

# MII Code of Ethics and Practice for Mediators

(Effective 1st May 2021)



The Mediators' Institute of Ireland

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**Extracts from The Mediation Act 2017 are in Italics and Bold with the reference to the specific section after the extract**

## Background/General Information

### The Mediators' Institute of Ireland

1. The Mediators' Institute of Ireland (the MII) has been in existence as the professional body of Mediators in Ireland since 1992. It is a not-for-profit organisation which promotes the use of mediation as a process in all areas of dispute/ conflict resolution and prevention by ensuring high standards of education, training, ethics and professional practice of mediation and by increasing public awareness of mediation.
2. It is unique in that it is the only professional body of Mediators that accredits and supports Mediators from all disciplines. This breadth of professional experience and expertise helps to inform the practice of Mediators from different disciplines thereby improving and expanding the Mediator's skills and helps them to understand and use different models and styles of mediation to the benefit of the Parties.
3. The aim of the MII is to continue to strive for best practice in mediation. The Code of Ethics and Practice provides guidance and support for Mediators and clarity for Parties, Clients and Attendees about the Mediation Process and what they should expect of their mediation. A high standard of practice has been adopted and the relevant terms of The Mediation Act 2017 have been interwoven into the Code to provide the statutory fundamental requirements. The requirement of Mediator's practice exceeds the statutory requirements. The MII believes its standards of education, training and ethics are in accordance with International standards.
4. We seek not only to support, protect and inform Parties, Clients, Attendees and Mediators but also to ensure the best professional standard of practice to the benefit of all involved in mediation.
5. In order to meet this objective, the MII has drawn up this Code of Ethics and Practice to provide clear information to those wishing to use mediation as the basis on which the mediation will be conducted and to provide ethical and practical guidance for Mediators in their work.

### The Mediation Act 2017

6. The practice of mediation in Ireland is subject to the Mediation Act 2017 (the Act) (except where the Act excludes a particular type of mediation) and its provisions must be followed. MII Mediators are obliged to read the Act, to be familiar with it and to refer to it as appropriate. The Code of Ethics and Practice describes the minimum standards that members of the MII are required to meet in their practice. It is provided to assist you with your practice and it sets out both the relevant terms of the Act (which are in bold and italics and referenced back to the Act) and the standard of practice required by the MII. If there is a conflict between the Act and the Code, the Act prevails. If you are in doubt about any issue relating to the Act refer back to the Act itself and not its representation in the Code which may have been altered slightly to fit into the Code.

## Fundamental Principles of Mediation

7. The fundamental principles of mediation are that it is a
  - voluntary process,
  - that confidentiality applies to every stage of the Mediation Process,
  - that the Mediator is and remains impartial and neutral,
  - that the parties have the right of self-determination and to decide on their own solutions rather than having a solution imposed on them.
  - The participants will treat each other and the process with respect.

The fundamental principles are dealt with in more detail below starting at clause 81 below).

## The Code of Ethics and Practice

8. The Code applies to all MII Mediators no matter where they mediate, whether in Ireland, internationally or online.
9. The Act applies generally to all mediations in Ireland except where the Act is expressly stated not to apply under S3(1). It does not apply to mediations that take place in other jurisdictions.
10. The Code is intended to be binding on the Mediator, the Parties, Clients and all participants in and Attendees at any stage of the Mediation Process.
11. The provisions of this Code shall apply to a mediation governed by a law, contract or agreement other than the Act and shall be modified as required to take account of the provisions and practice which governs those mediations.(S3(2)).
12. If you have any queries about the application or interpretation of the Code you should contact the Chairperson of the MII Ethics and Standards Committee.

## Member Requirements and Scope of Code

13. All Advanced, Certified, Associate, General and Trainee members of the MII agree to be bound by the Code of Ethics and Practice. In the event of an issue or complaint arising in relation to a member's alleged breach of this Code, the matter may be subject to disciplinary process in accordance with the MII's Complaints and Disciplinary Code.
14. We have attempted to cover as many aspects of mediation and the process as possible in this Code. However, it must be understood that every mediation is unique and its very success depends on its retaining its flexibility. Every Mediator will mediate differently to every other Mediator and will mediate each of their cases differently depending on the type of mediation, the subject matter of the mediation and the interaction of all of the people in the Mediation Session and on their own training and experience.
15. It is not possible to cover every scenario and, further, there may be occasions when the particular situation requires a different approach. Although, generally, a mediation will go through some or all of the steps below, some mediations may not allow for that approach or may not allow for the steps to be gone through in that order. It is the Mediator's decision as to how the mediation should proceed taking all of the circumstances into account.
16. There are different models, styles, methods and approaches to mediation. There is no single process and no one way to mediate. The Mediator should adapt the process and remain flexible to meet the

needs of the situation or dispute. In the event of an issue or complaint arising in relation to a particular mediation, the entire mediation will be considered in assessing whether there was a breach of this Code of Ethics and Practice.

