Guide to Good Practice on Mediation
This Guidance was revised in September 2015. The law or procedure may have changed since that time and members should check the up-to-date position.
Guide to Good Practice on Mediation

The Dispute Resolution Committee of Resolution has drafted the following good practice guide for all Resolution mediators as a means of setting out and encouraging best practice within the mediation community. The guidance sets out an explanation of the principles of mediation and a framework for the conduct of consistent and high-quality mediation practice.

Solicitor members and affiliates should be aware that there is also guidance on best practice in relation to the responsibilities of solicitors in relation to mediation and good professional relationships between mediators and solicitors (see p33).

**IMPORTANT INFORMATION FOR ALL MEDIATOR MEMBERS**

The Family Mediation Council (FMC), of which Resolution is a member organisation, has published a Manual of Professional Standards and Self-Regulatory Framework for all family mediators. This framework comes into force on 1 January 2015 and all mediators should be aware of and adhere to the requirements as set out in this document.

The document also sets out the transitional arrangements and the FMC will continue to publish further guidance in relation to the roll out of parts of the standards that will apply between 1 January 2015 and 31 December 2016. Members should check whether and how these arrangements may affect them. Mediator members are reminded that support for appropriate self-regulation of practice, including assistance with matters of good practice, can also be provided by their professional practice consultant.
Index

1. Qualifications, training and ongoing professional support - p.6
   • Accreditation - p.6
   • Professional practice consultancy - p.7
   • Continuing development - p.8
   • Publicly funded (Legal Aid) mediation practice - p.8
   • Child inclusive mediation: direct consultation with children - p.9
   • Insurance - p.9

2. Scope and principles of mediation - p.9
   • Impartiality - p.10
   • Impartiality in practice - p.10
   • Voluntary participation - p.11
   • Neutrality - p.11
   • The importance of individual legal advice - p.11
   • Confidentiality, privacy and privilege - p.12
   • Confidentiality and safeguarding - p.13
   • Confidentiality, privilege and legal proceedings - p.13
   • The welfare of children - p.14
   • Abuse and power imbalances within the family - p.15

3. Conduct of mediation - p.16
   • First contacts: assessing suitability and appropriateness - p.16
   • The importance of screening and assessment processes - p.17
   • First meetings - p.18
   • Mediation information and assessment meetings - p.18
   • Safeguarding/screening and assessment in the MIAM - p.19
   • Legal aid eligibility - p.20
   • Conducting MIAMs via other media - p.20
   • The first mediation meeting - p.21
   • Financial disclosure - use of forms - p.21
   • Before any meeting to record financial information - p.22
• Establishing financial disclosure - p.23
• Arrangements for children - p.24
• Parenting plans - p.25
• Hearing the voices of children and young people - p.26
• Developing options - p.26
• Practicalities - p.26
• Preparing to draft documentation - p.27
• Drafting and presentation of mediation documents - p.27
• Recording - p.27
• Responsibilities in relation to data protection - p.28
• The memorandum of understanding/outcome statement or summary - p.29
• Open financial statement - p.29
• Variations - disclosure - p.30
• Money laundering, fraud etc. - p.30
• The effect of Bowman v Fels - mediation - p.31
• Payment for mediation documents/concluding the mediation - p.32
• Variations - documentation - p.32
• Payments on account - p.33
• Non-payment - p.33
• Ending a mediation process - p.33
• Dealing with client concerns and complaints - p.34
• Mediator members of more than one organisation - p.35
• Monitoring performance/practice - client feedback - p.35

4. The professional relationship between mediators and solicitors - p.35
• General guidance for solicitors supporting clients through a mediation process - p.35
• Responsibilities of member solicitors in relation to family mediation and family mediators - p.37
• Responsibilities of mediators - p.37

5. Other professional practice considerations - p.38
• Co-mediation - p.38
• ‘Shuttle’ mediation - p.39
• Mediation where there is or has been abusive behaviour in the couple relationship - p.40
• Involving solicitors in a mediation - p.41
• Involving other professionals as part of the mediation - p.42
• International parenting/leave to remove/potential child abduction - p.43
• Working with or as part of a collaborative process - p.43
• Court referred mediation - p.44
• Consent orders - p.45
• Use of new technology in mediation process - p.46
• Advances in practice, hybrid models and working with families in other settings - p.47

Appendix 1 - FMC Manual of Professional Standards and Self-Regulatory Framework

Appendix 2 - Safeguarding Children and Young People - Duties and Responsibilities

Appendix 3 - Safeguarding - Dealing with Allegations or Disclosures
1. **Qualifications, training and ongoing professional support**

The new Manual sets out all requirements relating to training, qualification, continuing development, professional practice consultancy and the developmental pathway for mediators.

It also describes the standards in relation to training courses, training and required qualification of PPCs, requirements in relation to complaints and the responsibilities of the member organisations in supporting and ensuring that their mediator members meet the requirements as set out by the FMC.

From 1 January 2015, all family mediators will be required to work towards the standard of accreditation set out in the FMC Manual of Professional Standards and leading to the award of the title 'FMC Accredited Family Mediator' (FMCA).

Details of transitional arrangements for mediators who have yet to reach an accredited standard of practice are also set out in the manual. Mediators are advised to be in contact with their own PPC in order to discuss how the new standards will or may affect their practice in the first instance.

The FMC Manual is at appendix 1 of this guide or can be viewed/downloaded from www.familymediationcouncil.org.uk. Further information will be published and circulated by the FMC and member organisations as it becomes available.

**Accreditation**

From 1 January 2015, all family mediators are required to work towards and to attain FMCA status within three years of their foundation training wherever possible and practicable. (The manual at appendix 1 sets out the exceptional circumstances and the transitional arrangements for mediators trained before 1 January 2015 and not yet accredited. Further information will be published by the FMC as it becomes available.) It is important that all mediators understand that their foundation or initial training is the beginning of their continuing development towards accreditation and that post-accreditation they will still be required to maintain their learning and development to the standards set by the FMC.

From 1 January 2015 accreditation is for a period of three years and mediators will be required to re-accredit at the end of each three years of practice.

Full details of the routes for accreditation via either The Law Society or the Family Mediation Council Assessment of Professional Competence scheme are provided on the relevant websites (and see appendix 1 of this guide).

**Conduct of mediation information and assessment meetings**

The current requirements for recognition to conduct Mediation, Information and Assessment Meetings cease at the end of 2014.

Unaccredited mediators who have been recognised via the existing arrangements to conduct MIAMs (that is, have been signed off by their PPC for the conduct of MIAMs) may continue to do so until 31 December 2015.

All other unaccredited mediators who carry out MIAMs that do not lead to mediation or where a mediation breaks down or ends and there is a need for the relevant sections of the C100 or Form A to be signed, must ask their PPC to sign the relevant section as an FMCA (authorised mediator as defined in s.10 Children and Families
Any mediator who is uncertain as to their status in relation to the conduct of MIAMs should check the transitional arrangements set out in the FMC Manual and discuss their situation with their own PPC.

**Professional practice consultancy**

Professional practice consultancy is designed to ensure that mediators have the guidance, support and help of an experienced consultant or supervisor (who is an experienced mediator, trained and recognised to act as a practice consultant and who must hold and maintain FMCA status).

The PPC’s role is to:

- Assist new mediators as they begin their practice (including checking mediation document drafts and signing the relevant sections of the C100 or Form A as and when required).

- Support mediators in the development of their practice and towards accreditation, including provision of a statement confirming and endorsing their supervisee’s application for accreditation, to the standards set out in the FMC Manual of Professional Standards.

- Be available to support mediators with issues that may arise in their day-to-day practice (including providing support to any mediator where there has been a client complaint).

- Provide confirmation as and when required that the mediator has met the required standards in relation to continuing development and practice consultancy.

Where mediators provide legally aided mediation, the PPC provides practice supervision to the terms required by the Legal Aid Agency in its family mediation contract, which includes review of mediation files. A PPC who undertakes this role must be accredited to the Mediation Quality Mark (MQM) standard required by the Legal Aid Agency and must be an accredited mediator and FMC registered PPC.

Full details in relation to the PPC’s role in a mediator’s continuing development, practice consultancy and accreditation are set out in appendix 1.

Mediators are required to meet with their PPC on a one-to-one basis and may also accrue their additional required hours by meeting with a PPC as a member of a peer group. Mediators working towards their accreditation are required to undertake more hours with their PPC than mediators who are post-accreditation, in order to ensure their continuing development toward accreditation and to provide them with an enhanced level of professional support. A level of consultancy can be provided via telephone/Skype, but mediators should be aware that this should not be the greater part of their required PPC hours. Many PPCs lead peer groups or arrange with mediators to offer peer group meetings in local areas. The PPC network is still growing and there are shortages in some areas, so some PPCs travel to see mediators some distance from their own home area.

There is a charge for time spent with a PPC. Rates vary, so mediators should ask what the individual PPC’s rate is when they make contact with them. Many PPCs offer rates which are lower than their usual hourly rate (in any other professional role they have) in order to ensure that they offer an affordable service to mediators. PPCs who travel to consultees generally charge for travel so mediators should check this too if they choose a PPC who is at a distance from them.

Generally, it is the responsibility of the individual mediator to choose and maintain contact with a PPC whom they think best meets their needs. It is important that the relationship between mediator and PPC is good, productive and comfortable, so mediators are encouraged to choose their PPC carefully. PPCs should offer a
contract or agreement for the purposes of setting out arrangements for professional support, which should be signed by both parties. If a mediator wishes to change or move on, then their PPC will expect that the mediator will let them know that is their intention and any new PPC chosen by the mediator will need to check that the former PPC has been informed of the mediator’s decision to change and the reasons for it. They will also familiarise themselves with any issues or concerns on the part of the previous PPC.

Mediators need to be aware that they must meet the requirements for time spent annually with their PPC as set out by the Family Mediation Council standards. PPCs generally expect to spread the time and support they provide to mediators over the year as a means to properly support the mediator in practice and mediators should discuss with their chosen PPC a schedule for their consultancy over the year.

PPCs also prepare a statement, which forms part of the mediator’s accreditation portfolio. Mediators should be aware that in order for their PPC to be able to do this, they must have sufficient knowledge of the mediator’s professional development and practice leading up to their application for accreditation.

**Continuing development**

Under the new arrangements to be introduced on 1 January 2015, mediators will be required to have a continuing development record. The FMC describes this as being able to ‘demonstrate that adequate steps have been undertaken to keep up to date and maintain the ability to practise competently’. These new arrangements will replace the previous annual CPD requirement.

Continuing development can be achieved through a wide range of means, including accredited and non-accredited courses and conferences, practice-based activities such as co-mediation, observation and action-based learning, online learning, research, reading and higher education programmes. There are no restrictions on the kind of activities that can count, but it is important that they are relevant to the mediator’s practice, result in relevant learning and benefits, and taken together provide an adequate level of updating and development.

It is important for mediators to discuss their continuing development with their PPC. However, the FMC framework makes clear that activities that are chosen and undertaken are the responsibility of the mediator and do not need to be endorsed by the PPC. The Manual further points out that mediators are strongly advised to record and evaluate activities as they take place rather than waiting until the point of re-application. It will therefore be important that mediators develop good habits in recording activities undertaken and reflecting on them (with or without the help and support of their PPC) and in considering their overall developmental ‘pathway’ both before and after accreditation.

**Publicly funded (Legal Aid) mediation practice**

Mediators must hold a family mediation contract if they are to offer legally aided family mediation and must be accredited/competence-assessed to the standard required by the Legal Aid Agency. Mediators working towards their accreditation whose application will be lodged either with the FMC or the Law Society before 1 January 2015 should be in touch with their PPC to ensure they are clear about requirements for accreditation.

Mediators who offer legally aided mediation must also meet all the requirements in regard to qualification, continuing development, professional practice consultancy (referred to by the agency as supervision of practice), client service, management and administration, as set out in the Family Mediation Quality Mark Standard (MQM) and contract. All mediators providing legally aided mediation services must also ensure that
they meet the requirements set out by the Legal Aid Agency in relation to appropriate administration of their contract, including obtaining all documentary evidence from clients in regard to their eligibility for legal aid. ¹

Child inclusive mediation: direct consultation with children

Mediators who see children directly as part of a parental mediation process must have successfully completed recognised training and assessment, and their practice must be supervised by a PPC who is trained and qualified as a mediator and PPC for the purposes of direct consultation with children. Additionally, mediators must hold an enhanced DBS (formerly CRB) check.

Insurance

All mediators must have appropriate professional indemnity cover for their practice. This is a requirement for mediators whether they are offering legally aided mediation or in private client practice. It remains the case that solicitor members can usually simply inform their insurer that they will be offering mediation without incurring any loading or excess premium to their existing cover. (Barrister mediators should likewise check whether their existing insurance will also cover any work that they do as a mediator.)

However, it is important that mediators ensure that they have a suitable level of insurance and that it covers, for example, where they may be working away from their office base, e.g. at court, working with a co-mediator under the rules of that mediator’s member organisation, in a hybrid process or where the client’s asset base may exceed their level of indemnity (it is usually possible to negotiate single premiums where there is a need to increase cover for an individual case). All mediators are reminded that they must ensure that they are working within the FMC Code of Practice and the fundamental principles of family mediation for their insurance cover to remain valid on any claim.

2. Scope and principles of mediation

Family mediation is a process in which those whose relationship is ending or has ended, regardless of whether they are a couple or other family members, appoint an impartial third person to assist them to communicate better with one another and to reach their own agreed and informed decisions concerning some or all of the issues relating to their separation, divorce, children, finance or property by negotiation. Family mediation may also be appropriate in other family transitions, in respect of other family disputes or, for example, in relation to inheritance planning or disputes.

Family mediation is a principled and structured process of family dispute resolution. In assessing for suitability and in conducting mediation, all mediators should ensure that they fully explain the principles of mediation to clients/prospective clients and make sure that at all times they adhere to those principles in practice.

¹ For full information, see:

**Impartiality**

The requirements in regard to impartiality and conflicts of interest are set out in the Family Mediation Council Code of Practice (of which Resolution is a signatory). Generally, mediators must:

- Be aware of and act in a way that is impartial and balanced as between any participants to the mediation.
- Have no personal interest in the outcome of the mediation.
- Not mediate in any case in which they have acquired or may acquire relevant information in any private or other professional capacity.
- Not act or continue to act if they or a member of their firm has acted for any of the individuals in issues not relating to the mediation.
- Not accept referrals from any professional practice with whom they are employed, in partnership or contracted and which is involved in advising one of the participants on matters that relate or are capable of relating to the mediation, even though the practices are separate legal entities.
- Not refer a participant for advice or for any other professional service to a professional practice with whom they are employed, in partnership or contracted, if that advice or service relates or is capable of relating to the mediation, even though the practices are separate legal entities.
- Conduct mediation as an independent professional activity and must distinguish that activity from any other professional role the mediator may practise.

**Impartiality in practice**

Mediators have a particular responsibility to ensure that they seek to prevent any manipulative, threatening or intimidating behaviour by either client. They should also seek to address wherever possible any imbalance of power that exists, or arises during the mediation process.

Where it appears that any imbalance of power or behaviour between the clients is preventing or is likely to prevent the mediation from being a fair and/or effective process, mediators should consider taking appropriate steps, including ending (or not starting) the mediation if necessary.

In setting up or assessing for suitability, mediators should ensure that prospective clients are informed as early as possible of the mediator’s duty to conduct any mediation process in an impartial and balanced manner. This can be done in a range of ways:

- through the early provision of information to prospective clients;
- in an early telephone or other discussion with prospective clients;
- in any pre-mediation meeting or MIAM;
- at the point of discussing and preparing to sign the agreement to mediate; and/or
- giving permission to clients to raise any concern they may have at any point as to the mediator’s impartial conduct of the mediation.
Voluntary participation

Mediation and the participation of all – mediators and clients – is voluntary at all times.

Section 10 of the Children and Families Act 2014 and the Child Arrangements Programme have made compulsory the attendance at a MIAM for any applicant in most family proceedings (and the encouragement to attend a similar meeting for respondents) in order to consider mediation or other form of family dispute resolution. It is even more important that mediators ensure:

• Prospective and current clients are alerted to and reminded that mediation is a voluntary process and should be a positive choice for each and both of them.

• Prospective clients have the opportunity in individual meetings to explore whether mediation is the right and voluntary choice for them.

• They consider whether a mediation process should commence or continue if there are concerns in relation to voluntary participation, and particularly where the mediator considers that either or both clients are unable, unwilling or lack appropriate capacity to take part in the process fully or freely because of, for example, abuse or threat of abuse (in which case the mediator must raise the issue and discuss their concerns with the clients and consider whether it is appropriate to start, to suspend or end the mediation process).

• They do not give reasons for people deciding not to take part in mediation, or apportion blame of any kind to a decision not to enter or continue with mediation, for the purposes of completing an FM1.

• Where MIAM attendance is referred from the court, mediators take particular care to explain the voluntary nature of participation in a mediation.

As above, the principle of voluntary participation can be made clear to clients/prospective clients in a range of ways.

Neutrality

Mediators must remain neutral as to the outcome of any mediation. This requires that mediators monitor their practice at all times to ensure that they are not seeking to impose their own preferred outcome or to influence either or both clients towards an outcome not of their choosing.

Resolution mediators do have a responsibility, however, to inform clients if they consider that the outcome/s they are considering might or would fall outside that which a court might approve or order. Mediators may also provide legal and other information designed to assist clients in a mediation process to make informed decisions, but must make it clear that they do not provide partial advice of any kind. Information should be provided as neutral and mutual, and not ‘individualised’ to either client. Mediators should also be alert to points at which it would be helpful for either or both clients to have advice from their individual legal advisers or other specialised advice or support that would assist them in reaching an outcome.

The importance of individual legal advice

It is clear that an increasing percentage of people are not seeking legal advice on family legal issues. This may be because they do not have the means to afford it or that they have made a choice not to do so. Whatever the case, mediators must ensure that they:
- Explain the importance of individual legal advice, especially in relation to any proposals or decisions they may reach in a mediation process but respecting the client’s right to choose not to seek legal advice if that is the case.

- Clarify that although mediators can provide information in relation to general principles of family law in a neutral and mutual way, they are not able to provide advice or information on how it may affect the client’s individual circumstances.

- Ensure that they are able to provide information in respect of how clients can find details of local Resolution specialist family solicitor members and some of the ways in which solicitors might offer advice services in affordable ways.

- Provide information in respect of other sources of legal information and/or advice, whether via the internet, telephone helpline services, local providers such as the CAB or local law centres. Information provided should be in relation to recognised and accredited providers of pro bono or other charitable or voluntary based services.

Whilst it is the case that mediators may have considerable concerns for those who cannot afford legal advice, they must ensure that they work within the requirements of the FMC Code of Practice and must not provide partial advice, as to do so would breach their neutrality and the impartiality of any mediation process.

**Confidentiality, privacy and privilege**

Subject to the caveats in relation to the safeguarding of individuals and particularly of children, and in relation to money laundering legislation or criminal activity, mediation is offered as a confidential process. Mediators must not disclose or share any information about or obtained in the course of mediation to/with anyone without the express consent of each and both clients, an order of the court or where the law imposes an overriding obligation of disclosure.

Mediators must make clear to clients that confidentiality and legal privilege will not apply in relation to any allegation that any person, particularly a child, is suffering or is likely to suffer significant harm. See the separate detailed guidance at appendices 2 and 3 of this Guide.

Mediators should be aware of the existing precedent that guides confidentiality in the mediation process: Re D (Minors) (Conciliation: Privilege) [1993] 1 FLR 932, which is specific to mediation relating to children, arrangements for children or Children Act proceedings (see below in relation to finance and property etc.).

Mediators should also be aware of other more recent precedents in relation to civil/commercial cases which may impact upon family mediation, and of the European Directive (2008) Art 7. Any correspondence and/or discussions with either client’s legal or other advisors can only take place where the clients have given permission for this to happen and mediators must act in a balanced way in providing information so that any information is provided in an even-handed way to both legal advisers. It is too often the case that legal advisers feel concerned that they do not have information about the progress of their clients in mediation and are asked to give advice without understanding the context, so mediators should consider the usefulness of keeping in touch with legal advisers and of forwarding mediation documents to them as part of good client service.

Resolution mediators are expected to hold in mind the importance of good legal advice and that mediators and legal (and other advisers) should endeavour to work as a team to provide the best, most efficient and economical client service. However, they must also ensure that they have explained principles of confidentiality to the clients and have obtained their permission to be in contact with their legal advisers.
Confidentiality and safeguarding

All mediators must be aware of the statutory guidelines set out in 'Working together to safeguard children: a guide to inter-agency working to safeguard and promote the welfare of children' (DfE 2013).

Mediators should also be aware of the local arrangements set out by each children’s safeguarding board for their area, which are available via the internet (enter the name of the nearest town or city followed by 'children’s safeguarding board'). Wherever possible, mediators should make contact with their local children’s services to discuss local arrangements for referring; to gain an understanding of if, where and when it is appropriate to refer; and the action that the team would take should a referral be made.

Where there is a specific allegation that a child has suffered significant harm or is at risk of significant harm, mediators must stop the mediation process and discuss with the clients the limits of confidentiality, their responsibility in regard to protecting children from harm, and the allegation that has been made. They must then decide what action should or must be taken, which includes making a referral to their local children’s services duty team.

Where a mediator is concerned that a child is at risk of immediate significant harm they must, having discussed and agreed their course of action with the clients, report immediately. If the mediator is concerned that discussing with the clients their concern about an allegation would place the child or children at immediate or increased risk of significant harm, they should not discuss the issue with the clients and make an immediate referral to children’s services. Mediators also have a duty of care in relation to adults at risk of or subject to harm due to an abusive relationship or because of lack of capacity. They must consider the potential for honour-based or other violence and where this is the case, mediators should take appropriate steps to ensure that they discuss with clients an appropriate course of action, which may include reporting or referring clients to an appropriate agency. Mediators should not make judgements about either client in regard to what has been reported but seek to provide information and assistance to each and both clients in an even-handed way. Mediators should also take care to ensure that in all cases of safeguarding concerns, ‘next steps’ are discussed with clients and an appropriate onward destination from the mediator is agreed. Great care must be taken to ensure safe exits for clients in these circumstances.

A brief record of what happened and the actions of the mediator should be made as soon as possible.

In all cases relating to safeguarding concerns, mediators should be in contact with their PPC for support, advice and guidance as soon as is possible and practicable.

Full details on how practitioners should deal with such situations are set out in appendices 2 and 3 of this Guide.

Confidentiality, privilege and legal proceedings

Discussions, client negotiation and proposals made within mediation must be conducted on a legally privileged without prejudice basis. Mediators have a responsibility to ensure that clients understand the nature of confidentiality and of legal privilege, and are content to sign the agreement to mediate on the basis that, in doing so, they agree that discussions and negotiations in the mediation process are not to be referred to in any legal proceedings and that mediators cannot be required to give evidence or produce any notes or records made in the course of the mediation unless all participants agree to waive the privilege or the law imposes an overriding obligation of disclosure upon the mediator.
For clarity and as information for mediators, in Farm Assist v DEFRA [2009] EWHC 1102 (TCC) Ramsey J, having reviewed all available mediation precedents, defined ‘confidentiality’ and ‘privilege’ as follows:

**Confidentiality:** the proceedings are confidential both as between the parties and as between the parties and the mediator. As a result even if the parties agree that matters can be referred to outside the mediation, the mediator can enforce the confidentiality provision. The court will generally uphold that confidentiality, but where it is necessary in the interests of justice for evidence to be given of confidential matters, the courts will order or permit that evidence to be given or produced.

**Without prejudice privilege:** the proceedings are covered by without prejudice privilege. This is a privilege which exists as between the parties and is not a privilege of the mediator. The parties can waive that privilege.

