



Ministry  
of Justice



**Asking people about how to settle family disagreements more quickly**

**Please tell us what you think by: 15 June 2023**

**Part 3: Asking families to go to mediation**



EasyRead version

# The different parts of this paper

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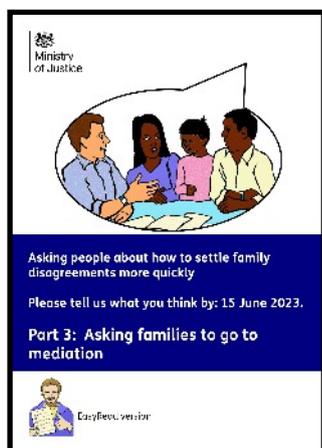
There are different parts of this paper explaining different things and asking you different questions.



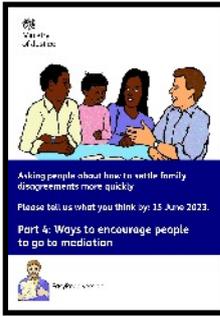
Part 1 is about general information about what we are talking about.



Part 2 is about help for families who are splitting up.



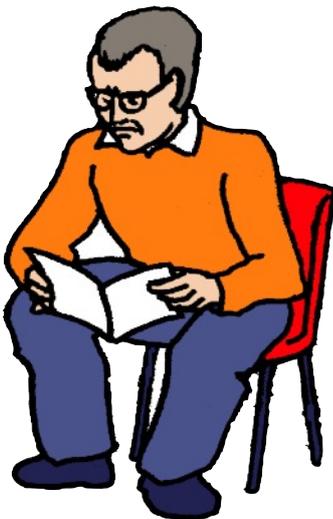
**This is Part 3. It is about asking families to go to mediation.**



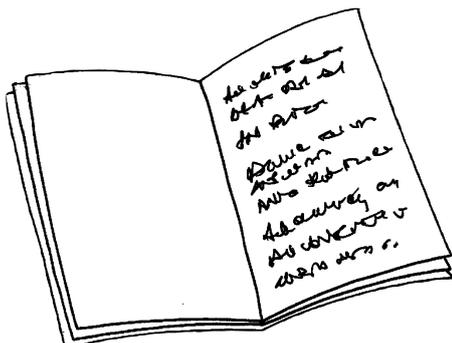
Part 4 is about ways to encourage people to go to mediation.



Part 5 is on the Impact Assessment, Equalities and Welsh Language.



Please read the parts you are interested in or know about and tell us what you think about our ideas.



Some of the difficult words in this easy read paper are in **Bold**.

They are explained in the section at the end called What the Words Mean.

# Asking families to go to mediation

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This part is about **compulsory mediation**.

**Compulsory** means you have to go to mediation before going to court for a disagreement about children or money.



We look at:

- who should pay for compulsory mediation and



- having the right number of trained mediators.

# Where we are now

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When families split up they have to talk about:

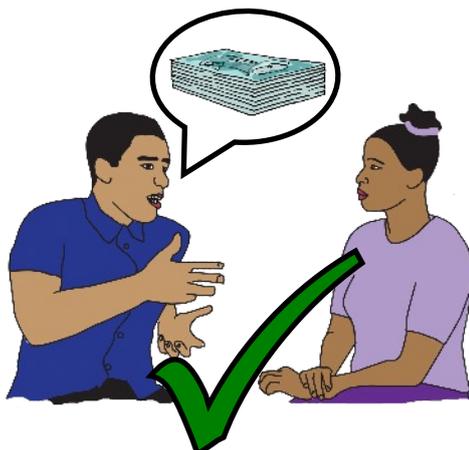
- who their child lives with and when they see each parent



- what school the child will attend.



When couples divorce they have to talk about money matters for them and their children.



Many parents can work this out by themselves and do not need help.



But some parents cannot agree between themselves and need support.

We suggest family mediation.



