



Legal Aid Agency

Family Mediation Guidance Manual

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Version

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2.0	1 st April 2013	To reflect changes as a result of the Legal Aid Sentencing & Punishment of Offenders Act 2012
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1. Overview

This guidance provides a comprehensive overview of the terms of the Family Mediation Contract

2. Family Mediation Criteria

You can mediate on a 'family dispute' which is a matter arising out of a family relationship as set out in Paragraph 14 of Schedule 1 Part 1 of the Act.

In order for a matter to fall within the scope and remit of publicly funded mediation there must be a **legal dispute** present. It is not sufficient for there simply to be a dispute between the parties that if left unresolved could lead to a legal dispute and the potential for family proceedings being issued.

Questions to answer in determining whether a matter is in scope of public funding family mediation

- Are there family issues in dispute?
- Are these disputes over legal issues, rights or duties, i.e. capable of giving rise to family proceedings?
- Are these significant legal issues in dispute?

The mediator must in assessing suitability consider whether the costs of mediation are themselves justified in terms of cost benefit as part of considering whether mediation is suitable for the dispute, the parties and all the circumstances.

Family Mediation will cover disputes relating to:

- Contact arrangements
- Residence and Parental Responsibility
- Child maintenance
- Property
- Finance – Savings, Debts, Pensions

If there are no significant legal family issues in dispute and the role of the mediation is simply to improve communication and the relationship between the parties then this will not fall within the scope of public funding. Public funded mediation will not cover therapeutic types of support provided via mediation which solely focus on trying to define issues and concerns, improve relationships and communication between family members and any other party to the mediation, such a Local Authority.

3. Contracts

Family Mediation falls under the 2010 Standard Civil Contract and there is a specific Family Mediation Specification, which can be found at the following link:

<http://www.justice.gov.uk/legal-aid/contracts-and-tenders/standard-civil-contract-2010>

Revised Claim forms and Means Assessment Forms can be found at the following link:

<http://www.justice.gov.uk/legal-aid/submit-claim/controlled-work-claims>

4. Competence of Mediators

In order to undertake publicly funded family mediation a mediator must either have:

- Successfully passed the Family Mediation Councils Assessment of Professional Competence (APC) Scheme*
- Obtained Practitioner Membership of the Law Society's Family Mediation Panel

* In order to be classified as having successfully passed the APC scheme a mediator must be recognised as competent. If a mediator is recognised as provisionally competent then this will be sufficient in order to undertake publicly funded family mediation work whilst you are working towards gathering additional evidence to resubmit in order to be fully recognised.

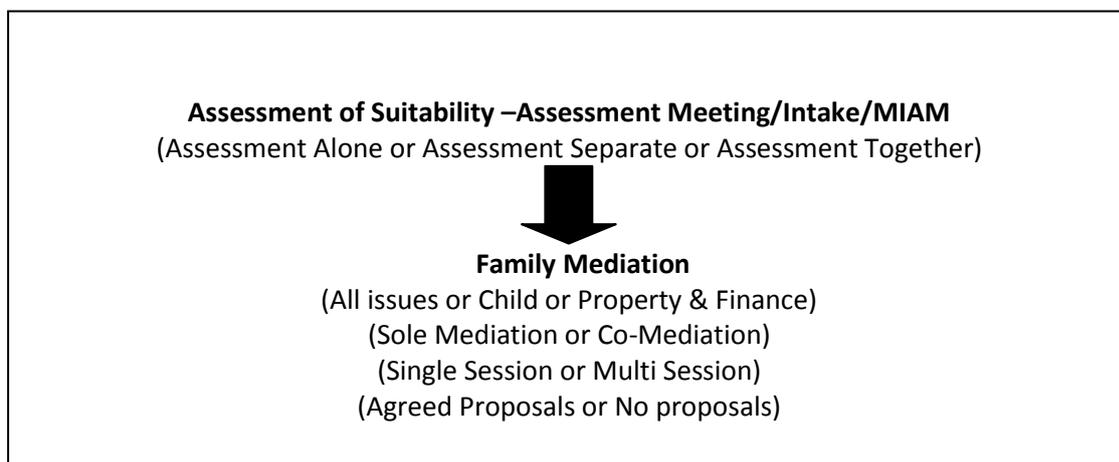
Preparation/Readiness to Practice

During the process of putting together a portfolio as part of the Assessment of Professional Competence Scheme it is possible for a mediator to be recognised as 'Ready to Practice'. This is where their Professional Practice Consultant (PPC) assesses the trainee mediator as sufficiently competent and ready to be allowed to co-mediate on publicly funded cases before a mediator is fully competent. This provision was brought in to support mediator access cases for the purposes of completing their portfolio.

