

Title: Consultation on supporting earlier resolution of private family law arrangements IA: MoJ033/2022 RPC Reference No: N/A Lead department or agency: Ministry of Justice (MoJ) Other departments or agencies: N/A	Impact Assessment (IA)			
	Date: 02/03/2023			
	Stage: Consultation			
	Source of intervention: Domestic			
	Type of measure: Primary Legislation			
Contact for enquiries: privatefamilylawconsultation@justice.gov.uk				

Summary: Intervention and Options	RPC Opinion: To Be Confirmed
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Cost of Preferred (or more likely) Option (in 2022/23 prices)

Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
£33.4m	N/A	N/A	To discuss with Regulatory Policy Committee (RPC) following publication of the consultation.

What is the problem under consideration? Why is government action or intervention necessary?

There is a significant backlog of cases in the family justice system. The number of open cases and the average duration of cases has increased consistently over the past five years in the two main family case types – public and private law. This problem was further exacerbated by the pandemic, where the courts' ability to hear cases was drastically limited. In response to this, the Government wants to reduce demand on family courts by mandating that suitable families make a reasonable attempt to reach mutual agreement through mediation before applying to the court for private law cases concerning arrangements for children or finances following a separation. To achieve this, the Government is proposing to fund mandated mediation sessions up to a value of £500 per family. In addition, parents diverted to mediation would be required to attend a co-parenting programme for child arrangement cases, which would also be funded by the Government. These reforms would help to reduce the backlog of cases in the courts and allow families to resolve their disputes in a less adversarial setting through mediation, where it is safe to do so. The proposals also include providing better support and information before court to help maximise the chances of the issues being resolved at an earlier stage and proposals to hold those parties who refuse to make a reasonable attempt at mediation accountable. Government intervention is required as the above would require changes in primary legislation.

What are the policy objectives of the action or intervention and the intended effects?

The primary policy objective is to help separating families resolve their private family law disputes earlier. Earlier resolution of disputes can improve the outcomes for any children involved and would allow the courts to focus their time and resources on the cases that need court involvement the most. This would also help to increase the throughput of cases that do come to court and reduce the backlog of cases in the system.

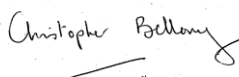
What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- **Option 0** – do nothing. Continue with current system including the requirement to attend a Mediation Information and Assessment Meeting (MIAM) and retain current exemptions.
- **Option 1 (preferred)** – Bring in primary legislation mandating mediation in private law child arrangement and financial remedy cases before an application can be made to the family courts unless an exemption applies.

Will the policy be reviewed? Review date:

Is this measure likely to impact on international trade and investment?	No			
Are any of these organisations in scope?	Micro Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.



Signed by the responsible Minister

Date:

21 March 2023

Summary: Analysis & Evidence

Policy Option 1

Description: Bring in primary legislation mandating mediation in private law child arrangement and financial remedy cases before an application can be made to the family courts unless an exemption applies.

FULL ECONOMIC ASSESSMENT

Price Base Year 22/23	PV Base Year 22/23	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 33.4

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		£21.1m	£181.6m

Description and scale of key monetised costs by 'main affected groups'

Option 1 would result in total additional costs for the MoJ of around £21.1m per year. Of this annual cost: £13.4m would be funding for mediation sessions for child arrangement and financial remedy cases; £5.0m would be cost of funding co-parenting programmes for parents before being diverted to mediation; and £2.8m would be a "deadweight cost", whereby the MoJ would pay for mediation sessions for families who would otherwise have opted to self-fund before going to court.

Other key non-monetised costs by 'main affected groups'

Option 1 would require mediators to confirm to the court if a reasonable attempt was made to mediate before a case could be heard in court. This is not anticipated to represent a substantial administrative burden and it is not assumed that mediators would increase their costs as a result. Families unable to reach agreement at mediation under Option 1, who would have gone directly to court in the counterfactual, may take longer to conclude their case. If the mediation process exacerbates disagreements, some cases may become more complex or adversarial when they reach the courts.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		£25.0m	£215.0m

Description and scale of key monetised benefits by 'main affected groups'

Under Option 1, any family that successfully agrees a set of arrangements through mediation would save HMCTS £1,713 (for child arrangement cases) or £812 (for contested financial remedy cases), resulting in total benefits of £21.1m per annum. These savings would be non-cashable and used to reduce the backlog in the family courts, allowing more of the court's time to be spent hearing complex cases that are not safe to be resolved outside of court and helping cases to be heard in a more timely manner after coming to court. The benefit to Cafcass and Cafcass Cymru - who represent the interests of children in family justice cases - would be £3.8m per year. While these savings would also be non-cashable, they would help to reduce backlogs and ensure that more resource is available for cases involving the most vulnerable children. Professionals in the mediation sector would benefit from the increased demand for their services.

Other key non-monetised benefits by 'main affected groups'

Mediation can be a quicker, less adversarial, and more cost-effective option for many people if they can reach an agreement. This can result in better outcomes for separating families and, more importantly, for any children involved in these disputes. Co-parenting programmes also help parents build up the skills to parent effectively after they separate.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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Demand for child arrangement and financial remedy cases is assumed to remain consistent across the appraisal period and is based on total applications to the family courts in 2021. Under Option 1 as outlined in the consultation document, the support available per family would be capped at £500, in line with the current mediation voucher scheme. It is not clear how the cap will affect mediation success rates over time, but evidence from the voucher scheme shows at least 32% of users have total sessions costing over £500, suggesting this cap is not always enough to reach agreement.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: TBC	Benefits: TBC	Net: TBC	
			TBC

