

Family Mediation Accreditation Scheme

Criteria and guidance notes

Education and Training Unit
Version 1

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Please note

This document contains information specific to the Family Mediation Accreditation Scheme.

Before making your application for accreditation you should ensure that you are familiar with the general procedures, criteria and membership conditions for the Solicitors Regulation Authority (SRA) accreditation schemes.

These are available on our website www.accreditation.sra.org.uk

14/08/2007

01/07/07

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For alternative formats, email info.services@sra.org.uk or telephone 0870 606 2555

Introduction

The Family Mediation Accreditation Scheme covers all types of issues where mediation is appropriate arising from family breakdown. Whilst family mediators may specialise in either children or financial only mediation, it is essential that all applicants are able to demonstrate awareness and knowledge of all family mediation issues.

The aim of the scheme is to provide a good quality service for the delivery of family mediation for the benefit of the public and the profession, ensuring that the public are easily able to identify solicitors and FILEX who are accredited by the Solicitors Regulation Authority (SRA).

The scheme is non-exclusive; practitioners who are not members will remain free to undertake family mediation work.

Eligibility

Who is eligible to apply for membership?

You can apply if:

- you have practised as a solicitor for at least three years and have held a practising certificate throughout that period. You must hold a current, unconditional practising certificate throughout your membership
- you have been a Fellow of the Institute of Legal Executives (FILEX) for at least three years, held Fellowship of the Institute throughout that period, and have passed the ILEX **part 2** entrance examinations in **family law and practice**. If you are a FILEX you must be employed by a solicitor throughout your membership.

Types of membership

There are two types of membership:

General membership

This is a once only award and is valid for two years from the date of the award. General members will be expected to comply with the criteria for and become a practitioner member by the end of the second year of general membership. If the general member has not achieved practitioner membership within two years they will be removed from the scheme.

Practitioner membership

This will be for an initial period of three years after which the member will be required to apply for re-accreditation. Successful re-accreditation will lead to a further five-year membership period. There are three different routes to achieving practitioner membership:

- passported route
- development route
- direct route.

What are the criteria for each route to membership?

General membership

- Applicants must provide evidence of successful completion of a family mediation foundation training course approved by the SRA. If the family mediation training was completed with a non-listed organisation the applicant should attach a copy of the course programme, syllabus and course papers to the application.

Practitioner membership - passported route

- Applicants must have successfully completed the Legal Services Commission's family mediation competence assessment and have been recognised as fully competent in all issues.

Practitioner membership – development route

- Applicants must be a general member of the scheme.
- Applicants must have undertaken at least 90 hours of mediation practice during the period of general membership consisting of:
 - i. a minimum of five mediations together which total at least 25 hours over the period of general membership
 - ii. Continuing professional development (CPD) in mediation of at least 11 hours for each year of general membership
 - iii. consultancy of a minimum of 11 hours (at least two and one-half hours of this must be sole face-to-face consultancy and two and one-half hours must be joint face-to-face consultancy) over the period of general membership
 - iv. the rest of the 90 hours mediation experience will be made up of training (as a trainer), practice and development, CPD or consultancy. It may also be made up by drafting summaries of outcomes, writing articles or appropriate reading.

Practitioner membership – direct route

- Applicants must have completed a foundation training course consisting of a minimum of 40 contact hours which complies with the SRA's Family Mediation Training Standards. If the foundation training was completed with a non listed organisation, the applicant must attach a copy of the course programme, syllabus and papers to the application.
- Applicants must have undertaken at least 90 hours of mediation practice during the two years preceding the date of the application, consisting of:
 - i. a minimum of five mediations together which total at least 25 hours
 - ii. CPD in mediation of at least 11 hours per year
 - iii. consultancy of a minimum of 11 hours (at least two and one-half hours of this must be sole face-to-face consultancy and two and one-half hours must be joint face-to-face consultancy)
 - iv. the rest of the 90 hours mediation experience will be made up of training (as a trainer), practice and development, CPD or consultancy. It may also be made up by drafting summaries of outcomes, writing articles or appropriate reading.

How we will deal with your application

Your application will be subject to the general application procedures described in the Professional Accreditation Schemes booklet.

There are additional assessment processes that are specific to the Family Mediation Accreditation Scheme.

Code of Practice

All applicants for both general and practitioner membership of the scheme are required to agree to be bound by the Law Society's Code of Practice for Family Mediators attached at **Annex A**.

References

All applicants are required to provide the details of two referees (examples of suitable referees, family mediation, supervisor or professional practice consultant, other family mediators, solicitors or barristers who have knowledge of and can comment on the applicant's mediation practice and who are not employed by or a partner in the applicant's firm).

