

TRACKED CHANGES TO THE FPR AS A RESULT OF THE 2023 RULES

FAMILY PROCEDURE RULES PART 2 APPLICATION AND INTERPRETATION OF THE RULES

2.3(1) *[New definition]* 'domestic abuse' has the meaning given in sections 1 and 2 of the Domestic Abuse Act 2021;

'non-court dispute resolution' means methods of resolving a dispute, ~~including mediation,~~ other than through the ~~normal~~ court process, ~~including but not limited to mediation, arbitration, evaluation by a neutral third party (such as a private Financial Dispute Resolution process) and collaborative law.~~

2.5 [new wording after paragraph (1A)]

(1B) The functions of the High Court listed in Practice Direction 2D may be exercised by a court officer who meets the criteria specified in that Practice Direction.

(1C) Practice Direction 2D may make provision for the procedure to be followed where such a court officer exercises a function of the High Court

[And as well as other minor amendments throughout the rules, not included here, the only other amendment of significance that is not in Part 3 or PD3A is in Part 28 on Costs, Rule 28, relating to costs in financial proceedings, at Rule 28.3(7);]

FAMILY PROCEDURE RULES PART 28 COSTS

Costs in financial remedy proceedings

28.3

(1) This rule applies in relation to financial remedy proceedings

(5) Subject to paragraph (6), the general rule in financial remedy proceedings is that the court will not make an order requiring one party to pay the costs of another party.

(6) The court may make an order requiring one party to pay the costs of another party at any stage of the proceedings where it considers it appropriate to do so because of the conduct of a party in relation to the proceedings (whether before or during them).

(7) In deciding what order (if any) to make under paragraph (6), the court must have regard to –

- (aa) any failure by a party, without good reason, to—
(i) attend a MIAM (as defined in rule 3.1); or
(ii) attend non-court dispute resolution;

FAMILY PROCEDURE RULES PART 3 NON-COURT DISPUTE RESOLUTION

CHAPTER I INTERPRETATION

3.1

In this Part –

‘allocation’ means allocation of proceedings other than appeal proceedings to a level of judge;

“authorised family mediator” means a person identified by the Family Mediation Council as qualified to conduct a MIAM;

(a) subject to the Family Mediation Council's code of conduct by virtue of his or her membership of a Family Mediation Council member organisation; and

(b) certified to undertake MIAMs by the professional practice consultant who is supervising the mediator's practice and who is a member of and approved for the purpose by a Family Mediation Council member organisation;

~~‘domestic violence’ means any incident, or pattern of incidents, of controlling, coercive or threatening behaviour, violence or abuse (whether psychological, physical, sexual, financial or emotional) between the prospective applicant and another prospective party;~~

‘family mediation information and assessment meeting’ has the meaning given to it in section 10(3) of the 2014 Act.

‘harm’ has the meaning given to it in section 31 of the Children Act 1989;

~~‘mediator's exemption’ has the meaning given to it in Rule 3.8(2);~~

‘MIAM’ means a family mediation information and assessment meeting;

‘MIAM exemption’ has the meaning given to it in Rule 3.8(1);

‘MIAM requirement’ is the requirement in section 10(1) of the 2014 Act for a person to attend a MIAM before making a relevant family application;

‘private law proceedings’ has the meaning given to it in Rule 12.2;

‘prospective applicant’ is the person who is considering making a relevant family application;

'prospective party' is a person who would be likely to be a party to the proceedings in the relevant family application;

~~'prospective respondent' is a person who would be a likely respondent to the proceedings in the relevant family application;~~ and

'relevant family application' has the meaning given to it in section 10(3) of the 2014 Act.

CHAPTER II

THE COURT'S DUTY AND POWERS GENERALLY

Scope of this Chapter

3.2

This Chapter contains the court's duty and powers to encourage and facilitate the use of non-court dispute resolution.

The court's duty to consider non-court dispute resolution

3.3

(1) The court must consider, at every stage in proceedings, whether non-court dispute resolution is appropriate.

