



On 1 March 2022 a new complaints process was introduced for family mediators registered with the Family Mediation Council (FMC). Complaints need to be first 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 relate to the FMC's Codes of Practice or professional Standards Framework.

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; and risks are further mitigated 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 second year of operation of this new system the FMSB considered ten complaints, accepted seven of these and rejected the remaining three. The complainants appealed the result of the panel hearings in two cases; these were both rejected as they did not meet the grounds for appeal.

Bias was often alleged, but not often upheld. However, breaches of standards were sometimes identified by complaints panels when they had not been identified by the complainant. This was particularly the case in relation to MIAM standards.

It was common for the primary complaint to be accompanied by a secondary complaint that the mediator had not followed their own complaints process, or did not have an appropriate complaints process.

The FMSB also saw some very good examples of complaints handling from mediators, where they had taken complaints seriously and been open about considering and making changes to their practice.

Rejected complaints that did not proceed to panel

The FMSB received a number of complaints that were not progressed to a panel. Complaints were frequently referred back to the mediator, as their own process had not been used before a complaint had been made to the FMC. A small proportion of these then returned to the FMSB after the mediator's process had completed.

Other complaints were rejected as they did not meet the FMSB's criteria for consideration. The reasons for rejection included:

- The complaint was made more than three months after the mediator completed their own complaints process
- The complaint was limited to the fact that the person had been invited to a MIAM
- The complaint related to a mediator not on the FMC Register
- The complaint did not relate to the FMSB Codes of Practice or Standards Framework.

Disciplinary actions

The vast majority of disciplinary actions were requirements for further training, with an accompanying requirement that the mediator follow up on this training in discussion with their Professional Practice Consultant. The purpose of this accompanying requirement is to ensure that mediators can understand how to apply what they have learnt on the training course to their own practice. Training requirements most often focused on MIAM training, safeguarding and complaints processes.

Several mediators were also required to update and/or publish their complaints processes, and ensure these processes meet the FMC's minimum requirements.

Other disciplinary actions included:

- A requirement to change PPC or appoint a secondary PPC due to a conflict of interest;

- A requirement for a provisionally accredited mediator to demonstrate they meet specified competences (which related to the upheld complaint) in their portfolio resubmission.

Where actions are required as a result of complaints processes, the FMSB requires the mediator (and the PPC where relevant) to inform the FMSB that those actions have been completed. In 2022/2023, mediators completed all actions required of them as a result of complaints processes.

Complaints panels have also made recommendations to mediators, including that they review their communication to potential MIAM/mediation participants, as a result of documents being presented to the FMSB as part of the complaints process that were not always clear or accurate.

No disciplinary action was required in one case where a complaint was upheld, as the mediator had already identified the breach of the standards as a result of their own complaints process and had changed their processes as a result.

Learning from complaints

Complaints are a valuable source of learning for the mediation profession at large and for the FMSB itself. This report summarises the recommendations and lessons arising since the last annual complaints report.

Recommendations to the FMSB (NB this includes recommendations made between 28.2.24 and 17.4.24)

The complaints panels recommended to the FMSB that it considered the following:

- Whether it is appropriate for a mediator to invite a second participant to a MIAM when the mediator has signed a court form for a first MIAM participant, and whether a mediator should be obliged to tell potential MIAM/mediation participants when they have issued a C100 to another participant. The FMSB has welcomed this recommendation and will review the MIAMs Guidance in July 2024.
- Being more explicit in stating that a mediator must have a complaints process that relates to all a mediator's practice (including MIAMs). The FMSB has welcomed this recommendation and will respond by reviewing the wording of the requirements for mediators to have complaints processes in place, in summer 2024.
- Amending the good standing requirements to make clear that any temporary removal from a professional register must be declared to the FMSB and to say that mediators must

(rather than can) declare any other relevant matters. The FMSB has welcomed this recommendation and will recommend to the FMC that the Standards Framework be amended accordingly, in summer 2024.

Learning for mediators (NB this includes learnings from between 28.2.24 and 17.4.24)

- **Sharing correspondence**

Mediators should give careful consideration to whether correspondence should be shared after an agreement to mediate has been signed, in order to ensure that the sharing of correspondence does not put the safety of a person at risk.

Where a mediator receives a complaint from a participant during an ongoing mediation, the mediator should not automatically share that correspondence with the other mediation parties.

If correspondence cannot be shared, the mediator should consider whether it is appropriate to continue the mediation. (See below for potential conflicts following a complaint).

Correspondence received from one potential MIAM/mediation participant should not be shared with another potential participant before the Agreement to Mediate (which makes clear that correspondence will be shared) has been made, ideally by both parties signing this.

- **Own conflict following a complaint**

If a mediator receives a complaint during an ongoing mediation, the mediator should take steps to resolve the complaint before the mediation continues.

It is not a breach of the FMC's Code of Practice or professional Standards Framework to offer to continue to mediate once the complaint appears to have been resolved. However, in these circumstances the mediator should consider whether they have a conflict in continuing and in particular what the complainant's perception of that conflict might be. The Mediator should also ensure that the party who has not complained is aware a complaint was raised and resolved.

