

## **UK Government plans costs orders to enforce family dispute mediation in England and Wales**

Synopsis: The Ministry of Justice (MoJ) has launched a consultation on measures to help couples in England and Wales resolve private family disputes earlier through mediation.

Date published: 19.04.2023

### **The issue**

More parents than ever before are resorting to the courts to resolve custody arrangements for children. According to the MoJ, 56,754 applications were made for child arrangements orders in 2021 compared with 52,944 a decade earlier. In the same period, 48,666 applications were made for financial orders compared to 46,348 in 2011.

Even though the number of contested financial applications has fallen significantly, the number of sitting days in the private law family courts increased by 52% in the six years to 2021.

The time required to complete a private law children's case rose from 26 to 40 weeks. These increases are largely due to the impact of the COVID-19 pandemic. The latest statistics available, from September 2022, suggest that it currently takes an average of 45 weeks to complete a case.

### **The solution**

In late 2021, the MoJ conducted a call for evidence on dispute resolution in the England and Wales family courts, with a view to making mediation compulsory.

In the meantime, it has been encouraging families to use mediation through the mediation voucher scheme launched in March 2021, which gives eligible parents or carers a £500 voucher towards the cost of mediation. Nearly 13,500 families have used it to help pay for mediation and funding was increased in 2021 to provide for an extra 10,200 families.

However, the MoJ has now announced it intends to make mediation compulsory before an application can be made to court for most private law children's cases and contested financial remedy cases. These would be those cases for which a mediation information and assessment meeting is currently a requirement.

For appropriate cases, the MoJ intends to fully fund compulsory mediation. For financial remedy cases, it is asking for views on an appropriate funding solution 'in the best interests of the parties themselves and the taxpayer'.

The [consultation paper](#) sets out some funding proposals for compulsory mediation in both children and financial remedy cases, as well as the proposed exemptions to the requirement to mediate. It also examines how the process could work in practice.

The proposed system of compulsory mediation will be 'effectively enforced and supported' by the family courts, says the consultation document. Those who do not make a reasonable attempt to resolve the dispute themselves through mediation will be held to account by paying costs orders. *'The court should not be used as a tool for those looking to prolong or escalate conflict'*, says the paper.

### **Comment**

The Government has taken various steps to cope with the increase in judges' workloads, such as technology to allow hearings to be conducted remotely, an increase in judges working in family courts and more efficient digital systems for financial remedy cases. However, it says the lengthening delays *'have the potential to be harmful'* to both adults and children.

Although some cases will continue to need effective access to the family courts, the MoJ believes a balance can be found that supports families to resolve child arrangements and financial matters out of court.

The consultation closes on 15 June 2023.

**020 7183 3931**  
**[www.riskassured.co.uk](http://www.riskassured.co.uk)**