

# Scottish Mediation Network

## Best Practice in Complaint Handling

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# Benchmark Standards for Mediators

1. Adequate training from a trainer or team of trainers with appropriate experience
2. A requirement for some form of initial mentoring or co-mediating to gain experience
3. Post-training Continuing Practice Development (CPD) and practice support
4. Adherence to an appropriate code of conduct
5. An appropriate system for addressing concerns and complaints
6. Appropriate indemnity insurance

# Benchmark Standard 5.

## A system for addressing concerns

“A mediator must have in place a written procedure for addressing concerns and handling complaints and keep written records of any complaints”.

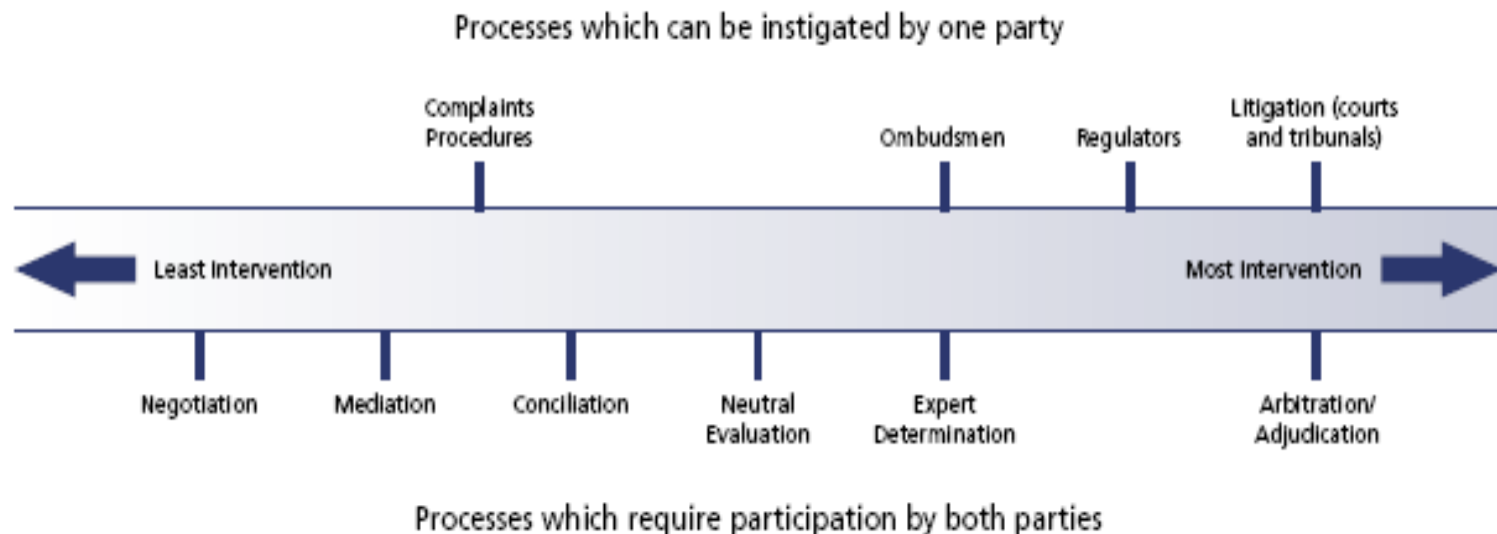
# Overview

- What is a Complaint
- Why People Complain
- Complaints About Mediation
- Complaints Process - the Basics
- Complaints Process - Characteristics
- Putting Things Right
- Being Complained About
- Apology
- Summary

# Dispute Resolution Spectrum

from 'The Civil Justice System in Scotland - A Case for Review?'  
Scottish Consumer Council (2005)

## The Spectrum of Dispute Resolution Processes



*“` I personally think we developed language because of our deep need to complain”*

*Lily Tomlin*

# What is a Complaint?

“An expression of dissatisfaction”.

“An expression of dissatisfaction that needs a response”.

Good practice to capture all types of feedback.

# SPSO Complaint Findings

## (Reasons for Complaints)

- Poor communication
- Delay
- Lack of/failure to follow policy/procedure
- Disagree with an outcome
- Bias/Discrimination
- Disrespected
- Not told about rights
- Inadequate remedy



# Discussion

**What Would Someone Complain About in relation to a Mediation or a Mediator?**

# Ten Ways to Get Sued

Michael Moffit, Harvard Negotiation Law Review (2003)

- Failure to disclose a conflict of interest
- Breach of contract
- Engaging in the unauthorised practice of law
- Legal malpractice
- Breaching confidentiality externally or internally
- Maintain confidentiality inappropriately
- False advertising
- Inflicting emotional distress on a party
- Fraud
- Professional negligence

# Mediation Complaints

Need to define/understand a complaint in order to know how to handle it:

- Mismanagement
- Misconduct
- Disagreements

# What is Good Complaint Management?

An organised and effective way of receiving, responding to, remedying, recording and using complaints to improve administrative actions and service provision.

