



Summary of MIAMs Consultation Responses

July 2021

Family mediators have responded thoughtfully, and in large numbers, to the FMSB's consultation on MIAMs standards. The responses show there is a high degree of support for the introduction of the proposed standards, expectations and guidance. While there was near universal acceptance of the proposed high-level standards, there are some proposed expectations that have generated a large amount of debate which show that different mediators take different approaches to some issues. The responses also show that mediators broadly support the introduction of assurance measures and a willingness to comply with these, but there is a concern that these should not be unduly onerous.

Many mediators thanked members of the working group for their time in preparing the draft documents.

In preparing this summary document all consultation responses have been read carefully, with the intention of ensuring that all key points have been included.

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General Themes

Are MIAMs standards necessary?

A small number of mediators asked for more explanation for the reasons behind the proposed changes. One urged that as well as the 'Whats' (Outcomes) and the 'Hows' (Delivery) being stated in the Standards, that the 'Whys' are also explicitly set out. This mediator suggested that the rationale for requiring high standards for conducting the MIAM included a) the protection of the public; b) protecting ethical practice based on the principles of mediation; and c) the specific purpose of the MIAM which is to ensure establishing suitability for mediation.

Others were concerned that the FMC had accepted the Private Law Working Group's assertion that "The quality of the delivery of MIAMs should be more rigorously monitored and consistently maintained" without putting up a more robust defence of those MIAMs that do take place, and noted that the MIAMs process was not as successful as intended because current rules are not enforced by the court, as opposed to any problems with the delivery of MIAMs. There was a related concern that the FMC was putting in place MIAMs standards to improve the public image, but that the proposed standards would not actually improve MIAMs nor the FMSB's ability to offer assurance about the quality of these.

Other mediators felt that the problem with consistency of MIAMs was generated or exacerbated by organisations which have one or two accredited mediators but multiple trainees who are conducting MIAMs and felt that the rules about who could sign court forms should change to restrict this practice, thus solving the problem about the consistent high-quality delivery of MIAMs.

The importance of professionalism and avoiding the 'tick box' approach

Some mediators emphasised the importance of exercising professional judgment in MIAMs, saying one of the most important and central aspects of an intake meeting is to get an instinctive feel of the parties and their dynamics, as a preparation for mediation, which can only be achieved from open, free-flowing conversations and not from closed questioning and checklists. They worried that the approach set out would encourage a checklist mentality, which doesn't reflect the skills or approach needed, and argued that assessment was a human process not a technical one.

There was also a concern that the expectations were too prescriptive on detail, which limited the ability of highly trained professionals to exercise their judgment appropriately and respond to clients' needs as these arise. Another worried that too many expectations on the mediator could be counterproductive making the mediator feel pressured into mentioning everything and covering nothing in any meaningful way.

Almost all of these same mediators stated they were supportive of MIAMs standards being introduced.

Cost of compliance with standards

Many mediators were worried about the time it would take and the costs they would need to incur to comply with the standards although lots emphasised that they supported the introduction of standards in spite of this.

How would MIAMs standards work in legal aid cases?

Several respondents raised the issue of how the proposed MIAMs standards would work in LAA cases.

Some focussed on rates of pay, noting it was unrealistic and unfair to expect mediators to deliver a MIAM as set out in the Standards and Expectations document for £87. One said that if these changes to practice were adopted and increasingly more was being asked of the mediator – especially mediators who are providing legal aid services – then there also needed to be work undertaken by the FMC to engage the Legal Aid Agency in increasing the fees payable, saying that this was especially critical if the changes proposed were being imposed by external forces such as the judiciary and family justice system more widely.

Others questioned whether LAA rules around joint meetings would be changed, saying that the standards and legal aid contracts needed to be consistent with each other.

Questions were also raised about data reporting and requests were made for the FMC to avoid duplication.

One concern was that the LAA expects standards to be followed to the letter. (As an example the draft standards say '*At a MIAM, the mediator must share information with the participant about: the mediation process (including Child Inclusive Mediation) and the benefits and challenges of this*'. If there are no children of the family it would not be necessary or appropriate to share information about Child Inclusive Mediation, yet if the standards say this the LAA may seek to enforce it.) This concern is informed by mediators' past experience of the LAA.

The term 'MIAM'

Some respondents urged the dropping of the terms MIAM and *Statutory* MIAM because both give an unnecessarily premature focus on the court implication of the MIAM. One respondent suggested the term 'meeting' was used throughout the documents.

