



Date **20/10/21**

Committee **Family Court Committee**

Response to **MoJ Call for Evidence on Dispute Resolution**

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Link to consultation [MoJ Call for Evidence on Dispute Resolution](#)

About the Magistrates Association

The Magistrates' Association is an independent charity and the membership body for the magistracy. We work to promote the sound administration of the law, including by providing guidance, training and support for our members, informing the public about the courts and the role of magistrates, producing and publishing research on key topics relevant to the magistracy, and contributing to the development and delivery of reforms to the courts and the broader justice system. With over 14,000 members across England and Wales, we are a unique source of information and insight and the only independent voice of the magistracy. Our members sit in both criminal courts and the Family Court.

Consultation Questions

Question 3: Some evidence suggests that mandatory dispute resolution gateways, such as the Mediation Information & Assessment Meeting (MIAM), work well when they are part of the court process. Do you agree? Please provide evidence to support your response

Magistrates feel that whilst many cases they saw are suitable for mediation, that the MIAM and the mediation outcome lacked "importance and recognition". Parties to the matter do not always pay attention to the mediation outcome resulting the cases returning to court. Magistrates also expressed concern about safeguards when using mandatory mediation gateways. Magistrates considered that there was a lack of visibility and awareness about safeguards. There needs to be better public awareness about what safeguards are in place when mandatory mediation gateways are used which prevent unsuitable cases proceeding to a MIAM or through to mediation.

Question 7: Do you have any evidence about common misconceptions by parties involved in dispute resolution processes? Are there examples of how these can be mitigated?

Magistrates noted a common misconception held by parties was that non-court dispute resolution processes were not a final solution. It was noted that mediation is perceived by some parties to be a

mere “talking shop” rather than a mediated settlement of a matter or of discrete issues faced by the family. This misconception can lead to parties returning to court after mediation or dispute resolution where the case could have remained out of court.

Question 4: Anecdotal evidence suggests that some mediators or those providing related services feel unable to refer parties to sources of support/information - such as the separated parents' information programme in the family jurisdiction – and this is a barrier to effective dispute resolution process. Do you agree? If so, should mediators be able to refer parties onto other sources of support or interventions? Please provide evidence to support your response.

Question 14: Do you have evidence of how frequently dispute resolution settlements are complied with, or not? In situations where the agreement was not complied with, how was that resolved?

(Joint response to questions)

Magistrates considered that mediation services and the initial MIAM should have clear links with CAFCASS and other support services. They noted that MIAMs or later mediation may fail due to unrealistic contact expectations, particularly where accusations of domestic abuse are not acknowledged by one of the parties or where the issue of domestic abuse is not immediately apparent. It was suggested that by having stronger links with support services, a MIAM would be more likely to be able to identify cases suitable for mediation and divert cases to court where a context of domestic abuse or other issues means that a case is more appropriate for resolution in court.