



**HM Courts
& Tribunals
Service**

Revised Guidance for HMCTS

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Practice Direction 3A –

Pre-Application Protocol for Private Law Proceedings:

Attendance at a Mediation Information and Assessment
Meeting (MIAM) prior to Issue of Application

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MoJ Policy Contact:

Jahanara Salihi

Family Justice Policy

020 3334 3109

Jan.salihi@justice.gsi.gov.uk

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Guidance for Court Staff

Pre-application protocol for family mediation information and assessment meetings

Introduction

A pre-application protocol for family Mediation Information and Assessment Meetings (MIAM) was introduced on 6 April 2011. This is intended to help the public become aware of mediation and understand how it could support them going through separation and divorce and maintain relationships with their children.

Family mediation can help some people reach a resolution where there is a family dispute. It can help in private law disputes between parents relating to children, with such disputes often best resolved through discussion and agreement, where that can be managed safely and appropriately.

This guide is intended to help court staff understand what the protocol is and what it means for staff working in the court.

What proceedings the protocol applies to

Private law proceedings relating to children, except –

- proceedings for an enforcement order, a financial compensation order or an order under paragraph 9 or Part 2 of Schedule A1 to the Children Act 1989;
- any other proceedings for enforcement of an order made in private law proceedings; or
- where emergency proceedings have been brought in respect of the same child(ren) and have not been determined.

Proceedings for a financial remedy, except –

- Proceedings for an avoidance of disposition order or an order preventing a disposition;
- Proceedings for enforcement of any order made in financial remedy proceedings.

Private law programme

In private law proceedings relating to children, the court is actively involved in helping parties to explore ways of resolving their dispute. The private law programme (Practice Direction 12B) provides for a first hearing dispute resolution appointment ('FHDRA'). The judge, legal adviser or magistrates, accompanied by an officer from Cafcass (the Children and Family Court Advisory and Support Service), will discuss with parties both the nature of their dispute and whether it could be resolved by mediation or other alternative means. Parties can also be given information about services which may be available to assist them.

The Pre-Application Protocol does not affect the operation of the private law programme or the role of the court at the first hearing in any relevant family proceedings but does support the encouragement to consider mediation as an alternative to a court-based resolution.

Where to find the Protocol and FM1 form

The Protocol is Annex A to Practice Direction 3A and explains what is expected of potential applicants and respondents in relevant private law proceedings.

The Practice Direction can be found at:

http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_03a

The Family Mediation Information and Assessment Form (FM1) is available from the HMCTS Form finder at: http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=2654

The FM1 form has been revised and the improvements made are designed to make the form look more official and to make it easier for mediators, parties and their advisers to complete.

What HMCTS court staff need to do

What this means for you – working in a court

It is important that the public have access to information and advice at an early stage about the options for resolving their dispute away from court. The Pre-application Protocol creates an expectation that those wishing to make an application to court, whether publicly funded or otherwise, will first attend a Mediation Information and Assessment Meeting (MIAM) to find out about and consider mediation and other alternative means of resolving their dispute.

All potential applicants for a court order in relevant family proceedings are now expected, before making their application, to have followed the steps set out in the Protocol. This requires a potential applicant, except in certain specified circumstances, to consider with a mediator whether the dispute may be capable of being resolved through mediation. The court will not only expect all applicants to have complied with the Protocol before commencing proceedings but will also expect any respondent to have attended a Mediation Information and Assessment Meeting, if invited to do so, except where exceptional circumstances apply.

If court proceedings are taken court staff should, as a matter of routine, ask applicants for their signed FM1 form when they come to issue. At the first hearing, the judge is likely to ask whether mediation has been considered by both parties and the FM1 form is the evidence of this. In considering the conduct of any relevant family proceedings, the court will take into account any failure to comply with the Protocol by either party and may refer the parties to a meeting with a mediator before the proceedings continue further.

Pre-application protocol

Family mediation information and assessment meetings (MIAM)

You will need to read and understand the Pre-Application Protocol for private law proceedings. There are certain situations where the parties will not be required to attend a MIAM but even if this is the case they are still expected to complete form FM1 to state the reasons why they are exempt (see the list of exceptional circumstances contained in Annex C of PD 3A).

There are three steps you need to take when an individual contacts you/attends at the counter.

1. **Inform** the individual of the Pre-Application Protocol and the requirement to have attended a MIAM or for them or their solicitor to certify on the FM1 form the reason why this has not happened.

A template letter has been produced to inform the applicant that form FM1 is required should an application come in via the post without one. The application should still be processed but the applicant will need to be fully informed of the expectation ahead of the first appointment that mediation has been considered.

The respondent should also be informed that the requirement applies to them equally. Where a C100 application is made (for child contact) the applicant should be given an additional copy of the template letter to include in the papers they will serve on the respondent. Where the application is in relation to financial arrangements, court staff should include a copy of the letter with the papers they send to the respondent.

Guide them on how to find their nearest family mediation service via **the family mediation database on www.Gov.UK** or by calling CLA direct.

2. **Issue** the application form which should include a signed family mediation information form (FM1). If the applicant was not aware of the requirements in the Pre-Application Protocol you could tell them where they can find it.

If the applicant insists that they must issue their application **now** you should give them a copy of the FM1 form and ask them to complete it at the court **before** issuing proceedings.

Some courts have implemented a practice whereby the court file is marked to the effect that a form FM1 has been filed. It may also be helpful if a note could be made on or in the file – with a flier for example – that the applicant declined to complete a FM1/did not file a FM1.

The FAQ section covers information about refusal of applicant to provide an FM1.

Signposting to information for the public

A family mediation service finder is available within the GovUK website (previously known as DirectGov) at:

<http://www.familymediationhelpline.co.uk/find-service.php>

A legal aid calculator is also available on this site at:

<https://www.gov.uk/legal-aid-eligibility-calculator#before-you-start>

or you can telephone the Community Legal Advice direct helpline 0845 345 4345.

Alternatively the web app “Sorting Out Separation is now available at:

<http://www.sortingoutseparation.org.uk>

The app provides information on services as well as an Action Plan and a link to legal aid information.

In court mediation

Court Managers may be approached by individual local mediators who wish to provide information about their service. Courts can post information about services with the caveat that they are not promoting one service over another or recommending any particular practitioner.

Court Managers may however wish to decide locally that only information about LSC contracted services – which operate under a recognised standard of service – will be posted. It will also be clear that with these services they at least deal with publicly funded and privately funded clients.

In terms of the set up of in-court mediation schemes then the LSC are keen to support this and are therefore happy to authorise outreach at court, in order to continue to facilitate the creation of more in-court mediation schemes up and down the country. However, where they are set up and the arrangements for them, has to be determined locally so they can be tailored to meet a court areas specific circumstances and needs based on the catchment areas, listing practices, court facilities, availability of local mediators etc.

A number of courts may have entered into an agreement with mediation services to provide either an initial MIAM type meeting and/or mediation at court.

The judge at the first hearing may suggest to the parties – if they have not yet considered mediation – that they could see a mediator now, at court, to see if mediation is a viable option. It may be that the parties have already attended mediation but have a particular issue still to be agreed on and it is thought that a further negotiation session might help them reach agreement.

Time permitting, the couple could return to the list that day to advise the judge of the outcome of the meeting. If the parties agree at court that mediation could be helpful the judge could then adjourn the case accordingly.

The level of service and the fee (if the clients are not eligible for legal aid) will be agreed between the parties and the mediator. See also below under ‘Signposting to information for the public’.

Frequently asked questions

What is mediation?

Family mediation is a process that can be used to resolve disputes that arise before, during or after the breakdown of a family relationship. It can also be used before, during and after court proceedings. It enables parties to communicate their concerns and needs. The role of the mediator, who is an independent and impartial third party, is to facilitate discussion between the two parties so they can come to an agreement on what to do with things such as financial or child arrangements.

Mediation is not counselling, it does not aim to reconcile couples and it does not include legal advice.

What is a MIAM – Mediation Information Assessment Meeting?

Before someone makes an application to court they and the other person involved in the dispute are expected to have discussed with a family mediator whether the dispute can be resolved through mediation, as an alternative to court. This meeting is referred to as a MIAM – Mediation Information Assessment Meeting. There are certain exemptions from this expectation and these are also explained in Practice Direction 3A.

How much is it likely to cost the parties?

Mediation is free if a client is eligible for public funding and will remain in scope after April 2013, subject to the usual eligibility criteria.

If one person is legally aided the other person will not have to pay for the MIAM, but they will have to pay for the mediation sessions, if they attend them.

The publicly funded person will also be entitled to free independent legal advice to support the mediation process and, if appropriate, help with drawing up a consent order for court (in relation to any financial arrangements agreed).

A person can find out if they are eligible by calling CLA direct on 0845 345 4345. Alternatively, the mediator at the MIAM can help clients to check whether or not they are eligible for legal aid.

If a client is not eligible for public funding they will have to pay for the MIAM (unless the other party is funded) and the mediation sessions.

