Engaging both parties in mediation within a changing funding climate

Perspectives from Relate’s mediation staff

Dylan Kneale, Chris Sherwood, Patrick Sholl and Janet Walker
About this report

This report summarises information collected from mediation staff at the front line of delivering mediation. Here staff describe the challenges of engaging with both partners, and situate these experiences against the backdrop of changes in legal aid funding.

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Executive Summary

Dispute resolution services hold advantages over the traditional adversarial legal process in private family law cases and can help bring about a quicker, less expensive, and longer-lasting resolution with many long-term benefits for the parties, their children, and other family members. Family mediation is one such service and the focus of this report.

The Coalition Government has outlined its commitment to dispute resolution services, specifically mediation, in its Dispute Resolution Commitment and Social Justice strategy. However, other changes, including the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), are negatively impacting on mediation take-up. The Children and Families Bill, currently progressing through Parliament, will make it compulsory for the applicant in family law proceedings to attend a Mediation Information and Assessment Meeting (MIAM) although the impact of this on mediation take-up is uncertain.

Engaging both parties in mediation is a challenge for a number of reasons. This scoping report uses preliminary research undertaken with Relate Centres which provide mediation and addresses questions about engaging both parties; the impact of policy and legal changes; the strategies mediation staff employ to engage both parties; and recommendations for change to further encourage both parties to engage in MIAMs and mediation.

Our findings are primarily informed by a focus group in which mediation service managers, some of whom were directly delivering MIAMs and mediation themselves, and group interviews with Relate mediators and mediation administrators. We also present analysis of management data on the number of mediation and MIAM referrals and starts. We caveat these findings as emergent evidence that would benefit from more in-depth research into the findings presented here.
Summary of results

1. There has been a substantial decline in the number of clients accessing MIAMs since the introduction of changes to legal aid funding. There have been large declines in separating and separated couples accessing publically funded mediation. These declines are likely to represent growing unmet need for support for separating couples.

2. MIAM and mediation clients are increasingly self-referring into services rather than being signposted by family law professionals or from other routes. Mediation staff report that those who are self-referring are more likely to be engaged in mediation because they have elected to take part.

3. There is evidence of a growing diversity of mediation providers, raising concerns about how service users can know how to choose the service that best meets their needs.

4. Some mediation service managers and mediators report that couples with more complex needs are now accessing mediation.

5. Mediation staff place high value on the MIAM to assess whether mediation is a suitable option, and would like to see MIAMs made mandatory for both parties. Unfortunately no one has yet found a solution to the issue of making MIAMs compulsory for both parties before court proceedings start. This is because there are no process levers by which a passive and prospective respondent party can be compelled to attend. If an application to court is made, the court will have powers to direct a respondent party to attend a MIAM and can adjourn proceedings to facilitate that. This will send a message to respondents that if they do not attend a MIAM pre-proceedings they are very likely to have to attend one at the outset of proceedings. But for this to work it is critical that the judiciary operate the pre-application protocol and reinforce this expectation. It is essential that this protocol is followed in all courts with family jurisdiction.

6. Mediation staff report that people who are accessing services arrive with low awareness that legal aid funding remains available for mediation for those that are eligible. Similar issues of awareness exist in relation to Legal Aid Agency funding of MIAMs for both parties where one is entitled to legal aid.

7. People attending a MIAM arrive with low levels of knowledge of their options or what the MIAM might achieve. The information available in the public domain is fragmented and not always impartial. More work needs to be done to both coordinate public information and raise awareness of what is available.

8. Mediation is a platform for innovation – both in terms of the method of delivery and in the recruitment of service users.

9. Mediators and mediation service managers in Relate would like to see greater coordination between different dispute resolution processes and a couple-centred approach that provides a ‘wrap-around’ service for couples facing separation or divorce.

10. Mediation staff are keen to initiate dialogue about ways of overcoming the apparent disconnect between the stance taken by lawyers, whose role is to represent each party’s individual needs, and mediators who emphasise the importance of the couple reaching agreements that meet the needs of both
parties and their children. There is a need to find a way of ensuring that mediated agreements can be taken seriously and have an element of authority, albeit that the courts in most family matters retain the discretion to decide different arrangements. While mediators appreciate that the court is unlikely to disturb an agreement that is consistent with English law principles, and made with legal advice where appropriate, and that the discretion to amend it is there, it is frustrating for couples if their lawyers seek to undermine or unpick mediated agreements after the mediation process has concluded.

11. Promoting mediation as (i) a way to keep decision-making within the couple, and (ii) as an opportunity to have the views of both parties heard and considered, are two of the main strategies mediators used to attract both parties to mediation.

Recommendations

The recommendations of this report are as follows:

1. In order to realise the opportunities inherent in the current family justice reforms which promote family mediation as a key dispute resolution service there needs to be:

   • A comprehensive, coherent platform for explaining to both parties the potential benefits of mediation, the different approaches available and their costs – via information hubs, court services and, specifically, MIAMs.
   
   • Clear, unambiguous information about the availability of legal aid for MIAMs, mediation and legal advice in support of mediation for those eligible for public funding.
   
   • An exploration of the ways in which mediators and solicitors can work more closely together to ensure that mediated agreements are not likely to be unpicked and can be considered in court. This could involve mediators adopting a standardised form of draft “order”, which is of a high standard and does not result in judges or legal advisors having additional work to do when the matter comes to court (mediators recognise that courts would likely still want people entering into financial agreements to have sought legal advice).
   
   • A coordinated, effective and efficient structure through which all mediators are trained and accredited and mediation is delivered, supervised and managed to ensure high quality and consistent standards in training and practice. This is vital to ensure that mediation services offer a high quality service to the public.
   
   • Better coordination between agencies offering interventions that support strong couple relationships and those providing dispute resolution services to ensure cross referral and the delivery of readily accessible wrap-around services for all families, both during and beyond separation and divorce. Although public funding may not be available for many of these services, it is possible that many people will welcome a range of support being on offer.
2. To encourage greater use of dispute resolution services, particularly mediation, attendance at a MIAM should ideally be mandatory or at least strongly encouraged for both parties when there are issues in dispute, especially if those issues include arrangements for children. The decision to participate in mediation, however, should remain voluntary. Attendance at a MIAM and consideration of mediation should take place as early as possible in the process.

3. To encourage innovative approaches to delivering mediation and to expand the market for family mediation, an innovation fund should be launched. Innovation funds are a good way to surface and test new innovations, but are not a sustainable way to ensure continued provision of services. The fund should encourage the development of wrap-around services for all couples and families before, during and beyond separation and divorce. It should also be used to increase the level of innovation in the sector. The fund could be modelled on similar funds delivered by the Department for Work and Pensions offering funds linked to delivery of outcomes. Part of the savings to the legal aid bill following the implementation of LASPO or the current underspend in the mediation budget could be used to fund this.

4. To encourage demand for family mediation and reduce stigma around accessing support both during and beyond separation and divorce, an investment in promotion and culture change activity should be made. This activity should look to disseminate good quality information about family mediation and how it can be accessed. It should also explain the continued availability of legal aid funding to cover the cost of mediation for those eligible.