In order for a mediator classified as Ready to Practice to undertake publicly funded mediation they must co-mediate and the other mediator present must be a competence assessed mediator. The co-mediator, usually the PPC is therefore able to provide a safety net at the mediation itself, to ensure the mediation is handled appropriately and can step in if required.

5. The Family Mediation Process

There are two main stages within the family mediation process with each attracting its' own individual payment under the current remuneration arrangements.



There is no limit on the number of family mediations starts that a contracted provider can undertake. Where the Civil Legal Aid (Merit Criteria) Regulations 2013 are satisfied, a provider can start as many mediation new matters starts as they wish. This is part of the Ministry of Justice (MoJ) and Legal Aid Agency (LAA) strategy to increase the number of family disputes that are resolved through mediation as they are often quicker, cheaper and less acrimonious compared to contested court proceedings.

Primary Routes to Mediation

- Solicitor Referral
- Self referral
- Court referral
- Other referral i.e. CAB, Relate

The MoJ introduced a new Pre-Application Protocol on 6th April 2011 to encourage an increased take up of family mediation. The protocol looked to replicate the LAA requirement for publicly funded clients to consider the use of mediation in certain private law family disputes. The protocol places an expectation on all potential applicants for a court order in relevant family proceedings to consider with a mediator whether the dispute is capable of resolution through mediation. The court will expect all applicants to have complied with the protocol before commencing proceedings and (except where exceptional circumstances apply) will expect any respondent to have attended a Mediation Information and Assessment Meeting (MIAMs).

The requirement is pre-court, but if clients come to court and have failed to comply, then the court may still refer clients to a meeting with a mediator if they consider it appropriate. The LAA approve outreach at court for mediation services who wish to become involved in their local in-court scheme.

As a consequence of the Family Justice Review recommendations the MoJ will be legislating to change the protocol so the expectation to attend a MIAM becomes an obligation unless certain limited exemptions apply. This is likely to be brought in under the Children and Families Bill in early 2014.

6. Assessment Meetings

Assessment meetings or Mediation Information and Assessment Meetings (MIAMs) are to review client circumstances, eligibility and suitability for mediation, including domestic violence screening. They also provide an opportunity for clients to find out about the benefits of mediation compared to contested court proceedings. They can be undertaken with a single client or with both clients present (together or separately).

Where at least one party is eligible for legal aid the LAA will cover the costs of assessment meetings for both parties. At each assessment meeting, the client's means must be assessed and the relevant evidence obtained to support eligibility.

There are 3 types of assessment meetings under the contract, which are as follows:

“Alone Assessment Meeting” mean where only one Client (and no other party) has agreed to Mediation and therefore it is only one Client who attends the Assessment Meeting.

“Separate Assessment Meeting” means where all parties agree to Mediation but only one party attends an Assessment Meeting at any one time.

“Joint Assessment Meeting” or *“Assessment Meeting Together”* means that all parties to the Mediation attend the Assessment Meeting at the same time (it is recognised that in order to undertake appropriate and effective domestic abuse screening during the course of this meeting that a mediator will need to see each client separately for a short period).

7. Subject Matter of Mediation

There are 3 types of mediation that can be reported under the family Mediation contract: Child Only Matters, Property and Financial Matters and All Issue Matters (includes both Children and property & financial matters).

“Child Only” mediation means Family Mediation where all issues pertinent to any arrangements for the children of a family, including extended family, are considered in the Mediation (this does not include aspects relating to family assets, property and pensions other than arrangements for child support).

Property & Finance” mediation means Family Mediation where all the issues pertinent to the financial aspects of separation or divorce are considered in the mediation (this does not include aspects relating to children arrangements other than child support).

