

## **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, and all rates and procedures governing payment for 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 This Specification also includes a Payment Annex, which sets out all the rates of payment for Family Mediation Contract Work. Fees and rates may only be changed during the lifetime of this Contract by Contract amendment under Clause 13 of the Standard Terms. If this happens we will issue a revised or new Payment Annex together with commencement and transitional rules setting out when the new fees or rates apply.

### **Definitions**

- 1.5 Unless otherwise stated, the definitions set out in the Funding Code, the Access to Justice Act 1999 or Clause 1 of 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, financial and emotional aspects of separation or divorce are considered in the mediation. (This may include communications, arrangements for divorce, the division of family assets and other financial arrangements, property and pensions and 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”* has the meaning given in the Funding Code;

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

*“Child”* or *“Children”* means a person or persons under the age of 18;

*“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 where a person 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;

*“Client”* means an individual who has been assessed (by a competent person or body) as a person for whom, under the Access to Justice Legislation, Contract Work may be performed and for whom you are performing (or have performed Contract Work);

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

*“Family Mediation”* has the meaning given in the Funding Code and “Mediation” and “to Mediate” have the corresponding meaning;

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

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

*“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 organisations of the Family Mediation Council or has obtained the Law Society’s Mediation Panel Practitioner membership (and such a Mediator is a “recognised mediator” or “mediator” for the purposes of the Funding Code);

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

*“Office”* means your office where you conduct Contract Work which must be a building suitable to cater for the needs of your Clients and personnel, enabling you to satisfy all relevant Health and Safety legislation and the quality and service standards of this Contract and to protect Client confidentiality. The Office must display the Community Legal Service logo and be included in the Category and location directory of Community Legal Advice. Hotels, retail outlets 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;

*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);

*“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);

*“Supervisor”* means a person who we have accepted as meeting the Supervisor Standards set out at Paragraph 2.5; and

*“Willingness Test”* means the test described as such in the Funding Code.

### **General powers**

1.7 This Contract operates as a license for you to undertake Family Mediations. Generally, this Contract does not restrict the number of Family Mediations you make undertake. However we may impose restrictions upon you by way of a Sanction under Clause 24 of the Standard Terms. Any restrictions on the number of Family Mediation you may undertake will be set out in your Schedule.

1.8 The decisions to provide Family Mediations to Clients under this Specification are taken by you on our behalf, unless we specify otherwise in your Schedule.

### **Applying the Funding Code and the Regulations**

1.9 You must apply the relevant Funding Code Criteria and Procedures to all Contract Work you undertake. These criteria 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.
- 1.10 When applying the Funding Code Criteria you are required to have regard to the Funding Code Guidance and you must refuse to act in respect of any matter that does not meet the Criteria – see Funding Code Procedure Rule A9.
- 1.11 Similarly all Contract Work must be carried out in accordance with the Access to Justice Act 1999 and all orders and regulations made under it.

### **Electronic Working**

- 1.12 All written communications with us relating to Contract Work must be made in the manner we specify in Guidance. This will usually be electronic, unless we have confirmed that we are prepared to receive communications on paper or otherwise. We will apply the same approach to communications with us from other third parties. References in this Specification to “forms” do not imply that hard copy written forms must be used. Forms include on-line forms and related processes.
- 1.13 We expect to introduce mandatory electronic working in a phased way during the life of this Contract. We will give notice, by publishing details on our website, of the region, types of cases or types of application for which electronic communication will be required.

### **Schedules**

- 1.14 The Schedule authorises you to perform the Contract Work from the Office and any Outreach locations specified in it.
- 1.15 The Schedule will be issued covering the terms and limits which are specific to you and your Contract Work.

- 1.16 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.
- 1.17 The Schedule is generally issued annually to cover the each year of the Contract term but we may specify a different duration. The first Schedule(s) we will issue under this Contract will reflect the outcome of the bid round exercise for 2010 contracts.
- 1.18 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.
- 1.19 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**

- 1.20 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**

- 1.21 If it comes to your attention that a Client has:
- (a) wilfully failed to provide information relevant to your decision to carry out Contract Work on their behalf: or
  - (b) has knowingly made a false statement or false representation which was material to your decision to carry out Contract Work

and after this failure or false statement or false representation has occurred, you have carried out Contract Work on the Client's behalf, then you should report the matter immediately to your Relationship Manager.

