



The Mediators' Institute of Ireland

Rules and Procedures for the processing of Notifications and Complaints of Alleged Breaches of the Code of Ethics and Disciplinary Actions

Effective on and from 6 April 2023

Objective

The objective of the MII Notifications and Complaints and Disciplinary Rules and Procedures is to promote and ensure adherence to the highest possible professional standards and competency by Members in their practice as Mediators by providing a fair, transparent and effective process to deal with notifications and complaints of alleged breaches of the Code of Ethics, by assisting and guiding Members and where appropriate, proportionally disciplining Members and thereby protecting and providing assurance to the users of mediation services in Ireland.

Purpose of the complaints and disciplinary process

The purpose of the disciplinary process is to provide a fair, just and effective system of investigating complaints, decision-making, support and sanctioning in order to:

- provide support and where necessary to apply sanctions on members who fail to adhere to the required professional standards.
- promote adherence to high professional standards.
- ensure that those who use mediation services provided by MII members are protected.
- protect the public interest generally.
- maintain public confidence in MII and mediation.

Scope

The MII complaints and disciplinary process cannot be used as a forum to seek or to provide compensation or redress or settling disputes between a user of mediation and a Mediator.

This document sets out the rules and procedures to be followed on receipt of a notification of an alleged breach of the MII Code of Ethics (hereinafter referred to as a “Notification”) by a MII Member.

Any person or entity, including MII on its own volition, can lodge or submit a Notification.

The rules and procedures set out in this document replaces all previous complaints policies and procedures operated by the MII. Notifications or complaints raised with the MII on or after 6 April 2023 shall be processed as per the procedures set out in this document.

These rules and procedures constitute a process, following notification of an alleged breach of the MII Code of Ethics, of internal confidential assessment and engagement with the mediator and where appropriate for alleged serious breaches of the Code of Ethics, the holding of formal disciplinary proceedings.

All notifications of an alleged breach of the MII Code of Ethics that qualify for assessment under these procedures will be dealt with thoroughly. Where appropriate the MII will raise concerns with its member, confidentially, and as deemed appropriate by the Council of the MII and in line with the MII Code of Ethics and the internal members disciplinary procedure.

The following are not covered by this policy:

- a) If the Mediator is acting under a statutory mediation scheme under the auspices of a State or Public Body or is acting as an in-house Mediator appointed by their employer to mediate differences between employees.
- b) Negligence or contractual breaches or criminal allegations.

If the MII determines that any part of a notification falls into one of these categories and cannot be processed, the MII will write to the person submitting the notification to let them know and the MII will explain why this is so.

Conditions of raising a notification

The notification of an alleged breach of the MII Code of Ethics must be raised in writing within 3 months of the conclusion of a Mediation, (i.e. within 3 months or 90 days of the date of the signed mediation settlement or the last date of the

mediation engagement) or within 3 months of reasonably becoming aware of the matter.

- The mediator to whom the notification relates must be a member of the MII or have been at the time of the mediation.
- All allegations raised must be supported by evidence and direct reference to the MII Code of Ethics.
- Anonymous allegations against a named MII mediator will not be considered.

If the MII determines that a notification of an alleged breach of the MII Code of Ethics does not meet the above criteria, the notification assessment will not proceed, the case will close and the MII will write to the person/s concerned to inform them that the case is closed.

Submitting or lodging a notification

Notification of an alleged breach of the MII Code of Ethics by one of its members should be made in writing to the CEO of the MII.

Any notification received will be screened by a designated person of the MII. The designated person will be appointed by the President of the MII. The designated person will act as the Registrar/Administrator throughout the process.

The designated person will:

- Determine if the notification meets the objective criteria to make a submission.
- Acknowledge receipt of the notification within ten days.
- Inform the mediator of the notification.

Initial Screening

The CEO, or another person appointed by the President, shall undertake an initial screening examination of the notification to establish whether, on the face of it, there appears to be a case to be answered regarding the possible breach of the MII Code of Ethics by one of its members. This examination will be based on objective criteria and conditions of making such a notification, as described above.