The three-layered format of the new standards – that of Standards, Expectations and Guidance

The FMSB asked respondents to comment on this: only a handful did. It was considered to be helpful and clear, though one respondent felt the format was unnecessarily lengthy and could be consolidated, which would reduce overlap.

Comments on Specific Standards, Expectations and Guidance

Content – Standards, Expectations and Guidance

	Standards	Expectations
1.	Providing information	
	<p>At a MIAM, the mediator <i>must</i> share information with the participant about:</p> <ul style="list-style-type: none"> - the mediation process (including Child Inclusive Mediation) and the benefits and challenges of this - the suitability of mediation and other out-of-court ways of addressing issues arising from separation; - other appropriate support services and information relevant to the potential participants' needs 	<p>When considering what information to share with clients, the mediator is expected to:</p> <ul style="list-style-type: none"> i. Include at the outset of a MIAM, information about confidentiality and other mediation principles that are relevant during the MIAM, so that the meeting can be conducted in accordance with these principles ii. Include information about remaining mediation principles and processes and how mediation works (including cost, timescale, client control, joint decision-making and co-parenting), so that potential participants fully understand the merits and benefits of taking that route iii. Describe the out-of-court alternatives and the court process, ensuring a rounded understanding of all options, so that potential participants can weigh these with the advantages of mediation and thereby make an informed choice about how best to resolve issues arising from separation iv. Where relevant, provide information about <ul style="list-style-type: none"> a. parenting post separation, including co-operative parenting b. the impact of separation on children (to include protective and risk factors to children's wellbeing) c. the impact of parental conflict on children, both in the short and long term d. the importance of a child focused separation and benefits of child inclusive mediation where appropriate e. local services available (signposting) to support the potential participants including co-parenting, housing, financial information, debt services and domestic abuse support services f. other support including legal advice or therapeutic support for either child/parent

		<p>g. how financial matters are dealt with in mediation and the necessity/importance of providing full and frank financial disclosure</p> <p>h. about what to expect from the next stage in the process and the likely time scale</p> <p>v. Discuss which other services may be available to support potential participants and, where it is appropriate, provide details of these services.</p>
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No respondents disagreed with the core content of this draft standard.

There was a concern that information about other processes (as well as about mediation), and the benefits and challenges of using them, should be part of the Standards as opposed to Expectations, given that Under the Children and Families Act 2014 a “family mediation information and assessment meeting” means ‘a meeting held for the purpose of enabling information to be provided about mediation of disputes of the kinds to which relevant family applications relate, ways in which disputes of those kinds may be resolved otherwise than by the court, and the suitability of mediation, or of any such other way of resolving disputes, for trying to resolve any dispute to which the particular application relates...’. There was a concern that court options are often not fully and clearly described and a suggestion that this should also be included in the standards or expectations.

There was also an argument for the provision of information about the importance of legal advice to support mediation to be specified as a standard as opposed to an expectation, which would reflect the good practice of the majority of mediators who themselves encourage parties to have independent legal advice to support and inform the mediation process, and as a protective measure.

In relation to the expectations, some mediators questioned the level of detail that should be provided when describing other processes, stressing that appropriate training and information needed to be available for mediators to understand and describe these processes in the detail that was needed. Mediators also asked for clarity over the extent to which mediation could or should be elevated other processes.

Other mediators made the point that CIM only needed to be discussed ‘where appropriate’. Another commented that it should be an absolute standard rather than guidance to confirm the cost of a MIAM before the participant attends a MIAM, saying the current wording of the guidance implies that mediators do not need to make participant aware of their charges in advance which should not be the case.

There were some concerns about the expectations including:

- That the voluntary nature of mediation is not specifically listed as a key mediation principle. There were some suggestions that all mediation principles be specifically listed.
- The use of the term co-parenting being listed as a mediation principle. It was suggested that this be replaced by working together in the best interests of the children.
- There was also a concern that not all parents ‘co-parent’ and that mediation should be able to lead to ‘parallel parenting’

