



## MII Code of Practice

A&B Mediation Mediators are Accredited to The Mediators Institute of Ireland and are bound by the MII Code of Ethics and Practice to only mediate where they have the appropriate training, knowledge and competence to effectively mediate.

### A Background/General Information

#### Purpose of Code

1. The Mediators' Institute of Ireland (The MII) is the professional organisation for Mediators. It is a not-for-profit organisation which promotes the use of mediation as a process in all areas of dispute resolution and prevention by ensuring high standards of education, training, ethics and professional practice of mediation and by increasing public awareness of mediation. It believes its standards of education training and ethics are in accordance with European standards.
2. In order to meet this objective, the MII has drawn up this Code of Ethics and Practice to provide clear information to those wishing to use mediation as the basis on which the mediation will be conducted and to provide ethical and practical guidance for Mediators in their work.

#### Member Requirements and Scope of Code

3. All Practitioner, Certified, Associate, General and Trainee members of the MII agree to be bound by the Code of Ethics and Practice. In the event of an issue arising in relation to a member's alleged breach of this Code, the matter may be subject to disciplinary process.
4. We have attempted to cover as many aspects of mediation and the process as possible in this Code. However it must be understood that every mediation is unique and its very success depends on its retaining its flexibility. Every Mediator will mediate differently to every other Mediator and will mediate each of their cases differently depending on the type of mediation, the subject matter of the mediation and the interaction of all of the people in the Mediation Session and on their own training and experience.
5. It is not possible to cover every scenario and, further, there may be occasions when the particular situation requires a different approach. Although, generally, a mediation will go through some or all of the steps below some mediations may not allow for that approach or may not allow for the steps to be gone through in that order. It is the Mediator's decision as to how the mediation should proceed taking all of the circumstances into account.
6. There is no "right" process or "right" way to mediate and, in the event of an issue arising in relation to a particular mediation, the totality of the mediation will have to be taken into account in assessing whether there was a breach of this Code of Ethics and Practice.
7. Only Mediators who hold a current MII practising certificate are approved by the MII to mediate. To obtain and retain a practising certificate for the current year the member must have carried out a minimum period of training, have passed an assessment of competence and skills, have appropriate professional indemnity insurance, have agreed to be bound by the then current disciplinary and complaints procedures and have agreed to be bound by the then current Code of Ethics and Practice.



8. Mediators with practising certificates must only practice within their level of competence. That level of competence will be different for each Mediator depending on their qualifications, their further education, their experience and their reflective practice. They may be more competent at one type of mediation than another. They may practice in one area of practice or in more than one area. Whether they are or were competent in any particular case will depend on the facts of the case reviewed in hindsight. On occasion the MII may designate particular courses that will need to have been attended by the Mediator to be deemed “competent” to practice in particular areas of practice.

## **Definitions and Explanations**

9. Mediation – A process in which an impartial and neutral third party facilitates communication and negotiation and promotes voluntary decision-making by the parties to prevent or resolve a dispute and to assist them to reach a mutually acceptable solution.

10. Aim of Mediation – The aim of mediation is to assist the Clients and / or Parties to prevent or resolve a broad range of conflicts within a variety of settings and to facilitate improvements to future relationships, where appropriate.

11. Fundamental Principles of Mediation – The fundamental principles of mediation are that it is a voluntary process, that confidentiality applies to the process, that the Mediator is and remains impartial and neutral, that the parties have the right of self determination and decide on their own solutions rather than having a solution imposed on them. The participants will treat each other and the process with respect (see below for detailed provisions).

12. The MII Mediator – A trained and accredited professional who facilitates the process of mediation whilst acting at all times in accordance with the principles of impartiality, integrity, fairness and confidentiality, with respect for all parties involved in the mediation. Only Mediators who hold a current MII Practising Certificate are approved to practice by the MII. A list of Mediators holding a current practising certificate can be found on the website

13. Where two or more MII Mediators work together with the Clients and/ or Parties in a mediation, this Code of Ethics and Practice applies equally to those Mediators.

14. The Mediator is neither a Judge nor an Arbitrator. The Mediator does not decide or indicate who is right or who is wrong.

15. Competence – The Mediator may only mediate where they have the appropriate training, knowledge and competence to effectively mediate in the dispute.

16. If during the mediation, a Mediator feels they are moving outside their level of competence they should take one or more of the following steps:- inform the Parties, pause the mediation, seek advice, and introduce a co-Mediator or alternative Mediator(s) or other person, advisor or expert or withdraw from the mediation. The Mediator shall have regard to the needs of the Parties. A Mediator’s competence will be judged in relation to the particular facts of the case.

17. Every Mediator is required to be aware of the law relating to how they conduct their personal professional practice and, where appropriate, codes of practice, guidelines and regulations. In particular



where the Mediator's practice brings them into the area of Child Protection, elder abuse, self-harm, abuse or welfare issues, the Mediator must inform themselves of any appropriate policies and guidelines.

18. The Parties – The parties to a mediation. The party may be an individual, a corporate entity, an organisation or a group of people who are directly involved in the Mediation Process. There may be more than two Parties to a mediation.

19. The Client – The person, corporate entity, organisation or service provider who arranges, and sometimes pays for, the mediation to take place. The Clients may or may not be a Party and may or may not be directly involved in the mediation process.

20. Mediation Process – The Mediation Process is the process which involves the Mediator and starts at the first contact between the Mediator and the Client, Party or the Expert (whichever is first) and ends when the Mediator closes their file.

21. Mediation Session – the actual session(s) when the Parties and the Mediator are mediating to assist the Parties to arrive at a mutually acceptable agreement.

22. A Service Provider – The organisation who provides a Mediator for the mediation. The service provider can operate either for profit or not-for-profit, may itself directly employ or may contract Mediators and the Mediators may be paid by the service provider or may mediate for no charge to either the service provider or the Client or the Parties.

23. An Expert (Advisor, Representative) – A person whom either party brings to any Pre-mediation Session and/ or the Mediation Session (by agreement of the Parties and the Mediator) to advise them in relation to the content of the mediation and the outcomes. Although sometimes described as “a representative” the individual is not there in a representative capacity. Their role is to advise and assist the Party and to input into the mediation as the Mediator believes would be beneficial to the process. The Expert does not usually act as an advocate for the Party. Ground rules relating to their participation in the Mediation Process should be agreed at the start of the Mediation Session. They are bound by the same confidentiality provisions as all of the other participants in the mediation. Consent to the attendance of an Expert may not be unreasonably withheld.

24. A Supporter – A person who attends any Pre-mediation Session and the Mediation Session (by agreement of the Parties and the Mediator) in a support role to one of the Parties. They play no active role in the proceedings (except where the Mediator believes it beneficial to the process). They are bound by the same confidentiality provisions as all of the others in the mediation. Consent to the attendance of a supporter may not be unreasonably withheld.

15. A Trainee Mediator – A person who is learning to become a Mediator. One of the ways of making Mediators or trainee Mediators more proficient is for them to be present at (but not necessarily taking part in) a mediation and, in particular, at a Mediation Session. Permission must be given by the Parties and the Mediator if a Trainee Mediator wishes to sit in at a Mediation Session. At the beginning of the Mediation Session ground rules in relation to the Trainee Mediator should be agreed and the Trainee Mediator should sign and be bound by the Agreement to Mediate.

26. Mediation Process – The commencement of the Mediation Process may give rise to the Statute of Limitations or other Statutory time limits being suspended in particular circumstances and the onus is on the Parties to inform themselves in relation to this and to make themselves aware of the consequences.



