

PRACTICE DIRECTION 3A – FAMILY MEDIATION INFORMATION AND ASSESSMENT MEETINGS (MIAMS) AND NON-COURT DISPUTE RESOLUTION

1.

The purpose of this Practice Direction is to supplement ~~the MIAM Rules in Part 3 of~~ the Family Procedure Rules and to set out good practice to be followed by prospective respondents who are expected to also attend a MIAM.

2.

Under section 10(1) of the Children and Families Act 2014, it is ~~now~~ a requirement for a person to attend a MIAM before making certain kinds of applications to obtain a court order. (A list of these applications is set out in Rule 3.6 and in paragraphs 12 and 13 below.) The person who would be the respondent to the application is expected to attend the MIAM. The court has a general power to adjourn proceedings in order for non-court dispute resolution to be attempted, including attendance at a MIAM to consider family mediation and other options.

3.

A MIAM is a short meeting that provides information about mediation and other methods of non-court dispute resolution, as options for resolving disputes. ~~as a way of resolving disputes.~~ A MIAM is conducted by a trained mediator who will consider and explain the potential benefits of non-court dispute resolution. ~~assess whether mediation is appropriate in the circumstances.~~ A MIAM should be held within 15 business days of contacting the mediator.

4.

There are exemptions to the MIAM requirement. These are set out in the MIAM Rules (see Chapter 3 to Part 3 of the Family Procedure Rules), and are explained in more detail in this Practice Direction.

5.

The effect of the MIAM requirement and accompanying Rules is that a person who wishes to make certain kinds of applications to the court must first attend a MIAM unless a 'MIAM exemption' ~~or a~~ 'mediator's exemption' applies. These exemptions are set out in Rule 3.8.

6.

When making certain kinds of applications (see paragraphs 12 and 13 below), an applicant must therefore provide on the application form, or on a separate form, one of the following –

(i) confirmation from a mediator that she or he has attended a MIAM;

(ii) confirmation from a mediator that a 'mediator's exemption' applies; or

(iii) a claim that a MIAM exemption applies. An applicant who claims an exemption from the MIAM requirement must attach any required supporting evidence to their application. ~~is not required to attach any supporting evidence with their application, but should bring any supporting evidence to the first hearing.~~

7.

If an applicant claims a MIAM exemption, the court will issue proceedings but will inquire into the exemption claimed. In private law proceedings, the court must make this enquiry, either at the stage at which the case is allocated to a level of judge (often referred to as the “gatekeeping stage”). In financial remedy proceedings, the court may make this enquiry at the stage at which the case is allocated, if that is appropriate, or at the first hearing. ~~At the first hearing, the~~ The court may review any supporting evidence in order to ensure that the MIAM exemption was validly claimed or whether any validly claimed MIAM exemption is still applicable. As set out in more detail below, if a MIAM exemption has not been validly claimed, or is no longer applicable, the court may direct the applicant or the parties to attend a MIAM, and may adjourn proceedings for that purpose.

Background: Consideration of mediation and other non-court dispute resolution

8.

The adversarial court process is not always best suited to the resolution of family disputes. Such disputes are often best resolved through discussion and agreement, where that can be managed safely and appropriately.

9.

There are various types of non-court dispute resolution which can enable parties to settle agreements, for example, mediation, arbitration, evaluation by a neutral third party (such as a private Family Dispute Resolution process and collaborative law. Family mediation is one way of settling disagreements. A trained mediator can help the parties to reach an agreement. A mediator who conducts a MIAM is a qualified independent facilitator who will ~~can~~ also discuss all potentially suitable other forms of non-court dispute resolution, ~~if mediation is not appropriate.~~

10.

Attendance at a MIAM provides an opportunity for the parties to a dispute to receive information about the different processes of non-court dispute resolution ~~of mediation~~ and to understand the benefits ~~they it~~ can offer as a ways to resolve disputes. At that meeting, a trained mediator will discuss with the parties the nature of their dispute and will explore ~~with them~~ whether a form of non-court resolution ~~mediation~~ would be a suitable way to resolve the issues on which there is disagreement.

10A While the FPR do not give the court the power to require parties to attend non-court dispute resolution, the court does have a duty to consider, at every stage in proceedings, whether non-court dispute resolution is appropriate.

