



THE CIVIL MEDIATION COUNCIL (CMC)

DISCIPLINARY REGULATIONS 2024

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Part 1

1.1 Jurisdiction

These regulations are made by the Board of Civil Mediation Council, apply to complaints considered on or after 3 October 2024 and replace the Rules of the Civil Mediation Council for Complaints and Discipline dated 1 February 2021.

1.2 The Regulations do **not** apply to:

- a) Non-Members of CMC (save for proceedings under Part 5)
- b) Complaints against persons or organisations in their capacity as Directors or Officers of the CMC
- c) CMC Friends, student Friends, CMC Peer mediation Trainer in schools, or CMC Organisational Members.

1.3 For the avoidance of doubt, with reference to 1.2 (b) these Regulations do not preclude consideration of a complaint against a Director or Officer of the CMC whilst acting on their own account and in their capacity as a mediator.

1.4 Where there is an ongoing complaint against a CMC member, that member will not be entitled to resign from membership of the CMC until the issues raised have been finally concluded by either the Investigating Committee or Discipline Committee.

1.5 Overriding Objective

The overriding objective of these Regulations and the process they govern, is to enable the CMC, the CDC and its Panels, with the assistance of the parties involved and Independent Investigators, to deal with cases efficiently, fairly and justly, with regard to proportionality and in a spirit of co-operation. Dealing with a case efficiently, fairly and justly, so far as practicable and reasonable, includes for example acting in ways which:

- Are proportionate to the seriousness and complexity of the issues.
- Seek informality and flexibility.
- Facilitate appropriate and full participation of those involved.
- Have regard to the costs to the parties involved and the resources of the CMC.
- Avoid delay, so far as is compatible with the proper consideration of the issues.

Part 2 - Complaints about a Regulated Person

Investigations stage | Investigating Panel

2.1 General

- 2.1.1 A complaint may be made against a Regulated Person (or 'member') on the grounds that they may be guilty of serious misconduct in a professional respect, in relation to an alleged breach or breaches of the relevant Membership Rules and/or relevant Code of Conduct.
- 2.1.2 For the purposes of Part 2 of these Regulations, a Regulated Person refers to a member who is:
- an Associate Mediator
 - a Registered Mediator
 - a CMC Fellow
- 2.1.3 A complaint may be made by any interested person as the CDC may determine, and an investigation may be raised, or complaint made by the CMC or the CDC of its own volition. Where a Complaint subsequently has been withdrawn by the Complainant at any point, the CMC or CDC may continue to pursue or consider the matter provided it is proportionate and in the public interest to do so.
- 2.1.4 Meetings of the Investigating Panel shall be in private without the parties or Complainant in attendance.
- 2.1.5 The quorum of the Investigating Panel is two and must include at least one Lay Member and one Mediator Member.
- 2.1.6 Decisions of the Investigating Panel are final and where a case is concluded by the Investigating Panel, no further communication or review will be considered.
- 2.1.7 An Investigating Panel may at any stage refer a case for consideration in accordance with Part 6 of these Regulations.

2.2 Acceptance criteria

- 2.2.1 All complaints should be in writing and in any format the CMC or CDC may reasonably prescribe from time-to-time.
- 2.2.2 Complaints against a Regulated Person must be made within 3 months of the conclusion of consideration of the complaint under the Regulated Person's complaint handling procedures. Acceptance of a complaint outside the above time limits will be at the absolute discretion of the CDC, having regard to proportionality, the public interest and particular circumstances.

2.2.3 Only in exceptional circumstances will the CDC accept complaints where the complainant has not exhausted the complaints handling procedure adopted by the Regulated Person. Such exceptional circumstances shall have regard to proportionality, and the public interest.

2.2.4 A complaint will not be progressed where it is deemed to be:

- Outside the remit or jurisdiction of the CMC or the purposes of these Regulations.
- On the face of it, frivolous, or vexatious in nature or otherwise an abuse of process.

2.3 Initial Consideration

2.3.1 Where the CMC receives a complaint it will be initially considered by the CDC Chair, Deputy Chair or a Panel Chair, who will decide whether it meets the acceptance criteria under Regulation 2.2 to be referred on for inquiry under Regulation 2.4.

2.3.2 In terms of Regulation 2.3.1, such preliminary inquiries as are considered necessary may be carried out or caused to be carried out having regard to the Overriding Objective and with reference to the matters raised.

2.3.3 Where a complaint is not referred for inquiry, it shall be dismissed, and the Complainant informed.

2.3.4 Where a complaint is referred for inquiry, the Complainant shall be informed, and the Regulated Person shall also be notified in terms of Regulation 2.4.2.