17. Only Mediators who hold a current MII practising certificate are approved by the MII to mediate. To obtain your first practising certificate you must have carried out a minimum period of basic training and have passed a certified assessment of competence and skills. To obtain a practising certificate for the current year the Mediator must have appropriate professional indemnity insurance or the equivalent; have agreed to be bound by the current MII disciplinary and complaints procedures; have agreed to be bound by the current MII Code of Ethics and Practice; have completed the appropriate Continuing Professional Development requirements and have completed appropriate training on this Code of Ethics and Practice as determined by the MII from time to time.

## Aim of Mediation

18. The aim of mediation is to assist the Clients and / or Parties to prevent or resolve a broad range of disputes or conflicts within a variety of settings and to facilitate improvements to future relationships, where appropriate.

## Definitions

19. Mediation is defined by the Mediation Act 2017(the Act) as– ***“a confidential, facilitative and voluntary process in which parties to a dispute, with the assistance of a Mediator, attempt to reach a mutually acceptable agreement to resolve the dispute.” (S2)***
20. Mediation is a process in which an impartial and neutral third party facilitates and supports communication and negotiation and promotes voluntary decision-making by the Parties to prevent or resolve a dispute or conflict and to assist them to reach a mutually acceptable solution.
21. The Mediation Process is the process which involves the Mediator and starts at the first contact between the Mediator and the Client, Party or the Attendee (whichever is first), and continues through to when the Mediator notifies the Parties in writing that the mediation is at an end in accordance with S18(2) of the Act and continues indefinitely after the mediation has ended to ensure that ongoing contractual provisions including confidentiality stay in force.
22. **The Mediator** – An accredited MII Mediator holding a current practicing certificate who facilitates the process of mediation whilst acting at all times in accordance with the principles of impartiality, integrity, fairness and confidentiality, with respect for all Parties involved in the mediation. Only Mediators who hold a current MII Practising Certificate are approved to practice by the MII. A list of Mediators holding a current practising certificate can be found on the website [www.themii.ie](http://www.themii.ie).
23. A “mediator” is defined in the Act as ***“a person appointed under an agreement to mediate to assist the parties to the agreement to mediate to reach a mutually acceptable agreement to resolve the dispute the subject of the agreement.” (S2)***

24. Where two or more MII Mediators work together with the Clients and/ or Parties in a mediation, this Code of Ethics and Practice applies equally to those Mediators. Where a Mediator is co-mediating with another mediator who is not an MII Mediator the MII Mediator must insert a clause into the Agreement to Mediate to say that this Code of Ethics and Practice applies to the mediation and it is intended to be binding on all involved in the mediation. The non MII Mediator may include their own Code of Ethics into the Agreement to Mediate. It must be clear in the Agreement to Mediate which Code applies to which Mediator.
25. The Mediator is neither a Judge nor an Arbitrator nor an Adjudicator nor conciliator. The Mediator does not decide or indicate either who is right or who is wrong or decide the outcome(s) of the mediation.
26. The Mediator shall not provide the Parties or the Clients with expert advice whether financial, legal or otherwise.
27. **The Parties** – The parties to a mediation. The party may be an individual, a corporate entity, an organisation or a group of people who are directly involved in the Mediation Process. There may be more than two Parties to a mediation.
28. **The Client** – The person, commissioning agent, corporate entity, organisation or service provider who arranges, and sometimes pays the costs of, the mediation to take place. The Clients may or may not be a Party and may or may not be directly involved in the mediation process.
29. **Client Agreement** – If the Mediator is instructed by a Client to act in the mediation, the terms on which the mediation is to take place must be agreed in advance between the Mediator and the Client including details of all fees, methods of payment and the confidentiality of the mediation.
30. **An Attendee** - An advisor, expert, a supporter, a representative or other person who is not a Party and who attends within the mediation.
31. **A Trainee or Assistant Mediator or Observer** - A person who is learning to become a Mediator or one who wishes to practice in an area of mediation new to them. One of the ways of making Mediators or trainee Mediators more proficient is for them to be present at (but not necessarily taking part in) a mediation and, in particular, at a Mediation Session. Permission must be given by the Parties and the Mediator if a Trainee, Assistant Mediator or Observer wishes to sit in at a Mediation Session. At the beginning of the Mediation Session ground rules in relation to the Trainee or Assistant Mediator or Observer should be agreed and they must sign and be bound by the Agreement to Mediate.

## Role of the Mediator

32. The Mediator is responsible for the process of mediation and decides how the mediation process should proceed.
33. The Mediator should inform the Parties and the Client, if applicable, at the earliest opportunity, that they intend to conduct the Mediation Process in accordance with the principles and obligations set out

in the Code, They should provide a copy of the Code to the Parties and the Client – this may either be in hard copy or by way of a link to the Code.

