

Standards of competence for the accreditation of family mediators

Education and Training Unit
Version 1

Introduction

The approach adopted in the standards of competence for family mediators (the Standards) is intended to facilitate consideration of the mediation process in its component parts.

A General member of the Family Mediation Accreditation Scheme should have attained knowledge of all aspects of the mediation process as defined in the Standards below by having completed approved foundation training.

A Practitioner member of the Family Mediation Accreditation Scheme should have the knowledge of all aspects of the mediation process as defined in the Standards below and be able to demonstrate how this knowledge has been applied in the practice of family mediation.

The knowledge and skills expected for each component are listed at the end of the relevant component. These are listed in a cumulative style and the knowledge and skills indicated for one component might also be relevant for another although they may not be listed in each.

In practice, the process of mediation will not necessarily occur in the same order as below, nor will each component be present in every case. Family mediators will need to be able to adopt a flexible approach to meet the needs of a particular mediation.

Component 1: Before mediation

Family mediators will:

- ***be able to understand the Law Society's Code of Practice for family mediators and apply it in their practice as mediators.***
- ***be aware of the processes for engaging the parties in the mediation forum, obtaining the commitment of the parties to mediation, establishing the parties' agreement to the items for discussion and the ground rules of the mediation, including the voluntary nature of the process and for conducting the necessary preliminary communications and preparation for the mediation, using a variety of methods and actions.***

Element 1: Understanding the Law Society's Code of Practice for family mediators

Family mediators will be able to:

- 1.1. understand the principles of the Law Society's Code of Practice for family mediators
- 1.2. apply the Code at all times in their practice as mediators.

Element 2: Engaging the parties in the mediation forum

This stage is the "intake" or "point of entry" phase. Although mediation has not yet commenced, this may be regarded as a specific stage in the process because it is the point where the parties have to consider and agree the forum in which they wish to operate.

Family mediators will be able to:

- 2.1 choose and undertake the most appropriate method of contacting each party
- 2.2 understand the need to act in an even-handed and non-judgmental way without discrimination on grounds of race, gender, culture, ethnicity or any other matter
- 2.3 explain to each party (and their lawyers, where appropriate) the mediation process including procedural, timing and costs aspects and do so at a pace and using language appropriate to the parties
- 2.4 explain the potential and limitations of mediation, realistically and objectively
- 2.5 explain the principles of confidentiality and privilege (including the absence of privilege for financial disclosure)
- 2.6 explain the applicable mediation principles of impartiality and non-directiveness
- 2.7 explain and clarify the role of mediator and how impartiality will be maintained
- 2.8 furnish ground rules and preliminary documents
- 2.9 establish the appropriateness of mediation
- 2.10 invite parties to express their feelings and concerns about continuing with the mediation process
- 2.11 help the parties to select the most appropriate forum and identify other relevant agencies and resources
- 2.12 communicate with the parties' lawyers on procedural issues
- 2.13 understand the principles and practice of co-mediation.

Element 3: Obtaining commitment and agreeing mediation rules

Family mediators will be able to obtain the commitment of the parties to mediation, and their acceptance of its terms and rules. Mediation will ordinarily be conducted in accordance with the agreed terms set out in the mediation agreement, the 'ground rules' set by the mediator for the particular mediation, the Law Society's Code of Practice and the code of practice, or rules of the mediation organisation, if any, offering the process. Signing a *written* agreement to mediate is both practical (to record the basis for the mediation) and symbolic (to commit to the process of seeking an agreed resolution).

Family mediators will be able to:

- 3.1 apply their knowledge of the practical, theoretical and ethical base underlying the mediation process and the model being offered
- 3.2 demonstrate their knowledge of the relevant code of practice and agreement to mediate
- 3.3 sustain empathetic contact with the parties impartially, without forming alliances
- 3.4 agree, obtain and secure the parties' commitment and informed consent to the proposed mediation model and conditions, including discussing the formalisation of the agreement to mediate
- 3.5 establish the principles of balanced participation of both parties and to agree methods of ensuring this balance is maintained throughout the process.

Element 4: Preliminary communications and preparation

Family mediators will understand the preliminary matters to be attended to before a mediator meets the parties, including matters for the parties to deal with, and matters (usually procedural) for decision by the mediator.

Family mediators will be able to:

- 4.1 communicate effectively with each of the parties to obtain appropriate information and documents
- 4.2 understand how the information from standard forms supplied by the mediator and completed by the parties will help to assess if there are any issues requiring special or urgent attention
- 4.3 screen for domestic violence
- 4.4 make practical arrangements for the mediation
- 4.5 establish that there is a genuine intention to mediate and that the parties understand the broad principles of the process
- 4.6 recognise when it may be necessary to consider co-mediation with the parties and be able to make the appropriate arrangements for it
- 4.7 liaise with the co-mediator and parties' solicitors appropriately.

