

Annex to in Court Mediation Trial

Annex 1: In-Court Mediation Working Group ‘Good Practice Guidelines for Mediators’

General Set Up Guidelines

Mediation Services, CAFCASS and local District Judges/Legal Advisors should set up early meetings to assist in a shared understanding of mediation and to help identify and clarify individual roles and boundaries.

When seeing parties, in-court mediators will not necessarily always be able to complete a mediation suitability assessment or commence in-court mediation. The extent of the work able to be conducted by in-court mediators will on all occasions be determined by the parties with the mediators based on the circumstances.

Prior to the date for First Hearing

District Judges/Legal Advisors to apply a consistent sifting mechanism on issue of proceedings to divide all new matters into “mediation” lists, and “non-mediation” lists. Mediators can then attend court on mediation list days, but not on non-mediation list days, with the result that mediator time at court is neither wasted nor unremunerated.

Liaison should take place between the court and mediators/Mediation Services no later than on the day before any list in order to confirm details as to whether there is a list going ahead, and if so, to also supply details as to the length and nature of that list, so that Mediators do not turn up at court when there is no list, or a list of cases completely unsuitable for mediation.

Mediators should have access to C100s etc. at least 24-48 hours in advance of the day of first hearing.

At Court on the day of First Hearing

Before Mediators See Parties

The Mediator should take an active role with Cafcass and the gatekeeper for the day (District Judge or Legal Advisor) in case triage (i.e. reviewing the cases in the list for the day and determining which may be suitable for mediation) at the beginning of each list. Cafcass safeguarding information must be available at this stage.

The District Judge/Legal Adviser will introduce the Parties and their representatives to the mediator.

The District Judge/Legal Adviser should provide strong encouragement where appropriate about the mediation assessment/mediation process, which may take a minimum of an uninterrupted hour.

After Mediators have seen parties

After seeing parties, and subject to parties consenting to break mediation privilege and confidentiality, mediators may feed back (whether orally or in written format) the outcomes/decisions from their meetings with parties to:

- Advocates; and then to
- District Judge/Legal Adviser and Cafcass as appropriate

When providing feedback to advocates, Cafcass, and judiciary mediators will not enter into discussion.

Mediators must clearly establish with parties and then report back to advocates and judiciary whether or not parties wish for their mediated outcomes to be converted into consent orders at court following any in-court mediation.

Professional Practice Matters for Mediators

Mediation must not start before both parties have signed an Agreement to Mediate. Consideration to be given to whether a shorter in-court specific Agreement to Mediate may be required.

Mediators may wish to develop a particular written format for presentation of feedback to advocates and judiciary of the outcomes/decisions of parties time spent with mediators at court.

Mediators Professional Practise Consultants (PPC) will be available to provide focussed support for mediators offering in-court mediation and will be aware of in-court mediators' particular enhanced needs as regards (for example):

- Tailored in-court mediation documentation
- Time Pressures and Time Management
- Mediator Stress

Annex 2: Analysis of the Survey Data

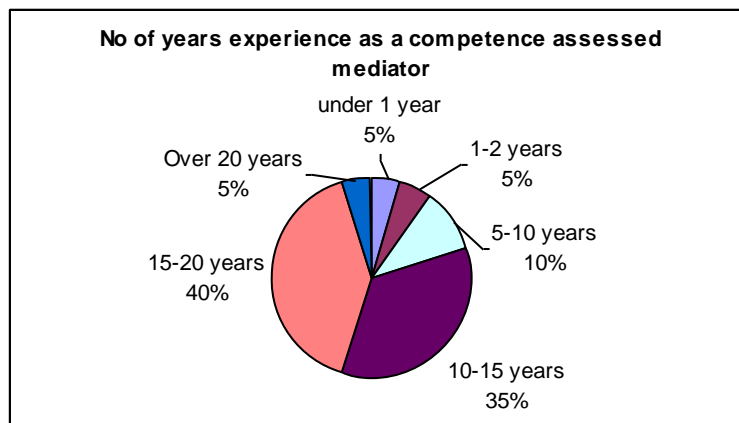
In total there were 21 responses received for the Mediator survey, and the majority of responses were from mediators involved on the pilot (86%). The remaining respondents answered on behalf of their Mediation Service (14%). Four additional responses came from the Judiciary and Cafcass.

