

Standards, Guidance and Quality Assurance

# MIAMS

ALEXIS J WALKER FMCA 0871A FMSB MEMBER  
PRESENTATION ON BEHALF OF FMSB  
SEPTEMBER 2022



# GATEWAY TO MEDIATION



# CONTEXTUAL LANDSCAPE FOR REVIEW OF MIAM STANDARDS

The Private Law Working Group Report to President of the Family Division November 2019 on a review of the Child Arrangements Programme

The Second Report June 2020

The Family Solutions Group Report November 2020

# COMMENTS FROM THE PRIVATE LAW WORKING GROUP'S REPORTS

“We acknowledge that the MIAM has not been, and is currently not, effective in steering families away from the court. We recognise that MIAMs are not widely seen by would-be applicants, and some legal professionals, as providing the valuable opportunity (which they are) to explore out-of-court dispute resolution but are regarded as an inconvenient obstacle to bypass to reach the court door.”

“It is important that we should consider ways to make MIAMs work”

“MIAMs are mandatory in our private law applications process, and it is important that we should consider ways to make them work. That is not to say that we do not recognise the obvious challenges of breathing new life into the MIAM activity”.

“In practice these are more than just mediation assessment meetings and they should be seen as valuable to parents, whether or not they choose mediation”

“In practice we know that the legislative requirements have not been uniformly followed across the country and many applications are issued without evidence of either MIAM attendance or exemption”

# PROPOSALS FROM THE PRIVATE LAW WORKING GROUP'S REPORTS

Several proposals made:

1. “..the ‘invitation’/direction to applicants to attend a MIAM should contain a more encouraging, positive, and child-focused message underlining the benefits to parents and their children of NCDR;“..
2. “The MIAM must be presented in a more positive and child-focussed way if it is to improve the chance of engaging parents in less conflictual resolution methods”.
3. Improved messaging information to the public (information on C100 plus accompanying information in place already)
4. “The quality of the delivery of MIAMs should be more rigorous monitored and consistently maintained. All MIAMs should follow a set pattern .. It should be much more widely acknowledged that a MIAM is a pre-mediation, pre-court discussion to give parents the chance to consider their options in a child-focussed way.”

# PROPOSALS FROM THE PRIVATE LAW WORKING GROUP'S REPORTS

“ .. a MIAM needs to be a confidential face-to-face meeting with the parent on his/her own, regardless of the suggestion in the original legislation that a MIAM might be conducted as a joint meeting.”

“Rapport, privacy and safety are essential elements of a MIAM if there is to be any prospect of effective screening.”

“This cannot take place at a joint MIAM, hence the requirement for separate MIAMs”.

DA screening needs time for a proper assessment to be undertaken by the mediator. Information may need to be given for signposting or referring on to other agencies; discussion on the best model for mediation, joint or shuttle, how the session will be managed by the mediator, re-assurances given.

“There is much ground to cover in a MIAM if it is done properly, and an hour's face-to-face meeting with each party is required”.

# PROPOSALS FROM THE PRIVATE LAW WORKING GROUP'S REPORTS

## DOMESTIC ABUSE & DELIVERY OF A MIAM

To remove the option of a joint MIAM so that time and privacy is given at every MIAM for proper screening to take place;

To require a mediator to consider whether there are alternative models of mediation which could create a safe process for mediation to take place if, and only if, the client is willing.

The issue of domestic abuse should always be kept under review and, at any stage, the mediator may need to form a professional opinion as to whether it is appropriate to continue with mediation or to terminate it immediately

to ensure that separate waiting spaces are available or other arrangements made as needed to ensure safety on arrival and departure from mediation

*The Family Mediation Standards Board to look again at steps to ensure quality delivery across the mediation profession, to include, amongst other requirements, that mediators complete regular CPD on identifying domestic abuse in assessment meetings including the use of validated tools for screening, and that only mediators specifically trained in the risks of screening via online video connection carry out online MIAMs by video conferencing*

# PROPOSALS FROM THE PRIVATE LAW WORKING GROUP'S REPORTS

“..we need to retain data on how many MIAMs take place, how many MIAMs result in NCDR, and how many court forms are signed”

“ ..current statistics do not include the non-Legally Aided MIAMS “

Need figures to establish the conversion rate to mediation.

