



Scheme of Mediation

Scheme of Mediation

The Institutes' bye laws on discipline recognise that there are certain areas of dispute that arise and result in a complaint being made to the Institute, as at least one party to the dispute is a CPA member. In certain cases, such disputes may be resolved more satisfactorily for all parties by mediation, rather than through the complaints process. Therefore, the bye laws provide for, in the absolute discretion of either the Secretary or the Investigation Committee, the referral of certain complaints to mediation. See bye law 6.17 attached – Appendix 1.

“Mediation is a process whereby an independent, neutral Mediator(s) assists the parties to come to agreement through collaborative engagement. The Mediator's role is non-judgmental and non-directive. The Mediator is neither judge nor arbitrator and does not adjudicate or give decisions on the rights or wrongs of the actions of the parties. The Mediator supports the parties in identifying their issues and needs, in exploring how those needs can be addressed and facilitates them to reach agreement” (Definition of Mediators Institute of Ireland)

Mediation provides a confidential and safe environment for the parties to air their issues and concerns with the other party at first hand and to hear the complaints, issues and concerns that are being made against them.

The content of mediation is confidential to the parties and the Mediator and can only be shared with a third party with the expressed permission of all parties.

The parties and the Mediator agree the terms of the mediation at the outset of the mediation.

Mediation is a voluntary process. Mediation cannot proceed if either of the parties objects to a mediation referral. Likewise each side may withdraw consent at any stage of the process and the mediation will be terminated immediately.

Why Chose Mediation?

Advantages for a Member:

- Less adversarial than the complaints process
- You get control of the process
- Speedy resolution – the formal complaints process takes an average of six months and often takes a lot longer
- No disciplinary record if mediation is successful
- No publication if agreement is reached
- Low risk
- Potentially lower cost

Advantages for a Complainant:

- Less adversarial than the complaints process
- Ability to come up with creative solutions to the problem
- Speedy resolution – the formal complaints process takes an average of six months and often takes a lot longer
- Preservation of options
- Swift settlement –the standard complaints process, while it may successfully discipline a member, does not guarantee any resolution of the dispute with the complainant
- You get a say in the process

Stages in Mediation Process

Stage 1 – Agree Process and Appoint a Mediator

1. The Secretary or Investigation Committee, if they deem a complaint suitable for mediation, will make contact with both parties and suggest that they engage in mediation as an option to resolve their conflict
2. If both parties agree to Mediation, the Institute will appoint a Mediator from a panel of Mediators
3. The Mediator will contact both parties and agree with both how to deal with the costs of the mediation
4. The Mediator will hold introductory meetings with the parties to identify the problems and develop a framework for the process

Stage 2 – Meetings

1. The Mediator will give each party an opportunity to present an outline of their perspective of the events leading to the dispute – normally in joint session
2. The Mediator will facilitate the examining of information, perceptions and understandings and in exploring what the main issues, obstacles and possibilities are.
3. The Mediator may decide to continue in joint session or may move into private meetings. Throughout the substantive discussion, the Mediator facilitates the Parties in exploring their needs and underlying interests.

Stage 3 – Negotiation of a Settlement

Efforts to reach a settlement continue until:

1. The Parties reach agreement to settle the dispute and such agreement is recorded in writing and signed by both Parties (the Mediated Agreement)
2. One of the Parties decides to withdraw from the mediation – in this case, the Mediator will inform the Secretary or the Investigation Committee of this fact and the complaint process resumes in accordance with bye law 6.
3. The Mediator decides to discontinue the mediation - in this case, the Mediator will inform the Secretary or the Investigation Committee of this fact and the complaint process resumes in accordance with bye law 6.

Stage 4 – The Written Settlement

1. If the parties agree to settle this dispute, the Parties, with the help of the Mediator will draft an agreement detailing the terms of the settlement.
2. When all Parties agree to its terms the Parties sign and execute the written agreement – which becomes legally binding. The Mediator will inform the Secretary/ Investigation Committee that agreement has been reached and the complaint file will be closed.
3. In the event that no written agreement is signed by the Parties to the dispute, the Mediator will inform the Secretary or the Investigation Committee of this fact and the complaint process resumes in accordance with bye law 6.

Confidentiality of Mediation Process

Any discussion that occurs between the Parties and/or the Mediator during the mediation process shall be on a confidential and without prejudice basis and cannot be relied upon before the Investigation Committee, the Special Investigator or at any Disciplinary hearing or Appeal hearing.

Appendix 1

Extracts from Bye Law 6 – Discipline

6.17. MEDIATION

6.17.1

The *Secretary* and/or *Investigation Committee* may in its absolute discretion decide that it is in the best interests of all the parties to deal with the *Complaint* through mediation. The *Secretary/ Investigation Committee* will only make such a determination where the *Complaint* does not raise matters of consumer protection. The *Investigation Committee* can make this determination at any stage once the *Complaint* has been laid before it.

6.17.2

The *Complaint* shall not be dealt with by way of mediation unless both the *Complainant* and *Respondent* agree to engage in the process. If either party refuse to engage in the process or object to the person appointed as mediator the *Complaint* shall be referred by the *Secretary* to the *Investigation Committee* or, if already referred, proceed as normal before the *Investigation Committee*.

6.17.3

The costs of the mediation process shall be borne by the parties to the *Complaint* and shall not be borne by the *Institute*.

6.17.4

The mediator shall be appointed by the *Secretary* from the Panel of Mediators.

6.17.5

The *Council* shall each year appoint not less 6 persons to the Panel of Mediators. Those persons may be but do not have to be *Members* of the *Institute* or *Lawyers*¹.

6.17.6

The Mediator appointed shall carry out the mediation in accordance with such scheme published by the Institute from time to time, and subject thereto, it shall be for the mediator in his absolute discretion to set out the mediation process to be adopted.

6.17.7

If the Mediator is of the opinion at any stage during the mediation process that either party is unwilling to engage in the mediation process he shall notify the *Secretary* of same and the *Complaint* shall be automatically referred to the *Investigation Committee* by the *Secretary* and the *Secretary* shall inform the parties of this *In Writing*.

6.17.8

Any discussion that occurs between the parties and/or the Mediator during the mediation process shall be on a confidential basis and cannot be relied upon before the *Investigation Committee*, the Special Investigator, or at any *Disciplinary* hearing or *Appeal* hearing.

6.17.9

If the mediation process resolves the *Complaint* the mediator shall notify the *Secretary In Writing* that the *Complaint* has been resolved. This notification shall include a document signed by the parties, witnessed and dated acknowledging that the *Complaint* has been resolved. No further action will be taken by the *Institute* in relation to this *Complaint*.

6.17.10

The *Secretary* shall notify the *Investigation Committee* as soon as reasonably possible when a *Complaint* is resolved by mediation.

¹ Article 49(o)