



## **CIVIL MEDIATION COUNCIL**

### **INDEPENDENT MEDIATION COMPLAINTS REVIEW SCHEME 2009**

#### **Introduction**

- i. This is the Civil Mediation Council (CMC)'s Independent Mediation Complaints Review Scheme to supplement the Registered Mediation Organisation and Registered Mediator Schemes which in turn replaced the CMC Accreditation Pilot programme introduced to support the National Mediation Helpline. The Independent Mediation Complaints Review Scheme ("the Scheme") has been developed in cooperation with the Ministry of Justice, the Department for Business Enterprise and Regulatory Reform, the ADR Committee of the Civil Justice Council, the legal professions, as well as the CMC Board Members. *The 2009 Scheme was adopted by the CMC's EGM on DTBC 2009 and began on DTBC 2009.*
- ii. The rationale behind the Scheme was that the CMC wished directly to deal with the reasons for possible concerns amongst stakeholders, rather than through a system that was over-heavy, clumsy, and failed to tackle the 'mischief'. The CMC has therefore established and manages a Scheme which offers independent review of a mediation complaint on payment of a fee. The review is carried out by the CMC's Independent Mediation Complaints Review Body ("the Review Body").
- iii. The members of the Review Body will be selected on each occasion by the Chairman of the CMC from a pool of appropriately experienced mediators and non-mediators.

- iv. The members of the Review Body will not be connected in any way with the organisation or individual about whom the complaint is made.
- v. Reviews of complaints will be conducted on the basis of an assessment of what was reasonable practice by a mediator working in the particular circumstances that applied to the mediation. Such reviews will be undertaken only once the mediation user with the complaint has completed and exhausted the internal complaints process that the organisation or mediator offers.
- vi. The Review Body may dismiss the complaint or, if it is upheld in whole or in part, may recommend that a mediator or organisation should reimburse some or all any mediation fee and/or the Review fee; and/or revisit their professional practice.
- vii. All CMC Registered Mediation Organisations and CMC Registered Mediators voluntarily and willingly undertake, as part of the registration process, to cooperate with, and follow a recommendation of, the Review Body. Mediation organisations or mediators who are not registered with the CMC are not so obliged.
- viii. It follows that all users or promoters of mediation should be encouraged to use or recommend only Registered Mediation Organisations or Registered Mediators if they wish to benefit from recommendations made under the Scheme.
- ix. Neither the CMC nor the Review Body has any greater powers than that in paragraph (vi) above. Complainants may, insofar as any applicable mediation agreement permits them to do so, turn to the courts for redress if they feel they have incurred more serious harm - or they have used an unregistered organisation or individual who will not cooperate or follow a recommendation.
- x. An adverse finding will not be a reason to suspend or exclude an organisation or individual from registration unless the individual or organisation is shown to be unfit. Entirely separate rules apply to the process of considering fitness for registration.

## **1. Scope**

- 1.1 Registration as a CMC Registered Mediator or as a CMC Registered Mediation Organisation is voluntary but carries with it a requirement to undertake to cooperate with, and follow a recommendation of, the Review Body under the Scheme.
- 1.2 The Scheme is also open to unregistered members of the CMC and to those who are not members of the CMC subject to the payment of the fee set out below.
- 1.3 The Scheme does not deal with fitness to be a CMC Registered Mediator or a CMC Registered Mediation Organisation. Complaints about fitness for continued registration are dealt with as part of the respective registration schemes.
- 1.4 The Scheme cannot be accessed without a complainant exhausting the organisation or individual's own internal complaints system. Systems vary in quality and complexity but if they have not been exhausted the complainant will be referred back to it by the CMC's Registrar.

## **2. Administration and Confidentiality**

- 2.1 The Scheme is intended to be a simple transparent process. The administration of the Scheme is therefore largely to be devolved to the Registrar supervised by the CMC Officers and ultimately the CMC Board.
- 2.2 The Registrar (0207 353 3227) will be the point of contact for the Scheme and will maintain appropriate and anonymous records of its operation. Complainants must agree to such record keeping as a condition precedent of using the Scheme.
- 2.3 The Registrar will hold in confidence all relevant documents. Complainants will agree that both the Registrar and the members of the Review Body can see all relevant documents of which they have ownership or privilege.

- 2.4 Registered Mediation Organisations and Registered Mediators will, as part of their cooperation, with the Review Body agree to discuss the complaint with the Review Body subject to the restriction that they cannot disclose or refer to matters relating to a party who has not complained without the consent of that party.
- 2.5 The names or details of the parties to the mediation will not be disclosed to the Review Body. They will be referred to by letters whereby “C” is always taken to represent the complainant and “X”, “Y”, “Z” and so on as necessary to represent the other party/parties.
- 2.6 The Registrar will ensure that any documents or copies of documents relating to the mediation are returned to the supplier at the end of the process.
- 2.7 The Registrar will not notify the other parties to the mediation of the complaint or the subject of the complaint unless requested to do so by the complainant.

