

Mediation

A guide to Mediation

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What is Mediation?

Mediation is where an independent third party helps parents come to a voluntary agreement about arrangements for their children and finances at separation and after.

From 22nd April 2014 all potential applicants to court in relevant family proceedings will be expected to have attended a Mediation Information and Assessment Meeting before applying to court unless their case meets one of the exemption criteria. The court may refer the parties back to mediation at any stage of proceedings.

What are the exemption criteria?

You will be expected to attempt mediation unless your case involves one of the following matters:

Domestic Violence: There is evidence of domestic violence (see our guide on Domestic Violence on our family law app).

Child Protection: There are child protection concerns (the child is subject to enquiries by the local authority or the subject of a child protection plan).

Urgency: The application is urgent e.g. there is risk to life, liberty or freedom of the applicant and/or his/her family. An exemption may also be appropriate if delays would put a child at risk (e.g. in the case of unlawful removal abroad), cause the

parties undue financial hardship or risk a significant miscarriage of justice.

Jurisdiction Disputes: Where a case may be legitimately heard in a foreign country as well as in England and Wales, and the delay caused by attending mediation would make an application in a foreign court, an exemption to attend mediation may also apply

Previous attempts at Mediation: Where the parties have attended a mediation session or an exemption has been granted in the past four months related to the the same or similar matters.

Disability and Access: Where one of the parties is disabled and the mediator lacks suitable facilities.

Without Notice Applications: Where applications are made without notice (e.g. where the party applies to court asking for an urgent hearing that day). Examples of circumstances might include one parent refusing to hand over the child's passport immediately prior to a foreign holiday or where there were immediate child protection concerns.

Contact Details Not Known: Where the applicant does not know the respondent's address or contact details.

Prison, License or Injunction: Where one of the parties is in prison or subject to bail

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conditions which prohibit contact with the other party or subject to an injunction which prohibits contact with the other party.

A Child is a Party to Proceedings: Where the child is the applicant or a respondent (as opposed to being the subject of proceedings).

Distance and Availability: Where there are no mediators within 15 miles of the applicant's home address or those mediators within this distance cannot offer mediation within 15 days

The mediator may decide that mediation is no appropriate where:

- None of the respondents were willing to attend mediation.
- The respondents failed to attend the mediation session(s) without good reason.
- The mediator decides that mediation is unsuitable in relation to the issues in dispute.

What is the MIAM?

MIAM stands for the Mediation Assessment and Information Meeting. When you contact a mediator, they will arrange a meeting with you and the other party to discuss the issues in dispute and whether mediation may assist you.

If the Mediator believes mediation will not assist, or if mediation fails, and you later apply to the court for a Child Arrangements Order, Specific Issue Order or Prohibited Steps Order, the Mediator must complete and sign section 14 of the Court's C100 Application Form to confirm why mediation was unsuccessful.

If you are applying for a parental responsibility order (or an order terminating parental responsibility), an order appointing or terminating the appointment of a Guardian, an order to change your child's surname, an order asking the court's permission to remove the child abroad, a special guardianship order (or an order terminating the appointment), you or your solicitor must complete Form FM1 and (unless you are exempt from Mediation) the Mediator must also complete the Form FM1 to confirm that mediation is not possible. Such applications to the court would use Form C1 (rather than the C100 Application Form).

If the Mediator believes that mediation may assist you, they will explain the next steps. The MIAM usually lasts for 45 minutes.

What does Mediation cost?

There is no standard fee. Mediators are independent and will have their own charging structure. Shop around! The service may be free if you are on a low income. If you are using a solicitor, they should calculate whether you qualify for legal aid. A mediator can also help you find out if you are eligible to have legal aid cover this cost. You may also wish to visit the Community Legal Advice website or call 0845

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345 4 345 to check whether you qualify for public funding.

How do I find a mediator?

Information on how to find a family mediator may be obtained from local family courts, from the Civil Legal Advice Helpline - CLA Direct (0845 345 4345) or at:

www.direct.gov.uk

You might also wish to use the National Family Mediation web site:

www.nfm.org.uk

What should I do?

- Before going to court, you (or your solicitor if you are legally represented) will normally be expected to contact a family mediator to arrange a "Mediation Information and Assessment Meeting" unless there are exceptional circumstances (see **Must I attempt Mediation?**).
- If you are the applicant, you or your solicitor should provide the mediator with contact details for the other parties to the dispute. The mediator will then contact them to discuss that party's willingness and availability to attend a Mediation Information and Assessment Meeting.
- The Mediation Information and Assessment Meeting should be organised within 15 days. If the mediator cannot meet this timescale, contact another firm. If you have tried three firms of mediators and none can

arrange a mediation session within 15 days, you can choose to apply to the court if you wish to.

- You should then attend the Mediation Information and Assessment Meeting. Where parties are willing, both can attend the same meeting, although separate meetings can be arranged.
- If, after the Mediation Information and Assessment Meeting, you (as the applicant) still wish to apply to the court, the Mediator must complete:
 - Section 14 of Form C100 if applying for a Child Arrangements Order, Specific Issue Order, or Prohibited Steps Order; or
 - a Family Mediation Information and Assessment Form (Form FM1) if the application is for a parental responsibility order (or an order terminating parental responsibility), an order appointing or terminating the appointment of a Guardian, an order to change your child's surname, an order asking the court's permission to remove the child abroad, or a special guardianship order (or an order terminating the appointment). The Form FM1 should accompany the C1 application form when applying to court for one of these orders.

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Why consider mediation?

If successful, mediation will be cheaper than going to Court. Mediation stands the greatest chance of an agreement being reached where both parents are happy, and therefore causes less stress for all.

Mediation requires both parents to be able and willing to reach compromise, although a trained and skilled mediator might be able to assist that process

Can I refuse Mediation?

Unless you have good reason (e.g. those listed in the **Must I attempt Mediation?** section) we recommend you do attempt mediation. The court will take note of your refusal to do so and may direct both parties to attempt mediation before court proceedings continue. This may result in delay and cause the judge to think you are “difficult” if they do not accept your reasons for refusal.

What does a mediator do?

Mediators can assist couples to communicate when they are separating and disagreeing about issues such as financial matters and where their children should live. Mediation can be carried out as an alternative to, or before, during or after court proceedings.

Family mediators can give general information about the law and the way the legal system works. They cannot provide advice about a person's legal rights or their best course of

action, and can't make decisions for you or give you legal advice.

Are agreements binding?

Mediated agreements are not binding in themselves. You may decide to apply to the court following an agreement having been reached via mediation, and ask the judge to make an “order by consent”, essentially rubber stamping what was agreed. Bear in mind though that the judge must also believe that the order is in the children's best interest.

Questions to ask

- When choosing a mediator, you may wish to ask the following questions at the first meeting or by telephone beforehand:
- How much will mediation cost?
- Do I qualify for legal aid? (If so, ask if the mediator does legal aid work... not all of them do)
- How long do the sessions last?
- Is there a waiting list?
- Do I need to bring any information with me?