Evidence Base

A. Background

1. The family justice system is broadly split into two parts: public family law deals with matters between individuals and the state e.g., taking children into the care of the local authority; while private family law deals with disputes between individuals e.g., divorce; the post-separation living arrangements for children; or settling financial disputes post-separation. Separating families can make their own arrangements for their children and only around one-third of families seek external involvement – court or mediation – for support in making these arrangements following a family breakdown.
2. When families require assistance to make arrangements relating to children and/or finances following a separation, they may choose to pursue mediation to reach mutual agreement. Mediation can offer faster dispute resolution than the courts. It is delivered privately and the majority of families opting to use mediation self-fund their sessions. However, individuals and families that are eligible for Legal Aid (LA) can receive government support to help to pay for some or all of their mediation – one funded session if one parent is eligible and full funding for all mediation sessions if both parents are eligible for LA.
3. Families may also decide to go to court to resolve their disputes. All applicants to the family courts seeking to make arrangements for their children or finances must first attend a Mediation Information and Assessment Meeting (MIAM) where an accredited mediator will assess if they would be suitable for mediation or if exemptions apply. Exemption reasons include domestic abuse concerns, a need for urgency in the case or child protection concerns. Published data from the MoJ shows that MIAM exemptions are claimed in 60%¹ of child arrangement cases that go to court.
4. The family courts can also direct parents to attend co-parenting programmes in child arrangement cases – these are currently known as the Separating Parents Information Programme (SPIP) in England (soon to be changed to Planning Together for Children (PT4C)) and Working Together for Children (known as WT4C) in Wales and are delivered by Cafcass and Cafcass Cymru, respectively. The purpose of these programmes is to help parents understand how to put their children first when they separate. Parents attend these separately and, currently, they are fully funded by the state (SPIPs cost £120 per session and WT4Cs cost £150 per session) when ordered by the court. If parents choose to attend these, or other co-parenting programmes, outside of any court proceedings they can do so, although they are then required to self-fund. These programmes can highlight the potential benefits of mediation as an alternative form of dispute resolution to court.
5. The Harm Panel reported that between 50% and 60% of families coming to court will have allegations and/or evidence of domestic abuse². The Government is working to improve the experience which victims of domestic abuse have in the family courts. To enable this Government legislated via the Domestic Abuse Act 2021 to create a

¹ [Family Court Statistics Quarterly: October to December 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/family-court-statistics-quarterly-october-to-december-2021)

² [Ministry Of Justice 2020 Assessing Risk of Harm to Children and Parents in Private Law Children Cases 2020 \(justice.gov.uk\)](https://www.justice.gov.uk/consultations/2020/assessing-risk-of-harm-to-children-and-parents-in-private-law-children-cases-2020)

statutory definition of domestic abuse and established a series of measures to improve protection and support for domestic abuse victims and survivors, including provision of automatic eligibility for special measures for victims and survivors of domestic abuse in the family courts.

Problem under consideration

6. The family courts have been struggling to cope with demand for a number of years. The total number of cases in the system across both public and private law had been continually growing since around the start of 2016. This was further exacerbated by the COVID-19 pandemic, especially in private law. The total number of outstanding cases in the system continues to rise and cases are taking longer to reach resolution in both public and private law cases. Evidence shows that prolonged parental conflict can have a number of negative impacts on outcomes for children involved.³
7. The total number of children in the family justice system in ongoing child arrangement cases has more than doubled in the past four years - from 42,009 in August 2018 to 85,706 in August 2022⁴. Likewise, between January and June 2022, 45,281 new child arrangement cases entered the system while only 38,482 reached a conclusion⁵, suggesting that the outstanding caseload is likely to continue to increase. Finally, the average length of child arrangement cases from issue to final order has also almost doubled from 22 weeks in 2016 to 41 weeks in 2021⁶.
8. In addition, 46,461 financial remedy cases started in 2021, with 43,032 cases leaving the system in the same year. Financial arrangements are mostly agreed outside of court, where, for example, solicitors work with the parties to reach an agreement but will still need to be approved by the court to obtain a legally binding order. These are “uncontested” financial remedy cases and do not usually require hearings. “Contested” financial remedy cases – around 26% of all finance cases that came to court in 2021⁷ were contested when the application was made – require the courts’ intervention to resolve the financial position. Cases can come to court contested but become uncontested if the parties reach agreement during the court process.
9. Reducing the number of outstanding cases and the length of time cases involving children spend in the family courts is the Government’s main priority in private family law. One way of achieving this would be to reduce the number of cases coming into the family courts so allowing the remaining cases to be heard more quickly which, over time, should help clear the backlog of cases currently in the system. To do this, suitable cases currently coming into the courts need to be diverted to mediation with the aim of reaching mutual agreement without the case going to court.
10. In March 2021, in response to the growing family court backlogs exacerbated by the pandemic, the Government introduced the mediation voucher scheme. This provides a one-off financial contribution of up to £500 per family to fund family mediation for child arrangement disputes. This scheme is not means tested and so is available

³ [What works to enhance interparental relationships and improve outcomes for children? | Early Intervention Foundation \(eif.org.uk\)](https://www.eif.org.uk/what-works-to-enhance-interparental-relationships-and-improve-outcomes-for-children/)

⁴ [HMCTS management information - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/hmcts-management-information)

⁵ [Family Court Statistics Quarterly: April to June 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/family-court-statistics-quarterly-april-to-june-2022)

⁶ [Family Court Statistics Quarterly: April to June 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/family-court-statistics-quarterly-april-to-june-2022)

⁷ [Family Court Statistics Quarterly: July to September 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/family-court-statistics-quarterly-july-to-september-2022)

regardless of income and runs in parallel to the legal aid scheme. As of 4th January 2023, just over 13,500 families have used the scheme to try and resolve their disputes outside of the courts. A review of evidence undertaken for the mediation voucher scheme shows that 69% of families report that they reached some or all of their issues in the mediation session(s) funded by the voucher. This review is published alongside the consultation.