It was difficult to ascertain the response rate for this survey, as surveys were sent to the lead contacts in all mediation services, Judicial and Cafcass contacts which were forwarded as necessary to a wider group involved in the pilot. The number of mediators taking part in the pilot from each mediation service varied, and it was not known how many people the surveys were passed on to. However, responses were received from 11 of the 12 mediation services involved in the pilot, and this covered all four court areas as well as Milton Keynes. The table below summarises the key respondent details for mediators.

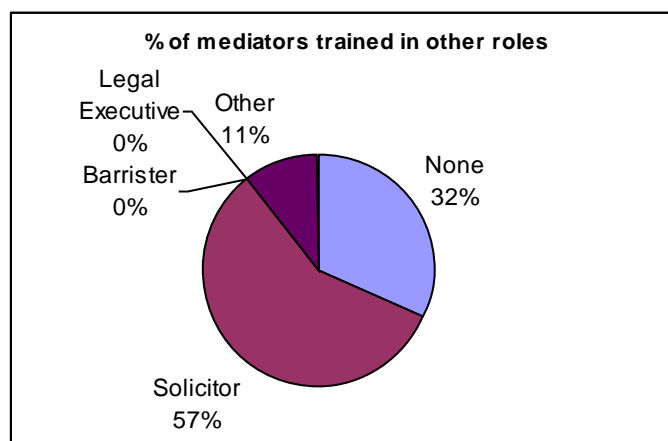
Respondent type by court area

Court Area	Mediator working on the pilot	Answering on behalf of mediation service
Sheffield	4	0
Reading	2	0
Plymouth	6	1
Birmingham	2	2
Milton Keynes	4	0
Total	18	3

Background, experiences and areas of expertise of mediators involved in the pilot



The mediator surveys showed that the mediators involved on the in-court pilot held a wealth of experience, as most mediators involved on the pilot have been practising as a competence assessed mediator for at least 15 to 20 years (40%), this was closely followed by those with 10 to 15 years experience (35%).



From the mediator surveys, just over half of mediators (57%) said they were also trained as solicitors. This experience was seen to be valuable for mediating at court, and most mediators trained as solicitors highlighted that having legal knowledge and an understanding of court processes, such as the workings of a Family Proceedings Court and County Court was useful for in-court mediation. This also corroborates the findings from the survey on whether mediators had previously worked in court before.

Most mediators (80%) had worked in a court before, and in turn found it helpful for in-court mediation. The main roles held in a court setting included working as a solicitor, a support advocacy worker, and offering mediation as an outreach prior to the in-court pilot.

Most mediators also cited their varied experiences as a mediator outside of court to be extremely useful. For instance some mediators outlined that their work with young people or direct children consultation cases to be useful when dealing with children's issues at court. A couple of mediators also discussed how previous work roles such as being a trained councillor, social worker, support worker, lecturer and research academic were also useful in terms of dealing with stressful situations, upholding a degree of empathy with clients, and also being familiar with a range of Children's issues that were presented.

The survey also gave consideration to identifying other skills and training, which could be helpful for mediating at court. Of those respondents who had not been trained in any other role besides being a mediator, conflict training and stress management were seen to be skills needed to carrying out mediation at court successfully. Overall, the findings from the surveys showed that mediators brought a wealth of training, skills and work experiences to meet the unique requirements of in-court mediation, and that the nature of mediation at court provides different challenges compared to mediation outside of the court.

What aspects of the pilot worked well?

Many mediators felt that being part of the pilot formalised the mediation service's role at court and improved working relations, professional trust and appropriate boundaries with Cafcass, court staff and the judiciary through close co-working and

education, leading to better understanding and outcomes. Many felt that there was a real willingness by all groups to engage and find ways of making the Pilot work.

The immediacy of any active encouragement from the judge was found to be very powerful in ensuring clients engagement in the assessment meeting and facilitate more constructive mediation. Where the DJ informs the clients in line with agreed protocol that they "are the experts about their children and therefore should be the decision makers" it helped focus the minds of the clients. Mediators felt that by providing clients time and space to attempt to make their own decisions, with help to focus on the children's needs rather than their own in this way proved to be extremely effective as they start to see it as a last ditch attempt to assist them to avoid an imposed adjudicated outcome, so they are able to retain control of their own family processes and relationships.

