Supporting earlier resolution of private family law arrangements: A consultation on resolving private family disputes earlier through family mediation

Written Evidence submitted to the Ministry of Justice

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Background on the Author

Rachael Blakey is an Assistant Professor at the University of Warwick. Her work focuses on the meaning and purpose of family mediation in the modern family justice system. In particular, Rachael considers family mediation's position following the removal of legal aid for the majority of private family disputes in court under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).

This body is work is currently being collated in a monograph, due to be released in early 2025. Rachael's work has also been published through two articles: 'Cracking the code: the role of mediators and flexibility post-LASPO' and ''Mediators mediating themselves': tensions within the family mediator profession'. The former was cited in the Family Solutions Group's 2020 report.

Question 8: What should "a reasonable attempt to mediate" look like? Should this focus on the number of mediation sessions, time taken, a person's approach to mediation or other possibilities?

The common context around private family disputes must be taken into account when deciding what is meant by 'a reasonable attempt to mediate'. While the Ministry of Justice has used the term 'low-level' to describe the cases that would be required to mediate, this phrase has not been clarified. It should be recognised that family disputes are highly stressful and complex for the disputants themselves even if the legal element is not particularly complicated. In YouGov's 'Legal Needs of Individuals in England and Wales' (2020: pg 17-18), those with family-related legal issues were most likely to report a negative consequence or impact stemming from that dispute. 67% said they were stressed, 40% suffered a financial loss, 23% suffered ill health or injury, and another 25% experienced harassment, threats or assault. Whether an individual has reasonably attempted mediation should be considered in light of this backdrop.

The meaning of 'reasonable attempt' will differ on a case-by-case basis. For instance, a party's ex-partner may have displayed coercive or abusive behaviour in the past. Their ex-partner could have been difficult to communicate with and disengaged throughout the separation period. There may also be genuine reasons why someone is unwilling to engage in the mediation process themselves. They may not have accepted the end of the relationship, or be fearful of their ex-partner. If a rigid meaning of 'reasonable attempt' is adopted and these types of individuals are asked to attend a specific number of mediation sessions or engage in mediation for a certain period of time, the proposed reforms would be unreasonable and unaccommodating.

The term must also recognise the prevalence and influence of safeguarding issues within private family matters. It is apparent from the consultation that the Ministry of Justice intends to implement exemptions to the compulsory mediation requirement. However, evidence suggests that the exemptions to the legal aid rules under LASPO, allowing victims of domestic abuse to claim legal aid for court proceedings, have been ineffective. I interviewed 17 mediators as part of a broader study on the purpose of family mediation after the 2013 cuts to legal aid in England and Wales. Some of the findings from this project have been published (https://wrap.warwick.ac.uk/176151/ and https://doi.org/10.1017/lst.2022.29), and I am happy to provide further evidence if it would aid the consultation. Many mediators in the study were willing to mediate more complex cases, including those involving domestic abuse. Interviewees often cited the lack of alternatives for these disputants as the reason for mediating. One mediator commented:

> 'It's a very difficult because there's some people that you know shouldn't really be [mediating] but a lot of them can't afford to resolve it any other way, so they're stuck.'

Another mentioned:

> 'Before LASPO, I was very happy with [screening cases out of mediation]. People could go and get their own solicitors. Then it would go to court and probably they'd settle… Post-LASPO (pause) I've really worried about closing down mediations like that. I probably have carried on too long trying to drag situations.'

The Ministry of Justice should be mindful of the same risk when introducing mandatory mediation. Otherwise, there will be instances where parties are made to reasonably attempt mediation when it is not in their interest for doing so (this is discussed further in my answers to questions 9-11). Further empirical research on the types of cases that should be expected to attempt mediation is also desirable.

Therefore, the meaning of 'reasonable attempt' should not be determined by one sole factor. Neither should one characteristic or aspect carry the same weight in all instances. The practitioner determining whether there has been a reasonable attempt should be able to consider a variety of factors, such as the ones listed in the question. Additionally, the context of the relationship between the parties should be taken into consideration.

If the practitioner determines that there has been a reasonable attempt, that practitioner should not be expected to give a detailed reason for their conclusion. From the practitioner's perspective, explaining how mediation has been reasonably attempted could be time-consuming and further delay cases from entering court proceedings. For the disputants, this expectation would set a high bar, leading to situations where mediation has been reasonably attempted yet not viewed in this way by the court (or whoever will be reviewing the documentation) due to insufficient explanation. While it is expected that the Ministry of Justice would require practitioners to fill in a document similar to the current FM1 form, this task should not become onerous or unfair.