10B The court will want to know the parties’ views on using non-court dispute resolution as a way of resolving matters. To enable the court to obtain that information, the procedure set out in paragraph 10C applies in-

(a) proceedings for a financial remedy in which the MIAM requirement applies (see paragraph 13); and 4

(b) private law proceedings relating to children in which the MIAM requirement applies (see paragraph 12) where those proceedings are progressing on the online system referred to in Practice Direction 36ZD,

unless the applicant claimed a MIAM exemption on the basis of domestic abuse (see paragraph 20) or a form C1A (allegations of harm and domestic abuse) has been filed with the court.

10C Where this paragraph applies-

(a) each party must file with the court and serve on all other parties a standard form setting out their views on using non-court dispute resolution-

(i) at least 7 days before the first hearing in the proceedings which is held on notice to all parties, or

(ii) within such other period before that hearing as the court may direct; and

(a) if required by the court, each party must file with the court and serve on all other parties an updated version of that standard form-

(i) at least 7 days before a subsequent hearing; or

(ii) within such other period before a subsequent hearing as the court may direct.

10D It may be that there are gaps in time between hearings which the court considers the parties should use to attend non-court dispute resolution and the court should make it clear to the parties if this is the case (Rule 3.4). The court also has general powers to adjourn proceedings, which could be exercised for these same reasons (Rule 4.1), with the court using its discretion on a case by case basis to determine the appropriate length of any adjournment.

10E If the court allows time for parties to attend non-court dispute resolution, or adjourns the proceedings specifically for that purpose, any failure of a party, or parties, to then attend non-court dispute resolution will not affect any substantive decision the court makes in the proceedings. However, the court may take the parties' conduct in relation to attending non-court dispute resolution into account when considering whether to make an order for costs in relation to the proceedings: see Part 28 FPR."

The applications to which the MIAM requirement applies

11.

In accordance with section 10 of the 2014 Act, and Rule 3.6, the proceedings to which the MIAM requirement applies are the private law proceedings relating to children listed in paragraph 12 and the proceedings for a financial remedy listed in paragraph 13 below.

Private law proceedings relating to children

12.

(1) The private law proceedings relating to children referred to in paragraph 11 are proceedings for the following orders, unless one of the circumstances specified in sub-paragraph (2) applies –

(a) a child arrangements order and other orders with respect to a child or children under section 8 of the Children Act 1989;

(b) a parental responsibility order (under sections 4(1)(c), 4ZA(1)(c) or 4A(1)(b) of the Children Act 1989) or an order terminating parental responsibility (under sections 4(2A), 4ZA(5) or 4A(3) of that Act);

(c) an order appointing a child's guardian (under section 5(1) of the Children Act 1989) or an order terminating the appointment (under section 6(7) of that Act);

(d) an order giving permission to change a child's surname or remove a child from the United Kingdom (under sections 13(1) or 14C of the Children Act 1989);

(e) a special guardianship order; and

(f) an order varying or discharging such an order (under section 14D of the Children Act 1989).

(2) The circumstances referred to in sub-paragraph (1) are that the proceedings –

(a) are for a consent order;

(b) are for an order relating to a child or children in respect of whom there are ongoing emergency proceedings, care proceedings or supervision proceedings; or

(c) are for an order relating to a child or children who are the subject of an emergency protection order, a care order or a supervision order.

Proceedings for a financial remedy

13.

(1) The proceedings for a financial remedy referred to in paragraph 11 are proceedings for the following orders, unless one of the circumstances specified in sub-paragraph (2) applies –

(a) the following financial orders –

(i) an order for maintenance pending suit;

(ii) an order for maintenance pending outcome of proceedings;

(iii) an order for periodical payments or lump sum provision as mentioned in section 21(1) of the Matrimonial Causes Act 1973, except an order under section 27(6) of that Act;

(iv) an order for periodical payments or lump sum provision as mentioned in paragraph 2(1) of Schedule 5 to the Civil Partnership Act 2004, made under Part 1 of Schedule 5 to that Act;

(v) a property adjustment order;

(vi) a variation order;

(vii) a pension sharing order; or

(viii) a pension compensation sharing order;

(b) an order for financial provision for children (under Schedule 1 to the Children Act 1989);

(c) an order for financial provision in a case of neglect to maintain (under section 27 of the Matrimonial Causes Act 1973 or under Part 9 of Schedule 5 to the Civil Partnership Act 2004);

(d) an order for alteration of a maintenance agreement (under section 35 of the Matrimonial Causes Act 1973 or under paragraph 69 of Schedule 5 to the 2004 Act);

(e) an order for financial provision for failure to maintain for parties to a marriage and children of the family (under Part 1 of the Domestic Proceedings and Magistrates' Courts Act 1978 or an order under Schedule 6 to the Civil Partnership Act 2004); and

(f) an order for special protection for respondent in certain separation cases (under section 10(2) of the Matrimonial Causes Act 1973 or under section 48(2) of the Civil Partnership Act 2004).

(2) The circumstances referred to in sub-paragraph (1) are that the proceedings –

(a) are for a consent order; or

(b) are for enforcement of any order made in proceedings for a financial remedy or of any agreement made in or in contemplation of proceedings for a financial remedy.

Making an application

14.

An application to the court in any of the proceedings specified above must be on the relevant court form which must contain either: (a) a confirmation from a mediator that the applicant has attended a MIAM or; (b) a claim by the applicant that a MIAM exemption applies (the list of MIAM exemptions is set out in Rule 3.8(1)); ~~or (c) a confirmation from a mediator that a mediator's exemption applies (the list of circumstances that qualify for a mediator's exemption is in Rule 3.8(2)).~~

15.

Relevant application forms are available from the HMCTS form finder service at www.justice.gov.uk/forms/hmcts. For matters concerning children you can find out which form to use by reading the leaflet CB1 - Making an application - Children and the Family Courts'. Leaflet CB7 – Guide for separated parents: children and the family courts also provides guidance on the court process.

16.

The relevant form can be completed either by the applicant or his or her legal representative. Any reference in this Practice Direction or in the Rules to completion of the form by an applicant includes a reference to completion by a legal representative.

MIAM exemptions

17.

FPR Rule 3.8(1) sets out the circumstances in which the MIAM requirement does not apply. These are called MIAM exemptions.

18.

In order to claim that a MIAM exemption applies, an applicant will need to tick the appropriate MIAM exemption boxes on the relevant form.

19.

Applicants should note that some of the MIAM exemptions require that certain evidence is available. The next section of the Practice Direction specifies those forms of evidence. This evidence must be provided ~~does not need to be provided~~ with the application (but does not need to be served on the other parties) ~~but applicants should bring such evidence to the first hearing because the court will inquire into such evidence in order to determine whether the MIAM exemption has been validly claimed. The court will inquire into such evidence in order to determine whether the MIAM exemption has been validly claimed or, where it has been validly claimed, whether it remains applicable."~~

MIAM exemption - Domestic abuse violence

20.

The forms of evidence referred to in Rule 3.8(1)(a) are–

(a) evidence that a prospective party has been arrested for a relevant domestic abuse violence offence;

(b) evidence of a relevant police caution for a domestic abuse violence offence;

(c) evidence of relevant criminal proceedings for a domestic abuse violence offence which have not concluded;

(d) evidence of a relevant conviction for a domestic abuse violence offence;

(e) a court order binding a prospective party over in connection with a domestic abuse violence offence;

(f) a domestic violence protection notice issued under section 24 of the Crime and Security Act 2010 against a prospective party;

(fa) a domestic abuse protection notice given under section 22 of the Domestic Abuse Act 2021 against a prospective party;

(g) a relevant protective injunction;

(h) an undertaking given in England and Wales under section 46 or 63E of the Family Law Act 1996 (or given in Scotland or Northern Ireland in place of a protective injunction) by a prospective party, provided that a cross-undertaking relating to domestic violence or domestic abuse was not given by another prospective party;

- (i) a copy of a finding of fact, made in proceedings in the United Kingdom, that there has been domestic ~~abuse violence~~ by a prospective party;
- (j) an expert report produced as evidence in proceedings in the United Kingdom for the benefit of a court or tribunal confirming that a person with whom a prospective party is or was ~~personally connected in a family relationship~~, was assessed as being, or at risk of being, a victim of domestic ~~abuse violence~~ by that prospective party;
- (k) a letter or report from an appropriate health professional confirming that-
 - (i) that professional, or another appropriate health professional, has examined a prospective party in person, ~~by telephone or by video conferencing~~; and
 - (ii) in the reasonable professional judgment of the author or the examining appropriate health professional, that prospective party has, or has had, injuries or a condition consistent with being a victim of domestic ~~abuse violence~~;
- (l) a letter or report from-
 - (i) the appropriate health professional who made the referral described below;
 - (ii) an appropriate health professional who has access to the medical records of the prospective party referred to below; or
 - (iii) the person to whom the referral described below was made; confirming that there was a referral by an appropriate health professional of a prospective party to a person who provides specialist support or assistance for victims of, or those at risk of, domestic ~~abuse violence~~;
- (m) a letter from any person who is a member of a multi-agency risk assessment conference (or other suitable local safeguarding forum) confirming that a prospective party, or a person with whom that prospective party is ~~personally connected in a family relationship~~, is or has been at risk of harm from domestic ~~abuse violence~~ by another prospective party;
- (n) a letter from an independent domestic violence advisor confirming that they are providing ~~or have provided~~ support to a prospective party;
- (o) a letter from an independent sexual violence advisor confirming that they are providing ~~or have provided~~ support to a prospective party relating to sexual violence by another prospective party;
- (p) a letter from an officer employed by a local authority or housing association (or their equivalent in Scotland or Northern Ireland) for the purpose of supporting tenants containing-
 - (i) a statement to the effect that, in their reasonable professional judgment, a person with whom a prospective party is or has been ~~personally connected in a family relationship~~ is, or is at risk of being, a victim of domestic ~~abuse violence~~ by that prospective party;
 - (ii) a description of the specific matters relied upon to support that judgment; and
 - (iii) a description of the support they provided to the victim of domestic ~~abuse violence~~ or the person at risk of domestic violence by that prospective party;

