



Family Mediators Association (“FMA”) MEDIATION COMPLAINTS AND DISCIPLINARY PROCEDURE
(“the FMA Complaints Procedure”)

Purpose

This procedure is intended to provide guidance for complainants, FMA mediators and professional practice consultants in the handling of complaints concerning a mediation.

The definitions which follow apply only to this particular procedure.

Definitions

“CA” means a complaints adjudicator appointed by the Trustees.

“CAP” means a FMA Complaints Appeal Panel which consists of three people being a lay professional who is not a family mediator and two FMA PPC members. One of the two PPC members will chair the CAP. No member of the CAP will have a business or personal relationship with the Complainant, the Other Party, the Member or the CPPC or have any knowledge of the details of the Complaint before sitting on the CAP.

“Code of Practice” means the Family Mediation Council’s code of practice for family mediation.

“Complainant” means a person who has been in mediation with a Member and complains about that Member’s conduct of it.

“Complaint” means a complaint in writing about a Member’s conduct of a mediation in which the Complainant has been a party.

“Complaint File” means the file (or files) of the CPPC which relates to the Complaint.

“CPAP” means a complaints preliminary assessment panel which meets every two months and which consists of two full members of the FMA who also act as CA’s. The CPAP is independently constituted which means that neither of the two people on it will have a business or personal relationship with the Complainant, the Other Party, the Member or the CPPC other than through serving or having served as a Trustee or director of FMA Trading Limited before sitting on the CPAP.

“CPPC” means a professional practice consultant recognised as such by any Family Mediation Council member organisation and must not be the Member’s PPC, the role of the complaints PPC being to deal with and investigate a Complaint against a Member.

“Mediation” means the process of mediation which will only be deemed to have begun once the parties thereto have both signed an agreement to mediate.

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“Mediation File” means the file of the Member or of the Mediation Service which relates to the Mediation which will include any file relating to a MIAM with the Complainant but not a file relating to a MIAM with the Other Party.

“Mediation Service” means the service with which the Complainant’s Mediation was arranged.

“Member” means a mediator who when the Mediation was undertaken was a member of FMA and is still a member of FMA at the time when a Complaint is investigated by FMA or who was a member of the FMA at the time when the matter complained about arose but ceased to be a member prior to the FMA investigating a Complaint, provided in that case that the cessation of membership is no more than 6 months before the Complaint being referred to the FMA.

“Other Party” means any party to a Mediation other than the Complainant.

“PPC” means the Member’s professional practice consultant.

“Timescale” means 6 months from the Complaint being received by the Member and/or the Mediation Service.

“The Trustees” means the trustees of the FMA who constitute its board of directors.

Introduction

The FMA Complaints Procedure for dealing with any complaints received from mediation clients is designed to maintain the Code of Practice. The FMA Complaints Procedure is binding upon all Members as defined above.

Any complaint relating to a current member of the FMA who was not a member at the time of the mediation giving rise to the complaint is not covered by this procedure but by the complaints procedure of the organisation to which the member belonged at that time.

All Members must follow the requirements of the FMA’s required Members’ mediation complaints procedure (“the Procedure”) which is binding on all Members and failure to abide by which by a Member will be treated by FMA as a disciplinary matter. The FMA Complaints Procedure is intended to cover the circumstances as provided for in the Procedure when a complaint is referred to FMA.

If a Complaint is not resolved through a Member’s internal complaints process and is referred to the FMA then the following process will be followed, save in respect of a referral made at Stage Two a) in the Procedure by a CPPC, in which case the matter will be treated by FMA as a disciplinary matter rather than as a Complaint.

The FMA, as a member association with a commitment to ensuring standards, reserves the right to investigate any area of Member or mediation practice. The FMA may take any appropriate actions independently in pursuing, clarifying or resolving any concerns which come to light as a disciplinary matter.

STAGE ONE – Making a complaint about a Member

Any Complaint against a Member must be in writing on the pro forma provided by FMA and signed before being sent to the FMA administration office within the time referred to below. The pro forma includes the consent for the release of the Mediation File and all papers relating to the Complaint to FMA.