- CIM is not listed in the expectations. This should reflect the FMC Code of Practice, which says where there are children aged 10 or over (and possibly younger), the mediator must explain to each parent or carer that the child has the right to be offered the opportunity to talk about their feelings and concerns and to offer their suggestions. The mediator must explain at the MIAM the principles and benefits of including children directly in mediation, although detailed discussion may be deferred to a mediation session with both parents/carers.
- The sheer number of topics that a mediator should cover and the number of other relevant services they should signpost to. Some mediators were unclear about the boundaries for mediators in discussing issues of parenting/child therapy, assessing capacity etc and cited that they did not have the relevant training and/or competence to be able to anything other than signpost to these services.
- It was suggested that the FMC could ease the information sharing burden by preparing fact sheets/requiring or allowing mediators to link to the MIAMs page of the FMC website thus controlling the information that clients receive pre MIAM about what they can expect from their MIAM meeting. Other mediators also supported the sharing of some information before as opposed to at a MIAM. One mediator suggested the FMC could negotiate a discount for mediators who could refer to the 'Click for parenting' course on the CAFCASS co-parenting hub, and that this would help with sharing information with participants.
- Local services vary. The words 'where they exist' need to be added to some services as they are just not available locally. Some mediators are forming networks of services – FMC support to develop these would be welcome.
- That the expectations require mediators to diagnose a number of potential health or social issues and make appropriate referrals, when they are not trained to do so. More than one mediator said 'I am not a therapist.'
- To make the best use of MIAMs, accurate information must be given to individuals about the full range of means of resolving matters and joined up approaches. There should be a more detailed explanation of how processes can work to resolve disputes and enable people who maybe can't speak to each other to have a constructive, assisted dialogue aimed at finding solutions.
- There should be clearer reference to the importance of accuracy in terms of explaining other out of court processes, and the type and extent of information to be provided. This would also better support mediation in the context of multi-disciplinary working and as part of a range of joined up approaches, rather than it being perceived as a siloed hurdle to court proceedings.
- Not all services/ways of resolving disputes need to be discussed in all cases as they are not always relevant. The term 'tailored information' might help to clarify this.
- Could the term collaborative practice be used rather than collaborative law?

<p>2.</p>	<p>Obtaining information</p> <p>At a MIAM, the mediator <i>must</i> obtain information from the participant about their circumstances and issues arising from separation.</p> <p>Before a determination about safety and suitability can be made, the mediator <i>must</i> ensure that sufficient information has been obtained from potential mediation participants to enable:</p> <ul style="list-style-type: none"> i. Screening for and assessing the impact of domestic abuse of all kinds including coercive and controlling behaviour, emotional or psychological abuse, physical abuse, financial abuse, sexual abuse; ii. Screening for and assessing the impact of drug or alcohol addiction; iii. Screening for and assessing the impact of child abuse, or any other child protection and safeguarding concerns; iv. Determining the emotional readiness of the potential participants to engage in dispute resolution. 	<p>When obtaining information, the mediator is expected to:</p> <ul style="list-style-type: none"> i. Use questioning and listening techniques as tools to screen for domestic or child abuse; ii. Ask appropriate questions to enable them to assess each potential participant’s emotional readiness to mediate; iii. Clarify if other professionals are involved with the family, confirm contact details and seek permission from the potential participant to liaise with the other professional(s) if appropriate.
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Comments on this standard were limited.

Some mediators questioned whether ‘emotional’ readiness was appropriate, asking whether they are trained to assess this. Others argued that ‘readiness’ to mediate was more appropriate, as factors other than emotional state have an impact on whether somebody is ready to mediate.

Some mediators had concerns about the expectations and guidance:

- 'Clarify if other professionals are involved with the family, confirm contact details and seek permission from the potential participant to liaise with the other professional(s) if appropriate' was considered to be very broad and might include a long list of services which are not always relevant. There were also concerns that collecting details of other professionals could lead to MIAMs confidentiality being breached, and that there was a need to be particularly mindful of data protection requirements. Alternative wording is proposed: 'If appropriate then the mediator should

discuss with the client whether it would be helpful or necessary for them to share the contact details of any other professionals working with the family'.

- Third party support: The Guidance recognises that potential participants may need the presence of another person in a session to provide emotional support. The consent of the other mediation participant is required for the 3rd party's attendance. 'A session' in this context evidently refers to a mediation session, not to the MIAM. Some potential participants need someone to accompany them to the MIAM to provide emotional support and/or to help them understand the information, eg a translator, a family member or friend. The consent of the other mediation participant is not required at this stage, since the MIAM is confidential and mediation has not yet been found suitable.
- Mediators will be required to ask for a lot of information – they must be well trained enough to know what to do with it and where to signpost clients to.