- 1.22 The application form signed by the Client may 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**

- 1.23 Except as otherwise provided by us, you must not charge a fee to the Client for the services provided under this Contract or seek reimbursement from the Client (or any other person) for their share of any disbursements incurred as part of the provision of such services.

- 1.24 Where you have been carrying out Contract Work on behalf of a Client, you may 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

and the Client has nevertheless decided to instruct you privately.

- 1.25 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 paragraph 1.24 must be kept on the file.

### **Transitional Provisions**

- 1.26 The terms of this Specification shall apply to all matters commenced by you on or after the Contract Start Date. For the purposes of this rule you "commence":

- (a) a Willingness Test on the date that the you first contact the Client to determine whether the Client would be willing to attend Mediation;
- (b) an Assessment Meeting on the date the Client attends the meeting; and
- (c) Mediation on the date when the Client attends the first Mediation session.

1.27 You may continue to perform Family Mediation Contract Work on any matter properly started prior to the Contract Start Date under any of your previous contracts (i.e. the previous specifications in force prior to 14 October 2010). These matters will continue to be governed by the provisions of the previous specification under those contracts.

## **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. Compliance with these Standards will also be taken into account in future bids rounds for legal aid contracts.
- 2.2 The minimum requirement to undertake Contract Work under this Specification depends on:
- (a) holding the Family Mediation Quality Mark Standard; and
  - (b) having a Family Mediation Supervisor.

### **Use of Agents**

- 2.3 The general rule is that you may instruct Agents from time to time to carry out 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 an Agent unless the Agent is your named external Family Mediation Supervisor (see paragraph 2.13 below).
- 2.4 Where you instruct an Agent, you may Claim payment for the Contract Work as if you had carried it out directly. Where you instruct an Agent to carry out services which are covered by a fixed fee, any fees or costs related to your use of the Agent will be included in the fixed fee and may not be claimed separately.

### **Supervision**

- 2.5 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 the above registration as a Supervisor) in each Category of Work; and
  - d. successfully completed a Mediation supervision training course recognised by a member organisation of the Family Mediation Council.
- 2.6 In addition, each Supervisor must as a minimum conduct at least 15 hours of Mediation sessions every year.
- 2.7 Supervisors must also have regard to the Family Mediation Council's guidance on supervision.
- 2.8 If any Supervisor ceases to meet the standards set out in paragraph 2.5 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.
- 2.9 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.
- 2.10 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.
- 2.11 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).

- 2.12 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**

- 2.13 You may use an Agent as your named Family Mediation Supervisor for the purposes of complying with this Contract.
- 2.14 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.
- 2.15 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.
- 2.16 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.

### **Supervisor temporarily unable to act**

- 2.17 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 to supervise; or
  - (b) nominate an external Supervisor (or another external Supervisor) to supervise.
- 2.18 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 Relationship 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**

- 2.19 A Willingness Test may be undertaken either by Mediators or by appropriately trained and qualified support staff employed by you.
- 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 that he or she 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 In particular, 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 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.
- 2.30 You must also signpost Clients or Potential Clients to the Community Legal Advice helpline (0845 345 4345) or website ([www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk)) in all cases where the Client's problem falls within the scope of the telephone and internet services available and it would be appropriate for the Client to take advantage of such services.

### **Welsh Language Requirements**

- 2.31 If you provide services under this contract within Wales, you must ensure, in accordance with the Welsh Language Act 1993, that those services are accessible to and understandable by Clients whose language of choice is Welsh.

### **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 KPIs 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 each stage of the KPI will be 20 (or above) Willingness Tests and 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 the following:
- (e) 35% conversion rate from Willingness Tests to Assessment Meetings;
  - and
  - (f) 40% conversion rate from Assessment Meetings (Separate and Joint) to Mediation.

## **CARRYING OUT FAMILY MEDIATION CONTRACT WORK**

### **Financial Eligibility**

- 3.1 The rates for financial eligibility are those set out in the Community Legal Service (Financial) Regulations 2000 (as amended). In making the assessment referred to in the Funding Code, you are required to have regard to any financial eligibility Guidance issued by us.
- 3.2 Satisfactory evidence, as described in Guidance, 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; and
  - (b) you have acted reasonably in initially assessing financial eligibility on the information available.

