

# **THE MEDIATORS' INSTITUTE OF IRELAND**

## **COMPLAINTS and DISCIPLINARY CODE August 2020**

### **SUMMARY**

If you are dissatisfied with the way in which your Mediator performed, then you may be entitled to lodge a complaint with the MII.

- The Mediator must be a Member of the MII or have been at the time of the Mediation.
- The complaint must be made within 6 months of the conclusion of the Mediation.
- If the Mediator is (a) acting under a statutory mediation scheme under the auspices of a State or Public Body or (b) acting as an in-house Mediator appointed by their employer to mediate differences between employees, your complaint should be submitted to that body or employer.
- A complaint should relate to a breach by the Mediator of the Code of Ethics or Code of Practice of the MII or a breach of proper professional standards.
- Complaints should be submitted on the Complaint Form at Schedule One below

### **This Policy provides for a four-stage response**

#### **Stage 1**

The MII will offer to appoint a facilitator to meet with you and the Mediator to see if the matter can be resolved between you.

#### **Stage 2**

If the matter is not resolved to your satisfaction or if you choose to by-pass Stage 1, the matter can proceed to a hearing before a Complaints Panel of three people, two of whom are not members of the MII.

#### **Stage 3**

If either party is unhappy with the decision of the Complaints Panel they can appeal to an Appeals Panel.

#### **Stage 4**

If the complaint is upheld, the Council of the MII will consider any recommendation to impose a sanction on a Mediator.

## INTRODUCTION

1. This complaints policy applies to all MII Mediators, except where they are;
  - (a) acting as a Mediator under a statutory mediation scheme under the auspices of a State or Public Body
  - or,*
  - (b) acting as an in-house Mediator appointed by their employer to mediate differences between employees.
2. A party to a mediation may make a complaint that a Mediator has been guilty of misconduct or poor professional performance constituting a breach of the Code of Ethics or Code of Practice of the MII or constituting a breach of proper professional standards. A complaint must be made within six months of the conclusion of the mediation within the meaning of Section 18(1) of the Mediation Act 2017.
3. The Registrar shall invite the parties to consider having the difference mediated and if both parties agree the President of the MII shall appoint an independent facilitator, whose costs and expenses shall be met by the MII. If a resolution is reached through a mediated intervention the matter is at an end. This process is confidential to the parties.

## COMPLAINTS PANEL

4. Complaints against Mediators shall be investigated and adjudicated upon by a committee to be known as the Mediators' Institute Complaints Panel ("the Panel").
5. The Panel shall act in accordance with natural and constitutional justice.
6. The Executive Committee of the MII shall from time to time, as required, appoint such Panels to consider complaints. A Panel will be appointed to deal with a specified complaint or appeal. In the event of an appointee not being able to continue then the Executive Committee may appoint a substitute panel member.
7. The function of a Panel shall be to investigate the complaint and to decide whether or not the complaint is upheld. The applicable standard of proof shall be the balance of probabilities.
8. A Panel shall consist of at least three members, a majority of whom shall be non-members of the MII and at least one member who shall be a member of the MII, the latter shall act as Chairperson of the Panel.
9. The Chairperson of the Ethics Committee of the MII, with the support of the Administrative Office of the MII, shall act as Registrar of Complaints for the purpose of administering complaints made to the MII and shall act as Secretary to any Panel appointed.
10. Decisions of a Panel shall be by a simple majority of the members of the panel.