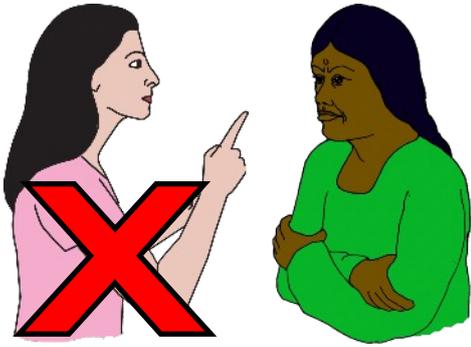
**Family mediation** is where a trained professional called a mediator helps people who are splitting up talk about plans for their children, money or property.



The mediator does not tell people how to agree.



Their job is to help both people agree and work out the way forward.

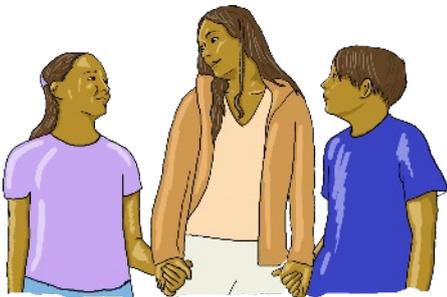


A mediator will not make either side do anything they do not want to.



Mediation is not marriage counselling.

Mediators do not get couples back together or ask them to live together for the sake of their children.

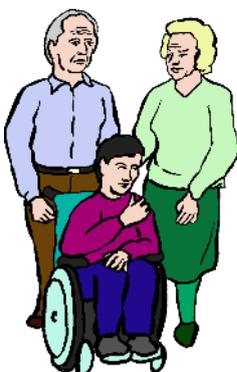


They talk through:

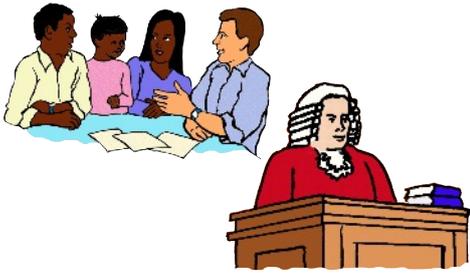
- looking after the children if the parents have split up



- how to divide money fairly



- when other family members such as grandparents or carers can see or contact the children.



Mediation is different from court where a judge decides for you.



In mediation everyone must agree about the final plan.



Mediators can work:

- with the adults and children



- either together or separately.



They try to help you find a plan that works for everyone and is in the best interests of the children.



People say mediation is a more positive and productive experience than going to court.



Mediation can teach parents and other adults how to work through new problems together and keep the focus on any children involved.

# Learning from other countries

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We looked at how other countries help people safely use mediation.



In Australia they ask parents to reach an agreement through **dispute resolution** before coming to court. Mediation is a form of dispute resolution.



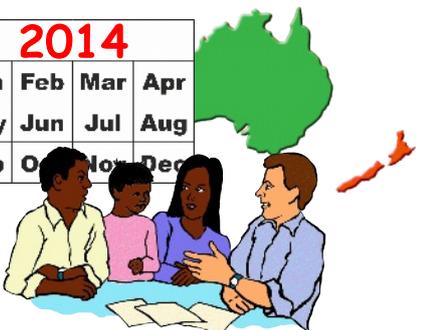
This is only where there is no violence, child abuse and urgency.

2009			
Jan	Feb	Mar	Apr
May	Jun	Jul	Aug
Sep	Oct	Nov	Dec



A paper in 2009 said 6 out of 10 separating parents in Australia used dispute resolution services.

2014			
Jan	Feb	Mar	Apr
May	Jun	Jul	Aug
Sep	Oct	Nov	Dec



In 2014 New Zealand said parents had to try family dispute resolution and do a parenting programme before applying to the courts.



They made special rules where there was violence, child abuse and urgency.



Norway asks all separating parents with children under the age of 16 to attend mediation.



