



## FMC Newsletter

May 2017

### Recent FMC Developments

#### Consent Orders

The FMC has published an [overview of the responses](#) which it has received so far to its consultation about mediators drafting consent orders. The FMC recognises this is a complex issue which will take time to consider in depth and is currently seeking the views of the judiciary and the MoJ on the issue, although discussions with the latter have been delayed as a result of the general election. The FMSB's advice on any implications for professional standards will be sought before a final decision is made.

#### Child Inclusive Mediation

The FMC would like to express its thanks to its Child Inclusive Mediation Working Group, which has been working hard over the past year to develop the competencies and training standards to be met by mediators who wish to carry out child inclusive mediation. The FMC Board is due to receive and consider these documents shortly.

#### Re-accreditation

The FMSB is finalising the process for re-accreditation. This will be published in the summer, with the first wave of re-accreditation to take place towards the end of this year; however all mediators are reminded that the requirements for the renewal of accreditation are included in the [FMC's standards manual](#) (p.9 onwards).

#### FMC Register

Mediators' details, including supplementary addresses, have now all been added to the FMC Register. If your details are incorrect, or if they change during the year, please e-mail [register@familymediationcouncil.org.uk](mailto:register@familymediationcouncil.org.uk).

Please remember that registration of the correct details is the responsibility of the individual mediator. If a service or a secretary is submitting information to the FMC on your behalf, we will be able to make the changes they request only if we have the mediator's consent to do so.

The FMSB is continuing to verify the information contained in the register, so that we can be sure that the information we are presenting to the public is accurate. The FMSB appreciates mediators' continued co-operation in supplying information when requested.

## Correct Designations & Logo Use

Mediators are asked to check their websites and promotional material to ensure that correct designations are being used, please. Accredited mediators may refer to being FMC Accredited or FMCA, and, if they are, may use the FMCA logo in accordance with the policy of use. Mediators may not use the FMC logo.

## Resolution's appointed director

Karen Barham has recently stepped down as a Resolution's appointed FMC director, and the FMC would like to express its thanks to Karen for her contribution to the board's work over the last few years. The FMC would also like to welcome Jane Wilson, Resolution's new nominated director, to the board.

## FMC & FMSB Recruitment

The FMC is recruiting additional directors and FMSB members. A number of applications have been received for the posts and a interview process is underway; we expect this process to be complete by the end of June.

# Developments from elsewhere

## Practice Direction Amendment

Following an amendment on 11th April of this year, PD 3A allows for a MIAM exemption arising from DV occurring from within 60 months (amended from 24 months) and includes a new exemption in cases of financial abuse. Amendments to Forms C100, FM1, A, A1 and B will reflect these changes.

## CAFCASS re-commissioning

CAFCASS is re-commissioning certain services it provides for separating families. Its plans can be seen [here](#). The original deadline for clarifications to the tender process was due to be in the week commencing 5th June, with the tender deadline falling in the week commencing 12th June. However, these dates have now been deferred due the general election and new dates will be published on the [CAFCASS website](#) in due course.

# FMC Research

The FMC has heard anecdotally that some courts are allowing applications to go before a judge without parties first having been to a MIAM or being eligible for an exemption. In contrast, courts in other areas are sending back applications where the form doesn't show parties have been to a MIAM or are exempt. We would like to find out more about what is happening in different parts of England and Wales. If you are aware of court practices in your area, please e-mail Helen Anthony at [executive@familymediationcouncil.org.uk](mailto:executive@familymediationcouncil.org.uk) to describe your experiences.

## Notices to Mediators

A PhD research student is exploring whether using a legal or mediated path to divorce makes a difference to the female experience of midlife marital breakdown. She is seeking the help of mediators to find female clients who would be willing to talk to her. Participants must be aged 50-65 and need to be coming out of their first marriage. Their youngest child must be over the age of 18 and they must have their Decree Nisi, but not their Absolute. The study has ethical approval from Birkbeck University. If you can assist, please contact Suzi Godson at: [divorceresearch@yahoo.co.uk](mailto:divorceresearch@yahoo.co.uk)

## Board Briefing

In each edition of the FMC newsletter, an FMC director will write a short piece which may be of interest to family mediators. This time, retiring director Karen Barham wanted to draw your attention to **Compliance Issues**

### **A timely reminder to encrypt documents stored on computers (including home computers)**

A 'senior' barrister, practising in family law, who failed to keep clients' sensitive personal information secure has been fined £1,000 by the Information Commissioner's Office (ICO).

Information belonging to up to 250 people, including vulnerable adults and children, was uploaded to the internet when the barrister's husband updated software on the couple's home computer. Some 725 unencrypted documents, which were created and stored on the computer, were temporarily uploaded to an internet directory as a back up during the software upgrade. Six of those files contained confidential and highly sensitive information relating to people who were involved in proceedings in the Court of Protection and the Family Court.