“All Issues” mediation means a Family Mediation where all issues in dispute pertinent to the legal, financial aspects of separation or divorce are considered in the mediation. (This may include, arrangements for divorce, the division of family assets and other financial arrangements, property and pensions and any arrangements to be made for the children of the family).

An All Issues case must involve a significant legal dispute relating to children and a significant legal dispute relating to finance to be classified as an AIM case. If there are some peripheral issues be it on children or finance which are not in dispute that get rolled up and included in the agreement for the sake of completeness then this wouldn't be sufficient to justify AIM.

Just because there are dependent children does not mean the mediation is classified as an All Issues mediation if there are no children issues in dispute.

The Civil Legal Aid (Remuneration) Regulations include the fees claimable under the contract. These figures are halved where only one party is eligible and the private paying client will be subject to any applicable private rates set by the service.

Mediation in public law children disputes

A 'family dispute' for the purposes of falling within the scope of legal aid for mediation is set out in Schedule 1 Part 1 paragraph 14 of the Act. This limits the scope of Family Mediation to assisting in the resolution of family disputes about legal rights and duties whether or not proceedings have yet been issued. This applies equally in both private law and public law children matters.

Public funded mediation through legal aid is not therefore available to provide support to the client(s) in respect of other more therapeutic services. For example, services provided which focus on trying to define issues and concerns, improve relationships and communication between family members and any other party involved such as a Local Authority does not fall within the remit of Family Mediation for the purposes of legal aid

Where mediation is being proposed to address these latter issues that are more therapeutic in nature and which aim to prevent the need for the local authority to bring proceedings, then it is considered that this falls within the Local Authority's duty of care for children under the Children Act 1989. Every local authority must protect and promote the welfare of children in need in its area and it is obliged to work with the family to provide support services that will enable children to be brought up within their own families.

Pre Proceeding Examples

Example 1

A grandmother assists her disabled daughter in the upbringing of her son. The grandmother and mother's relationship breaks down and the Local Authority (LA) become involved because they have concerns about the ability of the disabled mother to be able to care for her son on her own without the support of the mother. The social worker refers the mother and grandmother for mediation.

If the purpose of the mediation concerns work in resolving the differences of mother and daughter so the family unit remains intact and the grandmother can continue to assist the mother with the child's upbringing then this would not fall within the scope of publicly funded mediation. It is therapeutic work in nature and would more appropriately fall within the potentially remit of Legal aid.

The fact that a failure to address the issues between the grandmother and her daughter could lead to the LA initiating proceedings would not be sufficient to bring this within the definition of Family Mediation.

The situation may be somewhat different if the grandmother has decided that she wanted to make an application for sole residence of her grandchild. This might be opposed by the mother and mediation to resolve this dispute could fall within the scope of publicly funded mediation.

Example 2

The LA has concerns about the neglect of a child, but there has been a breakdown in the relationship between them and the parents. The parents are refusing to engage, frustrating LA attempts to address these concerns. It is felt the use of a mediator could help reduce the tensions in the relationship.

The issue in this case relate to child protection concerns and it may be that this type of dispute would be unsuitable for mediation in any event. However, if there were a role for a mediator in these circumstances it would be to help improve the relationship between the LA and the parent(s) in order to assist with communication and in defining the issues and concerns in an attempt to find solutions that may alleviate LA concerns about the child's welfare.

The fact that a failure to address these concerns could lead to the LA initiating proceedings would not be sufficient to bring this within the scope of legal aid funding in terms of Family Mediation. Again this work is more therapeutic in nature and could therefore fall within the potential remit of LA under their duty of care.

Example 3

The LA has concerns about the welfare of a child and wish for a family Support Worker to be put in place over a short period of time to assist in getting the children to a medical appointment. The parents are reluctant. It is felt that mediation could help to identify and define the issues with view to reaching a written agreement on short term arrangements.

The mediation could consider timescales in terms of when support can be put in place and when the Local Authority would wish to see particular problems change. These could be reviewed within specific timescales.

Again no legal disputes are involved in this type of matter so it would not fall within the scope of public funding under legal aid. The fact that a failure to address these concerns may lead to the LA initiating proceedings would not be sufficient to bring this type of dispute within the scope of legal aid funding in terms of Family Mediation.

