

Family Mediators Association (FMA) Response to A Fairer End to Relationships Consultation

Overview

We are the Family Mediators Association (FMA). We were established in 1988 and have a membership of 524 with 539 including affiliates and friends of FMA.

FMA is a lead body and founding member of the Family Mediation Council (FMC), which co-ordinates regulation of and develops common standards for family mediators.

FMA is the only member organisation of the FMC dedicated to representing the interests of professional family mediators, whatever their background, together with the interests of the families who need help from those professionals.

FMA welcomes the Government's consultation "A Fairer End to Relationships" and its ambition to create a family justice system that is clearer, fairer, more accessible and better aligned with modern family life. We particularly welcome the consultation's emphasis on reducing uncertainty, protecting vulnerable individuals, prioritising children's welfare and encouraging agreement wherever possible.

The consultation represents a significant opportunity not only to reform the law but also to reshape public understanding of how family disputes should and could be resolved. Rather than responding to each individual consultation question, FMA wishes to make a broader observation.

For many separating couples, the instinctive assumption remains that relationship breakdown is a legal problem requiring a court process. We believe this consultation provides an opportunity to promote a different narrative: separation is primarily a family transition, not a legal dispute. Whilst courts will always have an essential role in determining cases where agreement cannot be reached or where safeguarding concerns require judicial intervention, most families benefit from being supported to resolve their challenges outside court wherever it is safe and appropriate to do so.

FMA welcomes the Government's objective of creating a clearer and more accessible legal framework by bringing together principles that have developed over many decades through case law. The consultation recognises that the current law on financial remedies has become increasingly complex, with key concepts and outcomes often understood only through a substantial body of judicial decisions rather than from the legislation itself. This can make the law difficult for separating couples to understand and can contribute to uncertainty, anxiety and conflict.

A clearer statutory framework that incorporates established legal principles has the potential to improve public understanding of likely outcomes and provide a more predictable basis for decision-making. Greater certainty can support earlier

settlement by helping individuals focus on options rather than becoming entrenched in competing interpretations of the law. From a mediation perspective, participants are often better able to engage constructively in negotiations when they have a clearer understanding of the legal framework within which decisions will ultimately be made.

That said, whilst the current discretionary regime based on Section 25 has proved costly and unpredictable for litigants, in mediation the ability to enable participants to weigh for themselves the Section 25 considerations, and particularly the balance of resources and needs, rather than an illusory “fairness” or “justice,” is very powerful. As financial resolution hopefully moves further towards private, consensual, mediated resolutions and away from Judge-imposed solutions, the retention of Section 25, unfettered by too much attempt at codification of the last fifty years of judicial and other interpretations, has much to commend it.

Whilst codification alone will not remove the emotional challenges associated with family separation, it should make the process more transparent and accessible for families. FMA believes that clear legislation, combined with early information, legal advice where appropriate, and access to mediation and other forms of Non-Court Dispute Resolution, provides the best opportunity for families to reach informed and sustainable agreements without unnecessary recourse to litigation.

Reframing Separation as a Family Process

The Government's wider objectives would be best achieved by positioning Non-Court Dispute Resolution (NCDR), and family mediation in particular, at the centre of the family justice system and the first port of call on separation.

Families experiencing separation are often dealing with emotional, practical and parenting challenges alongside legal issues. Approaches that focus on communication, understanding and future planning are frequently more effective than adversarial processes in achieving sustainable outcomes.

Once separating couples embark on Court-based financial relief, it is vital that the recourse or return to mediation is left open; every step of the still-adversarial Court process is costly and often disappointing and distressing for litigants, and the ability to refer out to mediation or other NCDR to manage disclosure, neutral evaluation, or exploration of options leading to resolution, should always be emphasised as a choice. Too often a step onto the litigation pathway is seen as irrevocable, and a more integrated approach to the interrelationship between Court and NCDR would be invaluable.

We encourage Government to frame family separation as a problem-solving process that empowers families to make informed decisions, rather than one that immediately directs them towards litigation.

Embedding Mediation as the Default Entry Point

FMA believes mediation should be recognised and promoted as the normal starting point for resolving family disputes concerning children and finances.

The consultation identifies concerns about conflict, uncertainty and cost within the current system and seeks to encourage settlement where possible. Mediation directly supports these objectives by helping separating couples reach informed and voluntary agreements, reducing the need for lengthy court proceedings and enabling families to retain greater control over decision-making.

