

# Code of Professional Conduct for Family Mediators

This Code of Professional Conduct has been developed from the Code of Practice for Family Mediators, originally written by the UK College of Family Mediators.

Amended and approved by the Mediation Practice Committee, Feb 2015  
Further amendments June 2017, Feb 2019  
Reviewed and updated 2023

## **1. Definitions and Aims**

- 1.1 This Code of Professional Conduct applies to family mediation offered by mediators working for Services that are Members of Relationships Scotland<sup>1</sup>.
- 1.2 Family mediation is a voluntary process in which an impartial third person, the mediator, aims to assist those involved:
- to communicate with one another more effectively, now and in the future,
  - to reach their own informed decisions, appropriate to their circumstances, and
  - to reduce the scope or intensity of disputes and conflict within the family.
- 1.3 Family mediation within Relationships Scotland is provided primarily in the context of separation and divorce, parents living apart and family re-structuring. Participants are adults, typically parents, although other family members can be involved. Areas covered include children's living arrangements, parenting matters and communication.
- 1.4 Family mediators have a special concern for the welfare of children. They encourage participants to focus on the specific needs of individual children and they support children to express their views directly, as appropriate (See Section 3.6).
- 1.5 Families can experience conflict in different circumstances and mediation can cover a broad range of areas such as child welfare, intergenerational disputes, young people at risk of homelessness and financial matters.
- 1.6 Mediators must be trained appropriately and must always work within their competency. Mediators who meet directly with children as part of the mediation process must undertake specific training for that purpose. Mediators who provide mediation on financial matters or who provide mediation in other contexts are responsible for undertaking appropriate training (See Section 4).

## **2. Legal Context**

- 2.1 Family mediators are required to have regard for the principles in the Children (Scotland) Act 1995, the Family Law (Scotland) Act 2006 on Parental Responsibilities and Parental Rights and the Children (Scotland) Act 2020, as well as other relevant legislation. The Children (Scotland) Act 2020 policy objectives include:
- Ensure the views of the child are heard in contact and residence cases
  - Ensure the best interests of the child are at the centre

## **2.2 Legal Privilege**

Admissibility as to what occurred during family mediation is protected by the *Civil Evidence (Family Mediation) (Scotland) Act 1995* in any subsequent civil proceedings, where that mediation is conducted by an accredited family mediator. Relationships Scotland National Office is approved by the Lord President of the Court of Session in Scotland to accredit family mediators for the purposes of the *Civil Evidence (Family Mediation) (Scotland) Act 1995*.

Mediators must be aware of the exceptions to the general rules of inadmissibility, including where there are civil proceedings related to the care or protection of a child, or criminal proceedings. Care must be taken regarding any written communications which could be admitted as evidence (see Section 3.2)

## **3. General Principles**

Mediators work to the following principles, as an ethical framework that guides the provision of mediation in the specific divorce and separation context. Circumstances may arise when it is not possible to reconcile all the applicable principles and prioritising between principles may be required.

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<sup>1</sup> Membership Agreement, Relationships Scotland

### 3.1 Voluntary Participation

Mediation is a voluntary process and mediators must ensure participation is on a voluntary basis. Any participant or mediator is free to withdraw at any time. If a mediator believes that any participant is unable or unwilling to participate freely and fully in the process, the mediator may raise the issue with the participants and may suspend or terminate mediation. The mediator may suggest that the participants access other professional services as appropriate.

### 3.2 Confidentiality<sup>2</sup>

The process of mediation is confidential and mediators must not discuss or disclose any information about participants obtained in the course of a mediation to anyone, including any participant's legal advisor, a court welfare officer or a court. The confidentiality of the mediation process within Civil Legal Proceedings is protected by the Civil Evidence (Family Mediation) (Scotland) Act 1995. Mediation is conducted in accordance with the UK General Data Protection Regulation (GDPR) 2020, tailored by the Data Protection Act 2018.