27. Any agreements made between the Parties within the Mediation Process will last after the Process has finished unless otherwise agreed.
28. There is no set format for a mediation and it is up to each Mediator to decide what the Mediation Process should be in each case. In making that decision the Mediator will take account of the general principals and practice of mediation. There may or may not be a pre-mediation meeting, there may be a joint meeting with all of the Parties within or throughout the Mediation Session(s), the Mediation Session (s) may be with the Parties not meeting at all; the Mediation Session may be split into a number of shorter sessions over a period of weeks, months or years or the Mediation Session may last all day or into the night. There may or may not be a review meeting held at some stage after the Mediation Session(s) have terminated.
29. Agreement to Mediate – The written or oral contract for mediation between the Mediator and the Parties and other participants at the Mediation Session setting out the terms and conditions on which the mediation will take place. There may be very particular circumstances when the benefit and value of the flexibility and immediacy of mediation would be restricted by the requirement to have an Agreement to Mediate and in such instances, the having of an Agreement to Mediate would be removed. However in such circumstances the Mediator will, if appropriate, do their best to introduce an Agreement to Mediate later in the process.
30. Where appropriate the terms on which the mediation is to take place must be agreed in advance between the Mediator, the Client and/ or the Parties, including details of all fees and the confidentiality of mediation. It must also include an agreement by the Client and/or the Parties not to call the Mediator as a witness and the agreement of the Mediator to abide by The MII Code of Ethics & Practice. It should be in writing and signed by the Mediator and all the Parties. Other participants involved in the Mediation Process, should also sign the Agreement to Mediate.
31. Where there is an Agreement to Mediate it is a binding contract, whether in writing or not. The Mediator must clearly explain the obligations that Parties are agreeing to before they agree to mediate.
32. Client Agreement – If the Mediator is instructed by a Client to act in the mediation, the terms on which the mediation is to take place must be agreed in advance between the Mediator and the Client including details of all fees, methods of payment and the confidentiality of the mediation.
33. It must also include an agreement not to call the Mediator as a witness and the agreement of the Mediator to abide by the Code of Ethics & Practice.
34. Mediated Agreement or Note of Understanding – The written or oral agreement reached by the Parties within the Mediation Process. It sets out the terms on which the Parties have reached agreement during the mediation. A Mediated Agreement can be interim, partial or a complete agreement. It may be in writing.
35. The Mediated Agreement or Note of Understanding should state whether the terms are legally binding or not.
36. Pre-mediation – The meeting sometimes held before the Mediation Session with each Party and the



Mediator. A pre-mediation meeting is not always held but when it is it may be some time before the mediation session (e.g. a week) or immediately preceding the Mediation Session. The purpose of the pre-mediation meeting is to allow the Party to tell the Mediator in confidence their story or version of events and to enable the Mediator to explain the Mediation Process and how it works and to assess whether the matter is a suitable matter for mediation.

## Fundamental Principles

### Confidentiality

37. Confidentiality – The Mediator is obliged to explain to the Clients, the Parties and any Experts and Supporters the principles of confidentiality and how the rules in relation to confidentiality operate.

38. Mediation is confidential. The Mediator must not disclose, other than to the Client, that the mediation is taking place. No participant in the Mediation Process or in a Mediation Session may disclose anything discussed unless required to do so by law, or to a case consultant or unless all the Parties and the Mediator agree that this can be done. The confidentiality belongs to the Mediator as well as to the Parties and the Client. Even if the Parties and/or the Client wish the Mediator to lift the obligation of confidentiality, that will not happen unless the Mediator agrees to do so. The Mediator is not obliged to give reasons as to why the confidentiality is, or is not, being lifted.

39. Confidentiality for a Mediator and any Trainee in a mediation starts from the beginning of the Mediation Process and is an implied term, effective immediately from the start of the Mediation Process and all discussions and related communications should be treated as being “without prejudice” unless otherwise agreed or advised.

40. It is accepted that in some types of mediation the rules of confidentiality may differ slightly from the above. In the event of any issue arising in relation to confidentiality, the nature of the mediation and the “normal” rules for that type of mediation will be taken into account.

41. Confidentiality: Separate Meetings/Caucus Meetings – All matters discussed in separate meetings or phone conversations during the Mediation Process are confidential to those included in those discussions except where express permission has been given for all or some of the information to be shared with the other Parties, with the Client or for the purposes of obtaining legal or other advice.

