into a somewhat limited, formal autonomy only, and the supposed freedom of choice being exercised somewhat empty. Settlement for settlement's sake may be more dangerous than no settlement at all.[73]

The findings of this study suggest that some clients are uncomfortable with the idea of engaging in a process where they may be required to make an autonomous decision on the terms of settlement of a legal matter which would have a material impact on their lives without a legal advisor's input.

The benefit of receiving legal advice is reflected in paragraph 8.14 of the FMC's Code of Practice which states that:

> The Mediator must inform the Participants of the advantages of seeking independent legal or other appropriate advice whenever this appears desirable during the course of the Mediation. The Mediator must advise the Participants that it is in their own interests to seek independent legal advice before reaching any final agreement, and warn them of the risks and disadvantages if they do not do so.[74]

There does, therefore, seem to be an acknowledgement that in some cases clients would benefit from independent legal advice. However, as discussed earlier in this article, there is a clear lack of Government appetite to fund it. There is limited scope for clients to obtain a small amount

[70] Barlow et al, above n 8, 135.
[71] Ibid, 132.
[72] Equality and Human Rights Commission, above n 38, 43-47.
[73] Hitchings and Miles, above n 66, 176.
[74] Family Mediation Council, 'Code of Practice for Family Mediators', (November 2013, version 1.3) para 8.14.

of funding, known as Help with Family Mediation, for a solicitor to provide advice in the course of mediation. However, the Family Mediation Task Force found that this provision had barely been used.[75] As Hunter has argued '[t]his is potentially problematic as financial mediation in particular has traditionally operated in close conjunction with legal advice'.[76] The Law Society and the Bach Commission have also called for the restoration of early legal advice in family matters.[77] It is submitted that the lack of support in place to enable families to access legal advice may undermine the Government's efforts to encourage the use of mediation as a method of dispute resolution in private law matters.

Another factor which mediators believed impacted on whether clients engaged in mediation was that some were unaware or unconvinced of the benefits of using mediation to resolve family disputes. Interestingly, many mediators believed that once clients had engaged in multiple mediation sessions, they seemed to see the benefits of resolving their dispute through mediation and were, consequently, much more invested and engaged in mediation as a process. This is further supported by the fact that several mediators stated that in most cases clients were prepared to pay for subsequent mediation sessions after the value of the voucher had been exhausted. Mediators felt that once clients engaged in mediation sessions, they generally found the process to be fruitful and were generally more committed to using mediation to resolve their dispute. This finding is positive and demonstrates how initial resistance to mediation can be overcome by simple exposure to the process.

It is noteworthy, however, that this was not reflected across the entire spectrum. Some mediators stated that some clients simply did not want to consider resolving their dispute through mediation and some clients, as one mediator put it, simply 'wanted their day in court'. This is consistent with other research that suggests that some clients are unwilling to engage in non-court methods of dispute resolution.[78] In such cases it appears that financial incentives are unlikely to encourage the use of mediation.

This section has shown that, whilst financial support is important, it needs to be accompanied by better promotion of the benefits of mediation as well as investment which allows access to legal advice for those parties who could not otherwise afford it. The data demonstrates that this is key to persuading parties, who would otherwise be unwilling to engage in mediation, of its advantages. It has also supported the previous contentions made by Hitchings and Miles that, in some cases, mediation without accompanying legal advice may undermine parties' ability to reach a truly autonomous settlement which they are comfortable with. This could also result in a greater risk of 'uninformed and inequitable outcomes' being reached.[79]

Mediators' perceptions of the voucher scheme's impact on rates of settlement

Finally, in order to explore mediators' views on whether the first aim of the scheme has been met, 'to try to reduce the backlogs in family proceedings which have been exacerbated by the coronavirus pandemic', it was important for this study to ascertain perceptions on the scheme's impact on settlement rates. Furthermore, at its core mediation is a method of dispute resolution. It is therefore imperative that it enables families to resolve their disputes and for the purposes

[75] Hunter, above n 24, 197.
[76] Ibid, 198.
[77] www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/cut-family-court-backlog-by-restoring-legal-aid-for-early-advice, last accessed 13 June 2022. See also Bach Commission and Fabian Society, *The Right to Justice: The Final Report of the Bach Commission* (2017), 8.
See also, www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/mediation-funding-is-only-one-solution-to-family-court-backlog, last accessed 13 June 2022.
[78] Bloch et al, above n 64, 36.
[79] L Parkinson, 'Mediation and the Government response to LASPO' [2015] Fam Law 1131, 1133

of the scheme, that increased rates of engagement with mediation converts to increased rates of settlement/resolution. Government policy over recent years is clearly underpinned by a presumption that many families should be able to resolve their disputes through mediation. However, increased rates of engagement do not necessarily translate to increased rates of settlement.

