

## COMPLAINTS PROCESS

November 2023

### **ADRIC Process for Addressing Complaints against Members**

#### Source of Authority for this Complaints Process

Per the Memorandum of Understanding between ADRIK and the Affiliates, effective 13 February 2019, “ADRIK, in consultation with the Affiliates, has the responsibility to develop, promote and administer ... procedures for complaints ...” (Designations, Section 16) and “all Parties shall cooperate in the development and adoption of a single complaint process” (Membership Accountability, Section 37), this Complaints Process is applicable to all Members of ADRIK, no matter the Affiliate or the Respondent’s designation or lack thereof.

#### Jurisdiction: Persons to Whom this Complaint Process is Applicable

This Complaints Process will address Complaints against Members by

- Parties engaged in ADR proceedings,
- Witnesses who were involved in ADR proceedings,
- ADRIK Member v. ADRIK Affiliate, and
- ADRIK Member v. ADRIK Member.

#### Jurisdiction: Circumstances to Which this Complaint Process is Applicable

“ADR Proceedings” means all types of practice listed in the standard Errors and Omissions insurance policy offered through ADRIK during the year in which the event(s) of which Complainant complains occurred, and,

Collectively, the circumstances in which this Process is applicable are referenced herein as “Covered Acts”.

#### Timing

Each task described in this Process must occur within 14 calendar days of the prior task, e.g. Affiliate must send a Complaint it received to Ethics and Professional Practices (EPP) committee within 14 days of Affiliate’s receipt of that Complaint. EPP shall review and forward a copy of the Complaint to Manager within 14 days of EPP’s receipt of that Complaint. The only exception is that the appointment of the Facilitator must occur within 28 days of Respondent’s agreement to participate in Dialogue.

“Reports” referenced herein shall include the details and results of:

- Investigation of Respondent as ADRIK member,

- Investigation of Covered Acts, if applicable,
- Dialogue, if applicable, and,
- Where otherwise noted in this Process.

“Members”, when used in this Process, shall mean all persons who are members of ADRI including, but not limited to, individuals, corporations, and others such as associate, student, retired and non-practicing members.

“Affiliate” means, depending on the context, one, or more, or all, of ADRAI, ADR BC, ADRIA, ADRIM, ADRI, ADRSK or IMAQ, each of which is a regional not-for-profit organization engaged in the development and promotion of negotiation, mediation, arbitration, and other ADR services for their Members in the regional exclusive jurisdictions.

“EPP” means the Ethics and Professional Practices committee who is made of ADRI members including affiliate representatives to provide direction on policy and decisions related to the complaints process.

“Manager” means the person identified as responsible for working with the complainant and member through the process as outlined below.

### Complaints Process

1. ADRI and all Affiliates offer Complaint form on their websites, so it is easily discovered by those who wish to use it. IMAQ to provide a link to the [applicable complaints process mandated by legislation]

In order to access the Complaints form, Complainant needs to view a page explaining that

- 1) Making a Complaint in this forum will never result in compensation of any kind to Complainant, and
- 2) This Process is an intra-organization consideration of a Member’s behavior while acting within ADRI’s parameters, and
- 3) This Process is not a substitute for a malpractice claim.

The page should include information about this Process, timing, confidentiality, etc.

Form should require at least the following info:

- name of Complainant, their city of residence, contact info;
- name of Respondent;
- site of ADR forming basis of Complaint;
- type of ADR (if Complainant knows);
- date(s) of event(s) giving rise to this Complaint\*; and,
- brief description of issue, limited to 150 words.

\*Event(s) giving rise to Complaint must have occurred within the 120 days prior to the date the Complaint is submitted. Where event(s) giving rise to Complaint have occurred more than 120 days before the date Complaint is submitted, EPP shall determine on a case-by-case basis whether to grant an extension so that such Complaint can be addressed by the Process described herein.

2. All Complaints received by ADRIC and Affiliates should be forwarded unaltered to EPP. IMAQ process to follow legislation.

3. EPP shall review the Complaint and forward it to the Manager.

ADRIC shall include the position of Manager for Complaints addressed by this Process in a suitable ADRIC employee's job description. This task may be assigned to more than one ADRIC employee.

EPP shall have the opportunity to interview any person ADRIC considers for the Manager position prior to that person's confirmation as Manager, and ADRIC shall consult with EPP before offering the Manager position to any employee.

Manager shall have working knowledge and understanding of ADR processes but need not hold any designation. While performing tasks in connection with this position, Manager shall have one EPP member with whom to consult as a mentor/advisor. Manager shall keep EPP apprised of progress of any matter assigned to Manager.

4. Manager determines whether Respondent is Member of ADRIC.

IF Respondent is not a Member of ADRIC, Manager contacts Complainant in writing to explain that ADRIC cannot handle Complainant's matter because Respondent is not a Member of ADRIC.

Manager Responsibilities

Manager prepares and submits Report to EPP about the resolution of the matter, attaching a copy of the Complaint. EPP forwards a copy of the Report and the Complaint to ADRIIC and the relevant Affiliate

IF Respondent is a Member of ADRIIC, Manager contacts Complainant and

- 1) Explains that ADRIIC may be an appropriate forum for this Complaint,
- 2) Confirms that Complainant understands they will never receive any compensation as a result of engaging in this Process,
- 3) Explains that Manager will be able to proceed only if Respondent was engaged in Covered Acts,
- 4) Asks several scripted questions, e.g.
  - In what capacity was Respondent acting when the event of which Complainant complains occurred?
  - Describe the situation that Complainant believes supports the Complaint.
  - Is Complainant raising this issue in any other forum?
  - Has Complainant already contacted Respondent in an attempt to resolve?