Please note that references will be taken up when your application is assessed without further contact from this office. It is essential therefore that your referees are aware of the fact that you have nominated them. Please also note that the SRA reserves the right to obtain references from other sources if considered necessary or desirable.

Mediation training

Applicants will be required either to have attended a training course approved for the purposes of family mediation accreditation by the SRA or a course of comparable standard, full details of which have been submitted to and approved by the SRA. An up to date list of the foundation courses in family mediation that have been approved is attached at **Annex B**. Please note that certified copies of certificates of successful completion must accompany the application. Foundation courses provided with organisations not listed at **Annex B** may be considered only where full details and course papers are provided with the application form.

Application fee

The Legal Services Commission has indicated that it will contribute towards the costs of membership fees a **Franchise and Block Contract for Family Mediation** work is held by the applicant's firm/mediation practice. Full details will be provided on successful acceptance/re-accreditation to the scheme.

Re-accreditation

Practitioner membership is for an initial period of three years after which the member must apply for re-accreditation. The criteria and guidance notes and the application form for re-accreditation will be provided to you at least three months prior to the end of your membership period.

To aid the re-accreditation process members are advised to keep an appropriate log of family mediation practice, training consultancy and CPD to cover the full period of membership.

Continuing professional development (CPD)

Practitioner members must complete a minimum of eight CPD hours consisting of four hours in family or children law and four hours in family mediation and related topics (including, for example, family dynamics) during each year of membership. The CPD training record must be produced with the application for re-accreditation.

Annex A – Law Society’s Code of Practice for family mediation

Members of the SRA’s Family Mediation Accreditation Scheme **must** agree to be bound by this code.

Introduction

The Solicitors Code of Conduct July 2007 contains the general principles and rules regarding solicitors’ practice, including alternative dispute resolution.

This code is designed to deal with the fundamentals of family mediation. It is not intended that it should cover every situation that may arise.

The concept of not giving advice to the parties, individually or collectively, when acting as a mediator permeates this entire code.

Section 1 – objectives of family mediation

Family mediation is a process in which:

- 1.1 a couple or any other family members
- 1.2 whether or not they are legally represented
- 1.3 and at any time, whether or not there are or have been legal proceedings
- 1.4 agree to the appointment of a neutral third party (the mediator)
- 1.5 who is impartial
- 1.6 who has no authority to make any decisions with regard to their issues
- 1.7 which may relate to separation, divorce, children's issues, property and financial questions or any other issues they may raise
- 1.8 but who helps them reach their own informed decisions
- 1.9 by negotiation
- 1.10 without adjudication.

Section 2 – qualifications and appointment of mediator

- 2.1 Every mediator shall have regard to the criteria and requirements for mediators stipulated from time to time by the SRA, including those relating to training, consultancy, accreditation and regulation.
- 2.2 Save where appointed by or through the court, a mediator may only accept appointment if both or all parties to the mediation so request, or agree.
- 2.3 Whether a mediator is appointed by the parties or through the court or any other agency, he or she may only continue to act as such so long as both or all parties to the mediation wish him or her to do so. If any party does not wish to continue with the mediation, the mediator must discontinue the process. Also, if the mediator considers that it would be inappropriate to continue the mediation, the mediator shall bring it to an end, and may decline to give reasons.

Section 3 – conflicts of interest and impartiality of mediator

- 3.1 The impartiality of the mediator is a fundamental principle of mediation.
- 3.2 Impartiality means that:
 - 3.2.1 the mediator does not have any significant personal interest in the outcome of the mediation
 - 3.2.2 a mediator with any personal interest in the outcome of the mediation may act if, and only if, full disclosure is made to all of the parties as soon as it is known and they consent
 - 3.2.3 the mediator will conduct the process fairly and even-handedly, and will not favour any party over another.
- 3.3 The mediator must not act, or, having started to do so, continue to act:
 - 3.3.1 in relation to issues on which he or she or a member of his or her firm has at any time acted for any party
 - 3.3.2 if any circumstances exist which may constitute an actual or potential conflict of interest
 - 3.3.3 if the mediator or a member of his or her firm has acted for any of the parties in issues not relating to the mediation, unless that has been disclosed to the parties as soon as it is known and they consent.
- 3.4 Where a mediator has acted as such in relation to a dispute, neither he nor she nor any member of his or her firm may act for any party in relation to the subject matter of the mediation.

