

HONG KONG MEDIATION CENTRE

Rules in Handling Complaints and Disciplinary Matters

(Revised on March 7, 2017)

DEFINITIONS

1. In these Rules, except where the context otherwise requires:-
 - (a) “**Mediators’ Code**” means the standard practice prescribed for Mediator Members by the Council from time to time.
 - (b) “**Secretariat**” means the Administration Office headed by the Secretary General of the Centre, responsible for the carrying out of the administrative functions of the Council, including the receipt of complaints from members of the public lodged in accordance with these Rules.
 - (c) “**Complainant**” means any person or legal person of the public residing in the HKSAR or abroad who lodges a complaint in accordance with these Rules.
 - (d) “**Respondent**” means the member of Hong Kong Mediation Centre who is/ are subject to the complaint.
 - (e) “**Centre**” means the Hong Kong Mediation Centre.
 - (f) “**Committee**” means the Disciplinary Committee of the Hong Kong Mediation Centre set up by the Council the terms of reference of which is set out in paragraph 2 hereof.
 - (g) “**Council**” means the Council of the Hong Kong Mediation Centre.
 - (h) “**Member**” means any member of the Centre for the time being, and including any ex-member who, at the relevant time, was a member of the Centre

Unless the context otherwise requires, the words and expression contained in these Rules bear the same meanings as in the Articles of Association of the Hong Kong Mediation Centre. Words importing the singular shall include the plural and vice versa. Words importing the masculine shall include the feminine and vice versa.

DISCIPLINARY COMMITTEE

2. There shall be a Disciplinary Committee set up by the Council with power and authority to investigate and decide on any complaint(s) made against any Member or such matters as directed by the Council, concerning the professional conduct of any Member and/or breach of the Mediators' Code or any rules and regulations made by the Centre , and to make recommendation as to the course of action to be taken, including penalties and sanctions (if any), as appropriate in the complaint case(s), for the Council's consideration and approval.
3. The Disciplinary Committee shall compose of three to five persons (include the Chairman of the Committee) to be appointed by the Council with such powers and for such term as the Council shall see fit.
4. The Chairman of the Committee is responsible for recommending appropriate persons to be appointed as members of the Committee to the Council for approval.
5. The Chairman and members of the Committee must declare no conflict of interest for taking up such duties by signing the Declaration of Conflict-Of-Interest form to Secretariat for record and filing.

PROCEDURE FOR HANDLING COMPLAINTS

6. All complaints must be lodged to the Secretariat only. The Complainant, and anyone so authorized to lodge the complaint on behalf of the Complainant (in the case of representatives of a body corporate or a natural person) under the Rules herein, shall disclose his full name, address, telephone number and submit relevant documents as requested by the Secretariat when lodging the complaint, in default of which the complaint shall not be entertained by the Secretariat. The complaint shall not be entertained by the Secretariat if the Complainant or anyone so authorized did not express consent or sign any consent letter disclosing and using his personal information to the Centre or Member concerned for the purpose of handling complaints.
7. A complaint shall be made by lodging a Notice of Complaint in the form prescribed in Schedule 1, duly completed and signed by or on behalf of the Complainant. The Complainant may in writing authorize another person to lodge the complaint. The Secretariat shall maintain a register for all complaints received ("**the Register**").

8. When a Complainant lodges a complaint with the Secretariat, the Secretariat shall, as soon as practicable upon receipt thereof, but in no event later than 14 days from the date of lodged. The Secretariat will conduct an initial assessment on the nature of the case and make recommendation to the council to whether or not case should be referred to the Committee for the commencement of the formal investigation.
9. Where the council consider appropriate shall appoint the complaint to the Committee for commencing the proceedings. For other cases, the complaint will be handled by the Secretariat which will make its recommendation to the Council or President, whichever is appropriate.
10. To help investigate the complaint, the Secretariat, upon the request from the Committee, shall inform and send a copy of the complaint to the Member who is subject of the complaint ("**the Respondent**") requesting a reply within 14 days.
11. In any complaint where a Respondent informs the Council or the Secretariat that he does not wish to respond to the complaint or that the Respondent does not respond to the Committee or the Secretariat as required under Rule 10 above, the Committee may still continue handling the complaint in accordance with these Rules with due regard to the nature of the complaint and gravity of the circumstances accordingly.
12. The Committee shall have power to investigate into the complaint by writing to the Complainant and/or the Respondent asking for information or clarifications to be provided. In appropriate cases, the Committee shall also have power to summons a hearing requiring both the Complainant and the Respondent to attend to answer questions raised by the Committee. In such event, the Committee shall have full power to decide on the rules in conducting such hearing.
13. Formation of Task Force for a complaint case
 - (a) Upon receiving a complaint case, the Committee shall set up a task force ("**the Task Force**") comprising 2 Members, who have declared no conflict of interest for taking up such task, by signing the Declaration of Conflict-Of-Interest form, to investigate the Complaint and to report their findings for further discussion and consideration by the Committee.
 - (b) If there is more than one complaint case to investigate, the Committee may set up different Task Forces for each case.
 - (c) After studying the case documents provided by the Secretariat, the Task Force members can have their own discretion to decide either jointly or

separately in interviewing the Complainant and the Respondent. The Task Force will work independently and its members can consult the Committee when necessary through the Secretariat.

- (d) To ensure the independency of the Task Force's work, the Committee shall communicate and interact with Task Force through the Secretariat.

