

# **The Association of South West Mediators**

## **Handbook 2007**

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## **1. INTRODUCTION**

1.1. The objects for which the Association of South West Mediators was established are set out in its Memorandum of Association and are as follows:

- To promote the concept of commercial mediation and other alternative dispute resolution procedures
- To further the interests of mediation by liaising with such bodies as the Civil Mediation Council, the DCA, the courts' Liaison Committees, other similar regional associations, mediation providers and other organisations which make use of or provide training in the mediation process.
- To assist in the maintenance of high standards in training and practice of mediators by training or continuing to train those already accredited as mediators, and offering both complementary and supplementary CPD and similar courses and events; in addition, to periodically up-date members on developments in the field of training that are relevant to some or all members or faculties of members in the widening application of mediation and other alternative dispute.
- To maintain a regional list of civil and commercial mediators and other mediators and to be an accredited mediation provider.
- To provide opportunities and facilities for Members to meet and exchange views and ideas.
- To liaise and work closely with regional bodies representing family, community and collaborative mediation, and similar organisations.

1.2. The Association was established in 2007 and developed its rules and procedures to allow it to provide a first class service to its users.

1.3. The purpose of this handbook is to bring together the rules and procedure in order to provide transparency as to how it operates and what standards are required of its members.

## **2. MEMBERSHIP REQUIREMENTS AND JOINING PROCEDURE**

2.1. The Association has one category of membership.

2.2. Membership of the Association is determined by Articles 3 and 12 of the Articles of Association. The Association has a number of Faculties and admission to membership of a Faculty is determined by the admission criteria set down by the relevant Faculty.

2.3. Admission to the Association must be applied for in writing, delivered to the Secretary. Admission to a Faculty of the Association must be separately applied for in accordance with the regulations of that Faculty.

2.4. Every proposal for Membership must be submitted to and considered by the Standing Committee at the meeting next following receipt by the Secretary of the application or as soon as it is practical to do so.

2.5. In addition to the above, it is a requirement of membership of the Association that Members agree to be bound by the European Code of Conduct for Mediators.

2.6. Application for membership of the Association is made by completing the application form. The completed form should be submitted to the Secretary together with proof of accreditation.

2.7. Upon acceptance, each member must pay an entrance fee and annually a membership fee as fixed by the Association in General Meeting. The fees currently applicable are as stated on the application form.

### **3. MEDIATOR PANELS**

3.1. Acceptance as a Member of the Association does not imply that the Member will be put forward for mediations.

3.2. Article 12.4 of the Articles of Association states:

“All Members shall enjoy equal rights in all matters save that:

- (a) the Association shall not refer any mediation or other professional work to persons who are not members of the relevant Faculty; and
- (b) upon the Association becoming a Civil Mediation Council Accredited Mediation Provider, only Members of the Civil and Commercial Faculty shall be eligible for panel referrals by the Association.”

3.3. In order to ensure that the Association only puts forward for mediations those Members that have developed sufficient mediation skills and experience to act competently as lead mediator, the Association will, through its Faculties, maintain referral panels.

### **4. CONTINUED PROFESSIONAL DEVELOPMENT SCHEME**

4.1. Each member of the Association's mediator panels is required to ensure that he/she only accepts appointments as mediator which he/she is competent to undertake and to ensure that he/she undertakes sufficient CPD on an annual basis to maintain his/her mediation skills and knowledge.

4.2. Nevertheless, the Association wishes to be confident that its Members, and particularly its panels of mediators, are competent so that it is able to provide a first class service to its users. To this end, all panel Members are required to comply with the CPD requirements specified in the regulations of their Faculty.

4.3. Members who do not participate on the Association's mediator panels or who are not members of a Faculty are required to comply with the following:

- 4.3.1. the CPD scheme of their accrediting body, OR
- 4.3.2. attendance at at least one training meeting of the Association or an organisation similar to the Association.

4.4. Evidence that the above CPD requirements have been met will be required on renewal of membership each year. Such evidence will be by self-certification except that each year 5% of Members will be audited on a random basis.

## 5. MONITORING OF PERFORMANCE

5.1. It is important that the Association obtains feedback on mediations from the mediator and, wherever feasible and appropriate, the parties involved or their representatives or advisors.

