



Report on the External Mediation Master Scheme

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External Mediation Master Scheme

- Background
 - Establishment
 - Nature of cases handled
 - Salient features
- Role of external mediation masters
- Statistical findings
- Conclusions
- Recommendations



Establishment of the Scheme

- Pilot scheme in the District Court, endorsed by the Working Party on Mediation in November 2017
- 2 phases:
15 January – 6 April 2018; 9 April – 6 September 2018
- 3 lawyer-mediators as Temporary Deputy Registrars (EMMs)
- Each sat for about 4 weeks in each phase



Nature of cases handled

- Most DC civil cases were covered except:
 - Personal injuries, DCEC & DCEO cases
 - Cases which should stay with the handling masters for the sake of consistency
 - Where the complexity of a case justified exclusion
- Cases were assigned randomly to EMMs



Salient features of the Scheme

- For cases to be heard by EMMs, masters would direct that:
 - So far as arrangement is reasonably practicable, legally represented party or parties shall personally attend the hearing together with their legal representatives;
 - Legally represented party or parties do bring along a statement of costs incurred up to the hearing and estimated costs up to trial; and



Salient features of the Scheme

- Where appropriate, part of the hearing would be set aside for without prejudice discussion in furtherance of the underlying objectives under O.1A r.1(e) of RDC and the Court's duty under O.1A r.4(e) and (f) of RDC. The parties and their legal representatives were required to be prepared for such without prejudice discussion.



Role of External Mediation Masters

- To encourage and facilitate settlement through mediation at case management summons (CMS) or case management conference (CMC) hearings.
- What they actually did – experience sharing



Statistical findings

- Number of claims handled: 213
- Top 3 types of cases handled:
 - Debt claims (26%)
 - Contract and tort (15-16%)