11. The consultation that this Impact Assessment (IA) accompanies therefore proposes that separating or separated families seeking to make arrangements for their children or finances should be required to make a reasonable attempt to mediate before an application is submitted for a court order, unless they are exempt from mediation. The exemption criteria would broadly be the same as in the existing MIAM system – including exemptions where there is evidence of domestic abuse, child protection concerns and urgency. The Government would fund additional mediations up to a value of £500 per family for families diverted from court to mediation.

B. Policy Rationale and Objectives

Rationale

12. The conventional approaches to Government intervention are based on efficiency or equity arguments. Governments may consider intervening if there are strong enough failures in the way markets operate (e.g., monopolies overcharging consumers) or there are strong enough failures in existing Government interventions (e.g., waste generated by misdirected rules) where the proposed new interventions avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and distributional reasons (e.g., to reallocate goods and services to more vulnerable groups in society).
13. The primary rationale for government intervention in this instance is efficiency: to resolve family disputes on arrangements for their children more quickly, and in a less adversarial setting, outside of court, where it is appropriate and safe to do so. This would reduce demand on the family courts, allowing more of the courts time to be spent on cases that most need their involvement. The proposed reforms could also result in swifter resolution of disagreements for families and children, avoiding long, adversarial court cases. In addition to this, lower demand on the family courts would reduce the amount of time families and children spend in the system, which has been shown to improve outcomes and be better for the welfare of those involved.

Policy Objectives

14. The associated policy objectives are as follows:

- To help families resolve disputes about child and finance arrangements quickly and without court involvement, in appropriate cases.
- To improve outcomes for children by promoting quick and effective resolutions in private law child arrangement and financial remedy cases.

- To ensure access to the family courts, while achieving a balance that supports families in appropriate cases to reach a resolution out of court and allows courts to focus their time and resources on dealing with cases that need their involvement the most, such as cases involving evidence of domestic abuse or cases involving certain urgent or child protection circumstances.
- To address backlogs and efficiency issues in the family courts.
- To provide better support and information before court to maximise the chances of issues being resolved at an early stage.

C. Affected Stakeholder Groups, Organisations and Sectors

15. The options assessed in this IA would directly affect the following groups:

- Families including children seeking to agree child arrangements and couples resolving finances on divorce or dissolution
- HM Government - Ministry of Justice (MoJ), HM Courts and Tribunals Service (HMCTS)
- Children and Family Court Advisory and Support Services (Cafcass and Cafcass Cymru)
- Mediation & the wider dispute resolution sector
- Legal services providers
- Taxpayers

D. Description of Options Considered

16. To meet the above policy objectives the following options are considered in this IA:

- **Option 0** – do nothing. Continue with current system including the requirement to attend a Mediation Information and Assessment Meeting (MIAM) and retain current exemptions.
- **Option 1** – Bring in primary legislation mandating mediation in private law child arrangement and financial remedy cases before an application can be made to the family courts unless an exemption applies.

17. Option 1 is preferred as it best meets the Government's policy objectives.

Option 0

18. Continuing with option 0 would likely result in continued delays in the family court, prolonging conflict and uncertainty for children and families, and it would take longer to decrease the backlog of cases caused by the pandemic. There would not be an increase in the number of families able to resolve their issues outside of court.

Option 1

19. Option 1 would require families to make a reasonable attempt to mediate their disputes before applying to court, unless exemptions apply. The specific provisions as part of this option include:
- i. A requirement to make a reasonable attempt to mediate before making private law child arrangement applications to the family courts, unless exempt. The Government would fund mediation for families diverted away from court up to a value of £500 per family.
 - ii. A requirement to attend co-parenting programmes provided by Cafcass/Cafcass Cymru if the case is considered suitable. These programmes would also be funded by the Government.
 - iii. A requirement on mediators to assess the suitability of parents to attend mandatory co-parenting programmes before they can attend mediation.
 - iv. A requirement for authorised mediators to assess whether parties have made a reasonable attempt to mediate.
 - v. New and revised accountability and enforcement measures for the court, specifically.
 - a. the use of costs orders specifically where parties have not made a reasonable attempt to mediate or have prolonged court proceedings.
 - b. new powers for courts to order parties to make a reasonable attempt to mediate post-application.
20. Under the proposed system (point iv. above), the mediator would confirm to the court if a reasonable attempt had been made to reach agreement at mediation. Some families may make a reasonable attempt to mediate and still be unable to reach a mutual agreement and require the court to decide the final set of arrangements. If it is determined that a reasonable attempt has not been made, the court may impose cost orders onto the party (or parties) that were deemed to have acted unreasonably during the pre-court process. Such cost orders would be intended to incentivise parties to actively engage with the mediation process and discourage unreasonable behaviour. The consultation is seeking views on the details of these cost orders, but they could be equivalent to the cost of the pre-court mediation or court fees/costs.
21. In the proposed system of mandatory mediation, both parties involved in the dispute would be able to “self-certify” certain exemptions – specifically those including evidence of domestic abuse, urgency and certain child protection circumstances. However, the evidence supporting the exemption would have to be supplied with the application to court for scrutiny. If an exemption were found to have been claimed in invalid circumstances, or if the family’s circumstances have changed since the exemption was claimed, the court would be given new powers to order the parties to make a reasonable attempt at mediation. Where an exemption cannot be self-certified the accredited mediator would have to determine that the case is not suitable for mediation and should be dealt with in the family courts.
22. Before being required to attend mediation, parents would also be required to attend a co-parenting programme – a SPIP/PT4C or WT4C. This would aim to ensure parents are more aware of the benefits of alternative dispute resolution and are aware of the need to put their children first during the separation process. The additional co-parenting programmes would be directly funded by the Government.