2.4 Complaints referred for Inquiry.

2.4.1 Where a complaint has been referred for inquiry, the Investigating Panel may carry out or cause to be carried out such inquiries as are considered necessary having regard to the Overriding Objective and with reference to the allegation(s) identified.

2.4.2 The Regulated Person shall be notified and sent a copy of the complaint and asked to respond.

2.4.3 The Investigating Panel may appoint an Independent Investigator to examine the matter.

2.4.4 Thereafter the Investigating Panel will decide if, on the basis of all the information before it: -

- (1) There is a realistic prospect of a Discipline Panel finding the allegations proved and
- (2) There is a realistic prospect of a Discipline Panel making a finding of serious misconduct in a professional respect.

2.5 Investigating Panel Disposals

- 2.5.1 Where the Investigating Panel decides there is no realistic prospect in terms of Regulation 2.4.4, or considers the complaint to be malicious or vexatious, the complaint shall be dismissed in terms of Regulation 2.5.2 (1) or (2) and the Complainant and Regulated Person informed.
- 2.5.2 Where the Investigating Panel finds there is a realistic prospect of success under regulations 2.4.4 (1) and (2), having regard to proportionality and the public interest, the Investigating Panel may decide to:
- (1) Dismiss the complaint.
 - (2) Dismiss the complaint with advice.
 - (3) Dispose of the complaint by means of offering a consent order to reprimand the Regulated Person.
 - (4) Refer the complaint on to the Discipline Panel for hearing proceedings.
- 2.5.3 Where the Investigating Committee disposes of the complaint under Regulation 2.5.2 (3) and the Regulated Person does not consent in writing to a reprimand within 21 days, then Regulation 2.5.2 (4) shall automatically take effect.

Hearing stage | Discipline Panel

2.6 General

- 2.6.1 Hearings of the Discipline Panel shall take place in public with only the parties permitted to take part and may be held in person or virtually.
- 2.6.2 The quorum of the Discipline Panel is two and must include at least one Lay Member and one Mediator Member who have had no previous involvement with the case in terms of Regulations 2.4 and 2.5.
- 2.6.3 Save for any review proceedings in terms of Part 4 of these regulations, decisions of the Discipline Panel are final and once a case is concluded by the Discipline Panel, no further communication or review will be considered.
- 2.6.4 It is competent for the parties and the Discipline Panel to agree that the matters set out at Regulation 2.7 can be considered by a Discipline Panel based on written representations only.
- 2.6.5 A Discipline Panel may at any stage refer a case for consideration in accordance with Part 6 of these Regulations.

2.7 Hearings

- 2.7.1 Unless otherwise agreed the Regulated Person will be given no fewer than 28 days' notice of a full hearing. The notice will:
- 1) Explain the matters to be considered.

- 2) Provide copies of documents and statements to be relied on
- 3) Specify the date, time, and venue of the hearing.
- 4) Inform the Regulated Individual of their right to attend and be represented.
- 5) Inform the Regulated Individual that the hearing may proceed in their absence.
- 6) Inform the Regulated Individual of the disposals available to the Discipline Panel
- 7) Include a Hearing Questionnaire in such format as the CMC or CDC may reasonably prescribe from time-to-time.

2.7.2 The Regulated Person shall complete and return the Hearing Questionnaire to the Panel Chair not less than 7 days before the specified hearing date.

2.7.3 A Case Presenter may make submissions in support of the CMC's position in relation to the allegations.

2.7.4 At any stage before making its findings of fact, having heard from the parties, the Discipline Panel may amend the allegation(s) to be considered, unless, having regard to the fairness to the proceedings, the Discipline Panel considers that the amendment could be prejudicial to the parties or amount to injustice.

2.7.5 The Discipline Panel shall proceed to determine:

- Whether it finds the facts set out in the allegation(s) proved.
- Whether on the basis of any facts found proved it makes a finding of serious misconduct in a professional respect against the Regulated Person.

2.8 Disposals of the Discipline Panel

2.8.1 Where there is a finding of serious misconduct in a professional respect, the Discipline Panel shall proceed to consider a proportionate outcome in terms of regulation 2.8.2 with reference to the CMC Guidance on Disciplinary Outcomes.

2.8.2 Disposals available to the Discipline Panel:

- Take no further action.
- Issue a reprimand to mark previous misconduct.
- Issue a warning as to future conduct.
- Issue a reprimand and a warning.
- Suspend the Regulated Person's membership for a period not exceeding 12 months.
- Remove the Regulated Person's membership status.

2.8.3 In the case of removal of membership status, a Discipline Panel may also direct the period (not exceeding two years) which must elapse before the Regulated Person is permitted to make a subsequent re-registration application under Part 5 of these Regulations.