Making mediation the expected first step, while retaining appropriate exemptions where safety concerns exist, would help establish a culture in which collaborative resolution is viewed as the norm rather than the exception.

Embedding Mediation as the Primary Resource for Resolving Financial Disputes between Cohabitants

The consultation recognises that cohabiting couples are one of the fastest-growing family groups in England and Wales, yet they continue to have limited legal protections when relationships end. The resulting uncertainty can leave separating couples facing confusion, financial vulnerability and conflict at an already difficult time.

Family mediation is well placed to assist cohabiting couples in navigating these challenges. Mediation provides a structured environment in which participants can obtain information, explore options, and engage in constructive discussions about finances, housing arrangements and the future care of children without resorting to litigation.

As the Government considers introducing a new statutory framework for cohabitants, mediation could play a key role in helping separating couples understand their rights and responsibilities, reach practical agreements and avoid unnecessary disputes. Mediation offers an accessible process for resolving issues arising from cohabitation breakdown, particularly where the parties wish to preserve effective co-parenting relationships.

Where children are involved, mediation enables parents to focus on future arrangements and children's needs rather than becoming entrenched in legal arguments about status or entitlement. By promoting communication, informed decision-making and early resolution, mediation can help ensure that any new protections for cohabitants are accompanied by processes that support families to reach workable and sustainable outcomes.

For all the reasons set out in the review, cohabitants are baffled to find that, on engaging with financial mediation, there are none of the frameworks or safeguards they might have expected.

In respect therefore of the opportunity to address the *process* of financial resolution for separating cohabitants, we make the following proposals to ensure consistency, efficiency and the saving of public money:

- The proposed changes to the law to make financial disputes between cohabitants a matter for the family, not civil, Courts, should be supplemented by an extension of the MIAMs process to cover all applications, Applicants should not be able to enter the Court process without consideration of the alternatives by way of a mandatory meeting with a mediator, save in exceptional circumstances
- All the efforts of the Government and the profession of mediators to increase awareness of mediation/ NCDR should be replicated in respect of unmarried partners
- Combined and separate training across the judiciary and the mediation profession should emphasise the alternatives to litigation available within the new proposed legislation for cohabitants

In summary, the proposals in the Consultation represent an extraordinary opportunity to better inform and support unmarried partners who are struggling to resolve issues arising from their relationship, and to protect their children. Whilst the attempt to provide greater clarity through legislation is very much supported by our members, it will only be effective if an equal attention is given to the *means* of resolution, particularly by non-adversarial, non-Court initiatives such as mediation.

The simple solution to this is to replicate the current Family Procedure Rules relating to NCDR across the new framework for cohabitants; as we have found however in divorce reform, only by close liaison and attention to detail will it be possible to create a robust and effective scheme.

Mediators look forward to engaging with this once the legislative framework is settled; however, should the root and branch reform of financial relief for cohabitants be delayed, there is nothing to stop reform of the rules relating to the current hotch-potch regime taking place to accentuate the place of mediation in disputes between separating cohabitants regarding their finances and their children. This should

include a requirement to enter into a MIAMs process before embarking on TOLATA or Schedule 1 proceedings by an amalgamation of Family and Civil Procedure Rules.

Strengthening Information and Early Intervention

FMA supports measures that ensure separating couples receive high-quality information about all available dispute resolution pathways at the earliest opportunity.

Many families simply do not understand the range of options available to them. Early information and assessment stages should therefore be strengthened and utilised not merely as procedural gateways but as genuine opportunities for education and informed choice.

Early intervention frequently prevents conflict becoming entrenched, improves communication between parents, and reduces the emotional and financial impact of separation on adults and children alike.

Keeping Children at the Centre

We welcome the consultation's emphasis on achieving fair outcomes for children.

From a mediation perspective, the most effective arrangements are often those developed by parents themselves, supported by skilled professionals who help maintain focus on children's needs rather than parental disputes.

Family mediation is uniquely placed to support child-focused outcomes. Child-Inclusive Mediation (CIM), where appropriate, enables children's experiences and perspectives to be considered safely and sensitively within the decision-making process. This approach supports children's welfare, helps parents better understand the impact of separation on their children, and encourages longer-lasting agreements.

We would encourage Government to give greater prominence to child-centred dispute resolution approaches within any future reforms and public messaging.

Reducing Pressure on the Courts

The family justice system continues to face significant pressures in terms of resources, delay and demand.

