

The Law Society response to the FMSB Consultation on MIAMs Standards

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1. Introduction

- 1.1. The Law Society is the independent professional body for solicitors in England and Wales. We are run by and for our members. Our role is to be the voice of solicitors, to drive excellence in the profession and to safeguard the rule of law. On behalf of the profession, we influence the legislative and regulatory environment in the public interest. At home we promote the profession and the vital role legal services play in our economy. Around the world we promote England and Wales as a global legal centre, open new markets for our members and defend human rights.
- 1.2. The Law Society was represented on the MIAMs standards review¹, and we welcome the opportunity to respond to this consultation. As we were represented on the working group which led on this project, much of the detail of the proposed standards, guidance and assurance documents are not new to us. Our response therefore focuses on those proposals we would caution against introducing without further discussion.

2. Same day consecutive meetings

- 2.1. We understand that those advocating that couples should not start their mediation journey on the same day have the best of intentions to provide a further layer of safeguarding and give potential participants time to reflect on the information provided during their MIAM. However, this must be balanced against the need to maintain flexibility, the best interests of clients and the experience of mediators. Mediation is a voluntary process of self-determination.
- 2.2. There are numerous advantages in having same day consecutive meetings, assuming both parties wish to start the mediation process together, are able to accept on an informed basis, and the mediator has assessed that there are no issues concerning domestic abuse.
 - 2.2.1. There is no 'second party' to feel left behind or marginalised. Mediators often struggle to engage the 'second party' who can feel suspicious of a process in which one mediation participant is seen before the second participant. This is even more true if that first meeting happens before the second participant is even aware of mediation as a potential process.
 - 2.2.2. At the end of the two Mediation Information and Assessment Meetings ('MIAMs' or other term for initial meetings), an assessment will have been made and it will be clear if mediation should be progressed as participants will have made their views known to the mediator on the same day.

¹ <https://www.familymediationcouncil.org.uk/2021/04/23/fmsb-consultation-miams-standards/>

- 2.2.3. If both parties agree that they wish to proceed to mediation, there can be a short first joint meeting on the same day. In mediations concerning financial matters this can be very useful. For example, time can be spent by the mediator giving information to both participants concerning the need for financial disclosure, filling in a Form E and organising home valuations. This results in the mediation process being faster, more responsive and agile. At the second mediation meeting the participants may then be in a position to start their negotiations which may otherwise have taken much more time and therefore be less cost-effective.
- 2.2.4. This is particularly the case for legally aided mediation meetings as same day consecutive meetings are much more effective for ensuring that legal aid is a viable and sustainable business model, since a mediation meeting on the same day after both MIAMs covering substantive mediation issues is funded by the LAA as a mediation meeting.
- 2.2.5. Couples are now actively seeking out one legal advisor who will see them together. Models such as Amicable have been welcomed by some in the judiciary. Experienced and accredited mediators can be trusted to ascertain when mediation is not a suitable option.
- 2.2.6. It takes the skills of a mediator, rather than checklists, to assess if there has been domestic abuse, and multiple closed questions contained in a 'tick list' could drive a wedge through the prospects of becoming co-parents and improving communication for the benefit of all the family.

3. General concerns

- 3.1. We do not believe that it is necessary to prescribe a minimum time limit of one hour for a MIAM. The standards and expectations document states that mediators are expected to record the reasons for a MIAM concluding before one hour. MIAMs may conclude within a shorter period for a number of reasons, including that a participant does not wish to mediate or where there are safeguarding concerns resulting in the conclusion that mediation is not a suitable process. To require mediators to justify their reasoning in respect of each MIAM which does not last for one hour will be onerous and implies a lack of trust in accredited mediators.
- 3.2. It is unclear why mediators should be required to collect contact details of other professionals involved with the parties. This could be a breach of the confidentiality of MIAMs, which is an essential feature in helping participants to share all their concerns with the mediator. Participants are told before the MIAM about the exemptions if a child or adult has been or is at risk of being harmed.
- 3.3. It will not always be practicable for mediators to provide information on local services available, particularly in large areas such as London.
- 3.4. It may be helpful for the FMSB to provide examples of 'appropriate support services and information' which mediators should provide. For example, will it be enough to direct a party to a national helpline?
- 3.5. It is not clear what materials would sufficiently meet the requirement to provide information on the impact of separation on children. It may be helpful for the FMC to provide resources on its website which mediators can share with parties.

- 3.6. We appreciate that considerable thought has been given to the need for mediators to screen for abuse and assess each participant's suitability for mediation. However, it may be worth including that, as part of this assessment, mediators should also discuss the impact of other forums, including court, in compounding negative issues or retraumatising victims/survivors of abuse.
- 3.7. We are mindful that the current legal aid rate is £87 per MIAM from first engagement to sign off. The list of requirements must therefore be balanced against the economics, especially for practitioners in London and the South East, to safeguard against the risk of more mediators withdrawing from providing MIAMs altogether.
- 3.8. Although we understand the rationale behind requiring mediators to assess the emotional readiness of potential participants to engage in mediation, it is not clear how much impact this should have on the determination of whether or not to continue with mediation. If this is to be a key factor in deciding whether or not to continue, we are concerned that more and more cases will go straight to court.
- 3.9. Under 'Determining Next Steps' mediators will be required to signpost couples to other non-court dispute resolution (NCDR) processes if mediation is not pursued. It would be helpful to know how formal this process is intended to be. Will it be sufficient to mention other NCDR processes during the MIAM or will mediators need to provide written documentation to the participants?