

1. Paper 1: Child Inclusive Mediation – Duties, Principles and Requirements

Under the FMC Code of Practice for Family Mediators, September 2016, all mediators should explain to parents and carers that children and young people aged 10 and above have the right to be offered the opportunity to have their voices heard during mediation, if they wish: -

“All children and young people aged 10 and above should be offered the opportunity to have their voices heard directly during the Mediation, if they wish.” (FMC Code of Practice, s. 5.7.2).

1. Definition and aims of Child Inclusive Mediation (CIM)

Child-inclusive mediation provides opportunities for children and young people to have their voices heard directly during the process of mediation, to help them feel respected and listened to and, at their request, to assist parents or carers to receive, understand and take account of the child's messages and/or suggestions regarding decisions and arrangements for the child.

2. Recommendation from the Working Group to the FMC/FMSB

We recommend that the following paragraph be added to the FMC Standards Framework Manual to develop all mediators' understanding of child-inclusive mediation and their competencies in giving information to parents, assisting consideration of the suitability of CIM in particular circumstances and explaining the opportunities available (i.e. that different models that may be structured to meet the needs of the particular family and child/ren):

C1 Explain mediation to participants

This includes:

- *being clear about the difference between an initial consultation or assessment meeting and a mediation session*
- *explaining the principles, potential and limitations of mediation*
- *explaining the different methods of mediation that are available and how they would work.*
- *explaining CIM and the child's rights perspective to parents/carers, discussing ways in which children and young people can be listened to and encouraged to offer their perspectives and suggestions and to giving active encouragement to parents/carers to provide such an opportunity for the child.*

The principles of child-inclusive mediation are consistent with the fundamental principles of mediation.¹

Provision of information to parents/carers: mediators should explain to parents/carers at initial information and assessment meetings, as well as subsequently, that children and young people aged 10 and above should be offered the opportunity to have a conversation with a professionally qualified mediator or child consultant in which they are invited to give their perspectives and contribute to decisions and arrangements that are being made for them. s. 5.7.2 of the FMC Code of Practice embodies Article 12 of the UNCRC 1989 which gives all children the right to express their views in all matters affecting them in accordance with their age and maturity. In this jurisdiction, all children of 10 and over should have the opportunity to be consulted if they wish, when decisions and arrangements are being made that affect the child. Younger children (including younger siblings and other children of the family) should not be excluded from having a similar opportunity for child-inclusive mediation, since they are equally important members of the family. Exceptions include safeguarding concerns and/or consideration of a child's learning difficulties or mental illness,

Voluntary participation: the child or young person participates voluntarily, with the informed consent and support of both parents (or those holding PR). Child-inclusive mediation cannot be ordered by the courts.

Confidentiality: conversations with a child or young person in the course of mediation are confidential and are not reportable to the court or to third parties except a) where there are safeguarding/ child protection concerns or b) where, in exceptional circumstances, the law imposes an overriding obligation of disclosure upon the mediator or c) where the child or young person requests the mediator to share specific messages with their parents/carers during mediation.

Impartiality and Neutrality as to outcome: the mediator must remain impartial in meeting with a child or young person and must remain neutral as to the outcome of the mediation. The mediator does not represent the child or act as the child's advocate.

Decisions remain with the child's parents (or others holding PR). Children and young people may make requests and offer suggestions, but they are not asked, or given power, to make choices or decisions.

3. CIM Competencies for all mediators

Concerns have been expressed that foundation training provides insufficient time to cover the competencies that all mediators need to have in relation to hearing the voice of the child and

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Family Mediation in England and Wales – A Guide for Judges, Magistrates and Legal Advisors (Family Justice Council and Family Mediation Council, 2014)

CIM. As a means of addressing these concerns, we recommend that all non-CIM trained mediators should take a one day introductory course on CIM recognised by the FMSB/FMC (explaining its purpose and opportunities to parents, considering and exploring suitability, giving information about available options (models) and resources (FMC Standards Manual C1, C4 and C5) and actively encouraging parents/carers to make opportunities available to their children). A one day course should include elements on family systems, child development and formation of attachments, the impact of separation, loss and conflict on families and children and factors to consider in relation to shared residence and frequent change-overs, especially for children under 3 (FMC Standards Manual A1, Theoretical Underpinnings).

