

2010 Standard Civil Contract - Family Mediation Specification

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SECTION 1: GENERAL PROVISION

Scope of this Specification

- 1.1. This is the Family Mediation Specification (the “Specification”) of the 2010 Civil Contract. It is one of the key Contract Documents set out at Clause 12 of the Standard Terms.
- 1.2. This Specification sets out rules under which Family Mediation must be carried out and information about the conduct of Family Mediation Contract Work. It sets out how we will exercise our right to assess your Contract Work. It specifies organisational requirements, which include maintaining information and providing reports. It also includes some requirements relating to Clients.
- 1.3. The Civil Specification does not apply to Family Mediation Contract Work.
- 1.4. All the procedures and rates governing payment for Family Mediation (which is classified as Controlled Work) can be found in Legal Aid Legislation and are referred to in this Specification.

Definitions

- 1.5. Unless otherwise stated, definitions which are set out in Legal Aid Legislation and the Standard Terms apply to this Specification and are not repeated here.
- 1.6. In this Specification, the following expressions have the following meanings:

“Agreed Proposals” means where the parties have reached agreement/consensus on some or all of the issues in dispute and a written Mediation Summary is produced reflecting that agreement;

“All Issues” means a Family Mediation where all issues pertinent to the legal and financial aspects of separation or divorce are considered in the mediation. (This must include an

issue in relation to the division of family assets and other financial arrangements, property and pensions and also an issue in respect of any arrangements to be made for the child/ren of the family);

“Alone Assessment Meeting” means where only your Client (and no other party) has agreed to Mediation and therefore it is only your Client who attends the Assessment Meeting;

“Assessment Meeting” means an assessment by a mediator of whether, in the light of all the circumstances, a case is suitable for mediation;

“Category”, *“Categories”*, *“Category of Law”* or *“Category of Work”* means the definitions of each category of law which are set out in the Category Definitions 2013 or 2010 and are available on our website;

“Category of Work” means the specific categories of Family Mediation Contract Work set out in paragraph 3.14;

“Client and Cost Management System or CCMS” means our online system for managing the electronic transmission of information between us and Providers in connection with civil Contract Work;

“Child” has the meaning given to the term in the Procedural Regulations;

“Child Only” means Family Mediation where all issues pertinent to any arrangements for the child/ren of a family, including extended family, are considered in the Mediation (this does not include aspects relating to family assets, property and pensions other than arrangements for child support);

“Child-Abduction Mediation” means mediation in proceedings under paragraph 17(1)(a) and 17(1)(b) of Part 1 of Schedule 1 to the Act;

“Contract Guide” means a guide issued by us specifically in relation to the Contract and published on our website;

“Co-Mediation” means Mediation with two Mediators for all or part of the Mediation;

“Controlled Work” has the meaning given in regulation 21(2) of the Procedure Regulations;

“Delegated Function” means a function of the Director or the Lord Chancellor delegated to you by an Authorisation;

“Exempted Person” has the meaning given in regulation 20 of the Procedure Regulations;

“Family Mediation” has the meaning given in regulation 7 of the Procedure Regulations and regulation 16 of the Merits Regulations and *“Mediation”* and *“to Mediate”* have the corresponding meaning;

“Financial Regulations” means regulations made under section 21 of the Act;

“Family Mediation Quality Mark Standard” means our quality assurance standard which you must hold at all time this Contract is in force;

“Gateway Work” has the meaning given in regulation 20 of the Procedure Regulations;

“Joint Assessment Meeting” means that all parties to the Mediation attend the Assessment Meeting at the same time;

“Mandatory Electronic Working” means information in relation to civil Contract Work that you must provide to the Director or us electronically through CCMS in accordance with the Specification. Without limitation, examples of the type of information you must provide to us electronically are:

- a) appealing or reviewing decisions made by us on Claims; or
- b) reviewing or appealing determinations about whether an individual qualifies for civil legal services;

“Matter” means a Controlled Work matter governed by this Specification;

“Mediation Summary” which means the recorded details of the proposals agreed in the Mediation process in all or some of the areas identified at the start of the Mediation.

“Memorandum of Understanding” has the corresponding meaning;

“Mediator” means an individual who either has been assessed as competent by a member organisation of the Family Mediation Council or has obtained the Law Society’s Mediation Panel Practitioner membership;

“Merits Regulations” means The Civil Legal Aid (Merits Criteria) Regulations 2012;

“Multi Session” means where Mediation proceeds beyond the initial session irrespective of outcome;

“Office” means a building which is suitable to cater for the needs of your Clients and personnel, enabling you to satisfy all relevant Health and Safety legislation, the Quality Standards and Service Standards of this Contract and to protect Client confidentiality. An Office must have separate waiting facilities for each party and at least one confidential interview room which allows Client privacy to be protected. An Office must be a secure location suitable for the storage of Client files, have the appropriate equipment to deliver services and be suitable to undertake work to progress a Client’s case. Hotels and vehicles cannot count as Offices for these purposes (although such temporary arrangements may form part of authorised Outreach services);

“Outreach” means any location (additional to your Office) denoted in your Schedule and from which you are permitted to deliver Contract Work;

“Paragraph” means unless otherwise specified, one of the Paragraphs of this Specification;

“Procedure Regulations” means The Civil Legal Aid (Procedure) Regulations 2012;

“Property & Finance” means Family Mediation where all the issues pertinent to the financial aspects of separation or divorce are considered in the mediation (this does not include aspects relating to child/ren arrangements);

“Remuneration Regulations” means regulations made under section 2(3) of the Act;

“Separate Assessment Meeting” means where all parties agree to Mediation but only one party attends an Assessment Meeting at any one time;

“Single Session” means a Mediation that does not proceed beyond one session (which may be because the Mediation has broken down or because the issues in dispute have been resolved in one session);

“Standard Fee” means a fee payable under this Specification for a case or an item of work which is calculated on a basis other than hourly rates; and

“Supervisor” means a person who we have accepted as meeting the Supervisor Standards set out at Paragraph 2.6.