5. To ensure that mediation is offered appropriately, further research and monitoring should be undertaken to:
   a. Develop consistent safeguarding procedures and protocols for use in all dispute resolution services. Relate has looked carefully at the DOORS initiative being rolled out in Australia, which has been fully evaluated and validated, and we welcome the piloting of this by the Tavistock Centre for Couple Relationships.
   b. Promote the adoption of an evidence-based tool that can be used by all family law professionals to enable consistency in screening for domestic violence and abuse and signposting to appropriate support services.
   c. Understand how to better engage under-represented groups including those on low incomes, same sex couples and couples from the black and minority ethnic community.
   d. Understand and address the training and supervisory needs of mediators working with high conflict and complex cases.
Introduction

Dispute resolution services provide a route to separation and divorce through which conflict between parties is minimised through a cooperative process with the aid of a neutral third party. Pragmatically, these services, of which mediation is one of a range of different types (see Appendix A), allow parties to resolve disputes outside the court system, theoretically relieving courts from dealing with cases where judicial decision-making is unnecessary. These services enable greater involvement of conflicting parties in the decision-making process in resolving their disputes. They are also an important mechanism for extending choice for parties in conflict to resolve disputes through more expeditious and often cheaper means, without necessarily involving lawyers and the courts. While the remit of this report is limited to one form of alternative dispute resolution service (mediation), it is hoped that it can inform a broader investigation of issues around mediation and other alternative dispute resolution services.

Why dispute resolution matters

An ever-expanding evidence base finds that where relationships are of poor quality and characterised by high levels of conflict, they are detrimental for adults across a range of domains including physical and mental health (Meier, 2013). Living with unresolved or sustained conflict is also damaging for children – parental conflict is identified as a key variable associated with a range of negative outcomes among children living in both intact and separated families (Mooney, Oliver, & Smith, 2009). It is therefore important to recognise that as much as there is a need for relationship support to improve relationship quality and resolve conflict to enable couples to stay together, support is also needed for separating couples to achieve a healthy separation without enduring hostility. For families with dependent children in particular, mediation can be beneficial through bringing resolution to unhappy and conflictual family situations (Booth and Amato, 2001; Jekielek, 1998).

Family and couple conflict takes a range of forms across a continuum of ‘silence to violence’ (Harold and Leve, 2012), and conflict and family disputes can often be intertwined with a number of other problems including anger, violence, abuse, and drug and alcohol dependency (Family Justice Council, 2011). Attempting to resolve all forms of dispute through arm’s length negotiation via partisan lawyers or via the court process, can be both an unnecessarily costly process and also escalate conflict (Walker, 2010). Traditionally the majority of disputes between separating couples have been dealt with via solicitors or by parties attempting to manage the process on their own. While relatively few disputes end up in court, family law processes have remained primarily adversarial, although, increasingly, alternative methods of dispute resolution have been gaining recognition. These services are now referred to as ‘dispute resolution services’ and they attempt to resolve disputes as an alternative to using the judicial process (see Appendix A).

In this report, we focus on mediation and the factors that facilitate the participation of both parties in mediation. We aim to scope out some of these issues within the climate of recent changes in the policy and legal landscapes. It is hoped that the findings presented here can be used as a springboard for undertaking further research, both into mediation as well as other dispute resolution services. Because of the preliminary nature of the research undertaken, the findings should not be taken as conclusive in of themselves.

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1 Previously and internationally referred to as ‘alternative dispute resolution’ services
Describing mediation

There is no standard international definition of family mediation: ‘Family mediation is a shorthand term for a varied and somewhat fragmented approach to dispute resolution’ (Walker, 2010, p676). However, in practice, mediation in the UK can be broadly defined as: ‘a process in which an impartial third person, the mediator, assists those involved in family breakdown to make arrangements to plan for or following a separation or divorce. The process is managed by the mediator but the content is decided by the couple’ (ADR Group, 2013). Nevertheless, mediation is offered by a number of different professionals from a variety of disciplines using a range of models and working in the private, statutory and voluntary sectors.

The scope of family mediation includes disputes relating to contact arrangements, residence and parental responsibility, child maintenance, property, and finance (Legal Aid Agency, 2013). Mediation requires the involvement of both parties, though it is possible for parties to mediate without being in the same room (known as ‘shuttle mediation’).

A Mediation Information and Assessment Meeting (MIAM) is often the first step to mediation. MIAMs are designed to provide information about mediation and help parties (and mediators) determine the suitability for and willingness to undertake mediation. The MIAMs will also determine whether parties are eligible for legal aid, and also include a domestic violence screening. MIAMs also provide an opportunity for parties to review the advantages of mediation compared to other processes for settling disputes and making arrangements for the future. Clients may attend a MIAM together or separately.

In the UK, mediation uptake increased in recent years, with the number of legally aided clients attending a MIAM increasing by 38 per cent and the number attending mediation by 16 per cent between 2007/8 and 2011/12, decreasing slightly between 2011/12 and 2012/13 (Ministry of Justice, 2013). However, since the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) in April 2013, there is evidence that this trend is reversing, with substantial declines reported (Bowcott 2013).

This decline is concerning, particularly as mediation has been found to be a helpful and beneficial option for many couples, with two thirds of legally aided mediation starts between 2007/8 and 2012/13 reaching agreements (Ministry of Justice, 2013). A number of research studies have documented the benefits couples achieve via mediation and a Randomised Control Trail (RCT) study in the USA has found long-term benefits in respect of the relationships between parents and their children and in the overall adjustments in post-divorce parenting that minimise the potentially detrimental consequences for children (Emery et al, 2001).

Results from a survey of mediation clients at a Relate Centre are in accord with findings from other research, where 60 per cent of a survey of 203 clients said that the mediator helped them find an agreement on the main issues (Relate North East London, 2013). Moreover, research elsewhere has shown that when mediation has helped couples reach agreement on residence issues (child custody), levels of parental conflict have been lower, parental communication
and cooperation has been greater, and parental involvement has been higher several years afterwards, than it has for couples using adversarial approaches. Mediated couples have also been more likely to take a cooperative approach to parenting (Mooney, Oliver, & Smith, 2009; Walker, 2010).

Despite its efficacy, mediation is still an underutilised option. A recent e-survey of 710 people who had separated or were planning to separate found that only 14 per cent of those who had separated and seven per cent of those planning to separate had talked to a mediator (Walker et al., 2010). While it is important to note that ‘mediation is not and never will be a panacea for all of the cases that enter the family justice system’ (Walker, 2013: p.10), there is reason to believe that increasing uptake could benefit substantial numbers of couples who may currently use other forms of intervention, or who may have unresolved disputes.

