



On 1 March 2022 a new complaints process was introduced for family mediators registered with the Family Mediation Council (FMC). Complaints are now considered in accordance with the mediator's own complaints policy, which must meet minimum standards. If the complainant is not happy with the outcome once the mediator's process is complete, the complainant may refer their complaint to the FMSB for consideration.

The FMSB accepts complaints if they concern an FMC Registered Mediator, are made within three months of completion of the mediator's own complaints process, and concern the FMC's Codes of Practice or professional Standards Framework.

FMC Membership Organisations are no longer involved in investigating family mediation complaints about their members, but are instead able to support their members free from any conflict of interest alongside mediators' Professional Practice Consultants (PPCs).

Complaints that meet the criteria for acceptance are sent to the mediator for a response before being considered by a complaints panel, which is chaired by a non-mediator member of the FMSB, together with two mediators from the complaints pool. Conflicts of interest are declared by mediators if they are aware that a complaint has been made about a colleague, by checking the names of mediators' PPCs, and by anonymising documents before they are sent to the complaints panel so that panel members do not know the identity of the complainant, mediator, service or any other individuals/organisations mentioned in the papers.

Complaints considered

During the first year of operation of this new system the FMSB considered six complaints, accepted one of these and rejecting the remaining five. The complainant appealed the result of the panel hearing in two cases; these were both rejected as they did not meet the grounds for appeal.

Rejected complaints

The FMSB received a number of complaints that were not progressed to a panel. 16 complaints were referred back to the mediator, as their own process had not been used before a complaint

had been made to the FMC¹. A further 13 complaints were rejected as they did not meet the FMSB's criteria for consideration. The reasons for rejection included:

- The complaint related to a solicitor, not a mediator. The FMC office sent these complainants details of how to contact the Solicitors' Regulation Authority
- The complaint was made more than three months after the mediator completed their own complaints process
- The complaint related to the mediator sending a standard letter inviting a person to mediation
- The complaint related to a mediator not on the FMC Register.

Disciplinary actions

In the one case where the complaint was accepted, the FMSB required the mediator to undergo additional training, have additional PPC support focused on issues relating to the complaint, and be observed conducting an initial assessment meeting, actioning any areas for development highlighted by her PPC as a result. The mediator started completing the actions but then decided not to pursue accreditation and was removed from the FMC register as a result.

Two other recommendations concerning were made to mediators despite complaints not being upheld.

Recommendations to the FMSB

The complaints panels recommend to the FMSB that it considers the following:

- To review whether the Code of Practice is clear and unambiguous, in particular
 - At paragraphs 8.8 and Para 8.14 about getting legal advice and informing solicitors that mediation is taking place;
 - At paragraph 8.11, which states the mediator must 'seek' to ensure that the participants reach their decision upon 'sufficient' information and knowledge;
 - About what 'the mediation process' is and the rules that should apply before a MIAM, after a MIAM but before mediation has started, between mediation sessions and after a mediation has concluded.
- To review whether paragraph 5.1 of the Code of Practice regarding Conflicts of Interest should include consideration of whether there is a conflict of interest (or the appearance of

¹ One of these 16 complaints was later referred back to the FMSB, and was considered and rejected by a complaints panel.

such) relating to the mediator themselves continuing to mediate where a participant has previously made a complaint about the mediator.

- Whether there should be a complaints process for where a 'Practice' as opposed to individual mediators may be considered at fault.

Learning for mediators

- **Mediators working towards accreditation should not describe themselves as 'trained'**

Mediators working towards accreditation have a duty to represent themselves appropriately to the public as outlined in the FMC Standards Framework for mediators to represent themselves appropriately to the public. It is misleading for a mediator working towards accreditation to describe themselves as a 'trained' mediator – whilst mediators working towards accreditation have completed foundation, the term 'trained' could imply the mediator is fully qualified, which is the impression one complainant had as a result of a mediator working towards accreditation describing themselves as 'trained'.

- **Mediators should consider whether they have their own conflict in continuing to act as a mediator where a complaint has been made**

Where a complaint has been made by a participant or potential participant to a MIAM or mediation, mediators should give consideration to whether any conflict of interest (or appearance of such) relating to the mediator themselves arises. In two complaints considered by the FMSB, a mediator had continued to offer mediation despite a concern being raised by the complainant and this had caused the concern that the mediator was not impartial. Whilst it was not a breach of the Code or Practice to continue mediating, the panels recommended that the mediators provide options for proceeding where a mediation participant has raised previous concerns/complaints, including using another mediator should the complainant have concerns about the mediator continuing in their role.

- **The duty of a mediator to remain impartial and not give advice exists throughout the mediation process from first contact to after the mediation has completed**

A mediator who gave advice to a person who had attended an assessment meeting and was due to attend a mediation, by telling the person via e-mail not to contact the children until the mediation session took place, breached of the Code of Practice. A mediator has the same duty to remain impartial and not give advice, even before mediation has started, and even if the participants' actions risk derailing the mediation process.

- **When handling complaints, respond in a professional and sensitive manner**

The complaints panels have seen contrasting styles of responding to complaints. Panels welcomed mediators' responses where they had apologised for the distress complainants had felt as a result of the mediators' actions, and where mediators had reflected on their practice as a result of the complaint, even where there had been no breach of the Code of Practice. In contrast, one complaints panel was concerned to note that a mediation service's response to a complaint was defensive, and reminded the mediator that the response to a complaint should be sensitive and professional.

- **The spirit and intent of the Code of Practice requires mediators to manage the mediation, with clear explanations and timescales for the provision of information, and consequences for non-disclosure**

Mediators are not responsible for non-disclosure of information by participants, but should be clear about information that should be provided and by when, and about the consequences if information is not provided (e.g. the mediation session will be postponed, or will go ahead only dealing with specific issues). Mediators should ensure they are aware of the status of information provision before opening a mediation session and to consider deferring the mediation session if sufficient information is not available. Complaints panels noted that mediators' handling of information disclosure requests was an understandable source of frustration to (and potentially wasted time for) the complainants.

- **Verbatim minutes of mediation sessions are not required**

A complaint was made as a result of a mediator not including a specific action in the summary of mediation. The FMSB noted that it was not good practice for mediators to make verbatim minutes of a meeting, because these are not necessary and are often not helpful in helping participants focus on solutions.

- **Mediators should tell participants if they change practices**

A mediator was contracted on a consultancy basis to provide mediation through a practice, and then left that practice, taking cases that had started with her. The mediator did not tell participants of an ongoing mediation that these arrangements had changed, which caused confusion and led to a breakdown in trust between the mediator and participants. Upon reflection the mediator recognised that it would have been better if this had been communicated to the mediation participants. The FMSB agreed this would have been better practice.