**Other privileges:** if another privilege attaches to documents that are produced by a party and shown to a mediator, that party retains that privilege and it is not waived by disclosure to the mediator or by waiver of the without prejudice privilege.

Although Farm Assist v DEFRA concerns a civil case, the principles set out by Ramsey J in his judgment provide a useful framework for family mediators, particularly in relation to matters involving financial/property discussions or proposals.

Mediators should also be aware that, more recently, attempts to utilise other civil judgments have started to emerge, whether it is to establish that an ‘agreement’ was reached in a mediation (Brown v Rice & Patel [2007] EWHC 625 (ChD)), because of third-party interest (Cattley v Pollard [2007] 3 WLR 317, because of alleged misrepresentation, fraud or undue influence (Unilever v Proctor and Gamble [2000]), or on interests of justice principles (Farm Assist v DEFRA [2009] EWHC 1102).

Clients must also understand and agree that all factual information in regard to financial issues must be provided on an open basis, so that it can be referred to in any legal proceedings. All prospective mediation clients should also understand and agree that all information or correspondence provided by either of them in a mediation process should be shared openly and not withheld, excepting any address or telephone number or as the clients may agree otherwise.

It is also important that mediators are aware that Imerman v Tchenguiz [2010] EWCA Civ 908 is likely to mean that any documents produced by a client in mediation that have been obtained without the knowledge of the other and that relate to the other’s financial situation or position should not be read or accepted (or in the case of emailed attachments, opened) unless and until the mediator has clarified what the document is and how it came into the possession of the client. If it is clear that one client was not aware that any document had been taken or is now in the possession of the other, the mediator should stop the mediation and encourage each and both clients to seek legal advice about the situation before continuing with any mediation. Where it is the case that a document is produced that could indicate that full disclosure has not been made or there has been an attempt to hide information, the mediator must also consider whether and if the mediation should or can continue.

**The welfare of children**

As mentioned above, mediators must make clear to clients that confidentiality and legal privilege will not apply in relation to any allegation that any person, particularly a child, is suffering or is likely to suffer significant harm. Mediators have a special responsibility in regard to the welfare of any child of the family and should
encourage and assist client parents to focus on the needs and interests of their children and their future parenting.

Mediators must consider the wishes and feelings of any children of the family and encourage parents to consider the ways in which they may consider their children’s views, wishes and feelings.

Where it is appropriate to do so, mediators may discuss with client parents whether and to what extent it is proper to consult with their children directly in order to ascertain the child’s perspective and any messages they would like their parents to have about arrangements being made for their future parenting. Where clients and mediators agree that it is appropriate to do so, and there has been appropriate discussion with the parents as to how and when this might take place (and they have given their consent and agreement to the terms of their child being consulted), the child should be offered the opportunity or invited to meet with the mediator and their consent given to taking part in a meeting with a mediator once the mediator has explained to them the confidentiality and privacy (and the conditions of it) in a way that the child understands and can agree to.

Any mediator consulting directly with a child or children must have been specifically trained to do so and must hold an enhanced DBS check; they must also provide appropriate facilities for direct consultation. They must offer children confidentiality as to any discussions, except where the child discloses an issue of significant harm and must take care to also explain that if, subsequently, parents ask the court or judge to assist in decision making, then the judge may wish to know what they have said, or the judge may wish to talk with them about their views or arrange for someone else to do so.

Where a mediator suspects than any child is suffering or likely to suffer significant harm, they must ensure that the child understands that another person, responsible for the safety of children, will be informed and, unless it would place the child at further or immediate risk of significant harm, the mediator must talk to the parents about getting help and advice. In any event, mediators must also inform parents (except where in talking with the parents it would place the child at risk of immediate or further significant harm) that they have a duty to refer the matter to an appropriate agency. See appendices 2 and 3 for further information.

Abuse and power imbalances within the family

As touched on above, all mediators must be alert to the likelihood of power imbalances existing or emerging between clients in a mediation. They must ensure that all clients take part in mediation willingly and without fear or threat of violence or harm. They must undertake appropriate screening and assessment procedures before the commencement of, and during, any mediation process. It is important that such assessment in relation to abusive behaviour and/or client capacity is undertaken in individual meetings with each of the clients and that mediators remain alert during any subsequent process of mediation to concerns of abuse or lack of capacity.

Where a mediator has concerns that there are, may be or have been issues of abuse, harm or violence, they must discuss with each and both clients whether taking part in mediation is appropriate and must provide information about available support services.
Where mediation does take place, mediators must ensure that principles of voluntary participation, fairness and safety are adhered to and that they ensure the safety of all clients, especially on arrival and departure.

Mediators must also ensure that they endeavour to prevent manipulative, threatening, controlling or intimidating behaviour by either client during the mediation.

3. **Conduct of mediation**

**First contacts: assessing suitability and appropriateness**

Mediators must always ensure that prospective clients are given full information about the principles and process of family mediation in order that they can assess for themselves and with the mediator whether it is the right choice for them in all the circumstances.

Whether through or from another professional, or directly from a prospective client, on receiving a referral mediators should ensure that they carry out appropriate checks in regard to any conflict of interest.

At the first point of contact, whether by telephone or personally, mediators should check the individual’s understanding of mediation and discuss principles, including that:

- mediation is a voluntary choice for all those involved;
- it is confidential – subject to the usual caveats set out above;
- the decision-making authority rests with the clients; and
- that mediation is an impartial process and the mediator will conduct it in a balanced and even-handed way.

Mediators should also provide an outline of the mediation process, and stress that as they conduct an impartial process and act in a balanced and neutral way, they would prefer not to take details from prospective clients as to how they individually view the situation, but rather that it would be helpful to know what the prospective client hopes to achieve via mediation, what they believe to be the most important issues to deal with, and the reasons for those hopes or objectives.

Mediators should start their process of screening and assessment by stating their responsibility for safeguarding individuals, especially children, and by asking open and direct questions about whether the prospective client has any concerns about meeting together with their former partner (see also safeguarding/screening in the MIAM below). At all times, mediators must remain aware of the importance of maintaining impartiality and balance in any dealings with clients – both before and during mediation. Care must be taken in relation to the prospective client’s opinion of, or narrative around, their former partner and/or their individual perception of the situation, to ensure the mediator does not become (or be perceived to have become) partial to the view of one client rather than the objectives and aspirations of both.

Information should also be provided on the mediation process, e.g. an indication of length and average number of sessions required, and the documentation that will be prepared by the mediator. This should include an explanation of financial disclosure and the privileged status of the memorandum of understanding or outcome.
summary/statement (and that it is an expression of the proposals reached in mediation and not a binding agreement), the value of individual legal advice, and how clients may then achieve a binding agreement. Prospective clients should be provided with the following ahead of any first meeting:

- a preliminary information form (which should be completed and returned to the mediator ahead of any first meeting);
- a blank agreement to mediate;
- information about the mediation process; and
- details of fees and charges.

Resolution precedent documents may be downloaded from the Resolution website. Generally, where direct contact is made by one prospective client, mediators should ask them to ensure that their former partner makes contact with the mediator (excepting generally where a prospective client is referred for a MIAM – see below). This avoids mediators making a ‘cold’ contact with a prospective client who may be unaware that their partner or former partner is considering mediation. Great care should be taken in handling the sensitivities of first contacts at all times.

**The importance of screening and assessment processes**

All mediators should be aware of and conversant with the scope of abuse in couple relationships, which is not limited to forms of violence alone. Some forms of abuse are subtle, and may include but are not limited to coercive or controlling behaviour which has resulted in one person’s inability to be self-determined or act independently of the other, or forms of emotional abuse or bullying that have led to a serious loss of self-esteem in an individual, reducing their capacity to take part in discussions on an equal footing. It is essential therefore that all mediators ensure they have a clear understanding of, and carry out a process for, screening and assessment for all aspects of harm or abusive behaviour, whether in the past or ongoing, proven or alleged, and should also be alert to and assessing the person’s capacity to take part. It is also critical that mediators remain alert to factors in the clients’ past or continuing relationship which may put either client (or their child) at risk, or affect either client’s capacity to take part equally in a mediation process. Prior to starting a mediation process, mediators should offer a confidential meeting to each client (as mentioned above) in which they outline the main safeguarding/screening issues discussed above, and discuss any concerns they may have voiced in any telephone conversation or recorded or indicated in their returned preliminary information form.

This is to clarify whether mediation is the right and voluntary choice for them and consider with them what would assist in ensuring that they can take part in any process of mediation comfortably, openly and without fear or anxiety.

Where it is the case that mediation is not an appropriate or suitable choice, mediators should ensure that they have discussed with that prospective client next steps to ensure their individual safety or that of any child or children (including any referral that the mediator will make to appropriate authorities where it is appropriate to do so).

Mediators are not under any obligation to share or to disclose information relating to abusive behaviour discussed in individual meetings prior to the mediation to the other prospective client as the meeting is offered pre-mediation and as a confidential meeting. (Note, however, that mediators should make clear that confidentiality offered in an individual meeting is subject to the usual caveats set out above and make clear
that information shared in an individual meeting that is likely to be pertinent to any subsequent mediation discussions would need to be disclosed by the client as part of any subsequent mediation process. The mediator’s role is not to make judgements about either or both clients and/or their situation, but to assess with each the suitability of a mediation process given all the circumstances - and where it is not, that each client has a forward path beyond the meeting that ensures the safety of all concerned. See appendices 2 and 3 for further information.

First meetings

Good practice dictates that an individual meeting is conducted with each prospective client. Even where the clients’ stated preference is to meet together, mediators should explain and ensure that prospective clients are seen separately in order to carry out an assessment and screening process, to check information provided by the client on their preliminary information form, and to discuss any special needs or arrangements that would assist them to engage in the process comfortably and confidently. Individual meetings can serve a number of purposes and should be seen as an integral part of any mediation process. Mediators should make clear in any advance or forward information that mediation starts with individual meetings. It is up to mediators to decide how they will conduct individual meetings and what they will cover in that meeting. Essentially, apart from a process of screening and assessment, individual meetings also provide an opportunity to prepare clients for any subsequent mediation; to give individual clients the opportunity to ask questions that they might feel inhibited to ask in front of their former partner; to get a sense of the mediator and the environment for mediation; and to receive information about other services of help and support that might help in either preparing for or supporting them through the mediation process itself. For mediators it provides an opportunity to start a process of engagement with each client; manage client expectations; clarify priorities and aspirations; and to gather information about the nature of any dispute and the areas where there may be a level of agreement and an opportunity to de-escalate conflict or at least to establish what is likely to cause conflict between them in any subsequent joint meeting. Mediators should take care to manage meetings so that they are clear that although any first meeting is offered on a confidential basis (subject to the exceptions in relation to harm etc.), any information that is shared that may have relevance in any subsequent mediation would need to be shared latterly in the joint meetings. Otherwise, mediators should ask questions which assist people to consider what is important to them to sort out and what they hope to achieve if they decide to mediate, and to make clear that mediation isn’t about what has happened but rather what they would like to happen for the future. The aim, apart from ensuring that appropriate screening and assessment has been carried out is to prepare individual clients so that they can start their joint mediation process appropriately informed, engaged and with confidence. Generally, first meetings and MIAMs should be conducted in similar ways (see below).

Mediation information and assessment meetings

A MIAM is triggered by intent to issue proceedings. Section 10 of the Children and Families Act 2014 makes it compulsory for those intending to issue proceedings in most family matters to attend a MIAM, with a strong encouragement for respondents to do the same. Clients in this situation may be less likely to engage with mediators in the first instance and care should be taken in making contact with each and in providing an explanation as to the purpose of the meeting. Resolution believes the information and assessment meetings offer a significant opportunity to engage with clients and to provide a valuable client service in relation to separation or transitions akin to the ‘options meeting’ already offered by many members. Information and assessment meetings should not, therefore, be viewed as a ‘bureaucratic hurdle’ or of little significance. Good practice guidelines are that these meetings should not be for less than 45 minutes or more, generally, than one
hour, and should be charged for accordingly. (The FMC guideline suggests that mediators should not charge less than the current legal aid rate).

Wherever possible, appropriate and practicable mediators should offer a MIAM to both the applicant and respondent, even where the prospect of mediation might seem slight, as it is also important that individuals have an opportunity to consider the other options available to them and to discuss any other information needs they may have and for which the mediator may signpost.

Mediators should consider carefully how they can best and most economically provide information to referrers and to prospective attendees about the purpose of MIAMs, and consider the means by which they will gather information ahead of the meeting in order that they may use the time spent with the attendee to best advantage. This may include:

- Information provided on the mediator’s/practice website.
- Leaflets provided to referrers for client use.
- A short, preliminary information form to be completed by prospective clients and returned to the mediator (bearing in mind that attendees may not wish to provide a great deal of personal or sensitive information prior to a MIAM).

Mediators should provide information about the purpose of the MIAM, ensuring that prospective attendees understand that it will provide an opportunity to consider:

- Whether and what other processes of dispute resolution might be available and suitable for them. (Note that it is the mediator’s responsibility to familiarise themselves with information about other forms of family dispute resolution and to be able to discuss these options accurately with any potential client.)
- Any information they might need in relation to their circumstances, e.g. the effect of separation for children, parenting apart, the legal process, and signposting/next steps information pertinent to their circumstances, e.g. in relation to debts, housing/accommodation, benefits, personal professional support services etc.

Mediators need also to ensure that information is provided in a neutral and mutual way, bearing in mind that they may subsequently be acting as mediator with the two people whom they have met separately.

**Safeguarding/screening and assessment in the MIAM**

It is essential that mediators carry out a process of assessment for harm or potential harm as part of the invitation to, and at, the MIAM. It is likely that people who have been or are in an abusive relationship which has remained unreported will be among those who will be required to come to a MIAM. Where there are issues of harm, mediators must ensure that, as above, they adhere to their duties and responsibilities in relation to safeguarding and ensure appropriate referral is made where necessary and that information is provided to clients as to next steps. See appendices 2 and 3 for further information.

Mediators conducting MIAMs may conduct these as confidential, subject to the usual caveats, and this should be made clear to individuals prior to any meeting. However, and with a view to the potential for mediation, they should also explain that in a mediation, all information is shared and therefore information shared in an individual meeting that may be pertinent to any subsequent mediation decided on would need to be shared.
Where it is the case that information is shared in an individual meeting that relates to issues of abuse or harm, mediators must (in the case of safeguarding of children) consider appropriate referral to children's services. Where what is reported raises issues of immediate, serious or significant harm then a mediator should refer immediately.

In the case of vulnerable adults, mediators should provide information in respect of ensuring protection from abuse, harm or violence and provide information about sources of local help and support. Where this is the case, the mediator is under no obligation to share with the other person what has been said. Mediators should also bear in mind that their role does not require them to make judgements about whether there is or has been abuse in a relationship but to act appropriately to ensure information about personal protection from harm or abuse is provided to the person who has reported or alleged harm or abuse. See appendices 2 and 3 for further information.

**Legal aid eligibility**

All mediators are required to be able to assess prospective attendees for eligibility for public funding for mediation. Mediators should provide information to prospective attendees about eligibility limits and/or refer them to the Community Legal Advice Service. Information for prospective clients is available on the FMC website or on the direct.gov website, both of which also provide links to the online eligibility calculator.

Mediators who do not hold a contract for the delivery of legally aided mediation should make clear to both referrers and individuals that legal aid is available for mediation for eligible people and, where this is or may be the case, refer them to those practices that can offer legal aid. Where prospective attendees state a preference to meet with a mediator who cannot offer a legally aided service even though the prospective clients know that they are or would be eligible for public funding (and who wish to pay privately), those clients should confirm in writing that this is the case.

**Conducting MIAMs via other media**

As stated above, Resolution believes the information and assessment meetings offer a significant opportunity to engage with clients and to provide a valuable service in relation to separation or transitions akin to the ‘options meeting’ already offered by many members. They are not a ‘bureaucratic hurdle’. Mediators should therefore give very careful consideration to the appropriateness of agreeing (or offering) to conduct such meetings via telephone or other technology. It is likely that the opportunity to provide the best client service in relation to properly exploring with a prospective client the issues, the range of ways they might resolve things and providing information or sign-posting to other services of support and assistance may be lost or curtailed.

It is also the case that remote contact severely affects the mediator’s ability to properly assess with potential clients any aspects of abusive behaviour or client capacity.

Occasionally, however, a mediator may need to properly consider whether conducting a MIAM via telephone/Skype may be appropriate - for example because of the potential client’s location, because of a disability.

If this is the case, mediators should first consider whether one of the exemptions from attendance at a MIAM may apply; whether it would be more appropriate for a MIAM to be offered nearer to the client’s home area (and information provided in respect of mediators local to that prospective client); and generally whether there is the prospect of a mediation (or other form of family dispute resolution) if either prospective client is out of the jurisdiction. If the case involves child abduction or international aspects, mediators should also be aware of
the specialist mediation service offered by Reunite International and provide information to the prospective client. (See also the section on international parenting below).

Generally and otherwise, mediators are reminded that they can (and should) discuss with their PPC any request or consideration being given to conducting a MIAM via telephone.

**The first mediation meeting**

Prior to any first meeting, whether an individual or joint meeting, mediators should take care in establishing an appropriate, sensitive, safe and welcoming environment for mediation. It is important to remember that a first joint meeting may be the first time that clients have sat together in the same room for some time and it may feel awkward or uncomfortable initially. Generally therefore, mediators should ensure that they consider:

- Appropriate arrangements for waiting – especially where either client has voiced concerns about seeing or meeting with their former partner in the first instance. Reception staff should be properly briefed to be able to welcome and arrange waiting for each client.

- Mediation rooms should be comfortable and mediators should ensure that all required documentation and resources are available within the room.

- Mediators should check that there is easy exit from the room for both clients and for themselves (and that they have properly briefed support staff and have a strategy in place should any issue of abuse arise during the mediation).

- Wherever possible, mediators should have an appropriate and private space available should either client need to take a break during the mediation meeting.

At a first meeting mediators should ensure that both clients are clear about the principles and conduct of the mediation and are willing to sign the agreement to mediate, which must be signed before starting the mediation process. Care should also be taken to ensure that arrangements for payment have been discussed and agreed before commencing the first mediation meeting.

Mediators should then:

- establish the issues to be discussed and resolved, taking particular account of the needs of any children;
- create with the clients a mutual agenda; and
- begin to discuss with the clients the priority issues, establishing whether there are short-term matters to be dealt with and planning with the clients the medium- and longer-term issues and priorities to be considered.

**Financial disclosure – use of forms**

If the clients are intending to deal with their finances in the mediation, time should be set aside towards the end of the meeting to go through the (mediation) form E or other financial form to be used in order to explain to clients the sections pertinent to their disclosure and to provide any information to assist them in assembling the information and documentation that will be required to provide a full and frank disclosure. Mediators should provide clients with information about the necessity and requirements of financial disclosure and
emphasise that, whichever route they choose to settle financial issues between them, an open disclosure of finances will be required.

A growing number of clients now download the form E financial statement for themselves from the Ministry of Justice or HM Courts and Tribunal Service websites, or may have been directed to or provided with it by a/theyr solicitor prior to choosing or coming to mediation. Because the HMCTS form E is primarily for those applying for a financial order following a separation or divorce, it is not particularly mediation-friendly and includes the opportunity to set out, for example, standard of living and ‘behaviour’ and conduct issues (although it also makes clear that this will only be considered in ‘very exceptional circumstances’). That might prompt further conflict or misunderstanding between the clients, or an expectation or fear that they will be going to court. Mediators using this form should therefore ensure that they explain carefully and fully to the clients the purpose of the form generally, and that the questions set out at Part 1 (factual details that the mediation clients will already have provided), Part 4 in relation to conduct or behaviour, standard of living etc, and at Part 5 (order sought) do not need to be completed by them for the purposes of mediation. As an alternative they can be removed before giving the clients the form to be completed, simply asking them to note their name at the top of Section 2 - where details of financial disclosure start. It can also be useful to spend some time with the clients agreeing what sections of the information required actually will apply in their circumstances (not all mediation clients will have second/other properties or business assets or directorships). This can reduce the worry that clients may have about the enormity of the information asked for; help to clarify exactly what applies to their circumstances; and, by reducing the amount of information that is actually going to be required, make the disclosure process feel more manageable for clients. It can also help identify where one may have a concern about assets or liabilities that they are not sure about or are concerned may not be disclosed or are being ‘hidden’ by the other – in which case, mediators can reiterate the importance of full and frank disclosure and can note what the concerns are for discussion in any meeting to record financial disclosure.

Although Resolution produces a template mediation form E, it is up to mediators to consider which form for gathering financial disclosure will work best for the clients, in their local area and with colleague solicitors who may be latterly charged with checking and advising on financial disclosure made in mediation, and bearing in mind that if the clients latterly require a court route, they may be faced with repeating the recording of financial disclosure information from the mediation form E to a court form E. However mediators choose to gather financial disclosure from clients, they should bear in mind the importance of ensuring that it is a robust process and to a standard equivalent to that which would be required by a legal process or court-scrutinised route, unless as otherwise agreed and recorded by both clients.

The Financial Remedies Working Group established by the President of the Family Division is currently considering a modified form E. Any update or amendment to either the form E or the Resolution Mediation form E will be notified to mediators.

**Before any meeting to record financial information**

Mediators should explain to clients that they will require completed forms E or other financial form returned to them ahead of the meeting (usually three to four days ahead) and that, if the completed forms are not received, then it may not be possible to proceed with the meeting. An explanation of the importance of supporting documentation should also be provided to clients, along with the fact that, although the mediator is not responsible for verification of documentation, they will assist clients in how they might ensure that this happens appropriately and to an acceptable standard.
The issue of pension valuations remains a difficult one for the purposes of recording financial disclosure as it can take considerable time for documents to be produced. Mediators should discuss this fact with clients, suggest that they contact the pension provider as soon as is possible and enquire as to the expected length of time it may take to get a pension valuation.

Generally, a gap of not less than four weeks should provide clients with sufficient time to gather most of the information and documentation that they need in the absence of a pension valuation, and mediators should ask clients to use their most recent annual pension statement unless and until they receive a valuation. Clearly, this will vary between individual clients and mediators should plan with clients according to their individual and joint situation.

Establishing financial disclosure

Before the mediation meeting where finances and financial disclosure are to be discussed, mediators should ensure that they have received from each client a completed (mediation) form E or other financial form to be used and copy supporting documents (unless it is the case that the clients are to bring the documents to the meeting and the mediator is to copy them then.) If the completed forms have not been received by the date agreed at the previous meeting, mediators should take steps to contact clients to check whether there has been a problem in returning them and whether the client can ensure they are with the mediator in good time before the meeting.

On receipt of the completed forms, mediators should usually:

- Check through each one, noting any areas of discrepancy between each client’s recorded figures, missing information that will need to be provided and any other features of note.
- Copy both forms in order that the mediator and each client have a set of both forms (and, if provided, any supporting documentation).
- Optionally, mediators may wish to draft a ‘pencil’ schedule of major figures as an ‘aide memoire’ for themselves in the meeting with the clients, and/or a more detailed summary if a case is particularly complex.
- Prepare an outline for scheduling client information on the flip-chart.

At the meeting, mediators should, as in all meetings, first check with both clients whether any matter has arisen since the last meeting that may need to be dealt with ahead of the scheduled recording of finances.

Mediators should then:

- Reiterate the purpose of the meeting.
- Explain the use of the flipchart and check that each and both clients are comfortable with the recording of their finances on it.
- Explain that they will transcribe the information once listed on the flipchart into a draft open financial summary/statement and send it to each client as a ‘working’ document for the remainder of the mediation process and until financial disclosure is complete.
• Explain that they have copied both form Es or other financial form to be used so that all will have a copy of each, and ask that clients work with them on a page by page basis to record their joint financial situation.