5.2. Feedback from the mediator provides information on how well the Association performed and how the service could be improved, and on valuable lessons learnt that could be shared with other mediators (anonymously). It also assists in recording statistics on number of mediations that reach a settlement.

5.3. Similarly, feedback from the parties (or more often their representatives) gives similar information from the perspective of the user. It also provides more detailed information on the performance of the mediator.

5.4. Each Faculty will determine the nature of feedback to be requested from Members, the manner in which the feedback is to be obtained and recorded, and the procedures for the evaluation of the feedback.

## 6. COMPLAINTS PROCEDURE

6.1. The Association has a complaints procedure which is set out in Article 21.2 of the Articles of Association and in the Mediation Agreement pro- forma of each Faculty as follows:

*“The Association of South West Mediators (the Association) works hard to provide a high quality service. However the Association recognises that from time to time things can go wrong and should this happen it is important for complaints to be handled swiftly and sensitively. To that end the Association has adopted a procedure for dealing with complaints which is set out below.*

- *Should you wish to complain about any aspect of the service, which you have received from the Association then you should put your complaint in writing and address it to the Registrar.*
- *Upon receipt of the complaint the Registrar of the Association will, within five working days:*
  - *· acknowledge receipt of the complaint;*
  - *· copy the complaint to the Chairman of the Association;*
  - *· initiate an investigation of the complaint save in circumstances where the Registrar is the subject of complaint in which case the investigation will be undertaken by the Chairman or an Officer nominated by the Chairman;*
  - *should the complaint not be capable of immediate resolution, the Registrar shall refer it to two wholly independent members of the Association’s Standing Committee*
- *A formal written response to the complaint will be made within 21 days of receipt of the complaint. In the unlikely event that it is not possible to meet this deadline then a written explanation as to the reasons why will be despatched within 21 days of the receipt of the complaint and a revised date for a formal response proposed.*
- *If you are not satisfied with the response to the complaint then, within 14 days of receipt of the Association’s formal written response, you can contact the Association again. At that point your complaint will be referred to a tribunal*
  - *to be chaired by an Officer of the Association together with*
  - *one Member and*

- *one person (who is not a member of the Association) nominated by the Secretary of the UK Family Mediation Council (in Family mediations) or by the Secretary of the Civil Mediation Council (in Civil and Commercial mediations and in all other mediations)*

*who will determine the response of the Association which will be sent to you in writing within 28 days of the date when you reported your dissatisfaction with the original response.”*

## **7. MEMBERSHIP DATA AND DATA PROTECTION ACT**

The Association keeps data on its members in a number of forms. This includes:

- . CVs
- . Application Forms
- . Experience/Expertise Forms
- . Feedback Forms
- . Recent Experience Forms

The Association is registered as a holder of data under the Data Protection Act.

Consent is obtained from all members to hold such data.

**APPENDIX 1 KEY CONTACTS AND MEMBERS OF THE STANDING COMMITTEE (2011)**

<b>Chairman</b>	Nick Pearson
<b>Vice Chairman</b>	Gavin Fennell
<b>Secretary</b>	Jane Ward
<b>Treasurer</b>	Roger Isaacs
<b>Committee Member</b>	Iain Christie
<b>Committee Member</b>	Leonard Daniels
<b>Committee Member</b>	Sue Kelley
<b>Committee Member</b>	Frances Place
<b>Committee Member</b>	Sue Nicholls
<b>Registrar</b>	Nick Pearson – interim

**ARTICLES OF ASSOCIATION  
OF THE ASSOCIATION OF SOUTH WEST MEDIATORS**

1. Interpretation

In these Articles:

“Clear Days” in relation to the period of a notice means that period excluding the day when the notice is given or deemed to have been given and the day for which it is given or on which it is to take effect.

“Standing Committee” means the Standing Committee of the Association.

“The Association” means the Association of South West Mediators.

Unless the context otherwise requires words or expressions contained in these Articles should be given their natural and ordinary meaning.

2. Objects

The Association is established for the purposes expressed in the Memorandum of Association.

3. Membership

“Members of the Association” are those persons who have a professional connection with the geographical area encompassed by the Western Circuit and who are members of the association at the date of the adoption of these Articles, listed upon the Memorandum of Association, and such persons as are accepted as members in accordance with the Articles for the time being of the Association and no other persons may be Members of the Association.