34. There is no set format for a mediation, and it is up to each Mediator to decide what the Mediation Process should be in each case. In making that decision the Mediator will take account of the general principles and practice of mediation. There may or may not be a pre-mediation meeting, there may be a joint meeting with all of the Parties within or throughout the Mediation Session(s), the Mediation Session (s) may be with the Parties not meeting at all; the Mediation Session may be split into a number of shorter sessions over a period of weeks, months or years or the Mediation Session may last all day or into the night. There may or may not be a review meeting held at some stage after the Mediation Session(s) have terminated.
35. The commencement of the Mediation Process may give rise to the Statute of Limitations or other Statutory time limits being suspended in particular circumstances and the onus is on the Parties to seek appropriate advice in relation to this and to make themselves aware of the consequences. It is not the role of the Mediator to advise in relation to Statute of Limitation issues.
36. **Nature & Purpose of Mediation** – As soon as practicable after the beginning of the Mediation Process, and as appropriate, the Mediator must provide the Parties and Client with an explanation of the nature, purpose of and the fundamental principles of mediation. This may be provided in writing. The Mediator should also explain how the mediation is to be carried out.
37. **8 (1) The mediator shall, prior to the commencement of the mediation**
- (a)(i) make such enquiry as is reasonable in the circumstances to determine whether he or she may have any actual or potential conflict of interest and**
  - (ii) not act as mediator in that mediation if, following such enquiry, he or she determines that such conflict exists.**
  - (b) furnish to the parties the following details of the mediator that are relevant to the mediation in general or that particular mediation**
    - (i) qualifications;**
    - (ii) training and experience;**
    - (iii) continuing professional development training,**
- and**
- (c) furnish to the parties a copy of any code of practice published or approved under section 9 to which he or she subscribes in so far as mediation is concerned. (S8).**
38. **8(2) The mediator shall**
- (a) during the course of the mediation, declare to the parties any actual or potential conflict of interest of which he or she becomes aware or ought reasonably to be aware as such conflict arises and, having so declared, shall, unless the parties agree with him or her continuing to act as mediator, cease to act as the mediator.**
  - (b) act with impartiality and integrity and treat the parties fairly (c) complete the mediation as expeditiously as is practicable having regard to the nature of the dispute and the need for the parties to have sufficient time to consider the issues, and**
  - (d) ensure that the parties are aware of their rights to obtain independent advice (including**



*legal advice) prior to signing any mediation settlement.*

*(3) Subject to subsection (4), the outcome of the mediation shall be determined by the mutual agreement of the parties and the mediator shall not make proposals to the parties to resolve the dispute.*

*(4) The Mediator may, at the request of all the parties, make proposals to resolve the dispute, but it shall be for the parties to determine whether to accept such proposals.*

### **39. Mediation (S6)**

*(6) (1) The parties to a dispute may engage in mediation as a means of attempting to resolve the dispute.*

*(2) Participation in mediation shall be voluntary at all times.*

*(3) The fact that proceedings have been issued in relation to the dispute shall not prevent the parties engaging in mediation at any time prior to the resolution of the dispute.*

*(4) A party may –*

*(a) withdraw from the mediation at any time during the mediation,*

*(b) be accompanied to the mediation, and assisted by, a person (including a legal advisor) who is not a party or*

*(c) obtain independent legal advice at any time during the mediation.*

*(5) Subject to subsection 4(a), the mediator and the parties shall, having regard to the nature of the dispute, make every reasonable effort to conclude the mediation in an expeditious manner which is likely to minimise costs*

*(6) Subject to subsections (7) and (8) and subject to the confidentiality of the mediation, the mediator may withdraw from the mediation at any time during the mediation by notice in writing given to the parties stating the mediator's general reasons for the withdrawal.*

*7) A withdrawal under subsection (6) by the mediator from the mediation shall not of itself prevent the mediator from again becoming the mediator in that mediation.*

*(8) Where the mediator withdraws from the mediation under subsection (6), the mediator shall return the fees and costs paid in respect of that portion of time during which the mediator was paid to act as mediator and for which he or she will no longer act as mediator.*

*(9) It is for the parties to determine the outcome of the mediation. (10) The fees and costs of the mediation shall not be contingent on its outcome. (S6)*

## **Mediation phases**

**40.** The Mediation Process has three phases – Pre-Mediation; Mediation and Post-Mediation.

**41.** The Pre-Mediation Phase starts with the first discussion between the Mediator and a Party or Client (i.e. the start of the Mediation Process) and runs until an Agreement to Mediate is signed by all Parties and the Mediator. This phase may be very short or may take many months.

**42.** The Mediation Phase runs from when the Agreement to Mediate is signed by all Parties and the Mediator, until the Mediator informs the Parties that the mediation is at an end in accordance with S18(2) of the Act.

**43.** The Post- Mediation Phase starts from when the Mediator informs the Parties that the mediation is at an end in accordance with S18(2) of the Act and continues so long as is necessary for each mediation.



44. **Mediation Session** – the actual session(s) when the Parties and the Mediator are mediating to assist the Parties to arrive at a mutually acceptable agreement.