## **PROCEDURE:**

11. A complaint shall be made on a complaint form as set out in **Schedule One**.
12. A complaint may be made against a Mediator in relation to a mediation conducted while they were a member of the MII, even if they have since ceased being a member.
13. A Panel may postpone consideration of a complaint arising out of litigation continuing in the Courts, or for other good reason. A complaint may be re-introduced upon the cessation of the reason for its not being processed. The Secretary to the Panel shall communicate the fact of, and the reasons for, the non-processing of the complaint, to the parties within 14 days of any such postponement.
14. A copy of the complaint shall be sent by the Registrar to the Mediator against whom an allegation of misconduct has been made, within 14 days of receipt of same.
15. A Mediator shall have a period of 21 working days from the date of issue to them of the complaint to reply to the said complaint. Such reply shall be made on a form as set out in **Schedule Two** hereto. A copy of the reply shall be sent by the Registrar to the complainant within 14 days of receipt of same.
16. The Panel shall hold an oral hearing in regard to a complaint unless the complaint is rejected under clause 18. The Panel may decide that an oral hearing shall be conducted remotely with the aid of secure online technology. The parties shall be given 21 days prior notice of a hearing. The Panel shall use its best endeavors to fix a hearing date and time that suits all the parties and the Panel.
17. The Panel shall at any time be entitled to seek further information from either the complainant or the Mediator. In the event of the complainant or the Mediator refusing or failing to provide such further information within the time specified by the Panel, the Panel shall be entitled to make a Decision on the complaint, or to hold a hearing of the complaint in the absence of such further information. A copy of any such further information received by the Panel from either the complainant or the Mediator shall be sent by the Secretary to the Complaints Panel to the other party within 14 days of receipt.
18. The Panel shall be entitled to determine the procedures to be adopted by it in investigating and adjudicating upon a complaint in a manner consistent with the provisions of this policy.
19. The Panel shall be entitled to reject a complaint where it finds that there is no basis for it or where the Complainant, after notice, fails to co-operate with the hearing of the complaint. It may decide to do so at any stage.
20. If a Party fails to appear at the Oral Hearing, the Panel will proceed with its deliberations. In the absence of the Mediator the Panel shall firstly consider whether a prima facie case has been established and, if deemed to be so, shall decide whether the complaint should be upheld. In the absence of the Complainant, the Panel shall deem the complaint to be invalid on the basis that the Complainant has failed to establish a prima facie case before the Panel.

21. The complainant and the Mediator shall be entitled to be legally represented or to have a friend accompany them at a hearing. The cost of such representation shall be borne by the party represented. The Panel is not entitled to award costs to any party.
22. All proceedings before the Panel shall be heard in private. The Panel shall record any hearing in such manner it deems appropriate.
23. All documents connected with the proceedings, including the Decision, shall be confidential as between the complainant, the Mediator, the Panels and the MII, subject to such publication as may be approved by the Council of the MII.
24. The Secretary to the Panel shall be entitled to maintain the records of the complaint with the administrative records of the MII.
25. The Panel shall be entitled to reject a complaint on the grounds that the complainant has breached the confidential nature of such proceedings. Breach of the confidential nature of such proceedings by a Mediator shall constitute conduct contrary to proper professional standards.
26. The Panel shall be entitled to adjourn the consideration of a complaint from time to time or to extend time for doing any act necessary for processing the complaint.
27. The Panel may request the attendance of any person to give evidence before it, irrespective of whether such person is produced as a witness by either party. The Panel may also request any person, whether witness or otherwise, to make available any documents or other evidence which it wishes to consider irrespective of whether either party request the production of such documents or evidence. Where the person to whom a request under this rule is made is a member of the MII, it shall be a matter of professional obligation upon such member to attend any hearing of the Panel, to give such evidence as the Panel may direct and to make available such documents or other evidence as the Panel may direct, subject only to such Mediator's obligation of confidentiality to a client.
28. The Panel, where it deems it appropriate, may request the President of the MII to appoint a person as an expert to advise the Panel as to what constitutes proper professional practice in mediation or any specific sector of mediation.