It would be good practice in these circumstances to offer to refer the participants to another mediator.

- **If you ask for documentation before a MIAM or a mediation, be clear about what you will do with that documentation.**

A number of MIAM or mediation participants have been frustrated or have felt misled where mediators have asked for information in advance of a mediation with a view to running through this documentation or these issues in a MIAM or mediation session, because the mediator has not considered these documents in advance of the meeting. This has led to clients feeling they are not heard, or that mediators are not prepared for sessions, and can be avoided by explaining processes clearly in advance so that client expectations are met.

- **Familiarise yourself with the MIAM standards and ensure your websites are up to date.**

Several of the complaints that were upheld related to different aspects of the [MIAM standards](#). There was no one area of the standards that was consistently breached, but it was clear that not all mediators had ensured they were fully up to date with the standards that were introduced in August 2022. It is therefore recommended that all mediators ensure they are familiar with the MIAM standards.

- **Complete only the required boxes on court forms**

Mediators should complete only the required boxes on the court form without adding extra commentary or annotations to court forms.

- **Be aware of the cumulative impact of your actions**

The FMSB saw an increase in complaints where mediation participants have said they felt the mediator put them under pressure to mediate. Sometimes this was as a result of a mediators explaining other options – including the disadvantages of court – to a MIAM or mediation participant as required, which indicates compliance with rather than breaches of standards. However, complaints have been upheld where mediators have given repeated indications about the disadvantages of other processes, especially where mediation participants have indicated dissatisfaction or concern about the mediation. Mediators should therefore be aware of how the totality of their actions will be perceived, and ensure clients are aware that participation in mediation is genuinely voluntary and they can withdraw at any time.

Likewise, several complaints mentioned that lots of different aspects of a mediator's conduct had led to concerns that they favoured the other participant. Even where a mediator is not biased, a series of small actions which a person sees as favouring the other participant (e.g. more time, more focus on their issues, more support, small talk) can leave a person feeling like the mediator is not neutral. This might be avoided by clear communication between the mediator and all parties, so that expectations can be managed and reasons for potentially treating people differently are explained.

- **Be clear about P1's views on mediation when inviting P2 to a MIAM**

If you have seen a MIAM participant and signed a court form for them, and subsequently liaise with the second potential mediation participant about attending a MIAM, be transparent about this with the second potential mediation participant. This will avoid somebody attending a MIAM thinking that mediation will go ahead, when the other party has already decided against that and has submitted an application to court. If a mediator is not sure about the first MIAM participant's intentions, these can be clarified before the second MIAM goes ahead. This doesn't prevent MIAMs from taking place where one party has decided against mediation, but it does mean the mediator can focus the MIAM appropriately if the second participant attends.

- **Stay within the bounds of your role as a mediator, even if trying to help**

Mediators should not act in another professional capacity for the same clients. It is a legal or advisory role to complete and submit a court form, and mediators should not be doing this for clients even where the other potential mediation participant does not come to a MIAM, and where the client clearly needs support. Instead, signpost clients to available options for support. Remember that keeping up to date with available resources and support services is part of your CPD requirement as a mediator.

Likewise, don't confuse any neutral roles you have. Mediators can share legal information with participants, but cannot give tailored advice e.g. say what a court might do in their particular circumstances. It is therefore important not to morph from the role of a mediator in to one of an early neutral evaluator. Instead, if early neutral evaluation would help your clients, consider and discuss whether you should invite an external third party to act in this role.

- **Remember the value of legal advice and share details of multiple local services**
Although participants do not have to obtain legal advice, mediators should not assume that legal advice is only required if a mediation breaks down. The MIAM standards require mediators to make the value of legal advice clear in every case, and Paragraph 8.14 of the FMC Code of Practice requires mediators to inform participants 'of the advantages of seeking independent legal or other appropriate advice whenever this appears desirable during the course of the Mediation.'

Mediators should hold lists of local sources of legal advice (solicitors, charities etc.) and share lists with MIAM/mediation participants. Sharing details of multiple services helps mediators remain impartial as they cannot be seen to be recommending one particular service.

- **Complaints handling.** Make sure your complaints process complies with [minimum standards](#) and is published on your website, and then make sure you follow it!

Many of the complaints received by the FMSB could have been avoided if mediators had taken complaints more seriously at an earlier stage.

It is not nice to have a complaint made against you, but ignoring it, being defensive or dismissive won't make it go away, and instead has a tendency to make things worse.

The FMSB sees a variety of complaints handling approaches: in the best ones, the mediators seek to understand the reason(s) the complaint is being made, and are open to the possibility that they may have made a mistake, misunderstood something and/or that they could do things differently.

In one complaint where the FMSB found the mediator had breached the standards, the complaint panel agreed that no further action was required as the mediator had provided a comprehensive complaint response in the first instance, identified the breach themselves and taken action to ensure it would not be repeated.