14. To ensure the independency and effectiveness of decision making, every complaint will go through a 3-level work flow as follows:

- (a) 1st Level of work:-

The Task Force is responsible for investigation and listing out their Findings in details with preliminary recommendations in the "Task Force Investigation Report" to the Committee.

Legal advice will be sought upon approval by the Council.

- (b) 2nd level of work:

The Committee is to review the Task Force Investigation Report and related materials, and to decide on matters concerning the professional conduct of the Respondent.

The decision of the Committee is arrived at by simple majority vote (include the chairman of the Committee). If the Respondent subject of the Complaint has been found guilty of professional misconduct and/or breach of the Mediators' Code or any rules and regulations made by the Centre, the Committee will make recommendation for certain penalties and/or sanctions as appropriate in the "Disciplinary Committee Report" to be submitted to the Council for consideration and approval.

- (c) 3rd level of work:

The Council will proceed to either approve the Disciplinary Committee Report, or approve any part thereof, or reject the report or remit to the Committee for re-consideration as the Council shall think fit.

The President of Centre is responsible to take charge of the Appeal process, if any. Thus, he will not participate in any of the decision making process conducted by the Council at the 3rd level of work.

For effective decision making process of Council meetings in disciplinary cases, the President of Centre shall appoint a Vice President of Centre as the Chairman of Council meeting for disciplinary cases at the

beginning of each financial year.

The Council decision is arrived at by simple majority vote (include the chairman of the Committee) and the chairman of the Council meeting has the casting right.

15. The chairman of the Committee is responsible to write up reply letters on behalf of the Centre to the Complainant and Respondent. The reply letters shall be first sent to Council for approval.

Once being approved, the Secretariat shall notify such decision to both the Complainant and the Respondent and shall keep a copy of such decision in the Register.

16. In normal circumstances, a Complaint case shall be completed within 6 months from the date of being registered under Rule 6 and 7 above.

However, depending on the circumstances of the complaint, the Task Force shall inform the Committee the extension or the abridgement of time frame within which the Complainant and the Respondent shall reply.

PENALTIES AND SANCTIONS

17. The Committee, having considered the complaint and any comments/reply from the Respondent and/or after a hearing has been held and the Task Force Investigation Report, is of the opinion that the result of the complaint has been resolved in the appropriate scale in according with the prevailing rules and practices of the Centre, may recommend to the Council summarily the following actions to be taken against the Respondent:
 - (i) no further action;
 - (ii) issue an advice to the Respondent;
 - (iii) attend training course approved by the Hong Kong Mediation Accreditation Association Limited (HKMAAL), refresher class or appropriate course(s) approved by Council;
 - (iv) issue a letter of warning to the Respondent;
 - (v) recommend to the Council for suspension of membership with or without conditions;
 - (vi) recommend to the Council for termination of membership;
 - (vii) any other recommendation(s) for approval by the Council.

The recommendation of the Committee shall be considered by the Council who can decide whether to approve; partly approve; reject or remit to the Committee for re-consideration as the Council shall think fit.

APPEAL

18. The Respondent have a right to appeal the decision to the President within 30 days from the date of the reply letter signed by the chairman of the Committee on behalf of the Centre.
19. The President shall have full power to decide on the rules in conducting the appeal process and structure. The President shall decide on the outcome of the appeal whose decision shall then be final.
20. If the President has conflict of interest, the Council should appoint an independent third party (e.g. consultant of the Centre) to conduct the appeal process and structure. Such third party shall decide on the outcome of the appeal whose decisions shall then be final.

MISCELLANEOUS

21. The officers and staff of the Secretariat, members of the Task Force, the Committee and the Council, shall during the performance of or assisting in the performance of the handling of the complaint, preserve and aid in preserving secrecy with regard to any matter coming into their knowledge in the performance of their duties in pursuance thereof.
22. If the Complainant, after lodging a complaint with the Secretariat, subsequently withdraws or suspends his complaint, or there is a settlement between the Complainant and the Respondent before any decision is made in the Centre, such withdrawal or settlement must be recorded in the Register. In this circumstance, the said proceedings will still continue going through the 3-level work flow as required under Rule 13 above.
23. Any correspondence required to be communicated under the Rules may be made by electronic means (e.g. fax or email), unless the relevant recipient expressed in writing that electronic means is not acceptable to him.

SCHEDULE 1

NOTICE OF COMPLAINT

TO: Secretariat of Hong Kong Mediation Centre

I,of.....
(full name) (address)

do hereby make complaint to Hong Kong Mediation Centre

against,
(full-name of the mediator)

the details of which are as follows:-

(- Here state concisely the grounds and particulars of complaint –)

Dated this day of 20....

(A/ In the case the Complainant is a natural person, please insert the below term in Schedule 1:

“In lodging this notice, I consent that the personal information herein may be disclosed and used by the HKMC and/or designated persons of the HKMC for the purpose of handling complaints. ”

)

(Signature of Complainant

**must be signed by the complainant himself/herself)

Full name:

HKID No.:

Corresponding address:

Contact Phone number/ Mobile:

or

(B/ In the case the Complainant is lodging the complaint for and on behalf of other entity, please insert the below term in Schedule 1:

"In lodging this notice, I consent that my personal information herein may be disclosed and used by the HKMC and/or designated persons of the HKMC for the purpose of handling complaints."

For and on behalf of

(Company Chop + Signature of representative)

Company name:
Title of authorized person:
Company address:
Contact Phone number: