



## **CODE OF PRACTICE FOR MEDIATORS 2020**

### **PREAMBLE**

This Code of Practice is intended by the Society of Mediators (“the SOM”) in due course to supersede the European Code of Conduct, which was agreed in 2004 and is now widely thought to be obsolete. Mediators are expected, first, to comply with the Code and, second, to contribute to its development. Please email any such ideas to [code@societyofmediators.com](mailto:code@societyofmediators.com).

### **1 DEFINITIONS**

1.1 In this Code of Practice:

“Mediation”	means any civil, commercial, business, personal or other (non-family) mediation to which this Code of Practice applies
“Mediator”	means any person offering Mediation: in a co-mediation, the term shall be taken to include and to refer to, both of the co-mediators
“Participant”	means any person taking part in Mediation
“Representative”	means a Participant’s legal or other authorised Representative

1.2 This Code applies to all Mediations conducted or offered by Mediators.

1.3 Mediation is a process in which those involved in a civil or commercial, business or personal relationship breakdown, change, transition, or dispute, appoint a neutral and impartial third person, the Mediator, to assist them to communicate better, typically with a view to finding a suitable resolution or settlement.

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

## 2. AIMS AND OBJECTIVES OF MEDIATION AND MEDIATORS

- 2.1 Mediation aims to assist Participants to reach the decisions they consider appropriate to their own particular circumstances.
- 2.2 The Mediator's objective is to provide a neutral and impartial process using appropriate communication options as between the Participants to achieve the aim of Mediation.

## 3 QUALIFICATIONS AND TRAINING FOR MEDIATORS

- 3.1 In order to be appointed as a Mediator, a person must:
- (a) have successfully completed either the SOM's Foundation Training Course, or a foundation training programme approved by the Civil Mediation Council ("the CMC"); and
  - (b) have undertaken three observations of a Mediation (one of which may be a professional demonstration provided by the SOM); and
  - (c) carry a minimum of £1 million of Professional Indemnity Insurance; and
  - (d) be in date for mediation CPD; and
  - (e) adopt and comply with this Code of Practice; and
  - (f) adopt and comply with a suitable Complaints Procedure; and
  - (g) adopt and comply with suitable safeguarding, and diversity policies; and
  - (h) undertake to conduct themselves in a manner which is not likely to bring the mediation, or mediators generally, into disrepute; and
  - (i) have paid any applicable annual subscription required as a member of a relevant mediation organisation to which they hold themselves out as members.

## **4 APPOINTMENT AND COMPETENCE OF MEDIATORS**

- 4.1 Mediators may seek appointments by advertising, and promoting, their practices in a professional, truthful, and dignified way including in and by their use of social media.
- 4.2 Mediators shall be sufficiently and adequately competent and knowledgeable in the process of mediation for the Mediation to which they are appointed.
- 4.3 Relevant factors shall include proper training and continuous updating of their education and practice in mediation skills, having regard to any relevant standards or accreditation schemes which may apply in the jurisdiction or locality in which they are mediating.
- 4.4 The Mediator must be sure of their competence to conduct the Mediation before accepting an appointment and, upon request, candidly disclose information concerning their background, training, qualifications, and experience to the Participants.

## **5 INDEPENDENCE AND IMPARTIALITY**

- 5.1 The Mediator must not act, or, having started to do so, continue to act, before having disclosed to the Participants any circumstances that may, or may reasonably be seen to, or seem to, affect their impartiality, independence or amount to a conflict of interests. The duty to disclose is a continuing obligation throughout the process.
- 5.2 Such circumstances shall include any:
- \* personal or business relationship with one or more of the Participants;
  - \* financial or other interest, direct or indirect, in the outcome of the Mediation;
  - \* relevant involvement with the subject matter of the Mediation;
  - \* instance of the Mediator, or a member of their firm/company/Chambers, having to the Mediator's knowledge, acted in any capacity other than as a Mediator for one of the Participants or their Representatives.

5.3 In such cases, the Mediator may only accept or continue the Mediation if they are certain of being able to carry out the mediation with full independence and neutrality and the Participants, having been appropriately informed, consent.

