

FJC and FMC: Family Mediation in England and Wales

A guide for judges, magistrates, legal advisors, court staff

“In April 2024, the MIAM requirements in the Family Procedure Rules were strengthened and relaunched. The new edition of this helpful and brief guide for judges and magistrates to family mediation is therefore well timed. My thanks to the Family Mediation Council for their assistance in updating this document. It is important for all in the family judiciary to be familiar with the advantages and the process of mediation so that they may speak from a position of knowledge when encouraging parties to mediate. They will find much that they need to know on the topic within these pages.”

Sir Andrew McFarlane, President of the Family Division and Chair of the Family Justice Council

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Summary

Mediation is a flexible process that can be adjusted to meet the needs of a family with the goal of finding solutions that meet the needs of children and work for family members. There has been a growing understanding of the benefits of mediation and non-court dispute resolution (NCDR) over recent years.

In both children and finance cases, courts have the obligation to consider, at every stage of proceedings, whether any form of non-court dispute resolution is appropriate and the ability to refer to a Mediation Information and Assessment Meeting (MIAM). Courts should ensure they direct parties only to authorised family mediators, who can be found via the Family Mediation Council's website.

A MIAM is different from mediation. A MIAM is an individual meeting with each (potential) participant to court proceedings, at which an authorised family mediator will provide information about mediation and NCDR to enable them to make informed choices about how to resolve their family's issues. The mediator will assess the safety and suitability of mediation, discuss, and help each person determine their next steps, and signpost them to other relevant services.

Mediation is:

- Voluntary.
- Confidential, except where there are risks of harm or criminal activity. The court is not able to require mediators to disclose information about any mediation which has taken place except where there is an over-riding obligation in law.
- Conducted by an impartial mediator.
- A process where decision-making rests with the participants.
- A process that puts the needs of children and young people first.
- A process that must be safe for all.

Child-inclusive mediation is conducted by specialist mediators and allows children to have their voices heard as part of the mediation process. Anything a child says to a mediator is confidential (save for safeguarding exceptions). The confidentiality of a mediation meeting with a young person *cannot* be overridden by the court. Reports, written or otherwise, cannot be provided to the court. A mediator relays the child's views to their parents/carers as part of the mediation process where the child gives permission for this. The adults remain the decision-makers but hearing the views of children or young people can help those adults reach decisions.

Mediation works: 69% of cases resolve all or some issues and avoids having to go to court. As well as resolving immediate issues, mediation can improve communication and future relationships.

Courts can help make mediation more effective by explaining the advantages of the process and the realities of the court system. Funding for mediation is available through legal aid, on a means-tested basis, which covers costs for both MIAMs and mediation

sessions. At the time of writing, the government is also funding a Family Mediation Voucher Scheme which provides up to £500 towards costs of mediation sessions. Although a voucher cannot be used for a MIAM, it can sometimes cover the majority, if not all, of the mediation session costs.

Background: Growing support for family mediation as a way to resolve family conflict

Family Mediation has been available in England and Wales for over 40 years. Family mediators are specialists who work with all aspects of divorce and separation, including child arrangements, finance and property and arrangements between former cohabiting couples. They are skilled at negotiating agreements and accustomed to working with conflict.

In recent years, legislation has sought to increase the use of family mediation. The focus on empowering co-operative parenting has become increasingly recognised and the damage caused by unnecessary litigation has become more widely understood.

Legislation includes the Children and Families Act 2014 and the Family Procedure Rules 2010 (FPR 2010), considered below.

Also, there have been a number of judgments from senior courts emphasising the value of mediation generally and of family mediation in particular, including how important it is for the courts to promote mediation where that might be an option. These include:

[Churchill v Merthyr Tydfil CBC \[2023\] EWCA Civ 1416](#)

[K v K \(Fact-Finding Hearings in Private Family Proceedings\) \[2022\] EWCA Civ 468](#)

[Re X \(Financial Remedy: Non-Court Dispute Resolution\) \[2024\] EWHC 538 \(Fam\)](#)

Court obligations and powers to promote family mediation and other forms of non-court dispute resolution

For many years, FPR 2010, Rule 3.3 has placed an obligation on the court to consider, at every stage of proceedings, whether any form of non-court dispute resolution is appropriate and places particular emphasis on mediation and on the MIAMs process. With some exemptions, this requires applicants to court to attend a meeting with an authorised family mediator to discuss their options for resolving family disputes, including but not limited to mediation. For a detailed examination see [Chapter 3 of the FPR 2010](#)

Changes introduced by [The Family Procedure \(Amendment No 2\) Rules 2023 \(SI 2023/1324 \(L 10\)\)](#) allow the court to require a party to file and serve a form setting out their views on using non-court dispute resolution to resolve the issues raised in the proceedings. They also reduce the range of MIAMs exemptions, seek to close loopholes, and prevent abuses of the process. This is to reinforce the message that all parties are expected to attend a MIAM unless exempt.