2.8.4 The Discipline Panel shall communicate its decision and written reasons to the parties and the Complainant. The publication of the decision will be in accordance with the CMC's Publication of Disciplinary Decisions Policy.

2.8.5 Save for suspension or removal of membership, disposals of the Discipline Panel under Regulation 2.8.2 shall take immediate effect. Where the Regulated Person has been suspended or removed from membership and has not applied for a review in terms of Regulation 2.8.6, the disposal shall take effect 28 days after the Discipline Panel's determination.

2.8.6 Following the outcome of a Discipline Panel to suspend or remove the Regulated Person from membership, the Regulated Person may, within 28 days, apply to have the decision reviewed in the terms set out in Part 4 of these Regulations.

2.9 Removal of membership status for non-co-operation with CMC and/or CDC investigation

2.9.1 Where the Regulated Person has refused or failed to co-operate with the investigation of a complaint, the CDC and/or CMC, the Disciplinary Panel may remove membership status, if it is satisfied that:

- All reasonable efforts have been made by the CMC or CDC to make contact and/or engage with the Regulated Person and
- The allegations against the Regulated person if proven, would amount to a finding of serious professional misconduct and
- Removal of membership status is necessary to protect the public and/or is otherwise in the public interest.

Part 3 - Complaints about CMC Organisations or Providers

Investigations stage | Investigating Panel

3.1 General

- 3.1.1 A complaint may be made against a CMC Organisation or Provider on the grounds that they may be guilty of serious misconduct in a professional respect, in relation to an alleged breach or breaches of the applicable Membership Rules and/or relevant Code of Conduct.
- 3.1.2 For the purposes of Part 3 of these Regulations, a Member that is a CMC Organisation or Provider is referred to as a 'Regulated Entity'; this includes:
- Registered Mediation Providers.
 - Organisations which offer Regulated Training Courses.
- 3.1.3 A complaint may be made by any interested party as the CDC may determine, and an investigation may be raised, or complaint made by the CMC or the CDC of its own volition. Where a Complaint has subsequently been withdrawn by the Complainant at any point, the CMC or CDC may continue to pursue or consider the matter provided it is proportionate and in the public interest to do so.
- 3.1.4 Meetings of the Investigating Panel shall be in private without the parties or Complainant in attendance.
- 3.1.5 The quorum of the Investigating Panel is two and must include at least one Lay Member and one Mediator Member.
- 3.1.6 Decisions of the Investigating Panel are final and once a case is concluded by the Investigating Panel, no further communication or review will be considered.
- 3.1.7 The Investigating Panel may at any stage refer a case for consideration in accordance with Part 6 of these Regulations.

3.2 Acceptance criteria

- 3.2.1 All complaints should be in writing; in any format the CMC or CDC may reasonably prescribe from time-to-time.
- 3.2.2 Complaints against a Regulated Entity must be made within 3 months of the conclusion of consideration of the complaint under the Regulated Entity's complaint handling procedures. Acceptance of a complaint outside the above time limits will be at the absolute discretion of the CDC, having regard to proportionality, the public interest and particular circumstances.

3.2.3 Only in exceptional circumstances will the CDC accept complaints where the complainant has not exhausted the complaints handling procedure adopted by the Regulated Entity. Such exceptional circumstances shall have regard to proportionality, and the public interest.

3.2.4 A complaint will not be progressed where it is deemed to be:

- Outside the remit or jurisdiction of the CMC or the purposes of these Regulations.
- On the face of it, frivolous, or vexatious in nature or otherwise an abuse of process.

3.3 Initial Consideration

3.3.1 Where the CMC receives a complaint it will be initially considered by the CDC Chair, Deputy Chair or a Panel Chair who will decide whether it meets the acceptance criteria under Regulation 3.2 to be referred on for inquiry under Regulation 3.4.

3.3.2 In terms of Regulation 3.3.1, such preliminary inquiries as are considered necessary may be carried out or caused to be carried out having regard to the Overriding Objective and with reference to the matters raised.

3.2.3 Where a complaint is not referred for inquiry, it shall be dismissed, and the Complainant informed.

3.4 Complaints referred for Inquiry.

3.4.1 Where a complaint has been referred for inquiry, the Investigating Panel may carry out or cause to be carried out such inquiries as are considered necessary having regard to the Overriding Objective and with reference to the allegation(s) identified.

3.4.2 The Regulated Entity shall be notified and sent a copy of the complaint and asked to respond.

3.4.3 The Investigating Panel may appoint an Independent Investigator to examine the matter.

3.4.4 Thereafter the Investigating Panel will decide if, on the basis of all the information before it: -

- (1) There is a realistic prospect of a Discipline Panel finding the allegations proved and
- (2) There is a realistic prospect of a Discipline Panel making a finding of serious misconduct in a professional respect.

