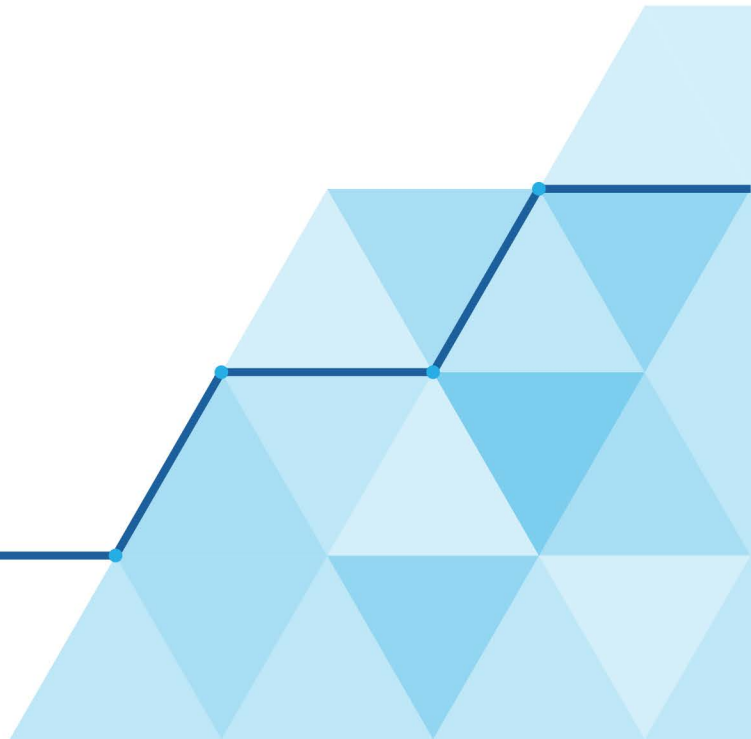




Ministry
of Justice

Family Mediation Voucher Scheme Analysis

March 2023



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A. Executive Summary

1. The family mediation voucher scheme was launched during the pandemic to help ease demand on the family courts. The aim is to incentivise families to resolve child arrangement disputes outside of court through mediation, where safe to do so. The intention is to support families in reaching faster agreements in a less adversarial form of dispute resolution than through in court. It also helps to reduce demand on the family courts, ensuring more of the courts time can be spent on cases that need to be there, such as those where there are safeguarding concerns. The scheme is currently only available for families with child arrangement disputes.
2. The scheme is currently administered by the Family Mediation Council (FMC). It offers families a one-off contribution of up to £500 (per family) towards their mediation costs with FMC accredited mediators.
3. This report summarises the findings from the first 7,214 families using the scheme. The FMC collects survey data which details the outcome of the sessions and a dataset reporting information about the sessions themselves and the associated costs and shares this with the Ministry of Justice (MoJ). This data, provided by the FMC, is filled out by the mediators, which has presented several data issues.
4. Across all responses, 69% of families were able to reach agreement on some or all issues and are classed as a successful diversion from court. Success is defined as those who reach agreement on all or some issues and the mediator indicates that the family didn't go to court or they went to court to obtain a consent order. This success rate was broadly consistent across various group breakdowns (for example, those who were and weren't willing to self-fund mediation, those who also received Legal Aid funding and those who mediated online vs. in person). One stand out group for success was the third of cases that spent more on mediation than the £500 voucher. Their success rate was 76%.
5. Mediators indicated that 51% of cases only mediated because the scheme was available to them and would not have self-funded sessions otherwise.
6. The total amount of vouchers claimed was £3.1m and the average amount claimed per family was £424.
7. It has been difficult to determine which families were able to reach agreement at mediation and successfully have their case resolved without having to come to the family courts. Inconsistencies were identified in the survey responses when trying to determine if families were able to reach agreement, this is due to a combination of

unclear questions in the survey and potential misinterpretation in mediator responses. We have established a definition of a “successful” case, but this comes with associated caveats outlined below.

