

07 Mediation policy

1. Introduction

Mediation is a process whereby an independent third party is appointed as a mediator to help reach a settlement between persons who are in dispute. Mediation is a voluntary process to resolve disputes and shall not take place without the express agreement of all the relevant parties.

A benefit of mediation is to prevent legal proceedings which can prove costly to both parties and be disruptive to the lives of those in dispute and their colleagues.

2. When to use this policy

Mediation is a mutually beneficial process in both resolving and avoiding protracted and damaging disagreements. There is a wide range of possible outcomes available and the perspectives and feelings of both parties are fully taken into account in reaching an agreement.

The range of disputes that may be solved through mediation will be those where Disciplinary or Grievance procedure are not applicable. Examples where the mediation process will be suitable:

- a breakdown in working relationships between colleagues or between an employee and their line manager (eg caused by differences in the way people behave, or non-discrimination cases of bullying/harassment, breakdown in trust, or communication difficulties)
- disagreements about workloads, job grades, allocation of overtime, reasonable adjustments for ill health or perceived unfairness at work
- continuing difficulties in rebuilding working relationships following an earlier dispute. Illegal behaviour or disciplinary matters are out of scope.

In the case of day-to-day working relationships the mediation process should not be embarked upon where the parties can resolve minor differences by effective communication and by managers exercising their responsibilities properly.

In cases involving discriminatory bullying or harassment or where misconduct or gross misconduct, including any alleged criminal activity is concerned, the mediation process is unsuitable. The most appropriate course of action will be a disciplinary investigation followed by any appropriate disciplinary action, notwithstanding any grievance raised by the employee(s) concerned.

3. Relationship with other policies and procedures

This policy is non-contractual

Trade unions support the use of this policy. Trade union officials (lay or full-time) may be appointed to represent employees during mediation.

The mediation process is not an alternative to the proper use of Disciplinary or Grievance procedures. This mediation policy may be used once any disciplinary/grievance appeals stage has been exhausted or where the matter will be resolved more satisfactorily than by use of the Disciplinary or Grievance Procedures.

This step will only be taken with the agreement of the parties involved. Such a step will require the suspension of the Disciplinary or Grievance procedure. Should the mediation process fail to resolve the dispute satisfactorily the relevant stage of the Disciplinary or Grievance procedure will be reinstated. This step may be taken at any stage during the mediation process and will be at the absolute discretion of the Director..

In exceptional circumstances, and with the agreement of the parties involved, we reserve the right to refer any matter for mediation under this Policy.

4. Appointment of a mediator

We may appoint an internal mediator who has been accredited to act in this role having undertaken a course of study in mediation. Alternatively, at the absolute discretion of the Director a suitably qualified external mediator may be appointed. S/he will be provided with the appropriate dispute mediation terms of reference agreed upon by us and the relevant employee(s).

All costs and expenses of engaging the services of the mediator will be agreed by the parties in advance. Any costs and expenses incurred by the relevant parties which are not agreed in advance will not be met by the company.

The mediation process will normally be held at neutral premises, unless exceptional circumstances require special accommodation to be used.

The date of any meetings and other procedural and practical matters not referred to in this policy or in the mediation process agreement will be decided by the mediator and the parties involved. If agreement cannot be reached the mediator will have absolute discretion to decide whether this prevents the mediation process from continuing.

5. The mediation process

The role of the mediator is to help all the parties in the dispute reach their own negotiated agreement and settlement. This is facilitated by the mediator first evaluating the dispute by allowing the parties to provide written or verbal submissions to the mediator. The mediator may invite the parties to separate meetings first or hold a joint meeting first. The mediator may hold further separate or joint meetings to assist resolving the dispute.

Resolution of the dispute is facilitated by the mediator giving constructive support for both parties to express their situation in a respectful manner so an agreement can be reached to the satisfaction of both parties or provide the basis for further discussion working towards a dispute settlement.

Both parties may appoint a colleague to join meetings to support working towards a resolution. No more than one colleague will be appointed by each individual party in the dispute. Colleagues must ensure confidentiality, can advise parties before and after mediator meetings but are not permitted to intervene in the mediator meetings.

The parties involved and their colleagues are required not to disclose any information shared in the mediation process to other parties. Before starting mediation, the parties are required to sign a confidentiality agreement to this effect. The mediator will also not disclose any information given in confidence by either party without the express consent of that party. If an employer is paying costs the mediator may advise the employer the outcome of meetings without sharing confidential information.

6. Agreement and settlement of dispute

Before the mediation process begins, all the parties will be required to sign a mediation process agreement. This will contain the mediation terms of reference, a confidentiality clause, what will happen should the mediation process break down and what will happen at the end of the mediation process.

Should the mediation process succeed and an agreement be reached, the parties to the dispute will be required to sign a legally binding settlement agreement.

If there is a complaint against the mediator: the mediator will acknowledge this in writing within 5 days of receipt; an independent qualified person will then investigate and respond in writing within 21 days; if appealed on certain grounds the case can be referred to the Civil Mediation Council.

7. Legal proceedings

The parties will agree in writing before the start of the mediation process that:

- all communications between the parties before and during the mediation process shall be treated as privileged and be 'without prejudice' for the purpose of any disclosure in any legal proceedings;
- any part of the mediation agreement and settlement is not to be treated as legally binding on any party without it first being placed in writing and agreed by or on behalf of the relevant parties;
- they will not call the mediator as a witness or expert in any legal proceedings or require the mediator to produce in any legal proceedings any written evidence or opinion related to the dispute in question, the mediation process or any subsequent related proceedings; and

- the mediator shall not be legally liable wholly or in part for any act taken or omission caused in the performance of his/her duties as the appointed mediator.

These terms and any variation are to be agreed by all parties in advance

This policy will be reviewed annually June 30

By Michael Oon