## Pre-Mediation phase

45. **Pre-mediation and/or preliminary meeting**– In many mediations a pre- mediation session and / or a preliminary meeting may be held by the Mediator with each of the Parties. Where a pre-mediation meeting is not held, the Mediator should make a note for their file explaining why the meeting has not been held. A pre-mediation meeting may be held some time before the mediation session (e.g. a week) or immediately preceding the Mediation Session. The purpose of the pre-mediation meeting is to allow the Parties an opportunity to tell the Mediator, in confidence, their perspective or version of events and to enable the Mediator to explain the Mediation Process and how it works and to assess whether the matter is a suitable matter for mediation. The terms of the Agreement to Mediate should also be explained at this meeting if this has not already happened or if the agreement has not already been signed.
46. **Providing Information** – *The Mediator shall, prior to the commencement of the mediation...(c) furnish to the parties a copy of any code of practice published or approved under S9 to which he or she subscribes in so far as mediation is concerned. S8(1)(c).*
47. To protect the integrity of the process all Attendees at the Mediation must be named in, and sign, the Agreement to Mediate. The name, address and relationship of each Attendee to the Party with whom they are appearing should be stated in the Agreement to Mediate. An office or workplace address may be used rather than a home address.
48. The Mediator will agree with the Parties and the other Attendees to the Mediation the ground rules in relation to the Attendees' involvement in the Mediation.
49. **Conflict of Interest** –*The mediator shall, prior to the commencement of the mediation...(a)(i) make such enquiry as is reasonable in the circumstances to determine whether he or she may have any actual or potential conflict of interest and (ii) not act as mediator in that mediation if, following such enquiry, he or she determines that such conflict exists. (S8(1)(a)).*
50. If the Mediator is unsure as to whether a conflict of interest exists, they should contact their practice consultant/supervisor or the Chairperson of The MII Ethics and Standards Committee.
51. If the Mediator or one of the Parties believes that a conflict of interest might exist or might be perceived to exist, the Mediator together with the Parties must discuss whether it is appropriate for the Mediator to continue their involvement.

## Agreement to Mediate

52. **( S 7 )– Prior to the commencement of the mediation, the parties and the proposed mediator shall prepare and sign a document (in this Act referred to as an “agreement to mediate”) appointing the mediator and containing the following information:**
  - (a) **the manner in which the mediation is to be conducted;**

- (b) the manner in which the fees and costs of the mediation will be paid;**
  - (c) the place and time at which the mediation is to be conducted;**
  - (d) the fact that the mediation is to be conducted in a confidential manner;**
  - (e) the right of each of the parties to seek legal advice;**
  - (f) subject to section 6(6) the manner in which the mediation may be terminated;**
  - (g) such other terms (if any) as may be agreed between the parties and the mediator.**
53. The Mediator is advised to prepare a check list of all items they should inform the Parties and/ or the Client of prior to the signing of the Agreement to Mediate and to note for their file the completion of the items on the check list.
54. The Agreement to Mediate is a legally-binding contract and the Mediator must clearly explain the obligations that Parties and other signatories are agreeing to before they sign the Agreement to Mediate. The Parties must be given an opportunity to take independent legal advice on the terms of the Agreement to Mediate.
55. The Agreement to Mediate will be signed by all Parties and any Attendees before the Mediation Session commences. All are bound by the same confidentiality provisions and must be a party to and sign the Agreement to Mediate. Ground rules relating to their participation in the Mediation Process should be agreed at the start of the Mediation Session.
56. There may be exceptional circumstances when the Mediator is not able to get the Parties to enter a written Agreement to Mediate and in that event the Mediator will explain the requirements of the Act as per Clause 52 above and will confirm those provisions as soon as practicable in writing to the Party. The Mediator will note on their file the reason why they could not comply with the provisions of the Act.
57. Apart from the terms to be included in accordance with the Act as set out at Clause 55 above the Agreement to Mediate must also include (a) agreement that the Mediator, the Parties and the Clients, if applicable, will abide by The MII Code of Ethics & Practice and (b) the fact that a Mediation Settlement shall have effect as a contract between the Parties to the settlement except where it is expressly stated to have no legal force until it is incorporated into a formal legal agreement or contract to be signed by the Parties. (11(2)).
58. The Agreement to Mediate and any agreements made between the Parties and with the Mediator within the Mediation Process will last after the Mediation Process has finished unless otherwise agreed.
59. Where there is to be a Review meeting in the Post-Mediation phase a new Agreement to Mediate should be entered into to relate to the review meeting unless the Mediator has provided for this in the Agreement to Mediate or in the Mediation Settlement.

## Mediation Session

60. Before the Mediation Session the Mediator will agree with the Parties who will attend the Mediation and what role the non-parties will have within the process.

