The Family Mediation Trust welcomes the opportunity to contribute to this consultation on matters pertaining to the family justice system. As a legal aid provider with 40 years of experience in the field, we are dedicated to promoting accessible and effective dispute resolution processes for families in need. Our organization is committed to upholding the principles of fairness, impartiality, and the best interests of the children involved.

Through our extensive work in the field of family mediation, we have witnessed first-hand the transformative power of alternative dispute resolution in fostering amicable resolutions and reducing the burden on the court system. Drawing from our expertise and experience, we provide valuable insights and perspectives on the role of court fees, the importance of financial accessibility, and the need for streamlined processes to support the overall objectives of the family justice system.

This consultation offers a valuable opportunity for stakeholders to come together and shape the future of family justice, ensuring that it remains accessible, fair, and efficient. We look forward to contributing our knowledge and expertise to facilitate meaningful discussions and propose practical solutions that benefit all parties involved, particularly those from low-income backgrounds.

The Family Mediation Trust is dedicated to promoting positive change and improving the lives of families navigating the complexities of legal disputes. We are committed to working collaboratively with policymakers, legal professionals, and other stakeholders to create a more inclusive and effective family justice system that meets the diverse needs of families across our society.

a) Requirement for a reasonable attempt at mediation before making private law child arrangement applications, with government funding for mediation up to £500 per family:

While we support the encouragement for families to attempt mediation, we have concerns about the focus solely on the voucher, as it may hinder access for those with the lowest income who cannot afford the MIAM (Mediation Information and Assessment Meeting) cost. To ensure sustainability, it is crucial that legal aid provisions adequately cover the costs of mediation, enabling increased uptake and reduction in court waiting times. We must ensure that this push for mediation does not compromise its quality or create additional barriers to access.

b) Requirement to attend co-parenting programmes funded by the government:

We acknowledge the positive impact of co-parenting programs and support the referral of clients to such programs. However, it is important that attending these programs does not delay the mediation process or result in additional costs for parents with lower incomes, such as expenses for attending the course or paying for extra pre-mediation meetings.

c) Requirement for mediators to assess the suitability of parents for mandatory co-parenting programs:

We believe that well-trained mediators possess the necessary skills to effectively and safely assess the suitability of parents for co-parenting programs. However, the funding for mediation should adequately reflect the costs associated with conducting this assessment and managing a referral.

d) Requirement for mediators to assess whether parties have made a reasonable attempt to mediate:

Maintaining the impartiality of mediation is paramount. If mediators are compelled to provide opinion-based comments to the courts, the effectiveness of the mediation process may be compromised. However, if the determination of a reasonable attempt can be based on factual information, such as attendance or nonattendance, the mediation sector is prepared to support this requirement.

e) New accountability and enforcement measures for the court:

The proposed use of cost orders and new powers to mandate parties to attempt mediation post-application may inadvertently impact the lower-income parent who cannot afford legal representation. There is a risk that these sanctions could unfairly penalize the unrepresented or less legally capable party. It is crucial to consider the potential implications and ensure that the measures do not create undue hardships for vulnerable individuals.

Detailed responses to the questions raised:

Question 1

Are you in favour of a mandatory requirement for separating parents (and others such as grandparents)[footnote 45] to attend a shared parenting programme, if they and their circumstances are considered suitable and subject to the same exemptions as for the mediation requirement (see chapter 3), before they can make an application to the court for a child arrangement or other children's order?

Yes, the Family Mediation Trust is in favour of a mandatory requirement for separating parents (including grandparents) to attend a shared parenting programme, provided their circumstances are deemed suitable and subject to the same exemptions as the mediation requirement.

However, we have certain concerns and recommendations regarding the implementation of this requirement. Firstly, these programmes should be freely accessible to all participants, and attendance should not necessitate making an application to the court. It is crucial to ensure that the process is streamlined and does not add financial or time burdens to the mediation firms.

We have reservations about the new programme introduced by CAFCASS, as it presents some fundamental issues that may limit access and pose challenges during the referral process. Previously, referrals to the old SPIPS programme required providers to use a CAFCASS secure email system and maintain additional policies, incurring costs. Any referral system should not impose additional financial or time costs on the mediation firms.