29. Every complaint processed by the Panel shall be the subject matter of a Decision by the Panel. Every Decision of the Panel regarding a complaint shall be in writing and shall be signed by the Chairperson of the Panel. A Decision of the Panel shall contain;
  - (a) a summary of the complaint and the reply thereto
  - (b) a summary of any oral or written submissions or evidence considered by the Panel.
  - (c) the findings of fact reached and the reason for the Decision,
  - (d) any disciplinary measures that may be recommended.
  - (e) if a complaint is upheld, the Panel shall, in stating the reasons for its Decision, specify whether the Mediator has been found guilty of a breach of the Code of Ethics & Code of Practice or of a breach of proper professional standards, or both.
30. The Panel in its Decision shall either uphold or reject a complaint in whole or in part.
31. The Decision shall remain confidential unless the Council otherwise decides in the manner provided for under this Policy.

## **DISCIPLINARY MEASURES**

32. Where the Panel upholds a complaint, it shall be entitled to make a recommendation to Council through the Chair of the Ethics Committee that one or a combination of the following disciplinary measures be implemented;
- (a) Take no action save to record the result of the complaint;
  - (b) Advise the Mediator as to future conduct;
  - (c) Require the Mediator to attend on a nominated Mediator to be given advice as to future conduct;
  - (d) Require the Mediator to complete a course of Continuing Professional Development to the satisfaction of the MII Executive at the Mediator's own expense;
  - (e) That the decision, or a redacted version, be published by the MII.
  - (f) That the Mediator be suspended for a specified period from the list of Practicing Mediators or from any particular category of practice.
  - (g) That a stated fine not exceeding €5,000 be paid to the MII.
  - (h) That the Mediator repays to the complainant the mediation fee, or a part thereof and/or forego any outstanding fees, or part thereof.
  - (i) That the member be removed from membership of the MII.
33. A party unhappy with a decision of the Panel may within 21 days from its issue appeal to the Registrar to have the case referred to the Appeals Panel referred to hereunder. No Decision of the Complaints Panel shall take effect until the time for lodging an appeal from the said Decision has expired. The lodgment of an appeal in respect of all or a part of the Decision of the Complaints Panel shall operate as a stay on the whole of the said Decision until the said appeal has been finally determined by the Appeals Panel

## APPEALS PANEL

34. Either party may appeal from a finding, sanction or recommendation to an Appeals Panel, to be known as the Mediators' Institute Appeals Panel, which Panel shall be constituted in like manner and with like powers and duties as prescribed by and provided for by these rules in respect of the Complaints Panel, and unless otherwise stated or provided shall conduct the appeal in like manner as the Complaints Panel.
35. The Appeal shall be in writing on an appeal form as set out in **Schedule Three** hereto. The appeal form shall be lodged with the Registrar within twenty-one days from the date of issue of the Decision which is the subject of the Appeal. The appeal form shall state whether all or a portion of the original Decision is being appealed and shall, if appropriate, specify the portion of the Decision which is being appealed. The appeal form shall also set out the grounds upon which the Decision or a portion of the Decision is being appealed.
36. The Appeals Panel shall decide whether the appeal shall be heard by way of oral hearing. The Appeals Panel shall consider and decide appeals solely on the basis of the matter contained in the Decision of the Complaints Panel, any documents considered by the Complaints Panel and the grounds of appeals and the reply lodged in respect of the appeal and a record of any hearing that took place and any written submissions made to the Appeals Panel. In the case of any oral hearing of an appeal, the Appeals Panel shall also have regard to the oral submissions of the appellant and the respondent.
37. The Appeals Panel shall not be entitled to consider evidence which was not considered by the Complaints Panel unless in exceptional cases the Appeals Panel decides that consideration of such evidence is necessary in the interests of justice. The Appeals Panel shall not consider any such new evidence unless it is satisfied that same was not available at the time of the hearing before the Complaints Panel.
38. The Appeals Panel shall issue its decision in writing to both parties.