8. The data is also unclear on costs for those who are also being supported by Legal Aid. The expectation is that the first session, which would be funded by Legal Aid instead of the voucher scheme, should be costed at £0. Some mediators do fill out the response in this way, but this isn't always the case.
9. There are also 32% of cases where the total cost of mediation sessions exceeds £500. It is not known how many mediators stopped reporting sessions after £500 (meaning that families had more mediation than documented to reach their outcome) and how many families only attended mediation funded by the voucher.
10. Finally, the next steps following mediation – particularly if the case went to court – are filled in by the mediator when they claim the cost of the voucher. There could be issues around agreements breaking down shortly after mediation. It was not possible to link the voucher scheme data to family court data to identify families that went to court. Similarly, we have information about whether families would have self-funded their mediation session(s) without the voucher being available, but this is based on the opinion of the mediator.

B. About the scheme

11. The voucher scheme started on 26 March 2021 with £1.2m in funding with an aim of reducing demand on the family courts by incentivising families to use mediation. The scheme is currently administered by the Family Mediation Council (FMC) and provides families with child arrangement disputes with up to £500 for use in sessions with FMC accredited mediators.
12. The family courts have faced increased demand for a number of years, the impact of which was exacerbated the coronavirus pandemic. The total number of outstanding cases in the system continues to rise and cases are taking longer to reach resolution (in both public and private law cases). Prolonged parental conflict can have negative impacts on the lives of the children and families concerned.
13. The total number of children in the family justice system in ongoing child arrangement cases has more than doubled in the past four years – increasing from 42,009 in August 2018 to 85,706 in August 2022.¹ The average length of child arrangement cases from issue to final order has also almost doubled from 22 weeks in 2016 to 41 weeks in 2021.²
14. Mediation can provide a faster and less adversarial means of resolving issues, where circumstances allow. With a maximum of £500 per family, the initial funding could help at least 2,400 families. As backlogs continued to grow in the family court, the scheme acquired additional funding throughout the rest of 2021 and 2022. Funding was increased to £8.6m in April 2022, allowing the scheme to continue until 31 March 2023.
15. As of 7 March 2023, just over 15,300 families have used the scheme. This report will use data from the 7,214 vouchers approved in the first year.

Legal Aid

16. Access to the voucher scheme is not based on a family's income or finances and those who are eligible for Legal Aid are not excluded from the scheme.
17. Those eligible for Legal Aid can receive government support to help pay for their mediation. If one party is eligible for Legal Aid funding, the voucher can be obtained

¹ [HMCTS management information - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/hmcts-management-information)

² [Family Court Statistics Quarterly: April to June 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/family-court-statistics-quarterly)

for the other party. This means the family will have one free mediation session through Legal Aid and can have further sessions funded by the voucher.

18. Where both parties are funded by Legal Aid, they receive fully funded mediation so have no need for this scheme.

Child Inclusive Mediation (CIM)

19. A small number of families (397) also took part in Child Inclusive Mediation under the voucher scheme. This type of mediation is carried out by a family mediator who is trained as a child consultant, it can be complex and require a lot of preparation. Children taking part in CIM are generally those aged 10 or over.
20. The data indicates that these sessions were taken in addition to the mediation without their children, rather than instead of. This means that this group tended to have more sessions and more time spent in mediation.

C. Data

21. The two sources of data are:

- A questionnaire completed by mediators describing the outcome of mediation for each family including:
 - Family location information
 - Legal Aid uptake
 - Would families have mediated without the financial contribution?
 - What type of mediation took place?
 - Were agreements made on none, some or all issues?
 - Next steps
- A dataset providing information, also from mediators, including:
 - Mediator and service information
 - Amount of voucher claimed
 - Number of sessions attended and cost per session
 - Other costs to families

22. Initially, mediators would provide both sets of information at the end of the process, however, this was later changed to be when the cases hit the £500 mark. This means that where the mediator chooses to submit their data as soon as sessions total £500, there is more likelihood that further mediation sessions are required or that agreements breakdown after the data is recorded. It is not known how many mediators submit their data as soon as the £500 mark is reached. This limits what we can say on how many families require over £500 worth of mediation to reach agreement.