Financial information provided by both should then be recorded on the flipchart to set out:

• Assets.
• Liabilities and debts.
• A family budget of income and significant outgoings – this last relates to the ‘here and now’ – future income/outgoings/budgets should be reserved to discussions relating to options for the future as part of reality testing any proposals the clients are considering.
• Some clients ask or want to use their mobile phones/other device to photograph the flipcharted information pending receiving the transcribed draft open financial summary/statement prepared by the mediator. Where it is the case that the flipcharted information includes information in respect of options, proposals etc., mediators should ensure that the flipchart sheets are marked as ‘Without Prejudice’ to avoid any confusion about the status of the recorded information.

Resolution mediators, as family specialists, will have a clear understanding of what needs to be included in any financial disclosure and how to check out areas of discrepancy, uncertainty or missing information. Mediators should also ensure both clients have a clear understanding of the information recorded and why it is required. An important part of recording financial disclosure is for clients to be properly informed about their own finances and confident in their ability to negotiate together towards developing options for settlement. It is usually helpful to emphasise the two-stage process as follows: (1) provision of financial information (which should not create any expectation of division or financial provision), and (2) discussing options for division and/or financial provision.

Mediators have a responsibility to ensure that they assist clients in making a full and frank disclosure of their finances. However, it is not the mediator’s role to interrogate. Where it appears to the mediator that financial information is being deliberately withheld or where either or both clients are unwilling to disclose financial information, then the mediator should consider whether to end the mediation and to discuss with the clients alternative means of resolving financial issues between them. Otherwise, financial disclosure should be at a standard equivalent to that which would be required by a legal process or court-scrutinised route, unless as otherwise agreed and recorded by both clients.

**Arrangements for children**

Where separating or separated parents are considering future arrangements for their children, mediators should ensure that they:

• Gather information about each child as an individual in order to assist parents in planning to best meet their needs.
• Provide information to parents about what is most helpful to children and young people when parents part (whilst recognising their own professional boundaries).
• Set out the factors that can cause emotional harm to children and young people.
• Provide information about services of support and assistance for separated parents, children and young people – bearing in mind that it is often the case that reactions to parental separation are generally within a normative range. Children benefit most from the support of each of their parents during a family transition and/or from the support of other significant members of their family or supporters who can be briefed by parents to provide support in a neutral way.

• Mediators should, however, be alert to parental concerns about their child’s behaviour that is clearly outside that which might be considered normal – e.g. self-harming, eating disorder, risk-taking behaviour, drugs, alcohol abuse etc. - and for which parents should be provided with information and links to specialised services of assistance.

Discussions in mediation about the upbringing of children when parents separate should take account of the day-to-day care in the unique context of their own family. Parents should be assisted in considering:

• What and how to tell their children about their separation and future living arrangements.

• How to balance their parenting between each and both parents and the importance of children being able to grow up in a close and loving relationship with both of their parents, though apart.

• How to manage parental communication in a way that best meets the needs of their children and especially in relation to providing appropriate boundaries for their children.

• Sharing information such as addresses as to where their child or children will be when they are with each parent, and the means for contacting each other.

• Significant family relationships – grandparents and other family members.

• How new relationships of the parents might best be managed as far as children are concerned.

• Arrangements that have significance for children and young people – eg for family pets.

• Significant issues and events – birthdays, Christmas, school holidays etc.

• Future education, health care issues and any special needs relating to their children.

• Reality testing arrangements they are considering in the context of their growing children’s needs.

• Consideration of the importance of taking account of young people’s needs as they grow towards independence – having time to spend with their friends and peers etc.

• Contingencies for when things go wrong.

Wherever it is appropriate, mediators should assist parents in setting out their aspirations as separated and co-operative parents in the memorandum of understanding or annexed to it as a parenting plan.

Parenting plans

Parenting plans should not be a means of simply setting out the ‘metric’ of separated parenting – the time children will spend with each parent - but a statement of how parents hope to raise their children though apart. A parenting plan outline is available on the Cafcass website, and may be used to assist parents in thinking through what they need to consider in making arrangements for their future parenting. Rather like a form E, the
parenting plan needs to encompass everything that might need to be considered by any set of parents, it is therefore a very comprehensive document. Parents can complete the plan in hard copy or electronically and it can be helpful for parents to do this during their mediation, aided by the mediator in discussing and deciding on what and how they intend to record their decisions in the plan outline. Alternatively, mediators may assist parents in reaching arrangements to be recorded in a parenting plan outline that is drafted by the mediator as an outcome document from the mediation.

There is particular policy emphasis being placed on the use of parenting plans as part of the overall reform of family justice. It is intended that, wherever possible, parents should give consideration to the drafting of a parenting plan to assist them in having a framework that helps them to parent their child or children to adulthood even though they no longer live together.

Parenting plans will not carry any evidential weight in court proceedings but parents may attach a copy of any existing plan to their C100 application if they make such an application.

**Hearing the voices of children and young people**

Mediators should also be aware that work is underway to establish how all children and young people aged 10 or over have an opportunity to express their views about matters and decisions which may affect them, should they wish to do so. Any new arrangements or requirements to be established will be notified to mediator members.

**Developing options**

Once mediators and clients have gathered all the information that is needed to make informed decisions about the future, clients should be assisted to consider all the options that may be available to them. Mediators must take care not to provide clients only with options that they, the mediator, believe might be an appropriate outcome, but they can assist clients by providing other options that the clients may not have thought of or put forward, so long as they avoid any indication that the option suggested is a preferred or ‘better’ potential outcome. As clients work towards achieving an outcome, their preferred option should be carefully reality-checked and information given where an option being considered may fall outside that which a court would order or approve. Mediators should also be alert to where and when it would be helpful for clients to seek individual legal or other advice and encourage clients to do so.

**Practicalities**

As stated above, it is important to carefully reality-check options being considered. This must include affordability and workability in relation to any future financial plans or proposals under consideration. If the clients are considering new or re-mortgages, releasing of one partner from the mortgage etc., they should be encouraged to seek such information and advice as they require to ensure that they will be able to do so, and at what rate etc. Mediators should be aware that with new arrangements in relation to mortgages in particular, the amount of loan available and obtaining a mortgage offer may take time and may not be at a level that either or both clients may expect or hope for. Future financial outgoings should also be tested to ensure affordability. If gaps or shortfalls are evident and clients still wish to proceed, the mediator should ensure that they record, as a caution in the memorandum or outcome documentation, that there is a shortfall or gap which has been discussed and will need to be addressed by the clients.
Preparing to draft documentation

Resolution provides model document outlines for both open financial summaries/statements and for the memorandum of understanding. Mediators should be aware of the headings in these documents and ensure that at a point where the mediation is coming to a conclusion, they check with clients that they have covered all pertinent areas, including e.g. the drafting of wills, signing of notices of severance, any prospect of inheritance, tax (including any tax credits in payment or to be applied for) and benefits.

Drafting and presentation of mediation documents

Mediation documents are of great significance to clients, recording as they do the commitment they have made and the work they have undertaken in the mediation, often in difficult and emotional circumstances. Documents should always be of a quality and standard that reflects that significance. The language used in mediation documents should be carefully considered by mediators. Mediation documentation is also the 'shop window' of mediation – that part of a mediation that is seen externally - and mediators should therefore ensure that documents are carefully prepared, well presented, and accurate.

Recording

Any written record undertaken by the mediator as part of the mediation process is open to the clients’ scrutiny. Mediators should explain this to clients and, if note-taking, should keep such notes to the bare minimum of facts, tasks yet to be undertaken and any other information that assists both clients and mediator to progress the mediation. Mediators may wish to consider whether they should send clients a brief and balanced summary of discussions and tasks to be undertaken between meetings as part of client service. Any summary provided should be one document sent to both clients, separately if they prefer. Mediators who choose to do so should also ensure that their fee information reflects this, or that any such correspondence is costed into their overall fee. Clarity around the confidentiality of any individual discussions, which are generally best avoided if possible but occur at times (for example for assessment or screening, in first preparation meetings or in a shuttle mediation) is necessary, and any notes of such discussions should be clear about this, as should the agreement with the client about the nature and disclosability or otherwise of such notes. Generally, all mediators are reminded that family mediators may not keep 'mediator secrets' or individual confidentiality.

It may also be helpful to provide inter-meeting summaries to the clients’ solicitors, so that they are kept informed about progress and are better able to support their respective clients through the process. The clients’ consent should be obtained in advance and the fact that their solicitors may charge for reading the summary should be made clear and taken into account. The basis on which the information is disclosed should also be considered carefully in the context of confidentiality and privilege - and documented appropriately.

For professional practice purposes and particularly when working towards accreditation/competence assessment, mediators should also keep a brief ‘professional practice note’. This should record:

- a brief overview of the situation and the issues brought to the mediation;
- what skills and/or techniques they used in the mediation;
- what went well, and what, on reflection, they might have done differently; and
- what areas of professional practice they would like more information or guidance about.
Professional practice notes are kept separately from client files as they provide an aide memoire on practice issues for discussion between the mediator and their PPC, and as a means of preparing their accreditation portfolio. If they are for the mediator’s benefit and therefore belong to the mediator rather than the clients, then they need to be suitably anonymised and may not be charged for.

**Responsibilities in relation to data protection**

The purpose of the *Data Protection Act 1998* is to protect the rights and privacy of individuals, and to ensure that data about them is not processed or shared without their knowledge and is processed with their consent wherever and whenever possible. All family dispute resolution practitioners including mediators should be aware of their responsibilities in relation to the provisions of the Act. This has application in family dispute resolution processes where there is, may be or has been data or information that may or could be shared with other professionals (lawyers, IFAs, financial neutrals or family consultants) who may be involved in working with, advising or representing clients as part of or outside of any family dispute resolution process. Care should therefore be taken to ensure that any information that is to be shared outside of the immediate mediation process should only be shared with the knowledge and consent of those involved.

All practitioners should note however the provision for permitted disclosure of information/data (exemptions from non-disclosure):

- ‘by or under any UK enactment
- by any rule of common law
- by order of a court or tribunal in any jurisdiction.’

In these circumstances, the legal obligation over-rides any objection the individual may have.

Disclosure is also permitted if it is likely to assist in the prevention, detection or prosecution of a crime and a failure to disclose would be prejudicial to those purposes.

Schedules 2 and 3 of the Act set out the circumstances under which the processing of personal data may be considered fair and lawful (‘the principles’). The main principles are that you must:

- have legitimate grounds for collecting and using the personal data;
- not use the data in ways that have unjustified adverse effects on the individuals concerned;
- be transparent about how you intend to use the data, and give individuals appropriate privacy notices when collecting their personal data;
- handle people’s personal data only in ways they would reasonably expect; and
- make sure you do not do anything unlawful with the data.

From time to time mediators have received requests from clients or former clients to provide information about the data the mediator holds about them. This is known as a ‘subject access request’. Generally, people are entitled to be informed of what personal information is held about them and to be provided with it, including how the information was obtained. Mediators who receive such a request are entitled to ask for a reasonable fee or payment to cover the cost of producing such information (recommended to be £10 but it is possible to charge more according to how much work is involved in researching, preparing and providing the
information). However, if the information contains information about another person, then the information cannot be provided without that person’s permission. Generally, if the client hasn’t specified what particular information they are seeking, then it can be useful to seek clarification of what it is they want to be provided with. Further information in respect of professional duties in relation to Data Protection is available from the website of the Information Commissioner’s Office.

The memorandum of understanding/outcome statement or summary

This document should be clearly marked as ‘confidential’ and ‘without prejudice’ and the precedent paragraphs from the Resolution model document must be used at the opening of the document, adapted as required for the particular clients.

All headings in the model document should be addressed and if a particular issue has not been discussed in the mediation, it should be indicated that this is the case. Where there are outstanding matters to be resolved, these should also be noted in the document. If a mediator has a concern about any part of the outcome, but having discussed this concern with the clients they wish nonetheless to proceed with a proposal or decision, then the mediator should record this as a caution within the document.

Language used in mediation documents should be clear, unambiguous, neutral and balanced. Formal legal terminology should be avoided (unless an explanation as to the term used is also provided). Language in relation to decisions reached about the formal ending of the couple relationship and especially in relation to arrangements for the children of the family should be sensitive to the client’s situation and circumstances. Use of the words ‘agreed’ and ‘agreement’ should be avoided in the memorandum of understanding in order to ensure there is no confusion as to the status of the proposals made in mediation.

Mediators should ensure that they have drafted a bullet point summary of the proposals that clearly sets out the proposals reached, with a timetable wherever possible and practicable.

The memorandum or outcome statement/summary is the mediator’s recording of the outcome from the mediation and is signed by the mediator and not by the clients (this also ensures that there can be no misunderstanding about the non-binding nature of the document).

Open financial statement

This document should be clearly titled as an open summary or statement and the opening paragraphs from the Resolution model document must be used (adapted as necessary) and an indication given in the opening paragraphs as to whether the document provides full disclosure, or whether disclosure is not yet complete, and the date that the clients have agreed applies to their disclosure.

Usually, a ‘working’ draft of this document will have been prepared by the mediator following the joint recording of the financial information provided by the clients. Once all financial information has been finalised as far as possible, the mediator should prepare a final version that can be signed by the clients at the last meeting.

Background information should be factual and care should be taken when recording any such information to ensure that nothing of a particularly sensitive nature is included, as this document may be seen by a number of other professionals.
The financial schedule should set out the client’s finances clearly (including details of account/policy numbers/references) and any significant points flagged up – including where there is any information still to be provided/not yet available. The schedule/s should include all assets and liabilities, income and outgoings, and details of the documents seen with copies of these, and the clients’ individual (mediation) forms E or other financial form attached if required.

This document is signed by the clients rather than the mediator as an indication that it is their agreed financial disclosure.

**Variations – disclosure**

Obtaining financial information, particularly in relation to CEV/pension valuations, can cause considerable difficulties in mediations. Where it does not prove possible to obtain a valuation but the clients wish to proceed with their negotiations, or clients state that they do not wish to deal with any pensions, mediators must make clear that as pensions can represent a significant family asset there is a danger that any proposals reached in regard to their finances may be set aside once a valuation of the pension is made. A caution should also be placed in any documentation as to the fact that pension information has not been made available or that clients, having received information about the importance of pensions, have stated their wish not to discuss or deal with any pensions and that the clients need to be aware of the effect this may have on any proposals reached/recorded.

Occasionally, clients may decide that they wish to proceed as far as is possible in their negotiations even though they are waiting on a pension valuation/CEV – and especially if they are aware or have been informed that information may take months rather than weeks to be available. Having provided information about the importance of pensions, mediators should consider carefully with the clients whether they should continue their negotiations on that basis, or whether they should re-schedule the mediation process to a time when the information is going to be available. Whatever the case, mediators have a duty to ensure that clients are provided with the best possible service – and one that does not result in proposals that are unfair or cannot be taken forward to a workable or binding conclusion as a result of missing financial information. It may be possible to discuss options in respect of pensions in terms of principle without specific values, for example, with the details to be finalised when CEVs are available. That will depend on the circumstances of the individual case.

As noted earlier, where clients decline to provide full information on any aspect of their finances, or the mediator has a concern that disclosure is being deliberately withheld, they should consider with the clients whether to terminate the mediation. If so, they should provide clients with a written confirmation as to the reasons for ending the mediation and a note of any proposals outside of the financial matters that have been reached in the mediation. If this is provided as a memorandum of understanding, the mediator should record that the mediation was ended as it was not possible to obtain full financial disclosure and record only those proposals made in relation to non-financial matters.

**Money laundering, fraud etc.**

Mediators have a responsibility to ensure that prospective and current clients are properly informed about the mediator’s duty to disclose suspected or actual fraudulent or criminal intent. This information is detailed in the agreement to mediate and the client’s attention should be drawn to it and reminders provided if the mediator has any concern that the client may make such an allegation or disclosure.
Where mediators have any concern in relation to allegations - or potential allegations - of a fraud or other criminal offence, or a money laundering offence, they must manage the situation in accordance with legal and regulatory duties.

**The effect of Bowman v Fels – mediation**

‘Money laundering’ refers to the process of concealing the source of legally, illegally, and grey area-obtained moneys. The Proceeds of Crime Act 2002 (as amended) sets out legislation in relation to money laundering offences and includes provisions requiring businesses within the ‘regulated sector’ (banking, investment, money transmission, certain professions etc.) to report to the authorities suspicions of money laundering by customers or others. One consequence of the Act is that solicitors, accountants, and insolvency practitioners (and some businesses, e.g. banks), who suspect as a consequence of information received in the course of their work that their customers or clients (or others) have engaged in tax evasion or other criminal conduct from which a benefit has been obtained, are required to report their suspicions to the authorities (since these entail suspicions of money laundering). In most circumstances it would be an offence (tipping off), for the reporter to inform the subject of their report that a report has been made. These provisions do not, however, require disclosure to the authorities of information received by certain professionals in privileged circumstances or where the information is subject to legal professional privilege.

The Court of Appeal considered these issues in *Bowman v Fels* [2005] EWCA Civ 226 and recorded at para 100:

‘The need to encourage co-operation and the value of consensual settlement have been underlined both nationally, by the Woolf Reforms in particular, and internationally, e.g. in the *acquis* of the Council of Europe and the developed practices of courts in countries such as the United States and Canada. Consensual settlement gives effect to the parties’ perception of the strengths and weaknesses of their respective positions, which would otherwise have to be determined by litigation to judgment. Any consensual agreement can in abstract dictionary terms be called an arrangement. But we do not consider that it can have been contemplated that taking such a step in the context of civil litigation would amount to "becoming concerned in an arrangement which.... facilitates the acquisition, retention, use or control of criminal property" within the meaning of s328. Rather it is another ordinary feature of the conduct of civil litigation, facilitating the resolution of a legal dispute and of the parties’ legal rights and duties according to law in a manner which is a valuable alternative to the court-imposed solution of litigation to judgment.

101. We appreciate that this means that there is a distinction between consensual steps (including a settlement) taken in an ordinary litigious context and consensual arrangements independent of litigation. But this is a distinction that is inherent in recitals (17) and (18) and in the second paragraph of article 6(3) of the 2001 Directive, as well as in ss330(10)(c), 333(3)(b), and 342(4)(b) of the 2002 Act.... The 2002 Act makes it clear that the distinction is between situations where there are existing or contemplated legal proceedings and other situations, and this seems to us consistent also with the language of recitals (17) and (18) and the second paragraph of article 6.3 of the 2001 Directive’.

And at para 95:

‘Information communicated or given with the intention of enabling a court to adjudicate upon the respective rights and duties of opposing parties would not be given for such a
purpose, even though it happened to disclose that one or other party had engaged or was engaged in money laundering activities (eg a VAT or tax fraud). For the reasons we have already given, the issue or pursuit of ordinary legal proceedings with a view to obtaining the court's adjudication upon the parties' rights and duties is not to be regarded as an arrangement or a prohibited act within ss327-9.'

Mediators should be alert to the possibility of money laundering, fraud and other criminal intent, and if in doubt about any particular situation should be in contact with their PPC in the first instance and should also consider what to do in accordance with their firm's money laundering reporting procedure (if applicable).

Mediators should note that requirements and arrangements in regard to money laundering may be reviewed and/or changed and should take responsibility to ensure that they keep currency of information about this aspect of law and practice. For more information see the Law Society practice note guidance in relation to money laundering.

**Payment for mediation documents/concluding the mediation**

In all cases, the mediator should discuss with clients the cost of providing whatever type/nature of documentation they want, in conjunction with the usual discussions that should take place regarding the terms on which the mediator is acting and if or when relevant their firm’s standard terms of engagement which should make clear that any complaint not resolved by the mediator in the first instance or via the firm’s complaint process, should be referred to Resolution. Mediators should consider removing references to the Solicitors Regulation Authority (SRA) from their standard terms of engagement for mediation since the SRA will usually have no power or responsibility in relation to mediation. (See also ‘Dealing with Client Concerns and Complaints’ below)

Mediators should ensure that they have explained at the outset and have reminded clients at the conclusion of the mediation that there is a charge for the preparation of mediation documentation. On completing the mediation documents (which should not usually be more than a maximum of 10 working days from the date of the last meeting), mediators may wish to inform clients that the documents are available and will be forwarded to the clients on receipt of payment. Mediators may also take payment for the mediation documents at the last meeting if this is acceptable to both clients. In any event, mediators should ensure that they have clearly set out arrangements for the payment and delivery of mediation documents.

On release of the documents to clients, mediators should ensure that they remind clients of the onward path from their mediation – encouragement to see a solicitor for individual advice on their proposals if this has not happened already, with a view to formalising their proposals into a binding agreement/consent order.

Mediators should consider diarising a 'follow-up' letter to clients to check that they are progressing with their proposals and to invite them to return to mediation if they have encountered any problems.

**Variations - documentation**

Occasionally, clients prefer not to have a memorandum of understanding, or their mediation may not have included finances and therefore they do not need to make financial disclosure. Early in the process, mediators should discuss the clients' wishes and requirements in respect of the documentation that reflects and records the outcome of their mediation.
This might be by way of a confidential, legally privileged, ‘without prejudice’ letter or a confidential and legally privileged outcome statement or summary. Mediators should take care to ensure that where they do not provide a full memorandum of understanding, they ensure that any documentation they do provide is appropriately headed to indicate the status of the document.

**Payments on account**

Mediators may take payments on account if they have appropriate arrangements to do so, and if that is provided for by the terms of engagement agreed with the clients. They should ensure that they keep a detailed breakdown of time spent. If mediation should end or break down ahead of the time the client/s have lodged payment for, mediators must ensure a prompt return of any outstanding client funds and provide a detailed breakdown of costs incurred. Mediators should also be aware that as mediation is a voluntary choice, they should also consider whether taking payment at the end of each session is a more appropriate means of indicating and confirming that it is the client’s choice as to whether they will continue in a mediation process at the conclusion of each meeting.

**Non-payment**

Generally, mediators should not send documents until payment has been received from both clients. However, from time to time it is the case that one client provides payment but the other does not. In this case, mediators must provide the client that has paid with the documents (as they have been paid for) unless the terms of business which the clients have each signed provide otherwise. Mediators should contact any client who withholds payment to discuss the reasons why this is the case and to consider with the client how payment can be made/collected.

In the case of non-payment for meetings, mediators should inform any client who has not made payment that the mediation cannot continue until payment has been made.

**Ending a mediation process**

We have already touched upon some of the most common reasons for terminating the process. In summary:

- A consensus has been reached on the issues which the clients have brought to the process.
- There is a power imbalance between the clients that cannot be addressed.
- It becomes apparent that either or both clients lack capacity to take part or to negotiate together or to reach a workable, fair and reasonable outcome.
- There is an allegation made in regard to harm or abuse, whether between adults or in respect of a child and the mediator decides that it requires appropriate protection action. Here the safeguarding guidelines must be followed.
- There is deliberate non-disclosure of financial information.
- Information is disclosed, an allegation is made or the mediator suspects fraudulent or criminal intent on the part of either or both clients.
- No progress is being or is likely to be made in relation to the issues to be resolved.
• Either or both clients wish to end the mediation.
• The mediator believes that for any reason related to the principles of mediation, it is inappropriate to continue.
• The client’s individual or joint circumstances change rendering continuing mediation inappropriate in the short or medium term (e.g. pending a property sale or other financial situation, the illness of one or other client).

Where a decision is made to end the mediation, the mediator should ensure that they have discussed with clients the options that remain available to them to resolve any remaining issues or conflicts and ensure that they each and both have an onward destination or immediate ‘next step’ beyond mediation.