**Significant changes: the wider policy and legal context**

The potential benefits but low uptake of mediation has led to various policy responses. The Ministry of Justice (MoJ) and the Attorney General’s Office formed the Dispute Resolution Commitment in 2011 with the aim to ‘encourage the increased use of flexible, creative and constructive approaches to dispute resolution’ (Ministry of Justice, 2011: p.1), and a focus on using the most cost-effective methods in terms of time and financial resources. This positive narrative around mediation continues in the Department for Work and Pensions’ (DWP) Social Justice: transforming lives strategy, where, in a progress report published a year after the strategy’s launch, there was a reiterated pledge to invest an expected £10 million to pay for 10,000 family mediations (HM Government, 2013). We understand that the budget for mediation is uncapped so if there is demand for the service then legal aid will fund it, even if this were more than £10 million.

While this direction of travel appears positive for increasing the accessibility of mediation, some of this investment may be undermined by the implementation of changes to funding, heralded by the implementation of LASPO. Moreover, while the Children and Families Bill 2013 may strengthen the role of mediation, it can do little to resolve a range of barriers to increased uptake since only one party will be obliged to attend a MIAM pre-proceedings. We hope that there will be encouragement from all professionals for both parties to do so voluntarily.

**Legal Aid, Sentencing and Punishment of Offenders Act 2012**

The LASPO included significant changes to legal aid, with respect to what can be funded and the thresholds for financial eligibility. Most private family law processes will be funded by legal aid only if there is ‘trigger evidence’ that demonstrates that either the applicant has been a victim of or is at risk of domestic violence, or a child who is the subject of the order is at risk of abuse from someone other than the applicant (National Family Mediation, 2013).

Mediation provided in relation to family disputes remains in scope for funding through legal aid, subject to other eligibility criteria (Legal Aid Sentencing and Punishment of Offenders Act 2012). As well as paying for the mediation, legal aid funding will also provide up to £150 to pay for solicitors to provide specialist legal advice to support mediation, and £200 is available to pay for a solicitor to draft the legally-binding Consent Order (the latter can be informed by the documents produced as part of the mediation process, which are not themselves legally binding; see Legal Aid Agency, 2013).
This contrasts with the situation pre-LASPO where parties could claim legal aid for instructing a solicitor and going through the court process, provided they were financially eligible and passed the relevant means and merits tests including a consideration of mediation (Ministry of Justice 2013). Historically, the most common route into mediation was through a referral from a solicitor, as consideration of mediation was compulsory in many circumstances before legal aid was granted for court proceedings. The introduction of MIAMs meant that most people who accessed mediation did so after attending a MIAM.

Change in financial eligibility

The LASPO has meant that means-testing is more stringent and fewer people will qualify for legal aid. Means testing involves (i) a gross income test, (ii) a disposable income test and (iii) a disposable capital test - applicants are required to pass all three tests (see Appendix B for the amounts required to qualify). The LASPO introduced three significant changes to the means-testing system. First, while previously those entitled to means-tested benefits were automatically financially eligible for legal aid, since the LASPO those on benefits pass only the income tests but are still assessed under the disposable capital test. Second, if the capital is being disputed, for example because it is in the shared family home, then a maximum of £100,000 is disregarded in the calculation for legal aid. Previously there was no maximum value and this change means that more people may now be financially ineligible for legal aid. Third, amongst those with a high enough income to have to contribute towards their costs, the proportion of disposable income that must be contributed has been increased. Mediation is non-contributory.

MIAMs: an expectation to attend and changes in the Children and Families Bill 2013

The second piece of legislation that impacts on MIAMs and mediation is the Children and Families Bill, which will make MIAMs compulsory rather than being an expectation for the party applying for a court order. The current expectation to attend a MIAM has been subject to large variations in interpretation (Walker, 2013), hence the step to make it mandatory. It is important to note, however, that the Children and Families Bill will only make it compulsory for the person applying to the court to attend a MIAM (the applicant), not the responding party. Determining how to ensure that both parties attend a MIAM, and therefore consider mediation, remains a key objective for family law professionals (Walker, 2013).

The challenge of engaging both parties in mediation

Research highlights a number of barriers that prevent people from using dispute resolution services such as mediation, including a lack of trust between the parties or a lack of understanding or belief that mediation can support couples in dispute to find a solution (Stark & Birmingham, 2001). Emotions such as pride or anger can have a similar effect (Carnevale & Pruitt, 1992). As long ago as 1989, Pearson and Thoennes highlighted that often one party was willing to try mediation but the other was not. This has been a consistent barrier ever since. Given the necessity for both parties to cooperate, attempts to increase the take-up of mediation services need to take account of the resistance of one party to mediate - the 'psychological gap' as one mediator we spoke to described it.

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2 The Interests of Justice test determines whether an applicant is entitled to legal aid based on the merits of the case.

3 The amount of disposable capital you can have to qualify for means-tested benefits is £16,000, whereas the threshold for legal aid is half of this at £8,000.
The inability or unwillingness of one or both parties to engage in mediation has led to repeated debate as to whether mediation should become mandatory for both parties. Mandatory mediation could appear to conflict with one of the guiding principles of mediation: that mediation should be entered into voluntarily (Walker, 2010). Nevertheless, it has been demonstrated that persuading both parties to seriously consider mediation leads to a significant increase in their likelihood of participating (Walker, 2010). Since MIAMs do not require both parties to participate together, thus addressing concerns relating to domestic violence or power imbalances between parties (Tishler et al, 2004), there is considerable agreement among family law professionals that attending a MIAM should be a step that both parties have to undertake when there are issues in dispute.

Research questions and methodology

Given the persistent challenge of attracting both parties to mediation, and the recent changes in funding regimes, this is an opportune moment to scope the challenges mediators face in delivering their service. Our research questions included:

• To what extent is getting both partners to engage in (i) MIAMs, and (ii) mediation a challenge for mediation staff?

• Have mediation staff witnessed a change in the scale and nature of these challenges (above) since the implementation of the LASPO?

• Which strategies do mediation staff use currently to encourage the participation of both partners in (i) MIAMs, and (ii) mediation?

• What could be changed within the current processes to encourage both parties to actively engage in both MIAMs and mediation?

Our findings are primarily informed by a focus group with mediation service managers in Relate, some of whom were experienced in directly delivering MIAMs and mediation themselves. The focus group included eight mediation staff and was held at Relate’s London office in August 2013.

All Relate Centres running mediation services were invited to participate and send at least one representative to the focus group. Participants were given details of the theme for the group, which was explained in advance as exploring the challenges and successful strategies used for facilitating the participation of both partners in mediation. Supplementary group interviews were held with a Relate mediation service manager and two mediation administrators in North Wales and two mediators in North East London in order to better understand the context in which mediation was delivered in two of the five Centres and to capture a greater balance of views. The same discussion guide was used for the focus group and the group interviews. Our findings present the experiences of mediation staff in Relate, both those administering the service and those delivering it.

The discussion guide was designed to elicit responses about the challenges of getting both partners to participate in mediation and how this had changed against the funding landscape. The content of the focus group and interviews were transcribed and summarily analysed using WEFT-QDA (freeware) data management/analysis software to allow us to better understand and structure the predominant themes emerging. These emergent themes are outlined in the remainder of the report and illustrated using direct extracts from the research participants to illustrate the main themes emerging from the data.

4 Six Centres sent representatives, although one of these services was newly established was therefore not able to provide management data. As of January 2014, nine Relate Centres deliver mediation, with four of these established in the past two years.
Our findings should be treated with an element of caution as they are based on limited empirical research with Relate mediation staff. Our task was to gain a snapshot of the current state of play with respect to mediation in Relate Centres and to learn about the challenges being faced and strategies being used to encourage both parties to attend mediation. As such, the research should be treated as a scoping exercise, providing themes for further study in the future.

In addition to our qualitative work, we asked Relate Centres delivering mediation services to send us management data on the services they provide. The data was drawn from Relate Centres that deliver mediation who have two years' worth of reliable data. Representatives from all of these Centres were also included in the qualitative component. Two of these Centres are based in London, one is based in the South East of England, one in the South West, and one in North Wales.

Results

Summary of results

1. There has been a substantial decline in the number of clients accessing MIAMs and mediation since the implementation of the LASPO; declines in couples accessing publically funded mediation were particularly notable. These downward trajectories likely represent growing unmet need for support for separating couples.

2. MIAM and mediation clients are increasingly self-referring into services rather than being signposted by family law professionals or via other routes. Mediation staff report that those who are self-referring are more likely to be engaged in mediation because they have elected to take part.

3. There is evidence of a growing diversity of mediation providers, raising concerns about how service users can know how to choose the service that best meets their needs.

4. Some mediation staff report that couples with more complex needs are now accessing mediation.

5. Mediation staff would like to see MIAMs made mandatory for both parties, recognising that this is currently not possible.

6. Mediation staff report that people who are accessing services arrive with low awareness that legal aid funding remains available for mediation.

7. Information on mediation can be fragmented and is not always impartial.

8. Mediation is a platform for innovation - both in terms of the method of delivery and in the recruitment of service users.

9. Mediation staff would like to see greater cooperation between family law agencies and a greater couple-centred approach that provides a ‘wrap-around’ service.

10. Mediation staff are keen to initiate dialogue about ways of overcoming the apparent disconnect between partisan lawyers representing individual needs and mediators representing the needs of the couple and their family.

11. Promoting mediation as (i) a way to keep decision-making within the couple, and (ii) as an opportunity to have the views of both parties heard and considered are two of the main strategies mediators used to attract both parties to mediation.
1. MIAMs: An essential ingredient of mediation and a market of the quality of mediators

MIAMs are an established first step used across different Relate Centres to better understand a client’s needs, establish rapport, ascertain financial eligibility and help the client understand if mediation is suitable for them. While mediation (at Relate) may be offered at a variable cost dependent on the client’s finances, the initial MIAM meeting is offered with a fixed cost.

MIAMs are not mandatory for Relate’s clients, but are considered best practice, and virtually all Relate mediation clients have attended a MIAM, although not all MIAM attendees will progress to mediation. The MIAM is an opportunity for the mediators to ‘sell’ mediation to clients and is considered to be an ‘exceptionally important meeting’. Mediation service managers and mediators take pride in their abilities to help clients move from a MIAM to full mediation. This conversion is viewed as a marker to gauge the skill of the mediator, and while mediators and mediation managers commonly referred to this as a ‘selling’ skill, in reality, the ability to explain, attract, reassure and work with clients going through stressful separations actually encompasses a much broader set of skills.

Some Centres reported that they are becoming more successful in attracting clients to mediation after the initial MIAM meeting following the implementation of the LASPO, although many were also keen to emphasise that the MIAM is still a challenging process, and is the first step in getting the other party to engage with mediation. The improving conversion rate between MIAM and mediation post-LASPO is viewed as being partially the result of an improving skill set among mediators in addressing client concerns, and also a result of the changes following the LASPO. It is also likely to reflect that those who are self-referring are doing so because they know that they want to access mediation (see next section).

"The conversion rate is good because once you get them in the room and show how cost effective it is, about the outcomes and the outcomes for children, [they are] getting support that they didn't know was there before."

Some clients nevertheless do not opt to progress through to mediation, although this is generally not regarded as a negative outcome in itself:

"Occasionally you'll get clients who do a MIAM and when you ring to see if they're ready to go ahead [with mediation] they say they can sort it. And good on them, especially if you've got children, if you can sit down and do it yourself, we say great."

Many of the mediation staff we spoke with expressed frustration that while attending a MIAM expanded disputing couples’ options, there is currently little or only moderate compulsion for one party to attend a MIAM (and no compulsion for both parties to attend). While choice and compulsion are usually regarded as being diametrically opposed, encouragement to attend a MIAM is viewed as essential in raising awareness of alternative (and potentially more economical) methods of dispute resolution. For mediation staff, it is this lack of public awareness about mediation that is of most concern. Increasing public understanding must be a priority.

Currently, the fact that just one party attends a MIAM can, in some cases, only serve to widen the psychological gulf between parties. Furthermore, although courts expect clients to seek information about alternative forms of dispute resolution, mediators noted that different
levels of encouragement are given by the judiciary in different parts of the country. This is not a novel finding, but for Relate mediation staff, this lack of consistency, particularly in respect to procedures around FMIs (Family Mediation Information and Assessment forms), is also reflected in different Relate Centres having very different relationships with local courts and judges. Certain judges are known to be more supportive of mediation while others are perceived to be less well informed or to regard mediation as, at best, superfluous.

While MIAMs and mediation are not forms of counselling, they do hold therapeutic value in helping couples to review and identify issues of contention and to better communicate their needs around these issues. Even the initial process in the MIAM of identifying the issues that a couple needs to resolve can be extremely constructive and can result in couples being able to reach informal agreements without further help.

“Sometimes they come in for mediation... we had someone come in the other day who came in for a joint session, when I saw them individually I thought it'd be nightmarish but when they came to the joint session they'd sorted everything out and didn't even need the whole ninety minutes. What I'd done with them, I'd prepared them, then it was just writing a few things up on the whiteboard and write down what they'd agreed. They actually probably could've done it on their own.”
2. The impact of changes to legal aid funding

National declines in referrals, MIAMs and legal aid funded mediation

In this section we compare Relate’s data on referrals, MIAMs, and mediation starts, for the first and second quarters of the financial year 2013/2014, with data for the same period from the financial year 2012/2013. The overall picture is one of precipitous decline in numbers.

Table 1: Percentage change in numbers of referrals, MIAMs and mediation starts between first two quarters of 2012/13 and 2013/14

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<tr>
<td>Number of legal aid funded mediation starts (at least one client funded)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2012</td>
<td>136</td>
<td>141</td>
</tr>
<tr>
<td>2013</td>
<td>113</td>
<td>60</td>
</tr>
<tr>
<td>% diff</td>
<td>-16.9%</td>
<td>-57.4%</td>
</tr>
</tbody>
</table>
• The largest declines are in the number of referrals to mediation services; most of this decline is due to a large drop in referrals from solicitors.