3.	Assessing safety and suitability	
	<p>At a MIAM, the mediator <i>must</i> assess the safety and suitability of mediation for the participant.</p> <p>Where a mediator has any doubt about whether mediation will be safe and suitable for potential participants, the mediator <i>must</i> consult their PPC. If, after this consultation, the mediator decides that mediation is safe and suitable, the mediator <i>must</i> record the reasons for this.</p> <p>When mediation is assessed as not safe or not suitable, or a potential participant does not wish to pursue this, the mediator <i>must</i> not mediate.</p> <p>As per the Code of Practice: At 5.2.2 - Where it appears necessary so that a specific allegation that a child has suffered significant harm may be properly investigated, or where the Mediator suspects that a child is suffering or is likely to suffer significant harm, the Mediator <i>must</i> ensure that the appropriate agency or authority is notified. Wherever possible, the Mediator should make such a</p>	

	<p>notification after consultation with his or her PPC.</p> <p>At 5.2.3 - The Mediator may notify the appropriate agency if he or she considers that other public policy considerations prevail, such as an adult suffering or likely to suffer significant harm. Wherever possible, the Mediator should make such a notification after consultation with his or her PPC.</p>	
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This standard was particularly welcomed.

There are some specific comments on the wording of the Code of Practice which is replicated here in the proposed standards:

5.2.2 use of the term 'significant harm or likelihood of significant harm' is based on an assessment a Social Worker makes. Lay professionals can only raise concern about a child's welfare. Only mediators who have had specific training in child protection/safeguarding would have the skills and knowledge required to make such an assessment. The Children Act 1989 places specific duties on a Local Authority to provide protection services or support services to children, it is a duty for the Local Authority to assess whether a child is suffering or likely to suffer significant harm.

*5.2.3 - We are **required** under safeguarding legislation, to inform the appropriate authorities if we have concerns about a child or adults' safety - therefore the use of the word 'may' is misleading.*

One mediator emphasised the importance of alerting the LAA to this standard, saying it must be prioritised, and that the LAA's key performance indicators for mediators currently make no allowance for this (requiring a conversion rate to mediation of 40%).

Some respondents proposed that, as part of the safety and suitability assessment, mediators should also discuss the impact of other forums, including court, in compounding negative issues or re-traumatising victims/survivors of abuse.

4.	Determining next steps	
	<p>At a MIAM, the mediator <i>must</i> discuss and, where possible, identify with participants their next steps.</p> <p>Where the mediation process is assessed as safe and suitable, this <i>must</i> include preparing the potential participants for the mediation process.</p>	<p>When mediation is assessed as safe and suitable and the potential participant wishes to pursue this, the mediator is expected to:</p> <p>i. Determine the most appropriate model of mediation to use;</p>

	<p>Where mediation is not being pursued, this <i>must</i> include signposting to other dispute resolution processes, intervention or support.</p> <p>Due to the mediator’s obligation of confidentiality to all MIAM participants there <i>must</i> be only one reason declared for mediation not proceeding – that after review with both potential participants the mediator considers that mediation is not suitable.</p>	<ul style="list-style-type: none"> ii. Determine whether specific steps are needed to enable participants to take part on an equal footing; iii. Determine the best preparation to assist the potential participants; iv. Decide whether any safeguards need to be put in place; v. Explain the next steps to provide clarity to potential participant <p>Where mediation is not being pursued, and the mediator signposts to other options as required, the mediator is expected to:</p> <ul style="list-style-type: none"> i. Provide information on other out-of-court options, where relevant – the Guidance describes the range of potential other out-of-court dispute resolution services that may be available ii. Provide information about a court application including possible timings and its limitations, where relevant. <p>As per 1. above, in all instances the mediator is expected to provide MIAM participants with details of other relevant support services.</p>
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Several mediators commented on the standard requiring mediators to declare only one reason for not proceeding. One made the point that this should apply even if only one potential participant had been seen. Others asked whether this was intended to mean a public declaration, and whether the participants could be given more detailed reasons, and whether these more detailed reasons could be recorded by the mediator. Reflecting other comments, one mediator said that only saying ‘mediation is not suitable’ is not always possible in practice when talking to clients and gave the following example. *‘Having agreed at MIAM to mediate, one party may subsequently change their minds. In this instance it is clear to all concerned that mediation is suitable but is not going ahead.’* Another mediator said: *whilst I can see that informing participants that mediation is not suitable applies where we have met one or both and from our discussion with them mediation is not suitable. Is the response to be the same where we simply get no reply from the other party? Surely it makes sense to say we have not received a response. After all we have no real way of knowing if our contact reached the other person given that we often rely on party one for contact details.*