~~(1A) When the court requires, a party must file with the court and serve on all other parties, in the time period specified by the court, a form setting out their views on using non-court dispute resolution as a means of resolving the matters raised in the proceedings.~~

(2) In considering whether non-court dispute resolution is appropriate in proceedings which were commenced by a relevant family application, the court must take into account –

(a) whether a MIAM took place;

(b) whether a valid MIAM exemption was claimed ~~or mediator's exemption was confirmed~~; and

(c) whether the parties attempted mediation or another form of non-court dispute resolution and the outcome of that process.

~~When the court will adjourn proceedings or a hearing in proceedings~~

Timetabling proceedings: encouraging non-court dispute resolution

3.4

~~(1) If the court considers that non-court dispute resolution is appropriate, it may direct that the proceedings, or a hearing in the proceedings, be adjourned for such specified period as it considers appropriate—~~

~~(a) to enable the parties to obtain information and advice about, and consider using, non-court dispute resolution; and~~

~~(b) where the parties agree, to enable non-court dispute resolution to take place.~~

~~(1) Paragraph (1A) applies when the court considers that non-court dispute resolution is appropriate.~~

~~(1A) Where the timetabling of proceedings allows sufficient time for these steps to be taken, the court should encourage parties, as it considers appropriate, to—~~

~~(a) obtain information and advice about, and consider using, non-court dispute resolution; and~~

~~(b) undertake non-court dispute resolution.~~

~~(2) The court may give directions under this rule on an application or of its own initiative.~~

~~(2) The court may give directions about the matters specified in paragraph (1A) on an application or of its own initiative.~~

~~(2A) Subject to paragraph (2B), the court may give directions referred to in paragraph (2) at any time during the proceedings.~~

~~(2B) In proceedings to which Practice Direction 12B applies, the court may give directions referred to in paragraph (2) at any time after the court has received the safeguarding letter or safeguarding report referred to in Practice Direction 12B.~~

(3) Where ~~para (1A) applies, the court~~ ~~the court directs an adjournment under this rule, it will~~ give directions about the timing and method by which the parties must tell the court if any of the issues in the proceedings have been resolved.

(4) If the parties do not tell the court if any of the issues have been resolved as directed under paragraph (3), the court will give such further directions as to the management of the case as it considers appropriate.

(5) The court or court officer will –

(a) record the making of ~~any directions to which this rule applies an order under this rule~~; and

(b) arrange for a copy of the directions order to be served as soon as practicable on the parties.

(6) Where the court proposes to exercise its powers of its own initiative, the procedure set out in rule 4.3(2) to (6) applies.

CHAPTER III

FAMILY MEDIATION INFORMATION AND ASSESSMENT MEETINGS (MIAM)s

Scope of this Chapter

3.5

This Chapter contains Rules about the requirement in section 10(1) of the 2014 Act to attend a MIAM.

Applications to which the MIAM requirement applies

3.6

(1) The MIAM requirement applies to any application to initiate the proceedings specified in paragraph (2), unless a MIAM exemption ~~or a mediator's exemption~~ applies.

(2) The specified proceedings are –

- (a) the private law proceedings relating to children specified in Practice Direction 3A; and
- (b) the proceedings for a financial remedy specified in Practice Direction 3A.

Making an application

3.7

An application to initiate any of the proceedings specified in Rule 3.8 must contain, or be accompanied by, a form containing, either –

(a) a confirmation from an authorised family mediator that the prospective applicant has attended a MIAM ~~or~~;

(b) a claim by the prospective applicant that one of the MIAM exemptions applies ~~;~~ ~~or~~

(A list of MIAM exemptions is set out in Rule 3.8(1) below.)

