



Family Mediators Association (“FMA”) complaints and disciplinary procedure concerning clients interviewed by a mediator for a MIAM which term is defined below

Purpose

This procedure is intended to provide guidance for complainants, FMA mediators and their professional practice consultants in the handling of complaints concerning a MIAM as defined below. The definitions which follow apply only to this particular procedure.

Definitions

“ICA” means an independent 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 potential attendee at a MIAM, the Member or the CC or have any knowledge of any 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 had a MIAM and complains about a Member’s conduct of it.

“Complaint” means a complaint in writing about a Member’s conduct of a Complainant’s MIAM. Even if there has been a mediation following the MIAM, only the MIAM file will be considered by FMA when investigating a Complaint.

“Complaint File” means the file (or files) of the Member, CC and/or Mediation Service which relate/s to the Complaint

“CPAP” means a complaints preliminary assessment panel, a 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 (or potential party) to a MIAM or mediation or the Member or the CC other than through serving or having served as a FMA Trustee or director of FMA Trading Limited before sitting on the CPAP.

“CC” means a Complaints Consultant who is recognised as such by any FMC 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.

“The FMA Complaints Procedure” intended to provide guidance for complainants, FMA mediators and professional practice consultants in the handling of complaints concerning a mediation.

“Mediation Service” means the service with which the Complainant has arranged a MIAM. The process of setting up a MIAM may be undertaken by service support staff not a Member. FMA cannot investigate a complaint unless it is against a Member.

“Member” means a mediator who at the point the MIAM 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.

“MIAM” means any face to face family mediation meeting for the purpose of providing information about family mediation and assessing a case for its suitability for family mediation (including a meeting by Skype or by telephone) that takes place between a mediator and a potential mediation client, whether that person is making a referral pursuant to clause 10 of the Children and Families Act or not. This definition does not include, nor does this procedure cover, telephone willingness tests or administrative calls concerning the setting up of a MIAM.

“MIAM File” means the file of the Member and/or the Mediation Service which relates to the MIAM conducted with the Complainant and not any file relating to a MIAM with any other party nor to any mediation file.

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

“Timescale” means a complaint must be presented to FMA within 6 months of the end of the mediation or MIAM, or the conclusion of the member’s own complaints procedure, whichever is the later.

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

Introduction

FMA’s Complaints and Disciplinary Procedure (“the FMA Complaints Procedure”) for dealing with any complaint received from mediation clients is designed to maintain the Code of Practice.

The Code of Practice refers specifically to the practice of family mediators when undertaking mediation. A MIAM is undertaken prior to mediation and is usually conducted with each individual separately to provide them with information about the mediation process, to assess whether they are eligible for legal aid, to ascertain their willingness to attend for mediation and for the mediator to decide whether mediation is suitable. Paragraphs 5.5.1, 5.5.2, 5.6.2 and 5.6.3 of the Code of Practice cannot be considered binding in respect of the MIAM process.

This complaints and disciplinary procedure applies solely to MIAM’s.

FMA will only deal with a complaint about a MIAM by investigating the MIAM’s file after the MIAM’s both with the Complainant and any other party have taken place and also after any mediation following the MIAM has concluded. FMA will only consider matters which relate to the Member’s conduct in, and of, the MIAM with the Complainant. The FMA will not consider or investigate any aspect of the Member’s file for dealings with the other party or potential other party to a MIAM as such is confidential, privileged, and separate and excluded from consideration of the Complaint.

The FMA MIAMs Complaints Procedure is binding upon all members of FMA.

FMA requires the CC to be involved in processing any complaint regarding a MIAM against a Member.

FMA members including PPCs and CCs have an overriding duty to consider the issues of both public and child protection at all stages of mediation and any complaints which arise thereof.

In the event of such a complaint being made, the Member, the persons responsible within their Mediation Service for dealing with complaints and the CC should have regard to this Complaints Procedure and must in particular ensure that the CC is asked both to review the Complaint and to categorise the Complaint as either minor or serious.

When a complaint is made to a Member, the Complainant must be provided with a copy of the Member's or the Mediation Service's internal complaints policy and the name, position and contact details of the person to whom they should refer any complaint about a Member in respect of a MIAM initially.

If the Complaint is not resolved internally and is referred to FMA, the following process will be followed.

STAGE ONE – Making a complaint about a Member

- a) Any Complaint against a Member must be in writing on a pro forma provided by FMA and signed before being sent to the FMA administration office. The pro forma includes the consent for the release of the MIAM file and all papers relating to the Complaint to the FMA.
- b) 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 MIAM and Complaint file from the Member and/or the Mediation Service and also to the FMA supplying a copy of the pro forma to the Member. FMA cannot deal with a Complaint without such consent.
- c) FMA will not deal with a Complaint until it is confirmed to FMA by the Member that the MIAM's, both with the Complainant and any other party have taken place and that any ensuing mediation has concluded and also until it is confirmed to FMA that the Member's own complaints process has been fully exhausted.
- d) FMA will only consider Complaints that involve a potential breach of the Code of Practice with the exceptions laid out in the introduction above.
- e) Upon receiving a Complaint concerning a Member, on the pro forma as above, FMA will notify the Member and the CC that a Complaint has been received, naming the Complainant. All notifications will be within ten days of the complaint being received by FMA.
- f) 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, considering or resolving any concerns which come to light as a disciplinary matter.

STAGE TWO – Obtaining information from the Member or CC

- a) When Stage One has been completed, to include the signing of the pro forma by the Complainant, FMA will require the Member, within 14 working days:
 - (i) To confirm that any MIAM with the other party and any mediation have been concluded.
 - (ii) To confirm that the Member's own complaints process has been fully concluded.
 - (iii) To supply a copy of the MIAM file.

