På privaträttens område kommer pågående ärenden och förfaranden som inleddes innan övergångsperioden löpte ut att fortsätta i enlighet med EU-rätten. Relevant information om Storbritannien kommer att finnas kvar på e-juridikportalen till slutet av 2022 enligt en ömsesidig överenskommelse med Storbritannien.

Mediation in EU countries

England och Wales

Rather than going to court, why not try to solve your dispute through mediation? This is an alternative dispute resolution (ADR) measure, whereby a neutral mediator assists those involved in a dispute to reach an agreement. The government and justice practitioners of England and Wales are aware of the advantages of mediation and are committed to the promotion and use of mediation to resolve disputes as an alternative to going to court, in suitable cases. Your case may be eligible to be funded by legal aid (subject to it passing the usual qualifying criteria).

Who to contact?

The Ministry of Justice is responsible for policy on civil and family mediation, including its promotion as it relates to England and Wales only.

Civil Mediation

In order to ensure the quality of court-referred mediation in civil disputes (excluding family disputes in the jurisdiction of England and Wales), the Ministry of Justice and Her Majesty's Courts and Tribunals Service (HMCTS) have established two civil mediation processes via which parties can resolve disputes depending on the value of the claim. The Small Claims Mediation Service is an in-house service provided and run by HMCTS, in relation to cases falling within the small claims track, generally cases under £10000. For higher value cases, over £10000, the Ministry of Justice has worked with the Civil Mediation Council (CMC) to introduce an accreditation scheme via which mediation provider organisations can apply to be included in the civil mediation directory and for courts to refer parties to them in suitable cases. The CMC is one organisation representing civil and commercial mediation providers.

Family Mediation

With regard to family disputes, mediation is self-regulated, consisting of a number of membership organisations or accreditation bodies to which mediators are affiliated. These bodies have converged to form the Family Mediation Council (FMC) in order to harmonise standards in family mediation. Another function of the FMC is to represent its founding member organisations and family mediation practitioners at large in the dealings of the profession with government.

The FMC is a non-governmental body and plays a central role among its member organisations, which are all non-governmental organisations/associations and founder members of the FMC. The most prominent of these are:

ADR Group
Family Mediators Association
National Family Mediation
College of Family Mediators
Resolution
The Law Society

Government has no plans at present to set up a regulatory body in relation to civil or family mediation.

You can find an accredited civil mediator on the civil mediation directory, available on the justice website. You can search the directory for a mediation provider that is local to you; and the cost of mediation is based on a fixed fee, depending on the value of the dispute. For parties who are unable to afford the cost of mediation a free mediation service is available for those who are eligible, provided by LawWorks. LawWorks can be contacted on **01483 216 815** or via the LawWorks website.

A family mediation service finder is available within the GovUK website (previously known as DirectGov) at: Family Mediation Service Finder . Please note there is no longer a Family Mediation Helpline.

You can find out more about legal aid, including whether you may eligible for legal aid on the new Legal Aid Information Service on the Gov.UK site at check-legal-aid

In which area is recourse to mediation admissible and/or the most common?

Mediation can be used to resolve a whole range of everyday civil and commercial disputes – including housing issues, business disputes, workplace disputes, small claims, debt claims, boundary disputes, employment disputes, contractual disputes, personal injury and negligence claims as well as community disputes such as nuisance or harassment issues.

Mediation can also be used in relation to family disputes, including divorce, dissolution, civil partnership dissolution, Children Act applications, including contact and residence. It is not restricted to former partners or spouses. For example, grandparents could use family mediation to help agree on arrangements for them to continue a relationship with their grandchildren.

Are there specific rules to follow?

Civil mediation procedure

Civil mediation is not regulated by law, nor is it a prerequisite to court proceedings. However, parties in civil cases are required to consider mediation seriously before going to court.

The **civil procedure rules** (CPR) govern the practice and procedure to be followed in the civil divisions of the Court of Appeal, the High Court and County Courts. The CPR has a procedural code, whose overriding objective is to help the courts deal with cases justly. Part of that overriding objective requires the court to manage cases actively, this includes encouraging the parties involved to use an alternative dispute resolution procedure if the court considers this appropriate and facilitates the use of such procedure.

While mediation is entirely voluntary, the civil procedure rules set out the factors to be taken into account when deciding the amount of costs to award. The court must have regard to the efforts made, if any, before and during the proceedings in order to try to resolve the dispute. Consequently, if a winning party has previously refused a reasonable offer of mediation, the judge could decide that the losing side will not be required to pay the winning side's costs.