The judiciary were also largely positive about the experience, believing that mediation has a major role to play in facilitating discussions between parents who are not finding communication easy or who do not communicate at all. Children will be the main beneficiaries as parents will be actively encouraged to continue to take the responsibility in the decision making for their children. The Judiciary also accepted it had taken some of them time to adapt their approach in order to push parties much harder towards mediation and that it was also the case that mediators had needed time for to adapt to working in the more pressurised court setting.

For a significant proportion of parties, the fact that they were able to mediate at Court meant that they achieved a desired outcome on the day, rather than having to wait for weeks for CAFCASS to prepare a report. Some mediators found that a client benefited from having their legal advisor available to them at stages during the mediation as it supported the management of their expectations and helped formulate greater levels of consensus between the clients concerned.

The pilot has also placed much greater focus on In Court or Court Referred Mediation work nationally and has provided mediators with an opportunity to explore new ways of working and extend mediator practice so that clients are given a greater number of routes into mediation during the life cycle of their dispute. Some clients had previously tried mediation, but this second chance was often welcomed, as being at Court had focussed their minds sufficiently for them to re-consider mediation and appreciate its merits and what it offers them. For some clients a referral to mediation at an early stage can be ineffective as the feelings and emotions attached to the breakout are too raw and high levels of anger and resentment remain present. Therefore have this additional opportunity to explore mediation can be beneficial

One mediator felt that they had established very useful links and good working relationships with both CAFCASS Officers and Court staff including Ushers at the FPC, which has been evidenced by the much stronger drive to encourage clients to at least explore mediation as an option at the end of the Pilot compared to when it commenced. However, in the County Court (CC), they felt they have not been able to make the same difference because of greater formality and a general failure to separate out the work of CAFCASS Officers and Mediators in triage as preparation for intervention by the District Judge. This has much to do with the lack of preparation for the pilot mentioned earlier and a perceived lack of recognition that the pilot necessitated a different and more joined up way of working.

What were the main obstacles to referrals to mediations in court?

Many mediators felt there was a lack of an agreed protocol with the Court and Cafcass about how mediation can be more effectively utilised within the court environment, hampered in part, by a general lack of understanding as to what mediation is, the protection it is able to offer clients and how it works most effectively. There were often inconsistent arrangements for co-working/triage between mediators, Cafcass Officers and Legal Advisors/District Judges leading to confusion about information sharing and ad hoc/ varied distribution of Court Listings, applications and Cafcass reports. There were also some delays experienced in obtaining safeguarding information, which limited referrals.

At the outset of the pilot in many of the areas, Cafcass tended to take on the sole role of deciding if a case was suitable for mediation and the decision was fait accompli and accepted by the judges without any further investigation. Some solicitor reluctance to encourage clients to participate in mediation meant clients were not as receptive to mediation as they could have been.

Many of the judiciary were initially of the view that mediation could and should be geared toward achieving "quick fixes" on the day, which is more in line with in court conciliation and more directive forms of mediation, which is not something that traditional models of mediation are designed to achieve. The role of the mediator at court was primarily to assess whether mediation might be suitable to the dispute and although it could result in short term agreements concerning upcoming arrangements for weekend contact with the children for example, more substantive mediation should take place to find more secure, longer term agreements on appropriate child arrangements going forward.

Mediators also raised serious concerns about the lack of time to mediate properly and still be able to comply with their own professional standards. Judicial endorsement of mediation is highly persuasive for many clients, especially linked with the capacity of the Judge to make an immediate order for the clients after the in-court mediation session in the terms of the mediated outcome.

Clear direction by the judge along the lines of 'you should know your children better than anyone. Why do you think someone who doesn't know your family at all (like me) should make decisions about it? The chances are no one will like my decision. It would be better to at least try and agree something. You might well be surprised: most people manage to agree at least something and many everything' was found to be particularly powerful in encouraging engagement with mediation and helped refocus the minds of the parents on the real needs of the children rather than their own.

The judiciary felt that obstacles preventing referrals were solely down to the individual circumstances of the case, and would only not make referrals where there were serious violence/abuse allegations or where there was local authority involvement. Although it was acknowledged that some judges did take time to adapt to the new arrangements and it only after this adjustment did they start making more consistent and stronger referrals to the mediators for an assessment.

Cafcass officers and mediators felt that initially an obstacle to referrals was often as a result of a lack of time before the first hearing, which prevented the safeguarding

checks being done as well as issues with obtaining police information during that period, thereby making a referral to mediation inappropriate at that time.

