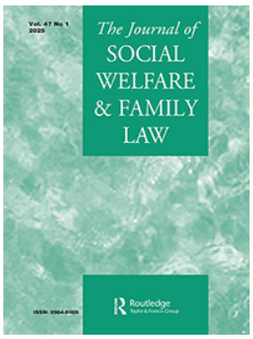

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Family mediation and domestic abuse: lessons from Australia

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ABSTRACT

For several decades, policymakers in England and Wales and Australia have implemented various measures designed to increase uptake of family mediation. In both jurisdictions, mediators are ultimately responsible for determining whether, in the circumstances of each case, mediation is a suitable method of dispute resolution. To discharge this duty, mediators must be able to reliably identify cases where there has been, or is a risk of, domestic abuse, and must be suitably equipped to determine whether any risks arising from abuse can be effectively managed. In this paper we use a contemporary comparative analysis of the implementation of mandatory family dispute resolution in Australia to argue that inadequate training and screening regimes undermine both the voluntary nature of the mediation process and the safety of participants. Ultimately, we argue that there is both a pressing need for, and scope to, strengthen the safeguards in place to protect victims/survivors of domestic abuse in England and Wales and make recommendations as to how this might be achieved.

KEYWORDS

Mediation; mediators; screening; non-court dispute resolution; domestic abuse

Introduction

In recent years family justice reforms in both England and Wales and Australia have sought to increase uptake of non-court dispute resolution services. The promotion of such services is underpinned by a desire to support parties to resolve disputes concerning children and finances as amicably as possible without recourse to court proceedings, thereby reducing the workload of the family courts. Policymakers in England and Wales have increasingly promoted the use of mediation in family law matters, particularly in cases concerning children, but recently abandoned plans to make engagement with the process a mandatory pre-action requirement in private law cases (Ministry of Justice 2024b, p. 19). In Australia, parties are required to make a 'genuine effort' to resolve their dispute through a family dispute resolution (FDR) process before they are permitted to make an application for a parenting order. Although the definition of FDR encompasses a range of dispute resolution services, it is primarily delivered in the form of facilitative mediation (Schindeler 2022, p. 86).

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Whilst family mediation is often said to be faster, cheaper and less adversarial than court proceedings, the process is not a panacea for all family law disputes (Barlow *et al.* 2017). In particular, it is less likely to be suitable in cases involving domestic abuse (Cleak *et al.* 2018; Kaspiew *et al.* 2009). This is because effective participation in mediation depends on both parties having equal bargaining positions, which is less likely where one party has inflicted abuse on the other. Many victims/survivors of domestic abuse feel pressured to reach unfair or unsafe agreements in mediation (Kaspiew *et al.* 2009), and some even find the process 'traumatic' (Barlow *et al.* 2017). This body of literature demonstrates that a failure to screen unsuitable cases out of mediation can undermine both the voluntary nature of the process and the safety of participants, demonstrating a clear need for effective safeguards to ensure the process is only used where it is safe and suitable.

An examination of how alternative jurisdictions have approached family mediation in this difficult context can provide significant insights which can be used to formulate pragmatic and important recommendations. This article seeks to provide such a critique by comparing the family mediation process in England and Wales to that in Australia. Australia was selected as the most appropriate comparator from a robust set of selection criteria: that mediation has been used in the jurisdiction to resolve family disputes, that it is an established way of doing so as opposed to being a pilot and that there is no language barrier to overcome in accessing the source material. Unlike other jurisdictions, Australia has operated a mandatory family dispute resolution system since 2006 and this therefore provides a unique opportunity to use valuable data from the operation of an existing scheme. The underpinning methods used were cross-comparative with both doctrinal and socio-legal elements of analysis. Focusing specifically on screening for domestic abuse cases in mediation has enabled us to cast a fresh perspective on both existing scholarly debates concerning how mediators can best identify cases of domestic abuse, and to assess whether current methods of protecting victims/survivors of domestic abuse in England and Wales can be enhanced to strengthen the safeguards which are currently in place.

In both England and Wales and Australia, mediators are ultimately responsible for determining whether a case is suitable for mediation. To fulfil this duty, mediators must be suitably equipped to reliably identify cases involving domestic abuse and determine whether mediation can be conducted in a way that is *both* safe and fair. In this paper, we argue it is necessary to improve the provision of training for, and the screening practices employed by, family mediators in England and Wales. As further evidence of the urgency of the need to address this issue, the previous Lord Chancellor and Justice Secretary confirmed that the government is working with the Family Mediation Council (FMC), the voluntary regulatory body for family mediators in England and Wales, to improve mediator training and screening on domestic abuse (Ministry of Justice 2024a). This paper therefore directly addresses a gap in the extant literature by using data generated from a comparative analysis of the family dispute resolution regime in Australia to produce a novel set of recommendations on how training and screening can be improved in England and Wales.

The paper is accordingly split into four parts. Part 1 provides an analysis of key policy developments in England and Wales and argues that although the law does not compel families to engage in mediation, as is the case in Australia, it encourages and incentivises

parties to attempt mediation. We argue that this increases the likelihood of potentially unsuitable cases, such as those involving domestic abuse, being drawn into mediation. Furthermore, it evaluates evidence which indicates an increasing willingness among mediators to mediate cases involving domestic abuse. We argue that there is an urgent need to enhance training and screening regimes in order to ensure that mediators are properly supported and equipped to make suitability determinations and to conduct mediations in cases involving domestic abuse. Part 2 provides a rigorous comparative analysis of the legislative framework in Australia and explains how the FDR system has developed to protect survivors of abuse when compared directly with the existing provision in England and Wales. We argue that comprehensive training and robust screening processes are vital safeguards to protect victims and survivors of domestic abuse. Finally, in Part 3 and the conclusion, we highlight how the safeguards in England and Wales can be enhanced by adopting a similar but adapted approach to that of Australia and we advance a novel set of recommendations concerning training, screening, legal advice and specialist mediation models which can be used to inform future policy developments in England and Wales. We also make important recommendations concerning a currently under researched but increasingly significant area of family dispute resolution: online family mediation.