In addition, the Child Arrangements Programme is clear that mediation and other forms of non-court dispute resolution should be considered at every stage of a court process.

Regulation and governance: the Family Mediation Council

The family mediation profession is governed by The Family Mediation Council (FMC), which has five member organisations: The College of Mediators, The Family Mediators Association, National Family Mediation, Resolution and The Law Society.

Family mediators are regulated by the Family Mediation Standards Board (FMSB), which is accountable to but operationally independent of the FMC. The FMSB has five lay members (one of whom is the Chair), and four mediator members, who all sit as individuals.

Under the advice of the FMSB, the FMC sets the standards of practice for family mediators, as outlined in the [FMC Code of Practice and Standards Framework](#) which includes specific standards for MIAMs. The FMSB is responsible for the training and accreditation of family mediators who are registered with the FMC, and for disciplinary and complaints matters.

It is important to be aware that Mediation is not a protected profession and so anyone can call themselves a family mediator - but only authorised mediators who are qualified and approved by The Family Mediation Council are permitted to complete and sign the relevant section of court forms and so should be used for court-referred MIAM attendance. This requirement is made clear to applicants (who may need to arrange to attend a MIAM prior to making a relevant family application) through guidance notes on relevant court application forms.

Authorised mediators can be found on the FMC register, which can be searched here: <https://www.familymediationcouncil.org.uk/find-local-mediator/>.

The Mediation Information and Assessment Meeting (MIAM)

A MIAM is different from mediation. It is a pre-mediation meeting at which the mediator meets a potential party to court proceedings, individually, and the discussion is confidential. The only exception to this arises when a disclosure in mediation indicates a safeguarding risk or criminal offence.

The requirement that applicants in relevant family proceedings attend a MIAM is contained in Section 10 Children and Families Act 2014. Attendance of respondents is also expected and encouraged. A MIAM can also be ordered as an activity under Sections 11A and 11C Children Act 1989. These provisions are designed to ensure that families have an opportunity to find out about mediation and other forms of family dispute resolution before asking the court to decide a family issue for them.

The [FMC MIAM Standards and Guidance](#) set out in detail how MIAMs are to be conducted. They can take place online, and exceptionally, on the telephone.

At a MIAM, the mediator will:

- Provide sufficient information about the process of mediation and other forms of family dispute resolution to enable the person attending to make informed choices about how to resolve their family's issues.
- Obtain information about the individual's and family's circumstances and issues arising from the separation.
- Assess the safety and suitability of mediation.
- Discuss and, where possible, identify with each person their next steps, including the value of seeking legal advice and of identifying other forms of support, including financial and emotional support.

At the MIAM, the mediator will talk through with each person their concerns and immediate priorities, with the aim of identifying what they want to achieve by attending mediation.

The MIAM is much more than a simple triage meeting. As well as providing information about what mediation and other forms of non-court dispute resolution can provide, the mediator is making a professional assessment about the family's ability to mediate. Where mediation is likely to proceed, the MIAM also provides the opportunity to establish rapport; helps the participant in preparing constructively for mediation; addresses the participant's emotional readiness, and establishes ways to safeguard the vulnerable and manage high conflict.

[FPR 2010 Rule 3.8](#) sets out the circumstances in which a requirement to attend a MIAM does not apply. In summary, the main exemptions are:

- Domestic abuse.
- Urgency.
- Previous MIAM attendance.
- Bankruptcy.

The scope of mediation

Mediation is a flexible process that can be adjusted to meet the needs of a family.

In all cases, the goal of family mediation is to move the frame of reference from one of law, court, and justice, to one of family responsibility and solutions.

The subject matter of family mediation includes, but is not limited to:

- Arrangements for children.
- Financial arrangements on divorce or separation, including the division of property, savings, pensions, business assets, pensions and liabilities, and child and spousal maintenance.
- Developing skills for working together in the future as separated parents.

Mediators work with families of every type and from all cultural and religious backgrounds.

Mediation often also involves members of the wider family and is not limited to the parties involved in family litigation.