Section 4 – mediation procedures

- 4.1 The mediator must ensure that the parties agree the terms and conditions regulating the mediation before dealing with the substantive issues. This should ordinarily be in a written agreement which should reflect the main principles of this code. Such agreement should also contain the terms of remuneration of the mediator.
- 4.2 The procedure for the conduct of the mediation is a matter for the decision of the mediator. Insofar as the mediator establishes an agenda of matters to be covered in the mediation, the mediator should be guided by the needs, wishes and priorities of the parties in doing so.
- 4.3 In establishing any procedures for the conduct of the mediation, the mediator must be guided by a commitment to procedural fairness, the fostering of mutual respect between the parties and a high quality of process.

Section 5 – the decision-making process

- 5.1 The primary aim of family mediation is to help the parties to arrive at their own decisions regarding their issues, on an informed basis with an understanding, so far as reasonably practicable, of the implications and consequences of such decisions for themselves and any children concerned.
- 5.2 The parties may reach decisions on any issue at any stage of the mediation.

- 5.3 Subject to paragraph 5.4, decisions arrived at in family mediation should not be binding on the parties until they have had the opportunity to seek advice on those decisions from their own legal representatives.
- 5.4 The parties must be offered the opportunity to obtain legal advice before any decision can be turned into a binding agreement on any issue which appears to the mediator or to either party to be of significance to the position of one or both parties.
- 5.5 The mediator must not seek to impose his or her preferred outcome on the parties and should try to avoid becoming personally identified with any particular outcome.
- 5.6 The mediator shall, however, be free to make management decisions with regard to the conduct of the mediation process, and may suggest possible solutions and help the parties to explore these, where he or she thinks that this would be helpful to them.
- 5.7 The mediator should assist the parties, so far as appropriate and practicable, to identify what information and documents would help the resolution of any issue(s), and how best such information and documents may be obtained. However, the mediator has no obligation to make independent enquiries or undertake verification in relation to any information or documents sought or provided in the mediation. If necessary, consideration may be given in the mediation to the ways in which the parties may make such enquiries or obtain such verification.
- 5.8 Family mediation does not provide for the disclosure and discovery of documents in the same way or to the same extent as required by court rules. The mediator may indicate any particular documents that he or she considers each party should furnish.
- 5.9 Parties should be helped to reach such resolution of such issues which they feel are appropriate to their particular circumstances. Such resolutions may not necessarily be the same as those which may be arrived at in the event of an adjudication by the court.
- 5.10 The mediator should, if practicable, inform the parties if he or she considers that the resolutions which they are considering are likely to fall outside the parameters which a court might approve or order. If they nevertheless wish to proceed with such resolutions, they may do so. In these circumstances the mediation summary may identify any specific questions on which the mediator has indicated a need for independent legal advice. If, however, the parties are proposing a resolution which appears to the mediator to be unconscionable or fundamentally inappropriate, then the mediator should inform the parties accordingly and may terminate the mediation, and/or refer the parties to their legal advisers.
- 5.11 Parties may consult with their own solicitors as the mediation progresses, and shall be given the opportunity to do so before reaching any binding agreement on their substantive issues. Where appropriate, the mediator may assist the parties to consider the desirability of their jointly or individually seeking further assistance during the course of the mediation process from professional advisers such as lawyers, accountants, expert valuers or others, or from counsellors or therapists. The mediator may also assist the parties by providing relevant lists of names.
- 5.12 Mediation meetings are commonly conducted without lawyers present. However, solicitors or counsel acting for the individual parties may be invited to participate in the mediation process, and in any communications, in such manner as the mediator may consider useful and appropriate, and as the parties may agree.

Section 6 – dealing with power imbalances

- 6.1 The mediator should be alive to the likelihood of power imbalances existing between the parties. These may relate to various different aspects including, for example, behaviour which is controlling, abusive or manipulative; finance; children and family; status; communication and other skills; possession of information; the withholding of co-operation; and many other kinds of power.
- 6.2 If power imbalances seem likely to cause the mediation process to become unfair or ineffective, the mediator must take appropriate steps to try to prevent this.
- 6.3 The mediator must ensure that the parties take part in mediation willingly and without fear of violence or harm. Additionally, the mediator must seek to prevent manipulative, threatening or intimidating behaviour by either party.
- 6.4 If the mediator believes that power imbalances cannot be redressed adequately and that in consequence the mediation will not be able to be fairly and effectively conducted, he or she may discuss this with the parties, but in any event must bring the mediation to an end as soon as practicable.

