

Practice Direction 3A - Pre-Application Protocol for Mediation Information and Assessment

This Practice Direction supplements FPR Part 3 (Pre-Application Protocol for Mediation Information and Assessment)

Introduction

1.1 This Practice Direction applies where a person is considering applying for an order in family proceedings of a type specified in Annex B (referred to in this Direction as “relevant family proceedings”).

1.2 Terms used in this Practice Direction and the accompanying Pre-action Protocol have the same meaning as in the FPR.

1.3 This Practice Direction is supplemented by the following Annexes:

- (i) Annex A: The Pre-application Protocol (“the Protocol”), which sets out steps which the court will normally expect an applicant to follow before an application is made to the court in relevant family proceedings;
- (ii) Annex B: Proceedings which are “relevant family proceedings” for the purposes of this Practice Direction; and
- (iii) Annex C: Circumstances in which attendance at a Mediation Information and Assessment Meeting is not expected.

Aims

2.1 The purpose of this Practice Direction and the accompanying Protocol is to:

- (a) supplement the court’s powers in Part 3 of the FPR to encourage and facilitate the use of alternative dispute resolution;
- (b) set out good practice to be followed by any person who is considering making an application to court for an order in relevant family proceedings; and
- (c) ensure, as far as possible, that all parties have considered mediation as an alternative means of resolving their disputes.

Rationale

3.1 There is a general acknowledgement that an adversarial court process is not always best suited to the resolution of family disputes, particularly private law disputes between parents relating to children, with such disputes often best resolved through discussion and agreement, where that can be managed safely and appropriately.

3.2 Litigants who seek public funding for certain types of family proceedings are (subject to some exceptions) already required to attend a meeting with a mediator as a pre-condition of receiving public funding.

3.3 There is growing recognition of the benefits of early information and advice about mediation and of the need for those wishing to make an application to court, whether publicly funded or otherwise, to consider alternative means of resolving their disputes, as appropriate.

3.4 In private law proceedings relating to children, the court is actively involved in helping parties to explore ways of resolving their dispute. The Private Law Programme, set out in Practice Direction 12B, provides for a first hearing dispute resolution appointment ('FHDRA'), at which the judge, legal advisor or magistrates, accompanied by an officer from Cafcass (the Children and Family Court Advisory and Support Service), will discuss with parties both the nature of their dispute and whether it could be resolved by mediation or other alternative means and can give the parties information about services which may be available to assist them. The court should also have information obtained through safeguarding checks carried out by Cafcass, to ensure that any agreement between the parties, or any dispute resolution process selected, is in the interests of the child and safe for all concerned.

3.5 Against that background, it is likely to save court time and expense if the parties take steps to resolve their dispute without pursuing court proceedings. Parties will therefore be expected to explore the scope for resolving their dispute through mediation before embarking on the court process.

The Pre-application Protocol

4.1 To encourage this approach, all potential applicants for a court order in relevant family proceedings will be expected, before making their application, to have followed the steps set out in the Protocol. This requires a potential applicant except in certain specified circumstances, to consider with a mediator whether the dispute may be capable of being resolved through mediation. The court will expect all applicants to have complied with the Protocol before commencing proceedings and (except where any of the circumstances in Annex C applies) will expect any respondent to have attended a Mediation Information and Assessment Meeting, if invited to do so. If court proceedings are taken, the court will wish to know at the first hearing whether mediation has been considered by the parties. In considering the conduct of any relevant family proceedings, the court will take into account any failure to comply with the Protocol and may refer the parties to a meeting with a mediator before the proceedings continue further.

4.2 Nothing in the Protocol is to be read as affecting the operation of the Private Law Programme, set out in Practice Direction 12B, or the role of the court at the first hearing in any relevant family proceedings.

Annex A - The Pre-application Protocol

1 This Protocol applies where a person ("the applicant") is considering making an application to the court for an order in relevant family proceedings.

2 Before an applicant makes an application to the court for an order in relevant family proceedings, the applicant (or the applicant's legal representative) should contact a family mediator to arrange for the applicant to attend an information meeting about family mediation and other forms of alternative dispute resolution (referred to in this Protocol as "a Mediation Information and Assessment Meeting").

3 An applicant is not expected to attend a Mediation Information and Assessment Meeting where any of the circumstances set out in Annex C applies.

4 Information on how to find a family mediator may be obtained from local family courts, from the Community Legal Advice Helpline – CLA Direct (0845 345 4345) or at www.direct.gov.uk.

5 The applicant (or the applicant's legal representative) should provide the mediator with contact details for the other party or parties to the dispute ("the respondent(s)"), so that the mediator can contact the respondent(s) to discuss that party's willingness and availability to attend a Mediation Information and Assessment Meeting.

