

FLiP Family Law in Partnership

Part 3 of the Family Procedure Rules 2010 showing the changes to be introduced by the Family Procedure (Amendment No.2) Rules 2023

3.1

In this Part –

'allocation' means allocation of proceedings other than appeal proceedings to a level of judge;

"authorised family mediator" means a person identified by the Family Mediation Council as qualified to conduct a MIAM;

(a) subject to the Family Mediation Council's code of conduct by virtue of his or her membership of a Family Mediation Council member organisation; and

(b) certified to undertake MIAMs by the professional practice consultant who is supervising the mediator's practice and who is a member of and approved for the purpose by a Family Mediation Council member organisation;

~~'domestic violence' means any incident, or pattern of incidents, of controlling, coercive or threatening behaviour, violence or abuse (whether psychological, physical, sexual, financial or emotional) between the prospective applicant and another prospective party;~~

'family mediation information and assessment meeting' has the meaning given to it in section 10(3) of the 2014 Act.

'harm' has the meaning given to it in section 31 of the Children Act 1989;

~~'mediator's exemption' has the meaning given to it in Rule 3.8(2);~~

'MIAM' means a family mediation information and assessment meeting;

'MIAM exemption' has the meaning given to it in Rule 3.8(1);

'MIAM requirement' is the requirement in section 10(1) of the 2014 Act for a person to attend a MIAM before making a relevant family application;

'private law proceedings' has the meaning given to it in Rule 12.2;

'prospective applicant' is the person who is considering making a relevant family application;

'prospective party' is a person who would be likely to be a party to the proceedings in the relevant family application;

~~'prospective respondent' is a person who would be a likely respondent to the proceedings in the relevant family application; and~~

'relevant family application' has the meaning given to it in section 10(3) of the 2014 Act.

II THE COURT'S DUTY AND POWERS GENERALLY

Scope of this Chapter

3.2

This Chapter contains the court's duty and powers to encourage and facilitate the use of non-court dispute resolution.

The court's duty to consider non-court dispute resolution

3.3

(1) The court must consider, at every stage in proceedings, whether non-court dispute resolution is appropriate.

1A When the court requires, a party must file with the court and serve on all other parties, in the time period specified by the court, a form setting out their views on using non-court dispute resolution as a means of resolving matters raised in the proceedings' and

(2) In considering whether non-court dispute resolution is appropriate in proceedings which were commenced by a relevant family application, the court must take into account –

(a) whether a MIAM took place;

(b) whether a valid MIAM exemption was claimed or ~~mediator's exemption was confirmed~~; and

(c) whether the parties attempted mediation or another form of non-court dispute resolution and the outcome of that process.

~~When the court will adjourn proceedings or a hearing in proceedings~~ Timetabling proceedings: encouraging non-court dispute resolution

3.4

(1) ~~Paragraph (1A) applies when the court considers that non-court dispute resolution is appropriate. If the court considers that non-court dispute resolution is appropriate, it may direct that the proceedings, or a hearing in the proceedings, be adjourned for such specified period as it considers appropriate—~~

1A Where the timetabling of proceedings allows sufficient time for these steps to be taken, the court should encourage parties, as it considers appropriate to

(a) obtain information and advice about, and consider using, non-court dispute resolution and

(b) undertake non-court dispute resolution

~~(a) to enable the parties to obtain information and advice about, and consider using, non-court dispute resolution; and~~

~~(b) where the parties agree, to enable non-court dispute resolution to take place.~~

(2) The court may give directions about the matters specified in paragraph (1A) on ~~under this rule on~~ an application or of its own initiative.

(2A) Subject to paragraph (2B) the court may give directions referred to in paragraph (2) at any time during the proceedings.

(2B) In proceedings to which PD12B applies, the court may give directions referred to in paragraph (2) at any time after the court has received the safeguarding letter or safeguarding report referred to in PD 12B

(3) Where ~~the court directs an adjournment under this rule, it paragraph (1A) applies, the court~~ will give directions about the timing and method by which the parties must tell the court if any of the issues in the proceedings have been resolved.

