

# Simplified Version of the MII Code of Ethics and Practice



The Mediators' Institute of Ireland

## Simplified Version of the MII Code of Ethics and Practice

### **DISCLAIMER**

**This is not the MII Code of Ethics and Practice and does not alter or amend the MII Code of Ethics and Practice in any way. This is a simplified version of that document, the only purpose of which is to assist MII members, and the parties to a mediation, in their reading of the MII Code of Ethics and Practice. The MII Code of Ethics and Practice is the definitive document, and in the event of any difference arising, or conflict emerging between the contents of the MII Code of Ethics and Practice, and the simplified version of same, then there should be no doubt that the MII Code of Ethics and Practice is the authoritative document, to which all members of the MII must adhere as a condition of accreditation and membership.**

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## Shorthand Used and Definitions

### **“MII”**

means the Mediators' Institute of Ireland

### **“Code”**

means the MII's Code of Ethics and Practice

### **“The Act”**

means the Mediation Act 2017

### **“Parties”**

means the people who use Mediation services to try resolving their differences

### **“Clients”**

are the people who hire a Mediator –  
they may or may not be the parties involved in the dispute

### **“Client Agreement”**

sets out the terms on which the Mediation is to take  
place if the clients are not involved in the dispute

### **“An Attendee”**

is somebody who is not a party but attends the  
Mediation as an advisor, expert, or supporter

### **“A Trainee or Assistant Mediator”**

is a person who is qualified to mediate and attends as a co-mediator.

### **“An Observer”**

is a trainee Mediator who attends the Mediation to observe the  
mediation process and learn from it

### **“Pre- Mediation and /or preliminary meetings”**

are often held between the Mediator and each of the individual parties.  
The Mediator uses this meeting to explain to the parties how the Mediation  
process works. Each person has this opportunity to speak to the Mediator  
in confidence to explain their version of events.

## General Information – Role of MII

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The MII was established in 1992 to promote Mediation as an ideal way to resolve conflict. It is the only professional body of Mediators in Ireland that accredits Mediators from all areas of mediation. It operates on a “not for profit” basis. It sets high standards for its members in education, training, ethics, and professional practice.

The MII includes people who practice different types of Mediation which gives members a wide range of expertise and experience to share. This helps members to expand their skills in using different models and styles of Mediation to the benefit of the parties.

## Purpose of Code of Ethics and Practice

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This Code of Ethics and Practice applies to all MII accredited Mediators, no matter where or how they conduct mediation in Ireland or abroad. It guides and supports Mediators, and they are obliged to comply with it. It is binding on all parties to a mediation at any stage of the mediation process.

Its purpose is to:

- support, protect and inform everyone involved in Mediation.
- ensure the best professional standard of practice, for the benefit of all involved; and
- provide ethical and practical guidance for Mediators in their work.

The Code also clarifies what participants should expect during the Mediation process and explains the legal clauses set out in the Mediation Act 2017 (the Act) to help Mediators comply with the law.

The provisions of this Code shall also apply to a mediation governed by a law, contract, or agreement other than the Act and shall be modified as required to take account of the provisions and practice which governs those mediations. [Section 3\(2\)](#).

If you have any questions about the Code, you should contact the Chairperson of the MII Ethics and Standards Committee.

The MII's Complaint and Disciplinary Code applies if an issue or complaint arises about a Mediators breach of the Act or this Code.

## Definitions and descriptions

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### Mediation

Mediation is defined in the Act as *“a confidential, facilitative and voluntary process in which parties to a dispute, with the assistance of a Mediator, attempt to reach a mutually acceptable agreement to resolve the dispute.”*

Mediation is a process, facilitated by an impartial and neutral Mediator, who supports the parties while they communicate, negotiate, and try to prevent or resolve a dispute, complaint, or conflict.