Dealing with client concerns and complaints

Mediators have a duty to ensure that they have provided information to clients in relation to any concerns or complaints they may have in regard to the mediation process or the mediator. The agreement to mediate details these arrangements for ease of information giving. Mediators should endeavour to resolve any concern or complaint with the client as a first stage wherever and whenever it is possible to do so. Where it does not prove to be possible to resolve a complaint, clients should be provided with full information as to how they can make a complaint for investigation by their firm or practice (if applicable), and when that process has been exhausted, the Legal Ombudsman (if applicable) and Resolution. Resolution provides information for members in relation to good complaints handling on the website and all mediators should be aware of the guidelines as set out and should also be aware of the standards set out by the Family Mediation Council. All mediators must ensure that they have current and valid mediator membership of Resolution if they have nominated Resolution as the route for any client complaint. Once a client complaint has been received by Resolution, it will be investigated in accordance with the current policy and procedure as set out on the website.

In the case of mediator member complaints, Resolution will accept complaints for consideration from anyone who is concerned or believes that a mediator member has breached the FMC Code of Practice in the first instance. As the FMC Code of Practice (General Principles 5.1.7) requires that mediators conduct mediation as an independent professional activity and must distinguish it and their role from any other professional role in which they may practise, it is the FMC Code of Practice that is the primary reference for any complaint made by a client or other party and any complainant contacting Resolution for the purposes of complaining about a mediator or mediation will be provided with information that clarifies this aspect. If a client also believes that the mediator has, by their actions as a mediator, also breached the Resolution Code of Practice, this may be considered by the organisation but primarily, it is a breach/breaches of the FMC Code that the organisation will consider in line with their responsibilities as a member body of the FMC and in line with FMC standards in relation to mediator complaints. Mediators working within their firm or practice should ensure that they have discussed with their complaints officer their responsibilities as a mediator, the fact that they must work within the Code of Practice of the FMC (rather than under the regulation of the SRA) and that any complaint not resolved with the mediator at first instance or within the firm should then be referred to Resolution and/or the Legal Ombudsman (depending on the circumstances of the complaint – full information is available on the website of the Legal Ombudsman) but note that individuals must first have made a complaint to the firm or practice and have allowed the firm or practice eight weeks to seek to resolve the complaint before they can ask the Legal Ombudsman to investigate and that the Legal Ombudsman will first consider if the complaint can be dealt with by them.
**Mediator members of more than one organisation**

Mediators should take care to clarify for clients the complaints route to be taken up if it should reach a stage where the mediator’s membership organisation is to be involved. Generally, if a mediator has conducted the mediation under Resolution guidelines and is a Resolution trained or converted mediator member or affiliate, the stated complaints route should be to Resolution. If, however, the mediation has been conducted under the guidelines of another mediation organisation, or the mediator is a member of another organisation and not Resolution, then it should be made clear that the route for any complaint is to the mediator’s membership organisation. Mediators should take care not to confuse clients about appropriate complaints routes or to leave themselves open to multiple or cumulative complaints across member organisations.

**Monitoring performance/practice – client feedback**

Wherever possible and practicable, mediators should consider how they will monitor their practice and performance by gathering client feedback as to their experience of the mediation. Mediators who provide legally aided mediation service are required to do so as part of the terms of their contract and mediators working with private clients should also consider the importance of this aspect of monitoring their practice.

**4. The professional relationship between mediators and solicitors**

It is important for both solicitors and mediators to understand the critical nature of working together to assist clients in resolving matters between them. Mediation is not a competitor to solicitor practice and neither mediators nor solicitors should behave as though the client or prospective client is making a choice between solicitor service (collaborative practice or any other solicitor-led service) or mediation. People need tailored information and assistance to understand the ways in which they might resolve the issues they have. Where solicitors and mediators work closely together the outcomes for clients are likely to be improved and both solicitor and mediator stand to gain from client recommendation as a result.

The requirements of the Children and Families Act 2014 make clear that people will be expected to consider mediation before issuing proceedings. However, solicitor members are also reminded that Resolution's own Code of Practice requires that they inform clients of the options – mediation, collaborative law, family law arbitration as well as other options such as counselling, family therapy, round table negotiations, and court proceedings. The Law Society Family Law Protocol has a similar requirement and also endorses the Resolution Code of Practice.

**General guidance for solicitors supporting clients through a mediation process**

Solicitors should ensure that they have an accurate understanding of the principles, process and conduct of mediation (and of any other family dispute resolution process) in order to inform clients about the range of ways in which they might resolve issues between them and be able to answer any questions the client has. Mediation is most effective when clients, solicitors and mediator work together in achieving an appropriate outcome. In order for this to happen it is essential that solicitors have a clear understanding of mediation and can support clients throughout it.

It is therefore important that all clients are made aware how mediation works, that mediation is a voluntary choice and that they cannot be compelled to take part, but that it is important to at least consider it. Generally,
the earlier a client is referred to a mediator in order to hear about and consider whether and if mediation might be appropriate for them, the better. Solicitor members may consider that an assessment as to whether mediation is appropriate should be made between the solicitor and the client. However, solicitors are working with a single client and not both and the dynamic which exists between the client and solicitor may make it very difficult for an appropriate assessment to be made. The responsibility for making an assessment as to suitability for mediation (excepting where it is clear than an exemption applies) lies with the mediator. This is because mediators will be making that assessment with each and both clients. The solicitor’s responsibility is therefore to provide accurate information about mediation (and the exemptions to and reasons why it might not be appropriate) and an encouragement to find out about mediation. Solicitors should also inform clients that they may be required to attend a MIAM, or encouraged or ordered to do so by the court in order to be informed about mediation (and other forms of dispute resolution that may be available to them) and to consider with a mediator whether their particular circumstances are appropriate for a process of dispute resolution. But it will remain the client’s choice as to whether they take up the opportunity to mediate matters.

Resolution member solicitors should be aware that there is or can be variation in the way in which mediators conduct MIAMs locally and solicitors should ensure that they have an understanding of how a referral for one should be made to their local providers. Resolution best practice standards require mediators to conduct these meetings to a high standard of client service and that usually a MIAM will take between 45 minutes and an hour (and for which there is usually a charge). Solicitor members should note that MIAMs will not be conducted by telephone (except in rare and/or exceptional circumstances).

Mediators do not provide information about the client’s decision not to undertake mediation. It is also the case that a mediator may decide that mediation is not appropriate for a range of reasons – similarly, mediators do not provide information as to how that decision has been reached to either client, to their solicitors or to the court.

Mediators will generally and as a courtesy inform solicitors if clients decide to enter a mediation process but will not report to the solicitor any aspect of the discussions between the clients in mediation unless the clients agree that the mediator should have contact with their solicitors, and on what terms.

During a mediation process, mediators will encourage clients to seek individual legal advice on any aspect of their discussions where it is pertinent to do so. Mediators will provide information about the legal process and general legal principles and associated matters (e.g. the operation of the CMS - formerly the CSA) but do not provide any individualised advice. It is therefore very important that clients are able to take advice as and when they need it. Mediators will also explain the importance of having legal advice and the solicitor’s responsibility in providing ‘individual best interest’ advice to clients, whereas in mediation, people are seeking to make proposals that best meet their collective needs – and especially those in relation to the future parenting and needs of any children.

Proposals made in mediation are legally privileged and without prejudice – the privilege belongs to the participants to the mediation and together they may choose to waive it. The confidentiality and privacy of discussions within the mediation, however, remains with the mediator and clients, as should be clearly recorded in any agreement to mediate. Even if the clients choose to waive privilege, confidentiality and privacy, the mediator may enforce the confidential and private nature of the discussions since they are a party to the agreement to keep discussions confidential and private. This is so except where an order of the court or the law imposes an overriding obligation of disclosure.
Participants in a mediation are informed that they will be required to make full and frank financial disclosure and that such disclosure is made on an ‘open’ basis. During a mediation process where clients are dealing with financial matters, mediators will prepare an open financial summary of the participants’ financial situation from their completed forms E and from documentation provided to evidence the information which has been provided by them in their respective form E. The summary may be provided in either draft form (where financial disclosure is not yet complete) or in final form, which they may take to their legal advisers, independent financial advisers or other professionals in order to discuss their financial situation. They will continue to use the draft summary during the process of mediation as a means to consider their options for resolving financial issues between them. Mediators do not verify documentation provided by participants but will explain that their respective solicitors may need to do so and will detail and attach copies of documents seen to the summary document if so agreed with the clients.

On completion of the mediation process, mediators will generally supply a memorandum of understanding or outcome summary that details the proposals made within the mediation and on which clients will require independent legal advice, and will usually instruct their solicitors to draft a consent order in suitable terms. Mediators will also detail in the memorandum any other legal matters that will need to be considered by clients with their respective solicitors (e.g. wills, tax considerations etc.).

It should be noted that there is variation in the presentation and content of mediation documents. What is outlined here is the best practice standard required by Resolution of its mediator members.

For specific guidance in relation to solicitors being directly involved in a mediation process see p39.

**Responsibilities of member solicitors in relation to family mediation and family mediators**

Solicitor members of the organisation have a responsibility to:

- adhere to the requirements of the Code of Practice, which makes clear the importance of informing people of the options they may have for resolving matters between them;
- be able to discuss accurately and appropriately the range of family dispute resolution options that are available and encourage clients to find out about whether mediation may be appropriate for them;
- ensure that they are aware of the range of mediation providers in their locality, what they offer and how they would expect any referral to be made;
- act co-operatively and professionally with mediator colleagues; and
- endeavour to support their client in a mediation process and not to disturb any mediation process by inappropriate correspondence in respect of matters known to be in discussion in mediation.

**Responsibilities of mediators**

In order to provide the best client service, mediators should carefully consider the role the client’s legal advisers have and the importance of creating a co-operative working relationship that best aids the clients. This will involve:

- Whether and how the mediator will keep in touch with their solicitors or with any other professional who is working with the couple as part of their mediation process.
• As a matter of courtesy, mediators should inform solicitors when they have been in contact with a client in regard to a mediation process and/or if a mediation process is about to be undertaken, provided they are authorised to do so by the client/s.

• Otherwise, mediators should agree with clients whether it would be helpful for the mediator to send solicitors any updated information as to progress of the mediation, a note on referral to solicitors for individual advice and the particular areas/subjects for such advice, and copies of mediation documentation.

• Mediators must ensure that any contact they have with legal advisers is in a neutral and balanced way and have the agreement of both clients as to the level of any contact.

• Mediators must also remain observant of the principles of mediation and ensure that any contact with legal advisers does not breach fundamental principles of practice and that the status of any communications is clear in respect of confidentiality and privilege.

Involving lawyers more directly in the mediation process is dealt with below.

5. Other professional practice considerations

Thus far we have has set out the mediation process as it is usually expected to be conducted. However, each client’s situation is unique and will require, within the framework of mediation principles and process, a bespoke approach. Family mediation is also a young profession and new or varied means of design and delivery within the principles of mediation are emerging. Where a mediator believes that varying their approach to the process is appropriate, they should, in the first instance, discuss their plan with their PPC and follow the guidance given. At all times, they must first check that their planned approach does not breach any of the fundamental principles of mediation or the FMC Code of Practice. Examples of variations might include:

• involving others in the mediation process who the mediator believes have a substantial or meaningful part in the conflict or in the potential resolution of any conflict;

• any kind of ‘shuttle’ mediation process (especially where this may relate to an abusive relationship between the clients);

• the involvement of adult children in the mediation; and/or

• any other client situation where the mediator believes that mediation has a good chance of success but requires a variation in the way in which it will be conducted.

Set out below are some of the more commonly used/considered methods of practice and practice considerations.

Co-mediation

Co-mediation can be an effective means of conducting mediation where:

• There are complex family and/or financial issues.
• A gender-balanced team of mediators might afford a valuable resource or model for those who are in high conflict as a result of the ending of their relationship.

• The balance between mediators from different professional backgrounds might assist in the resolution of the particular issues in a mediation (e.g. an IFA mediator or psycho-therapeutically trained mediator working with a mediator from a legal professional background).

• Support is needed for a new mediator, working with a more experienced mediator.

• There is a need to conduct the mediation as a ‘shuttle’ process for all or at least part of the mediation (where this choice is made because of issues of abuse between clients, unaccredited or less experienced mediators may wish to consult with a PPC as to the appropriateness of a ‘shuttle’ co-mediation).

Resolution encourages all mediators to consider co-mediation as a valuable model of practice and one which may afford particular assistance to some clients.

Where mediators intend to offer co-mediation, they should ensure that:

• They discuss with prospective clients the potential for co-mediation and why it may be of particular assistance in their mediation.

• Consideration is given to an appropriate fee.

• They properly plan and set up any co-mediation and ensure that they and their co-mediator have prepared to work as a balanced team rather than as two individual mediators.

• Clients know that both mediators work as a balanced team rather than as mediator and ‘expert’.

• Where it would be of assistance, they talk with a PPC to ensure a professional approach to co-mediation.

'Shuttle' mediation

Shuttle mediation refers to mediation conducted with clients in separate rooms for some or all of the mediation process with the mediator or mediators conducting the mediation by going between the participants to facilitate their negotiations.

It has been perceived as a suitable means of offering mediation where there is or has been abuse within the couple relationship. All mediators should be aware that using a shuttle model does not, of itself, guarantee client safety (particularly away from the mediation) or ensure equality of negotiation between participants. At present, there is no national standard for it, or the practice of it by mediators. All mediators should therefore discuss with their PPC any plan to conduct shuttle mediation.

There are a number of very important considerations in relation to shuttle mediation. Mediators should ensure that:

• They do not breach the fundamental principles of mediation or the FMC Code of Practice.

• They make an appropriate assessment with the clients as to whether shuttle mediation is or would be appropriate, which includes ensuring that a screening and/or assessment process is undertaken before and during any mediation as the use of shuttle mediation does not necessarily resolve issues or guarantee equality of discussions or negotiations in a mediation.
• They are careful not to hold confidences or ‘mediator secrets’ as part of a family mediation process conducted as a shuttle mediation. This requires any mediator acting in a shuttle mediation to have explained carefully to each and both clients that this is the case and to ensure that agreement has been reached in relation to any discussions held separately with each person and how any information will be shared.

If the mediation is contracted and conducted under civil/commercial mediation rules (and the mediator is suitably trained and qualified to conduct such a mediation) because, for example, the primary conflict to be resolved relates to a family business or the mediation is commissioned on such a basis because of financial complexity, then the mediator/s may make suitable arrangements in relation to confidentiality of separate discussions. However, mediators must be clear as to the organisational or professional rules by which they are conducting the mediation and therefore the appropriate code of practice they are working to and complaints route for any complaint that cannot be resolved by the mediator by their practice.

**Mediation where there is or has been abusive behaviour in the couple relationship**

Where clients have admitted, disclosed or acknowledged that there is or has been abuse within their relationship and where they still wish to mediate, mediators must take considerable care to discuss with each client whether the process would be appropriate and if so, how it is to be conducted.

It is possible for mediators to consider whether a form of ‘shuttle’ mediation may be appropriate, and if so, they must still seek to establish whether in doing so they can ensure:

• Each client’s protection from (further) abuse or harm can be assured. (This will be particularly important to consider if clients remain under the same roof together.)

• Each client has appropriate capacity to take part, even if the mediation process is undertaken in a shuttle model (mediators should be aware of the effect of controlling behaviour in abusive relationships that may result in an individual’s inability to make truly independent decisions).

• They have discussed other support or assistance that may be required to ensure suitable help for either client during a process of mediation.

• They consider working with a co-mediator as a suitably balanced professional team to best manage all the circumstances.

• They are particularly alert to the issues that may arise in relation to confidentiality and impartiality.

Please note that where there have been issues relating to the safeguarding of children and where parents wish to mediate, mediators must always ensure:

• That there is no current investigation by local authority children’s services (in which case mediation should be deemed unsuitable).

• That where there has been an investigation, the mediator has seen any outcome report, the terms of any contract or agreement between the parents and the local authority, or any court order that clarifies the nature of the issues involved and the outcome (and that a decision on suitability for mediation is based on the information available).
Where a key worker remains involved with the family, they seek to discuss with the parents/carers whether and how the key worker should be informed or involved in any subsequent decision to mediate.

**Involving solicitors in a mediation**

Generally, mediation is a discrete process conducted with the clients alone. However, on occasion and where appropriate, it may be helpful to involve the solicitors directly in the mediation process. This may be helpful to consider where:

- There are particularly complex legal issues to be considered.
- The support of solicitors may assist the clients in engaging confidently in a mediation process.
- There are concerns in regard to imbalance of knowledge/information between clients.
- There are or have been particularly high levels of conflict between the individuals.
- There has been a history of abuse between individuals and where they want, if at all possible, to resolve matters between them but there are concerns about capacity and balance between the clients.

All mediators need to consider carefully the direct involvement of solicitors in a mediation process, including:

- A clear understanding by each solicitor and client as to mediation and the involvement of solicitors within it.
- The role of the solicitor/s within the mediation.
- When solicitors will be involved – for one meeting/throughout the mediation/as felt necessary and appropriate/at the conclusion of the mediation as a means of setting out any consent order?
- An outline agreement for and with solicitors taking part in any mediation that sets out the expectations of the mediator, the role of the solicitor/s, expectation of provision of advice to clients privately during the mediation process etc.
- The confidential, private and privileged nature of discussions, and any relevant exceptions.

Mediators should take care that they do not compromise the solicitor’s relationship with their client where they may be uncertain as to whether the solicitor would accept an invitation to participate in a mediation process. Any discussion with clients in regard to solicitor attendance should therefore be on the basis that it would be for the client and solicitor to discuss together whether it might be possible and practicable in all the circumstances.

Mediators should also make clear that such attendance will attract additional fees for their solicitor’s time in attending.

As already stated, mediators should consider all aspects of involving clients’ solicitors. They should also take responsibility to ensure that solicitors are protected from any breach of professional regulations set and/or required by the SRA should they attend as part of a mediation process.
Solicitors who receive a request, whether via their clients or directly from a mediator, to attend a mediation should be aware that participation for anyone is a voluntary choice. They should therefore consider with their client the purpose of their attendance and whether it is appropriate given all the circumstances.

Solicitors should also be clear as to their role in attending and mediators should provide full information of this aspect. This may encompass (but is not limited to):

- Attending with their client with a view to establishing the issues and matters pertinent to the mediation process and supporting their client in clarifying such matters.
- Attending as observers to the mediation with a view to advising their client on aspects identified as requiring specific advice that would assist the parties in reaching decisions.
- Attending both to support and advise their client (individually and out of the room). This may include playing a part in assisting in the client’s process of negotiation.
- Attending with their client for the purpose of drafting a consent order on decisions and proposals reached in the mediation process.

Mediators should provide a form of agreement in relation to the terms of the solicitor’s involvement for discussion and agreement between mediator and solicitor/s.

Conversely, solicitors who in consultation with their client believe it would be useful and appropriate for them to attend should inform the mediator and suggest that this is discussed in order to explore whether it is an option the mediator would like to consider with the clients. Similarly and as above, solicitors should take care that they do not compromise the mediator’s relationship with clients where they may be uncertain as to whether the mediator would accept a request for a solicitor to attend the mediation process.

In all cases, this should be understood as a matter for consideration as between mediator, clients and their respective solicitors. It is therefore good practice that professionals keep in communication on such matters – and wherever possible have local means of keeping in touch with each other in respect of opportunities to assist clients through the provision of solicitor-attended mediation and/or mediation generally.

**Involving other professionals as part of the mediation**

In some cases the involvement of other professionals - financial advisers, family consultants, lay advocates or other professional supporters - may be helpful in supporting individuals and couples make best use of a mediation process. Mediators should consider carefully with the clients what might be most helpful and must make appropriate arrangements in relation to the involvement of, contracting for and terms of the confidentiality that must exist as part of discussions and negotiations in a mediation process. Who, how and in what way other professionals can be involved, what information will be shared, and what will or will not remain confidential must be carefully planned for and the clients must be aware of and agree to the suggested arrangements. As with the involvement of solicitors, mediators must be alert to and take careful account of any professional code of practice to which other professionals are signed and should take care not to compromise the practice of any other professional. Generally, mediators should apply the same considerations as are stated above in relation to the involvement of solicitors in a mediation process.
International parenting/leave to remove/potential child abduction

Where it is the case that in an individual meeting or within a mediation process a parent discloses that they intend to or are considering removing a child or children from the jurisdiction, the mediator must:

- Provide information on the general principles of the law in relation to removal and/or child abduction.
- Encourage and recommend that parent to seek individual legal advice as soon as is possible.
- Provide information about services of help and support (e.g. Reunite International).
- If disclosed in a separate meeting and the mediation is ongoing, remind that parent that all information disclosed must be shared and discuss with them how that is to happen.
- If it is the case that the parent refuses to agree to share the information, the mediator should make clear that they must share the information with the other parent; that they will give the same information about general principles and services of help and support; and that they will encourage them also to seek immediate legal advice.
- Explain that mediators have a duty and responsibility to make a referral to the local authority children’s services where any child is at risk of harm. The abduction or threatened abduction of a child is or may be deemed to present such a risk of harm to the child and therefore there is a need to make a referral to the appropriate authorities. It is also the case that in most circumstances a parent who abducts a child will be committing an unlawful if not criminal act (under the Child Abduction Act 1984). The agreement to mediate also refers to the committing of or the intent to commit an unlawful, illegal or criminal act as being exempted from confidentiality.

If a potential client to a mediation discloses this information to a mediator (that is as part of a MIAM or preparatory meeting) then the mediator should provide the same information referred to above, encourage and recommend that parent to seek legal advice and, if and when appropriate or necessary, inform an appropriate authority where they believe any child is at risk of abduction and/or immediate, serious or significant harm (which may be deemed to be the case if a child is at threat of abduction).

All mediators are reminded that if, where or when it is the case that threatened child abduction may result in Hague proceedings, they should be in contact with Reunite International, which is funded by the Foreign and Commonwealth Office and recognised by the High Court to offer mediation in such cases. Reunite also provides telephone and online advice and support to both the taking away and left behind parent.

Potential for child abduction is a serious matter and mediators must act appropriately to refer or to report to the appropriate authorities where they believe it is or may be in prospect. Mediators should also be in contact with their PPC for assistance where they have concerns about the potential for child abduction and the appropriateness of mediation.

Working with or as part of a collaborative process

From time to time, mediators may be asked to provide a process of mediation for clients in a collaborative process. This may be because there is a single issue or conflict that the collaborative team believe may be best dealt with in a mediation. Mediators should ensure that they approach any mediation of this type and nature in the same way as they would any other mediation process, that is:
• Check with the prospective clients that this is a voluntary choice for them and is suitable for mediation.

• Provide information as to what mediation is and how it is normally conducted.

• Carry out appropriate screening and safeguarding.

• Ensure that the clients are content to sign an agreement to mediate.

• Provide appropriate documentation at the conclusion of any mediation process.

Occasionally, collaborative practitioners may request that a mediator conducts or 'chairs' a four-way meeting. This may be because:

• There are particularly high emotions in play between the clients and the collaborative team believe it may be of assistance to have a neutral person to manage the meeting.

• There are particularly complex legal or other matters that require the considerable attention of the respective collaborative practitioners, leaving them less able to manage the forward progress of the meeting.

• There are other reasons or concerns that have led the collaborative team to believe that the assistance of a neutral professional would assist progress.

Whatever the case, mediators should ensure that they carefully consider whether the circumstances are appropriate for their involvement, and discuss with the collaborative team their understanding of mediation and the skills/role of the mediator. Mediators should check with both clients as to their agreement that the involvement of a mediator is acceptable to them. Mediators should then ensure that they have an appropriate agreement to provide mediation assistance in the context of the collaborative process in which they will assist. This should include the expectations, responsibilities and role of all those involved (including in relation to fees). Mediators should seek the guidance of their PPC in relation to involvement in a collaborative process.