3.5 Investigating Panel disposals.

- 3.5.1 Where the Investigating Panel decides there is no realistic prospect in terms of Regulation 3.4.4, or considers the complaint to be malicious, the complaint shall be dismissed in terms of regulation 3.5.2 (1) or (2) and the parties informed.
- 3.5.2 Where the Investigating Panel finds there is a realistic prospect of success under Regulations 3.4.4 (1) and (2), having regard to proportionality and the public interest, the Investigating Panel may decide to:
- (1) Dismiss the complaint.
 - (2) Dismiss the complaint with advice.
 - (3) Dispose of the complaint by means of offering a consent order to reprimand the Regulated Entity.
 - (4) Refer the complaint on to the Discipline Panel for hearing proceedings.
- 3.5.4 Where the Investigating Committee disposes of the complaint under Regulation 3.5.2 (3) and the Regulated Entity does not consent in writing to a reprimand within 21 days, then Regulation 3.5.2 (4) shall automatically take effect.

Hearing stage | Discipline Panel

3.6 General

- 3.6.1 Hearings of the Discipline Panel shall take place in public, with only the parties permitted to take part and may be held in person or virtually.
- 3.6.2 The quorum of the Discipline Panel is two and must include at least one Lay Member and one Mediator Member who have had no previous involvement with the case in terms of Regulations 3.4 and 3.5.
- 3.6.3 Save for the review proceedings in terms of Part 4, decisions of the Discipline Panel are final and once a case is concluded by the Discipline Panel, no further communication or review will be considered.
- 3.6.4 It is competent for the parties and the Discipline Panel to agree that the matters set out at 3.7 can be considered by a Discipline Panel based only on the written representations.
- 3.6.5 The Discipline Panel may at any stage refer a case for consideration in accordance with Part 6 of these Regulations.

3.7 Hearings

- 3.7.1 Unless otherwise agreed the Regulated Entity will be given no fewer than 28 days' notice of a full hearing. The notice will:
- 1) Explain the matters to be considered.
 - 2) Provide copies of documents and statements to be relied on
 - 3) Specify the date, time, and venue of the hearing.

- 4) Inform the Regulated Entity of their right to attend and be represented.
- 5) Inform the Regulated Entity that the hearing may proceed in their absence.
- 6) Inform the Regulated Entity of the disposals available to the Discipline Panel
- 7) Include a Hearing Questionnaire in such format as the CMC or CDC may reasonably prescribe from time-to-time.

3.7.2 The Regulated Entity shall complete and return the Hearing Questionnaire to the Panel Chair not less than 7 days before the specified hearing date.

3.7.3 A Case Presenter may make submissions in support of the CMC's position in relation to the allegations.

3.7.4 At any stage before making its findings of fact, the Discipline Panel may amend the allegation(s) to be considered, unless, having regard to the fairness to the proceedings, the Discipline Panel considers that the amendment could be prejudicial to the parties or amount to injustice.

3.7.5 The Discipline Panel shall proceed to determine:

- Whether it finds the facts set out in the allegation(s) proved.
- Whether on the basis of any facts found proved it makes a finding of serious misconduct in a professional respect against the Regulated Person.

3.8 Disposals of the Discipline Panel

3.8.1 Where there is a finding of serious misconduct in a professional respect, the Discipline Panel shall proceed to consider a proportionate outcome in terms of regulation 3.8.2 with reference to the CMC Guidance on Disciplinary Outcomes.

3.8.2 Disposals available to the Discipline Panel:

- Take no further action.
- Issue a reprimand to mark previous misconduct.
- Issue a warning as to future conduct.
- Issue a reprimand and a warning.
- Suspend the Regulated Entity's membership for a period not exceeding 12 months.
- Remove the Regulated Entity's membership status.

3.8.3 In the case of removal of membership status, a Discipline Panel may also direct the period (not exceeding two years) which must elapse before a Regulated Entity is permitted to make a subsequent re-registration application under Part 5 of these Regulations.

3.8.4 The Discipline Panel shall communicate its decision and written reasons to both parties and the Complainant. The publication of the decision will be in accordance with the CMC's Publication of Disciplinary Decisions Policy.

3.8.5 Save for suspension or removal of membership, disposals of the Discipline Panel under Regulation 3.8.2 shall take immediate effect. Where the Regulated Entity has been suspended or removed from membership and has not applied for a review in terms of Regulation 3.8.6, the disposal shall take effect 28 days after the Discipline Panel's determination.

3.8.6 Following the outcome of a Discipline Panel to suspend or remove the Regulated Entity from membership, the Regulated Entity may, within 28 days, apply to have the decision reviewed in the terms set out in Part 4 of these Regulations.