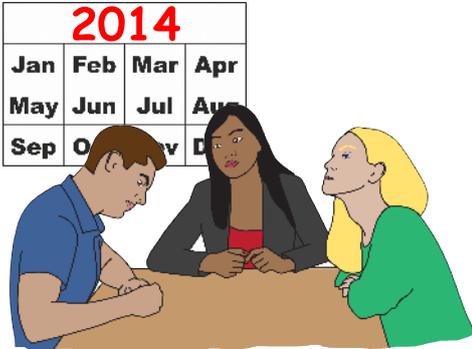
At a Family Counselling Service parents make a written agreement for childcare arrangements.



Parents who want to go to court have to try to do mediation first.

# What we have done so far

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## The Mediation Information and Assessment Meeting or MIAM

In 2014, we said people had to go to a Mediation Information and Assessment Meeting (MIAM) before applying to the family court.

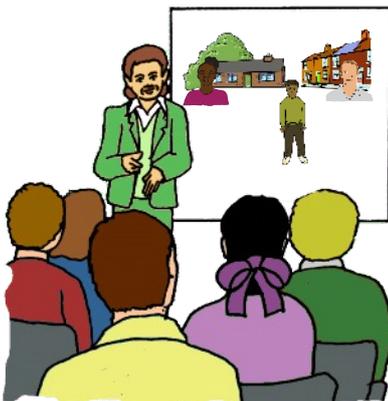


At the MIAM a mediator:

- decides if they think mediation will help



- explains what happens at mediation



- what else they can try before court.



The family decides if they want to go ahead with mediation sessions or look for other things to try.



The MIAM may not be right for the family if:

- things need to be looked at quickly



- there are signs of domestic abuse or harm to a child



- mediation will not work.



MIAM mediators have special training. For example, they know how to spot domestic abuse.

2020				2021			
Jan	Feb	Mar	Apr	Jan	Feb	Mar	Apr
May	Jun	Jul	Aug	May	Jun	Jul	Aug
Sep	Oct	Nov	Dec	Sep	Oct	Nov	Dec



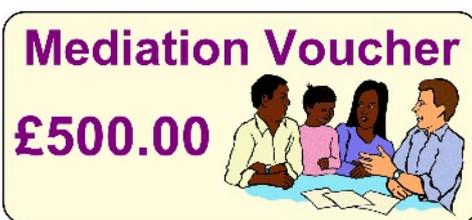
## We know people are not going to MIAMs

Only 1 in 3 people applying to the family courts for a private law matter concerning children went to a MIAM in 2020/21.



Some people said they had a reason not to go. But this reason was not checked properly.

## Mediation voucher scheme



The voucher scheme helps pay for mediation. Separating families are offered a voucher of up to £500 to pay for their mediation. A mediator talks to you about why you need mediation.



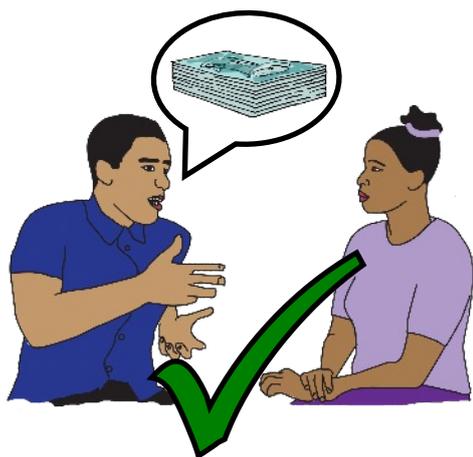
Then they decide if they will apply for the voucher funding.



We know that the scheme helped 6 out of 10 families who went to mediation and made agreements outside of the family courts.

## Other things we could do

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We know some family disputes can be sorted out quickly without needing to go to court.



So here are some ideas we will try:

- We will check the reasons why a family will not go to see a mediator.

People will have to tell the court the reasons why they cannot go to mediation and provide proof.



- We will look at **costs orders**.

**Costs orders** are when one party has to pay some or all of the costs in the case. These can include:

- legal costs
- the application fee





- the costs of any attempted dispute resolution services tried outside of court, such as mediation.



