

1. Introducing the Guide

Whether you're a manager considering making a referral to our mediation service, or if you are preparing to engage in mediation as a participant, this Guide to Workplace Mediation will provide you with details of the role of mediators and the process and philosophy of mediation.

This is intended to act as a comprehensive guide to mediation and its role in transforming and resolving workplace conflicts, disputes and disagreements.

During mediation, our mediators will work with everyone involved in a conflict situation to explore their underlying issues, needs, goals and expectations. They apply a series of safe and constructive approaches to help those involved listen to one another and support them as they identify areas of commonality and difference. Mediation is often described as an attempt to build bridges. In many respects, this is true, as mediation helps people bridge the gaps which remain unresolved in workplace conflict.

We understand that resolving workplace conflict can be difficult and tiring. Our experienced mediators will support the participants every step of the way. By listening carefully to what each one has to say, the mediators will encourage them to talk about their problems constructively and safely. They will not make judgments or determine who is right or wrong. Instead, they will maintain a neutral and impartial approach throughout the process and support the participants before, during and after mediation.

Importantly, all the work is confidential. This is one of the guiding principles of the Mediation Service and we take this very seriously. If you want to discuss any aspect of our Internal Mediation Service, please contact HR Direct on 27700.

2. What is Mediation?

Mediation is a process whereby a neutral person works with people who are in a workplace conflict or dispute to assist them in reaching a satisfactory outcome.

Mediation usually lasts one full day. It creates a safe environment where participants are able to communicate and work towards the restoration of a positive working relationship. Mediation is a structured process which enables those involved to identify, consider and discuss their own and each other's current and future needs. The mediators encourage and facilitate open and honest communication which often leads to increased awareness, understanding and empathy between participants

Mediation is a different way of resolving conflict, it has a clear structure and it is underpinned by important ethical values. However, it is important to say that mediation is only as effective as you want it to be. If you want to find a solution you will find it.

The mediators will do everything they can to help those involved to find a positive and constructive way forward.

The key purpose of mediation is to restore a positive and productive working relationship. During mediation, the meaning of a positive and productive working relationship will be considered, how such a relationship can be restored, how this should happen, and how mediation can ensure that it will work.

There are some key concepts which will be explained at the first meeting:

Mediation is voluntary

People should enter into mediation because they want to and not because they feel bullied or threatened.

Mediation is a safe and constructive way of speaking and listening

Mediation's basic ground rules prevent the process from being used as a means of threatening, intimidating or bullying participants.

Mediation encourages fair problem-solving with a focus on the future

Every person involved in conflict has an idea regarding how it can be resolved. Mediation encourages openness and honesty and it ensures that each person's point of view is considered. Through mediation, the participants develop realistic, agreed and measurable action plans.

Mediation is confidential

Mediation is a confidential process. We ask the participants to sign the confidentiality agreement before mediation starts. No formal records are kept of the information shared in the mediation meeting and nothing is put onto their files

3. What is a Mediator?

We have a number of trained mediators who are independent and invited into a conflict or dispute situation to work with the people involved to try to find a positive resolution to their situation. In our service, we normally use two mediators on each Mediation. The mediators do not judge who is right or wrong, do not blame those involved and do not tell people what to do.

The mediators listen carefully to what the participants say and ask a number of questions to allow them to share information. The mediators help them to address their current concerns and issues as well as their expectations and goals.

Throughout the mediation process, the mediators consider how to move the participants forward and work with them to consider their future needs, expectations and options.

4. What is the Mediation Process?

There are six stages of workplace mediation which are

Prior to mediation starting

1. Making the Referral and setting up the mediation
2. One of the mediators making contact with the participants separately (normally by telephone)

The mediation day

3. The mediators hold a first meeting with each of the participants separately
4. The mediators hold a second meeting with each participant separately
5. The joint mediation meeting
6. Reaching agreement and concluding the mediation

Each of these stages is explained in more detail in the sections below

Stage 1 - Making the Referral and Setting up the Mediation

The purpose of the referral is

- For the referring manager to provide details of their concerns in relation to a conflict or dispute between (or with) one or more employees.
- To provide the background to the conflict, covering any relevant history, the present situation and the organisation's expectations and goals.
- To explain the causes and effects of the conflict in terms of the people involved, the current management action, the prevailing culture, the environment and the use of existing policies and procedures.
- To consider whether mediation is suitable in this context.
- To agree logistical arrangements, costs and any requirements for reporting back.

