

# Code of conduct for the MfN registered mediator

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This code of conduct is a guideline for the conduct of the MfN registered mediator (the mediator). It also serves as information for those involved and as a benchmark for the disciplinary law judge when assessing the mediator's actions.

## 1 – Professional ethics and integrity

The mediator will behave as may be expected of a mediator acting properly.

### ***Explanation***

This code of conduct forms the basis for the mediator's actions and serves as a framework for all other codes of conduct that are based on it. Integrity is a core value for the mediator. He<sup>1</sup> can be expected to comply with and apply his<sup>2</sup> professional code and general social and ethical standards and values, even when there is external pressure to deviate from this. The mediator will act at least as a reasonably competent and reasonably acting mediator.

## 2 – Transparency

The mediator provides the parties with clarity about the mediation process.

### ***Explanation***

Transparent conduct means that the mediator provides the parties with clarity about the mediation process, including his own role in it. The mediator makes issues open to discussion with or between the parties and is clear about his working methods, his approach and what the parties expect from him<sup>3</sup>. Openness and clarity are essential for building trust and a good working relationship with the parties.

## 3 – Party autonomy, commitment and voluntariness

- 3.1 The mediator respects the autonomy of the parties.
- 3.2 The mediator assesses the voluntary participation and commitment of the parties.
- 3.3 The mediator does not make a decision on the matter.

### ***Explanation***

The mediator respects the autonomy of the parties and assesses their commitment and voluntary participation in the mediation. The parties make their own choices and are responsible for those choices. The mediator stands between the parties and supports them in making their choices and searching for a solution. While respecting his impartiality, the mediator may provide the parties with information where necessary so they can form a well-considered view and determine their position.

The mediator does not make a decision on the issue or any part thereof. He therefore does not make a decision on the content of the conflict between the parties. The mediator is also reluctant to give his opinion and/or advice on what a party should or should not do.

If the parties agree, the mediator may make verbal or written recommendations or proposals to the parties for a solution. He ensures that he maintains his impartial role in making these recommendations or proposals.

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<sup>1</sup> Whenever this document refers to 'he', this is also taken to include 'she', 'them' and 'those'.

<sup>2</sup> Whenever this document refers to 'his' as a possessive pronoun, this is also taken to include 'her' and 'their'.

<sup>3</sup> Whenever this document refers to 'him', this is also taken to include 'her', 'them' and 'those'.

If necessary, the mediator will inform the parties of the possibility of consulting external advisors or experts during the mediation.

## 4 – Independence

- 4.1 The mediator acts independently. He has no interest that could affect his independence.
- 4.2 If the mediator cannot supervise the matter independently, he will not accept the assignment or will withdraw.

### ***Explanation***

A mediator who has an interest in the mediation that impedes or could impede his independence will not accept his appointment. This interest could lie in a personal or business relationship that the mediator or one of his or her office partners has or has had with (one of) the parties, or in the outcome of the mediation. Although commission arrangements are not strictly speaking unlawful, they may, under certain circumstances, conflict with the mediator's independence. An arrangement in which the amount of the fee is determined by the outcome of the mediation is in any case contrary to the independence of the mediator.

The mediator should also be aware of the possible appearance of dependency and should act accordingly. He provides the parties with clarity about his position if his independence is or could be at stake. He will then ask the parties whether they wish to continue with him on this basis. The mediator ensures that he maintains his independence during the mediation. If necessary, he withdraws.

## 5 – Impartiality

- 5.1 The mediator is impartial and acts without bias.
- 5.2 If the mediator cannot supervise the issue in an impartial manner, he will not accept the assignment or will withdraw.

### ***Explanation***

One characteristic of the mediator is his impartial role. He holds a position of trust in relation to each of the parties. The mediator will not express in words or actions any preference for or disapproval of (any of) the parties or their views and will act without bias towards them. The parties' confidence that the mediator is impartial is essential for the quality of the mediation process.