This type of mediation would involve reaching agreement on practical arrangements rather than addressing legal issues in dispute and could therefore be more appropriately remunerated by the local authority under their duty of care.

Post Proceeding Examples

Example 4

A child has been taken into care by a local authority and the mother is seeking contact with the child which is not currently taking place. It is felt that mediation could help to facilitate an agreement on appropriate contact arrangements for the child.

In these circumstances there is potentially a legal dispute between the local authority and the mother on a legal right and duty. Consequently mediation about contact to a child in care may be appropriate under legal aid. If it were successful it could prevent applications being made for a S34 order.

Example 5

A written agreement has been drawn up at Court where the children are at home with the resident parent under the auspices of an Interim Supervision Order. A dispute has arisen as the parent doesn't fully understand the terms of the order and what constitutes a breach. It is believed that mediation could be used to clarify parents' and carers' understanding of what is required of them to avoid the need for another court hearing.

It is questionable whether it is necessary for a referral to be made to a mediator in these circumstances as it will be a case of ensuring that the parents understand the nature and requirements of the order rather than a formal need for negotiation to reach an agreement on acceptable parameters for both the local authority or the parent (s).

If mediation is used it would not satisfy the criteria for the provision of legal aid. However if the LA felt it was appropriate for this communication to be handled by an impartial third person then any funding in this regard would need to be provided by them.

Example 6

The LA has a Care Order in place for a child. An extended family member applies, with the support of the local authority, for a Special Guardianship Order that would discharge the care order. This is opposed by the mother and the case gets referred to mediation.

This case would fall within the remit of publicly funded family mediation as it is a dispute about a legal right.

8. Models of Family Mediation

The LAA is guided by the Family Mediation Council on appropriate mediation models that comply with Professional Codes of Practice.

For mediation to take place and be claimable under the legal aid scheme it is expected that both clients must be in attendance either in the same room or in separate rooms (shuttle mediation). Public funding is not usually available for mediation where clients attend at different times as we do not consider this constitutes effective mediation practice. There are limited exceptions to this rule if for example there is a restraining order in place against one of the parties to the mediation or if this is the only meaningful way of facilitating mediation.

It is important to note that where this model is used one mediation session for the purposes of claiming work constitutes both clients having attended separate sessions (i.e. separate sessions with the clients would constitute one mediation session for the purposes of a claim against legal aid). Justification of the use of this model must be kept on file for the purposes of any future audit.

Use of telephone and Skype

Currently the use of telephone or Skype for both assessment meetings and mediation is not permissible under the legal aid contract. This is because it is prohibited practice by the Family Mediation Council, as it fails to meet their Professional Code of Practice.

The use of telephones in particular fails to provide the mediator with the means of being able to consider a person's body language which can be a useful indicator for determining whether there is or has been an issue of domestic violence as part of the screening process.

We may occasionally allow for this practice if unique circumstances warrant its use, but requests must be made directly to the LAA (Contract Manager) and a record of our approval kept on file. Circumstances where we may allow for this practice include where clients are a significant distance apart or where a case is international in nature (i.e. international child abduction).

Co-Mediation

Co mediation means mediation with two mediators for all or part of the mediation. Any decision to use a co-mediator will only be justified in exceptional circumstances and justifications will need to be included in the file, with details where appropriate of reasons such as

- Complexity, legal, psychological or otherwise of the case,
- Following a risk assessment for the participants and/or the mediator,
- Any reasons as to the requirements or specialist and/or expert skills; and
- Any management issues for the mediation.

Examples would be where there are more than two parties involved in the mediation so the dynamics of the mediation itself are complex or if there are complicated international issues involved in the dispute. It may also be acceptable to use this model of mediation where there is direct consultation with a child (to allow for a mediator trained and recognised to undertake Direct Consultation with Children to participate in the mediation process) or shuttle mediation is used.

It would not be acceptable for co-mediation to be undertaken simply to provide support for the mediator and would not be justified if one of the parties was upset or if a party was angry with their former partner as these would be typical emotions experienced by clients attending mediation.

