

## Family Mediation Contract Basics Legal Services Commission Family Mediation Guidance

Version 1.0 – November 2010

This guidance should be read in conjunction with the 2010 Standard Civil Contract standard terms and conditions, Family Mediation Specification, Funding Code Decision Making Guidance and Guidance for Reporting work under the Family Mediation Contracts 2010 (Nov 2010).

### Contract Basics

#### Payments under the Family Mediation Schedule

The LSC will set up a schedule payment limit (SPL) which is divided into monthly payments for the duration of the financial year based on anticipated volumes of work.

There are no restrictions on the numbers of matters that can be started under the schedule. The SPL is calculated according to set rates and manipulation of the number and nature of matters in your schedule. For this reason the numbers and profile of matters stated in the schedule may not always match up to what you have reported (and will report in the coming year) in each of the categories. However, it is the overall monetary value figure (i.e. contract balance – value of claims against payments made) that is used for any reconciliation.

#### When are payments made?

Payments are made on the receipt of monthly work claims submitted on the Family Mediation Work Start Form and the Mediation Consolidated Work Form at the start of each month. To ensure payments are made at the start of each month services must submit both forms within 10 days after the end of each month. Further information on claiming mediation work can be found in the separate Guidance for Reporting Work under the Family Mediation Contracts 2010.

### Scope

#### What type of dispute can receive public funding for family mediation?

Essentially, you can mediate on a 'family dispute' which is defined in the Funding Code Decision Making Guidance as a legal dispute arising out of a family relationship, including disputes concerning the welfare of children or which may give rise to family proceedings. In light of this, a good question to ask is could the dispute have arisen or the proceedings been brought were it not for the family relationship. If the answer is yes then it cannot be defined as a family dispute for the purposes of mediation.

### Understanding mediation work types under the contract

#### Willingness Test

The Willingness Test is where, following a Funding Code Referral, a mediator or appropriately trained and qualified member of support staff contacts the 2<sup>nd</sup> party by two telephone calls and/or a written letter. Where a telephone number is provided a call should be made as this is the most effective way to engage with a client and encourage them to attend an assessment meeting.

#### Timing of the Willingness Test

When a mediation service receives a Funding Code Referral you should undertake the willingness test first, before undertaking any assessment of the first client. There may be occasional exceptions to this rule, but this should be best practice.

The reason we introduced the willingness test was to avoid unnecessarily paying for an assessment meeting of the referred client when the 2nd party never has any intention of considering mediation by attending an assessment meeting. Clients should always be given the choice of whether to attend the assessment meeting together or separately.

### **What is an Assessment Meeting Alone?**

An assessment meeting alone is claimable where the 2nd party does not want to attend an assessment meeting, but the first client where eligible would still like to. The choice is solely the 1st parties in these circumstances. The reason we pay for an assessment meeting even though mediation is not possible is to increase awareness of mediation for that client so that if circumstances change at least one of the parties has an understanding of what mediation offers so it may be used in the future.

### **Assessment Meetings**

Where at least one party is eligible for legal aid the LSC will cover the costs of assessment meetings for both parties. The only extension of this approach is for Funding Code Referrals (see below).

At each assessment meeting, the client's means must be assessed and the relevant evidence obtained to support eligibility.

The assessment meeting should also be used to undertake domestic abuse screening, discuss the benefits of mediation and to assess the dispute, the clients and all the circumstances to see if mediation is appropriate.

### **Funding Code Referrals**

Funding Code Referrals are referrals from a LSC contracted family solicitor to a mediator following initial legal advice and assistance provided under legal aid (Family Help). If the case is a Funding Code Referral we will cover the costs of both parties even if neither party proves to be eligible following assessment by the mediator. The reason for this being that the client has already been assessed as eligible by a contracted LSC family solicitor and thereby referred in good faith on the understanding that the assessment meeting will be free for them.

### **Mediations**

There are 3 types of mediation that can be reported under the family Mediation contract: Child Only Matters, Property and Financial Matters and All Issue Matters (includes both Children and property & financial matters).

Mediations can either be reported as single sessions or multi-sessions.

### **Mediation Agreements**

The LSC pays an agreed outcome payment where mediation achieves an agreement on the majority of the issues in dispute and a written agreed proposal or Memorandum of Understanding is produced

Although the LSC pays an agreed proposal fee for the time it takes to draft the proposal and not the actual reaching of the agreed proposal itself, producing summaries throughout the course of each mediation session outlining progress/potential agreements would not constitute an agreement for this purpose and the agreed proposal rate should not be claimed in these circumstances. This work would be covered by the standard mediation rate.

### **How to correctly claim the appropriate outcome codes**

#### **S - Outcome**

If at the conclusion of the mediation, an agreement is reached on the majority of the issues in dispute and a document is drafted setting out the agreed proposal reached then an 'S' outcome should be claimed.

**A - Outcome**

If clients reach agreements through mediation, but do not need or have a written summary produced for them then an A outcome can be claimed. This recognises the value of mediation in helping the clients to reach agreement, but attracts no payment as no agreement/memorandum of understanding (MoU) is drafted.

**C - Outcome** – only applicable for AIM cases

If an agreement isn't reached on the majority of issues in an All Issues Mediation (so not an 'S' outcome), but agreed proposals are reached on the majority of children issues then C can be claimed.

**P - Outcome** - only applicable for AIM cases

If an agreement isn't reached on the majority of issues in an All Issues Mediation (so not an 'S' outcome), but agreed proposals are reached on the majority of property and finance issues then P can be claimed.

**B - Outcome**

Where no agreed proposals are achieved and the mediation has broken down a 'B' outcome should be claimed.

**Co Mediation**

Co mediation means mediation where two mediators are present for all or part of the mediation. Any decision to use a co-mediator will only be justified in exceptional circumstances and justifications will need to be included in the file, with details of reasons such as the following:

- Complexity, legal, psychological or otherwise of the case,
- Following a risk assessment for the participants and/or the mediator,
- any reasons as to the requirements or specialist and/or expert skills; and
- any management issues for the mediation.

Examples would be where there are more than two parties involved in the mediation so the dynamics of the mediation itself are complex or if there are complicated international issues involved in the dispute.

It can be acceptable to use co mediation if direct consultation with a child is used. However, the mediator who undertakes this work must have attended a recognised training course by a member organisation of the FMC and obtained the consent of both parties.

It would not be acceptable for co-mediation to be undertaken simply to provide support for the mediator and would not be justified if one of the parties was upset or if a party was angry with their former partner as these would be typical emotions experienced by clients attending mediation.

Only 8% of all mediations are currently co-mediated and the LSC will monitor usage by each service, particularly where it is significantly higher than this average.