(4) If the parties do not tell the court if any of the issues have been resolved as directed under paragraph (3), the court will give such further directions as to the management of the case as it considers appropriate.

(5) The court or court officer will –

(a) record the making of ~~an order under this rule~~ any directions to which this rule applies; and

(b) arrange for a copy of the order-directions to be served as soon as practicable on the parties.

(6) Where the court proposes to exercise its powers of its own initiative, the procedure set out in rule 4.3(2) to (6) applies.

III FAMILY MEDIATION INFORMATION AND ASSESSMENT MEETINGS (MIAM)s

Scope of this Chapter

3.5

This Chapter contains Rules about the requirement in section 10(1) of the 2014 Act to attend a MIAM.

Applications to which the MIAM requirement applies

3.6

(1) The MIAM requirement applies to any application to initiate the proceedings specified in paragraph (2), unless a MIAM exemption ~~or a mediator's exemption applies~~.

(2) The specified proceedings are –

(a) the private law proceedings relating to children specified in Practice Direction 3A; and

(b) the proceedings for a financial remedy specified in Practice Direction 3A.

Making an application

3.7

An application to initiate any of the proceedings specified in Rule 3.8 must contain, or be accompanied by, a form containing, either –

(a) a confirmation from an authorised family mediator that the prospective applicant has attended a MIAM; or

(b) a claim by the prospective applicant that one of the MIAM exemptions applies; ~~or~~

(A list of MIAM exemptions is set out in Rule 3.8(1) below.)

~~(c) a confirmation from an authorised family mediator that a mediator's exemption applies.~~

~~(A list of mediator's exemptions is set out in Rule 3.8(2) below.)~~

Circumstances in which the MIAM requirement does not apply (MIAM exemptions ~~and mediator's exemptions~~)

3.8

The MIAM requirement does not apply if –

(1) a prospective applicant claims in the relevant form that any of the following circumstances (a 'MIAM exemption') applies –

Domestic ~~violence~~ abuse (and all other references to violence be changed to abuse)

(a) there is evidence of domestic ~~violence~~ abuse, as specified in Practice Direction 3A; or

Child protection concerns

(b) –

(i) a child would be the subject of the application; and

(ii) that child or another child of the family who is living with that child is currently –

(aa) the subject of enquiries by a local authority under section 47 of the 1989 Act; or

(ab) the subject of a child protection plan put in place by a local authority; or

Urgency

(c) the application must be made urgently because –

(i) there is risk to the life, liberty or physical safety of the prospective applicant or his or her family or his or her home; or

(ii) any delay caused by attending a MIAM would cause –

(aa) a risk of harm to a child;

(ab) a risk of unlawful removal of a child from the United Kingdom, or a risk of unlawful retention of a child who is currently outside England and Wales;

(ac) a significant risk of a miscarriage of justice;

(ad) significant financial ~~unreasonable~~ hardship to the prospective applicant; or

(ae) irretrievable problems in dealing with the dispute (including the irretrievable loss of significant evidence); or

(iii) there is a significant risk that in the period necessary to schedule and attend a MIAM, proceedings relating to the dispute will be brought in another state in which a valid claim to jurisdiction may exist, such that a court in that other state would be seised of the dispute before a court in England and Wales; or

Previous MIAM attendance or non-court dispute resolution attendance ~~MIAM exemption~~

(d) –

(i) in the 4 months prior to making the application, the person attended a MIAM or a ~~participated in another form of~~ non-court dispute resolution process relating to the same or substantially the same dispute; and or

~~(ii) at the time of making the application, where the person is participating in another form of attended a non-court dispute resolution process, there is evidence of that attendance, as specified in PD3A relating to the same or substantially the same dispute; or~~

~~(e) –~~

~~(i) in the 4 months prior to making the application, the person filed a relevant family application confirming that a MIAM exemption applied; and~~

~~(ii) that application related to the same or substantially the same dispute; or~~