Part 1: classical models of mediation and family Justice

The family law Act 1996

Uptake of family mediation in England and Wales has been limited since the process was first introduced in the late 20th century (Maclean 2010, p. 105). This is despite the fact that successive governments have implemented various measures to promote its use in private family law matters. For instance, the Family Law Act 1996 introduced measures designed to encourage publicly funded parties to resolve their dispute(s) through mediation rather than through lawyers and/or court proceedings. Section 26 made provision for legal aid funding to be provided to families to enable them to engage in mediation, subject to the parties attending an intake meeting to determine whether the process was appropriate in their circumstances (Hunter 2017, p. 190). The intake meeting specifically considered whether there was a risk that one party could be 'influenced by fear of violence or other harm', suggesting that mediation was unlikely to be a suitable form of dispute resolution in cases involving domestic abuse (Family Law Act, s29(3F)(a)). Section 29, which came into effect in 1998, stipulated that those seeking legal aid for court proceedings on private family law matters had to first attend a meeting with a mediator to receive information about mediation. This requirement resulted in a 'substantial increase' in mediation intake meetings but did not translate to a rise in actual mediation sessions (Hunter 2017, p. 190). Despite the provisions introduced by the 1996 Act, mediation did not capture the attention of the public in the way that policymakers had hoped, and uptake of mediation remained low (Peacey and Hunt 2009).

Compulsory attendance at mediation information and assessment meetings

To increase uptake of family mediation, the President of the Family Division issued a Practice Direction, introduced in April 2011, which stated that all prospective private law applicants were 'expected' to attend a Mediation Information and Assessment Meeting (MIAM) before they commenced court proceedings (Pre-Action Protocol Practice Direction 3A, para. 3.5). The MIAM provides an opportunity for a mediator to inform the parties about mediation and determine its suitability in the circumstances of the case (Children and Families Act 2014 section 10(3)). The intended effect of the protocol was to extend the compulsory MIAM attendance requirement to privately funded parties contemplating court proceedings (Hunter 2017, p. 191). Legally aided parties were, and still are, able to access funding to cover the cost of the MIAM (Legal Aid Agency 2018, para 6). However, the protocol was not consistently or widely enforced and did not lead to an increase in mediation cases (Hunter *et al.* 2017, p. 147; Trinder *et al.* 2014, p. 38–39). In fact, Rosemary Hunter (2017, pp. 191–192) argued that conversion rates actually reduced, in part because many parties preferred to resolve disputes through solicitor-led negotiations.

The government's policy position was clearly outlined in the Family Justice Review: 'It should become the norm that where parents need additional support to resolve disputes they would first attempt mediation or another dispute resolution service' (Norgrove 2011, paras 119–120). The report recommended that attendance at a MIAM should be a prerequisite to any private law application. This recommendation was placed on a statutory footing by virtue of section 10 of the Children and Families Act 2014, which requires all prospective applicants to attend a MIAM unless an exemption applies. The prospective respondent to the application is not under a legal obligation to attend the MIAM but is 'expected' to do so (Practice Direction 3A, para 1). Nonetheless, the court can adjourn proceedings in order for non-court dispute resolution to be attempted and may encourage the parties to attend a MIAM to consider family mediation and other options (Practice Direction 3A, para 2). It is now the case that all applicants for private law or financial orders, as defined in Family Procedure Rule 3.8 and PD3A Part 3, must provide confirmation from a family mediator that they have attended a MIAM. Alternatively, the applicant can claim that an exemption applies and provide any relevant supporting evidence at the first hearing (Family Procedure Rule, 3.8).[1] In the event that a MIAM exemption is invalidly claimed, the court may direct the applicant/parties to attend a MIAM, adjourning proceedings if necessary (Family Procedure Rule, 3.10).

The Ministry of Justice recently acknowledged that the compulsory attendance at MIAMs requirement is 'not working as intended' (Ministry of Justice 2023, p. 26). In 2020–21, only a third of parties making a court application in respect of a private law child dispute attended a MIAM; in the remaining two-thirds of applications, an exemption was claimed (Ministry of Justice 2003, p. 26). The Ministry of Justice posited that the high number of exemptions was due to limited scrutiny of supporting evidence, citing the case of *K v K [2022] EWCA Civ 468* where the Court of Appeal discovered an inappropriate use of the urgency exemption which had not been identified by the court in the first instance. It is, however, conceivable that the high number of exemptions claimed actually reflects the fact that many family law disputes involve factors such as domestic abuse and are not suitable for mediation. This proposition is supported by a literature

review from Adrienne Barnett (2020, p. 2) which clearly demonstrates that 'the prevalence of domestic abuse in private law children cases is considerably higher than in the general population'. Research by Cleak *et al.* (2018, p. 1136) in the Australian context also shows that family mediation clients are a 'potentially high-risk group' in which there is a greater prevalence of domestic abuse. Nevertheless, recent amendments to the Family Procedure Rules, which came into effect in April 2024, aim to strengthen the MIAM attendance requirement by requiring all private law applicants and respondents to file a FM5 form, prior to the commencement of proceedings, which sets out their views on non-court dispute resolution (Practice Direction 5A). Under the new rules, the court can also make a costs order against any party who has failed, without good reason, to attend a MIAM or engage in non-court dispute resolution (Family Procedure Rule 28)'. It is submitted that these recent developments perpetuate an assumption that parents, particularly mothers, who opt for court 'are selfish and unable to put their children's interests first', despite the fact that they might 'genuinely (and rightly) believe' that the court is the only forum that can adequately protect their safety and interests (JUSTICE 2022, p. 13).

The impact of the legal aid, sentencing and punishment of offenders Act 2012 on uptake of mediation

Most of the developments outlined above coincided with wider reforms that drastically altered the family justice landscape. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), which came into effect in April 2013, severely reduced the availability of legal aid in private family law proceedings. The reforms were underpinned by an 'anti-lawyer rhetoric', as well as a combination of both financial and ideological drivers (Barlow *et al.* 2017, p. 24). As Trinder *et al.* (2015, p. 223) explains, whilst the Ministry of Justice aimed 'to reduce its budget by almost a quarter' in the aftermath of the global economic crisis, the reforms also reflected a neoliberal agenda, 'emphasising individual responsibility rather than state intervention'. Legal aid is now only available to parties involved in private family proceedings in a very limited range of circumstances, namely where a case qualifies for exceptional case funding, child protection concerns have been raised or the case involves domestic abuse (although this latter exemption has been narrowly construed) (Choudhry and Herring 2017). Nonetheless, legal aid remains available for mediation. As Rosemary Hunter (2017, p. 193) observes, the scaling back of legal aid funding for anything other than mediation 'was another nudge, albeit one closer to the "hard shove" end of the spectrum of persuasion' to encourage families to resolve their dispute(s) through mediation.