Statistics on Claim nature of cases handled by EMM

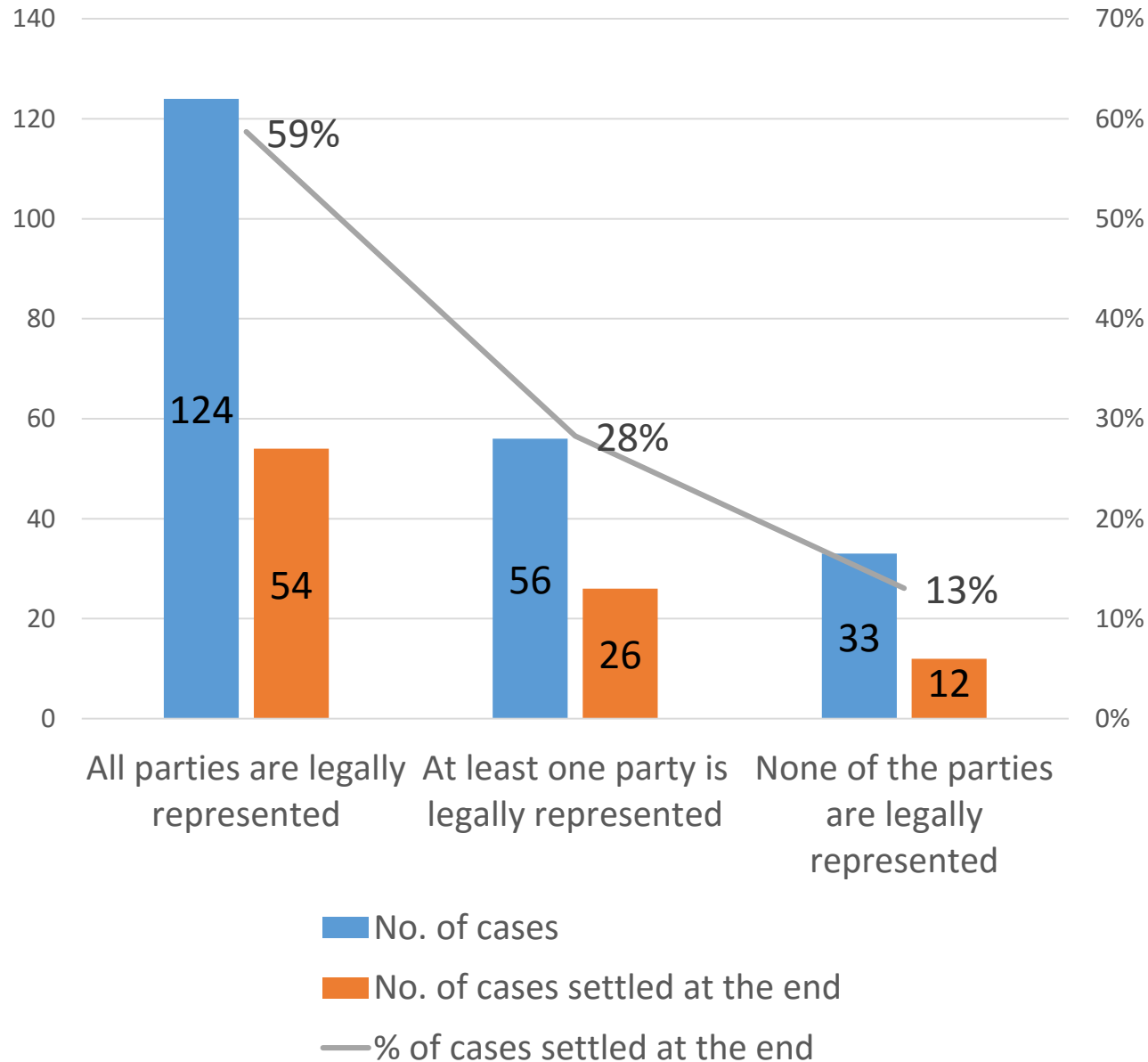
	<u>no. of cases handled</u>	<u>no. of cases settled</u>
Trust	6	3
Tort	35	20
Services rendered or work	13	8
Possession	1	0
Partnership & joint venture	1	1
Mortgage action	2	0
Money lender's action	4	2
Misrepresentation	3	2
Landlord & tenant	8	5
Land	25	7
Goods sold & delivered	6	2
Defamation	4	2
Debt	55	17
Contract	32	14
Company	1	1
Building management (incl. water leakage)	16	8
Agency	1	0
Total	213	92



