

FMSB Meeting

26 April 2023

Approved Minutes

Present: Robert Creighton (Chair), Sarah-Jane Turnbull, Lesley Allport, Mike Mack,
Alexis Walker, Lorraine Bramwell, John Hobson

Also present: Beverley Sayers (FMC Representative), Helen Anthony (Executive Officer)

Part 1 - Open session		Papers
1.	Introductory	
1.1	Welcome and introductions apologies, declarations of interests	
	The Chair welcomed everybody.	
1.2	Approval of minutes of last meeting & matters arising not covered elsewhere	
	<p>The minutes of the meeting held on 1.2.23 were approved.</p> <p>Matters arising:</p> <ul style="list-style-type: none">• Communication. The FMSB noted that the FMC was now sending out a monthly newsletter to mediators.• 2022 report. The FMSB noted that this would be send to the FMC ahead of the joint meeting in May.• Lord Bellamy Standards briefing. The FMSB noted that RC, LB & HA had briefed Lord Bellamy about the FMC's Standards Framework and he had asked for views about the issues raised in the (now published) MoJ consultation.	
2.	Reports	
2.1	Chair's Report	
	The Chair had nothing to report other than issues already on the agenda.	
2.2	Executive Officer's Report	
	<p>The FMSB noted the Executive Officer's report.</p> <p>The FMSB noted that the Executive Officer was due to meet an FMC member organisation to discuss how it can ensure its listing of mediators was up to date and consistent with the FMC Register; the FMSB asked HA to ensure all MOs lists were also consistent with the FMC Register.</p>	HA to check FMC MOs lists of mediators against FMC Register
2.3	FMC Report	
	The FMSB noted the draft minutes of the FMC meeting held on 8.3.23 and, in particular, discussions about Chartered status, the question of whether the FMSB acts as a regulator, and the fact that the Chair's term is due to end in early 2024.	

3.	Governance	
3.1	2023 workplan	
	<p>The FMSB noted and agreed the updated workplan to 2023, subject to minor amendments. The FMSB agreed to amend the format of this to include timescales so that progress could more easily be tracked.</p>	<p>HA to reformat workplan & add timescales</p>
4.	Items for Discussion	
4.1	<p>MoJ Consultation: Supporting earlier resolution of private family law arrangements - issues for FMSB</p>	
	<p>The FMSB discussed the MoJ’s consultation and noted that whilst some of the proposals appeared to undermine key principles of mediation, the MoJ’s aim to increase the use of family mediation. The FMSB noted that this was consistent with the FMC’s primary aim, and that FMC proposed to submit a consultation response which would propose ways to achieve this aim without compromising mediation principles.</p> <p>The FMSB agreed that the MIAMs standards were fit for purpose as drafted, but agreed to undertake a review of these if there was a substantial change in public policy.</p> <p>The FMSB agreed that it needed to prepare to support the mediation profession to meet growing demand. The FMSB noted that one way in which it could do that was to ensure it had clear processes for those mediators who wanted to return to practice. The FMSB also noted that re-introducing child-only and property/finance only accreditation may attract more mediators back to the profession.</p> <p>The FMSB agreed that if attendance at mediation was no longer to be voluntary, it would be even more important that mediators were able to screen accurately for abuse which could render mediation unsuitable. The FMSB agreed to consider whether additional training for domestic and child abuse was necessary, or whether it should be more specific about the training that should be carried out. The FMSB noted that if additional training was necessary, it would be necessary to bear the cost of this in mind and that the FMSB may need to allow for it to be completed as part of a mediator’s usual three-year accreditation cycle, unless external funding was available which could accelerate the delivery of this training.</p> <p>The FMSB considered measures that could incentivize mediation, without having to compromise on mediation principles. The FMSB noted that getting both parties to a MIAM was crucial if mediation was to go ahead, and that funding MIAMs would therefore likely lead to an increase in both parties attending. The FMSB</p>	