The only exceptions to this rule of confidentiality would be:

- if there were any concerns about the safety of a child. In this event mediators are obliged to share information with the appropriate agency.
- if there was any violence or threat of violence before / during / after a mediation session where the mediator, participant or other person feels it necessary to call the police, or where a mediator is a witness to an incident which results in criminal proceedings; or
- if something was said in mediation that leads the mediator to believe that any participant has benefited from the proceeds of crime (under the *Proceeds of Crime Act 2002* and / or relevant money laundering regulations).
- if information is disclosed relating to a crime. The mediator must discuss this with their Service Manager as there may be a duty to report this to the appropriate authorities.

In all the above exceptional circumstances the mediator must refer to the appropriate National Policies and discuss and agree the appropriate course of action with their Service Manager.

In accordance with the requirements of the Civil Evidence (Family Mediation) (Scotland) Act 1995, the Service Manager/Practice Manager may be asked to confirm whether clients are participating in mediation and if any contract has been entered in to, or not.

In the event of a request to disclose any information obtained in the course of a mediation to a legal advisor this must be with the express consent of each participant to the mediation, and anything that is said or written to the legal advisor of one, must also be said or written to the legal advisor of the other<sup>3</sup>.

### 3.3 Impartiality

Mediators must remain even handed between the participants at all times. They must conduct the process in a fair and impartial way.

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<sup>2</sup> National Policy on Confidentiality and Disclosure, Relationships Scotland

<sup>3</sup> Guidance for Family Mediators on Written Communications, Relationships Scotland

Mediators must seek to prevent manipulative, threatening or intimidating behaviour by any participant. Mediators must manage the process in such a way as to redress, as far as possible, any differences in power between the participants. If such behaviour, or any other, seems likely to render mediation unfair or ineffective, the mediator must take appropriate steps to try and prevent this, terminating mediation as necessary.

### **3.4 Participant Decision Making**

The matters discussed and the outcome of mediation are determined by the participants. Mediators manage the process and remain neutral with regard to the outcome. Mediators encourage participants to make decisions based upon sufficient information, knowledge and advice, which may include accessing support from independent professionals. Mediators do not seek to move the participants towards a particular outcome, whether by attempting to predict the outcome of court proceedings or otherwise.

### **3.5 Safeguarding**

Relationships Scotland Member Services are committed to keeping all children and adults who use their services safe and protected. Participants have an initial individual intake meeting to explore the mediation process and whether there are any concerns about safety<sup>4</sup>, coercive or controlling behaviour, fear of abuse or any other harm. This discussion covers a range of areas, as highlighted in Relationships Scotland's National Safeguarding Policy<sup>5</sup>, including Domestic Abuse<sup>6</sup>, Child Protection<sup>7</sup>, Adult Support and Protection<sup>8</sup>. The intake worker in consultation with the Service Manager decides whether mediation is appropriate and if not, whether other support services may be of assistance.

Risk monitoring and management continues throughout mediation. Even if safety or abuse concerns have not emerged as an issue at intake, mediators must pay continued attention throughout mediation. If mediation has to be terminated, then it must be ended safely and alternatives explored with the participants.

Mediators pay particular attention to the welfare of children in the family. Where it appears to a mediator that any child is suffering or likely to suffer significant harm, the mediator must advise participants to seek help from the appropriate agency and must follow the procedure set out in the National Policy on Child Protection.

Mediators must follow all of Relationships Scotland's Safeguarding Policies and Procedures, and must discuss and agree the appropriate course of action with their Service Manager.

### **3.6 Children's Needs and Views**

Mediators must ensure the best interests of the child are at the centre of any discussions and decision making. They encourage participants to focus on the specific needs of individual children and must explore the situation from the children's point of view.

Mediators must encourage participants to consider the children's own wishes and feelings, and how they are experiencing life at the moment. Where appropriate, they will discuss whether and to what extent it would be helpful to involve the children themselves in the mediation process, in order to give them an opportunity to express their views directly.

