



## Family Mediators Association ("FMA") Complaints Procedure

### 1. Purpose

- 1.1 The FMA is responsible for dealing with complaints against its members. This document provides details of the FMA's procedure for handling complaints in respect of Mediation. The FMA has a separate procedure for handling complaints in respect of Information and Assessment Meetings.

### 2. Definitions

**"Accredited Family Mediator"** A mediator who is an FMC Accredited Family Mediator.

**"Agreement to Mediate"** The document, which is signed by all parties to the mediation and sets out the terms and conditions of the mediation. The document should comply with FMC requirements as contained in the FMC's Code of Practice.

**"Appeal"** The grounds of the appeal as set out in writing by the appellant on an FMA Appeal Form.

**"Appeal Form"** The FMA pro forma document to be used when an appellant appeals the decision of the ICA.

**"Appeal ICA"** A second Independent Complaints Adjudicator appointed by the FMA as per section 7 (below) of the complaint's procedure. The Appeal ICA must not have any prior involvement in the complaint, must be a member of the FMA, must be an accredited family mediator, must be a PPC registered with the FMA and the FMC, and must not have any business or personal relationship with the member or the complainant.

**"Appellant"** A person (either the complainant or member) who appeals the decision of the ICA.

**"Client"** A person who has used the services of the member in the latter's practice as a family mediator.

**"Code of Practice"** The Family Mediation Council's Code of Practice for family mediation.

**“Complaints Committee”** A committee of the FMA with responsibility for dealing with issues relating to complaints. Any member of the Complaints Committee dealing with a complaint must not have any business or personal relationship with the member or the complainant concerned in the complaint.

**“Complaint”** The details of a complaint against a member as made in writing by the complainant on an FMA Complaint Form.

**“Complaint Form”** The pro forma document to be used when a complainant refers a complaint to the FMA.

**“Complainant”** A person, who was a client of the member, who has a complaint about the member’s conduct of the mediation.

**“Complaints Procedure”** This document.

**“Explanatory Notes”** A document providing a more detailed explanation of the purpose and application of the FMA’s complaints procedure.

**“Family Mediation”** Family Mediation (as defined by the Family Mediation Council Code of Practice) is a process in which those involved in family relationship, breakdown, change, transitions or disputes, whether or not they are a couple or other family members, appoint an impartial third person, a family mediator, to assist them to communicate better with one another and reach their own agreed and informed decisions typically relating to some, or all, of the issues relating to separation, divorce, children, finance or property by negotiation.

**“FMA”** The Family Mediators Association.

**“FMA Agreement to Mediate”** The model Agreement to Mediate made available by the FMA to Members via email and the FMA website at the time of the Mediation.

**“FMA Board”** The trustees of the Family Mediators Association.

**“FMC”** The Family Mediation Council: the body with overarching responsibility for maintaining standards for all mediators whether they are accredited or working towards accreditation.

**“ICA”** An Independent Complaints Adjudicator, who is appointed by the FMA as per section 6 (below) of the complaints procedure. The ICA must not have any prior involvement in the complaint, must be a member of the FMA, must be an accredited family mediator, must be a PPC registered with the FMA and the FMC, and must not have any business or personal relationship with the member or the complainant.

**“Information and Assessment Meeting”** means a pre-mediation meeting or meetings held between a mediator and the potential participants in a mediation for the purpose of explaining the mediation processes and assessing whether mediation is appropriate for the participants and includes statutory Mediation Information and Assessment Meetings under s. 10(1), Children and Families Act 2014, which are known as MIAMs.

**“Mediation”** The process of mediation which will only be deemed to have begun once the parties thereto have both signed an Agreement to Mediate.

**“Mediation File”** The file of the member or of the mediation service which relates to the mediation, which will include any file relating to an Information and Assessment Meeting with the complainant but not a file relating to an Information and Assessment Meeting with the other party.

**“Mediation Service”** The service with which the complainant’s mediation was arranged.

**“Member”** A mediator, whether FMC accredited or working towards FMC accreditation, who was a member of the FMA when the mediation was undertaken and either is still a member of the FMA at the time when a complaint is investigated by the FMA or, alternatively, who ceased to be a member no more than 6 months before the complaint was referred to the FMA.

**“Membership Organisation”** A membership body recognised by the FMC – currently, the FMA, the College of Mediators, the Law Society, National Family Mediation or Resolution.

