

# Positioning mediation - guidance notes for managers

The following information is provided as a general guidance note for managers in positioning external mediation with employees and is based on the relevant law and best practice in the United Kingdom.

In positioning mediation with employees, managers need to be aware of a number of the key elements of mediation to avoid inadvertently dissuading employees from attempting to mediate or contributing further to the conflict by introducing inaccuracies about the process.

The following guidance notes are therefore intended to assist managers in discussing the option of mediation with employees in conflict.

## Role of the mediators

The mediators will not impose a solution on the parties, as it will be up to the employees engaged in the mediation to arrive together at a resolution that all feel they can live with.

The mediators are trained independent people whose role it will be to assist the parties to identify the problems and facilitate a safe and respectful discussion and explore whether a settlement or resolution is possible. There will always be two mediators involved.



## Willingness to participate

All that is required initially is that the parties feel a willingness to attempt the mediation. This does not have to mean that they like the other person or will end up liking them or befriending them, only that they are willing to enter into a frank and honest discussion of the issues in an effort to resolve them.

Parties are also free to end or pause the mediation process at any time if they feel that they are either too distressed or lose faith in the process to arrive at a resolution.

## The mediation itself

If employees are too distressed to meet face to face or online with any of the parties it is possible to conduct the mediation using a 'shuttle method' whereby the parties are interviewed in separate rooms and if at any time they all feel comfortable they can then be brought together.

However, it is possible to use a shuttle approach throughout the entire process if needed or a combination of approaches can be used that suits the needs of the parties and the issues involved.

Parties to the mediation can expect to be asked to consider and discuss their needs, fears and expectations for the future and to make statements about what they believe would solve the problem and then to enter into a negotiation process to attempt to arrive at a resolution.

## Outcomes of the mediation

Sometimes people believe that mediation is always a case of arriving at a 'win-win' outcome. This can be distressing to one or more parties as they are of the view that someone needs to 'take the blame' or accept responsibility for what has occurred. Employees are very often right to feel this way and it is important to explain to parties that mediation is not about glossing over the facts or the truth and that invariably one or more of the parties does need to accept responsibility for some aspect of their behaviour.

No one can predict what each person (if anyone) will end up taking responsibility for or admitting to until the mediation takes place as again it is stressed that the outcomes are in the hands of the parties to the dispute.

Employees also need to understand that there is no expectation or requirement on them to have to arrive at a resolution if they genuinely do not feel that this is possible and that they can come to this conclusion at any stage of the process without incurring any subsequent reprisals or sanctions by management.

What is important here is that there are no preconceived ideas about the outcomes by the mediators or management and that the mediators are impartial at all times.

## Control of the process

Whilst the parties are responsible for arriving at a resolution, the Mediators will maintain control of the process at all times and will ensure that both parties behave respectfully and appropriately throughout.

The mediators are also aware of power imbalance issues and where any employee has felt threatened or bullied by another person involved in the mediation, action may be taken to cease the process if it is felt that anyone is being exposed to undue stress or who may be at risk of being re-victimised by the process.

## Confidentiality, disclosure and agreements

A report will be provided to HR and/or commissioning manager which will be non disclosing but will simply state if a resolution has been achieved or not. No content will be provided of the mediation. Whether an agreement is reached or not the detail of the discussion at mediation is confidential and the parties and mediators are bound by this agreement not to disclose the content of the discussions, unless express permission is given by the parties to do so. The parties are assisted by the mediators in the preparation of a written agreement. A copy of this agreement is to be kept by the parties, the mediators and (where express permission has been given) HR and/or commissioning manager. No notes are to be kept by the parties or the mediators following the mediation and any notes taken throughout the process are to be destroyed in the presence of all parties and the mediators.

## Subsequent action

In the event that the mediation does not arrive at a resolution or where an agreement subsequently breaks down employees are entitled to pursue further action by either making a formal complaint or taking legal action.

In this sense, mediation is non-prejudicial and employees do not waive their rights to organisational due process by agreeing to participate. Nor can employees or mediators be required to give evidence at court or during a formal investigation about anything that has been said at mediation.

**For further information or advice please contact your line manager or a member of the HR team.**



**Want to know more?**

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