

Introduction

The FMC has been responsible for assessing competence/accreditation of family mediators since 2007. The FMCA was launched at the end of 2014 to coincide with the implementation of the new FMC Standards on 1 January 2015. This replaced the assessment of professional competence which had been launched in 2012 which in turn replaced the original assessment process initiated by the Legal Aid Agency (then the Legal Aid Board) in 1998.

Currently there are 9 FMC assessors all of whom are highly experienced family mediators and PPCs and who are drawn from a range of FMC member organisations.

The Chief Assessor with the support of the Executive Officer acts as a focal point for enquiries about the assessment procedure and confirms the outcome of accreditation following assessment. The Internal Verifier moderates the assessments of the assessors so that there is consistency in terms of outcome for mediators between the various assessors.

Process

1. Once a family mediator submits their portfolio (either electronically or in paper form) it is sent out by the FMC to one of the assessors for assessment. The assessor has four weeks to undertake the assessment and if there are particular issues about the portfolio they can discuss these with the Chief Assessor. On completion of the assessment the assessor's assessment and recommendation is forwarded to the Chief Assessor electronically along with the portfolio (if submitted electronically). Paper portfolios or the printouts of sections 1, most of 2 and section 3 (where assessors have printed for ease of assessment) are sent to the Chief Assessor by post. The Chief Assessor has two weeks to review the portfolio and confirm the outcome of the assessment: confirming either full FMCA, provisional FMCA (with specific requirements for resubmission) or not yet proven. There is no longer the option of child only or property and finance only accreditation.
2. On receipt of a portfolio the assessor should undertake an overall check to make sure all of the required content is there. If a specific piece of evidence is missing and the assessor believes this might be a simple mistake (e.g. there is no witness testimony from a PPC) the assessor should retain the portfolio and ask the FMC to contact the mediator to request the missing evidence for forwarding to the assessor. If, however the assessor finds that the mediator has not fulfilled the requirements for a completed portfolio (e.g. the mediator has only submitted two cases instead of 3) the portfolio should be returned to the mediator unassessed with a request that it is only resubmitted when it is complete.
3. In assessing the content of the portfolio the assessor is assessing competence against the family mediation standards rather than brilliance. The various sections of the portfolio need to meet the requirements in addition to the content needing to evidence meeting the standards for a mediator to be assessed as having demonstrated competence as a family mediator as set out at Appendix 3 in the Standards Framework (SF). When the evidence is finely balanced the assessor should give the mediator the benefit of the doubt. Assessors should feel able to contact the Chief Assessor to discuss matters if required.

4. All correspondence with candidates and their PPCs should be through the FMC Office. This ensures that FMC had a record of all correspondence and reduces the chance of mediators contacting assessors inappropriately.

SECTION 1

FMC Competence Grid

The 47 competencies fall into three sections.

- A: theoretical underpinnings,
- B: professionalism and ethics
- C: mediation practice.

The family mediator is required to demonstrate meeting each competence at least once (but there should be no more than three specific references to the same competence in the grid and within the case commentary). Evidence **and** location **must** be indexed in the grid as well as in the content for ease of location by the assessor.

The assessor will complete the assessment criteria mark sheet and indicate for each competence whether they feel that the mediator has or has not demonstrated the relevant competence sufficiently, by indicating Yes/No on the grid. This makes the assessor's judgement at the end, with regards outcome, more transparent. Assessors should not put 'in part', 'not entirely' or similar comments on the grid, but should instead use the commentary to provide detail where there were indications of competencies being partly met.

If **four** of the competencies are insufficiently covered full FMCA can be awarded providing

- C2.2, C2.3, C2.4 and C6.1 must be evidenced (as these deal with safe practice)
- 5 of C7.1 must be evidenced (as these represent the basic skills in the tool box of a family mediator).

The four insufficiently covered competencies can be **no more than** 1 each from Section A, Section B, C1 to 6 (MIAMs) and from C7 to 11 (Mediation).

If **any** of C2.2, C2.3, C2.4, C6.1 and 5 of C7.1 **are not** evidenced, the most the candidate can be awarded is provisional FMCA.

