



Code of Practice for Mediators

This document sets out the principles of practice and code of conduct for mediators who are members of the College of Mediators. It covers the following areas:

- 1. Definitions**
- 2. Aims and Objectives**
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1 DEFINITIONS

1.1 This Code of Practice applies to all mediation conducted or offered by mediators who are Trained or Approved members of the College of Mediators. College members may be offering mediation in one or more of the following contexts including, but not restricted to, neighbourhood and community conflicts; family breakdown; workplace and employment disagreements; education settings (including peer mediation, special educational needs); disability and healthcare settings; civil and commercial disputes; homelessness and intergenerational conflicts.

1.2 Mediation is a process in which an impartial third person assists those involved in conflict to communicate better with one another and reach their own agreed and informed decisions concerning some, or all, of the issues in dispute.

This Code applies whether or not there are, or have been, legal proceedings between any of the participants and whether any, or all of them, are legally represented.

1.3 These terms are used to mean the following throughout this Code:

- “Mediation” means the process to which this Code applies.
- “Mediator” means any person trained to offer such mediation.
- “Participant” means any individual taking part in it.
- The “College” means the “College of Mediators”.

2 AIMS AND OBJECTIVES

2.1 Mediation aims to assist participants to reach decisions which they consider appropriate to their own particular circumstances.

2.2 Mediation also aims to assist participants to communicate with one another now and in the future and to reduce the scope or intensity of the dispute or conflict.

2.3 Mediators should have regard to the ethics of mediation in that it should be carried out in a way that seeks to:

- provide a full opportunity for participants to express their views and concerns about the dispute, and at the same time
- minimise distress to the participants and any others involved
- promote as good a relationship between the participants and any others involved as possible
- recognise and manage the risk of abuse to any of the participants or others involved
- reduce conflict and misunderstanding
- be clear and open about financial cost to the participants
- enable the participants to reach a mutually agreed outcome

3 SCOPE OF MEDIATION

3.1 Mediation may cover any issue in dispute which the participants have freely agreed it would be helpful to resolve, over which they have decision-making authority and which the mediator considers suitable for mediation.

3.2 Mediators should be aware of the legislative framework in which they are operating, where this is applicable. Relevant legislation for various mediation contexts is to be found in Appendix A.

4 GENERAL PRINCIPLES

4.1 Voluntary Participation

While many contexts strongly encourage or even require that participants attend an initial information meeting with a mediator, continued engagement in mediation is always voluntary. Any participant or mediator is free to withdraw at any time. If a mediator believes that any participant is unable or unwilling to participate freely and fully in the process, they should raise the issue with the participants and, where necessary, may suspend or terminate mediation. The mediator should suggest that the participants obtain other professional services as appropriate.

4.2 Neutrality

Mediators must remain neutral concerning the outcome of mediation. They must not attempt to move the participants towards the mediator's own preferred outcome or to predict the outcome of court or formal proceedings.

In contexts where mediators are operating within a legislative framework they should reality test the workability of proposals put forward by the participants to be clear whether they fall within legal parameters.

There is an expectation that mediators will help participants to identify and explore the options available to them and the feasibility of those options. This may involve giving initial information in a neutral way, which participants may research further outside of the mediation process.

Mediation should take place in a neutral forum, free from stigma, coercion and confusion from other interventions.

4.3 Impartiality

4.3.1 Mediators must always remain impartial to the participants. They must conduct the process in an even-handed way.

4.3.2 Mediators should create a non-threatening environment in which participants can fully express their views and should conduct the process in such a way as to redress, as far as possible, any imbalance in power between the participants. If any behaviour seems likely to render mediation unfair or ineffective to any of the participants, the mediator must take steps to address this. Where appropriate, this may include terminating the mediation.

4.4 Independence and Conflicts of Interest

4.4.1 Mediators must not have any personal interest in the conduct of the mediation.

4.4.2 Mediators must not mediate in any case in which they have acquired or may acquire relevant information in any private or other professional capacity.

4.4.3 Mediators who have acquired information in their capacity as an impartial third party should not act for any participant in any professional or other capacity in relation to the subject matter of the mediation.

