

Feedback for the Committee for Family Justice to better manage, resolve and adjudicate cases brought before the Family Court

s/n	Possible reforms in various areas of family justice as highlighted by CFJ	AWARE's Feedback/Suggestions	
A	Shifting to a greater emphasis on counselling, mediation and consensual dispute resolution to resolve the majority of family disputes	1	<p>AWARE agrees with the proposal to increase the use of Mediation during the divorce process. We understand Mediation to be a dispute resolution process in which the spouses are assisted by an impartial and neutral professional to analyse the situation arising from divorce, understand each other's views better and manage and resolve their various conflicts with less impact on their children. Mediation will, in many cases, if properly conducted, help parties in a divorce to go through the process more quickly and with less acrimony.</p>
		2	<p>AWARE recommends Mediation to be made available not just at the beginning of the divorce process, but also during and after the Final Judgment has been made. Mediation should not be used in cases where there is abuse, violence or intimidation by one party. The determination as to whether there is abuse, violence or intimidation, should in the first instance, be determined by a persons with the appropriate expertise and training (see Point 3 below).</p>
		3	<p>Additionally, more guidance and information needs to be provided to reduce the stress and impact of the initiation of divorce processes. This is because in many cases, our clients were ill prepared when they received the Writ of Divorce¹. They did not know what needed to be done, and the implications of not filing a Memorandum of Appearance within eight days of receiving the Writ. Quite a few of our clients did not respond to the Writ, while many others hastily engaged a lawyer. This also proved to be challenging for the clients, as they did not have the resources or the knowledge on how to engage one. They often called AWARE's helpline, requesting that we recommend lawyers, which we were not able to do².</p> <p>AWARE suggests two possibilities:</p> <ol style="list-style-type: none"> a. Institutionalising a 'first information session' where a person with social work or counselling background provides information on the divorce proceedings and determines if the case is suitable for mediation. This person should also determine if there is abuse, violence or intimidation between the couple and if either of the spouses need financial or legal assistance or psychological help. If yes, the person should refer them to the appropriate service

¹ See Appendix A point 1.1.

² See Appendix A point 1.1 and 1.2.

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			<p>provider. or b. Setting up a Helpline that provides resources and assistance on divorce proceedings or is able to connect callers to other resources such as legal clinics.</p>
		4	The effectiveness and success of mediation rests very much on the ability of mediators to create an atmosphere of trust during the process and to facilitate but not pressurise a resolution of the issues ³ .
		5	<p>The selection and training process of mediators is critical and must include:</p> <ul style="list-style-type: none"> a. Training on family dynamics b. Skills to manage intimidating tactics by parties c. Knowledge of how each party, including children, are or might be affected by the divorce due to their own situation d. Ability to provide empathetic responses
B	Developing a complementary profession of family justice practitioners who need not be lawyers but who would be trained in elements of family law, counselling, psychology, mediation and conciliation	6	AWARE agrees with this proposal and recommends that a certified course be developed to train these professionals in elements of family law, counselling, psychology, mediation and conciliation.
		7	Mediators should not be limited to Judges alone, but should be extended to include other professionals from other fields of work, such as social work, psychology, counselling, people who have volunteered in community work.
C	Moving to a more inquisitorial system in family justice where the Judge leads the process of establishing the facts of what happened and then generates solutions geared towards appropriate closure	8	AWARE is not able to comment substantially on this proposal without more information from the Committee. The end goal should be a simpler and friendlier system that increases co-operation and reduces acrimony between parties. This may be achieved by substantially increasing the emphasis on mediation and simplifying the current divorce laws and processes. Therefore, it may not be necessary to shift to a more inquisitorial system, which requires fundamental change to the nature of the current system and processes.
		9	<p>AWARE believes it would be helpful for Judges to take a more pro-active role in two instances:</p> <ul style="list-style-type: none"> a. Where at least one of the parties is a litigant in person b. That the Judge be empowered to refer parties to mediation at any stage of the proceedings and to refer parties to seek support or advice from the complementary supporting network of professionals.
D	Simplification of divorce	10	AWARE agrees that the divorce processes could be further

³ See Appendix A point 1.5.