**Reliable data is needed**



# FAMILY SOLUTIONS GROUP REPORT

Early intervention; early face to face meeting with a professional; early assessment of needs; signposting; information

Divert from court

Change mindset from dispute to child and goal focused, co-operative parenting

# FAMILY SOLUTIONS GROUP REPORT

Domestic abuse needs a Defined Pathway

No DA - a whole review of needs of families, services for children and parents, including legal, conflict resolution, psychological etc.

Focus on children, co-operative parenting, child's wellbeing, impact of parental conflict on children, future focus

Damage to children of parental conflict

Presumption of Children's rights to contact

CIM UNCRC S12 – child's right to be consulted

# FAMILY SOLUTIONS GROUP REPORT

Focus on positive parenting

Holistic approach

FAMILY MEDIATORS ARE BEST PLACED TO DELIVER THIS MEETING DUE TO THEIR PROFESSIONAL SKILLS.

Active listening, building rapport quickly, remaining impartial, distinguishing between legal and general information and providing information in a mutually beneficial way, emotionally supporting client

Good understanding of relevant theories e.g. conflict theory, attachment theory, child development, domestic abuse, good communication.

# WHAT IS A MIAM

Statutory MIAM – before court application

Explore using mediation – self referral

Stuck and exploring options

*AIMS ARE THE SAME: SAFE AND CONFIDENTIAL SPACE; ASSESSMENT OF SUITABILITY;  
OPTIONS TO BE IDENTIFIED*

# PURPOSE OF NEW MIAM STANDARDS

1. Maintain consistent delivery of high quality best practice
2. Ensure protection of public
3. Protect ethical practice based on the principles of mediation
4. Establish reliable suitability for mediation

# PROFESSIONALISM

Family Mediation is a profession

Mediators work within an ethical and principled framework of professionalism which allows us to use our professional judgement to meet the needs of participants

The essence of professionalism is that the practitioner has learned and applies the standards of behaviour, enabling a consistent delivery of high quality practice.

Miam Standards allow mediators to exercise that professional judgement

Objectives and outcomes are stated but the manner of achievement is flexible

# WHATS AND WHYS

The Standards set out a framework of well defined mandatory outcomes (Whats)

The Standards set out a limited number of normative statements about delivery (hows) backed up by the Guidance Document

Accountability is maintained as described in the Assurance Document

# CHANGES

**MUSTS** - the rules are mandatory, therefore noncompliance would be viewed as a professional breach . They are open to professional challenge which mediators would need to address and explain how standards are being fully met.

Standards need to be read in accordance with the guidance.



# OUTCOMES

1. Provide information
2. Obtain information
3. Assess safety of and suitability for the participant
4. Identify next steps

*MIAMS MUST BE CONDUCTED IN A WAY TO ACHIEVE THESE OUTCOMES AND IS NOT AN OPPORTUNITY TO SIMPLY COMPLY WITH A REQUIREMENT OF THE COURT, ALTHOUGH A PROPERLY CONDUCTED MIAM WILL ACHIEVE THAT PURPOSE.*

# PROVIDE INFORMATION

Provide information about mediation – principles, process, benefits, challenges, costs, timescales

Needs of children – co-operative parenting, child focused separation, impact of parental conflict

CIM

Legal Aid (as appropriate)

Mediation Voucher Scheme (appropriate)

Handling of Property & finance matters including full & frank disclosure

Other support & signposting

Value of legal advice

# GATHERING INFORMATION

Focus on Mediation skills :

asking appropriate questions to ascertain the facts

building rapport by active listening,

valuing responses

remaining non-judgemental

building trust to enable a participant to feel he/she can open up to you

Providing time and space for talking and listening

# ASSESSING SAFETY AND SUITABILITY

Is there any DA and will it cause undue distress and affect discussions

Be alert to behaviours indicative of DA

Can they disagree, challenge, speak up for themselves without feeling threatened, intimidated or worried about reprisals either during or after mediation