## **APPENDIX 2    ARTICLES OF ASSOCIATION**

### **4.     Officers**

4.1     There must be a Chairman, a Vice-Chairman, a Treasurer, and a Secretary (“the Officers”) who must be elected by the Association at Annual General Meeting and hold office until the day after the next Annual General Meeting but may be re-elected on each occasion.

4.2     There must be a Standing Committee consisting of:

4.2.1    The Officers; and

4.2.2    up to six Members elected in the manner provided below,

4.3     Subject to as provided below, elected Members of the Standing Committee must be elected at the Annual General Meeting for three years until the day after the Third Annual General Meeting after their election.

4.4     Any elected Member of the Standing Committee who attends fewer than half the meetings between two consecutive Annual General Meetings must, if his term of service is not expired, retire on the day of the second of such meetings unless the Standing Committee decide otherwise, and is ineligible for re-election for the next year.

4.5     If a casual vacancy occurs in any of the offices or amongst the elected Members of the Standing Committee between one Annual General Meeting and another, the Standing Committee may appoint a Member to fill the vacancy whose period of office shall expire the day after the next Annual General Meeting.

### **5.     Annual General Meetings**

5.1     The Association must hold a General Meeting as its Annual General Meeting in each year in addition to any other meetings in that year that take place.

5.2     Not more than 15 months may elapse between the date of one Annual General Meeting of the Association and that of the next.

## **APPENDIX 2     ARTICLES OF ASSOCIATION**

- 5.3     At the Annual General Meetings the reports of the Standing Committee and the accounts for the previous year must be considered, calls upon the Members may be made, the Officers and other elected Members of the Standing Committee for the following year must be elected by ballot if the number of nominations exceed the number of vacancies, and any other business may be transacted at an Annual General Meeting by statute or these Articles
- 5.4     All General Meetings other than Annual General Meetings must be called Extraordinary General Meetings.
6.     Convening Extraordinary General Meetings
- 6.1     The Standing Committee may, whenever it thinks fit, and must upon a requisition made in writing by three or more Members convene an Extraordinary General Meeting.
- 6.2     Any requisition for an Extraordinary General Meeting must express the object of the meeting proposed to be called, and must be left at the office of the Association addressed to the Secretary.
- 6.3     On receipt of such requisition, the Standing Committee must proceed to convene and Extraordinary General Meeting.
- 6.4     If the Committee does not proceed to convene the meeting within 21 days, those requiring the meeting may themselves convene such meeting.
7.     Notices of Meetings.
- 7.1     At least 14 days notice in any Annual General Meeting, and 7 days notice of any other general meeting must be given.
- 7.2     The notice must specify the place and day and hour of the meeting and in case of special business, the general nature of such business.

## **APPENDIX 2    ARTICLES OF ASSOCIATION**

### **8.     Business**

All business is deemed to be special, with the exception of business which may be transacted at the Annual General Meeting according to these Articles.

### **9.     Copy of procedures to be sent to the Members.**

A copy of the minutes of all Annual General Meetings shall be sent to each Member.

### **10.    Voting**

10.1    At every general meeting, six Members, including any Officers present, form a quorum.

10.2    Each member may have one vote and except in the cases otherwise specifically provided for by these Articles, all resolutions decided by a majority of the Members present and voting and the Chairman in case of equality, may have a second or casting vote.

### **11.    Exercise of Powers of Standing Committee**

11.1    The Management of the Association must be entrusted to the Standing Committee who may regulate it so in proceedings, fix the quorum necessary, delegate any of the powers to sub- committees, make alter or revoke its own regulations, and generally exercise all powers of the Association not otherwise exercisable in general meetings.

11.2    No regulation made by the Association in general meetings may invalidate any prior act of the Standing Committee that would have been valid had the regulation not been made.

11.3    The Standing Committee must make a report to every Annual General Meeting.

## **APPENDIX 2     ARTICLES OF ASSOCIATION**

### 12.     Application for Membership.

12.1     Admission must be proposed by notice in writing delivered to the Secretary.

12.2     Every proposal for membership must be submitted to and considered by the Standing Committee at the meeting next following receipt by the Secretary of the application or as soon as it is practical to do so, and the Standing Committee shall satisfy itself as to eligibility.