A. Knowledge and skills specification for component 1:

- A1 knowledge of the appropriateness of different methods of communicating with the parties
- A2 knowledge of the mediation process (practice and theory)
- A3 knowledge of law and legal procedures relevant to marriage breakdown so as to appreciate the implications of the parties' circumstances and requirements, and available options

- A4 ethical understanding (mediation ethics and solicitors ethics, including codes of practice)
- A5 knowledge of principles of confidentiality and evidential privilege
- A6 awareness of systems theory and the place of mediation within the different systems
- A7 understanding of the applicability of non-discrimination policy
- A8 understanding of cultural and gender issues
- A9 awareness of principles of impartiality and non-directiveness and their application
- A10 awareness of counselling, therapy and other agencies for referral if necessary
- A11 understanding when mediation is inappropriate (including under the Family Law Act)
- A12 empathetic approach without forming alliances
- A13 awareness of the principles and practice of co-mediation
- A14 knowledge about charging including when public funding or some other form of funding by a third party might be available to pay for the mediation itself (mediator's fees and disbursements etc.) or for legal advice and representation and public funding (where available).

Component 2: During the substantive mediation

Family mediators will be able to demonstrate:

- ***an understanding of the importance of the venue and arrangements for receiving the parties, including the provision of suitable facilities***
- ***an understanding of the importance and purpose of the first meeting with the parties including:***
 - ***how to establish both the presenting issues and those which are underlying or submerged***
 - ***how to establish an agenda***
 - ***how to prioritise issues.***

Element 5: Establishing the venue and meeting the parties

Family mediators will be able to make proper arrangements for receiving the parties and for setting up the room(s) where the mediation will be conducted, and to provide the necessary facilities for the mediation.

Family mediators will be able to:

- 5.1 make appropriate practical arrangements for the mediation session
- 5.2 clarify the terms and rules for the mediation and have the agreement to mediate signed
- 5.3 create a secure environment for discussions and negotiation, putting parties at ease, creating an atmosphere which balances a formal and businesslike approach with a willingness to listen, to sympathise and to help the parties move from entrenched positions
- 5.4 demonstrate a regard for issues of personal safety.

Element 6: Establishing the issues and setting the agenda

The standard forms returned by each party will give some information about the issues between them. This can be enlarged upon or clarified when the parties explain the issues to the mediator at the first meeting. Mediators will generally establish the issues by asking questions and engaging the parties in discussion, and by observing their reactions. Mediators will then establish an agenda in collaboration with the parties, which will usually be checked and if necessary revised as the mediation progresses.

Family mediators will be able to:

- 6.1 demonstrate an awareness of the sensitive nature of the issues raised in the preliminary forms
- 6.2 clarify the issues raised in the forms by appropriate questioning, summarising, listening and observation
- 6.3 encourage each party to express concerns and to identify issues, and to clarify those appropriately
- 6.4 set an agenda prioritising issues in collaboration with the parties.

Element 7: Information gathering

Family mediation is conducted on the basis of informed decision-making. Mediators gather information, not so much for their own purposes, but more particularly to help parties share this with one another so that they can make informed decisions. Neither is mediation an "easy option" on financial disclosures. Parties must provide as full and accurate information here as in the traditional adversarial process.

Accordingly, information gathering and exchange allows mediators the opportunity to understand the parties' individual cases and the issues correctly, and to obtain any information as necessary. It may also help to establish whether the *parties* have a true perspective of each other's concerns.

In all forms of mediation, the mediator will establish further relevant information by careful listening and observation, by picking up signals that either party may give as to underlying concerns and possible solutions, and by sensitive questioning.

Family mediators will be able to:

- 7.1 establish factual (including financial) information through forms, questioning, discussions and documents
- 7.2 establish a balanced understanding by the parties of the information obtained
- 7.3 observe and evaluate verbal signals and non-verbal communications to obtain an understanding of the underlying (as opposed to presenting) issues
- 7.4 analyse the substance of the issues raised by the parties in order to decide whether any additional information is required and when it is appropriate to ask for it
- 7.5 help to identify gaps and inconsistencies and how to overcome these
- 7.6 identify ways of having information verified
- 7.7 secure an understanding of the children and their needs and interests, as well as those of any other relevant members of the family
- 7.8 ensure that information is appropriately shared between the parties and understood by them.

