



Aurora Family Mediation

Creating Open Dialogue

MEDIATION INFORMATION AND ASSESSMENT MEETINGS A GUIDE FOR CLIENTS

Background

From 6th April 2011, anyone wishing to issue proceedings in the family court in relation to money or children issues is expected to attend a Mediation Information and Assessment meeting (“MIAM” for short) with a mediator, to determine whether the issues in dispute are capable of settlement through mediation, collaborative law or any other non court-based form of dispute resolution. There are certain cases which are exempt from this requirement, and certain circumstances in which mediation assessment will not be appropriate (e.g. if you need to make an emergency application or if there has been a failed mediation in the last 4 months). Your solicitor will be able to guide you based on the facts of your situation.

If proceedings are issued, the court will wish to know at the first hearing whether mediation has been considered by the parties. The judge is expected to take into account any failure to attend a mediation assessment meeting and may put court proceedings on hold and refer you to a meeting with a mediator before the court proceedings can continue further.

Why have these changes been made?

First, it is felt that an adversarial court process is ill-suited to the resolution of many family disputes, particularly in relation to children. There is evidence that negotiated agreements in relation to children are more likely to be complied with than an order imposed by the court, and parents are likely to maintain a better relationship with each other if they have agreed parenting arrangements themselves.

The other main reason is that the family court is overrun with work, leading to delay in many cases being determined. If the appropriate cases can be diverted away from the courts, it frees up court time to deal with cases which need judicial input (e.g. cases involving children at risk, and children/financial cases which involve a complex element or novel point of law).

Some practicalities – Q&A

1. What happens at a MIAM?

Different mediators will have different practices. They will wish to meet you with you and with your spouse/partner separately, and if possible together. The mediator will seek to understand the issues and ask questions to establish whether your case may be suitable for mediation. You will be told about other forms of alternative dispute resolution (and about parenting workshops, in cases involving children), and signposted to other services which may be helpful to your situation. The mediator is also required to advise whether you are eligible for legal aid. The meeting will usually last around 45 minutes.

2. What happens afterwards?

Once a mediator has seen you and your spouse/partner, a certificate (“Form FM1”) will be signed to indicate whether or not mediation is deemed appropriate.

If your case is suitable for mediation and you both agree to try it, the person who assessed you for mediation can undertake the mediation for you. A date will be fixed for the first mediation session and you may return to your solicitor for advice and support at any time during the process. If agreement is reached, the mediator will write to the solicitors to set out details so that you may both take advice on the terms and conclude the agreement. If the mediation does not conclude in agreement and one party wishes to issue Court proceedings, the mediator will provide a signed Form FM1 so that proceedings can be issued.

Alternatively, you/your partner/spouse are free to issue court proceedings after the MIAM if you still wish to, even if the mediator says your case is suitable for mediation. You may still be encouraged by the judge at the first hearing to try mediation if your case has been certified appropriate and court proceedings may be put on hold while you try mediation.

3. Who does the MIAM?

An approved Mediator who is not associated with the legal advisors advising or acting for you or your spouse or partner. There is a full list of Mediators doing MIAMs on the Direct Gov website www.directgov.co.uk which identifies mediators doing publicly funded mediation.

4. What if I cannot find a mediator with availability?

If three mediators are contacted within 15 miles of your home and none is able to conduct a MIAM within 3 weeks, then you are not expected to attend a MIAM and the solicitor acting for you will tell the court this.

5. How much does a MIAM cost and who pays for it?

The cost of the MIAM is to be discussed and agreed between you and the mediator. See point 3 above regarding free publicly funded mediation for eligible people.

6. I do not wish to issue court proceedings to resolve the issues in my case. Do I have to attend a MIAM?

No. You only need to be assessed for mediation if you wish to issue court proceedings. Otherwise, you can continue through solicitor negotiations, collaborative law or mediation.

7. I have already tried mediation/collaborative law in relation to the issues in dispute but the process broke down. Do I need to attend a MIAM or can I just issue court proceedings?

If the process broke down in the last 4 months, you do not need to attend a MIAM and can issue court proceedings straight away. If longer than 4 months ago, you will be expected to attend a MIAM **unless there is good reason not to do so. The Mediator or your Solicitor will tell you if you need to attend.**

8. What if I want to issue a court application and my spouse/partner is refusing to attend a MIAM?

It is recommended that you attend a MIAM to obtain information which may be of assistance to you further down the procedure.

9. What is mediation? What are the other alternatives to Court?

Mediation is assisted negotiations between you and the other party. Other options include collaborative practice.

10. If we decide to use mediation or another alternative to court to resolve the issues in our case, is the outcome less binding than if we had gone to court?

No. In financial cases, a negotiated agreement will be converted into a court order and submitted to a judge for approval. In children cases the majority of parents choose not to have a court order setting out arrangements for their children, but you can discuss with your solicitor what is appropriate in your case.