



Mediation Guidelines

February 2010

These guidelines have been prepared pursuant to section 62(1) of the Medical Practitioners Act, 2007 for the resolution of complaints by mediation. They are intended solely to give guidance to the parties to mediation pursuant to section 62.

1 What is mediation?

Mediation is a form of alternative dispute resolution whereby the parties attempt to resolve their dispute / complaint with the assistance of an independent third party called a mediator. Mediation is a confidential process.

2 Statutory provision for mediation.

Section 61(1)(c) of the MPA, 2007 provides that 'Where the Preliminary Proceedings Committee is, in respect of a complaint, of the opinion that – the complaint is one that could be resolved by mediation or other informal means pursuant to guidelines prepared under section 62(1), it shall inform the Council of that opinion.'

Section 61(2)(d) of the MPA, 2007 provides that 'The Council may, after considering an opinion referred to in *subsection (1)* in respect of a complaint – refer the complaint for resolution by mediation or other informal means.'

Section 62 (1) of the MPA, 2007 provides for the preparation of guidelines for the resolution of complaints by mediator.

3 Referral of complaints for mediation.

The Preliminary Proceedings Committee (PPC), having considered all relevant information in respect of a complaint, may form the opinion that the matter is one that can in their opinion be resolved by mediation and the PPC will inform the Council of that opinion.

The PPC will form such an opinion in circumstances where it believes that mediation may be of assistance to both the complainant and the registered medical practitioner as a means of restoring the doctor / patient relationship and where the PPC are of the opinion that the subject matter of the complaint does not warrant referring to the Fitness to Practise Committee pursuant to section 63 of the Medical Practitioners Act, 2007.

The PPC shall not form an opinion that the matter is one that could be resolved by mediation if it is of the opinion that there is a prima facie case to warrant further action being taken in relation to the complaint pursuant to Section 63 of the MPA, 2007.

4 Consent to mediate

Mediation shall only be arranged where the parties have given their written consent.

Section 62(3) of the MPA, 2007 provides 'No attempt may be made to resolve a complaint by mediation or other informal means without the consent of the complainant and the registered medical practitioner the subject of the complaint'.

In the event that either party does not consent to mediation, no further action will be taken by the Medical Council in respect of the complaint.

Pursuant to section 62(4) of the MPA, 2007, 'A consent given by a registered medical practitioner the subject of a complaint for the purpose of (section 62) shall not be taken as an admission of any allegation.'

5 Withdrawal from mediation process

In the event that a party to the mediation process withdraws their consent prior to the mediation taking place, the other party shall be notified and it shall be treated as though no consent has been given for the purposes of section 62(3) of the MPA, 2007.

6 Persons who may attempt to mediate / parties to the mediation process

The parties to the mediation process for the purposes of section 62(2)(b) of the MPA, 2007 shall be the complainant (person who made the complaint) and the registered medical practitioner the subject of the complaint.

It shall be a matter for both parties to decide and agree at the commencement of the mediation whether any other person such as a legal representative or advocate or any family members may attend the mediation and participate in the process.

7 Panel of mediators

A panel of qualified and accredited mediators will be made available to the parties once consent to mediate has been received by the Medical Council. It will be a matter for the parties to agree a mediator.

8 The mediation process

Once consent has been obtained from both parties, and a mediator selected from the panel, the Medical Council will arrange a suitable date, time and place for the mediation to take place. The Medical Council will not be involved in the mediation and no staff from the Medical Council will be present on the day.

A draft / template Mediation Agreement will be provided by the Medical Council to the parties to the mediation and the mediator in advance of the mediation. The parties may choose whether or not to use the draft / template agreement.

The Medical Council will pay the reasonable professional fees of the mediator for a one day mediation and will also provide the facilities for a one day mediation.

9 Reaching an agreement – financial compensation

It will be a matter for the parties to the mediation to agree on the terms of the agreement, if an agreement is to be reached.

Pursuant to section 62(6) of the MPA, 2007, 'The resolution of a complaint pursuant to guidelines prepared under *subsection (1)* shall not include the payment by any party of any financial compensation.'

10 Breakdown in mediation / failure to reach agreement

Should the mediation breakdown at any point during the process, or should the parties fail to reach an agreement, the mediation will conclude at that point.

No further action will be taken by the Medical Council in relation to the complaint.

11 Breach of agreement

Should a party breach the terms of any agreement reached there is no recourse to the disciplinary processes of the Medical Council and the matter cannot be referred back either to the PPC or to Inquiry.

12 Record of the Resolution and Agreement

The mediator may inform the Medical Council as to whether the parties to the mediation reached an agreement but no other details of the mediation will be furnished to the Medical Council as these are confidential.

13 Confidentiality and Privilege

Pursuant to section 62(5) of the MPA, 2007 –

‘No answer or statement made, in the course of attempting to resolve a complaint pursuant to the guidelines prepared under *subsection (1)* by the complainant or the registered medical practitioner the subject of the complaint may –

(a) Be communicated to any person other than the persons participating in the attempt to resolve the complaint;

or

(b) Be used in any disciplinary, civil or criminal proceedings.’