On the expectations and guidance, some comments were made as follows:

- How much detail would mediators need to provide of other support services? Is ‘you might want to consider counselling’ sufficient or do mediators need to provide information about where to find counsellors such as names and contact details?
- Similarly, ‘Likely cost’ of other forms of dispute resolution can be difficult to provide information on. Is generalising sufficient? E.g. “Arbitration could possibly be your most expensive option as it’s similar to having your own private judge and courtroom”.
- Should ‘An application to court’ include the option of being supported by a solicitor or doing this yourself?
- Should ‘models of mediation’ read ‘method’ or ‘approach’ instead? A ‘model’ might be read as meaning a facilitative / transformative / evaluative model whereas it may be that intended reading of the draft is meaning online, or shuttle mediation etc.
- Could the guidance contain more detail about how to ‘prepare’ clients and choice of mediation models/methods? It’s good to see these mentioned in the standards but there are no suggestions or proposals being put forward as to what ‘preparation’ might mean or look like.

5.	Costs and legal aid	
	<p>At a MIAM, the mediator <i>must</i> inform potential participants of cost of mediation and, where relevant, assess for legal aid eligibility in line with Legal Aid Agency requirements.</p> <p>Where a mediator ascertains that a potential participant is eligible for Legal Aid the mediator <i>must</i> inform the potential participant of this and offer the participant the opportunity to access Legal Aid either through the mediator’s own service (if the service holds a contract with the Legal Aid Agency to provide family mediation) or by referring the potential participants to providers which can provide mediation funded by Legal Aid.</p>	

Several mediators objected to the requirement to refer to a legal aid service, and argued that ‘signposting’ was a more appropriate word, given that the LAA require providers to retain their independence.

It was also argued that such signposting should take place when mediators are ‘likely to be eligible’ for legal aid as opposed to ‘eligible’ for legal aid as actual eligibility is best assessed by a mediator with a legal aid contract.

6.	Separate MIAMs	
	The mediator <i>must</i> conduct MIAMS for each potential mediation participant separately.	<p>The mediator is expected not to conduct a MIAM immediately following a meeting with any other person who may be a participant in the same mediation, unless conducted via a video call.</p> <p>The mediator is expected not to arrange MIAM which is to be followed immediately by a mediation session in the same case.</p>

This standard and expectation generated the most debate.

Some welcomed the move for separate MIAMs as one which protects clients:

Standard 6 which specifies that ‘The mediator must conduct MIAMS for each potential mediation participant separately’, and the first part of Section 6 of the Guidance are welcome. It is the experience of our members that the LAA is pressing for more meetings to be joint for the purposes of approving payment. This approach risks individuals being coerced into attending with an abusive partner. It is also the case that the thought of a joint meeting can be a deterrent to some respondents, who might otherwise attend and benefit from an individual meeting.

And

We expect mediators and other family justice professionals to carry out appropriate screening and make an assessment of risk factors in relation to safeguarding issues in relation to the protection of any child or adult from harm, understand coercive control as well as ‘violence’, and to be aware of what is going on in the background for families. Assessment of the capacity of the individuals concerned to take part in mediation and its suitability, with appropriate safeguards if necessary, for resolving their particular dispute is critical... We query whether the approach proposed in the consultation is necessary if acceptable processes are in place, and whether such will be workable and possible under legal aid contracts. But we agree that the safeguarding of vulnerable individuals is the most important factor and that, on balance, this approach should be taken.

However, some thought a ban was not necessary to ensure clients are protected.

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.*

Other arguments against a ban on joint MIAMs include the fact that mediation is a voluntary process of self-determination, that it puts a barrier in the way of clients who are amicable, and that it infantilises clients. Others make the point that joint MIAMs are useful for returning clients.

Mediators also argue that joint MIAMs, correctly used, are an excellent way of supporting successful mediation.