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<sup>4</sup> Intake Screening and Assessment Form for Family Mediators, with Guidance notes, Relationships Scotland

<sup>5</sup> National Safeguarding Policy, Relationships Scotland

<sup>6</sup> National Policy on Domestic Abuse, Domestic Abuse Practice Procedures for Intake and Mediation, Relationships Scotland

<sup>7</sup> National Policy on Child Protection, Relationships Scotland

<sup>8</sup> National Policy on Adult Support and Protection, Relationships Scotland

If, in a particular case, it is thought that it may be appropriate to meet any child directly in mediation, the mediator carrying out the consultation, including the preparation with the parents, must be trained for that purpose, must obtain the child's consent and must provide appropriate facilities, as detailed in the Consultation with Children and Young People in Mediation (CCM) Policy and Practice Guidelines.<sup>9</sup>

All Relationships Scotland policies affecting children and young people are considered within the UNCRC (Incorporation Scotland) Bill and aim to promote and protect GIRFEC (Getting it Right for Every Child) to give children and young people the highest level of protection possible. Providing a caring and supportive environment for children when attending a Relationships Scotland service is key to enabling children to cope and develop resilience in times of family difficulties and break down.

This Code of Professional Conduct has been considered within a Children's Rights and Wellbeing Impact Assessment (CRWIA) framework, and it supports the Relationships Scotland National Policy on Services for Children and Young People<sup>10</sup>.

### **3.7 Legal Proceedings**

Family mediation is provided alongside and in support of the legal process. Matters in dispute might be discussed and resolved through a combination of mediation, solicitor negotiation, court proceedings or other dispute resolution options.

Family mediators understand the legal context and whilst legal information may be made available, mediators must not provide legal advice. Mediators inform participants of the benefits of seeking independent legal advice during the course of mediation. They have an ongoing obligation to advise both participants to obtain legal and other professional advice and assistance where financial or property issues are involved.

Whenever appropriate, mediators inform participants about the court proceedings which are available, the procedures for these, the extent and nature of financial disclosure that would be required (if applicable), the nature and finality of court orders which might be made and the broad principles of law applicable to the matter in dispute.

Mediators may prepare a written summary of the factual outcome of the mediation, where appropriate and required by participants. Mediators must be aware that anything that is written and sent to participants is no longer 'confidential' and retained within the Service. It may form the basis of an agreement drafted by solicitors, and it may be admitted as evidence in Civil Legal Proceedings. Trial arrangements may be considered to be a 'contract', and therefore be admissible under exceptions to the Civil Evidence (Family Mediation) (Scotland) Act 1995, unless it is clearly stated that the arrangements are subject to further review<sup>11</sup> (See Sections 2.3 and 3.2 also).

### **3.8 Independence and Conflict of Interest<sup>12</sup>**

Mediators must be independent and not have any personal interest in the outcome of the mediation.

Mediators must not mediate in any case in which they have acquired or may acquire relevant information in any private or other professional capacity, including through the use of social media<sup>13</sup>. Where this is unavoidable mediators must make this clear to participants and remind them that they have the option to withdraw from the mediation.

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<sup>9</sup> Consultation with Children and Young People in Mediation (CCM) Policy and Practice Guidelines, Relationships Scotland

<sup>10</sup> National Policy on Services for Children and Young People, Relationships Scotland

<sup>11</sup> Guidance for Family Mediators on Written Communications, Relationships Scotland

<sup>12</sup> National Policy on Conflict of Interest, Relationships Scotland

<sup>13</sup> National Guidelines on the Use of Social Media, Relationships Scotland

Mediators who have acquired information in the capacity of mediator in a particular case must not act for any participant in any other professional capacity in relation to the subject matter of the mediation.

Mediators must distinguish their roles as mediators from any other professional role in which they may act and must make sure that they make this clear to the participants.

Mediators must give careful consideration before entering into any personal or business relationships with former participants. It would be good practice to note such a relationship in supervision.