• The number of MIAMs taking place has dropped substantially. Fewer people are therefore learning about mediation as a means for resolving disputes. The number of legally aided MIAMs has more than halved when comparing 2012/13 data with data collected in 2013/14.

• Across Relate Centres in England and Wales, there has been a substantial drop in the overall number of mediation starts. When comparing the second quarter of data for 2012/13 with data for 2013/14, we observe a 36 per cent drop in mediation starts. The numbers of mediation starts funded by legal aid declined by more than half over this period. When we examine the picture for the four English Centres alone, the decline is even steeper. In Wales, the decline in mediation starts is more moderate (a 7.5% decline in the second quarter in 2012/13 compared with 2013/14), which could be explained by the different landscape in terms of competition and policy or other factors may be responsible.

• The profile of parties accessing mediation is also thought to be growing in complexity, based on mediation staff reports.

• Across all Relate Centres that deliver mediation, the number of legal aid funded mediation starts has dropped by over a third when comparing the first six months of 2012/13 and 2013/14.

Figure 2 summarises the experiences of five Relate Centres in terms of the number of referrals they receive, the proportion of MIAMs clients they see that are legally aided and the referral routes that clients take to reach the Centres. It is clear that referrals from solicitors now account for far fewer MIAMs and mediation starts than has been the case in the past.

The data suggests an increase in the proportion of MIAMs that are converted to mediation case starts when comparing the first six months from 2012/13 with 2013/14. It seems likely that this is partially reflective of the increasing skill of mediators to convert MIAMs into mediation case starts, along with the range of innovative methods that are undertaken by Centres to encourage mediation take up. It is also likely to reflect that those who are self-referring are doing so because they want to access mediation.

However, some mediation staff report that the profile of clients is also tipping towards clients with more complex needs; one explanation for this changing profile could be that separating couples’ disputes are increasingly escalating to crisis points under the new funding regime before they seek help or that the filters used by solicitors are no longer active. This delay in seeking dispute resolution could also be one explanation for the rise in conversion rates, as those with the greatest needs are accessing MIAMs. While some may consider this shift as positive, the reality is that prolonging periods of family conflict in this way is detrimental to adult and child outcomes.
Additionally, the decline in legally aided clients entering mediation in particular is worrying, suggesting that those with more limited financial resources are those who are now failing to access the service.

Practically, this decline in the number of MIAMs clients and the increase in the complexity of cases have had an impact on the ‘business’ of mediation. There have been job losses in some Centres and, in others, mediators have been subject to a cut in their hours.

For example, mediators in one Centre have experienced a 25 per cent cut in their contracted hours. We understand that similar losses are occurring in respect of other mediation providers. The loss of a trained mediator represents a loss of a specific set of skills in the sector. Relate mediators are required to follow a two-year programme of training before they are able to practice independently. Besides the decline in numbers, the changes following the implementation of the LASPO have affected the business of mediation through:

1. Changing established referral routes into mediation
2. Changing the composition of mediators (sectorally)
3. Increasing concerns around the changing composition of mediation clients
4. Increasing concerns around the levels of unmet need.

**Changing established referral routes into mediation**

One of the most frequent explanations given by mediation staff for the drop in the number of clients seeking a MIAM (and subsequently mediation) is the change in referral routes into mediation, especially from solicitors. The Family Law Protocol (Published by the Law Society) still places solicitors under a professional duty to refer clients to mediation if it is appropriate but it would seem that (i) people are not going to a solicitor on a private paying client basis and/or (ii) where clients do see a solicitor there are only a few onward referrals to mediation.
Previously, most mediation clients would have attended a MIAM as part of the application for funding for legal aid, or have been referred by their solicitor. This is represented by Pathway 1 in Figure 3 below. Legal aid is no longer available for private family law cases, except where there is evidence of domestic violence, forced marriage or child abduction. However, legal aid continues to be available for MIAMs and mediation, albeit with more stringent criteria around financial eligibility. This should therefore have led to an increase in separating couples accessing other (cheaper) forms of dispute resolution, including mediation. But, after the implementation of LASPO, much of the incentive (or compulsion) for solicitors to refer couples to a MIAM has reduced.

"The goalposts have changed - and have gone a lot smaller - but it's [legal aid funding] still there for some people".

Figure 3: Mediation referral routes

3. The changing composition of mediators in the sector and their clients

Changing composition of mediators

Some mediation staff attribute a small part of the decline in service users to the impact of increased competition in the sector and a ‘rush’ of newly qualified lawyer mediators offering their services, particularly those linked to local firms of solicitors. However, this varies by geographical area - while some Relate Centres are unaware of new (for profit) mediation services starting in their areas, others are acutely aware.
The ‘rush’ of newly qualified mediators who entered the profession is a concern for the mediation staff we spoke to because of a perception that service users did not know how best to choose a mediation provider that meets their needs. Many Relate mediators are also trained counsellors and, at the very least, will work in environments in close proximity to counsellors on whom they can rely for advice and to whom they can make referrals if mediation clients would benefit from individual counselling to deal with the ending of their relationship. They may also be more aware than some other professionals of the impact that hurt and unresolved anger can have on people’s behaviours when they are being encouraged to act in a conciliatory way. Relate mediators are skilled in recognising and dealing with clients’ emotions, and are able to employ a range of techniques, including ‘shuttle mediation’. It is important, therefore, to consider the impact of funding changes on the composition and training of mediators and the settings of mediation practice. This is particularly the case given the increasing complexity of cases arriving for mediation.

Changing client needs

The fall in numbers, which was well evidenced across many Centres, was also accompanied by a perception that client needs have increased in complexity, with higher levels of conflict between the parties. Some mediation staff noted that separating couples with complex needs may have directly progressed through the court system in the past, including cases where the levels of acrimony were very high (although not necessarily involving domestic violence), and where mediation may not have been the most suitable form of intervention. Such clients may have preferred to proceed directly to instruct solicitors and allow them to negotiate at arm’s length or represent them in court. Certainly this was a more common route before April 2011 and the introduction of MIAMs.

More complex cases require more time, not only in terms of the number of sessions of mediation, but also in the supporting processes around administration, supervision and support for mediators, and case conferences with teams of mediators. Some mediation administration staff that we spoke to felt that even the business of booking clients in for appointments, as well as tracking and tracing paperwork, had become more difficult and time consuming, in line with the increased complexity of cases. Some Centres estimate that for each hour of mediation that takes place, one and a half hours of administration supports this; in other Centres the ratio is higher, with four hours of administration work supporting every one and a half hours of direct mediation delivered.

As one large research project has discovered, while mediation may hold many positive advantages for parties, it is not suitable for resolving all family disputes such as those involving the risk of child abduction or where there are mental health issues (Barlow and Hunter, 2013). Before the implementation of the LASPO, some concerns had been voiced about whether the LASPO would lead to cases entering mediation where other forms of dispute resolution may be more appropriate (see, for example, Cobb 2013). Our results do not directly support these fears, as the evidence we present here is limited. Nevertheless, concerns about the increasing
Engaging both parties in mediation within a changing funding climate

Complexity of client needs do warrant further investigation, as the same trend may also be occurring among less well established mediation services that may be less well equipped and have less developed partnership networks to help mediate complex cases.