The mediator only acts in matters where he can maintain his impartiality.

He will at all times ensure that his impartiality is not affected by any judgement on the positions or interests put forward by the parties or by bias. For example, bias may arise from personal characteristics, position, religion or background of the parties or of the person himself.

The mediator may be expected to continuously maintain his impartial position. If it is impossible for the mediator to conduct the mediation in an impartial manner, he will withdraw from it.

## 6 – Confidentiality

- 6.1 The mediator ensures that all parties involved in the mediation commit to respecting the agreements on the confidentiality of the mediation.
- 6.2 The mediator is bound by a duty of confidentiality as referred to in Article 7 of the MfN Mediation Regulations.
- 6.3 The duty of confidentiality continues after the end of the mediation.

### **Explanation**

The basic principle is that everything exchanged verbally or in writing during mediation is confidential. This information may not be used outside the mediation during or after the mediation, unless the parties make explicit different agreements with each other and the mediator, for example, if feedback is needed for the progress of the mediation or for the announcement of the mediation's outcome. Information that was or could have been public or known before the start of the mediation is not covered by the duty of confidentiality. The mediator has a duty to ensure that all parties involved in the mediation process comply with their duties of confidentiality and to intervene if he receives signals that this is not happening. After the mediation has ended, it is no longer the mediator's responsibility to ensure that the parties and other parties involved comply with their own duties (including their duties of confidentiality) under the mediation agreement.

The mediator is bound by a duty of confidentiality regarding everything he learns in his capacity as a mediator during his discussions with the parties and other parties involved in the mediation, both in plenary sessions and individually. His duty of confidentiality also applies to exploratory (preliminary) discussions with the parties before a mediation agreement is concluded with them. Any feedback from the mediator to referrers or clients that goes beyond a notification of the end of the mediation will only be done in consultation and with the consent of all parties.

There are some exceptions to the mediator's duty of confidentiality, which can be found in Article 7 of the MfN Mediation Regulations.

## **7 – Competency**

The mediator is professionally qualified and will only accept a mediation if he has the necessary knowledge, skills and competencies to ensure the mediation runs smoothly.

### **Explanation**

It may be necessary for the mediator to have specific qualities in addition to those required as an MfN registered mediator in order for the mediation to proceed smoothly. In that case, he will only accept the mediation if he also has those specific qualities or if he can contribute this specific expertise with the consent of the parties and with the help of expert third parties.

The mediator is expected to have knowledge of communication and conflict resolution, negotiation concepts and intervention techniques. This may also involve substantive expertise in the area in which the issue arises, particularly if the parties have engaged the mediator specifically for that purpose. The skills that may be expected from the mediator include, for example, intervention techniques aimed at restoring and/or improving communications between the parties, clarifying the issue, emotions and interests, and guiding the negotiations between the parties. The mediator also has skills such as drawing up and discussing a mediation agreement and recording agreements in a settlement agreement or other agreement document.

The essence of the professional conduct is that the mediator is honest and reliable, practices his profession to the best of his ability and is willing to undergo continuous training and further development as a mediator. The mediator is expected to be balanced, flexible, empathetic and assertive, and able to operate well in a context in which pressure and conflicting interests play an undeniable role.

## **8 – Procedure**

- 8.1 The mediator is responsible for the mediation process and monitors its progress.
- 8.2 The mediator uses an approach appropriate to the nature of the issue, the stage of the mediation process, and the parties' needs.
- 8.3 Prior to the mediation, the mediator concludes a written mediation agreement with all parties, which includes at least confidentiality and voluntariness.

- 8.4 The mediator will not involve third parties in the mediation unless with the consent of all parties.
- 8.5 After the mediator has sent the neutral final notice referred to in Article 8.2 of the MfN Mediation Regulations, the mediator's activities end.