Only 8% of all mediations are currently co-mediated and the LAA should monitor usage by each service.

Direct Consultation with Children

Any mediator who undertakes this work must have attended a recognised training course by a member organisation of the FMC and obtained the consent of both parties before commencing this work. This model is claimable under the standard fixed fee scheme and no disbursements are allowed to be incurred to remunerate this work.

Where direct consultation is used a mediation service should add the code DCC on the end of the reference number for the mediation. This will allow the LAA to identify cases where direct consultation is used and monitor the profile and outcomes achieved.

Back to back mediation sessions

Multiple sessions can take place on the same day if it is appropriate and justifiable to do so. We would only really consider it appropriate in more exceptional circumstances and would expect some justification to be recorded on the file where this model is used. An example would be where a client has travelled a significant distance (child abduction type disputes where time is also extremely limited) and significant progress is being made.

This more intensive type of mediation would require certain conditions to be met such as:

- There are appropriate breaks between sessions so that clients can get refreshments and reflect on the discussions being had.
- There are at least two meaningful mediation sessions undertaken. The LAA would not pay a multi session rate where the second session is only 5-15 minutes long.

In the majority of cases this type of approach would not be necessary or appropriate as clients will benefit from having a few days to consider and reflect on what gets discussed at mediation so they don't feel pressurised into reaching agreements on issues that they are uncomfortable with as these are potentially less likely to last.

9. Agreed Proposals

Agreed proposals means the parties reach agreement on the majority of issues in dispute and a written Mediation Summary is produced reflecting this agreement at the end of the mediation. A Mediation Summary which may also be termed the Memorandum of Understanding means the recorded details of the proposals agreed in the mediation process in all or some of the areas

identified at the start of the mediation. This may, where appropriate include an Open Financial Summary. We are not prescriptive on what this should look like as such, but the mediation summary should be in a format approved by a representative body/Family Mediation Council

The production of summaries throughout the course of each mediation session outlining progress, interim or potential agreements would not constitute an agreement for this purpose and the agreed proposal rate should not be claimed in these circumstances. This work would therefore be covered by the standard mediation rate. Only agreements reached and drafted during mediation which provides an on-going solution to the dispute at the conclusion of the mediation can be claimed.

The use of Letters

If agreement is reached on the majority of the issues and the letter is sufficiently well detailed and clear i.e. sets out all of the agreements reached in enough detail for all parties to be clear about what the arrangements for children are in terms of contact arrangements, duties expected in exercising PR, specific issues etc, then this would be claimable.

If it is a basic letter that doesn't adequately cover the issues/agreements reached then this is not claimable.

For the purposes of a Financial dispute a letter and open financial statement would only suffice as an agreement if the matter was very straightforward – e.g. a house with not a lot of equity and a straight split AND the clients did not want an MOU perhaps because of expense for example. Otherwise a full agreement/MoU would be required and a letter would not be appropriate or sufficient to claim an agreed proposal.

How to correctly claim the appropriate outcome codes

S - Outcome

If at the conclusion of the mediation, an agreement is reached on the majority of the issues in dispute and a detailed document is drafted clearly setting out the agreed proposal reached then an 'S' outcome should be claimed.

A - Outcome

If clients reach agreements through mediation, but do not need or have a written summary produced for them then an A outcome can be claimed. This recognising the value of mediation in helping the clients to reach agreement, but attracts no payment as no agreement/memorandum of understanding (MoU) is drafted.

If broad agreement is reached through the mediation process on the issues and the clients are able to resolve the outstanding issues themselves and don't require a formal agreement to be drafted then again A, should be claimed.

C - Outcome – only applicable for AIM cases

If an agreement isn't reached on the majority of issues in an All Issues Mediation (so not an 'S' outcome), but agreed proposals are reached on the majority of children issues then C can be claimed.

P - Outcome - only applicable for AIM cases

If an agreement isn't reached on the majority of issues in an All Issues Mediation (so not an 'S' outcome), but agreed proposals are reached on the majority of property and finance issues then P can be claimed.

B - Outcome

Where no agreed proposals are achieved and the mediation has broken down a 'B' outcome should be claimed. It is recognised that even where a full or partial agreement isn't reached mediation can still play an important and valuable role in narrowing the issues in dispute.

