

Response to FMSB consultation on MIAMs standards

Overview

We broadly welcome the review of MIAMs, and are encouraged by its focus on developing and maintaining consistently high standards and expectations, not least because we are confident these are already being met by NFM mediators and services.

By setting these standards it can only lead to an improvement in confidence in our profession of separating families needing help at their time of crisis.

However, the focus of this response is on our areas of concern in the documents laid out in this consultation.

We are aware that mediators have submitted responses about very specific points of practice and so will avoid duplication of these.

Premise

It has always been the intention of the FMC to review the standards for family mediation through the work of the FMSB, and on that basis a review of the standards has to start somewhere.

The imperative to start with the MIAM is, however, driven by the recent publication of the report from The President's Private Law Working Group and the Family Solutions Group where current MIAM delivery came under some criticism.

Whilst this report marked a welcome contribution to an ongoing debate between family mediation professionals and their place in the family justice system, some of the proposed changes to MIAM practice in this consultation seem to be more focussed on accepting the criticisms and therefore altering mediation practice to satisfy those criticisms - rather than building on best practice, and making a public demonstration of the existing good practice that exists.

There is always a danger in any organisation reacting to 'events' in a way that might veer from its strategic agenda, and we ask you to note our concern in relation to the premise of this consultation.

Data

We appreciate this consultation but are also concerned that the consultation is very heavy on words, but light on data.

More statistical information about the current situation relating to private clients, for example, would have been helpful in enabling consultees to provide more robust responses. This would also allow the FMC to provide more evidence in response to anecdotal concerns that are expressed, and which then become truth. Data would help us achieve an evidence base and move away from opinion and anecdote.

Additional work, no additional funding

The current structure and content of the MIAM has been in place for around 20 years. Over the years there have been developments and changes to delivery that have recognised the evolving nature of policy and practice.

If these changes to practice are adopted and increasingly more is being asked of the mediator - especially mediators who are providing legal aid services - then there also needs to be work undertaken by the FMC to engage the Legal Aid Agency in increasing the fees payable. This is especially critical if the changes proposed are being imposed by external forces such as the judiciary and family justice system more widely.

We firmly believe in, and respect, the professional judgement of mediators and we are aware of some concerns that additional bureaucracy might undermine this judgement.

Moreover, the observation and annual review process proposed will create an additional burden on services delivering mediation, whilst the legal aid fees available for MIAMs and mediation have not increased, remaining static for some 20 years.

Administrators and managers of mediation service organisations believe that any increase in the amount of work required for MIAM delivery requires the FMC to campaign to persuade the Legal Aid Agency to increase fees to reflect the extended remit of their role.

Similarly the proposal to introduce an annual review and observation specifically of the MIAM will increase the costs to services of delivering MIAMs that cannot be easily absorbed by increasing fees for private clients and static legal aid fees.

Notwithstanding the concerns, all NFM services and their mediators are committed to high standards and the professional development of their teams and therefore routinely look at MIAM practice because it is the gateway to full mediation.

Feedback

We strongly reject the idea that mediators should seek feedback post-MIAM, whilst the status of a case is at that point unknown. Feedback in many areas of our lives is increasingly sought from us, but at the *end* of a process, not midway through it. Requiring mediators to seek feedback whilst there is the prospect of a case converting to mediation will actively discourage that conversion.

All NFM services seek feedback from clients once the case has closed and this includes feedback from attendance at a MIAM. This is good practice and provides valuable insights into how to improve.

Joint MIAM and separate MIAM followed by mediation

We strongly oppose the abolition of this way of practicing.

Professionals who currently deliver joint MIAMs always make time and space for individual screening and financial assessment.

Significantly, in our experience the majority of joint sessions are attended by well-informed people who have already researched their options and have agreed to discover together whether or not mediation will work for them. They are at least warm to the idea of mediation, and often extremely keen to get on with it.

Denying the joint MIAM in these cases threatens to dissuade conversion and would certainly undermine client choice and self-determination.

The purpose in proposing this abolition appears to be as a direct result of growing concerns around coercive control in domestic violence cases.

We should remember that:

- at least 30% of cases going to court have no identified risk factors and therefore should not be in the court process; (CAFCASS data)
- that many of those in the court process have not attended a MIAM;
- that all parties to the mediation are there voluntarily including the mediator,
- and that mediators are very experienced at assessing suitability for mediation and are assessing the individuals' abilities to negotiate in mediation.

The MIAM is a crucial part of determining suitability for mediation whether separately or jointly and to deny client choice in how the client wants to attend a meeting denies a level of access to our service at a time when it is most needed. This proposal to abolish joint MIAMs undermines one of mediation's core precepts: that clients are in control, especially of the outcomes and decisions agreed.

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