**Court-referred mediation**

All mediators should be aware of the guidance published by Resolution in relation to working with the court and of the FMC information issued to judges, magistrates and court staff in relation to family mediation.

Generally, mediators must ensure that they do not breach fundamental principles of mediation in offering or providing mediation services with/to their local court. They should be particularly alert to the fact that the court environment is an alien, unfamiliar and stressful environment for clients, who may find it difficult to fully understand the nature of independent mediation. Wherever possible, any mediation process should be provided away from the court environment and mediators must avoid providing time-limited mediation on the court premises.

Mediators should also ensure that any suggestion that a child should be consulted as part of the court process in order to provide information to the court in relation to the child’s wishes and feelings should be refused as this breaches fundamental principles in relation to the child’s right to privacy and confidentiality. Direct consultation with children as part of an adult mediation process is governed by a set of principles and procedures that should be adhered to in order to protect the child and the parents, and to preserve a clear understanding of the limits of mediation principles, the process and the role of mediators.
Mediation precedent documents should not be altered to accommodate the needs of the court to have information about the process of mediation (and mediators should be aware that this may affect their insurance cover). Mediators should ensure that clients understand, as in any mediation process, that they may waive their legal privilege if they so wish and agree in order to assist them in any court proceedings, but that the mediator will not provide information to the court in regard to the discussions held in mediation.

**Consent orders**

Recently, there has been growing interest in and enquiries about whether and how mediators might prepare consent orders following a mediation. This may be because clients have requested that the mediator do so, that clients are both unrepresented and have no means of being able to take to Court their proposals in a form that the Court can process or for any other reason. It may be that the introduction of template orders will provide the means for people to complete a relevant template with the assistance of a mediator but there are fundamental issues to be considered in the preparation of such documentation. Firstly, it might be argued that a consent order cannot be properly drawn for clients unless and until some form of advice has been provided. If it is the mediator that has provided that, they will be in breach of the FMC Code of Practice. Secondly, although clients may say that they wish to utilise any draft produced to take to a Court, they may latterly choose not to and may simply sign the document themselves and which latterly may raise issues in relation to that agreement. Thirdly, the drafting of such a document, if separated from the Memorandum of Understanding, may cause the status of that document to be unclear, unless it is stated on the face of it to be confidential and legally privileged and drafted subject to the clients’ right to seek legal advice before confirming their agreement to the terms of the document if so advised.

There is, as yet, no guidance or judgement as to whether and if the drafting of a consent order is or might be considered as falling into one of the six categories of ‘reserved legal activity’ and would therefore be reserved to solicitors or suitably legally qualified professionals. Mediation is not a ‘legal activity’ (as it expressly falls outside the regulatory framework of the Legal Services Act 2007) and there is further prospect of confusion for clients and a risk to those mediators who are solicitors and mediators if drafting consent orders as part of a mediation.

Mediators who are qualified to conduct mediation under civil/commercial rules and who do so because the family situation includes matters that would be more properly and appropriately dealt with via a civil/commercial model, will usually prepare a Tomlin Order at the conclusion of the mediation. However, where this is the case, the mediator must ensure that they have made clear that the mediation is being conducted as a civil/commercial mediation and should conduct the process under the rules of their civil/commercial mediation membership/accrediting organisation.

**SRA Guidance on drafting by separate retainer**

Mediators will be aware that in August 2015, the SRA issued guidance in relation to the preparation of consent orders by solicitors who are mediators by way of a separate retainer. The guidance is available at:


Resolution has asked the FMC to consider the SRA information and to issue guidance for mediators in relation to how the SRA guidance sits with the FMC Code of Practice and particularly Rule 5 Conflict of Interest (6.1.6/7). As soon as such guidance is received from the FMC, Resolution will ensure that mediator members are notified.
Otherwise, mediators are reminded that neither Resolution or the FMC have provided any guidance on the preparation of Consent Orders at the conclusion of a family mediation conducted under the FMC Code of Practice and that as such, preparation of Consent Orders by a mediator may breach the Code, (and mediator insurance).

**Use of new technology in mediation process**

It is important that mediation and mediators is/are responsive to the needs of clients. People will expect that there will be a range of ways in which they might access and use mediation and that there is ease of access in a way that matches their needs. There are considerable advances being made in other jurisdictions in the use of new technologies in mediation processes. If and when mediators consider using new technology – e.g. Skype, online mediation etc., they should be aware that they must take care not to breach the FMC Code of Practice.

At present, there are no guidelines published by Resolution or the FMC for the use of such technology, but as general guidance, mediators should consider:

- Discussing the use of new technology/conducting mediation by other or remote means with their PPC in the first instance.
- Considering what training or professional development they might need or could undertake in order to conduct mediation via use of new technology to a professional and high-quality standard.
- The reasons for the use of the new technology and whether it is/would be appropriate - and consider carefully whether using such technology (including any specialised software packages) is compliant with the FMC Code of Practice.
- Checking with each client whether and if they feel comfortable about the use of such technology.
- Careful assessment of the clients and the circumstances in each case. This should include consideration in respect of abusive behaviours and client capacity, and appropriate screening and assessment as would be carried out for any mediation. It is not sufficient to assume that mediation via remote or textual technologies will necessarily remove or deal with abusive or controlling behaviour that may affect the ability of the victim of such abuse to negotiate equally and/or make decisions free from concerns as to the possible consequences of doing so.
- Careful pre-planning and testing of any mediation to be managed via technology such as Skype (especially in relation to the reliability of the link), video conferencing etc and clear contingencies for if/when/where the link fails or is lost.
- Managing any online/Skype mediation meetings to take full account of the very different dynamic that exists in remote meetings/textual negotiation.
- Consideration in respect of how issues such as information display and exchange will be managed.
- Avoiding the use of Skype where one person can be present with the mediator but the other is not (to ensure balance and to avoid inappropriate alignment).
- Where a mix of technologies is used which encompasses transfers of information by writing or via discussion forum, that great care is taken to ensure the appropriate status and protection of such written materials or documents.
• For information in regard to the conduct of MIAMs via telephone or other technology please see p17.

**Advances in practice, hybrid models and working with families in other settings**

Family mediation has application in a broad range of settings and situations. As the use of mediation becomes more established and better known and understood, it is likely that family mediators may be asked to consider providing mediation in new ways and/or in a range of new settings. There is some evidence that mediators are being asked to work in matters relating to inter-generational disputes, Court of Protection matters and at the cusp of public law children proceedings. It is very important however that mediators act professionally in responding to these requests. They should, in the first instance, be in touch with their PPC to work through the appropriateness and suitability of mediation, whether and if it is possible to offer mediation that is compliant with the fundamental principles of mediation and within the Code of Practice of the FMC; whether they are suitably qualified and experienced to offer mediation in the particular setting or dispute; and to ensure that they have made suitable checks with their insurers in respect of continuing validity of their insurance cover.

*Resolution thanks Angela Lake-Carroll for writing this Good Practice Guidance, September 2014.*
Appendix 1

Please see next page.
FMC Manual
of Professional Standards and Self-Regulatory Framework

September 2014
Part 1: The FMC Accreditation Framework (p 5)

Introduction

Section 1 Title and eligibility

Section 2 Requirements for gaining FMC accreditation
2.1 Post-training requirements and restrictions
2.2 Assessment of professional competence
2.3 Appeals against assessment decisions
2.4 Award of FMCA status

Section 3 Renewing accreditation
3.1 General requirements
3.2 Continuing development
3.3 Professional Practice Consultants
3.4 Minimum hours of practice
3.5 Levels of activity below the recommended minima
3.6 Late and insufficient applications
3.7 Lapsed accreditation and action plans
3.8 Appeals against refusal to reaccredit

Appendices:
1 Portfolio contents
2 The FMC professional competence standards for family mediation
3 The level required at the point of assessment
4 Transitional and non-standard arrangements for the award of FMCA

Part 2: Initial Training and Course Approval (p 24)

Introduction

Section 1 - Minimum requirements for family mediation initial training courses to be approved by the FMC
1.1 The provider
1.2 Entry to courses
1.3 Level of courses
1.4 Course content
1.5 Duration and teaching methods
1.6 Assessment
1.7 Staffing
1.8 Certification
1.9 Post training review with a Professional Practice Consultant

Section 2 – Course approval
2.1 Requirement for course approval
2.2 Responsibilities and conflicts of interest
2.3 Initial approval
2.4 Re-approval

Part 3: Requirements for assessors for FMC Accreditation (p 30)

Introduction

Section 1 – Definition and essential requirements

Section 2 – Appointment, training and updating of assessors

Section 3 – Oversight of assessors

Part 4: Common requirements for Professional Practice Consultancy (p 32)

Introduction

Section 1 – Definition and essential requirements

Section 2 – Recruitment and registration of PPCs

Section 3 – Training and updating of PPCs

Section 4 – Oversight and the professional practice consultancy process

Part 5: Complaints, disciplinary processes, withdrawal of accreditation (p 36)

Section 1 – Member organisations’ responsibilities
   (a) Complaints and claims of breach of the FMC Code of Practice
   (b) Disciplinary processes

Section 2 – Family Mediation Council responsibilities
   (a) Appeals against member organisations’ complaints and disciplinary
      Procedures or disciplinary decisions
   (b) Removal of accreditation
(c) Appeals to the FMC against withdrawal of accreditation of refusal to re-accredit
(d) Sharing details of disciplinary penalties with MOs
Part 1: The FMC Accreditation Framework

Introduction

This document describes the proposed requirements and process for gaining and renewing FMC accreditation as a family mediator, to come into operation from 1st January 2015 onwards. FMC accreditation is designed to be the standard qualification for family mediators in England and Wales, and embraces the current APC and Law Society schemes. As well as being required to conduct publicly-funded mediation, it will increasingly be needed for all mediation where referrals have been made for matters relating to separation and divorce that would otherwise go to court.

1. Title and eligibility

The designation **FMC Accredited Family Mediator (FMCA)** is awarded to family mediators who have (a) passed the assessments on an FMC-approved initial training course, (b) completed the post-training requirements, and (c) passed the final assessment of professional competence. Requirements (b) and (c) are summarised below. **Transitional arrangements**, providing exemptions from one or more of these components for previously-accredited, trained or experienced mediators are detailed in Appendix 4; in principle, anyone accredited to undertake legal-aided family mediation, or under the Resolution or FMA schemes, will gain FMCA provided they meet current practising and CPD requirements. Accreditation is currently for a period of three years, after which an application must be made for renewal that demonstrates that the mediator satisfies the conditions in section 3.

Award of FMCA status requires mediators to have basic competence in children and financial issues and to be able to undertake all-issues mediation (this requirement will not be applied to children-only or property and finance-only mediators who qualified under previous schemes). Post-FMCA, mediators may choose to specialise in one or other area or undertake all-issues mediation, provided the FMC Code of Practice is followed. Some specialist areas of mediation – for instance relating to direct consultation with children or child abduction – will require additional training and qualifications.

After 1st January 2015, mediators who wish to be added to any register approved by the Ministry of Justice or FMC for carrying out family mediation or for providing mediation information and assessment meetings (MIAMs) will need to have achieved FMCA status. Mediators who have already been approved to conduct MIAMs will be able to continue to do so until 31st December 2015, after which they will need to have gained FMCA.

The Law Society’s family mediator accreditation scheme will apply the same standards as those required for FMCA. Subject to agreement by the FMC Family Mediation Standards Board (FMSB), Law Society accredited family mediators will automatically qualify for FMCA status.

FMCA family mediators may use the letters ‘FMCA’ or designation ‘FMC Accredited Family Mediator’ and any trade mark which may be agreed for the use of FMCA mediators.

Retaining FMCA status is subject to:

- remaining in membership of an FMC member organisation
• practising in accordance with the FMC Code of Practice
• Meeting the requirements to renew accreditation (these are explained in section 3).

2. Requirements for gaining FMC accreditation

2.1 Post-training requirements and restrictions

Mediators who wish to gain FMC accreditation will need to do so within three years of completing initial training. In exceptional circumstances this may be extended to up to five years with endorsement from the mediator’s Professional Practice Consultant (PPC). Mediators who have not gained accreditation within this period will need to undertake further training as advised by the FMC.

Between completing training and becoming eligible for accredited status, mediators will need to do the following (and keep the relevant records and commentaries for the final assessment as detailed in appendix 1):

• Have at least ten hours one-to-one, principally face-to-face support from their PPC, with sessions recorded in a log countersigned by the PPC. This includes the PPC contact outlined below, but does not include (a) any time spent co-mediating with the PPC or observing the PPC mediate, or (b) the normal four hours per year of PPC contact expected of all mediators.

• Have (as the first of these sessions) a post-training review with the PPC. This may be organised by the provider of the initial training or by the mediator independently. The PPC will review the mediator’s readiness to mediate and if necessary agree additional measures for gaining experience before starting to mediate.

• Before acting as a sole or lead mediator or representing themselves to the public as a family mediator (and see a. under ‘Until mediators gain FMCA status’ below), register with the FMC as working towards accreditation (this will normally be done via one of the FMC member organisations).

• Before starting to mediate, either observes or co-mediates in a mediation session conducted by an FMCA mediator, and produces an evaluative account of the session.

• For their first case as a sole or lead mediator, (a) have a pre-case discussion with their PPC before starting to mediate or to assess clients’ suitability for mediation, and (b) hold a post-case review with their PPC. In the pre-case discussion, the PPC will if necessary identify any additional support that the mediator needs before starting the first session.

• Have at least one mediation session observed by their PPC (which must not be a session co-mediated with the PPC). This must be within two years of completing initial training and ideally should be near the beginning of the post-training period. More than one observation is encouraged, including observation of an initial assessment /consultation meeting. The PPC’s written feedback on a minimum of one session needs to be included in the materials submitted for assessment.

• Take a minimum of three cases through to completion. These will need to be written up for assessment.

• Comply with the requirements for continuing professional development and ongoing PPC support (as applicable to FMCA's).
Until mediators gain FMCA status, they will need to:

(a) Represent themselves appropriately to the public: a suggested format is ‘(Mediator) has completed initial training and is registered with the Family Mediation Council as working towards fully qualified status as a family mediator. S/he is supported by (PPC) as his/her Professional Practice Consultant.’

(b) Enlist PPC or qualified colleague support if any elements of any case are beyond their capability.

(c) Have any mediation outcome documentation, including memoranda of understanding and open financial statements, approved by their PPCs before being sent to their clients.

(d) Have any court forms relating to their clients signed by their PPCs. This does not apply to mediators who were approved to conduct MIAMs before 1st January 2015, who may continue in this role until 31st December 2015.

2.2 Assessment of professional competence

Award of FMCA status is made following an assessment of a portfolio of work assembled from the period between completion of training and application (as described in section 2.1). The portfolio, which should normally be submitted in electronic form using widely-available software, must demonstrate that the mediator meets the FMC professional competence standards at a level that must be at least ‘competent’ and should show elements of progressing to ‘proficient’ (see appendix 3 for an explanation of these levels). The material required in the portfolio is detailed in appendix 1.

Completed portfolios must be sent to the FMC (via the office handling the administration of assessments) with the current application fee, which covers one assessment. Following submission, an initial examination of the portfolio will be made to ensure that it is clearly and legibly presented and includes the materials required in the outline above. Incomplete or incomprehensible portfolios will be returned to the mediator for amendment. An additional administrative fee may be payable for resubmission.

Portfolios that are deemed to be complete will be allocated to an assessor for formal assessment to the FMC professional competence standards. Assessors will be allocated to avoid conflicts of interest; where an assessor suspects that a conflict exists, s/he will discuss the matter with the scheme’s chief assessor before proceeding with the assessment.

The assessor will make a rigorous and unbiased assessment of the portfolio to the professional standards. Any standards that are not met at the ‘competent’ level, or any failure to meet the portfolio requirements, will be clearly identified by the assessor, who will make one of three decisions:

A. The mediator meets the required standards and is eligible for accreditation (‘approved’).

B. Additional work is required on the portfolio that can reasonably be completed within six months, such as the addition of further explanations or an additional case-commentary (‘accepted subject to additional work’).
C. Substantial work is required that is not likely to be feasible to complete within six months, typically because the work submitted falls substantially short of the professional competence standards or none of the cases are suitable (‘competence not yet proven’).

Assessors may make further enquiries if the portfolio suggests that the work submitted is not that of the mediator, or other forms of impropriety or plagiarism are suspected.

Portfolios will be moderated through examination by the scheme’s Chief Assessor or by an experienced assessor nominated by him or her. Portfolios that appear to be borderline will be examined in depth and discussed with the first assessor. Assessors may also contact the mediator for further explanations.

Mediators will normally be informed of the assessment decision within six weeks of submitting the portfolio. If the portfolio is deemed not yet proven or is accepted subject to additional work, the reasons for this will be communicated clearly and precisely. In either case mediators will be encouraged to resubmit at the appropriate point (and where to discuss their portfolio with their PPC).

The Family Mediation Standards Board may examine a sample of portfolios as a check that the overall process is operating consistently and to the required standard. This does not constitute an additional assessment and will not delay assessment decisions being communicated to mediators.

2.3 Appeals against assessment decisions

Mediators who believe that their portfolio has been wrongly deemed ‘not proven’ or requiring additional work may make an appeal to the FMC, stating clearly the grounds for the appeal. Mediators are strongly encouraged to discuss potential appeals with their PPC, and will need to explain the reason if the PPC is not supporting the appeal. Mediators and PPCs are encouraged to each make a short written statement in support of the appeal (no more than 500 words), but no material will be accepted for addition to the portfolio.

Appeals must be made within three months of the assessment result. A fee is payable for an appeal; it will be refunded if the appeal is successful.

The FMC will investigate where there are valid grounds for the appeal. Acceptable grounds include the use of criteria that do not reflect the professional standards or code of practice, or the guidance set out in the published portfolio requirements; the criteria have been interpreted incorrectly; and the assessors have missed or misinterpreted material included in the portfolio.

When an appeal is approved to go forward, the portfolio will be re-examined by an assessor who has not previously been involved in its assessment. The assessor will have sight of the original assessment decision and the appeal submission, unless there are overriding reasons relating to the nature of the appeal that the reassessment should be carried out without knowledge of one or both. The decision on appeal will be final.

2.4 Award of FMCA status
The FMC Family Mediation Standards Board will be notified of the names of all mediators who have passed the assessment process. FMC Accredited Family Mediator status will be awarded provided that the mediator is in current membership of an FMC member body and is not in breach of the Code of Practice.

3. Renewing accreditation

3.1 General requirements

Accreditation is held for a period of three years following successful assessment or renewal. At the end of the three-year period, the mediator will need to make an application for renewal if s/he wishes to retain accreditation (mediators who are granted FMCA based on existing approvals may initially be asked to reapply after a shorter or longer period in order to avoid all renewal dates occurring in the same month).

The basic requirements for reaccreditation are (a) an adequate record of continuing development; (b) adequate dialogue with a Professional Practice Consultant; and (c) a minimum level of practice. Mediators must also be in current membership of one of the FMC member organisations, and not have had their accreditation revoked under the disciplinary process. Details of these requirements are given below, and a reapplication form, on which all applications for reaccreditation must be made, will be provided by the FMC.

3.2 Continuing development

The mediator must provide a completed continuing development record (as included with the reapplication form), which demonstrates that adequate steps have been undertaken to keep up-to-date and maintain the ability to practise competently. The record needs to describe (briefly) the activities that were carried out, why these were undertaken (i.e. their relevance to practice), and the benefits to clients and to practice that were gained.

The mediator should demonstrate keeping up-to-date with the following, as relevant to his or her practice:

- Changes in family law
- Changes in pensions, benefits and personal taxation
- Developments in family mediation practice and theory.

Development activities may of course cover other areas such as acquiring new skills, learning about particular aspects in greater depth, gaining knowledge of complementary fields, and advancing practice and theory.

Continuing development can be achieved through a wide range of means, including accredited and non-accredited courses and conferences, practice-based activities such as co-mediation, observation and action-based learning, on-line learning and research, reading, research, and higher education programmes. There are no restrictions on the kind of activities that can count, but it is important that
they are relevant to the mediator’s practice, result in relevant learning and benefits, and taken together provide an adequate level of updating. There are no requirements for development activities to total to a particular number of hours, although for guidance it is unlikely that less than ten hours per year engaged in specific development activity will be sufficient. Development should be timely, for instance when changes in family law are announced mediators will be expected to update themselves sufficiently quickly so that they are able to continue to provide accurate information to clients. Activities would normally be expected to be spread across the three-year period (if the period includes a substantial career break or other period of absence from practice, the mediator will need to explain how s/he has ensured that s/he is sufficiently up-to-date on returning to practice).

The mediator is encouraged to discuss development activities with his or her PPC. However, the activities that are chosen and undertaken are the responsibility of the mediator, and do not need to be endorsed by the PPC. Mediators are strongly advised to record and evaluate activities as they take place rather than waiting until the point of reapplication.

3.3 Professional Practice Consultants

The mediator must provide a record of adequate support from a PPC. This will normally not be less than four hours per year, at least two of which must be individual face-to-face sessions (the remaining hours can be remote or through a small-group session, but not a lecture or seminar). It is the responsibility of mediators to ensure that their PPC support is sufficient for the needs of their practice; this may require more than four hours of contact per year.

The PPC must endorse the application as (to the best of his or her knowledge) a true and fair record of the mediator’s development activities, PPC contact and hours of practice, and sign a statement to the effect that there is no reason under the FMC Code of Practice or the rules governing award of FMCA that the mediator should not be accredited.

3.4 Minimum hours of practice

A minimum level of practice is expected in order for the mediator to maintain his or her face-to-face mediation skills. This should normally be not less than fifteen hours per year of direct mediation, excluding information and assessment meetings or work involved in preparation and recording.

3.5 Levels of activity below the recommended minima

If the levels of PPC contact or mediation are below those stated above or there are any years with little or no continuing development activity, the mediator should provide an explanation and if relevant a proposed action plan to ensure that an acceptable level of competence is maintained. Other than where there is a valid reason such as maternity or paternity leave, illness, bereavement, or a planned career break, activity below the recommended minimum will be followed up; mediators should note that it is their responsibility to find the minimum level of work.

Levels of activity should match each other, so that for instance while PPC support and development activities will not be compulsory during a break from work, the mediator should show how s/he has ensured that s/he is sufficiently prepared and up-to-date before starting to practise again.
3.6 Late and insufficient applications

Applications can be accepted up to six months after the end of the three-year period, provided that there is a reasonable explanation for the lateness (for instance illness, bereavement or other unforeseen circumstances). Mediators who know that they will be away or indisposed when accreditation expires should reapply in good time to meet the deadline. Mediators on extended periods of leave may apply before or during the period of leave; the FMSB will ensure that mediators who have a valid reason for not practising are not disadvantaged if their reaccreditation date falls within the period of leave.

Late applications will not result in an extended period of accreditation, so if for instance accreditation expires on 31st January 2018 but the application is not made until 31st March, the new period of accreditation will run to 31st January 2021. Late applications after the six-month period, or any applications that are late without good cause, will be treated as if accreditation has lapsed.

Where an application does not meet the requirements set out above, the FMSB can ask for additional information, ask the mediator to propose an action plan that will result in the requirements being met (see section 3.7 below), or, following unsuccessful recourse to these measures, refuse to reaccredit. The timescale for resolving matters relating to insufficient applications will normally be a maximum of six months, after which accreditation will lapse. This period will be extended if delays are caused by matters beyond the control of the mediator.

The FMSB will ensure that the above allowances are not abused, for instance by mediators who deliberately submit an application that is both late and weak.