10. Use of Disbursements in Family Mediation

There is some guidance on the use of disbursements in the Family Mediation Specification (4.11) including a list of things which may or may not be incurred. The non-allowable disbursements are costs which the LAA consider to be client expenses or things which do not fall within the ambit of services to be provided by public funding.

If a disbursement is not on the list of non-allowable disbursements then it may be allowable. The issue which will then need to be considered is whether it is in the best interests of the client to do so and if it is reasonable to incur the disbursement for the purpose of providing Mediation to the client. The amount of the disbursement must also be reasonable and incurring the disbursement should be to further the mediation.

Paternity or DNA Testing

A paternity/DNA test may be permissible if it is crucial to furthering the mediation, i.e. contact will be allowable if a client proves to be the father. However, it won't be permissible if the sole issue is whether the client is the father for example, as the test would be an end in itself and all you would be mediating on is getting an agreement for the test to take place. Once this is established there is nothing left to mediate on. In these circumstances the clients would be using legal aid to fund an issue which the clients should cover themselves, which is not permissible.

Therefore, if the mediation concerns contact, then determining paternity is a crucial element in taking forward the mediation and therefore the DNA testing would progress the mediation.

Drug and alcohol testing

In relation to alcohol/drug testing we would not generally expect these disbursements to be met at this level of advice/support, be it legal advice or mediation. You would need to consider carefully the purpose of the tests, their relevance and how the results will be interpreted and used.

The fact that drink and drug testing are not always conclusive or 100% accurate in their results due to a range of factors should be a concern for any practitioner. As a result of this we would have concerns about a mediator's ability to appropriately instruct a suitable expert, in terms of identification of the drugs to be tested for; the type of test or analysis needed (whether on a overview/standard basis or a segmented/month by month test basis); and if it was for alcohol abuse whether the test would be blood, hair or liver function. A mediator would also need to give thought to the length of time that the tests should run for when providing instructions (the standard period of testing is 3 months). For example a test can be affected by hair length (a 1cm length of head hair provides a 1 month history of drug use) or whether hair dye has been used for example.

Consequently, would a mediator be happy to allow something such as contact following an agreement reached during mediation on the basis of a test that isn't 100% reliable. I think a mediator runs a considerable risk in these circumstances.

The question also remains would a party to the mediation accept the findings of the test if it came back positive and would they then look to get a second opinion or go onto contested hearings regardless.

If there are potential safeguarding issues concerned due to alcohol/drug abuse the LAA consider these cases should be referred to court. That way any expert reports can be more meaningfully considered and scrutinized by the court.

If a mediator does want to incur the costs of alcohol or drug tests authority must be sought from the LAA in advance.

Pension Valuations

Most pension providers will provide a value of the pension which will be sufficient for the purposes of mediation. A valuation would only be justified if it was necessary for the purposes of progressing the mediation itself.

Pension Actuary

In terms of a pension actuary the LAA would only cover the costs of a valuation. This would only be the case if it was actually needed and it was reasonable to do so. Most pension providers will provide a value of the pension without the need for a pension actuary to be involved. The LAA would certainly not cover an actuary providing specialist advice on the pension scheme in terms of options or future arrangements for the clients. These would be client expenses that they should meet themselves.

CETV

It is a potentially allowable disbursement in the same way as obtaining valuations of other matrimonial property would be to enable the mediation or work provided by the solicitor to progress. The issue will be whether a full valuation is required. Pension providers will, as a matter of course, usually provide an annual CETV which can sometimes be used. However, if the pension is in payment there are more complicated issues and the pension providers do often charge. The LAA have seen quite high charges for complicated pension's e.g. armed forces.

Claiming Disbursements and fees and rates payable

If incurring a disbursement it is appropriate to refer to the Civil Legal Aid (Remuneration) Regulations 2013. Where the expert service is of a type listed in the Table under Schedule 5 Expert Fee and Rates, the Lord Chancellor must pay remuneration to the provider for the expert service at the fixed fees or at rates not exceeding the rates set out in the Table. Where an expert is not listed in the Regulations a provider must ideally look to get 2-3 quotes where possible to make sure they are paying the market rate for the work undertaken.