E. Cost and Benefit Analysis

23. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.
24. This IA identifies impacts on individuals, groups and businesses in England and Wales, with the aim of understanding what the overall impact to society would be from implementing the options considered. IAs typically place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However, there may be important aspects that cannot sensibly be monetised which might include how the policy impacts differently on particular groups of society or changes in equity and fairness.
25. The costs and benefits of each option are usually compared to the ‘do nothing’ or ‘counterfactual’ option. As the counterfactual is compared to itself, its costs and benefits are zero, as is its Net Present Value (NPV).
26. In the case of the options in this IA, we do not have robust evidence on the rate of success in reaching a full or partial agreement at mediation by parents/carers who would now be required to mediate and that, therefore, would no longer need to go court. Therefore, we are unable to sensibly perform a cost-benefit analysis for the measure proposed under Option 1. Instead, this IA presents a break-even analysis on the public sector impacts to indicate the rate of success for which benefits would offset the estimated costs for legal aid assistance. As this is a consultation stage IA, we will continue to seek empirical evidence on the benefits of these options, taking into account any changes to the preferred option following the consultation.
27. The NPV covers private sector impacts and has been appraised over a 10-year period beginning in 2024/25, with a 3.5% discount rate applied and the addition of a 20% optimism bias applied to reflect the high level of uncertainty concerning the costs of delivery. All costs in this IA are given in 2022/23 prices.

Key figures and assumptions

28. The proposed system under Option 1 is much different to the existing model and any estimate of the impact is **highly uncertain**. The modelling represents the best assessment of how the system is likely to change under Option 1 and this has involved making certain assumptions using limited data and evidence. All estimates and assumptions made in this IA are subject to ongoing review as the development of Option 1 continues and more evidence is obtained. In what follows, we describe the data and assumptions which underpin the modelling – this includes the number of additional mediations under Option 1, the estimated success rate of families undertaking mediation, impacts on families eligible for Legal Aid, “deadweight” costs associated with Option 1 and the timing of when cases arrive at court.

Additional Mediation Volumes

29. In 2021, a total of 101,110 private family law cases started in the courts. Of these, 54,649 related to child arrangements, with the remaining 46,461 relating to finances⁸.
30. In 2020-21 85% of child arrangement cases were subject to a MIAM requirement before coming to court⁹. The remaining 15% of cases were applications for orders which do not have a requirement to mediate before going to court – for example, enforcement orders and parental orders. Where a case was subject to a MIAM requirement, mediation exemptions were claimed in 60% of cases¹⁰. This suggests that around 34% of child arrangement cases that come to the courts would be suitable for mediation and could be safely diverted away from court under Option 1 to make a reasonable attempt to reach agreement through mediation. This would equate to 18,800 additional mediations per year from 54,649 case starts in 2021.
31. In 2021, 26% of all financial remedy cases that came to the family courts were contested at the point of application. As the Legal Aid statistics show that over half of finance cases are linked to a child arrangement case¹¹, these cases are assumed to have similar exemption rates to all child arrangement cases (60% exempt from mediation). Financial remedy cases where children are not involved are assumed to have a lower exemption rate, as child safeguarding concerns and other exemptions do not apply. Therefore, an overall exemption rate of 50% has been assumed for financial remedy cases. This equates to 5,900 finance cases per year which would be required to mediate under Option 1.
32. The combined total of additional mediations expected to take place under Option 1 is 24,700 per year across both child arrangement and finance cases. The consultation document is seeking views as to whether financial remedy cases should be included, but they have been included as part of this modelling to understand the costs associated, should they be included following the conclusion of the consultation.

Mediation Success Rates

33. Not all families reach agreement successfully at mediation. Data from Legal Aid funded mediations shows that 67% of mediation starts resulted in a full or partial agreement in 2021-22 – although this was slightly lower between 2018 – 2021 averaging 61%¹². The Government does not collect data on privately funded mediations, but evidence from the mediation voucher scheme suggests that 69% of families using the scheme were able to reach agreement on some or all of their issues and either did not go to court after mediation or only went to obtain a consent order. A consent order is a mechanism to make an informal agreement – i.e., one reached through mediation – legally binding and enforceable through the courts.
34. Although the available evidence suggests that mediation achieves similar success rates across different cohorts of users, neither cohort is the same as the families who would be required to mediate under Option 1. Only 30% of children cases and 10% of finance cases are currently eligible for Legal Aid. Instead, the cohort of families

⁸ Family Court Statistics Quarterly: April to June 2022 - GOV.UK (www.gov.uk)

⁹ Family Court Statistics Quarterly: October to December 2021 - GOV.UK (www.gov.uk)

¹⁰ Family Court Statistics Quarterly: October to December 2021 - GOV.UK (www.gov.uk)

¹¹ Legal aid statistics quarterly: April to June 2022 - GOV.UK (www.gov.uk)

¹² Legal aid statistics quarterly: April to June 2022 - GOV.UK (www.gov.uk)

using the mediation voucher scheme are more similar to those who would be required to mediate under Option 1. However, there are some key differences between the two groups that mean the evidence is not directly applicable.