~~(c) a confirmation from an authorised family mediator that a mediator's exemption applies.~~

~~(A list of mediator's exemptions is set out in Rule 3.8(2) below.)~~

Circumstances in which the MIAM requirement does not apply (MIAM exemptions ~~and mediator's exemptions~~)

3.8

The MIAM requirement does not apply if –

(1) a prospective applicant claims in the relevant form that any of the following circumstances (a 'MIAM exemption') applies –

Domestic abuse ~~violence~~

(a) there is evidence of domestic ~~abuse~~violence, as specified in Practice Direction 3A; or

Child protection concerns

(b) –

(i) a child would be the subject of the application; and

(ii) that child or another child of the family who is living with that child is currently –

(aa) the subject of enquiries by a local authority under section 47 of the 1989 Act; or

(ab) the subject of a child protection plan put in place by a local authority; or

Urgency

(c) the application must be made urgently because –

(i) there is risk to the life, liberty or physical safety of the prospective applicant or his or her family or his or her home; or

(ii) any delay caused by attending a MIAM would cause –

(aa) a risk of harm to a child;

(ab) a risk of unlawful removal of a child from the United Kingdom, or a risk of unlawful retention of a child who is currently outside England and Wales;

(ac) a significant risk of a miscarriage of justice;

(ad) ~~unreasonable~~ significant financial hardship to the prospective applicant; or

(ae) irretrievable problems in dealing with the dispute (including the irretrievable loss of significant evidence); or

(iii) there is a significant risk that in the period necessary to schedule and attend a MIAM, proceedings relating to the dispute will be brought in another state in which a valid claim to jurisdiction may exist, such that a court in that other state would be seised of the dispute before a court in England and Wales; or

Previous MIAM attendance or non- court resolution attendance MIAM-exemption

(d) –

(i) in the 4 months prior to making the application, the person attended a MIAM or a participated in another form of non-court dispute resolution process relating to the same or substantially the same dispute; and or

(ii) where the person attended a non-court dispute resolution process, there is evidence of that attendance, as specified in Practice Direction 3A; or at the time of making the application, the person is participating in another form of non-court dispute resolution relating to the same or substantially the same dispute; or

~~(e)–~~

~~(i) in the 4 months prior to making the application, the person filed a relevant family application confirming that a MIAM exemption applied; and~~

~~(ii) that application related to the same or substantially the same dispute; or~~

(f) –

(i) the application would be made in existing proceedings which are continuing; and

(ii) the prospective applicant attended a MIAM before initiating those proceedings; or

~~(g)–~~

~~(i) the application would be made in existing proceedings which are continuing; and~~

~~(ii) a MIAM exemption applied to the application for those proceedings; or~~

Other

(h) –

(i) there is evidence that the prospective applicant is bankrupt, as specified in Practice Direction 3A; and

(ii) the proceedings would be for a financial remedy; or

~~(i) the prospective applicant does not have sufficient contact details for any of the prospective respondents to enable a family mediator to contact any of the prospective respondents for the purpose of scheduling the MIAM; or~~

(j) the application would be made without notice; or

(Paragraph 5.1 of Practice Direction 18A sets out the circumstances in which applications may be made without notice.)

(k) –

(ai) the prospective applicant is not able to attend a MIAM online or by video-link and an explanation of why this is the case is provided to the court;

(i) the prospective applicant is ~~or all of the prospective respondents are~~ subject to a disability or other inability that would prevent attendance in person at a MIAM unless appropriate facilities can be offered by an authorised mediator;

(ii) the prospective applicant has contacted as many authorised family mediators as have an office within fifteen miles of his or home (or ~~five three~~ of them if there are ~~five three~~ or more), and all have stated that they are unable to provide such facilities; and

(iii) the names, postal addresses and telephone numbers or e-mail addresses for ~~the such~~ authorised family mediators contacted by the prospective applicant, and the dates of contact, ~~are can be~~ provided to the court ~~if requested~~; or

(l) the prospective applicant ~~or all of the prospective respondents~~ cannot attend a MIAM because the prospective applicant is he or she is, or they are, as the case may be –

(i) in prison or any other institution in which the prospective applicant is he or she is or they are required to be detained and facilities cannot be made available for them to attend a MIAM online or by video-link;

(ii) subject to conditions of bail that prevent contact with the other person; or

(iii) subject to a licence with a prohibited contact requirement in relation to the other person; or

~~(m) the prospective applicant or all of the prospective respondents are not habitually resident in England and Wales; or~~