### Mediator

A Mediator is defined in the Act as *“a person appointed under an agreement to mediate to assist the parties to the agreement to mediate to reach a mutually acceptable agreement to resolve the dispute the subject of the agreement.”*

In the Code, Mediator means an accredited MII Mediator holding a current practicing certificate who facilitates the process of Mediation while acting in accordance with the principles of impartiality, integrity, fairness, confidentiality, and respect. 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 MII [website](#).

Where two or more MII Mediators work together in a Mediation, the Code applies equally to those Mediators. Where a Mediator is co-mediating with another Mediator who is not an MII Mediator, the MII Mediator must insert a clause into the Agreement to Mediate to say that the MII Code of Ethics and Practice applies to the Mediation and that it is intended to be binding on all involved in the Mediation. The non-MII Mediator may include their own Code of Ethics into the Agreement to Mediate. It must be clear in the Agreement to Mediate which Code applies to which Mediator.

The Mediator is neither a judge nor an arbitrator nor an adjudicator nor a conciliator. The Mediator does not decide or indicate either who is right or who is wrong. The Mediator does not decide the outcome of the Mediation.

The Mediator must not provide the parties or the clients with expert advice whether financial, legal, or otherwise.

The Mediator is responsible for the process of mediation and decides how the mediation process should proceed.

### Parties

Parties to a Mediation may be individuals, a corporate entity, an organisation, or a group of people who are directly availing of the Mediation process. There may be more than two parties to a Mediation.

## The Client

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The client is the person, commissioning agent, corporate entity, organisation, or service provider who arranges for the Mediation to take place and sometimes pays the costs. The client may or may not be a party and may or may not be directly involved in the Mediation process.

### **Client Agreement**

If a Mediator is engaged by a client to provide a Mediation service, 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.

### **Attendee**

An Attendee is an advisor, expert, a supporter, a representative or other person who is not a party and who attends within the Mediation.

### **Trainee, Assistant Mediator or Observer**

A trainee, assistant Mediator or observer is a person who is learning to become a Mediator, or one who wishes to practice in an area of Mediation new to them. One of the ways of making Mediators or trainee Mediators more skilled is for them to be present at a Mediation (but not necessarily taking part in it). Permission must be given by the parties and the Mediator if a trainee, assistant Mediator, or observer wishes to sit in at a Mediation session.

At the beginning of the Mediation session, ground rules in relation to the trainee or assistant Mediator or observer should be agreed, and they must sign and be bound by the Agreement to Mediate.

## The Mediation Act 2017

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The practice of Mediation in Ireland is covered by the Mediation Act 2017 (the Act), and its provisions must be followed. There are some exclusions, which are set out in [Section 3 of the Act](#). The Act does not apply to Mediations that take place in other jurisdictions.

The Act defines mediation as ***“a confidential, facilitative and voluntary process in which parties to a dispute, with the assistance of a Mediator, attempt to reach a mutually acceptable agreement to resolve the dispute”***. [Section 2 of the Act](#).

The Code describes the minimum standards that members of the MII are required to meet in their practice and flags (in bold italics) key legal requirements. If there is any doubt about an issue, clarification should be sought directly from the Act rather than the Code.

## Fundamental Principles of Mediation

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The fundamental principles of Mediation are as follows:

- Mediation is Confidential.
- Mediation is Voluntary.
- Mediators are Impartial and Neutral.
- Parties have the right to self-determination, that is, to decide on their own solution.
- Everyone involved treats each other, and the process, with respect.

These principles are dealt with in more detail below.

### 1: Confidentiality

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The nature of Mediation is “without prejudice”, meaning that what is said during Mediation cannot be used in evidence against a party afterwards. Therefore, everything said during the Mediation Process must be kept confidential by parties, clients, attendees, and any participants involved in the Mediation Process, including the Mediator. [Section 10 \(1&2\)](#) & [Section 17](#)

The Mediator is obliged to explain to clients, parties, and attendees the principles of confidentiality and the rules about confidentiality that are set out in the Act, and which can be summarised as follows:

All oral statements, records and notes are confidential and cannot be used in court proceedings or otherwise, **except where needed:**