Case commentaries

Candidates are required to demonstrate a clear understanding of process and an ability to reflect on their interventions/actions/body language/use of language as well as on the participants' actions/language and behaviour.

Candidates should specify if they have co-mediated a case, explain the model of co-mediating, but be specific about what the **candidate** did. Candidates can also set out what they learnt from any interventions from their co-mediator, to demonstrate development, but others' actions cannot be used to demonstrate the candidate's own competency.

Candidates are expected to demonstrate the majority of the MIAM and mediation skills competencies in this section. The FMC standards set out the requirements and the assessors are looking for examples of actions/interventions and reflections, not just descriptions.

e.g. *'I mutualised their responses to highlight that they were both seeking although they had different ideas about how that might be achieved' rather than merely saying 'I mutualised their responses'.*

There should be evidence that interventions are intentional (why a mediator did something), their success or otherwise and reflection on what might have worked better (as appropriate). The case commentary template is designed to help mediators structure their evidence in this way. Mediators should not be penalised for including an action/reflection in what the assessor might consider to be the wrong column of the table.

Candidates can use direct or indirect speech, so long as it is clear what the mediator did (as opposed to a co-mediator). Direct speech can though be the most effective way to demonstrate this.

Cases should not usually be more than two years old. PPCs can allow for cases which started up to three years ago to be used in exceptional circumstances. If mediators have had an extension to submit their portfolio, this also extends the date of the cases they can use (by the length of the extension).

One of the case commentaries submitted by a mediator as part of their portfolio may be in relation to a case where mediation did not complete, but where, as a minimum:

- some or partial agreement has been reached on some issues
- there has been more than one session
- in financial cases, substantial disclosure has been achieved

If a mediator submits such a case, the mediator must include in their case commentary:

- an explanation of why the case did not complete;
- a statement explaining whether, on reflection, the mediator would have done anything differently and why; and
- any actual or draft summaries of sessions that have been completed and
- any actual or draft Interim Confidential Summary of Proposals/Open Financial Statement or parenting plans.

Mediators must still ensure that **all** of the competencies are demonstrated in their portfolio.

Where proposals have been reached, but one or both clients have indicated that they do not wish to receive final outcome documentation, provided that this is for one of the case commentaries only, the mediator may draft appropriate Outcome Statements as relevant to the case, for the purpose of supporting the case commentary, as if they had been requested to do so by the client. It should be made clear on the face of the document and within the portfolio that the summary has been prepared for this purpose only.

Case Study Questions

There is not a preferred “right” answer to the case study questions. There are some answers of course which are more right than wrong but the assessor is assessing the professional thinking of the mediator and their ability

to make a well-argued point or points in answer to the hypothetical scenario where the answer sits within the FMC Code of Practice.

Reflective Account

This is a helpful background document for the mediator to describe their development to become a competent mediator and some of their professional and personal values which relate to the role of the family mediator.

The mediator must include evidence of managing high conflict cases in the portfolio. This may have been evidenced in one or more of their case commentaries in conjunction with competence C8.4 and C8.5. Where case commentaries do not cover high conflict cases, these must be referenced in the reflective account. It is an opportunity for the mediator to evidence their ability to manage, or have some strategies for managing, high conflict cases across a wider range of cases.

A portfolio not including any examples of managing high conflict could not therefore be granted full FMCA.

The reflective account is also a useful way for the mediator to demonstrate other competencies that have not been covered in the case commentaries, pulling from other cases that they have mediated but not necessarily concluded or chosen to include in their portfolio.

Personal Training and Development Plan

The personal training and development plan has three constituent sub-headings,

- Theory and Practice of Family Mediation,
- Family Law and Understanding of Pensions,
- Benefits and Personal Taxation

The format should help the mediator structure their evidence in demonstrating both what they have achieved so far (prior to accreditation assessment) and areas in which the mediator would benefit from further training and development in future.

The TDP should **give at least one example** under each of the three sub-headings in line with FMC Guidelines and should demonstrate 10 hours training per year prior to the submission of their portfolio and after foundation/core family mediation training.

SECTION 2

Recent CV – self-explanatory.