General Powers

- 1.7. For Controlled Work, the decisions to provide services are taken by you on behalf of the Director in accordance with an Authorisation. Generally, this Contract does not restrict the number of Family Mediations you make undertake. You have our authority to commence Controlled Work Matter Starts without further permission from us in accordance with and as set out in your Schedule.
- 1.8. You must report all Controlled Work Matter outcomes promptly, fairly and accurately in accordance with the Contract Guide.

Applying the Legal Aid Legislation

- 1.9. You may undertake Family Mediation Controlled Work for Clients, subject to:
 - a) the Act and any secondary legislation made under it (including the Merits Regulations and the Financial Regulations);
 - b) any limitations set out in your Schedule; and
 - c) the provisions of this Contract.
- 1.10. Decisions relating to the making and withdrawal of determinations about Controlled Work are delegated to you by the Director in accordance with an Authorisation.
- 1.11. You should exercise the Delegated Functions in every appropriate case and these decisions should not be referred to the Director or anyone else to whom he has delegated his determination making function in accordance with an Authorisation although advice may be sought in cases of difficulty or doubt. These Delegated Functions must in all circumstances be exercised in accordance with the terms of this Contract.

- 1.12. You must apply the relevant Merits Regulations, Financial Regulations and Procedure Regulations and the provisions in this Specification, to all Contract Work you undertake. These Regulations must be applied both:
- a) when the application for the prospective Client is made; and
 - b) as and when further work is provided throughout the matter.

Electronic Working

- 1.13. All communications with the Director or us relating to civil Contract Work must be made electronically, unless we have notified you that we are prepared to receive communications on paper or otherwise.
- 1.14. We will introduce Mandatory Electronic Working during the Contract Period and give you at least three months" notice of the date it will take effect.
- 1.15. When Mandatory Electronic Working is in force under this Contract in accordance with Paragraph 1.14, CCMS will be our primary method of communication with you. You will submit associated evidence or requested documentation to the Director and/or us using one of the following two methods:
- (a) uploading a file to CCMS in .pdf, .tiff or .rtf format, not exceeding 8MB in size for a single document; or
 - (b) submitting information to our central postal hub, in the format we specify and with the system generated cover sheet.
- 1.16. Pursuant to Paragraph 1.15:
- (a) we or the Director may reject any evidence you provide to us which is not submitted in the form we or the Director require;
 - (b) where we or the Director request copies of original documentation, you must make a copy of the original evidence;
 - (c) where we ask you to obtain a declaration from your Client we will require you to retain a copy of the original declaration and Client signature on your file. We may request the original signed

declaration at any time during or after the Contract Period but no later than six years from the date the Contract ends;

- (d) you must keep original copies of any evidence you could be reasonably expected to retain as evidence of work conducted on the case. We may request the original evidence at any time during or after the Contract Period but no later than six years from the date the Contract ends; and
- (e) we will provide you with training on how to use the CCMS system and submit associated evidence using our website. We will use the website to notify you of any exceptions to the process, including any alternative methods of submitting information to us.

Schedules

- 1.17. The Schedule authorises you to perform the Contract Work from the Office and any Outreach locations specified in it.
- 1.18. The Schedule will be issued covering the terms and limits which are specific to you and your Contract Work.
- 1.19. The Schedule will specify your monthly payment. Whilst this Contract operates as a license, the Schedule is the mechanism by which we record the volume of Matters we anticipated that you will commence during the term of the Schedule, in order to calculate your monthly payments for Contract Work.
- 1.20. The Schedule is generally issued annually to cover the period 1 April to 31 March in each year of the Contract term but we may specify a different duration.
- 1.21. The Schedule will expire on the date specified in your Schedule or Contract for Signature. When a Schedule expires but this Contract remains in force, we will issue you with a new Schedule unless you have given us at least one month's notice that you do not wish us to do so.

- 1.22. We will set the amount of monthly payments under a subsequent Schedule with the aim of making good any underpayments and recovering any overpayments arising under any previous Schedule.

Providing information to another Provider

- 1.23. If you have provided Family Mediation to a Client and that Client chooses to instruct another Family Mediation Provider with regard to the same matter or issue, you are required, on request from the new Provider and only with the consent of both parties, to give to the new Provider the Client's file, or a copy, and reasons for the termination of the retainer, as soon as practicable.

Misrepresentation

- 1.24. If you know or suspect that the Client:
- (a) has failed without good reason to provide information or documents relevant to either your decision to carry out Controlled Work or the Director's determination that the Client qualifies for civil legal services provided as Licensed Work; or
 - (b) in providing required information or documents in relation to Contract Work has made a statement or representation knowing or believing it to be false,
- then you must immediately cease work and report the relevant circumstances to your Contract Manager.

- 1.25. The Means7 form signed by the Client will incorporate an agreement by the Client to repay to us any costs we pay out to you in the matter, in the event of the Client having withheld or misrepresented information with the intention of appearing to qualify for Contract Work.

Payment other than through the Contract

- 1.26. Except as otherwise provided by us you must not charge a fee to the Client or any person for the services provided under this Contract or seek

reimbursement from the Client or any other person for any disbursements incurred as part of the provision of such services.