Moreover, the original SPIPS programme had a delivery Key Performance Indicator (KPI) of twenty working days, whereas the new programme is more complex and time-consuming, with a KPI of 35 working days. Prolonged referral processes can hinder families' progress for significant periods of time, and efforts should be made to avoid such delays.

We must also consider that many low-income families face limitations in accessing services online. They may have lower-quality mobile phones or lack access to home laptops, and data usage can be expensive for them. It is crucial to make the programme easily accessible for low-income families, ensuring they are not excluded due to technological barriers. Adequate provisions should be made to accommodate their needs.

Additionally, we have concerns about insisting on families completing a self-created one-line parenting plan, which is currently part of the programme. In mediation, trained professionals work with parents to create a comprehensive plan that considers the child's best interests and addresses power dynamics between the parents. A self-managed program does not achieve these goals and often necessitates additional mediation sessions when clients return to the process. This adds costs for both the clients and the mediation providers.

It is essential to recognize that making a referral during a MIAM (Mediation Information and Assessment Meeting) will require additional time, increasing the cost of conducting the MIAM. These costs include variable rates associated with running the session and fixed costs related to additional administrative processes. To ensure the sustainability of the mediation process, it is important to consider and account for these costs in the legal aid payment rates.

In conclusion, while we support the mandatory requirement for a shared parenting programme, we urge careful consideration of the concerns and recommendations outlined above. By addressing these issues, we can facilitate a more effective and accessible system that benefits all participants involved in the mediation process.

Question 2

If yes, are you in favour of this being required before mediation can start?

No, the Family Mediation Trust is not in favour of requiring parents to attend the shared parenting programme before mediation can start.

While we recognize the value of ensuring parents have access to the course as soon as possible, mandating attendance before attempting mediation is likely to discourage reluctant parents from taking necessary steps. This could lead to further delays, increased conflict, and potentially render the case unsuitable for mediation when it eventually reaches that stage.

To prioritize the best interests of the child, it would be more beneficial to allow the course and mediation to run in parallel if needed. This approach would prevent unnecessary delays, enable the formation of agreements at an earlier stage, and often facilitate the implementation of interim steps that reduce conflict for the children. By avoiding delays, mediators can develop stronger, long-term plans that cater to the needs of all parties involved.

We passionately believe that accredited mediators possess the necessary skills and experience to make informed judgments regarding whether mediation should be paused while attendance at a parenting course takes place, or if the two processes can be conducted concurrently. The mediation standards administered by the Family Mediation Council (FMC) already require mediators to undergo training in areas such as safeguarding and domestic abuse screening.

We are confident that the FMC has the capacity to amend the MIAM (Mediation Information and Assessment Meeting) standards to accommodate these suggested changes. This flexibility would contribute to the development of strong, long-term plans, which are especially vital for families on limited budgets as it minimizes their engagement with the family legal processes.

In conclusion, we advocate for the parallel running of the shared parenting programme and mediation, allowing mediators to exercise their expertise in determining the most appropriate

approach. This approach will result in more efficient and effective outcomes for families involved in the mediation process.

Question 3

Should information on the court process (non-tailored legal information) be provided to those with a private family law dispute:

Parents' circumstances vary based on factors such as their location, income, history, and employment. Therefore, it is essential to ensure that they can access relevant information in a timely and accessible manner.

The recently reviewed MIAM standards have undergone significant development and outline the core outcomes expected from a MIAM. These include providing participants with sufficient information about mediation and other dispute resolution processes to make informed choices, obtaining information about their circumstances and issues, assessing the safety and suitability of mediation, and discussing participants' next steps, including the value of seeking legal advice.

The supplementary guidance to the standards emphasizes that mediators should expand on the information exchange and provide details on other out-of-court options when mediation is not being pursued. This includes offering brief descriptions of alternative processes, their benefits, principles, costs, potential disadvantages, and relevant timings. Mediators should also provide general information about court applications, including limitations and potential outcomes, while managing participants' expectations regarding financial and emotional costs and timescales.