3.9 Removal of membership status for non-co-operation with CMC and/or CDC investigation

3.9.1 Where the Regulated Entity has refused or failed to co-operate with the investigation of a complaint, the CDC and/or CMC, the Disciplinary Panel may remove membership status, if it is satisfied that:

- All reasonable efforts have been made by the CMC or CDC to make contact and/or engage with the Regulated Entity and
- The allegations against the Regulated entity if proven, would amount to a finding of serious professional misconduct and
- Removal of membership status is necessary to protect the public and/or is otherwise in the public interest.

Part 4 – Review of Disciplinary Panel decisions by a Review Panel

4.1 General

- 4.1.1 Where a Discipline Panel suspends or removes the membership status of a Regulated Person or a Regulated Entity they, as an 'Applicant for Review', may apply to have the decision reviewed by a Review Panel on the basis of one or more of the grounds set out at Regulation 4.2 (a – c).
- 4.1.2 For the purposes of Part 4 of these Regulations, an Applicant for Review refers to:
- Regulated Persons (Regulation 2.1.2)
 - Regulated Entities (Regulation 3.1.2)
- 4.1.3 An Applicant for Review must submit an application to the Complaints and Discipline Committee in a format the CMC or CDC may determine, no more than 28 days after the date of the Discipline Panel's written decision to suspend or remove membership status.
- 4.1.4 A Case Presenter may make written submissions on behalf of the CMC in relation to the application for review submitted.
- 4.1.5 The quorum of the Review Panel is two and must include at least one Lay Member and one Mediator Member who wherever possible, have had no previous involvement with the case.
- 4.1.6 Where an application for review is received and complies with Regulation 4.1.3, the decision of the original Discipline Panel shall not take effect until matters are finally concluded under this part of the Regulations.
- 4.1.7 A Review Panel may dismiss any review application where it considers that the application has not been properly made or has been abandoned.

4.2 Grounds for review:

- a) The Discipline Panel acted in a manner that amounts to a serious departure from these Regulations; and/or
- b) The Discipline Panel's determination is flawed because of a serious procedural or other irregularity which has had a significant impact on the decision reached; and/or
- c) The Applicant for Review has acquired new evidence which could not have been submitted to the original Discipline Panel and if submitted to that Panel would have been likely to have significantly influenced its decision.

4.3 Review process

4.3.1 The Review Panel shall firstly consider whether in terms of Regulation 4.2, the review application has:

- A real prospect of success at the further consideration stage or
- There is some other compelling reason that it should progress to the further consideration stage.

4.3.2 Where the Review Panel decides that the requirements of Regulation 4.3.1 are not met, the application shall be dismissed, and the decision of the original Discipline Panel shall stand and take immediate effect. Otherwise, the review application shall receive further consideration under Regulation 4.4.

4.4 Further Consideration

4.4.1 The onus shall rest on the Applicant for Review to establish that in terms of regulation 4.2, the ground(s) is/are made out.

4.4.2 The Review Panel shall give the opportunity to the parties to provide further written documentation.

4.4.3 The Review Panel shall hold a paper hearing and make a decision on the basis of all the documents and written submissions from the parties together with the written determination of the original Discipline Panel, without the parties, representatives or original Complainant in attendance.

4.5 Review Panel disposal

4.5.1 If in the opinion of the Review panel the application for review is not made out, it will be dismissed, and the disposal of the Discipline Panel shall take immediate effect.

4.5.2 If the ground(s) is/are made out, either in whole or in part, the Review Panel may:

- 1) Quash the decision of the original Discipline Panel and any part of it or
- 2) Substitute the decision of the Discipline Panel and dispose of the case as it sees appropriate under regulations 2.8.2 or 3.8.2 or
- 3) Order a fresh hearing before a new Discipline Panel in terms or Regulation 2.7 or 3.7

4.5.3 The Review Panel shall communicate its decision with written reasons to the parties and the original Complainant. Publication of the decision will be in accordance with the Complaints and Discipline Committee's Publication of Disciplinary Matters Policy.

4.5.4 All disposals under Part 4 of these Regulations shall be final and take immediate effect, and no further submissions or reviews shall be considered.

Part 5

Subsequent Membership Applications

5.1 A subsequent registration application is an application for membership made by a former Regulated Person or Regulated Entity ('applicant for subsequent membership') who was removed from membership in terms of these Regulations (or historic equivalent). The application, in such format as the CDC may from time-to-time reasonably prescribe, must be considered by a Discipline Panel. The onus rests upon the Applicant for subsequent membership to successfully persuade a Discipline Panel that they are now suitable to have their membership status restored. Additionally, the Applicant for subsequent membership is required to meet any other membership requirements as may be currently necessary.

