



## **Complaints and Discipline Committee (CDC) Guidance on making a complaint**

### **Introduction and background**

The Civil Mediation Council (CMC) is committed to maintaining and improving professional standards and protecting the public. As a professional regulator, the CMC holds and publishes a register of mediators, but does not recommend or endorse any individual member, employ or contractually engage mediators, or offer or provide mediation services itself. The CMC does not regulate activities relating to family mediation or arbitration. If your concern relates to a family mediation or arbitration, we recommend contacting the individual directly to confirm which professional body regulates their work. If your concern involves a potential criminal matter, please contact the police.

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. 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.

### **(A) 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.

## **(B) Process**

- (a) Other than in exceptional circumstances, 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) Matters Outside the CMC's Powers and Functions**

For the avoidance of doubt, the CMC has no power, jurisdiction, or function to do any of the following:

### **1. Jurisdiction and Scope**

- Investigate the conduct of any person or entity who is not, and has never been, a CMC member.
- Consider complaints made anonymously.
- Consider complaints which the CMC determines to be frivolous and/or vexatious.

### **2. Sanctions, Remedies and Redress**

- Impose fines on a current or former member.
- Order, suggest, or otherwise seek to compel a current or former member to:
  - refund fees paid or waive fees outstanding
  - pay compensation
  - provide services, undertake additional work, or take a particular course of action
  - apologise to a complainant.
- Assist with, advise on, or otherwise facilitate the pursuit of compensation.

### **3. Contractual and Financial Matters**

- Become involved in, comment upon, or determine contractual disputes.
- Become involved in or comment upon fee levels or fee disputes.

### **4. Advice and Substantive Assessment**

- Provide legal advice, mediation advice, or any other form of professional guidance.
- Make any assessment of, or offer any opinion or comment on, the conduct, content, or course of a mediation session.

## **5. Appeals and Alternative Processes**

- Act as an appeal body or mechanism to change, alter, or overturn the outcome of a mediator's own complaint-handling procedure.

The CDC is also unable to resolve issues which fall under the jurisdiction of the Civil Courts or Tribunals relating to for example allegations of negligence, claims for damages, financial loss, employment matters or recovery/refund of fees.

### **(C) 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](mailto:Complaints@civilmediation.org). More information can be found at [www.civilmediation.org/concerns](http://www.civilmediation.org/concerns).

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