**Mediating with complex cases**

“It doesn't mean we wouldn't mediate but we have to be careful. One example where a woman came in but she didn't want to be in the same room as the man so it was shuttle [mediation].

When I spoke to her... the man seemed keen he was client 1... so I asked her if she really wants to be here and she said 'no, he said he was going to take me to court if I didn't'. So I said she didn't have to be here. She would've got legal help because she'd been to her doctor with injuries*. So I said you don't have to be here... we'll let you go. We kept the man in the room while we let her out. It's a judgement call the whole time. Sometimes we might talk to each other, discuss what we think. We have separate waiting areas. We try as much as we can, it's not like counselling; they might be in the same house and it can make things worse. With this [mediation] it's a different aim.”

*Under the Government's proposals, anyone who has one or more forms of evidence of domestic violence would not be required or expected to attend a MIAM.

**Understanding an unmet need**

The mediation staff we spoke with were unanimous in expressing serious concern that the lower number of clients corresponds with an increase in the levels of unmet need for mediation services. Disputing couples are thought to be 'shelving' mediation (and divorce where applicable) and remaining in 'intolerable' situations because of a lack of information about what is available to them and/or private funds with which to access mediation services. If such a trend is occurring, it is likely to be highly damaging for the adults and children involved through increasing the risk of conflict and violence, along with the associated health and mental health issues that arise.

Fathers seeking contact with their children were identified by some in our focus group as being at heightened risk of rising level of unmet need for mediation services. The decline in legally aided funded MIAMs and mediation starts in particular suggests that those from more disadvantaged socioeconomic backgrounds may be experiencing the highest levels of unmet need. The LASPO changes removed the automatic tick box referral to a MIAM as a means to get the legal aid certificate for legal representation and therefore the pathway has changed, which has resulted in a drop in referrals. The Government continues to support MIAMs and mediation through legal aid and therefore it is vital that remedies to this are sought.

“I don't know where people are. I thought people would be out there representing themselves in court and they're not. I don't know where they are”

Much of the decline in client numbers, the increasing complexity of cases who do arrive at mediation, and the potential rise in unmet need, are perceived to be artefacts of a lack of understanding around mediation and MIAMs, both among the public and also within the court system itself. This lack of understanding is thought to have been compounded by the changes in legal aid funding and as a consequence, solicitors are not providing a key route for referrals to mediation, even where clients are paying to access a solicitor.
Mediators expressed disappointment that communications around changes to legal aid funding focussed more on the withdrawal of funding from family courts, and less on the continuation of funding for mediation for those who meet the criteria. This is clearly a problem and the public need to be made aware of this. In addition, many felt that there is little independent advice available if clients do not go to a solicitor. Many information providers have a conflict of interest through being service providers themselves. Mediation staff report that many people arrive at a MIAM with very low levels of awareness of what a MIAM is for and little understanding of what mediation is and how it differs from other services. Since the MIAM is about providing information and assessing parties’ suitability for mediation, it is vital that people attend one as early as possible.

4. Partnership, innovation and the legal process

Many Relate Centres have sought to establish strong links with their local courts and CAFCASS, with varying success. Most agreed that simply being visible in court is an important exercise in raising awareness of mediation among the public. However, different Centres also have different experiences of how this visibility translates into footfall into services. Where this system has worked well, the local mediation service has attended court on family days and the judges have referred relevant cases. Those referred then receive an in-court MIAM, and then the couple can move into mediation or return to the court. Such a system can directly reduce the burden on courts. Seed-funding from CAFCASS was instrumental in helping to support such pilot work although maintaining this service after the trial period has sometimes been difficult.

In addition to piloting innovative models of referral, many Centres are developing new models of delivering mediation. For example, one Centre has been piloting a new approach to the delivery of mediation that could be used for more complex cases by blending their counselling skills with those they use as mediators. By using their counselling knowledge and skills in mediation, they are able to assist people to be ready and able to mediate their disputes. This is not counselling per se, but a constructive use of a range of skills that Relate mediators have in their toolbox, thereby promoting better outcomes.

During an initial assessment by a mediator on the appropriateness of mediation, referrals can be made for couples who are not thought to be ready for mediation, to individual or joint counselling before starting mediation, and they can also re-enter counselling at any point during mediation if required. Of course, legal aid funding will not pay for the counselling services offered. In this way, the Centre is attempting to provide a continuous ‘wrap-around’ service for complex cases that would otherwise be entering mediation inappropriately or relying on the judicial process.

“A mediation supervisor had the idea of separate sessions with a counsellor where more work was needed first to talk about the parental aspects of it, for example. To do the work we need to make sure that they’re in a position to negotiate”

Several of our qualitative research participants, composed of mediation service managers, mediators and mediation administrators expressed a desire to provide a more cohesive ‘wrap-around service’ for separating couples. This is a direction of travel for some Centres, while others expressed frustration at the lack of inter-referral between other complementary services – for example between domestic violence and abuse services, supported child contact services and supervised child contact services, and mediation - but see many
potential opportunities for such an approach in future. Some believe that greater integration of local services can only take place if this is mirrored in central structures.

“I’d like to see more support to push change through and actually understand better – sometimes you get a lot of government departments making changes, but they don’t work together”

Mediation and the role of solicitors

Mediation is a process where two parties in dispute discuss their issues with a neutral third party (mediator) to fashion a mutually acceptable agreement in a consensual manner, which meets their children’s best interests and their needs as best as possible. The involvement of solicitors can, according to members of our focus group, sometimes serve to undermine the purpose and outcomes of mediation. While solicitors can provide a valuable and necessary complementary service particularly if clients are mediating on a financial or property matter, once the memorandum of understanding is drafted it is less than helpful if a solicitor informs them that it’s not what a court would say.

There is no reason why solicitors cannot support the mediation process – and legal aid can pay for that if it is necessary to support the process of mediation. Although most family law solicitors are aware of the importance of minimising conflict and promoting conciliatory agreements, mediation staff explained that, at times, the agreement that they had worked hard to negotiate, often at cost to the disputing couple, was undermined by partisan solicitors who are duty bound to represent the interests of their own client only. When this happens, the parties have reported feeling that mediation has been futile as redrafting or changing the mediation agreement meant either starting again or incurring an additional charge. This is why it is important that solicitors are involved during the mediation process, not only at the end.

“It’s an issue because the respondent and applicant will have a solicitor and the solicitor is bound by oath to represent their own client’s interest and not the couple’s – they work in opposition to mediators”

There is frustration for parties and for mediators that the agreements reached in mediation are not legally binding until they are drawn up into a consent order by the involvement of solicitors. While mediation staff ‘promoted good legal advice along the way at every step’, there is strong feeling that subsequent legal processes could, at times, be counterproductive to ‘moving on’ separating couples because of the focus on individual interests rather than joint interests and joint resolution. The non-binding nature of mediated agreements is said to discourage clients in preliminary meetings.