61. ***A party may be accompanied to the mediation and assisted by a person (including a legal advisor) who is not a party” (6(4)(b).***
62. A Party may bring an advisor, expert supporter and / or representative and permission to do so, in general, cannot be refused. However, the Mediator may refuse a particular person from attending provided that they have good reason for so doing. The other Party must be informed in good time of who is going to be at the mediation to give them sufficient time to bring their own Attendee if they so wish. The Mediator must have the right to decide who attends the mediation. The Mediator is aware of the rights of the Parties under the Act to have someone attend and assist but they must be able to disallow particular people if they believe that that person is not appropriate.
63. If either Party objects to a person whom the other Party wishes to attend the Mediation the Mediator will decide, having discussed the matter with both Parties.
64. ***Advice from Professionals*** – The Parties are free to take whatever advice they require before and during the mediation, and, in particular, before coming to a Mediation Settlement, and the Mediator will allow time for this if requested. The onus is on the Parties and not on the Mediator to ask for time or this to happen.
65. ***A party may ... (b) be accompanied to the mediation and assisted by, a person (including a legal advisor) who is not a party or (c) may obtain independent legal advice at any time during the mediation. (S6(4))***
66. ***The mediator shall ... (d) ensure that the parties are aware of their rights to each obtain independent advice (including legal advice) prior to signing any mediation settlement (S8(2)(d)).***
67. Mediation Settlement means ***“an agreement in writing reached by the parties to a dispute during the course of a mediation and signed by the parties and the mediator.”*** (S2(1)). It sets out the terms on which the Parties have reached agreement during the mediation. A Mediation Settlement can be interim, partial or a complete agreement. It must be in writing. It is legally-binding.
68. ***Agreement to Mediate and Mediation Settlement*** – These agreements are confidential to the signatories. The Parties to them may have to use the Agreement(s) to enforce a term of the agreement or to seek redress in the event of a breach of the Agreement(s). In that event the confidentiality over the Agreement is waived except as required by law [S10(2)(a)]. Confidentiality will also be waived in the event of a complaint or claim being made against the Mediator.[S10 (2) (e)]
69. The Parties may agree that some or all terms of their Agreement to Mediate or Mediation Settlement or Memorandum of Understanding can be disclosed and to whom. In the event of a dispute as to what information is to remain confidential and what may be disclosed the Parties may go back to mediation to enable agreement to be reached.
70. A Memorandum of Understanding should be used if the Parties do not wish to enter into a legally-binding agreement and it should state that the terms are not legally-binding.

71. A non-binding work plan, behavioural plan or other informal plan agreed by the Parties may be attached either to a Mediation Settlement (but not be legally binding) or to a Memorandum of Understanding.
72. The Parties may come to a non-binding accord and may not wish to have anything in writing recording the terms of the accord or may not wish to exchange a document recording their accord. In that event the Mediator shall make a note of the terms of the non-binding accord and stating that the Parties did not wish to have the accord in writing and include this note on their file.

## Termination of Process

73. **Termination** The Mediator may terminate the Mediation Process if, in their sole discretion, they believe that they or one of the Parties may be at risk or that the Parties do not have an appropriate level of respect for the Mediator or mediation process. ***The Mediator may withdraw from the mediation at any time during the mediation by notice given in writing to the Parties stating the Mediator's general reasons for the withdrawal. (S6(6)).*** The Mediator should inform the Client in writing of such termination of the mediation.
74. **Notes and Flip Charts from the Mediation Process** – all involved in the Mediation Session are encouraged not to take verbatim notes. The Mediator should agree at the beginning of the Mediation Session with all of those involved as to what is to happen to any notes taken and the flip chart pages. The Mediator is advised to take a photograph of the final Flip Chart to enable them to destroy the Flip Chart at a later date. The photograph of the Flip Chart should be kept on the Mediator's file.
75. **Recording devices** – except as agreed by the Mediator and the Parties all mobile phones, cameras, tape recorders or other recording devices must be turned off during any meetings. No photographs may be taken of the flip chart notes by the Parties unless by agreement of all Parties. The Mediation Session may not be recorded. Unless agreed in exceptional circumstances by the Parties and the Mediator there shall be no recording of any meeting, call or electronic meeting during the Mediation Process.
76. **The Mediator's Notes**–The Mediator's own notes of the Mediation Process are the property of the Mediator and may not be disclosed to the Parties or the Clients, except as required in para 83 and 84 below.
77. ***"Enforceability of Mediation Settlements (S 11)***
  - (1)The parties shall determine***
    - (a)if and when a mediation settlement has been reached between them, and***
    - (b)whether the mediation settlement is to be enforceable between them.***
  - (2)Notwithstanding subsection (1) and subject to subsection (3)a mediation settlement shall have effect as a contract between the parties to the settlement except where it is expressly stated to have no legal force until it is incorporated into a formal legal agreement or contract to be signed by the parties.***
  - (3)Without Prejudice to sections 8 and 8A (inserted by S20 of the Status of Children Act 1987) of the Family Law (Maintenance of Spouses and Children) Act 1976 and subject to subsection 4,***

**a court may, on the application of one or more parties to a mediation settlement, enforce its terms except where the court is satisfied that –**

**(a) the mediation settlement**

**(i) does not adequately protect the rights and entitlements of the parties and their dependents (if any),**

**(ii) is not based on full mutual disclosure of assets, or**

**(iii) is otherwise contrary to public policy**

**or**

**b. a party to the mediation has been overborne or unduly influenced by any other party in reaching the mediation settlement.**

**(4) Where a mediation settlement relates to a child. A court, in determining any application with regards to the mediation settlement, shall be bound by section 3(amended by section 45 of the Children and Family Relationship Act 2015) of the Guardianship of Infants Act 1964. (S11)**

**78. The Mediator in a mediation shall inform the Parties in writing of the date on which the mediation ends. (S18(2)).**

## Post mediation phase

**79. This phase will include the enforcement of any Mediation Settlement and will include the ongoing confidentiality provisions. It may include other provisions either from the Agreement to Mediate or the Mediation Settlement.**

**80. Where a mediation settlement relates to a child, a court, in determining any application with regard to the mediation settlement, shall be bound by section 3 (as amended by section 45 of the Children and Family Relationships Act 2015) of the Guardianship of Infants Act 1964.”**