Moreover, mediators are required to provide MIAM participants with details of other relevant support services, including those for children, so they can directly access appropriate assistance.

Based on these robust standards, we believe that clients attending MIAMs should receive tailored information about the legal systems and available options. We do not consider a separate meeting conducted by solicitors (commonly referred to as an IAM) to be advantageous for most low-income families. Introducing such a meeting would extend the process, increase costs, and deviate from the FMC-regulated standards. IAMs primarily aim to steer individuals away from mediation toward other dispute resolution methods that low-income families cannot afford to pursue.

Regarding the provision of court process information via an online resource, a centralized information portal would be beneficial for many people.

Question 4

Based on current online resources, what are your views on an online tool being provided by the government to help parents, carers and possibly children involved in child arrangement cases? What information and resources should any such tool prioritise to support families to resolve their issues earlier?

When considering the provision of an online tool by the government to assist parents, carers, and potentially children involved in child arrangement cases, it is crucial to address the specific challenges faced by low-income families. These challenges primarily revolve around literacy levels and access to information technology.

Given the limited resources available to low-income families, there is a risk that an online portal may not be accessible to all. Many families may lack reliable internet access or have limited digital literacy

skills, hindering their ability to benefit from such a tool. It is vital to take these access issues into account and ensure that alternative avenues for information and support are available to families who face difficulties in accessing the online tool.

Additionally, the language and content presented on the online platform must be carefully crafted to cater to individuals with a low level of understanding regarding legal processes and terminology. This is especially crucial when designing a system intended to support children. It is important to recognize that the average age of children going through mediation processes is typically under six years old. Therefore, providing accessible information that can be easily understood by young children is a complex task that requires special attention.

In light of these considerations, it is recommended to develop resources specifically for schools to use with children. This approach would have a significant impact on supporting children's understanding of what is happening in their families. These resources can be tailored to the child's age and background, ensuring that the information provided is age-appropriate, engaging, and easily comprehensible. By collaborating with schools to incorporate educational resources into their curriculum, children can receive the necessary support and guidance to navigate the complexities of child arrangement cases.

To support families in resolving their issues earlier, any online tool should prioritize the following information and resources:

1. Clear explanations of the legal processes and terminologies involved in child arrangement cases, using plain language that is accessible to individuals with limited legal knowledge.
2. Practical guidance on how to initiate and navigate the mediation process, including information on the benefits of mediation, the role of mediators, and how to prepare for mediation sessions.
3. Guidance on creating parenting plans, addressing various aspects such as child custody, visitation schedules, communication between parents, and decision-making processes.
4. Information on available support services, both legal and non-legal, that can assist families in resolving their issues, such as counselling services, parenting programs, and community resources.
5. Age-appropriate resources and guidance for children to help them understand the changes occurring in their family dynamics, manage their emotions, and express their needs and preferences.
6. Access to relevant forms, templates, and resources that can aid families in documenting agreements and complying with legal requirements.
7. Links to further information and external resources that can provide in-depth knowledge on specific topics related to child arrangement cases.

By prioritizing these aspects and considering the unique circumstances of low-income families, an online tool can effectively support families in resolving their issues earlier and promote positive outcomes for all parties involved.

Question 5

Do you think it is appropriate for mediators to determine suitability for a co-parenting programme at an information meeting? Please state yes/no/do not know and provide reasons for your answer.

Yes

Mediators assessing suitability for a co-parenting programme at the information meeting (MIAM) is appropriate for several reasons:

1. Cost-effectiveness: The MIAM is a mandatory step for parents before engaging in the process of reaching agreements around their children. Assessing suitability during this meeting does not add extra costs for parents, as they are already required to attend the MIAM.
2. Mediators' training: Mediators undergo extensive training to identify issues such as domestic abuse, client capacity, and coercive behaviour. They receive ongoing professional practice support and training to maintain their skills. The standards for mediator training and ongoing development are set by the Family Mediation Council (FMC) and are regularly reviewed.
3. Flexibility in mediation process: Assessing suitability during the MIAM allows the mediator to determine whether the mediation should occur after the parenting course or run concurrently. This assessment ensures that the case moves forward at an appropriate pace while prioritizing the best interests of the child.