- To enforce a Mediation Settlement.
- To prevent physical or psychological injury to a party.
- Because disclosure is required by law.
- To prevent or reveal a crime, or the concealment of a crime.
- To prevent or reveal a threat to a party.
- To prove or disprove a civil claim or complaint of negligence or misconduct of the Mediator. [Section 10 \(1&2\)](#)

Evidence, e.g., matters of fact or documents, don't automatically become protected from admission in court just because it happened to be used in Mediation. If it is otherwise admissible it can be subject to discovery as usual. [Section 10\(3\)](#)

The Mediator is obliged to outline this principle and these rules to everyone involved.

Confidentiality for a Mediator and any trainee, assistant or observer in a Mediation starts from the beginning of the Mediation process. The Mediator must not disclose, other than to the client, that the Mediation is taking place.

No participant in any part of the process is allowed to disclose anything discussed unless the parties agree, other than the exceptions listed above.



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At the first opportunity, the Mediator should inform the client and the parties that, from the start of the Mediation Process, the Code of Ethics and Practice governs everyone involved - the parties, attendees, clients, and the Mediator. Mediation is confidential right through the process for all parties to the Mediation and for all other attendees who have signed the Agreement to Mediate.

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 considered.

Subject to subsection (2) and section 17 all communications (including oral settlements) and all records and notes relating to the mediation shall be confidential and shall not be disclosed in any proceedings before a Court or otherwise. [Section 10](#)

All matters communicated to the Mediator, by email, at separate meetings or by phone conversation are confidential to those included in the discussions except where express permission has been given for all or some of the information to be shared with the other parties, the client, or for the purposes of obtaining legal or other advice.

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 attendees or
- between the Mediator and the other party, including their attendees.

The Mediator should be particularly aware of confidentiality in relation to online meetings.

Where the client is not a party to the Mediation, they should not get any information about the process or the substance of the Mediation, unless all parties agree otherwise.

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 to the Client, the Parties must agree exactly what information may be given and who will give it.

## 2: Voluntary Participation

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Participation in Mediation shall always be voluntary. [Section 6\(2\)](#). This means that any party to Mediation may leave the process at any time including the Mediator. If the Mediator leaves, the Mediator must notify the parties in writing that they are withdrawing and give general reasons why. [Section 6\(6\)](#)

### 3: Impartiality and Neutrality

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The Mediator shall act with impartiality and integrity and treat the parties fairly. 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.

[Section 8\(2\)\(b\).](#)

The Mediator must remain neutral as to the content and the outcome of the Mediation. That does not prevent the Mediator from talking to, phoning, communicating with or meeting one party with or without the knowledge of the other party, if it has been explained to the parties that this might happen, and that impartiality and neutrality are maintained.

### 4: Respect

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

### 5: Self-Determination (Informed Decision-Making)

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Self-determination means that the parties make the decisions in relation to the outcome of the Mediation. The Mediator is there to help that process, but it is up to the parties alone to determine the outcome of the Mediation. [Section 6\(9\)](#). Mediation is based on the principle of informed decision-making. The Mediator cannot make suggestions for the parties unless he/she is invited to do so. If that happens the Mediator may give examples of what might have happened in similar situations in the past but not make specific suggestions as to what these particular individuals should or could do to resolve the issue which brought them to mediation.

## The Role of the Mediator

### Providing Information

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#### **Disclose Conflicts of Interest**

Before the Mediation begins, the Mediator must make reasonable enquiries to find out if they have any actual or potential conflict of interest. They must not act as Mediator for the case if such a conflict exists. [Section 8 \(2\)](#).

If the Mediator or one of the Parties believes that a conflict of interest might exist or be thought to exist, the Mediator and the Parties must discuss whether it is appropriate for the Mediator to continue their involvement. Unless all parties agree to the Mediator continuing with the case the mediator must stop acting as Mediator.