There was divergence among those mediators who supported separate assessments when it came to consecutive meetings. Those mediators who supported consecutive meetings made several arguments for these, including that it respects the autonomy of clients, there is no 'second party' to feel left behind or marginalised, it is more efficient for legal aid, and it offers more client choice. The strongest advocate for consecutive (but not joint) meetings said that her arguments were based on clients having a genuine, informed, opportunity to choose either way, and that she ensures this happens by having pre-meeting intake discussions with her clients before they attend a MIAM. Mediators who opposed consecutive meetings were concerned about the lack of physical and/or emotional space that clients were afforded in their MIAM.

Some mediators asked for more evidence that joint or consecutive MIAMs offered less protection for clients than separate MIAMs.

Few comments were made about the need for some 'cooling off' time between MIAMs and mediation, though those that were made were arguing for the retention of the option to arrange mediation immediately following a MIAM, again on the basis that this gave clients autonomy and reflected the fact that the mediation process was one of self-determination.

7.	MIAM format	
	<p>At a MIAM, the mediator <i>must</i> ensure that the mode and duration of delivery ensures that all MIAM Standards are fully met.</p> <p>The mediator <i>must</i> deliver the MIAM face-to-face, either in person or via an online video connection, where possible. MIAMs should not be carried out via voice only connections except where there are specific problems about meeting in person or access to an online video link. The mediator <i>must</i> record in writing what those specific problems are.</p> <p>Mediators are entitled to be paid for a MIAM and may therefore bring a meeting to a close if it becomes clear that the meeting will not be able to be funded, but the mediator <i>must</i> signpost to any steps that are necessary in order to ensure the safety of adults or children where relevant.</p>	<p>The mediator is expected to consider the most appropriate way to deliver a MIAM taking in to account the safety and accessibility of different approaches.</p> <p>The mediator is expected to deliver MIAMs that are of sufficient length to cover all compulsory elements of a MIAM, which would usually be at least an hour. If the MIAM is less than an hour, mediator is expected to record the reason for this.</p>

This standard drew very little comment. In contrast, the expectation that a MIAM last at least an hour and more specifically that mediator record the reason for any MIAM taking less than an hour generated considerable amount of concern.

There was concern about the legal aid agency only paying for MIAMs that lasted 45 mins, and a call for the FMC to argue that MIAMs rates should be increased so that LAA mediators could meet these standards.

For some, this was the only comment they wished to make on the entirety of the standards consultation. One mediator said: *My only comment on the new proposed MIAMs standards is that whilst they are generally helpful, the suggestion that MIAMs should always be an hour long is not appropriate. There are times when someone attends and is very adamant they do not wish to mediate for example, or may have had previous MIAMs or mediation and so fully understand the principles. It is unfair to expect all MIAMs to*

be an hour long. In contrast, another mediator (who had expressed lots of concerns about the other proposed standards) said the expectation was good as it allowed accredited mediators to use their wealth of professional experience and judgement.

Whilst some mediators said they covered everything in the draft standards in their MIAMs now, which lasted less than an hour, others said that doing everything listed would take far longer than an hour. Some said they provided information prior to the MIAM, including on the telephone, which shortened the length of the MIAM.

Many mediators argued that recording the reason for MIAMs being less than an hour was an unduly onerous requirement when it was likely that most of their MIAMs would be shorter than this.

Others said that the requirement to record the reasons for MIAMs being less than an hour seemed to doubt mediators' professionalism and that they should be trusted to ensure a MIAM is an appropriate length.

Some mediators made suggestions for amendments, requiring mediators to record reasons for MIAMs which were shorter than 30 minutes long, or requiring mediators to record the length of all MIAMs which could then be considered along with the PPC at the MIAM review.

8.	Inviting other potential participants to a MIAM	
	At a MIAM, the mediator <i>must</i> seek to ensure that all participants are given the opportunity to be consulted and involved in the MIAM process.	<p>After seeing a potential mediation participant, the mediator is expected to invite other potential participants to a MIAM except where:</p> <ul style="list-style-type: none"> a. the mediator does not have contact details for the second potential participant; b. in the professional judgement of the mediator, it is not safe or otherwise appropriate or suitable to do so. <p>If the mediator does not invite the second potential participant to a MIAM, the mediator is expected to record the reason for this.</p>

This standard and the related expectations generated a lot of debate.