Determining Success

23. The aim of the scheme is to help families reach agreement on their child arrangement disputes more quickly and in a less adversarial setting. This will also help to reduce demand on the family courts, therefore we define a success as a case that does not return to court, unless for a consent order (based on the information given). A consent order is a mechanism to make an informal agreement – i.e., one reached through mediation – legally binding and enforceable through the courts. However, it is difficult to determine from the data which cases fit this criterion. This section will explain the issues and the agreed method.

24. There are three questions in the mediator survey which can be used to determine if mediation was successful or not.

1) What was the outcome of the mediation

No agreement

Proposals agreed on all issues and written up

Proposals agreed on all issues but not written up

Proposals agreed on some issues and written up

Proposals agreed on some issues but not written up

2) If some or all issues were resolved, what are the participants' next steps?

Consent order – child and finance/property issues

Consent order – child issues

Consent order – finance/property issues only

Parties to implement proposals but no further formal action

Other

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3) If not all issues were resolved, what are the participants' next steps?

Court

Arbitration

Collaborative Law

Solicitor

Negotiation

Other

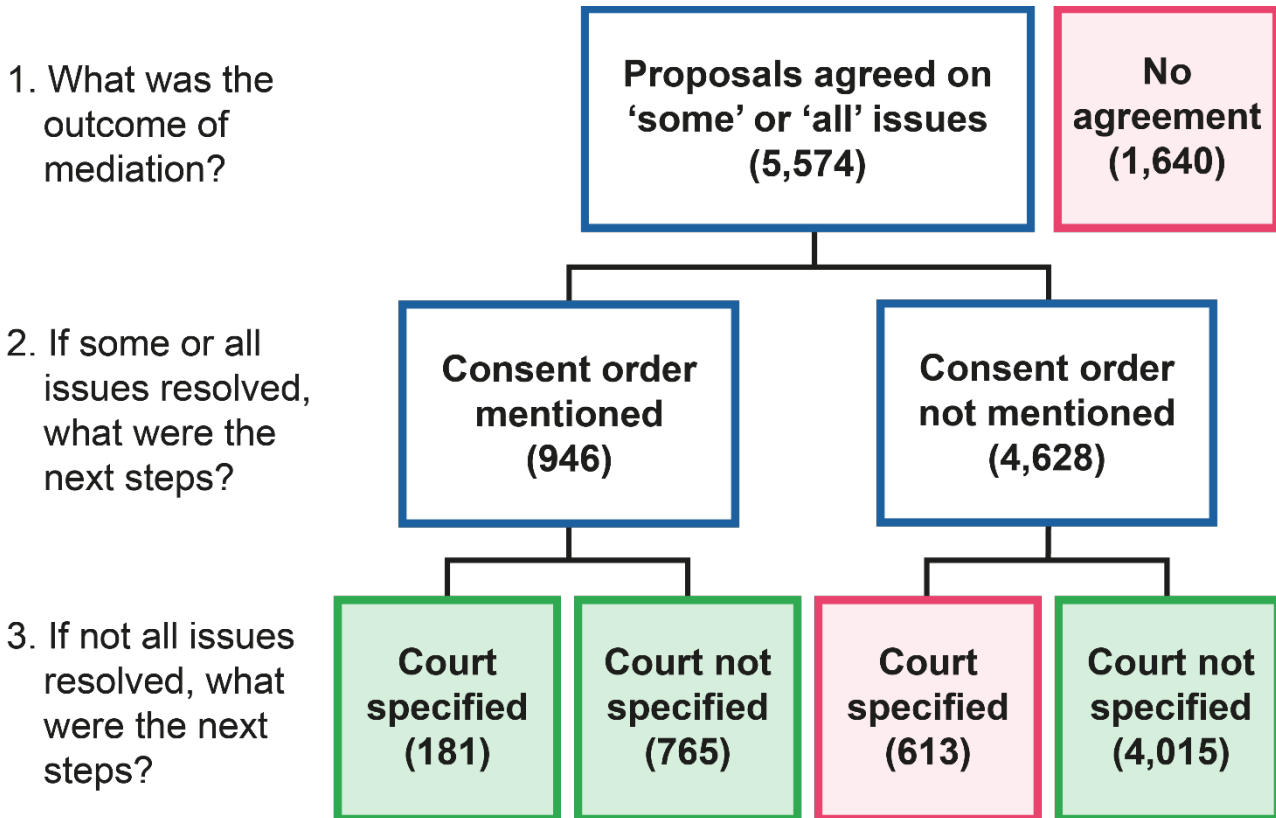
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25. Question 1 determines whether any agreements were made during mediation or not. Questions 2 and 3 go on to determine further actions taken by the participants. The phrasing of questions 2 and 3 could be clearer and there is some overlap between the two. Question 2 and 3 could both apply to cases where only some issues are agreed at mediation, despite having different sets of responses. Mediators are also free to answer both, one or neither questions if they choose to. The data suggests that mediators have interpreted the questions in different ways. This creates two main issues.