(f) –

(i) the application would be made in existing proceedings which are continuing; and

(ii) the prospective applicant attended a MIAM before initiating those proceedings; or

~~(g) –~~

~~(i) the application would be made in existing proceedings which are continuing; and~~

~~(ii) a MIAM exemption applied to the application for those proceedings; or~~

Other

(h) –

(i) there is evidence that the prospective applicant is bankrupt, as specified in Practice Direction 3A; and

(ii) the proceedings would be for a financial remedy; or

~~(i) the prospective applicant does not have sufficient contact details for any of the prospective respondents to enable a family mediator to contact any of the prospective respondents for the purpose of scheduling the MIAM; or~~

(j) the application would be made without notice; or

(Paragraph 5.1 of Practice Direction 18A sets out the circumstances in which applications may be made without notice.)

(k) –

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

(i) the prospective applicant is ~~or all of the prospective respondents are~~ subject to a disability or other inability that would prevent attendance in person at a MIAM unless appropriate facilities can be offered by an authorised mediator;

(ii) the prospective applicant has contacted as many authorised family mediators as have an office within fifteen miles of his or home (or three-five of them if there are three-five or more), and all have stated that they are unable to provide such facilities; and

(iii) the names, postal addresses and telephone numbers or e-mail addresses for ~~such the~~ authorised family mediators contacted by the prospective applicant, and the dates of contact, ~~can are be~~ provided to the court ~~if requested~~; or

(l) the prospective applicant ~~or all of the prospective respondents~~ cannot attend a MIAM because ~~he or she is, or they are,~~ the prospective applicant is as the case may be –

(i) in prison or any other institution in which the prospective applicant ~~he or she is or they are is~~ required to be detained and facilities cannot be made available for them to attend a MAIM online or by video-link;

(ii) subject to conditions of bail that prevent contact with the other person; or

(iii) subject to a licence with a prohibited contact requirement in relation to the other person; or

~~(m) the prospective applicant or all of the prospective respondents are not habitually resident in England and Wales; or~~

(n) a child is one of the prospective parties ~~by virtue of Rule 12.3(1)~~; or

(o) –

(Ai) the prospective applicant is not able to attend a MIAM online or by video link and an explanation of why this is the case is provided to the court.

(i) the prospective applicant has contacted as many authorised family mediators as have an office within fifteen miles of his or her home (or three-five of them if there are three-five 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 the -such authorised family mediators, and the dates of contact, ~~can are~~ be provided to the court ~~if requested~~; or

~~(p) there is no authorised family mediator with an office within fifteen miles of the prospective applicant's home; or~~ (i) the prospective applicant is not able to attend a MIAM online or by video-link

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

(iii) an explanation of why the exemption applies is provided by the prospective applicant to the court.

~~(2) an authorised family mediator confirms in the relevant form (a 'mediator's exemption') that he or she is satisfied that—~~

~~(a) mediation is not suitable as a means of resolving the dispute because none of the respondents is willing to attend a MIAM; or~~

~~(b) mediation is not suitable as a means of resolving the dispute because all of the respondents failed without good reason to attend a MIAM appointment; or~~

~~(c) mediation is otherwise not suitable as a means of resolving the dispute.~~

Conduct of MIAMs

3.9

(1) Only an authorised family mediator may conduct a MIAM.

(2) At the MIAM, the authorised family mediator must

(a) provide information about the principles, process and different models of mediation, and information about other methods of non-court dispute resolution;

~~(b) assess the suitability of mediation as a means of resolving the dispute; consider and explain the potential benefits of mediation and other methods of non-court dispute resolution as a means of resolving the dispute~~

(c) assess whether there has been, or is a risk of, domestic ~~violence~~abuse; and

(d) assess whether there has been, or is a risk of, harm by a prospective party to a child that would be a subject of the application, and

~~(e) indicate to those attending the MIAM which form or forms of non-court dispute resolution may be most suitable as a means of resolving the dispute and why and~~

~~(f) where sub-para (e) applies, provide information to those attending the MIAM about how to proceed with the form of non-court dispute resolution in question -~~