4.4.4 Mediators must make clear to participants the differences between their role as mediator and any other professional role in which they may act.

4.4.5 Mediators must be aware of the potential risks of developing personal relationships through social media with mediation participants and must not 'friend' or communicate with mediation participants or their families/guardians, both past and present, through any personal social media platform.

4.5 Confidentiality

4.5.1 There is an overriding principle of confidentiality which applies to all conversations held in mediation. This is, however, subject to certain exceptions outlined in paragraphs 4.5.3 below. Mediators must not disclose any information obtained during mediation to anyone external to the mediation process, without the express consent of each participant.

4.5.2 In contexts where the proposals agreed in mediation involve people who have not participated in the discussions, mediators must ensure that arrangements to share the appropriate information are agreed and clearly laid out in any written outcome of mediation.

4.5.3 Exceptions to Confidentiality

Exceptions to confidentiality fall under two main categories:

- i) Where a mediator suspects that a person, particularly a child or vulnerable adult, is in danger of significant harm they must ensure that the relevant authority is notified.
- ii) Where a mediator becomes aware of any criminal activity, the knowledge of which would be classified as collusion in a crime, the mediator must terminate the mediation.

Further information as to how these exceptions to confidentiality may be observed in different mediation contexts and their implications for practice are set out in Appendix B.

4.5.4 Confidentiality within the Process

Confidentiality within mediation, i.e. between participants and, where applicable, their representatives, applies in different ways, depending on the model being used. Mediators should be aware of the variations in approach regarding confidentiality and should give due consideration to factors such as:

- respecting an individual's wish to keep personal information private (for example telephone numbers, postal or email addresses)
- how information in private or individual meetings with participants is handled, to balance the encouragement of full and honest disclosure to the mediator with the need for transparency with other participants
- the role of legal or other advisers in the proceedings, how much information is shared with them, at what stage, verbally or in writing and how this is to be agreed.

Mediators should always (except in the circumstances outlined above in paragraph 4.5.3) gain the agreement of each participant for any information to be shared and with whom. They should be transparent with all those involved about their role in the sharing of information within the process.

Mediators should clearly set out these terms in an Agreement to Mediate.

4.6 Privilege and Legal Proceedings

4.6.1 Subject to paragraphs 4.6.2, all discussions and negotiations in mediation are conducted on a legally privileged basis. Participants must agree that discussions and negotiations in mediation are not to be referred to in any legal or other formal proceedings and that the mediator cannot be required to give evidence or produce any notes or recordings made during the mediation, unless all participants agree to waive the privilege or the law imposes an overriding obligation upon the mediator.

4.6.2 Mediators must be aware of the situations in which factual information which has been brought to mediation to assist decision-making may be disclosed in legal proceedings and must ensure that participants are aware of this. For further information, see Appendix B.

4.7 Children and Young People

4.7.1 Where decisions made in mediation have an impact on children and young people, mediators have a special concern for their welfare. They must encourage participants to focus upon the needs of the children and must explore the situation from the child's point of view.

4.7.2 Mediators must encourage the participants to consider the wishes and feelings of children and young people and to what extent it is proper to involve children themselves in the mediation process to understand their perspective.

4.7.3 Mediators should be aware of the requirements of the legal framework in which they are operating (see Appendix A), together with the need to balance their own involvement with that of any other professional support that children and young people might be receiving.

4.7.4 If the mediator and participants agree that it is appropriate to meet with any child or young person directly in mediation, the mediator should be trained and qualified for that purpose and must have enhanced Disclosure and Barring Service (DBS) clearance. They must obtain the informed consent of the child or young person, and of both parents (or other adult with parental responsibility). Mediators must provide appropriate facilities for a meeting to take place.

4.7.5 Where it appears to a mediator, in consultation with their Professional Practice Consultant (PPC), that any child is suffering or likely to suffer significant harm, the mediator must advise participants to seek help from the appropriate agency. The mediator must also advise participants that whether, or not, they seek that help, the mediator must report the matter in accordance with paragraph 4.5.3.

