



Code of Practice for Family Mediators

May 2018

Preamble

It is the policy of the FMC to keep this Code under review. Not all aspects of review will fall to take place at the same time, but the FMC is keen to avoid issuing a revised version of the entire Code every time a change is made. Furthermore, the wording for any detailed changes will always be carefully considered before those changes are incorporated, and that will take time. For those reasons, and to allow changes to be brought into effect meanwhile, the FMC will - as occasion may require - issue short-form Practice Directions, setting out, in simple form, the principles of each change. Mediators should comply with those Practice Directions in the same way as they comply with the body of the Code. Each Practice Direction will be superseded once its terms have been incorporated into the Code itself.

1 DEFINITIONS

1.1 In this Code of Practice:

“Code” means this Code of Practice

“FMC” means The Family Mediation Council

“FMCA” means Family Mediation Council Accreditation

“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” means the family Mediation to which this Code applies

“Mediator” means any person offering such Mediation

“MO” means an entity which is a Member Organisation of the FMC

“Participant” means any person taking part in Mediation or an Information and Assessment Meeting.

- 1.2 This Code applies to all Information and Assessment Meetings and Mediation conducted or offered by Mediators who are members of the MOs.
- 1.3 Mediation 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 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.
- 1.4 An Information and Assessment Meeting is a meeting that provides information about Mediation as a way of resolving disputes conducted by a trained mediator who will also assess whether Mediation is appropriate in the circumstances.
- 1.5 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.

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:
 - a. minimises distress to the Participants and to any children;
 - b. promotes as good a relationship between the Participants and any children as is possible;

- c. removes or diminishes any risk of abuse to any of the Participants or children from the other Participants; and
- d. avoids any unnecessary cost to Participants.

2.4 An Information and Assessment Meeting aims to inform individuals about mediation (and other forms of resolving disputes away from the Court) and to assess whether a mediation process may be suitable in the circumstances. Any individual who intends to make an application to obtain a court order in certain family proceedings is required to attend a statutory Mediation Information and Assessment Meeting unless an exemption applies. Individual respondents are expected to attend a Mediation Information and Assessment Meeting.

3. QUALIFICATIONS AND TRAINING

- 3.1 Mediators must either be accredited by the FMC (i.e. hold FMCA status), or have completed a foundation training programme approved by the FMC and be currently registered with the FMC as working towards FMCA.
- 3.2 Mediators must abide by the FMC's current requirements for accredited and registered Mediators, including being a current member of an MO and maintaining the required levels of practice, professional practice consultancy, and ongoing professional development.
- 3.3 Mediators may undertake child-inclusive Mediation only when they:
- a. have registered to do so with the FMC; and
 - b. 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.
- 3.4 Mediators undertaking publicly-funded Mediation must hold FMCA status.
- 3.5 Mediators must not mediate unless they are covered by adequate professional indemnity insurance.
- 3.6 Mediators must abide by the complaints and disciplinary procedures laid down by the MO of which they are members. A Mediator who is a member of more than one MO must make clear to Participants which MO's complaints and disciplinary procedures will apply.
- 3.7 Mediators must have appropriate safeguarding policies and procedures in place.

4. SCOPE OF MEDIATION

4.1 Mediation may cover any or all of the following matters:

- a. options for maintaining or ending the marital or other relationship between the adult Participants and the consequences of doing so;
- b. arrangements for dependent children: arrangements for parenting between parents and/or carers and extended family as appropriate; any other aspect of parental responsibility such as, but not exhaustively, schooling, holidays or religious education;
- c. 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;
- d. how adjustments to these arrangements are to be decided upon in the future.

4.2 The Participants and the Mediator 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 Mediator considers suitable for Mediation.

5. GENERAL PRINCIPLES which apply to Information and Assessment Meetings and to Mediation

5.1 Conflicts of Interest

5.1.1 The Mediator must act impartially in conducting any process of Mediation and with integrity and fairness towards each of the Participants. The Mediator must also ensure that any conflicts of interest are identified, considered and addressed.

5.1.2 The Mediator must not have any personal interest in the outcome of the Mediation.

5.1.3 The Mediator must not mediate in any case in which he or she has acquired or may acquire relevant information in any private or other professional capacity.

5.1.4 Where Mediation services are offered as part of a practice/consortium ("Practice") offering other professional services or where an individual Mediator carries out work for a Practice on a consultancy basis, a Mediator

from that Practice or a consultant to that Practice may not act as a Mediator for any Participant who has received other professional services from that Practice unless the Mediator is satisfied that:

- a. the information given to other professionals at the Practice has no bearing on the issues to be addressed in the Mediation; and
- b. the Participants have been informed of the potential conflict of interest and have given consent in writing to the Mediator conducting the Mediation

The consent of the Participants does not lessen the Mediator's duty as set out in 5.1.1 above.