**“Other Party”** Any party to mediation other than the complainant or member.

**“PPC”** Professional practice consultant.

**“Respondent”** pursuant to an appeal under this procedure, the other party to the complaint (may be either the complainant or member) to the appellant.

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

**“Working days”** any day other than a Saturday, a Sunday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

### **3. Application of the FMA’s Complaints Procedure**

- 3.1 This complaints procedure is designed to uphold the Family Mediation Council Code of Practice. The FMA complaints procedure is binding upon all members (as defined above).
- 3.2 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 is covered instead by the complaints procedure of the membership organisation to which the member belonged at the time.
- 3.3 A member who is a member of more than one membership organisation at the relevant time may state in their Agreement to Mediate which membership organisation’s complaints procedure is to be used in the event of a complaint. If the member clearly chooses a member organisation other than FMA, FMA will not consider a complaint against that member. If the member’s Agreement to Mediate does not make it clear which member organisation is to be used, the complainant may choose which membership organisation should deal with their complaint.
- 3.4 The FMA’s complaints procedure is only available to persons who have been in mediation with the member in question and who have a complaint about the conduct of the mediation (as set out in the definition of complainant provided above).

- 3.5 Members, including PPCs, have an overriding duty to consider the issues of public and child protection at all stages of mediation and when responding to a complaint.
- 3.5 A set of Explanatory Notes, which are intended to provide more detailed explanation as to the purpose and application of the complaints procedure, are available and should be read alongside this document.

#### **4. Local resolution of complaint**

- 4.1 The FMA requires all members to have their own complaints procedure in respect of mediation, which is clear and available to all clients upon request.
- 4.2 It is advised that members include the following information in their complaint procedure:
- a) How a complaint can be made to the member including, but not limited to, whether it can be made verbally or should be made in writing and/or in a specified format
  - b) When a complaint can be made including, but not limited to, any deadline for making a complaint following the conclusion of the mediation
  - c) The identity and role of the person or persons with responsibility for dealing with the complaint including, but not limited to:
    - i) The involvement of the member in resolving the complaint
    - ii) The involvement of the member's PPC in resolving the complaint
    - iii) The involvement of any other person with responsibility for resolving the complaint at local level (for example a complaints handler within the member's firm or service provider)
  - d) The member's timescales for dealing with the complaint including but not limited to:
    - i) The timescale for acknowledging a complaint
    - ii) The timescale for responding to a complaint
    - iii) The timescale for attempting to resolve a complaint
  - e) How to escalate a complaint to the FMA if resolution at a local level is not possible
- 4.3 Members must provide clients with a written agreement for signature, which is compliant with FMC requirements. This agreement must include a clause stating that all parties to the mediation consent to the release of the mediation file to the FMA (or other membership organisation as per paragraph 3.4 above) and to the FMC if any party wishes to escalate a complaint. A signed copy of the FMA Agreement to Mediate will be treated as such an agreement for the purposes of any complaint.

- 4.4 Members are required to inform clients of their right to escalate a complaint to a membership organisation if they are unable to resolve it with the member or the member's firm or service provider. This information should be provided to clients at least verbally and preferably in writing at, or before, the Information and Assessment Meeting with a client and should be provided in writing before the Agreement to Mediate is signed.
- 4.5 Members should ensure that clients are aware that escalating a complaint to the FMA does not prejudice the client's right to seek civil remedy.

## **5. Referring the Complaint to the FMA**

- 5.1 If a complaint is not resolved at local level the matter may be referred to the FMA.
- 5.2 The FMA will only consider a complaint 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; and
  - (e) The complaint involves a potential breach of the Code of Practice.
- 5.3 The complaint must be made in writing on an FMA Complaint Form, which is available on the FMA website or on request from the FMA administrative office, and must be signed by the complainant. Upon request to the FMA administrative office, the FMA will provide appropriate support to complainants that are unable to express themselves sufficiently clearly in writing. The Complaint Form must contain the complainant's consent to the sharing of information and documentation with the FMA including the release of the mediation file, all correspondence and documentation pertaining to the complaint.
- 5.4 Upon receipt of a completed Complaint Form, the FMA will send a copy of the Complaint Form to the member within 7 working days. The member will be asked to respond within a further 14 working days and to confirm that:
- a) Mediation is concluded; and
  - b) Their internal complaints procedure has been exhausted in respect of the complaint.
- 5.5 Once FMA receive confirmation from the member as set out in paragraphs 5.4(a) and 5.4(b) above, or after the expiration of the deadline at para 5.4 above, the Complaint Form will be referred to the FMA's Complaints Committee within a further 14 working days. A panel consisting of at least two members of the FMA Complaints Committee will review the

Complaint Form within a further 14 days and decide whether the requirements for consideration of the complaint by the FMA as per paragraph 5.2 above are met.