## Fundamental Principles

### Confidentiality

**81. The obligations of confidentiality that flow from the without prejudice nature of the Mediation Process, in which the Mediator plays an integral role, extend and apply to all Parties, Clients, Attendees and any participants involved in the Mediation Process including the Mediator.**

**82. The confidentiality applies to the Mediation Process as a whole and binds not only the Parties but third parties and the Mediator.**

**83. “10(1) Subject to subsection (2) and section 17, all communications (including oral statements) and all records and notes relating to the mediation shall be confidential and shall not be disclosed in any proceedings before a court or otherwise.**

**(2) Subsection (1) shall not apply to a communication or records or notes, or both, where disclosure -**

**(a) is necessary in order to implement or enforce a mediation settlement**

**(b) is necessary to prevent physical or psychological injury to a party**

**(c) is required by law**

**(d) is necessary in the interests of preventing or revealing –**

- (i) the commission of a crime (including an attempt to commit a crime) the  
 (ii) concealment of a crime, or  
 (iii) a threat to a party, or*  
*(e) is sought or offered to prove or disprove a civil claim concerning the negligence or misconduct of the Mediator occurring during the mediation or a complaint to a professional body concerning such negligence or misconduct. (S10(1) and (2)).*
84. ***(3) Evidence introduced into or used in mediation that is otherwise admissible or subject to discovery in proceedings shall not be or become inadmissible or protected by privilege in such proceedings solely because it was introduced into or used in mediation.”(S10(3)).***
85. The Mediator is obliged to explain to the Clients, the Parties and any Attendees the principles of confidentiality and the rules in relation to confidentiality as outlined in S10 of the Act how these rules operate. The Mediator shall ensure that any Attendees are bound by the same terms of confidentiality as the Parties and sign the Agreement to Mediate.
86. Mediation is confidential. The Mediator must not disclose, other than to the Client, that the mediation is taking place. No participant in any element of the Mediation Process may disclose anything discussed except as agreed by the Parties and / or for the identified exceptions contained in the Act as set out in Clause 83 above.
87. This is to ensure that confidentiality and the exceptions apply throughout the Mediation Process.
88. Confidentiality for a Mediator and any Trainee, Assistant or Observer in a mediation starts from the beginning of the Mediation Process. The Mediator should inform the Client and the Parties at the first opportunity that the Code of Ethics and Practice governs both the Parties, Attendees and Clients as well as the Mediator from the start of the Mediation Process.
89. It is accepted that in some types of mediation the rules of confidentiality may differ slightly from the above. In the event of any issue arising in relation to confidentiality, the nature of the mediation and the “normal” rules for that type of mediation will be taken into account.
90. ***Subject to subsection (2) and section 17 all communications (including oral settlements) and all records and notes relating to the mediation shall be confidential and shall not be disclosed in any proceedings before a Court or otherwise. [S10]***
91. **Separate Meetings/Caucus Meetings** – All matters communicated with the Mediator including in emails, at separate meetings or phone conversations during the Mediation Process are confidential to those included in those discussions except where express permission has been given for all or some of the information to be shared with the other Parties, with the Client or for the purposes of obtaining legal or other advice.
92. **Clients** (where the Client is not a Party) Except as below, neither the Mediator nor the Parties shall give any information regarding the Mediation Process or content to the Client unless agreed by all of the Parties. The Mediator may inform the Client of the length of the mediation (for the purposes of costs), of any review meeting or subsequent Mediation Sessions and whether or not agreement



has been reached. If other information is to be given by the Parties or the Mediator to the Client it should be agreed exactly what information may be given and who is to give it.

93. **Confidentiality of Communications between Mediator, the Client and the Parties –**

Where, during the Mediation Process, the Mediator has a discussion or written exchanges with one Party, they should not reveal the contents of those communications to the other Party except with the express agreement of the first Party. The Parties are not entitled to see any written exchange of communications between the Mediator and the Client and/or the Client's Attendees or between the Mediator and the other Party including their Attendees. The Mediator should be particularly aware of confidentiality in relation to online meetings.

## Voluntary Participation

94. ***Participation in mediation shall be voluntary at all times. (S6(2)).*** Any party to mediation or the Mediator may leave the process at any time. ***Subject to subsections (7) and (8) and subject to the confidentiality of the mediation the mediator may withdraw from the mediation at any time during the mediation by notice in writing given to the parties stating the mediator's general reasons for the withdrawal.(S6(6))***

## Impartiality and Neutrality

95. **Impartiality and Neutrality – *The mediator shall .... (b) act with impartiality and integrity and treat the parties fairly. (S8(2)(b)).*** Impartiality means freedom from favouritism, bias or prejudice. The Mediator must not take sides. If a Mediator believes that they cannot remain impartial they shall terminate the mediation.
96. The Mediator must remain neutral as to the content and the outcome of the mediation. Nothing shall prevent the Mediator from talking to, phoning, communicating with or meeting one Party with or without the knowledge of the other Party provided it has been explained to the Parties that this might happen and that impartiality and neutrality are maintained.