Copies of certificates – mediators who submit portfolios after 1.9.19 **must** have attended a Child Inclusive Mediation Awareness and Understanding Day. Full FMCA cannot be awarded if this course has not been attended.

Statement from PCC

The statement from the PPC or witness testimony is the opportunity to evidence a number of competencies including:

- B2.2 confirmation of maintaining an adequate level of PPC support in line with the standards,
- B5.1, B5.2, C3.1 (confirmation of the mediator's competence in relation to identifying any public or other funding available and carrying out basic eligibility test and potential onward sign-posting),
- C11.1 and C11.2. The PPC should also confirm the authenticity of the mediator's work and ideally offer reassurance that the mediator was the lead mediator where the mediator has used co-mediated cases.

If the mediator has not undertaken the required 10 hours PPC in addition to the 4 hours per annum the mediator should not be assessed as full FMCA and a provisional recommendation should be made.

If the PPC has not observed the consultee in a mediation session the PPC must include the following additional information within their Registered PPC's statement in support:

- the specific circumstances which lead to the decision to use a substitute (e.g. geography, diary issues etc.);
- the basis on which the Registered PPC thinks they have sufficient knowledge of the mediator to make their statement in support; and
- confirmation that the Registered PPC has discussed the observation notes and mediator's feedback with the mediator candidate.

The level of competence required and confirmed by the PPC in C3.1 (public funding/eligibility assessment) is a level of knowledge about the eligibility criteria sufficient for the mediator to know when to signpost a client to a mediation service which provides mediation funded by the LAA.

The PPC's Statement must:

- confirms the accuracy of the mediator's log of the PPC sessions
- confirms the case commentaries submitted in the portfolio are authentic, that the mediator has taken the lead in them, and that the mediator has obtained permission from the clients to use them
- endorse the mediator's competence to practise independently to the requirements of the FMC professional competence standards
- confirms that the material submitted is entirely the mediator's own work.

Account of Session Observed by the Mediator

The write up of a session observed by the mediator can be where their PPC was mediating or any other FMCA mediator. Whilst ideally this would be soon after completing foundation/core training this will not be possible for the cohort of mediators that trained prior to 1 January 2015 who nevertheless need to write up an observed account of a mediation session.

Mediators should demonstrate they are able to link mediation theory learned in their foundation training to their observation of an FMCA mediator and the skills used by the FMCA mediator in the observed session.

Observations by video link are not permitted, because this does not allow mediators to observe the whole mediation (e.g. meeting and greeting, seeing the whole room)

Mediation Account of Feedback and Reflection of Session Observed by PPC

Whilst the guidelines state that this should not be a co-mediated case with the PPC and should be undertaken within 2 years of initial training, again, this will not be possible for mediators trained prior to 1 January 2015.

This with the case commentaries is helpful evidence in relation to what the mediator actually does in the room and their competence or otherwise in relation to their mediation skills. It is not expected that the level of competence demonstrated by the mediator is that associated with a competent mediator (particularly if this is an early example of their work). **It should demonstrate the application of some of the key skills that a mediator will have learned in their foundation training.**

Observations by video link are not permitted, because this does not allow mediators to observe the whole mediation (e.g. meeting and greeting, seeing the whole room)

If circumstances make it particularly difficult for a mediator to be observed by their registered PPC, the mediator may be observed by another PPC or FMCA with three years post accreditation experience, with the agreement of and approval by the mediator's registered PPC. In this case, the mediator should include in their portfolio:

- the substitute observer's account of the session
- a response from the mediator relating specifically to areas for development identified by the substitute and how these can be addressed in their practice or through future supervision with their Registered PPC.

PPC Log

There is a suggested format for this and it **must** evidence the 10 hours PPC whilst the mediator is working towards their FMCA assessment plus 4 hours for each year post initial training signed by the PPC.

SECTION 3 – MOUs /OFSs/Outcome Statements

Assessors should look (usually in the introductory paragraphs of the MOU) for confirmation that the mediator is using the precedent MOU (where required) linked to the mediation organisation that the mediator is a member of.