Other issues as to why referrals weren't made by Cafcass after discussions with the clients focused on practical arrangements such as the associated costs of the mediation for the privately funded client and the distance to the mediation service for follow up mediation. It was felt that costs were prohibitive when more substantive mediation was suggested as the benefits of mediation being the cheaper alternative loses weight once the private paying client has already incurred significant cost for legal advice to get to court proceedings.

Additionally, where both parties are publicly funded and there are no immediate financial implications for them then there could be a tendency to continue the 'fight' rather than achieve resolution. It was felt that more directive mediation to compel clients into mediation not just assessment for at least one or two sessions prior to a matter being set down for a final hearing might be appropriate in these circumstances.

There were also the issues that parties were unwilling to participate in mediation due to difficulties in communicating with the other party and lack of preparation/education by solicitors about how mediation can be arranged e.g. separate rooms. There were also additional educational issues around a party's belief that if they engage in mediation, they will not be able to obtain a Court Order.

What aspect of the pilot could have been improved? How could this be achieved?

Three key themes emerged in terms of what could be improved from a mediator perspective. The first was more effective identification of appropriate cases where a referral to assess suitability should be made. This would allow for more efficient and effective court listings to ensure better use of mediator time at court. This decision making process could either directly involve the mediator along with the Judge and the Cafcass officer in order to determine those cases that were clearly not suitable for mediation or involve greater education that would put Cafcass and the Judiciary in a more informed position to make these decisions in advance.

Mediators also believed more information could be provided to them in advance in terms of the lists and applicable C100 form.

The second theme was to specifically allocate time for mediators to work with clients so they could do so without interruption and the third theme was to make clients more aware of in court mediation prior to attending so they knew what to expect, which would enable them to make appropriate arrangements (e.g. child care) to be able to mediate at court.

Prior to pilot representatives from mediation, judiciary, Cafcass and court staff should have been expected to meet and discuss the implementation of the Presidents Private Law Programme and the prospective role of mediation as part of it. Planning to ensure that the pilot was being coordinated and that all involved were working together would have provided opportunities to increase mutual understanding of our different roles prior to the commencement of the pilot.

It was believed that letters informing clients of the hearing date should make it clear that they might be required to consider mediation. Where parties are represented, their representative should also be under a duty to inform their client about in court mediation.

The Judiciary and Cafcass accepted that it had taken time for all those involved to adapt to new ways of working which is now starting to take place for the benefit of the children involved. It was also argued that more dissemination of the whole proposal before the pilot commenced should have taken place with briefings and preparatory meetings to ensure that all agencies had a common understanding of what was to happen and why.

Cafcass officers also believed agreement should have been reached in advance on limited privilege being applied to information discussed at mediation so that greater understanding of why it might not be appropriate or acceptable to parties was gained. This could have been achieved with a clear remit to check with parties what would be fed back to the court/Cafcass when mediation could not proceed, no agreement was reached or an agreement was reached.

Do clients prefer to mediate in court or away from the court?

Many mediators felt that given the choice clients would mostly prefer mediation away from the court, but this was primarily due to the fact that they were usually unprepared for mediation being used at court in such short notice. Mediation largely remains an unfamiliar service to clients and actual engagement in this way with the other party will be very different to what they were expecting from the court. As a consequence clients felt they would be more prepared and relaxed negotiating at a different time in a more neutral and less formal setting. It also gave clients the opportunity to give more detailed consideration to the different options available to them that may be explored during mediation and to trial them, if necessary.

Others believed that many were happy to mediate at the court, primarily because it was expected of them and would have no concept that mediating in a different environment might potentially prove more beneficial for them. One mediator felt that it was necessary for mediators to adapt mediation models so they could better meet the needs of clients within the court environment as it was not always viable for it to take place away from the court due to circumstances. Therefore mediators needed to develop more appropriate models that could be more responsive to the unique circumstances of clients in court.

From the Judges surveyed there was mixed views about whether there was preference for mediation to take place at court. One felt that the majority of cases were suitable for mediation and in theory these could be undertaken outside court, but felt the benefits of in court mediation were enormous, mainly because there is a Judge controlling the process which means that if no progress is made directions can be given immediately which avoids any undue delay for the child. They considered that the fact that a Judge maintains control, overseeing the process encourages the parties to settle. Other judges were more inclined to adjourn the hearing if the parties were willing to attempt mediation in order to tackle the underlying problem of the dispute.