If “yes”, what was result of such contact?

Result of such contact should be included in Report.

- Manager will ensure that appropriate Affiliate is notified within 14 days of the complaint if received directly.

If complainant first contacted the Affiliate, they will forward the complaint to the Manager and notify the complainant of the complaints process within 14 days.

5. Manager asks whether Complainant wishes to proceed to the next step of the Process, i.e. determining whether Respondent was engaged in Covered Acts during the event(s) of which Complainant complains.

IF Complainant does not wish to proceed, Manager prepares written communication to thank Complainant for their time and effort, and explains that Manager will submit Report of matter to EPP, which will forward it to Discipline Committee, which has option to further investigate and move forward to discipline Respondent. Discipline Committee might be in contact with Complainant to act as a witness.

Manager submits Report to EPP about the resolution of the matter, attaching a copy of the Complaint. EPP will forward Report and copy of Complaint to ADRIC, Discipline Committee and relevant Affiliate.

6. IF Complainant does wish to proceed, Manager must determine whether capacity in which Respondent was engaged in Covered Acts in the underlying situation. Manager must be familiar with the currently applicable Codes of Conduct and Ethics as well as the rules governing the Covered Acts.

IF Respondent was not engaged in Covered Acts, Manager contacts Complainant in writing to explain that ADRIC cannot address Complainant's matter because Respondent was not engaged in ADR Proceedings/Other.

Manager submits Report to EPP about the resolution of the matter, attaching a copy of the Complaint.

EPP shall forward Report and copy of Complaint to Discipline Committee and relevant Affiliate.

IF Respondent was engaged in Covered Acts, Manager contacts Complainant, explains Complaint Process, i.e. next step is Dialogue\* with Respondent. Does Complainant wish to have Manager submit request for Dialog to EPP?

\*Dialogue is a time-limited conversation between the Complainant and the Respondent, assisted by a Facilitator, meeting in an online platform that provides easy access for participants.

ADRIC shall maintain a roster of Members who have agreed to act as Facilitators. After Complainant and Respondent have agreed to engage in Dialogue, ADRIC shall review the Complaint and use its internal process to connect a suitable Facilitator to Manager. Facilitator must not be a Member of the same Affiliate as Respondent.

Manager, Facilitator, Complainant and Respondent shall determine an appropriate date, time and platform for the Dialogue.

ADRIC shall pay Facilitator a fee commensurate with the fee ADRIC pays to Members providing similar services to or through ADRIC.

7. IF Complainant wishes to proceed, Manager sends copy of results of Membership and Covered Acts inquiries to EPP and relevant Affiliate.

Manager contacts Respondent and informs them of Complaint, sending them a copy of Complaint.

8. If Respondent refuses to participate in Dialogue, Manager prepares Report and forwards such Report and the Complaint to EPP. EPP forward the Complaint and the Report to the Discipline Committee and relevant Affiliate.

Manager contacts Complainant and explains that Respondent will not participate in Dialogue, and that such refusal to participate in Dialogue will be included in Report to EPP and Discipline Committee. Manager thanks Complainant for their time and explains that Manager will submit Report of matter to EPP, which will forward it to Discipline Committee, which has option to further investigate and move forward to discipline Respondent. Discipline Committee might be in contact with Complainant to act as a witness.

9. If Respondent agrees to participate in Dialogue, Manager arranges time/date/platform for Dialogue between Complainant and Respondent and joined by Facilitator.

Facilitator manages conversation during Dialogue.

Dialogue shall not to exceed 90 minutes unless Facilitator determines that continued Dialogue would be beneficial. Parties must agree to pay any additional fees arising from the extra time spent prior to the extension of the Dialogue's initial 90-minute period of discussion.

10. Manager and Facilitator each submit Report to EPP. EPP forwards all Reports and the Complaint to the Discipline Committee and relevant Affiliate.

Discipline Committee undertakes its own process to determine whether Respondent's actions should be investigated, addressed and, ultimately, whether Respondent should be subject to discipline and, if so, what discipline to be imposed, e.g., mentoring, remedial education, suspension, expulsion.

Discipline Committee determines whether to move forward on Complaint against Respondent and undertakes whatever process has been set to address such allegations.

## **ADRIC Process of Addressing Complaints Against Members**

*Use in conjunction with text “ADRIC Process for Addressing Complaints against Members”, which reflects details of the Process.*

### **COMPLAINT SUBMISSION AND RECEIPT**

- A. Complainant completes and submits online Complaint form within 120 days of event.
- B. ADRIC or Affiliate receives Complaint and relays it unaltered to EPP and ADRIC or relevant Affiliate, as applicable within 14 days
- C. EPP reviews and relays Complaint to ADRIC-appointed Manager for this Complaint.

### **DETERMINING ADRIC AUTHORITY**

- A. Is Respondent an ADRIC Member?

**yes**

- B. Was Respondent engaged in Covered Acts?

**yes**

- C. Dialogue offered to Complainant. Does Complainant accept?

**no**

### **COMPLAINT DOES NOT PROCEED**

Complainant notified in writing within 14 days.

**yes**

### **DIALOGUE**

- A. Manager contacts Respondent, provides Complaint and invites Respondent to engage in Dialogue. Does Respondent both respond to invitation and agree to participate?

**yes**

- B. ADRIIC supplies suitable Facilitator.
- C. Manager arranges time, date and platform for Dialogue.
- D. Facilitator manages conversation during Dialogue

**no**

Discipline Committee determines whether to address issues raised.

## **CONCLUSION**

After conclusion of Dialogue, Manager and Facilitator each prepare and submit Report to EPP. EPP forwards Complaint and Reports to Discipline Committee and relevant Affiliate.