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 pro forma on the basis that a copy thereof will be sent to the Complainant.

- b) When the FMA contact the CC, the FMA will require the CC within 14 working days to forward any Complaint File which he or she has in relation to the Complaint.

STAGE THREE – Deciding whether the complaint demonstrates that there is a potential case to answer, that is a possible breach of the Code of Practice has occurred

- a) Within 14 working days of all documents referred to in Stages One and Two being supplied to FMA, FMA will convene a CPAP and will send to it all the documents referred to at Stages One and Two above including the pro forma, any written response to it by the Member, the MIAM file and any Complaint file.
- b) The CPAP will consider the Complaint, and any supporting evidence. Its task is to decide whether or not, on that evidence, there is a prima facie case to answer. The CPAP does not decide whether the Complaint is upheld.
- c) That means that the CPAP has to satisfy itself that, taking into account the Complaint and any representations or comments made by the Member in dealing with the Complainant as part of the Member's own complaints process and any response to the pro forma by the Member, the allegations contain sufficient detail/evidence to establish a potential breach of the Code of Practice subject to the exclusions as already detailed.
- d) Where there is insufficient evidence available to it to make such a decision, the CPAP may refer the Complaint back to the Complainant, the Member or the CC for more detailed information.
- e) The CPAP may find that the 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. The CPAP has 28 working days from receipt of all of the original papers or, if later, any new evidence, to reach a conclusion.
- f) If the CPAP decides that there is no potential breach of the Code of Practice 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 the FMA. The Complainant, the Member and the CC will all be informed in writing of this within 28 working days of the CPAP decision. If the CPAP decides that there is sufficient evidence available within the Complaint to establish a potential breach of the Code of Practice, the matter will progress as set out in the following Stage.

- g) The CPAP's report is confidential as between the CPAP and FMA. The Complainant, Member, Mediation Service and CC are not entitled to see the CPAP report but only to know its findings.
- h) 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 is of a vexatious or personal nature. If the Member or the Complainant do not accept the CPAP's findings, he or she can, within 14 working days of receipt of the CPAP's findings, request in writing that a second 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 is no appeal by either the Member or the Complainant from the findings of a second CPAP.
- i) The findings of the first CPAP will not be made available to the second CPAP.

STAGE FOUR – Independent Complaint Adjudication

- (a) On receiving a 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 an ICA appointed by the Trustees to investigate the Complaint. The Complainant, the Member and the CC will be invited to comment in writing if the ICA believes that it would assist him or her in their investigation. It is for the ICA to decide whether all documents will be shared between the parties. The ICA will deal with the matter in 56 working days.
- (b) The ICA will be provided by the FMA with all documents considered by the CPAP and its findings including its report. In addition the ICA will be provided with all documents made available to the FMA and the CPAP.
- (c) The ICA will prepare a confidential report for the Trustees within 56 working days of receipt of all documents from the FMA. A separate written decision will be sent to the Complainant, the Member and the CC.

STAGE FIVE – Disciplinary Process

- a) The written report and decision of the ICA will then be considered at the first board meeting of the Trustees following on 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 any member justified they may decide that:
 - (i) No action should be taken.
 - (ii) The Member should be reprimanded.
 - (iii) The Member's membership should be suspended with or without conditions which might include the return or remission of fees paid by the Complainant
 - (iv) The Member's membership should be terminated.
- c) 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 MIAM client.
- d) If any Trustee has a business or professional relationship with the Member, the Complainant or the other party to the MIAM, if his/her identity has been divulged, that Trustee will, prior

to the Trustees discussing the ICA'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 and resolution on the Complaint. This provision shall equally apply to any consideration by the Trustees of the findings of a CAP.

- e) If, after considering the written report of the ICA (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 and the CC within 14 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.
- f) If, after considering the written report of the ICA (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 Complainant, the Member and the CC 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 them 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 ICA or the findings of the CAP, as detailed at Stages Six and Seven below as to the Complaint itself.
- g) 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.
- h) 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.
- i) The Trustees will in any event reconsider any resolution as to disciplinary action if there is an appeal against the findings of the ICA at the first board meeting following FMA's receipt of the findings of the CAP.
- j) FMA will inform the Complainant, the Member and the CC in writing of the resolution of the Trustees following on any such meeting within 14 working days. The Complainant cannot appeal against the resolution made.
- k) Before passing any resolution concerning disciplinary action, the Trustees must have regard to the considerations concerning disciplinary processes as set out in the FMC Manual of Professional Standards and Self-Regulatory Framework dated September 2014 and any successor document thereto.
- l) If the Trustees pass a resolution concerning disciplinary action prior to the expiry of the time period for either the Complainant or the Member 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 after 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 ICA

- a) Within 28 working days of receipt of the ICA'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 ICA was not correct in all the circumstances. The appeal in writing must set out the detailed grounds of appeal by reference to the ICA's findings.
- b) The Complainant or the Member (depending on who has lodged the appeal) and the CC will be notified in writing by FMA of the appeal within 14 working days of receiving the grounds of appeal.

STAGE SEVEN- Appeal hearing by the CAP

- a) 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 ICA in reaching their decision as well as the written grounds for appeal and will decide whether the decision of the ICA 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 ICA 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.
- b) Within 28 days of considering the appeal being dealt with, the CAP will issue its decision in writing to the Member, the CC, the Complainant, other party to a MIAM if his or her identity is known and the Trustees. The decision of the CAP is final.
- c) Once the FMA's internal procedures are exhausted the complainant or the mediator may refer the matter to the FMC to deal with within the terms of reference of the FMC's appeal process.