Even so, the cuts to legal aid were massively counterproductive. Because fewer families could access legal advice after LASPO, this meant that fewer disputants were informed about mediation when it was a viable option for dispute resolution (Equality and Human Rights Commission 2018, p. 11). The number of legal aid family mediation starts subsequently dropped from 13,609 in 2012–13 to 8,438 the following year (Ministry of Justice 2025b, table 7.2). The number of mediation starts has not recovered, with only 9,841 starts in 2024–5. This has, as expected, also reduced the number of agreements reached through legal aid mediation: in 2022–23, there were fewer than half the number of agreements compared to the year before LASPO came into effect.[2]

Family mediation in the post-LASPO landscape

In March 2021 the Ministry of Justice launched the Family Mediation Voucher Scheme. It provides funding of up £500 per family to help meet the costs associated with mediation. Funding is not means tested and is available where the parties are involved in a private law dispute relating to a child, as defined in the Family Procedure Rules.[3] The government has estimated that the scheme will have cost approximately £23.6 million by April 2025 and claims that it has 'helped over 24,600 families to resolve their issues without resorting to court' (Ministry of Justice 2024a).[4] There is, however, a lack of robust evidence to support this claim. For instance, data concerning settlement rates in cases funded by the scheme does not distinguish between full or partial settlements, so it is not possible to determine what proportion of the 69 percent of cases that settled required further action (Sixsmith 2023, p. 24). The government has also acknowledged that, because of data limitations, it is not possible to determine what proportion of cases have required, or will require, further judicial adjudication (Ministry of Justice 2024b, p. 19). It is therefore not possible to accurately gauge the number of disputes which have been resolved without recourse to court proceedings.

In March 2023 the Ministry of Justice (2023, pp. 22–31) set out proposals which would have required all private law applicants to make 'a reasonable effort' to resolve their dispute(s) through mediation before they were permitted to submit an application to court, unless an exemption applied. The proposals were met with widespread concern, particularly in respect of whether the availability of exemptions to mandatory mediation would be enough to adequately protect survivors of domestic abuse. The government response to the consultation confirmed that it would not introduce mandatory mediation 'at this time' and stated that policymakers were working with the FMC and domestic abuse organisations to improve mediators' approach to identifying domestic abuse (Ministry of Justice 2024b, pp. 18–19). More specifically, the former Lord Chancellor and Justice Secretary, Alex Chalk KC, stated that the government intended to improve training on domestic abuse for mediators and 'develop a 'screening tool – such as a questionnaire – to better identify victims at the earliest opportunity' (Ministry of Justice 2024a). The debate concerning mandatory mediation has therefore unearthed wider concerns about the extent to which mediators are equipped to detect domestic abuse and screen unsuitable cases out of mediation.

Whilst policymakers have abandoned plans to introduce mandatory mediation for the foreseeable future, it is clear that current policy aims to encourage and incentivise more families to resolve their disputes through mediation. This is concerning because, as Anne Barlow (2017, p. 206) has observed, many families have, in reality, limited choice about which dispute resolution services they can access. In many cases families have a 'binary choice' to either 'mediate or litigate', which is 'unhelpful, given the benefits of different dispute resolution processes for different families' (JUSTICE 2022, p. 3) We argue that the provision of funding for mediation may induce some parties to use the process because it is the most affordable dispute resolution service available to them, rather than because it is the most suitable method for their dispute (Sixsmith 2023, p. 19). Furthermore, parties may opt to use mediation because it offers the prospect of a faster resolution to their dispute than court proceedings (Sixsmith 2023, p. 19). There is therefore a risk that victims/survivors of abuse, who are not precluded from using

mediation, are being encouraged to use a process which is primarily designed for low-conflict private family law disputes. We therefore contend that there is a pressing need to ensure that effective safeguards are in place to ensure that mediation is only used in cases where it is both safe and appropriate.

Mediators are ultimately responsible for deciding whether a case is suitable for mediation, so it is vital that they are suitably equipped to both detect domestic abuse and determine whether any risks arising from it can be managed. Although there is a lack of data concerning the use of mediation in cases involving domestic abuse, some data indicates that many mediators feel confident in their ability to both identify cases involving domestic abuse and facilitate mediation in such cases. Data from a survey conducted by the FMC (2020, p. 7) reported that more than 90 percent of the mediators surveyed felt comfortable assessing whether a case involving domestic abuse was suitable for mediation. In the same survey, only 3 percent of the 8,479 MIAMs conducted over a six-month period were deemed 'unsuitable for mediation' because of domestic abuse (FMC 2020, pp. 2–3). This suggests that a relatively low proportion of domestic abuse cases are being screened out, alluding to an increasing willingness amongst mediators to mediate such cases. This is further supported by the fact that in the same period, 15 percent of the 2,161 mediations conducted involved domestic abuse (FMC 2020, pp. 2–3). Additionally, a study commissioned by the Ministry of Justice (Bloch *et al.* 2014, p. 16) found that the majority of mediators in the sample reported that they screened cases into mediation because of the lack of realistic alternatives. Similarly, the Mapping Paths to Family Justice study (Barlow *et al.* 2017), found 'compelling evidence' that cases involving domestic abuse are inappropriately accepted into mediation. We suggest that the recent policy developments outlined above are likely to have compounded this problem. It is also worth highlighting that over a fifth of respondents to the FMC survey (2020, pp. 6–8) indicated that they did not feel comfortable mediating disputes involving domestic abuse. This may, at least in part, be attributable to the fact that there appears to be a lack of consistency in terms of both the form and availability of training on domestic abuse. For example, around four-fifths of respondents indicated that they had received face-to-face training on how to conduct mediation where a case involved domestic abuse, whereas some respondents had received no training at all (FMC 2020, pp. 6–8). This divergence suggests that there is a need for a more consistent and comprehensive training regime. Furthermore, given that the number of cases involving domestic abuse being screened out appears to be low, despite the fact that domestic abuse is particularly prevalent in private law cases (Cleak *et al.* 2018, p. 1140), there is a need to ensure that the processes in place to screen out unsuitable cases are effective. It is this gap in existing scholarship which this article seeks to address.

Part 2: new models of enhanced family support

The Australian context

The family justice system in Australia has, for a significant period of time, focused on supporting families to amicably resolve post-separation disputes and, where possible, without recourse to litigation. For example, the Family Law Act 1975 introduced no-fault divorce and established the Family Court of Australia, a specialist multi-disciplinary

court, with an in-house counselling section staffed by psychologists and social workers with expertise in child welfare. This reflected a belief that a less adversarial court, operated by professionals trained and experienced in dealing with the consequences of relationship breakdown, would be better equipped to appropriately respond to the needs of families and assist them in resolving their post-separation disputes more amicably (Nicholson and Harrison 2000, pp. 758–761). The Act encouraged parents to reach agreements through the use of non-court dispute resolution services, such as mediation and counselling (Joint Select Committee 1980, pp. 45–46).