12.3     Members shall be entitled to apply for admission to such Faculties as the Association establishes from time to time, subject to the Members satisfying the relevant entry criteria for the Faculty, such criteria to be established by the Standing Committee and set out in the Association's Handbook. The handbook shall also set out the relevant rules governing the conduct of any such Faculty and its members.

12.4     All Members shall enjoy equal rights in all matters save that:

- (a)     the Association shall not refer any mediation or other professional work to persons who are not members of the relevant Faculty; and
- (b)     upon the Association becoming a Civil Mediation Council Accredited Mediation Provider, only Members of the Civil and Commercial Faculty shall be eligible for panel referrals by the Association.

### 13.     Entrance Fees, Annual Membership and Calls

Every member elected under these articles must upon admission to the Association pay such entrance fee, if any, and any call that has been made under Article 19. This will entitle him or her to one year's membership. Thereafter he/she will be entitled to renew his or her membership provided:-

- a) He/she has complied with the CPD requirements applicable to him/her within the Association at that time according to such rules as may be drawn up for that purpose
- b) pays the required fee to renew his or her membership

## **APPENDIX 2     ARTICLES OF ASSOCIATION**

### 14.     Resignation of Membership

Any member having paid all money due from him to the Association, may resign his membership on giving notice in writing to the Secretary of his intention so to do.

### 15.     Avoidance of Membership by Bankruptcy

Any member of the Association who becomes bankrupt, or has a Receiving Order in Bankruptcy made against him or made a voluntary arrangement as defined in the Insolvency Act 1986, or ceases to be a member of his or her professional body and is otherwise suspended from practising as a Mediator immediately ceases to be a member of the Association.

### 16.     Expulsion of Members

If any Member is accused of any dishonourable, improper or unprofessional conduct, on the grounds which the Standing Committee after investigation deem sufficient, an Extraordinary Meeting of the Association must be convened to consider the accusation, and the Member may, after he has had the opportunity of explaining his conduct, by vote of three quarters of the members present and voting on the question (there being not less than 10 members present) be expelled from the Association and will then immediately forfeit his interest and privileges in the Association without further claim for calls or for any other money paid to the Association, but he will remain liable to repay any calls or other money outstanding as at the date of his expulsion.

### 17.     Rights of Members

The rights of each Member are personal and not capable of transfer or transmission.

### 18.     Accounts

A copy of every Balance Sheet should be laid before the Association at or prior to the Annual General Meeting and approved by a majority of the Members present.

## **APPENDIX 2     ARTICLES OF ASSOCIATION**

### **19.     Funds:**

- 19.1     The Entrance Fees shall be £25 or such other sum as may be varied and approved by the Annual General Meeting of the Association.
- 19.2     The Annual Membership shall be £50 or such other sum as may be varied and approved by the Annual General Meeting of the Association.
- 19.3     The Association in Annual General Meeting or by clear majority in writing may from time to time make such calls as it thinks fit (and as necessary to meet the legitimate needs and expenses of the Association) upon the Members, and each Member must pay the amount in every call so made on him to the Treasurer at such time or times as are prescribed by the Resolution making the call or, if no time is prescribed than at the expiration of 14 days from the passing of the Resolution.
- 19.4     A call is deemed to have been made when the Resolution making the call was passed.
- 19.5     No notice of any call need be sent other than a copy of the proceedings of the meeting at which the call was passed, which copy is deemed to be a notice within the meaning of these Articles.
- 19.5     The Association's funds may be placed in bank account (s) to be opened and operated as determined by the Standing Committee and all such records of the bank account shall be available for inspection by any Member upon giving 14 days notice in writing to the Officers.

### **20.     Forfeiture of Membership**

- 20.1     Any Member who has not paid his annual membership or call by the end of the current year for which the membership or call is made may be struck off the roll of members by resolution of the Standing Committee.
- 20.2     Upon the Association becoming an Accredited Mediation Provider, Full Members who are more than 28 days in arrears with payments of annual membership fees

## **APPENDIX 2     ARTICLES OF ASSOCIATION**

or calls shall be re-designated Associate Members until they have corrected the position.

### 21.     Referral of mediation and similar work

21.1     The Association shall appoint a Registrar who shall openly, impartially, and transparently refer all any and all enquiries or work to Full Members, as set out below, and maintain a record of each referral, the fee, the source and the mediator; and the Registrar shall obtain feedback and quality control information in each case.