If a Mediator proceeds in these circumstances, they must act with impartiality and integrity, treat the parties fairly, and complete the Mediation as quickly as possible in the circumstances, reminding the parties of their rights to get independent advice (including legal advice) before signing any agreement. [Section 8 \(2\)](#).

## Original

If the Mediator has any doubts about whether a conflict of interest exists, they should seek advice from their practice consultant/supervisor or the Chairperson of the MII Ethics and Standards Committee.

### **Give details of Qualifications, Training and Experience**

Before the Mediation begins, the Mediator must provide the parties with details of their relevant qualifications, training and experience, and their continuing professional development training.

[Section 8 \(1\)](#)

### **Provide a Copy of the Code of Ethics**

As early as possible, the Mediator should inform the client and the parties that they intend to conduct the Mediation process in accordance with the principles and obligations set out in this Code. They must provide a copy of the Code to parties and clients, either in hard copy or by way of a link to the Code. [Section 8 \(1\) \(c\)](#).

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### **Explain the Aim, Nature, Purpose and Principles of Mediation**

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

As soon as they can, after the beginning of the Mediation process, the Mediator must provide the client and parties with an explanation of the nature, purpose and first principles of Mediation. This may be provided in writing. The Mediator should also explain how the Mediation is going to be carried out.

### **Notify parties that the Mediation is at an end**

The Mediator must inform the parties in writing of the date on which the Mediation ends. [\(Section 18\(2\)\)](#).

## **Deciding the Format**

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Every Mediator and mediation is unique and its success depends on the ability of the Mediator to be flexible. As a result, the Mediator will decide on the appropriate format in each case, in line with the principles and practices of Mediation.

As there is no set format for a Mediation, and it is up to each Mediator to decide what the process should be in each case.

- There may, or may not, be a pre-Mediation meeting.
- There may be a joint meeting with all the parties at one or more Mediation sessions.
- A Mediation session may take place without the parties meeting at all.
- Mediation sessions may be split into several shorter sessions over a period of weeks, months, or years.
- A 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

## Facilitating agreement

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In line with the principle of self-determination, the Mediator will not make proposals to the parties to resolve a dispute. However, the Act does provide for the Mediator to make proposals to resolve a dispute, but only **at the request of the parties**, and in such cases, it is up to the parties themselves to decide whether, or not, to accept such proposals.

## Withdrawing from, or terminating, the process

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The Mediator may withdraw from the Mediation at any time by giving notice in writing to the parties, stating the Mediator's general reasons for the withdrawal. [Section 6](#).

The confidentiality requirements remain in place even if a Mediator has withdrawn from the process.

If a Mediator has withdrawn from a Mediation case, that does not stop them from coming back to the case and acting as Mediator again at a later stage.

If a Mediator withdraws from a case, the Mediator shall return any fees and costs paid in advance for service not yet provided.

The Mediator may put an end to the Mediation process if 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 for the process. The Mediator should inform the Client in writing of such termination of the Mediation. [Section 6\(6\)](#).

## The Role of the Parties

### Using Mediation

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- Parties to a dispute, a conflict or a complaint may use Mediation as a means of attempting to resolve the matter. [Section 6](#)
- It must be a voluntary decision to use Mediation.
- Legal proceedings might already be in train, but that does not stop the parties using Mediation at any time up to the resolution of the case.
- Parties may withdraw from the Mediation at any point of the process.
- Parties may be accompanied to the Mediation and assisted by a person who is not a party. This includes a legal advisor.
- Parties may obtain independent legal advice at any time during the Mediation.
- It is up to the parties to decide the outcome of the Mediation.

### Requirement for both Mediator and Parties – Costs and Efficiency

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The Mediator and the parties must make every reasonable effort, in the circumstances of the case, to conclude the Mediation quickly and efficiently and to minimise costs. [Section 6 \(5\)](#)

The fees and costs of the Mediation are not to be linked in any way to its outcome. [Section 6 \(10\)](#)

## Mediation Phases

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The Mediation Process has three phases and confidentiality applies throughout –

1. Pre-Mediation
2. Mediation
3. Post-Mediation

The Pre-Mediation phase starts with the first discussion between the Mediator and a party or client (i.e., the start of the Mediation process) and runs until an Agreement to Mediate is signed by all parties and the Mediator. This phase may be very short or may take many months. Find more on Pre-Mediation [here](#).

