



The Voice of Children & Young People in Mediation Policy and Best Practice Guidelines

This document outlines the College of Mediators' Policy and Best Practice Guidelines concerning work with children and young people and covers the following areas:

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PART 1: Children and Young People in Mediation Policy

1. Glossary of Terms

For the purposes of this document the terms below are understood to mean the following:

Trained Mediator

A Trained Mediator has successfully undertaken a recognised foundation training, is a member of the College and is engaged in a period of supervised practice.

Accredited Mediator

An Accredited Mediator has successfully undertaken a recognised foundation training programme in mediation followed by a period of practice. After the submission of a portfolio evidencing their mediation experience this mediator is recognised as accredited. Family Mediators must be registered with the Family Mediation Council and on completion of their portfolio are recognised as Family Mediation Council Accredited (FMCA) and issued with a Unique Reference Number (URN).

CIM Trained Mediator

A CIM Trained Mediator is an accredited mediator who has undertaken an assessed, specialist training course that qualifies them to meet directly with children in mediation.

Child Consultant

A Child Consultant has undertaken professional training to work in a support role with children directly. They will be independent and impartial (that is, they will have no vested interest in any particular outcome). They may not necessarily be a trained mediator but they will have a thorough understanding of the mediation process and what it seeks to achieve.

Child Inclusive Mediation (CIM)

Child Inclusive Mediation is an approach in which time and consideration is given to understanding how best to take account of the views of children and young people by those adults who have responsibility for making decisions which will affect their lives. CIM may include a direct meeting with a child or young person.

Family

The College of Mediators recognises that families and family relationships take many forms and does not distinguish between different family structures.

Participant

A participant is a party to the dispute who is taking part in the mediation process in order to resolve issues.

2. Who this policy is for

2.1 This policy has been developed for College members including:

- Trained and Accredited Mediators who will be talking to parents, carers and professionals with decision-making authority about ways to listen to children and young people in mediation
- CIM Mediators meeting directly with children or young people as part of the mediation process
- Child consultants meeting with children or young people as part of the mediation process
- Professional Practice Consultants who will be supervising mediators working in this capacity.

2.2 There is separate information available for parents, children and young people who may be considering meeting with a mediator or consultant as part of the mediation process.

3. Statement of Purpose

3.1 This policy and the accompanying guidelines set out the principles of hearing the voice of children and young people in mediation adopted by the College of Mediators. They are intended to be applied in settings where mediation is offered as a means by which to enable adults to make informed, joint decisions about children in matters that affect their lives. It is particularly relevant for mediators working with parents facing separation and divorce, parents and young people whose families are in crisis, and parents and professionals working within the education sector.

3.2 Family relationships, education and parental separation or divorce have a significant impact on children's lives. Research findings highlight a range of needs that children express. There are strong indications that many of these needs are not met when children have little or no opportunity to be informed, listened to and heard in the making of arrangements that affect them.

3.3 The College Code of Practice states that the perspective of the child or young person is a crucial part of the information that parents, or carers with parental responsibility, need if they are to make informed decisions relating to children. Section 4.7.1. states that:

“Where decisions made in mediation have an impact on children and young people, mediators have a special concern for their welfare. They must encourage participants to focus upon the needs of the children and must explore the situation from the child's point of view.”

An understanding of the child's perspective may be gained indirectly, via the parents themselves in mediation sessions or by the mediator, meeting with children directly to understand their views. (see Appendix 1)

3.4 The College actively encourages mediators to support parents, carers and professionals in mediation who have decision making authority:

- to talk with and listen to children and young people in order that the decisions adults make are reached on the basis of an understanding of each child's perspective and bearing in mind their stage of development
- to consider the different ways in which children and young people may be involved in the mediation process including, when appropriate, offering opportunities for them to take part directly in discussions with a mediator or a child consultant

3.5 Part 1 of this policy sets out the principles on which child inclusive mediation is based. In Part 2, the guidelines outline the necessary conditions, competencies and factors that should be considered for effective child inclusive working. Further information, referring to the relevant legislative frameworks and evidence base for involving children in mediation can be found in the Appendices attached to this document in Part 3.