The pro forma can be downloaded from the FMA website or obtained by contacting FMA at the administrative office address. If a Complainant needs help in completing the pro forma, he or she should contact the FMA who will assist as to completion of the form. The form contains provision for the Complainant to consent to the sharing of information with FMA concerning his or her Complaint and to FMA obtaining the Complaint and Mediation files from the Member and/or the Mediation Service and the CPPC and also to FMA supplying a copy of the pro forma to the Member. FMA cannot deal with a Complaint without such consent.

FMA cannot consider a Complaint unless the Mediation has concluded and the Member's own complaint process is at an end. FMA will only consider a Complaint that involve a potential breach of the Code of Practice.

FMA will only consider a Complaint within 6 months of the end of the Mediation or the conclusion of the Member's own complaints process, whichever is the later.

Upon receiving a written Complaint (including the consent) concerning a Member, FMA will notify the Member and the Member's CPPC that a Complaint has been received, naming the Complainant. FMA will inform the Other Party of there being a Complaint provided that there are contact details for that person unless there exceptional reasons not to do so. The Other Party is not entitled to receive any details of the Complaint. All notifications will be within 10 working days of the Complaint being received by FMA.

When receiving a referral from a CPPC in line with Stage Three a) in the Procedure, FMA will notify the Member and the Complainant. The Complainant will, in that case, be asked to complete a pro forma within 21 working days of receiving the notification from FMA and will be told that, if the pro forma is not received within that time scale, FMA will not deal with the matter as a Complaint but purely as a disciplinary matter. A copy of the pro forma (whenever lodged with FMA) will be forwarded by FMA to the Member. FMA will, when receiving a CPPC referral and a signed pro forma from the Complainant inform the Other Party of there being a Complaint unless there are exceptional reasons not to do so, provided that there are contact details for that person. The Other Party is not entitled to receive any details of the Complaint.

A referral by a CPPC pursuant to Stage Two a) in the Procedure will not be treated by the FMA as a Complaint but as a disciplinary matter.

STAGE TWO – Obtaining information from the Member and his or her CPPC

a) When Stage One has been completed, to include the signing of the pro forma by the Complainant, either when first notifying the Member when a Complainant initiates a complaint or within 10 working days of receiving the Complainant's pro forma if the CPPC has made the referral, FMA will require the Member, within 14 working days:

- (i) To confirm that there is no ongoing Mediation

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- (ii) To confirm that the Member's own complaints process has been fully concluded.

The Member will also be told by FMA that he or she can provide at that stage a written response to the contents of the Complainant's pro forma on the basis that a copy thereof will be sent to the Complainant.

- b) When FMA contact the CPPC (if he or she has not made the referral in which case, following Stage Three b) in the Procedure, the CPPC will already have sent his or her Complaint File to FMA), FMA will require the CPPC within 14 working days to forward his or her full Complaint File which should include the CPPC's classification of the Complaint, details of any recommended actions and of the Member's response thereto. In the event that the Complaint File is not supplied by the CPPC, the Member must supply a full copy to FMA within a further 7 working days from the expiry of the 14 working day period referred to above.
- c) If the Complaint File or any part thereof cannot be supplied to FMA because the Member's agreement to mediate does not include the requisite consent of the parties, the Member must use his or her best endeavours to obtain such consent from both parties within 14 working days of being requested to do so by FMA. In the event that the consent of both parties is not forthcoming within that period, as that means that the agreement to mediate is non compliant, FMA cannot investigate the complaint but will institute a disciplinary process. In that event, FMA will advise the Member, the CPPC, the Complainant and the Other Party (if told about the Complaint) accordingly.

STAGE THREE – Deciding whether the Complaint demonstrates that there is a potential case to answer

Within 14 working days of all documents referred to in Stages One and Two being supplied to FMA, FMA will convene a CPAP.

FMA will send to the CPAP all documents referred to at Stages One and Two (excluding at this stage the Mediation File if received) above including a copy of the Complaint File, the pro forma and any written response thereto from the Member.

