

## Family Mediation

### Questions and answers for service providers

#### **Why will mediators decide whether domestic violence cases are suitable for mediation?**

We want to ensure that family mediation is not automatically ruled out for domestic violence cases (the NAO recommended that we should review this frequently used exemption).

All family mediators receive domestic abuse screening and assessment. They can provide reassurance within an individual assessment meeting on how mediation operates, explaining: how they would create a safe mediation environment, even where there has been domestic abuse, addressing client fears and making mediation suitable and possible. This may include:

- the use of separate waiting areas
- staggered arrival and departure times
- separate meetings (caucuses) and
- shuttle mediation where the clients need not be in the same room at any stage in the mediation process.

#### **How can I get a copy of the NAO report?**

It is available on the NAO website:

[http://www.nao.org.uk/publications/nao\\_reports/06-07/0607256.pdf](http://www.nao.org.uk/publications/nao_reports/06-07/0607256.pdf)

#### **What is happening with Help with Mediation under Level 2 and will it still be exempt from the statutory charge?**

Under the old arrangements, Help with Mediation was exempt from the statutory charge. This was intended to be an incentive for clients to use mediation. However, the number of clients using this level of service remained low.

Help with Mediation will cease to exist as a separate level of service - it has been incorporated into the new Level 2 fee. Therefore, the specific exemption from the statutory charge will not apply.

However, if the case settles through mediation at this level and clients do receive legal advice in relation to their mediation agreement, this will be exempt from the statutory charge. There is one exception: if the case is exceptional at Level 2, the charge will apply.

#### **If not-for-profit providers stop doing legal aid because it's not considered financially viable, does this not contradict what the NAO report said?**

The NAO report recommended that the LSC revise the funding structure for family mediators so that same fees apply within the not-for-profit and for profit sector.

We have been working with the not-for-profit sector for three years in preparation for this alignment (introducing transitional contracting arrangements). Not-for-profit representative bodies agreed that three years was sufficient time to allow services to adjust.

Some of the smaller not-for-profit providers who, for example, undertake less than 60 mediations a year will be at risk and may not be financially viable without the fixed annual payment (a guaranteed payment, paid under current not-for-profit arrangements regardless of the volumes of work done) if they maintain their current business structure. Funding them in this way was never going to be sustainable in the longer term.

Any potential reduction in the number of mediation providers does not mean a reduction in the number of mediations or referrals to mediations - we will encourage existing providers to increase capacity.

Large mediation providers will achieve greater economies of scale by offering outreach in areas that have historically generated 30-60 mediations a year. This may not be enough work to support a whole service, but it will be sufficient to generate a profit for services that offer outreach.

### **For domestic violence cases, how is a police investigation defined for mediation exempt cases?**

The exemption from the requirement to consider mediation applies where allegations have resulted in either:

- police investigations or
- the issue of civil proceedings for the protection of the applicant within the 12 months prior to the application for funding

In this context, a police investigation is when a report has been made to the police who have attended the relevant premises or interviewed any parties (regardless of any arrest or charge). You don't have to obtain any documents to confirm that the exemption applies.

The amended [Family Decision Making Guidance](#) defines a police investigation. This is available on the family pages of this website and will be published in the next update to the Legal Services Commission Manual.