Statistical findings

- 84% of the cases were wholly or partially legally represented

Legal representation for EMM cases

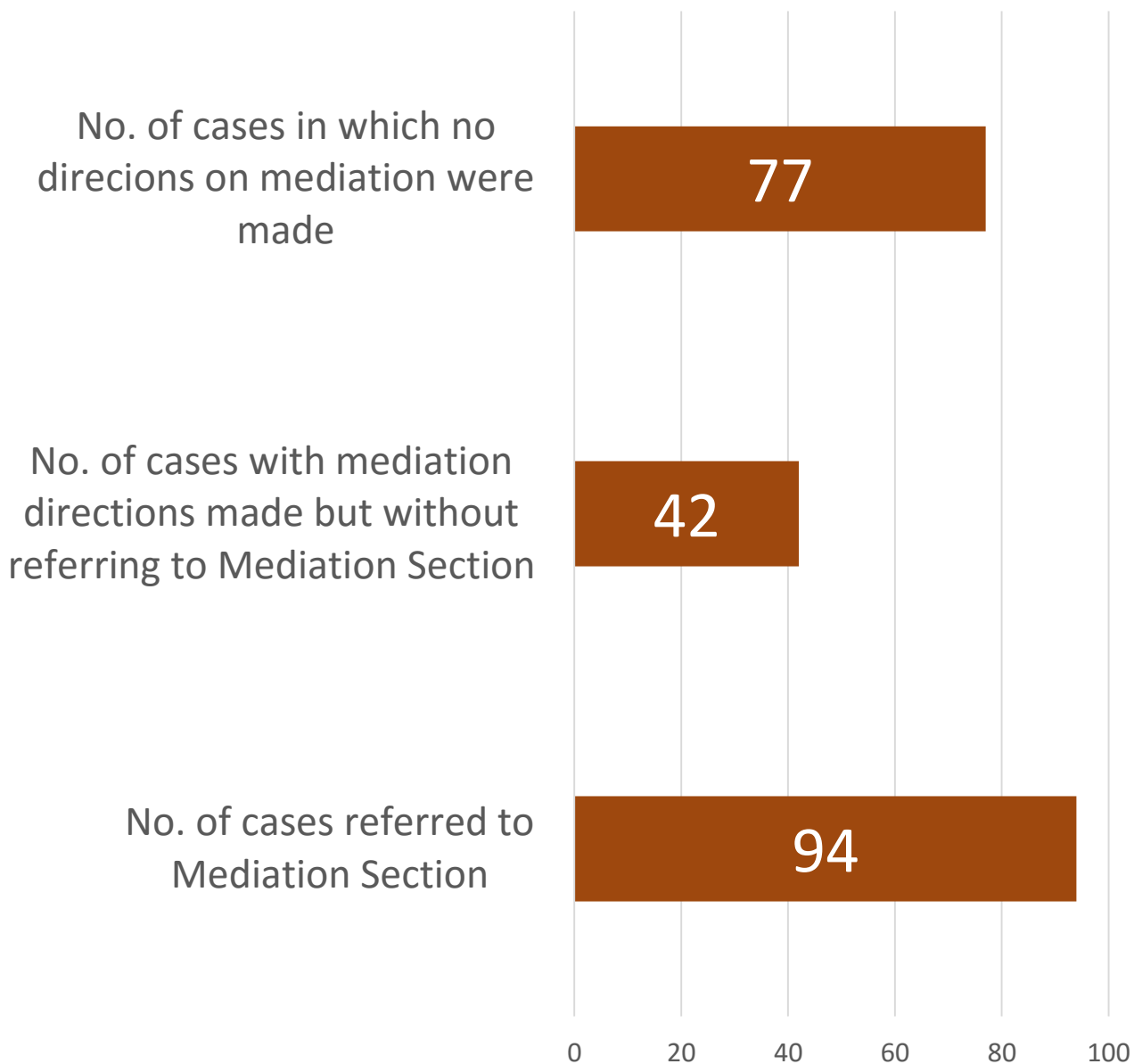




Statistical findings

- 64% of the cases were referred to mediation
 - 44% referred to the Mediation Section, the Judiciary
 - 20% with mediation directions but without referral