As a broad illustration only:

Cost:

- there is no standard fee for mediation, individual mediators regulate their own charges and would be expected to provide clients with a fees estimate on inquiry;
- different mediation practices charge different rates, some by the hour, some per session, some may apply sliding scales or fixed fee packages;
- there may be a specific/separate fee for dealing only with signing the FM1 form.

Time involved:

- the amount of time involved and number of sessions of mediation (after the MIAM) will depend on the particular individuals involved and the issues they wish to deal with;
- a MIAM session will usually take approximately 1 hour per person (2 hours if conducted jointly);
- a mediation session would usually last between 1-2 hours;

- for mediation involving child arrangements this may involve between 1 and 3 sessions; and
- for mediation involving financial arrangements which may or may not also include child arrangements, this may involve between 3 and 5 sessions.

Clients will also need to consider the cost of any advice sought from a solicitor on the arrangements agreed on in the mediation process.

The applicant wants to know where to find the Pre-Application Protocol?

This can be found at Annex A to Practice Direction 3A. The Practice Direction gives guidance about the protocol but the specific steps to be followed by the applicant/respondent are set out in Annex A.

Does the Pre-Application Protocol apply to all private law proceedings?

No. There are some exceptions. These are set out in Annex B to Practice Direction 3A.

The applicant wants to know what the exemptions are from the requirement to attend a MIAM?

These are explained on the FM1 form and can also be found at Annex C to Practice Direction 3A.

Are there any forms required for the Protocol?

Yes – form FM1 must be completed by the applicant or their solicitor if they are exempt from attending a MIAM, or by the mediator (if the applicant attends a MIAM).

Does a different form have to be completed for publicly funded parties?

No – it is the same form FM1.

The applicant seems to have a good reason for not trying mediation. Do I still have to ask for a completed an FM1 form before issuing proceedings?

It is not for court staff to determine whether or not the reasons are valid – the judge will make that decision at the first hearing [x12]. That is why the FM1 form is important as it allows the applicant to state the reasons why mediation was not suitable if that is the case.

The applicant is very insistent – can I just issue proceedings and leave it to them to complete the FM1 afterwards?

If the applicant has not provided you with an FM1 form (completed by the mediator, by them or by their solicitor) then they have not provided a reason as why they are exempt from the need to attend a MIAM. If the need to make an application is genuinely urgent, for example, this can be stated on the FM1 form. You should advise the applicant that an FM1 form is part of making the application to the court. A form can be completed by the applicant at court if necessary.

What should I tell someone who says I must issue their application without an FM1?

All applications in relevant family proceedings should have a completed FM1 enclosed. If the litigant considers that mediation is not appropriate they should be asked to complete **Part 1** of the FM1 form. You should explain that the Pre-Application Protocol requires a completed FM1 form to accompany the application form.

There is a strong likelihood that the judge will ask about mediation at the first hearing. You should also explain to litigants that in considering the conduct of any relevant family proceedings, the court

will take into account any failure to comply with the protocol. If mediation has not been considered at all, the court may adjourn the hearing and direct the parties to attend a meeting with a mediator (the MIAM) before the proceedings continue further.

Where the court is not satisfied about the reasons for not complying with the Protocol it may adjourn proceedings so that one or both parties can attend a Mediation Information and Assessment Meeting.

It is better for the litigant that they can demonstrate through their completed FM1 form that have properly considered mediation by attending a Mediation Information and Assessment meeting – or that they have not attended a MIAM because one of the exemptions legitimately applies.

What happens if the applicant still insists that I issue their application without the completed FM1 form and they will not leave court until I do so?

If having explained the process to the applicant they still refuse to complete an FM1 form then you should make it clear that you are issuing proceedings against the requirements of the Protocol and it will be up to the judge to decide at the first hearing what should happen. It is important that you do not prevent an application from reaching court by refusing to issue proceedings as there could be safety or other issues present in the case which require decisions to be made by the court.

What happens if an application is received via the post without a form FM1?

As it will cause undue delay to proceedings to return these type of applications the case should be issued as normal. A letter should be sent, using the template provided, informing the applicant that they need to provide a completed FM1 prior to the first appointment. A copy should be included for the applicant to serve on the respondent in C100 applications and the court should send the same letter to the respondent with papers in relation to applications about financial arrangements.

The respondent will not consider mediation?

The Family Mediation service will contact the respondent and discuss the possibility of undertaking mediation. The mediation information assessment meeting provides both parties with the opportunity to discuss the problems with a mediator either separately or together. If the reason for the applicant not attending a MIAM is that the other party has made it clear they will not attend then there is space on the form in Part 2 to explain this.