The voucher scheme provides a welcome opportunity for policymakers to gather data relating to rates of settlement for families who engage with mediation which can then be used to inform future policy development. The FMC has stated that mediation generally results in families reaching agreement in over 70 percent of cases.[80] Furthermore, it has confirmed that 77 percent of the first 2000 cases using a voucher reached either a whole or partial agreement outside of court.[81] This suggests that many families who use mediation are able to reach either a whole or partial resolution to their dispute(s). These statistics are positive and suggest that mediation is, for many clients, an effective means of resolving family disputes.

The survey asked participants about their perception as to whether the voucher scheme had impacted rates of settlement: 82 percent of those who responded felt that the voucher scheme had increased rates of settlement. Participants were encouraged to explain their response and, again, a number of interesting themes emerged from the data.

The first common theme to emerge was that mediators felt that families were often motivated to engage in multiple mediation sessions when they would not have otherwise done so which then led to a higher rate of settlement. Many mediators felt that this was because the voucher scheme has made mediation a more affordable service and this meant that families were incentivised to participate in multiple mediation sessions, enabling mediators to make much more progress with their clients which, in turn, increased rates of settlement. A number of mediators said that they felt that once clients had invested their time and effort in mediation, they were much more likely to reach a full or partial resolution to their dispute(s). This suggests that clients who were not initially persuaded that mediation was a viable method for resolving their dispute were incentivised to engage in more mediation sessions and this increased their likelihood of being able to reach a resolution to their dispute(s).

Other mediators believed that because the voucher scheme reduced the overall cost of mediation it was increasingly viewed by clients as being a viable alternative to court proceedings. As has been discussed above, some mediators explained that some clients perceived court proceedings to be the most cost-effective method of resolving a family dispute and that it offered them the certainty of knowing that their dispute would be resolved. Some mediators felt that the voucher scheme had altered this perception because it made mediation much less of a financial risk for their clients. This seemed to be particularly true of clients who had limited financial resources to dedicate to resolving their dispute(s) and needed to carefully consider how best to invest their money. Again, mediators felt that parties were more likely to reach settlement because they engaged in multiple sessions and were more invested in mediation. It seems that in general mediators believed that the voucher scheme has positively impacted rates of settlement in eligible cases due to it removing the initial financial barrier from clients who would otherwise have been resistant to engaging or funding the process.

What was not clear from the data was the extent to which the scheme had enabled parties to reach a full resolution to their dispute(s). The qualitative data stated that mediators felt the scheme had increased rates of partial and full settlement. Similarly, the FMC's figure regarding rates of agreement includes both full and partial agreements. Although the data clearly

[80] www.familymediationcouncil.org.uk/family-mediation/choose-family-mediation/, last accessed 13 June 2022
[81] www.gov.uk, n48

suggested that the majority of respondents felt that the voucher scheme had positively impacted rates of settlement, it did not provide an insight into whether mediators felt that families were able to reach a full agreement to resolve their dispute(s). It is therefore not possible to comment on the extent to which mediators felt that the voucher scheme enabled families to fully resolve their dispute(s). It is submitted that it is essential that the data that is collected by the FMC/MoJ distinguishes between full and partial settlements. This is because in cases where families are only able to reach a partial agreement, they will require a further form of dispute resolution to resolve the outstanding dispute(s), most likely court proceedings. This may adversely impact the anticipated reduction in the caseload of the family courts that policymakers had hoped to achieve. It is submitted that further research will need to be undertaken to enable policymakers to better understand the barriers which prevent families reaching full settlement through mediation.

It is also important that policymakers consider whether agreements reached through mediation are durable. Some research has cast doubt on the claim that mediated agreements are durable, with research indicating that some agreements reached through mediation were in effect 'torn up' soon after mediation ended.[82] If agreements reached through mediation do not stand the test of time, then some disputes which have been resolved through mediation may require judicial determination in the future and this would undermine policymakers' efforts to divert cases away from the family court system. It is therefore submitted that further research needs to be undertaken to establish whether agreements reached through mediation are durable.