21.2     The Registrar shall also maintain a recorded complaints process whereby:

- (a)     any complaint from any person about a Member of the Association shall be considered initially by the Registrar;
- (b)     if it is not frivolous or vexatious complaint, or one capable of immediate resolution, the Registrar shall refer it to two wholly independent members of the Standing Committee;
- (c)     those independent members shall formally investigate the complaint in accordance with the principles of natural justice proportionate to the nature of the complaint;
- (d)     those independent members may take such oral or written submissions and evidence as they think fit in conducting the investigation, and shall thereafter complete a suitable and sufficient written record of such evidence;
- (e)     the outcome of the complaint shall be notified in writing to the complainant and to the Member as a Decision, including details of any recommendation made to avoid a repetition, for further training, for sanctions or for expulsion, or the reasons why the complaint has been dismissed, together with details of the appeal process set out below;

## **APPENDIX 2     ARTICLES OF ASSOCIATION**

- (f) if the complainant or the Member is dissatisfied with the outcome of the complaint, either may appeal by Notice submitted to the Registrar within 14 days who shall then convene a tribunal to be chaired by an Officer of the Association together with one Member and one person who is not a member of the Association nominated by the Secretary of the Civil Mediation Council, and that appeal body shall consider the written submissions of the appellant together with the original evidence before the independent members investigating the complaint – there shall be no further evidence taken and the tribunal shall consider the Decision in the context of the evidence available: it may then vary or uphold the decision as the tribunal thinks fit. There is no further appeal.

21.4 The Association shall pay the reasonable administrative expenses of the Registrar on a basis to be approved by the Standing Committee, subject to the audit of the Treasurer to be reported annually.

21.5 Only Members of the Association admitted to the relevant Faculty shall be referred work by the Association or be recommended to other persons, bodies or organisations including disputants or the courts as being potentially suitable to act as a mediator.

21.6 The Association shall only refer work to Members who are:

- (a) in the opinion of the Registrar, suitably experienced;
- (b) in the opinion of the Registrar, appropriate;
- (c) not conflicted in any professional or other manner for acting;
- (d) insured in accordance with the requirements of the CMC from time to time promulgated and who have provided evidence of such insurance;  
and
- (e) who are not the subject of an ongoing complaint.

## **APPENDIX 2     ARTICLES OF ASSOCIATION**

- 21.7 Full Members wishing to accept referrals from the Association are to lodge electronic and hard copy CVs with the Registrar, together with evidence of current professional indemnity insurance.
- 21.8 Full Members accepting a referral shall fully cooperate with any complaint or feedback process which the Association shall initiate.
- 21.9 Subject to Article 21.5 above, referrals shall be made by the Registrar on a strict rota basis as between Members of the relevant Faculty and the Registrar shall use best endeavours to achieve parity of referrals.
- 21.10 Full Members accepting a referral shall pay to the Association, within 14 days of receiving payment for their fee for the referred mediation, a sum towards the costs of the Registrar deemed to be 10% of the fee due for the work.
22. Insurance
- 22.1 The Association shall take out and maintain a suitable policy of insurance in respect of its administrative activities from time to time conducted.
- 22.2 All Members agree that they shall indemnify the Association against any act, error, negligence or omission in the course of their activities which may or could result in a claim against the Association and each Full Members shall as a condition precedent of membership warrant that he or she has and shall have at all times suitable insurance in respect of professional activities and negligence in the course of such work.
23. Notices
- 23.1 Any notice to be served by the Association upon any Member may be served personally or by sending it through the post in a pre-paid addressed envelope.
- 23.2 Any notice, if served by post, is deemed to have been served at the time when the letter containing the notice would be delivered in the ordinary course of post, and a certificate signed by the Secretary or the person employed by him to post the notice is conclusive evidence of the notice having been duly posted.

**APPENDIX 2    ARTICLES OF ASSOCIATION**

24.    Members' addresses

Every Member must from time to time notify the Chairman or Secretary of a place of business or residence as his address and that place will for all purposes be deemed his or her address.

25.    Amendments    These Articles of Association may be amended by resolution of at least three quarters of those Members of the Association present and voting on the question in a general meeting.



