



## Good Practice Guidance for Mediation Information and Assessment Meetings (MIAMs)

This document accompanies the [MIAM Standards](#) which are incorporated as section 7 in the FMC Manual of Professional Standards and Self-Regulatory Framework.

1.	Providing information
	<p>Ahead of a MIAM, it is good practice for Mediators to:</p> <ul style="list-style-type: none"> <li>• confirm whether a participant may be eligible for legal aid and if so, then:             <ul style="list-style-type: none"> <li>○ if the provider offers legal aid, confirming with participants any information they need to provide at/ahead of the MIAM in relation to eligibility;</li> <li>○ if the provider does not offer legal aid, alerting the participant to the possibility they may be eligible for legal aid and signposting the participant to a legal aid provider should they wish to consider this option.</li> </ul> </li> <li>• confirm the cost of the MIAM if participants are not eligible for legal aid and how any MIAM will be funded;</li> <li>• manage potential participants' expectations by providing them with information about what to expect at a MIAM;</li> <li>• have an efficient system in place to be able to respond to enquiries from potential clients as soon as possible;</li> <li>• think about and review with their PPC the information provided to potential participants before the meeting, and the order and manner in which it is given. This includes how and when information is given through their website, social media, and reception staff.</li> </ul> <p>Mediators may be asked if potential participants are exempt from a MIAM. Mediators should not give legal advice, including whether people can claim exemptions to attending a MIAM.</p> <p>Mediators can provide links to details of the exemptions (e.g. <a href="#">gov.uk here</a>) and information about how to obtain legal advice on whether they are exempt from attending a MIAM.</p>

It is good practice to start a MIAM by setting out how long the MIAM is expected to last and what it entails. Explaining the principle of confidentiality and the exceptions to it ensures that potential mediation participants are aware of confidentiality constraints before they choose what to say. Knowledge of voluntary participation is more, rather than less, likely to encourage a positive attitude in a participant considering the option of mediation, so it is good practice for mediators to clarify the principle of voluntariness after discussing confidentiality; to explain the compulsory MIAM element should there be a proposed application to court; and that both participants need to be willing to attend mediation for it to proceed. In the course of the meeting, the mediator will need to explain other mediation principles and may find it useful to do this at the start of the MIAM.

Mediators are not obliged to carry out a full assessment of eligibility for Legal Aid if potential participants are clearly excluded from being eligible, for example because of the value of property owned or because their income exceeds the threshold.

If participants believe they may be eligible for Legal Aid but after assessment fail to qualify and have no means to pay for a MIAM, the mediator may end the MIAM at that point allowing participants time to consider how a MIAM might now be progressed. In these circumstances however the mediator must still signpost participants to any next steps that are necessary to ensure the safety of adults or children (see Standard 4).

A mediator who does not work for a service which holds a Legal Aid contract may work for and be paid privately by potential participants who may be or who are eligible for Legal Aid funding, providing the mediator informs the participant of this and the possibility of accessing legal aid through another mediation service.

It is good practice to tailor the information provided to fit each participant's individual circumstances, so that participants are provided information about alternatives to mediation and signposted to services which can be used outside of or alongside of the mediation process according to their individual needs.