The Family Law Reform Act 1995 aimed to expand the use of non-court dispute resolution services and section 31 explicitly encouraged parents 'to agree about matters concerning the child rather than seeking an order from a court'. Part III was designed 'to encourage people to use primary dispute resolution mechanisms', including 'mediation, arbitration or other means of conciliation or reconciliation'. Interestingly, the use of the word 'primary' reinforced the idea that out-of-court dispute resolution was to become the norm. The court was required to 'advise parties to seek the help of a family and child mediator' where it believed that mediation could help them to resolve their dispute and could adjourn proceedings to enable attendance at mediation (Family Law Act 1975 section 19 BA(1)).[5]

Over time it became clear that the 1995 legislation had not achieved its policy objectives. Research showed that few individuals were opting to use dispute resolution services and there had been a 'considerable increase' in the number of applications for parenting orders (Rhoades *et al.* 2000, p. 93). There was widespread concern about the extent to which the reforms, particularly the emphasis on the child's 'right' to contact with a non-resident parent, had negatively impacted victims/survivors of family violence and, as had been predicted, many women reported that they felt coerced or pressured to agree to unsafe contact arrangements reached through mediation (Rhoades *et al.* 2000, pp. 70–71). In 2003, the House of Representatives Standing Committee on Family and Constitutional Affairs (2003, para 4.41) concluded that the time was 'ripe for a significant reform of legal processes for parenting disputes' and stated that the family justice system's primary focus should be on 'empowering family members to make their own decisions that are creative and meet their own and their children's specific needs'. It believed that the majority of families would be able to reach agreements through non-court dispute resolution processes, provided they were used at an early stage, and, ideally, attempted before filing any application for an order. It therefore recommended the introduction of mandatory pre-action family dispute resolution (FDR) for parenting disputes in order to reserve the use of court for more complex cases, namely those involving family violence. This recommendation was implemented by the Family Law Amendment (Shared Parental Responsibilities) Act 2006 (the 2006 Act).

The family law Amendment (shared parental responsibilities) Act 2006

The 2006 Act made extensive changes to the 1975 legislation and transformed the family justice system. The reforms were underpinned by the belief that 'many disputes over children following separation are driven primarily by relationship problems rather than legal ones' and were therefore better suited to community-based interventions that addressed unresolved relationship issues (Kaspiew *et al.* 2009, p. E1).

A key aim of the legislation was to support families to reach settlement without recourse to litigation. It therefore introduced a requirement that any person seeking to apply for a parenting order must first attempt to resolve their dispute(s) through FDR unless an exemption applies. Section 10F of the 1975 Act defines FDR as an extra-judicial process 'in which a family dispute resolution practitioner helps people affected, or likely to be affected, by separation or divorce to resolve some or all of their disputes with each other' and 'in which the practitioner is independent of all of the parties involved in the process'. Although this definition encompasses a range of FDR services, FDR is primarily delivered in the form of facilitative mediation (Schindeler 2022, p. 86).

A court exercising jurisdiction under the 1975 Act is prohibited from hearing an application for a parenting order unless the applicant also files one of five certificates listed in section 60I(8) with their application or an exemption under section 60I(9) has been granted. Section 60I certificates can only be obtained from a Family Dispute Resolution Practitioner (FDRP) and the type of certificate issued will depend on whether one or both parties attended FDR and whether, in the view of the FDRP, the parties made a genuine effort to resolve the dispute(s). Where the FDRP determines that FDR is inappropriate in the circumstances of the case, they will issue a certificate stating that it is inappropriate to 'conduct' or 'continue' FDR, enabling the applicant to commence court proceedings (Family Law Act 1975, section 60I(8)(aa) and section60I(d)). In making such a determination, FDRPs must consider whether the ability of any party to negotiate freely in the dispute is affected by various factors, including a potential history of family violence and the equality of bargaining power (Family Law Regulations 2008, Regulation 25). The court itself may grant a party an exemption to the genuine effort requirement under section 60I(9) where the court is satisfied that there are reasonable grounds to believe that there is a risk of family violence. Where the applicant applies for such an exemption, they must file a Non-Filing of Family Dispute Resolution Certificate and provide written confirmation that they have received information about the FDR services available. This is because victims/survivors of abuse are permitted to use FDR services; various mediation models, such as co-mediation, shuttle mediation or legally assisted mediation, can be utilised to facilitate mediation in such instances. Nevertheless, the legislative framework clearly acknowledges that mediation may be an inappropriate form of dispute resolution in cases involving domestic abuse.

The radical reforms implemented by the 2006 Act had a significant impact on the operation of the family justice system more generally. A network of Family Relationship Centres (FRCs) provides families with access to FDR services, legal advice services and counselling services. Many FDR services are funded or heavily subsidised by the government. Originally, lawyers were prohibited from engaging with clients attending a FRC on the assumption that their involvement would create an adversarial (and hence hostile) environment that sat at odds with the relationship-focused programs which underpinned the Centres (Moloney *et al.* 2013, p. 251). However, following the trial of the Better Partnerships program in 2009, which facilitated connections between FRCs and legal services providers, the majority (if not all) of FRCs welcomed the use of legal support and advice (Dobinson and Gray 2016, p. 200). Where appropriate, a FDRP may now encourage clients to seek legal advice. Families can access free basic legal advice and

information from the Legal Advice Service and may also be eligible to access free or low-cost legal advice and/or other legal services from providers such as Community Legal Centres (independent, not-for-profit, community-based organisations) and Legal Aid Commissions (independent statutory bodies that provide legal advice and representation).

Domestic abuse and family dispute resolution: key policy developments

A comprehensive review of the 2006 legislation, led by Kaspiew *et al.* (2009, pp. 365–366), concluded that the reforms had enabled many parents to resolve their disputes without recourse to litigation. This resulted in a decline in the number of court applications concerning children's matters. However, it also found that despite the availability of exemptions, FDR services regularly dealt with high-conflict situations, including family violence (Kaspiew *et al.* 2009, p. 26). More than half of separating fathers and two-thirds of separating mothers surveyed reported physical or emotional abuse in their relationship. In another survey, 85 percent of respondents who had attempted FDR claimed they experienced physical or emotional violence during the relationship (Moloney *et al.* 2010, p. 195). Qualitative findings confirmed that victims/survivors often felt pressured to agree to a settlement in FDR, with some even experiencing abuse whilst negotiations continued (Kaspiew *et al.* 2009, p. 102). Kaspiew *et al.* (2010, p. 46) consequently identified a 'level of over-confidence' amongst FDR professionals in their ability to support victims/survivors which, regrettably, did not translate into safe practice. It was clear that more needed to be done to improve the detection of, and training on how FDRPs should respond to, domestic abuse.