### **APPENDIX 3      MEMORANDUM OF ASSOCIATION**

4.      Application of Income and Property:      The entire income and property of the Association must be applied solely to the promotion of the objects of the Association as set out in this memorandum; no distribution may be paid or transferred, directly or indirectly, by way of dividend or bonus, or otherwise by way of profit, to the persons who at any time are or have been members of the Association or any of them, or to any person claiming through any of them provided that nothing contained in this Memorandum of Association prevents:
  - i)      Payment in good faith of remuneration to any member of the Association or other person, in return for any services actually rendered to the Association, or
  - ii)     Payment of interest at a rate not exceeding 10% per year on money borrowed from a Member of the Association, or
  - iii)    Free distribution among, or sale at a discount to, Members of the Association of any books or other publications relating to any of the objects of the Association as set out above.
  
5.      Winding-up:      If on the winding-up or dissolution of the Association, any property remains after the satisfaction of all debts and liabilities, that property must not be paid to or distributed amongst the Members of the Association but must be given or transferred to some other Institution or Institutions having Objects similar to the Objects of the Association in either case to be determined by a resolution of the Members of the Association in a general meeting , and, in default, by any Judge of the High Court of Justice who may have or have acquired jurisdiction of the matter and if and so far as effect cannot be given to this provision then to some charitable object.
  
6.      Amendments:      This Memorandum may be amended by resolution of at least three quarters of those Members of the Association present and voting on the question in a general meeting.

## **APPENDIX 4 EUROPEAN CODE OF CONDUCT FOR MEDIATORS**

*This code of conduct sets out a number of principles to which individual mediators can voluntarily decide to commit, under their own responsibility. It is intended to be applicable to all kinds of mediation in civil and commercial matters.*

*Organisations providing mediation services can also make such a commitment, by asking mediators acting under the auspices of their organisation to respect the code.*

*Organisations have the opportunity to make available information on the measures they are taking to support the respect of the code by individual mediators through, for example, training, evaluation and monitoring.*

*For the purposes of the code mediation is defined as any process where two or more parties agree to the appointment of a third-party – hereinafter “the mediator” – to help the parties to solve a dispute by reaching an agreement without adjudication and regardless of how that process may be called or commonly referred to in each Member State.*

*Adherence to the code is without prejudice to national legislation or rules regulating individual professions.*

*Organisations providing mediation services may wish to develop more detailed codes adapted to their specific context or the types of mediation services they offer, as well as with regard to specific areas such as family mediation or consumer mediation.*

### **1. COMPETENCE AND APPOINTMENT OF MEDIATORS**

#### **1.1 Competence**

Mediators shall be competent and knowledgeable in the process of mediation. Relevant factors shall include proper training and continuous updating of their education and practice in mediation skills, having regard to any relevant standards or accreditation schemes.

#### **1.2 Appointment**

The mediator will confer with the parties regarding suitable dates on which the mediation may take place. The mediator shall satisfy him/herself as to his/her background and competence to conduct the mediation before accepting the appointment and, upon request, disclose information concerning his/her background and experience to the parties.

#### **1.3 Advertising/promotion of the mediator’s services**

Mediators may promote their practice, in a professional, truthful and dignified way.

### **2. INDEPENDENCE AND IMPARTIALITY**

#### **2.1 Independence and neutrality**

The mediator must not act, or, having started to do so, continue to act, before having disclosed any circumstances that may, or may be seen to, affect his or her independence or conflict of interests. The duty to disclose is a continuing obligation throughout the process. Such circumstances shall include

- any personal or business relationship with one of the parties,
- any financial or other interest, direct or indirect, in the outcome of the mediation, or
- the mediator, or a member of his or her firm, having acted in any capacity other than mediator for one of the parties.

In such cases the mediator may only accept or continue the mediation provided that he/she is certain of being able to carry out the mediation with full independence and neutrality in order to guarantee full impartiality and that the parties explicitly consent.

#### **2.2 Impartiality**

The mediator shall at all times act, and endeavour to be seen to act, with impartiality towards the parties and be committed to serve all parties equally with respect to the process of mediation.

### **3. THE MEDIATION AGREEMENT, PROCESS, SETTLEMENT AND FEES**

#### **3.1 Procedure**

The mediator shall satisfy himself/herself that the parties to the mediation understand the characteristics of the mediation process and the role of the mediator and the parties in it.