## Respect

97. **Respect** – An underlying and fundamental principle of the Mediation Process is respect between the Mediator and the Parties and of the process. If this respect is missing in the process and the Mediator believes that the lack of the respect is or is likely to affect the process the Mediator may terminate the mediation.

## Self-Determination

98. **Self-Determination** – The Parties make the decisions in relation to the outcome of the mediation. The Mediator is there to help that process. ***It is for the parties to determine the outcome of the mediation (S6(9)).***
99. **Informed Decision-Making** – Mediation is based on the principle of informed decision- making.

## Mediator Requirements

100. **Competence** – **The Mediator may only mediate where they have the appropriate** training, knowledge and competence to mediate effectively in the dispute.



101. **If during the mediation a Mediator feels they are moving outside** their level of competence they should take one or more of the following steps :- pause the mediation; seek advice; introduce a co-Mediator or alternative Mediator(s) or other person, advisor or expert or withdraw from the mediation. The Mediator shall have regard to the needs of the Parties. A Mediator's competence will depend on whether the Mediator met the standards applicable at the time the mediation took place.
102. Mediators with practising certificates must only practice within their level of competence. That level of competence will be different for each Mediator depending on their qualifications, their further education, their experience and their reflective practice. They may be more competent at one type of mediation than another. They may practice in one area of practice or in more than one area. Whether they were competent in any particular mediation in which an issue or complaint arose will depend on whether the Mediator met the standards applicable at the time the mediation took place.
103. The MII may, from time to time specify additional requirements that MII Mediators must meet to be deemed "competent" to practice in particular areas of mediation.
104. The MII will notify members of any such additional requirements or variations and may produce practice notes with which Mediators are bound to comply.
105. Every Mediator is required to be aware of the law relating to how they conduct their personal professional practice and, where appropriate, codes of practice, guidelines and regulations. In particular where the Mediator's practice brings them into the area of Child Protection, elder abuse, self-harm, abuse or welfare issues, the Mediator must inform themselves of any appropriate legislation, policies and guidelines.
106. **Record-Keeping** – The Mediator must open a file in each case at the start of the Mediation Process and they must ensure that all mediation notes and records are stored on the file which should be kept securely and confidentially. A Mediator may belong to another institute or organisation and may have other requirements in relation to record keeping. Mediation records must be destroyed and disposed of securely at the appropriate time.
107. The MII advises that, subject to the current provisions of data protection legislation and GDPR, all of the Mediator's notes and any papers in the mediation should be retained after the mediation process is finished for a period of at least 7 years. In accordance with Clause 74 the Mediator may substitute a photograph of any flip charts for the original flip chart used in the mediation. A clause in relation to the retention of documents should be included in the Agreement to Mediate.
108. The Mediator must be aware of all relevant legislation relating to recording and storage of personal information, especially the Freedom of Information, GDPR and Data Protection legislation, and how it applies to their own mediation work.
109. **Reflective Practice: Supervision/Case Consultancy/ Mentoring/Sharing and Learning** Training. Reflective practice is a mandatory requirement for MII Mediators. Mediators are advised to improve their professional practice by reflecting on their performance in their mediations and reflective practice is a requirement of Continuing Professional Development. This reflective practice can either be carried out in one-to-one sessions or in group sessions at the option of the Mediator.

110. For the purpose of this reflective practice and training the Mediator may, disclose anonymised information arising in any mediation that they have been involved with provided that they do so in such a way that the identity of any of the Clients or Parties cannot be ascertained from the information given. The onus is on the Mediator to ensure that those others involved in the reflective practice are also bound by confidentiality.
111. **Trainers & Trainees** – Any trainer and trainee using real cases by way of example for teaching purposes should ensure the identity of the Client and/or the Parties is protected. Any person learning the identity of a Client or Party has a duty to maintain the confidentiality of such information.

## Continuing Professional Development

112. **Continuing Professional Development** – Continuing Professional Development is an essential and mandatory requirement for all Certified and Advanced Mediators.
113. The Mediator shall, at a minimum, comply with The Mediators' Institute of Ireland's current requirements for CPD. They should attend educational programmes and related activities to maintain and enhance their knowledge and skills related to mediation. The Mediator will continue their professional education and be personally responsible for their ongoing professional development.

## Fees

114. **Fees** – *Prior to the commencement of the mediation the parties and the mediator shall prepare and sign a document (in this Act referred to as an “agreement to mediate” appointing the mediator and containing the following information ... (b) the manner in which the fees and costs of the mediation will be paid. (S7(b)).* If fees are payable, prior to the Mediation Session the Mediator must clearly explain to those paying the fees how the fees, outlays, VAT and charges are calculated. Any options for paying the fees should also be discussed.

*(1) Unless ordered by a court or otherwise agreed between the parties, the parties shall (a) pay to the mediator the fees and costs agreed in the agreement to mediate or (b) shall share equally the fees and costs of the mediation. (S20(1)). The fees and costs of a mediation shall be reasonable and proportionate to the importance and complexity of the issues at stake and to the amount of work carried out by the mediator. (S20(2))*

115. Subject to Clause 114 above the fees charged may take account of the type of mediation, the complexity of the matter, the expertise of the Mediator and the time required. Some Mediators charge on an hourly basis, some on a half-day basis, some on a whole-day basis, or a combination of these. Some Mediators charge overtime if the mediation goes past a certain time or number of hours. Some Mediators will not charge any fee. Some Mediators will look for payment on account in advance. Some may charge a minimum fee.