Kaspiew *et al.* (2009, p. 110) noted in their review of the 2006 reforms that new training to obtain accreditation for FDRPs was being introduced to improve screening. However, they acknowledged that screening 'does not always provide an answer' to how an FDRP should respond if family violence has occurred. Further research suggested that FDR *could* benefit survivors provided that practitioners received comprehensive and specialist training to respond to such cases (Dobinson and Gray 2016, p. 182). Thus, there was a broad consensus within the Australian family justice literature that both comprehensive training and robust screening were vital to properly supporting and protecting victims/survivors of abuse (Rice *et al.* 2012, p. 10).

In response to growing criticism, the Australian government introduced the Family Law Legislation Amendment (Family Violence and other Measures) Act 2011. The Act introduced a definition of family violence into s4AB the 1975 Act, which included 'violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful'.[6] The reforms were 'intended to support increased disclosure of concerns about family violence and child abuse, and to support changed approaches to making parenting arrangements where these issues are pertinent to ensuring safer parenting arrangements for children' (Kaspiew *et al.* 2015, p. 2). They also aimed to create a standardised screening procedure, and included training designed to equip practitioners to better identify family violence. Kaspiew *et al.* (2015, pp. 74–75) later found that the legislation had caused 'subtle changes' in the types of parenting arrangements being made, as well as 'increased emphasis on identifying family violence' within the system. Even so, their

review concluded that there was 'some way to go' before screening procedures could be regarded as comprehensive and effective, citing a small yet concerning number of court users who had not been asked about family violence prior to their proceedings.

Strategies designed to improve screening have had some success, the most notable of which is the Family Law Detection of Overall Risk Screen (DOORS). The framework departs from earlier domestic violence screenings solely or primarily premised on subjective reports of abuse, instead concentrating on more objective indicators of such harm (McIntosh *et al.* 2016, p. 1517). As the name suggests, it seeks to detect 'wellbeing and safety risks', including but not limited to abuse, that parties or other family members may experience during family breakdown (McIntosh and Ralfs 2012, p. 1). The handbook for the tool, published in 2012, outlines three levels to DOORS (McIntosh and Ralfs 2012, pp. 17–18). The first is entry-level screening which involves the self-identification of risk. Clients are asked to complete a questionnaire about their relationship with the other parent, their separation and safety. Upon completion, the practitioner receives a follow-up report of the client's responses. The second level comprises a tailored enquiry by the practitioner, having been given prompts and guidance on response planning by the programme. Finally, the third level of DOORS provides the practitioner with resources to understand the risks identified through the framework, assisting them in deciding the next steps.

Although evidence indicates that DOORS is a vast improvement on earlier screening frameworks, the evaluation of the 2012 reforms found that the majority of legal practitioners rarely or never used the programme (Kaspiew *et al.* 2015). Reasons for this underuse included the unavailability of training sessions and apprehension around the framework's approach to screening, in addition to concerns around the time and resources it took to complete the process (Kaspiew *et al.* 2015, pp. 62–66). Nonetheless, evidence suggests that DOORS has become more commonplace over time, with one not-for-profit counselling and mediation service using the framework for all of its 28,097 clients since 2013 (Lee *et al.* 2021). DOORS is now described as 'an agency-wide language and framework of practice' and is also used in the family court system (Lee *et al.* 2021, p. 706). The framework has been found to detect sudden changes in the safety of family members, as well as potentially reduce the risk of violence in the long term due to its repeated screening (Booth *et al.* 2023, p. 368). Collectively, these features render DOORS more effective and comprehensive than other screening tools.

Another notable development designed to deal with the high levels of participation in FDR across the victim/survivor population is the use of specialist FDR models. In the same year as the 2006 reforms, Field (2006, p. 78) argued that funding should be provided to enable lawyers to act as 'advocates' for survivors of abuse. Several years later, Field and Lynch (2014, p. 396) designed the Coordinated Family Dispute Resolution model. Piloted from 2010 to 2012, the model adopted a collaborative approach, comprised of four professions: mediators conducting a responsive form of mediation, lawyers advocating for each party, domestic violence specialists screening for risks, and men's workers who provide counselling to perpetrators of family violence. There were several phases to the Coordinated Family Dispute Resolution model, including a specialist risk assessment, preparation through preliminary legal advice and co-mediation with the inclusion of legal representatives. Research showed that these various strands improved parties' participation in FDR and could, at times,

redress the various power imbalances amongst disputants (Kaspiew *et al.* 2012, p. 145). Despite Coordinated Family Dispute Resolution being heralded as 'at the cutting edge of family law practice' (Kaspiew *et al.* 2012, p. 139), the model was not implemented due to what Field (2016, p. 88) cited as 'political, resource and funding issues'. However, this does not undermine the usefulness or effectiveness of the model as a potential model for inclusion in this article. The use of specialist mediation models, such as Coordinated Family Dispute Resolution, can help to ensure that victims/survivors of domestic abuse receive the information and support they need to be able to safely and effectively participate in mediation. Such models recognise the limitations of traditional forms of mediation, particularly in terms of redressing power imbalances between the parties.

Part 3: squaring the circle: mediation, screening and training

Current policy in England and Wales is designed to encourage and incentivise families to resolve their disputes through mediation. Consequently, there is a risk that victims/survivors of abuse are being encouraged to use a process which is primarily designed for low-conflict family disputes. There is also some evidence to suggest that mediators are increasingly dealing with cases involving domestic abuse. It is therefore vital that mediators are suitably equipped to identify cases which involve domestic abuse and are able to determine whether mediation is suitable in such cases. We believe that suitability determinations require mediators to have an in-depth understanding of how different forms of domestic abuse might impact a party's ability to effectively participate in the process and an understanding of how, if at all, any risks associated with domestic abuse can be effectively managed. Although the Ministry of Justice has acknowledged that there is scope to improve training on domestic abuse for mediators and has indicated that it hopes to develop a new screening tool, such as a questionnaire, to help mediators screen unsuitable cases out of mediation at the earliest possible opportunity (Ministry of Justice 2024a, 2024b), to date, no concrete proposals as to how this might be achieved have been advanced. In this final section, we advance a series of recommendations to inform future policy developments in England and Wales.