MIAM exemption not validly claimed or no longer applicable

3.10

(1) If a MIAM exemption has been claimed, the court will inquire into whether the exemption (a) -if appropriate when making a decision on allocation, and in any event at the first hearing, inquire into whether the exemption was not validly claimed or (b) was validly claimed but is no longer applicable

1A The inquiry referred to in paragraph (1) must be made

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

(b) when making a decision on allocation (if such a decision is made) and in any event at the first hearing, in proceedings for a FR to which the MIAM requirement applies-

(2) If a court finds that the MIAM exemption was not validly claimed, or that it was validly claimed but is no longer applicable the court will –

(a) direct the applicant, or direct the parties to attend a MIAM; and

(b) if necessary, adjourn the proceedings to enable a MIAM to take place;

unless the court considers that in all the circumstances of the case, the MIAM requirement should not apply to the application in question.

(3) In making a decision under Rule 3.10(2), the court will have particular regard to –

(a) any applicable time limits;

(b) the reason or reasons why the MIAM exemption was not validly claimed;

(ba) the reasons why a MIAM exemption was validly claimed is no longer applicable

(c) ~~(e)~~ the applicability of any other MIAM exemptions;
(CA) the potential benefits of attending a MIAM including the opportunity to receive information about options for non-court dispute resolution and ~~and~~

(d) the number and nature of issues that remain to be resolved in the proceedings.

PD3A - Family – 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 Part 3~~ in 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 as a way of resolving disputes. A MIAM is conducted by a trained mediator who will assess consider and explain the potential benefits of different methods of non-court dispute resolution ~~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 is ~~not required~~ must to attach any required supporting evidence with to 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 at 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.

Family mediation is one way of settling disagreements. There are various types of non-court dispute resolution which can enable parties to settle disagreements, for example, mediation, arbitration, evaluation by a neutral third party (such as a private Financial Dispute Resolution process) and collaborative law. A trained mediator can help the parties to reach an agreement. A mediator who conducts a MIAM is a qualified independent facilitator who can will 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 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 dispute resolution mediation would be a suitable way to resolve the issues on which there is disagreement.

10A

While the FPR does 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 financial remedy in which the MIAM requirement applies (see para 13); and
- (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 para 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 the 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 subparagraph (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 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 ~~does not need to be~~ must be provided with the application (but does not need to be served on other parties). ~~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 or, where it has been validly claimed, whether it remains applicable.

MIAM exemption - Domestic ~~violence~~ abuse (and change all other 'violence' to 'abuse')

20.

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

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

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

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

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

(e) a court order binding a prospective party over in connection with a domestic ~~violence abuse~~ 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 ~~violence-abuse~~ 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 in ~~a family relationship personally connected~~, was assessed as being, or at risk of being, a victim of domestic ~~violence-abuse~~ 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 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 ~~violence abuse~~;

(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 ~~violence abuse~~;

(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 ~~in a family relationship personally~~

connected, is or has been at risk of harm from domestic ~~violence~~-abuse 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 ~~violence~~-abuse 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 violence or the person at risk of domestic ~~violence~~-abuse by that prospective party;

(q) a letter which-

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

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

(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 ~~violence~~ abuse; 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 ~~violence~~ abuse;

(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 ~~violence~~-abuse 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 violence-abuse 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 violence-abuse 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.

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 to 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 ~~three-five~~ of them if there are ~~three-five~~ 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, ~~can have been~~ be provided to the court ~~if requested~~.

25.

Rule 3.8(1)(p) also provides an exemption if

- i) ~~The prospective applicant is not able to attend a MIAM online or by video link;~~
~~and~~
- ii) ~~there is no authorised family mediator with an office within fifteen miles of the prospective applicant's home; and~~
- 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 ~~be prepared to send to the court with their application 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 does not need to be provided with the application form (but that evidence does not need to be served on the parties). The Applicants should instead bring any such evidence to the first hearing because the court will may inquire into such evidence in order to determine whether the MIAM exemption is no longer applicable.was validly claimed.