One of the key issues for the mediators was the lack of time at court. Mediators would often need to see other clients who were also listed that day or the time permitted only allowed them an hour at most in which to discuss the matter with the clients and start some initial mediation to establish some common ground and potential areas of compromise. In fact some mediators felt that clients did not necessarily prefer mediation out of court, but rather more mediation sessions were needed due to the nature of their case, and in the pursuit of working towards a more sustainable long-term solution that they needed to go to the mediation service itself.

It was broadly agreed between all mediators that the atmosphere away from court is far less hostile and pressurised, so less stressful for clients and thereby more conducive to open discussion and mediation.

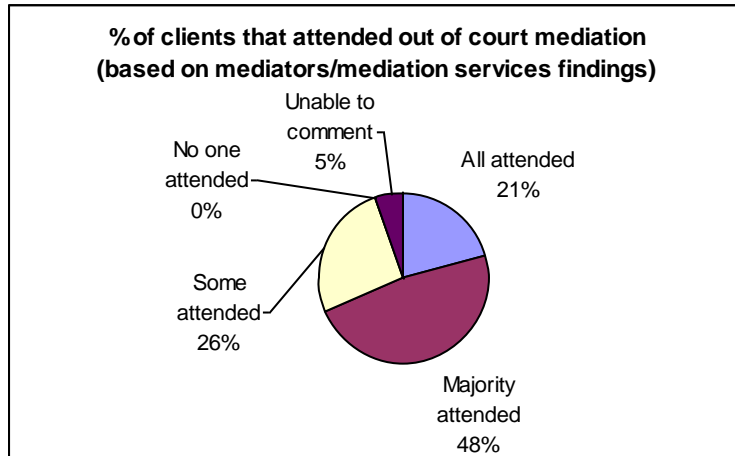
Attention was also drawn to the facilities in court. For instance, one mediator commented that the only refreshment facilities at court are a drinks vending machine, and therefore some people were simply too hungry/thirsty to stay at court to allow for mediation to take place.

When asked if the facilities in court were adequate to carry out assessment meetings and mediations, the results were mixed as these varied between the different courts across the pilot areas. Most respondents (50%) agreed that the facilities were adequate. However, 45% felt that court facilities for assessment meetings and mediations were not adequate and 5% felt unable to comment.

When mediators/mediation services were asked how facilities in court could be improved if necessary, most respondents tended to emphasise the importance of having a dedicated room for mediations to take place which were less formal, and equipped with things like flip charts and access to refreshments for clients and other court users. Having a larger room to work with clients was also seen as being important to help facilitate mediations, and some comments were made about the possibility of having access to additional rooms for shuttle mediations to take place if necessary. This highlights the differences for mediators and clients taking part in mediation at court, and how the nature of the facilities in court are important for both clients and mediators to feel comfortable in. The importance of good court facilities ties in with the findings from Genn *et al* (2007) as research highlighted how poor facilities can affect in-court mediation case outcomes.

Did mediation continue when arranged to take place away from the court?

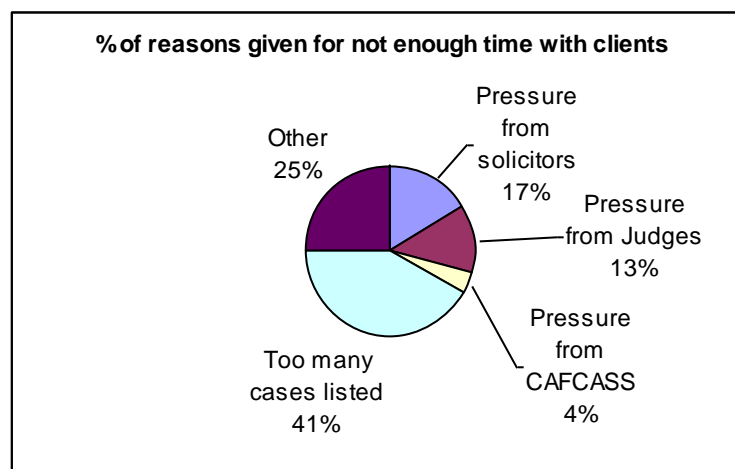
Based on the mediators/mediation services experiences, the findings from the surveys showed that of those who preferred to continue with mediation outside of court, most of them did attend further mediation sessions (69%). Therefore providing parties with the opportunity to discuss and consider mediation at court was a useful way of encouraging clients to proceed and engage in more substantive longer term mediation.



