



Explanatory Notes to the Family Mediators Association (“FMA”) Complaints Procedure

1. Purpose

Pursuant to the Part 5 of the Family Mediation Council’s (‘FMC’) Professional Standards and Self-Regulatory Framework, initial responsibility for complaints against family mediators rests with their membership organisation. The FMA Complaints Procedure (the Procedure provides details of the FMA’s process for handling complaints against its members. These notes are intended to accompany the Procedure and provide a more detailed explanation of its purpose and application. If, which is not intended, there is a conflict between the interpretation of these explanatory notes and the Procedure, the terms of the Procedure take precedence.

The central purpose of the Procedure is two-fold, namely:

- 1) To protect the reputation of, and instil confidence in, FMA family mediators; and
- 2) To protect the public against practice by FMA members which is contrary to the FMC’s Code of Conduct.

The procedure aims to provide a robust and transparent process of dealing with complaints against FMA members, which is even-handed in its application.

The FMA recognise that complaints can be a difficult process for all concerned and are therefore committed to dealing with complaints in a timely and efficient manner.

2. Application of the FMA’s Complaints Procedure

A separate complaints procedure (and accompanying explanatory notes) is available to clients who have attended an Information and Assessment Meeting (which includes statutory Mediation Information and Assessment Meetings) with an FMA member.

Where an FMA member is a member of more than one family mediation membership organisation, they can elect which membership organisation complaints are referred to by incorporating a clause to this effect in their contract with clients (see section 3 below). In the absence of a clause to this effect, the complainant is free to choose which membership organisation they refer their complaint to.

Where a current FMA member was not a member of the FMA at the time of the conduct giving rise to the complaint, the complaint must be made to the membership organisation that the member did belong to at the relevant time.

The FMA will only consider complaints that allege a breach of professional standards by reference to the FMC's Code of Practice.

3. Contract with clients/ Agreement to Mediate

FMA members are expected to use an FMC compliant Agreement to Mediate as the basis for their contractual relationship with clients. The FMC's requirements in this respect are contained at section 8.7 of the FMC's Code of Practice. Failure to comply with the FMC's requirements in this respect may be dealt with as a disciplinary matter by the FMA.

The FMA recommends that members use the FMA's model Agreement to Mediate as the template for their contractual relationship with client. Whilst FMA members are free to make amendments to FMA's precedent Agreement to Mediate, the document must contain a clause consenting to the release of the mediation file to the FMA and the FMC in the event of a complaint. Failure to incorporate a clause to this effect may be dealt with as a disciplinary matter by the FMA.

Where, due to a member's failure to incorporate a clause consenting to the release of the mediation file, documentation cannot be provided to the FMA to assist their investigation of a complaint, any dispute as to the contents of such documentation will be construed against the member.

4. Local resolution of complaint

Where possible, the FMA seeks to promote early resolution of complaints with the support of a member's PPC. However, the FMA recognise that a member's PPC is not an independent party and should not fulfil any formal investigative role in respect of the resolution of any complaint.

The FMA requires all members to have their own internal complaints process. Advice is provided in the Procedure as to what the FMA expect this procedure to contain. Failure to have an internal complaints procedure, or one that it is fit for purpose, may be dealt with by the FMA as a disciplinary matter.

The FMA will not deal with a complaint where local resolution of the complaint has not been concluded. This means that the nature of the complaint being referred to FMA must have been addressed via the member's own complaints procedure and that procedure must have concluded without resolution. Where it appears that a complaint has been dealt with at local level but the complaint, or some elements of the complaint, being made to the FMA differs from the complaint made at local level, the FMA may require the complainant to address this different complaint, or this different element of their complaint, with the member, via the member's complaints procedure, before dealing with the matter.

5. Referring the Complaint to the FMA

Completion of Complaint Form

When referring a complaint to the FMA, complainants are required to complete the FMA's standard Complaint Form. Upon notification of a complaint, the FMA will send a hard copy of the form to the complainant. The Complaint Form is also available on the FMA's website. The complainant must, in the Complaint Form, provide their consent to the sharing of information and documentation with the FMA including the release of the mediation file and all correspondence and documentation pertaining to the complaint.

Requirements for FMA to consider complaint

The FMA will only consider complaints under this policy where it is satisfied that:

- (a) The member's internal complaints procedure has been concluded; and
- (b) Mediation between the member and the complainant has been concluded; and
- (c) The complaint has been made within 6 months of the conclusion of mediation or within 8 weeks of the conclusion of the member's complaints procedure (whichever is the later); and
- (d) The complainant is a person who has been in mediation with the member (a person who has a complaint about an intake an assessment meeting should refer to the separate policy covering such meetings); and
- (e) The complaint involves a potential breach of the Code of Practice.