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

(a)(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.

Definitions

38.

For the purpose of this Practice Direction –

'appropriate health professional' means-

(a) a medical practitioner licensed to practise by the General Medical Council;

(b) a health professional who is registered to practise in the United Kingdom by-

(i) the Nursing and Midwifery Council; or

(ii) the General Dental Council; or

(c) a paramedic, practitioner psychologist, radiographer or social worker registered to practise in the United Kingdom by the Health and Care Professions Council;

'care order' has the meaning given to it in Rule 2.3 of the FPR;

'care proceedings' has the meaning given to it in Rule 12.2 of the FPR;

'consent order' has the meaning given to it in Rule 2.3 of the FPR;

'domestic ~~violence-abuse~~ offence' has the meaning given in the list published by the Lord Chancellor which can be viewed at <https://www.gov.uk/government/publications/domestic-violence-and-child-abuse-offences>;

'emergency proceedings' has the meaning given to it in Rule 12.2 of the FPR;

'emergency protection order' has the meaning given to it in Rule 12.2 of the FPR;

'expert report' means a report by a person qualified to give expert advice on all or most of the matters that are the subject of the report;

'FPR' means the Family Procedure Rules 2010;

'financial order' has the meaning given to it in Rule 2.3 of the FPR;

'financial remedy' has the meaning given to it in Rule 2.3 of the FPR;

'housing association' has the same meaning as in section 1(1) of the Housing Associations Act 1985;

'local authority' means a county council, a district council, a London borough council or a parish council but, in relation to Wales, means a county council, county borough council or community council;

'health professional' means a registered –

(a) medical practitioner who holds a licence to practise;

(b) nurse;

(c) midwife; or

(d) practitioner psychologist who holds a licence to practise;

~~'mediator's exemption' has the meaning given to it in Rule 3.1 of the FPR;~~

'MIAM' means a family mediation information and assessment meeting;

'MIAM exemption' has the meaning given to it in Rule 3.1 of the FPR;

'MIAM requirement' has the meaning given to it in Rule 3.1 of the FPR;

'non-court dispute resolution' has the meaning given to it in Rule 2.3 of the FPR;

'pension compensation sharing order' has the meaning given in Rule 9.3 of the FPR;

'pension sharing order' has the meaning given in Rule 9.3 of the FPR;

'personally connected' has the meaning given in section 2 of the Domestic Abuse Act 2021

'private law proceedings' has the meaning given to it in Rule 12.2 of the FPR;

'prospective applicant' has the meaning given to it in Rule 3.1 of the FPR;

'prospective party' has the meaning given to it in Rule 3.1 of the FPR;

'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);

'protective injunction' means an order made by the court—

(a) in respect of persons who are personally connected in a family relationship with each other, containing any of the following provisions—

(i) protecting a person from harm, intimidation, threats or harassment;

(ii) protecting a person from being forced into a marriage or from any attempt to be forced into a marriage;

(iii) prohibiting a person from contacting, or communicating with, another;

(iv) concerning entry or access to, or the use or occupation of, property;

(b) for the protection from female genital mutilation under paragraph 1 or 18 of Schedule 2 to the Female Genital Mutilation Act 2003; or

(c) in respect of a violent offender within the meaning of section 98 of the Criminal Justice and Immigration Act 2008, but does not include an order made without notice to the respondent that was subsequently set aside by the court;

'public authority' has the same meaning as in section 6 of the Human Rights Act 1998;

'registered charity' means a charity which is registered in accordance with section 30 of the Charities Act 2011;

'refuge' means—

(a) a refuge established for the purpose of providing accommodation for victims of, or those at risk of, domestic violence abuse; or

(b) a residential home established and maintained by a public body for any other purpose that also provides accommodation to the victims of, or those at risk of, domestic violence abuse;" and

'relevant' in paragraph 20 of this Practice Direction means that the evidence—

(a) identifies a person with whom a prospective party is or was in a family relationship as being, or at risk of being, the victim of domestic ~~violence~~ abuse; or

(b) is-

(i) in a form described in paragraph 20(1)(a) to (d);

(ii) identifies a prospective party as the person arrested for, cautioned with, charged with, or convicted of the domestic ~~violence~~ abuse offence; and

(iii) relates to a domestic ~~violence~~ abuse offence which does not identify the victim;

'supervision order' has the meaning given to it in Rule 12.2 of the FPR;

'supervision proceedings' has the meaning given to it in Rule 12.2 of the FPR; and

'variation order' has the meaning given to it in Rule 9.3 of the FPR.