## **COUNCIL CONSIDERATION**

39. Where a Panel Decision is final and upholds a complaint and includes a recommendation to Council, then the decision will be forwarded to the Council within 14 days.
40. The parties to the complaint will be entitled to make written submissions in such manner as the Council may direct in relation to the sanction recommended and the proper consideration of the complaint.
41. The Council will be furnished with the Decision and Submissions under Clause 40 and will meet to satisfy itself that the Decision of the Panel has been reached following a proper consideration of the complaint in accordance with this Code and that the proposed sanction is proportionate. The Council may seek such further information as it may deem necessary from the Panel and, or Parties.
42. The Council will approve the recommended sanction or may substitute a lesser sanction or, in its discretion, may refer the matter back for further consideration by the Complaints Panel or the Appeals Panel, as the case may be.
43. The Council will arrive at a decision in respect of the Panel Recommendation by a simple majority of those present at the Council Meeting and the decision of the Council shall be provided to the parties within 14 days.
44. In a case in which the Council imposes a fine or a requirement to repay fees to a party, the Council shall be entitled to specify the time within which the said fine is to be paid or repayment of fees is to take place, after which time the Mediator, if in default, shall be suspended from membership of the MII until such fine is paid or such fees are repaid.
45. The Council will decide whether, to what extent and in what manner it may publish details of the Complaint and the Decision mindful of the complainant's entitlement not to be identified and the confidential nature of the mediation that gave rise to the complaint.
46. Where a Panel has concluded that a complaint has not been substantiated the Mediator shall be entitled to request the MII Council to publish that fact on the MII Website.

## **GENERAL**

47. The MII will meet the costs and expenses of the Panels and indemnify the Panel Members against all and any claims against them arising from the performance of their duties under this policy.
48. Where the complaint relates to a co-mediation the Complainant will clarify whether the complaint relates to one or all of the Mediators. If the complaint relates to two or more Mediators then each complaint will be considered individually but will be referred to the same Panel, who can determine whether or not to hear them at the same time.

**Adopted by Council: 27 July 2020**

**Effective From: 1 August 2020**

**Review Date: 1 August 2022**

**SCHEDULE ONE  
Making a complaint against an MII Accredited Mediator**

<b>Your Name:</b>	
<b>Your Address/Phone:</b>	
<b>Your Email:</b>	
<b>Mediator Name:</b>	
<b>Mediator Address/Phone:</b>	
<b>Mediator Email:</b>	
<b>1. Has this issue been raised directly with the Mediator or organisation employing the Mediator</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>

<b>2. Date of mediation</b>	
<b>3. If the mediation took place more than 6 months ago please state reason for delay in submitting this complaint</b>	
<b>4. Place of mediation</b>	
<b>5. Nature of complaint</b>	
<b>6. Related section(s) in MII Complaints Policy</b>	

<p><b>7. Related breach of section in the MII Code of Ethics and Practice</b></p>	
<p><b>8. Outline of issues</b> (please use additional pages as required)</p>	
<p><b>9. Please list any supporting documents you wish to submit in support of this complaint.</b></p>	

Signature of complainant: \_\_\_\_\_

Date submitted: \_\_\_\_\_

Office use only

Date received	
Date referred	
Referred to	
Follow up actions	
Outcome	
Appeal	



**SCHEDULE TWO**

**Mediator's Response to a Complaint Against Him/Her**

<b>Complainant's Name:</b>	
<b>Mediator Name:</b>	
<b>Complaint Reference No</b>	

<b>Mediator's Response to Complaint</b> (please use additional pages as required)	
<b>Please list any supporting documents you wish to submit in support of this response.</b>	

Signature of Mediator: \_\_\_\_\_

Date submitted: \_\_\_\_\_



**SCHEDULE THREE**  
**Lodging an Appeal against a Complaints Panel decision**

<b>Complainant's Name:</b>	
<b>Mediator Name:</b>	
<b>Complaint's Panel Decision Ref No and Date</b>	

<b>Grounds Upon Which Appeal is Being Lodged</b> (please use additional pages as required)	
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Signature of Appellant: \_\_\_\_\_

Date submitted: \_\_\_\_\_