If the value is higher than your current disbursement level set out in your schedule then you will need to request permission from your Contract Manager for the limit to be increased. Disbursements get claimed once the case is closed and are reported alongside the case details on the Consolidated Work Report Form that a provider submits on a monthly basis.

11. Family Mediation at Court

In the case of 'in-court' mediation, the LAA may accept a claim for assessment without corroborated income evidence as a client may have attended without prior knowledge of what is required. The LAA recognises that clients will not always bring evidence of their means to Court. In these circumstances the mediator can rely on a current determination as proof of eligibility and a note of the certificate reference should be made and retained on file. Alternatively, it is also possible to rely on clause 3.3 of the Family Mediation Specification 'you may assess the prospective Client's means without the accompanying evidence where (a) It is not practicable to obtain it before commencing Family Mediation Contract Work' for work undertaken at court.

However, in these circumstances the mediator must require the Client to provide the evidence as soon as practicable. If satisfactory evidence of the Client's financial eligibility is not subsequently supplied, or if the evidence shows that the Client is not financially eligible, you may claim the work carried out provided that:

- (a) You have acted reasonably in undertaking work before receiving satisfactory evidence of the Client's means; and
- (b) You have acted reasonably in initially assessing financial eligibility on the information available.
- (c) You do not Claim any disbursement beyond those incurred in the period before it is practicable to obtain satisfactory evidence of the Client's means.'

These arrangements for 'in court' work will be kept under review. These provisions on the assessment of means only relates to assessment meetings and not actual mediation.

The key principle of clause 3.3 is to ensure clients can be helped where it is necessary to do so immediately and we consider this is the case for the assessment meeting undertaken at court to determine whether mediation could be suitable. However, once this is established, the court hearing can be adjourned and the clients referred to a mediation session away from the court for this to take place. Consequently reliance on clause 3.3 is no longer justified.

If providers undertake substantive mediation at court they undertake it at their own risk if full evidence isn't available and can only claim it once evidence of means has been provided. If subsequent mediation sessions take place back at the offices of the mediation services then again the clients will always need to bring the standard evidence of eligibility required.

The LAA's experience and understanding of in-court mediation work is that the time the mediator has to spend with clients in the court environment is very limited and extremely pressurised. In most situations the amount of time a mediator has with a client(s) is between 40 minutes to just over an hour, during which time the assessment meetings are undertaken. In some situations a mediator may look to resolve an immediate issue such as contact that weekend for example to allow for an interim order to be made, but more meaningful and lengthy mediation to address the fundamental issues will not usually be possible (or ideal) in the court environment. Hence if the matter is appropriate for mediation in most cases the court hearing is adjourned and taken back to the mediator's office.

In these circumstances the assessment meeting fee(s) of £87 (separate) or £130 (together) which covers an average of 1 hour 20 minutes work and an average of 2 hours respectively is deemed appropriate for the work set out above.

If a mediator undertakes meaningful/substantive mediation at court (which although not ideal, can be justified for example due to the travel distance for the clients) where the eligibility of the clients

has not been established then a mediator can do so, but they must ensure they obtain the evidence at a later date in order to make a claim to the LAA, otherwise they will be at risk of not being remunerated for this work. Alternatively if a client is not eligible, a mediator is free to charge the clients private rates for this work at court.

In order for a mediation session to be claimed at court in addition to the assessment meetings then we consider approximately 40 minutes of actual mediation needs to take place to justify a £168 session fee on top of an assessment meeting fee. This is because where mediation directly follows the assessment meeting at court the time pressures involved will already mean the duration of the assessment meeting will often already be heavily condensed.

12. Re-Referrals to Mediation

Under Clause 4.8 of the Family Mediation Specification if a mediation case is closed and the clients return within 3 months then the service needs to reopen the case if it relates to the same matter. At conclusion of the further mediation an amended Consolidated Work Report Form should be submitted if the previously reported details change, i.e. increase to multi session, change to outcome.

If the client returns after 3 months since the last visit then the provider can start a new matter. The term 'return' means the date the parties contact the mediation service, not the date of the subsequent mediation session. The last 'visit' is interpreted as the last contact with the clients.