The Mediation phase runs from when the Agreement to Mediate is signed by all parties and the Mediator until the Mediator informs the parties in writing that the Mediation is at an end. This phase includes the Mediation Session – the actual session(s) when the parties are working, with the Mediator's support, to arrive at a mutually acceptable agreement. Find more on the Mediation phase [here](#)

The Post- Mediation Phase starts from when the Mediator informs the Parties that the Mediation is at an end and continues so long as is necessary for each Mediation. Find more on the Post Mediation phase [here](#)

## Agreement to Mediate

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Before Mediation begins, and ideally before any initial meetings take place, the Mediator and the parties will sign an Agreement to Mediate. [Section 7](#). This document is confidential between the people who sign it, and it protects the integrity of the process.

The Agreement to Mediate is a legally binding contract. The Mediator must explain clearly what everyone is agreeing to before they sign. Parties must be given an opportunity to take independent legal advice about the content of the Agreement to Mediate.

The Agreement to Mediate should state the following:

- ✓ That the Mediator has been appointed
- ✓ How the Mediation is to be conducted
- ✓ How any fees and costs will be paid.
- ✓ When and where the Mediation will take place
- ✓ That the Mediation is to be conducted in a confidential manner
- ✓ That each party has a right to seek legal advice
- ✓ How the Mediation may be terminated. [Section 6\(6\)](#).
- ✓ That the Mediator, parties, and client will abide by The MII Code of Ethics & Practice
- ✓ That a Mediation Settlement is a contract between the parties unless expressly stated to have no legal force until it is incorporated into a formal legal agreement or contract to be signed by the parties. [\(Section 11\(2\)\)](#)
- ✓ Any other terms agreed by the parties and the Mediator, including:
  - o Attendees' name & address (workplace or home)
  - o Attendees' relationship to the party with whom they attend.

## Original

The Mediator is advised to prepare a check list of all items about which they should inform parties, clients, and attendees before they sign the Agreement to Mediate, and to keep a note on file that all items on the list were covered.

The Agreement to Mediate and any later agreements made within the Mediation Process will last after the process has finished unless otherwise agreed.

If a post-Mediation Review meeting is decided upon, this needs to be set out in the original Agreement to Mediate, or in the Mediation Settlement, or in a new Agreement to Mediate.

### **Attendees must sign the Agreement to Mediate**

The Mediator, the parties and other attendees will agree the ground rules for attendees' involvement in the Mediation. All attendees at the Mediation must be named in, and must sign, the Agreement to Mediate.

Attendee signatures on the Agreement to Mediate must be complete before the Mediation Session happens. All involved are equally bound by the same confidentiality provisions.

For some reason it may happen that the Mediator cannot get the parties to enter a written Agreement to Mediate. If this happens, the Mediator will explain the legal requirements of [Section 7 of the Act](#) or convey the information in some other way and confirm the information in writing to the Party. The Mediator will note on their file the reason why they were not able to get a written Agreement to Mediate signed.

## Pre-Mediation Phase

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A Pre-Mediation and/or a preliminary meeting may or may not be held by the Mediator with each of the parties.

Where a pre-Mediation meeting is not held, the Mediator should make a note for their file explaining the reason why it was not held.

There is no set time frame for holding a pre-Mediation meeting; for example, it could be a week before the Mediation session, or it could be right before the Mediation session.

The purpose of the pre-Mediation meeting is to allow the parties an opportunity to tell the Mediator, in confidence, their perspective or version of events, and to enable the Mediator to explain the Mediation process and how it works, and to assess whether the matter at issue is a suitable one for Mediation.