However, there is no need for an additional assessment meeting, such as an IAM (Independent Assessment Meeting). Adding another meeting before the MIAM would result in additional costs for clients, delays in accessing mediation, potential client disillusionment with the process, confusion in messaging if delivered by other professionals, and resource diversion from mediation. The existing MIAM process is sufficient for assessing suitability and streamlining the mediation journey.

Question 6

Can you share any experience or further evidence of pre-court compulsory mediation in other countries and the lessons learned from this?

Nothing to add.

Question 7

How should the 'MIAM' pre-mediation meeting under this proposed model differ from the current MIAM?

The proposal to introduce an IAM (Independent Assessment Meeting) as part of the pre-mediation process raises concerns about its potential misalignment with the best interests of clients, particularly those from low-income backgrounds. While the intention behind IAMs may be to provide an additional layer of assessment, it is important to critically examine the motivations and potential consequences of such a requirement.

IAMs are often seen as catering more to the interests of high-level legal professionals who may be concerned about their income, rather than prioritizing the needs of clients. The additional meeting could introduce unnecessary delays and financial burdens for families seeking resolution through mediation, especially for those with limited financial resources.

One of the key strengths of the current MIAM (Mediation Information and Assessment Meeting) process, established by the Family Mediation Council (FMC), is its focus on providing timely and accessible information to clients. The rigorous standards set by the FMC ensure that issues related to safeguarding and domestic abuse are consistently addressed during the MIAM.

The recent updates to the MIAM standard, increasing the required duration to one hour, demonstrate the commitment to providing comprehensive support and assessment. However, the proposed IAM could potentially disrupt this streamlined process and introduce additional costs, negatively impacting the accessibility of mediation for low-income families.

It is crucial to consider the financial implications of the proposed IAM. The current legal aid payment for MIAMs has remained unchanged since 2004, while the costs associated with delivering MIAMs have significantly increased. This disparity could lead to a situation where low-income families are forced to choose between meeting their basic needs and accessing the necessary support through MIAMs.

To ensure that mediation remains accessible and equitable for all, it is imperative to address the financial concerns and adequately fund MIAMs through legal aid. Increasing the payment for MIAMs and adjusting it to account for inflation would alleviate the burden on low-income families and ensure their meaningful participation in the mediation process.

In conclusion, while the IAM proposal may have been introduced with good intentions, it is essential to critically evaluate its potential impact on clients, especially those from low-income backgrounds. Sustaining the strengths of the current MIAM process and addressing the financial implications are crucial steps toward maintaining an inclusive and accessible mediation system.

Question 8

What should “a reasonable attempt to mediate” look like? Should this focus on the number of mediation sessions, time taken, a person’s approach to mediation or other possibilities?

The concept of "a reasonable attempt to mediate" should focus on the active engagement and participation of the parties involved in the mediation process. It is important to note that mediators cannot provide commentary on the specifics of what was said or how it was said during the confidential mediation sessions, as this would violate the confidentiality principles and limit client engagement.

Instead, assessing a reasonable attempt to mediate can be based on objective factors such as the number of mediation sessions attended by the parties and the duration of the mediation process. This approach recognizes that mediation is a voluntary process, and parties must demonstrate a genuine effort to engage in the resolution of their dispute through mediation.

By focusing on the participation and commitment of the parties, rather than the specific content of the mediation discussions, a reasonable attempt to mediate can be determined. This approach respects the confidentiality of the mediation process while ensuring that parties are actively involved and invested in exploring mediation as a means of resolving their issues.

It is worth noting that the definition of a reasonable attempt to mediate may vary depending on the circumstances and the nature of the dispute. Flexibility should be maintained to account for different complexities and dynamics involved in each case. The ultimate goal is to encourage and support

parties in actively participating in mediation, with the understanding that genuine effort and engagement are essential for the mediation process to be effective.