#### ***Explanation***

The essence of the mediator's task is to supervise and monitor the mediation process. The mediator handles the mediation with due diligence and makes sufficient time available for this purpose. The mediator has the freedom to shape his procedure and approach as necessary to ensure that the process runs smoothly and professionally.

The mediator explains the mediation process, the content of the mediation agreement and the MfN Mediation Regulations.

The mediator verifies that the parties understand the conditions and consequences of signing the mediation agreement. The mediator promotes a balanced treatment of the issue and is committed to ensuring that each party is heard equally. The mediator also ensures that each party has sufficient opportunity to consult financial, legal, psychological or other advisors if necessary.

The mediator is responsible for contractually recording his and the parties' duty of confidentiality in the mediation agreement. The parties' duty of confidentiality is primarily intended to encourage them to speak freely during mediation discussions and thus build trust. The parties and the mediator discuss the scope of the duty of confidentiality. The parties will jointly determine whether consultation with certain persons outside the mediation table is necessary for the progress of the mediation.

After the mediation has ended, it is no longer the mediator's responsibility to ensure that the parties and other parties involved comply with their own duties (including their duties of confidentiality) under the mediation agreement.

## **9 – Fee and costs**

- 9.1 Before the mediation, the mediator will make an arrangement with the parties about his fee and any additional costs and will record this arrangement in the mediation agreement.
- 9.2 Unless the mediator has good reasons to believe that the parties are not eligible for mediation assistance, he is obliged to inform the parties of the possibility thereof. If the parties may be eligible for mediation assistance but nevertheless choose not to use it, the mediator will record this in writing.
- 9.3 The mediator will not request or receive any compensation from the parties for his work in a mediation in which he has been appointed, in any form whatsoever, other than the personal contribution imposed by the Legal Aid Board.
- 9.4 The mediator is allowed to agree on a fixed amount for the mediation.
- 9.5 The mediator will provide a clear and comprehensible invoice.

#### ***Explanation***

At the start of the mediation, the mediator makes a clear arrangement about his fee (or a fixed amount for the mediation) and any additional costs. The mediation agreement may also simply state that arrangements have been made about fees and costs, without naming them. This is the case if the arrangements about this have been recorded elsewhere. The mediator agrees with the parties who will bear the costs of the mediation. The mediator specifies his invoice in a clear manner. He maintains a statement of performance and will submit it upon request, giving the parties a clear overview of his charges for each activity. For confidentiality reasons, the mediator must anonymise his statement and separate the details thereof from the invoice itself. This way, the representatives of the parties can forward the invoice to their organisation's accounts department for payment without the risk of breaching their duty of confidentiality.

The parties may be eligible for mediation aid from the Legal Aid Board on different areas (see the link to the [Legal Aid Board Knowledge Guide](#) for the areas in which legal aid can be granted if the conditions are met).

At the start of the mediation, the mediator must investigate whether the parties (or one of them) are eligible for mediation aid. This obligation may be waived if the mediator has good reasons to assume that the parties (or one of them) are not eligible for legal aid. This may be the case, for example, if the nature of the dispute does not meet the substantive requirements of the Legal Aid Board or if the parties' capacity to pay is higher than the income requirements of the Legal Aid Board (see [www.rvr.org](#)). Mediators who are not registered with the Legal Aid Board generally refer parties who are eligible for mediation aid to a mediator who is registered with the Legal Aid Board.

If a party entitled to compensation under the Legal Aid Act waives this right, the mediator will record this in writing.

Under no circumstances may the mediator charge the party any costs other than the personal contribution on a legal aid basis. Charging costs to the party on a legal aid basis is contrary to the provisions of the Legal Aid Act (Article 33e, paragraph 3, and Article 38, paragraph 1) and to Article 2(b) of the 'Registration Conditions for Mediators' of the Legal Aid Board. This does not affect the fact that the mediator receives compensation from the Legal Aid Board for his activities on a legal aid basis.

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