The CPAP will consider the Complaint or the disciplinary referral made by the CPPC and the supporting information. Its task is to decide whether or not, on that evidence, there is any potential case to answer. The CPAP does not decide whether the Complaint is upheld. If the CPAP decides there is a potential case to answer, the Complaint will be progressed in accordance with the stages set out below. Where there is insufficient evidence available for the CPAP to make this decision, the CPAP may refer the Complaint back to the Complainant, the Member or the CPPC for more detailed information. If this happens, the CPAP dealing with the Complaint will consider any "new" evidence, and then reach a decision as to whether there is a potential case to answer.

The CPAP may find that FMA cannot deal with the Complaint if it does not, in the opinion of the CPAP, relate to a possible breach of the Code of Practice. The CPAP may find that the Complaint is of a vexatious or personal nature. If the CPAP does not reject the Complaint on that basis, it has to decide whether prima facie there is a case to answer. That means that it has to satisfy itself that there is a potential breach of the Code of Practice.

The CPAP has 28 working days from the receipt of all of the original papers or, if later, any new evidence, to reach a conclusion.

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If the CPAP decides that there is no potential breach of the Code or that the Complaint is vexatious or of a personal nature or that there is no case to answer, no further action will be taken by FMA. The Member, the Member's CPPC, the Complainant and the Other Party (if originally informed of the Complaint) will all be informed in writing of this within 28 working days of the CPAP decision. If the CPAP decides there is sufficient evidence available within the Complaint to establish a potential breach of the Code of Practice, the matter will progress to stage Four below.

The CPAP's report is confidential to the FMA and will not be shared with the Member, the Member's CPPC, the Complainant or the Other Party.

There is no appeal from the CPAP's decision that the Complaint does not relate to a potential breach of the Code of Practice or that the Complaint is vexatious or personal in nature. If the Member or the Complainant does not accept the CPAP's finding as to whether there is a potential case to answer, he or she can, within 14 working days of receipt of the CPAP's findings, request in writing that a second, differently constituted, CPAP be convened by FMA to reconsider the matter. All of the provisions as to the operation of a first CPAP as contained in this Stage shall apply to any second CPAP thus convened. There will be no appeal by either the Member or the Complainant from the decision of a second CPAP.

STAGE FOUR – Complaint Adjudication

- a) On receiving the finding of either the first or second CPAP (in the case of a first CPAP after allowing sufficient time to elapse to receive a request to convene a second CPAP) that there is a case to answer, FMA will instruct a CA appointed by the Trustees to investigate the Complaint. The Complainant, the Member, the Member's CPPC will be invited to comment in writing if the CA believes that it would assist him or her in their investigation. It is for the CA to decide whether all documents should be shared between the parties.
- b) The CA will be provided by FMA with all documents considered by the CPAP and its findings including its report. In addition he or she will be provided with the Mediation File.
- c) The Mediation File (if not already included in the Complaint File or otherwise provided as it should have been) will be requested from the Member by FMA. The Member must provide it within 14 working days of FMA requesting it.
- d) The CA will prepare a written decision for the Trustees within 70 working days of receipt of all the documents from the FMA. The written decision will be sent to the Member, the Member's CPPC and the complainant.

STAGE FIVE - Disciplinary Process

- a) The written report and decision of the CA will then be considered at the first board meeting of the Trustees following on its receipt by FMA, the Trustees, for these purposes, constituting a disciplinary panel.
- b) In accordance with the Articles of Association of FMA, if the Trustees find any complaint against a Member justified they may decide that:
 - (i) No action should be taken.
 - (ii) The Member should be reprimanded.

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- (iii) The Member's membership should be suspended with or without conditions, which might include the return or remission of fees paid by a mediation client.
- (iv) The Member's membership should be terminated.

The Trustees have resolved that the conditions to be attached in the event of suspension of membership will include a requirement that the Member return or remit fees paid by a mediation client.