The Mediator should check at this stage that the parties have been given a copy or link to the Code of Ethics, and if not, they should provide same.

The Mediator can also explain at this stage the ground rules for all parties in relation to their involvement in the Mediation.



## Original

The Mediator must continue to watch out for any actual or potential conflict of interest.

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

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

The terms of the Agreement to Mediate should be discussed and signed by all present at the pre-Mediation meeting if this has not already happened in advance. [Section 8 \(1\) c.](#)

## Mediation Phase

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### **Attendees**

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Parties are entitled to bring an advisor, expert, supporter and/or a representative. Generally, permission to do so cannot be refused, however, there are exceptions. See \*below. [Section 6 \(4\).](#)

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The other party must be told in good time who is going to be at the Mediation, to give them enough time to bring their own attendee if they so wish.

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If one party objects to another party's choice of attendee, the Mediator will decide, having discussed the matter with both parties.

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\*The Mediator will be aware that under the Act, parties have the right to bring someone to attend and assist them. However, the Mediator must be able to disallow particular people if they believe that that person is not appropriate. Therefore, the Mediator may refuse a particular person from attending if they have a good reason for doing so. Ultimately, the Mediator has the right to decide who attends the Mediation.

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### **Advice from Professionals**

Parties are free to take whatever advice they need before and during the Mediation, and before agreeing a Mediation Settlement. The Mediator will allow time for this if requested. The onus is on the parties and not on the Mediator to ask for time for this to happen, but the Mediator should remind parties about this right before they finalise any Mediation Settlement. [Section 8 \(2\)\(d\).](#)

### **Mediation Settlements and Other Agreements**

It is up to the parties to decide, if, and when, they have reached any agreement, whether that agreement will be enforceable. The parties have several choices when it comes to setting out their agreements. These are:

**A Mediation Settlement** - this is a written agreement, made by the parties during Mediation, and signed by the parties and the Mediator. It sets out the points of agreement they reached during the Mediation. A Mediation Settlement can be interim, partial or a complete agreement.

## Original

It must be in writing. It is legally binding unless it is expressly stated not to be legally binding. [Section 2 \(1\)](#).

**A Memorandum of Understanding** – this is a written agreement made by parties who do not wish to enter into a legally binding agreement. They write up and sign their agreement, and state in it that the terms are not legally binding.

**An informal Plan** – this is a non-binding work plan, behavioural plan or other informal plan agreed by the Parties. It may be written and attached either to a Mediation Settlement (without being legally binding) or to a Memorandum of Understanding.

**An unwritten Accord** - this is a non-binding agreement where the Parties prefer not to have a written, signed document. In these cases, the Mediator should put a note on their file stating the terms of the non-binding accord and noting that the parties did not wish to have the accord in writing.

Mediation Agreements are confidential to those who sign it. However, in the case of Mediation Settlements, there are several exceptions to this confidentiality, all set out in [Section 10\(2\)](#) of the Act. Among these exceptions are the following:

- Confidentiality can be set aside if a party needs to use the Mediation Settlement to enforce its terms or to seek redress if the agreement is breached. [Section 10\(2\)\(a\)](#)
- Confidentiality can also be waived if a complaint or claim is being made against the Mediator. [Section 10\(2\)\(e\)](#)

The parties may agree that some or all terms of their Agreement to Mediate or Mediation Settlement or Memorandum of Understanding 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.

## Records created during Mediation Sessions

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**Notes and Flip Charts** - All involved in the Mediation Session are discouraged from taking verbatim notes. At the beginning of the Mediation Session, the Mediator should agree with everyone present what will happen to any notes taken and flip chart pages. The Mediator is advised to photograph the final flip chart and destroy the original pages later. The photo of the flip chart should be kept on the Mediator's file.

**Recording devices** – Mobile phones, cameras, tape recorders and other recording devices must be turned off during meetings, unless otherwise agreed by the Mediator and the parties. Parties are not permitted to take photos of the flip chart unless all parties agree to it. Recording of the Mediation Session is not allowed. There shall be no recording of any meeting, call or virtual meetings during the Mediation Process unless agreed in exceptional circumstances by the parties and the Mediator.