4.7.6 Where it appears to a mediator that the participants are acting or proposing to act in a manner likely to be seriously detrimental to the welfare of any child, the mediator may withdraw from mediation. The reason for doing so must be outlined in any summary which may be available to any participants' legal or other advisers or relevant authority as described in paragraph 4.5.3.

4.7.8 For further information on the process of meeting with children in mediation (preparing parents, meeting children and feeding back their views) please refer to the College's Voice of Children and Young People in Mediation Policy.

4.8 Safe Participation in the Process

4.8.1 For mediation to be effective all participants should feel safe to be involved in the process and to freely communicate their interests and concerns without fear of punishment or repercussion. Fear of harm may indicate domestic abuse within personal relationships, or bullying or harassment within workplace, neighbourhood and other settings. In all cases, mediators must seek to discover through a separate screening procedure with each participant whether there is fear of abuse or any other harm and whether it is alleged that any participant has been or is likely to be abusive towards another. Where abuse is alleged or suspected, mediators must discuss whether any participant wishes to take part in mediation and consider with them where they might access other support services. Further guidance for good practice in assessing suitability to mediate in different contexts is to be found in Appendix C.

4.8.2 Where mediation does take place, consideration must be given to any practical arrangements that can be put in place to ensure the comfort and safety of all involved.

4.9 Equality of Opportunity

4.9.1 Mediators should be aware of the importance of the principles of equality of opportunity and inclusiveness in their practice. They should also be aware of the impact of unconscious bias towards participants in mediation.

5 QUALIFICATIONS AND TRAINING

5.1 Mediators must have successfully completed a foundation training programme. This should have been delivered by a training provider approved by the College or other regulatory body (such as the Family Mediation Council, the Civil Mediation Council or the Mediators Institute of Ireland.) The programme must cover the skills and knowledge to enable mediators to practice in their chosen field(s). Some areas of practice require specific contextual knowledge. Context specific skills and knowledge may be covered in a foundation programme or through a generic programme followed by specialised training, depending on the provider.

5.2 Mediators are entitled to join the College as Trained or Approved Members.

Trained members will have successfully attended an assessed training course and demonstrated personal aptitude for mediation through subsequent experience.

Approved members will, in addition, have successfully demonstrated their competency as a mediator through the submission of a written portfolio based on their specific experience of mediation.

5.3 Mediators must demonstrate to the College that they have made satisfactory arrangements for regular meetings in relation to their mediation practice with a PPC. The PPC must have attended an approved training course in mediation supervision skills and be recognised by the College. In the case of family mediators, their PPC could be recognised by another Member Organisation of the Family Mediation Council. Further details about requirements for supervisions and supervisor are detailed in the College's PPC Code of Practice.

5.4 Mediators must update and improve their skills and knowledge of mediation practice on a regular basis. Continuing Professional Development can be completed via a number of different learning approaches (see Appendix D) and must be validated by their PPC.

5.5 Mediators must ensure that they are covered by professional indemnity insurance.

5.6 Mediators must abide by the complaints and disciplinary procedures and the ethical and equality requirements as laid down by the College.

5.7 Mediators who are members of the College must adhere to this Code of Practice.

5.8 Family Mediators in England and Wales must also adhere to the registration and accreditation requirements, together with Code of Practice laid down by the Family Mediation Council. This includes the stipulation that family mediators must be FMC Accredited (FMCA) in order to conduct publicly funded mediation.

6 CONDUCT OF MEDIATION

6.1 Participants must be given clear information, before mediation begins, of the nature and purpose of the process and how it differs from other services. Each participant must be supplied with written information covering the main points and given opportunity to ask questions about it.

6.2 Mediators should take steps to ensure that mediation is a suitable process to use for all participants. Where practicable, assessment meetings for suitability should be conducted face-to-face. However, some contexts have specific requirements concerning initial meetings. Initial meetings can include electronic media such as Skype, which allow visual contact. Assessment meetings can be conducted jointly or separately, depending on the participant's preference, but mediators must be aware of the contexts in which these meetings must include an individual element with each participant; for example, family mediators who are screening for domestic abuse.