Making a referral:

If, as a line manager/HR Consultant, you wish to make a referral for mediation you need to complete a Mediation Referral form, which is available on People First, and send it by e mail to the Mediation Administrator. If you need any information about the process you can contact HR Direct on 27700. Once the completed Referral form (appendix 1) is received, the Service Co-ordinator will consider your request for mediation.

Agreeing on an intervention:

The Service Co-ordinator will look at the specific details relating to your referral and determine whether the conflict is suitable for mediation. They will consider the causes and effects of the conflict, how the conflict has developed and how it has been responded to. They will establish whether the participants are willing and able to engage fully in all stages of mediation.

Consideration will also be given to whether mediation is appropriate and if there are any allegations of bullying, harassment, discrimination or issues of personal safety which need to be taken into account.

Once they have reviewed the information and the causes and effects of the conflict, they will consider the available options. If they think that mediation is not appropriate in the current context, a range of potential alternatives will be provided. At the referral stage, the logistics of offering mediation will also be considered.

Setting up the Mediation Meeting

If mediation is considered suitable, the Mediation Administrator will contact you as the referring manager to discuss the arrangements for the Mediation. You will be given a link to the Mediation Guidance and a copy of the Confidential Agreement (appendix 2) and Goals for Mediation to give to each participant before the Mediation. All participants are asked to complete a short questionnaire asking them to consider their personal goals for mediation which should be completed and handed to the mediators at the first pre-mediation meeting (appendix 3).

The Mediation Administrator will discuss with you the possible room options for the Mediation day. It is very important that consideration is given to having appropriate rooms for the mediation meetings in a venue away from their immediate workplace as follows

- A comfortable room for meeting participants and undertaking joint mediation meetings.
- Two smaller rooms to be used by the participants as waiting rooms and as small break-out rooms as required during mediation.
- Access to refreshments.

The suitability of rooms and venues is important for all involved. The participants need to

feel comfortable and confident that they will not be interrupted and that confidentiality is maintained. Whilst it may be suitable for the mediation to be held in their workplace it should not be in the vicinity of other colleagues. The Mediation Administrator will book the rooms.

Stage 2 - Making Contact with the Participants

One of the mediators will contact the participants separately, usually by telephone, to explain how mediation works and to make it clear that the process is an honest and genuine attempt to resolve conflict. The mediator will explain the importance of getting each person's commitment to mediation in order to improve the likelihood of subsequent success.

Stage 3 - The First Meeting

On the Mediation day, the mediators hold the first meeting with each participant separately. The meeting lasts about an hour. The purpose of this meeting is to:

- Explain and clarify to the participants the role of the mediator and the mediation process, and to answer any questions that they may have.
- Consider the various elements of mediation and the impact on the individuals involved.
- Identify, through a process of active listening, the history of the situation as well as the participants' future needs and expectations.
- Discuss the participant's goals for mediation (appendix 3).
- Agree terms of reference for the mediation process which the participants are able to commit to.

The first meeting will give each participant the opportunity to discuss the issues as they see them, to find out more about mediation and, hopefully, to commit to the process. It is important that those involved realise that the mediation process is a useful tool to help amend the situation and that each participant will only get out of the process what they are prepared to put into it.

The mediators will listen carefully to each participant and ask relevant and appropriate questions. The mediators do not judge what participants say and will work with each person to prepare them for the joint meeting. Whilst the mediators will not disclose what the other person has said, they will identify areas of commonality and consensus.

The participants will each be asked to prepare for the joint meeting by clearly identifying their needs and goals and to consider what they wish to say in their uninterrupted speaking time in the joint meeting

Stage 4 - The Second Meeting

In the second meeting the mediators meet each participant again separately. The meeting is relatively short but it is very important for three key reasons.

1. It prepares all participants for the difficult conversation ahead.
2. It allows the participants to 'test' what they want to say on a neutral person.
3. It gives the mediators the opportunity to map the issues and develop the agenda for the joint meeting.

The second meeting will also be used to 'reframe' any challenging language and the mediators will help each participant construct what they want to say to one another. This will be done by making sure that things that are important to each person are said in an objective and non blaming way that focuses on their needs.