- the costs to the government, for example the costs of mediation that the government has funded

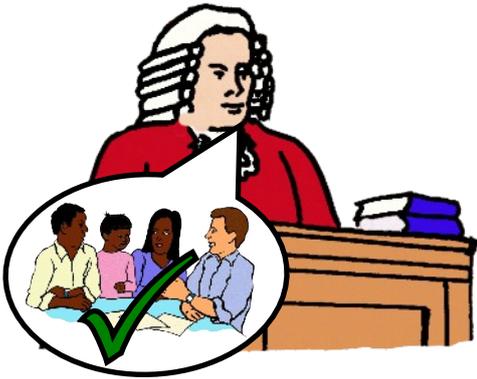
Cost orders can be used by the court in different situations. These are listed below.



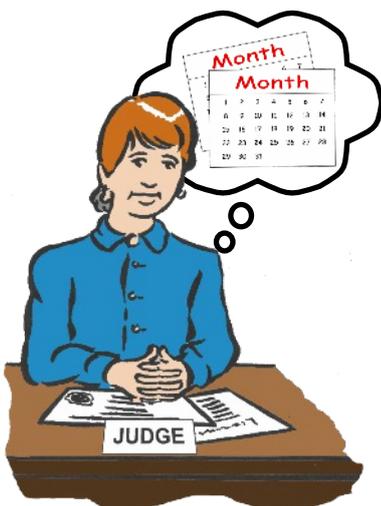
- If one person in court has not tried to go to mediation, and does not have a good reason for why they did not try mediation. They are in court because their ex-partner made the application after they did go to mediation.



- If the court looks at the reason that the person did not go to mediation before court, and decides that this was not an acceptable reason.



- If the court orders parents to attend mediation (because the reason not to go was not acceptable, or because the case has only now become suitable for mediation) and if one person does not try to mediate after this order and they did not have a good reason for why they did not try mediation.



- If the court decides that one party has made the case take longer than it should have in court, by not accepting a reasonable offer from the other party in the case.



- We want to make mediation **compulsory** before people apply to a court.

**Compulsory** means you must do something.



Under a new system people will:

1. go to an information meeting



2. learn about what happens in court and the benefits of mediation and other forms of dispute resolution.



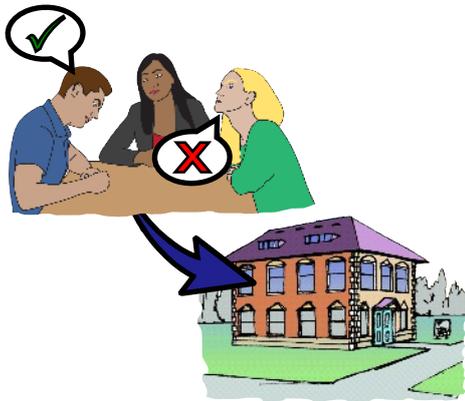
The mediator will decide if mediation and a parenting programme may help.



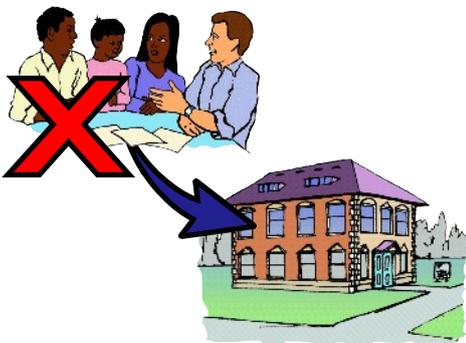
The mediator will check if there are any good reasons mediation will not work.



We think most people attending compulsory mediation will reach a full or part agreement without having to go to court.



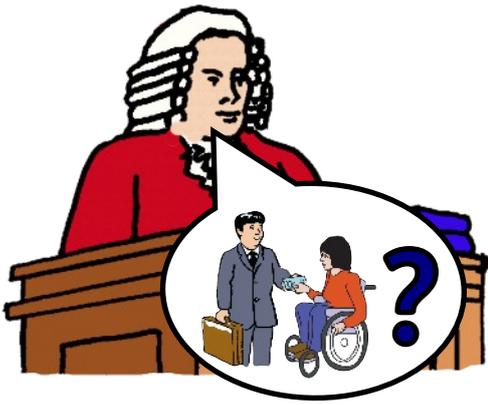
If people still cannot agree, they will then go to court.



