

Family Mediation Council Suggested Good Practice Guidelines for In-Court Mediation

Introduction

The following Family Mediation Council Good Practice Guidelines have been developed and endorsed by mediators for mediators at a series of meetings of mediators and others concerned in and connected with the "In Court Mediation Pilot" at LSC's Birmingham offices on 18 September 2009, 04 December 2009 and 01 March 2010. They are offered as illustrative and non-exhaustive.

A. General Set Up

A1. Meetings should be set up by Mediators/Mediation Services with CAFCASS and local District Judges/Legal Advisors to assist in a uniform implementation of these principles and to help identify and clarify individual roles and boundaries

A2. When seeing parties, in-court mediators will not necessarily always be able to complete a mediation suitability assessment or commence in-court mediation. The extent of the work able to be conducted by in-court Mediators will on all occasions be determined by the parties with the Mediator/s.

B. Prior to the date for First Hearing

B1. District Judges/Legal Advisors apply a consistent sifting mechanism on issue of proceedings to divide all new matters into "mediation" lists, and "non-meditation" lists. Mediators can then attend court on mediation list days, but not on non-meditation list days, to minimise wasted and/or unremunerated mediator time at court.

B2. Liaison takes place between the court and Mediators/Mediation Services no later than on the day before any list in order to confirm details as to whether there is a list going ahead, and if so, also supply details as to the length and nature of that list, so that Mediators do not turn up at court when there is no list, or where the list is of cases completely unsuitable for mediation.

B3. Mediators have access to C100s etc. at least 24-48 hours in advance of the day of the first hearing which helps facilitate conflict checking by mediation services.

C. At Court on the day of First Hearing

C1. It is to be noted and respected by other professionals that the Mediator/s have control of the mediation process

Before Mediators See Parties

C2. The Mediator is to take an active role with CAFCASS and the gatekeeper for the day (District Judge or Legal Advisor) in case triage (i.e. reviewing the cases in the list for the day and determining which may be suitable for mediation) at the beginning of each list. CAFCASS safeguarding information must be available at this stage.

C3. The District Judge/Legal Adviser introduces the Parties and their representatives to the Mediator/s.

C4. The District Judge/Legal Adviser is positive about the mediation assessment/mediation process which may take a minimum of an uninterrupted hour.

After Mediators have seen parties

C5. After seeing parties, and subject to parties consenting to break mediation privilege and confidentiality, Mediators may feedback (whether orally or in written format) the outcomes/decisions from their at-court meetings with parties to:-

- Advocates; and then to
- District Judge/Legal Adviser and CAFCASS as appropriate

C6. Mediators will not enter into dialogue or discussion when giving feedback to advocates, CAFCASS and/or judiciary.

C7. Mediators must clearly establish with parties whether or not parties wish for their mediated outcomes to be converted into consent orders at court following any in-court mediation.

C8. Mediators and those involved in the administration of the mediation process may not be compelled to give evidence regarding information arising out of or in connection with any mediation except by reference to overriding public policy considerations (e.g. child protection or to prevent harm) or where disclosure of the content of the agreement resulting from any mediation is necessary in order to implement or enforce that agreement.

D. Professional Practice Matters for Mediators

D1. Mediation must not start before both parties have signed an Agreement to Mediate. Consider whether an in-court specific Agreement to Mediate may be required.

D2. Mediators may wish to develop a particular written format for presentation of feedback of the outcomes/decisions of parties time spent with mediators at court.

D3. Mediators' PPCs (Professional Practice Consultants) will continue to be available as usual in order to provide focussed support for Mediators offering in-court mediation and will be aware of in-court Mediators' particular enhanced needs as regards (for example):-

- Tailored in-court mediation documentation
- Confidentiality
- Time Pressures and Time Management
- Mediator Stress