5.2 Hearing stage

5.2.1 All applications under 5.1 will proceed to a hearing before the Discipline Panel unless by written representations pursuant to 5.2.5; otherwise hearings shall take place in public, may be held in person or virtually and the parties are permitted to attend.

5.2.2 A Case Presenter may make submissions in support of the CMC's position in relation to the application.

5.2.3 The quorum of the Discipline Panel is two and must include at least one Lay Member and one Mediator Member.

5.2.4 Unless otherwise agreed the Applicant for subsequent membership will be given no fewer than 28 days' notice of a full hearing. The notice will:

- Indicate that the onus rests upon the Applicant for subsequent membership and that the CMC may resist their application.
- Provide copies of documents to be relied on by the CMC.
- Specify the date, time, and venue of the hearing.
- Inform the Applicant for subsequent membership of their right to attend and be represented.
- Inform the Applicant for subsequent membership that the hearing may proceed in their absence.
- Include a Hearing Questionnaire in such format as the CMC or CDC may reasonably prescribe from time-to-time.

5.2.5 It is competent for the parties and the Discipline Panel to agree that the matters can be considered by a Discipline Panel based only on the written representations.

5.2.6 The Applicant for subsequent membership shall provide the Panel Chair with the following at least 14 days before the specified hearing date:

- the skeleton argument in support of their subsequent membership application and
- any other documents upon which they intend to rely at the Hearing.

5.2.7 The Applicant for subsequent membership shall complete and return the Listing Questionnaire to the Panel Chair not less than 7 days before the specified hearing date.

5.2.8 At any stage the Discipline Panel may amend the Part 5 procedures to ensure the fairness to the parties.

5.3 Disposals of the Discipline Panel under Part 5

5.3.1 A Discipline Panel may direct that:

(a) provided that the Applicant for subsequent membership is otherwise eligible for membership, they are re-admitted to CMC membership or

(b) the application be refused.

5.3.2 A Discipline Panel may dismiss any subsequent membership application where it considers that the application has not been properly made or has been abandoned.

5.3.4 Where an application is refused under 5.3.1 (b), the Discipline Panel may also direct that the Applicant for subsequent membership will be prohibited from applying, or as the case may be applying again for restoration of membership status under Part 5 of these regulations until the expiry of such period (not exceeding 2 years), as it may determine.

Part 6 – Temporary Measures

Temporary Restrictions | Temporary Restriction Review

6.1 General

- 6.1.1 Part 6 Temporary Restriction(s) (TR) apply only to Regulated Persons and Regulated Entities as defined at Regulations 2.1.2 and 3.1.2.
- 6.1.2 Where the CMC, CDC or an Independent Investigator has received information of a complaint which may give rise to serious public protection or other concerns, a TR may be sought from the Investigating Panel or Discipline Panel as applicable. Where a Complaint has been withdrawn by the Complainant at any point, the CMC or CDC may continue to consider the matter provided it is proportionate and in the public interest to do so.
- 6.1.3 For the avoidance of doubt, a TR is a temporary measure which restricts a Regulated Person or Regulated Entity's registration pending final conclusion of a complaint made under these regulations. A TR is not a disposal, sanction, or final outcome.
- 6.1.4 A TR takes immediate effect and lasts for a period not exceeding 9 months and may be reviewed at request of either party where there has been a material change of circumstances or new evidence has become available.
- 6.1.5 Unless there are exceptional circumstances a request from the Regulated Person or Regulated Entity under Regulation 6.1.4 will not be competent until at least 6 months have elapsed from the date on which that TR was made.

6.2 TR Hearings

Unless otherwise agreed the Regulated Person or Regulated Entity will be given no fewer than 14 days' notice of a full hearing. The notice will:

- 1) Explain the matters to be considered.
 - 2) Provide copies of documents and statements to be relied on
 - 3) Specify the date, time, and venue of the hearing.
 - 4) Inform the Regulated Person or Regulated Entity of their right to attend and be represented.
 - 5) Inform the Regulated Person or Regulated Entity that the hearing may proceed in their absence.
 - 6) Inform the Regulated Person or Regulated Entity of the disposals available to the Discipline Panel
 - 7) Include a Hearing Questionnaire in such format as the CMC or CDC may reasonably prescribe from time-to-time.
- 6.2.1 TR Hearings before the Discipline Panel or Investigating Panel ('the TR Panel') shall take place in private, may be held in person or virtually and the parties, but not the Complainant are permitted to attend.

6.2.2 The TR Panel shall consider submissions which set out the allegation and underpinning evidence and why it is necessary to impose or renew TR.

