Rhwydwaith
CYMUNEDAU MWY DIOGEL CYMRU
WALES SAFER COMMUNITIES
Network

Wales Safer Communities Network response to: Ministry of Justice - Supporting earlier resolution of private family law arrangements

Closed 15 June 2023
Response submitted via the online survey.

Questions

Question 1: Are you in favour of a mandatory requirement for separating parents (and others such as grandparents) to attend a shared parenting programme, if they and their circumstances are considered suitable and subject to the same exemptions as for the mediation requirement (see chapter 3), before they can make an application to the court for a child arrangement or other children's order?

- Yes
- **No**
- Don't know

Please provide reasons for your answer:

Whilst on paper it appears that it could be a good idea, it could be used by perpetrators of coercive behaviour to manipulate the other party. Coercion is harder to identify and is (unintentionally) not always fully recognised by law enforcement as there is no physical or financial harm identified. The impact of being forced to be in a shared space with potential abusers could have a damaging effect and continue the suffering of victims. How it will be decided on if they are considered suitable could be problematic, narcissists can be very charming and convincing until they don't get their way. If either party claims any form of abuse physical, financial or emotional/mental then having a trained IDVA present as a prerequisite should form part of the mandatory requirement, also if during the programme the individuals running the programme identify any potential flags then an expert in Domestic Abuse in all its forms should be asked to join (IDVA would be appropriate).

Additionally, if Mediation Information and Assessment Meeting (MIAM) requirement is already in place perhaps given the limited take up and current exemptions then perhaps it suggests that this is not a suitable approach? Making it mandatory has the potential to see the system inundated with support services not currently set up and resourced on this scale as well as the as compacting hidden safeguarding concerns for individuals and families.

Question 2: If yes, are you in favour of this being required before mediation can start?

- Yes
- **No**
- Don't know

Please provide reasons for your answer
It is not always required, especially if both parties have already been through the process before, but if they decide to go direct to mediation then the option to be referred back to the parenting programme should be an option for the mediator. This should be monitored to make sure that this option is not being used to extend the period of time they are in the whole process which might be indicative of an emotionally abusive relationship.

Question 3: Should information on the court process (non-tailored legal information) be provided to those with a private family law dispute:
• at the mediation information and assessment meeting (MIAM)
• at the parenting programme
• via an online resource
• by any other means (please specify)

Please provide reasons for your answer
Yes, to all of these options. The family court process is confusing and is not always clearly explained even when social services are involved. Family court is protected from reporting more than the criminal courts and therefore people often go into it with little to no information provided on what will happen. Those with financial independence and who are able to afford legal representation could be better placed to follow the process. This leaves the other party, who may or may not be subject to domestic abuse, at a distinct disadvantage.

Question 4: Based on current online resources, what are your views on an online tool being provided by the government to help parents, carers and possibly children involved in child arrangement cases? What information and resources should any such tool prioritise to support families to resolve their issues earlier?
A jargon free easily to follow pathway map that should be available in multiple formats and languages. Not all adults have the same level of cognitive processing and they should not be at a disadvantage because the information provided is too difficult to understand. A list of jargon terms used in family courts for ease of reference. A simple diagram of what a typical family court layout is, and at a local level one with pictures to help understand especially for children which could be shared only during either mediation or the parenting programme for security reasons. A basic template for agreements may allow those from deprived areas or where poverty is involved to be able to make a formal agreement without the inclusion of the family court, where those from more affluent areas and families may be able to take advantage of private lawyers to ensure that everything is legal.

It is worth highlighting that even where a separation is amicable and an informal agreement is in place, a change in circumstances may result in the breakdown of said informal arrangement bringing it to the family court for a range of reasons. In

these instances, if the informal arrangement was supported by a formal written agreement there would be a starting point for the process of what was agreed and reduce the potential for differences being presented.