The mediator shall in particular ensure that prior to commencement of the mediation the parties have understood and expressly agreed the terms and conditions of the mediation agreement including in particular any applicable provisions relating to obligations of confidentiality on the mediator and on the parties. The mediation agreement shall, upon request of the parties, be drawn up in writing.

The mediator shall conduct the proceedings in an appropriate manner, taking into account the circumstances of the case, including possible power imbalances and the rule of law, any wishes the parties may express and the need for a prompt settlement of the dispute. The parties shall be free to agree with the mediator, by reference to a set of rules or otherwise, on the manner in which the mediation is to be conducted.

The mediator, if he/she deems it useful, may hear the parties separately.

#### **3.2 Fairness of the process**

The mediator shall ensure that all parties have adequate opportunities to be involved in the process. The mediator if appropriate shall inform the parties, and may terminate the mediation, if:

- a settlement is being reached that for the mediator appears unenforceable or illegal, having regard to the circumstances of the case and the competence of the mediator for making such an assessment, or
- the mediator considers that continuing the mediation is unlikely to result in a settlement.

#### **3.3 The end of the process**

The mediator shall take all appropriate measures to ensure that any understanding is reached by all parties through knowing and informed consent, and that all parties understand the terms of the agreement.

The parties may withdraw from the mediation at any time without giving any justification.

The mediator may, upon request of the parties and within the limits of his or her competence, inform the parties as to how they may formalise the agreement and as to the possibilities for making the agreement enforceable.

#### **3.4 Fees**

Where not already provided, the mediator must always supply the parties with complete information on the mode of remuneration which he intends to apply. He/she shall not accept a mediation before the principles of his/her remuneration have been accepted by all parties concerned.

### **4. CONFIDENTIALITY**

The mediator shall keep confidential all information, arising out of or in connection with the mediation, including the fact that the mediation is to take place or has taken place, unless compelled by law or public policy grounds. Any information disclosed in confidence to mediators by one of the parties shall not be disclosed to the other parties without permission or unless compelled by law.

**APPENDIX 5 APPLICATION FOR MEMBERSHIP**

**ASSOCIATION OF SOUTH WEST MEDIATORS  
Membership Application Form**

FULL NAME	
-----------	--

BUSINESS ADDRESS		
		Post Code

<b>CONTACT NUMBERS:</b>	OFFICE	
	FAX	
	HOME	
	MOBILE	
	EMAIL	

<b>PRIMARY PROFESSION</b>	
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<b>ACCREDITING BODY</b>	
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<b>ACCREDITATION DATE</b>	
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*Please enclose copies of relevant accreditation certificates. If not accredited, please provide other relevant qualifications or statement of experience*

<b>FACULTY MEMBERSHIP</b>	<i>Please indicate which Faculty/ies you wish to join and whether you would be interested in assisting with the running of the Faculty.</i>			
<b>Faculty</b>	Civil & Commercial	Family	Public Sector	Other – please specify
<b>Membership</b>				
<b>Assist running</b>				

**CIVIL & COMMERCIAL FACULTY APPLICANTS -**

<i>Please indicate whether you wish to join a Panel</i>	<i>General Disputes Panel</i>		<i>Time limited Panel</i>	
<i>Please submit Panel Application Form, Experience Statement and supporting documentation</i>				

<b>MEMBERSHIP FEE:</b>	(Annual Membership £50 plus £25 joining fee)	<b>£75.00</b>
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**Please attach your cheque for the total amount made out to: "The Association of South West Mediators".**

I AGREE TO BE BOUND BY THE ARTICLES OF ASSOCIATION OF THE ASSOCIATION OF SOUTH WEST MEDIATORS, INCLUDING THE PROCEDURES SET OUT IN THE HANDBOOK, AND AGREE, FOR THE PURPOSE OF THE DATA PROTECTION ACT, THAT THE ASWM MAY PROCESS INFORMATION ABOUT ME.

<b>SIGNATURE</b>	<b>DATE</b>
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Please send application forms to:  
Mr Andrew Hannam,  
Chairman, ASWM  
c/o Foot Anstey  
The Quad  
Blackbrook Park Avenue  
Blackbrook Business Park  
Taunton TA1 2PX

The Association of South West Mediators  
Handbook 2007