If people have tried mediation and it has not worked, they will go to court.



- We may ask people to write to the court explaining how they tried to sort out their problems before coming to court.



If the 2 parties give different reasons about why mediation did not work, the court work out how to charge costs.



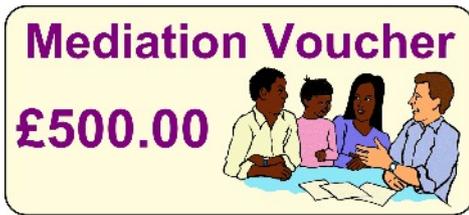
Courts could ask the mediator to share their view.



- We can look at how to help people to pay for mediation services.



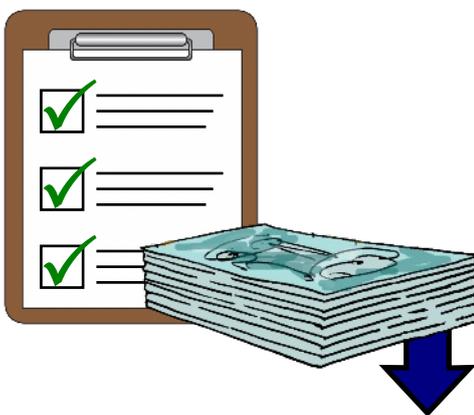
When parents and their children have to go to mediation we want to help with the costs where needed.



We will pay up to £500 in place of the temporary Mediation Voucher Scheme.



For cases dealing with money, we are thinking of the same payment as for children cases.



You can get legal aid to pay for mediation if you pass a **means test**.

A **means test** is checking if you have a low income and savings.



If 1 person meets the means test they receive legal aid and the other person is offered the MIAM and first mediation session funded under legal aid.



If both of you meet the means test all sessions are funded.

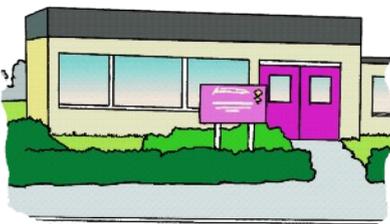


- All mediators are checked by the Family Mediation Council, to make sure that they are trained to be able to help people solve their disagreements.



Family mediation services are provided by:

- small businesses/self-employed mediators



- some established mediation providers



- mediators working in law firms of various sizes.

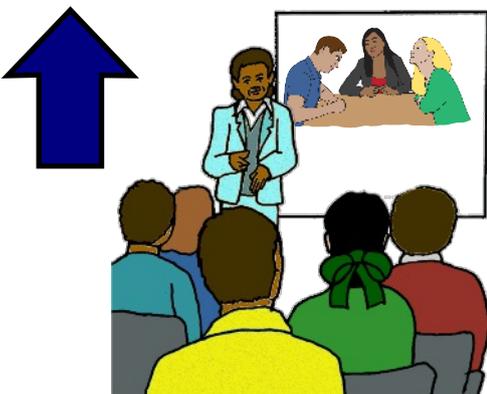


The Family Mediation Council controls what training a mediator must have.

This is called **accreditation**.



We want to know if **accreditation** is working.



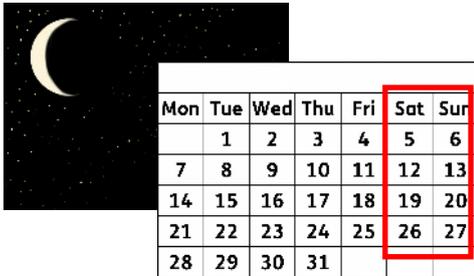
We want to have enough trained mediators to cope with the higher number of people going to mediation if we ask more families to go to pre-court mediation.