Question 9

a) Do you agree that urgent applications, child protection circumstances (as set out in the current MIAM exemption), and cases where there is specified evidence of domestic abuse, should be exempt from attempting mediation before going to court?

Yes, urgent applications, child protection circumstances, and cases where there is specified evidence of domestic abuse should be exempt from attempting mediation before going to court. However, it is important to note that domestic abuse can occur across all socioeconomic groups, although it is more prevalent in low-income households. Research indicates a correlation between low-income neighbourhoods and the higher likelihood of experiencing domestic abuse.

Low-income households often face additional vulnerabilities such as overcrowding, financial stress, and limited access to safe housing options, which can exacerbate the risk and impact of domestic abuse. Financial constraints and economic dependence can make it difficult for individuals to leave abusive relationships, and barriers may exist in accessing resources like legal aid, housing, and support services.

While it is agreed that cases involving domestic abuse should be exempt from mediation, it is worth noting that there is not a universally held view among providers of domestic abuse support. Some believe that mediation can still be effective in certain cases that involve elements of domestic abuse, utilizing approaches like co-mediation, shuttle mediation, online mediation, and collaborative mediation.

Mediators accredited by the Family Mediation Council (FMC) undergo comprehensive training in domestic abuse screening, and there have been no reported complaints to the FMC regarding the conduct of mediators in relation to domestic abuse screening.

In conclusion, exemptions from attempting mediation should be granted in cases involving urgent applications, child protection circumstances, and specified evidence of domestic abuse. However, it is important to ensure that funding and support are available in low-income communities, considering the higher prevalence of domestic abuse in these households.

Question 12

What are your views on providing full funding for compulsory mediation pre-court for finance remedy applications?

We strongly believe that full funding for compulsory mediation pre-court for finance remedy applications is essential, particularly for low-income families. While financial issues can be complex and often involve matters like tenancy disputes, dividing shared ownership properties, or managing debt, it is crucial to address these issues safely and avoid further conflict.

In many cases, families are encouraged to pursue litigation instead of mediation due to financial incentives for litigation teams and the need for court approval at the end of the process. However, providing vouchers for families, including those who are not eligible for legal aid but still have low incomes, can encourage more families to attempt mediation and increase the conversion rate.

However, it is important to acknowledge that the current voucher system may favour better-off clients, creating challenges for low-income families. For instance, low-income families may require interpreter services, which can diminish the available budget for mediation. Additionally, the complexity of low-income cases often necessitates co-mediation, multiple sessions, and additional support measures.

Addressing the issue of low-income families returning to court is also crucial, as a considerable number of cases require review and resolution of ongoing conflicts. Access to mediation should include the option for families to return to mediation when necessary.

To ensure that low-income families can access mediation, it is vital to protect Legal Aid as the available tool for funding. Furthermore, any funding provided should be linked to inflation to account for rising costs and adequately support the mediation sector. The lack of review for the Legal Aid payment has hindered the sector's ability to invest in the future and plan effectively.

Additionally, exploring options to streamline the conversion of a mediated agreement into a legally binding agreement at a low cost would further enhance the effectiveness and accessibility of mediation.

In conclusion, it is imperative that any funding for compulsory mediation pre-court for finance remedy applications is safeguarded by the statute books and linked to inflation. Protecting funding through legislative measures ensures its long-term sustainability and effectiveness in supporting low-income families. Additionally, linking the funding to inflation is essential to account for rising costs and prevent the diminishing value of financial support over time. By enacting these measures, we can ensure that mediation remains accessible and beneficial to all families, regardless of their financial circumstances.

Question 13

Does the current FMC accreditation scheme provide the necessary safeguards or is additional regulation required?

Yes, the current FMC accreditation scheme provides necessary safeguards for the mediation profession. The FMC has shown its ability to adapt to changes, implement standards, and manage training requirements. However, additional regulation is required in terms of funding to ensure the sustainability and development of standards.

Providing a central grant to the FMC would support their efforts in maintaining effective and independent delivery of accreditation standards, addressing the issue of underfunding, and justifying the necessary increase in fees. This approach would enhance the overall effectiveness and quality of the mediation profession.