6.3.1 TR Hearing Disposals

6.3.2 Where the TR Panel is satisfied that there is prima facie evidence of the allegation, it shall decide whether a TR is:

- necessary for the protection of the public; and/or
- otherwise in the public interest; and/or
- in the interests of the Regulated Person or Regulated Entity

It may impose either of the following TRs:

- i. Place restrictions upon the membership and/or practice of the Regulated Person or Regulated Entity
- ii. Temporarily suspend the membership status of the Regulated Person or Regulated Entity for a period not exceeding 9 months

6.3.2 When reviewing an existing TR made under 6.3.1, a Discipline Panel may if still satisfied that it is necessary to protect the public and/or otherwise in the public interest or in the interests of the Regulated Person or Regulated Entity, may add to, revoke, vary or extend the TR for a further period not exceeding 12 months.

6.3.3 Any TR in place concerning the same matter(s), shall be replaced by any final disposal under these Regulations, and when said disposal comes into effect.

Part 7

Application for membership

- 7.1 Where the CMC has received an application for membership status as defined in Regulations 2.1.2, or 3.1.2, and such application has been refused by the CMC on grounds of lack of good standing, the applicant for membership may request for the Discipline Committee to review the matter.
- 7.1.2 At the stage of making the request for review the applicant should make written submissions which explain the reasons as to why the application should be granted.
- 7.1.3 For the avoidance of doubt Part 7 proceedings do not include persons or entities referred to in Regulation 5.1.

7.2 Hearing stage

- 7.2.1 The Discipline Panel shall hold a paper hearing and make a decision on the basis of all the documents and written submissions from the parties together with the CMC's original refusal determination, without the parties, or representatives in attendance.
- 7.2.2 A Case Presenter may make written submissions in support of the CMC's position in relation to the application.
- 7.2.3 The quorum of the Discipline Panel is two and must include at least one Lay Member and one Mediator Member.
- 7.2.4 At any stage the Discipline Panel may amend the Part 7 procedures to ensure the fairness to the parties.

7.3 Disposals of the Discipline Panel under Part 7

- 7.3.1 A Discipline Panel may direct that:
 - (a) provided that the Applicant for membership is otherwise eligible for membership, they are admitted to CMC membership or
 - (b) the application be refused.
- 7.3.2 A Discipline Panel may dismiss any application for membership where it considers that the application has not been properly made or has been abandoned.
- 7.3.4 Where an application is refused under 7.3.1 (b), the Discipline Panel may also direct that the Applicant for membership will be prohibited from applying, or as the case may be applying again for membership until the expiry of such period

(not exceeding 2 years), as it may determine. Such re-applications shall be considered under Part 7 of these Regulations.

Appendix A

Miscellaneous provisions

A.1 Constitution of the Complaints and Discipline Committee (CDC)

- A.1.1 Lay Member is defined as a person who has never been and currently is not a CMC member.
- A.1.2 Mediator Member is defined as a person who is a currently a CMC member.
- A.1.3 Members of the Panels which consider cases under Parts 2 – 7 of these Regulations shall be drawn from current members of the CDC.
- A.1.4 A member of any Panel whose term of appointment expires after the Panel has started considering a complaint may continue as a member of that Panel until those matters are concluded.
- A.1.5 A member of the CDC shall not concurrently hold a position as a Director or Officer of the CMC.

A.2 Operation of the Complaints and Discipline Committee (CDC)

- A.2.1 The CDC Chair, deputy Chair or a panel Chair can issue case management directions as appropriate and in pursuance of the Overriding Objective (1.4).
- A.2.2 Provided a procedure is not prohibited by these regulations or by statute, and has regard to the Overriding Objectives, a Complaints and Discipline Panel may establish its own procedure.
- A.2.3 A Panel may consider its decision in the absence of the parties at any time and announce its decision thereafter.
- A.2.4 Having regard to the Overriding Objectives, where not otherwise expressly provided, it is competent that with agreement of the parties, the CDC can consider matters under these Regulations based only on the written representations.
- A.2.5 A Panel has the discretion to admit late papers having due regard to fairness to the parties.
- A.2.6 A Case Presenter is an Independent Investigator or other appropriately qualified person presenting the CMC's position either orally or in writing during or in connection with CDC proceedings.
- A.2.7 A Panel may appoint a Legal Advisor to provide independent legal and procedural advice during proceedings. A Legal Advisor has no role in a Panel's decision-making process and must be a Solicitor, Barrister or an Advocate practising at the Scottish Bar of not less than 5 years' standing.