26. Firstly, there are some cases in which a consent order is mentioned in question 2 and then court is mentioned in question 3. This would be the expected response, as a consent order can only be obtained by going to court. There are also cases where a consent order is mentioned, but then court is not mentioned. It is reasonable to assume that some mediators selected consent order in question 2 and felt there was no reason to specify that the family went to court in question 3 because it is implied by the answer to question 2. Since we class cases that only go to court for a consent order as a successful diversion from court, this causes some issues.

27. Secondly, there are examples of counterintuitive responses, for example, both ‘proposals agreed on all issues’ and ‘court’ selected, but a consent order isn’t mentioned so it isn’t clear why the family went to court. The diagram below shows the various survey response outcomes.

Figure 1: Survey responses and success groups



28. The most basic way to determine a successful case is to only look at question 1 – proposals agreed on ‘some’ or ‘all’ issues – which was the response for 5,574 families. This method gives a 77% success rate. Whilst this is intuitive, it fails to consider the information given in questions 2 and 3.

29. There are 613 cases where ‘court’ is specified, and a consent order is not. We think it is unreasonable to classify these cases as successful as they could have gone to court to settle some of the issues not agreed at mediation, rather than to obtain a consent order. Removing this group from the 5,574 where agreement was reached on ‘all’ or ‘some’ issues leaves 4,961 successful cases – a 69% success rate.

30. There is an option in both questions 2 and 3 to select ‘other’ and give a free text response. Of the 4,961 cases we are defining as a success, 139 mention ‘court’ in the free text responses in some way, indicating that some may not have been successful. Equally, we acknowledge that there may be some cases classified under this method as unsuccessful which didn’t in fact return to court for anything other than a consent

order. Therefore, given the data limitations, we think unsuccessful cases are those with 'no agreement' reached and those where proposals were made but court is mentioned, and a consent order is not. The remaining cases are classified as a success.

Legal Aid Sessions

31. Mediators were asked that the cost of 'session 1' was listed as 0 if a family had one Legal Aid funded party (i.e. receiving one mediation session free of charge). However, only 51% of the Legal Aid funded cases had 0 cost against their first session. It is unclear what this means for those which do have a cost against the first session. It could be that the mediator has listed what the cost would have been, or that the first session for that group is not included in the data. Likely, a combination of the two.
32. There are a small number of cases (33 in total) where both participants were eligible for Legal Aid but chose to use the voucher scheme instead. Since families can get full funding for all their mediation sessions if both parents are eligible for Legal Aid, they should not need to use the voucher scheme. This may be an error in the survey responses or be due to other factors such as their chosen mediator not opting to provide Legal Aid funded mediation.
33. All cases will be included in the data.

The Total Cost of Mediation

34. 32% (2,285) of families exceeded a £500 spend on mediation, meaning that the mediation outcomes are not solely based on voucher usage. It is not specified in the payments data if all sessions attended by parents are included, or just those paid-for by the voucher. Given the 32%, we know that some mediators have included data from multiple additional sessions beyond those funded by the voucher, but it's unknown whether this applies to all responses. Considering mediators are able to apply for the voucher funding as soon as the £500 mark is reached, it is possible that families went on to self-fund additional sessions beyond those covered by the voucher before reaching an agreement. This won't be captured in the survey response or payments data.