Developing more consistent and comprehensive screening and training regimes

There is considerable scope to develop a more consistent and comprehensive approach to domestic abuse screening in England and Wales. Screening is a vital tool to support mediators in discharging their professional obligations and helps to ensure that the process is only used in circumstances in which it is both safe and suitable (i.e. that both parties are able to effectively participate in the process). The consensus within the Australian literature is that screening must be a proactive element of family relationship practice. Disclosure of abuse is not a standardised event (Cleak and Bickerdike 2016, p. 23), and research by Rice *et al.* (2012, p. 9) shows that there is no 'one fool-proof question' or method that persistently leads to disclosure. While some survivors may only disclose abuse if they are regularly and directly questioned, others may be discouraged by this strategy. Some may prefer to speak to a practitioner about their concerns around domestic abuse, whereas others may only disclose information when given a written

survey to complete. Many victims do not disclose the fact they have experienced abuse, and many do not see themselves as victims of abuse (Field 2006, p. 74). Screening should thus be a continuous process, not a singular or a discrete event. This is particularly important because abuse can start or worsen on or after relationship breakdown (Barnett 2020, p. 2) or during stressful periods (Cleak *et al.* 2018, p. 1137). Screening processes should also reliably detect various forms of domestic abuse (Cleak 2018, p. 1122).

While the introduction of a screening questionnaire may enhance current screening practices, it will not in itself be an adequate screening tool. In Australia, the DOORS framework has been commended for its comprehensive approach. The DOORS tool begins with a questionnaire which covers ten domains of family life post-separation, including a client's culture and religious background as well as how they are coping with family breakdown (McIntosh and Ralfs 2012, p. 18). The DOORS guidance recommends that all domains are completed where the case involves children in order to help the practitioner identify which areas require further investigation. The questionnaire is completed by the client, though there is some flexibility in when and where this occurs. A client can complete the questionnaire before or at an appointment with a practitioner and may do so electronically or in a physical format (McIntosh and Ralfs 2012, pp. 19-–20). A major strength of the DOORS framework is that the questionnaire is followed up by the practitioner's enquiry, as guided by the DOORS programme.

One of our core recommendations is that a similar tool is designed and implemented in England and Wales. Family mediators would benefit from detailed guidance on any risks identified during screening and this would support them to make informed decisions about how, if at all, those risks can be mitigated. Additionally, the implementation of a screening tool which does not rely solely on subjective indicators would be more likely to identify different forms of abuse and would, consequently, be more effective at detecting abuse in cases where neither party makes a disclosure. It is also important that the tool screens for other factors (particularly those which may allude to an abusive party dynamic) which may render mediation inappropriate. For instance, in *Creating Paths to Family Justice*, Barlow *et al.* (2017, pp. 9–10) worked with OnePlusOne to develop a traffic-light system-based screening tool which ascertained parties' emotional readiness to use non-court family dispute resolution.

An additional recommendation is that screening should be carried out multiple times; research from 2023 suggests that DOORS would be more effective as a repeated, rather than a singular, method of screening (Booth *et al.* 2023, p. 368). The *Improving Access to Justice for Separating Families Report* (2022, p. 4) stresses 'the importance of systematic risk screening' and therefore recommends a single structured tool which screens for overall risk to 'systematically and consistently throughout the family justice system by different professionals'. We echo this recommendation. In England and Wales, the police and several other agencies use the SafeLives DASH risk assessment tool (Turner *et al.* 2022). It has also been adopted in the Pathfinder courts (Ministry of Justice 2023). Although it is a valuable tool for those working with victims/survivors of domestic abuse, the reliability of the tool to accurately assess risk has been 'repeatedly questioned' (Bows and Herring 2024, p. 345). We therefore recommend that research concerning DASH's effectiveness, and how it could be improved, should be used to inform the development of a new domestic abuse screening tool.

Our final recommendation in this section concerns provision of training for mediators. Research by Kaspiew *et al.* (2011), p. 13) shows that 'finely tuned assessment and screening mechanisms' are most effective when applied by 'highly trained and experienced professionals' and are situated in 'a collaborative, interagency approach' to dispute resolution (Dobinson and Gray 2016, p. 189). The combination supports the meeting of clients' varying and complex needs, particularly those experiencing abuse. The Ministry of Justice (2024b, p. 33) has admitted that many respondents to the mandatory mediation consultation had called for 'enhanced domestic abuse training' and has confirmed that it plans to improve training for mediators.

This development is welcomed by the authors of this paper; we hope any enhancement of the existing training regime will ensure that all mediators receive comprehensive training on how to identify various forms of domestic abuse and ensure they understand how these different types and patterns might impact suitability determinations. This is important because some forms of domestic abuse are more likely to adversely impact a party's ability to participate in mediation than others (Cleak *et al.* 2018, p. 1140). Cleak's research also found that, in some circumstances, modifications to the mediation process (for instance the use of shuttle mediation or the support of a lawyer) could enable some survivors of abuse to effectively participate in mediation. Nonetheless, it is important to acknowledge that these models, whilst being likely to ensure the safety of a victim/survivor, will not completely alleviate the 'fear, intimidate or control' that underpins many abusive situations (Barlow *et al.* 2017, p. 97). The efficacy of models such as shuttle mediation is therefore likely to be limited (Barlow *et al.* 2017, p. 97). Future training for family mediators must therefore continue to acknowledge instances where mediation is wholly inappropriate even if safeguards were put in place. Otherwise, as warned by Barlow *et al.* (2017, p. 97), mediation risks becoming another 'avenue of control'.

The introduction of further domestic abuse training may necessitate a broader review of the training process for family mediators. Currently, multiple foundation training courses are run by various organisations (such as Resolution and National Family Mediation), which are then approved by the FMC (Family Mediation Council 2024a). The FMC itself does not provide any training, most likely due to the regulatory structure of family mediation whereby family mediators first join one of five Member Organisations, each denoting a different professional background (Blakey 2025). The FMC sets out some guidance for foundation courses in its Manual of Professional Standards (Family Mediation Council 2024b, pp. 27–28). For instance, it states that a course 'should cover the principles, knowledge, techniques and skills stated or implied in the [FMC] Standards', 'must cover knowledge of children and property/finance aspects' and 'must provide an adequate opportunity for skills development through role-play and other relevant techniques'. Even so, it is questioned whether this structure ensures consistent training, particularly in regard to screening and domestic abuse. Ultimately, current policy places the onus of identifying and responding to domestic abuse on mediators, so it is crucial they receive the specialist training and support that is needed to enable them to discharge this obligation. A possible solution is to mandate further specialist training around domestic abuse, similar to the requirement for all FMC-accredited mediators to attend training on child-inclusive mediation (Family Mediation Council 2024a). This training, even if not provided by the FMC itself, could be organised by one or two specific providers to encourage uniform practice. Whilst

there is a concern that additional mandatory training could become too onerous on trainee and accredited mediators (Blakey 2023, p. 156), domestic abuse is clearly a context where further understanding is urgently needed. Where the FMC is currently considering accreditation reform (Family Mediation Standards Board 2024, p. 4), we also recommend that the FMC explores reforming the training structure, with the views of and techniques adopted by mediators dealing with domestic abuse being used to collaboratively develop an enhanced training regime for mediators.