(q) a letter which-

(i) is from an organisation providing domestic ~~abuse violence~~ support services, or a registered charity, which letter confirms that it-

(aa) is situated in ~~the United Kingdom~~ ~~England and Wales~~,

(bb) has been operating for an uninterrupted period of six months or more; and

(cc) provided a prospective party with support in relation to that person's needs as a victim, or a person at risk, of domestic ~~abuse violence~~; and

(ii) contains-

(aa) a statement to the effect that, in the reasonable professional judgment of the author of the letter, the prospective party is, or is at risk of being, a victim of domestic ~~abuse violence~~;

(bb) a description of the specific matters relied upon to support that judgment;

(cc) a description of the support provided to the prospective party; and

(dd) a statement of the reasons why the prospective party needed that support;

(r) a letter or report from an organisation providing domestic ~~abuse violence~~ support services in the United Kingdom confirming-

(i) that a person with whom a prospective party is or was ~~personally connected in a family relationship~~ was refused admission to a refuge;

(ii) the date on which they were refused admission to the refuge; and

(iii) they sought admission to the refuge because of allegations of domestic ~~abuse violence~~ by the prospective party referred to in paragraph (i);

(s) a letter from a public authority confirming that a person with whom a prospective party is or was ~~personally connected in a family relationship~~, was assessed as being, or at risk of being, a victim of domestic ~~abuse violence~~ by that prospective party (or a copy of that assessment);

(t) a letter from the Secretary of State for the Home Department confirming that a prospective party has been granted leave to remain in the United Kingdom ~~as a victim of domestic abuse. under paragraph 289B of the Rules made by the Home Secretary under section 3(2) of the Immigration Act 1971, which can be found at <https://www.gov.uk/guidance/immigration-rules/immigration-rules-index>~~;

(u) evidence which demonstrates that a prospective party has been, or is at risk of being, the victim of domestic ~~abuse violence~~ by another prospective party in the form of abuse which relates to financial matters.

MIAM exemption – Bankruptcy

21.

The forms of evidence referred to in Rule 3.8(1)(h) are –

- (a) application by the prospective applicant for a bankruptcy order;
- (b) petition by a creditor of the prospective applicant for a bankruptcy order; or
- (c) a bankruptcy order in respect of the prospective applicant.

MIAM exemption – previous non-court dispute resolution attendance

21A If within the four months before the date of the court application the prospective applicant has attended a non-court dispute resolution process in relation to the same, or substantially the same, dispute to which the proposed court proceedings relate, then a MIAM exemption applies (Rule 3.8(1)(d)). The prospective applicant must provide evidence of that attendance at a non-court dispute resolution process. The required form of evidence is: written confirmation from the non-court dispute resolution provider that the prospective applicant has attended.”

Finding an authorised family mediator

22.

As set out in Rule 3.9, a MIAM must be conducted by an authorised family mediator. Under that rule, an authorised family mediator is a person identified by the Family Mediation Council as qualified to conduct a MIAM.

23.

A list of authorised family mediators, including their location, can be found using the ‘Find your local mediator’ search engine at: www.familymediationcouncil.org.uk

24.