Cases Returning to Court

35. Whether a case returns to court or not is only known based on the mediator's response to the survey. Therefore, there is a risk that some of the 'successes' might end up going to court where agreements break down following an initially successful mediation.
36. Ideally it would be possible to link the data from the mediators to FamilyMan (the administrative data system for the family courts) and identify where participants do go on to attend court or not. However, due to limitations around data use and quality it was not possible to perform this analysis.

Families Using Mediation Because of the Voucher Scheme

37. Determining whether families would or wouldn't have mediated in the absence of the voucher scheme is based on subjective survey evidence from mediators. The survey responses indicated that 49% of families would have self-funded their mediation. This group don't offer direct benefit in terms of diverting families from court. Prior to launch, the MoJ estimated around 30–60% of users would have self-funded mediation without the scheme, so this falls within the anticipated range.

D. Success Rates

Table 1: Success rates

	Sample size	Success rate
Total sample	7,214	69% (4,961)
Those who only mediated because the scheme was available	3,683	67% (2,473)
Those who would have mediated anyway	3,531	70% (2,488)
Cases where one party received Legal Aid funding alongside the scheme	2,122	70% (1,495)
Cases where neither party was eligible for Legal Aid	4,804	68% (3,264)
Those who mediated online	6,319	68% (4,322)
Those who mediated in person	705	71% (500)
Those who mediated 'together in one room' either online or in person	5,539	73% (4,025)
Those who also had Child Inclusive Mediation	397	74% (294)

38. Following the method laid out in paragraph 29, overall, the scheme had a 69% success rate. This means that 4,961 families either did not go on to court or went only for a consent order. Mediation success is broadly similar across all group breakdowns. We have not tested whether differences are statistically significant between groups, it should be noted that some of the sample sizes are relatively small.
39. Mediators were asked whether participants would have mediated if there was no financial contribution. Based on their responses, 51% only mediated because of the voucher scheme. The success rate for this group was 67%. The participants who would have mediated regardless of the scheme had a slightly higher 70% success rate. This is likely because they were more willing to try mediation before court in the first place, without the incentive of voucher funding.
40. 29% of families had one party receiving Legal Aid funding alongside the voucher, these families had a 70% success rate compared to the 68% success rate for cases where neither party was eligible for Legal Aid. It's possible the success rate is slightly higher for those with Legal Aid funding because they receive one free mediation session on top of the voucher. This means they had an average of 2.5 sessions compared to an average of 1.8 sessions for those not eligible for Legal Aid. Although, more sessions do not necessarily mean a better outcome.

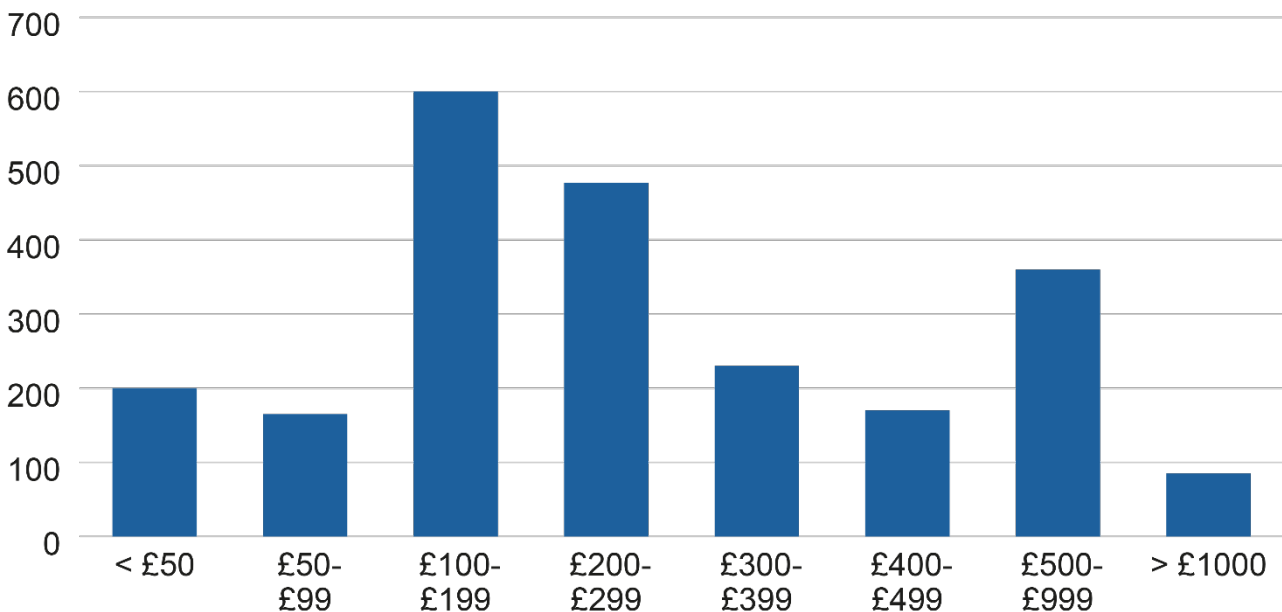
41. Most participants (88%) mediated using an online method which includes together in one 'room', shuttle mediation (at the same time but different rooms) and at different times. The success rate for this group was 68% compared to a slightly higher 71% for those mediating in person (of which there were 705 families). In person mediation also included in one room, shuttle and at different times.
42. For the participants who mediated 'together in one room' either online or in person, the success rate was 73%. This is likely to be higher than the total sample success rate given that their relationship allows them to agree to be in one room together.
43. Those who also took part in CIM had a success rate of 74%. They also had a higher average number of sessions compared to the overall sample (3.4 sessions vs. 2 sessions), likely because CIM seems to be taken part of on top of other mediation sessions rather than instead of.

