

## **Making a Complaint about Scottish Mediation Registered Mediators**

### **1. The Purpose of our Complaints Process**

1.1 Scottish Mediation is committed to listen and learn from the experiences of people who engage with mediation. It is vital that when that experience has not met expectations, we can learn from it for the benefit of everyone.

1.2 We see the purpose of complaints about mediators as a way of ensuring that when things go wrong that lessons are learned by all mediators and that the practice of mediators improves as a result. That improvement helps to provide a better service for everyone using mediation. It also ensures that people who engage in mediation can trust that those on the register are meeting the standards appropriate for conducting mediations. Where appropriate the outcome of a complaint may include a requirement for an individual mediator to undertake training and development to improve their practice. In some circumstances it may be appropriate to remove the mediator from the Scottish Mediation Register. The process is designed to ensure that all voices are heard.

1.3 What is expected of Mediators is outlined our Code of Professional Conduct for Mediators in Scotland, and mediators' performance will be judged against that Code.

1.4 Our process for dealing with complaints reflects this and we aim to ensure that we provide support for people complaining and those complained about, whilst ensuring Scottish Mediation properly understands the complaint and the circumstances that led to it so that we can learn for the future and consider each case in a fair and independent way. Our process is also designed to ensure that the complainant's voice is heard.

1.5 For Scottish Mediation to hear complaints against any mediator on the Scottish Mediation Register, the concerns must first have been raised with the mediator in question. Every mediator on the Scottish Mediation Register

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has a complaints process which should be available on request. If the complaint is still unresolved, then it can be raised with Scottish Mediation using this procedure.

## **2. Scope of Our Complaints Process**

2.1 Scottish Mediation is only able to consider a mediator's conduct against the Code of Professional Conduct. We will determine whether the complaint is either upheld, not upheld or partially upheld. If the complaint is upheld or partially upheld our response is limited to considering a mediator's membership of the register and to requiring mediators to undertake training and supervision to improve practice.

2.2 We are not able to consider financial redress against mediators on the register. If you are seeking redress, you should consider contacting Citizens Advice, obtaining legal advice or using one of the ADR schemes set up to provide this.

## **3. The Scottish Mediation Register's procedure for handling complaints**

3.1 A concern or complaint that a Scottish Mediation Registered mediator cannot show they comply with the Practice Standards will be handled by the office of Scottish Mediation (SM) in the first instance. The SM Office will first of all ask if the complaint has exhausted the mediators complaints process. If it has not the complainant will be advised to take up the complaint to give the mediator an opportunity to resolve it. If it has the SM office will ask for all relevant information from the mediator and the person expressing the concern.

3.2 If, on the face of it, the mediator cannot show they comply with the Code of Professional Conduct, the SM office will write by recorded delivery letter to the mediator telling them that consideration is being given to a complaint about their conduct. At this stage the mediator's entry may be suspended and may not appear on the SMR.

3.3 The letter will give the grounds of the complaint and ask for any relevant representations about that proposal to be submitted to the

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Committee for Excellence in Mediation (CEM) or such other successor Board of the SM within 14 days or such other agreed time limit. The letter will also indicate the consequences of the complaint being upheld.

3.4 After 14 days or such other agreed time limit for representations, the SM office will refer the papers, including any representations made by the mediator about the complaint to a panel of the CEM comprising of 3 members, one of whom must be a person who does not practice as a mediator, chaired by one of their number to be agreed by the panel. The absence of representations from the mediator will not delay the panel's consideration of the complaint.

3.5 The CEM panel will decide:

- for each of the elements of the complaint, whether there is sufficient evidence to conclude that the complaint be upheld;
- if upheld, whether it is sufficiently serious to warrant the removal of the mediator from the Register ("de-registration")
- if the mediator is to be removed from the SMR, the length of time before the mediator may apply to the CEM to be readmitted to the Register.
- regardless of whether the mediator has been removed from the register the panel may impose conditions required to be met by the mediator concerned. This may include (though not exclusively), a requirement to undergo a period of supervision and to undertake additional CPD or training.

3.6 Where the CEM panel is satisfied that the mediator should be removed from the Register or have had a condition imposed on their continued membership, they will be informed by the SM office in writing. The office will send this decision to the mediator at their last known business address and will as soon as practicable send to the mediator by a means allowing for verification of receipt, the reasons for this decision. The mediator will also be informed that they have 21 days in which to seek a review of the CEM panel's decision. At this stage where a decision has been taken to remove from the Register the mediator's entry will be removed from and not appear on the SMR. No part of the registration fee will be repaid to the mediator.

## **4. Review**

4.1 A mediator aggrieved by a decision of the panel may, within 21 days of receiving the reasons for the decision, seek a review of the decision from the CEM. On the receipt of such a request for a review, the SM office will refer the review to the next full meeting of the CEM for consideration at which no member of the panel initially considering the complaint may take part.

4.2 The CEM's decision on review will be the final decision and will be communicated to the mediator by recorded delivery letter. No further right of review will be available to the mediator.

4.3 If the time-limit for requesting a review of the decision to de-register has expired with no request having been taken, the SM office may give publicity to the decision to remove the name of mediator from the Register on the basis of his or her failure to show that they comply with the Code of Professional Conduct of the Scottish Mediation.