- 1.27 Where you have been carrying out Contract Work on behalf of a Client, you must not accept instructions to act privately in the same Matter from a Client unless you have advised the Client in writing of: -
- (a) the consequences of ceasing to be in receipt of Legal Aid; and
 - (b) any further Legal Aid services which may be available, whether from you or another Provider.
- 1.28 You must not ask your Client to instruct you on a private basis simply because your costs calculated on an hourly rate basis have reached the level of the Standard Fee payable for the Matter or case on which you are acting.
- 1.29 Where a Client elects to instruct you privately in relation to a matter in which you have been providing Contract Work, a copy of the letter dealing with the matters required by Paragraphs 1.27 and 1.28 must be kept on the file.
- 1.30 Subject to Paragraph 1.32, you cannot be retained to act for the Client in the same Matter under this Contract and on a privately paying basis at the same time.
- 1.31 You may charge privately for civil legal services which are not described in Part 1 of Schedule 1 to the Act (including for making an application for a determination under section 10 of the Act). For the avoidance of doubt, where you have already received payment from the Client for work which has become payable under Legal Aid pursuant to a determination under section 10 of the Act, you must refund such payment to the Client.
- 1.32 All payments for Contract Work must come through us, except:
- (a) where the statutory charge in your favour arises; or
 - (b) where you are responsible for collecting a contribution that is payable.
- 1.33 Where an order or agreement for a sum of money is payable to the Client, in which the proportion of the sum that represents the damages and the costs are not specified, we do not authorise you to retain any part of the sum, and you must claim the costs of any relevant work from us under the relevant provisions of this Section 1.

Transitional Provisions

- 1.34 In relation to fees and remuneration rates, the terms of this Specification apply to all matters commenced by you on or after the 1 April 2013. For the purposes of this rule you must refer to the transitional provisions set out in secondary legislation made under the Act in relation to when we will treat a Matter as having been commenced prior to the 1 April 2013. You may claim for Contract Work on any matters properly commenced prior to the 1 April 2013 under your Previous Contract specification or the terms of this Specification in place prior to the 1 April 2013.
- 1.35 In accordance with Clause 1.27 of the Standard Terms, for the purposes of deciding under this Specification whether a new Matter is justified, nothing in the transitional provisions of this Specification prevents the existence of any matters started under any Previous Contract Specification or the terms of this Specification in place prior to the 1 April 2013 being taken into account. Similarly, where Key Performance Indicators are based upon cases concluded under this Contract, this will include cases started under any Previous Contract specification or under the terms of this Specification in place prior to the 1 April 2013.
- 1.36 In relation to all matters other than fees and remuneration rates, and subject to the transitional provisions set out in secondary legislation made under the Act, this Specification (including any procedures for assessing remuneration) applies to all work done on or after the 1 April 2013.

SECTION 2: SERVICE STANDARDS

The Right to do Contract Work

- 2.1 This part of the Specification sets out the Service Standards, which should be met when carrying out Contract Work.
- 2.2 The minimum requirement to undertake Contract Work under this Specification depends on:
- (a) holding the Family Mediation Quality Mark Standard;
 - (b) having a Family Mediation Supervisor; and
 - (c) not being prevented from carrying out such work under any other provision of this Contract.

Use of Agents

- 2.3 You may instruct Agents from time to time to carry out or assist with Contract Work where you are satisfied that it is in the interests of your Client to do so, subject to your compliance with the rules on working with third parties in Clause 3 of the Standard Terms. However, you may not entrust an entire Matter or case to and Agent unless the Agent is your named external Family Mediation Supervisor (see paragraph 2.14 below).
- 2.4 Where you instruct an Agent you may claim payment for the work as if you had carried it out directly. Where you instruct an Agent to carry out services which are covered by a Standard Fee, any fees or costs related to your use of the Agent will be included in the Standard Fee and may not be claimed separately.
- 2.5 Unless we have specified otherwise, you may not rely on the use of any Agent as evidence of satisfying any of the Service Standards in this part of the Specification.

Supervision

- 2.6 To qualify as a Family Mediation Supervisor for the purposes of any Contract Work under this Contract, the Mediator must for the duration of this Contract have:
- a. at least 3 years experience as a Mediator;
 - b. been registered as a supervisor with a member body of the Family Mediation Council;
 - c. conducted at least 45 hours of Mediation sessions (at least 15 of which have been conducted in the year prior to registration as a Supervisor) in each Category of Work;
 - d. successfully completed a Mediation supervision training course recognised by a member organisation of the Family Mediation Council.
- 2.7 In addition, each Supervisor must as a minimum conduct at least 15 hours of Mediation sessions every year.
- 2.8 Supervisors must also have regard to the Family Mediation Council's guidance on supervision.
- 2.9 If any Supervisor ceases to meet the standards set out in paragraph 2.6 above, or fails to perform their duties as a Supervisor in a timely manner and with all reasonable skill, care and diligence, you will notify us and that person must immediately cease acting as a Supervisor.
- 2.10 A Supervisor must ensure that all persons performing Contract Work pursuant to this Contract have the appropriate level of experience for the type of Contract Work taking place.
- 2.11 Arrangements must be in place to ensure that each Supervisor is able to conduct their role effectively including but not limited to:
- (a) designating time to conduct supervision of each Mediator;
 - (b) ensuring that the level of supervision provided reflects the skills, knowledge and experience of each Mediator.