5.1.5 Mediation must be conducted as an independent professional activity and must be distinguished from any other professional role in which the Mediator may practise.

5.2 Confidentiality

5.2.1 Subject to paragraphs 5.2.2, 5.2.3 and 5.2.4 below, the Mediator must not disclose any information about, or obtained in the course of an Information and Assessment Meeting or during a mediation process to the other participant or to anyone including a court appointed officer or the 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 to do so.

5.2.2 Where it appears necessary so that a specific allegation that a child has suffered significant harm may be properly investigated, or where the Mediator suspects that a child is suffering or is likely to suffer significant harm, the Mediator must ensure that the appropriate agency or authority is notified. Wherever possible, the Mediator should make such a notification after consultation with his or her PPC.

5.2.3 The Mediator may notify the appropriate agency if he or she considers that other public policy considerations prevail, such as an adult suffering or likely to suffer significant harm. Wherever possible, the Mediator should make such a notification after consultation with his or her PPC.

5.2.4 Where a Mediator suspects that he or she may be required to make disclosure to the appropriate government authority under the Proceeds of Crime Act 2002 as updated and/or relevant money laundering regulations, the Mediator must stop the Information and Assessment Meeting or Mediation immediately without informing the Participants of the reason

5.3 Welfare of children

At all times the Mediator must have particular regard to the welfare of any children of the family, and should encourage the Participants to focus on the needs and interests of the children as well as on their own.

5.4 Abuse and power imbalances within the family

5.4.1 The Mediator must be alert to the likelihood of power imbalances existing between Participants, including but not limited to those resulting from emotional or physical abuse, manipulation, coercion or controlling behaviour.

5.4.2 In all cases, the Mediator must seek to ensure that the Participants take part in the Mediation willingly and without fear of violence or harm. The Mediator 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 (or towards a child). Where abuse is alleged or suspected, the Mediator must discuss with the Participant believed to be adversely affected whether that Participant wishes to take part (or to continue to take part) in the Mediation, and information about available support services should be provided.

6. GENERAL PRINCIPLES which apply to Mediation

In addition to the clause 5, the following provisions also apply to Mediation.

6.1 Voluntary Participation

Participation in Mediation is voluntary and must be the free choice of each Participant at all times. The Participants and the Mediator are always free to withdraw. Where the Mediator considers that a Participant is unable or unwilling to take part in the process freely and fully, the Mediator must raise the issue and where necessary suspend or terminate the Mediation.

6.2 Neutrality as to Outcome

The Mediator must remain neutral as to the outcome of the Mediation at all times. The Mediator must not seek to impose any preferred outcome on 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, the Mediator may inform them (if it be the case) that he or she considers that the resolutions they are considering might fall outside the parameters which a court might approve or order. The Mediator 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 he or she is not giving advice.

6.3 Impartiality

- 6.3.1 The Mediator must at all times remain impartial as between the Participants and conduct the Mediation process in a fair and even-handed way.
- 6.3.2 The Mediator must seek to prevent manipulative, threatening or intimidating behaviour by any Participant, and 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, the Mediator must take appropriate steps to seek to prevent this, including terminating the Mediation if necessary.

6.4 Confidentiality

The Mediator must not discuss the Mediation or correspond with any Participant's legal advisor without the express consent of each Participant. When communicating with the Participants or their legal advisers, the Mediator must maintain professional impartiality.

6.5 Without Prejudice to Legal Proceedings

- 6.5.1 Subject to paragraph 5.6.2 below, all discussions and negotiations in the Mediation must be conducted without prejudice to legal proceedings. 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 the Mediator cannot be required to give evidence or produce any notes or records made in the course of the Mediation, unless the Participants agree to waive the without prejudice basis on which the Mediation is conducted or the law imposes an overriding obligation of disclosure upon the Mediator.
- 6.5.2 The Participants must agree that all factual information material to financial issue must be provided on an open basis, so that it can be referred to in legal proceedings.
- 6.5.3 In general, information provided by one Participant should be shared openly with other Participants and not withheld, except any address or telephone number or as the Participants may agree otherwise. This requirement does not apply to information which, if shared, could lead to a child or other person suffering harm, or where other public policy considerations prevail.

6.5.4 The without prejudice basis on which the Mediation is conducted and the confidentiality which would otherwise apply 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.