**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. [Section 10 \(1\)](#).



## Official end of the Mediation process

Original  
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The Mediator must inform the parties in writing of the date the Mediation process officially ended. [Section 18 \(2\)](#).

## Post Mediation phase

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The post Mediation phase includes the enforcement of any Mediation Settlement and the ongoing confidentiality provisions that continue to apply, even after the Mediation process is finished. It may also include other ongoing provisions from the Agreement to Mediate or the Mediation Settlement.

A party may go to court to have terms of a Mediation Settlement enforced. The courts, however, will not enforce a Mediation Settlement if they are not satisfied that the Settlement conforms with certain social policies and laws designed to protect the rights and entitlements of parties and dependents. The courts will also consider whether all assets were disclosed in the process, whether any party has been “overborne” or unduly influenced in the process, and, above all, whether the Settlement serves the best interests of any child affected. [Section 11](#).

## Commencement and Duration of Mediation

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Mediation starts at the first contact between the Mediator and the client, party, or attendee (whichever comes first). It continues through to when the Mediator notifies the parties in writing that the Mediation process is at an end [Section 18\(2\)](#). It continues indefinitely after the Mediation has ended to ensure that ongoing contractual provisions including confidentiality stay in force.

The commencement of the Mediation Process may give rise to the Statute of Limitations or other Statutory time limits being suspended in certain circumstances. The onus is on the Parties to seek appropriate advice in relation to this and to make themselves aware of the consequences. It is not the role of the Mediator to advise in relation to Statute of Limitation issues. [Section 18\(1\)](#)

## Complaints, Disciplinary Process, Legal Action

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MII accredited Mediators working in a private capacity are subject to the MII Complaints & Disciplinary Code. Should a person wish to lodge a complaint about a Mediator they may do so by completing the Complaints Form which is available [here](#).

If a Mediator is required 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. [Section 10\(2\)\(e\)](#)

If the Mediator is required by law to give evidence in relation to a mediation, they should answer the questions asked and not volunteer information about the mediation that is not relevant to the questions.

## Original

Complaints – The Mediator agrees to be subject to current MII Complaints Procedure, Disciplinary Procedure, and Appeals Procedure, except where prohibited by law, and agrees to make 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 Act followed by reliance on the MII Code of Ethics and Practice.

## Mediator's Practice Requirements

### Qualification and accreditation

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Only Mediators who hold a current MII practising certificate are approved by the MII to mediate. To obtain a first practising certificate a mediator must have carried out a minimum period of basic training and have passed a certified assessment of competence and skills.

To obtain a practising certificate for any subsequent year the mediator must have appropriate professional indemnity insurance or the equivalent; have agreed to be bound by the current MII Code of Ethics and Practice; have completed the appropriate Continuing Professional Development requirements and have completed appropriate training on this Code of Ethics and Practice as determined by the MII from time to time.

### Competence

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

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

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: -

- Pause the Mediation
- Seek advice
- Introduce a co-Mediator or alternative Mediator(s) or another person, advisor, or expert
- Withdraw from the Mediation.

The Mediator shall have regard to the needs of the parties. A Mediator's competence will depend on whether the Mediator met the standards applicable at the time the Mediation took place.

Mediators with practising certificates must only practice within their level of competence or ability. 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. Their competence in any Mediation, in which an issue or complaint arose, will depend on whether the Mediator met the standards applicable at the time the Mediation took place.

## Original

The MII may, from time to time specify additional requirements that MII Mediators must meet to be deemed “competent” to practice in particular areas of Mediation.

The MII will notify members of any such additional requirements or variations and may produce practice notes with which Mediators are bound to comply.

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. 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 legislation, policies, and guidelines.