- 2.12 Each Supervisor must conduct file reviews for each Mediator they supervise. The number of file reviews must reflect the skills, knowledge and experience of the individual. The Supervisor must record the outcome of files reviews, together with the details of corrective action taken (if any).
- 2.13 Where a Mediator undertakes Contract Work in a location other than where their Supervisor is based, the Supervisor must conduct, as a minimum, face-to-face supervision at least once every three months.

Using an Agent as an external Supervisor

- 2.14 You may use an Agent as your named Family Mediation Supervisor for the purposes of complying with this Contract.
- 2.15 The external Supervisor's role must be formalised by a contract between you and your Agent, which must document, in detail, the supervisory arrangements in place to ensure accessibility to internal Mediators and control over Contract Work.
- 2.16 At our request, you must be able to demonstrate to our reasonable satisfaction that the external supervisory arrangements fully comply with the terms of this Contract.
- 2.17 If we are not satisfied with any external supervisory arrangements, we may issue a notice in accordance with this Contract requiring you, within a reasonable period, to appoint a new Supervisor.
- 2.18 If a Supervisor is for any reason temporarily unable to act as such, you may for a period of up to 6 weeks either:
- (a) nominate a Mediator who does not meet all the Supervisor requirements (as defined in paragraph 2.6) to supervise; or
 - (b) nominate an external Supervisor (or another external Supervisor) to supervise.

2.19 If you estimate that your Supervisor may be unable to supervise for more than 6 weeks, or following completion of the 6-week temporary period described above, the Supervisor is not able to resume supervision, you must immediately inform your Contract Manager who will decide at their discretion what you must do to comply with the Contract. This may include:

- (a) extending the use of an employed Mediator as Supervisor for a limited period;
- (b) formalising the external Supervision arrangement for a limited period;
- (c) by written notice specifying that you must put in place another permanent Supervisor by such period as the notice specifies; or
- (d) applying a Sanction.

Level of experience for Contract Work

2.20 A Mediator must conduct Assessment Meetings and all other Categories of Work (see Section 3).

2.21 If the Mediation involves direct contact or consultation with a child/ren, the Mediator(s) must have attended and passed a registered training course recognised by the Family Mediation Council on direct contact with Children.

2.22 Where Child-Abduction Mediation takes place, the Mediator must be an individual on the International Child Abduction and Contact Units official list of recognised mediators.

Co- Mediation

2.23 Whilst you do not need our prior authority to use Co-Mediation, any decision to use Co-mediation will need to be recorded on the file including, where appropriate:

- reasons as to the complexity, legal, psychological or otherwise of the case;
- a risk assessment for the participants and/or Mediator;
- any reasons as to the requirement of specialist and/or expert skills;
- any management issues for the Mediation.

Location of Work

2.24 Family Mediation must be provided from the Office named in the Schedule unless it is:

- (a) provided via an Outreach service specifically authorised by a Schedule or other contract issued by us; or
- (b) approved by us in writing in advance; or
- (c) provided to a Client on an individual basis where the Client for good reason cannot attend a Schedule Office and it is reasonable in the circumstances for you to accept instructions from that Client.

2.25 You may perform Outreach Work without our prior authority as authorised by your Office Schedule, and in accordance with the terms set out in the Schedule.

Referral and Signposting Arrangements

2.26 You must have appropriate arrangements in operation so that you can refer or signpost a Client or potential Client to another Provider where:

- (a) you do not provide the services the Client requires;
- (b) you have so much work that you are unable to provide appropriate services to a Client within a reasonable time;
- (c) there is a conflict of interest between two or more Clients or potential Clients wishing to access your services; or
- (d) you are required to make a referral under the professional conduct rules of your Relevant Professional Body.

2.27 You must signpost a potential Client at an early stage if it becomes clear that the enquiry concerns a subject which is outside your area of expertise.

2.28 If you need to refer a Client after you already have an established Client relationship, have undertaken work on a current case or hold case information or documents, you must inform the Client of any cost implication of referral.

Information about advice and assistance already given and any relevant documentation must be forwarded to the new Provider.

- 2.29 Where you make a referral to another Provider you must ensure, so far as practicable, that that Provider is authorised by us to provide services in the Category of Law most relevant to the Client's problem.
- 2.30 Where you refer an existing Client, such referral should be undertaken in a manner which does not prejudice the Client. You must also keep the Client informed in respect of the progress of such referral. If you are unable (or cease to be able) to perform Contract Work for Clients and you are unable to make any referral to another Provider, your procedures must ensure that you make reasonable endeavours to ensure that your Clients' rights are protected, that they suffer no damage and they are provided with all relevant information.

Gateway Work

- 2.31 You must signpost Clients or potential Clients to the helpline in respect of Gateway Work unless that Client or potential Client is an Exempted Person as described in the Procedure Regulations.

Key Performance Indicator (KPI)

KPI Scope and Procedures

- 2.32 The Key Performance Indicator of this Specification is set out at paragraph 2.38 below. This KPI must be complied with both by your organisation as a whole and also by any Schedule Office. This KPI is a contractual requirement; however if you do not satisfy this KPI we will not apply any Sanction unless this is authorised under the procedures set out at Clause 11 of the Standard Terms.
- 2.33 The KPI depends on fair and accurate recording of case outcomes. You must ensure that outcomes are reported appropriately in accordance with our forms and Guidance. Material or persistent failure to report outcomes appropriately may lead to Sanctions under Clause 24 of the Standard Terms.