116. **The fees and costs of the mediation shall not be contingent on its outcome. (S6(10)).**

117. At whatever stage the Parties leave or end the mediation, they or the Client must pay all fees due to the Mediator to that point. If fees and / or costs have been paid in advance to the Mediator, the Mediator must repay the excess amount of fees and / or costs paid to them to the relevant Party / Parties/ Client. **Where the Mediator withdraws from the mediation under subsection (b) the**

***Mediator shall return the fees and costs paid in respect of that portion of time during which the Mediator was paid to act as Mediator and for which he or she will no longer act as the Mediator. (S6(8)).***

118. Due to competition and restrictive practice law, the MII is not allowed to obtain, hold or give out details of charges of any Mediators. Mediators should not fix levels of fees with other Mediators.

## Insurance

119. **Insurance** – The Mediator must have appropriate Professional Indemnity Insurance or have the risk underwritten to cover their mediation practice and must make a declaration annually to The MII to this effect. The Mediator is responsible for ensuring that their insurance cover is adequate. If requested by the Parties or the Client, the Mediator must provide details of their professional indemnity insurance and their qualifications.

### **120. Mediator Report to Court [S17]**

***(1) Where, following an invitation by the court under S16(1) of the Act, the Parties to the proceedings concerned engage in mediation and subsequently apply to the court to re-enter the proceedings, the mediator shall prepare and submit to the court a written report which shall set out –***

***(a) where the mediation did not take place, a statement of the reasons as to why it did not take place or***

***(b) where the mediation took place –***

- (i) a statement as to whether or not a mediation settlement has been reached between the parties in respect of the dispute the subject of the proceedings, and***  
***(ii) if a mediation settlement has been reached on all, or some only of the matters concerning that dispute, a statement of the terms of the mediation settlement.***

***(2) Except where otherwise agreed or directed by the court, a copy of a report prepared under subsection (1) above shall be given to the parties at least 7 days prior to its submission to the court. (S17(1) and (2))***

### ***Effect of mediation on limitation and prescription periods***

***121. (1) In reckoning a period of time for the purposes of a limitation period specified by the Statute of Limitations the period beginning on the day on which an agreement to mediate is signed and ending on the day which is 30 days after either (a) a mediation settlement is signed by the Parties or***

***(b) the mediation is terminated, whichever first occurs shall be disregarded. (S18(1))***

122. **Complaints, Disciplinary Process, Legal Action** – If a Mediator requires to defend themselves against a complaint, disciplinary process or any other legal or other action arising out of a Mediation Process they may, without the prior approval of the Client or any Party or other person or body, disclose items that occurred within the Mediation Process but only to such an extent as to respond to and answer matters raised against them. S10 (2) (e)

123. If the Mediator is required by law to give evidence in relation to a mediation they should answer the questions asked and not volunteer information about the mediation that is not relevant to the questions.

124. **Complaints** – The Mediator agrees to be subject to current MII Complaints Procedure, Disciplinary Procedure, and Appeals Procedure, except where prohibited by law and agrees to make the Parties and /or Clients aware of these procedures in the event of any issues arising. Where a query, issue or complaint is raised with the MII, the MII reserves the right to give primary reliance to the Act followed by reliance on the MII Code of Ethics and Practice.

## Practising as a Mediator

125. **Practising as a Mediator** – To practice as a Mediator a member must meet the current accreditation requirements and must only practice within their competence.

## Advancement of Mediation

126. **Advancement of Mediation** – The Mediator should be committed to the advancement of mediation and raising public awareness of mediation as a type of dispute resolution.
127. The Mediator will actively support the MII and encourage non-MII Mediators to join the organisation.

## Advertising and Promotion

128. **Advertising** – The Mediator will be truthful in advertising for mediation and must honestly represent the services on offer, qualifications, experience and fees.
129. The Mediator will not promise or guarantee results and should not advertise information about settlement rates.
130. The Mediator will not advertise in any way which contradicts the principles of mediation as laid out in the Act or in the Code of Ethics & Practice.

## MIJ Nomenclature and Designations

131. **MIJ Nomenclature and Designations** – The Mediator will only use MII designations of membership categories and approved letters when describing themselves in relation to the MII. They may only use such designation and category as are appropriate to their MII accreditation. The MII may from time to time introduce different categories of membership or change nomenclature in respect of categories of membership.
132. The Mediator shall not do anything that brings the MII into disrepute and shall treat the organisation, its Council, its committees and its members with respect and shall not do anything that undermines any of them.

## Council and Committees

133. **Council and Committees** – Where serving on Council or on an MII committee the Mediator will put aside self-interest and will act in the best interests of the MII. The Mediator will declare any conflict of interest they may have. The Mediator will use their best endeavours to work as part of the cohesive whole of the Council and/or Committee for the best interests of the MII abiding by any ground rules or standing orders agreed by the Council and / or Committee.

*As approved by MII Council on 29th of March 2021*



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