Question 9a: Do you agree that urgent applications, child protection circumstances (as set out in the current MIAM exemption), and cases where there is specified evidence of domestic abuse, should be exempt from attempting mediation before going to court?

I agree with the exemptions covered in this question. The government itself has long recognised that these cases are unsuitable for mediation by listing the same characteristics as not only exemptions to the MIAM requirement, but instances where participants can still receive legal aid in court. While the mediator sample I interviewed was screening in more cases – often because they felt they needed to, as discussed under question 8 – the participants continued to recognise that mediation was unsuitable for some cases. One mediator specifically expressed:

> 'I'm pleased about the exemptions in the law so if there are domestic abuse issues and somebody actually- the only way they're going to get what they need is for somebody to stand behind and tell them what they're going to do. I think that the safety net needs to be there and I'm really (pause) really pleased, relieved that that is there. I will say to people that I love mediation but we're not a panacea. Sometimes it's important for you not to use mediation.'

The meaning of 'specified evidence of domestic abuse' must be broad enough to ensure that inappropriate cases are screened out of mediation. When LASPO was introduced, domestic abuse victims were required to submit substantial evidence to claim legal aid in proceedings. The problems with this exemption were two-fold. First, there were issues with the original 24-month time limit on evidence. This was extended to 60 months, though Choudhry and Herring argue in 'A human right to legal aid? The implications of changes to the legal aid scheme for victims of domestic v' (2017: pg 163) that some instances of domestic abuse last longer than five years. In these cases, the victims will not be able to use all available evidence to claim the exception. Furthermore, the negotiations and power dynamics taking place within mediation can still be impacted by past abuse from many years prior.

Second, many victims struggle to obtain the necessary evidence under Regulation 33 of the Civil Legal Aid (Procedure) Regulations 2012. Evidence from Women's Aid in 'Evidencing domestic violence: nearly 3 years on' (2015) showed that 37% of women who were or had

experienced domestic abuse did not have the evidence available to access legal aid in court proceedings. The types of acceptable evidence – also listed on the current FM1 form – are dependent on the victim contacting a particular authority or professional. In reality, many victims of domestic abuse have difficulty seeking help or realising the severity of the abuse they are experiencing, meaning the likelihood that they have an accepted form of evidence is low.

For this reason, it should be permitted for the practitioner assessing the exemption to conclude that mediation should not be attempted due to domestic abuse. The practitioner should be allowed to reach this conclusion without any specified type of evidence being produced by the victim. This proposal is partially acknowledged by the Ministry of Justice which writes that mediators would be able to determine suitability for mediation through the MIAM equivalent where evidence cannot be provided (pg 28).

Question 10: If you think other circumstances should be exempt, what are these, and why?

A. Significant power imbalances

The Ministry of Justice could introduce an additional exemption of 'significant power imbalances'. This exemption could be claimed by the parties themselves or identified by the mediator in the proposed information meeting.

There will be instances where the dynamic between the disputants is not described as 'violent' or 'abusive', but still involves such a significant power imbalance that mediation is ineffective or an opportunity for further coercion. Mediators already screen for power imbalances in MIAMs and would be well placed to screen during the proposed information meeting. One mediator who was interviewed recognised the types of power imbalances that render mediation more difficult:

> 'So, obviously there can be communication imbalances. There can be intelligent imbalances and emotional imbalances… Then obviously we look at whether there has been any domestic abuse and that's the screening you do at the beginning. That doesn't necessarily mean screening out. You have to ask people what has happened and whether or not that prevents them coming to mediation.'

While the mediator sample did not think that certain factors automatically rendered mediation inappropriate, they acknowledged that they needed to screen for a variety of characteristics and behaviours in order to determine if mediation should take place. For these reasons, screening for the 'reasonable attempt' exemption should also not be rushed. Mediators (or the practitioner assessing the exemption) must be given ample time to determine if an exemption applies.

