



## **Unified Contract Family Mediation Specification**

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## **Unified Contract -Family Mediation Specification**

*NB The Funding Code Guidance includes important information about what you must do both before beginning a mediation and during a mediation.*

### **1 Introduction**

- 1.1 This Specification, which is one of your Contract Documents, sets out rules and information about the conduct of, and payment for, mediations. This Specification applies to both Not for Profit and For Profit providers. The Unified Contract Civil Specification does not apply to Family Mediation Contract Work.
- 1.2 Part B of this Family Mediation Specification (“the Payment Annex”) contains the rates of payment for Family Mediation Contract Work. For the avoidance of doubt only Section 11 of the Payment Annex applies to Family Mediation Contract Work and the remaining sections of the Payment Annex are not applicable to Family Mediation Contract Work. With effect from 1 July 2008 a new Payment Annex 2008 has been added to Part B of this Specification. For the avoidance of doubt any fee changes relate solely to non-Family Mediation Contract Work commenced under the Unified Contract. Fees for Family Mediation matters, as set out in both the Payment Annex 2007 and Payment Annex 2008, remain unchanged.
- 1.3 When providing any Contract Work you must apply the Funding Code and the Access to Justice Legislation.
- 1.4 You must apply the relevant Funding Code Criteria to all Contract Work you undertake. These criteria must be applied both:
  - a) when the application for the prospective Client is made; and
  - b) as and when further work is provided throughout the matter.
- 1.5 When applying the Funding Code Criteria you are required to have regard to the Funding Code Guidance and you must refuse to act in respect of any matter that does not meet the Criteria.

1.5 The terms of this Specification shall apply to all matters commenced by you on or after the 1 October 2007. For the purposes of this rule you “commence”:

- (a) a Willingness Test on the date that the you first contact the Client to determine whether the Client would be willing to attend Mediation;
- (b) an Assessment Meeting on the date the Client attends the meeting; and
- (c) Mediation on the date when the Client attends the first mediation session.

You may continue to perform Family Mediation Contract Work on any matter properly started prior to 1 October 2007 under the previous Unified Contract Family Mediation Specification (i.e. the previous specification in force from 1 April 2007 – 30 September 2007) or Family Mediation Contract (Solicitor or NfP). These matters will be governed by the provisions of the previous specification under the Unified Contract, or Family Mediation Contracts (Solicitor or NfP).

1.7 Terms that are defined in this Specification are set out in Annex A.

1.8 This Specification sets out the amounts payable for Contract Work and explains what they are based on and how they apply. It sets out how we will exercise our right to assess your Contract Work. It specifies organisational requirements, which include maintaining information and providing reports. It also includes some requirements relating to Clients. We may amend this Specification from time to time in accordance with Clause 13 of the Contract Standard Terms.

1.9 All payments specified are exclusive of VAT. We will add on VAT to all payments we make to Suppliers who are registered for VAT. You must tell us straight away if your VAT status changes.

### *Providing information to another Supplier*

- 1.10 If you have provided Family Mediation to a Client and that Client chooses to instruct another Supplier with regard to the same matter or issue, you are required, on request from the new Supplier and only with the consent of both parties, to give to the new Supplier the Client's file, or a copy, and reasons for the termination of the retainer, as soon as practicable.

### *Misrepresentation regarding Contract Work*

- 1.11 If it comes to your attention that a Client has:

- (a) wilfully failed to provide information relevant to your decision to carry out Contract Work on their behalf: or
- (b) has knowingly made a false statement or false representation

and after this failure or false statement or false representation has occurred, you have carried out Contract Work on the Client's behalf, then you should report the matter immediately to the relevant Director.

- 1.12 The application form signed by the Client may incorporate an agreement by the Client to repay to us any costs we pay out to you in the matter in the event of the Client having withheld or misrepresented information with the intention of appearing to qualify for Contract Work.

## **2. Financial Eligibility**

- 2.1 The rates for financial eligibility are those set out in the Community Legal Service (Financial) Regulations 2000 (as amended). In making the assessment referred to in the Funding Code you are required to have regard to any Financial Eligibility Guidance issued by us.

- 2.2 Satisfactory evidence, as described in Guidance, in support of the prospective Client's information as to their means must be provided to you before you assess financial eligibility, subject to the provisions of Paragraph 2.3. The evidence (or a copy) must be retained on the file.

2.3 You may assess the prospective Client's means without the accompanying evidence where:-

- (a) it is not practicable to obtain it before commencing Family Mediation Contract Work;
- (b) pre signature telephone advice is given; or
- (c) exceptionally, the personal circumstances of the Client (such as the Client's age, mental disability or homelessness) make it impracticable for the evidence to be supplied at any point in the case.