- (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 Community Legal Service (Financial) Regulations 2000, Regulation 11 (3).
- 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 and Willingness Tests**

- 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 (the “Willingness Test”).
- 3.11 For the purpose of conducting a Willingness Test, you must 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 of 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 You must report, using our forms, all Willingness Tests that you carry out, whether or not a subsequent Alone, Joint or Separate Assessment Meeting takes place.

3.22 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).

3.23 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 each year. For example, if you began work on 14 October, 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 13 October.
- 4.2 The fixed fees are set out in the Payment Annex to this Specification and replicated in the Tables below for illustration. 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.

### **Willingness Tests and Assessment Summary**

- 4.3 There is a fixed fee for carrying out a Willingness Test and it is payable only once, even if you contact the other party more than once.
- 4.4 The Willingness Test fee is payable for all Willingness Tests undertaken whether or not a subsequent Assessment Meeting takes place.
- 4.5 There is a fixed fee for Assessment Meetings, which, subject to Paragraph 4.4 are payable only once (even if you have met the first party, the other party or both more than once, to carry out the assessment).
- 4.6 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.

**Table 1: Fees for Assessment Meetings and Willingness Tests**

<b>Table 1</b>		
<b>Category of Work</b>	<b>Payment</b>	<b>Hours/Rate</b>
Joint Assessment Meeting	£130.00 (per couple)	2hrs/£65
Separate Assessment Meeting	£87.00 (per person)	1.33hrs/£65
Willingness Test	£25.00 (per test)	0.5hrs/£50

**Mediations**

- 4.7 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 (Table 2 Column 2). 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 the Multi Session column (Table 2 column 3) is payable and that outcome should be reported.
- 4.8 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.
- 4.9 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 Agreed Proposal column (Table 2 column 4) will be payable. Agreed Proposals should be concluded at the end of Mediation and include all agreements reached during Mediation.
- 4.10 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.

4.11 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*

4.12 When only one party is receiving 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 receiving public funding.

**Table 2 Fees for Mediation and Formal Agreements**

<b>Table 2</b>			
<b>Category of Work</b>	<b>Single Session</b>	<b>Multi Session</b>	<b>Agreed Proposals</b>
	<b>Session Payment</b>	<b>Case Payment</b>	<b>Agreement Payment</b>
Sole All Issues Mediation	£168.00	£756.00	£252.00
Co- All Issues Mediation	£230.00	£1064.00	£252.00
Sole Property & Finance	£168.00	£588.00	£189.00
Co- Property & Finance	£230.00	£834.00	£189.00
Sole Child Only	£168.00	£462.00	£126.00
Co- Child Only	£230.00	£647.00	£126.00

*Examples*

(1) A Child Only Sole Mediation that finishes in one session and results in Agreed Proposals being produced will attract a payment of £294. This is

made up of a payment of £168 for the Single Session and a payment of £126 for the Agreed Proposals. Both parties are publicly funded.

(2) An All Issues Sole Mediation that lasts for seven sessions and results in Agreed Proposals being produced on the financial issues but not the Children issues will attract a payment of £945. This is made up of a payment of £756 for the Mediation itself and a payment of £189 for the Agreed Proposals. Both parties are publicly funded.

(3) An All Issues Co-Mediation that lasts for 3 sessions and results in Agreed Proposals being produced on the Children issues but not the financial issues will attract a payment of £1,190. This is made up of a payment of £1064 in respect of the Mediation itself and a payment of £126 for the Agreed Proposals. Both parties are publicly funded.

## **Disbursements**

4.13 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.

4.14 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;
- (c) Counsels fees (only in exceptional circumstances).

4.15 The following disbursements may not be incurred:

- (a) Mediator or Client traveling expenses;

- (b) The cost of room hire for Outreach work;
- (c) Costs of or expenses in relation to counseling, 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.

4.16 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 4.13. 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.

4.17 Where you instruct an expert (e.g. a surveyor) we will not pay in excess of

- (a) 45 pence per mile traveling costs; and
- (b) £40 per hour traveling time.

4.18 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 Guidance issued by us related to disbursements.

### **Assessments**

4.19 You must comply with the provisions on claiming and Assessment in respect of Contract Work set out in the terms of this Contract, the Community Legal (Financial) Regulations 2000, the Community Legal Service (Costs), the

Community Legal Service (Cost Protection) Regulations and the Civil Procedure Rules.

*General provisions on claiming and assessment*

4.20 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.

4.21 You should note the following provisions regarding costs and disbursements:

(a) you may 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;

(b) you may 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 based nearer to him or her;

(c) you may 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 Guidance.