B. Seeking clarification on 'low-level' and 'high-level' cases

When the consultation was announced, the Ministry of Justice wrote: 'In a major shake-up to the family justice system, proposals will see mediation become mandatory in all suitable low-level family court cases excluding those which include allegations or a history of domestic violence' (www.gov.uk/government/news/plans-to-protect-children-under-new-mediation-reforms). The term 'low-level' is not used in the consultation document but has been adopted by the FMC in their recent press releases (e.g. www.familymediationcouncil.org.uk/2023/05/21/press-release-family-mediators-give-views-on-plans-to-make-mediation-mandatory-in-low-level-family-dispute-cases/). If a case's 'level' is going to determine whether mediation is mandatory, the meaning of 'low-level' (and possibly also 'middle-level' and/or 'high-level') must be clarified. On the one hand, clear guidance on this matter must be provided to the practitioners who will make this decision. On the other hand, there are concerns that having prescriptive definitions of these terms will lead to harsh distinctions that leave certain groups vulnerable. The 'level' categorisation requires careful thought, planning, and further consultation if it is to be introduced.

It is disappointing that the Ministry of Justice has not asked for opinions on what constitutes 'low-level' family matters. There are two likely interpretations of the term. First, 'low-level' may refer to the amount of financial assets and property in the dispute. This approach is incredibly worrying because it implies that only cases involving significant financial assets (often called 'big-money cases') necessitate legal proceedings. The remainder and majority of private family disputes would be cast aside as 'low-level' even though many of these cases may result in unfair agreements without any legal oversight. While parties can hire a solicitor to assist them throughout the mediation process, it needs to be recognised that fewer individuals can afford a lawyer in the current economic climate.

Second, 'low-level' may refer to the complexity of the dispute. This approach is preferable to the extent that it would recognise that more difficult or complicated disputes are inappropriate for mediation, regardless of the financial assets involved. However, there is still a concern that the majority of family law cases will be considered straightforward and therefore deemed 'low-level' with no real consideration of the dispute at hand. The Ministry of Justice previously discussed cases involving relationship breakdown in 'Proposals for the Reform of Legal Aid in England and Wales' (2010: para 4.207). It commented: 'There is no reason to believe that such cases will be routinely legally complex.' While family disputes may not involve the extreme examples of vulnerability discussed in this paragraph (including 'detained mental health patients, or elderly care home residents), these matters are incredibly stressful and difficult for the families involved. In YouGov's 'Legal Needs of Individuals in England and Wales' (2020: pg 14), those with a family-related legal issue rated their problems the most serious compared to all other respondents. It is crucial that the Ministry of Justice does not construe 'low-level' too broadly to comprise the majority of family disputes when many of these cases will require support beyond what is available through mediation.

Question 11: How should exemptions to the compulsory mediation requirement be assessed and by whom (i.e., judges/justices' legal advisers or mediators)? Does your answer differ depending on what the exemption is?

As mentioned in the answer to question 8, there is a concern that the exemptions will be construed so narrowly that many individuals who are unsuitable for mediation will still be required to go through the process. For this reason, the practitioner's (or practitioners') assessment of whether mediation is unsuitable in light of an exemption must be thorough. The meetings where this assessment takes place must not be rushed and allow the practitioner to properly consider all elements of the dispute.

The Ministry of Justice could opt for a two-tiered assessment. This would prevent a case from going to mediation where the exemption was not correctly identified by the first practitioner. Assessment by two practitioners would furthermore enable different aspects of the dispute to be assessed in order to determine if the case is also 'low-level'. The case could first be considered by a practitioner with legal knowledge, such as a legal advisor. This advisor could determine if the case is too complex to be considered 'low-level', as well as if any of the exemptions apply. The case could then be assessed by a practitioner with an understanding of the psychological and emotional elements of family disputes, such as a therapist or counsellor. This practitioner may be more adept at screening for abuse and other concerning party dynamics. Following the two-tiered assessment, the mediator would then have an opportunity to screen the parties in the pre-mediation information meeting.

If the exemptions were only going to be assessed by one individual, I believe that mediators are well suited for this role. My interviews with family mediators were conducted in 2019, several years after the LASPO reforms. Those who claimed that they carried out little screening or were apprehensive about the role appeared to mainly mediate clients who were referred to mediation by a solicitor. However, the majority of the 17 participants felt able to appropriately screen parties in and out of mediation where parties had not seen a lawyer beforehand. While this data cannot be used to critique the quality of screening conducted by mediators, it reveals a general view among participants that are able to screen for various factors. However, further views from family mediators are needed to ensure that these assessments are conducted consistently. If the Ministry of Justice is going to introduce these proposals and require mediators to assess the exemptions to compulsory mediation, the organisation should work closely with the FMC and its Member Organisations.