Unless Paragraph (c) applies, you must require the Client to provide the evidence as soon as practicable. If satisfactory evidence of the Client's financial eligibility is not subsequently supplied, or if the evidence shows that the Client is not financially eligible, you may claim the work carried out provided that:

- (a) you have acted reasonably in undertaking work before receiving satisfactory evidence of the Client's means; and
- (b) you have acted reasonably in initially assessing financial eligibility on the information available.
- (c) You do not Claim any disbursement beyond those incurred in the period before it is practicable to obtain satisfactory evidence of the Client's means.

We may monitor the number of your cases that fall into this category. If we consider it appropriate we may carry out further investigations. If, as a result of further investigation, it appears that you have breached this provision we may take appropriate action, including assessing a sample of your claims or applying a Sanction under Clause 29 of the Standard Terms.

2.4 When assessing the means of a Child, the appropriate means which you must take into account are:

- a) those of the Child; and
- b) those persons who have care and control or are liable to maintain him/her or usually contribute substantially to the child's maintenance, subject to the exception provided for by Community Legal Service (Financial) Regulations 2000, Regulation 11 (3).

2.5 When assessing means where you accept an application for Family Mediation directly from a Child you must consider whether it is just and equitable not to aggregate the Child's means with those of the person liable to maintain him/her. The presumption is that there should be aggregation but you can decide not to aggregate (and assess only the Child's means) if, having regard to all the circumstances, including the age and resources of the Child and to any conflict of interest, you reasonably consider it just and equitable to do so. Non-aggregation is more likely to be justified where there is a conflict between the Child and the person liable to maintain him/her.

2.6 The assessment of means section and the Client's details must be fully completed and the form signed by the Client in your presence before Family Mediation is commenced. The completed form must be kept on file.

### **3. Reference numbers for cases**

3.1 You must allocate a reference number to each case on your first contact with the Client. You may use your own reference number system, provided it distinguishes between cases and enables us to identify cases for the purposes of audit, or for the purpose of any of our other functions under the Contract.

## **4 Payment**

Assessment Meetings and Willingness Tests

*Funding Code*

- 4.1 The Funding Code provides that, before beginning mediation, you must determine whether mediation is suitable to the dispute. Only if it is, may you begin the mediation. Part of determining whether mediation is suitable to the dispute may involve contacting the other party to first find out whether they would be prepared to attend an Assessment Meeting and consider mediation. In the Funding Code, this is called the “Willingness Test”.
- 4.2 Usually, you will carry out the Willingness Test before holding an Assessment Meeting because, if the other party is not willing to consider mediation, there will be little point in going further. However, the Funding Code Guidance provides that, in some circumstances, even where it appears that the other party is not willing to consider mediation, you may hold an Assessment Meeting (Alone) with the first party (the party who contacted you first). At this meeting you will be able to give the first party information about mediation and its benefits and then contact the other party afterwards. You should refer to the Funding Code Guidance for more information about this.

*Fixed fees and Clients’ right to choose*

- 4.3 There is a fixed fee for carrying out a Willingness Test and it is payable only once, even if you contact the other party more than once. There are also fixed fees for Assessment Meetings, which, subject to Paragraph 4.4 are also payable only once (even if you have met the first party, the other party or both more than once, to carry out the assessment). The Funding Code Decision Making Guidance sets out what is required in respect of a Willingness Test.
- 4.4 Clients have the right to choose whether to attend a Joint or a Separate Assessment Meeting. If you have two Separate Assessment Meetings - one with the first party and one with the other party – then a fixed fee for a Separate Assessment Meeting is payable for each meeting. If you have a joint Assessment Meeting then the fixed fee for a Joint Assessment Meeting is payable.
- 4.5 The fixed fees for Assessment Meetings (Joint and Separate) and for carrying out the Willingness Test are set out in the Payment Annex to this Specification and are also shown in Table 1 below. The fees cover all

associated work and no additional payments will be made e.g. for letters you may need to write or for telephone calls you may need to make.

*When is a Willingness Test fee payable?*

- 4.6 The Willingness Test fee is payable for all Willingness Tests undertaken whether or not a subsequent Assessment Meeting takes place.
- 4.7 This means that you must report, using our forms, all Willingness Tests that you carry out, whether or not a subsequent Assessment Meeting takes place.
- 4.8 The Contract Report Forms are the Mediation Work Start Form and the Mediation Consolidated Work Report Form. Separate Guidance is available on how to report work with these forms.