42. Confidentiality – Clients (where the Client is not a Party) Neither the Mediator nor the Parties shall give any information (except as below) regarding the Mediation Process or content to the Client unless agreed by all of the Parties. The Mediator may inform the Client of the length of the mediation (for the purposes of costs) of any review meeting or subsequent Mediation Sessions and whether or not agreement has been reached. If other information is to be given by the Parties or the Mediator to the Client it should be agreed exactly what information may be given and who is to give it

43. Confidentiality of Communications between Mediator, the Client and the Parties – Where, during the Mediation Process, the Mediator has a discussion or written exchanges with one party, they should not reveal the contents of those communications to the other party except with the express agreement of the first party. The Parties are not entitled to see any written exchange of communications between the Mediator and the Client or the Client’s Experts or between the Mediator and the other Party.



44. Notes and Flip Charts from the Mediation Process – all involved in the Mediation Session are encouraged not to take verbatim notes. The Mediator should agree at the beginning of the Mediation Session with all of those involved as to what is to happen to any notes taken and the flip chart pages.

45. Recording devices – mobile phones, cameras, tape recorders must be turned off during the Mediation Session. No photographs may be taken of the flip chart notes unless by agreement of all participants. The Mediation Session may not be recorded.

46. The Mediator's Notes – The Mediator's own notes of the Mediation Process are the property of the Mediator and may not be disclosed to the Parties or the Clients, except as required by law.

47. Experts and Supporters – The Mediator shall ensure that any Experts or supporters involved in the mediation are bound by the same terms of confidentiality as the Parties.

48. Agreement to Mediate and Mediated Agreements – These agreements are confidential to the signatories. The Parties to them may have to use the Agreement to enforce a term of the agreement or to seek redress in the event of a breach of the Agreement. In that event the confidentiality over the Agreement is waived except as required by law. It will also be waived in the event of a complaint or claim being made against the Mediator.

49. The Parties may agree that some or all terms of their Agreement to Mediate or Mediated Agreement can be disclosed and to whom. In the event of a dispute as to what information is to remain confidential and what may be disclosed the Parties may go back to mediation to enable agreement to be reached.

50. Exceptions to Confidentiality – A Mediator may have to breach confidentiality without the consent of any or all of the Clients and / or Parties in the following circumstances:

- i. When there is a concern that a child may be at risk
- ii. If required to do so by law.
- iii. To enable the Mediator to defend themselves from a complaint, disciplinary process, negligence or other proceeding against them arising from the mediation.

In relation to i and ii above it is the duty of the Mediator to inform themselves of appropriate policies guidelines and the law.

51. Complaints, Disciplinary Process, Legal Action – If a Mediator requires to defend themselves against a complaint, disciplinary process or any other legal or other action arising out of a Mediation Process they may, without the prior approval of the Client or any Party or other person or body, disclose items that occurred within the Mediation Process but only to such an extent as to respond to and answer matters raised against them.

52. Legal Privilege – There is no legal privilege covering mediation unless specifically referred to in statute and therefore there is no right not to disclose to a Judge what occurred in a Mediation Process if asked. However as a matter of public policy Judges may refrain from questioning the Mediator but they are entitled to do so and, if they insist on a response, a Mediator would be obliged to answer or risk being in contempt of Court. It is open to the Mediator to refer to the Agreement to Mediate and, as appropriate, to the Mediated Agreement and to seek to explain to the Judge the fundamental principle of



confidentiality in the Mediation Process. Mediators will be governed by the current law in relation to privilege and confidentiality.

53. Waiver from Mediator giving Evidence – The Mediator, the Client and/or the Parties can agree in the Agreement to Mediate that the Mediator will not be called to give evidence as a witness in any forum in relation to the Mediation Process and that the Parties shall not call for the production of any notes or documents that the Mediator has in connection with the Mediation Process.

54. Reflective Practice: Supervision/Case Consultancy/Mentoring/Sharing and Learning – Mediators are encouraged to improve their professional practice by reflecting on their performance in their mediations and reflective practice is a requirement of Continuing Professional Development. This reflective practice can either be carried out in one-to-one sessions or in group sessions at the option of the Mediator. For the purpose of this reflective practice the Mediator may disclose anonymised information arising in any mediation that they have been involved with provided that they do so in such a way that the identity of any of the Clients or Parties cannot be ascertained from the information given. The onus is on the Mediator to ensure that those others involved in the reflective practice are also bound by confidentiality.

