

# **THE FAMILY MEDIATION COUNCIL**

## **CODE OF PRACTICE FOR FAMILY MEDIATORS AGREED BY THE MEMBER ORGANISATIONS**

### **1 DEFINITIONS**

- 1.1 This Code of Practice applies to all family mediation conducted or offered by mediators who are members of the Member Organisations of the Family Mediation Council.
- 1.2 Family mediation is a process in which those involved in family breakdown, whether or not they are a couple or other family members, appoint an impartial third person to assist them to communicate better with one another and reach their own agreed and informed decisions concerning some, or all, of the issues relating to separation, divorce, children, finance or property by negotiation.
- 1.3 This Code applies whether or not there are or have been legal proceedings between the participants and whether or not any, or all of them, are legally represented.
- 1.4 In this Code, “mediation” means the family mediation to which this Code applies. “Mediator” means any person offering such mediation. “Participant” means any family member taking part in mediation.

### **2. AIMS AND OBJECTIVES**

- 2.1 Mediation aims to assist participants to reach the decisions they consider appropriate to their own particular circumstances.
- 2.2 Mediation also aims to assist participants to communicate with one another now and in the future and to reduce the scope or intensity of dispute and conflict within the family.
- 2.3 Where a marriage or relationship has irretrievably broken down, mediation has regard to the principles that the marriage or relationship should be brought to an end in a way that
  - minimises distress to the participants and to any children;
  - promotes as good a relationship between the participants and any children as is possible;
  - removes or diminishes any risk of abuse to any of the participants or children from the other participants; and
  - avoids any unnecessary cost to participants.

### **3 QUALIFICATIONS AND TRAINING**

- 3.1 Mediators must have successfully completed such training as is approved by a Member Organisation and accredited by the Council to qualify them to mediate upon those matters upon which they offer mediation.
- 3.2 Mediators must be a member of a Member Organisation and must therefore have successfully demonstrated personal aptitude for mediation and competence to mediate.
- 3.3 Mediators must satisfy their Member Organisation that they have made satisfactory arrangements for regular professional practice consultancy with a professional practice consultant who is a member of and approved for the purpose by a Member Organisation.
- 3.4 Mediators must agree to maintain and improve their skills through continuing professional development courses approved by a Member Organisation and/or the Council.
- 3.5 Mediators may only undertake direct consultation with children when they have successfully completed specific training approved by their Member Organisation and/or the Council and have received specific clearance from the Criminal Records Bureau.
- 3.6 Mediators undertaking publicly funded mediation must have been assessed as competent to do so by a recognised assessment scheme.
- 3.7 Mediators must not mediate upon any case unless they are covered by adequate professional indemnity insurance.
- 3.8 Mediators must abide by the complaints and disciplinary procedures laid down by the Member Organisation of which they are a member.

### **4 SCOPE OF MEDIATION**

- 4.1 Mediation may cover any or all of the following matters
  - 4.1.1 options for maintaining or ending the marital or other relationship between the adult participants and the consequences of doing so;
  - 4.1.2 arrangements for dependant children :- with whom they are to live; what contact they are to have with each parent and other family members; any other aspect of parental responsibility such as, but not exhaustively, schooling, holidays, religious education;
  - 4.1.3 the future of the family home and any other property or assets, including pensions, belonging to the adult participants; issues of child maintenance and spousal maintenance; issues relating to debts;

- 4.1.4 how adjustments to these arrangements are to be decided upon in the future;
- 4.2 Participants and mediators may agree that mediation will cover any other matters which it would be helpful to resolve in connection with relationship breakdown between the participants and which the mediators consider suitable for mediation.

## **5 GENERAL PRINCIPLES**

### **5.1 Independence and Conflicts of Interest**

*[THIS SECTION OF THE CODE OF PRACTICE IS UNDER DISCUSSION.]*

### **5.2 Voluntary Participation**

Participation in mediation is voluntary at all times and participants and the mediator are always free to withdraw. Where mediators consider that a participant is unable or unwilling to take part in the process freely and fully, they must raise the issue and possibly suspend or terminate the mediation.

### **5.3 Neutrality**

Mediators must remain neutral as to the outcome of a mediation at all times. Mediators must not seek to impose their preferred outcome on the participants or to influence them to adopt it, whether by attempting to predict the outcome of court proceedings or otherwise. However, if the participants consent, they may inform them that they consider that the resolutions they are considering might fall outside the parameters which a court might approve or order. They may inform participants of possible courses of action, their legal or other implications, and assist them to explore these, but must make it clear that they are not giving advice.