13. Assessment Meetings and signing the FM1

An assessment meeting/MIAM determination by a recognised mediator lasts 4 months. If an assessment was made longer than 4 months ago the mediator can refuse to sign the FM1 and request that the client comes back to mediation. The 4 month rule applies from the date given on the FM1 form and this should be the date that the assessment was made. A mediator can use their discretion in these instances and where it is clear that mediation is not appropriate from their original assessment then an FM1 can be completed without the need for a client to attend a second assessment meeting.

14. Retaining Family Mediation Files

How should a service retain files?

In accordance with the Standard Terms the position is as follows:

'8.7 Subject to Clause 8.8, you must securely retain all the Contract Work files (including all documents originally placed on the file, and file records) of all Clients for whom you have performed work under this Contract or any prior agreement with us for any Contract Work (or equivalent) covered by this Contract until the later of the date you are required by law and/or your Relevant Professional Body (and if more than one such body specifies a period, it shall be the longest period for the purpose of this Clause 8.7) to retain the same and the end of the period of six years from the date of the last of the following events to occur:

(a) you have correctly reported closure of the Matter or case to us;

(b) a final claim for payment for your work on the Matter or case has been submitted to us;

(c) all payments in respect of the Matter or case have been made.

8.8 You need not retain closed files (or copies of them) if the Matter or case has been transferred elsewhere at the Client's request, including if they have changed solicitors. However, you should retain copies if, without them, there is a risk that you will be unable to demonstrate compliance, as required by Clause 7. Where a Client has changed solicitors, obtaining an irrevocable undertaking from the new solicitor to return the file, should it be required for Audit purposes, will be sufficient.

8.9 Without limiting our rights under Clause 9.1, Records may be held by you pursuant to this Clause 8 in any manner (including on microfiche or CD ROM), provided that you are able to comply with your obligations to provide such information to us in accordance with Clauses 8 and 9. '

All forms can be stored electronically once the file has been closed in accordance with the 2010 Standard Civil Contract section 8. Whilst a file is open the LAA would expect to see hard original copies of means forms.

15. Completing the CW5 Help with Family Mediation Form

A new CW5 form has been introduced to support the legal aid reforms. It has been created to provide evidence to a contracted Family legal aid provider that the client concerned has participated in mediation and is potentially eligible for Help with Family Mediation. The Mediation Service should complete the Equal Opportunities section and client details section on page 1 and the mediation details section on the top of page 2. The remainder of the document is for the legal advisor to complete.

16. Transitional Arrangement Pre and Post 1st April 2013

Willingness Test

The reporting month of the Mediation Work Start Form will determine whether Willingness Tests can be claimed or not under the contract. Willingness Tests are one off events that if undertaken in March 2013 can be claimed and should be included as an overall number on the Work Start Submission for March submission. From the 1st April 2013 no Willingness Tests undertaken can be claimed.

Therefore it is not the date of the referral that determines whether a Willingness Test can be claimed but the date of the telephone call or letter being sent that determines whether it will be remunerated.

Funding Code Referrals

If a Funding Code Referral is received and one of the clients is seen at an Assessment Meeting prior to the 1st April 2013 and is assessed as not eligible then you can claim for the additional assessment meeting if the second party is also not eligible even if they are only seen after the 31st March 2013 where it relates to the same matter.

If a Funding Code Referral is received and neither of the clients are seen at an assessment meeting prior to the 1st April 2013 then the LAA will only fund the assessment meetings from 1st April 2013 onwards where at least one of the clients is eligible for legal aid.

Correct Reporting Forms

When a mediation service submits their April 2013 claim it must be submitted on the revised and rebranded LAA Work Start and Consolidated Work Report Forms.

17. Useful Links

Guidance on the assessment of client eligibility can be found at the following link:

<http://www.justice.gov.uk/legal-aid/assess-your-clients-eligibility/civil-eligibility>

See specifically the guidance document – ‘Guide to determining eligibility for Controlled Work and Mediation’.

The Means Assessment Helpline can be contacted on 0300 200 2020 or by emailing:

Means-Enquiries@legalaid.gsi.gov.uk