#### **4. Qualifications and Training**

- 4.1 Mediators must have successfully completed Relationships Scotland's Family Mediation training or, if trained elsewhere, have applied for Accreditation of Prior Learning and Experience (APLE) and completed any additional training requirements as agreed with Relationships Scotland National Office. They must therefore have successfully demonstrated competence as a family mediator and be registered with Relationships Scotland National Office as either an Accredited or a Registered mediator.
- 4.2 Mediators must work for a Relationships Scotland Member Service and satisfy Relationships Scotland National Office that they have met the Practice Standards<sup>14</sup> each year, through the Annual Renewal process. This includes undertaking a minimum number of practice hours per year, as well as regular supervision in relation to their professional practice with a supervisor who is approved by Relationships Scotland<sup>15</sup>. Professional Indemnity Insurance is provided through the Relationships Scotland National Office.
- 4.3 Mediators must undertake the required amount of Continuing Professional Development (CPD) training through attendance at relevant events approved by Relationships Scotland. CPD may also include undertaking research, teaching or attendance at relevant conferences, as agreed. Mediators are responsible for keeping their learning up to date across all aspects, and particularly regarding safeguarding such as child protection and domestic abuse.
- 4.4 An essential element in the development of family mediators is learning from mediation practice. Mediators must respect the confidentiality of participants when contributing to mediation training or research. Mediators must ensure that the identities of the participants are not disclosed and any identifying features are changed.
- 4.5 Mediators must abide by the relevant complaints<sup>16</sup> and disciplinary<sup>17</sup> procedures and this Code of Professional Conduct.
- 4.6 Mediators on the Relationships Scotland Register are accredited to provide family mediation with adults in the context of separation and divorce, in person and online. Mediators providing Consultation with Children and Young People in Mediation (CCM) must undertake specific additional training for that purpose. Mediators providing family mediation that covers finance and property matters and the division of shared assets (referred to as All Issues Mediation, AIM) must undertake appropriate additional training for that purpose. Mediators providing mediation for young people and adults to meet together to discuss issues in the context of difficulties in family relationships (Young People and Families Mediation) must refer to the relevant Guidance.<sup>18</sup> Mediators providing mediation in other contexts (e.g. additional support needs, elder care,

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<sup>14</sup> Practice Standards for Family Mediation, Relationships Scotland

<sup>15</sup> Policy and Practice Standards for the Supervision of Family Mediators, Relationships Scotland

<sup>16</sup> National Complaints Policy and Procedures, Relationships Scotland

<sup>17</sup> Disciplinary Procedures, Member Service

<sup>18</sup> Young People and Families Mediation – Guidance, Relationships Scotland

workplace) are responsible for undertaking any training that is required by these specific sectors. Mediators must work within their competency at all times. Mediators discuss and agree additional training with their Service Manager.

## **5. Conduct of Mediation**

5.1 Participants must be clearly advised at the outset of the nature and purpose of mediation. In particular they must be informed of the nature and limits of confidentiality, the mediator's particular concern for the welfare of the children and of the general principles as outlined in Section 3. This information is confirmed in an Agreement to Mediate form, or equivalent. It is best practice for participants to be made aware if their mediator is in training.

5.2 Mediation may be provided 'in person' or 'online' using video conferencing technology<sup>19</sup>. Typically participants meet in joint sessions although shuttle mediation and individual sessions may be offered.

5.3 Mediators facilitate the process and help participants to define the issues, identify areas of agreement, clarify areas of disagreement, explore the options and seek to reach agreement and a positive way forward, as far as possible. Safeguarding must be attended to at all times.

5.4 Mediators must actively encourage the participants to make decisions based upon sufficient information, knowledge and advice. Mediators must inform participants of the benefits of seeking independent legal advice and, where appropriate, the benefits of seeking the help of other professionals including counsellors, accountants, valuers, pension consultants and other financial advisors.

5.5 Mediators must ensure that agreements reached by participants are both fully informed and freely made. Participants must have as good an understanding as is practicable of the consequences of their decisions for themselves, the children of the family and other family members.

5.6 Whenever appropriate or required by the participants, mediators prepare a written summary of the factual outcome of the mediation.

## **5.7 Termination of Mediation**

It is the duty of the mediator to suspend or terminate mediation whenever continuation of the process would, in their opinion, be likely to harm or prejudice one or more of the participants, such as when mediation is being misused; for example, if the mediator feels that one or both participants is acting in bad faith or is trying to conceal assets. The mediator will determine when to conclude the mediation process.

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<sup>19</sup> Guidance for online or telephone mediation, Relationships Scotland and Guidance for mediators working online with children and young people, Relationships Scotland