55. Trainers & Trainees – Any trainer and trainee using real cases by way of example for teaching purposes should ensure the identity of the Client and the Parties is protected. Any person learning the identity of a Client or Party has a duty to maintain the confidentiality of such information.

## **Impartiality and Neutrality**

56. Impartiality and Neutrality – The Mediator must act and be seen to act in an impartial manner throughout the process of mediation. Impartiality means freedom from favouritism, bias or prejudice. The Mediator must not take sides. If a Mediator believes that they cannot remain impartial they shall terminate the mediation.

57. The Mediator must remain neutral as to the content and the outcome of the mediation. Nothing shall prevent the Mediator from talking to, phoning, communicating with or meeting one Party with or without the knowledge of the other Party provided it has been explained to the Parties that this might happen and that impartiality and neutrality are maintained.

## **Respect**

58. Respect – An underlying and fundamental principle of the Mediation Process is respect between the Mediator and the Parties and of the process. If this respect is missing in the process and the Mediator believes that the lack of the respect is or is likely to affect the process the Mediator may terminate the mediation.

## **Self-Determination**

59. Self Determination – The Parties make the decisions in relation to the outcome of the mediation. The Mediator is there to help that process - The content and outcome of the mediation belongs to the Parties.

60. The Mediator is in charge of the process and decides how the mediation process should proceed.

61. Informed Decision-Making – Mediation is based upon the principle of informed decision-making. The Parties are asked to disclose all relevant information during the mediation. On occasion, particularly in



the separation of assets, they may be asked to swear a Statutory Declaration in relation to their assets.

## **Voluntary Participation**

62. Voluntary Participation – Mediation is voluntary. Any party to mediation including the Mediator may leave the process at any time without having to give reasons.

63. All MII Mediators are governed by this Code of Ethics & Practice, except as provided by law. The terms of this Code (or any subsequent Code) apply to every MII mediation from the beginning of the process.

## **Nature & Purpose of Mediation**

64. Nature & Purpose of Mediation – As soon as practicable after the beginning of the Mediation Process, and as appropriate, the Mediator must provide the Parties and Client with an explanation of the nature, purpose of and the fundamental principles of mediation. This may be provided in writing. The Mediator should also explain how the mediation is to be carried out

## **Fees**

65. Fees – If fees are payable, prior to the Mediation Session the Mediator must clearly explain to the Client or the Parties, whoever is paying the fees, to the person(s) or organisation paying the fees how the fees, outlays, VAT and charges are calculated. The options for paying the fees should also be discussed.

66. The fees charged may take account of the type of mediation, the complexity of the matter, the expertise of the Mediator and the time required. Some Mediators charge on an hourly basis, some on a half-day basis, some on a whole-day basis, or a combination of these. Some Mediators will not charge any fee. Some Mediators will look for payment on account in advance. Some may charge a minimum fee.

67. The Mediator shall not enter into a fee agreement which depends on the result of the mediation.

68. Terminating the Mediation – At whatever stage the Parties leave or end mediation, they or the Client must pay all fees due to the Mediator to that point.

69. Due to competition and restrictive practice law, the MII is not allowed to obtain, hold or give out details of charges of any Mediators. Mediators should not fix levels of fees with other Mediators.

## **Advice from Professionals**

70. Advice from Other Professionals – The Parties are free to take whatever advice they require before, during, and in coming to agreement, and the Mediator will allow time for this if requested. The onus is on the Parties not on the Mediator to ask for time for this to happen.

## **Conflict of Interest**

71. Conflict of Interest – The Mediator must not proceed or continue with mediation if they decide that a conflict of interest arises and that it would be inappropriate for them to continue with the mediation. If the





Mediator is unsure as to whether a conflict of interest exists, they should contact their practice consultant/supervisor or The MII Ethics and Standards Committee.

72. If the Mediator or one of the Parties believes that a conflict of interest might exist or might be perceived to exist, the Mediator together with the Parties must discuss whether it is appropriate for the Mediator to continue their involvement.

## **Insurance**

73. Insurance – The Mediator must have appropriate Professional Indemnity Insurance or have the risk underwritten to cover their mediation practice and must make a declaration annually to The MII to this effect. The Mediator is responsible for ensuring that their insurance cover is adequate. If requested by the Parties or the Client, the Mediator must provide details of their professional indemnity insurance and their qualifications.

## **Providing Information**

74 Providing Information – The Mediator must inform the Parties how they may obtain a copy of the Code of Ethics and Practice if required.

## **Record Keeping**

75. Record Keeping – The Mediator must ensure that any mediation records are stored securely and must decide what papers to keep and for how long. A Mediator may belong to another institute or organisation and may have other requirements in relation to record keeping.

76. The MII recognises that there are different and valid views of Mediators as to whether or not the file, the Mediator's notes and any papers in the mediation should be retained after the mediation process is finished and if so, for how long. The onus is on each Mediator to seek their own advice and come to their own decision on this.

77. The Mediator must be aware of all relevant legislation relating to recording and storage of personal information, especially the Freedom of Information and the Data Protection legislation, and how it applies to their own mediation work.

78. If requested, the Mediator must inform the Parties and Client about their entitlements to access information recorded about them.

## **Termination of Process**

79. Termination – The Mediator may terminate the Mediation Process if in their sole discretion they believe that they or one of the Parties may be at risk or that the Parties do not have an appropriate level of respect for the Mediator or mediation process.

## **Complaints**

80. Complaints – The Mediator agrees to be subject to then current MII Complaints Procedure, Disciplinary Procedure, and Appeals Procedure, except where prohibited by law and agrees to make these



the Parties and /or Clients aware of these procedures in the event of any issues arising. Where a query, issue or complaint is raised with the MII, the MII reserves the right to give primary reliance to the MII Code of Ethics and Practice.

## **Continuing Professional Development**

81. Continuing Professional Development – Continuing Professional Development is an essential and mandatory requirement for all Certified and Practitioner Mediators.

82. The Mediator shall, at a minimum, comply with The Mediators' Institute of Ireland's current requirements for CPD. They should attend educational programmes and related activities to maintain and enhance their knowledge and skills related to mediation. The Mediator will continue their professional education and be personally responsible for their ongoing professional development.

## **Practising as a Mediator**

83. Practising as a Mediator – To practice as a Mediator a member must meet the current accreditation requirements and must only practice within their competence.

## **Advancement of Mediation**

84. Advancement of Mediation – The Mediator should be committed to the advancement of mediation and raising public awareness of mediation as a type of dispute resolution.

85. The Mediator will actively support the MII and encourage non-MII Mediators to join the organisation.

## **Advertising and Promotion**

86. Advertising – The Mediator will be truthful in advertising for mediation and must honestly represent the services on offer, qualifications, experience and fees.

87. The Mediator will not promise or guarantee results and should not advertise information about settlement rates.

88. The Mediator will not advertise in any way which contradicts the principles of mediation as laid out in the Code of Ethics & Practice.

## **MII Nomenclature and Designations**

89. MII Nomenclature and Designations – The Mediator will only use MII designations of membership categories and approved letters when describing themselves in relation to the MII. They may only use such designation and category as are appropriate to their MII accreditation. The MII may from time to time introduce different categories of membership or change nomenclature in respect of categories of membership.

90. The Mediator shall not do anything that brings the MII into disrepute and shall treat the organisation, its Council, its committees and its members with respect and shall not do anything that undermines the organisation.



## **Council and Committees**

91. Council and Committees – Where serving on Council or on an MII committee the Mediator will put aside self-interest and will act in the best interests of the MII. The Mediator will declare any conflict of interest they may have. The Mediator will use their best endeavours to work as part of the cohesive whole of the Council and/or Committee for the best interests of the MII abiding by any ground rules or standing orders agreed by the Council and / or Committee.

As approved by MII membership on 16 December 2009.

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