35. Currently, a £500 cap would be applied to the total amount of support available, per family, for the mediation session(s) required under Option 1. This is in line with the cap in the existing mediation voucher scheme. Data on the mediation session(s) funded by vouchers has been shared by mediators and suggests that 68% of vouchers claimed are for £500 worth of mediation or less. For the 32% of vouchers with over £500 worth of mediation, the average additional spend was £312, which would be entirely self-funded by parents. It is not specified in the payments data if all sessions attended by parents are included, or just those paid-for by the voucher. Evidence from the voucher scheme shows that some mediators include additional sessions beyond those funded by the £500 voucher in their returns, but we do not know if all mediators do this or the prevalence of it. It is also possible that mediators only included details on sessions funded by the voucher scheme in their returns, but parents did self-fund additional sessions before reaching agreement.
36. Where the total cost of all mediation sessions attended under the voucher scheme was over the £500 cap, the success rate for families increases to 76%. This suggests that the cap could result in some families failing to reach agreement where they are unable to self-fund further sessions of mediation. However, given the caveats around the payment data, robust analysis of how the success rates vary by spend is not possible. The success rate for families with a total mediation cost of £500 or less, was 66%. This group is the most closely aligned with the cohort of families that would be required to make a reasonable attempt to reach agreement through mediation under Option 1, where up to £500 of funding is available per family.
37. In this analysis, a success rate of 66% is assumed for additional mediations under Option 1, in alignment with the evidence from the voucher scheme. The success rate assumption is explored in more detail in the risks, assumptions and sensitivity analysis section below.

Legal Aid Impacts

38. As mentioned above, 30% of all child cases and 10% of finance cases that come to the family courts are eligible for Legal Aid. Under the current system, families that meet the Legal Aid eligibility requirements are eligible for: a free MIAM and half the cost of one mediation session if only one party is eligible for Legal Aid; or the full cost of a MIAM and all subsequent mediation sessions paid for if both parties are eligible. Because of data linking issues, it is not possible to determine how many, if any, of the Legal Aid-eligible cases that come to the family courts took up the support available through Legal Aid to attempt mediation first.
39. Where one parent is eligible for Legal Aid, it has been assumed that families could take up the funding offered through Legal Aid, then also receive up to £500 in Government support in addition to this. This is in line with how the current mediation voucher scheme operates. Evidence from the scheme shows 29% of voucher users were also eligible for Legal Aid. Where both parents are eligible for Legal Aid, their mediation would already be entirely funded by the Legal Aid Agency, meaning they would not need additional support under Option 1.

40. In summary, given the entitlement under Legal Aid would be the same under Option 1 as in the counterfactual, it is assumed no additional costs are incurred by the Legal Aid Agency and the costs of additional mediation sessions fall directly on the MoJ.

Timing of Court Costs

41. Where a family does not reach agreement at mediation, it is assumed that they go on to attend court as they would have done if not required to mediate first. It is possible that the process of going to mediation could delay the court application enough to push the costs into the next financial year but, for simplicity, we have assumed that the case would occur in the same financial year as in the counterfactual.

Deadweight Costs

42. Evidence from the mediation voucher scheme suggests that there is a substantial “deadweight” cost incurred when diverting cases from court. “Deadweight cost” occurs where the government pays for a service which the users would otherwise have paid for it themselves.

43. Half of all families that used the mediation voucher scheme indicated that they would have self-funded their mediation session(s) had the £500 voucher not been available. In the past year, this equates to 4,000 vouchers totalling around £2.3m which have been issued to families who would otherwise have funded their mediation privately. Funding vouchers for families that would have self-funded does not offer any monetised benefits, as the outcome at mediation is assumed to be the same regardless of the funding source – i.e. if a family self-funds their mediation session(s) but is unable to reach agreement and has to go to court, it is assumed that this would also be the case if the mediation was funded by the Government.

44. This situation is likely to be similar under Option 1, as it would not be feasible or equitable to implement a system whereby the Government only funded mediation for cases that would have gone to court in the counterfactual. Were a system like this to be implemented, it could create perverse incentives for families to apply to court to become eligible for financial support for their mediation, creating additional administrative burdens on the courts.

45. It is difficult, however, to produce a robust estimate of the deadweight costs that could be incurred from mandating mediation. The Government does not collect data on private mediations where families self-fund and there is not a reliable estimate of how many families undergo mediation for child arrangement disputes each year. Without this data, it is difficult to determine the percentage of families that could actively seek out financial support for their mediation rather than self-funding.

46. For this IA, the deadweight cost is assumed to be consistent with the observed cost per year in the mediation voucher scheme (£2.3m per year) because the Government funding would be equally accessible to families in both schemes.

Option 1 – Bring in primary legislation mandating mediation in private law child arrangement and financial remedy cases before an application can be made to the family courts, unless an exemption applies.

Costs of Option 1

Monetised Costs

Ministry of Justice (MoJ)

47. Additional Mediations: The MoJ would directly fund the mediation for all child arrangement and financial remedy cases that are not exempt from mediation. This equates to 24,700 additional mediations taking place, each year – of which 18,800 would be for child arrangement disputes and 5,900 would be related to finances.
48. The average cost per family is assumed to be £500. Evidence from the mediation voucher scheme – where the same £500 cap applies – shows that the average amount claimed per voucher has been £430 per family, to date. However, this has been steadily increasing over time, after being as low as £405 after around 4-5 months in. It is also expected that the cost of mediation will grow over the next few years, in line with inflation and due to the additional demand on the sector. These factors mean that almost all families are expected to use the full £500 available for mediation. This applies to both child and finance cases, although evidence from the voucher scheme only relates to child arrangement cases.
49. Overall, this would equate to a total cost of £13.4m per year, to the MoJ, to fully fund child arrangement and financial remedy mediations, £10.2m and £3.2m for each case type, respectively.
50. Deadweight Costs: There would be £2.8m per year in deadweight cost, from MoJ funding mediation for families who would otherwise have opted to self-fund. These costs are based on the observed annual deadweight cost of the mediation voucher scheme, which is the best estimate of the possible deadweight cost of Option 1. These costs have been isolated from the funding of “additional mediations” because, as these families would have self-funded in the counterfactual scenario, they are not additional mediations, but ones now funded by the Government, not the families.
51. Parenting Courses: The MoJ would also pay the cost of each family required to attend an SPIP/PT4C or WT4C before attending mediation. It is assumed that any case suitable for mediation would also be suitable to attend a co-parenting course. As 93% of child arrangement cases are based in England, this means 17,500 families would be required to attend an SPIP/PT4C 1 with the remaining 1,300 families attending a WT4C in Wales. As parents attend SPIPs/PT4Cs and WT4Cs separately, there would be a total of 35,100 additional SPIPs/PT4Cs and 2,500 WT4Cs This would result in total additional costs of £5.0m per year (£4.6m of which would be SPIPs/PT4Cs and £0.4m would be WT4Cs).
52. Table 1 summarises the monetised costs of Option 1 and shows the NPC over the ten-year appraisal period.