Family mediation procedure

"Since April 2011 all clients (not just those in receipt of public funding) have been expected, except in specified circumstances, to consider the use of family mediation by attending a Mediation Information and Assessment Meeting (MIAM) before they can make an application to the court under the President's Pre Application Protocol (PAP) - Practice Direction 3A. At this meeting which parties can attend either together or separately, mediation or any other dispute resolution option available locally, can be discussed and considered.

Prior to April 2014 applicants were expected to file Form FM1 with their application to show that they are:

exempt from attending a MIAM; that mediation is not suitable; that they attended a MIAM but mediation is not suitable; or that mediation took place but was not able to resolve any or all of the issues. Post April 2014 the mediation declaration is contained within the relevant application form, eg C100.

It is now a legal requirement that anyone considering applying to court for an order about their children is legally obliged to attend a MIAM first. To support this, the Government has kept family mediation and Legal Help for Mediation within scope for legal aid. If one party qualifies for legal aid, the cost of the initial MIAM will be covered for both participants. There are certain exemptions to this requirement, for example in relationships involving domestic violence.

In addition to this, as of 3 November 2014, the first single session of mediation is publicly funded in all cases where one of the people involved is already legally aided. In this scenario, both participants will be funded for the MIAM and the first session of mediation. It is hoped that the combination of the compulsory MIAM with the free first mediation session will prove effective in introducing more people to the benefits of mediation, and away from the courts. However mediation is still a voluntary process and both parties must agree to mediate."

Like the **Civil Procedure Rules**, the **Family Procedure Rules** (a comprehensive set of rules that relate to court procedure) encourage the use of alternative dispute resolution (ADR) methods.

Maintaining professional standards

There is no national code of conduct for mediators specific to England and Wales. However, in order to be accredited by the CMC the civil mediation provider must adhere to a code of conduct – the **EU Code of Conduct** is used as the model. The profession is self-regulating and the government plays no role in encouraging adherence to any voluntary code

All founding members of the FMC are required to ensure that their members (family mediation practitioners) adhere to the FMC Code of Conduct.

Information and training

Information about civil mediation, services and pricing is available from the Government website at the Ministry of Justice website: civil mediation

The Civil Mediation Directory offers a search facility to find a mediator who is able to provide mediation in a location suitable to the parties. The CMC website and the websites of the CMC provider organisations provide more information about mediation and mediation services.

The Family Mediation Service Finder offers a search facility to find a mediator in a user's local area. The websites of the FMC member organisations provide more information about mediation services

There is no national training body for civil mediators in England and Wales. Civil mediators are trained by the private sector, which is self-regulated. The profession self-regulates and deals with the training of its membership.

Family mediators come from a variety of backgrounds, including legal, therapeutic and social services, and there is no legal requirement that they undertake any specialist training. The various membership/accreditation organisations do, however, maintain their own sets of training and professional standards, which feature training requirements. Mediators who have a contract to provide publically funded mediation are expected to attain a particular high standard of accreditation and training to carry out the initial Mediation Information Assessment Meeting (MIAM) and mediation.

What is the cost of mediation?

The cost of mediation varies by provider and is not generally regulated by the state. In civil matters, the cost of mediation relates to the value of the issues in dispute and the time required to undertake the mediation process. The rates for the provision of mediation provided via the online civil mediation directory are available from the justice website. The LawWorks charity provides free mediation to those who cannot afford to pay. LawWorks can be contacted on 01483216815 or via the LawWorks Mediation website.

Is it possible to enforce an agreement resulting from mediation?

Directive 2008/52/EC implemented in the UK under The Cross-Border Mediation (EU Directive) Regulations 2011 (SI 2011 No 1133) allows those involved in a cross-border dispute, where one party is domiciled in a Member State at the time of the dispute to request that a written agreement arising from mediation be made enforceable. Member States shall inform the Commission of the courts or other authorities competent to receive requests.

For England and Wales, details on competent courts are available on the website of Her Majesty's Courts and Tribunals Service.

Parties to a civil dispute, issued in court, who have reached an agreement through mediation, may apply to the court to have their agreement legal endorsed by a judge. Once endorsed by a judge the agreement becomes legally binding and enforceable 'consent order', should the court be satisfied as to the fairness of the agreement reached.

Parties to family disputes who have reached agreement amongst themselves, through their solicitors or through mediation, may apply to the court to convert their agreement into a legally binding court 'consent' order, should the court be satisfied as to the fairness of the agreement in question. This is more likely to apply to financial agreements rather than those relating to children.

Related Links

Civil Mediation Council, Family Mediation Council, Civil Mediation Online Directory, Family Mediation Service Finder, EU Code of Conduct for Mediators FMC Code of Conduct, LawWorks Mediation

Last update: 20/04/2015

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