3.7 Lapsed accreditation and action plans

Accreditation will lapse if an application has not been received by the due date, a late application is received without adequate explanation, or the application is insufficient and the relevant matters remain unresolved. Mediators may of course choose not to reapply either to take an extended career break or because they no longer expect to practise as a family mediator.

Mediators who wish to reapply after their accreditation has lapsed for a shorter or longer period will need to put forward an action plan that will bring them to the required level of competence to practise at a proficient level. In developing the action plan, the mediator should refer to the FMC professional standards and code of practice, as well as (for mediators who have been out of practice for a substantial period) the current training requirements. The contents of the action plan will depend on individual circumstances and could vary for instance from essential updating and additional PPC support, through to substantial retraining and/or reassessment. The FMSB will want to see that the action plan is credible in terms of when the mediator last practised and the level (if any) of updating that has been maintained. The FMSB may negotiate changes to the action plan if necessary. Following approval of the action plan, the FMSB may reaccredit either immediately or when evidence has been produced that some or all of the agreed actions have been carried out.
Mediators who have been out of practice for a significant length of time and who have not maintained a sufficient level of ongoing development should be aware that they may need to undergo full retraining and reassessment.

3.8 Appeals against refusal to reaccredit

Mediators who are refused reaccreditation after making a valid and complete reaccreditation application may appeal to the FMC, clearly stating the grounds for the appeal. Mediators are strongly encouraged to discuss potential appeals with their PPC, and will need to explain the reason if the PPC is not supporting the appeal. Mediators and PPCs are encouraged to each make a short written statement in support of the appeal (no more than 500 words). A fee is payable for an appeal; it will be refunded if the appeal is successful.

When an appeal is approved to go forward, the FMC FMSB will convene an appeals panel that has not been involved in the decision to refuse accreditation. The panel will examine the decision-making process leading to the withdrawal or refusal of accreditation. The decision on appeal will be final.

Mediators who have had membership of a MO terminated should note that a successful appeal against refusal of accreditation will not automatically require that MO to reinstate their membership.
Appendix 1

Portfolio contents

Portfolios must include the following:

An application form, which includes:

- The mediator’s contact details and the name(s) of any practice(s) or service(s) with which s/he works.
- The FMC membership organisation that the mediator is a member of or registered with.
- The name and contact details of the mediator’s PPC (and any previous PPCs if relevant, together with the dates for which they were engaged).
- A declaration signed by the mediator confirming that:
  a) there are no past, current or known future reasons why s/he should not be practising as a family mediator
  b) The materials contained in the portfolio are his or her own work.
  c) s/he will comply with and practise in accordance with the FMC Code of Practice
  d) S/he accepts that the assessment decision made by the FMC is final, subject to the appeals process detailed in this document.

A contents page for the portfolio.

A standard format for this will be required by the FMC, which will include a grid for cross-referencing portfolio contents to the professional standards.

A statement from the mediator's PPC that:

- 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
- endorses 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.

Observation of a mediation session by the mediator

An account reflecting on and evaluating a mediation session by a FMCA, observed by the mediator, must be included in the portfolio.

Observation of the mediator by the PPC

The PPC’s feedback for the observed mediation session must be submitted, accompanied by an account by the mediator that:

- sets the context for the session (if it is not part of one of the case commentaries below);
- reflects on the mediator’s approach in the session; and
- Responds constructively to any points raised by the PPC.

**Case commentaries**

Three cases are needed where the mediator has taken the substantive lead, and full or extensive agreement has been secured. Cases must have started not later than two years before the date of submission of the portfolio (in exceptional circumstances a further year can be granted with the approval of the mediator’s PPC).

The cases must include at least one that is all-issues mediation, two with mediation of children issues, and two that include memoranda of understanding and open financial statements. Between them the cases must show evidence of successful, high-quality mediation that demonstrates the ability to mediate cases through to completion, including both financial and children’s issues, showing use of the full range of mediation skills identified in the professional standards and portfolio guidance.

The cases must include at least two examples of initial consultations or assessment meetings.

Each commentary must include a brief background to the case and a summarised account of the process of each mediation session, including the mediator’s reflection on their interventions. At least one case – which should normally be an all-issues case - must include a complete set of case notes, session records and correspondence. Case commentaries must be anonymised, and permission obtained from the clients to use them. A template will be provided for this purpose.

The mediator can make reference to additional cases if these are needed to demonstrate that the professional competence standards have been met.

**Reflective account**

A reflective account must be submitted (typically 1,500-2,000 words) drawing on the mediator’s practice experience. The account should where possible include reflection on cases that did not go to completion and what was learned from them. The account must include evidence of managing high conflict cases. The mediator must demonstrate a real sense of the work undertaken, highlighting key achievements, skills and knowledge gained since completing mediation training and any evidence that the mediator wishes to highlight to assessors that is not covered elsewhere within the portfolio. Inclusion of references to mediation reading and theory are likely to enhance the account.

**Case study questions**

A set of case-study questions are available at (web site to be added). The mediator will need to select three of the current five cases and answer the questions on them. When reflecting on these questions applicants should, wherever possible, draw on similar or related case examples from their own practice to include in their answers. The suggested response length is 200–400 words per question.
The questions are not intended to elicit a single ‘right answer’, but are instead designed to enable the mediator to show that proper consideration has been given to the situations described, drawing on knowledge and practice experience. The answers allow understanding to be demonstrated relevant to the professional standards that may not be apparent from cases handled to date.

**Personal development planning and review**

This includes (a) a personal development record covering the period since completing initial training, outlining learning experiences (including learning from practice) and the learning and development gained, and (b) a plan for the mediator’s future development post-accreditation. The record should be in the same format as provided for reaccreditation.
Appendix 2
The FMC professional competence standards for family mediation

Introduction

These standards apply to the work of family mediators generally, with specific application to assessment for accreditation. They are designed to apply across the contexts in which family mediators work – e.g. voluntary sector, private practice, law firms, sole practitioner, co-mediation etc. They aim to avoid assumptions that limit the context in which they can be applied (or make them hostage to changes in regulations, funding regimes, etc).

Note that the term ‘participants’ is used to denote the mediation clients rather than being inclusive of the mediator or anyone else who may be involved in the mediation.

A. Theoretical underpinnings

A1 Understand and draw on theories-in-use that inform the practice of mediation

These include:
- theories concerning the impact of separation, loss and conflict on families and individuals
- theories of child development and the impact of separation and other family changes on children and young people
- theories of conflict, co-operation and competition
- theories of communication and engagement
- key processes for resolving family disputes.

A2 Understand the ethical basis and key principles of family mediation

This includes:
- key principles of mediation including independence of the mediator, ‘without prejudice’, child focus, fairness, voluntariness, client competence, confidentiality and its limits, impartiality and neutrality, and participant self-determination within the relevant legal framework
- the impact of the mediator’s personal beliefs, values and style
- distinguishing between the process of mediation and employing other forms of intervention.

A3 Understand the key methods and techniques employed in family mediation

These include:
- different types of intervention and when it is appropriate to use them
- methods that enhance communication in the mediation process
- techniques for dealing with conflict, power imbalance and impasse
- ways of bringing the perspective of children and young people into the mediation process.
B. Professionalism and ethics

This section applies as relevant throughout the mediator’s work.

B1  Work within legal and professional guidelines and the limits of personal capability

This includes:
- working in accordance with the Family Mediation Council’s Code of Practice and with the procedures of the organisation(s) of which the mediator is a member
- operating within the law and following any legal requirements and processes
- only undertaking work that is within the mediator’s competence and capacity, seeking guidance or recommending alternative sources of support where necessary.

B2  Maintain the ability to practise competently and ethically

This includes:
- maintaining an adequate and up-to-date understanding of legislation, policy developments, research and practice relating to the field of family mediation
- maintaining an adequate level of support from a Professional Practice Consultant (PPC)
- taking responsibility for personal learning and development, including identifying areas for development, acting to meet learning objectives, and learning from practice.

B3  Respect the needs and individuality of participants

This includes:
- maintaining sensitivity to the needs of individual participants
- acting in accordance with the principles of equality and diversity
- responding to and addressing cultural and gender issues effectively and sensitively
- taking into account, and acting with sensitivity towards, any issues of mental health, learning disability or other potential barriers to participation in mediation.

B4  Balance the need for confidentiality with that for safeguarding

This includes:
- applying and upholding the principle of confidentiality and respecting the privileged nature of family mediation, other than where there are overriding and ethically sound reasons to do otherwise
- responding appropriately and effectively to any domestic abuse, safeguarding or child protection issues.

B5  Act with integrity and fairness

This includes:
- acting in an even-handed manner
- acting with openness, transparency and integrity.
C. Mediation practice

C1 Explain mediation to participants
This includes:
- being clear about the difference between an initial consultation or assessment meeting and a mediation session
- explaining the principles, potential and limitations of mediation
- explaining the different methods of mediation that are available and how they would work.

C2 Assess the suitability of mediation for participants
This includes:
- assessing, initially and on an ongoing basis, suitability for mediation in respect of (a) the dispute, (b) the participants, and (c) all the circumstances of the case
- helping the participants to decide on the appropriateness of mediation for their situation
- signposting participants to complementary or alternative services where appropriate
- ensuring that participants are aware of their right to seek independent legal advice.

C3 Check eligibility for financial support
This involves identifying any public or other funding that is available and, where appropriate, carrying out and recording accurate financial checks for eligibility.

C4 Assess and respond to domestic abuse and child or other safeguarding issues
This includes:
- screening effectively with each participant separately for domestic abuse or harm to themselves, children or others
- identifying any potential for unreported domestic abuse or harm
- providing appropriate information on sources of assistance and protection from harm, including emergency remedies
- notifying appropriate outside agencies, and the mediator’s PPC, where necessary.

C5 Provide relevant information about services and options available to participants
This includes, at the level appropriate to the participant and the situation:
- providing information about family law and its processes
- providing unbiased information about other relevant means of family dispute resolution
- providing information about sources of assistance for parents, children and families
- maintaining (and explaining to the participant) the distinction between information and advice.

C6 Establish the environment, agenda and ground rules for mediation
This includes:
- setting up mediation as appropriate for participants’ needs
- creating a safe and neutral environment for mediation
- identifying and agreeing the issues that will form the agenda for discussion
- establishing the principle of balanced participation, and agreeing how this balance will be maintained throughout the process
- clarifying issues of, and limits to, confidentiality.
C7 Use effective skills and interventions during the mediation process
   These include things such as:
   - using different types of question appropriately
   - using relevant listening, communication and mediation skills to aid mutual understanding and
     rapport, help participants to move forward and to overcome blocks in progress
   - facilitating participants’ lateral thinking, problem solving and option development.
   Further guidance on the skills that will be looked for during assessment are provided in the
   portfolio guidance document.

C8 Maintain progress towards resolving issues
   This includes:
   - managing the discussion of matters in a way that facilitates effective progress
   - managing effective financial disclosure
   - recognising and dealing effectively with impasse
   - managing strong emotions and conflict sufficiently to allow the mediation process to move
     forward
   - managing power imbalances to avoid detriment to either participant.

C9 Produce an appropriate and agreed outcome statement
   This includes:
   - ensuring that all mediated outcomes follow a clear rationale, are reality-tested, and are
     approved by both participants
   - using appropriate language and drafting formats
   - ensuring congruence between ‘without prejudice’ mediation summaries and open financial
     statements
   - ensuring that only appropriately open facts are included in open financial statements
   - drafting financial settlements that are capable of legal implementation and accord with current
     legislation
   - setting out any matters that have not been resolved.

C10 Record decisions and maintain participant files
   This includes recording, at the appropriate points in the process:
   - the assessment as to the suitability of mediation
   - participants’ agreement to mediation
   - any ground rules that are established
   - the location, timetable and practicalities of mediation
   - details and outcomes of each session, including any proposed actions (for participants and
     the mediator) and matters to be taken forward to the next session.

C11 Review individual cases and overall practice
   This includes:
   - identifying any significant personal learning points from cases
   - initiating case discussions with PPCs
   - contributing as needed to reviews of individual cases and to overall service provision.
Appendix 3

The level required at the point of assessment

The assessors will be looking for a level of performance that is at least ‘competent’ as indicated below, but also shows development towards the ‘proficient’ level. The table can also be used as an aid to tracking development, for instance in PPC discussions.

<table>
<thead>
<tr>
<th>Knowledge</th>
<th>Standard of work</th>
<th>Autonomy</th>
<th>Coping with complexity</th>
<th>Perception of context</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Novice</strong></td>
<td>Minimal, or ‘textbook’ knowledge without connecting it to practice</td>
<td>Unlikely to be satisfactory unless closely supervised</td>
<td>Needs close supervision or instruction</td>
<td>Little or no conception of dealing with complexity</td>
</tr>
<tr>
<td><strong>Advanced Beginner</strong></td>
<td>Working knowledge of key aspects of practice</td>
<td>Straightforward tasks likely to be completed to an acceptable standard</td>
<td>Able to achieve some steps using own judgement, but supervision needed for overall task</td>
<td>Appreciates complex situations but only able to achieve partial resolution</td>
</tr>
<tr>
<td><strong>Competent</strong></td>
<td>Good working knowledge of practice and key principles</td>
<td>Fit for purpose, knowing when to seek support for more complex issues</td>
<td>Able to achieve most tasks using own judgement, referring to PPC/qualified colleagues for support where needed</td>
<td>Copes with complex situations through deliberate analysis and planning</td>
</tr>
<tr>
<td><strong>Proficient</strong></td>
<td>Depth of understanding of practice and underlying principles</td>
<td>Fully acceptable standard achieved routinely</td>
<td>Able to take full responsibility for own work</td>
<td>Deals with complex situations holistically, decision-making more confident</td>
</tr>
<tr>
<td><strong>Expert</strong></td>
<td>Authoritative knowledge of underlying principles and deep tacit understanding of practice</td>
<td>Excellence achieved with relative ease</td>
<td>Able to take responsibility for going beyond existing standards and creating own interpretations</td>
<td>Holistic grasp of complex situations, moves between intuitive and analytical approaches with ease</td>
</tr>
</tbody>
</table>

Appendix 4

**Transitional and non-standard arrangements for award of FMCA**

The following measures are available for mediators who have relevant training, recognition or experience when the new framework comes into force, or have trained or gained recognition outside the UK. Transitional arrangements will normally cease by 31st December 2016 at the latest.

1 **Family mediators currently approved to undertake legal-aided work or who have FMA or Resolution accreditation**

Mediators who are currently approved to undertake legal-aided work (whether through the APC scheme, the LSC/UK College scheme, or the Law Society scheme), or hold accreditation under the Family Mediators’ Association or Resolution schemes, will transfer directly to FMCA provided that they are in current full membership of an FMC member organisation as a practising family mediator – including meeting the requirements for CPD and for PPC support. Mediators within this category who are not currently approved to undertake legal-aided work may be restricted from undertaking legal-aided work without a further assessment.

2 **Family mediators who have trained pre-changeover but do not come into category 1 above (including those who are MIAMs-approved)**

This measure applies to mediators who have, pre-changeover, passed a family mediation initial training course that was provided by an FMC member organisation or that has been approved for family mediation by the College of Mediators. This training will be treated as if it had been approved by the FMC, so mediators can register to start working towards FMCA in accordance with the normal regulations.

Where mediators within this category already have some PPC-supported experience in working towards APC or Law Society accreditation, or have approval to conduct MIAMs, this can be used as part of the required post-training development. Mediators should be aware that there are some additional requirements in the new scheme for the assessed portfolio, and should discuss what they need to do with their PPC.

Mediators who fall within this measure have three years from the date of their initial training, or for MIAMs-approved mediators until 31st December 2015 if longer, to achieve FMCA. An extension of up to a further two years may be granted if there is good reason and the extension is supported by the mediator’s PPC. Approval to undertake MIAMs expires on 31st December 2015 for mediators who do not achieve FMCA.
3 Family mediators who have taken non-validated/non-approved courses in England and Wales

Any family mediation courses that have not been approved by the FMC or come under measure 2 above will be considered on an individual basis. Mediators wishing to have these courses considered as fulfilling all or part of the requirements for initial training will need to provide the following:

- The names of the training provider and course tutors, and if relevant the validating body.
- The dates of the course.
- Full details of the course content and duration, the teaching and practice methods used, and how it was assessed. If this is not in an official course document, it needs to be endorsed by the course tutor.
- Any certificate or proof of completion from the course.

The FMSB can decide to accept the course as covering the initial training requirements; accept the course but require evidence of additional learning to make up any deficiencies (which could be provided by a suitable conversion course, short course or other forms of learning, depending on what gaps need to be covered); or reject the course as providing insufficient coverage of family mediation as represented by the FMC Professional Standards and Code of Practice. Courses will normally be rejected if the FMSB considers that the gap between the course content and the FMC’s requirements is too large to be made up by easily-available training or other sources of learning.

Mediators whose training has been approved as acceptable, with or without additional learning, will need to register as working towards FMCA, and complete within three years of their training. Where additional learning has been asked for, this needs to be demonstrated and approved by the mediator’s PPC before the portfolio can be submitted for assessment.

Non-validated courses from within England and Wales will only be considered if they were taken before the end of 2014, and only for mediators being assessed for accreditation before 31st December 2016. An extension of up to a further two years to gain accreditation may be granted if there is good reason and the extension is supported by the mediator’s PPC.

4 Family mediators who have trained outside England and Wales

The treatment of these courses will initially be on the same basis as in measure 3 above, except that there will be no cut-off date for considering courses. The FMSB will keep a register of its decisions under this measure and ensure that applicants from the same programme, or with the same family mediation qualification, are treated consistently.

The FMSB will be particularly mindful of (a) applicants’ knowledge of family law, welfare benefits, family support provisions and other relevant matters as they relate to England and Wales, and (b) for applicants who do not have English as a first language, the need for an appropriate level of spoken and written English (or Welsh for practising exclusively in Wales). Unless the mediator is proposing to
work exclusively with a community whose native language is not English or Welsh, this latter needs to be at a native or near-native level (CEFR level C2).

If more than occasional applications are received from the same course or qualification that is provided outside England and Wales and is conducted in English or Welsh, the FMSB should encourage the provider to gain FMC approval for it through the normal processes.

5 Experienced mediators who do not come into category 1

Family mediators who have substantial current or recent experience – normally those who have at least three years’ continuous experience as a family mediator in England or Wales and who, if they had been accredited, would meet the reaccreditation requirements – can apply to be exempted from foundation training or to proceed directly to submitting a portfolio for assessment.

The FMSB will consider applications individually at the point of registration. Applicants should normally demonstrate the above practising requirements, including the stipulated level of PPC support, along with adequate initial training as indicated in measures 2, 3 or 4. Initial training does not need to be recent provided that the applicant can provide evidence of having kept up-to-date.

Mediators admitted under this measure need to meet the standard portfolio requirements, except for the additional ten hours of PPC support. Applicants should however ensure that they have sufficient PPC support to complete the tasks required for the portfolio.

This measure will cease after 31st December 2016.

6 Family mediators who have accreditation from outside of England and Wales

The basic treatment of family mediators who have professional accreditation, qualified status or state registration from outside England and Wales is the same as for measure 5, except that there will be no cut-off date.

The FMSB will apply the same considerations about language and the English and Welsh context as in measure 4, and will also record decisions with a view to maintaining consistency.

The FMSB will work towards establishing mutual recognition processes for schemes outside of England and Wales, with a conversion requirement specific to each scheme.
Part 2: Initial Training and Course Approval

Introduction

This document sets out the requirements and process for FMC approval of initial training courses for family mediators. Section 1 covers the minimum requirements for courses, and Section 2 the process for approval. These requirements come into force on 1st January 2015.

1. Minimum requirements for family mediation initial training courses to be approved by the FMC

These are the minimum requirements that all family mediation courses, including those run by FMC member organisations, need to comply with in order to enable mediators to be approved as eligible to progress to accreditation. Providers seeking course approval will need to provide details that demonstrate how their courses meet these requirements, as detailed under each section below.

1.1 The provider

There is no restriction on the type of organisation that can provide family mediation training, provided that the minimum requirements set out in this document are met.

Applications can be accepted from providers in England and Wales, as well as from outside of England and Wales for courses run in English or Welsh. Non-England and Wales providers who intend or expect that some of their course participants will want to practise in England or Wales are encouraged to gain FMC approval for their courses.

Providers will need to provide details of their legal status, contact details and where applicable registered office; whether the organisation is part of a parent organisation or group, or if it is applying as a consortium, details of the members of the consortium; the person responsible for the application to whom correspondence is to be addressed; and the person with authority to authorise the application.

Providers will need to demonstrate that they have adequate resources and financial capacity to meet the above requirements, including ongoing support for participants as described in section 1.6.

Providers will need to include brief details of previous family mediation courses that they have run and (where applicable) which organisation these have been approved by. Providers without previous experience of running family mediation courses should include details of similar courses that they have run or are currently running.

1.2 Entry to courses

Entrants to courses should demonstrate:
The ability to work at graduate level, either through possession of a degree or equivalent-level professional qualification, or experience of work in a role that requires an equivalent level of thinking and application.

The ability to understand and use an adequate level of written and spoken English (or Welsh for courses in the Welsh language). Providers should note that unless the mediator is proposing to work exclusively with a community whose native language is not English or Welsh, this will need to be at a native or near-native level at the point of accreditation (CEFR level C2).

The ability to work with conflicts and manage interpersonal relationships at a professional level, gained either through typically two or three years’ experience as a professional dealing with families, or a similar amount of time as a mediator or non-adversarial dispute resolution practitioner in another field.

Providers will need to show how they are applying, or intend to apply, these principles to course admission. In particular they should demonstrate how they will operate fair and equitable access, while ensuring that potential participants are adequately prepared for the course.

Providers must provide accurate information to prospective course participants. In addition to information about the course, this includes accurate information about the process post-training to gain accreditation (FMCA) via the FMC or Law Society, including the implications in terms of the level and cost of Professional Practice Consultant support that will be required.

1.3 Level of course

Family mediation courses should reflect as a minimum the requirements for level 5 as described in the level descriptors of the Qualifications and Credit Framework, Framework for Higher Education Qualifications or Credit and Qualifications Framework for Wales. Providers may choose to pitch their courses at a higher level provided that the other requirements stated here are adhered to. Courses may optionally be validated or credit-rated by a university or recognised awarding body, but this is not currently a requirement for FMC approval.

Providers will need to include a summary of learning objectives and course content that accords with the minimum level requirement and supports participants to demonstrate learning outcomes in accordance with 1.4 below.

1.4 Course content

Providers should refer to the FMC Professional Competence Standards and the Code of Practice in developing their course content and assessment criteria. The Competence Standards are geared to a level of practice some time after training, but courses should cover the principles, knowledge, techniques and skills stated or implied in the Standards, including applying them in a simulated environment. Providers should note that the Standards include pre-mediation information and assessment, and initial training must now cover these areas as separate MIAMs training will cease after the end of 2014.
Courses must cover knowledge of children and property/finance aspects, and ensure that participants can carry out a simulated all-issues mediation and produce outcome statements relating to both children and property/finance.

Courses must provide an adequate opportunity for skills development though role-play and other relevant techniques. Each participant must play the role of the mediator several times over the duration of the course and be provided with adequate feedback, such that s/he has a fair and adequate opportunity to demonstrate the relevant learning outcomes.

1.5 Duration and teaching methods

The minimum requirements for initial training courses are:

- At least 60 hours of contact time, excluding time spent on reading or other private study, completion of assignments and preparation for assessment. This must be spread over a minimum of eight days with sufficient intervening periods to enable reflection, private study and preparation for assessment. Up to half the contact time may be substituted by structured on-line or distance learning supported by adequate one-to-one or small group tutor support. A variety of teaching methods must be used so that participants have an opportunity to learn the required principles and theory, reflect on and discuss principles and approaches, apply theory to practice, and develop the relevant skills.