- We want to check the fees mediators charge are fair.



- We can use online mediation like we did during the COVID-19 pandemic:
  - mediation sessions moved online



- sessions were offered in the evenings and on weekends



- people do not only have to see a mediator based in their area. They can now have mediation sessions with mediators based across the country.



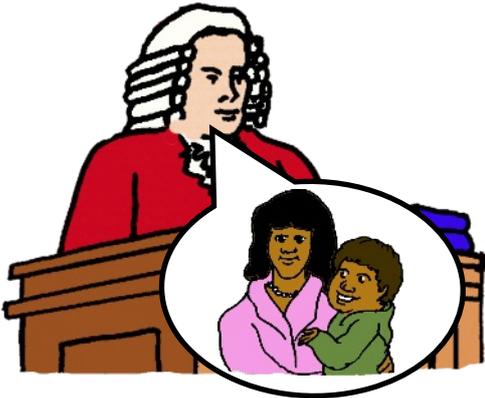
- We can look at other ways to sort out family arguments instead of court.



- **Arbitration:** an **arbitrator** is a person you ask to help work through a disagreement.



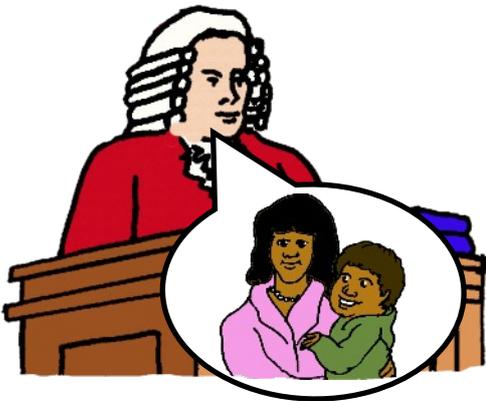
An arbitrator can look at the arguments and decide on the most likely outcome in the case.



A court would still have to make the final order, considering the welfare of the child.



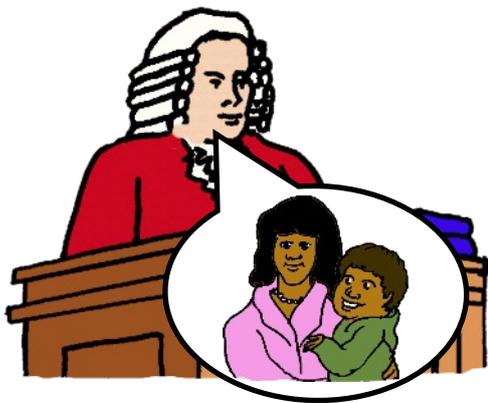
- **Collaborative lawyers:** people can ask a lawyer to help sort through their disagreements without taking to the case to court.



A court would still have to make the final order.



- **Lawyer negotiation:** people can ask lawyers to help sort through their disagreement between themselves so people do not have to talk to each other.



A court would still have to make the final order.

# Questions

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## **Question 6: Other countries.**

Do you have any stories to share about pre-court compulsory mediation in other countries?



**Question 7: This question is about the current rule for people to attend a MIAM.**

We know that not enough people are going. How should the meeting we want parties to go to before trying mediation, where they discuss their disagreement and their options to find a solution, be different from the current MIAM?



## **Question 8: How can we check that someone has made a proper attempt to mediate?**

Could this include:

- counting the number of mediation sessions parties have attended?
- looking at how much time parties spent in mediation?
- looking at a person's attitude to mediation or other dispute resolution options?



## Question 9: Reasons people don't go to mediation first.

People do not have to go to mediation before going to court for these reasons:

- urgent applications
- domestic abuse
- child protection.

Do you agree with this?

Yes

No

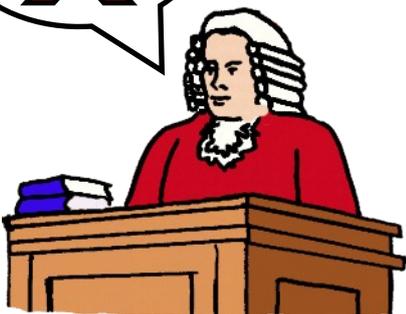
Don't know



Would you like to tell us more?



