

## ***Code of practice for mediators***

### **1 DEFINITIONS**

- 1.1 This Code of Practice applies to all mediation conducted or offered by mediators who are standard or recognised members of the College of Mediators.
- 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.
- 1.3 This Code applies whether or not there are or have been legal proceedings between any of the participants and whether or not any, or all of them, are legally represented.
- 1.4 In this Code, “mediation” means the mediation to which this Code applies. “Mediator” means any person offering 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 the 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 dispute and conflict.
- 2.3 Mediators should have regard to the ethics of mediation in that it should be carried out in a way that:
- minimises distress to the participants and any others involved;
  - promotes as good a relationship between the participants and any others involved as possible;
  - removes or diminishes any risk of abuse to any of the participants or others involved, and
  - avoids unnecessary cost to the participants.

#### *In relation to family mediation*

- 2.4 By virtue of the Children (Scotland) Act 1995, family mediators in Scotland are required to have regard to the principles contained in Part 1 of that Act on Parental Responsibilities and Rights.

- 2.5 By virtue of the Family Law Act 1996, family mediators in England and Wales are required to have regard to the general principles set out in section 1 of that Act when exercising functions under or in consequence of it.
- 2.6 By virtue of the Children (Northern Ireland) Order 1995, family mediators in Northern Ireland are required to have regard to the general principles contained in Part 2, Article 3 regarding the paramountcy of a child's welfare and Article 5 regarding Parental Responsibility.

### **3 SCOPE OF MEDIATION**

- 3.1 Mediation may cover any issue in dispute which the parties have freely agreed it would be helpful to resolve and which the mediator considers suitable for mediation.

## **4 GENERAL PRINCIPLES**

### **4.1 Voluntary Participation**

Participation 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, the mediator may raise the issue with the participants and may suspend or terminate mediation. The mediator may suggest that the participants obtain such other professional services as are appropriate.

### **4.2 Neutrality**

Mediators must at all times remain neutral as to the outcome of mediation. They must not seek to move the participants towards an outcome which the mediator prefers, whether by attempting to predict the outcome of court or formal proceedings or otherwise.

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.

### **4.3 Impartiality**

- 4.3.1 Mediators must at all times remain impartial as between the participants. They must conduct the process in a fair and even-handed way.
- 4.3.2 Mediators must seek to prevent manipulative, threatening or intimidating behaviour by any participant. Mediators must 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, the mediator must take appropriate steps to prevent this, terminating mediation if necessary.

### **4.4 Independence and Conflicts of Interest**

- 4.4.1 Mediators must not have any personal interest in the outcome 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 the capacity of mediator in any particular case must 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 distinguish their roles as mediators from any other professional role in which they may act and must make sure that they make this clear to the parties.

#### **4.5 Confidentiality**

- 4.5.1 Subject to paragraphs 4.5.3 mediators must not disclose any information about, or obtained in the course of a mediation to anyone, without the express consent of each participant.
- 4.5.2 Mediators must not discuss or correspond with any participant's legal adviser without the express consent of each participant. Where both participants have legal advisers, nothing must be said or written to the legal adviser of one, which is not also said or written to the legal adviser of the other(s), unless at the specific request of both participants.
- 4.5.3 Where a mediator suspects that a person is in danger of significant harm, or it appears necessary so that a specific allegation that a child has suffered significant harm may be properly investigated, mediators must ensure that the relevant authority is notified.
- 4.5.4 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. If the crime involves the risk of significant harm the mediator must ensure that the relevant authority is notified.

*In relation to workplace mediation:*

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

#### **4.6 Privilege and Legal Proceedings**

- 4.6.1 Subject to paragraphs 4.6.2, all discussions and negotiations in mediation must be 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 in the course of the mediation, unless all participants agree to waive the privilege or the law imposes an overriding obligation upon the mediator.

*In relation to family mediation*

- 4.6.2 Participants must, however, agree that any factual disclosure made with a view to resolving any issue relating to their property or finances may be disclosed in legal proceedings.

**4.7 Welfare of Children**

- 4.7.1 Where it appears to a mediator 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 will be obliged to report the matter in accordance with paragraph 4.5.3.
- 4.7.2 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 advisers or relevant authority as described in paragraph 4.5.3.

*In relation to mediation concerning children:*

- 4.7.3 Mediators have a special concern for the welfare of all children of the family. They must encourage participants to focus upon the needs of the children as well as upon their own and must explore the situation from the child's point of view.
- 4.7.4 Mediators must encourage the participants to consider children's own wishes and feelings. Where appropriate, they may discuss with the participants whether and to what extent it is proper to involve the children themselves in the mediation process in order to consult them about their wishes and feelings.
- 4.7.5 If, in a particular case, the mediator and participants agree that it is appropriate to consult any child directly in mediation, the mediator should be trained for that purpose, must obtain the child's consent and must provide appropriate facilities.

**4.8 Abuse, Bullying and Harassment**

- 4.8.1 In all cases, mediators must seek to discover through a screening procedure whether or not there is fear of abuse or any other harm and whether or not 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 information about available support services should be provided.
- 4.8.2 Where mediation does take place, mediators must uphold throughout the principles of voluntariness of participation, fairness and safety and must conduct the process in accordance with this section. In addition, steps must be taken to ensure the safety of all participants on arrival and departure.

## **5 QUALIFICATIONS AND TRAINING**

- 5.1 Mediators must have successfully completed such training as is approved by the College to qualify them to mediate upon those matters upon which they offer mediation.
- 5.2 Mediators must be a standard or recognised member of the College. They must therefore have successfully demonstrated personal aptitude for mediation through an approved training and subsequent experience (standard member) and of specific experience and competence to mediate (recognised member).
- 5.3 Mediators must satisfy the College that they have made satisfactory arrangements for regular professional practice consultancy or supervision in relation to their mediation practice with a supervisor or consultant who is a member of, or who has been approved by, the College. The current requirements are listed in Appendix A.
- 5.4 Mediators must agree to maintain and improve their skills through the acquisition of a set number of continuing professional development points each year. The current requirements are listed in Appendix A.
- 5.5 Mediators must not mediate upon any case unless 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.