If any Trustee has a business or professional relationship with the Member, the Member's CPPC or either party to a mediation (other than through serving or having served as a board member and /or trustee of FMA or FMA Trading Ltd), that Trustee will, prior to the Trustees discussing the CA's report, make a written declaration of the extent of his or her conflict of interest for consideration by the other Trustees who, as provided in FMA's Articles of Association, will exercise their discretion as to whether that Trustee should be excluded from the Trustees' discussion of the CA's report. This provision shall equally apply to any consideration by the Trustees of the findings of a CAP. If, after considering the written report of the CA, (or following receipt of the findings of a CAP), the Trustees resolve that no further action should be taken, that resolution will be notified in writing to the Complainant, the Member, the Member's CPPC and the Other Party if informed at the outset within 14 working days of the resolution being taken. The Complainant cannot, at any stage, appeal against the Trustees' resolution as to what, if any, disciplinary action should be taken.

- c) If, after considering the report of the CA, (or following receipt of the findings of a CAP), the Trustees resolve that it is appropriate that the Member should have his or her membership suspended (with or without conditions) or have his or her membership terminated, that resolution will be notified to the Member, the Complainant, the Member's CPPC and the Other Party if informed at the outset within 14 working days of the resolution having been taken. The Member may, within 21 working days of notification of the resolution, give written notice of a wish to attend a meeting of the Trustees to address the Trustees about the proposed disciplinary action. The Member, if doing so, must, in the written notice, set out his or her reasons as to why that disciplinary action should not be taken. The written notice can only relate to the resolution as to disciplinary action and not the report of the CA or the findings of the CAP, as detailed at Stages Six and Seven below as to the Complaint itself.
- d) The Trustees may from time to time prescribe rules and procedure to be followed at any such meeting which must take place within 70 working days of receipt by FMA of the written notice from the Member.
- e) The Trustees will resolve, following such an appearance, whether the disciplinary action previously resolved on will stand or be replaced with a different form of disciplinary action. That resolution will be final.
- f) The Trustees will in any event reconsider any resolution as to disciplinary action if there is an appeal against the findings of the CA, at the first board meeting following FMA's receipt of the findings of the CAP.
- g) FMA will inform the Complainant, the Member, the Member's CPPC and the Other Party if informed at the outset in writing of the resolution of the Trustees following on any such meeting within 14 working days of the resolution being taken. The Complainant cannot appeal against the resolution of the Trustees.

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- h) Before passing any resolution concerning disciplinary action, the Trustees must have regard to the considerations concerning disciplinary processes as set out in the Family Mediation Council Manual of Professional Standards and Self-Regulatory Framework dated September 2014 and any successor document thereto.
- i) If the Trustees pass a resolution concerning disciplinary action prior to the expiry of the time period for either the Member or the Complainant to give notice of appeal against the findings of the CA or while the appeal process is underway, no disciplinary action can be imposed on the Member until either the expiry of the time limit for giving notice of appeal or the conclusion of the appeal, save for a suspension of membership without the imposition of conditions.

STAGE SIX - Process by which the Member or Complainant may Appeal against a Decision of the CA

Within 28 working days of receipt of the CA's findings the Member and/or the Complainant may lodge an appeal in writing to a CAP on the grounds that the decision of the CA was not correct in all the circumstances. The appeal in writing must set out the detailed grounds of appeal by reference to the CA's findings.

The Complainant or the Member (depending on who has lodged the appeal) and the Member's CPPC will be notified in writing by the FMA of the appeal within 14 working days of receiving the grounds of appeal.

STAGE SEVEN - Appeal Hearing by the CAP

The CAP will meet within 56 working days of FMA's receipt of the written grounds of appeal. The CAP will consider no verbal evidence. The CAP will look at all the evidence put before the CPAP/s and the CA in reaching their decision, as well as the written grounds of appeal and will decide whether the decision of the CA was, in its opinion, correct in all the circumstances. The CAP will not be able to consider any new evidence that may be submitted, other than in exceptional circumstances. Consideration by the CAP is not an opportunity to produce evidence that should have been properly submitted to and considered by the CA and there must be a good and sufficient reason why any late evidence was not submitted earlier. The CAP has an absolute discretion as to whether to consider any such evidence.

Within 28 working days of considering the appeal, the CAP will issue its decision in writing to the Member, the Member's CPPC, the Complainant, the Other Party (if originally informed about the Complaint) and the Trustees. The decision of the CAP is final.