### **5.4 Impartiality**

- 5.4.1 Mediators must at all times remain impartial as between the participants and conduct the mediation process in a fair and even-handed way.
- 5.4.2 Mediators must seek to prevent manipulative, threatening or intimidating behaviour by any participant. They must conduct the process in such a way as to redress, as far as possible, any imbalance of power between the participants. If such behaviour or any other imbalance seems likely to render the mediation unfair or ineffective, mediators must take appropriate steps to seek to prevent this including terminating the mediation if necessary.

## **5.5 Confidentiality**

- 5.5.1 Subject to paragraphs 5.5.3, 5.5.4 and 5.5.5 below mediators must not disclose any information about, or obtained in the course of, a mediation to anyone, including a court welfare officer or a court, without the express consent of each participant, an order of the court or where the law imposes an overriding obligation of disclosure on mediators.
- 5.5.2 Mediators must not discuss the mediation or correspond with any participant's legal advisor without the express consent of each participant. Nothing must be said or written to the legal advisor of one party regarding the content of the discussions in mediation which is not also said or written to the legal advisor(s) of the other.
- 5.5.3. Where it appears necessary so that a specific allegation that a child has suffered significant harm may be properly investigated or where mediators suspect that a child is suffering or is likely to suffer significant harm, mediators must ensure that the relevant Social Services department is notified.
- 5.5.4 Mediators may notify the appropriate agency if they consider that other public policy considerations prevail, such as an adult suffering or likely to suffer significant harm.
- 5.5.5 Where mediators suspect that they may be required to make disclosure to the appropriate government authority under the Proceeds of Crime Act 2002 and/or relevant money laundering regulations, they must stop the mediation immediately without informing the clients of the reason.

## **5.6 Privilege and Legal Proceedings**

- 5.6.1 Subject to paragraph 5.6.2 below, all discussions and negotiations in mediation must be conducted on a legally privileged basis. Before the mediation commences the participants must agree in writing that discussions and negotiations in mediation are not to be referred to in any legal proceedings, and that mediators cannot be required to give evidence or produce any notes or records made in the course of the mediation, unless all participants agree to waive the privilege or the law imposes upon mediators an overriding obligation of disclosure upon the mediator.
- 5.6.2 Participants must agree that all factual information material to financial issues must be provided on an open basis, so that it can be referred to in legal proceedings.
- 5.6.3 All information or correspondence provided by either participant should be shared openly and not withheld, except any address or telephone number or as the participants may agree otherwise.
- 5.6.4 Privilege will not apply in relation to communications indicating that a child or other person is suffering or likely to suffer significant harm, or where other public policy considerations prevail.

## **5.7 Welfare of children**

- 5.7.1 At all times mediators must have special regard to the welfare of any children of the family. They should encourage participants to focus on the needs and interests of the children as well as on their own.
- 5.7.2 Mediators must encourage participants to consider the children's wishes and feelings. If appropriate they may discuss with them whether and to what extent it is proper to consult the children directly in order to ascertain their wishes and feelings.
- 5.7.3 Where mediators and both participants agree that it is appropriate to consult any children directly, the consent of the children must first be obtained. Mediators consulting directly with any children must have been specifically trained to do so and have received specific enhanced clearance from the Criminal Records Bureau. Such mediators must provide appropriate facilities for direct consultation.
- 5.7.4 Where qualified mediators undertake direct consultation with any child, they must offer that child confidentiality as to any disclosure that that child may make to them. This must be explained to the participants before they agree to the direct consultation. Confidentiality in direct consultation with children must always be exercised subject to paragraphs 5.5.3, 5.5.4, 5.5.5, and 5.6.4 above.
- 5.7.5 Where mediators suspect that any child is suffering or likely to suffer significant harm, they must advise the participants to seek help from the appropriate agency. Mediators must also advise the participants that, in any event, they are obliged to report the matter to the appropriate agency in accordance with paragraph 5.5.3.
- 5.7.6 Where mediators consider that the participants are or are proposing to act in a manner likely to be seriously detrimental to the welfare of any child of the family or family member, they may withdraw from the mediation. The reason for doing this must be outlined in any further communication.