Question 5: Do you think it is appropriate for mediators to determine suitability for a co-parenting programme at an information meeting?
• Yes
• No
• Don't know

Please provide reasons for your answer:
In principle this would appear appropriate. However it would depend on the skill level of the mediators, their ability to not carry bias and to identify signs of (potentially hidden) abuse in all its forms and not be blinded by a skilled abuser. Someone capable of 'love bombing' to gain control in a relationship is potentially capable of being charming and appearing reasonable to a mediator or other individual.

Question 6: Can you share any experience or further evidence of pre-court compulsory mediation in other countries and the lessons learned from this?
No

Question 7: How should the 'MIAM' pre-mediation meeting under this proposed model differ from the current MIAM?
There should be the opportunity for IDVA (and if appropriate ISVA) to be involved or at least available as even the best trained mediator is going to have the skills to identify an abuser and support a victim as the specialists in domestic abuse and sexual violence.

Consideration should be taken around involvement with local support services, as domestic abuse is not always prosecuted, and an individual's actions should be noted as reported by the possible victim.
The exemption criteria would need to be reviewed.

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?
We think it is difficult to specify but should be linked to progress being made and the ability of the parties to compromise, but again this would need to be carefully managed. Just as dragging the process out can be a form of continuing to have control and abuse, there is also the risk that if one side always gets their way that the mediation process is being used to carry out coercive control so they get their way as none of their requests are seen as being particularly controversial.

There is a danger here, that if there is a check list for the mediator to use and a successful resolution is not identified, will it go against the person who has been

'less engaged' despite the potential for many reasons for this to happen including fear and intimidation.

Question 9:
a) 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?
- **Yes**
- No
- Don't know

Please provide reasons for your answer:
Domestic abuse in all its forms and child protection both involve victims and being forced to mediate with an abuser could provide additional risk as they would know where the victim was going to be at a specific time. The emotional toil on victims who may also be going through criminal court processes would not be appropriate and add to the abuse continuing.

Where one of the individuals claims there was domestic abuse but there is no record within statutory bodies it would be appropriate to engage the IDVA ahead of it moving to court, if they suspect it is a false claim then they should be able to refer back to mediation. Whilst false claims are rare and should be seen as such a way to stop the process being manipulated either by the actual perpetrator or by someone who due to emotional pain may not be thinking clearly.

b) What circumstances should constitute urgency, in your view?
Where there is abuse of any form whether safeguarding or domestic should constitute urgency and enable the move to court. A child or adult left in a vulnerable position who is then subject to further abuse and possibly worse is not only being let down by the system in place to protect them, but also empowering the perpetrator not only for now but also for any potential future victims.

Potential victims of: forced marriage; people trafficking; human slavery; and where there could be a risk of flight due to dual passport for children, if safeguards are not in place quickly may result in further abuse or exploitation due to a real or perceived problem in the family court system and processes.

Question 10: If you think other circumstances should be exempt, what are these, and why?
Involvement in organised crime should also make for an exemption. Criminal exploitation especially of children, where they may think they are just running an errand for a parent means that there is an additional risk if either party or the wider family (such as grandparents) are involved in the exploitation of children or vulnerable adults for criminal purposes.

Question 11: How should exemptions to the compulsory mediation requirement be assessed and by whom (i.e., judges/justices' legal advisers or mediators)? Does our answer differ depending on what the exemption is?
Exceptions should be approved by judges/justices based on written documentation from either social workers, health professionals (health visitors, doctors, nurses, therapists), police (including National Crime Agency), youth justice services, domestic abuse organisations, IDVA, ISVA and mediators depending on the circumstances and who is or has already been involved.

Question 12: What are your views on providing full funding for compulsory mediation pre-court for finance remedy applications?
If it were to go ahead, and we don't fully agree that it should then full funding would appear to be fair and appropriate, if a set benchmark was set (where above there is no support and below there is support) directly negatively impacts those just above the line. The cost of living crisis has highlighted how close many families are to the poverty line impacting not just the families traditionally seen as living in poverty but reaching up into those previously who would have been identified as middle class. The breakdown of a family unit is likely to add to the financial burdens especially if one party is not paying anything towards the family expenses (housing, food, clothes etc).