*The fees payable*

**Table 1 Fees for Assessment Meetings and Willingness Tests**

<b>Table 1</b>		
<b>Category of Work</b>	<b>Payment</b>	<b>Hours/Rate</b>
<b>Joint Assessment Meeting</b>	<b>£130.00 (per couple)</b>	<b>2hrs/£65</b>
<b>Separate Assessment Meeting</b>	<b>£87.00 (per person)</b>	<b>1.33hrs/£65</b>
<b>Willingness Test</b>	<b>£25.00 (per test)</b>	<b>0.5hrs/£50</b>

- 4.9 The Funding Code Guidance provides that Assessment Meetings must be conducted by Mediators, but the Willingness Test may be undertaken either by Mediators or by appropriately trained and qualified support staff. It goes on to say that, the Willingness Test may be undertaken by “suitable experienced support staff employed by the mediation service”.

## **Mediations**

### *Types of mediation*

- 4.10 Mediations may be Sole Mediations (where one Mediator is present) or Co-Mediations (where two Mediators are present for all or part of the case). They may be All Issues mediations, Child mediations or Property and Finance mediations. A mediation may be a Single Session or Multi Session. At any stage in a mediation Agreed Proposals may be reached.

### *Fixed fees and when they are payable*

- 4.11 The fees payable for mediations are set out in the Payment Annex to this Specification and also shown in Table 2 below. The fees cover all associated work and no additional payments will be made e.g. for letters you may need to write or for telephone calls you may need to make.
- 4.12 If a Single Session is all that takes place, the appropriate session payment for that Single Session is all that is payable, and all that you should report (Table 2 Column 2). If more than one session takes place, the session payment for a Single Session is **not** payable, and should not be reported. Instead, the appropriate higher case payment specified in the Multi Session column (Table 2 column 3) is payable and that outcome should be reported.
- 4.13 You must report a Single Session or a Multi Session only in two circumstances. First if you are **sure** that the parties will either not continue with the mediation (e.g. client indicates that they do not wish to continue) or that the mediation has been completed. Second if you are **reasonably sure** (e.g. consider it likely) that the parties will either not continue with the mediation or that the mediation has been completed **and** three months have elapsed since the single session or the last session.
- 4.14 If, at the end of a mediation, Agreed Proposal/s are reached and you produce a Mediation Summary reflecting this, you should report this and the appropriate agreement payment specified in the Agreed Proposal column (Table 2 column 4) will be payable. We expect Agreed Proposal/s to be concluded at the end of mediation and to incorporate all agreements reached

during mediation. If the mediation concludes but the parties return to you within 3 months you should reopen the case if it relates to the same matter and submit an amended Consolidated Work Report Form. If the parties return after 3 months since the last visit you should treat the return visit as an entirely new application.

*What is the “appropriate” payment if everything is not agreed?*

- 4.15 If you are conducting a mediation on All Issues but reach Agreed Proposal/s only on some issues e.g. Property and Finance, then only the Property and Finance Agreed Proposal fee is payable or if agreement reached only on the Child Only issues, only the Child Only Agreed Proposal Fee is payable.

*What if only one party is receiving public funding?*

- 4.16 When only one party is receiving public funding for mediation, only half the specified fee is payable. The amount you charge the other party depends upon the terms of your agreement with them. The Mediation Contract Report Form requires you to show which clients are receiving public funding.

**Table 2 Fees for Mediation and Formal Agreements**

<b>Table 2</b>			
<b>Category of Work</b>	<b>Single Session</b>	<b>Multi Session</b>	<b>Agreed Proposals</b>
	<b>Session Payment</b>	<b>Case Payment</b>	<b>Agreement Payment</b>
Sole All Issues Mediation	£168.00	£756.00	£252.00
Co- All Issues Mediation	£230.00	£1064	£252.00
Sole Property & Finance	£168.00	£588.00	£189.00
Co- Property & Finance	£230.00	£834.00	£189.00
Sole Child Only	£168.00	£462.00	£126.00
Co- Child Only	£230.00	£647	£126.00

*Examples*

- 4.17 A Child Only Sole Mediation that finishes in one session and results in Agreed Proposals being produced will attract a payment of £294. This is made up of a payment of £168 for the single session and a payment of £126 for the Agreed Proposals. Both parties are publicly funded.
- 4.18 An All Issues Sole Mediation by a service that lasts for seven sessions and results in Agreed Proposals being produced on the financial issues but not the children issues will attract a payment of £945. This is made up of a payment of £756 for the mediation itself and a payment of £189 for the Agreed Proposals. Both parties are publicly funded.
- 4.19 An All Issues Co-Mediation that lasts for 3 sessions and results in Agreed Proposals being produced on the children issues but not the financial issues will attract a payment of £1,190. This is made up of a payment of £1064 in respect of the mediation itself and a payment of £126 for the Agreed Proposals.