5.4 Mediators shall at all times act, and endeavour positively to be seen to act, with impartiality and neutrality towards the Participants.

5.5 Mediators shall at all times endeavour to serve the Participants equally.

## 6 THE MEDIATION AGREEMENT, PROCESS, AND SETTLEMENT

6.1 The Mediator shall only accept an appointment to act in a Mediation under a written agreement (“the Mediation Agreement”).

6.2 The Mediation Agreement shall, as a minimum, include:

- (a) **the date, time, and place** at which the Mediation shall be conducted;
- (b) **the names of the Participants** and any attending Representatives;
- (c) **the names of the Mediator** and any attending observer;
- (d) **the fees**, if any, that are applicable;
- (e) a statement that the Mediation is without **prejudice and confidential**;
- (f) a statement that the Mediator and Participants shall act in **good faith**;
- (g) a statement that the Mediator shall act under this **Code of Practice**;
- (h) a statement from each of the Participants (or their Representatives if applicable) that they have **authority to settle** if they so decide; and
- (i) such **other rules** that are to apply.

6.3 The Mediator shall ensure that the Mediation Agreement is signed by each Participant (or their attending Representative) and by the Mediator before the Mediation begins.

6.4 The Mediator and the Participants may agree, by reference to a set of rules, or otherwise, on the manner in which the Mediation is to be conducted.

- 6.5 The Mediator shall not begin the Mediation unless the Mediator is reasonably satisfied that the Participants understand the characteristics of the mediation process, and the impartial, neutral, role of the Mediator.
- 6.6 The Mediator shall conduct the Mediation in an appropriate manner, taking into account the circumstances of the case, in accordance with the Mediation Agreement. The Mediator shall in particular not seek to impose a settlement or resolution, nor place the achievement of a settlement or resolution, ahead of the due process of Mediation.
- 6.7 The Mediator may meet the Participants jointly or separately.
- 6.8 The Mediator shall ensure that all Participants have adequate opportunities to be involved in the process.
- 6.9 The Mediator shall not advise the Participants on:
- (a) the substance of the matter discussed in Mediation; or
  - (b) any offer, settlement, or resolution; or
  - (c) the law.
- 6.10 The Mediator may, in their absolute discretion, advise the Participants on the process, or the use of the process, of mediation.
- 6.11 The Mediator must permit a Participant to withdraw from the Mediation at any time without giving any reason or justification.
- 6.12 The Mediator shall terminate the Mediation, if:
- (a) one Participant permanently leaves the Mediation;
  - (b) one Participant formally requests the Mediator to end the Mediation;
  - (c) it would be unethical for the Mediator to continue the Mediation;
  - (d) it would be illegal for the Mediator to continue the Mediation; or
  - (e) the Mediator is conflicted in a manner that cannot be resolved.

- 6.13 The Mediator shall, in the event that a resolution or settlement is reached, remind the Participants that unless the Participants formalise the outcome in writing that outcome may not be readily enforceable.
- 6.14 The Mediator shall not draft or finalise any offer, resolution, or settlement.

## **7 CONFIDENTIALITY**

- 7.1 The Mediator shall keep confidential all information, arising out of or in connection with the Mediation, including the fact that the Mediation is to take place or has taken place, unless required and compelled by lawful order to do otherwise.
- 7.2 Any information disclosed in confidence to the Mediators by any Participant shall not be disclosed to another Participant without permission unless required and compelled by lawful to do otherwise.

## **8 FEES AND PAYMENT**

- 8.1 Where not already provided, the Mediator shall, before the Mediation, supply the Participants with complete information on any fees that apply and the payment terms.
- 8.2 The Mediator must not commence a Mediation before their fees (if any) have either been paid, or the basis of any later payment has been accepted in writing by all Participants.
- 8.3 No Mediator shall undertake a Mediation on a 'conditional fee', 'success fee', 'no settlement no fee', or similar contingent basis. Such terms are unethical for Mediators.

**THE SOCIETY OF MEDIATORS**

20<sup>th</sup> January 2020