If the initial assessment finds that the notification does not qualify under the criteria, the person who submitted the notification and the Mediator will be informed.

If the initial assessment finds that the notification does qualify and that there may be a case to be answered, the person who submitted the notification and the Mediator will be informed

Assessment Committee

A two-person Assessment Committee will be selected from a trained Panel of six assessors who are MII members. The panel will be made up of Advanced members, or members who have a minimum of seven years' experience, or a relevant professional qualification. The Assessment Committee will liaise throughout the process with the designated person, as determined by them.

The mediator will be advised of the membership of the Assessment Committee. The mediator may object to a member or members of the Assessment Committee if the mediator can show an actual or potential conflict of interest or bias.

Assessment of the Notification of an alleged Breach of the Code of Ethics by an MII Member

The Assessment Committee will impartially examine the notification by gathering all relevant information and evidence. This may include speaking with the person who has submitted the notification, the mediator, witnesses or examining documentation. This will be undertaken promptly and with attention to detail to ensure a thorough examination of the notification. The Assessment Committee shall make one of the following findings:

- That there is no case to answer.
- That the matter is managed through the informal process that may result in an advisory outcome or remedial action.
- That the matter is managed through the formal process that may result in disciplinary action and sanction.

The Assessment Committee will confirm their findings to the designated person, who will advise the Executive of the outcome without identifying the identities of the persons involved.

Where there is no case to answer the designated person will advise the mediator and the person who submitted the notification.

Where the matter is referred to the informal process, the Assessment Committee will advise the mediator and proceed to the informal process.

Where the matter is referred to the formal process, the Assessment Committee will advise the designated person.

Informal Process

The Assessment Committee will work in consultation with the mediator to address the issues and the Committee shall decide on the course of action, either advisory or remedial. A remedial action may involve an advisory element.

Advisory:

Where the Assessment Committee decide that the findings and recommendations are advisory in nature, they will offer guidance and suggestions to the mediator. It is intended that this stage is informative and supportive and aimed at providing insight into potential courses of action that may address the issue at hand.

In most cases, it can be expected that the case will close; the mediator and person who submitted the notification will be informed that the case is closed.

The Assessment Committee may decide that as new information arises, the notification should be considered for a remedial action or move to the formal procedure. In such cases, the Assessment Committee will inform the mediator. The person who submitted the notification will not be informed at this stage.

A mediator who fully engages with the advisory process shall not be deemed to have received any adverse finding regarding professional conduct.

Remedial Action:

The Assessment Committee may decide that remedial action is necessary. Remedial action is deemed appropriate and necessary to mitigate any potential harm and address the underlying problem. The nature and scope of the remedial action will depend on the specifics of the situation, and will be undertaken in consultation with the mediator. It will be designed to prevent the issue from recurring and to ensure that any harm resulting from the notification/alleged breach is minimised. The Assessment Committee shall ensure that all efforts will be made to implement the necessary actions in a timely and effective manner.

Following the completion of any remedial obligation within a time frame set by the Assessment Committee, the case will be closed. The mediator who fully engages with the remedial process shall not be deemed to have received any adverse finding regarding professional conduct.

The mediator and person who submitted the notification will be informed that the case is closed.

In some cases, the Assessment Committee may decide if new information becomes available and/or if the Mediator does not comply, without just cause, with the

Committee's directions, the allegation may be processed through the formal disciplinary process. In such cases, the Assessment Committee will inform the mediator. The person who submitted the notification will not be informed at this stage.

Formal Process

All informal resolution avenues will be contemplated and, where appropriate, exhausted before a formal process is invoked. Other than for allegations of serious breaches of the Code of Ethics, proceeding to a formal process shall not be automatic.

The designated person will bring the recommendation for the matter to be referred to the formal process to the Executive for decision. Escalating a notification to a formal process will only be done following a review by the Assessment Committee of all aspects of the matters concerned. The Executive may decide the matter should not be referred to a formal process and that the matter should be referred back to the informal process for further consideration.

Should a notification proceed to the formal process, it will be referred to as a 'complaint'.