Poor professional presentation e.g. typos, layout, inaccuracy in relation to figures, inadequate coverage of the issues, or where the MOU does not sufficiently relate to the case commentaries should lead to provisional accreditation as the MOU and associated paperwork is the professional outcome of mediation and should therefore be of a competent standard. Naturally assessors will need to use their judgement as it would not be appropriate for mediators to be given provisional FMCA because there was one typo in one of the MOUs.

Assessors should not look negatively on paperwork that is drafted in a different style to their own. There are many ways in which a mediator can present competent paperwork that complies with the principles of mediation and required standards of good practice. The assessors would expect to see sufficient summary of discussions which demonstrate how the participants reached their decisions as well as clarity about the joint proposals

reached. It is important that the summary of discussions is drafted in a way that does not enflame the participants and so written outcome statements shouldn't rehearse all arguments made in mediation. It should be a helpful document for the legal advisors where it is expected that they will be required to prepare a consent order as well as a helpful document for the participants as a record of the outcome.

Whilst some assessors might take the view that future estimated budgets should appear in the MOU and not the OFS where the mediator has put the budget in the OFS the assessor should appreciate that some MO foundation courses, teach that the expenses information should be in the OFS and therefore this is not incorrect. It should not prevent full accreditation being awarded.

SECTION 4 – Full Case Paperwork for One of the Three/four Cases and Two MIAM Records

The portfolio needs to include two separate MIAMs record – this can be from client A and client B on the same case. The records may relate to (one of) the case(s) used for a case commentary, or may be a different case. Both Information and Assessment Meetings must be described separately – this can be from client A and client B, but the second should not be 'I did the same thing again'. Two distinct separate processes need to be described separately.

With the exception of the occasional slip, if the portfolio material has not been properly anonymised this should lead to an assessment of provisional FMCA as it shows a disregard for proper professional care and attention.

Assessors should assume where anonymisation has been confirmed that the names used in the case commentaries etc. are fictitious. Full paperwork must include the signed agreement to mediate, any interim letters/emails sent to clients and notes of each mediation session (these may be rough hand written notes or a more comprehensive mediation session note). Any photocopied originals should be anonymized and it is not expected that clients' Forms E will be submitted where these have been used.

Other

Reasonable Adjustments – The FMC has a duty to make reasonable adjustments if a person has a disability. The portfolio guidance asks mediators to contact the FMC Office if they have a disability which makes it difficult to complete any aspects of the portfolio so that the FMSB can consider making reasonable adjustments. The template asks the mediator to include any relevant correspondence with the FMC about these adjustments in the portfolio when it is submitted.

Types of Cases – out of the three/four cases submitted two need to have child related components and two need to have property and finance components. At least one/two of the child cases must contain evidence of a child related dispute. In at least one/two of the P&F/AIM cases there must be evidence of a range of financial issues (i.e. more than one issue).

Time Limits Where the cases are more than two years old (date of the first mediation appointment starts the clock ticking) the mediator must have prior approval supported by their PPC confirmed by the FMC.

Template for assessment There is a standard FMC template assessment document for assessors to provide specific feedback on the portfolio sections and competencies as well as having space for additional feedback to the mediator where this has not been covered already.

There is also a checklist for assessors to identify/highlight whether each competency has been met to the required standard. Assessors, where possible, should try and find positives to comment upon in addition to identifying the absence or lack of evidence to support competence where provisional FMCA is recommended but this should not entail supervision or detailed instructions about how the portfolio should be written.

Assessors should undertake the assessment of a portfolio as soon as possible and regard the four-week period as a maximum.

Assessors should not hesitate to contact the Chief Assessor to discuss issues generally however in the case of a potential “not yet proven” recommendation where the totality of the portfolio leads the assessor to consider that competence has not been demonstrated and the majority of competencies are not evidenced then the assessor **must** discuss this with the Chief Assessor before making an NYP recommendation.

Where the recommendation is for provisional accreditation the assessor should specify the remedial action required, appropriate to the standards, so that the mediator is clear about what they need to do for resubmission. The specific requirements for a reassessment will be confirmed by the Chief Assessor and it is this list of actions/evidence that the mediator needs to address when submitting additional material for reassessment.