Table 1 – Breakdown of gross costs under Option 1

	Volume	Annual Cost	10-Year NPC
Additional Mediations	24,700	£13.4m	-£115.2m
of which Child Arrangements	18,800	£10.2m	-£87.5m
of which Financial Remedy	5,900	£3.2m	-£27.7m

Additional Co-Parenting Courses	37,600	£5.0m	-£43.7m
of which SPIPs/PT4Cs	35,100	£4.6m	-£39.2m
of which WT4Cs	2,500	£0.4m	-£3.5m
Deadweight Costs	n/a	£2.8m	-£23.8m
Total Gross Cost	n/a	£21.1m	-£181.6m

Note: Totals may not sum due to rounding

Non-Monetised Costs

Mediation Sector in England and Wales

53. Where a couple is not able to reach an agreement during mediation and goes on to have their case heard at court, mediators would be required to pass on a report outlining if the parties made a reasonable attempt at mediation. This report is not anticipated to be detailed and would not require the mediator to pass on details of anything discussed at mediation – e.g., offers discussed or the final position of each party. Because of this, it has been assumed that the additional resource required from mediators to produce this report would be negligible and would not increase their costs. The consultation will seek feedback from the mediation sector as to whether they can absorb this responsibility into their current workloads. This will help to inform whether any monetised costs associated with producing this report should be included in the response IA.

54. There may be transition costs associated with mediators being expected to undertake additional responsibilities to their existing roles. It is also possible that additional training could be required to understand the new responsibilities, depending on the complexity. However, as the consultation is seeking to understand if mediators could perform these additional duties, no cost estimates have been made in this IA on the potential transition costs to mediators. Further detail will be included in the response IA on transition and training costs associated with any additional responsibilities.

Family Legal services sector in England and Wales

55. Legal services providers who provide advice and representation for Family Law cases which would be diverted away from the courts by this option could experience a fall in demand for their services linked to the volume of cases diverted from the courts via mediation. However, as is common in MoJ IAs which seek to simplify legal processes or to take unnecessary cases out of the court system, it has been assumed that the legal sector would be able to find other work of similar or next best economic value to reallocate their resources to.

Children and Family Court Advisory and Support Service (Cafcass and Cafcass Cymru)

56. The consultation asks if co-parenting programmes (SPIPs/PT4Cs and WT4Cs) should be mandatory for any family applying to the court, with the same exemptions applicable as those for mediation. If the feedback to the consultation indicates yes, this would lead to an estimated additional 37,600 co-parenting courses being required each year.

57. It is not expected that the current resource allocation to these programmes could handle this increase in demand. Therefore, it is expected that there would be

transition costs associated with hiring and training additional staff to deliver these programmes in addition to the cost of directly funding the additional courses. If co-parenting programmes are mandated as a result of Option 1, we will ensure these transition costs are reflected in the final IA.

Families

58. We assume roughly one in three (34%) families diverted to mediation would not be successful in reaching agreement outside of court. For these families, their application to court would be delayed by the amount of time taken to arrange and attend mediation, although we do not hold data on how long the full mediation process takes. Assuming that the family spend the same amount of time in court after attending mediation as under Option 0 where they would have gone directly to court, the family will take longer to resolve their issues. This can be particularly detrimental to children involved in these cases as prolonged parental disputes and spending longer in the court system is shown to result in worse outcomes for children.
59. Cases that are unsuccessful at mediation may become more complex by the time they reach the court under Option 1. This could be due to family relationships breaking down further or new areas of conflict emerging during the mediation process that would not have arisen had the case gone directly to court. This could lead to more negative outcomes for children involved and cause cases to take longer. As it is not possible to determine the likelihood of this happening to an individual case, nor the magnitude of any impact on the quality of outcome or length of time the case spends in the system, the monetary cost of this cannot be estimated.

Benefits of Option 1

Monetised Benefits

HMCTS

60. The benefit to the family court has been estimated using the marginal cost of a generic sitting day in the family court that has been adjusted into a unit cost using the number of cases completed per sitting day (for child arrangement and financial remedy cases separately) and finally foregone court fees are deducted (minus remission rates). We estimate that the saving per case diverted is £1,713 per child arrangement case and £812 per contested financial remedy case.
61. This is the monetised benefit of diverting a child arrangement case to mediation and the issues being successfully resolved, so ensuring that the case does not go on to go to court. This benefit would be non-cashable due to the significant backlog of outstanding cases in the family courts. Any diverted case would not result in a reduction in sitting days but would contribute to reducing the number of cases in the system, allowing the courts to focus resource on cases that need to be heard in the courts and help cases to progress through the courts more quickly.
62. While the eventual goal is to completely clear the backlog of cases, it is not possible at this stage to determine if the impact of Option 1 would allow the family courts to do this over the 10-year forecast period. Because of this, it is assumed that the backlog would not be cleared and benefits remain non-cashable for the purposes of this IA.