If the FMSB/FMC decide to introduce this CPD requirement for all mediators, it could include a written post-course assignment on the mediator's reflections on CIM (suitability, reducing anxieties of parents and children, overcoming other obstacles). This assignment could be a means of evidencing competencies with regard to CIM that all mediators need to have.

We recommend that attendance at a one-day introductory course on CIM should be made a requirement for acceptance for CIM training, since it would provide a bridge between the level of competencies required for accreditation and the higher level of competencies needed for CIM. CIM training courses should include pre- and post-course assignments and should consist of a minimum of 3 days of directly delivered training, which may be organised in separate modules of one or two days. CIM training should conclude with a assessment of each mediator's competencies for CIM.

4. Qualifications, Training and Practice Requirements for CIM-recognised mediators

4.1 Requirements for application for CIM Training

Mediators may apply for training in Child-Inclusive Mediation provided they:

- a) are currently registered with the FMC as fully accredited mediators, and
- b) provide their PPC's written support for their application, with any further confirmation that may be requested by the trainers.

4.2 Requirements for CIM practice

Following successful completion of CIM training based on assessment of competencies, FMCA mediators may undertake child-inclusive mediation provided they:

- a) have met the requirements as may be laid down by the FMC or, if none exist, are approved to carry out child-inclusive mediation by an MO;
- b) have Enhanced DBS clearance (the FMC is currently considering this issue and the

practicalities involved).

c) have been appropriately assessed as having attained the competencies required for CIM practice.

d) have a PPC trained in child-inclusive mediation for consultation and discussion of their child-inclusive mediation practice. This PPC may be separate from and additional to their existing PPC, if s/he is not CIM trained and practising.

4.3 Requirements for ongoing PPC and CPD

The mediator must continue to meet FMC/FMSB requirements for PPC and continuing professional development in relation to child-inclusive mediation.

5. Facilities and Conduct of Child-Inclusive Mediation

- 5.1 The mediator should have access to suitable rooms and facilities for meetings with young people and children, where children are safe at all times and can feel comfortable and at ease.
- 5.2 The mediator should consider having a co-mediator or colleague who would be available to take part in a meeting with a child or young person, or be nearby, for safety/safeguarding purposes.
- 5.3 Each parent/carer should first attend an initial meeting that includes assessment of and screening for domestic abuse and child protection issues and safeguarding concerns.
- 5.4 The mediator should check whether any other professional(s) is/are involved with the child or family, either currently or previously.
- 5.5 Before a child or young person is invited to take part directly in mediation, parents should have committed to the mediation process by signing an Agreement to Mediate. The mediator should discuss the objectives and possible options with each parent/carer, to explore the appropriateness of the child's direct involvement. If a child has a parent or carer who is not a participant in the mediation, consideration needs to be given to consulting with this person as well.
- 5.6 The mediator's role must be clarified with and accepted by both parents/carers. Confidentiality and its limits should be explained carefully and understood by all concerned. Both parents/carers need to understand and accept the principles and objectives of involving their children directly. They should sign a letter confirming their consent and their willingness to receive messages or feedback that the child requests the mediator to give them. The consent form should include an undertaking that the parent/carer will not brief the child beforehand on what the child should or should not

say to the mediator or child consultant, nor question the child or young person afterwards as to what they actually did, or did not say.

- 5.7 Mediators should offer a range of options for child-inclusive mediation (e.g. one mediator or two, siblings together as well as separately). The child's involvement, structure of meetings and time-scale should be planned carefully with parents/carers to maximise the benefits and minimise any potential difficulties.
- 5.8 It must be made clear to children and young people themselves that they are free to accept or decline the invitation to meet with the mediator or child consultant. They may respond directly if they wish, or via a parent or carer.
- 5.9 Mediators must have careful regard to time-scales for children and young people, arranging dates and scheduling follow-up meetings with parents/carers and, if needed, with the children, to avoid delay and ensure that children are kept informed.
- 5.10 Child-inclusive mediation is a process, rather than a one-off meeting. Ongoing support and further meetings with the child or young person should be offered and arranged as appropriate.
- 5.11 Mediators must keep a professional record of their meetings with children and young people, but they should not provide reports, written notes or written feedback to parents (or to anyone else). Mediators should give verbal feedback only to parents/carers, without giving any additional information, interpretations or comments beyond what the child or young person has specifically requested the mediator to convey.