



## **PRACTICE DIRECTION NO. 2 OF 2016**

### **MEDIATION INFORMATION & ASSESSMENT RULES 2016**

#### **Introduction**

Mediation of family disputes offers many advantages over resolution of disputes through the court. Consequently, the court actively monitors all family disputes to determine whether the couples concerned should attend a meeting with a family mediator to learn about the mediation process and the merits of mediation over litigation in court.

Although mediation is suitable for many family disputes, it is not suitable in all cases and the MIAM Rules provide for exemptions. It is also recognised that drug and/or alcohol abuse, and/or mental illness, are likely to prevent couples from participating effectively in mediation.

#### **Summary**

1. The purpose of this Practice Direction is to provide guidance in respect of the MIAM Rules and to set out good practice to be followed by respondents who are expected to also attend a MIAM.
2. Under the MIAM Rules it is now presumed that if a person makes certain kinds of applications (s)he will be ordered to attend a MIAM before continuing with the application. (A list of these applications is set out in Rule 6.) The respondent to the application is expected to attend the MIAM. The court has a general power to adjourn proceedings in order for non-court dispute resolution to be attempted, including attendance at a MIAM to consider family mediation and other options.
3. A MIAM is a short meeting that provides information about mediation as a way of resolving disputes. A MIAM is conducted by a trained mediator who will assess whether mediation is appropriate in the circumstances. A MIAM should be held within 15 business days of contacting the mediator.
4. There are exemptions to the MIAM presumption. They are set out in the MIAM Rules.

5. The effect of the MIAM presumption and the MIAM Rules is that a person who makes certain kinds of applications to the court must first attend a MIAM unless a 'MIAM exemption' applies. These exemptions are set out in Rule 8.

6. When making certain kinds of applications (see paragraphs 12 and 13 below), an applicant must therefore provide on the relevant form one of the following –

- (i) confirmation from a mediator that (s)he has attended a MIAM; or
- (ii) a claim that a MIAM exemption applies. An applicant who claims an exemption from the MIAM requirement is not required to attach any supporting evidence with his or her application, but should bring any supporting evidence to the first hearing.

7. If an applicant claims a MIAM exemption, at the first hearing the court will inquire into the exemption claimed. At the first hearing, the court may review any supporting evidence in order to ensure that the MIAM exemption was validly claimed. As set out in more detail below, if a MIAM exemption has not been validly claimed, the court may direct the applicant or the parties to attend a MIAM, and may adjourn proceedings for that purpose.

#### **Background: Consideration of mediation and other non-court dispute resolution**

8. The adversarial court process is not always best suited to the resolution of family disputes. Such disputes are often best resolved through discussion and agreement, where that can be managed safely and appropriately.

9. Family mediation is one way of settling disagreements. A trained mediator can help the parties to reach an agreement. A mediator who conducts a MIAM is an independent facilitator who can also discuss other forms of dispute resolution if mediation is not appropriate.

10. Attendance at a MIAM provides an opportunity for the parties to a dispute to receive information about the process of mediation and to understand the benefits it can offer as a way to resolve disputes. At that meeting, a trained mediator will discuss with the parties the nature of their dispute and will explore with them whether mediation would be a suitable way to resolve the issues on which there is disagreement.

### **The applications to which the MIAM presumption applies**

11. The MIAM presumption applies to private law proceedings relating to children and proceedings for a financial remedy as set out in Rule 1.

### **Making an application**

12. An application to the court in any of the proceedings specified above must be accompanied by the relevant court form which must contain either: (a) a confirmation from a mediator that the applicant has attended a MIAM; or (b) a claim by the applicant that a MIAM exemption applies (the list of MIAM exemptions is set out in Rule 8(1)).

13. The relevant form can be completed either by the applicant or his or her attorney. Any reference in this Practice Direction or in the Rules to completion of the form by an applicant includes a reference to completion by an attorney.

### **MIAM exemptions**

14. Rule 8(1) sets out the circumstances in which the MIAM presumption does not apply. These are called MIAM exemptions.

15. In order to claim that a MIAM exemption applies, an applicant will need to complete the relevant form.

16. Applicants should note that some of the MIAM exemptions require that certain evidence is available. This evidence does not need to be provided with the application but applicants should bring such evidence to the first hearing because the court will inquire into such evidence in order to determine whether the MIAM exemption has been validly claimed.

### **Finding a family mediator**

17. As set out in Rule 9, only a family mediator may conduct a MIAM. Under that Rule, a family mediator is a Grand Court judge who is assigned to the Family Division, or a Magistrate, or one of the persons or class of persons identified in the Schedule to this Practice Direction.

18. Further information about mediation including a list of family mediators and their contact details can be found at [www.judicial.ky](http://www.judicial.ky).

19. The expectation is that an applicant should be able to find a family mediator. As stated in Rule 8(1)(o) a MIAM exemption is available if –

- (i) the applicant has contacted at least three family mediators, 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 such family mediators, and the dates of contact, can be provided to the court if requested.

20. The applicant will need to be prepared to produce at the first hearing the names, contact information and details of the dates of contact with the family mediators.

### **Attending a MIAM**

22. Respondents are expected to attend a MIAM, either with the applicant or separately. A respondent may choose to attend a MIAM separately but this should usually be with the same family mediator.

23. The applicant should provide contact details for the respondent to a family mediator for the purpose of the mediator contacting them to discuss his or her willingness to attend a MIAM and, if appropriate, to schedule his or her attendance at a MIAM.

24. If the mediator contacts the respondent and determines that he or she is unwilling to attend a MIAM, an applicant should ask the mediator to confirm this as a ground for MIAM exemption in the relevant section of the application form, which should then be returned signed to the applicant.

### **MIAM exemption: Inquiries by the court**

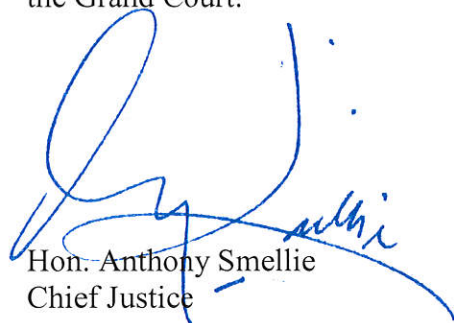
25. Where a MIAM exemption requires that an applicant supply certain evidence to support his or her claim to the exemption, (s)he should bring that evidence to the first hearing. At that hearing the court will inquire into that evidence to determine whether (s)he has a valid claim to that MIAM exemption.

26. The court may, if appropriate, adjourn proceedings where the applicant is unable to supply that evidence or it may give directions about how and when the applicant is to file such evidence with the court.

27. If the court determines that the applicant has not validly claimed a MIAM exemption, it may direct the applicant, or the parties, to attend a MIAM and may adjourn proceedings pending attendance at that MIAM.

### **Definitions**

30. For the purpose of this Practice Direction the definitions in the MIAM Rules apply. Pursuant to Rule 1 of the MIAM Rules the Schedule to this Practice Direction sets out a list of family mediators who are not magistrates (or acting magistrates) or judges (or acting judges) of the Grand Court.



Hon. Anthony Smellie  
Chief Justice

27th May 2016

## **SCHEDULE TO PRACTICE DIRECTION No 2 OF 2016**

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