## **6 CONDUCT OF MEDIATION**

- 6.1 Participants must be clearly advised at the outset of the nature and purpose of mediation and of how it differs from other services. Each participant must be supplied with written information covering the main points and given an opportunity to ask questions about it.
- 6.2 The terms upon which mediation is to be undertaken should be agreed in advance. Where an agreement is in writing, such agreement must include the basis upon which any fees are to be charged and should, if practicable, indicate the anticipated length of the mediation. Where participants are legally advised, they must be advised to notify any legal advisers acting for them of the appointment of a mediator.
- 6.3 Mediators must assist participants to define the issues, identify areas of agreement, clarify areas of disagreement, explore the options and seek to reach agreement upon them.
- 6.4 Mediators must seek to ensure that participants make decisions with sufficient information and knowledge. They must inform participants of the need to give full and frank disclosure of all material relevant to the issue(s) being mediated and to assist them where necessary in identifying the relevant information and requesting any supporting documentation.

- 6.5 Mediators must not guarantee that any communication from one participant will be kept secret from the other(s), except that they may always agree not to disclose one participant's address or telephone number to the other(s). They may see participants separately, if both agree, but if any relevant information emerges which one participant is not willing to have disclosed to the other(s), mediators must consider whether or not it is appropriate to continue with mediation.
- 6.6 Mediators must ensure that each participant is given the opportunity to make further enquiries about the information disclosed by any other participant and to seek further information and documentation when required. Mediators must promote the participants' equal understanding of such information before any final agreement is reached
- 6.7 Mediators must make it clear that they do not themselves make further enquires to verify the information provided by any participant; that each participant may seek independent legal 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.
- 6.8 Mediators must, where appropriate, inform participants of the benefits of seeking the expertise of other relevant professionals.
- 6.9 Mediators must inform participants about the court or other formal proceedings which are available and the procedures applicable to these. They 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 the outcome preferred by the mediators.
- 6.10 Mediators must inform participants of the advantages of seeking independent legal advice whenever this appears desirable during the course of a mediation.
- 6.11 Whenever appropriate or requested by the participants, mediators must prepare a written summary of the factual outcome of the mediation.
- 6.12 Mediators must ensure that agreements reached by participants are fully informed and freely made. Participants must have as good an understanding as is practicable of the consequences of their decisions for themselves and relevant others.

*In relation to family mediation:*

- 6.13 The terms upon which mediation is to be undertaken should, preferably, be in writing and must be in writing where finance and property issues are involved.
- 6.14 Participants must be informed of the extent of the disclosure which will be required, particularly in cases relating to their property and finances, of the nature and limits of the principles of confidentiality and privilege and of the family mediators' special concern for the welfare of the children of the family.
- 6.15 Family mediators must keep the possibility of reconciliation under review throughout the mediation.

- 6.16 Where finance and property issues are involved participants must be informed of the nature and extent of the financial disclosure which would be required; the nature and finality of the court orders which might be made; and the broad principles of law applicable to the matter in dispute.
- 6.17 Family mediators must advise participants that it is desirable and in their own interests to seek independent legal advice before reaching any final agreement and warn them of the risks and disadvantages if they decide not to do so.

*Revised December 2008*

## **APPENDIX A**

### **SUPERVISION AND CONTINUING PROFESSIONAL DEVELOPMENT REQUIREMENTS AS AT DECEMBER 2008**

#### **Family mediators**

##### *Professional Practice Consultancy*

Standard and recognised members must have had a minimum of two hours one-to-one professional practice consultancy in the year to application. This must be with a professional practice consultant who is a member of, or approved by, the College.

##### *Continuing professional development*

Standard and recognised members must have gained at least 10 continuing professional development (CPD) points in the year to application. At least five of these must be gained through attending training with an approved CPD provider<sup>1</sup> (category A) and the balance may be through PPC approved self directed learning<sup>2</sup> (category B).

#### **Workplace mediators**

##### *Professional Practice Consultancy/supervision*

Standard and recognised members must have had a minimum of two hours one-to-one practice consultancy/supervision in the year to application. Whilst formal mechanisms for College recognition of non-family practice consultants/supervisors are being developed the College's requirement for PPCs/supervisors in non-family mediation are at least three years experience in mediation and continued supervised mediation practice.

##### *Continuing professional development*

Whilst the College is developing CPD recognition structures for workplace mediation standard and recognised members should be able to demonstrate that they have undertaken at least 10 hours ongoing training each year which may include attendance on courses or self directed learning<sup>2</sup>.

#### **Community mediators**

##### *Supervision*

Standard and recognised members must have had a minimum of two hours one-to-one practice consultancy/supervision in the year to application. Whilst formal mechanisms for College recognition of non-family practice consultants/supervisors are being developed the College's requirement for PPCs/supervisors in non-family mediation are at least three years experience in mediation and continued supervised mediation practice.

##### *Continuing professional development*

Whilst the College is developing CPD recognition structures for community mediation standard and recognised members should be able to demonstrate that they have undertaken at least 10 hours ongoing training each year which may include attendance on courses or self directed learning<sup>2</sup>.

#### **Notes:**

1. Details of the College CPD scheme are available on the website. To register as an approved CPD provider please contact the College.
2. Self directed learning includes training with non-College approved providers, group practice review/supervision, relevant academic study, self directed reading, relevant project work.