Many mediators work within a larger organisation that has its own policies and procedures in place (eg a firm of solicitors) but an increasing number of practitioners run their own often separate enterprises. In such circumstances, mediators are reminded that:

- The Data Protection Act 1998 requires every data controller (eg organisation, sole trader) who is processing personal information to register with the ICO, unless they are exempt.
- All mediation practices must have a data protection policy.

Further information can be found at [www.ico.org.uk](http://www.ico.org.uk)

## Consumer rights and mediators as service providers

All mediators should be aware of and comply with the Consumer Rights Act 2015, as it applies to all traders and service providers who charge a fee for their services. It covers all aspects of consumer rights and the responsibilities of traders and service providers. This includes, for example, unfair terms and cancellation fees.

Part of the new legislation, the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015, also implements the requirements of the EU ADR Directive.

The aim of that part of the new legislation is to provide all consumers with greater access to early resolution and redress if something goes wrong with a purchase of goods or services. If a business is involved in a dispute with a consumer which is not resolved through the business's complaints procedure, they will need to make the consumer aware of a relevant certified 'ADR provider' and to let the consumer know whether or not they are prepared to use the ADR provider to deal with the dispute.

As in all mediation processes, you and the clients have to agree to use an ADR Provider. It is not compulsory for you or for the clients to do so, unless the business operates in a sector where existing legislation makes it mandatory, such as financial services. The Government has appointed competent authorities across all relevant sectors to ensure that dispute resolution for consumers is readily available.

The Chartered Trading Standards Institute (CTSi) will act for the non-regulated sector. CTSi holds a list of ADR Approved Bodies who can provide ADR in one or multiple industries. The ADR Providers are organisations who have applied and been approved for the delivery of ADR. The Approval and Certification process is set out by Regulation in the legislation.

How to comply with the new legislation in relation to the ADR Directive:

- If it will not be possible to resolve a dispute between you and a client directly with the client or through your own complaints procedure you should provide information about the availability of ADR providers, alongside information about external complaints channels such as your member organisation (and where appropriate the SRA and the Legal Ombudsman. NB There has been confusion about the circumstances in which these bodies accept complaints against mediators and the FMC is liaising with both bodies to see if the position can be clearly established). Make it clear to the client whether you are prepared to work with an ADR provider to resolve the complaint if the client chooses this channel.
- The use of an ADR Provider is only going to be appropriate for poor service matters (such as claims of delay, general poor service, over-charging) and in relation to requests for refund of fees; rather than a complaint that relates to breaches of the FMC Code or in relation to conduct matters.

Further Information can be found at [www.businesscompanion.info](http://www.businesscompanion.info)

## Upcoming events & training

- 6 June 2017, [Resolution PPC Networking Day](#), London
- 8 June 2017, Relate Training: The Mediator and the Modern Family (to include tax, pension and legal update 2017), Harrow, London. Details available from [Nicola.cunniffe@relatelondonnw.org.uk](mailto:Nicola.cunniffe@relatelondonnw.org.uk)
- 15 June 2017, College of Mediators' Annual Conference – Celebrating 21 Years! London. Details available from [admin@collegeofmediators.co.uk](mailto:admin@collegeofmediators.co.uk)
- 28 June 2017, CMC Training: [Save Time, Save Money, Save Stress \(Workplace Mediation\)](#), Bristol
- 29 June 2017, NFM Training: [How to prepare for FMC re-accreditation in 2018](#) (A one-day workshop for all accredited family mediators), York (Further dates: 27 September in London; 19 October in Birmingham)
- 14 September 2017, Family Matters Mediation Training: [Difficult people and their behaviour; how to understand, respond to and engage them](#), Doncaster
- 19 – 20 September 2017, FMA Annual Conference, York University. Details available from [info@thefma.co.uk](mailto:info@thefma.co.uk)
- 21 September 2017, College of Mediators' PPC Conference, Loughborough. Details available from [admin@collegeofmediators.co.uk](mailto:admin@collegeofmediators.co.uk)
- 19 – 20 October 2017, [Resolution's Dispute Resolution Conference 2017](#), Nottingham. Details to follow in due course.
- 19 October 2017, CMC Training: [Save Time, Save Money, Save Stress \(Workplace Mediation\)](#), Solihull, West Midlands
- 9 November 2017, NFM Training: [Personal Tax, Pensions and Family Law Update 2017](#), London (Further dates: 23 November 2017 in Bristol; 6 December 2017 in Birmingham)
- Ongoing, [NFM Professional Practice Consultancy Training](#) (distance learning)

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*Family Mediation Council  
2 Old College Court  
29 Priory Street  
Ware  
SG12 0DE*

[www.familymediationcouncil.org.uk](http://www.familymediationcouncil.org.uk)

*Telephone: 0844 556 7215  
Company reg no: 9560220*