63. It is estimated that 16,300 cases would be successfully diverted away from court each year under Option 1 – 12,400 being child arrangement cases and 3,900 being finance cases. In total this represents non-cashable savings of £21.1m per year, of which £18.4m would come from child cases and £2.8m from finance cases.

Children and Family Court Advisory and Support Services (Cafcass and Cafcass Cymru)

64. Cafcass and Cafcass Cymru represent children in family court cases in England and Wales, respectively. They are independent and advise the family courts about what is safe for children and in their best interests. Diverting a child arrangement case away from court and resolving issues in mediation would also mean that Cafcass or Cafcass Cymru will no longer be involved in the case.

65. The level of involvement that Cafcass and Cafcass Cymru have in child arrangement cases varies depending on the complexity of the case and the vulnerability of the children – and adults – involved. A case has substantial costs to Cafcass and Cafcass Cymru if it goes to first hearing and the resource needed to support a case increases as a case returns for multiple hearings. Cafcass and Cafcass Cymru are not involved in every private law child arrangement case that goes through the courts. Comparing Cafcass private law demand statistics¹³ to the family courts statistics¹⁴ shows that Cafcass are involved in around 79% of all private law child arrangement cases in England. The family courts statistics also show that 91% of private law case starts in 2021 went to first hearing.

66. Based on these proportions, Cafcass and Cafcass Cymru would be involved in 71% of private law child arrangement cases that go to first hearing. Given that private law cases suitable for mediation are likely to be amongst the least complex of those that come to court, a £500 marginal cost per case has been agreed where a case goes to mediation under Option 1. This is based on an adjustment to the marginal cost of Cafcass' involvement in child arrangement cases based on the proportion of cases that only involve one hearing before being resolved – this has been used as proxy for less complex cases. The aim is to refine this assumption following this IA and in time for the consultation response.

67. As with the courts, Cafcass and Cafcass Cymru are also dealing with a backlog of cases and the benefits outlined are assumed to be non-cashable for the 10-year forecast period. The monetised benefits come from Cafcass and Cafcass Cymru being able to reduce their backlogs, bring down the average time cases spend in the system and dedicate more time and resource to the most complex cases.

68. In total, Option 1 would reduce demand on Cafcass and Cafcass Cymru by 8,900 private law child arrangement cases per year. This represents non-cashable benefits of around £3.8m per year for Cafcass and Cafcass Cymru combined.

69. Table 2 summarises the monetised costs of Option 1 and the NPV over the 10-year appraisal period.

¹³ [Our data - Cafcass - Children and Family Court Advisory and Support Service](#)

¹⁴ [Family Court Statistics Quarterly: April to June 2022 - GOV.UK \(www.gov.uk\)](#)

Table 2 – Breakdown of gross benefits under Option 1

	Volume	Annual Benefit	10-Year NPB
Cases Diverted from Court	16,300	£21.1m	£181.9m
of which Child Arrangements	12,400	£18.4m	£158.2m
of which Financial Remedy	3,900	£2.8m	£23.7m
Cases not Requiring Cafcass/Cafcass Cymru Support	8,900	£3.8m	£33.1m
Total Gross Benefit	n/a	£25.0m	£215.0m

Note: Totals may not sum due to rounding

Non-Monetised Benefits

Families

70. Mediation can be a quicker and more cost-effective method of dispute resolution where a case can safely be resolved outside of court. Resolving disputes more quickly and in a less adversarial setting than the family court can be beneficial, in particular for any children and adults involved in disputes.
71. Co-parenting programmes provide support and information on co-parenting after separation. They specifically aim to help parents put their children first when they separate, and therefore could help support the early resolution of disputes through mediation.
72. In addition, successfully diverting some of these suitable cases from court would indirectly help other families. The complexity of many issues coming to the family courts mean that more time is needed by all professionals working in courts to consider issues and take the appropriate action. Where suitable families can resolve issues via mediation this would support the family courts in prioritising these cases.

Families who would self-fund mediation

73. For families who would currently opt to self-fund mediation sessions before going to court, Option 1 offers a benefit of up to £500 per family in funding for their mediation session(s). As this benefit is also an additional cost to the Government, it has been included as a monetised cost in paragraph 50. The cost incurred by funding mediation for this cohort of families is classed as a deadweight cost to the MoJ.

The mediation sector

74. Under Option 1, there would be 24,700 additional mediations per year, increasing the demand across the mediation sector. This would be beneficial to the mediation sector as a whole, and to individual mediators. As any benefit to the mediation sector is also a direct cost to the MoJ, these are captured as monetised costs in paragraph 49.

HMCTS

75. Every family who is diverted to mediation and able to successfully resolve their child arrangement disputes represents one case that no longer comes into the family courts (unless to obtain a consent order for an agreement reached at mediation). As

was explained above, due to the backlog of outstanding cases currently in the system – representing almost 86,000 children in private law cases – reducing demand will not offer cashable, monetised benefits over the 10-year forecast period.

76. However, diverting appropriate cases to mediation in the first instance would help ensure that more of the court's time can be dedicated to complex cases with vulnerable parties and children involved, which cannot be resolved safely outside of court. The lower demand on the family courts would also help cases to get in front of a judge more quickly, after the initial application, due to fewer cases coming into the family courts and having a lower backlog of existing cases in the system over time.
77. Option 1 would give courts the power to apply cost orders in cases that come to court where no reasonable attempt was made to mediate by one or both parties. It is not possible to make any estimate, at this stage, of the likely volume of cost orders that could be made by judges under Option 1. It is also not possible to estimate how often parties would be deemed to have acted unreasonably, or how often judges would choose to apply cost orders. As the policy around cost orders is refined following the consultation responses, we will work to develop an estimate of the possible income generated by HMCTS from cost orders applied under Option 1.