	<p>also noted that MIAM participants also often ask about the status of mediation agreements, and that a process to make agreements reached as part of the mediation process more easily enforceable would be likely to encourage uptake of mediation.</p> <p>The FMSB discussed its role in setting standards for the mediation profession as part of the FMC. The FMSB agreed that it would be helpful to discuss at the forthcoming FMC/FMSB meeting whether the FMSB's regulation of mediation is fit for purpose, or whether it requires more weight.</p>	
4.2	Family Procedure Rules Consultation	
	<p>The FMSB considered the MoJ's consultation which proposed amendments to the Family Procedure Rules, and asked the FMC to incorporate its conclusions in to its response to the consultation.</p> <p>The FMSB noted the proposed amendments to the MIAMs exemptions appeared to be appropriate from a Standards perspective, and welcomed the recognition that a standalone MIAM has value.</p> <p>The FMSB noted with concern the proposal at paragraph 22 that mediators should '<i>assess suitability for all forms of non-court dispute resolution</i>' but that later in the same paragraph there was a proposal that seemed to contradict this. The FMSB agreed that it was not appropriate for mediators to assess for suitability for forms of NCDR other than mediation, as part of the MIAM.</p> <p>The FMSB noted the discussion in the consultation paper about other forms of NCDR and agreed that whatever forms were allowed to exempt people from attending a MIAM should be at least as well regulated in terms of qualifications of the person conducted the activity, and the process that must be followed as mediators are for MIAMs.</p>	
4.3	Modular Accreditation	
	<p>The FMSB welcomed Helen Keville and thanked her for the work she had been doing on modular accreditation.</p> <p>The FMSB heard that HK had concluded that it was possible to break down the current portfolio in to formal modules, with mediators on the modular portfolio path being supervised closely in the initial stages, and able to work solo in the final stage before portfolio submission.</p>	

The FMSB noted that the proposed modular scheme would work best for services and would primarily support those working within services, whereas trainees which work outside services often struggle to complete the portfolio. The FMSB also noted HK's view that the system could work for individuals where a PPC was also willing to offer access to work (as some do) or for a consortium of PPCs willing to do this.

The FMSB discussed the difficulties of identifying which competences should be demonstrated before a mediator could under the modular approach, be allowed to practice solo. The FMSB agreed it was not appropriate to designate some of the existing competences as essential, but that judging each competence at a different level at each stage of assessment was impractical and may make the portfolio harder to complete. The FMSB recognised that there needed to be a focus on safe practice and some way for assessors to scrutinise whether a mediator could move to solo working. The FMSB agreed that competence B3.1 (only undertaking work within a mediator's competency) was really important. The FMSB also agreed that there must be provision for a PPC to identify the absence of key skills, for example a PPC should be able to highlight a failure to identify a safeguarding issue. The FMSB agreed it was important to clarify whether a competence passed on the first assessment but not demonstrated on the second assessment would be grounds for a mediator not passing.

The FMSB noted the need for both PPCs and services to be trained in how the new system will work.

The FMSB noted that there was a cost to the proposed system, because PPC time would need to be more concentrated than at present, as well as a need for the provision of work. The FMSB noted that nevertheless firms may be incentivised to take part in the pilot of the new system as their mediators would progress to accreditation more quickly, and be more likely to pass the assessment the first time around.

The FMSB agreed to pilot the model for services, subject to the competences, criteria list for services, training process for services and PPCs being finalised. HK to work on the detail of these with the Accreditation Panel and feedback from the chief assessors, with points of principle being brought back to the FMSB to confirm its agreement.

The FMSB also asked the Accreditation Panel to actively explore whether the model could work for individuals who did not work in services.

	<p>The FMSB clarified that as the modular portfolio would be a pilot scheme, mediators/services would not have to complete this and if a mediator started on the modular route but found it did not work, the mediator could submit a complete portfolio for assessment as usual.</p> <p>The FMSB noted the importance of getting and responding to feedback from mediators and services as the modular portfolio pilot progresses. The FMSB also noted that it was important to any variances to the scheme were recorded, so that these can be taken account when the pilot is evaluated.</p>	
4.4	Accreditation Panel	
	<p>The FMSB noted the draft minutes of the Accreditation Panel meeting held on 14.3.23.</p> <p>The FMSB approved the extension policy, subject to including a requirement to have completed required PPC hours as part of the criteria for a mediator having made a reasonable start on their portfolio.</p> <p>The FMSB considered and approved the Reasonable Adjustment policy, subject to amendments including:</p> <ul style="list-style-type: none"> • the timescales to include a requirement for the FMSB to acknowledge all requests within two working days and having no backstop date if the meeting could not be arranged due to the mediators being unavailable; and • making it clear that applications can be made at any point in the process, and that requests can be made separately to training providers. <p>The FMSB considered whether it would be possible to adjust the portfolio process without a mediator's PPC being aware of the mediator's disability, and agreed it was necessary for the PPC to be aware if any adjustments were to be made, as it is the PPC's role to support the mediator with the completion of the portfolio and the PPC has to review the portfolio before it is submitted.</p> <p>The FMSB reviewed proposed portfolio fees and agreed to recommended to the FMSB stepped fee increases until the fees covered the cost of the portfolio process in 2025.</p>	<p>HA to send the amended extension policy & reasonable adjustments policy to the FMC and to publish these</p> <p>HA to send amended portfolio fees to FMC for consideration and approval</p>
4.5	Assurance	
	The FMSB noted the working group set up to consider assurance processes for domestic and child abuse screening had made good progress on bringing together	