What if the applicant doesn't want to be physically near the respondent?

Mediators must make sure that mediation discussions are fair, and that every participant feels safe. Mediators will check with each party to see whether there is a problem of violence or abuse. In such circumstances it is likely that the mediation process is unsuitable and the mediator will probably suggest a solicitor should be contacted especially if a court protection order is required.

Will mediation take long, this is an emergency?

Mediation services are usually able to see clients quickly and the mediation information assessment meeting does not take long. However, a MIAM may not be appropriate if there is a genuine urgency and this is one of the exceptional circumstances in which the requirement to attend a MIAM does not apply. However, the applicant or their solicitor is expected to state the reason for the urgency on the FM1 form under **Part 1**.

List of exceptional circumstances

The applicant or their solicitor has completed Part 1 of the FM1 to certify that:

The applicant and/or the respondent have not attended a Mediation Information and Assessment meeting because:

1. They are both in agreement and there is no dispute to mediate.
2. The application to the court is to be made without notice being given to the other person involved.
3. There is an allegation of domestic violence as defined in the Practice Direction section 3 Annex C, 4 (*please attach evidence of any court proceedings or police investigation*).
4. The dispute concerns money or other financial issues and one of the people involved in the dispute is bankrupt.
5. The whereabouts of the other person involved in the dispute is unknown and they cannot be contacted.
6. The application to the court is urgent, meaning:
 - There is a risk to an individual or their family's life, liberty or physical safety or to their home; **or**
 - Any delay caused by attending a Mediation Information and Assessment Meeting would cause a risk of significant harm to a child, a significant risk of a miscarriage of justice, unreasonable hardship to an individual or irretrievable problems in dealing with the dispute (such as an irretrievable loss of significant evidence).
7. Social services **are actively involved in pursuing child protection issues relating to a child who would be the subject of the proposed court application.**
8. A child would be a participant to the prospective application under the Family Procedure Rules 2010, r 12.3(1).
9. The person involved or their legal representative has contacted three family mediators within 15 miles of their home and none has been able to conduct a Mediation Information and Assessment Meeting within 15 working days of being contacted.

The Mediator has completed Part 2 of the FM1 to certify that mediation is not proceeding because:

1. The family mediator is satisfied that mediation is not suitable because either party to the dispute is unwilling to attend a Mediation Information and Assessment Meeting and consider mediation.
2. The family mediator determines that the case is not suitable for a Mediation Information and Assessment Meeting.
3. The family mediator has made a determination within the previous four months that the case is not suitable for a Mediation Information and Assessment Meeting or for mediation.

Other reasons explained in the form:

4. One or both of the people involved have attended a Mediation and Information Assessment Meeting, but one or both have decided not to start or continue with mediation.
5. Mediation started, but has broken down/concluded with issues unresolved.



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Non Compliance with the Pre-Action Protocol – Action Required

An application has been processed and a copy of the notice of hearing is enclosed.

Before the first hearing parties should be aware that there is a Pre-Application Protocol which sets out an expectation that both parties in a court case should have attended a Mediation Information Assessment Meeting (MIAM) or give valid reasons for their exemption.

This meeting can be attended separately or by both parties together and provides an opportunity for them to consider whether or not mediation or another form of dispute resolution could help them come to a solution, rather than go to court.

Mediation is not counselling, does not aim to reconcile the couple and does not provide individual legal advice.

Under the Pre-Application Protocol, a form FM1 (copy enclosed) should be filed with the application. The judge/magistrate(s) at the first hearing will note the filing or absence of the FM1 and seek to confirm whether or not the parties attended a MIAM, if mediation was tried and what, if anything, they were able to agree on.

As no completed form FM1 has been provided, this notice is being sent to the applicant – and to be copied to the respondent – to ask that they ensure that a completed FM1 is filed with the court at least 2 days prior to your hearing date.

If the application is regarding arrangements for a child(ren) a copy of this notice has been enclosed for you to include with the papers to be served on the respondent.

If the application is in relation to financial arrangements the court will send this notice to the respondent to ensure they are aware of the requirement.

A family mediation service finder is available within the GovUK website (previously known as DirectGov) at: <http://www.familymediationhelpline.co.uk/find-service.php>

A legal aid calculator is also available on this site at:

<https://www.gov.uk/legal-aid-eligibility-calculator#before-you-start>

or you can telephone the Community Legal Advice direct helpline 0845 345 4345.

If neither party attended a MIAM without a valid reason, the judge/magistrate(s) may adjourn the case until you do.