Mediators can work alongside the court in public law or entrenched private law proceedings, for example, to build co-operation between family members to allow a child to return to the family in care proceedings.

Mediators can provide a cost-effective form of informal Financial Dispute Resolution (FDR), where the mediator works with lawyers and participants to facilitate effective option-testing and narrowing of issues.

Mediators can provide assistance in other disputes outside divorce proceedings, such as Trusts of Land Act and Appointment of Trustees Act (TOLATA) cases or those involving grandparents or other family members.

Mediators can work with additional family members in an eco-systemic process which recognises the child's wider world and all those who have a stake in the outcome of discussions about child arrangements.

The mediation process

Family mediation has a clear process, in which the participants:

- Establish what they want to achieve for themselves and for their children.
- Collect and share the information and documentation that will enable an informed dialogue to take place (much like the disclosure required by way of Form E).
- Create as wide a range of options as possible.
- Evaluate and reality-test those options.
- Come to mutually acceptable proposals, usually enshrined in a Confidential Summary of those Proposals (CSP) - sometimes called a Memorandum of Understanding.

Mediators are experienced in adapting the process to meet the needs of particular participants or situations. This involves choices about options such as:

- The number and length of sessions.
- The number and expertise of the mediators.
- Whether the mediation is on-line or in person.
- Whether the participants should work in the same or separate spaces.
- How additional participants might be included.
- Whether there are others crucial to a potential resolution, such as family members, advocates, Women's Aid workers, lawyers, or pensions advisers. This is increasingly called an "integrated" or "hybrid" approach.

The mediation process is one in which participants feel invested and retain control of the outcome, and, especially in child cases, are encouraged to take their parental

responsibilities seriously. It is governed by a number of principles enshrined in the [FMC Code of Practice](#) and elsewhere.

The principles of mediation

The following principles are central to the practice of family mediators in England and Wales. Mediation will not take place until an ‘Agreement to Mediate’, which details these principles, is signed by all participants.

These principles distinguish mediation from Cafcass/Cafcass Cymru dispute resolution services. Whilst both processes have the safety, welfare, and views of the child as their central concern, court directed services do not require the consent of the participants and the outcomes can be shared with the court. Mediation on the other hand is facilitative, consensual, and confidential.

Mediation is voluntary

It is fundamental that mediation is a voluntary process. All participants must agree that mediation is suitable. Judges should be aware that a mediator may make an independent determination that mediation is unsuitable, even where participants are unable to meet the evidential requirements for exemption from MIAM attendance and involving circumstances where both prospective participants are prepared to proceed. This is usually because the mediator has deemed it unsafe to do so in the context of unresolved allegations of abuse, intimidation, or client vulnerability/capacity.

Research has shown repeatedly that an unwilling participant is unlikely to work cooperatively and constructively. The government confirmed in January 2024 that it was not going to introduce “compulsory mediation”. The Family Procedure Rule changes of April 2024, and the FMC MIAM Standards and Guidance work together to give powerful positive encouragement to parents to engage constructively in mediation without compelling it.

Mediation is confidential and legally privileged except where there are concerns of risk of harm to a child or adult or of criminal activity

Participants understand that all communications and conversations, except the disclosure of financial information, are made on the basis that they:

- (a) are confidential;
- (b) will not be referred to in evidence in any court proceedings about the same issues;
- and
- (c) will not be used in affidavits or statements.

Similarly, the court is not able to require mediators to disclose information about any mediation which has taken place except where there is an over-riding obligation in law. This includes anything a child may have said in Child Inclusive Mediation (see below). Mediation privilege can be waived with the consent of both parties. Confidentiality can be waived only with the consent of both parties and the mediator or where there is an

overriding obligation in law. The confidentiality of a meeting with a young person *cannot* be overridden by the court.

Financial information disclosed and shared by way of completion of documents akin to a 'Form E' will be summarised by the mediator in an Open Financial Summary which is signed by the participants. This material is available to the court and, even where acceptable proposals are not reached, it can provide a cost-effective way of providing financial information and narrowing issues to assist the court.

If agreement is reached the mediator will draft a Confidential Summary of Proposals. This can be used to form the basis of a consent order or a binding agreement. Participants in mediation are strongly advised to take legal advice, both during mediation and on any proposals they have made.

Mediators are impartial

Mediators facilitate negotiation to assist people to reach their own, informed decisions; they have no vested interest in the outcome. Where the court has encouraged mediation, it is vital that the participants understand that mediators will be independent of the court and will not form judgments.