*The rates that the fees are based on*

- 4.20 The fixed fees are based on an average amount of time that we anticipate you will spend in providing the service. Of course, some cases will take longer than average and some will take less time. This is something that we will monitor and, if necessary, we may amend the fee structure.

**Table 3 Notional Hourly Rates and Average Times**

<b>Table 3</b>						
<b>Category of Work</b>	<b>Single Session</b>		<b>Multi Session</b>		<b>Agreed Proposals</b>	
	<b>Average Hours</b>	<b>Rate</b>	<b>Average Hours</b>	<b>Rate</b>	<b>Average Hours</b>	<b>Rate</b>
Sole All Issues Mediation	2	£84	9	£84	3	£84
Co- All Issues	2	£125/84	9	£125/84	3	£84

Mediation						
Sole Property & Finance	2	£84	7	£84	2.25	£84
Co- Property & Finance	2	£125/84	7	£125/84	2.25	£84
Sole Child Only	2	£84	5.5	£84	1.5	£84
Co- Child Only	2	£125/84	5.5	£125/84	1.5	£84

4.21 The notional hourly rate for Co-Mediations is not double the rate for Sole Mediations. This is because the rates include an amount towards your overheads or fixed costs (not merely the overheads or fixed costs of the individual Mediator) and case administration. Therefore, these elements of the rate are not doubled just because you deploy two Mediators. This approach is reflected in the fixed fees, where the fees for Co-Mediations are not double the fees for Sole Mediations.

### **Fixed Fees – Monitoring and Auditing**

#### *Possible effect of fee structure*

4.22 The fee structure for Contract Work is based on the results of research into mediation in operation. However fee structures themselves can create incentives with sometimes undesirable outcomes e.g. holding more than a Single Session per couple when it has become clear during that session that mediation was not feasible, holding Co-Mediations in preference to Sole Mediations and concluding Child Only mediations before Property and Finance Mediations instead of holding one All Issues Mediation.

4.23 We will monitor and audit mediation services with this in mind. If we consider that the fee structure is adversely affecting the service – either because it is leading to increased costs or because it is affecting the way in which services are provided, or the type of services provided - we may issue further guidance or may consult with Suppliers and the Consultative Bodies with a view to amending the fee structure under Clause 13 of the Contract Standard Terms.

- 4.24 We will also address this issue when assessing Contract Work for the purposes of payment. For example, if in assessing a Multi Session case, we consider that the matter should have been dealt with in a Single Session, we will disallow the unnecessary session or sessions. This will mean that only the amount specified as the session payment for a Single Session will be payable. Please see the section on assessments below.

*What we will we pay each month*

- 4.25 We will pay you on a monthly basis. The amount of your monthly payment will be based on our assessment of the amount that will be payable to you under the contract for the period to 31 March in each year. For example, if you began work on 1 April, we will set your monthly payment at one twelfth of our assessment of the amount that will be payable to you for the one year period to 31 March.

*Contract Work Report Forms*

- 4.26 To ensure that you receive each monthly payment, you must send us properly completed Contract Work Report Forms every month. These will normally be, or include, a Mediation Work Start Form (giving details of the matters you have started) and a Mediation Consolidated Work Report Form (giving details of your completed cases).
- 4.27 You must send these together so that we receive them within ten days of the end of each month. For example, you must send us your report forms for July so that we receive them by 10 August. If you fail to do so, the monthly payment that would have been triggered by the receipt of these documents will not be made and your monthly payments may be adjusted downwards. If you fail to do so on time that payment will be made late.

*Disbursements*

- 4.28 You may incur disbursements where:
- (a) it is in the best interests of the Client to do so;