Conclusions

The study aimed to gather data from mediators to determine whether the voucher scheme has positively impacted rates of participation with mediation and rates of settlement. It also aimed to gather qualitative data so that the reasons underlying its impact could be ascertained. The findings of this study indicate that mediators generally perceived the voucher scheme in a positive light. Several mediators commented on the fact that the scheme was administered efficiently and said that they hoped that it would be made permanent. The findings are broadly positive and strongly indicate that mediators believe the scheme has increased both rates of engagement with mediation and rates of settlement.

The findings suggest that mediators believed that in many cases the availability of financial support enabled clients to participate in mediation because it reduced the overall cost of mediation and made it more affordable. Therefore, the findings of this survey suggest that the positive impact the scheme has had is not necessarily only attributable to the fact that the voucher *incentivised* some parties to engage in mediation, but rather because it *enabled* many families to afford mediation when they would not have otherwise been able to do so. Mediators believed in some cases the financial incentive encouraged clients to engage with mediation because it reduced the risks associated with investing time and limited financial resources into a process that could not guarantee a resolution or because it meant clients felt that they 'had nothing to lose' from trying mediation. This seemed to encourage those who were not persuaded by the benefits of mediation to attempt it. Therefore, the data suggested that mediators felt that in some cases the financial incentive did incentivise parties to attempt mediation. Overall, the study findings suggest that one of the main objectives of the scheme has been achieved, an increase in the uptake of mediation.

The findings of the study also illustrate that there are a range of factors which influence whether parties are able and/or inclined to attempt to resolve their dispute through mediation. Mediators

[82] Barlow et al, above n 8, 158.

generally felt that cost and affordability were important factors for most clients, but they also identified several other factors which influenced clients' decision making. These findings are consistent with earlier research which demonstrates that there are a wide range of factors which determine whether mediation is a suitable method of dispute resolution, as previously discussed. The data showed that mediators believed that some clients are reluctant to engage with mediation because they are unaware or unconvinced of its benefits. Mediators also indicated that some clients were reluctant to attempt mediation because they were concerned that it would not represent a good return on their investment of money, time and effort. This was particularly the case where the party had limited resources at their disposal. However, mediators generally felt that once clients engaged in the mediation process, they were much more likely to feel that mediation was a viable method of resolving their family dispute.

Research has also demonstrated that as a consequence of LASPO many parties are unable to access affordable legal advice. Ultimately private law disputes are legal disputes which concern the rights and duties of those family members involved the dispute and this likely explains why many parties feel that access to legal advice is important. The findings of this study suggest that attempts to increase rates of engagement and settlement through mediation, thus diverting private family law matters from the family courts, may be undermined by the fact that parties are sometimes unable or unwilling to attempt mediation, or reach a settlement through mediation, in the absence of legal advice. It is submitted that it may therefore be necessary to supplement the voucher scheme with further provision to enable clients to access legal advice so that they feel able to resolve their legal disputes through mediation or dispute resolution services. Furthermore, policymakers should be alive to the risk that parties with limited financial resources may feel compelled to attempt mediation, irrespective of whether it is suitable in their circumstances, simply because it is the only affordable dispute resolution service available to them.

Finally, the study showed that many mediators felt that once clients were invested in the mediation process, they were much more likely to reach partial or full settlement. The data did not, however, differentiate between how many matters reached full settlement and how many reach partial settlement. It is therefore not possible to comment on whether the scheme is likely to have increased the number of cases which are fully resolved through mediation or whether it has achieved one of its primary aims, reducing the number of cases being dealt with by the family courts.

The voucher scheme provides a welcome opportunity for policymakers to collect and analyse data concerning rates of settlement in mediation cases and it is hoped that the data will differentiate between the proportion of cases which resulted in a full settlement and those which resulted in partial settlement. It is submitted that, in any event, further research needs to be undertaken to help policymakers to understand the barriers which prevent clients from reaching either a partial or full settlement through mediation. Further research into the durability of settlements reached through mediation would also be welcomed, which would help to establish whether mediation enables families to resolve disputes without the need to utilise additional dispute resolution services or resort to judicial determination. The data collected by the FMC/MoJ will include data about whether agreements reached in cases where a voucher was used were formalised by a court. It is hoped that the data will also provide qualitative data concerning the reasons why agreements are/are not formalised and monitor compliance with agreements which are not formalised by a court after mediation has concluded.