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	procedures and processes		<p>simplified. Though the current system is theoretically no-fault, in practice, fault is an issue when parties are relying on adultery, unreasonable behaviour or abandonment by one party, to prove that the marriage has irretrievably broken down⁴. The need to prove one of the above facts leads to divorce proceedings being acrimonious.</p> <p>AWARE suggests deleting or modifying Section 95(3) of the Women's Charter to create a true "no-fault" system.</p>
		11	<p>AWARE reiterates its call⁵ for the various time bars in Sections 93, 94 and 95 of the Women's Charter to be reduced by one year, given the current realities of a globalised Singapore and the fact that Singaporeans are marrying much later than before.</p>
		12	<p>The aim should be to simplify the process to such an extent that, for simple, straightforward cases, litigants can represent themselves adequately. This creates another option for those who are neither eligible for assistance from the Legal Aid Bureau, nor able to afford a lawyer⁶.</p>
		13	<p>Facing the perpetrator in Court can be an extremely harrowing experience. AWARE recommends that the video uplink facility for application and hearings be extended to more social work agencies. Currently, this service is only available in the three Family Violence Specialist Centres.</p>
E	Facilitating quicker and more efficient resolution of practical issues arising in divorces, e.g.: transfer of HDB Housing	14	<p>Housing, particularly those relating to HDB, adds on to the stress for many couples who are in the midst of divorce⁷. AWARE recommends that HDB sets up a specific service that provides information and advice on HDB options in the event of a divorce. This service should be available before, during and post Final Judgment.</p>
		15	<p>It is noted that HDB transactions generally do not require lawyers. However, HDB transfers carried out in relation to the enforcement of court orders always require lawyers. This causes parties to incur additional legal costs. AWARE recommends that this process be changed to avoid the need for lawyers, in straightforward transfer cases.</p>
F	Establishing a framework to leverage on other resources e.g. Family Service Centres and other support networks as part of the family dispute resolution process	16	<p>The divorce process involves emotional and legal aspects. AWARE recommends that a pool of professionals made up of social workers, psychologists, financial consultants and legal consultants be at hand to assist spouses during divorce litigation. These professionals will help to resolve any doubts and provide information about what happens before, during and after the divorce proceedings. This extra</p>

⁴ Section 95 of Women's Charter.

⁵ AWARE 2010:15,16,17.

⁶ See Appendix point 1.4.

⁷ See Appendix A point 2.1.

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		<p>support will also be useful for those who choose to represent themselves in the divorce procedures. We also recommend that provisions be made for more Family Service Centres to stay open on Sundays to allow for parents with access rights to meet with their children.⁸</p> <p>17 Changing Women's Charter to Family Charter Naming it the 'Women's Charter' provides an inaccurate impression that Family Law favours wives over husbands, and women over men. This does a disservice to the society and families in Singapore. This misconception may also contribute towards the acrimony in a divorce as the husband feels that the system is against him. AWARE thus reiterates our call for the Women's Charter⁹ to be renamed the Family Charter.</p> <p>18 Introduction of Maintenance Collection Agency The enforcement of Maintenance Orders remains one of the most difficult areas for our clients¹⁰. In most cases of maintenance arrears, the multiple trips to Court to enforce maintenance orders wears down the claimant and causes her to give up her right to Maintenance as she simply cannot afford to keep taking time off work to go to Court. AWARE reiterates its call for the establishment of a central body to administer maintenance payments and to facilitate the collection of outstanding payments, with powers to access information from government databases¹¹.</p>
		<p>19 PPO There are many issues relating to PPO and we have detailed these in Appendix A for the Court's review.</p>

Bibliography

AWARE. 2010. *Feedback on the Draft Women's Charter (Amendment) Bill*, http://www.aware.org.sg/wp-content/uploads/Feedback_on_Womens_Charter-2010.pdf (accessed 11 April 2013).

⁸ AWARE 2010:22.

⁹ AWARE 2010:2.

¹⁰ See Appendix A point 2.2

¹¹ AWARE 2010:1.

APPENDIX A

Summary of difficulties reported by AWARE's clients while going through Family Justice System

1. Divorce related:

- 1.1. In many cases, some clients were not prepared when they received the Writ of Divorce. In fact, for some, that was the first time they realised that their spouse wanted a divorce. Some clients were not able to understand the implication of not filing a Memorandum of Appearance within eight days of receiving the Writ. Quite a few of our clients also did not respond to the Writ, while many others quickly engaged a lawyer, without taking the time to ensure that they were comfortable with the lawyer and that the lawyer's fee was within their budget.
- 1.2. Many clients were daunted by the idea of getting a lawyer. They had no idea where to begin looking and how to go about the process. They often called our Helpline, requesting that we recommend lawyers.
- 1.3. At times, the case drags on for years. This process is extremely taxing on the resources of both parties, especially the wife, since in most cases, she has limited earning capacity and assets.
- 1.4. A significant percentage of our clients were not eligible to get assistance from the Legal Aid Bureau, nor could they afford a lawyer. While clients desire to represent in person, the processes are difficult, and especially so if they are contesting the ancillaries. Clients who do not read or write in English do not even consider self representation as an option. In many situations, our clients were coerced by their husband - who was able to afford a lawyer - to agree to terms that were unfair to the client.
- 1.5. In one case, a client reported that she was upset by the divorce mediation process. She felt that the mediator was not sensitive to her position of not wanting to part-purchase the house as her husband had used the house to have sex with his girlfriend. She was upset with the pressure that the mediator put on her to accept the part-purchase solution.

