



Standards for Mediation Information and Assessment Meetings (MIAMs)

Introduction

Historical and Legal Context

The primary purpose of the MIAM derives, historically and legally, from the introduction of legal aid for family mediation by the Family Law Act 1996, subsequently incorporated into the Access to Justice Act 1999 (s 11). Because the FLA 1996 recognised the principle of voluntary participation in mediation, it introduced the requirement that applicants for legal aid for legal representation attend a pre-mediation meeting to determine suitability for mediation. This involved screening for domestic abuse, serious power imbalances, incapacity of various kinds and child protection concerns (FLA 1996 s. 29 (3F) (a)). This pre-mediation meeting was extended to fee paying participants under the Pre-Application Protocol 2011 and renamed the Mediation Information and Assessment Meeting (MIAM). Attendance at the MIAM first became compulsory for all applicants (self-funding and legally-aided) in legal proceedings under the Children and Families Act 2014 (s 10). These Standards and the accompanying Guidance therefore apply to all forms of introductory meetings carried out by registered family mediators.

The development of MIAMs standards and assurance is taking place in the context of wider consideration of the FMC's Standards Framework to reflect several interconnected themes:

- Understanding how family mediation defines itself as a profession;
- The way in which standards are defined in light of this;
- The consequential approach to assuring performance against the standards.

Professionalism

Overarching the practice of MIAMs is the professional context of family mediation. Practitioners work within an ethical and principled framework of professionalism wherein experienced mediators can use their professional judgement to meet the needs of participants. The essence of professionalism is that the practitioner has learned, and applies, the standards of performance and

behaviour, thereby consistently delivering high quality practice. This calls for standards to be defined in a way that permits the exercise of professional judgement – rigorous statements of objectives and required outcomes, with appropriate flexibility about the manner of achievement. Assurance, therefore, is primarily a matter of demonstrating the attitudes, behaviours, skills and knowledge that give a rounded account of professional practice, rather than adherence to rigid protocols (e.g., through checklists or tick-boxes).

The development work on MIAMs has pioneered this approach in family mediation. The result is a presentation in the form of Standards specifying a rigorous framework of well-defined mandatory outcomes (the ‘whats’) and a limited number of normative statements about excellent delivery (the ‘hows’), backed up by the accompanying Guidance document. Mediators will conduct MIAMs informed by their understanding of and compliance with those Standards.

These two elements result in an ethical and principled framework, within which experienced mediators can use their professional judgment to meet the needs of their participants. Accountability is maintained through the application of the FMSB’s full regulatory framework as described in the Assurance document.

High standards are required for MIAMs to:

1. ensure consistency in delivery,
2. ensure protection of the public,
3. protect ethical practice based on the principles of mediation,
4. establish reliable suitability for mediation.

Terminology

Standards state mandatory requirements, and any non-compliance by a mediator would be a professional breach, hence the use of “Mediators Must... “. Any mediator whose practice departed from that described in these Standards may be subject to professional challenge, and such mediators would need to demonstrate how the Standards were being met to the fullest extent.

The practice Guidance amplifies and clarifies how best to achieve excellence in attaining and maintaining standards.

Scope of Standards

For clarity, these Standards apply equally to all pre-mediation meetings, whether the participants are attending spontaneously and voluntarily or as a requirement to attend prior to issuing court proceedings. In all cases the objectives of these meetings are the same – to provide 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, and for mediators to assess the suitability of mediation for the participants.

Summary

At a MIAM, mediators must achieve the following outcomes:

1. Provide participants with sufficient information about mediation and other dispute resolution processes to enable them to make informed choices about how to resolve the issues they raise;
2. Obtain information from participants about their circumstances and issues arising from separation;
3. Assess the safety and suitability of mediation for the participants;
4. Discuss and, where possible, identify with participants their next steps, including the value of seeking legal advice.

Normative Conduct:

5. Mediators must ensure that meetings are conducted in ways that enable these outcomes to be achieved.

STANDARDS	
	Purposes and Objectives of MIAMs
	These Standards specify the outcomes that mediators are required to achieve, with a limited number of requirements about processes for doing so. As described above, a MIAM is an opportunity for potential participants to learn about mediation and other dispute resolution processes so that they can make informed choices about how best to resolve issues arising from separation, and for mediators to assess the suitability of mediation for the participants, and to signpost them to other services. A MIAM is not an opportunity simply to comply with a requirement of a Court, though a properly conducted MIAM will certainly achieve that purpose.

MIAMs OUTCOMES STANDARDS	
1.	Providing information
	<p>Mediators must share with participants sufficient information about mediation, likely costs and other dispute resolution processes to enable them to make informed choices about how to resolve the issues they raise.</p> <p>Mediators must include:</p> <ul style="list-style-type: none"> • the mediation principles as set out in the FMC Code of Practice • the mediation process, and the benefits and challenges of mediation • the suitability of mediation and other out-of-court ways of resolving issues arising from separation • other appropriate support services and information relevant to the potential participants' needs • the likely costs of mediation • the position on legal aid for mediation • the value of legal advice in all cases and the particular importance of this where issues arise relating to the safety of an adult or child, or it appears to mediators that delay in seeking legal advice would be detrimental to the MIAM participants. <p>Where relevant, mediators must also provide information about:</p> <ul style="list-style-type: none"> • the impact of separation and parental conflict on children (to include protective and risk factors regarding children's wellbeing), the importance of a child-focused separation, and parenting post-separation, including co-operative parenting • child-inclusive mediation, where there are children of the family who are or may be capable of participating in the process • how financial matters are dealt with in mediation and the necessity of providing full and frank financial disclosure • what to expect from the next stage in the process and the likely timescale • other support, including legal advice or therapeutic support for either parents or child(ren)