Consideration of Complaint Form by Panel of FMA Complaints Committee

Upon receipt of a completed Complaint Form, a panel consisting of a least two members of the FMA's Complaints Committee will consider the Complaint Form. They will review whether the above requirements have been met. The Complaints Committee's role is purely administrative in function. They will not undertake any investigation of the complaint and will not offer any opinion as to whether they believe the alleged breach of the Code of Practice has any merit. They will not offer any recommendations or comment on the complaint and their response will be restricted to whether the complaint, as detailed on the Complaint Form, meets the above requirements for consideration by the FMA.

If the requirements have not been met, but the panel of Complaints Committee believe that the seriousness of the conduct complained of merits the attention of the FMA and/or there are extenuating circumstances that justify such action, they can refer the matter back to the FMA for consideration as a disciplinary matter. Examples may include, but are not limited to, the following:

- where local resolution of the complaint is being unreasonably protracted to avoid investigation by the FMA.
- where a complaint is made by someone other than a person who has been in mediation with the member.

Insofar as the function of the Complaints Committee is purely administrative (namely to satisfy itself that the requirements for consideration by the FMA have been met), there is no appeal from its decision save for the ability to appeal the matter to the FMC.

6. Investigation by the FMA

If the Complaints Committee are satisfied that the requirements for the FMA to consider the complaint have been met, the matter will be referred to an Independent Complaints Adjudicator (ICA) for consideration.

The role of the ICA is to:

1. Consider the evidence (namely, the documentation provided to the ICA as per section 6.3 of the Procedure); and
2. Consider the complaint made to the FMA (as per the Complaint Form); and
3. Reach a decision as to whether a breach (or breaches) of the Code of Practice occurred.

It is envisaged that the ICA will base their decision on the documentation provided and, unless there are exceptional circumstances, dialogue between the ICA and the parties to the complaint will not be necessary.

The ICA's role is strictly limited to the complaint that is made to the FMA (as per the Complaint Form). If they consider that the documentation raises other practice issues that the member may want to address, they are free to communicate these directly with the member and the member's PPC outside of the Procedure.

The FMA will provide the ICA with a standard ICA report and ask that the ICA uses this as the template for their report. The ICA will be reminded of the disciplinary action that is available to the Trustees and asked to bear this in mind when making any recommendations.

7. Appeal of the decision of the ICA

Pursuant to the Part 5 of the Family Mediation Council's ('FMC') Professional Standards and Self-Regulatory Framework, membership organisations must have an impartial process, independent of the initial investigation, for considering appeals against complaints, both by complainants and by members. The appeals process should be accessible but should state the grounds on which appeals will be accepted for consideration.

Part 7 of the Procedure accordingly provides a process, independent of the initial investigation, for the appeal of the ICA's decision. The grounds on which an appeal will be accepted for consideration by the FMA are strictly limited to the following:

- that the ICA made a specific error as a result of which their decision was wrong in all the circumstances.

For the sake of clarity, an appeal will not be considered on grounds that a party is unhappy with, or disagrees with, the decision of the original ICA. The Appellant must identify a specific error, or errors, in the original ICA's decision and must state why such error(s) led to the ICA's decision being wrong in all the circumstances.

8. Disciplinary process

Part 5 of the Family Mediation Council's ('FMC') Professional Standards and Self Regulatory Framework provides that each membership organisation is responsible for disciplinary processes in respect of its members.

Part 8 of the Procedure details the disciplinary process that will be following if an ICA or Appeal ICA finds that a member has breached the Code of Practice.

Pursuant to the Family Mediation Council's ('FMC') Professional Standards and Self Regulatory Framework,

The role of the FMA Board when considering disciplinary action is to consider what action is necessary to:

- protect the public
- restore confidence in the profession, and
- where appropriate to ensure that the mediator is competent to continue practising.

The disciplinary action that the FMA Board may take is strictly restricted by the FMA's Articles of Association to the following four options:

- No action should be taken.
- The member should be reprimanded.
- 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.
- The member's membership should be terminated

In considering what, if any, disciplinary action is to be take, the FMA Board must consider:

- the consequences or potential consequences of such action
- the level of intent of the member
- the level of negligence of the member
- the level of competence of the member

If allowing the member to continue to practise would constitute a significant risk to clients, members of the public, or other professionals or co-workers, the minimum penalty must be suspension. If this is due to lack of competence, additional training or directly supervised practice may be required as a condition before the member can be reinstated. If due to deliberate dishonesty or gross negligence, membership must normally be terminated.

If in FMA Board's judgment there is no risk or the risk is minimal, the member may be allowed to continue in membership subject to either or both of a formal warning (reprimand) or, in cases where his or her level of competence is a contributing factor, additional training or supervised practice. A second formal warning for the same or a closely related reason, or three formal warnings overall, can constitute sufficient grounds for termination of membership.