- At least 30 hours of the above time to be spent on skills development, generally through role-play exercises as described in section A4 above.

- Courses must run with sufficient participants to support adequate skills development. Normally this will mean a minimum of six participants on any course.

Providers will need to include a summary of the course programme or programmes that are expected to be used, demonstrating how they meet the above requirements. Providers should note that there is a large amount of content to cover, including development and assessment of skills. A 60-hour course will need to be carefully designed, with good use of the intervening periods for remote study, to ensure that participants have a fair opportunity to reach the required standards.

1.6 Assessment

All the key areas of the FMC Professional Competence Standards must be assessed at a level appropriate for a classroom/simulated environment, with all needing to be demonstrated to a satisfactory standard for the course to be passed. Participants must be adequately proficient in handling both children and property/finance matters to pass the course.

The provider must use assessment methods that are valid and sufficient for the learning outcomes to be assessed, operate assessment in a way that is robust and consistent, and avoid placing barriers in the way of participants that do not reflect the criteria being assessed. Assessment must include observation of each participant undertaking the role of the mediator in a simulated situation, as well as written exercises that as a minimum require drafting of a memorandum of understanding.
Formal assessment must either be carried out or moderated by a person who has not been involved in training the participant who is being assessed. If assessment is carried out by the trainer, moderation must include detailed sampling of every participant’s work.

Where a participant fails to meet the standard required to pass the course, the provider must provide support to enable the participant to retake the relevant assessment(s) on at least one further occasion. This support can include advice to gain additional training or experience if this is necessary. Providers must act in participants’ interests by providing fair and unbiased information and advice that is geared to giving participants the best chance to pass the assessment. Providers’ obligations under this requirement can cease twelve months after the end of the course.

Providers will need to include a summary of the assessment methods and tasks that are proposed, including how assessments will be moderated.

1.7 Staffing

At least 80% of the course must be taught by core trainers who (a) are FMC or Law Society accredited family mediators and (b) who either have a teaching or training qualification at a minimum of England and Wales level 4, or have previously acted as a core trainer on at least two comparable mediation courses. The same requirements apply to assessors.

All courses must (a) involve a minimum of two trainers and (b) have a maximum ratio of six participants per trainer for all practical exercises. Staffing must take account of the requirement for independent assessment or moderation described in section 1.6.

Providers will need to include details of each of the core trainers and the assessors that they propose to use, demonstrating how the above criteria are met.

1.8 Certification

Participants who have passed all the course assessments will be issued with a certificate stating their achievement.

Any other records, for instance confirming attendance or providing credit for partial achievement, will be clearly distinguished from full certificates and include a statement to the effect that they do not represent completion of initial training as required by the Family Mediation Council.

1.9 Post-training review with a Professional Practice Consultant

Before proceeding towards accreditation with the Family Mediation Council, it is a requirement that all mediators must have a post-training review with an FMC-approved Professional Practice Consultant (PPC). Providers may optionally wish to (a) aid participants who have not already done so to find a PPC, and (b) to include the cost of this review in the course fee. Providers must be clear in their literature whether this service is included or whether participants need to arrange their own PPC support.
Providers should ensure that participants are aware of the requirement to register with the FMC, normally through one of the FMC member organisations, before acting as a sole or lead mediator or representing themselves to the public as a family mediator.

2. Course approval

2.1 Requirement for course approval

Approval from the Family Mediation Council is needed for courses to be accepted as providing the initial training needed for family mediators to start working towards FMC accreditation.

Approval will be normally for a period of three years, after which reapproval will be needed as described in section 2.4 below. All current courses pre-dating this procedure will need to be submitted via the initial approval process as described below. Exceptionally, approval can be for a shorter period after which stated conditions must be met. Reapproval will also be required if the legal entity of the provider changes.

2.2 Responsibilities and conflicts of interest

Course approval is the responsibility of the FMC Family Mediation Standards Board (FMSB), either directly or via delegated authority to a course approval panel or executive. No person involved in considering an application for course approval or reapproval may be, or have been within the last three years, a trustee, board member, employee, trainer or assessor of the organisation submitting the application.

2.3 Initial approval

The intending course provider must submit an application that describes how the minimum requirements detailed in section 1 will be met. Providers will be encouraged to discuss their application with a person appointed by the FMSB before submitting it.

On receiving an application, the FMSB will appoint two reviewers within a period of ten working days. Reviewers must be independent of the provider submitting the course; this will include not having acted as a trainer or in a similar capacity for the provider organisation within three years of the submission date. The reviewers will examine the application and make recommendations within a further ten working days. The reviewers may make one of the following recommendations:

- The course is approved
- The course is approved subject to minor conditions being met
- The course is not approved
- More information is needed before a recommendation can be made.
In the case of non-approval, the reviewers must make clear which requirements have not been met and make recommendations for bringing the application to a satisfactory standard. Reasons for non-approval must be endorsed by the FMSB and communicated to the applicant.

The FMSB will communicate its decision to the applicant within ten working days of receiving the report from the reviewers. Where further information is requested, the applicant may provide this directly to the reviewers.

Applicants who have not been successful in their first application will normally be encouraged to address the points that resulted in rejection and resubmit their application.

The FMSB will consider appeals on the basis that the reasons given for rejection were not in accordance with the requirements stated in this document. On appeal, the application will be treated as a new application and sent to two further reviewers under the procedure described above. The FMSB's decision following appeal will be final.

Following approval, the applicant undertakes to provide access to all course and assessment materials (including web-based materials and platforms), training and assessment sessions, assessed work, trainers and participants should the FMSB wish to conduct an inspection. The FMSB will give at least ten working days' notice before making any inspection.

The FMSB may set fees for course approval, resubmissions of unsuccessful applications, and appeals. The appeals fee will be refunded if the appeal is successful.

2.4 Re-approval

Reapplications must be made in sufficient time to enable any planned courses to run before approval expires. Reapplications cannot be made more than 42 months after the date of the original approval.

Reapplications should focus on any changes that have been made or are proposed since the original application, including changes to staffing. They should also be accompanied by:

- A concise report on the provision that has taken place since the last approval, including any changes that have been made as a result of learning by the course team
- The success rates achieved by participants
- The names of participants on each course
- Feedback from course participants on each course.

The procedure for handling reapplications will be the same as that for initial applications.

Re-approval will normally be for a period of three years.

Where re-approval is required within any three-year approval period because of a change in legal entity, the applicant should initially provide details of the new organisation together with a summary of the material changes that this entails. The FMSB will decide whether a full reapplication is required at this stage.
Part 3: Requirements for assessors for FMC Accreditation

Introduction

This document sets out the basic requirements for assessors for FMC Accreditation (FMCA). Equivalent requirements will apply to Law Society assessors for family mediation accreditation, with different arrangements for oversight. The FMC and the Law Society will work towards a common pool of assessors with, wherever sensible and feasible, common training and updating.

Definition and essential requirements

FMCA assessors are appointed by the FMC Family Mediation Standards Board (FMSB) to carry out the final assessment of candidates for FMCA status. The assessment role is at present limited to examining documentary evidence provided by the candidate and his or her PPC as well as where needed questioning candidates; it does not extend to observing them mediate.

The basic role of the assessor is to examine the evidence that the candidate has put forward and assess it against the requirements for FMCA, as expressed in the FMCA document and associated portfolio guidance. Assessors are also involved in re-examining evidence on appeal, and may be asked to assist with moderating assessments and providing feedback to PPCs individually or jointly on their contribution to candidates’ evidence.

Appointment, training and updating of assessors

The FMSB is responsible for appointing a Chief Assessor who also acts as the scheme’s moderator, and for appointing assessors in conjunction with the Chief Assessor. Assessors must be recruited from across the family mediation community and appointed on an open and fair basis according to criteria determined by the FMSB. The minimum requirements for assessors are that they:

- hold FMCA status
- have been practising continuously as a family mediator for at least three years
- currently act, or have acted for at least two years, as a PPC
- have current membership of an FMC MO
- are supported by their PPC in becoming an assessor.

Assessors must be provided with adequate training to enable them to carry out their role to an acceptable standard. Initial training may take the form of a one-day course, one-to-one mentoring, or distance learning followed by discussion. Training must cover:

- The basic principles of work-based assessment, including validity, robustness, consistency, authenticity of evidence, fairness, and accessibility.
- The requirements of the FMCA scheme and their implications for assessment.
- Interpreting the FMC professional competence standards and assessing against them to the required level.
- Applying the FMC Code of Practice to assessed work.
- Practicalities of assessing portfolios.
- Resources and support for undertaking the role.
- Ongoing professional requirements as an assessor.

Following initial training, the assessor will be provided with one-to-one support by the Chief Assessor (or another experienced assessor nominated by him or her) to help in assessing his or her first portfolio(s). The Chief Assessor will sign off the new assessor when s/he is ready to assess unaided. Trainee assessors who are not signed off after co-assessing three portfolios and believe that they are ready to assess unaided may ask for a second opinion for their next portfolio, which will be considered by the FMSB along with that of the Chief Assessor. Beyond this, continued support towards signing off as an assessor will be at the FMSB’s discretion.

Assessors must keep up-to-date with any changes in the FMCA scheme and in recommended assessment practice. Updates may be provided in the form of meetings, short courses or briefing sessions, electronic or paper-based materials, or online conferences. The FMSB will provide, and assessors are responsible for reading and if necessary gaining clarification on, details of changes to the scheme.

In addition to updating requirements specifically for assessors, all assessors must remain accredited (FMCA) including meeting the minimum requirements for practice as a family mediator and for contact with their own PPC.

**Oversight of assessors**

The FMSB is responsible for the competence and conduct of assessors, via the FMCA Chief Assessor.

The main means of oversight is via examining assessed portfolios along with the assessment decisions. The Chief Assessor (or his or her nominee) will carry out a brief second check of all portfolios, and examine any that appear to be borderline in greater depth. Borderline portfolios, and those where there appear to have been problems with the assessment, will be discussed with the first assessor. Assessors may also ask the Chief Assessor to check interpretations or specific points. The FMSB will also examine a sample of portfolios as a check that the overall process is operating consistently and to the required standard. This does not constitute an additional assessment and will not delay assessment decisions being communicated to mediators.

Assessors who appear to be having difficulties with assessment will be offered additional support. The FMSB reserves the right not to use the services of any assessor who is consistently requires a high level of monitoring, who repeatedly fails to follow the FMCA scheme requirements, or who causes unnecessary delays in the assessment process.
Part 4: Common requirements for Professional Practice Consultancy

Introduction

This document sets out the basic requirements for Professional Practice Consultancy and the training, registration and oversight of Professional Practice Consultants when the revised system of accreditation comes into operation in 2015. The training of PPCs is the responsibility of individual FMC member organisations (MOs), while registration and oversight is the responsibility of the FMC Family Mediation Standards Board (FMSB).

Definition and essential requirements

Professional Practice Consultancy is relationship of support and oversight between a Professional Practice Consultant (PPC), who must be an experienced, FMC-accredited and currently practising family mediator, and another family mediator who may be FMC accredited, registered as working towards accreditation (‘registered’), or neither accredited nor registered. Family mediators are required to have a specified minimum level of initial and ongoing PPC support as a condition of registration and accreditation.

The PPC’s role includes acting as a mentor and sounding-board for the mediator, and providing a second professional opinion when requested by the mediator, the FMC or the mediator’s MO, for instance in response to a complaint or difference of opinion. It also involves maintaining oversight of the mediator’s work insofar as is possible within the stipulated minimum requirement for PPC contact. While it is not a policing role, the PPC must draw the mediator’s attention to any matters that may lead to contravention of the FMC Code of Practice, and, should the mediator continue to contravene the Code in spite of the PPC’s advice and warnings, to reporting such contraventions to the mediator’s MO for consideration under its complaints and disciplinary procedures. PPCs are also encouraged to discuss with their mediators (and, if necessary to arrive at a decision on acceptability, raise with the MO concerned) any issues which, while they do not directly contravene the Code, could be considered borderline in terms of good practice.

PPCs must act confidentially, and in line with data protection requirements, in relation to their mediators and to any information they are privy to about mediation clients, while making clear that there are limits to confidentiality where there is risk of harm, money laundering, serious breach of the Code of Practice, or where directed to reveal information by a Court.

The PPC cannot be held responsible for any failings in the mediator’s work unless they result from a clearly substantiated neglect of these duties. MOs should note that PPCs cannot be considered sufficiently independent to carry out a formal investigation of a complaint against a mediator whom they support and supervise, though as stated above they may be asked to provide a second opinion to aid informal resolution.
Where a mediator voluntarily changes his or her PPC, the new PPC must contact the outgoing one to check the reason for end of the previous PPC relationship and acquaint him/herself with any practice issues or concerns on the part of the previous PPC.

PPCs also have additional duties in relation to mediators who are registered as working towards FMC accreditation (FMCA), including supporting portfolio development, observing mediation, approving documentation, and signing Court forms. These are detailed in the accreditation framework document.

PPCs must act in accordance with the FMC PPC Code of Practice and the Guidelines for PPCs.

**Recruitment and registration of PPCs**

Each MO is responsible for providing PPC training courses and recruiting mediators to them. MOs must recruit on an open and fair basis. Each MO may set its own criteria for accepting course participants, subject to ensuring that the criteria used do not discriminate on any of the grounds excluded by current employment legislation and require as a minimum that potential PPCs:

- hold FMCA status
- have been practising continuously as a family mediator for at least three years
- have current membership of an FMC MO
- are supported by their own PPC in training as a PPC.

Mediators who successfully complete the required PPC training (see below) must apply to the FMC to be placed on the register of PPCs. Once registered, PPCs are recognised by all MOs and eligible to work with members of any MO.

PPCs are engaged by business entities (including sole practitioners) to work with individual mediators or groups of mediators. A PPC must not work as such with a mediator, firm or service when a conflict exists that may inhibit the PPC from providing impartial advice and support, or from acting appropriately in the case of mediators deviating from the FMC Code of Practice. This includes but is not limited to situations where the mediator has a close personal relationship with the PPC, or is in another economic relationship with the firm or service that would allow it to place undue pressure on the PPC.

PPCs must re-register every three years to practise as PPCs, normally at the point when they renew their FMC accreditation.
Training and updating of PPCs

MOs may provide PPC training individually or jointly. Initial PPC training must consist of at least 15 guided learning hours and be delivered in a way that includes time for questioning, clarification and discussion between participants (whether face-to-face or remotely). Courses must provide up-to-date coverage of the following topics:

- The role and responsibilities of the PPC, both in relation to general practice and in relation to accreditation, reaccreditation, and complaints
- Implications of the FMC Code of Practice, professional competence standards, and complaints procedure in relation to the PPC role
- Understanding and applying the FMC PPC Code of Practice and guidance
- Approaches and practicalities for professional practice consultancy
- Balancing supporting aspects of the role with the need to maintain professional standards and public protection
- Potential conflicts within the PPC role and matters that the PPC cannot take responsibility for
- Resources and support for undertaking the role
- Contracting and insurance
- Ongoing professional requirements as a PPC.

The course must include an assessment of each participant's understanding of the topics covered, which must be passed before the participant can be registered as a PPC. The format of this assessment is open to providers; it could for instance take the form of short written answers, response to case-studies, or an online or multiple choice test. If the assessment is conducted verbally, the provider will need to keep a record of the discussion signed by the trainer and the participant; if operated remotely, the provider must ensure that the prospective PPC’s identity is authenticated, for instance by having the test witnessed by his or her PPC or administered by a responsible and impartial person.

The FMC, in conjunction with MOs, will also provide or facilitate the organisation of updating events and resources for PPCs; these may include national, regional and online events, as well as electronic and paper-based resources and helplines. The FMC is responsible for ensuring that the PPCs on its register are kept up-to-date with changes in relevant aspects of the FMC’s self-regulatory framework and recommended good practice for PPCs. PPCs are responsible for ensuring that they keep up-to-date with the information provided the FMC and by MOs in relation to these matters. They must normally attend at least one updating event specifically for PPCs each year, which may be a national, regional or synchronous online event, and undertake a minimum of five hours’ updating annually that is directly relevant to their role as a PPC (including the event).

In addition to these updating requirements specifically for PPCs, all PPCs must remain accredited (FMCA) including meeting the minimum requirements for practice as a family mediator and for contact with their own PPC. PPCs must also act as a PPC for a minimum of four hours per year (i.e. the equivalent of supporting one mediator), which may be averaged over three years.
Oversight of PPCs and the professional practice consultancy process

The FMC FMSB will establish a line of responsibility to a named person or a panel for overseeing the activity of PPCs registered with it. This responsibility includes:

- Maintaining the register of PPCs and making it available to all MOs.
- Monitoring that PPCs are meeting the ongoing requirements to practise as a PPC.
- Responding to and investigating complaints about PPCs.
- Deselecting PPCs found to be in neglect of their responsibilities, via a fair and consistent process with possibility of appeal.

PPCs must re-register every three years, normally at the same time that they renew their FMC accreditation. In addition to the ongoing requirements for FMCA, they will need to demonstrate the following:

- Compliance with the minimum updating requirements for PPCs stated above (PPC development activities should be added to the form for continuing development, and commented on in the same way).
- Evidence of at least twelve hours of PPC activity, equivalent to acting as a PPC to one mediator, over the three years. The MO may ask to see summary records of this activity.
- Confirmation from their own PPC that s/he still supports their continuing in the PPC role.

Where PPCs fail to meet these requirements, they will normally need to attend a refresher course (or full PPC course if a refresher is unavailable) provided by a MO.

Each MO must maintain a register that ensures that each member who practises as a family mediator (whether or not accredited or registered as working towards accreditation) has a current PPC, and provide this to the FMC. Where a member’s PPC changes, the MO should ensure that the new PPC contacts the previous PPC to check the reason for end of the previous PPC relationship and acquaint him/herself with any practice issues or concerns on the part of the previous PPC.
Part 5: Complaints and disciplinary processes and withdrawal of accreditation

Initial responsibility for both complaints and disciplinary processes rests with the member organisations (MOs) of the Family Mediation Council (FMC). The FMC maintains control over common standards, acts as an adjudicator where MOs’ processes and interpretations are challenged, and is also ultimately responsible for decisions about accreditation (FMCA).

1. Member organisations’ responsibilities

(a) Complaints and claims of breach of the FMC Code of Practice

Each FMC member organisation (MO) is responsible for dealing with complaints against its members that are escalated beyond their practices or employers, as well as any claims that their members are otherwise in breach of the FMC Code of Practice. Complaints (including claims of breach) may be made by mediation clients (including persons attending mediation information and assessment meetings or other initial consultations), by other mediators (including PPCs), or by others affected by or privy to the member’s actions. Complainants do not need to be affected personally by the actions of the member where they are making a claim that the member is in breach of the FMC Code of Practice. The MO may after considering the grounds of the complaint refuse to investigate complaints that do not involve potential breaches of the Code of Practice, or appear to be vexatious or of a purely personal nature.

The MO will have a complaints procedure that provides details of the types of complaints that it can consider, how complaints will be investigated, by whom, and the timescales that it will adhere to for acknowledging and adjudicating on complaints. The complaints procedure will conform with the requirements below, and will be provided to all members and to all persons who have notified the MO of their intent to make a complaint.

The MO will include provisions for investigating, insofar as is practicable and subject to reasonable time limitations, complaints against former members where the complaint arose during their period of membership, and concluding the investigation of any complaint where the member resigns during the investigation. These provisions are necessary to prevent mediators from avoiding investigation and possible disciplinary action while continuing or returning to practise with another MO. Where the investigation upholds the complaint and considers that it is a disciplinary matter, the MO must refer the case to its disciplinary panel as if the mediator was still in membership.

The MO is responsible for requiring its members to inform their clients of their right to escalate a complaint to a named MO of which the mediator is a member if they are unable to resolve it with the mediator or their firm or service provider. This information should be provided at least verbally and preferably in writing at the initial meeting, and in writing before the agreement to mediate is signed. The agreement to mediate must include a clause where both clients consent to release of the mediation file to the MO (and if necessary the FMC) should either client wish to escalate a complaint.
The member must also ensure that clients are aware that the MO complaints procedure does not prejudice the right to seek civil remedy.

The MO will normally only investigate a complaint relating to the standard of service provided by the member if the complainant has already exhausted the member's own complaints procedures (including those of any firm of service provider for or via whom the mediator provided the service that the complaint concerns).

The MO may require that escalated complaints are normally submitted in writing, but must offer appropriate support to complainants who are unable to express themselves sufficiently clearly in writing. The MO must obtain consent from the complainant that all matters relating to the complaint can be shared with the member and the member's PPC. Where the complaint is from a mediation client, the MO must obtain consent from the complainant to examine the client’s file (this consent should normally already be available if the mediator has followed the requirement above that consent is incorporated in the agreement to mediate).

Where appropriate, and before the complaint reaches the stage of formal investigation, the MO may ask the member’s PPC to discuss the complaint with the member and produce an opinion that is shared with the member and the MO. The MO must however be aware that there is an established working relationship between the PPC and the member, and avoid placing the former in a situation where there is a conflict of interest. To be clear, a member's PPC cannot be considered sufficiently independent to make a formal investigation of the complaint.

The MO will not make a charge for investigating complaints.

The MO panel investigating the complaint must be constituted to avoid any conflict of interest. Should any panel member become aware of a conflict of interest, s/he will immediately step down from the investigation.

The MO must investigate the complaint without presupposition or bias, and enable both the complainant and the member to present their cases fairly. The member must have access to the allegations made by the complainant, must be allowed to share them with his or her PPC, and must be allowed to make a full reply.

In arriving at its decision the MO must apply the FMC Code of Practice and where relevant the FMC Professional Competence Standards.

If the complaint is upheld, the MO may require the member to make appropriate redress, including if needed the return or remission of any fees. The complaints panel may also recommend that the member is referred for disciplinary action.

The MO must have an impartial process, independent of the initial investigation, for considering appeals against complaints, both by complainants and by members. The appeals process should be accessible, but should state the grounds on which appeals will be accepted for consideration.
The MO must inform the parties to an appeal that, having exhausted the MO’s internal procedures, they may take a complaint to the FMC for further consideration. The FMC will limit its consideration to whether the MO has complied with the requirements set out in this document and has followed its own documented complaints procedure.

The deliberations of the MO in respect of the complaints and appeals processes must remain confidential, except that (a) where disciplinary action is to be taken they must be provided to the disciplinary panel, and (b) where the decision is referred to the FMC they must be provided to the FMC to aid with further consideration.

**(b) Disciplinary processes**

Each FMC member organisation (MO) is responsible for disciplinary processes in respect of its members. Disciplinary processes commence when an investigation has taken place under the complaints procedure in response to a complaint or a claimed breach of the Code of Practice, and the decision is made to refer the member for disciplinary action. Disciplinary processes must also be pursued in the case of former members referred from the complaints procedure, so that the outcome can be notified to the FMC and if necessary the mediator’s accreditation revoked.

The MO will convene a disciplinary panel when a referral is made for disciplinary action. The disciplinary panel must be constituted to avoid any conflict of interest. Should any panel member become aware of a conflict of interest, s/he will immediately step down from the decision-making process.

The role of the disciplinary panel is to consider what action is necessary to protect the public, to restore confidence in the profession, and where appropriate to ensure that the mediator is competent to continue practising. The panel will not re-investigate the matters giving rise to the complaint or breach that resulted in referral.

In reaching the penalty or remedial action to be applied, the panel must consider the consequences or potential consequences, level of intent, level of negligence and level of competence displayed by the member. In particular:

- If allowing the member to continue to practise would constitute a significant risk to clients, members of the public, or other professionals or co-workers, the minimum penalty must be suspension. If this is due to lack of competence, additional training or directly supervised practice may be required as appropriate before the member can be reinstated. If due to deliberate dishonesty or gross negligence, membership must normally be terminated.