Children and Family Court Advisory and Support Service (Cafcass and Cafcass Cymru)

78. Similarly, Cafcass and Cafcass Cymru would have lower overall demand from private law child arrangement cases. This would not offer any monetised benefits, due to there being similar backlogs for caseworkers in Cafcass and Cafcass Cymru. The reduced demand would allow case workers to focus more of their resource on cases that most need independent oversight and advice for the children involved. It may also help Cafcass and Cafcass Cymru to work through their backlog of cases in the long-term, but in the short- to medium-term the benefit would be progressing work on children's cases more quickly once they have come into the system and spending more of the time available on cases that are complex and that present risks to child welfare.

F. Risks, Assumptions and Sensitivity Analysis

79. The key assumptions used to estimate the impact of Option 1 are outlined in the Cost and Benefit Analysis section above. This section will address the assumptions which are the most uncertain and will have the greatest impact on the overall costs of Option 1.

Cost per additional family diverted to mediation

80. It has been assumed that the average cost per family diverted to mediation is £500. This is in line with the maximum amount that would be available, as outlined in Option 1. It is possible that this could be lower and, to date, the average cost per family for the mediation voucher scheme has been around £430. However, as outlined in paragraph 48, this amount has been increasing month-on-month in the out-turn data and is expected to continue to increase over the next few years. If the cost per family were to be lower than the £500 cap, this would bring down the gross cost of Option 1, without reducing the benefits.

81. However, evidence from the mediation voucher scheme show that at least 32% of families that used the scheme had over £500 worth of mediation sessions, where they would have to fund the difference above the cap. As outlined in paragraph 36, the success rate for these parents was 76% and the average additional cost of mediation was over £300 above the £500 cap. This suggests there could be scope to increase the cap on mediation support in order to try and ensure more families reach agreement in mediation. Due to data quality issues, robust analysis of how mediation success is linked to cost (or time spent in mediation) is not available.
82. Sensitivity analysis shows that, assuming the 66% success rate remains unchanged, the scheme would be cost neutral – i.e., would have an NPV of zero – where the average cost per voucher is increased to just under £750.

Mediation success rates

83. Evidence from the mediation voucher scheme suggests that success rates are broadly in line with the observed success rates in Legal Aid funded mediations – 66% has been used as the central assumption in this IA. However, it is not clear if this success rate would continue to hold as more families are required to mediate, due to more complex cases now being diverted to mediation. As outlined above, it is also possible that success is linked to the amount of financial support available and how long parents are able to spend in mediation.
84. Sensitivity analysis shows that Option 1 is a net benefit as long as the mediation success rate is 50% or more assuming that the cap per family remains at £500.

Court costs

85. The marginal cost of a family court sitting includes the staff costs i.e., the cost of a court clerk, a judge, and other judicial costs. We have not included any overhead costs since assumptions from HMCTS suggests that the diversion of cases would not be enough to impact on estates, IT, etc. Court diversions would also need to occur in a specific region to result in a such overhead costs being impacted. Rather we have assumed that savings to HMCTS are non-cashable and would be used to address outstanding cases and reduce waiting times for families and allow more of the courts' time to be spent hearing cases that are not suitable to be resolved through alternative forms of dispute resolution.

Cafcass/Cafcass Cymru Costs

86. Cafcass provided the cost to their organisation of a private law child arrangement case that goes to first hearing. This cost was assumed to be the same for Cafcass and Cafcass Cymru because the underlying modelling does not split out impacts for England and Wales.
87. As outlined in paragraph 64 we estimate that Cafcass / Cafcass Cymru are involved in 79% of all private law child arrangement cases in the courts, based on published data for 2021. A judgement assumption has been made that this percentage is likely to be lower when looking specifically at cases which can be safely diverted to mediation. This is because Cafcass involvement tends to be higher in cases which would be exempt from mediation – i.e., those with domestic abuse concerns, child

welfare issues and other factors. It was not possible to make an accurate estimate at the point, but this is something we aim to investigate following the publication of the consultation.

G. Wider impacts

Equalities

88. An Equalities statement is included within the consultation document which this IA accompanies.

Better Regulation

89. Option 1 is classed as a qualifying regulatory provision as the direct benefits to the mediation sector (the EANDCB) exceeds the de minimis of \pm £5 million per year. Although we expect some of the additional demand in this sector to be met by family legal providers, we do not have a sense of what proportion this will be. In addition, the impact of parents and carers exceeds the de minimis of \pm £5 million per year. Therefore, the department will engage with the Regulatory Policy Committee (RPC) for an opinion following the publication of the consultation.

Potential implications for trade

90. There is no significant impact on international trade.

Family Impact Test

91. A family impact test has been published in addition to this IA.

Small and Micro Business Assessment

92. The mediation market is a mix of small businesses/self-employed mediators, some established mediation providers, and mediators working in law firms of various sizes. We will gather more evidence on affected businesses during the consultation stage, but it is possible that businesses of all sizes will be impacted, when factoring in mediators that may work for a larger law firm. Given the anticipated benefits, the measures would have a positive impact upon micro and small businesses in the mediation sector.

Welsh Language

93. We have considered the implications for Welsh language. A Welsh language version of the consultation will be published alongside this IA.

H. Monitoring and Evaluation

94. We will draw up plans for proportionate monitoring and evaluation of the policy as it is finalised following the feedback obtained in the consultation period.