Issues with Drug or alcohol addictions

Issues of child protection or other safeguarding concerns

Any other vulnerabilities present such as mental health, intellectual capacity, disability, emotional readiness

Support of others to attend the mediation

# IDENTIFYING NEXT STEPS

Mediation is proceeding

How? Shuttle / joint / Face to Face / online

Timescales

Any special arrangements re arrival times / waiting areas/ focus on ground rules / staggered leaving times / another present either before, during or after / co-mediation

Prepare participant for mediation

Preparing participant for the other refusing a MIAM or declining mediation after MIAM

# IDENTIFYING NEXT STEPS

Mediation is not proceeding:

Other options including both in and out of court with brief descriptions and any other details regarding costs and timescales

Signpost where appropriate

Provide signed court form where appropriate

Manage expectations

**ASSESS IF SAFE TO NOTIFY EITHER PARTICIPANT THAT THE OTHER ONE IS NOT WILLING TO ATTEND. ANY REASON GIVEN IS CONFIDENTIAL AND NOT TO BE DISCLOSED**

# CONDUCT OF A MIAM

Safe and efficacious delivery – either online or in person. Record on file if telephone MIAM

Covering key areas in Standards will require time, the optimum is 60 minutes. Record on file if less than 45 minutes

Proper exploration of DA, safeguarding, exploitation requires each participant to be free to speak without the influence of the other. MIAMs must be conducted separately with each person

Strong presumption against consecutive MIAMs in person or online if in same home. Mediator will need to demonstrate and record on file how such practice is safely delivered. Not suitable for a trainee

# CONDUCT OF A MIAM

Provide the same opportunity to both participants unless it is a professional judgement of the mediator it is not safe or otherwise appropriate to do so. If second participant is not invited to a MIAM, record the reason on file

Allow participants sufficient time to process the outcomes of the MIAM

Strong presumption against a substantive mediation following a MIAM, and if arranged in this way, the mediator must demonstrate any strong reasons for so doing and record these on the file. Not suitable for a trainee

Request for a consecutive MIAM – not suitable for a trainee. FMCA needs to carry out checks, offer alternatives and undertake a risk assessment. A risk assessment in this situation cannot be undertaken by anyone else other than a FMCA mediator



# QUALITY ASSURANCE

Context of wider consideration of FMC's standards to reflect interconnected themes:

Understanding how family mediation defines itself as a profession

The way in which standards are defined in the light of this

The consequential approach to assuring performance against the standards

# QUALITY ASSURANCE CONTROLS

Controlled entry to the profession including a Good Standing Test

Rigorous Foundation Training

Development of skills and experience

Formal mediation accreditation

# QUALITY ASSURANCE MONITORING

Regular self certification – annual registration

Re-accreditation every three years – ensuring standards for CPD, PPC supervision and ongoing professional practice, including specific reference to MIAMs.

Professional supervision by PPC

# QUALITY ASSURANCE MONITORING

## **Investigation and control of registration :**

In response to complaints or other indications of a substandard performance, FMSB has the power to investigate mediators' practice

As appropriate it has the power to qualify, suspend or terminate their registration

FMC has recently strengthened FMSB's powers in this area to ensure resources available for non-compliance with Standards including those relating to MIAMs.

# NEW MIAM STANDARDS

Here to stay

Will evolve and be subject to review as appropriate

Validates the good practice of many mediators already

Ensures consistency in delivery

Ensures those FMCA mediators who are not practising to this high quality practice are found out and encouraged to work with us or leave.

Re-affirms and enhances the professional status of mediators in the general family legal community

# NEW MIAM STANDARDS

Maintain consistent delivery of high quality best practice

Ensure protection of public

Protect ethical practice based on the principles of mediation

Establish reliable suitability for mediation

# NEW MIAM STANDARDS

First race won  
Not there yet!