Section 7 – confidentiality and privilege

- 7.1 The mediator must maintain confidentiality in relation to all matters dealt with in the mediation. The mediator may disclose:
 - 7.1.1 matters which the parties and the mediator agree may be disclosed
 - 7.1.2 matters which the mediator considers appropriate where he or she believes that any child or any other person affected by the mediation is suffering or likely to suffer significant harm (and in such case, the mediator should, so far as practicable and appropriate, discuss with the parties the way in which such disclosure is to take place), or
 - 7.1.3 matters where the law imposes an overriding obligation of disclosure on the mediator.
- 7.2 Any information or correspondence provided by any party should be shared openly with both and not withheld, except any address or telephone number and except as the parties may otherwise agree.
- 7.3 All information material to financial issues must be provided on an open basis, so that it can be referred to in court, either in support of an application made with the consent of the parties or in contested proceedings.
- 7.4 However, discussions about possible terms of settlement should be conducted on the "without prejudice" basis; and in any event a mediation privilege should ordinarily be claimed for them, so that parties may explore their options freely.
- 7.5 The mediator must discuss arrangements about confidentiality with the parties before holding separate meetings or caucuses. It may be agreed that the mediator will either:
 - 7.5.1 report back to the parties as to the substance of the separate meetings, or
 - 7.5.2 maintain separate confidences: provided that if separate confidences are to be maintained, they must not include any material fact which would be open if discussed in a joint meeting.

- 7.6 The mediation privilege will not ordinarily apply in relation to communications indicating that a child or other person affected by the mediation is suffering, or likely to suffer, significant harm, or where other public policy considerations prevail, or where for any other reason the rules of evidence render privilege inapplicable.

Section 8 – families and children

- 8.1 Mediators shall have regard at all times to the provisions of Part I of the Family Law Act 1996.
- 8.2 In working with the parties, the mediator should also have regard to the needs and interests of the children of the family.
- 8.2.1 When it appears to the mediator that a child is suffering, or is likely to suffer, significant harm, the mediator should consider with the parties what steps should be taken outside mediation to remedy the situation. But in exceptional circumstances where there is serious risk of harm to any person the mediator may decide not to inform the parties.
- 8.2.2 Where it is necessary to protect the child from significant harm, the mediator must in any event contact an appropriate agency or take such steps outside the mediation as may be appropriate.
- 8.3 Occasionally children might be directly involved in mediation. The mediator should consider whether and when children may be directly involved in mediation. The mediator should not ordinarily invite children to be directly involved in the mediation unless specifically trained to do so and alive to the issues such as confidentiality and the dynamics inherent in doing so.

Section 9 – professional indemnity cover

- 9.1 All solicitor mediators must carry professional indemnity cover in respect of their acting as mediators.
- 9.1.1 Solicitors who practise as mediators will be covered by appropriate indemnity insurance in respect of their acting as a mediator, provided they are doing so in their capacity as a member of their firm.
- 9.1.2 If a solicitor is acting as a mediator as a separate activity outside his or her legal practice, separate indemnity insurance must be obtained.

Section 10 – promotion of mediation

- 10.1 Solicitor mediators may promote their practice as such, but must always do so in a professional, truthful and dignified way. They may reflect their qualification as a mediator and their membership of any other relevant mediation organisation.
- 10.2 Solicitor mediators should have regard to the contents of the Law Society's Publicity Code (see p.229 of the Guide).

Section 11 – Family Law Act 1996, section 27 (Legal Aid Act 1988, section 13b)

Every mediator must have arrangements designed to ensure:

- 11.1 that parties participate in mediation only if willing and not influenced by fears of violence or other harm
- 11.2 that cases where either party may be influenced by fears of violence or other harm are identified as soon as possible
- 11.3 that the possibility of reconciliation is kept under review throughout mediation, and
- 11.4 that each party is informed about the availability of independent legal advice.

Annex B – Approved family mediation foundation courses

The SRA has approved the foundation courses in family mediation provided by the following organisations. These courses meet the training standards set by the SRA and are accepted for the purposes of general and practitioner membership of the Family Mediation Accreditation Scheme.

Resolution (Formerly - Solicitors Family Law Association (SFLA))

Contact details

Address 366a Crofton Road, Orpington, Kent BR2 8NN
DX 86853 LOCKSBOTTOM
Telephone 01689 850227
Fax 01689 855833

Family Mediators Association

Contact details

Address PO Box 5, Bristol BS99 2WZ
Telephone 0117 9467062
Fax 0117 9467181
Website www.fmassoc.co.uk

ADR Group (Family)

Contact details

Address Grove House, Grove Road, Redland, Bristol, BS6 6UL
DX 99884 BRISTOL
Telephone 0117 946 7180
Fax 0117 946 7181
Website www.adrgroup.co.uk

Professional Development Training - approval currently applies only to courses run up to and including the end of March 2000.

Lawgroup UK, Caterham, Surrey - approval currently applies only to courses run up to and including the end of July 2001.

LawNet Centre, Leamington Spa, Warwickshire - approval currently applies only to courses run up to and including the end of July 2001.