	<p>the standards that already existed for domestic and child abuse, and had identified that that a toolkit needed to be developed so that the level and approach to screening was more consistent. The FMSB noted that the working group had also identified the need for mediators to be trained in the use of the toolkit. The FMSB asked PASS to ensure project support was available, and agreed to consider whether resources were available to buy specialist time to develop the toolkit and train mediators.</p> <p>The FMSB agreed that in addition to this this important work on screening for domestic and child abuse, there was a need to focus specifically on ensuring that mediators adhered to the standards that are in place. The FMSB considered that the measures currently in place may need to be more specific – for example, the Standards Framework requires mediators to carry out CPD for domestic and child abuse in each three-year accreditation cycle, but does not specify the method and length of training required or who this should be delivered by, nor does it stipulate that procedures should be reviewed. RC & JH to look at framework for assurance.</p> <p>The FMSB discussed that strengthening of assurance through, for example, additional and/or more specific PPC consultation or CPD, may result in increased costs for mediators. The FMSB noted that assurance costs must be sustainable for the profession, and that this issue needed to form part of a conversation with the profession and with the government, as it relates to the role of the FMSB in regulating the profession referred to in item 4.1 above (re MoJ consultation).</p>	
5.	Updates	
5.1	Accreditation Reform Group	
	The FMSB noted the minutes of the Accreditation Reform Group meeting held on 27.2.23.	
5.2	Complaints	
	<p>The FMSB welcomed the annual complaints report and thanked all the panelists for their work during the year. The FMSB noted that the introduction of the new complaints system had resulted in a clearer process for mediation participants, and that it had been operated smoothly. The FMSB welcomed the recommendations in the report that has arisen from complaints panels and agreed it would act on them. The FMSB also agreed to publish the report so that all mediators could learn from previous complaints.</p>	<p>RC to thank panelists</p> <p>HA to add panel recommendations to FMSB agenda for consideration/ implementation as required</p>

	<p>The FMSB noted with concern that in several complaints the panels had found that the spirit and intent but not the letter of the Codes of Practice and Standards Framework had been violated. The FMSB agreed to review how to rectify this.</p> <p>The FMSB noted that it had already identified another issue for consideration: that of complaints about services and/or service standards. The FMSB noted that this workstream had already been incorporated in to the workplan for 2023.</p>	HA to publish report
5.3	PPCs	
	<p>The FMSB noted the minutes of the PPC panel held on 27.2.23 and the draft minutes of the meeting held on 18.4.22.</p> <p>The FMSB noted that the most recent draft minutes did not appear to reflect the panel's initial focus on confirming the role of the PPC; the Panel chair confirmed that this was still central to the panel's work, and the draft minutes would be updated accordingly.</p>	
5.4	MIAMs	
	The FMSB noted that work on MIAMs was not being progressed at present due to the proposals in the MoJ consultation potentially meaning that the Standards would have to be reviewed.	
5.5	Training	
	The FMSB noted that training course reviews were being progressed and that the reviewers and panel members were arranging a meeting to discuss progress.	
6.	AOB	
	The FMSB noted that the Family Justice Council was recruiting for a mediator member and encouraged everyone to consider recommending to suitably qualified accredited mediators that they apply.	
7.	Future Meeting Dates	
7.1	<ul style="list-style-type: none"> • 16 May 2023 Joint FMC/FMSB (in person) • 5 July 2023 (online) • 11 October 2023 (in person) 	