



Complaints Policy

07th September 2018

Table of Contents

EMIN COMPLAINTS POLICY	2
1. SCOPE OF THE EMIN COMPLAINTS POLICY	3
2. PRINCIPLES UNDERLYING THE EMIN COMPLAINTS POLICY	3
2.1 Independent and objective:	3
2.2 Fair:	3
2.3 Transparent:	3
2.4 Timely:	4
2.5 Confidential:	4
3. DEFINITIONS	4
3.1 The Complaint:	4
3.2 Adjudication Process:	4
3.3 The Chairperson:	4
3.4 Adjudicator:	4
3.5 Parties:	5
3.6 Member(s):	5
3.7 The Participants:	5
3.8 Supporter:	5
3.9 Facilitator:	5
4. ROLES AND RESPONSIBILITIES	5
4.1 The Chairperson	5
4.2 Adjudication Panel	6
4.3 Complainant	6
4.4 The Member(s)	6
4.5 Participant	6
4.6 The Facilitator:	6
5. THE ADJUDICATION PROCESS	7
5.1 Initiating the EMIN Complaints Procedure	7
5.2 Initial contact	7
5.3 Submission of complaint and initiation of the Complaints Process	7
5.4 Stage 1: Informal Process:	8
5.5 Stage 2: Formal Process	8
6. INDICATIVE TIMELINES	10
7. DECISIONS AND OUTCOMES	10

1. Scope of the EMIN Complaints Policy

The scope of the EMIN Complaints Policy covers complaints against EMIN Member(s) in the performance and/or delivery of their role(s) as Elder Mediator perceived to be in contravention of the terms of the EMIN Code of Ethics and/or other EMIN rules or protocols. EMIN is entitled to reject a complaint where it finds that there is no basis for the complaint or that the complaint is outside of the scope of the EMIN Complaints Policy.

Additionally, in the event that the EMIN Board becomes aware of an issue(s) that might reasonably be considered to compromise a Member's good standing with EMIN, the Board may instigate an Adjudication Process to ascertain the extent and implications of the issue(s). Subject to the findings of the Adjudication Process, the Board may determine a course of action including possible sanction of the Member, up to and including revoking of their EMIN certification and/or membership.

2. Principles Underlying the EMIN Complaints Policy

The EMIN Complaints Policy is governed by the following principles:

2.1 Independent and objective:

- 2.1.1 The EMIN Adjudication Process will be conducted without bias and in an independent and objective manner.
- 2.1.2 The Chairperson and Panel members are prohibited from adjudicating in any case in which they have a material interest or a known conflict of interest. In the event of an adjudicator becoming aware of a conflict of interest or a perceived conflict of interest after a case has commenced, they will notify the Panel and parties to the case and, if appropriate, withdraw from the case.
- 2.1.3 The Chairperson / Adjudication Panel shall inquire and determine whether any person consulted in the course of their adjudication of the case has a personal, professional, or pecuniary conflict of interest with either the complainant or the Member and be cognizant of this when assessing the information.

2.2 Fair:

- 2.2.1 The Adjudication will be conducted in a manner to be decided by the Adjudication Panel based on the particulars of the case. The process steps may vary depending on the particulars of the case and will be designed to ensure that each participant is afforded due process and natural justice.
- 2.2.2 The Member(s) against whom the complaint has been made will be informed of the substance and the detail of the complaint/allegations against them, and/or grounds for adverse comment, and given an opportunity to respond to the complaint/allegations/adverse comment. Each party will have sight of all information relevant to their case and given an opportunity to respond to the information before any determinations or findings are made.
- 2.2.3 No person may act as a Chairperson or Adjudication Panel member if that person has a personal, professional, or pecuniary conflict of interest with either the complainant or the member.

2.3 Transparent:

- 2.3.1 The parameters and steps of the Adjudication Process will be clearly explained to each of the Parties at the outset of the process and the parties will be kept informed of the status of process as it progresses.