**Question 10: Can you think of other reasons a person should not have to go to mediation?**



**Question 11: Who do you think can decide that a family can skip mediation? For example, judges/justices', legal advisers, or mediators?**



### Question 12: Paying for mediation.

What do you think about people having help to pay for pre-court compulsory mediation to resolve their money matters?



### Question 13: Mediators.

The Family Mediation Council says what training a mediator must have. This is called accreditation.

Is this enough?

Yes

No – we need more checking

Don't know



**Question 14: If you said yes, we do need more checking of mediators in Question 13, can you tell us more?**



**Question 15: This question is about other ways people can sort out their arguments instead of mediation.**

Before coming to court, should people try:

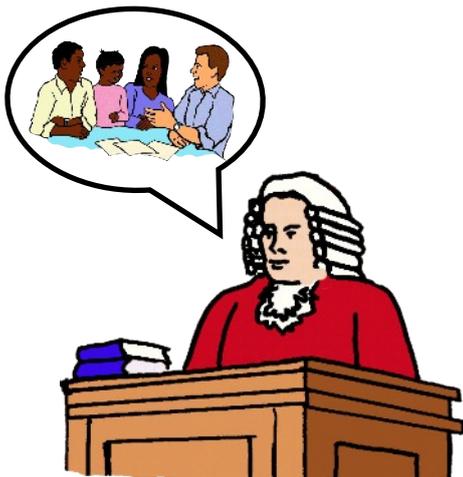
Just mediation?

Other options to agree arrangements outside of court, listed on page 24.

Don't know



If you said other ways, is there anything more you would like to say about how this may work?



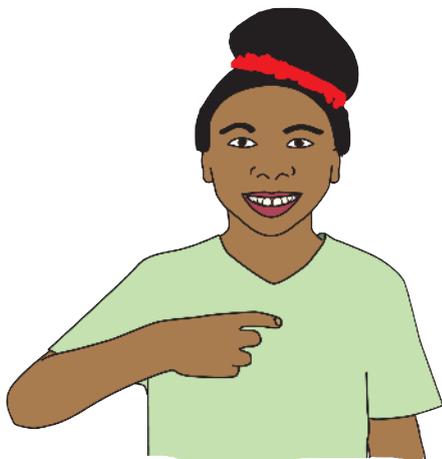
**Question 16: This question is about people who do not try to sort out their disagreements before going to court.**

Should the court be allowed to ask them to explain why they did not try mediation first?

What else should the court be allowed to do to find out if people really tried mediation, for example use cost orders as talked about on page 16?

# More information

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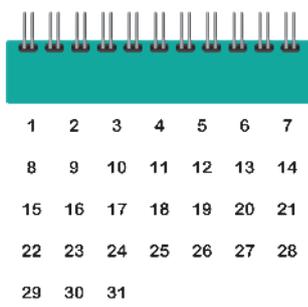
## About you

Please use this section to tell us about yourself

Full name

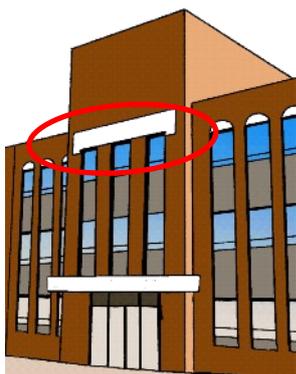


Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)



Date

1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				



Company name/organisation (if applicable):



Address



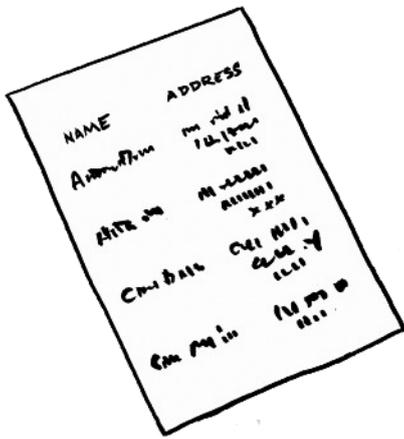
Postcode



If you would like us to  
acknowledge receipt of your  
response, please tick this box



Address to which the acknowledgement  
should be sent, if different from above.