The expectation is that a prospective applicant should be able to find an authorised family mediator within 15 miles of his or her home or be able to attend a MIAM online or by video-link. As stated in Rule 3.8(1)(o) a MIAM exemption is available if –

(ai) the prospective applicant is not able to attend a MIAM online or by video-link and has provided an explanation about why this is the case to the court; and

(i) the prospective applicant has contacted as many authorised family mediators as have an office within fifteen miles of his or her home (or ~~five three~~ of them if there are ~~five three~~ or more), and all of them have stated that they are not available to conduct a MIAM within fifteen business days of the date of contact;

and

(ii) the names, postal addresses and telephone numbers or e-mail addresses for such authorised family mediators, and the dates of contact, have been ~~can be~~ provided to the court ~~if requested~~.

25.

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Rule 3.8(1)(p) also provides an exemption if: ~~there is no authorised family mediator with an office within fifteen miles of the prospective applicant's home.~~

(i) ~~the prospective applicant is not able to attend a MIAM online or by videolink; and~~

(ii) ~~there is no authorised family mediator with an office within fifteen miles of the prospective applicant's home; and~~

(iii) ~~(iii) the prospective applicant has provided the court with an explanation of why this exemption applies.~~

26.

To determine whether a mediator is within the distance of 15 miles from their home, applicants can use the 'Find your local mediator' search engine to type in their own post code and then use the distance option to display only family mediators within a 15 mile distance.

27.

The applicant will need to ~~send to the court with their application~~ ~~be prepared to produce at the first hearing~~ the names, contact information and details of the dates of contact with the authorised family mediators.

28.

Information about the Family Mediation Council, including its code of conduct can also be found at www.familymediationcouncil.org.uk

Funding attendance at a MIAM

29.

The cost of attending a MIAM will depend on whether the prospective parties attend separately or together and whether at least one of the prospective parties is eligible for Legal Aid. If at least one party is eligible for Legal Aid then the total cost of MIAM attendance can be met by the Legal Aid Agency, whether the parties attend the same MIAM or separate MIAMs.

30.

If neither party is eligible for Legal Aid then the mediator will agree with the prospective parties how the cost of MIAM attendance is to be met.

31.

Parties can find out whether they are eligible for Legal Aid by using the calculator tool available at www.gov.uk/legal-aid

Attending a MIAM

32.

Prospective respondents are expected to attend a MIAM, either with the prospective applicant or separately. A prospective respondent may choose to attend a MIAM separately but this should usually be with the same authorised family mediator.

33.

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.

34.

If the mediator contacts the prospective respondent and determines that he or she is unwilling to attend a MIAM, a prospective applicant should still attend a MIAM. ask the mediator to confirm this as a ground for MIAM exemption in the relevant section of the application form, which should then be returned signed to the applicant.

MIAM exemption: Inquiries by the court

35.

Where a MIAM exemption requires that certain evidence is available, the evidence must be provided does not need to be provided with the application form (but that evidence does not need to be served on other parties). ~~Applicants should instead bring any such evidence to the first hearing because the~~ The court may will inquire into such evidence in order to determine whether the MIAM exemption was validly claimed or whether a validly claimed MIAM exemption is no longer applicable.

35A The court will consider whether the MIAM exemption was validly claimed, or whether a validly claimed MIAM exemption is no longer applicable-

(a) when making the decision on allocation in private law proceedings to which the MIAM requirement applies; and

(b) if making a decision on allocation, and in any event at the first hearing, in the proceedings for a financial remedy to which the MIAM requirement applies.

36.

The court may if appropriate adjourn proceedings where ~~such~~ evidence relating to a MIAM exemption is not available or may give directions about how and when such evidence is to be filed with the court.

37.

If the court determines that the MIAM exemption was not validly claimed, or was validly claimed but is no longer applicable, the court may direct the applicant, or the parties, to attend a MIAM and may adjourn proceedings pending MIAM attendance.

Definition changes

38-

(a) for “domestic violence offence” substitute “domestic abuse offence”;

(b) omit the defined term “mediator’s exemption”;

(c) after the definition of “pension sharing order” insert- “ “personally connected” has the meaning given in section 2 of the Domestic Abuse Act 2021;”;

(d) for the defined term “prospective respondent” substitute- “ “prospective respondent” means a person who would be a likely respondent to the proceedings in the relevant family application (which has the meaning given to it in Rule 3.1 of the FPR);”; 7

(e) in the definition of “protective injunction” for “in a family relationship” substitute “personally connected”;

(f) omit the defined term “registered charity”; (g) in the definition of “refuge” for “violence” both times it occurs substitute “abuse”; and

(h) in the definition of “relevant” for “violence” each time it occurs substitute “abuse”.

[39 deleted as the definition of a person associated with another person has been changed, in para 20, to a person with whom a prospective party is or has been ‘personally connected’.]