2. Ancillaries:

2.1. Division of house

2.1.1. The division of the matrimonial home is a vexed issue for many of our clients.

2.1.2. Problems that our clients face in relation to this issue include:

- (a) Not having sufficient money to take over their spouses' share in the flat (including servicing the loan). This is especially acute when the wife has not been working for a long time and has care and control of the children.
- (b) Difficulties in applying for another HDB flat due to:
 - a. the lack of a family unit, especially if the children are not under their care and control;
 - b. HDB rules.
- (c) husband's default in carrying out the court order to transfer the HDB flat.

2.2. Maintenance

- 2.2.1. Our clients struggle to get maintenance and the process of going to the court for enforcement can be very draining, especially, if our clients are part-time or casual workers. At times, if the wives cannot track their defaulting husbands, AWARE gives them the option of DP Credit Bureau, which can help track and black list the husband. However, in many cases, our clients have mentioned that this is not helpful as the husband does not have any credit worthiness. In situations where the husband has moved overseas or travels a lot between Singapore and neighbouring countries, maintenance is near impossible to enforce.
- 2.2.2. Clients also feel anxious about not knowing how to prepare themselves for the upcoming court hearing.

2.3. Child custody

- 2.3.1. The time between the couple's separation till the completion of the divorce process can be quite challenging and confusing with regards to the custody of children. The process of getting interim access is onerous.
- 2.3.2. Some of the problems faced by clients include:
 - (a) Client, escaping from an abusive or threatening situation, was scared to take the children with her, due to fear of being accused of kidnapping. However, if she did not, it would have been a lost battle. In one case, our client could not see her child once she left the house. (The child was at times only as young as 3-4 months old).
 - (b) Husbands taking the child overseas, leaving the wife completely helpless.
- 2.3.3. Enforcement of care and control orders are also problematic. In some cases, our clients did not know who to turn to if their husbands took their children away despite their having been granted care and control. Some of our clients were also not able to see their children despite having visitation rights.
- 2.3.3. AWARE has seen several cases where the mother feels her children might not be in good care under her husband's care and control. Clients did not know how they could re-apply for care and control of their children.
- 2.3.4. Securing immediate access to see their children is harrowing when our clients have either been chased out of the house or have had to leave due to an abusive relationship.
- 2.3.5. Quite often, our clients do not have the means to fight a long legal battle or support the children if they have inadequate social support systems or finances. This is especially true for our clients on Dependant's Pass (DP) or Long Term Visit Pass (LTVP).
- 2.3.6. Clients on DP or LTVP and married to Singaporeans or men on PR or Employment Pass often face difficulty in securing custody or even in initiating any divorce procedures in fear of the overarching reality that they would lose their visit pass. Our clients are not sure of their rights or even residential status if they file for divorce.
- 2.3.7. Cross-border child custody issues are often confusing for our clients. This includes both situations - either when the husband threatens or has taken the children away or when the wife wants to and there is uncertainty as to which country's law would apply.

3. Family violence (PPO Procedures):

- 3.1.** The process of getting a PPO can drag on for months, which defeats the purpose of seeking immediate protection. Husbands usually have more resources and hire lawyers to defend their case. In such cases, the applicant is disadvantaged if she does not have a lawyer. One client, staying in a crisis shelter, took a loan to pay for her lawyer's fee.
- 3.2.** It is a big challenge to produce 'evidence' for situations where emotional, verbal or even physical abuse – where there are no bruises, such as pushing, grabbing or strangulation – is involved.
- 3.3.** The complainant might apply for an Expedited Order (EO) in situations where immediate protection is required. However, the EO gets activated only from the time when the summon is served on the respondent.

Some clients did not know the address of the respondent and live in fear for an extended period without protection. In one situation, the complainant was asked to find out the respondent's address, and it took her two weeks before she was able to get the EO. During this time, the respondent came knocking and screaming at the door. When she called the police, they came to her house to give the man a warning, and asked her to go back to court.