E. Cost of Mediation

Total cost of sessions

44. The average total cost of documented mediation sessions, which may include additional sessions not funded by the voucher is £511. For successful cases this is slightly higher at £531.
45. 32% of cases have a total session cost of more than £500. They paid an average of £312 on top of the voucher, not including additional costs that participants may incur such as paperwork, MIAMs, VAT and other costs. The chart below shows how much participants paid in addition to the voucher.

Chart 1: Number of families with over £500 mediation costs, by value over £500



46. The success rate for families that had more than £500 worth of mediation was 76%. Given the caveats around the payment data (section 4.3) robust analysis of how the success rates vary by spend is not possible to undertake. The success rate for cases which used only the voucher amount (up to and including £500) had a lower success rate of 66%.

Average Voucher Value

Table 2: Average voucher value and session information

	Average Voucher Value	Average Number of Sessions	Average time spent in mediation
Total sample	£424	2	3 hrs
Those who only mediated because the scheme was available	£415	2	2 hr 57 min
Those who would have mediated anyway	£432	2	3 hr 2 min
Cases where one party received Legal Aid funding alongside the scheme	£342	2.5	3 hr 47 min
Cases where neither party was eligible for Legal Aid	£458	1.8	2 hr 40 min
Those who mediated online	£420	2	2 hr 58 min
Those who mediated in person	£442	2	3 hr 2 min
Those who mediated 'together in one room' either online or in person	£425	2	2 hr 59 min
Those who also had Child Inclusive Mediation	£463	3.4	4 hr 25 min

47. The total monetary value of the 7,214 vouchers claimed was £3.1m and the average amount claimed per case was £424. The voucher was spent over an average of 2 sessions which totalled an average of 3 hours (both number of sessions and total time spent in mediation are included as session length can vary).
48. The average voucher spend per hour of mediation is £141.
49. Those who received Legal Aid funding alongside the scheme spent 3 hours 47 minutes in mediation but claimed, on average, only £342. This is likely due to them having one free session through Legal Aid before using the voucher scheme. These figures are likely to be impacted by the fact that mediators are using different methods to report sessions for those who received Legal Aid funding (paragraph 31).
50. Those who also attended CIM spent the most time in mediation (4 hours 25 minutes) and claimed the highest average amount of the voucher. This makes sense as the sessions were mostly in addition to their other mediation.
51. The total voucher amount claimed for those who would have mediated regardless of the scheme (49% of families) was £1.5m. These costs don't directly divert any cases away from the family courts, if a successful agreement is reached, this could have been achieved without the funding from the voucher. If no agreement is reached, the

case could still come to the family courts. However, this cost is part of delivering the broader aim of incentivising other families to use mediation where they wouldn't otherwise.



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