## **5.8 Abuse and power imbalances within the family**

- 5.8.1 Mediators must be alert to the likelihood of power imbalances existing between the participants.
- 5.8.2 In all cases, mediators must seek to ensure that participants take part in the mediation willingly and without fear of violence or harm. They must seek to discover through a screening procedure whether or not there is fear of abuse or any other harm and whether or not it is alleged that any participant has been or is likely to be abusive towards another. Where abuse is alleged or suspected mediators must discuss whether a participant wishes to take part in mediation, and information about available support services should be provided.

- 5.8.3 Where mediation does take place, mediators must uphold throughout the principles of voluntary participation, fairness and safety and must conduct the process in accordance with this section. In addition, steps must be taken to ensure the safety of all participants on arrival and departure.
- 5.8.4 Mediators must seek to prevent manipulative, threatening or intimidating behaviour by either participant during the mediation.

## **6 CONDUCT OF THE MEDIATION**

- 6.1 All assessments for suitability for mediation must be conducted at meetings on a face-to-face basis. Assessment meetings can be conducted jointly or separately depending on client preference, but must include an individual element with each participant to allow mediators to undertake domestic abuse screening.
- 6.2 Mediators must manage the mediation process. They should consult the participants on management decisions such as the ordering of issues and the agenda for each mediation session but must not relinquish control of the process to the participants.
- 6.3 Throughout the mediation mediators must keep the possibility of reconciliation of the participants under review.
- 6.4 Participants must be clearly advised at the outset of the nature and purpose of mediation and how it differs from other services such as marriage or relationship counselling, therapy or legal representation.
- 6.5 Participants must be informed of all the general principles set out in Section 5 above, including the nature and limits of the principles of confidentiality and privilege and mediators' special concern for the welfare of any children of the family.
- 6.6 Participants must be informed of the extent of any disclosure which will be required in cases relating to their property and finances.
- 6.7 Each participant must be supplied with written information covering the main points in this Code and given the opportunity to ask questions about it.
- 6.8 Mediators must ensure that the participants agree the terms and conditions regulating the mediation before dealing with the substantive issues. This must be in the form of a written agreement which reflects the main principles of this Code. The agreement must also set out the client fees.
- 6.9 Participants must be requested to notify any legal advisors acting for them of the appointment of a mediator.
- 6.10 Where during a privately funded mediation, mediators become aware that one or more of the participants may qualify for public funding, they must inform

the client of this and, if they do not undertake publicly funded work, of the potential services of a mediation practice with an LSC contract.

- 6.11 Mediators must assist participants to define the issues, identify areas of agreement, explore the options and seek to reach agreement upon them.
- 6.12 Mediators must seek to ensure that participants reach their decision upon sufficient information and knowledge. They must inform participants of the need to give full and frank disclosure of all material relevant to the issues being mediated and assist them where necessary in identifying the relevant information and supporting documentation.
- 6.13 Mediators must ensure each participant is given the opportunity to make enquiries about information disclosed by any other participant and to seek further information and documentation when required. They must promote the participants' equal understanding of such information before any final agreement is reached.
- 6.14 Mediators must make it clear that they do not themselves make further enquiries to verify the information provided by any participant, that each participant may seek independent legal advice as to the adequacy of the information disclosed before reaching a decision; that in any court proceedings a sworn affidavit, written statement or oral evidence may be required and that authoritative calculations of liability under the Child Support Act 1991 can only be made by the Child Support Agency or may replacement organisation established under the Child Maintenance and Other Payments Act 2008..
- 6.15 Mediators must inform participants of the advantages of seeking independent legal or other appropriate advice whenever this appears desirable during the course of the mediation. They must advise participants that it is in their own interests to seek independent legal advice before reaching any final agreement and warn them of the risks and disadvantages if they do not do so.
- 6.16 Mediation meetings are commonly conducted without lawyers present. However, solicitors or counsel acting for the participants may be invited to participate in the mediation process and in any communications if the participants agree and the mediator considers that it would be appropriate.
- 6.17 When appropriate and with the consent of both participants, arrangements may be made for the attendance of professional third parties other than lawyers, such as interpreters, accountants, actuaries, independent financial advisors, and other advisors.
- 6.18 When appropriate and with the consent of both parties, arrangements may be made for the attendance of third parties with an interest in the proceedings, such as new partners, parties with a legal or beneficial interest in property that is the subject of dispute, or other family members.
- 6.19 Mediators must seek to ensure that agreements reached by participants are fully informed and freely made. Participants must have as good an

understanding as is practicable of the consequences of their decisions for themselves, their children and other relevant family members.