If the exemptions to the compulsory mediation requirement are going to be assessed through paperwork instead of a meeting, this documentation must be accessible to a range of individuals through various formats. For example, the documentation should be written in plain English and also available in an easy-read format. Individuals claiming an exemption should be given clear and detailed guidance on how to complete these forms, as well as examples of the accepted evidence.

Question 12: What are your views on providing full funding for compulsory mediation pre-court for finance remedy applications?

I strongly agree with the extension of full funding for finance remedy applications. There are genuine concerns around the introduction of compulsory mediation where the process is premised on voluntariness and consent. Similar to how the Ministry of Justice recognises that '[i]t is important to us that parents and their children are not left financially worse off by the requirement to attend mandatory mediation' (pg 30), the same view should apply to those involved in a financial remedy application. If these individuals are required to pay for their mediation fees, the amount of money available for the financial dispute will decrease. This cost will continue to impact parents and their children in the long term.

Funding legal advice

It is assumed that the proposed funding (whether for children's matters or financial disputes) does not include the provision of legal advice as the consultation document is silent on this point. Even if the cases coming to mediation are considered 'low-level', legal oversight during mediation remains important. While an increasing number of mediators originate from a legal professional background, they are limited to providing information rather than advice. Without legal oversight by a lawyer or legal advisor, there is the risk that a mediated agreement would not be approved by a judge, causing further delay and stress.

Legal oversight during mediation is important for children's matters as these mediation cases are not always followed by a binding consent order. In my interviews with family mediators, the participants said they would strongly encourage consent orders for financial and property matters, but not for children-related disputes. One participant said a 'tiny' number of individuals involved in children's cases sought a consent order. By comparison, another claimed they would tell 'one hundred percent' of financial cases to seek a legally binding outcome. If fewer mediated agreements for children's matters are evaluated by a judge, the lack of legal advice in mediation means there has been little, if any, legal oversight. This problem could be reduced if funding for compulsory mediation included the payment of several legal advice sessions. Funding could be provided for advice towards the beginning and end of the mediation process, rather than throughout, in order to save costs.

The value of legal advice during mediation is implicitly acknowledged by the Ministry of Justice through administering the 'Help with Family Mediation' (HwFM) scheme. Under this scheme, a lawyer receives a fixed fee of £150 for advising a client using mediation and another £200 if they draft a financial consent order. Nonetheless, HwFM appears to be widely unavailable and accessible to individuals claiming legal aid mediation. The legal aid statistics show that there were 1,521 HwFM cases through a lawyer from 2013-14 to 2021-22. There were 68,449 legal aid mediation starts in the same period, meaning that only 2.2% of these cases received further support via HwFM. I am currently conducting further statistical analysis of the HwFM data and am happy to provide further information on this

point. Nevertheless, these numbers demonstrate the inaccessibility of legal advice through the legal aid scheme. This problem should be avoided with compulsory mediation.

Funding mediation services

While funding for compulsory mediation is to be welcomed, the Ministry of Justice must be mindful of other areas where funding is needed. In particular, funding is needed to support family mediation services across England and Wales. Without further financial assistance, there may not be enough family mediators to keep up with the number of cases coming to mediation following the proposed reforms.

It is difficult to determine how many new family mediators are obtaining FMC accreditation, but it is largely accepted that the profession is (or is at risk of) declining in number. Some of the more recently qualified mediators in my interview sample discussed the difficulties in entering the profession. One barrier was financial. A mediator mentioned that she trained as a mediator once a week, though this work was voluntary. She felt it would have been 'impossible' to obtain accreditation without another part-time job. Similarly, another interviewee described the journey to accreditation as 'terrible' as she 'wasn't earning any money'. She was dependent on her partner's income to continue her mediator training: her placement was unpaid and she regularly had to arrange for expensive childcare even though clients would regularly miss their appointments. The lack of funding to support trainee mediators may also discourage young professionals, such as graduates, from attempting to become a mediator. This was mentioned by a different mediator, who said mediation was 'very much a career for people who have gone through other bits', and that she 'might not have been able to afford it [the training]' if she had been younger.