Question 14

If you consider additional regulation is required, why and for what purpose?

We do not believe additional regulation are required.

Question 15

a) Should the requirement for pre-court mediation be expanded to include reasonable attempts at other forms of non-court dispute resolution (NCDR), or should it be limited only to mediation?

Mediation has proven to be an effective and accessible form of non-court dispute resolution (NCDR) for families. Expanding the requirement to include other forms of NCDR may introduce higher costs and complexity, potentially excluding low-income families from accessing these options. Focusing on enhancing the availability and affordability of mediation is a more practical approach to ensure equitable access to NCDR.

b) Advantages of limiting the requirement to mediation:

- Mediation is more cost-effective compared to other NCDR options.
- Mediation promotes a cooperative and collaborative approach, facilitating better communication and understanding between parties.
- Mediation allows for tailored and flexible solutions based on the unique circumstances of each family.

Disadvantages of expanding the requirement:

- Other NCDR options may have higher costs, limiting access for low-income families.
- Different NCDR processes may have varying levels of effectiveness and standardization, potentially leading to inconsistent outcomes.
- Expanding the requirement could add complexity and confusion to the process, potentially prolonging resolution timelines.

c) N/A (Since I answered "Mediation only" in 15a.)

d) N/A (Since I answered "Mediation only" in 15a.)

e) N/A (Since I answered "Mediation only" in 15a.)

Question 16

What is the best means of guarding against parties abusing the pre-court dispute resolution process:

(i) should the court have power to require the parties to explain themselves

(ii) what powers should the court have in order to determine whether a party had made a reasonable attempt to mediate, for example when considering orders for costs?

The best means of guarding against parties abusing the pre-court dispute resolution process, particularly in relation to low-income families, requires careful consideration to protect mediation principles and prevent conflict escalation. The following approaches can help address these concerns:

(i) Court's Power to Require Parties to Explain Themselves: Requiring parties to provide detailed explanations of the mediation process may undermine mediation principles and lead to confidentiality breaches and increased conflict. Instead, the focus should be on obtaining fact-based information regarding attendance or non-attendance at mediation sessions. This approach respects mediation principles, preserves confidentiality, and minimizes the risk of escalating conflict.

(ii) Court's Powers to Determine Reasonable Attempt to Mediate: When considering orders for costs, the court should possess the authority to assess whether a party has made a reasonable attempt to

engage in mediation. However, this evaluation should rely on objective criteria that do not necessitate disclosing the specifics of the mediation process. For instance, the court can evaluate factors such as a party's willingness to participate in mediation and their attendance at mediation sessions. This approach emphasizes the parties' commitment to resolving disputes outside of court, upholding mediation principles, and safeguarding confidentiality.

By adopting these approaches, the court can effectively safeguard against the abuse of the pre-court dispute resolution process while upholding mediation values and principles. This not only promotes fairness and justice but also ensures that low-income families are not disproportionately affected by requirements that breach confidentiality or exacerbate conflict. The goal is to strike a balance between encouraging genuine attempts at mediation and preserving the integrity of the mediation process.

Question 17

How could a more robust costs order regime discourage parties in court from avoiding reasonable attempts at pre-court or post-application mediation and lengthening proceedings unnecessarily? Should judges continue to have discretion to decide when to make these orders and what specific costs to include?

A more robust costs order regime can serve as a deterrent for parties in court to avoid reasonable attempts at pre-court or post-application mediation and needlessly prolong proceedings. However, when implementing such a regime, it is essential to address the concerns surrounding low-income families, particularly those without legal representation.

Costs orders can be effective in encouraging parties to actively engage in mediation and comply with the process by making it clear that failing to make reasonable efforts to resolve disputes outside of court may result in financial liability. This financial incentive can promote the efficient resolution of cases and alleviate the burden on the court system.

Nevertheless, it is crucial to protect the interests of low-income families, who may be more vulnerable in the mediation process, especially when they lack legal representation. Concerns have been raised, supported by legal experts, academic research, and case studies, regarding the potential for parties with greater financial resources and legal knowledge to exploit mediation, leading to prolonged proceedings and increased costs for the disadvantaged party. This power imbalance can undermine the effectiveness of mediation, exacerbate disparities, and create barriers to accessing justice for low-income individuals.

