

# Family Mediation and the Implications on Commercial Practice in England and Wales

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**BRITISH HELLENIC**  
*Chamber of*  
**COMMERCE**

## Mediation is...

- Voluntary
  - Impartial
  - Confidential
  - Parties remain in control
- 
- *'Mediation is an empowering process for the children, and it can lead to their parents making more informed and suitable decisions for the future'.*

Mr and Mrs  
Call the  
Mediator  
(TV series –  
2016)

- [https://www.youtube.com/watch?v=DVWsoZ3\\_SBg](https://www.youtube.com/watch?v=DVWsoZ3_SBg)

Worried about sorting  
out arrangements after  
a separation or divorce?

## Family mediation works

Professional family mediators help you agree on arrangements for your children, home and finances, if you are divorcing or separating. You can do this without going through court and paying big legal fees. The majority of people who start mediation reach an agreement.

You'll usually need to prove that you've considered mediation before you go to court.

Family mediation is:

- Quicker and cheaper than long court battles
- Less stressful than court – with less contact between you and your partner
- Gives you more control over decisions than if you go to court
- Better for children when parents co-operate

Mediators could be free if you qualify for Legal Aid. You can check whether you qualify for free mediation at [www.gov.uk/check-legal-aid](http://www.gov.uk/check-legal-aid) or call 0345 345 4345. If either of you qualify for Legal Aid then the information meeting (the MIAM) and first mediation session will be free for both of you.

Contact a family mediator when you think you need help sorting out arrangements – you don't have to see a solicitor first.



Find more information and search for a mediator at  
[www.familymediationcouncil.org.uk](http://www.familymediationcouncil.org.uk)

- Family Law Act 1996
- Access to Justice Act 1999
- Children and Adoption Act 2006
- Legal Aid Sentencing and Punishment of Offenders Act 2012
- Children & Families Act 2014

The logo for the Family Mediation Council (FMC) is located on the left side of the slide. It consists of a dark blue square containing the text "family mediation council" in white, lowercase, sans-serif font. Below the text is a white wavy line graphic. The entire logo is set against a light blue background.

family  
mediation  
council

- Family mediators are regulated and governed by six member organisations, all of which are members of The Family Mediation Council (FMC).
- The FMC provides the Code of Practice for family mediators and sets minimum standards for the practice requirements of family mediation. The FMC is responsible for the accreditation of family mediators.
- In mediating agreements family mediators are required to have regard to the child's welfare and to consider how the child's wishes can be considered.



- The primary role of the Family Justice Council is to promote an inter-disciplinary approach to family justice and to monitor the system.
- The Council, a non-statutory, advisory body, monitors how effectively the system, both as a whole, and through its component parts, delivers the service the Government and the public need. It advises on reforms necessary for continuous improvement.

# Mediation Information and Assessment Meeting (MIAM)

- Since 22 April 2014, most divorcing and separating couples in England and Wales who want to use the court process to resolve any questions about children or money have to show that they have attended a Mediation Information and Assessment Meeting (MIAM) before they can apply for a court order (*section 10 Children and Families Act 2014*). Additionally, a MIAM can be ordered as an activity under *section 11A and 11C Children Act 1989*.
- The two people will usually be invited to separate private meetings.
- The applicant (the person asking the court to get involved) will almost always have to go to the meeting. The other person is expected to go, but does not have to unless the court says this must happen.

# MIAM Encourages...

The MIAM provides an opportunity for parties to meet with a mediator. At this meeting the mediator will:

- Provide information about the process of mediation and other forms of family dispute resolution
- Start to clarify the areas where there are disputes, and provide options for resolving them
- Identify other sources of support including financial, emotional and legal
- Provide parties with more detailed information about additional services that encourage reaching settlement.



# MIAM Exemptions

There may be other over-riding factors which mean the court does not consider attendance at a MIAM is suitable in any particular case. *FPR Rule 3.8(1)/(2)* sets out the circumstances in which a requirement to attend a MIAM does not apply.

- The main exemptions are:
  - Domestic violence/child protection
  - Bankruptcy
  - Unavailability of an authorised mediator within a specified geographic area or timescale
  - MIAM has already been attended in the four months prior to making the application



Legal Aid  
Agency

## Types of cases suitable for Legal Aid

- Contract arrangements
- Residence and parental responsibility
- Child maintenance
- Property
- Finance – savings, debts and pensions



Legal Aid  
Agency

**OFFER ACCEPTANCE FORM:**

**TO BE COMPLETED AND EMAILED TO [Civil.Contracts@legalaid.gsi.gov.uk](mailto:Civil.Contracts@legalaid.gsi.gov.uk) by 23:59 hours on 4 August 2016.**

**Provider principal ("lead") Office Legal Aid Agency Account Number:**

.....

***I/we [provider to insert names(s) of provider signatory(ies)]***

.....

.....

**being duly authorised to act for and on behalf of *[full name of provider to be inserted]***

.....

**ACCEPT the terms of the Legal Aid Agency's Offer of an extension of the Contract Period of my 2010 Standard Civil Contract in Family Mediation from 31 October 2016 until 31 March 2018 as set out in its Offer Letter dated 14 July 2016.**

# Mediation works...the numbers

- National Audit Office figures on legally-aided mediation show that the average time for a mediated case to be completed is **110 days**, compared to **435 days** for court cases on similar issues
- Mediation is also often cheaper than going to court – data from Legal Aid cases shows the average cost per client of mediation is **£535** compared to **£2,823** for cases going to court
- According to the Ministry of Justice, in 2013 “nearly **two thirds** of couples who attended a single mediation session for a child dispute reached a full agreement
- Almost couples who opted for mediation reached an agreement **seven out of every ten**.” (Ministry of Justice Press Release published 20 August 2014)

# Awareness Raising



- Explain family mediation – answer questions and debunk the myths
- Help separating couples decide whether mediation is for them
- Discuss the benefits of family mediation as a well-respected and legitimate alternative to court
- Connect separating couples with mediation professionals

# Implications for Commercial Practice in England and Wales

- Challenge of 'voluntary' mediation – cost sanctions and courts becoming impatient with unnecessary litigation
- Government regulation (CPR and precedent)
- Budget constraints – loss of the National Mediation Helpline and court based schemes
- Regulation and governance (CMC v FMC)
- Mediators suitability and availability
- Cost

# Questions



- Thank you!



HELLENIC MEDIATION & ARBITRATION CENTRE