- A.2.8 Parties involved in proceedings shall be responsible for their own costs.
- A.2.9 Upon the application of either party, the Discipline Panel may decide to conduct proceedings either in whole or in part in private where it is satisfied to do so is fair, reasonable and in the public interest.
- A.2.10 The **realistic prospect** test relates only to the Investigating Panel stage and applies to both the factual allegations and the question whether, if established, the facts would amount to Serious misconduct in a professional respect. This should reflect a genuine (not remote or fanciful) possibility.
- A.2.11 **Serious misconduct in a professional respect.** Whilst there is no definitive meaning of serious misconduct, it is a term used to describe conduct by a CMC registered mediator that is so serious as to warrant consideration of the mediator's continued registration with the CMC, ie their suitability to practise as a mediator. Such behaviour must be capable of being characterised as 'serious', would be regarded as deplorable by fellow practitioners and falls far short of that expected of a mediator.

A.3 Evidence, burden and standard of proof

- A.3.1 Where required, the burden of proof shall rest on the CMC to prove the facts to the civil standard of proof.
- A.3.2 Where a Member has been convicted of a criminal offence (in or outside the UK), and provided that such conviction is neither pending appeal, nor has been successfully appealed:
- (a) an extract conviction, or copy of the certificate of conviction certified by a competent officer of the relevant court, will be conclusive proof of the conviction; and
 - (b) any findings of fact upon which the conviction is based will be admissible as evidence of those facts.
- A.3.3 A copy of the determination of any statutory Tribunal or of any Body which exercises a professional disciplinary function (in or outside the UK), is conclusive evidence of the facts found proved in relation to that outcome.
- A.4 **Witnesses and Vulnerable witnesses**
- A.4.1 Any fact which needs to be proved by the evidence of a witness at a Discipline panel hearing may be proved by their evidence being provided in writing in the form of a written statement signed by them which contains the evidence that they would be permitted to provide orally at a hearing.

A.4.2 Where a witness is called to give oral evidence and has provided a witness statement, their witness statement will stand as their evidence in chief unless a Discipline panel orders otherwise.

A.4.3 A witness giving oral evidence at a hearing who has provided a witness statement may –

- (a) amplify their witness statement; and
- (b) give evidence in relation to new matters which have arisen since the witness statement was prepared.

A witness giving oral evidence at a hearing will also answer any questions put to them in cross-examination or by the Panel.

A.4.4 A Discipline panel may adopt such measures as it considers necessary and reasonable to enable it to receive evidence from a vulnerable witness.

A.5 Representation and Notice

A.5.1 Where a Regulated Person, Entity or Applicant is permitted to attend proceedings under these Regulations, they can be represented by a legally qualified person or otherwise.

A.5.2 Any reference in these Regulations to notice being sent to a Regulated Person, Entity or Applicant is a reference to the notice:

- a) being delivered personally to the Regulated Person, Entity or Applicant;
- b) being sent to the Regulated Person, Entity or Applicant's proper address by a postal service which provides for the delivery or receipt of the notice to be recorded; or
- c) being sent by email or other appropriate method of electronic communication to an electronic address provided by the Regulated Person, Entity or Applicant

A.5.3 For the purposes of paragraph A.5.2 (b) or (c), a Regulated Person, Entity or Applicant's proper address is:

- a) if the Regulated Person, Entity or Applicant is registered in the Register, the Member or Applicant's address as shown in the CMC Register or, if different, the last address known to the CMC.
- b) in any other case, the last address of the Regulated Person, Entity or Applicant known to the CMC.

A.5.4 A notice sent to the Regulated Person, Entity or Applicant as mentioned in Regulation A.5.2 (b) is to be taken to be received three working days after it was posted.

- A.5.5 A notice sent to the Regulated Person, Entity or Applicant as mentioned in Regulation A.5.2 (c) is to be taken as received on the day after it was sent.
- A.5.6 The notice period shall be no less than 28 days for hearings taking place under these Regulations, save for proceedings under Part 6 when the notice period shall be no less than 14 days.
- A.5.7 Where the Regulated Member, Regulated Entity or Applicant is permitted to attend proceedings under these Regulations, the CDC may proceed in their absence where it is satisfied that service has been affected and it is fair to do so.
- A.6 **Case management for Discipline panel hearings**
- A.6.1 To secure the just, expeditious and effective running of proceedings in keeping with the Overriding Objective, the CDC chair or a Discipline panel chair may manage a case by issuing case management directions or arranging a case management discussion at any stage.
- A.6.2 A case management discussion will take place in private and will be conducted by telephone or by such other method as may be agreed between the parties.
- A.6.3 Case management directions may be issued according to what is considered appropriate in the circumstances of the case.
- A.6.4 Either party may apply in writing to the CDC Chair for case management directions. The other party will respond in writing to the application within a timeframe prescribed by the CDC Chair or a Discipline panel chair. The CDC Chair or a Discipline panel Chair will consider the application on the papers or by arranging a case management discussion/directions hearing.