



**Ministry of Justice - Supporting earlier resolution of private family law arrangements:  
A consultation on resolving private family disputes earlier through family mediation**

**FMC Key Messages**

**26 May 2023**

1. **Encouraging Non Court Dispute Resolution (NCDR)** We strongly support the policy objective of encouraging separating families to pursue mediation – including Child Inclusive Mediation - and other forms of NCDR, and to do so early in the process – this will lead to better outcomes for families and reduce the pressure on family courts.
2. **Parenting programmes to support families** We strongly support the aim of encouraging the use and availability of parenting programmes at an early stage and streamlining the referral and use of them as an adjunct to NCDR processes.
3. **Culture change to consensual solutions** We welcome the MoJ's intention to change the culture in the family justice system, strengthening expectations in favour of consensual solutions: this will require a concerted effort to educate, inform and enlist the support of all agencies and bodies across the family justice system and to promote widespread understanding across society as a whole.
4. **Confidence in family mediation delivered by FMC Registered mediators** We welcome the confidence shown in family mediation conducted by FMC Registered Mediators as a highly effective form of NCDR, and the desire to increase uptake: justified by the data from the Legal Aid Agency and the Family Mediation Voucher Scheme on family mediation's effectiveness, international evidence, and by the strength of FMC regulatory principles.
5. **Voluntary participation** The effectiveness of family mediation derives from it being undertaken and completed voluntarily by both participants: successful mediation builds on the commitment and readiness of the separating partners. Voluntary participation is a central tenet of family mediation and is enshrined in both the FMC's Code of Practice and in its Standards; any departure from this principle would fundamentally contradict the essence of mediation. The non-partisan approach mediators take promotes the capacity for self-determination and ownership of outcomes which are more sustainable in the long term.  
Compulsion to mediate:
  - a. Would undermine the essence of mediation; and
  - b. Is unlikely to be effective in achieving the underlying policy aims and delivering successful outcomes.

6. **Compulsory Mediation Information and Assessment Meetings (MIAMS)** MIAMs are distinct exploratory meetings. They are not mediation. A requirement of participation by both potential parties to a court application in a MIAM would not infringe the voluntary participation principle. If the parties cannot agree to proceed to mediation, or if mediation is not suitable there will be no mediation and the issue of voluntarism will not arise.
7. **Encouraging parties to adopt Mediation** Changes in policy and practice can encourage the early uptake of mediation and improve its capability to help separating families, developing MIAMs further as the gateway to family mediation by:
  - a. Requiring both individuals to attend a MIAM to explore options for NCDR;
  - b. Stronger monitoring and enforcement of existing requirements on the courts to assure themselves that potential parties to a court application have tried NCDR in any form; and
  - c. Tightening up the Family Procedures Rules (see the parallel consultation response from the FMC) to reduce MIAMs exemptions and encourage participation at any stage of the separation.
8. **Standards for MIAM delivery** Mediation is the only profession that has specific training and standards for MIAMs; only fully accredited mediators (FMCAs) are trained specifically to conduct MIAMs and permitted to do so. Their professional practice is bound by clear and rigorous FMC Standards that emphasise their role in sharing information, assessing readiness for resolution, and screening for any form of abuse. FMCAs are required to explore all forms of dispute resolution, not only mediation. The skills required to recognise domestic and child abuse are a key component in the training of mediators, and maintaining them is a required element in the continuing professional development of FMCAs, such that with a high level of awareness and suitable safeguards mediation can still be safe and successful.
9. **Confidentiality and Impartiality** The Code of Practice and Standards for FMC Registered Mediators require confidentiality and impartiality in MIAMs and any subsequent mediation: any breach of these principles is professionally unacceptable and subject to disciplinary action by the FMC. It is therefore inappropriate for mediators to be required to make judgements about participants' conduct, for example by advising a court whether there has been a 'reasonable' attempt to mediate. However, a purely factual statement would be appropriate (e.g stating whether a person has or has not attended a MIAM or mediation session).
10. **Affordability of Family Mediation** Accessible and affordable family mediation is required to deliver the policy objectives. Funding systems need to complement each other. The Voucher Scheme has been significant in encouraging the considerable expansion of publicly funded family mediation. However, it is legal aid that enables mediation to be accessible to those on the lowest incomes, and higher rates of remuneration for this are essential to ensure that legally aided mediation is sustainable. Child Inclusive Mediation must be another priority area for funding, so that the voice of children can be heard irrespective of their parents' finances.