2.	<p><b>Listening &amp; obtaining Information</b></p>
	<p>In order to assess suitability of mediation, the mediator will ask questions to ascertain the facts: details of the family, the relationship (past and present), timelines, current circumstances, previous circumstances, mental and physical capacity to participate in the mediation process, and if any legal orders apply.</p> <p>To ensure sufficient information is obtained to make an assessment about suitability of mediation, it is important that mediators:</p> <ul style="list-style-type: none"> <li>a) use mediation skills and strategies to build a trusting relationship with potential participants to provide the best opportunity for any concerns about abuse, power, and control to be shared;</li> <li>b) use questioning and listening techniques to identify domestic or child abuse, drug and/or alcohol addiction, mental capacity to engage in mediation and emotional and other readiness to mediate.</li> </ul> <p>Participants may need to tell their story before they are ready to hear information about mediation, and so asking participants what is important to them may be a good starting point.</p>
3.	<p><b>Assessing safety and suitability for mediation</b></p>
	<p>This assessment is a continuing process that will lead to a determination of suitability for mediation.</p> <p>The FMSB has produced separate Mediation Screening and Assessment Guidance and a resource to assist with assessment of safety and suitability for mediation. This can be found together with other guidance <a href="#">on the FMC website here</a>.</p> <p>Considerations include whether the potential participant is able to take part without becoming unduly distressed to enable discussion to take place; whether the participant can disagree, challenge and discuss issues with the ex-partner without fear of intimidation and harassment either during or after the session; and the risk to the participant of re-traumatisation following earlier abuse by engaging in mediation. If information provided points towards a risk of re-traumatisation, it is likely that mediation will not be suitable.</p>

	<p>Mediators should be alert to information relevant to suitability for mediation throughout the MIAM. Potential participants may share relevant information with the mediator, either when explaining their circumstances, or through answers to direct questions.</p> <p>Mediators should be alert to a range of behaviour which constitutes domestic abuse, including physical, sexual, emotional, economic or psychological actions or threats of actions, and of coercive control. This is also important if participants choose to proceed to mediation: while the MIAM provides the opportunity for a critically important check at the point of entry to mediation, it is not necessarily conclusive. Mediators will not always be able to detect domestic abuse at the MIAM, as potential evidence of this may not be presented. Evidence of domestic abuse may emerge later and needs to be addressed then to ensure ongoing safety of participants.</p> <p>It is important to remember mediators must keep their safeguarding knowledge and skills, to include those covering domestic and child abuse, up to date. Mediators can ensure they meet this requirement by discussing their training and development plans with their PPCs.</p> <p>Potential participants and children (if they are to be consulted) may need the presence of another person in a mediation session to provide ongoing emotional or other support e.g., housing support worker; youth worker; a family member; mental health support worker; advocate, or solicitor. The informed consent to the presence of third parties in the mediation would need to be given by the other mediation participant; this does not apply to the MIAM. Mediators should also be mindful of the provisions of the FMC Code of Practice (section 5.2) with regard to confidentiality if other professionals are to be involved in the mediation process.</p>
4.	<p><b>Determining next steps</b></p>
	<p>Once participants have learned about mediation and other ways of proceeding, and following the mediator's assessment of safety and suitability, a decision about the next steps needs to be led by the participant(s).</p> <p>A final decision on whether mediation is safe and suitable can generally only be made once the second participant has been seen for a MIAM, so mediators should prepare the first MIAM participant accordingly. In some cases, the situation might be such that mediation is so clearly unsafe or unsuitable, or contacting the second participant might put the first participant or</p>

children at risk of harm, that a mediator might make that assessment having seen one participant only.

If mediation is proceeding, after consulting participants the mediator will need to consider which model of mediation is the most appropriate and what support participants may benefit from alongside mediation.

Considerations will include whether:

- to mediate in person or online;
- there is a need for any safeguards such as separate arrival/departure times, or the presence of a third party; considerations include not just the risk of violence but also of coercive control and the impact on potential participants;
- any specific steps need to be taken to enable participants to take part on an equal footing;
- participants should be in the same or separate rooms. Mediators should be alert to the fact that shuttle mediation does not necessarily make mediation safe for participants;
- co-mediation should be used;
- other professionals should be involved in the process;
- other individuals that play a significant role in a family (such as new partners or biological parents) should be involved in the process;
- additional support services might be valuable to the participant(s) alongside mediation;
- whether participants may benefit from attending support/parenting programmes;
- any specific steps are needed to prepare participants to be both emotionally and practically ready to engage in mediation.