4.22 We may specify maximum rates for experts' fees by reference to type of expert and activity (such as reports, attending conferences or court hearings). Where we have done so, experts' fees incurred by you in relation to any Contract Work will not exceed these maximum rates, unless prior authority has been granted to exceed the limit in the particular case. Subject to any such limits, the amounts claimed for experts' fees must be justified on detailed Assessment in the normal way.

4.23 Any Assessment undertaken by us, whether by the Director or by the Assessor or Costs Appeals Committee 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 rate as set out in the Payment Annex to this Specification.

4.24 When we assess a sample of your Contract Work claims, we may apply any findings to your other claims for Contract 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.

4.25 'Findings' for the purposes of Paragraph 4.24 above 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 fixed fee where we consider that only one such fee should be payable; or
- (d) where we consider the wrong level of Standard or Graduated Fee has been claimed.

4.26 When findings are applied to a Claim under these provisions, then we have assessed that Claim.

## **Appeals**

- 4.27 If you are dissatisfied with any decision of the Director 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 and its related Guidance shall include “Assessors” in cases where an appeal is dealt with by a panel of three Assessors rather than a single Assessor alone.
- 4.28 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. The Director 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.
- 4.29 Failure to comply with any of the requirements set out in Paragraph 4.28 above means that you accept the decision of the Director and lose your right to dispute it.
- 4.30 Where an appeal is to proceed the Director also has the right to make written representations (in addition to those contained in the original assessment) to the Assessor. If the Director does 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 the Director then you have the right, within 14 days, to provide a written response to them.
- 4.31 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 the case of the Director, at the same time as he or she makes any written reply (or, where no written reply is made, during the period allowed for making such reply) .
- 4.32 The Assessor will consider the request and notify both parties of his or her decision.

4.33 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, s/he 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.

4.34 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 s/he 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.

4.35 For the avoidance of doubt, 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.

4.36 On appeal, the Assessor shall review the Assessment whether by confirming, increasing or decreasing the amount assessed. In the Assessment, the Assessor may apply his or her findings generally across files outside the sample before him or her under the terms of Paragraph 4.24. However, no such decision shall apply to any completed Assessments that you have not appealed within the time limit.

- 4.37 Where in dealing with an appeal on the papers only the Assessor identifies new issues (i.e. issues which have not been raised by either party under the appeal) the Assessor will, as s/he 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 the Director for a new decision.

*Points of Principle of General Importance*

- 4.38 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, the Director or the Assessor may seek certification of a Point of Principle of General Importance.
- 4.39 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 the Director and, if one has already been appointed and their identity notified to you, to the Assessor. The Director will, within seven days of receipt of your application, forward that application to our Legal Director and, if an Assessor has been appointed but their identity not notified to you, to the Assessor also; and
  - (b) in the case of the Director, by sending an application directly to our Legal Director and copying that application to you and to the Assessor (if appointed);
  - (c) in the case of the Assessor, by sending the application to the Director. The Director will, within seven days of receipt, send the application to our Legal Director and notify you that the Assessor is seeking certification of a Point of Principle of General Importance.
- 4.40 All applications for certification of Points of Principle of General Importance, whether made by you, the Director 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.

- 4.41 Upon receipt of an application for certification of a Point of Principle of General Importance, our Legal Director will decide whether the matter should progress to the Costs Appeals Committee. If our Legal Director decides that the matter should not progress to the Costs Appeals Committee for certification then the Legal Director will send the reasons for refusal to the Chair of the Costs Appeals Committee for approval and, if approved, to you, the Director and, where appropriate, the Assessor.
- 4.42 If our Legal Director or the Chair of the Costs Appeals Committee consider that the matter should proceed for certification to the Costs Appeals Committee then the matter will be listed for consideration by that Committee.
- 4.43 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.
- 4.44 On considering an application under this rule, 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 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.
- 4.45 You, the Director and, where appropriate, the Assessor will be notified of the decision of our Legal Director and/or the Costs Appeals Committee.
- 4.46 Any Point of Principle certified by the Costs Appeal Committee, whether or not made under this Contract, is binding on all Assessments carried out by the Commission and any appeals in relation to such Assessments.

**Family Mediation Specification Payment Annex 2010**

See standalone document entitled, *“Civil and Family Mediation Specification Payment Annex 2010”*.