- 2.34 When assessing KPI compliance with we will consider all relevant cases concluded and reported by you over any period of not less than three months. We will consider cases over a period longer than three months if there are insufficient cases to satisfy the minimum volumes set out in paragraph 2.35 or if for any other reason we are not satisfied that the volume of cases concluded within three months is sufficient to reach conclusions about your KPI compliance.
- 2.35 The minimum volumes of work we will take into account for the KPI will be 10 (or above) Assessment Meetings over a three-month period.
- 2.36 The KPI will be based on cases concluded within the lifetime of this Contract, including those started under any previous contract. However, when considering any Sanctions for failure to satisfy the KPI we will be concerned with your performance from the Contract Start Date.
- 2.37 We will publish on our website a list of all any outcome codes required for the KPI. We will not change these codes during the life of this Contract, except in accordance with the principles and procedures set out in Clause 13 of the Standard Terms.

KPI 1 – Quality: Specific Family Mediation Outcome

- 2.38 It is a requirement under this Specification that you must achieve conversion rate for Clients of at least 40% conversion rate from Assessment Meetings (Separate and Joint) to Mediation.

CARRYING OUT FAMILY MEDIATION CONTRACT WORK

Financial Eligibility

- 3.1 The thresholds for financial eligibility are those set out in the Financial Regulations
- 3.2 Satisfactory evidence, as described in Contract Guide, in support of the prospective Client's information as to their means must be provided to you before you assess financial eligibility, subject to the provisions of Paragraph 3.3. The evidence (or a copy) must be retained on the file.

- 3.3 You may assess the prospective Client's means without the accompanying evidence where:-
- (a) it is not practicable to obtain it before commencing Family Mediation Contract Work; or
 - (b) exceptionally, the personal circumstances of the Client (such as the Client's age, mental disability or homelessness) make it impracticable for the evidence to be supplied at any point in the case.
- 3.4 Unless Paragraph 3.3 (b) applies, you must require the Client to provide the evidence as soon as practicable. If satisfactory evidence of the Client's financial eligibility is not subsequently supplied, or if the evidence shows that the Client is not financially eligible, you may claim the work carried out provided that:
- (a) you have acted reasonably in undertaking work before receiving satisfactory evidence of the Client's means;
 - (b) you have acted reasonably in initially assessing financial eligibility on the information available; and
 - (c) you do not Claim any disbursement beyond those incurred in the period before it is practicable to obtain satisfactory evidence of the Client's means.
- 3.5 When assessing the means of a Child, the appropriate means which you must take into account are:
- a) those of the Child; and
 - b) those persons who have care and control or are liable to maintain him/her or usually contribute substantially to the Child's maintenance, subject to the exception provided for by the Financial Regulations.
- 3.6 When assessing means where you accept an application for Family Mediation directly from a Child you must consider whether it is just and equitable not to

aggregate the Child's means with those of the person liable to maintain him/her. The presumption is that there should be aggregation but you can decide not to aggregate (and assess only the Child's means) if, having regard to all the circumstances, including the age and resources of the Child and any conflict of interest, you reasonably consider it just and equitable to do so. Non-aggregation is more likely to be justified where there is a conflict between the Child and the person liable to maintain him/her.

- 3.7 The assessment of means section and the Client's details must be fully completed and the form signed by the Client in your presence before Family Mediation is commenced. The completed form must be kept on file.

Reference numbers for cases

- 3.8 You must allocate a reference number to each case on your first contact with the Client. You may use your own reference number system, provided it distinguishes between cases and enables us to identify cases for the purposes of audit, or for the purpose of any of our other functions under the Contract.

Commencing Assessment Meetings

- 3.9 You may not open a Matter where the only work to be undertaken by you is incurring the disbursement and passing the service provided (for example, a report) to the Client without the Client receiving Family Mediation in relation to the particular circumstances that have arisen.
- 3.10 Before beginning Mediation, you must determine whether Mediation is suitable to the dispute. Only if it is, may you begin the Mediation. Part of determining whether Mediation is suitable to the dispute may involve contacting the other party to first find out whether they would be prepared to attend an Assessment Meeting and consider Mediation.
- 3.11 For the purpose of contacting the other party, you should attempt to contact the Client by two telephone calls and/or a written letter, depending on the contact details provided.

3.12 Even where it appears that the other party is not willing to consider Mediation, you may hold an Alone Assessment Meeting with the party who contacted you first. At this meeting you will be able to give the first party information about Mediation and its benefits.

3.13 Where, following an Assessment Meeting the matter is considered unsuitable for Mediation or the parties are unwilling to Mediate then signatures should be obtained where possible from the parties acknowledging their understanding of the decision reached.

Categories of Work in Mediation

3.14 There are 3 Categories of Work within Family Mediation:

- a. All Issues Mediation;
- b. Child Mediation; and
- c. Property and Financial Mediation.

3.15 Under each Category of Work, Mediations are classified as either:

- a. Single Session; or
- b. Multi Session.

3.16 Mediations may be conducted by a single Mediator (Sole Mediation) or by two Mediators (Co-Mediation) who may both be present for some or all of the Mediation.

Agreed Proposals and the Mediation Summary

3.17 At any stage in a Mediation, Agreed Proposals may be reached in any Category of Work.

3.18 The Mediation Summary should be recorded in the Contract Report Form approved by us.

- 3.19 It must be evidenced, by the Mediator signing on the Mediation Summary or elsewhere on the file, that the Mediation Summary is an accurate reflection of the Agreed Proposals by both parties at the end of the Mediation process.