- (b) it is reasonable for you to incur the disbursement for the purpose of progressing the mediation; and
  - (c) the amount of the disbursement is reasonable;
- 4.29 We may prescribe types of disbursements that may or may not be incurred in the provision of Family Mediation Contract Work.
- 4.30 The following disbursements may be incurred though, of course, they are not the only disbursements that you may incur:
  - (a) Interpreters' fees
  - (b) Valuers' fees – e.g. surveyors' valuation fees when the value of the property e.g. the matrimonial home is in dispute.
  - (c) Counsels fees (only in exceptional circumstances)
- 4.31 The following disbursements may not be incurred:
  - (a) Mediator or Client travelling expenses;
  - (b) The cost of room hire for outreach work;
  - (c) Costs of or expenses in relation to counseling, treatment, therapy, training or other interventions of an educative or rehabilitative nature unless authorised by the Lord Chancellor;
  - (d) Contact Centre fees; and
  - (d) Client expenses.
- 4.32 If you propose to incur a disbursement which does not appear in the above list then you must consider whether the disbursement is recoverable or not by reference to its purpose (that is, is it for the purpose of progressing Family Mediation) and the provisions at Paragraph 4.31 above.
- 4.33 You may not use the Family Mediation scheme where the only work to be undertaken by you is incurring the disbursement and passing the service provided (for example, a report) to the Client without the Client receiving Family Mediation in relation to the particular circumstances that have arisen.

- 4.34 You must aim to secure the best possible value for money when you have to incur a disbursement, just as you would if you were acting for a private client. For example, it may often be sensible to obtain three quotations for a piece of work and you will need to be clear why incurring the disbursement is necessary and what level of expertise is required.
- 4.35 You should include disbursements that you have incurred in your Mediation Contract Work Report Forms and, so long as they are allowed on assessment, we will pay them in addition to the fixed fees. We will include an allowance for disbursements in your monthly payments but may also specify a maximum amount that you may spend on disbursements in a Contract Year. If we do, you may not exceed this limit without prior authority from the Regional Office. There will be some disbursements on which you will not pay VAT; you should not charge us VAT on them

### **Location of Work**

- 4.36 Family Mediation must be provided from the office named in the Office Schedule unless it is:
- (a) provided via any Outreach Work service specifically authorised by a Schedule or other contract issued by us; or
  - (b) approved by us in writing in advance; or
  - (c) provided to a Client on an individual basis where the Client for good reason cannot attend a Schedule office and it is reasonable in the circumstances for you to accept instructions from that Client.

### **Outreach work**

- 4.37 You may perform Outreach Work without our prior authority as authorised by your Office Schedule, and in accordance with the terms set out in the Office Schedule.

## **5. Assessments**

- 5.1 You must comply with the provisions on claiming and Assessment in respect of Contract Work set out in the terms of this Contract, the Community Legal

(Financial) Regulations 2000, the Community Legal Service (Costs), the Community Legal Service (Cost Protection) Regulations and the Civil Procedure Rules.

### *Samples*

- 5.2 Although we may assess every case that you report, we will normally assess a sample of your cases, instead. This is to avoid the cost and delay to both you and us that would be caused by our assessing every individual case.
- 5.3 When we assess a sample of cases, we may apply any findings (that are not simply issues relating to an individual case) to other cases of a similar type. For example, if we assess ten single session cases concerning Sole and Co-Mediations, we may apply the findings to other such cases. If we assess a sample that is a complete mixture of cases, we may apply the findings to all cases - unless the findings relate only to a type of case, in which case we will apply them only to that type.
- 5.4 When we apply findings in this way, we may do so for all relevant cases reported in the 12 months preceding the date of the Assessment. If a sample reveals a change of practice at a point in time, we will apply the findings from that point. If a sample Assessment would lead to a payment reduction of no more than 5%, we will make no sample reduction but we may individually assess (and reduce) any individual cases in the sample if the reduction to them would be 10% or more.
- 5.5 If, through carrying out an Assessment, we consider that the contract payment structure is undesirably affecting the way a Supplier performs Contract Work, we may amend it and the rates payable – though we expect to do so rarely, if ever, because in these circumstances, termination of the contract may be more likely to be appropriate. For example, if a Supplier commonly completes categories of work in less than the average time, we will consider whether this is because they operate more effectively than average. If so, there will be no change. However, if for example, the results they secure are less good than might be expected, we may make a change. Similarly, for example, if (compared to other Suppliers) a Supplier reports very few Single

Sessions but several Incomplete Outcome cases with two or more short attendances, we may make a change.

- 5.6 If we do wish to amend a Supplier's future payment structure, our aim (unless there has been a breach of contract) will not be to penalise the Supplier by the amendment but simply to ensure that, in future, we make appropriate payment for the work that will be done. Before making any amendment, we will discuss the matter with the Supplier with the aim, if possible, of agreeing an amendment.

*General provisions on claiming and assessment*

- 5.7 You may only claim for work that has been actually and reasonably done and disbursements actually and reasonably incurred in accordance with the provisions of the Contract and that is supported by appropriate evidence on the file at the time of the Claim and Assessment.