Where mediation is not being pursued and the mediator signposts to other options as required, the mediator is expected to expand on the possible next steps already described in the information exchange by:

- providing information on other relevant Non-Court Dispute Resolution (NCDR) options; this should include a brief description of the process, benefits, principles, likely costs and any potential disadvantages of options that may be appropriate and affordable for the individuals concerned. These may include:
  - Solicitor negotiation

- Working collaboratively with separate solicitors
- Neutral Evaluation including Private Financial Dispute Resolution (FDR) hearings
- Arbitration;
- providing general information about a court application including possible timings and its limitations, where relevant.

It is important that mediators are realistic about potential outcomes and help manage the participants' expectations regarding likely outcomes, financial and emotional costs, and timescales of each option. Mediators can access information about all NCDR options via the FMC website, and offer it to participants. Participants may need help in navigating this information; short of giving advice, mediators may help them weigh up the pros and cons of the various options.

Whilst it is the case that costs vary for these different approaches, it is important that mediators provide information that would allow participants to make an informed choice, including about whether options are affordable.

As per Standard 1 in all instances the mediator should provide all MIAM participants with sufficient details of other relevant support services, including those for children, so that they can contact other appropriate services directly.

If mediation is not being pursued, nor to the mediator's knowledge is another form of NCDR, it is recommended that the mediator echoes the wording of the court certificate and states that 'mediation or any other form of non-court dispute resolution is seen as unsuitable at this time'. This can play a role in reducing conflict because it makes clear that the judgement has been made by the mediator, and it also allows for participants to come back to mediation (or another form of NCDR via a further MIAM) if their circumstances change at a later date.

Where one participant only has attended a MIAM, and the other potential participant has been contacted but has either not responded or has told the mediator that they do not wish to attend a MIAM, the mediator may inform the first participant of this, provided that the mediator feels that it is safe to do so. If the second potential participant provides a reason for not attending, this reason remains confidential.

Participants may decide that they prefer to pursue another form of NCDR than mediation. If so, the mediator cannot have direct knowledge of whether this is in fact pursued, but can only trust the participants' intentions. When completing court forms it is reasonable for mediators to rely on the participants' stated intentions at the time.

If the mediator is not sure whether safety is an issue, it is important that the mediator discusses this with their PPC.

#### **Expiry of MIAM certificate on court application form**

Custom and practice emerging from related court rules suggests that a mediator's signature is valid for four months.

If no mediation has taken place in those four months, another MIAM should take place to ascertain whether there has been any substantial change of circumstances. It may be appropriate to amend the nature of the MIAM, the time it takes to deliver it (recording the reasons for any MIAM shorter than 45 minutes) and to adjust the MIAM fee accordingly.

#### **Signing of MIAM certificate on court application form**

Only FMC Mediators who are accredited are authorised (See FPR Rule 3.9(1)). to sign court forms. Court forms should be signed to confirm MIAM attendance once a MIAM has taken place.

The MIAM certificate page of court forms does not require detailed information from the mediator, and the information required is purely factual. This does not allow the mediator to indicate to the court whether one person is still willing to proceed to mediation, for example. That information may be shared by the person with the court on an FM5, and so it not required here.

Mediators should only complete the boxes on the court form and should not alter or add further information to this.

#### **Information for the FM5 court form**

It is not a mediator's responsibility to complete an FM5, or provide information for this.

Mediators can provide a client or prospective client with details such as dates that the client had