6.6 Welfare of children

6.6.1 The Mediator must encourage the Participants to consider the children's wishes and feelings. 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.

6.6.2 Where the Mediator and the Participants agree that it is appropriate to consult any children directly, the consent of those children must first be obtained. A Mediator intending to consult directly with any children must have been specifically trained to do so. Such Mediators must provide appropriate facilities for direct consultation.

6.6.3 Where a qualified Mediator undertakes direct consultation with any child, he or she must offer that child confidentiality as to any disclosure that that child may make to him or her. 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.

6.6.4 Where the Mediator suspects that any child is suffering or likely to suffer significant harm, he or she must advise the Participants to seek help from the appropriate agency. The Mediator must also advise the Participants that, in any event, he or she is obliged to report the matter to the appropriate agency in accordance with paragraph 5.5.3.

6.6.5 Where the Mediator considers that the Participants are acting, 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, the Mediator may withdraw from the Mediation. The reason for doing this must be outlined promptly, in writing.

6.7 Abuse and power imbalances within the family

6.7.1 The Mediator 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 the Participants on arrival at and departure from the Mediation.

- 6.7.2 The Mediator must seek to prevent manipulative, threatening or intimidating behaviour by any Participant during the Mediation.

7. CONDUCT OF MEDIATION INFORMATION AND ASSESSMENT MEETINGS

All assessments for suitability for Mediation should be conducted by a Mediator at meetings and, where possible, on a face-to-face basis. Assessment and Mediation may include meetings via an online video connection. Statutory Mediation Information and Assessment Meetings may also be conducted via an online video connection. Assessments, including statutory Mediation Information and Assessment Meetings, should not be carried out via voice only connections except where there are specific problems about access to an online video link. The Mediator must record in writing what those specific problems are. Assessment meetings can be conducted jointly or separately, but must include an individual element with each Participant to allow the Mediator to undertake domestic abuse screening. If assessments or Mediation meetings are conducted via online video connection, the Mediator must act appropriately having regard to all the current practice guidance issued by the FMC.

8. CONDUCT OF THE MEDIATION

- 8.1** The Mediator must manage the Mediation process. The Mediator 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.
- 8.2** Throughout the Mediation, the Mediator must keep the possibility of reconciliation of the Participants under review.
- 8.3** The Mediator must advise the Participants clearly 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.
- 8.4** At the same time, the Mediator must inform the Participants of all the general principles set out in Section 5 above, including the nature and limits of the principles of confidentiality, the without prejudice basis of the Mediation and the Mediator's special concern for the welfare of any children of the family.
- 8.5** The Mediator must inform the Participants of the extent of any disclosure which will be required in cases relating to their property and finances.

- 8.6** Each Participant must be supplied with written information covering the main points in this Code and given the opportunity to ask questions about it.
- 8.7** The Mediator must ensure that the Participants agree the terms and conditions regulating the Mediation before dealing with the substantive issues, by means of a written agreement which reflects the main principles of this Code. The agreement must also set out the Mediator's fees.
- 8.8** Participants must be requested to notify any legal advisors acting for them of the appointment of the Mediator.
- 8.9** Where, during a privately funded Mediation, the Mediator becomes aware that one or more of the Participants may qualify for public funding, the Mediator must inform the Participants of this and, if the Mediator does not undertake publicly funded work, of the services of a Mediation practice with a Legal Aid Agency contract.
- 8.10** The Mediator must assist the Participants to define the issues, identify areas of consensus, explore the options and seek to reach agreement upon them.
- 8.11** The Mediator must seek to ensure that the Participants reach their decision upon sufficient information and knowledge. The Mediator must inform the 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.
- 8.12** The Mediator 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. The Mediator must promote the Participants' equal understanding of such information before any final agreement is reached.
- 8.13** The Mediator must make it clear that he or she does not 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 an affidavit, written statement or oral evidence may be required; and that authoritative calculations of liability under the Child Support Act 1991 can be made only by the Child Support Agency, Child Maintenance Service or any replacement organisation established under the Child Maintenance and Other Payments Act 2008 or subsequent related legislation.

- 8.14** The Mediator must inform the Participants of the advantages of seeking independent legal or other appropriate advice whenever this appears desirable during the course of the Mediation. The Mediator must advise the 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.
- 8.15** 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.
- 8.16** When appropriate and with the consent of the 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.
- 8.17** When appropriate and with the consent of the Participants, 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.
- 8.18** The Mediator must seek to ensure that proposals reached by the Participants are fully informed and freely made. The 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.