2.3.2 At the end of the Adjudication Process, the adjudicators will produce a written report outlining their findings and the reasons for their final decision. Each of the principal parties will be informed in writing of the relevant findings and the reasons on which the findings are based.

2.4 Timely:

2.4.1 The Adjudication Process will be conducted in a reasonable time frame, taking account of the need for thoroughness and natural justice.

2.5 Confidential:

2.5.1 The Adjudication Process is strictly confidential and the Panel members and Parties are bound to respect the confidential nature of the process.

2.5.2 Each Party may nominate a support person (Supporter) to support them through the process. The support persons are also bound to confidentiality during the process.

2.5.3 Information arising through the process is not privileged and may be acted upon after the process has terminated.

2.5.4 To enable full consideration of the complaint, the Complainant(s) and the Member(s) may disclose information from the mediation that gave rise to the complaint where they believe that information to be pertinent to the case. Care must however be given to protect the confidentiality of information which is personal to other parties to the dispute and/or participants in the mediation that gave rise to the complaint.

3. Definitions

Adjudicator:

An individual(s) appointed by the Chairperson to the Adjudication Panel.

Adjudication Process:

A process of search and analysis in which a Panel of Adjudicators (the Panel) gather relevant information, including the evidence and arguments set out by the Parties to a Complaint, with a view to establishing the facts surrounding an allegation(s) and, in line with recognized, best-practice procedures, to ascertain on a balance of probability whether the allegation(s) is/are founded.

Chairperson:

The Chairperson of the Adjudication Panel appointed by the EMIN Secretary / EMIN Board to adjudicate the complaint.

Complaint:

A formal, written complaint submitted by a complainant(s) who has/have participated in an Elder Mediation process conducted by a Member(s) of EMIN who believe(s) that they have cause for a complaint against the Elder Mediator(s) based on a perceived breach of the EMIN Code of Ethics or other EMIN protocol by the Elder Mediator(s) in the performance of their role in the Elder Mediation.

A complaint may be made by a single complainant or more than one complainant who has participated in the Elder Mediation which gave rise to the complaint.

Complaints/Appeals Administrator:

A person appointed by EMIN to facilitate the operation of the relevant process and to provide process support, as appropriate, to the different officers appointed to specific process roles.

Facilitator/Mediator:

A person appointed to facilitate the informal adjudication process, hereafter referred to as the Facilitator.

Member(s):

The Member(s) against whom a complaint has been made in relation to their conduct as a mediator / co-mediators in an Elder Mediation case. The Member(s) may consist of one mediator or two co-mediators who is/are a Member(s) of EMIN.

Participants:

All of the Parties to the complaint and any Witnesses, advisor or third parties called by the Chairperson to take part in the adjudication process.

Parties:

The Complainant(s) and the EMIN Member(s) against whom the complaint is being made.

Supporter:

Any person(s) engaging in the Adjudication Process in a support role but who are not directly involved in the complaint and who may not make a statement to the investigation nor cross-examine any party or witness in the process.

4. Roles and Responsibilities

4.1 The Chairperson

The Chairperson, appointed by the EMIN Complaints/Appeals Administrator or Executive Board, is responsible for managing the Adjudication Process and ensuring that it adheres to the principles as set out in Section 2 above.

The Chairperson must ensure that each participant in the Adjudication Process is furnished with appropriate information in relation to the process and afforded an opportunity to discuss any concerns or issues that they may have in relation to engaging in the process. They must also ensure that consent is received from participants, in writing, prior to their formal adjudication interview.

The Chairperson will maintain an Adjudication File containing transcripts of all interviews and a copy of any documentation and/or information gathered as part of the process. It is the responsibility of the Chairperson to ensure that all information is securely stored and held in accordance with relevant jurisdictional requirements, including data protection.

If appropriate, the Chair, may at any stage of the process suggest an alternate dispute resolution process in an attempt to resolve the situation in a manner that is mutually agreeable to all parties.