Focus group participants also felt that not enough is done externally to advise service users that once agreements have been made, other subsequent legal procedures, including divorce, have the potential to be quicker and less expensive. Of course, mediation does not automatically result in a cheaper or quicker case; if it fails, parties may incur even higher costs due to first having to pay for mediation services.

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Attitudes, affordability and awareness

“They know they’re getting divorced. They know it’s going to happen. But the... [other party] just won’t attend. And it’s not for any other reason than sheer bloody mindedness and they think I’m going to drag it out. They get there eventually. But the applicant is way ahead psychologically than the respondent – you’ve got this applicant who has accepted things a long time ago and can be up to 18 months ahead in the process. If you apply the counselling logic to it, that’s where you end up... that’s the truth of the matter.”

The overriding message from the mediation staff we spoke with was that the psychological gap between applicant and respondent is inevitable where one partner wants to separate but the other is still trying to come to terms with separation or wanting to save the relationship. However, changes to the nature, process and the understanding of mediation could help to bridge this psychological gap between the parties if mediators are able to spot potential barriers to the couple being able to reach agreements.

In practice, two main strategies are used to gain the cooperation of the reluctant party. The first is to emphasise the elements of choice and control for each party, which can be lost through legal processes. This mainly involves promoting mediation as an opportunity, particularly for parents with dependent children, to be involved in the decision-making processes with regards to the current dispute but also in the event of future disputes. As one mediator put it, when she talks to clients she asks them ‘what are you going to do every time a disagreement comes up – go back to court?’ In this way, mediation provides a framework for parties to negotiate agreements in the current context and can equip parties with the skills to settle future disputes without legal involvement.

“I think the other thing to make clear to them is...if you go to court you get someone else making all the decisions – we had a couple come in after they went to court to decide which schools the children should go to – and I was thinking ‘why did you want someone else to make that choice for you?’

The second strategy is to promote mediation as an opportunity for the concerns of both parties to be heard. Often, up to that point it is the actions of one party that had dictated the course of the separation process, including accessing a MIAM. The other party can therefore arrive at mediation feeling disenfranchised and perceiving that the only power they have remaining is to trenchantly oppose the separation process and refuse to cooperate. In these circumstances, an important skill of mediators is the ability to recognise and deal with such ‘power and control issues’. Part of the process of mediation is to listen to the respondent, provide a reality check and also to challenge the respondent when appropriate.

“I’ve got this couple where the man is very reluctant to engage with it because he doesn’t want the relationship to be over. We looked at his fears and talked... you’ve got to be realistic as well, if you do it through a solicitor it’s going to cost you a lot more money and here we’ve got the chance of someone really helping you to do it.”

“Quite often when you’re doing it you see that shift – the penny finally drops – it is actually over isn’t it.”
Mediation staff also described more pragmatic ways in which they engage with the other party, including offering different models of mediation to suit a couple’s needs, for example shuttle mediation, or offering time slots for mediation to suit the schedule of both parties. Most mediation services ‘try to make it as easy as possible for people to come in; this also includes being as transparent as possible about the likely financial costs of mediation. Previous studies have found that when one party is eligible for legal aid and another is not, this can contribute to feelings of animosity towards the eligible party and towards the mediation process (Walker et al., 2010). Focus group respondents also viewed this as an obstacle, although the changes to legal aid funding mean that they are seeing more couples where neither party is now eligible for funding for mediation.

Affordability is a particular concern for mediation staff from London, where changes in the calculation of financial eligibility around housing wealth means that virtually all homeowners in London (and the South East) are now ineligible for legally aided mediation, regardless of being on a low income or receiving benefits. For homeowners who, despite having assets may have low incomes, mediation is now unaffordable. However, mediation can be non-contributory for people who qualify for legal aid, who will not need to pay all or some of the costs.

Discussions with mediation staff repeatedly returned to the need to promote mediation more widely. Many who are now accessing mediation services and are eligible for legal aid funding are unaware of their eligibility prior to contacting the service. While cuts to legal aid funding have been widely publicised, the fact that funding remained in place for mediation has not been. Mediation staff described a broader culture of ignorance with respect to mediation, and about the way in which court or legal routes to resolving disputes are embedded in the mindset of the public as the single available option, or at least the first port of call. This lack of awareness is at the heart of the challenge inherent in attracting both parties into mediation.

“"I think it will be a long long time before... I don’t know if it’ll ever get over the battle of bringing [the respondent] in... unless someone in government or in that legal structure says, you’ve got to both look at it before you even come near the court, and that would be fantastic.”"

“The only message going out was the legal aid was going. I don’t think they did enough to say the mediation was still out there. I don’t think they did enough to get mediation in the mindset of people and say what mediation could offer.”

“I would like to see more support from advertising and getting the message out there; I’d like to see the courts take more interest and recognise us for the work that we do.”
Conclusions and recommendations

Emergent themes
While getting both parties involved in mediation is the main challenge, recent policy changes have served to amplify concerns about:
1. the affordability of mediation
2. the lack of visibility of the service and impartial sources of information
3. the lack of compulsion to find out about and consider alternative forms of dispute resolution
4. and the non-binding nature of mediated agreements.
All of these factors reduce the willingness of both parties to engage in mediation.

Limitations of the study
While the results of our focus group and interviews highlight some of the main concerns facing Relate mediation staff, these should be treated as emergent evidence. The results represent potential areas for further research, and a more extensive and robust exercise is needed to fully validate these emergent themes. In particular, the findings are based on a focus group and two group interviews involving mediation staff with very different roles – further robust, qualitative research across different organisations and with a greater regional coverage is needed to find out if our observations are replicated across different organisations and regions. Nevertheless, these findings do represent the views of staff in mediation services provided by Relate from a range of sites across England and Wales (from Dorset to North Wales). Reports of declining numbers of clients and changing referral routes are also based on less subjective findings from the analysis of management data that are routinely collected by these organisations.

Recommendations
The recommendations from this report are as follows:
1. In order to realise the opportunities inherent in the current family justice reforms which promote family mediation as a key dispute resolution service there needs to be:
   • A comprehensive, coherent platform for explaining to both parties the potential benefits of mediation, the different approaches available and their costs – via information hubs, court services, and, specifically, MIAMs.
   • Clear, unambiguous information about the availability of legal aid for MIAMs, mediation and legal advice in support of mediation for those eligible for public funding.
   • An exploration of the ways in which mediators and solicitors can work more closely together to ensure that mediated agreements are not likely to be unpicked and can be considered in court. This could involve mediators adopting a standardised form of draft "order", which is of a high standard and does not result in judges or legal advisors having additional work to do when the matter comes to court. (Mediators recognise that courts would likely still want people entering into financial agreements to have sought legal advice.)
A coordinated, effective and efficient structure through which mediators are trained and accredited and mediation is delivered, supervised and managed to ensure high quality and consistent standards in training and practice. This is vital to ensure that mediation services offer a high quality service to the public.