	<p>been offered for a MIAM, dates they had attended sessions etc but it is the client's responsibility to complete this information on the FM5 and provide further information about why non-court dispute resolution options are not being pursued.</p>
5.	<p><b>Conduct of MIAMs</b></p>
	<p>It is important that mediators create an environment in which potential participants feel emotionally supported, by using active listening to hear participants' stories, giving information specific to their needs in a way that is easily understood, and taking a holistic approach to help participants choose a process that is right for them and their family. Engaging each participant in the meeting is vital, and is achieved by building rapport, remaining sensitive to the participant's needs, and working through the meeting at the pace of the participant.</p> <p>The following order of delivery is suggested:</p> <ol style="list-style-type: none"> <li>i. Confidentiality and other mediation principles</li> <li>ii. Legal aid assessment, if not previously undertaken</li> <li>iii. Information Exchange</li> <li>iv. Assessment for domestic or child abuse</li> <li>v. Questions in relation to other areas that affect safety and suitability</li> <li>vi. Determination of suitability for mediation or other out of court processes or court options</li> <li>vii. Next steps, including signposting.</li> </ol> <p>However, as it is important to take an individualised approach, and there may be areas of overlap, the order of deliver is ultimately up to the mediator.</p> <p>It is anticipated that a MIAM delivered in accordance with the Standards will last for an hour. Even where a mediator makes an early assessment that a case is not safe or suitable for mediation, the time remaining in a MIAM can and should be used to ensure the participant has information about other dispute resolution options and other support services where relevant (see Standard 4).</p> <p>Mediators cannot force MIAM participants to take part for the recommended time, but effort should be made to ensure that any and all participants receive a high-quality meeting which</p>

provides information about how they can resolve issues they face. Mediators would benefit from having information signposting to next steps (including local support services) readily available to provide to participants, whether or not the mediator assesses mediation as safe and suitable.

### **Separate MIAMs**

The safety of participants in mediation is of paramount importance. The mediator cannot know in advance of the MIAM how two people will behave in the same actual or virtual space. Delivering MIAMs to participants separately provides each with an opportunity to discuss the issues which arise without being concerned at the response of the ex-partner. It also ensures that discussions are as open and honest as possible, to enable an effective assessment of safety to take place, without fear of harm or undue pressure from the ex-partner.

Academic research supports this approach. See

- Hester, M & Radford, L 1996, 'Domestic violence and child contact arrangements in England and Denmark', Bristol: The Policy Press and Journal of Social Welfare and Family Law
- Mapping Paths to Family Justice (Barlow, Hunter et al, 2014, University of Exeter, <https://www.exeter.ac.uk/research/groups/law/frs/projects/mappingpathstofamilyjustice/>)
- 'Assessing risk of harm to children and parents in private law children cases' (Hunter, Burton & Trinder, 2020, Ministry of Justice <https://www.gov.uk/government/consultations/assessing-risk-of-harm-to-children-and-parents-in-private-law-children-cases>)

### **Immediately Consecutive MIAMs**

Immediately consecutive MIAMs conducted in person increase the prospect of participants sharing the same space before, in between or after the meetings, and MIAMs conducted online from the same home or any shared location inherently have similar characteristics. There are potential risks of one participant exercising control or influence over the other, so making screening for domestic abuse difficult. For this reason, the Standards state that there is a strong presumption against this practice, and require mediators to explain how it is managed safely.

Key to safe practice is the professional skill of the mediator in carrying out an appropriate risk assessment. Considerable experience is required to glean the necessary information and make

the sensitive judgements involved. It would be wholly unacceptable, for instance, for a mediator still working towards accreditation to attempt this kind of practice.

When potential participants have expressed a wish to start their mediation process jointly, mediators should not assume that this joint approach is without risk. The FMCA mediator should take specific steps to establish whether immediately consecutive MIAMs in person or from the same location would be safe, by for example having individual telephone conversations with the participants before they attend the MIAMs, and undertaking a risk assessment. This task cannot be delegated to an unaccredited mediator or to administrative staff.

If participants do wish to have immediately consecutive MIAMs and the mediator cannot demonstrate these are safe to conduct in person, consideration could be given to conducting MIAMs online, if potential participants are not in the same home or building.

### **Mediation Immediately Following MIAMs**

Ensuring that mediation is not scheduled immediately following a MIAM allows potential participants time to consider whether they want to proceed with mediation and, if so, to prepare for it. It also prevents awkward situations arising for the mediator, where the mediator assesses that mediation is not suitable for safety reasons after seeing the first participant and, with that knowledge, might then have to go straight into a meeting with the second.

This should not prevent early joint meetings taking place following separate MIAMs to discuss practical arrangements with both participants.