- 5.8 You should note the following provisions regarding costs and disbursements:

- (a) you may not claim for time spent on purely administrative matters (such as opening and setting up files, the maintenance of time/costing records) or in meeting the administrative requirements of your contract (such as the information return and the claim for costs), unless expressly provided by this Contract;
- (b) you may not claim for any additional costs incurred by you or your Client because you are based in a location distant from your Client where it would have been reasonable for your Client to have instructed a Supplier based nearer to him or her;
- (c) You may not claim for matters that properly fall as your overheads, such as internal communications, typing, administration and equipment costs, stationary, postage and courier charges, telephone charges and the time and costs of photocopying, save as provided for in Guidance.

- 5.9 We may specify maximum rates for experts' fees under Clause 19.2 of the Standard Terms, by reference to type of expert and activity (such as reports, attending conferences or court hearings). Where we have done so, experts' fees incurred by you in relation to any Contract Work will not exceed these maximum rates, unless prior authority has been granted to exceed the limit in the particular case. Subject to any such limits, the amounts claimed for experts' fees must be justified on detailed Assessment in the normal way.
- 5.10 Any assessment undertaken by us, whether by the Director or by the Assessor or Costs Appeals Committee on a subsequent appeal, will be subject to any costs or other limitations imposed by us and costs will only be allowed at the appropriate rate as set out in the Payment Annex to this Specification.
- 5.11 When we assess a sample of your Contract Work claims, we may apply any findings to your other claims for Contract Work. When we apply findings in this way, we may do so for all cases commenced under this Contract (or any previous contract it has replaced) where costs have been claimed from us either:
- (a) *Since the date the file sample was requested for the last contract compliance audit; or*
  - (b) *From a date 12 months immediately preceding the date the file sample was requested for assessment on the current audit,*
- whichever is the most recent.
- 5.12 Findings' for the purposes of Paragraph 5.11 above includes not only findings on particular practices (such as failing to assess financial eligibility) but in relation to more general matters, such as claiming excessive time for preparation or attendances or the average percentage reduction on assessment of a sample of your files.
- 5.13 When findings are applied to a claim under these provisions, then we have assessed that claim.

*Provisions on appealing from our assessment decisions*

- 5.14 If you are dissatisfied with any decision of the Director as to the Assessment of the costs of Contract Work, you may appeal to an Independent Costs Assessor (“the Assessor”). For the avoidance of doubt, subsequent references in this rule and its related guidance and in the following rules and related Guidance to “Assessor” shall include “Assessors” in cases where an appeal is dealt with by a panel of three Assessors rather than a single Assessor alone.
- 5.15 The appeal must be made in writing (setting out full reasons) within 28 days of notification of the Assessment decision, and must be accompanied by the file. The Director will only extend the 28-day time limit where you have requested an extension for good reason within 21 days. Any extension of the time limit will be for a maximum further 14 days.
- 5.16 Failure to comply with any of the requirements set out in Paragraph 5.15 above means that you accept the decision of the Director and lose your right to dispute it.
- 5.17 Where an appeal is to proceed the Director also has the right to make written representations (in addition to those contained in the original assessment) to the Assessor. If he does so, these will be sent to you not less than 21 days before the appeal papers are sent to the Assessor. If you receive such further representations from the Director then you have the right, within 14 days, to provide a written response to them.
- 5.18 The appeal shall be dealt with by the Assessor on the papers only. There is no general right for either party to attend or to be represented on the appeal. However, if either party considers that there are exceptional circumstances which mean that concerns or issues cannot be addressed in writing, they may make a written request (setting out full reasons) for an oral hearing, to the Assessor. Such an application must be made at the same time as:
- (a) in your case, you submit your written appeal; and
  - (b) in the case of the Director, at the same time as he or she makes any written reply (or, where no written reply is made, during the period allowed for making such reply) .

5.19 The Assessor will consider the request and notify both parties of his or her decision.

5.20 If:

(a) neither party has made a request for an oral hearing but the Assessor believes that his or her review of some or all of the issues under the appeal cannot be concluded properly without hearing oral submissions; or

(b) having considered a party's request for an oral hearing, s/he is of the opinion that the request should be granted

he or she will notify the parties of this. If either party chooses to attend at an oral hearing, having been given permission from the Assessor, the other party will also have a right of attendance and representation at the appeal and shall confirm whether or not they intend to exercise that right.