6.3 The terms upon which mediation is to be undertaken should be agreed in advance and written down in an Agreement to Mediate. Further guidance on the use of Agreements to Mediate are to be found on the College website. Where the aim of mediation is to reach a financial settlement, these terms must be in writing and must include the basis upon which any fees are to be charged. It should, if practicable, indicate the anticipated length and cost of the mediation. Where participants have a legal or other adviser acting for them mediators should strongly encourage them to inform their advisers that the mediation process is going ahead.

6.4 The role of mediators is to support participants to define the issues, identify areas of agreement, clarify areas of disagreement, explore the options open to them and seek to reach agreement.

6.5 Mediators must give every encouragement to those participating in the process to make decisions with sufficient knowledge and information. In circumstances where there is a requirement that participants provide full and frank disclosure of all material relevant to the issue(s) being mediated, mediators must ensure that participants understand the need for this. Where necessary mediators should assist participants to identify the relevant information and request any supporting documentation.

6.6 Mediators should give careful consideration as to how information is passed between parties and their role in supporting that. This is particularly important in situations that require the use of a shuttle mediation approach or caucus meetings. Mediators using these approaches should work

sensitively to achieve a balance between inviting the full confidence of a participant while not encouraging them to withhold information that may be relevant to the discussions. Mediators working with participants in individual sessions should carefully negotiate the information to be shared in order that everyone concerned can make the most effective use of the mediation process. Where participants wish to withhold information that the mediator considers is vital to the discussions, the mediator should explore with the participant the feasibility of continuing and if necessary, terminate the process.

6.7 Mediators should promote the participants' equal understanding of the information exchanged in mediation before any final agreement is reached. They should ensure that in situations where new information may be disclosed by one participant, the other is given the opportunity to make enquiries and to seek further information and documentation if it is required.

6.8 Mediators must make it clear that they do not themselves make further enquiries to verify the information provided by any participant; that each participant may seek independent legal or other advice as to the adequacy of the information disclosed before reaching a decision and that in any court or formal proceedings a sworn affidavit, written statement or oral evidence may be required.

6.9 Mediators must not collude in an agreement that they know to be based on deception.

6.10 Mediators must, where appropriate, inform participants of the benefits of seeking the expertise of other relevant professionals.

6.11 In situations where mediation provides an alternative to a formal process such as a court hearing or a tribunal, mediators must ensure that participants are aware of these procedures or that they have adequate opportunity to obtain any necessary information about them. Mediators must not give legal or other advice. They must not predict the outcome of court or formal proceedings in such a way as to indicate or influence the participants towards their own preferred outcome.

6.12 Mediators must inform participants of the advantages of seeking independent legal or other advice whenever this appears desirable during mediation.

6.13 Mediators should prepare a written summary of the factual outcome of the mediation whenever appropriate or requested by the participants.

6.14 Mediators should ensure, as far as possible, that agreements reached by participants are fully informed and freely made. Participants should have the best possible understanding of the consequences of their decisions for themselves and others that may be affected.

APPENDIX A

Relevant Legislation and Requirements in Different Mediation Contexts

Family Mediation

- England and Wales – Family Law Act 1996; Access to Justice Act 1999; Civil Partnership Act 2004; Children and Adoption Act 2006; Legal Aid Sentencing and Punishment of Offenders Act 2012; Children and Families Act 2014.
- Scotland – Children (Scotland) Act 1995; Civil Evidence (Family Mediation) (Scotland) Act 1995; Marriage and Civil Partnership (Scotland) Act 2004; Children and Young People

(Scotland) Act 2014; Courts Reform (Scotland) Act 2014; Family Law (Scotland) Act 2016; Domestic Abuse (Scotland) Act 2018; Sheriff Court Rule 33.22; Court of Session Rule 49.23.

- Northern Ireland – Children (Northern Ireland) Order 1995.

Special Educational Needs and Disability Mediation

- Children and Families Act 2014.

