



## **Introduction and background. Complaints and Discipline Committee (CDC)**

### **Guidance on making a complaint**

The Civil Mediation Council (CMC) is committed to maintaining and improving professional standards and protecting the public. As a professional regulator CMC holds and publishes a register of mediators, but does not recommend or endorse any individual member, or in any sense employ or contractually engage mediators. **The CMC does not regulate mediators involved in family mediation.** Hence, if your concern is related to family mediation you should approach the mediator concerned to clarify which body regulates them. Contact the police if your concern is of a criminal nature.

This guidance is intended to explain and give a context to misconduct and the CDC's role. It is general in nature and does not refer to any individual complaint or set of allegations.

Mediators sometimes make mistakes or errors of judgement both inside and outside work. These will not always give rise to a finding of serious professional misconduct, and it would not be proportionate or in the public interest for CMC to sanction mediators in all situations where things could have been better or turned out differently. Whilst outcomes for clients may be disappointing, mediators may differ in approach and are also permitted to exercise reasonable professional judgement in the given set of circumstances. A fundamental aspect of a mediator's role is to remain impartial rather than advocate for either party. Accordingly, a mediator should not be criticised for not advancing one side's perspective over the others. The CMC's Disciplinary Procedures, although their effect may be punitive, are not intended to punish individual members but rather to protect the public and maintain trust in mediation and CMC as regulator.

#### **(1) What complaints we investigate**

- (a) The facts underpinning any complaint have to be proved on the balance of probabilities – i.e. that it is more likely than not what is alleged occurred. The burden of substantiating the facts falls on the CMC and relies on evidence as opposed to individual perceptions, opinions or speculation. Consequently, proving events to the required standard based on conflicting descriptions of what allegedly happened, is challenging where there is insufficient supporting evidence.

#### **(b) Serious professional misconduct**

A mediator's registration may be called into question where there is a finding of serious professional misconduct, in relation to an alleged breach or breaches of the applicable Membership Regulations and/or appropriate Code of Conduct. Not every breach of the code will reach the threshold of serious professional misconduct. A breach must be substantial and not based on situations where the mediator made a mistake, a party is dissatisfied with how the mediation was handled or believes the outcome could have been more favourable or different if not for the mediator's alleged actions or omissions. Thus, what is alleged must be commensurate with a level of seriousness which is so egregious that it calls into question the mediator's continued suitability for registration with CMC and public trust in and reputation of the profession.

This could include for example:

- Serious departures from the standards set out the European Code of Conduct for Mediators\*
- Fraud or dishonesty
- Criminal convictions

Service complaints will rarely reach the threshold of serious professional misconduct. As is the case with other professional regulators, such concerns would have to go beyond dissatisfaction with instances of service delivery and be so poor or unprofessional so as to give rise to wider and fundamental concerns about the mediator's fitness to practise.

## **(2) Process**

(a) The CMC shall not accept a complaint unless there is evidence to confirm that the complaints handling procedure adopted by the Mediator has been exhausted by the complainant.

(b) Where the facts of a complaint against a member are found proved **and** these facts are considered to amount to serious professional misconduct, the CDC can: -

- 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 CMC membership status for a period of up to 12 months.
- Remove CMC membership status.

(c) However, owing to legal constraints and CMC's remit the CDC/CMC cannot: -

- Investigate a person or entity who/which is not currently in CMC membership.
- Fine a member or previous member.
- Order a member or previous member to carry out additional work which you think is needed.
- Order a member or previous member to apologise to you.
- Order a member or previous member to refund fees you have paid or cancel fees that are outstanding.
- Order a member or previous member to pay you compensation.
- Become involved in comment on or resolve contractual disputes.
- Help or advise you how to obtain compensation.

The CDC is also not able to: become involved in or comment upon fee levels or fee disputes; give any party legal or mediation advice or guidance; resolve issues which fall under the jurisdiction of the Civil Courts or Tribunals relating to for example allegations of negligence, claims for damages, employment matters or recovery/refund of fees; accept complaints made anonymously; consider complaints that we deem to be frivolous or vexatious.

## **(3) How to proceed with a complaint**

If, after having read this guidance, you decide that you wish to proceed with making a complaint and are in a position to do so, please email **Complaints@civilmediation.org**.

The CDC will progress complaints with due diligence and in most cases provide a final determination within 6 months of receipt of the complaint.