	<ul style="list-style-type: none"> any other services available to support the potential participants, including co-parenting, housing, financial information, debt services and domestic abuse support services.
2.	<p>Listening & obtaining Information</p>
	<p>For accurate assessment, signposting and consideration of appropriate options, mediators must obtain information from participants about their circumstances and the issues arising from separation; and in order to build the necessary rapport mediators must give potential participants both the time and opportunity to be heard.</p> <p>Mediators must obtain sufficient information about the relationship before and after separation, how potential mediation participants are likely to behave towards each other in a mediation meeting and afterwards, and the impact on any children of a mediation process, in order to assess safety and suitability for mediation.</p> <p>Mediators must clarify if other professionals are involved with the family and, if appropriate, discuss with the potential participants whether and, if so, how it might be helpful in this context for mediators to liaise with the other professional(s).</p>
3.	<p>Assessing safety and suitability for mediation</p>
	<p>Mediators must assess the safety and suitability of mediation for participants at a MIAM.</p> <p>The following factors must be taken into account:</p> <ul style="list-style-type: none"> Domestic abuse of all kinds including physical abuse, coercive and controlling behaviour, emotional or psychological abuse, financial abuse, sexual abuse Drug or alcohol addiction Child abuse, or any other child protection and safeguarding concerns Any other vulnerability such as physical or mental health challenges or intellectual capacity that may impact on participants' capacity to engage in the mediation process or their safety The emotional readiness of the MIAM participants to engage in mediation and its likely impact on their effective participation in the mediation process. <p>Mediators must consult their Professional Practice Consultants (PPCs) if they have any doubt about whether mediation will be safe and suitable for potential mediation participants</p>

	<p>and must record the reasons if mediation is deemed suitable (see Code of Practice: s5.2.2). Where mediation has been assessed as not safe or not suitable, mediators must not mediate.</p>
4.	<p>Determining next steps</p>
	<p>It is important that MIAM participants each leave the meeting with a clear idea of their next steps. In order to achieve this, mediators must:</p> <ul style="list-style-type: none"> • Identify with participants options for their next steps • Prepare the potential participants for the mediation process if mediation is suitable and safe • Signpost participants to other services, legal advice, interventions or support whether or not mediation is proceeding • Mention significant time scales when appropriate. <p>Where mediation is proceeding, mediators must determine, after consulting participants, which model of mediation is appropriate.</p> <p>Where appropriate, mediators must assess for legal aid eligibility in line with Legal Aid Agency requirements, or signpost participants to another service offering Legal Aid if their own service does not.</p> <p>Mediators must obtain the written consent of participants if other professionals are to be contacted.</p> <p>Due to mediators' obligation of confidentiality to all MIAM participants, mediators must not share any information received during a MIAM with anyone other than the participants who shared this information. This means that, if MIAMs with both potential participants have taken place and mediation is not proceeding, the only reason mediators must give to other participants, the court, or any other third party is that mediation is not suitable at the present time.</p> <p>Mediators must signpost participants to next steps that are necessary to ensure the safety of adults or children where relevant, even if it becomes apparent during a MIAM that the MIAM cannot be paid for.</p>

	STANDARDS OF CONDUCT OF MIAMs
5.	Practical arrangements and normative conduct
	<p>In order to achieve the specified outcomes mediators must make practical arrangements and must conduct themselves in ways such that:</p> <p>Practical Arrangements</p> <ul style="list-style-type: none"> • the mode of delivery is safe and efficacious – mediators must deliver the MIAM face to face either in person or via an online video connection; and if a voice-only (telephone) connection is the only option, record the reasons; • sufficient time is given to cover all the key areas described in these Standards – as it is unlikely that they can be covered effectively in less than an hour, mediators must, if the MIAM lasts less than 45 minutes, record the reasons why; • suitable conditions are created to permit the exploration of issues of abuse, exploitation and safeguarding without either participant being able to influence the other – MIAMS must therefore be conducted separately with each participant; and there is a strong presumption against immediately consecutive meetings whether in person or online from the same home, with the consequence that mediators must demonstrate and record how any such practice has been delivered safely; • all possible steps are taken to give both participants the opportunity for a MIAM – mediators must therefore seek to invite both participants to separate MIAMs unless the mediators do not have contact details for the other participant or in the professional judgement of the mediators it is not safe or otherwise appropriate to do so; and if potential participants are not invited to attend a MIAM, record the reason; • participants have time to process the outcomes of the MIAM – this creates the presumption that substantive mediation must not normally follow immediately after a MIAM (though administrative matters can be addressed immediately) but, if it does, mediators must demonstrate that there are strong reasons for so doing and record these reasons; <p>Normative Conduct</p> <ul style="list-style-type: none"> • mediators practise active listening while allowing participants to tell their stories; • mediators use sensitive and appropriate questioning to identify and understand the issues.