- 5.6 The FMA Complaints Committee will complete a form recording their decision as to whether the requirements (at para 5.5 above) have been met and will send a copy of the form to the FMA administration.
- 5.7 If the FMA Complaints Committee decide that the complaint does not meet with the FMA's requirements for consideration, the FMA will inform the complainant and the member of this in writing within 7 working days of the FMA receiving the decision made by the Complaints Committee. This will conclude the matter, subject to the complainant's ability to refer the matter to the FMC.
- 5.8 If the FMA Complaints Committee decide that the complaint meets the FMA's requirements for consideration, the FMA will, within 7 working days of receiving the decision made by the Complaints Committee, inform the complainant and the member that the conditions for consideration by the FMA have been met and the complaint will be investigated by the FMA.

## **6. Investigation by the FMA**

- 6.1 The member will be required to provide the following documents within 14 working days of receiving notification pursuant to section 5.8 above:
  - (a) The mediation file; and
  - (b) All correspondence and other documentation pertaining to the complaint, including but not limited to:
    - i) Letters, emails, and file notes of telephone calls between the member and the complainant in respect of the complaint; and
    - ii) Letters, emails, and file notes of telephone calls between the member's PPC and the complainant in respect of the complaint; and
    - iii) Letters, emails, and file notes of telephone calls between the complainant and any other person with any responsibility for resolving the complaint at local level (for example a complaints handler within the member's firm or service provider) in respect of the complaint.
- 6.2 The member will be provided with the opportunity to provide a written response to the complaint within 14 working days.
- 6.3 Upon receipt by the FMA of the mediation file, all correspondence and other documentation pertaining to the complaint and a written response from the member (if provided), the FMA will appoint an ICA. If the mediation file is not forthcoming, the FMA will appoint an ICA

within 14 working days of the file being requested. The FMA will provide the ICA with the following documents:

- (a) The complaint; and
- (b) The Complaint Committee's form; and
- (c) The mediation file (if delivered up); and
- (d) All correspondence and other documentation pertaining to the complaint (as per 6.1(b)) (if delivered up); and
- (e) The member's written response (if provided).

6.4 The role of the ICA is to determine whether the member breached the Code of Practice as alleged in the complaint. The ICA will prepare a report within a further 28 working day, which will include the following information:

- (a) Details of the alleged breach of the Code of Practice including but not limited to:
  - i) A brief chronology of events; and
  - ii) A brief overview of the circumstances of the alleged breach of the Code of Practice; and
  - iii) The section of the Code of Practice that the alleged breach relates to.
- (b) Details of all documentary evidence (reviewed by the ICA) that supports or disproves the alleged breach.
- (c) The ICA's decision as to whether the member breached the Code of Practice together with their reasoning.

6.5 Upon receipt of the ICA's confidential report, the FMA will, within 7 working days, provide a copy of the report to the complainant and the member but, on the request of the ICA, the ICA's details may be anonymised. If the ICA refers to the member's written response (as per section 6.2) in their reasoning, a copy of the member's written response will be provided to the complainant alongside the ICA's report.

6.6 If the ICA's report concludes that the member did breach the Code of Practice, the matter will be referred to the FMA Board after 28 working days (to allow sufficient time for an appeal – see section 7 below – to be made). If an appeal is made, the matter will be held in abeyance pending the conclusion of the appeal.

6.7 At the time that the ICA's report is referred to the FMA Board, the FMA will contact the member and give them an opportunity to inform the Board in writing of any mitigating factors that they believe to be relevant to the proposed disciplinary action. These will be considered by the Board as per section 8.3 below.

- 6.8 If the ICA's report concludes that the member did not breach the Code of Practice, this will bring the complaint process to an end subject to the complainant's ability to appeal the decision of the ICA.