5.21 In any case, whether or not a party has made a request for an oral hearing, if the Assessor is of the opinion that an appeal is of such complexity and / or value that it should not be considered by a single Assessor alone s/he may, in his or her sole discretion, refer the appeal to a panel of three Assessors either to deal with on the papers only or by way of an oral hearing. If the Assessor is of the opinion that the appeal should be dealt with by way of an oral hearing, the provisions set out in the preceding Paragraph apply save that a panel of three Assessors shall deal with the appeal rather than a single Assessor alone.

5.22 For the avoidance of doubt, the Assessor may give procedural directions as to the determination of the appeal whether the appeal is to be dealt with on the papers only or on an oral hearing basis.

5.23 On appeal, the Assessor shall review the Assessment whether by confirming, increasing or decreasing the amount assessed. The Assessor may apply his or her findings generally across files outside the sample before him or her under the terms of Paragraph 5.11 However, no such decision shall apply to any completed Assessments that you have not appealed within the time limit.

5.24 Where in dealing with an appeal on the papers only the Assessor identifies new issues (i.e. issues which have not been raised by either party under the appeal) the Assessor will, as s/he considers appropriate in the circumstances, either:

- (a) adjourn the appeal and seek representations from the parties before making his final decision; or
- (b) remit the matter back to the Director for a new decision.

*Points of Principle of General Importance*

5.25 At any point after the submission of an appeal to the Assessor, but no later than 21 days after receipt of the Assessor's final decision, either you, the Director or the Assessor may seek certification of a Point of Principle of General Importance.

5.26 An application for certification of a Point (or Points) of Principle of General Importance must be made as follows:

- (a) in your case, by sending your application to the Director and, if one has already been appointed and their identity notified to you, to the Assessor. The Director will, within seven days of receipt of your application, forward that application to the LSC's Legal Director and, if an Assessor has been appointed but their identity not notified to you, to the Assessor also; and
- (b) in the case of the Director, by sending an application directly to the LSC's Legal Director and copying that application to you and to the Assessor (if appointed);
- (c) in the case of the Assessor, by sending the application to the Director. The Director will, within seven days of receipt, send the application to the LSC's Legal Director and notify you that the Assessor is seeking certification of a Point of Principle of General Importance.

- 5.27 All applications for certification of Points of Principle of General Importance, whether made by you, the Director or the Assessor, must set out the exact wording of the Point of Principle of General Importance being sought and explain, in detail, the basis of the application.
- 5.28 Upon receipt of an application for certification of a Point of Principle of General Importance our Legal Director will decide whether the matter should progress to the Costs Appeals Committee. If our Legal Director decides that the matter should not progress to the Costs Appeals Committee for certification then she will send her reasons for refusal to the Chair of the Costs Appeals Committee for approval and, if approved, to you, the Director and, where appropriate, the Assessor.
- 5.29 If our Legal Director or the Chair of the Costs Appeals Committee consider that the matter should proceed for certification to the Costs Appeals Committee then the matter will be listed for consideration by that Committee.
- 5.30 Applications for certification of Points of Principle of General Importance are, unless permission to attend is granted by the Chair of the Costs Appeals Committee, considered by that Committee on the papers only.
- 5.31 On considering an application under this rule, the Costs Appeals Committee will either:
- (a) decide whether to certify the Point of Principle of General Importance sought and / or, where appropriate, amend any of the Assessments of the Assessor to give effect to this determination, or refer the matter back to the Assessor for him to do so; or
  - (b) determine that there is no Point of Principle of General Importance raised by the application before it and refuse the application accordingly.
- 5.32 You, the Director and, where appropriate, the Assessor will be notified of the decision of our Legal Director and / or the Costs Appeals Committee.

## **6 The Quality Mark Standard for Mediation and Code of Practice**

### *Quality Mark Standard for Mediation*

- 6.1 The Quality Mark Standard for Mediation is our quality assurance standard, which applies to you unless we agree otherwise.
- 6.2 The Quality Mark Standard for Mediation sets requirements with which you must demonstrate compliance before we will issue a Quality Mark Standard for Mediation certificate with which you must continue to comply, and demonstrate compliance as required by this Contract.

### *Our Code of Practice*

- 6.3 You must comply with the Code of Practice of a Regulatory Body approved by the Legal Services Commission.

## **7 Information for statistical purposes**

- 7.1 We may wish to collect information for statistical purposes and you must provide this information on request. Set out below is a list of information that could be required.

- Costs
- Time taken to complete cases
- Number of cases referred
- Source of referrals
- Number of mediations and outcomes
- Number of clients assessed for suitability and eligibility
- Marital status of Client
- Type of mediation conducted (e.g. child only)
- Issues mediated (e.g. childcare arrangements)
- Mediation model used (e.g. sole, anchor, co-mediation, shuttle)

- Number of sessions per case
- Number of sessions per mediator
- Number of cases being referred from and to solicitors
- Participation of others in mediation
- Number of mediations where there is a history of domestic violence.