4.2 Adjudication Panel

The Panel of Adjudicators is comprised of three members, the Chairperson and two additional Panel members appointed by the Chairperson including an EMIN certified Elder Mediator and a non-mediator who is independent of EMIN.

The role of the Adjudication Panel is to investigate the particulars of the complaint in accordance with the principles of the EMIN Complaints Policy (see Section 2 above) and to engage with the Participants in the delivery of this role.

The Panel will review the complaint and specific allegation(s) in accordance with the EMIN Adjudication Process as set out below, with a view to ascertaining the credibility or otherwise of the alleged behaviors, and where allegations are upheld, the extent of the alleged behaviors.

The Panel will collect and forward anonymized information to the Board as set out periodically by the Board for training and learning purposes and/or for informing policy and procedures.

4.3 Complainant

The Complainant(s) is/are required to engage in a reasonable manner with the EMIN officers and to cooperate with the Chairperson and Adjudication Panel in line with the Formal Process Steps as set out in Section 5.5 below.

4.4 The Member(s)

The Member(s) is/are required to engage in a reasonable manner with EMIN officers and to cooperate with the Chairperson and Panel in line with the Formal Process Steps as set out in Section 5.5 below.

A Member may be suspended if they:

- 4.4.1 Fail to respond to a complaint forwarded to him/her by an officer on behalf of EMIN within the allocated time frame;
- 4.4.2 Fail to co-operate with the EMIN Secretary/Adjudication Panel Member or appointed EMIN officer or in any way impede the Adjudication or Complaints process; or
- 4.4.3 Fail to abide by a decision of EMIN that results in a sanction other than suspension or revocation of membership.

4.5 Participant

The Adjudication Process is confidential and all participants are bound to treat all substantive information arising in relation to the process in the strictest of confidence and to adhere to the process as set out in this policy.

4.6 The Facilitator:

The Facilitator is responsible for managing the informal adjudication process as set out in Section 5.4 below.

5. The Adjudication Process

5.1 Initiating the EMIN Complaints Process

To initiate the EMIN Complaints Process, all of the following must apply:

- 5.1.1 The Mediator against whom the complaint is being made must be a current member of EMIN.
- 5.1.2 The complaint must be about the conduct, capacity and/or performance of a named EMIN member(s).
- 5.1.3 The complaint should reference any EMIN bylaw, policy, or Code of Ethics provision that has been allegedly breached, as provided for in the EMIN Complaints Form downloadable from the website.

A person who has not identified the relevant provision, will be directed to the EMIN website where these documents are available. Where required, assistance will be provided to enable the complainant to identify the relevant provision.

- 5.1.5 The person submitting the complaint (the Complainant) must provide his or her name and contact information, and must also complete the EMIN Complaints Form.
- 5.1.6 The Complainant must provide a summary of the specific allegations underlying the complaint (including the date, venue, time, who was present etc. and the particulars of the alleged behavior and/or omissions of the mediator(s)), together with any supporting documents.

5.2 Initial contact

Before proceeding with a formal complaint, the complainant may, in the first instance, contact the Chairperson of the Ethics Committee to discuss their issues and/or concern(s) with a view to exploring their options and deciding how they wish to proceed. [contact details to be included]

5.3 Submission of complaint and initiation of the Complaints Process

- 5.3.1 The EMIN Complaints Form is submitted to the Secretary of EMIN.
- 5.3.2 Within three weeks, the Secretary shall:
 - a) Determine that the subject of the complaint is NOT an EMIN member, and:
 - summarily dismiss the complaint for lack of jurisdiction if the person is not an EMIN member;
 - inform the President of EMIN of this dismissal; and
 - complete, sign and forward the Jurisdiction Dismissal Letter to the Complainant

Or

- b) Determine that the subject of the complaint is/are an EMIN member(s), and appoint a Chairperson to adjudicate on the matter(s).
- 5.3.3 The appointed Chairperson will nominate two additional panel members – one a lay person (not a member of EMIN) and the other an EMIN Certified Member – who will assist the Chairperson in adjudicating the case.

