

## STAGES IN FMA COMPLAINT PROCEDURES

### FAMILY MEDIATORS ASSOCIATION (“FMA”) REQUIRED MEMBERS’ MEDIATION COMPLAINTS PROCEDURE

#### STAGE 1 - INFORMAL RESOLUTION

Member attempts to resolve complaint in-house, with or without assistance of PPC, and, if required, using firm’s Complaints Handler.

#### STAGE 2 – FORMAL RESOLUTION

Member passes management of complaint to Complaint Consultant (“CC”) who investigates and attempts to resolve. If complaint not resolved within 28 working days, CC classifies complaint as either serious, minor or of a personal/ vexatious nature. If CC cannot investigate because Agreement to Mediate does not allow for release of file, CC to refer to FMA as disciplinary matter\*.

#### STAGE 3 – REFERRAL

Referred to FMA if:

1. Complaint classified as serious (CC refers to FMA)
2. Complaint classified as minor and CC makes recommendations to the Member, which the Member does not accept (CC refers to FMA)
3. Complainant does not accept ‘recommendation’\*\* of CC (Complainant refers to FMA)

\* See FMA Complaints & Disciplinary Procedure – what is difference between the handling of complaint & disciplinary matter?

\*\* ‘Recommendation’ refers to CC’s ability to make recommendations after classifying complaint as minor. Was this the intention in the drafting? What about scenario where Complainant does not accept CC’s ‘classification’ of complaint?

## STAGES IN FMA COMPLAINT PROCEDURES

### FAMILY MEDIATORS ASSOCIATION (“FMA”) MEDIATION COMPLAINTS AND DISCIPLINARY PROCEDURE

#### STAGE ONE – Making a complaint against a Member

Complaint must be in writing, on FMA pro forma, and signed. Complaint cannot be considered if Member’s complaints process has not concluded or if it is more than six months after the conclusion of the mediation.

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

Member to confirm that mediation is not ongoing and that their internal complaints process has been concluded. Member is given the opportunity to provide written response. CC to provide Complaint File. If Complaint File not available because Member’s Agreement to Mediate does not include the consent of both parties to release of the file, and the Member cannot obtain consent from both parties, FMA will institute a disciplinary process.

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

Complaints Preliminary Assessment Panel (“CPAP”\*\*\*\*) convened. CPAP to consider complaint ‘or disciplinary referral made by CC’\*\*\*\*. The task of the CPAP is to consider whether there is a prima facie case to answer – i.e. a potential breach of the Code of Practice. If the CPAP considers 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. If the CPAP find there is a case to answer, complaint to progress to stage 4. If either the Member or Complainant do not accept the CPAP’s finding, they can request a second, differently constituted CPAP\*\*\*\*\*.

#### STAGE FOUR – Independent Complaint Adjudication

Independent Complaint Adjudicator (“ICA”) appointed. ICA to prepare a confidential report for FMA\*\*\*\*\*. Separate written decision to be sent to Member, CC and Complainant.

#### STAGE FIVE – Disciplinary Process

The ICA’s report will be considered by the Trustees of the FMA Board constituting a disciplinary panel\*\*\*\*\*. If the Trustees find any complaint 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 a client’\*\*\*\*\*)
- iv) The Member’s membership should be terminated

The Member can ask to attend a meeting of the Trustees of the Board as to the proposed disciplinary action. The Complainant cannot appeal the Trustee’s decision as to what, if any, disciplinary action should be taken.

\*\*\* Definition of CPAP ‘...meets every two months and which consists of two full members of the FMA who also act as ICA’s’. Do we have a CPAP that meets every two months?

\*\*\*\* On what basis does the CPAP consider the disciplinary referral?

\*\*\*\*\* How does this accord with the definition of the CPAP (see above)?

\*\*\*\*\* Procedure gives no information on what the ICA’s function is/ what the report should address

\*\*\*\*\* Is this the case even if the ICA finds that the complaint should not be upheld?

\*\*\*\*\* But note stage five 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 [italics added]’

## **STAGES IN FMA COMPLAINT PROCEDURES**

### **FAMILY MEDIATORS ASSOCIATION (“FMA”) MEDIATION COMPLAINTS AND DISCIPLINARY PROCEDURE**

#### **STAGE SIX – Process by which the Member or Complainant may Appeal against a Decision of the ICA**

The Member or the Complainant may lodge an appeal against the ICA’s findings to an FMA Complaints Appeal Panel (“CAP”) on the grounds that the decision of the ICA was not correct in all the circumstances.

#### **STAGE SEVEN – Appeal Hearing by the CAP**

The CAP will decide whether the decision of the ICA was correct (after reviewing written evidence). The CAP will not consider new evidence unless there are exceptional circumstances. The decision of the CAP is final. Once the FMA’s process is exhausted, the Complainant or the Member may refer the matter to the FMC.