



**IMPACT TRAINING CONSULTANCY**

**MEDIATION GUIDANCE AND PROCEDURE**

**Date:** April 2007

**Effective from:** August 2007

**Reviewed:** September 2010

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| Approval/review body    | <b><i>Company Board</i></b>                       |
| Review interval (years) | <b>2</b>  |



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## 1 Introduction

Mediation can help to deal with people in conflict in the workplace. It can often seem easier to avoid conflict and hope it will go away but that is how problems escalate. When an individual is involved in conflict, a solution may seem impossible; they may not even be able to talk to the person they are in conflict with because things have got so fraught.

Many employment tribunal claims started with a small spark - an employee with a problem not taken seriously, a badly handled discipline interview or a misunderstanding between people - which was then fanned into a flame and finally erupted into a volcano.

Help from someone independent and even-handed may be the only way things can be improved.

Most kinds of dispute can be mediated provided that those involved want to find a way forward. Mediation is especially suitable when the aim is to maintain the employment relationship. It can be used at any stage in a dispute but is often most effective if used early on. If you are having conflicts at work, mediation can help you to communicate, examine what has gone wrong and identify the issues. Mediation is focused on bringing people together to find a mutually agreeable way ahead. Mediation can be used at any stage, from when disagreements first arise to try to prevent the issues escalating further, through to helping to rebuild relationships where there has been a longer period of dispute. It can help in many different situations, including:

- Issues between colleagues
- Conflict between staff and managers
- Repairing working relationships
- Communication difficulties

The mediators can also advise you on preparing for difficult conversations about working relationships, with your staff or your colleagues.

Mediation may not be suitable if an individual wants to enforce a legal right or wants someone to decide the 'rights and wrongs' of an issue for them.

This guide is based on ACAS's recommended approach to mediation.

**It is an informal process, mediation can be quite intense for everyone involved. Our mediators are fully trained to make the meetings as easy and comfortable as possible, and have the skills to help you communicate. We will not make any judgements on the merits of the discussion, and are not legal advisers. Neither will we advise anyone on the merits of agreements made during the mediation or on the benefits of any other course of action.**

## 2 Definitions



**Mediation** is a way of sorting out disagreements or disputes without having to go to court. A neutral third person works with those in disagreement or dispute to help them reach an agreement that will sort out their problems.

It is **Voluntary** i.e. an individual only takes part if they want to.

**Confidentiality** is maintained - the mediator undertakes that any information obtained from the Client or the parties during the mediation or in connection with it will only be disclosed to any other person to the extent that it is necessary for the purposes of providing the services, unless they have obtained the express prior permission of the parties to disclose the information further or they are required to do so by a court or tribunal.

The aim is to maintain the employment relationship if at all possible and so mediation is about the future, not the past and who was right or wrong.

### 3 **Approach**

Impact Training's approach to mediation is non-threatening and is about creating a safe environment that encourages individuals to speak freely; Impact Training believes that all individuals should be valued and respected.

The mediator will start by talking separately to the people involved in the dispute to find out about the situation, how the individuals feel about it and the effects it is having.

Later on – when the time is right – the mediator will bring the individuals together in a joint meeting. At that meeting, everyone will have the chance to say exactly how they feel without being interrupted and to listen to how the other person feels without interrupting them.

The mediator will ask questions, help all the individuals involved look at the situation realistically and help them come up with ways to improve things. In some circumstances, where both sides ask, the mediator can recommend a way forward if the parties cannot find their own solution.

### 4 **Benefits**

Conflict costs in terms of managers' valuable time and the valuable time of the individuals directly involved in the dispute. The rest of the team are also affected as they are distracted by the conflict and the atmosphere it causes. Going through procedures is time consuming and doesn't always resolve the problem. Those involved may be absent from work through sickness and stress and they certainly won't be giving their all to the job. All this impacts on the productivity of the organisation, and if it ends up in an employment tribunal, the average cost is around £30,000.



## 5 Procedure

The mediator will decide the best way to carry out the mediation.

They start by talking separately to the people involved in the dispute to find out about the situation, how they feel about it and the effects it is having. They will then help the individuals to start thinking about what they want, what the other person might want, and how things might be improved.

The mediator won't take sides or judge who is right or wrong. Because mediation is about repairing working relationships with the people in conflict with each other, the mediator will help them focus on the future, not the past.

Later on when the time is right the mediator will bring the individuals together in a joint meeting. At that meeting they will have a chance to say exactly how they feel without being interrupted and to listen to how the other people feel without interrupting them.

The mediator will ask questions, help the individuals to look at the situation realistically and help them come up with ways to improve things.

The mediator decides the best way to carry out the mediation. They guide the individuals through and help them to identify the real issues and come up with ideas to improve things. They do this mainly by asking questions but they can use their experience in similar situations before to make suggestions. It is up to those involved in the dispute to decide if they want to take up these ideas.

Both sides can talk to the mediator openly because the mediator will not pass on anything said without the agreement of the person who said it.

Those involved in the mediation will be given a written copy of anything that is agreed.

If a mediator is required to make formal recommendations they need to be informed of this when arranging the mediation. They will then appoint a mediator from an independent panel. The mediator will decide how best to carry out the mediation, usually in the way outlined above. If the individuals are unable to reach agreement, the mediator will write to them with their formal written recommendations within six working days. They will not give their recommendations on the day of the mediation.

If any of the individuals do not want to be in the same room as the person they are in disagreement or dispute with, the mediator will take this into account and will not force a joint meeting without the agreement of all parties. If agreement for a joint meeting is subsequently obtained, some rules will be agreed with both sides about how everyone will behave and the mediator will help everyone to stick to them.

An open and frank discussion of the issues, which is controlled by the mediator to ensure fairness and appropriate behaviour, can be key to sorting out conflict.



Anyone can ask for the joint meeting to be stopped for a while to take 'time out' or to speak on their own to the mediator.

Mediation often works best when those actually in conflict work directly with the mediator to resolve it, especially if they will need to work together in the future. Experience shows that the individual is the best person to explain how they feel. An open and frank discussion of the issues, which is controlled by the mediator to ensure fairness and appropriate behaviour, can be key to sorting out conflict. Individuals can choose to bring a representative to the mediation, but they must talk to the mediator about this before the day that the mediation takes place as all those involved in the mediation must know who will be attending.

Mediation is entirely voluntary. The mediator will explain all about mediation to those involved so they can decide if it is for them. If an individual decides that they do not want to mediate the mediator will tell their employer that it is not possible for the mediation to go ahead.

Mediation meetings can be held at the workplace or impact can arrange a suitable venue. There will need to be at least two private rooms for the mediation - one for each side in the dispute.

Individuals will not be forced into making an agreement against their wishes so they must be committed to sticking to what is finally agreed.

The mediator will arrange a follow up meeting usually within three months, both parties will be invited to attend to discuss their progress, any concerns and feelings.

Agreements reached in mediation are not normally legally binding unless both sides specifically ask for this. They will be given the opportunity to take legal advice before a legally binding agreement is made.

If agreement cannot be reached, workplace procedures can still be used or, in some cases, legal procedures. However, it is a condition of providing this service that the parties maintain the strict confidentiality of the process and in particular undertake not to call the mediator to provide evidence, at a later date, regarding the content of the mediation.

In terms of preparation, individuals will sometimes be asked to write down:

- what the problem is that they want the mediator to help with and
- a short list of the main things that have happened. This is to help the mediator understand what the issue is and to save time on the day of the mediation.



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