5.4 Stage 1: Informal Process:

- 5.4.1 Within five working days of the Panel being constituted, the Chairperson shall:
- a) Forward a copy of the written complaint to the Member(s) with a copy of the EMIN Complaints Policy inviting the Member(s) to respond in writing. The Member(s) will be allowed five working days to consider the complaint and up to a further seven working days to respond in writing¹.
 - b) Where deemed appropriate, the Chairperson may contact the Complainant and the Member(s) by email to ascertain their willingness to seek an informal resolution of the complaint through a telephone or online conference² involving the Complainant, the Member(s) and a neutral facilitator (the Facilitator).
 - c) Where both Parties are willing to try to resolve the situation informally, the Chairperson will suspend the Adjudication Process and request the EMIN Secretary to appoint a Facilitator to the case.
- 5.4.2 The Facilitator will issue terms of engagement to each of the Parties and seek agreement by email or in writing to the terms of engagement for the telephone / online conference. The terms of engagement will set out the voluntary nature and parameters of the conference, and suggested time limits.
- 5.4.3 The Facilitator will manage the conference.
- 5.4.4 On agreement by the Parties to the terms of engagement, the Facilitator will convene a telephone conference, to occur within 14 days;
- 5.4.5 During the informal conference, the Facilitator will assist the Parties to constructively discuss and, if possible, resolve the issue that gave rise to the complaint.
- 5.4.6 If the parties reach a mutually acceptable agreement at the conclusion of the telephone conference, the nature and terms of the agreement will be written up by the Facilitator and issued to each of the Parties confirming the agreement and that the case file will be closed
- 5.4.7 In this event, no further steps will be taken by EMIN other than that the Facilitator will notify the Chairperson of the Adjudication Panel who in turn will notify the President that the issues have been informally resolved and the adjudication terminated.
- 5.4.8 If the issues that gave rise to the complaint cannot be mutually resolved in the informal process, or if one or both Parties choose to withdraw from the informal process, the Facilitator will formally close the informal process and notify the Chairperson, who will proceed with the formal adjudication process.

5.5 Stage 2: Formal Process

- 5.5.1 All parties in the adjudication process have a right to be heard and each Party will be provided with a copy of all information relevant to their case and allowed an opportunity to respond in writing to the information, before any determinations or findings are made. In the event that a party decides that they do not wish to be heard, this will not alter the right of the other party(s) to be heard.
- 5.5.2 Engagement in the Adjudication Process may be by phone, in writing and/or by online interview. The Chair, in consultation with the Panel members and

¹ Where there are extenuating circumstances, the time allocation may be extended by agreement with the Chairperson.

² The costs of the telephone conference will be borne by EMIN

participants, will conduct the meetings/interviews by Skype/Zoom or other online facility, or by conference call.

5.5.3 The Chairperson is responsible for process of adjudication and will decide on the most appropriate approach. Adjudication Process steps generally includes the following:

- a) The Chairperson forwards a copy of the Member's formal response to the Complainant within five working days of the commencement of the Formal Adjudication Process, inviting the Complainant(s) to respond in writing, if they so wish, in advance of their preliminary conference meeting with the Chairperson and/or Panel. The preliminary conference meeting will be by phone or online mechanism, as appropriate, and the purpose of this meeting is to allow the Chair/Panel to gather further information and/or clarifications from the Complainant(s) in relation to their complaint.
- b) Following the conference meeting, the Chairperson forwards a copy of the notes from the meeting with the Complainant(s) to the Complainant(s) for sign off and/or comment.
- c) The Chairperson forwards a copy of the signed-off notes from the Complainant's conference meeting and any associated documentation to the Member(s), and invites the Member(s) to respond in writing to the documentation, if they so wish, in advance of their preliminary conference meeting. The Member(s) preliminary conference meeting will be by phone or online mechanism, as appropriate, and the purpose of this is to allow the Chair/Panel to gather further information and/or clarification from the Member(s) in relation to their response to the complaint/allegations.
- d) Following the Member's conference meeting, the Chairperson forwards a copy of the notes from the meeting with the Member(s) to the Member(s) for sign off and/or comment.
- e) The Chairperson forwards a copy of the signed-off notes from the Member's conference meeting and any associated documentation to the Complainant(s) and invite the Complainant(s) to respond in writing to the documentation, if they so wish.
- f) Where there is disagreement in relation to what was said at a conference meeting, the disagreement will be noted on the record.
- g) Following receipt of these initial comments, submissions and meetings, the Panel drafts a summary of the case being made by the Complainant(s) against the Member(s) and a summary of the response of the Member(s) to the allegation(S) and circulates a copy of the summary draft to the complaint to both the Complainant(s) and to the Member(s), inviting each to respond within seven working days with any final comment.
- h) Upon receipt, and circulation if appropriate, of any final comments, the Adjudication Panel will assess the complaint³
- i) During the assessment stage of the Process, the Panel examines and considers all of the relevant information.

³ The assessment may include collecting further information from individuals with knowledge of the subject matter of the complaint, interviewing the Member and/or the Complainant, and any further steps that the Panel consider appropriate and reasonable to fully assess the complaint

- j) The Panel drafts their report, including an outline of the Complainant's case, a summary of the Member's response to the allegation(s) and detailed findings in relation to each allegation, stating the reasons for each finding.
- k) The Panel makes findings of fact, as far as is possible and on a balance of probability in relation to each of the allegations. However, the Panel will make no recommendations in relation to actions to be taken by EMIN based on their findings.
- l) Where appropriate, the Panel may make recommendations in light of information gleaned through the process in relation to training and/or EMIN policies.
- m) The Chairperson will issue a copy of the report to the EMIN Board for consideration within an expected timeframe of four weeks from the commencement of the Assessment Stage.

6. Decisions and Outcomes

- 6.1 The Adjudication Panel will establish the facts in relation to a complaint or allegation(s) against a Member(s), as far as they can be established on a balance of probability.
- 6.2 If it is determined that a Member has practiced in a manner that is unskilled or unprofessional, or that they have contravened the EMIN Code of Ethics or other EMIN protocol, the EMIN Executive Board will render a decision in relation to actions to be taken on foot of the findings up to, and including, a disciplinary sanction which may include:
 - i) A counsel or caution to the Elder Mediator
 - ii) A reprimand
 - iii) A suspension or cancellation of their EMIN membership
 - iv) A request to pass a specified course of study or training or otherwise satisfy the Panel that they can practice competently
 - v) A suspension, restriction or cancellation of certification
 - vi) Other
- 6.3 In the event that a member of the Adjudication Panel is an EMIN Board member, they must excuse themselves from that part of the Board meeting during which the Board considers the actions to be taken on foot of the findings of the Panel.
- 6.4 Allegations will be dismissed if there is insufficient evidence of conduct deserving of sanction, in which case the complainant and the Elder Mediator will be advised in writing that no further action will be taken.

7. Indicative Timelines

- 7.1 The complaint must be submitted by the Complainant within 90 days of the events that led to the complaint/allegations, unless there are compelling reasons why the complaint could not be submitted within 90 days.
- 7.2 In the event that the Member(s) fails to respond to a complaint within 90 days, their EMIN membership may be permanently revoked unless, in the opinion of the Board of EMIN, special circumstances warrant a lesser sanction.

- 7.3 Depending on the particulars of the case, processing the complaint is expected take from between five to 75 days.
- 7.4 The President of EMIN in his/her discretion may amend time limits as s/he deems appropriate, including retroactive amendments of time limits.
- 7.5 An appeal against a decision to dismiss an allegation must be received by EMIN within ten working days of notification of the decision. See [\[URL TBC\]](#) link for a copy of the EMIN Appeals Process.