### **7. Appeal of the decision of the ICA**

- 7.1 Within 28 working days of receiving the report of the ICA, the complainant or the member may appeal on the grounds that the ICA made a specific error, as a result of which their decision was wrong in all the circumstances. Whoever it is that is making the appeal is referred to as the appellant for the remainder of this section.
- 7.2 The appeal must be made in writing on an FMA Appeal Form (available on the FMA website or on request from the FMA administrative office) and must be signed by the appellant. Upon request to the FMA administrative office, the FMA will provide appropriate support to appellants that are unable to express themselves sufficiently clearly in writing.
- 7.3 The Appeal ICA will not be able to consider any new evidence other than in exceptional circumstances. Consideration by the Appeal ICA is not an opportunity to produce evidence that should have been properly submitted to and considered by the original ICA. There must be a good and sufficient reason why any late evidence was not submitted earlier. The Appeal ICA has an absolute discretion as to whether to consider any new evidence.
- 7.4 Upon receipt of a completed Appeal Form, the FMA will send a copy of the Appeal Form to the other party to the complaint (referred to as the respondent for the remainder of this section) within 7 working days. The respondent will be invited to provide a written statement in response to the appeal within 14 working days. A copy of the written response will be provided to the appellant for information only; the appellant will not be permitted to respond to the respondent's written response.
- 7.5 Upon receipt of the Appeal Form and a written response (if provided), the FMA will appoint an Appeal ICA and provide them with the following documents within 14 working days:
- (a) The Complaint Form; and
  - (b) The Complaint Committee's form; and
  - (c) The mediation file; and
  - (d) All correspondence and other documentation pertaining to the complaint (as per 6.1(b)); and
  - (e) The member's written response to the complaint (if provided); and
  - (f) The report of the original ICA; and
  - (g) The Appeal Form and supporting evidence (the latter is only allowed in exceptional circumstances); and

- (h) The respondent's written response to the appeal (if provided).
- 7.6 The role of the Appeal ICA is to consider whether the original ICA erred in their decision and, if so, whether this led to their decision being wrong in all the circumstances. The Appeal ICA will prepare a report within a further 28 working day, which includes a consideration of the following questions:
- (a) Did the ICA make an error in their understanding of the facts of the complaint?
  - (b) Did the ICA make an error in their understanding of the application of the Code of Practice?
  - (c) Did the ICA make an error in any other respect in their report (e.g. the documentary evidence that they considered and/or their reasoning as to their decision)?
  - (d) If the ICA made an error on any of the above grounds, did this lead to their decision being wrong in all the circumstances and, if so, why?
  - (e) If the ICA erred in their decision and, consequently, their decision was wrong in all the circumstances, was there a breach of the Code of Practice and, if so, why?
- 7.7 If the Appeal ICA's report concludes that the original ICA did not err in their decision and their decision was therefore correct, the decision of the original ICA will stand.
- 7.8 If the Appeal ICA's report concludes that the original ICA erred in their decision and their decision was therefore wrong in all the circumstances, the decision of the original ICA will be overturned. The Appeal ICA's decision as to whether there was a breach of the Code of Practice will replace the decision of the original ICA.
- 7.9 The matter will proceed as per paras 6.5 and 6.6 above, with all references to an appeal relating now to the one remaining option of appealing to the FMC.

## **8. Disciplinary process**

- 8.1 If the ICA or, if the matter has been appealed, the Appeal ICA, find that the member has breached the Code of Practice, the matter will be referred to the FMA Board for consideration. The matter will be considered at the first meeting of the Board following receipt of the ICA's, or Appeal ICA's, report.
- 8.2 Any trustee of the Board who becomes aware of a conflict of interest will immediately step down from the decision-making process.
- 8.3 The Board is to consider the ICA's, or Appeal ICA's report, together with any written representations from the member as to mitigating factors, and decide whether disciplinary action against the member is necessary in order to protect the public, to restore confidence in the profession, and/or, where appropriate, to ensure that the member is competent to continue practising. The Board is not permitted to re-investigate the matter.
- 8.4 The Board may decide that:

(a) No action should be taken.

(b) The member should be reprimanded.

(c) 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.

(d) The member's membership should be terminated.

8.5 If the Board resolves that no further action should be taken, that resolution will be notified in writing to the complainant and the member within 14 working days of the resolution being taken.

8.6 If the Board resolves 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 in writing to the member and the complainant within 14 working days of the resolution having been taken.

8.7 The resolution of the Board as to the actions that should be taken is final save for the ability of either the member or complainant to appeal to the FMC.