The implementation of specialist mediation models

Specialist mediation models can help to protect victims and survivors of domestic abuse and empower them to effectively participate in mediation. Coordinated Family Dispute Resolution is 'a tested model grounded in theory and scholarship' (Field and Lynch 2014, p. 401) However, it is important to be realistic and recognise that the model is both an expensive and resource intensive. It is therefore extremely unlikely that government funding will be allocated to implementing the model in full. Indeed, Coordinated Family Dispute Resolution was not implemented in Australia on the basis of resource and cost, despite the government's 'social and ethical responsibility' to protect victims/survivors of domestic abuse (Field 2016, p. 83). Hunter and Barlow (2020, p. 25) additionally note the difficulties of various Australian family mediation models in relation to 'resourcing', including provision of funding. We therefore recommend that elements of the Coordinated Family Dispute Resolution model are incorporated into the standard mediation process.[7] In particular, we suggest that mediators be asked to follow up with clients who had experienced domestic abuse several months after negotiations have concluded, domestic abuse experts should be present in some mediations, and funding should be provided to allow a lawyer or other legal adviser to attend mediation, notifying both parties of their legal rights and entitlements. Incorporating these elements of the Coordinated Family Dispute Resolution model would be both cost-effective and enhance general practice.

The need for further research and training on mediations conducted online

Much of this article has focused on enhancing mediation when carried out face-to-face. It is, however, concerning that there is a significant gap in both existing research and general discourse which involves one of the most rapidly expanding areas of family dispute resolution: mediations which take place in the online space. There is some evidence to suggest that an increasing number of mediations are now being conducted online. Data shows that 88 percent of the first 7,214 mediations conducted under the voucher scheme were online mediations (Ministry of Justice 2023, p. 12). These were conducted virtually, either together in one virtual 'room', at different times or using shuttle mediation (where both participants were online at the same time but were in different virtual 'rooms'). It is worthwhile highlighting that the scheme was launched in March 2021 when COVID-19 social distancing restrictions were still in place, so it is likely that the use of online mediations has decreased since those restrictions ceased. However, research concerning the use of mediation more generally suggests that the sudden shift to online mediations prompted by the pandemic has resulted in a significant

increase in the number of mediations being conducted remotely (Sixsmith 2022). This trend appears to be mirrored across the family mediation sector, with a significant proportion of family mediators now offering online mediation. Furthermore, the Family Procedure Rules Committee has recently updated the Family Procedure Rules to take account of the increasing number of mediations conducted online.

The Family Justice Council's *Safety from Domestic Abuse and Special Measures in Remote and Hybrid Hearings* guidance (2020, p. 4) confirms that the use of remote hearings can be 'invasive, (re)traumatising and endangering' and can enable a perpetrator to see and note details of a victim/survivor's 'private, safe space, which may also be used to track them down, break into their home, continue the exercise of coercive control, or harass or intimidate them in other ways'. We contend that such risks can also arise in the context of mediations which are conducted online. This contention is supported by research concerning the remote delivery of FDR services in Australia during the COVID-19 pandemic which found that online mediation has both the potential to magnify and minimise risks associated with domestic abuse (Heard *et al.* 2022). On the one hand, it can enhance participant safety because there is no physical contact between the participants, and this may be particularly beneficial in cases where physical violence has been a feature of the relationship. However, the online format may make it more difficult for mediators to, first, detect threatening or intimidating behaviour and, second, maintain confidentiality, particularly where the mediation takes place in a home shared with other family members.

Around the time of the 2006 reforms, Relationships Australia Queensland (RAQ) established the Telephone Dispute Resolution Service (Thomson 2011, p. 253). The Director of Relationship Australia Queensland recognised that FDR conducted via telephone was not inherently appropriate or inappropriate in instances of domestic abuse: whilst safety concerns may have meant that a telephone call was more appropriate, there were also situations where telephone mediation was unsuitable due to the communication format being used as a method of abuse in the past (Thomson 2011, p. 254). Thus, the Telephone Dispute Resolution Service was designed to include 'continual screening and assessment', regularly considering if parties should move to a face-to-face FDR. In 2009, following the reported success of the telephone service, RAQ was commissioned to design an online FDR programme. A report on the programme concluded that many clients saw online FDR as more convenient, but still expressed a preference for face-to-face meetings (Relationships Australia 2011, p. 11). The report mentions that the online FDR programme included an 'automated' screening tool whereby the FDPR asked the client a set of questions, but it provides very little data on the use of online FDR where family violence has occurred as such cases were excluded from the pilot. The rationale for this exclusion was 'to allow the FDRPs to become properly familiar with the new technical process prior to managing complex power imbalances in the virtual space' (Relationships Australia 2011, p. 65). This suggests that there is a need to provide specialist training on conducting mediations online in cases involving domestic abuse.

The FMC Code of Practice (2024c, para 7) stipulates that MIAMs may be conducted online, and the FMC has also provided specific guidance (Family Mediation Council 2016) on online video mediation. However, the guidance, which is to be read in conjunction with the Code, does not explicitly deal with the use of online mediations

in cases involving domestic abuse. This lack of guidance is concerning, particularly given the fact that such written information is available for online court hearings. For instance, the Family Justice Council has produced guidance on the use of remote and hybrid hearings in family cases (Family Justice Council 2020) which explicitly recognises that there are benefits and risks associated with virtual hearings and provides practical advice on how such risks can be mitigated. For instance, it advises that the online meeting link is activated and terminated by the judge or court staff so that there is no risk that the victim/survivor and perpetrator are put in a situation where they are alone together in a virtual room. It also stipulates that the victim/survivor be provided with information on how they can blur their background or use a generic background (if the platform being used enables this) to reduce the risk that the perpetrator is able to see and note details of their private space. We argue that there is a need for further research to be undertaken to gauge the use of online mediations in cases involving domestic abuse and to explore the benefits and risks associated with the use of online mediation in such cases. This research should then be used to inform the development of comprehensive guidance and training for mediators.