Are you content for the Ministry of Justice to include your affiliated organisation in a public list of respondents to the consultation exercise?



If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.



Please send your response by **15 June 2023**.



Address:  
**Family Justice Policy Team  
Ministry of Justice  
102 Petty France  
London. SW1H 9AJ**

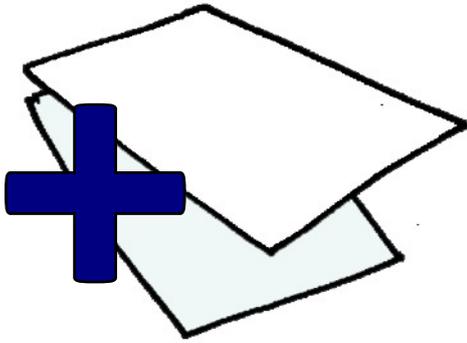


Email:  
**[privatefamilylawconsultation@justice.gov.uk](mailto:privatefamilylawconsultation@justice.gov.uk)**



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You can ask for this paper in other forms from [privatefamilylawconsultation@justice.gov.uk](mailto:privatefamilylawconsultation@justice.gov.uk).



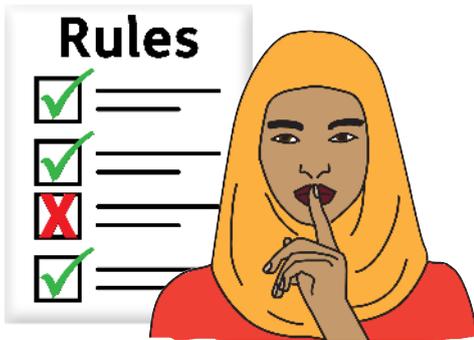
## The next step

We will put a report on-line about what people told us at: [consult.justice.gov.uk/](http://consult.justice.gov.uk/)



## Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.



## Privacy

We follow rules about keeping your information private.



The rules are the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (UK GDPR) and the Environmental Information Regulations 2004.



We follow the rules of a Code of Practice.



If you want us to keep your information private tell us why.



We will listen to you but we cannot promise to keep your information private.



We will not give your personal information to others.

## What the words mean

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**Accreditation** means trained. For example, the Family Mediation Council makes sure mediators are properly trained.

**Coercive behaviour** is a type of abuse. The abuser uses threats or violence to frighten the victim or make them do things that they do not want to do. This abuse can be physical, emotional, financial or sexual.

**Co-parenting** means you and your ex-partner talk about how you will bring up your children.

**Co-parenting programmes** are courses where you learn ways to co-parent to have a positive impact on any children involved.

**Compulsory** means you have to do something, unless there are reasons that this would be harmful.

**Consent order** is a paper issued by the court about how you'll look after your children such as:

- where they live
- when they spend time with each parent and other relatives
- when and what other types of contact take place (phone calls, for example)

**Dispute resolution** is the process of finding an agreed solution to a disagreement. Mediation is a form of dispute resolution.

**Disputes or conflicts** are when people disagree or argue about something.

**Family mediation** is where a trained professional called a mediator helps separating couples work through plans for their children, finance or property.

**Means test** is checking if you have a low income and savings.

**Mediation information assessment meeting** is called a **MIAM** for short. A MIAM is a short meeting with a trained professional called a mediator where you will be provided with information about mediation as a way of resolving your issues. The mediator will assess whether mediation is an appropriate option based on your individual circumstances.

**Mediation** means you talk to an independent person called a **mediator** who helps you sort out a problem without going to court.

**Party.** People involved in a court case are called parties.

**Reasonable adjustments** means making our service accessible to people with disabilities.

# Credits

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