4. Definition of Child Inclusive Mediation (CIM)

4.1 Child Inclusive Mediation is an approach in which time and consideration is given to understanding the views of children and young people about matters affecting their lives. Where appropriate, children and young people may be offered the opportunity to have their voices heard directly as part of the mediation process in order that they might feel respected and listened to. At their request, information may be fed back to parents or carers to better understand and take account of their views when making arrangements which will have an impact on their future. This opportunity should be available to all children over the age of 10 who wish to take it up.

4.2 The role of a CIM Trained Mediator or a Child Consultant is:

- 4.2.1 to provide a safe and sensitive environment in which a child or young person can meet directly with them
- 4.2.2 to listen to the child with sensitivity and respect
- 4.2.3 to convey any messages back to parents or relevant professionals, when appropriate, in order that they can continue with the mediation process.
- 4.2.4 to facilitate subsequent discussion and informed decision making by participants in the mediation process which incorporates the views expressed by children and young people. In the case of a child consultant this task may handed back to the mediator managing the case

4.3 The aims of a direct meeting are to:

- 4.3.1 provide a platform for a child or young person to be able to talk freely about their experiences and concerns in a confidential environment
- 4.3.2 consult with the child or young person in order to explore any future messages to be fed back to their parents, or, where appropriate, the relevant professionals

- 4.3.4 agree precisely what these messages are (including if there are no messages), how they may be framed constructively and how they would like them to be fed back

5. Principles of Practice

5.1 All mediators should make parents, carers or professionals aware of the importance of understanding the perspective of children and young people in matters that affect their lives.

5.2 All mediators should work with parents, carers or professionals to continually develop participants' understanding of the child's perspective and to build a holistic understanding of their concerns and needs. Mediators should encourage participants in mediation to consider and agree a process through which they can take their own steps to consult with the child or young person involved.

5.3 All mediators should be able to routinely explain the principle of child inclusive mediation to parents, carers and professionals at initial meetings, and should actively encourage and assist them to explore the appropriateness of meeting the child or young person directly as part of the mediation process.

5.4 A direct meeting with a child may be conducted by the mediator leading the case (so long as they are CIM trained): or with another mediator who is CIM trained or with a child consultant who has expertise in working with children. The meeting is a purposeful, structured step that forms a part of the mediation process and should not take place in isolation.

5.5 Trained and Accredited Mediators who are not CIM trained should have arrangements in place whereby they can call on another, appropriately trained mediator, or child consultant who can offer this service.

5.6 CIM trained mediators should nevertheless consider carefully whether it is in the child or young person's best interest to meet the same person who is working with their parents. Mediators should remain aware:

- of the need to build trust in a protected environment and of the impact that they themselves may have on a child or young person
- of their own interests in progressing the mediation successfully and how this might affect their approach to the meeting and to the feedback they give to parents or other decision makers

5.7 Mediators should be clear in the distinction between their own role and other forms of professional intervention with children such as counselling, therapy, advocacy, welfare investigation and representation of children.

5.8 Where a CIM trained mediator or a child consultant meets directly with a child or young person **it must be with their informed consent and with the consent of both of their parents, carers or adult decision makers.**

5.9 Mediators always have a responsibility to consider safety and, particularly where they consider that a child or young person might be at risk of significant harm, to inform the appropriate agency. (See paragraph 4.7.5 of the Code of Practice and Appendix 1).

6. Requirements and Responsibilities of Mediation Providers

6.1 The responsibilities and requirements outlined in this section apply to:

- Sole mediation providers
- Agencies employing mediators or contracting with mediators on a consultancy basis.

Mediators and Agencies should be aware of their mutual responsibilities in fulfilling these requirements and share information accordingly.

6.2 The responsibilities and requirements of mediators, PPCs, Agencies and the College are as follows:

- i. Mediators who wish to meet directly with children and young people are required to complete an approved training course delivered by a College approved Training Provider, an approved External Provider of Continuing Professional Development (CPD) or the Family Mediation Council (FMC).
- ii. All mediators who meet directly with children and young people must have access to Professional Practice Consultancy with a registered Professional Practice Consultant [PPC] who is qualified to supervise in this field.
- iii. Mediators and PPCs qualified to work directly with children and young people in mediation should have a clear understanding of the legislative framework within which they are operating. (see Appendix 2)
- iv. Mediators who meet directly with children and young people should undertake continuing professional development in this field of practice and should be able to demonstrate that they meet with children and young people regularly. Family mediators should meet the levels of practice and CPD as stipulated by the FMC.
- v. Professional Practice Consultants who supervise this field of practice must have successfully completed an approved training course in Child Inclusive Mediation.
- vi. Agencies providing mediation services must ensure that where their mediators are meeting directly with children and young people they are suitably qualified to do so and have access to a qualified PPC.
- vii. Agencies should have a policy in place regarding requests for written information from parents or children and young people.