- If in the panel’s judgement there is no risk or the risk is minimal, the member may be allowed to continue in membership subject to either or both of a formal warning or, in cases where his or her level of competence is a contributing factor, additional training or supervised practice. A second formal warning for the same or a closely related reason, or three formal warnings overall, can constitute sufficient grounds for termination of membership.
Where the handling of the complaint giving rise to the disciplinary action is subject to an appeal, any disciplinary action should be held in abeyance until the outcome of the challenge is known. The exception is where the penalty is suspension or termination of membership, when suspension should apply until the appeal (and any subsequent referral to the FMC) has been decided.

The MO must have an impartial process, independent of the initial investigation, for considering appeals against disciplinary measures, both by complainants and by members. The appeals process should be accessible, but should state the grounds on which appeals will be accepted for consideration.

The MO must inform the parties to an appeal that, having exhausted the MO’s internal procedures, they may take a complaint to the FMC for further consideration. The FMC will limit its consideration to whether the MO has complied with the requirements set out in this document and has followed its own documented disciplinary procedure, and whether any sanction that has been applied, or any decision not to apply a sanction, is fair and proportionate.

All disciplinary measures taken against members and former members must be reported to the FMC.

(c) Co-operation and common standards

Each MO must co-operate with the FMC and with the other FMC MOs in upholding professional standards, investigating complaints and ensuring that members are fit to practise. This includes sharing relevant information where it is legal to do so, following or taking account of decisions made by other MOs, and following FMC recommendations in relation to complaints and disciplinary processes.

2. Family Mediation Council responsibilities

(a) Appeals against member organisations’ complaints and disciplinary procedures or disciplinary decisions

Where a complainant or member has exhausted the relevant MO’s appeals processes, s/he may refer to the FMC Family Mediation Standards Board (FMSB) for adjudication on one or more of the following grounds:

- The MO’s complaints or disciplinary procedure did not conform with the requirements set out in this document.
- The MO deviated from its own complaints or disciplinary procedure.
- The MO’s decision was contrary to the FMC Code of Practice and where relevant the FMC Professional Competence Standards.
- The MO failed to take account of all the relevant evidence that was provided.
- In disciplinary cases, the MO’s decision was not in proportion to the nature of the misconduct. The FMSB will consider whether a penalty is too harsh or lenient in relation to the guidelines given in section 1(b), but it will not normally consider specifics relating to requirements for further training or supervision.
Where the FMSB accepts that the matter referred for adjudication is within its area of competence, it will convene an adjudication panel to examine the matter. The adjudication panel must be constituted to avoid any conflict of interest. Should any panel member become aware of a conflict of interest, s/he will immediately step down from the investigation.

The adjudication panel will normally require to see all the evidence and records relating to the original investigation and decision-making process. It may not hear or examine any new evidence or carry out a reinvestigation of a complaint or matter giving rise to disciplinary action, although it may ask for clarification from the complainant, the member, or the MO.

If the adjudication panel finds that the MO’s processes or interpretations were deficient, it will recommend that the MO changes its decision to the extent that would have applied had the correct procedures been followed. It may also recommend changes to the MO’s complaints or disciplinary procedures to make them consistent with the requirements set out in section 1 above.

If the adjudication panel finds that a disciplinary penalty is unduly harsh or lenient in relation to the guidelines provided in section 1(b) it will recommend that the MO changes its decision accordingly. The panel may also recommend to the FMSB that a mediator who holds or is registered for FMCA and who is guilty of serious or recurring misconduct, but whose membership has not been revoked by his or her MO, has his or her accreditation removed.

(b) Removal of accreditation

Where an MO revokes or suspends a mediator’s membership as a result of a disciplinary procedure, the FMSB will normally withdraw or suspend accreditation in accordance with the MO’s decision regardless of whether or not the mediator is a member of another MO. If, in exceptional circumstances, the panel decides not to withdraw accreditation from a mediator whose membership has been terminated, this will not affect the MO’s decision and will only enable the mediator to remain accredited if s/he is also a member of another MO. The panel may decide at its discretion to require a mediator whose membership has been suspended to undergo reassessment before s/he can be readmitted to FMCA status.

The FMSB will also normally remove accreditation from any mediator whose former MO would have revoked membership for disciplinary reasons save that the mediator had already resigned from the MO.

(c) Appeals to the FMC against withdrawal of accreditation or refusal to reaccredit

Mediators who are members of one or more MOs and whose accreditation has been withdrawn, who are refused reaccreditation after making a valid and complete reaccreditation application, or who wish to restart working towards accreditation after being debarred from doing so, may appeal to the FMC, clearly stating the grounds for the appeal. Mediators are strongly encouraged to discuss potential appeals with their PPC, and will need to explain the reason if the PPC is not supporting the appeal. Mediators and PPCs are encouraged to each make a short written statement in support of the appeal.
(no more than 500 words). A fee is payable for an appeal; it will be refunded if the appeal is successful.

When an appeal is approved to go forward, the FMC FMSB will convene an appeals panel that has not been involved in the decision to withdraw or refuse accreditation. The panel will examine the decision-making process leading to the withdrawal or refusal of accreditation. The decision on appeal will be final.

Mediators who have had membership of a MO terminated should note that a successful appeal against withdrawal of accreditation will not require that MO to reinstate their membership.

**d) Sharing details of disciplinary penalties with MOs**

In order to prevent mediators from avoiding the consequences of cumulative disciplinary penalties, or from avoiding any requirements for additional training or supervision, the FMC will keep a time-limited register of disciplinary penalties and remedial requirements that have been applied, and at its discretion share details of the penalties and requirements applying to any individual mediator with any or all of its MOs.
Appendix 2

Safeguarding Children and Young People - Duties and responsibilities

Everyone has a responsibility for safeguarding children and young people. Family mediators also have a duty to safeguard vulnerable adults.

Confidentiality principles for family mediation include the ability to breach confidentiality where there is an allegation or disclosure of harm against another person – especially a child. If the mediator believes that a child is at risk of, or is suffering, significant harm then they must immediately report this to the appropriate authority – usually the local authority children's services duty team.

In England the law states that people who work with children have to keep them safe. This safeguarding legislation is set out in the Children Acts of 1989 and 2004. It also features in the United Nations Convention on the Rights of the Child (to which the UK is a signatory) and sets out the rights of children to be free from abuse. The government also provides statutory guidance in the document ‘Working Together to Safeguard Children’, first published in 2010 but now replaced by a 2013 edition.

The ‘Working Together’ document sets out how all those involved in working with or providing services to children and families should act to protect children from harm and to promote their welfare. The Department for Education has issued new statutory guidance which incorporates the recommendations of the Munro Review and which came into effect on 15 April 2013. It is critical that all mediators are aware of the content of this document and the statutory guidelines that apply and that may affect their practice as mediators working with families generally and particularly where they may consult directly with a child or children as part of a mediation process.

In summary, the guidance covers:

• the legislative requirements and expectations on individual services to safeguard and promote the welfare of children; and

• a clear framework for local safeguarding children’s boards (LSCBs) to monitor the effectiveness of local services.

As noted, the 2013 edition replaces the 2010 edition. It also supercedes the framework for the assessment of children in need and their families (2000) and the 2007 statutory guidance for making arrangements to safeguard and promote the welfare of children under s11 of the Children Act 2004.

The guidance is issued under:

• Section 7 of the Local Authority Social Services Act 1970, which requires local authorities in their social services functions to act under the general guidance of the Secretary of State

• Section 11(4) of the Children Act 2004, which requires each person or body to which the s.11 duty applies to have regard to any guidance given to them by the Secretary of State; and
• Section 16 of the Children Act 2004, which states that local authorities and each of the statutory partners must, in exercising their functions relating to Local Safeguarding Children Boards (LSCBs), have regard to any guidance given to them by the Secretary of State.

And note:

• the guidance applies to ‘other organisations’, as set out in the guidance;
• the guidance must be complied with unless exceptional circumstances arise.

The guidance is comprehensive, dealing with early help to serious case reviews and is therefore a complete framework for all those involved in the provision of services to children and families.

Assessing need and providing help

Chapter 1 sets out assessing need and providing help and introduces the need to provide early help – that is, providing support as soon as a problem emerges - at any point in a child's life, from the ‘foundation years through to the teenage years’. It further recognises that in order for that to happen, local agencies must work together to identify those children and families who would benefit from early help, assessments of the need for early help and targeted early help services to address those needs.

For mediators, this should translate as a means of ensuring that families can be assessed for appropriate help at an early point should a report be made in regard to a safeguarding concern. In practice, any report of a safeguarding issue will be carefully considered by the local authority so that the appropriate and proportionate level of assessment and subsequent help can be established. Local authority children’s services teams hold responsibility for determining the nature of any reported concern and to lead any assessment or subsequent investigation. Therefore, mediators should ensure that rather than endeavouring to determine the ‘seriousness’ or veracity of a concern or allegation raised, they act to ensure that a referral is made to the appropriate and nominated agency for support and any further action.

Chapter 1 is also very clear about the importance of information sharing and makes clear that fears about sharing information ‘cannot be allowed to stand in the way of the need to promote the welfare and protect the safety of children’. It further sets out principles in relation to local arrangements and the importance that ‘no professional should assume that someone else will pass on information which they think may be critical to keeping a child safe’.

This places a responsibility on mediators to ensure that they do not avoid sharing information because of any fears in relation to breaching confidentiality or because they are uncertain as to the veracity of the allegation or concern. It is also a reminder of the importance of not making assumptions about the fact that someone else, or another agency will already have passed on or be aware of information.

Information is also provided on the required response by the statutory services to any referral made (p26) and includes timetables for response and new provision for feedback to be made to the referrer.

Organisational responsibilities

Chapter 2 sets out organisational responsibilities – including those placed on ‘voluntary and private sector’ providers and makes clear that such providers should have the arrangements described in the guidance in place in the ‘same way as organisations in the public sector, and need to work effectively with the LSCB’ (p57).
It is therefore important that mediators are aware of those arrangements and ensure that they are appropriately translated into their own practice and/or service. In some cases, these arrangements will need to be met by utilising, for example, training opportunities provided by mediator member organisations or by the local authority/LSCB and by considering how policies might be written to reflect the requirements of the guidance in relation to sharing information - whether with other professionals, on making a report or in relation to other local arrangements set out by the LSCB. Mediators will need to check how their own organisation or practice’s functions and structure relates to arrangements required and ensure that the salient arrangements are met. In summary, all mediators should ensure that:

- paid and volunteer staff are aware of their responsibilities for safeguarding and promoting the welfare of children;
- they know how they should respond to child protection concerns; and
- they know how referrals should be made to local authority children’s social care, or the police if necessary.

**Local safeguarding children’s boards**

Chapter 3 sets out the role and function of the LSCBs and also notes that each LSCB should work with their local family justice board. In this chapter, it is important to note that there is provision for an LSCB to require a person or body to comply with a request for information (under s14A of the Children Act 2004, inserted by s8 of the Children, Schools and Families Act 2010). Mediators will need to consider that concerns about harm to a child provide an exemption to confidentiality in relation to the mediation process, and it may be the case that requests of this nature from an LSCB would be inclusive of the confidentiality exception in mediation. If mediators receive such a request, they should be in contact with their PPC in the first instance for support and assistance.

**Learning and improvement framework**

Chapter 4 sets out the requirements for learning and improvement frameworks which should encourage and promote reflection on quality of service, and learning from and sharing practice. Frameworks will be established in each LSCB area which should be shared across all local organisations. In the case of mediators, it would be helpful if mediation providers could be part of the local frameworks as everyone can learn from the experience of others and although child protection matters are relatively rare in mediation, it is important that mediation and mediators are known within their local safeguarding community.

Chapter 4 also deals with serious case reviews following the death of a child.

**Significant harm, immediate protection and urgent action**

The new guidance makes clear that there may be a range of actions that will be considered following a referral to the local authority, encompassing:

- an early help assessment;
- assessment under s.17 Children Act 1989 (children in need);
• assessment as to whether there is reasonable cause to suspect that the child is suffering, or likely to suffer, significant harm and whether enquiries must be made and the child assessed under s.47 of the Children Act 1989;

• consideration of whether there are any services required by the child and family; and

• further specialist assessments in order to help the local authority to decide what future action to take.

Mediators should be aware of this enhanced range of duties and responsibilities placed on the local authority in order to properly inform parents with whom they work of the broader nature of help and support for children and families that may be available to them as a result of a referral for assessment.

In general, the responsibility placed on mediators remains as previously: to be alert to concerns in relation to harm to a child or a vulnerable adult, and any allegations made in respect of such harm, in particular where an allegation or concern provides reasonable cause to suspect that the child or children is suffering, or likely to suffer, significant harm – and/or, in the wording of the new guidance, the child requires immediate protection and urgent action is required.

What is ‘significant harm’?

This concept was introduced in the Children Act 1989 as the threshold that justifies compulsory intervention in family life in the best interest of a child or children and is defined as:

'any physical, sexual, or emotional abuse, neglect, accident or injury that is sufficiently serious to adversely affect progress and enjoyment of life'.

‘Harm’ is defined as the ill treatment or impairment of health and development. This definition was clarified in section 120 of the Adoption and Children Act 2002 (implemented on 31 January 2005) so that it may include, ‘for example, impairment suffered from seeing or hearing the ill treatment of another’.

Suspicions or allegations that a child is suffering or likely to suffer significant harm may result in a core assessment incorporating a section 47 enquiry.

There are no absolute criteria on which to rely when judging what constitutes significant harm. Sometimes a single violent episode may constitute significant harm but more often it is an accumulation of significant events, both acute and longstanding, which interrupt, damage or change the child’s development.

Local authority duty to investigate

The duty of the local authority to make enquiries following information received suggesting that a child may need protection is contained in Part V of the Children Act. The local authority has a duty to make enquiries where it:

• is informed that a child who lives, or is found, in their area is the subject of an emergency protection order; or is in police protection; or

• has reasonable cause to suspect that a child who lives or is found in their area is suffering or likely to suffer significant harm.

The authority make, or cause to make, such enquiries as it considers necessary to enable it to decide whether it should take any action to safeguard or promote the child’s welfare (s47(1)).
Local safeguarding children boards

The Children Act 2004 required each local authority to establish an LSCB. Chapter 3 of ‘Working Together’ 2013 sets out in detail the arrangements for the work of each board – including the functional objectives under s14 of the Children Act 2004.

The new guidance strengthens the previously stated ‘proactive work that aims to target particular groups, including developing thresholds for working with children and families where the child comes within the definition of a Child in Need but is not suffering or likely to suffer Significant Harm’.

Mediators should be aware of the local arrangements in their area. Details of LSCBs and their local arrangements are available on the internet.

Important pointers for mediators and those consulting directly with children and young people

• Mediators must work within statutory guidelines and must take care to ensure that they are properly and currently informed of arrangements in their local area.

• Mediators must ensure that the arrangements required and as set out in chapter 2 of ‘Working Together’ (Organisational responsibilities) are appropriately established and effectively monitored in their own practice or service.

• Mediators must ensure that they are aware of and know how they should make a referral to the local authority (or to the police) when it is appropriate or essential that they do so.

• Mediators must ensure that parents, children and young people are made aware of the mediator’s duties and responsibilities in relation to safeguarding and the exemption to confidentiality that applies in respect of safeguarding/child protection concerns. Where this concerns explanations to children and young people, mediators should ensure that this is provided in age-appropriate terms and that where a child or young person discloses or tells a mediator of any aspect of harm to them, the mediator will need to ensure that someone who has responsibility for keeping children safe is informed.

• Wherever possible, mediators should have a nominated, named contact within the local authority with whom they should liaise in order to keep currency of information in regard to reporting procedures. In some areas it may be possible to arrange an informal consultation procedure with the local authority children’s services team, which would allow mediators to consult with the local authority to assist it in deciding whether to make a formal referral. Note that the NSPCC host a professional’s helpline, available 24 hours a day, every day of the year, which provides any professional who is concerned about the safety and well-being of a child with advice and guidance. The helpline can be contacted in a number of ways: telephone: 0808 800 5000; email: help@nspcc.org.uk; text message: 88858 (Channel Islands: 07786 200001) or through its website.

• As arrangements and guidelines are subject to change (and not just changes in legislation), mediators should keep a regular contact and arrange for updated information in regard to reporting procedures to be provided to them/their service.

• Similarly, mediators should hold sufficient information to enable them to explain to client parents and/or children and young people directly consulted what will happen following a referral, and should also
ensure that they are able to properly ensure that clients have an immediate 'next step' or onward destination from the mediator.

**‘No Secrets’ – policies and procedures to protect vulnerable adults from abuse**

‘No Secrets’ was published jointly by the Department of Health and the Home Office in 2000 and is the mirror guidance to ‘Working Together’ in relation to the protection of vulnerable adults. Mediators should be aware that there are policies and procedures in place in all local authority areas in relation to the statutory guidelines of ‘No Secrets’. As with ‘Working Together’, mediators should be aware of local arrangements in their own area in relation to the protection of vulnerable adults. Each local authority has a safeguarding adults board and information about local arrangements is published on local authority websites.
Appendix 3

Safeguarding - Dealing with allegations or disclosures

Pre-mediation process:

Be and remain aware of and alert to the prevalence of unreported abuse

Ensure that you have started your safeguarding and screening process from the very first contact with prospective clients.

Ensure that information regarding screening/safeguarding is explicit in pre-mediation materials – information sheets, leaflets etc. - and that you make explicit that mediation starts with individual meetings.

Ensure that you explain carefully and early in pre-mediation phone calls that mediation is a voluntary process and not one that anyone should feel coerced or pressurised into.

In explaining confidentiality, ensure that prospective clients know that an exception to that confidentiality is any reported harm against another person and particularly a child. This is to protect vulnerable people and ensure that appropriate assistance is provided. Ask questions that are designed to prompt clues for you of any concern.

Explaining to clients that, normally, mediations are conducted with both clients and the mediator in the room is important – and out whether that causes the prospective client any concerns. Mention that you see people separately before starting a mediation process.

Ensure that wherever possible, an agreement to mediate is provided to prospective clients ahead of any meeting – and ask them to read it through.

Similarly, preliminary information forms need to be provided to clients – and returned ahead of any first meeting so that checks can be carried out in relation to any answers that would indicate that there may be issues of harm/concerns about harm.

Where social services or police investigations/court injunctions are indicated, mediators must clarify with clients the status of the investigation. If it is ongoing, do not not enter into a mediation process. If it has been completed, mediators must have evidence of outcome in order to assess the appropriateness of a mediation process. Where there have been injunctive proceedings or an injunction, mediators must check whether the injunction is current and the conditions related to it. Generally, the presence of an injunction is likely to make a mediation process inappropriate.
At first meetings:

- Always see individuals separately ahead of any joint meeting. Screening and safeguarding checks should be carried out again at the point of first meetings. Good practice guidelines would indicate that individual screening is a prerequisite for mediation.
- Check out any comments provided by clients in completing their information forms.
- Ensure that any staff are aware of and alerted to the potential for abuse between clients – help them to manage your clients before they get to you by ensuring they are properly and appropriately briefed.
- Think carefully about arrangements for client, mediator and staff safety and ensure that you have a contingency in place should you need to separate clients and/or alert staff that there is a problem.
- Always ensure that mediation rooms are carefully laid out, allowing sufficient personal space between clients – and with a clear line of exit for all.
- At the point of starting the mediation process and signing the agreement to mediate, point out the major principles within the agreement, including exceptions to confidentiality.
- Observe clients carefully, listen carefully - observe client behaviour when together.
- Do not leave clients alone together in the mediation room.

At subsequent meetings:

- Always check at the beginning of each meeting whether anything has happened since the last meeting that clients need to discuss or report.
- It is important to be aware that in some relationships it is possible for a ‘one-off’ episode of violence to occur between individuals – this is categorised as ‘post separation or divorce trauma’ and is caused by the stress of separation. The reality of a client’s situation – whether it is that they are to divorce, or that they realise that their finances are less than or insufficient to their future needs, or where there are difficulties in relation to shared parenting may all be ‘flash points’ for an episode of violence between adults.
- Mediators should be alert to this situation – and be careful to ensure that this is a one-off episode rather than part of a pattern of on-going violence.

If an allegation or disclosure is made:

- Stay calm – put the meeting or process on hold.
- Be clear about safeguarding duties and your organisation’s policy and procedures – take a problem-solving approach between you all.
- Listen very carefully.
• **Ask open questions** for clarification – but do not interrogate.

• **Reflect back** what you have heard and check mutual understanding.

• **Do not make judgements** about either client or any allegation made – keep a balanced stance.

• **Explain procedures** and what you intend to/must do – and be aware of statutory guidance and local reporting arrangements.

• **Give parents as much information as you can as to next steps** – check that they have an immediate ‘onward destination’ from you.

• **If parents are to report** a third party abuser, explain that you will need to check that they have done so and make a referral yourself.

• **Ensure safe exits** for all.

• **Report immediately** where there is grave concern of a child at immediate risk and/or where a child requires immediate protection and urgent action is required.

• **Record promptly and clearly the facts** – not your opinion or view – noting the precise words used, action decided upon and when/how taken.

• **Seek advice/guidance as appropriate** – be in contact with your PPC.

**If a child or young person discloses:**

• **React calmly** so as not to frighten the child.

• **Listen** carefully.

• **Reassure the child** that they are right to tell.

• **Do not make promises of confidentiality**, and explain that you will have to tell another adult whose responsibility is to keep children safe from harm.

• **Take what the child says seriously** – and recognise the difficulties there are in interpreting what is said by a child.

• **Keep questions to the barest minimum** to ensure a clear and accurate understanding of what has been said.

• **Do not ask leading questions**.

• **Explain to the child** in an age-appropriate way what you will do next and with whom you will share information.

• **Record promptly and carefully** (using the child’s own words), not your opinion or view. Record action decided upon and when/how taken.
• Seek advice/guidance as appropriate – be in contact with your PPC.

Domestic abuse screening/safeguarding

Quick checklist

• Be aware and remain alert to the prevalence of unreported abuse throughout the mediation process.

• Ensure information is explicit in pre-mediation materials – information sheets, leaflets etc.

• Cover exemptions to confidentiality early in pre-mediation phone calls – ask questions that are designed to prompt early warning of potential of/for abuse. Inform them that mediations are normally conducted with both people in the same room - is that likely to present any concerns for them? Mention that you see people separately before starting the mediation process.

• Check preliminary information forms carefully.

• Check your office and mediation room, consider seating arrangements and exits. Cover aspects of screening and abusive behaviour with your staff. Consider carefully the safety of clients, your staff and yourself.

• Listen to/observe clients carefully – ask direct questions. Explore, but do not interrogate or judge, in order to get clarity. Observe client behaviour and body language when together. Consider client capacity to take part in mediation

• Discuss exemptions to confidentiality in separate meetings/first joint meeting and when they sign the agreement to mediate.

• Be prepared to deal with a 'one-off' episode of separation or divorce-engendered trauma which has led to violence. Always ask at the beginning of each session whether anything has happened between sessions that they need to talk about.

• Have currency of information in relation to local services of support and protection. Also ensure that you are familiar with reporting procedures and ensure that clients have a clear ‘next step’ from you should an allegation or disclosure be made that will end the mediation/lead to reporting. Always consider the impact of an adult abusive relationship on any child. Always consider whether discussing any expressed allegation/disclosure would place a child at increased risk of significant harm – if so, reporting, not the discussion of or agreement to reporting, is the priority.

• Ensure safe exits for each and both clients. Be in touch with your PPC.