A large number of mediators felt that to invite a second participant to a MIAM against the wishes of the first participant was inappropriate. This draft standard was described by one mediator as 'absurd' and another as 'ridiculous' in cases where the first party to attend a MIAM has made it clear that they do not want to mediate.

Many mediators argued that the proposal breached the principles that participation in mediation was voluntary and enabled self-determination, and that the mediation process was confidential.

Some mediators argued that second parties would feel that mediators have wasted their time and their money inviting them to a meeting and then meeting with them when they already know that mediation is not suitable (and pointed out that as per standard 4 this is the only reason they will be able to give for mediation not proceeding). Mediators felt this would be fraudulent or unethical, and would result in numerous complaints.

Others said the LAA would not pay for a second MIAM where the first participant has said they will not mediate.

A smaller number of mediators robustly defended this proposal.

One said: I believe we should be doing all we can to meet with both parties; I was surprised to hear some of the difficulties some people experience around getting C2 in. I always explain to clients at the outset that I am required to invite them both to book in for their independent and confidential Information and Assessment meeting even if it appears that mediation is not likely to take place. They are both entitled to receive the information and signposting we can supply and there is always the possibility that you build rapport and trust and they may well loop back into mediation in the future. There is also the issue of impartiality, how can we say we are impartial if we listen to one person's perspective and then do not offer the same opportunity to the other. How can they trust us if the court then orders C2 to book in for a MIAM and that person feels we kept them out of the loop?

Those in favour of the proposed standard and expectation felt that every party to a referral should have the same opportunity to receive information as this creates parity and allows each party to understand their options. Others pointed to the Practice Direction on MIAMs, saying mediators did not have a choice and that they had to invite the second party to a MIAM.

One mediator suggested adding to the guidance a section on engaging the 2nd potential participant's attendance at a MIAM, where the MIAM with the 1st has not found circumstances unsuitable for mediation.

Proposals for additional content in the standards/expectations/guidance

- A requirement for the same mediator to conduct both MIAMs, and the mediation
- What happens in a situation of transfer from one mediation company to another when a MIAM has taken place
- Can FMC standardise the charging for a MIAMs appointment to help mediators compete fairly?
- Can the guidance include how to deal with requests for court forms to be signed where more than three months have passed since the end of mediation / last MIAM?
- Include a brief history of MIAMs in the Guidance
- More guidance about confidentiality pre-MIAM
- Guidance on conflicts of interest
- The importance of engaging the second participant well, which can result in a high conversion rate to mediation, should be emphasised

Assurance Processes

Mediators who responded to proposals on assurance tended to comment only on proposals 3 and 4 (client feedback and data collection).

Mediators' responses about standards and assurance processes were sometimes contradictory. Some wanted the standards to 'have teeth' and to be 'policed' at the same time as calling for standards 'not being too prescriptive' and 'trusting' mediators to be professional. Others wanted 'rogues' to be caught but are reluctant to provide information on their own compliance due to the onerous nature of this. Some mediators were concerned that assurance processes would be properly complied with by mediators who were delivering high quality MIAMs but that those who were not delivering these would not properly comply with assurance processes, or would deliberately falsify records to demonstrate compliance.

The issue of whether a MIAM (which is primarily an art of being able to listen and engage) can be measured by a tick box exercise was reflected in some consultation responses.

In one Zoom consultation, it was clear than most mediators didn't object in principle to the proposals, but were concerned about the additional administrative burden of reporting particularly for very small practices or legal aid providers who already operate on tight margins.

Comments on Specific Elements

1. Basic Principle: Mediators must demonstrate through the accreditation process their internalisation of the professional approach to standards in delivering MIAMs	The rigorous, extensive, demanding and peer-reviewed processes for training and accreditation that are already in place (as described above and set out in Appendix 1) ensure that high quality MIAMs are delivered by mediators with an inherently professional approach.
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Mediators were generally supportive of this proposal.

Some suggested that training, accreditation and re-accreditation processes needed strengthening and made specific suggestions of how this could be done.

2. Mediators must submit to the FMSB an annual 'Declaration of Compliance', signed by Mediator and PPC, confirming they meet the MIAMs Standards. The PPC's declaration must be based on an annual review of compliance with MIAMs standards, conducted with the mediator.	Part of the mediator's required individual PPC support time each year should be used to review the mediator's practice at MIAMs/pre mediation meetings, allowing the mediator and their PPC to check the mediator's compliance with the standards. Guidance will be developed to help mediators and PPCs adopt a constructive approach to this. It is likely that this will include discussion, file review and a review of MIAM attendee feedback. PPCs may decide that an observation would be helpful, but it is not intended that this form part of the review process in every case.
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The purpose of the PPC review was questioned, with some mediators saying clarity was needed regarding this, but some PPCs themselves welcome the provision as providing more direction to their role.