Reporting

- 3.20 The key Contract Report Forms are the Mediation Work Start Form and the Mediation Consolidated Work Report Form. Separate Guidance is available on how to report work with these forms.
- 3.21 To ensure that you receive each monthly payment, you must send us properly completed Contract Work Report Forms every month. These will normally be, or include, a Mediation Work Start Form (giving details of the matters you have started) and a Mediation Consolidated Work Report Form (giving details of your completed cases).
- 3.22 You must send these together so that we receive them within ten days of the end of each month. For example, you must send us your Contract Report Forms for July so that we receive them by 10 August. If you fail to do so, the monthly payment that would have been triggered by the receipt of these documents will not be made and your monthly payments may be adjusted downwards. If you fail to do so on time, that payment will be made late.

SECTION 4: REMUNERATION FOR FAMILY MEDIATION CONTRACT WORK

Monthly Payments

- 4.1 We will pay you on a monthly basis. The amount of your monthly payment will be based on our assessment of the amount that will be payable to you under the Contract for the period to 31 March in each year. For example, if you began work on 1 April, we will set your monthly payment at one twelfth of our assessment of the amount that will be payable to you for the one year period to 31 March.
- 4.2 The fixed fees are set out in the Remuneration Regulations. The fees cover all associated work and no additional payments will be made e.g. for letters you may need to write or for telephone calls you may need to make.

Assessment Meetings

- 4.3 There is a fixed fee for Assessment Meetings, which, is payable only once (even if you have met the first party, the other party or both more than once, to carry out the assessment).
- 4.4 Where both parties agree to Mediate, they have the right to choose whether to attend a Joint or a Separate Assessment Meeting. If you have two Separate Assessment Meetings - one with the first party and one with the other party – then a fixed fee for a Separate Assessment Meeting is payable for each meeting. If you have a Joint Assessment Meeting then the fixed fee for a Joint Assessment Meeting is payable.

Mediations

- 4.5 If a Single Session is all that takes place, the appropriate session payment for that Single Session is all that is payable and all that you should report. Subject to Paragraphs 4.5A to 4.5C if more than one session takes place, the session payment for a Single Session is not payable, and should not be reported. Instead, the appropriate higher case payment specified in Remuneration Regulations is payable and that outcome should be reported.

- 4.5A Paragraphs 4.5B and 4.5C shall only become operative on amendments of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 taking effect which provide that the normal financial means test shall not apply in respect of the first mediation session following an Assessment Meeting where one party is financially eligible to receive public funding and the other party is not.
- 4.5B Where, save for the application of this Paragraph 4.5, only one party would be entitled to receive public funding for mediation, then for the purposes of the first mediation session only (following the Assessment Meeting) and subject to the other requirements of this Paragraph, the means test set out in the applicable Financial Regulations shall not apply and payment may be claimed by the party not otherwise entitled to receive public funding for that initial session. The value of any such claim by a party who would not otherwise be entitled to receive public funding shall be limited to an amount equal to one half of the fee payable for a Single Session where both parties were entitled to receive public funding (irrespective of whether the mediation continues beyond the initial session) and only where that first mediation session takes place on/or after the 3rd November 2014. In cases where the first mediation session takes place prior to this date the relevant means test shall apply as normal and payment will only be made where a party is entitled to receive public funding following the outcome of such test.
- 4.5C Irrespective of any entitlement to claim half of the Single Session fee by a party who would not otherwise be eligible to receive public funding the session payment in respect of the party who is eligible to receive public funding shall be that which is payable in accordance with Paragraph 4.5 above and you must report the mediation as a single Matter regardless of the fee payable in respect of each party. For the avoidance of doubt the provisions of Paragraph 4.10 shall apply in relation to all work undertaken following the initial mediation session, and to Agreed Proposal fees.

- 4.6 You must report a Single Session or a Multi Session only in two circumstances. First if you are sure that the parties will either not continue with the Mediation (e.g. your Client indicates that they do not wish to continue) or that the Mediation has been completed. Second if you are reasonably sure (e.g. consider it likely) that the parties will either not continue with the Mediation or that the Mediation has been completed and three months have elapsed since the Single Session or the last session.
- 4.7 If, at the end of a Mediation, Agreed Proposals are reached and you produce a Mediation Summary reflecting this, you should report this and the appropriate agreement payment specified in the Remuneration Regulations. Agreed Proposals should be concluded at the end of Mediation and include all agreements reached during Mediation.
- 4.8 If the Mediation concludes but the parties return to you within 3 months, you should reopen the case if it relates to the same Matter and submit an amended Consolidated Work Report Form. If the parties return after 3 months since the last visit, you should treat the return visit as an entirely new Matter and for the avoidance of doubt in such circumstances the provisions of Paragraphs 4.5A to 4.5C shall apply in relation to the entitlement of both parties to receive payment for the new initial session.
- 4.9 If you are conducting a mediation on All Issues but reach Agreed Proposals only on some issues e.g. Property and Finance, then only the Property and Finance Agreed Proposal fee is payable or if agreement reached only on the Child Only issues, only the Child Only Agreed Proposal fee is payable.

Where only one party is receiving public funding

- 4.10 Subject to Paragraphs 4.5A to 4.5C above, where only one party is assessed as being financially eligible for public funding for Mediation, only half the specified fee is payable. The amount you charge the other party depends upon the terms of your agreement with them. The Mediation Contract Report Form requires you to show which Clients are assessed as being financially eligible for public funding.

Disbursements

4.11 You may incur disbursements where:

- (a) it is in the best interests of the Client to do so;
- (b) it is reasonable for you to incur the disbursement for the purpose of progressing the Mediation;
- (c) the amount of the disbursement is reasonable; and
- (d) incurring the disbursement is not prohibited by this Specification.