Need good complaint management to:

- Effectively deal with and resolve an individual complaint; and
- Use the learning from the complaint to make improvements.

# What do Complainants want from a Complaints Process?

- To know who is dealing with the complaint
- To be listened to and believed
- To be treated fairly and efficiently
- To be kept informed of progress

And

- To believe that professionals are committed to the people they are serving and will take responsibility and ownership for the services they deliver

(Policy Commission on Public Services 2004)

# Complaints Process - The Basics

- Every organisation must have a process for handling complaints.
- The process should be owned by the governing body of the organisation.
- The complaint management function should carry the authority of the Chief Executive, or equivalent.
- Complaints should be welcomed with a positive attitude and valued as feedback.

# Complaints Process - The Basics

## (continued)

- The process should be driven by the search for improvement and not the apportionment of blame.
- There should be clearly defined responsibilities for dealing with complaints.
- The process should be readily available to all customers and staff of the organisation.
- The process should be subject to regular review.

# Valuing Complaints

## Complaints Process Characteristics

- **Accessible**
  - Clear, Free and Available to all
- **Transparent**
  - Impartial, Independent and Auditable
- **Simple**
  - Few Steps as Possible and Minimal Hand-offs
- **Evidence-Based**
  - Driven by Facts, not Assumptions
- **Respectful**
  - Values the Complaint, Respects the Complainant



# Complaints Process Characteristics (cont.)

- **Authoritative**
  - Credible, Consistent and Definitive
- **Standards-Based**
  - Standards Explicit - on Quality, Time and Communication
- **Proportionate**
  - Flexible in Method and Appropriate to the Circumstances
- **Demonstrable**
  - Open to Feedback and Used to Drive Improvement
- **Confidential**

# Staged Complaints Process

- Informal Resolution
- Impartial Investigation  
(all investigations should aim to understand the root causes leading to the complaint)
- Internal appeal (within larger organisations)
- External Review

# Discussion

**What Could You Do To Prevent a  
Complaint About Your Mediation  
Service?**

*“It is impossible to suffer without making someone pay for it; every complaint already contains revenge”*

*Friedrich Nietzsche*

# Putting Things Right

## What do Complainants Want?

- To make something happen
- Receive an apology
- Make sure that the same thing does not happen to others
- Recover costs/compensation
- Obtain justice - often a matter of principle
- Retribution

# Remedy wanted and Received

- Explanation why problem occurred 73%/18%
- Product repaired/service fixed 72%/27%
- Thank you for my business 71%/25%
- Assurance problem wouldn't recur 70%/16%
- Apology 59%/25%
- Chance to vent 59%/47%
- Money back 45%/18%
- Free product/service in future 35%/18%
- Compensation for time, inconvenience etc 23%/4%

Customer Care Measurement & Consulting (2005)

# Complaint Consequences

Looking after the person complained about.

## ‘Upheld’ Complaint Consequences

- Personal Liability
- Criminal Sanctions
- Disciplinary action - employer/body/panel
- Disciplinary action - professional body

# Apology

“An encounter between two parties at which one party, the offender, acknowledges responsibility for an offence or grievance and expresses regret or remorse to a second party, the aggrieved”.

Aaron Lazare. *On Apology*. New York: Oxford University Press, Inc. 2004



# Elements of a Meaningful Apology

- Acknowledging the wrong done
- Accepting responsibility for the offence
- Explaining why it happened
- Expressing sincere regret
- Assurance that harm will not be repeated (lessons learned)
- Redress (making amends)

# Delivering an Apology

- The timing of an apology can be crucial - an apology delayed may be an opportunity lost.
- A meaningful apology should be owned, active and unconditional (i.e. 'It was my fault' rather than 'If mistakes have been made').
- The language used should be clear, plain and direct
- The apology should not question whether the aggrieved had been harmed (i.e. 'I am sorry if you were offended').
- The apology should not minimise the offence (i.e. 'no-one else has complained').

# Delivering an Apology (cont.)

- It is essential to apologise to the right person and for the right offence.
- Every complaint is unique - so every apology needs to be tailored individually.
- It is essential to understand how and why the complainant considers they were wronged and what would put things right.
- It may help to ask the complainant what they want and involve them in the form and content of the apology.

# Summary

- Complaint definition
  - Who person should contact (who deals with what)
  - What will happen next (staged process)
  - Time-scales
  - Be clear what can/will offer to remedy a complaint
- 
- Have a written procedure
  - Train all who need to know
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- Use complaints to improve what you do