Community Mediation

- Anti-Social Behaviour, Crime and Policing Act 2014

APPENDIX B

Confidentiality in Mediation

How exceptions to confidentiality may be observed in different mediation contexts and their implications for practice:

Family mediation – factual disclosures made with a view to resolving issues relating to property or finances may be disclosed in legal proceedings.

Workplace mediation – where a mediator becomes aware of any breach of organisational policy which might be classified as gross misconduct, they must terminate the mediation. Where the breach is significant, the mediator must ensure that those with relevant authority are notified.

Workplace mediation – it is common practice for workplace mediation cases to involve discussion of whom the mediation agreement will be shared with. This is agreed by the clients and does not constitute a breach of confidentiality.

All areas of practice – where a risk of harm is disclosed, a mediator may need to break confidentiality in order to comply with best practice guidelines for safeguarding.

Proceeds of Crime Act (POCA) – in certain circumstances (especially in family or commercial mediation but it can apply in all areas of practice), the mediator may need to break confidentiality to comply with POCA.

APPENDIX C

Assessing Suitability to Mediate

Suitability for mediation should be considered at the initial/assessment stage and, if mediation goes ahead, throughout the process.

Consideration of suitability must be grounded in the core principles of mediation:

1. Voluntary: are participants willing to engage in mediation?

In some contexts, there is a requirement to consider mediation, for example the Mediation Information and Assessment Meeting (MIAM) requirement for an applicant to court in family matters and expectation for the respondent, some contracts of employment, tenancy agreements. Participants are free to withdraw at any stage.

There must also be a willingness to agree with the terms of process, e.g. to make full financial disclosure where needed, to maintain confidentiality about discussions which take place in mediation sessions.

2. Participants make the decisions.

Elements of this include:

- Participants feel safe, not intimidated, and are able to speak freely
- Participants are free to make decisions on this matter. This is not a third-party decision, for example, if Social Services are involved, they may have rules, and participants may not be free to negotiate.
- Participants can understand the necessary information, make informed decisions and understand the implications of those decisions. Barriers might be some mental illnesses (for example those which result in loss of insight or sense of external reality, dementia, memory loss), substance misuse in some circumstances (may vary day-to-day), learning disability in some circumstances. The mediator should consider with participants whether mediation might be suitable with the presence of a support person or advocate
- There is no evidence of false information having been/being provided.

3. Safety:

- Domestic abuse – physical, verbal, emotional, financial, coercive control; Practice Direction 12J & MIAM exemption
- Child protection, including domestic abuse
- Must screen separately, graded questions. Awareness that individual may not appreciate severity.

4. Legal restrictions

- Injunctions, restraining orders and bail conditions may prevent any contact between participants. Orders sometimes stipulate that mediation can take place (if participants are willing). In other situations, this may need to be clarified with solicitors/judge.
Other court orders?

5. Am I suitable as a mediator?

- The mediator must consider whether the case is within their competence. If not, they should refer to another, suitably experienced mediator or co-work with such a colleague.
- The mediator should not proceed where there is conflict of interest, for example personal knowledge of participants, or where either participant is known to the mediator in another role.

APPENDIX D

Practice, Supervision/Professional Practice Consultancy (PPC) and Continuing Professional Development (CPD) Requirements for Practising Members

Supervision/PPC Requirements

Trained and Approved members must have had four hours of supervision/PPC in the year to application. At least two of these hours must be one-to-one and up to two may be in a group supervision setting. All supervision/PPC must be with a supervisor/Professional Practice Consultant (PPC) who is a member of, or approved by, the College.

Practice and CPD Requirements

Trained and Approved members must carry out fifteen hours of mediation practice and ten hours of CPD in the year to application.

Suitable CPD activities include training courses, reading, writing, research, project work and networking. The activity must be relevant to mediation and must support the mediator's learning and development. A mix of CPD activities is recommended and all CPD hours must be approved by the mediator's supervisor/PPC at the time of application.

Supervisors/PPCs must additionally carry out five hours of CPD, in the year to application, which is specifically relevant to their role as a mediation supervisor/PPC.

Family mediators, who are trained in Direct Child Consultation, must carry out five hours of CPD, in the year to application, which is specifically relevant to their role as a child consultant.