Element 8: Managing and facilitating discussions and negotiations

This is the main stage of the substantive mediation process. It involves mediators helping the parties to identify and to explore options and to discuss and negotiate the resolution of their issues. This requires the mediator to act both as manager of the process, keeping control of it, and as a facilitator, helping the parties to work effectively with one another in circumstances that are often very difficult between them. This demands various attributes and skills from the mediator, which can be both learned and developed.

During this stage mediators will continue to listen effectively to the parties, watching for signals that may provide clues for creating settlement options. Mediators will try to encourage a problem-solving mode, but will understand that parties commonly continue to negotiate in a competitive mode. By the use of summarising, acknowledging, mutualising, re-framing and normalising, mediators will help to create conditions in which the parties may feel heard and may find it easier to shift their positions.

Mediators will facilitate negotiations between the parties, seeking to win the trust of the parties so as to try to gain a full understanding of the issues, both as initially presented and underlying, adopting a flexible and creative approach to seeking settlement terms, within the bounds of ethical propriety and practical efficacy.

Family mediators will be able to:

- 8.1 establish a framework, an agenda, prioritise issues and balance pace
- 8.2 allow each party sufficient uninterrupted time to express their emotions, feelings and concerns, and then return to task
- 8.3 use a range of interventions to help the parties cope with strongly expressed feelings and emotions
- 8.4 ensure equal involvement of the parties throughout the process
- 8.5 help the parties to create, identify, explore and develop options, ideas and aspirations
- 8.6 help the parties to test the reality of options, ideas and aspirations
- 8.7 explore ways in which gaps between the position of each party can be narrowed
- 8.8 assist in the development of further options, where progress cannot be made
- 8.9 manage power imbalances and prevent abuse
- 8.10 respect and manage parties' differences of position
- 8.11 focus discussions primarily on future possibilities rather than on past events
- 8.12 respect and use the capabilities of the parties, as a means of facilitating progress
- 8.13 listen effectively, question, summarise, acknowledge, mutualise, normalise, reframe and help parties to communicate with one another
- 8.14 recognise when and how to involve other necessary professionals

- 8.15 facilitate parties obtaining legal advice from their own lawyers
- 8.16 help the parties with their transitions and rebuilding trust
- 8.17 facilitate negotiations and encourage a problem-solving mode
- 8.18 manage the process overall, making procedural decisions and deterring abusive or inappropriate conduct.

Element 9: Employing impasse strategies

An impasse arises during the mediation when parties are stuck on some point that prevents them from moving forward. An impasse strategy helps the mediator to break the deadlock and to allow the parties to revert to their negotiations.

Family mediators will be able to:

- 9.1 recognise an impasse
- 9.2 assess its cause
- 9.3 deal appropriately and effectively with it
- 9.4 help parties to explore alternatives to settling in mediation.

B. Knowledge and skills specification for component 2 (in addition to those in component 1):

- B1 knowledge of how to establish a secure and effective working environment
- B2 an understanding of how to put the parties at ease and to help them to communicate
- B3 an understanding of how to deal sensitively with the issues, concerns and aspirations of each party
- B4 knowledge of how to draw relevant information from the parties, and consider and analyse that information
- B5 knowledge of the principles of relevant communication, theory and skills to mediation including:
 - questioning techniques
 - summarising
 - acknowledging
 - listening
 - observing non-verbal communications
 - mutualising
 - reframing
 - normalising
- B6 knowledge of law and practice regarding financial disclosure, clarification and verification

- B7 understanding of negotiation theories, practice and approaches
- B8 knowledge of how to deal creatively and flexibly with problems and people
- B9 awareness of couple and family dynamics and patterns of behaviour
- B10 understanding of children's developmental stages and needs
- B11 an understanding of how to avoid the development of unwitting alliances with either party
- B12 an understanding of how to manage the expression of emotions
- B13 knowledge of how to manage power imbalances
- B14 understanding of how to deal with abuse concerning partner or child, and child protection
- B15 knowledge of how to provide legal information covering for example, contract law, housing, pensions, inheritance, trusts, tax and other aspects, without advising
- B16 understanding the place of rights in family mediation
- B17 understanding of how to involve, effectively, other professional advisors
- B18 knowledge of when co-mediation would be appropriate and how to make the appropriate arrangements
- B19 an understanding of and ability to manage the mediator's own pre-conceived prejudices, assumptions and judgements
- B20 understanding of the ways in which the traditional lawyer's role differs from that of a mediator and an ability to cope with those different roles
- B21 understanding of and ability to facilitate discussions, negotiations, option development and reality testing
- B22 understanding of impasse and its causes, and effective strategies to deal with it
- B23 understanding of when it is appropriate to mediate in joint sessions and when to use private mediation, and the ability to mediate effectively in either context
- B24 ability to communicate and work with parties' lawyers as necessary
- B25 ability to manage the mediation process effectively.