Another issue was the lack of placements available to trainee mediators. Interviewees regularly mentioned the decline in mediation cases after LASPO. This impacted the number of paid mediator jobs, as well as the number of people who could obtain FMC accreditation. To quote one mediator: 'because there aren't enough cases around, we can't actually train others up'. Another interviewee also mentioned that there was 'no support system financially' for services that took on trainee mediators, despite the high costs that were often involved. Although many more cases would be going through mediation under the Ministry of Justice's proposals, provisions should be put in place to ensure mediation services can train and support new practitioners.

In summary, there is a growing concern amongst the family mediator community that the profession is declining in number, and more should be done to support and fund these services. If this issue is not addressed, family mediation services may not have the capacity to handle the increasing number of mediation cases. Delays may increase as a result, intensifying the very problem within the family law system that the Ministry of Justice seeks to resolve.

Question 13: Does the current FMC accreditation scheme provide the necessary safeguards or is additional regulation required?

Answer: no – additional regulation required.

The FMC, established in 2007, has taken significant strides towards improving standards for family mediators. The organisation introduced its first Code of Practice in 2010, followed by a Standards Framework in 2014 which led to a register of accredited mediators. In 2016, accreditation was streamlined and FMC Accredited Family Mediator (FMCA) status became available. FMCA mediators are now required to apply for reaccreditation every three years. The FMC has continued to release new guidance, including a 2016 document on online video mediation which was publicised in the COVID-19 pandemic. Standards have also been changed in light of feedback. For example, the Standards Framework was modified in June 2019 to allow trainee mediators to submit a case commentary where mediation did not reach completion if the mediator could explain why an agreement was not possible. The FMC is currently undertaking a Standards Review to evaluate the procedures and rules in four broad areas: accreditation; complainants and appeals; the Standards Framework, and; documenting mediation outcomes to be submitted to court.

Some of the mediators I interviewed recognised that the FMC had taken some steps in the right direction. For example, one said: 'The FMC, I do think, has had a unifying effect. They've had some rough passages, but it is much, much stronger. I think they've raised standards.' Another recognised that the FMC 'have changed certain things, like short-term fixes, to make things easier for the mediators.'

However, a lack of unity remained evident within the mediator sample. I have written about this problem in a 2023 open-access article titled ''Mediators mediating themselves': tensions within the family mediator profession' (https://doi.org/10.1017/lst.2022.29). For the current consultation, it is relevant to consider mediators' understanding (and subsequent use) of the law.

Many mediators originate from a non-legal background (such as therapy or counselling). According to the FMC's 'Manual of Professional Standards and Self-Regulatory Framework' (2022: pg 20-21), accredited members are expected to be able to provide 'information about family law and its processes'. They must also be capable of 'drafting financial settlements that are capable of legal implementation and accord with current legislation'. Neither provision requires mediators to have a comprehensive understanding of family law. As of June 2023, the FMC has approved seven foundational training courses (see www.familymediationcouncil.org.uk/approved-foundation-training-courses/). While these courses (typically eight days in length) all include some element of family law, it is unclear how much legal content is covered. Several lawyer mediators in my sample even mentioned the low quality of mediated agreements. For example, one participant said: 'I've certainly come across some mediated agreements that are appalling'. Another claimed she has seen mediated agreements 'which just don't make sense'. There is, therefore, a concern that mediators are applying an incorrect or underdeveloped understanding of the law which

could undermine the potential for justice where other forms of legal support are widely inaccessible.

A focus on legal norms in family mediation should not become so prevalent that the skillset of non-lawyer mediators is disregarded. All mediators come to mediation with a unique and valuable skillset to aid negotiations. However, it is important that further consideration is given as to whether mediators should undergo additional training on the legal elements of family disputes. Very little research or discussion on this issue has taken place. Any proposed changes to the FMC accreditation scheme would benefit from a stronger evidence base, and the Ministry of Justice should consider commissioning further research.

A final concern is the professional status of mediators. Solicitors are part of a controlled profession, meaning any individual must fulfil various training and accreditation requirements before describing themselves as a 'solicitor' to the public. However, the same cannot be said for family mediators. Only family mediators with FMCA status can conduct MIAMs or legal aid mediation. However, two interviewees in my study remained concerned about the lack of protection afforded to the name of the profession. One participant described this as a 'real worry', and another was frustrated that she had gone through the accreditation process 'when you've got any person in the street who can call themselves a mediator'.