To address these concerns, it is necessary to strike a balance. While maintaining the discretion of judges to determine when to make costs orders and which specific costs to include, safeguards and guidance should be in place to prevent the misuse of mediation by legally astute clients. This can involve implementing robust procedural rules, providing legal aid provisions for low-income parties, establishing clear guidelines for judges to assess parties' conduct in mediation, and ensuring that cost orders are fair and proportionate.

By adopting a balanced approach, the court can discourage parties from avoiding reasonable attempts at mediation, discourage unnecessary prolongation of proceedings, and protect the interests of low-income families in a manner that upholds fairness and access to justice.

Question 18

Once a case is in the court system, should the court have the power to order parties to make a reasonable attempt at mediation e.g., if circumstances have changed and a previously claimed exemption is no longer relevant? Do you have views on the circumstances in which this should apply?

Once a case is within the court system, it is worth considering whether the court should possess the authority to mandate parties to engage in a reasonable attempt at mediation, particularly in situations where circumstances have changed and previously claimed exemptions are no longer applicable. However, it is vital to carefully consider the potential impact on low-income families and establish appropriate support systems, such as legal aid, to facilitate their access to mediation.

If there are adequate financial support mechanisms in place to assist applicants in accessing mediation, it becomes justifiable to refer cases back to mediation if previous attempts were insufficient. This approach encourages active participation in mediation as a means of resolving disputes outside of court, potentially saving time and resources for both the court and the parties involved.

To implement this approach effectively, it is imperative to provide courts with clear guidelines on when and how to refer cases to mediation. The current system occasionally leads to cases being returned to mediation after being deemed unsuitable, followed by court-ordered child-inclusive mediation (CIM mediation). This can cause confusion for clients and pose challenges for mediation providers. Therefore, establishing a streamlined and well-defined process for referrals and maintaining a consistent approach to assessing mediation suitability can help address these issues.

When considering the circumstances in which the court should order parties to attempt mediation, factors such as the nature of the dispute, the parties' willingness to engage in mediation, and the availability of appropriate mediation services should be considered. Striking a balance between the court's authority to promote mediation and the specific circumstances and needs of the parties, including those from low-income families, is crucial. Flexibility should be exercised to ensure that the requirement for mediation remains reasonable and fair, while considering any potential barriers or challenges that may hinder participation, especially for disadvantaged parties.

Granting the court, the power to order parties to make a reasonable attempt at mediation can be advantageous in fostering alternative dispute resolution and alleviating the burden on the court system. Nonetheless, it is of utmost importance to provide clear guidance to courts, ensure adequate financial support for low-income families, and consider the individual circumstances and needs of the parties to maintain a fair and accessible process.

Question 19

What do consultees believe the role of court fees should be in supporting the overall objectives of the family justice system? Should parties be required to make a greater contribution to the costs of the court service they access?

While it may be reasonable to expect individuals with the means to pay higher court fees to contribute proportionally, it is essential to exempt low-income families from bearing excessive financial burdens. The primary focus, particularly in cases involving children, should be on reducing conflict and prioritizing the long-term mental well-being of the children involved. Imposing onerous

court fees should not hinder families from accessing the court when mediation is deemed unsafe or when they have made reasonable efforts to reach an agreement but have been unsuccessful.

To further support the objectives of the family justice system, we advocate for the exploration of streamlined processes to convert mediated agreements into legally binding agreements. By implementing such an alternative process, the need for a full court proceeding can be bypassed, leading to faster resolutions and reduced costs for the parties involved. One suggested approach is enabling mediators to submit applications accompanied by confirmation that both parties have received legal advice during the agreement drafting. It is proposed that the drafting and submission of the order could be eligible for legal aid payment, thus facilitating access to justice for low-income families.

By embracing this approach, the family justice system can prioritize the well-being of the parties, particularly children, by minimizing conflict and promoting efficient and cost-effective resolution processes.