~~39~~

~~(1) For the purposes of paragraph 20, there is a family relationship between two people if they are associated with each other. A person is associated with another person if-~~

~~(a) they are or have been married to each other;~~

~~(b) they are or have been civil partners of each other;~~

~~(c) they are cohabitants or former cohabitants;~~

~~(d) they live or have lived in the same household, otherwise than merely by reason of one of them being the other's employee, tenant, lodger or boarder;~~

~~(e) they are relatives;~~

~~(f) they have agreed to marry one another (whether or not that agreement has been terminated);~~

~~(g) they have entered into a civil partnership agreement (as defined by section 73 of the Civil Partnership Act 2004) (whether or not that agreement has been terminated);~~

~~(h) they have or have had an intimate personal relationship with each other which is or was of significant duration;~~

~~(i) in relation to any child, they are both persons falling within sub-paragraph (3); or~~

~~(j) they are parties or prospective parties to the same family proceedings.~~

~~(2) For the purposes of sub-paragraph (1)-~~

~~(a) 'cohabitants' are two persons who are neither married to each other nor civil partners of each other but are living together as husband and wife or as if they were civil partners, and~~

~~(b) 'cohabit' and 'former cohabitants' are to be read accordingly, but the latter expression does not include cohabitants who have subsequently married each other or become civil partners of each other.~~

~~(3) A person falls within this sub-paragraph in relation to a child if—~~

~~(a) the person is a parent of the child; or~~

~~(b) the person has or has had parental responsibility for the child.~~

~~(4) If a child has been adopted or falls within sub-paragraph (6), two persons are also associated with each other for the purposes of sub-paragraph (1) if—~~

~~(a) one is a natural parent of the child or a parent of such a natural parent; and~~

~~(b) the other is the child or any person—~~

~~(i) who has become a parent of the child by virtue of an adoption order or has applied for an adoption order, or~~

~~(ii) with whom the child has at any time been placed for adoption.~~

~~(5) A body corporate and another person are not, by virtue of sub-paragraph (1)(i) or (j), to be regarded as associated with each other.~~

~~(6) A child falls within this sub-paragraph if—~~

~~(a) an adoption agency, within the meaning of section 2 of the Adoption and Children Act 2002, has power to place him for adoption under section 19 of that Act (placing children with parental consent) or he has become the subject of an order under section 21 of that Act (placement orders), or~~

~~(b) the child is freed for adoption by virtue of an order made—~~

~~(i) in England and Wales, under section 18 of the Adoption Act 1976, or~~

~~(ii) in Northern Ireland, under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987, or~~

~~(c) the child is the subject of a Scottish permanence order which includes provision granting authority to adopt.~~

~~(7) In sub-paragraph (6)(c) 'Scottish permanence order' means a permanence order under section 80 of the Adoption and Children (Scotland) Act 2007 (including a deemed permanence order having effect by virtue of article 13(1), 14(2), 17(1) or 19(2) of the Adoption and Children (Scotland) Act 2007 (Commencement No 4, Transitional and Savings Provisions) Order 2009).~~

~~(8) For the avoidance of doubt, where paragraph 20 refers to a person with whom a prospective party is in a family relationship, that person could be (but need not necessarily be), another prospective party.~~

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Family Law in Partnership, Melbourne House, 46 Aldwych, WC2B 4LL
E: hello@flip.co.uk T: 020 7420 5000 www.flip.co.uk

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