Better coordination between agencies offering interventions that support strong couple relationships and those providing dispute resolution services, to ensure cross referral and the delivery of readily accessible wrap-around services for all families, both during and beyond separation and divorce. Although public funding may not be available for many of these services, it is possible that many people will welcome a range of support being on offer.

2. To encourage greater use of dispute resolution services, particularly mediation, attendance at a MIAM should ideally be mandatory or strongly encouraged for both parties when there are issues in dispute, especially if those issues include arrangements for children. The decision to participate in mediation, however, should remain voluntary. Attendance at a MIAM and consideration of mediation should take place as early as possible in the process.

3. To encourage innovative approaches to delivering mediation and to expand the market for family mediation, an innovation fund should be launched. Innovation funds are a good way to surface and test new innovations, but are not a sustainable way to ensure continued provision of services. The fund should encourage the development of wrap-around services for all couples and families before, during and beyond separation and divorce. It should also be used to increase the level of innovation in the sector. The fund could be modelled on similar funds delivered by the Department for Work and Pensions offering funds linked to delivery of outcomes. Part of the savings to the Legal Aid bill following the implementation of LASPO or the current underspend in the mediation budget could be used to fund this.

4. To encourage demand for family mediation and reduce stigma around accessing support both during and beyond separation and divorce, an investment in promotion and culture change activity should be made. This activity should look to disseminate good quality information about family mediation and how it can be accessed. It should also explain the continued availability of legal aid funding to cover the cost of mediation for those eligible.

5. To ensure that mediation is offered appropriately, further research and monitoring should be undertaken to:

a. Develop consistent safeguarding procedures and protocols for use in all dispute resolution services. Relate has looked carefully at the DOORS initiative being rolled out in Australia, which has been fully evaluated and validated, and we welcome the piloting of this by the Tavistock Centre for Couple Relationships.

b. Promote an evidence-based tool that can be used by all family law professionals to enable consistency in screening for domestic violence and abuse and signposting to appropriate support services.

c. Understand how to better engage under-represented groups including those on low incomes, same sex couples and couples from the black and minority ethnic community.

d. Understand and address the training and supervisory needs of mediators working with high conflict and complex cases.
References

ADR Group (2013) Overview. Retrieved 18 October, 2013 from http://www.adrgroup.co.uk/section/5.1/family/df1c55b705707df1f78e3fa44ec7ea81


Legal Aid, Sentencing and Punishment of Offenders Act 2012 c.10


## Appendix A: Dispute resolution services

<table>
<thead>
<tr>
<th>Dispute resolution service</th>
<th>Description</th>
<th>Does it appear in Family dispute resolution?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arbitration</td>
<td>The parties enter into an agreement under which they appoint a suitably qualified person (an “arbitrator”) to adjudicate a dispute and make an award. The decision is legally binding. Arbitration is closer to court proceedings than mediation.</td>
<td>Yes – but doesn’t seem to have gained much publicity or support. There is no legal aid support for family arbitration.</td>
</tr>
<tr>
<td>Conciliation</td>
<td>Conciliation is usually the first step in the arbitration process in consumer disputes. Both parties will be asked to give written details of the complaint including any evidence and the conciliator will give their opinion as to a solution. The decision is not legally binding.</td>
<td>No – there is no sign of formal family conciliation being offered.</td>
</tr>
<tr>
<td>Mediation</td>
<td>The mediator will help the parties negotiate an acceptable agreement and if necessary, act as a go between for the parties.</td>
<td>Yes – this appears to be the most popular form of family dispute resolution service, receiving support in terms of legal aid.</td>
</tr>
<tr>
<td></td>
<td>Yes – this appears to be the most popular form of family dispute resolution service, receiving support in terms of legal aid.</td>
<td>Yes exclusively. It doesn’t fall into the traditional types of dispute resolution service. Free to those referred by the courts, private SPIP are not due to be legal aid funded.</td>
</tr>
<tr>
<td>Separated Parents Information Programme (SPIP)</td>
<td>SPIPs are designed to help parents understand the impact of on-going parental conflict on their children. They provide advice and support about how the parties can help themselves and their children. They have been initially by court order. Private SPIPs are being trialled currently.</td>
<td>Yes exclusively. It doesn’t fall into the traditional types of dispute resolution service. Free to those referred by the courts, private SPIP are not due to be legal aid funded.</td>
</tr>
<tr>
<td>Collaborative Law</td>
<td>This involves both parties meeting each with their own respective lawyers. This is an attempt to resolve disputes before going to court. If the parties are unable to reach an agreed outcome, new solicitors must be instructed by both parties.</td>
<td>Yes; legal aid is not available for collaborative law.</td>
</tr>
</tbody>
</table>
Appendix B: Legal aid means testing post LASPO

<table>
<thead>
<tr>
<th>Gross monthly income</th>
<th>Disposable monthly income (considered if gross monthly income is below the amount in the previous column)</th>
<th>Disposable capital (considered if disposable monthly income is below the amount in the previous column)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum to be eligible for legal aid</td>
<td>£2,657, plus an additional £222 for every dependent child you have beyond your fourth</td>
<td>£733</td>
</tr>
</tbody>
</table>

Note: If this figure is above £315, you will be expected to make monthly contributions to your costs.

| Maximum to be eligible for legal aid | £733 |

Note: there are a number of exceptions, see below

| Disposable capital (considered if disposable monthly income is below the amount in the previous column) | £8,000 |

The table above shows the three tests that comprise the means testing for legal aid. If a client fails on any of the three tests they will not qualify for legal aid.

Disposable capital is defined subject to a number of exceptions or ‘disregards’. The first £100,000 of any mortgage or loan registered on the main or only dwelling is disregarded in determining the disposable capital; this is called the mortgage disregard. Following this, the first £100,000 of the value of the property after making the previous mortgage deduction is also disregarded; this is called the equity disregard. (see Legal Aid Agency, 2013b for further information). For example, if a property was valued at £270,000, with a mortgage of £120,000, the first £100,000 of that mortgage would be discounted, leaving a £170,000 value, then a further £100,000 of equity would be disregarded leading to the disposable income being assessed at £70,000.

There is also a further £100,000 disregard for the subject matter of the dispute. This means that if the dispute is over an asset, a further £100,000 of the client’s share of that asset is not counted.
About Relate

Relate is the largest provider of relationship support in the UK and each year over a million people access our services. In 2013, Relate celebrated its 75th year and although we are primarily known for our relationship counselling, we have a long-standing commitment to offering mediation services as a way of helping couples to overcome their differences. This stems from our belief that conflict within couples, be these intact, separating or separated couples, is detrimental to the outcomes of adults and children. Offering mediation services is an important part of the alternative dispute resolution landscape and helps couples to resolve their differences while remaining involved in the decision-making process. We have been providing mediation for over 20 years in some Centres, and continue to do so in Centres up and down the country.