## Reflective Practice; Supervision; Case Consultancy; Mentoring; Sharing and Learning; Training.

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Reflective practice is a mandatory requirement for MII Mediators. Reflective practices are methods and techniques that help individuals and groups reflect on their experiences and actions in order to engage in a process of continuous learning. Mediators are advised 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 this reflective practice and training the Mediator may disclose anonymised information arising in any Mediation that they have been involved with if 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.

Any trainer and trainee using real cases by way of example for teaching purposes should ensure the identity of the client and/or the parties is protected. Any person learning the identity of a client or party has a duty to maintain the confidentiality of such information.

Continuing Professional Development is an essential and mandatory requirement for all Certified and Advanced Mediators. The Mediator shall, at a minimum, comply with the MII’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.

## Record-Keeping

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The Mediator must open a file in each case at the start of the Mediation Process and they must ensure that all Mediation notes and records are stored on the file which should be kept securely and confidentially. A Mediator may belong to another institute or organisation and may have other requirements in relation to record keeping. Mediation records must be destroyed and disposed of securely at the appropriate time.

## Original

The MII advises that, subject to the current provisions of data protection legislation and GDPR, all the Mediator's notes and any papers in the Mediation should be retained after the Mediation process is finished for a period of at least 7 years. The Mediator may substitute photographs for any original flip charts used in the Mediation. A clause in relation to the retention of documents should be included in the Agreement to Mediate.

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

## Insurance

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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.

## Engagement with the Courts

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In some cases, parties decide to come to Mediation because they have been invited by the courts to do so. While they are engaging with Mediation, their court proceedings are set aside. If the Mediation doesn't happen, or if it doesn't lead to a Mediation Settlement, the parties may go back to court to re-start the proceedings. In such cases, the Mediator must submit a written report to the court setting out:

- If Mediation didn't go ahead, the reason why.
- If Mediation went ahead, a statement on whether a Mediation Settlement has been reached
- If a Mediation Settlement was reached, a statement of the terms of the settlement.

The Mediator must give a copy of this report to the parties at least 7 days before submitting it to the court.

Some court proceedings are limited by the Statute of Limitations, which means parties can run out of time to take a case. However, if parties go to Mediation, the following period is not counted for the Statute of Limitations rule:

- From the date on which the parties signed the Agreement to Mediate until 30 days after
  - o the date the Mediation Settlement is signed or
  - o the date of the Termination Statement (whichever is earlier).

Therefore, it is essential for the Mediator to have clear written, dated, and signed Agreements to Mediate, Mediation Settlements, and termination statements, as a matter of standard practice.

## General Commitments expected of Mediators

### Original

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

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

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

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

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

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.

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 any of them.

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.

## Fees

### Original

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The Agreement to Mediate must include information about how the fees and costs of Mediation will be paid. [Section 7 \(b\)](#).

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Fees are not always payable. If they are, the Mediator must clearly explain to those paying the fees how the fees, outlays, VAT, and charges are calculated. This should be done before the Mediation Session. Any options for paying the fees should also be discussed.

The courts might make an order about Mediation costs, or parties might have another arrangement about how to meet the costs. If not, the parties will pay the Mediator whatever fees and costs they sign up to in the Agreement to Mediate, or else split the fees and costs equally between them. [Section 20](#).

The fees and costs of a Mediation must be reasonable and proportionate to the importance and complexity of the issues at stake, and to the amount of work carried out by the Mediator. [Section 20](#).

Subject to the preceding paragraphs, 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 charge overtime if the Mediation goes past a certain time or number of hours. Some Mediators will not charge any fee. Some Mediators will look for payment on account in advance. Some may charge a minimum fee.

The fees and costs of the Mediation are for the service, not for the results. Fees and costs shall not be contingent on the outcome of the Mediation process. [Section 6 \(10\)](#)

At whatever stage the parties leave or end the Mediation, they or the client must pay all fees and costs due to the Mediator to that point. If money has been paid in advance to the Mediator, the Mediator must repay any excess amount to whoever paid it, when the Mediation process comes to an end.

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.



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