- viii. Agencies and mediators who invite a child consultant who is not trained in mediation to meet directly with a child must ensure that the consultant fully understands and works within this policy.
- ix. The College requires that all Training Providers offering CIM Training Programmes to incorporate a suitable assessment component, which must be completed successfully by participants. In the case of meeting directly with children and young people in family mediation, Training Providers offering CIM training for family mediators must have their programmes approved by the Family Mediation Council. This includes being able to demonstrate that their programmes:
- are a minimum of 40 hours in length
 - fulfil the Learning Objectives laid down by the FMC
 - enable delegates to meet the relevant competencies.
 - incorporate an appropriate assessment process to enable delegates to demonstrate these competencies

For further information please visit the FMC website:

<https://www.familymediationcouncil.org.uk/apply-for-a-course-to-be-approved/>

PART 2: Best Practice Guidelines

7. Child Inclusive Mediation Practice

All mediators should take the opportunity to talk with parents and adult decision makers in initial assessment meetings about the importance of hearing and understanding the wishes and feelings of children and young people in mediation. This includes giving information about the principles underlying the legislative frameworks encouraging the Voice of the Child to be heard. (see Appendix 2)

An understanding of the perspectives of children and young people should inform parental decision making. It is a central part of a mediator's role to support parents and decision makers to agree ways forward that take account of these views. This should form part of the discussions in initial meetings with potential mediation participants, irrespective of whether the mediator themselves would meet directly with the child or young person, or call on another trained mediator to do so.

8. Deciding whether to Meet Directly with Children or Young People in Mediation

There are several factors that will influence the decision to meet directly with a child or young person as part of the mediation process, including:

- Whether the child or young person wants to participate in a meeting
- The developmental stage of each child or young person
- The emotional and psychological state of each child as far as it can be understood via parents, carers or relevant professionals, and their position within the family
- How far the parents or adults are open to listening and hearing the views of the child
- Indicators that a meeting will, in the first instance, be of benefit to the child or young person, and second, potentially inform parental decision-making
- The stage parents are at in their separation, divorce or stepfamily formation
- The stage of the mediation process at which a meeting is being considered (meetings can be too early, before parents have fully considered their own views; or too late, when decisions have already been made)
- The issues involved, the level of conflict and the current capacity of each parent to recognise and meet their child's needs
- The culture, religion and ethnicity of each parent and any influence this may have in their approach to the involvement of children and young people in decision making
- The likelihood of involvement of any other judicial or statutory service i.e. CAFCASS, Local Authority Social Services and Social Work Departments
- The existing involvement of the child with other related professionals
- Consideration of whether a child or young person can participate meaningfully in the process.

9. A Step by Step Process for meeting with Children and Young People

Step 1 – Obtaining Informed Consent

- Agreeing the terms of a meeting with a child or young person needs to be carefully undertaken with the adults and the children concerned. It is essential to be sure that participants have fully considered the purpose of a direct meeting, the implications of the process and the role of the mediator or child consultant. This is particularly important in respect of how parents and decision makers will respond to feedback that they may not wish to hear. Preparation for feedback is an important part of the initial agreement to proceed.
- Even where a child or young person is requesting to meet with a mediator or consultant, the process of contracting with parents and adults must be thorough and should form part of an assessment by the mediator as to whether the meeting should proceed.
- During this part of the process the mediator should identify any support that children may need with parents or carers and what, if any, special needs they have.
- The mediator undertaking the mediation with the parents should briefly record the purpose and task of meeting with the child or young person, detailing respective roles and timings, both in the case record and in a letter to the parents.
- Each parent or relevant adult should be asked to sign a form confirming their consent to the meeting going ahead on the basis agreed with the mediator and each other. This should include an undertaking that they will not influence or ‘coach’ the child in what to say.
- **A meeting with a child or young person may only go ahead with the informed consent of parents, carers or relevant professionals and the child or young person themselves.**

Step 2 - Preparing for Meeting with a Child or Young Person

Preparing all participants is a crucial step to supporting the success of a meeting with mediator or child consultant. The mediator for the parents should:

- Clarify expectations and explore the advantages and disadvantages for the parents and for the child or young person of the meeting.
- Agree a process with the parents, carers or relevant professionals which includes questions about who is involved, what will happen and when it will take place.
- Consider whether it is beneficial for a sibling group to be met together, whether it would be helpful for individuals to have separate time with the child consultant or mediator or whether there should be a mixture of both.