If the mediation is compulsory but not fully funded then the system could be used to manipulate and cause financial hardship through controlling abuse.

Question 13: Does the current FMC accreditation scheme provide the necessary safeguards or is additional regulation required?
• Yes
• No – additional regulation required
• Don't know

Question 14: If you consider additional regulation is required, why and for what purpose?
It is difficult to identify as each circumstance is different but awareness around neurodiversity, accessibility, and other vulnerabilities, as well as how to identify own bias and potential coercive and controlling behaviours.

Question 15:
a) Should the requirement for pre-court mediation be expanded to include reasonable attempts at other forms of non-court dispute resolution (NCDR), or should it be limited only to mediation?
• Mediation only
• Other forms of non-court dispute resolution (NCDR)
• Don't know

Please explain your answer
If both parties have already willingly engaged in other forms of non-court dispute resolution then it may just be another way to prolong the process and therefore enabling a continuation of abuse if they then have to go through mediation. It should be demonstrated that both parties were equal through any process and not that one held all the power and pushed it all through for their own benefit, which could be an example of other coercive and controlling behaviours which could signify them being a perpetrator of domestic abuse under the definition in the 2021 Act.

b) What are the advantages and disadvantages of expanding the requirement?
It will depend on the individual circumstances and therefore we do not think it is appropriate that we answer this question, as what may be an advantage in one situation could be a disadvantage in another when controlling, coercive or other forms of abuse or exploitation may be involved.

c) If for 15a you answered 'other forms of non-court dispute resolution (NCDR)', to what other forms of NCDR should it be expanded?
The consultation lists three forms: arbitration, 'collaborative lawyers', and lawyer negotiation. We think it is important that the list can be expanded to allow for alternatives that can be evidenced and which may be open to those from poorer backgrounds in the future.

d) If for 15a you answered 'other forms of non-court dispute resolution (NCDR)', what accreditation/regulatory frameworks do other forms of NCDR have that could assist people in settling their family disputes in a way that fits with the legislation that applies to private law children cases and financial remedy cases?
We think there should be an approved and recorded form of accreditation for all NCDR options which goes beyond the formal training on what the law requires. A more uniformed approach to quality may result in better experiences for all those involved.

e) If the requirement is limited to mediation, should completion of another form of dispute resolution lead to an exemption from the requirement to attempt mediation?
Potentially yes, but please see previous answers in regard to the risk carried regarding exploitation, coercion and other forms of controlling behaviour which could be forms of abuse.

Question 16: What is the best means of guarding against parties abusing the pre-court dispute resolution process:

(i) should the court have power to require the parties to explain themselves.

Yes, but with the exception of where there is suspected coercion or controlling behaviour that comes to light during the process.

(ii) what powers should the court have in order to determine whether a party had made a reasonable attempt to mediate, for example when considering possible orders for costs?
Circumstances are likely to have an impact once again and therefore what powers or action is likely to differ, and it may be that other legislation can be utilised as it frequently is in anti-social behaviour responses. See also our responses to the questions under accountability, enforcement and fees.

Question 17: How could a more robust costs order regime discourage parties in court from avoiding reasonable attempts at pre-court or post-application mediation and lengthening proceedings unnecessarily? Should judges continue to have discretion to decide when to make these orders and what specific costs to include?
We are not sure costs would have the desired effect of stopping the lengthening of proceedings, it may do for those at a socio-economic disadvantage but for others it would not act as a deterrent. If it is a route undertaken then any costs applied under this should not be allowed to be considered against the overall outcome, as those who are perpetrators of abuse and exploitation may prefer the courts to receive money and reduce the amount that can be awarded to their victims, and therefore be an unexpected consequence.

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?
We do not think that this is appropriate, especially if the exception was due to domestic abuse, child protection or criminal exploitation (as we suggested in question 10).

Where an exemption was due to a NCDR then this may be more appropriate.

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?
No, we think that this would risk the court services being discriminatory and out of the reach of those at a socio-economic disadvantage, which goes against the Equalities Act 2010 with socio-economic duty becoming a legislative protected characteristic in Wales in March 2021.