Did mediators have enough time with the parties when undertaking assessment and initial mediation at court?

The majority of mediators did not feel as if they had sufficient time to work with clients at court. Only 15% that had enough time, 30% they occasionally had enough time and 55% they were not provided with enough time to see the clients.

Of those that responded 'No' they were asked to outline the reasons why they felt they did not have enough time with clients. Respondents were able to choose from a list of options, and also able to put forward any other reasons.



Most respondents felt that they did not have enough time with clients due to too many cases being listed (41%). A quarter of respondents put forward their own reasons and this included issues around the complexities of the referral process being difficult to allocate enough time for clients and also too much time being spent on cases not suitable for mediation. The unpredictable nature of how many cases were listed and suitable on any given day was also discussed, along with issues surrounding the clients themselves, such as parties not turning up at court. Pressure from Solicitors, Judges and CAFCASS was seen to be less of a prevailing reason for a lack of time spent with clients, as these reasons reported lower percentages.

How did mediators utilise their time when not seeing clients?

One of the key issues for mediators was their use of time at court. Under the pilot only 39% of mediator time was spent working with clients either as part of assessment or mediation.

Initially a significant amount of time was spent familiarising themselves with the way the court operates and getting themselves known, as a way of establishing more constructive working relationships and developing the levels of understanding about the respective roles that each professional could provide to the court. There was a strong educational role provided by the mediators to wider court staff as they clarified how they could support the work of the court, the training they have received as a mediator and providing reassurance about their skills in safeguarding/domestic violence screening which they undertake to ensure client safety is maintained at all times.

As the pilot progressed most mediators time that was spent not directly seeing clients was taken up with attending hearings or having discussions with District Judges (County Court), Legal Advisers (in the Family Proceedings Court), ushers, court staff and administrators, advocates, parties and litigants in person on cases to determine which matters may be more suitable to be referred to an assessment meeting. Others utilised their time reviewing court files and the C100 to facilitate this process.

Mediators also undertook record-keeping and mediation administration for the in-court matters, recording mediation outcomes, completing paperwork and preparing correspondence to clients as required.

Others felt their time was wasted and having them at court was largely unproductive for significant periods of time.

All mediators felt the referral system could be improved by the introduction of a triage system, which more effectively identifies those cases that are potentially suitable to mediation and those that clearly aren't. The lists could then be compiled accordingly to limit the amount of time mediators are at court unnecessarily. The greater the involvement of the mediator in this process either directly or through training the better they would be utilised.

Should more directive forms of mediation take place at court?

There were a variety of opinions from the mediation profession on the appropriateness of more directive forms of mediation. Some felt that although there is a temptation to be directive in response to time constraints and perceived expectation at court in order for mediators to 'get a result'. However, direction to mediation and more directive forms of mediation do not necessarily secure commitment. Research shows, that in court conciliation may secure agreement but the underlying conflict is not resolved.

Mediation as typically practiced away from court was considered to have the right balance of direction and dialogue and it was feared that the process could revert to a head banging session if more directive mediation was used, which had the potential to perpetuate any power imbalances between the parties. Most felt that the role of the mediator is that of an impartial facilitator and there should always be a clear

divide between mediation and the work of the Judges, Lawyers and CAFCASS or any other agencies.

Many mediators adopt a therapeutic family mediation approach and anything more directive was not viewed as a proper function of mediation, whether in or out of court, as otherwise there is a clear risk of breaching three of the four key mediation principles, voluntariness, impartiality, and decision-making resting with the participants (The fourth key principle is confidentiality.)

However, other mediators felt that seeing cases with a high level and long history of conflict needs mediators to be flexible in their approach. When time is limited, as is often the case (particularly if both clients do not want to use mediation out of Court, say, if not eligible for PF), then there is a tendency, which they accept needs monitoring, to become more directive with clients.

In the case where clients are more interested in talking over aspects of their past relationship difficulties, more directive forms of mediation can be useful, given the time constraints, for them to be able to focus on their children and future arrangements.

Respondents from the Judiciary and Cafcass felt that judges should have greater powers to direct clients to mediation as well as mediators using more directive forms of mediation itself as it would avoid unnecessary excuses being raised by the parties and could help lead to greater a number of agreements being reached. One Cafcass officer felt having a mediator present meant they were less pressured to slip back into their conciliation role of working at the behest of a DJ or Legal Adviser, or pushy solicitors.