- Clarify issues about confidentiality with the parents and, in due course, with the child or young person.
- Ensure that both parents know in advance that the child or young person might ask the mediator to keep private [i.e. not to pass onto one or both parents] something they have told to the mediator. **If either parent does not agree to their child's right to this confidentiality, the meeting should not take place.** The mediator may conclude that this refusal on the part of the parents raises serious doubts about the appropriateness of Meeting with a Child or Young Person.
- Consider the gender implications of meeting with children and young people and explore options such as co-working.
- Discuss and agree how feedback, if any, will be undertaken: by whom; with one child at a time or in a sibling group.
- Agree practical arrangements (such as the transportation of children to and from the agreed venue) which are balanced and fair to each parent and to the child or young person.
- Make arrangements for a venue that is welcoming and provide age appropriate resources that will enable children and young people to feel relaxed, safe and free from stigma or confusion.

Step 3 – Preparing Children.

- Both parents and mediators need to take steps to prepare children and young people for a meeting. The mediator working with the parents should ensure that each child or young person has a good understanding of the purpose and clear expectations of the process, including the protected nature of a conversation with a mediator or child consultant.
- This can be achieved in one or more of the following ways according to age and appropriateness for each child or young person:
 - Age appropriate leaflets explaining the process generally
 - A dedicated letter of invitation written with the parents' help and knowledge
 - A dedicated email discussed with the parents
 - A phone call organised with the help of the relevant parent
 - Confidential and careful use of social media such as Facebook Messenger
- Where siblings are all involved in the meeting there should be some discussion to consider how they can each contribute equally to the process.

Step 4 – Face to face work with children.

At the meeting with a child or young person the mediator or child consultant should:

- Reconfirm the informed consent of all the children or young people participating at the beginning of the meeting using age appropriate language and concepts.

- Make clear to the child or young person that their parents recognise their right to a private conversation from which there may or may not be any feedback.
- Explain to each child or young person the limits of confidentiality with regard to safeguarding and self-harm, e.g. suicide risk. The mediator should not offer total confidentiality.
- Be aware that children and young people can have unrealistic expectations about parents' capacity to sort things out and ensure that these hopes are carefully and sensitively addressed.
- Be aware that children and young people may feel they must be loyal and protective to one or both parents. This can present a considerable dilemma for a child: time and thought should be given to considering how a child's perspective is fed back to the parents to ensure that any changes and implications in the parent /child relationship are explored as fully as possible.
- Handle the end of the session carefully and sensitively, including:
 - agreeing exactly what will be fed back to the parents and how
 - helping the child or young person to consider how their parents might react
 - how to phrase feedback.
- Clearly explain the nature of any future contact between the child or young person and the mediator or child consultant, the limits of this and the need to be transparent with parents and decision makers about this.

Step 5 Feedback to parents

- Feedback may be with the children or young person present or on their behalf, as agreed during the meeting. The main task of the mediator or child consultant during feedback is to communicate the children's views or to support them to do so for themselves.
- Mediators must keep a professional record to indicate when a meeting with children and young people has taken place, but they should not provide reports, written notes or written feedback to parents (or to anyone else). Mediators should give verbal feedback only to parents/carers, without giving any additional information, interpretations or comments beyond what the child or young person has specifically requested them to convey.
- After feedback the mediator should ensure as far as possible that the parents show respect for the views expressed, build an understanding of their child's wishes and feelings and agree a way forward as to what should happen.

10. Quick Check List for Mediators setting up a Meeting with a Child or Young Person

Mediators and Child Consultants should:

- ✓ Be familiar with the College Code of Practice.
- ✓ Seek regular supervision from a qualified person for this work.