(n) a child is one of the prospective parties ~~by virtue of Rule 12.3(1);~~ or

(o) –

(ai) the prospective applicant is not able to attend a MIAM online or by video-link and an explanation of why this is the case is provided to the court;

(i) the prospective applicant has contacted as many authorised family mediators as have an office within fifteen miles of his or her home (or ~~five three~~ of them if there are ~~five three~~ or more), and all of them have stated that they are not available to conduct a MIAM within fifteen business days of the date of contact; and

(ii) the names, postal addresses and telephone numbers or e-mail addresses for ~~the such~~ authorised family mediators contacted by the prospective applicant, and the dates of contact, ~~are can be~~ provided to the court ~~if requested~~; or

(p) ~~-~~

~~-(i) the prospective applicant is not able to attend a MIAM online or by video-link;~~

~~(ii) there is no authorised family mediator with an office within fifteen miles of the prospective applicant's home; and~~

~~(iii) an explanation of why this exemption applies is provided by the prospective applicant to the court.~~

~~. there is no authorised family mediator with an office within fifteen miles of the prospective applicant's home; or~~

~~(2) an authorised family mediator confirms in the relevant form (a 'mediator's exemption') that he or she is satisfied that—~~

~~(a) mediation is not suitable as a means of resolving the dispute because none of the respondents is willing to attend a MIAM; or~~

~~(b) mediation is not suitable as a means of resolving the dispute because all of the respondents failed without good reason to attend a MIAM appointment; or~~

~~(c) mediation is otherwise not suitable as a means of resolving the dispute.~~

Conduct of MIAMs

3.9

(1) Only an authorised family mediator may conduct a MIAM.

(2) At the MIAM, the authorised family mediator must

(a) provide information about the principles, process and different models of mediation, and information about other methods of non-court dispute resolution;

~~(b) consider and explain the potential benefits of mediation and other methods of non-court dispute resolution as a means of resolving the dispute assess the suitability of mediation as a means of resolving the dispute;~~

(c) assess whether there has been, or is a risk of, domestic ~~abuse violence~~; and

(d) assess whether there has been, or is a risk of, harm by a prospective party to a child that would be a subject of the application;

(e) indicate to those attending the MIAM which form, or forms, of non-court dispute resolution may be most suitable as a means of resolving the dispute, and why; and

(f) where sub-paragraph (e) applies, provide information to those attending the MIAM about how to proceed with the form, or forms, of non-court dispute resolution in question.

MIAM exemption not validly claimed or no longer applicable

3.10

(1) If a MIAM exemption has been claimed, the court will inquire into whether the exemption—

(a) was not validly claimed; or

(b) was validly claimed but is no longer applicable.

(1A) The inquiry referred to in paragraph (1) must be made—

(a) when making the decision on allocation, in private law proceedings to which the MIAM requirement applies; or

(b) when making a decision on allocation (if such a decision is made), and in any event at the first hearing, in proceedings for a financial remedy to which the MIAM requirement applies.

~~If a MIAM exemption has been claimed, the court will, if appropriate when making a decision on allocation, and in any event at the first hearing, inquire into whether the exemption was validly claimed.~~

(2) If a court finds that the MIAM exemption was not validly claimed, or that it was validly claimed but is no longer applicable, the court will –

(a) direct the applicant, or direct the parties to attend a MIAM; and

(b) if necessary, adjourn the proceedings to enable a MIAM to take place;

unless the court considers that in all the circumstances of the case, the MIAM requirement should not apply to the application in question.

(3) In making a decision under Rule 3.10(2), the court will have particular regard to –

(a) any applicable time limits;

(b) the reason or reasons why the MIAM exemption was not validly claimed;

(ba) the reasons why a MIAM exemption which was validly claimed is no longer applicable;

(c) the applicability of any other MIAM exemptions; ~~and~~

(ca) the potential benefits of attending a MIAM, including the opportunity to receive information about options for non-court dispute resolution; and

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(d) the number and nature of issues that remain to be resolved in the proceedings.