Decision-making rests with the participants

Mediators emphasise that it is the parents who have the responsibility to resolve family issues, and they empower them to make decisions in the interests of their whole family.

The needs of children and young people come first

Children's wishes, needs, welfare, safety, and interests are the priority in family mediation. Mediators encourage participants to focus on the needs and interests of the children, often by directly involving the young person in the process. Mediators use a wide range of strategies and resources, including videos and on-line tuition, and may facilitate the involvement of other professionals and agencies with the aim of supporting the joint exercise of parents' shared parental responsibility. The goal is to support family relationships and well-being, now and in the future.

Mediation must be a safe process

Mediation requires negotiation without risk of threat or harm. Those engaged in mediation share responsibility to ensure that conversations are free from discrimination and abuse and are conducted with respect and tolerance.

Screening for abuse, intimidation, coercion, power imbalance, physical safety, and emotional and mental well-being begins at the MIAM and continues throughout the mediation process. Mediators are trained and updated regularly in awareness and incidence of all forms of abuse and how to screen effectively. It is sometimes possible to mediate where allegations of abuse have been made - provided safety concerns can be managed robustly and mediation participation is clearly voluntary. The needs of children may require parents to work together despite entrenched and very high levels of conflict.

However, concerns about continuing intimidation or situations where allegations and narratives are wholly irreconcilable are likely to make mediation unsuitable.

Child-inclusive mediation and its relationship with the courts

The FMC Code of Practice requires that all children and young people aged 10 and above be offered the opportunity to have their voices heard directly during the mediation, unless, exceptionally, the mediator considers that this is not appropriate. This ‘child consultation’ can be undertaken only by specially trained mediators with the consent of both parents and the child. Unlike meetings with a Cafcass/Cafcass Cymru officer, the child consultation with a family mediator is a confidential meeting.

Young people have the right to be heard in all matters concerning their needs, interests, and futures. Child-inclusive mediation provides an opportunity for a young person to be heard and for their parents to hear feedback. This will consist only of whatever the child or young person wants to share with the parents, without commentary by the mediator. The FMC Code of Practice explicitly prohibits written feedback, so parents cannot abuse or share what the young person has said. It follows that when a court encourages mediation involving a young person, they can choose not to accept the invitation. Anything the young person does say to the mediator is available only to parents, only with the child’s permission, and only in the form of verbal feedback. The child-inclusive process therefore cannot be used directly to bring the child’s voice before the court. This is why the child-inclusive process is not an alternative to Cafcass/ Cafcass Cymru involvement - a common misunderstanding of legal representatives and sometimes judges.

A significant positive aspect of this process is that the young person is provided with a safe place to share their feelings about their parents’ separation. The parents are provided with an opportunity to respond constructively to what the young person has to say, without any concerns about subsequent court scrutiny of what has been discussed. It can often be a particularly constructive intervention, to adjourn court proceedings, to encourage parents to engage positively in a mediation which includes an invitation to a young person to participate in the process. The outcome will not be a report about the child’s wishes and feelings: it will hopefully be confirmation of agreement reached between the parents that concludes the litigation.

What can mediation achieve?

Mediation works well for many people as a way to resolve family disputes, where it is safe, and the parties are willing and able to negotiate. Mediation is not always “successful” in resolving family conflict, just as the court process is not always “successful.” However, recent studies show that a significant majority of those who engage in family mediation resolve their issues in a way that means they do not need to ask the court to make decisions on their behalf. The key goal is to give families a clear understanding of practical options with a focus on what will work for their children, ideally after having heard from the children directly. The MOJ voucher scheme has produced consistent evidence that [about 69% of parents attending mediation resolve part or all of the issues in dispute and do not proceed to court.](#)

The great advantage of mediation over other recognised forms of non-court dispute resolution is that it leaves the decision-making in the hands of the participants, with established benefits in terms of satisfaction with, and sustainability of, outcomes. This is especially important when dealing with families, many of whose issues are not, in reality, justiciable at all. In relation to children, for any outcome to work well family members need to be able to communicate. Court proceedings are unlikely to assist with communication. Mediation is designed to improve communication and to give the family unit a chance to resolve things between themselves, improving their chances of doing so in the future without professional support.

Mediation is not solely focused on legal outcomes. Mediation uniquely emphasises effective communication, co-parenting, inclusion of the child’s voice, empowerment, addressing emotional unreadiness, coercion and other obstacles to effective dialogue, ownership of decisions and responsibility. This usually provides the best opportunity to effect a transformation in the exercise of co-operative parental responsibility, leading to sustainable outcomes.