- ✓ Preferably, have an up to date enhanced DBS check in place (this cannot currently be enforced).
- ✓ Have knowledge of local safeguarding procedures and guidelines, and a clear understanding of their own responsibilities should any safeguarding issues arise.
- ✓ Ensure parents and children understand the purpose of Meeting with Children and Young People and the nature and limits of confidentiality, including amongst siblings.
- ✓ Ensure parents are able and willing to listen to, hear and take account of the needs and wishes of the child or young person.
- ✓ Be clear about the distinction between meeting directly with children and young people in mediation with other approaches and techniques of other interventions in relation to children – e.g. counselling, therapy or meeting with a CAFCASS officer.
- ✓ Obtain written consent for a meeting from both parents and verbal consent from any children or young people involved.
- ✓ Understand the potential for “programming” of children or young people by a parent [to repeat information] or of the “recruitment” of a child by a parent.
- ✓ Be aware of potential alignment of children or young people with parents.
- ✓ Understand the possible isolation of the child or young person during family breakup.
- ✓ Create an environment that is welcoming and relaxed for children and young people, and free from any sense of coercion or stigma.
- ✓ Use any aids, toys, flipcharts, genograms, etc. in an appropriate way.
- ✓ Respect the child or young person’s right to a private conversation while keeping a detailed and accurate record of feedback that has been agreed with them.

Mediators and Child Consultants should avoid

- ✗ Creating unrealistic expectations for children and young people as to the outcome of a meeting.
- ✗ Working with a group of children or young people without addressing power imbalances where some are less communicative than others.
- ✗ Meeting directly with a child or young person when one, or both, parent fails to agree the ground rules or tries to dictate the process.
- ✗ Colluding with either a child or a parent.
- ✗ Arranging meetings with children/young people where conflict levels between adults are high and there is i) little collaboration between parents or ii) no openness to hearing a child’s view.
- ✗ Taking over the parents’ responsibility to pass on significant decisions or to give news, good or bad.
- ✗ Arranging meetings with children or young people because parents or adults are ‘stuck’.

- x Arranging a meeting that could undermine either the parents or a child or young person.
- x Arranging a meeting in order to “rescue” either parents or a child or young person.
- x Arranging a meeting that is likely to put pressure on a child or young person.

Appendix 1: Relevant paragraphs within the College Code of Practice

4.7 Children and Young People

4.7.1 Where decisions made in mediation have an impact on children and young people, mediators have a special concern for their welfare. They must encourage participants to focus upon the needs of the children and must explore the situation from the child's point of view.

4.7.2 Mediators must encourage the participants to consider the wishes and feelings of children and young people and to what extent it is proper to involve the children themselves in the mediation process in order to understand their perspective.

4.7.3 Mediators should be aware of the requirements of the legal framework in which they are operating (see Appendix A) together with the need to balance their own involvement with that of any other professional support that children and young people might be receiving.

4.7.4 If, in a particular case, the mediator and participants agree that it is appropriate to meet with any child or young person directly in mediation, the mediator should be trained and qualified for that purpose, including having a clear, enhanced police check, must obtain the child's consent and must provide appropriate facilities.

4.7.5 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. The mediator must also advise participants that whether or not they seek that help, the mediator will be obliged to report the matter in accordance with paragraph 4.5.3.

4.7.6 Where it appears to a mediator that the participants are acting or proposing to act in a manner likely to be seriously detrimental to the welfare of any child the mediator may withdraw from mediation. The reason for doing so must be outlined in any summary which may be available to any participants' legal advisers or relevant authority as described in paragraph 4.5.3.

Appendix 2: Legislative Frameworks

Mediators practise within a legal framework that requires them always to respect and promote the human rights of children. These include the right of the child to have their views heard and be given due weight in any matter or procedure affecting them. In family mediation where the adults are the decision-makers, a careful balance has to be struck between the rights and the obligations relating to the care, protection, direction, guidance and the consultation of children. The relevant legislation is as follows:

- i. The UN Convention on the Rights of the Child 1989
- ii. The Children Act 1989
- iii. The European Convention on the Exercise of Children's Rights 1994
- iv. The Children (Scotland) Act 1995
- v. The Family Law Act 1996
- vi. The Human Rights Act 1998
- vii. Council of Europe recommendation on Family Mediation R98.1.
- viii. The Children and Families Act 2014