Experiences of working with other professionals in a court based setting.

The majority of mediators found it an informative and valuable experience as they broke down barriers, perceived threats and misconceptions about mediation and how it can support the existing court framework. It helped establish how each area can complement one another if there is better understanding of each professions strengths and weaknesses. Overall the pilot was found to be a challenging, but progressive and rewarding experience.

In certain areas there did seem to be some confusion on the part of some solicitors and court staff, as to the role of the mediator; some mistakenly believing that mediators at court were Officers of the court or worked for Cafcass directly, and thereby under a duty to provide a report to the court. Others were unaware of the mediator's duty of confidentiality to the clients, which often created certain tensions between the staff concerned. This was believed in part, to be due to a perceived lack of communication about the pilot and revised Family Law Programme.

Understandably, some Cafcass officers were initially concerned about mediators' ability to ensure the protection of the parties. Once this was overcome, by discussion and shared practice, Cafcass started to make far more frequent recommendations for mediation.

A minority of District Judges appeared more reluctant to engage with mediators, whereas others were clearly supportive of in-court mediation and were keen to utilise mediators where possible to resolve the disputes.

A distinction was also made between the FPC and CC. In the FPC, some mediators felt more welcomed and appreciated as a qualified professional, who had a role to play in increasing clients options for settlement. However, due to the low level of suitable cases or listings in the CC, it felt as if the pilot has made very little difference and that there is no longer-term perspective in terms of the continued involvement of mediators at this stage. The experience for the mediator could therefore be vastly different depending upon which DJ's court they are in, which can impose stress upon the mediators concerned.

Were there any issues relating to the sharing of client information with other professionals?

The majority of mediators, judges and Cafcass officers felt there were no issues with sharing information discussed as part of mediation. As part of mediation practice standards the mediators are not allowed to disclose what is discussed at mediation without the consent of the clients unless there are child protection issues. This had the potential to create difficulties if clients were unwilling to permit such disclosure. However, this was primarily a theoretical issue rather than a practical issue as clients were generally happy and expected what was discussed at mediation, to be relayed to solicitors and judges.

At the outset mediators did have to manage the expectations of the judiciary and solicitors of the confidential nature of mediation and how and when information would or could be released to the court. Some felt they was often more of an issue if the case was unsuitable or where clients decided not to proceed to mediation and whether reasons could be provided.

Some mediators felt they were not always allowed access to the information necessary, particularly at the outset of the pilot. Cafcass felt that they did not have authority to disclose contact details to mediators in advance of the first hearing and there were no suitable arrangements in place for the courts to send copies of applications to the mediators in advance of hearings.

However, over time in certain areas they were provided with the C1s two days prior to court to run conflict checks and meet with the DJ and Cafcass at the beginning of the day to see if police and Social Services checks might preclude certain cases.

Were there any resource implications by having a mediator/s spend time in court?

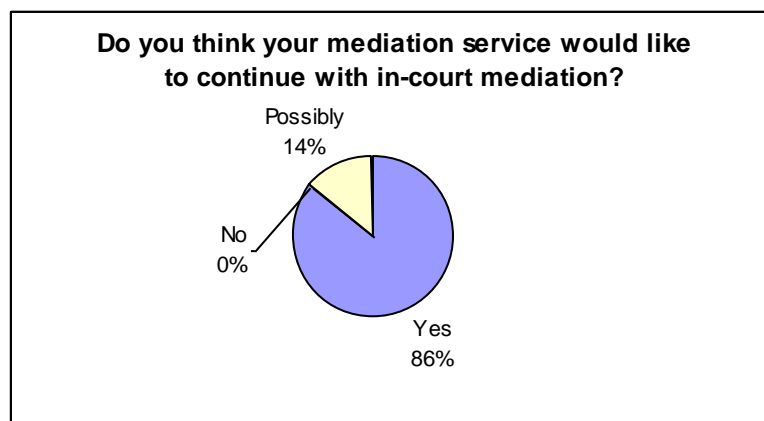
Despite being remunerated for their time at court, there were still some issues for mediation services concerning mediator's losing out on being able to undertake administrative tasks for the services when they were not seeing clients at court. Most mediators who participated in the pilot had no idea how many cases would get referred to them on a given day, but would still have to set aside the entire day in order to honour them. This meant that if it became clear during the morning that they would not be required for the whole day, they would then not be able to arrange work back at their offices for the afternoon. Even if it was anticipated that only a morning session would be required, the travel time from the court to the mediation office or

outreach locations, particularly in some of the more rural areas of the southwest surrounding Plymouth meant the day could often be significantly broken up severely restricting chargeable hours for the mediator.