Expanding awareness and uptake of mediation and other forms of NCDR has the potential to reduce the number of cases that proceed unnecessarily to court, allowing judicial resources to be focused on those matters that genuinely require determination by a judge.

Investment in early resolution services should therefore be viewed not simply as support for families but as a strategic measure to improve the overall efficiency of the justice system.

Funding and Accessibility

For mediation to achieve its full potential, families must be able to access it easily and affordably.

FMA supports continued investment in mediation funding and believes the Government should actively promote the financial support already available through the Family Mediation Voucher Scheme and legal aid for eligible individuals.

Consideration should also be given to increasing the value of mediation vouchers. Even a modest increase would represent a comparatively small public investment when measured against the financial and societal costs associated with prolonged court proceedings.

Providing greater financial support for mediation would improve access, increase participation and offer substantial long-term value for both families and the justice system.

Safeguarding and Safe Participation

Any expansion of mediation must continue to prioritise robust safeguarding.

Family mediators are trained to undertake detailed screening and ongoing assessment of suitability, including identifying domestic abuse, coercive behaviour, power imbalances and other risks. This assessment process enables appropriate referrals, adaptations or exemptions where necessary.

For many families, mediation can provide a carefully managed environment in which difficult conversations can take place safely and constructively. The profession's established safeguarding processes provide an effective gateway for assessing suitability for different forms of dispute resolution and ensuring families receive the support most appropriate to their circumstances.

Family mediation provides a safe environment in which discussions can take place because suitability is assessed from the outset and reviewed throughout the process.

Family mediators undertake comprehensive individual screening with each participant before any joint discussions take place. This assessment is often more detailed and focused on interpersonal dynamics than the initial information available to other professionals.

As a result, mediation is well placed to facilitate early discussions about whether participants should continue with mediation, engage in another form of Non-Court Dispute Resolution, require additional support, or proceed through alternative pathways. Where participants wish to discuss and consider opting out of the suggested protections for cohabiting couples, mediators can determine whether mediation is suitable and signpost a vulnerable person to the appropriate support, thereby providing a safety net for vulnerable people.

FMA believes that the MIAM should be recognised not only as a standalone process in its own right, but that the MIAM is an important gateway for assessing suitability, safeguarding participants and directing families towards the most appropriate form of support or dispute resolution. This role is particularly important in achieving the consultation's objectives of protecting vulnerable individuals and children.

Conclusion

FMA believes this consultation presents a rare and valuable opportunity to achieve more than legislative reform. It offers the chance to reshape the culture of family dispute resolution in England and Wales.

By strengthening information and awareness, investing in mediation services, promoting child-centred practice and supporting early intervention, Government can help families resolve disputes more constructively, reduce conflict, lessen the burden on courts and improve outcomes for children. The public message must be to consider Non-Court Dispute Resolution before court intervention.

A fairer end to relationships requires not only fair laws, but fair processes. Family mediation should be a central part of that vision.

We asked our membership the following questions:

Question 1: Would it be helpful for separating families to have more clarity around the treatment of pensions on divorce?

Feedback from members indicated broad support for greater clarity around pensions, although many noted that pensions can never be reduced to a simple formula because outcomes depend on factors such as the length of the relationship, the ages of the parties, the nature of the pension provision and the financial needs of the family. Members consistently reported that many clients do not understand that pensions form part of the matrimonial assets and some continue to resist including them within settlement discussions.

Several mediators highlighted that they already provide extensive information and signposting regarding pensions but recognised that not all separating couples access professional advice or mediation. Greater public information and awareness would therefore be beneficial, particularly for those navigating separation without professional support. Members also emphasised that improving understanding of pensions is likely to support more informed negotiations and reduce misunderstandings that can become barriers to settlement.

Key message: Greater clarity and public education about pensions would be helpful, particularly in improving awareness that pensions are often significant matrimonial assets, although flexibility must remain to reflect the individual circumstances of each family. We do therefore agree with the Government's view that the court should specifically be required to give consideration to pensions accrued during the marriage and pension needs when making financial orders. This requirement would help to clarify the position that pensions should be discussed and considered when looking to find resolution. **[Question 19 of the consultation]**

Question 2: Do separating families focus more on sharing assets by percentage rather than in accordance with need?

Member responses revealed differing experiences, but a strong theme was that separating couples frequently arrive at mediation focused on percentage-based outcomes, particularly the concept of a "50:50 split." Mediators reported that this is often more common among financially stronger parties or higher earners, who may initially view fairness through the lens of equal percentages rather than practical outcomes.