### **3. How the Scheme will operate**

- 3.1 The complainant will contact the Registrar via telephone or the CMC website and give details of the mediation organisation or mediator against whom the complaint is made. The Registrar will specifically ask whether the complainant has exhausted the internal complaints procedure operated by the organisation or individual. If the answer is “no” then the complainant will be referred back to the organisation or individual and no further action will be taken.
- 3.2 If the answer is “yes” then the Registrar will contact the mediation organisation or mediator to notify them that a complaint has been received and to invite them to confirm that their complaints procedure has been followed. If they so confirm, the matter will then proceed in accordance with paragraph 3.5 below.
- 3.3 If it is denied that their complaints procedure has been followed, then the Registrar will refer the complainant back to the mediation organisation or mediator.

- 3.4 In the event that there is a dispute over the degree to which the internal system has been exhausted the Registrar will refer the matter to the Secretary (or if conflicted to another Officer) who will decide the point on behalf of the CMC in the light of all the available evidence.
- 3.5 If the complaint is to proceed to the Review Body then the complainant shall on being requested by the Registrar:
- (a) put all the details of their complaint in writing signed under a statement of truth and provide it together with any supporting documents to the Registrar within 14 days; and then
  - (b) immediately pay the required fee (as set out at Annex A) to the CMC.
- 3.6 The Registrar will on confirming that there are cleared funds notify the mediation organisation or mediator of the complaint. The Registrar will also forward the materials provided under paragraph 3.5(a) (above) and request that any written response will be provided to the CMC within 14 days.
- 3.7 The Registrar shall then send the papers to the Review Body members selected in accordance with section 4 (below) to consider the complaint. The Review Body will review the complaint with 28 days of the receipt by the Registrar of the written response invited under paragraph 3.6 (above).
- 3.8 The procedure adopted for each review shall be in the absolute discretion of the Review Body. It may deal with the complaint by way of an oral hearing, by way of considering the papers only, or in some other reasonable manner as the Review Body thinks just. The Review Body will decide the procedure it will use having liaised with the complainant and the mediation organisation or mediator facing the complaint. It will inform all concerned in advance of the procedure to be used.

- 3.9 The Review Body may, having carried out its review, decide only:
- (a) to adjourn the complaint to allow for more evidence to be presented; or
  - (b) to dismiss the complaint (stating its reasons); or
  - (c) to dismiss the complaint (stating its reasons) but in so doing to make a recommendation as to professional practice; or
  - (d) to uphold the complaint in whole or in part (stating its reasons) and to make a recommendation as to professional practice and/or to recommend that all or part of the mediation fee paid by the complainant shall be repaid; and/or
  - (e) to recommend (stating its reasons) that all or part of the complaint fee shall be paid by the individual or organisation.
- 3.10 The decision of this Review Body will be final.
- 3.11 The use of the Scheme by complainants and mediation organisations or mediators will be under the express understanding that the users agree to be bound by the procedure adopted, and the finality of the Review Body's decision. The complainant will as a condition precedent to using the scheme undertake with the CMC that no application for judicial review or other legal remedy will be made against the CMC or the Review Body consequent upon any decision of the Review Body in respect of a complaint unless it is based upon an allegation of bad faith or illegality.

#### **4. Review Body members**

- 4.1 The members of the Review Body shall be determined by the Chairman of the CMC (or in default the Vice Chairman) who shall select them from a pool of mediators and non-mediators who have in the opinion of the Chairman of the CMC suitable and sufficient experience.

- 4.2 Review Body members shall be paid their reasonable expenses by the CMC and a single fee of £250+VAT (if the member is VAT registered).
- 4.3 Review Body members shall declare any possible conflict on selection.
- 4.4 Names of the three nominated Review Body members shall be passed by the Registrar to the complainant and the mediation organisation or mediator facing the complaint upon their selection by the Chairman of the CMC. Objections must be made within 24 hours of notification on the sole ground of conflict of interest.
- 4.5 Ordinarily each Review Body shall consist of a mediator chairman, a mediator, and a non-mediator. The Chairman of the Review Body shall only vote if there is a disagreement between the two other members.
- 4.6 A majority decision of the Review Body shall be noted as such when the reasons for any decision are given.

## **5. Version**

- 5.1 This is the Scheme adopted on 10<sup>th</sup> December 2008 by the CMC AGM in London.

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### **FEE STRUCTURE 2009**

- (1) Where the mediation organisation or mediator subject to the complaint was at the relevant time Registered with the CMC the fee is £1,000 payable in advance.
  
- (2) Where the mediation organisation or mediator subject to the complaint was not at the relevant time Registered with the CMC the fee is £1,500 payable in advance.

### **Notes on the fee structure**

The fees are intended to reflect the advantages to clients of using Registered Mediation Organisations and Registered Mediators, and to deter frivolous or vexatious complaints.

The difference between the fees is the difference between the actual costs of the Scheme reflected in the fees payable in respect of an unregistered mediation organisation or mediator, and a partial contribution where there is a Registered Mediation Organisation or Registered Mediator.

### **Hardship**

On application to the CMC a complainant can ask for all or part of the fee to be waived. In such an event a CMC Officer who is not conflicted will review the request balancing any evidence of hardship provided by the complainant against the potential merits of the complaint. The Officer may, on the evidence, and in his or her absolute discretion, make a decision on waiver of all or part of the fee if satisfied that there is both genuine hardship and a more than merely fanciful prospect of the complaint succeeding. There is no appeal from the decision of the Officer which shall be final.