The importance of access to early legal advice

The availability of legal advice is often seen as a cornerstone of family justice. It ensures parties are aware of their legal rights and obligations and understand how that information applies to their dispute. In the context of domestic abuse, the provision of legal support can reduce the power imbalance between a perpetrator and their victim, providing the latter with a representative to advance their interests. Legal advice can also ensure that settlements reached through mediation are made in the shadow of the law. Barlow *et al.* (2017, pp. 133–134) have therefore described legal advice alongside mediation as an 'optimum process'. However, legal advice is now largely inaccessible for the majority of separating families (Bloch *et al.* 2014, pp. 12–13, Hitchings *et al.* 2023, pp. 105–106). While provision for legal support technically remains available through 'Help with Family Mediation', data shows that the scheme has been accessed in a negligible number of legal aid mediations due to the low number of lawyers providing such assistance (Blakey 2024, p. 88). Providing funding for parties in mediation to receive legal advice and support would aid not only victims/survivors of abuse, but also legal aid recipients and the majority of parties who can no longer afford such services privately.

The provision of free or affordable legal advice have been positively received in Australia. As previously mentioned, lawyers were only permitted to support cases at FRCs some years after the 2006 reforms came into place. The Better Partnerships program, designed to foster partnerships between FRCs and funded legal services, received over AU$4.2 million and provided individual advice and group information sessions (Moloney *et al.* 2011, p. 1 and 84). An evaluation of the scheme concluded that legal assistance did not necessarily result in settlement for high-conflict cases, but nonetheless supported parties' understanding of their dispute and the options available to them going forward (Moloney *et al.* 2011, p. 83). Moloney *et al.* (2011, p. 90) comment that the provision of legal support was subsequently 'a source of empowerment' for victims/survivors of abuse. More recently, a pilot on lawyer-assisted family mediation for property-related matters was found to provide particular assistance to vulnerable clients

who had experienced family violence, with some practitioners suggesting that a settlement would not have been reached without the provision of legal support (Carson *et al.* 2022, p. 177).

Returning to England and Wales, the Ministry of Justice (2024b, p. 15) has recently announced 'a new pilot of legal advice, specifically designed for parents/carers facing challenges when agreeing their child arrangements'. The proposal appears to largely replicate the 'green form' scheme, set up in 1973, which enabled individuals to quickly receive legal advice on a certain matter following an eligibility test (Hynes 2012, p. 16). While the green form scheme was later replaced by Legal Help, and subsequently limited by the LASPO reforms, the House of Commons Justice Committee (2021, para 99) recommended a return to the system in 2021. The Committee proposed 'an ambitious and economically viable early advice scheme. . . strategically targeted at those who would most benefit from early advice'. The extent to which the scheme, which essentially replicates the old scheme, needs to be piloted is questionable. Nonetheless, Hynes (2012, p. 18) notes that the green form scheme was replaced following concerns around its costs, particularly where evidence suggested that a minority of legal support providers disproportionately used the scheme for 'low-level enquiries' to increase profits. The proposed pilot, mentioned by the Ministry of Justice, is thus likely to assess the scheme in terms of its cost-effectiveness. This neoliberal analysis risks overlooking the social utility of early legal advice, particularly in family matters. There is, furthermore, a risk that the pilot may have a limited impact on those who opt to use mediation because the scheme is primarily directed at 'families looking to resolve their issues through the courts' (Ministry of Justice 2024b, p. 15). It therefore appears that the pilot seeks to reinstate lawyers as a primary gatekeeper into mediation, rather than ensure lawyers are available to support victims and survivors who choose to use mediation to resolve their disputes. We argue that accessible and affordable legal support is crucial in empowering victims/survivors of abuse to use mediation where it is a viable option. Without adequate funding to support this, there is a risk that victims/survivors of abuse will not be able to access the partisan support that is necessary to safeguard against unfair or unsafe agreements being reached through mediation.

Conclusion

In conclusion, we submit that current family justice policy in England and Wales increases the likelihood of victims/survivors of domestic abuse being drawn into mediation, a dispute resolution process which, at present, is ill-equipped to meet their needs. We argue that there is a clear and pressing need to strengthen the safeguards in place to ensure that victims/survivors of domestic abuse are identified at the earliest possible opportunity and are, where appropriate, supported to safely and effectively participate in the mediation process. The research demonstrates a need for the development and implementation of a systematic and sophisticated domestic abuse screening tool to help mediators to reliably identify cases involving domestic abuse and make informed decisions about how, if at all, the process could be modified to safely and fairly resolve the dispute. It also demonstrates that screening is most effective when coupled with a comprehensive training regime that equips mediators with the knowledge, understanding and skills to identify and manage the risks arising from domestic abuse.

Our recommendation is that a model akin to the DOORS framework is developed and used across the English and Welsh family justice system. Screening should be a continuous process to avoid reliance being placed on a single suitability assessment. Furthermore, we recommend that mediators be required to undertake comprehensive training which enables them to reliably identify cases involving domestic abuse and make informed decisions about whether mediation is a suitable form of dispute resolution. The development and implementation of such a tool, when coupled with a robust training regime, is much more likely to support mediators to identify abuse and respond appropriately when abuse is detected. We also recommend that research-informed guidance, designed to encourage best practice when conducting mediations online, is developed and published. Such guidance will also help to ensure that mediators are able to identify and mitigate the risks associated with conducting mediations online in cases involving domestic abuse. Finally, data concerning the implementation of mandatory FDR in Australia indicates that additional measures are often needed to enable victims/survivors to effectively participate in mediation. There seems to be no good reason why this data should be disregarded when considering best practice in England and Wales, although, as we outline above, this needs to be balanced against the competing pressures of funding constraints and lack of resource. It is therefore recommended that consideration is made as to whether elements of the Coordinated Family Dispute Resolution model should be incorporated into the standard mediation process. For example, family law practitioners could be required to follow up with clients who had experienced domestic abuse several months after negotiations have concluded, domestic abuse experts could be present in some mediations and funding could be provided to allow a lawyer or other legal advisor to attend mediation. Ultimately, ensuring best practice for victims/survivors of domestic abuse should be a priority for interested stakeholders, even if such reforms will require additional finance and resourcing.

Notes

1. See also Practice Direction 3A, Part 3, paras 17, 20-21A.
2. There were 9,060 full or partial agreements in 2012–13, compared to 4,268 in 2022–23.
3. See Family Procedure Rule 36.2 and Practice Direction 36 V.
4. The Ministry of Justice (2025a) has since announced an extension of the Family mediation Voucher Scheme until March 2026.
5. As amended by the Family Law Reform Act 1995, section 17.
6. Family Law Legislation Amendment (Family Violence and other Measures) Act 2011, section 8.
7. This argument was first advanced by one of the author's dissertation students. See: Bhatia (2024).

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