6 The applicant should then attend a Mediation Information and Assessment Meeting arranged by the mediator. If the parties are willing to attend together, the meeting may be conducted jointly, but where necessary separate meetings may be held. If the applicant and respondent(s) do not attend a joint meeting, the mediator will invite the respondent(s) to a separate meeting unless any of the circumstances set out in Annex C applies.

7 A mediator who arranges a Mediation Information and Assessment Meeting with one or more parties to a dispute should consider with the party or parties concerned whether public funding may be available to meet the cost of the meeting and any subsequent mediation. Where none of the parties is eligible for, or wishes to seek, public funding, any charge made by the mediator for the Mediation Information and Assessment Meeting will be the responsibility of the party or parties attending, in accordance with any agreement made with the mediator.

8 If the applicant then makes an application to the court in respect of the dispute, the applicant should at the same time file a completed Family Mediation Information and Assessment Form (Form FM1) confirming attendance at a Mediation Information and Assessment Meeting or giving the reasons for not attending.

9 The Form FM1, must be completed and signed by the mediator, and countersigned by the applicant or the applicant's legal representative, where either:

- (a) the applicant has attended a Mediation Information and Assessment Meeting; or
- (b) the applicant has not attended a Mediation Information and Assessment Meeting and
 - (i) the mediator is satisfied that mediation is not suitable because another party to the dispute is unwilling to attend a Mediation Information and Assessment Meeting and consider mediation;
 - (ii) the mediator determines that the case is not suitable for a Mediation Information and Assessment Meeting; or
 - (iii) a mediator has made a determination within the previous four months that the case is not suitable for a Mediation Information and Assessment Meeting or for mediation.

10 In all other circumstances, the Form FM1 must be completed and signed by the applicant or the applicant's legal representative.

11 The form may be obtained from magistrates' courts, county courts or the High Court or from www.direct.gov.uk.

Annex B - Proceedings which are "relevant family proceedings" for the purposes of this Practice Direction

1 Private law proceedings relating to children, except:

- proceedings for an enforcement order, a financial compensation order or an order under paragraph 9 or Part 2 of Schedule A1 to the Children Act 1989;
- any other proceedings for enforcement of an order made in private law proceedings; or
- where emergency proceedings have been brought in respect of the same child(ren) and have not been determined.

("Private law proceedings" and "emergency proceedings" are defined in Rule 12.2)

2 Proceedings for a financial remedy, except:

- Proceedings for an avoidance of disposition order or an order preventing a

disposition;

- Proceedings for enforcement of any order made in financial remedy proceedings. (“Financial remedy” is defined in Rule 2.3(1) and “avoidance of disposition order” and “order preventing a disposition” are defined in Rule 9.3(1))

Annex C - A person considering making an application to the court in relevant family proceedings is not expected to attend a Mediation Information and Assessment Meeting before doing so if any of the following circumstances applies:

1 The mediator is satisfied that mediation is not suitable because another party to the dispute is unwilling to attend a Mediation Information and Assessment Meeting and consider mediation.

2 The mediator determines that the case is not suitable for a Mediation Information and Assessment Meeting.

3 A mediator has made a determination within the previous four months that the case is not suitable for a Mediation Information and Assessment Meeting or for mediation.

4 Domestic abuse

Any party has, to the applicant’s knowledge, made an allegation of domestic violence against another party and this has resulted in a police investigation or the issuing of civil proceedings for the protection of any party within the last 12 months.

5 Bankruptcy

The dispute concerns financial issues and the applicant or another party is bankrupt.

6 The parties are in agreement and there is no dispute to mediate.

7 The whereabouts of the other party are unknown to the applicant.

8 The prospective application is for an order in relevant family proceedings which are already in existence and are continuing.

9 The prospective application is to be made without notice to the other party.

10 Urgency

The prospective application is urgent, meaning:

- (a) there is a risk to the life, liberty or physical safety of the applicant or his or her family or his or her home; or
- (b) any delay caused by attending a Mediation Information and Assessment Meeting would cause a risk of significant harm to a child, a significant risk of a miscarriage of justice, unreasonable hardship to the applicant or irretrievable problems in dealing with the dispute (such as an Irretrievable loss of significant evidence).

11 There is current social services involvement as a result of child protection concerns in respect of any child who would be the subject of the prospective application.

12 A child would be a party to the prospective application by virtue of Rule 12.3(1).

13 The applicant (or the applicant’s legal representative) contacts three mediators within 15 miles of the applicant’s home and none is able to conduct a Mediation Information and Assessment Meeting within 15 working days of the date of contact.