Statistics on mediation directions made by EMM



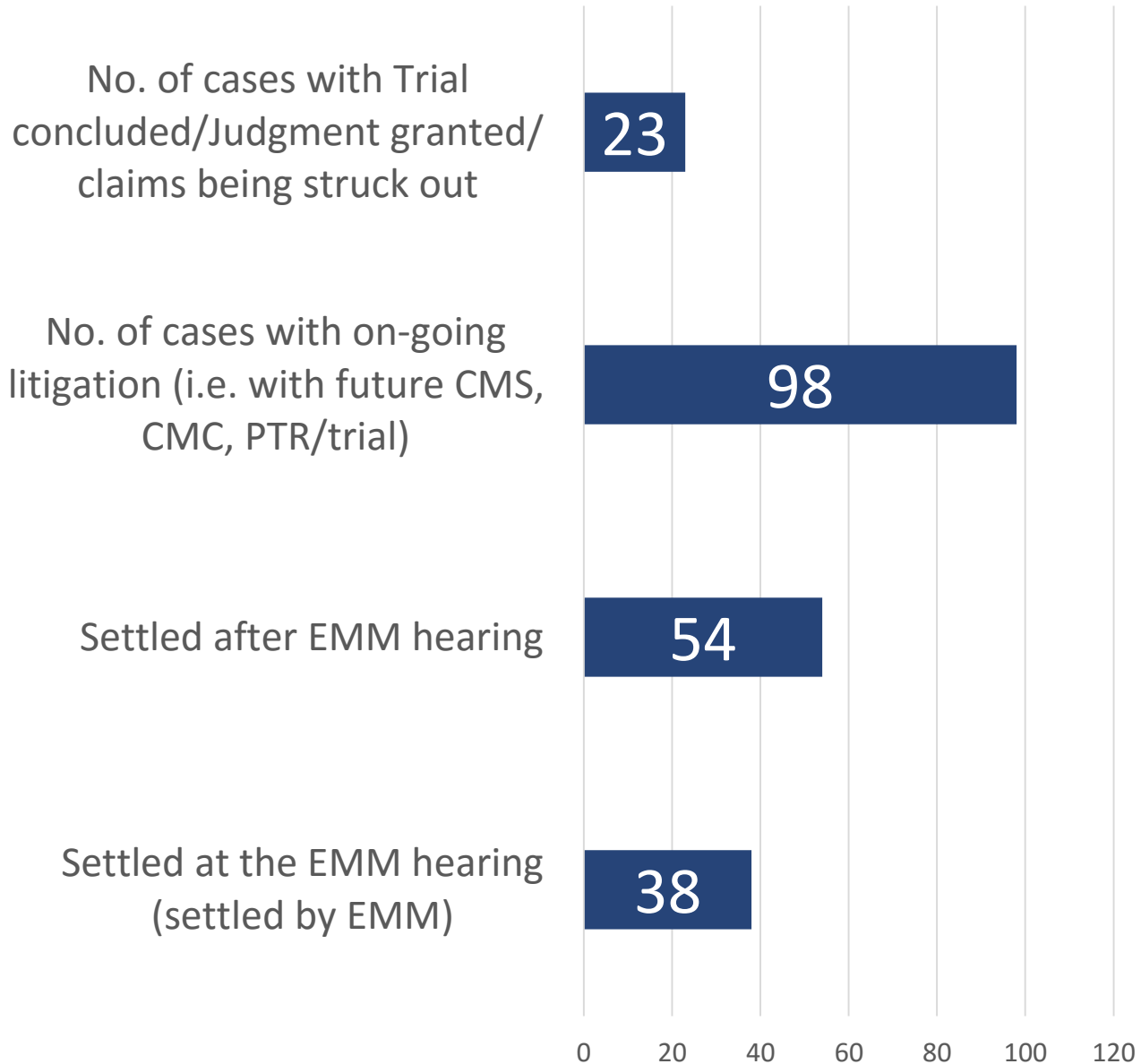


Statistical findings

Settlement

- Number of cases settled: 92
- Settlement rate: 43%

Outcome of cases under EMM pilot scheme

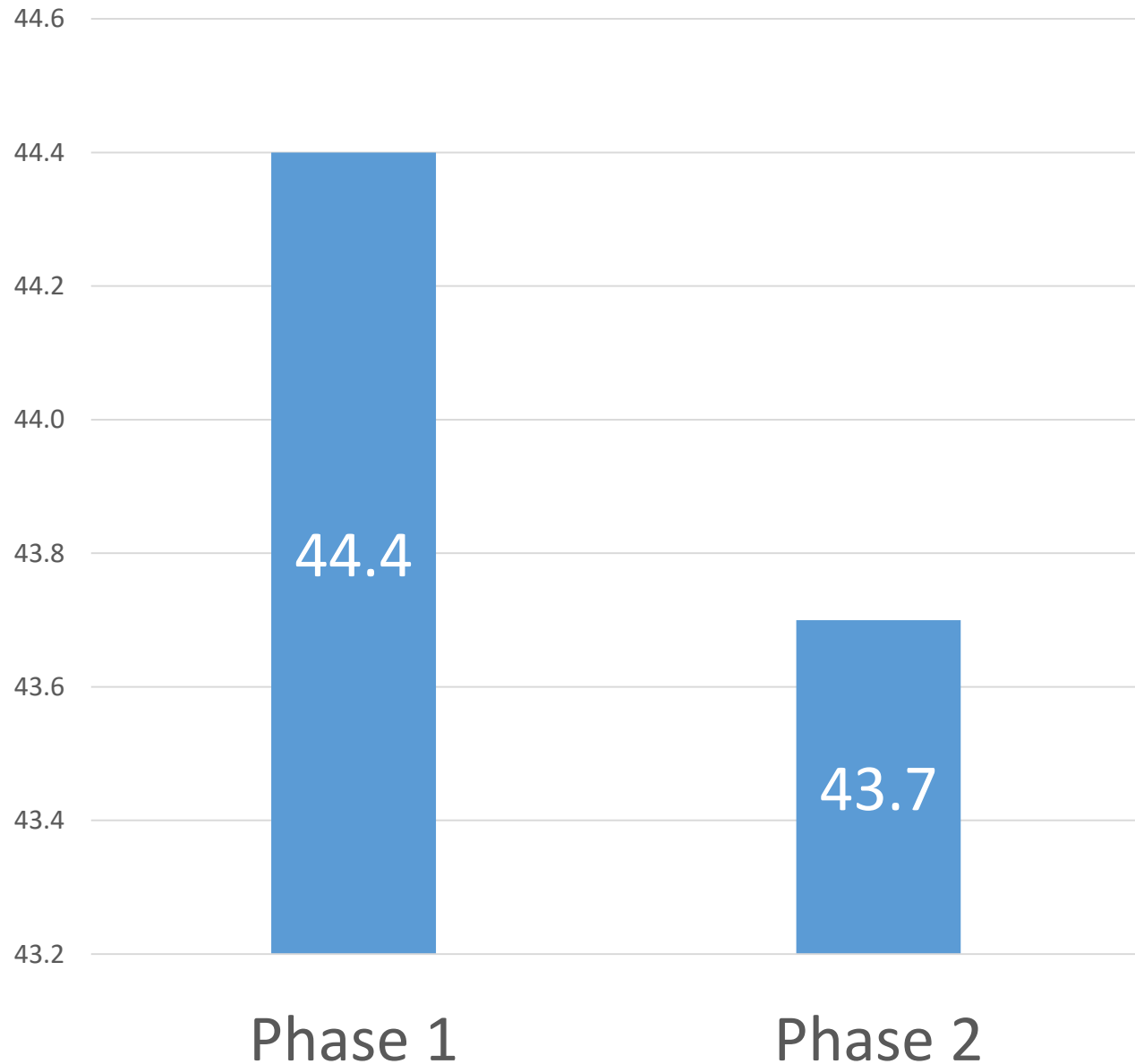




Statistical findings

- Average hearing time: 44 minutes per case
- Average time spent on encouraging/facilitating mediation: 50%-75% of the hearing time

Average hearing time
(minutes/case)





Conclusions

- Factors contributing to the success of the scheme:
 - EMMs were experienced and skilled at promoting mediation
 - The scheme formed part of the court hearings and the parties were more receptive to having meaningful settlement discussions
 - The scheme provided a platform in the litigation process for the parties to settle when they had litigated for a while and had some experience of the time and costs involved in litigation. There were cases where solicitors found it difficult to persuade their clients to address settlement options realistically. The EMMs playing an impartial and authoritative role could assist the parties to face the options they could pursue realistically.



Recommendations

- The scheme should be formalised in some form of judicial settlement conferences
- The scheme is not intended to replace mediation as the court would not carry out caucuses or separate sessions with the parties
- Statistics on application for leave to amend pleadings after mediation may need to be collected in future



External Mediation Master Scheme

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