

CMC Guidance on Disciplinary Outcomes



This guidance is to assist a Panel of the Conduct and Discipline Committee ('the Panel') when considering the outcome of a complaint following a finding of misconduct in a professional respect.

Deciding Serious Professional Conduct in a professional respect ('serious professional misconduct').

This is not subject to any burden or standard of proof but rather is a matter of judgement for the Panel. There is no definition of serious professional misconduct *pe se*, however over time, leading case law indicates that it is conduct which would be regarded as "deplorable" by a responsible body of fellow practitioners. Such conduct can occur within or outside the professional context and represents a serious departure from the standards expected and/or be damaging to the reputation of and the public's trust in the profession of mediator.

Sanctions

The decision about which sanction to impose (or indeed whether to impose a sanction at all) should be approached by a Panel with a holistic and proportionate regard to the factors identified, and the relevant Code of Conduct and Guidance. The balancing of all of these factors is a matter for the Panel to consider on a case-by-case basis, in order to reach what it considers to be an appropriate outcome in the given circumstances.

Aggravating and Mitigating Factors

In coming to a view, the Panel should have regard to the aggravating and mitigating factors of the case and provide clear and cogent reasons for its decision.

Listed below are aggravating and mitigating factors to assist Panels in reaching decisions.

Aggravating factors (Regulated persons)	Mitigating factors (Regulated persons)
<ul style="list-style-type: none">• Dishonesty, fraud or lack of integrity• Recklessness• Violence• Deliberate discrimination• Previous finding of misconduct• Financial gain• Breach of client confidentiality• Abuse of trust	<ul style="list-style-type: none">• The circumstances of the incident• No financial gain• Single or isolated incident• Open and frank admission at an early stage• Subsequent efforts to avoid a repetition of such behaviour/or put things right

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<ul style="list-style-type: none"> • The involvement of a vulnerable client • Sexual misconduct including child sexual abuse images • Obstructing the course of justice • Money laundering • Serious criminal offence • Facilitating or concealing serious or organised criminality of others • Misconduct sustained or repeated over a period of time • Misconduct which was deliberate and calculated • Conduct contravening advice issued by the CMC, or CDC • Blatant or wilful disregard for the role of the CMC and its regulatory systems • Lack of insight into the criminal offence or misconduct • Bringing the CMC and/or the profession into disrepute • Placing the blame for the misconduct on others • Previous finding of misconduct 	<ul style="list-style-type: none"> • Significant lapse of time since the incident • Demonstration of real and genuine insight into the offence or misconduct • Voluntarily notifying the CMC of the misconduct
Aggravating factors (Regulated entities)	Mitigating factors (Regulated entities)
<ul style="list-style-type: none"> • Dishonesty, fraud or lack of integrity • Recklessness • Direct Discrimination • Previous finding of misconduct • Misconduct sustained or repeated over a period of time • No complaints handling procedure • Sustained failure to engage with clients • Breach of client confidentiality • Loss to clients • Misappropriation of client funds • Lack of current Indemnity Insurance • Obstructing the course of justice • Money laundering • Facilitating or concealing serious or organised criminality of others • Misconduct sustained or repeated over a period of time 	<ul style="list-style-type: none"> • The circumstances of the incident • No financial gain • Single or isolated incident • Open and frank admission at an early stage • Subsequent efforts to avoid a repetition of such behaviour and/or put things right • Significant lapse of time since the incident • Demonstration of real and genuine insight into the offence or misconduct • Voluntarily notifying the CMC of the misconduct

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<ul style="list-style-type: none">• Conduct contravening advice or requirements issued by the CMC, or CDC• Blatant or wilful disregard for the role of the CMC and its regulatory systems• Misconduct in breach of obligations to protect the public• Bringing the CMC and/or the profession into disrepute	
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Purely Personal Mitigation

Whilst testimonials and personal character references are important, the Panel should exercise care when considering them. Equally, adverse inference should not be drawn where (for whatever reason) a Member chooses not to provide references or testimonials ahead of, or during proceedings.

It is important to emphasise that references and testimonials should be taken into account during the outcomes and sanctions stage, and not at previous stages when the Panel is determining facts or serious professional misconduct. This is because references and testimonials do not serve as evidence of whether specific events occurred or not; decisions regarding serious professional misconduct are a matter for the Panel's judgment, made in conjunction with the applicable CMC codes of conduct and other relevant guidance.

Accordingly, when considering references and testimonials, the Panel should take into account how recent they are, the nature of the providers, whether the providers were aware of the allegation(s) against the Member and gave the reference or testimonial knowing that it would be used within the context of the current CMC proceedings.

Outcomes and Sanctions

Panels should bear in mind that the primary purpose of sanction is not to punish but to protect the public interest, the reputation of the profession and the CMC as regulator. However, it is accepted that a sanction will inevitably have a punitive effect upon the person or entity concerned. When deciding the outcome in any case, the Panel must adopt a proportionate approach, commencing with the least restrictive measure and stopping at the sanction that, in consideration of all relevant factors, it deems most suitable to adequately reflect the gravity of the misconduct and ensure the protection of the public. It is regarded as sound practice for the Panel to also consider the next available sanction as a sensible procedural check and balance.

In relation to a Regulated Person or a Regulated Entity, the Panel's powers are as follows:

- Take no further action

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- Issue a reprimand
- Issue a warning as to future conduct
- Issue a reprimand and a warning
- Suspend membership status for a period not exceeding 12 months.
- Remove membership status.

Take no further action.

In certain cases, the Panel may consider that a finding of serious professional misconduct is sufficient to mark the conduct. In such instances the Panel must provide very full and clear reasons to explain and justify this course of action and how the public remains protected.

Issue a Reprimand to mark previous misconduct and/or Warning as to future conduct.

A Reprimand and/or Warning have no direct upon a Member's right to practise as a regulated CMC mediator. The Panel should consider that a Reprimand and/or Warning appropriately mark the misconduct and provide adequate protection to the public, the reputation of the profession, and guard against repetition of the misconduct by the individual or by other members of the profession.

This level of sanction may be appropriate where:

- The misconduct is at the lower end of the spectrum of seriousness and,
- There is no, or minimal risk of repetition, and,
- There is evidence of insight.

Suspension

Suspension may be appropriate where the misconduct is sufficiently serious to warrant more than a Reprimand or Warning, but not sufficiently serious to justify the removal of Membership status.

Suspension may be appropriate where some or all of the following are present:

- The misconduct is serious.
- There is no significant risk of repetition.
- The member is fit to return to practice after the period of suspension.
- The member's misconduct is not fundamentally incompatible with CMC membership status.
- Demonstration of some insight

Removal of membership status

Removal of membership status may be appropriate where the Member's misconduct is so serious that it fundamentally incompatible with CMC membership and is the only way of protecting the public, reputation of the profession and the wider public interest.

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Proven dishonesty has been held to come at the 'top end' of the spectrum of profession misconduct; removal of membership status may be appropriate where the following may be involved:

- Serious departure from professional standards
- Offences of a sexual nature
- Offences involving violence and/or loss of human life
- Evidence of a harmful deep-seated personality or attitudinal problem
- Conduct involving dishonesty, particularly where it is persistent or concealed.
- Perverting or obstructing the course of justice.

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