### **Methods of Delivery**

It is important that the mediator considers the most appropriate way to deliver a MIAM, taking into account the safety and accessibility of different approaches.

Different modes of delivery have different advantages and disadvantages:

- i. Physically in person – non-verbal clues provided by the presence of a participant can be observed (for instance, alcohol can be smelled on a person's breath, the general well-being of a participant can be seen); the mediator can be sure nobody else is in the room

with the participant; and it may be easier to build rapport with a participant and ask questions about safeguarding or domestic abuse.

- ii. Video on line – is convenient and preferred by some people; is useful if it is difficult for participants to attend an office due to individual accessibility needs or if public health constraints exist. It requires other safeguards, for instance video panning of the room or verbal confirmation about privacy and freedom from disturbances. The mediator needs to be able to build rapport in an online forum. Non-verbal body language can still be effective in communication between mediator and participant but awareness of differences between in-person and online models is important for the mediator to provide the most helpful and safe model for the participant.
- iii. Telephone delivery relies solely on audio cues and is the least preferred medium, hence the Standards specify that this should be used only if neither of the above can take place.

#### **Inviting Other Potential Participants to a MIAM**

A MIAM is designed to assist both participants in understanding and considering the use of mediation. In order to remain impartial and to fulfil the legal requirement that both participants are expected to be invited to a MIAM, it is important that the mediator invites the second participant to a MIAM unless either of the exceptions set out in the Standards applies.

Paragraph 33 of Practice Direction 3A to the Family Proceedings Rules, says:

*The prospective applicant should provide contact details for the prospective respondent to an authorised family mediator for the purpose of the mediator contacting them to discuss their willingness to attend a MIAM and, if appropriate, to schedule their attendance at a MIAM.*

If a first MIAM participant says they do not wish the second participant to be contacted, it is important for the mediator to explore with that first participant the reasons for this. The mediator should explain to the MIAM participant that it is expected that the second potential participant will attend a MIAM and that it is appropriate for them to be given the same opportunity to attend in order to learn about options for resolving the dispute. If the first MIAM participant is adamant that the second potential MIAM participant should not be contacted, it is likely that it will not be appropriate for the mediator to contact that person, but mediators should use their professional judgement in reaching a decision about whether to do so. The mediator should be conscious that the reason a participant may not wish the mediator to contact

a second potential participant could relate to safeguarding concerns, and should avoid placing pressure on the participant to change their mind.

If a mediator has contact with a potential mediation participant, the mediation process has started for the purpose of the FMC Code of Practice. This means that information a mediator receives from a potential MIAM/mediation participant is subject to the rules on confidentiality set out in the FMC Code of Practice, and should therefore not be shared with other participants without explicit consent.

If a mediator contacts the second participant being aware that the first MIAM participant has chosen not to pursue mediation, the mediator should make clear that the invitation to the MIAM is being issued notwithstanding the fact that in their view, mediation is not suitable at the present time, but that there is still benefit in attending a MIAM for parity of information and equality of opportunity.

A mediator should tell the second participant if they have signed a certificate to confirm MIAM attendance for the first participant, which means the first participant can issue a court application if they choose to do so. This is transparent, more accurate than just saying the mediator has signed a court form, and doesn't breach confidentiality.

#### **When potential mediation participants attend different services for MIAMs**

When potential mediation participants have attended different services for MIAMs, one mediator may wish to see the other's MIAM notes. Factual notes from a MIAM can be shared with other mediators or with a client (who can choose to pass this on to a new mediator) if requested by the client who attended the MIAM. This does not need to extend to notes expressing the mediator's view on suitability. For this reason, mediators may wish to keep two separate sets of notes, one to record facts which may include a pre-MIAM questionnaire, and one set of notes with their views. Mediators would benefit from considering data protection responsibilities when considering whether to share notes.

Whether or not a mediator obtains MIAM notes from another service, mediators should consider the most appropriate length of a new MIAM to ensure the requirements of the MIAM standards are met, which includes having enough information to make their own professional judgment about suitability and sufficient time to build rapport with each client.