

## MIAMS Guidance

*This Guidance provides additional support for mediators when conducting MIAMs, and should be read alongside the MIAMs Standards and Expectations.*

A MIAM is an opportunity for potential participants to learn about mediation and other dispute resolution processes so that they can make an informed choice about how best to resolve issues arising from separation.

It is important that mediators create an environment in which potential participants feel emotionally supported, can listen actively to potential participants' narratives, convey information that is specific to potential participants' needs in a way that can be easily understood, and take a holistic approach to help potential participants choose a process that is right for them and their family.

The numbering below corresponds to the MIAMs Standards and Expectations.

### 1. Providing Information

Ahead of a MIAM, Mediators would benefit from:

- discussing and confirming the cost of the MIAM if not eligible for legal aid and how any MIAM will be funded;
- managing potential participants' expectations by providing them with information about what to expect at a MIAM;
- having an efficient system in place to be able to respond to enquiries from potential clients as soon as possible.

Starting a MIAM by explaining the principle of confidentiality and the exceptions to it in relation to the MIAM ensures that potential mediation participants are told this before they choose what to say. The mediator will need to explain other mediation principles in the course of the meeting, although may find it useful to do this at the start of the MIAM.

Beyond the order set out in the Standards, it is difficult to prescribe the order of a MIAM because there are areas of overlap, and because the approach of the potential mediation participants may require a flexible response from the mediator. However, the following order is suggested:

- A. Confidentiality and other mediation principles
- B. Legal aid assessment, if not previously undertaken
- C. Information Exchange
- D. Screening questions for domestic or child abuse
- E. Questions in relation to other areas that affect suitability, previously referred to
- F. Determination of suitability for mediation or other out of court processes or court options
- G. Next steps including signposting

## **2. Obtaining information**

The aim of the questions is for the mediator to obtain sufficient information from the client to enable proper screening to take place. This may include

- Sufficient information about the relationship prior to separation
- Sufficient information about the relationship post separation
- Sufficient information to assess the impact of any abuse on the potential participant and their ability and capacity to take part in a process safely
- Sufficient information about how potential mediation participants are likely to behave in a mediation meeting and afterwards towards each other

Sensitive and appropriate questioning is required for the identification and understanding of the issues, for accurate screening, signposting and consideration of appropriate options. In order to achieve this, mediators need to give potential participants both the time and opportunity to be heard.

## **3. Assessing safety and suitability**

Assessment is an ongoing process which will lead to a determination of suitability for mediation.

Considerations include whether the potential participant is able to take part without becoming unduly distressed to enable discussion to take place, and whether the client can disagree, challenge and discuss issues with ex-partner without fear of intimidation and harassment after the session. The mediator should also consider the risk to the potential participant of re-traumatisation following earlier abuse, as a result of engaging in mediation. If information provided points towards a risk of re-traumatisation, it is likely that mediation will not be suitable.

Mediators should therefore be alert to information relevant to suitability for mediation throughout the MIAM. Potential participants may share relevant information when either explaining their circumstances, or through answers to direct questions.

Potential participants may need the presence of another person in a session to provide ongoing emotional support e.g. Housing support worker; Youth worker; an agreed family member; mental health support worker; advocate, or solicitor. The informed consent to the presence of third parties would need to be given by the other mediation participant.

## **4. Determining next steps**

Depending on the outcome of the screening and assessment above, in conjunction with the potential participant, a decision about the next steps needs to be made.

A final decision on whether mediation is safe and suitable can generally only be made once the second potential mediation participant has been seen for a MIAM, but mediators should prepare the first MIAM participant accordingly. In some cases, the situation might be such that mediation is so clearly unsafe or unsuitable or contacting the second participant might put the first participant or children at risk of harm, that a mediator might make that assessment having seen one participant only.

When determining the most appropriate method of mediation, it is best practice for mediators to consider

- Whether to mediate online/physically in person
- Whether to mediate as a joint mediation meeting/shuttle meeting (NB be wary not just of risk of violence but also of coercive control and impact on potential participant)
- Whether additional support services might be valuable to the participant/s alongside mediation
- Arrangements for arrival and leaving

Options for resolution other than mediation should include a brief description of the process, benefits, principles, likely cost and any potential disadvantages of options that are appropriate and affordable for the individuals concerned. This may include:

- Solicitor negotiation
- Collaborative Law
- Arbitration
- Early Neutral Evaluation and Private FDR's
- An application to court

Mediators should be realistic about potential outcomes and help manage the potential participants' expectations regarding likely outcomes, financial and emotional costs and timescales of each option.

This may also include referrals to other support services.

## **5. Costs and legal aid**

Mediators are not obliged to carry out a full assessment for Legal Aid if potential participants are clearly excluded from being eligible, for example because of the value of property owned or income threshold.

If a participant believes he/she may be eligible for Legal Aid but after assessment fails to qualify AND has no means to pay for a MIAM, mediators may end the MIAM at that point allowing participant time to consider how a MIAM may now be progressed.

Mediators who do not work for services which hold Legal Aid contracts may work for and be paid privately by potential participants who may be or who are eligible for Legal Aid funding, provided they inform the potential participants that they may or are eligible for Legal Aid and that the MIAM and mediation may or could be provided at no cost to them, if they were to use a mediator who offers legal aid.

## 6. Separate MIAMs

Delivering MIAMs to potential participants separately provides individuals with an opportunity to discuss the issues which arise without being concerned at the response of the other potential mediation participants. It also ensures that discussions are as open and honest as possible to enable effective screening and assessment to take place, without fear of harm or undue pressure from the other potential participant.

Ensuring that mediation is not scheduled immediately following a MIAM allows potential participants time to consider whether they want to proceed with mediation and to prepare for this. It also prevents awkward situations arising for the mediator, where the mediator assesses that mediation is not suitable for safety reasons after seeing the first person and might then have to go straight into a meeting with the second, with that knowledge.

## 7. MIAM format

Different modes of delivery have different advantages and disadvantages.

- Physically in person – non verbal clues provided the presence of a 3D person can be observed, the mediator can be sure nobody is in the room with the client, alcohol can be smelled on a person's breath, general well-being of client can be seen, it may be easier to build rapport with a client and ask questions about safeguarding or domestic abuse.
- Video on line – is convenient and preferred by some people, and useful if it is difficult for participants to attend an office due to individual accessibility needs or if public health constraints exist. It requires other safeguards to be checked out e.g. video panning of room or verbal confirmation about privacy and freedom from disturbances, ability of mediator to build rapport in on line forum. Non verbal body language can still be effective in communication between mediator and participant but awareness of differences between both models is important for mediator to provide the most helpful and safe model for the participant
- Telephone delivery relies solely on audio cues and is the least preferred medium, hence the Standards specify that this should only be used if neither of the above can take place.

Even where a mediator makes an early assessment that a case is not safe or suitable for mediation, the time remaining in a MIAM can and should be used to ensure the client has information about other dispute resolution options and other support services where relevant (see Standard 4).

Mediators would benefit from having signposting information to next steps, including local support services readily available to provide to clients, whether or not the mediator assesses mediation as safe and suitable.