One PPC said that extra duties for PPCs will necessitate an increase in the minimum PPC hours requirement and suggested a minimum of 1.5 hours per quarter for each mediator. Another respondent asked for this review to be within the 4 hour annual requirement so that mediators do not incur extra costs.

Two alternative suggestions were made:

- that all mediators sign an Agreement with the FMC to have a 'core pack' of information that they agree to provide at MIAMs (in writing to clients) e.g., costs, principals, signposting, screening etc, and as part of the annual registration process mediators confirm their compliance.
- that MIAM compliance be checked when renewal of accreditation takes place, once every three years as part of a much more comprehensive process (like portfolio submission for accreditation).

<p>3. Mediators must invite feedback from MIAM attendees and review this annually.</p> <p>Records of all responses, and the proportion of responses received, should be retained and made available to the FMSB on request.</p>	<p>If a purpose of a MIAM is in part to share information with a participant, it is important to seek feedback to ascertain whether this has been achieved.</p> <p>Although many participants won't provide feedback, those that do may provide the mediator and their PPC with a useful barometer of whether one of the objectives of the MIAM has been achieved.</p> <p>It may be the case that people who feel they have had bad experiences are more likely to provide feedback than those who feel they have had a positive experience, and this should be borne in mind. Nevertheless, negative feedback may provide useful opportunities to develop a mediator's practice.</p> <p>The FMSB will develop a standard feedback form that mediators will be required to send to MIAM participants after completion of a MIAM.</p> <p>The feedback forms can form a useful part of the mediator's annual review with their PPC.</p> <p>The FMSB may ask to see completed feedback forms from time to time.</p>
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Of the four specific proposals about assurance, this received the greatest response from mediators and it was overwhelmingly negative.

Mediators felt it was an unnecessary administrative burden, they would not receive many forms back, and that the feedback that was received was likely to be negative as it would only be completed by dissatisfied clients.

Others felt feedback should be invited at the end of the process and it would be inappropriate to invite feedback from clients whilst mediation was due to (or might) go ahead.

Some other respondents asked to see the proposed feedback forms.

<p>4. Mediators must record key MIAM data and report this to the FMSB</p>	<p>The FMSB will set out the data to be recorded, which will need to be reported on an annual basis. The FMSB will develop a template for recording and reporting this information, and will aggregate this data.</p> <p>The data to be recorded includes:</p> <ul style="list-style-type: none"> • Number of MIAMs taking place <ul style="list-style-type: none"> ○ Proportion resulting in mediation ○ Proportion referring to other NCDR ○ Proportion where court forms signed • Average/Range of Duration of MIAMs • Proportion of In-person/Online <p>The data relating to next steps for MIAMs participants will not be defined in terms of ‘successful’ outcomes i.e. continuing to mediation, as mediation will not be suitable in every case. However, very high or very low conversion rates, which vary significantly from national rates, is a factor that a mediator and their PPC should take in to consideration when conducting an annual MIAM review.</p>
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Mediators were primarily concerned about the time and costs which they would incur in collecting and providing such data. Others were concerned that this was sensitive and confidential business information.

Those who provide legal aid argued for consistency with the data collected for LAA purposes; others urged for integration with IT systems widely used by mediators.

Alternative idea for assurance

One part of this is mediators who provide low cost, incomplete MIAMs to those who ‘just want a certificate to go to court’. This could be addressed by monitoring advertising and doing some random phone calls rather than developing an ‘assurance process’ which creates an additional workload for 1,000 mediators on the basis of the poor practice of half a dozen. This is a sledgehammer to crack a nut.

Areas for Further Work

In light of these responses the areas on which the FMSB's MIAM working group is undertaking further work are:

- whether more emphasis can be placed on professionalism
- whether joint MIAMs should be banned
- the need to record the length of the MIAM
- the circumstances in which a second party should be invited to a MIAM
- the need to ensure that the introduction of the new requirements does not place an undue burden on mediators.

The working group is also looking carefully at the detailed suggestions made, as well as the language used throughout.