4.12 The following disbursements may be incurred though, of course, they are not the only disbursements that you may incur:

- (a) Interpreters' fees;
- (b) Valuers' fees – e.g. surveyors' valuation fees when the value of the property e.g. the matrimonial home is in dispute; and
- (c) Counsels' fees (only in exceptional circumstances).

4.13 The following disbursements may not be incurred:

- (a) Mediator or Client travelling expenses;
- (b) The cost of room hire for Outreach work;
- (c) Costs of or expenses in relation to counselling, treatment, therapy, training or other interventions of an educative or rehabilitative nature unless authorised by the Lord Chancellor;
- (d) Contact Centre fees;
- (e) Client expenses;
- (f) Any separate administration fee charged by an expert where 'administration fee' includes but is not limited to, a fee in respect of offices and consultation rooms, administrative support including typing services, subsistence and courier; and
- (g) Any cancellation fee by an expert where notice of cancellation is given more than 72 hours before the relevant appointment.

4.14 If you propose to incur a disbursement which does not appear in the above lists then you must consider whether the disbursement is recoverable or not by reference to clause 4.11. You must record on the file why the disbursement

is necessary and what level of expertise is required and why. You must aim to secure the best possible value for money when you have to incur a disbursement, just as you would if you were acting for a private client.

- 4.15 Where you instruct an expert (e.g. a surveyor) we will not pay in excess of
- (a) 45 pence per mile travelling costs; and
 - (b) £40 per hour travelling time.
- 4.16 Where a case falls within the definition of Child Abduction, additional disbursements are permitted to cover the costs of flights, hotels where the Client has submitted an application under the Hague Convention or the European Convention to the Central Authority in England and Wales under section 3(2) or 14(2) of the Child Abduction and Custody Act 1985. Your must have regard to any Contract Guide issued by us related to disbursements.

Assessments

General provisions on claiming and assessment

- 4.17 You may only Claim for work that has been actually and reasonably done and disbursements actually and reasonably incurred in accordance with the provisions of the Contract and that is supported by appropriate evidence on the file at the time of the Claim and Assessment. This is without prejudice to your right to Claim Standard Fees.
- 4.18 Without prejudice to the generality of Paragraph 4.17, you should note the following provisions regarding costs and disbursements:
- (a) You must not claim for time spent on purely administrative matters (such as opening and setting up files, the maintenance of time/costing records) or in meeting the administrative requirements of your Contract (such as the information return and the Claim for costs), unless expressly provided by this Contract or Costs Assessment Guidance;
 - (b) You must not claim for any additional costs incurred by you or your Client because you are based in a Location distant from your

Client where it would have been reasonable for your Client to have instructed a Provider located nearer to him or her;

- (c) You must not claim for matters that properly fall as your overheads, such as internal communications, typing, administration and equipment costs, stationary, postage and courier charges, telephone charges and the time and costs of photocopying, save as provided for in the Costs Assessment Guidance.

4.19 Where you instruct an expert to deliver services of a type set out in the Remuneration Regulations we will not pay fees in excess of those in Remuneration Regulations unless:

- (a) we consider it reasonable to increase such fixed fees or rates in exceptional circumstances; and
- (b) we have granted prior authority to exceed such fixed fees or rates on such basis.

Subject to such limits where applicable, the amounts claimed for the provision of expert services must be justified on detailed assessment by the court or Assessment by us in the normal way. For the purpose of this Paragraph 4.19, “exceptional circumstances” means that the expert’s evidence is key to the Client’s case and either the complexity of the material is such that an expert with a high level of seniority is required; or the material is of such a specialised and unusual nature that only very few experts are available to provide the necessary evidence. We will pay expert services of a type not listed in the Remuneration Regulations at such rate as we may from time to time determine and in considering the same we will have regard to the rates set out in the Remuneration Regulations and we may require you to provide us with a number of quotes in respect of the provision of the relevant service.

4.20 Any Assessment undertaken by us or by the Assessor on a subsequent appeal, will be subject to any costs or other limitations imposed by us and costs will only be allowed at the appropriate rates as set out in the Remuneration Regulations.

4.21 We may, however, impose a separate Costs Limit in respect of experts’ fees.

Controlled Work Costs Audits

4.22 When we assess a sample of your Controlled Work Claims, whether paid or payable as a Standard Fee, we may apply any findings (see Paragraph 4.23) to your other claims for payment for Controlled Work. When we apply findings in this way, we may do so for all cases commenced under this Contract (or any Previous Contract it has replaced) where costs have been claimed from us either:

- (a) since the date the file sample was requested for the last contract compliance audit; or
- (b) from a date 12 months immediately preceding the date the file sample was requested for assessment on the current Audit;

whichever is the most recent.

4.23 “Findings” for the purposes of Paragraph 4.22 includes not only findings on particular practices (such as failing to assess financial eligibility) but in relation to more general matters, such as:

- (a) claiming excessive time for preparation or attendances;
- (b) the average percentage reduction on assessment of a sample of your files;
- (c) claiming for more than one Standard Fee where we consider that only one such fee should be payable; or
- (d) where we consider the wrong level of Standard Fee has been claimed.

4.24 When findings (as set out at Paragraph 4.43) are applied to a Claim under these provisions, then we have assessed that Claim.

Appeals

4.25 If you are dissatisfied with any decision of ours as to the Assessment of the costs of Contract Work, you may appeal to an Independent Costs Assessor (“the Assessor”). For the avoidance of doubt, subsequent references in this rule in Paragraph 4.25 and its related Contract Guide shall include “Assessors” in cases where an appeal is dealt with by a panel of three Assessors rather than a single Assessor alone.