In matters relating to children, mediators can enable parents and young people to reality-test, finding safe modes of communication, building flexibility and sustainability. Discussions and decisions are informed by the principles of the Children Act and other legislation, and also by awareness of the latest research and policy regarding young people and the risks posed by parental disharmony. Mediation provides a safe space for a wider, more creative focus on the individual separated family as a whole. The context is one of “Family Solutions” rather than “Family Justice.”

In financial matters, discussions and decisions are normally framed by the principles of finance and divorce legislation, and awareness of the latest research and policy such as PAG Reports and FJC Guides. Mediators will assist in and initiate the exploration of more creative and sustainable options outside the legal options, such as those requiring a collaborative approach or the utilisation of assets from outside the “family pot.”

In all matters, mediation encourages a focus on what participants might share in common in the future, rather than on what has polarised them in the past. Mediation provides a holistic, “all-issues” process where arrangements for children are made in the context of decisions about where families are going to live, how to share the marital/relationship assets, and taking into account the safety of all concerned. This is unlike the separate court processes that may apply.

How courts can help to make mediation more effective

Although judges are not able to order “compulsory mediation” they are able to use the FPR to divert participants in a court process towards mediation. They can give a positive message about the benefits of collaboration as parents, and the potential negative consequences of continued use of the court process.

It is usually better if judges do not prescribe the subject-matter of the mediation, allowing the participants to set the agenda instead. Sometimes, it may assist for the court to give some indication and to ask that this be communicated by the prospective participants to the mediator. Mediators do not usually have access to court documents, but there may be exceptions where the availability of specific directions or reports will enable the mediators to start with an understanding of the context, especially of any risks already identified by the litigation process.

Again, the progress and outcome of mediation will usually be confidential. If mediation breaks down, or is found to be unsuitable, the mediator will not give written details as to why this may be the case. However, where mediation has resulted in full or partial agreement, the participants are encouraged to share their confidential outcome statement with the court by jointly lifting privilege, preferably after taking legal advice.

A number of sessions are usually required to reach an enduring outcome. The court may need to adjourn the proceedings to allow this process to be completed. Mediation appointments take place within a timeframe that is practical for clients. The timetable may include time to test agreed arrangements, as would often happen at court through short duration orders. Despite the adjournment period, the time taken in mediation to reach full agreement is usually considerably shorter than the full court process.

Judges, legal advisers, and magistrates are strongly encouraged to make contact with their local family mediation services and to arrange joint awareness meetings and observations, perhaps under the auspices of their Local Family Justice Boards, where this document could prove a valuable discussion document.

Funding family mediation

The Ministry of Justice “Voucher Scheme” provides parents engaged in child-centred mediation with a voucher for £500 towards their costs. This voucher cannot be used to fund MIAM attendance.

However, Legal Aid is available for MIAM attendance, and also for mediation, for those who are eligible. Parties can check whether they are eligible at <https://www.gov.uk/check-legal-aid> and a mediator with a Legal Aid Agency (LAA) contract can then undertake the eligibility assessment. The LAA will cover the costs of both parties to attend a MIAM if one party is eligible. This encourages anyone who is not eligible for Legal Aid to find out about family mediation. Legal Aid is also available for legal advice provided under the LAA’s ‘Help with Mediation’ scheme. This can provide advice on proposals discussed and made in mediation and assistance with drafting consent orders.

In-court mediation schemes

The LAA allows court premises to be used as designated outreach facilities for the purpose of assessing suitability and eligibility for legally aided mediation. This only covers the cost of delivering the MIAM. Before mediation can take place, the client has to produce evidence of their income, to confirm their entitlement to public funding. It is unlikely that

parties at court will have with them proof of income evidence. Parties should understand that, if mediation is to take place in the precincts of the court and before income evidence is produced, there will be costs associated with the delivery of mediation. Mediation providers working in courts will have available a schedule of their charges. Judges should be aware that assessment and mediation on court premises has been the subject of many pilot schemes over the last 20 years. Whilst most attempts have eventually foundered through lack of funding, there remain some successful exceptions. Liaison between the court and local mediation providers so that court attendees can be easily signposted has generally proved to be the best model.

About this guide

This guide was originally produced by the Family Justice Council and Family Mediation Council in 2014 and has now been updated in September 2024.

For more information about Family Mediation, visit <https://www.familymediationcouncil.org.uk/>