## **Annex A**

### **Definitions in the Specification**

“Agreed Proposals on the Issues” means that the parties reach agreement on the issues in dispute and a written Mediation Summary is produced reflecting this agreement.

“Agreed Proposals on Some Issues” will apply only to All Issues Mediation cases where the parties reach agreement on some but not all of the issues in dispute at the start of the mediation i.e. agreement reached on children issues but not financial issues. A written Mediation Summary must be produced reflecting this agreement.

“Assessment Meeting” has the meaning given in the Funding Code. A Joint Assessment Meeting means that all parties to the mediation attend the Assessment Meeting at the same time. A Separate Assessment Meeting means that only one party attends the Assessment Meeting at any time.

“Case Administration” includes but is not limited to case preparation, the drafting of file notes, and the preparation of interim summaries

“Category of Work” means work that may be provided under the contract within a category specified by us in the Specification.

“Code of Practice” means the code of practice specified in the Specification.

“Consultative Body” means the Family Mediations Counsel (including The Law Society, National Family Mediation, Family Mediation Association, Resolution and such other body as we may recognise as such from time to time.

“Co-Mediation” means mediation with two mediators for all or part of the mediation. Any decision to use a co-mediator will need to be justified on the file including, where appropriate, reasons as to the complexity, legal, psychological or otherwise of the case, a risk assessment for the participants and/or mediator, any reasons as to the requirement of specialist and/or expert skills and any management issues for the mediation. No special application will need to be made to the Regional Office in this regard.

“Co-Mediation All Issues” means mediation with two mediators for all or part of the mediation where all issues pertinent to the legal, financial and emotional aspects of separation or divorce are considered in the mediation. (This may include arrangements for divorce, the division of family assets and other financial arrangements, property and pensions and any arrangements to be made for the child/ren of the family).

“Co-Mediation Child Only” means mediation with two mediators for all or part of the mediation where all issues pertinent to any arrangements for the child/ren of a family, including extended family, are considered in the mediation (this does not include aspects relating to family assets, property and pensions other than arrangements for child support).

“Co-Mediation Property & Finance” means mediation with all two mediators for all or part of the mediation where all the issues pertinent to the financial aspects of separation or divorce are considered in the mediation.

“Family Mediation” has the meaning given in the Funding Code.

“Funding Code” means the code under Clause 9 of the Act.

“Mediation Quality Mark” means our quality assurance standard.

“Mediation Summary” which may also be termed the Memorandum of Understanding means the recorded details of the proposals agreed in the mediation process in all or some of the areas identified at the start of the mediation. This may, where appropriate, include an Open Financial Summary. The Mediation Summary should be in a form approved by a Consultative Body from time to time. In order to attract the additional payment for drafting the Mediation Summary it must be evidenced, by the mediator signing on the Summary or elsewhere on the file, that the Mediation Summary is an accurate reflection of the proposals agreed by both parties at the end of the mediation process.

“Mediator” means a family mediator recognised as such by us in a Category of Work (and such a Mediator is a “recognised mediator” or “mediator” for the purposes of the Funding Code)

“Multi Session” is a case where mediation proceeds beyond the initial session irrespective of outcome. (See Table 2).

“Pre Quality Mark Audit” means an audit by us, and designated as such by us, of a Provisionally Quality Marked Office.

“Provisionally Quality Marked Office” means an office, which has applied for (but has not granted) approval of the office as a Quality Marked Office.

“Provisionally Quality Marked Office Contract” means a Contract designated as such by us.

“Quality Mark Standard for Mediation” means our quality assurance standard.

“Single session” means that a mediation does not proceed beyond one session, either because the mediation has broken down or because the issues in dispute have been resolved in one session.

“Sole Mediation All Issues” means mediation with one mediator where all issues pertinent to the legal, financial and emotional aspects of separation or divorce are considered in the mediation. (This may include arrangements for divorce, the division of family assets and other financial arrangements, property and pensions and any arrangements to be made for the child/ren of the family.)

“Sole Mediation Child Only” means mediation with one mediator where all issues pertinent to any arrangements for the child/ren of a family, including extended family, are considered in the mediation (this does not include aspects relating to family assets, property and pensions other than arrangements for child support).

“Sole Mediation Property & Finance” means mediation with one mediator where all the issues pertinent to the financial aspects of separation or divorce are considered in the mediation.

“Willingness Test” means the test described as such in the Funding Code.