However, mediators also emphasised that an important part of the mediation process is helping participants move beyond percentage-based thinking and understand that needs, particularly the needs of children and the financially weaker party, are often the primary consideration. Several members noted that once parties understand how needs-based principles operate, percentages can still serve as a useful benchmark for discussion but should not drive decision-making.

Other members felt that where mediation is working effectively and participants are properly informed, families ultimately focus on needs rather than percentages.

Key message: While many separating couples initially focus on percentage-based divisions, mediation helps shift discussions towards meeting needs and achieving sustainable outcomes. Members strongly emphasised that children's welfare and financial needs should remain at the centre of any financial framework. On this basis, we do not agree with the Government's view that the court should consider the sharing principle as the starting point and consider the needs principle where equal sharing would not allow needs to be met. This shifts the focus towards sharing when for most families it is more helpful to remain focussed on needs. [**Question 2 of the consultation**]

Question 3: Law reform for cohabitants

A. Is it more important that remedies are available on separation than the details of how those remedies are quantified?

Most members supported the principle that cohabitants should have access to remedies upon relationship breakdown, particularly where children are involved. Feedback suggested that providing a route to redress is more important than attempting to create highly prescriptive formulas for calculating outcomes.

Members observed that any overly rigid approach could create complexity and disputes, whereas a framework based on needs and judicial discretion would be more capable of reflecting the realities of family life. However, some respondents also stressed that clarity around how remedies are assessed remains important if the law is to provide certainty and public confidence.

Key message: Members generally favour ensuring remedies are available to separating cohabitants, whilst recognising that clear principles will also be needed to guide decision-making. We do therefore agree with the Government's proposed approach in relation to remedies for cohabitants. [**Question 37 of the consultation**]

B. Is only allowing maintenance in exceptional circumstances more likely to result in unfair outcomes?

Many responses expressed concern that restricting maintenance to exceptional circumstances could lead to unfair outcomes, particularly where there has been economic disadvantage, caring responsibilities or a significant income disparity arising during the relationship.

Members noted that every family's circumstances differ and that flexibility is often needed to achieve fair outcomes. While some accepted that maintenance should not become routine, there was a view that limiting it too tightly risks failing to meet genuine needs and could disadvantage vulnerable parties.

Key message: Members generally considered that restricting maintenance to exceptional cases could increase the risk of unfair outcomes and reduce the ability of the system to respond to differing family circumstances. Therefore, in relation to maintenance we do not agree that maintenance should only be awarded in exceptional circumstances (such as serious health issues or disability). **[Question 38 of the consultation]**

C. Will excluding discretionary needs for cohabitants complicate resolution and reduce clarity and certainty?

Many respondents believed that excluding discretionary needs could create unfairness, particularly in longer relationships where one party has experienced relationship-generated disadvantage or where there are children. Members emphasised that the ability to consider individual needs is often essential in reaching fair and workable outcomes.

Some respondents acknowledged that exclusion might create greater legal certainty because the rules would be clearer but questioned whether greater certainty should be prioritised over fairness.

Key message: Members generally favoured retaining the ability to consider needs and individual circumstances, viewing fairness and flexibility as critical components of any future framework for cohabitants. We do not therefore agree that discretionary needs should be excluded from the consideration of needs for cohabitants as it would lead to unfairness and increased uncertainty. **[Question 34 of the consultation]**

Question 4: Is there anything you would like to add from your standpoint as a family mediator?

A dominant theme emerging from members was the need for clarity, public education and early information. Mediators repeatedly highlighted that many people enter cohabiting relationships without understanding the limited legal protections available to them compared with marriage or civil partnership. Members suggested that information about legal rights and financial protections should be provided much earlier, enabling individuals to make informed decisions about their relationships.

There was also strong support for avoiding unnecessary complexity and ensuring any reforms are practical, understandable and accessible to families. Members emphasised that reform should focus on providing basic protections and achieving fair outcomes without creating an overly complicated legal framework.

Importantly, members reinforced the value of mediation as a process that helps families understand their options, focus on their children's needs, and reach sustainable agreements. Consistent with FMA's broader response, feedback highlighted the importance of early information, informed decision-making and non-court dispute resolution as central features of any future family justice framework.

Key message: Members consistently called for greater clarity, better public understanding of relationship rights and responsibilities, and a stronger emphasis on early information and mediation to help families resolve issues constructively.

Submission by

The Chairs and Board of the Family Mediators Association

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