Investigation

The purpose of an investigation is to determine the facts. The outcome of an investigation may separately lead to a disciplinary process being instigated in respect of the member, but the investigation itself will be solely a fact-finding exercise.

The investigation will be governed by terms of reference which should include:

- A timescale for the investigation
- The scope of the investigation
- Confidentiality

The President will appoint an investigator either from the Assessment Panel or an experienced Member or externally, depending on the nature of the notification.

Disciplinary Process

The Disciplinary process will involve a hearing before a Disciplinary Committee. The Executive will appoint the Disciplinary Committee of three persons, either MII members or otherwise.

The report and findings of the investigation will be submitted to the Disciplinary Committee, and the Disciplinary Committee shall consider same.

The Disciplinary Committee shall be an inquisitorial, a finder of fact and a decision-making body.

The mediator will attend before the Disciplinary Committee and shall be entitled to be represented at his/her own cost.

The person who submitted the notification may be invited to the disciplinary hearing by the Disciplinary Committee or the mediator. He/she will attend only in the capacity of a witness before the Disciplinary Committee but shall be entitled to be represented at his/her own cost, and may be examined/questioned by members of the committee. The member, or the legal representative of the member, shall have the right to cross-examine the witness..

The standard of proof required before the Disciplinary Committee is the civil standard, that is, on the balance of probabilities.

If the Disciplinary Committee holds that the member has breached the Code of Ethics it shall have a wide discretion in relation to proportionate sanctions, and this could range from a recommendation of action to the member, and up to and including suspension and or termination of its MII membership.

The Disciplinary Committee shall report its findings to both the person who submitted the notification and the mediator.

The Disciplinary Committee may decide to confine reporting of any sanction imposed on a member to the member only, and to the CEO.

If the Disciplinary Committee decides not to impose a cost recovery measure, it must set out in an anonymised report to the Executive, the justification for not imposing a cost recovery measure.

On application by the member to the Executive, the cost recovery measure and/or the sanction may be reduced, but in no case shall the Executive interfere with the findings of the Disciplinary Committee.

Appeal

A member against whom an adverse finding has been made by a Disciplinary Committee, may, within a 21-day period from the issuing of the decision, appeal both the finding and the sanction imposed by the Disciplinary Committee.

The Executive of MII will appoint the Appeals Panel, which shall consist of three persons:

- One of whom shall be a barrister or solicitor, of at least five years standing, and that person shall act as chairperson of the panel.

- One of whom will be an Advanced Member, or member who has a minimum of seven years' experience, or a relevant professional qualification.

The appeal shall be by way of a full appeal but without the entitlement to a rehearing on oral evidence.

The person who submitted the notification shall not have a right to appeal any decision or sanction of the Disciplinary Committee.

The Appeals Panel shall confine its deliberations to the evidence presented to the Disciplinary Committee, the report of the Disciplinary Committee and in exceptional and justified situations the panel may consider new evidence which may be advanced by the member.

The Appeals Panel may:-

- confirm all or any findings of the Disciplinary Committee.
- confirm all or any sanction imposed by the Disciplinary Committee.
- set aside all or any finding of the Disciplinary Committee.
- set aside all or any sanction imposed by the Disciplinary Committee.
- substitute its own finding for all or any finding of the Disciplinary Committee.
- impose its own sanction to replace all or any sanction imposed Disciplinary Committee.

If the Appeals Panel confirms in total or substantially the findings and sanctions imposed by the Disciplinary Committee, the member shall be liable for the full cost of the Appeals Panel. The member may make a written submission to the Executive seeking mitigation of any financial fine or cost imposed on the member by the Appeals Panel.

Confidentiality

All members of the MII, who wilfully or recklessly breach confidentiality of any aspect of the deliberations involved in the procedures for the processing of notifications and complaints of alleged breaches of the Code of Ethics shall, if proven, be guilty of a serious breach of the Code of Ethics.

A staff member of MII who wilfully or recklessly breached confidentiality shall, if proven, be guilty of serious misconduct and a fundamental breach of trust.