Throughout the pilot, many mediators felt the amount of revenue they were able to generate by the in-court mediator remuneration arrangements was less than could have been generated had there been the equivalent amount of client-work available in the office. However, it was accepted that there were no guarantees that such work would exist at the office at that time and working at court presented opportunities for new referrals and helped establish stronger profession links with the various bodies that make up the family justice system. Currently, some 83% of referrals come from legal aid Funding Code referrals, 8% are self-referrals and less than 1% come from the court itself.

Working with the LSC

Most respondents had positive comments about working with the LSC over the course of the pilot. Some mediators also commented that they found it helpful to attend an in-court mediation review meeting with other mediation services involved in the pilot, and the LSC's involvement in this meeting was useful in terms of understanding the main issues of the pilot. Funding issues were also raised, and some mediators commented on the low rates of remuneration they received from the LSC. Although it was also noted by a couple of mediators that being paid for time spent in court was the only viable way of being able to provide mediation at court.



Looking beyond the pilot, mediators and mediation services were keen to continue with in-court mediation with (86%) indicating they would like to continue, while the remaining respondents would possibly consider this as an option (14%). There were no respondents that said they would not want to look into the possibility of providing in-court mediation. Without financial support from the LSC it would not have been possible to trial the effectiveness or the viability of carrying out mediation in court. Therefore this demonstrates that the pilot has been a useful starting position for mediation services to consider offering mediation in a court environment.

The judiciary and Cafcass also believed that in court mediation should continue to be provided.

Annex 3 – In court mediation reporting form

Contract Number:

In-Court Mediation Pilot Reporting Form

Date: ___/___/___

Supplier Name: _____

Total Time Spent at Court in hours/minutes: ___/___

Case Ref	Client Names	Has Mediation previously been Considered?	Age	Gender	Disability Monitoring	Ethnic Origin	Work Type	Breakdown of Time in Hr/Min	Outcome	Reason for outcome if Codes (A, B or C)	Issues Discussed
								Ass Mt: ___/___ Med: ___/___			
								Ass Mt: ___/___ Med: ___/___			
								Ass Mt: ___/___ Med: ___/___			

Annex 4: Data inputting issues and limitations

From the standard reporting forms we were able to generate quantitative results and look at the relationships between a range of different variables. Two LSC staff members input the information on the standard reporting forms throughout the course of the pilot. To make sure interpretation of data was consistent; both members of staff reviewed any forms, which were problematic or unclear. In most cases the mediator concerned was contacted in order to discuss the exact nature of the cases as a way of addressing these issues. However, this was not applicable in all cases, so before the results can be interpreted fully, it is important to draw attention to the following points when considering data generated from the standard reporting forms:

1. The section on the standard reporting form that asks for the Assessment Meeting type (the work type code on the standard reporting forms) does not account for assessment meetings, where parties are seen separately. It was assumed that both parties would be at court and an assessment meeting would take place with both parties present.
2. For the question "Has mediation previously been considered?" Mediators were given the following three codes; 'Mediation has been attempted', 'Mediation has been considered' and 'No mediation has been considered'. Some mediators simply responded with a 'Yes' to this question, and in these instances the option 'Mediation has been considered' was recorded.
3. In a couple of cases, the mediator reported two outcomes, and our reporting system was not designed to include multiple outcomes. All the cases with two outcomes were reviewed carefully and the most appropriate outcome was used. For example, one mediator noted that mediation had narrowed some issues but others remained unresolved and clients returned to court (outcome D) and also that mediation was unable to resolve dispute and no more mediation would take place (outcome F). In this instance it was decided that outcome D would be used, as the in-court pilot had helped to narrow some of the issues even if no further mediation would take place.
4. Of the 10 mediation services involved in the pilot, Berkshire Family Mediation Service had been undertaking mediation at court prior to the beginning of the pilot. Therefore it is important to bear in mind that the services involved in the pilot have varying levels of experience of working in a court environment and this may account for some of the regional differences.