Question 14: If you consider additional regulation is required, why and for what purpose?

The majority of this answer is adapted from my 2023 article, ''Mediators mediating themselves': tensions within the family mediator profession' (https://doi.org/10.1017/lst.2022.29).

As discussed under question 13, mediators could be asked to undergo additional training in relation to family law and mediation. While family mediators should not be expected to have a complete understanding of family law, modules could provide further detail and information on the use of legal norms in mediation. This training could focus on what outcomes are typically expected by the courts, increasing the likelihood of a legally fair outcome in mediation that would be approved by a judge.

This training could be mandatory or part of an optional programme. One mediator I interviewed was in favour of extra training in the legal and therapeutic areas of mediation. She said:

> 'Maybe family law solicitors need more of the sort of information about children or whatever. And those who've come more from CAFCASS [non-lawyer mediators] don't need that but they need a lot more in terms of the finances. Particularly if people are drafting consent orders, you perhaps need a different level of training altogether.'

Under this recommendation, mediators would attend different training modules and receive a 'badge', allowing them to advertise their areas of expertise. She mentioned that this was similar to the introduction of mandatory training on child-inclusive mediation in 2019.

However, training must not become so extensive that it leads to frustration and criticism within the family mediator population. Another mediator I interviewed was frustrated that they were required to attend the child-inclusive mediation training course, mentioning that it cost 'a lot of money'. This participant may have preferred for the course to be optional. As proposed by another mediator, there could be 'different levels of qualification', similar to the training and accreditation programme for financial advisors.

The Ministry of Justice and FMC must remain mindful of family mediators' national community if they were to introduce new training. As I discuss in the 2023 article, the family mediator profession is heavily fragmented. A voluntary training system could result in some mediators being more qualified purely on the basis that they had the funds or time to do so. For this reason, the FMC may wish to consider a mixture of training programmes comprising both mandatory schemes and optional add-on courses.

Family mediators would be also better protected by becoming a controlled profession. The FMC cannot implement this change on its own, and statutory recognition is desirable. Whilst this type of reform is harder to achieve, it would aid in the professionalisation and protection of family mediators. Both elements are important if family mediation is going to become compulsory and increasingly used.

Question 18: Once a case is in the court system, should the court have the power to order parties to make a reasonable attempt at mediation e.g., if circumstances have changed and a previously claimed exemption is no longer relevant? Do you have views on the circumstances in which this should apply?

I do not think that the court should have the power to order a reasonable attempt at mediation. This is because the exemptions have already been considered and/or assessed by a practitioner, as suggested by the Ministry of Justice through the wording of question 11. There is a concern that a power of a court to require a reasonable attempt at mediation would significantly undermine the work and decision of that professional.

Question 19: What do consultees believe the role of court fees should be in supporting the overall objectives of the family justice system? Should parties be required to make a greater contribution to the costs of the court service they access?

While the 17 family mediators in my study were interviewed in 2019, their concerns about the family justice system remain relevant. Many of the participants felt like access to justice had been massively reduced by the LASPO reforms, particularly following the rise of Litigants' in Person. One mediator described access to justice as 'a bit of a joke', whilst another mentioned

the reduction of legal aid availability made family disputes 'incredibly difficult' to resolve. As a whole, the sample heavily correlated access to justice (and therefore the family justice system) with the availability and accessibility of court. They felt this was not impeded by mediation so long as the process remained voluntary. One interviewee responded:

> 'I think access to justice to me means if people want to go to court they can. So I do feel pretty strongly that attending mediation does not in any way interfere with anybody's access to justice. Because mediation is voluntary. If people come in and say they don't want to mediate, that's absolutely fine. They can go to court if they want to.'

Another reiterated:

> '…you shouldn't need to have a high income if you need to use the legal system… I suppose a lot of these things should be kept out of the courts, if possible, but as a last resort, you should be able to enter the system equally, irrespective of your income.'

Access to the family justice system should not be prevented by cost. The £232 application fee is already an excessive amount for many individuals involved in family disputes, particularly where there are welfare or abuse concerns and victims may have limited access to funds. It is expected that many respondents to this consultation will view compulsory mediation as an affront to access to justice itself as its introduction would render mediation, rather than MIAMs, the main barrier to attending court. Increasing the cost of court fees will entrench this problem even further. For this reason, parties should not be required to make a greater contribution to the costs of the court service they access.