Component 3: The end of mediation and afterwards

Family mediators will be aware:

- ***of the variety of reasons for mediations ending; the process for the termination of the mediation by the mediator and actions which may require further input from the mediator after the mediation has been terminated***
- ***of the effect upon the parties' legal position of both a successful mediation (i.e. a mediation resulting in mutually acceptable settlement proposals) and a mediation which terminates temporarily or permanently, without agreement being reached.***

Element 10: Concluding mediation and recording the outcome

This is the final stage. Mediation may end for various reasons, for example because parties have resolved their issues or because they find they cannot do so and need a different process such as negotiation between solicitors or adjudication by the court. Alternatively, they may reconcile, or may decide to seek counselling instead of mediation. Mediation may be discontinued as inappropriate, as where a party appears to be unable to continue to mediate, or where a party is abusing the process. In each of these events, a written memorandum of some sort may be necessary or advisable. Certainly it is likely to be essential where the parties have resolved their issues and wish to have a record of their proposals. In that event the mediator would prepare a non-binding summary for the parties, which they could take to their respective legal advisers for consideration and (if the terms are acceptable to the parties) for conversion into binding form as might be appropriate.

Family mediators will be able to:

- 10.1 bring mediation to a close, in appropriate circumstances, with or without mutually acceptable terms
- 10.2 explain to the parties the non-binding nature of settlement within mediation, and inform them as to the role of their respective legal advisers in implementing settlement terms arrived at in mediation
- 10.3 explain to the parties the consequences of failure to reach settlement
- 10.4 draft summaries as necessary, including without prejudice summaries of proposals, open summaries of financial information, and interim summaries.

Element 11: Post-termination

After the mediation has concluded and the mediator has sent summaries to the parties, that would ordinarily end the mediator's function. It is, however, possible for certain matters to be reserved to the mediator, or for further meetings with the mediator to be required.

Family mediators will be able to:

- 11.1 assist effectively, where appropriate, with implementation issues (including dealing post-termination with matters raised by the solicitors for any party)
- 11.2 mediate in the future on continuing issues.

C. Knowledge and skills specification for component 3 (in addition to those in components 1 and 2):

- C1 knowledge of where it is inappropriate to mediate, or may become so
- C2 knowledge of how to bring negotiations to a close
- C3 knowledge of how to draft appropriate records of agreement
- C4 knowledge of settlement implementation including relevant court formalities, and post-termination requirements.

1. **Mutualising**, for example:

- During negotiations one party may feel that he or she has conceded more than the other has and may be disinclined to move any further. It can often assist if the mediator mutualises his concern by pointing out (if it is true) that the other party feels much the same way and that, as the mediator sees it, **both** parties have been making useful and proper movements towards resolving the issue.
- Where one party in a joint meeting is becoming emotional, the mediator may, instead of addressing that party, mutualise his or her comments (again, only if it is true). The mediator might in that case comment that situations of this nature could be very stressful for both parties even though they might display that stress in different ways.

2. **Acknowledging**, for example:

- Where a party feels aggrieved, distressed or angry, the mediator may need to acknowledge that sense of grievance, distress or anger. Parties need to feel heard and understood, and a mediator can give acknowledgement without having to agree with the party as to the causes. An acknowledgement may sometimes only be a nod of response.
- Where a party has made some shift or concession, it can help to move the process forward if the mediator acknowledges that fact (obviously in a non-patronising way).
- Sometimes a mediator can help one party to acknowledge the other, especially where that does not come easily. Receiving acknowledgement can be important to a party and can help to create an atmosphere conducive to movement.

3. **Normalising**, for example:

- Parties who were in a relationship with one another, that has broken down may tell the mediator privately that they do not trust the other party. While acknowledging that, the mediator can perhaps indicate that in situations in which close working relationships have broken down, it is not uncommon for trust also to break down (by adding “on both sides”, the mediator would also be mutualising).

- Parties who have made some progress but then become deadlocked may feel the setback keenly and become pessimistic about the chances of breaking the deadlock. A mediator may normalise the situation and the feelings, and help ease the tension, by explaining that this often happens in an intense negotiating process, and that people generally pass through that stage and find ways forward.

Note: Experienced practitioners will tend to use these skills intuitively; but the training standards require identification and naming of skills so that trainers can make them explicit and can ensure that they form part of formal training.