- 4.26 The appeal must be made in writing (setting out full reasons) within 28 days of notification of the Assessment decision, and must be accompanied by the file. We will only extend the 28 day time limit where you have requested an extension for good reason within 21 days. Any extension of the time limit will be for a maximum of a further 14 days.
- 4.27 Failure to comply with any of the requirements set out in Paragraph 4.26 means that you accept our decision and lose your right to dispute it.
- 4.28 Where an appeal is to proceed, we also have the right to make written representations (in addition to those contained in the original assessment) to the Assessor. If we do so, these will be sent to you not less than 21 days before the appeal papers are sent to the Assessor. If you receive such further representations from us then you have the right, within 14 days, to provide a written response to them.
- 4.29 The appeal shall be dealt with by the Assessor on the papers only. There is no general right for either party to attend or to be represented on the appeal. However, if either party considers that there are exceptional circumstances which mean that concerns or issues cannot be addressed in writing, they may make a written request (setting out full reasons) for an oral hearing, to the Assessor. Such an application must be made at the same time as:
- (a) in your case, you submit your written appeal; and
 - (b) in our case, at the same time as we make any written reply (or, where no written reply is made, during the period allowed for making such reply) .

Either party may challenge such an application for an oral hearing to the Assessor within 7 days of the application being made.

- 4.30 The Assessor will consider the request and notify both parties of his or her decision.
- 4.31 If:
- (a) neither party has made a request for an oral hearing but the Assessor believes that his or her review of some or all of the

issues under the appeal cannot be concluded properly without hearing oral submissions; or

- (b) having considered a party's request for an oral hearing, he or she is of the opinion that the request should be granted,

he or she will notify the parties of this. If either party chooses to attend at an oral hearing, having been given permission from the Assessor, the other party will also have a right of attendance and representation at the appeal and shall confirm whether or not they intend to exercise that right.

4.32 In any case, whether or not a party has made a request for an oral hearing, if the Assessor is of the opinion that an appeal is of such complexity and / or value that it should not be considered by a single Assessor alone he or she may, in his or her sole discretion, refer the appeal to a panel of three Assessors either to deal with on the papers only or by way of an oral hearing. If the Assessor is of the opinion that the appeal should be dealt with by way of an oral hearing, the provisions set out in the preceding Paragraph apply save that a panel of three Assessors shall deal with the appeal rather than a single Assessor alone.

4.33 The Assessor may give procedural directions as to the determination of the appeal whether the appeal is to be dealt with on the papers only or an oral hearing basis.

4.34 On appeal, the Assessor shall review the Assessment whether by confirming, increasing or decreasing the amount assessed. In a Controlled Work Assessment, the Assessor may apply his or her findings generally across files outside the sample before him or her. However, no such decision shall apply to any completed Assessments that you have not appealed within the time limit.

4.35 Where in dealing with an appeal on the papers only the Assessor identifies new issues the Assessor will, as he or she considers appropriate in the circumstances, either:

- (a) adjourn the appeal and seek representations from the parties before making his or her final decision; or

- (b) refer the matter back to us for a new decision.

Points of Principle of General Importance

4.36 At any point after the submission of an appeal to the Assessor, but no later than 21 days after receipt of the Assessor's final decision, either you, us or the Assessor may seek certification of a Point of Principle of General Importance.

4.37 An application for certification of a Point (or Points) of Principle of General Importance must be made as follows:

- (a) in your case, by sending your application to us and, if one has already been appointed and their identity notified to you, to the Assessor. We will, within 7 days of receipt of your application, if an Assessor has been appointed but their identity not notified to you, forward the application to the Assessor also;
- (b) in our case, by sending a copy of that application to you and to the Assessor (if appointed); and
- (c) in the case of the Assessor, by sending the application to us. We will, within 7 days of receipt notify you that the Assessor is seeking certification of a Point of Principle of General Importance.

4.38 All applications for certification of Points of Principle of General Importance, whether made by you, us or the Assessor, must set out the exact wording of the Point of Principle of General Importance being sought and explain, in detail, the basis of the application.

4.39 Upon receipt of an application for certification of a Point of Principle of General Importance we will decide whether the matter should progress to the Costs Appeals Committee. We may refuse to refer an application to the Costs Appeal Committee where the proposed Point of Principle of General Importance:

- (a) would conflict with a provision of contract or legislation; or
- (b) is not capable of forming a principle of costs assessment of general application,

and our decision shall be final. We will give written reasons of any decision we make to refuse to refer such an application.

- 4.40 If we consider that the matter should proceed for certification to the Costs Appeals Committee then the matter will be listed for consideration by that Committee.
- 4.41 Applications for certification of Points of Principle of General Importance are, unless permission to attend is granted by the Chair of the Costs Appeals Committee, considered by that Committee on the papers only.
- 4.42 On considering an application under this rule in Paragraph 4.39, the Costs Appeals Committee will either:
- (a) decide whether to certify the Point of Principle of General Importance sought and, where appropriate, amend any of the Assessments of the Assessor to give effect to this determination, or refer the matter back to the Assessor for him or her to do so; or
 - (b) determine that there is no Point of Principle of General Importance raised by the application before it and refuse the application accordingly.
- 4.43 You, where appropriate, we and/or the Assessor will be notified of our decision and/or that of the Costs Appeals Committee.
- 4.44 Any Points of Principle of General Importance certified by the Costs Appeal Committee, whether or not made under this Contract, is binding on all future Assessments carried out by us and any appeals in relation to such Assessments.