Finally, the mediators will explain what happens at the joint meeting and will invite each participant to prepare what they want to say during their uninterrupted speaking time (also

known as an opening statement). It is important to prepare for this as it is not always easy to say what you want to say when you feel tense. Notes or bullet points can be helpful.

Stage 5 - Joint Mediation Meeting

The joint meeting generally take place in the afternoon of the mediation day. The purpose of this meeting is:

- To establish a safe and structured environment where all participants involved in the dispute/conflict can meet one another to discuss their concerns.
- To evaluate all available options and ultimately to arrive at realistic, manageable and agreed outcomes.
- To develop an action plan and a memorandum of understanding for agreement by all participants.
- To consider longer-term requirements and follow-up arrangements.

Joint Mediation Meeting stages:

1. Opening and ground rules
2. Uninterrupted speaking time each person in turn
3. Exchange between the participants
4. Action planning
5. Closure

The Joint Mediation meeting in detail

1. Opening and ground rules

At the start of the meeting the mediators will establish a number of ground rules. These are:

- Please try not to interrupt whilst others are speaking.
- Listen to what each other are saying.
- Respect the other person's points of view and their right to voice it.
- Be courteous to each other
- Speak from your own perspective

2. Uninterrupted speaking time

After the ground rules have been agreed, each of the participants will have the opportunity to tell their story. This is done during uninterrupted speaking time. You should try to speak for a maximum of five minutes, but you may take longer if necessary, but consider that the other person might not be able to remember a lot of points. Each person is given the same opportunity to speak and listen.

3. The exchange between the participants

After the uninterrupted speaking time the mediators will invite the participants to respond to what they have heard or to ask questions of clarification. This allows each participant to hear what the other is saying and the impact on them.

This meeting is a carefully structured process which follows simple and effective guidelines. This by far is the most important stage of the mediation process. Entering into this clearly demonstrates commitment towards a positive and realistic outcome to the current situation.

This form of mediation is not easy, and it can be challenging, frustrating, complex and tiring. However, by meeting one another and talking with honesty and openness about the situation, you are making a real and sustainable contribution to the dispute resolution process.

We consider the process of direct communication as the most effective and worthwhile form of mediation available.

The role of the mediators) during the joint meeting

The mediator's role is to act as a facilitator, listen carefully, ensure that ground rules are adhered to, ask questions, summarise what is said and generally lead the meeting in a positive manner whilst ensuring everyone's point of view is considered.

Time-out

In some cases, the mediators may ask for the joint meeting to break into smaller one-to-one meetings. This allows participants to take time out without interrupting the flow of the process. A time out may be called when:

- A difficult issue arises which requires personal and private consideration.
- Mediators experience difficult or challenging behaviours.
- One or both participants requests space and time to think and reflect.

Stage 6 - Reaching Agreement and concluding the mediation

There are no set formulae for how mediation should end. Every situation is different and what is needed may be different depending on the circumstances. It is important that participants have the opportunity to start talking again and that they agree what they want to happen in the future. What happens afterwards may include:

- An action plan to be monitored by participants for a specific time.
- Future mediation involving other people or a whole team conference if there is conflict within a team.
- An agreement or memorandum of understanding outlining how the participants will interact in the future.
- Consideration of training and development issues or supervision and coaching needs.

The mediators are bound by a strict code of confidentiality. However, it is recognised that some feedback may be required as part of the reintegration process. Each case will be assessed on its own merits and circumstances. The mediators will agree with the participants what, if any, feedback is provided to the referring manager. The availability of email and telephone support will be discussed at the conclusion of the case.

Any outcome will be put in writing in the form of a Mediation Agreement for participants to consider, keep and follow. After an agreed period (usually one month) the mediators will contact participants to establish how the case has progressed. The mediators are able to offer a confidential telephone and email support service for one year after the mediation. This will be discussed during the joint meeting.

Remember: Mediation is only as effective as you want it to be. If you want to find a solution, you will find it. The mediators will do everything they can to help those involved to find a positive and constructive way forward.

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Workplace Mediation Referral

This form should be completed as fully as possible and returned via e-mail to anna.early@nhsbt.nhs.uk

1. Referring Manager Details

Your name	
Department / Section	
Position	
NHSBT location of participants	
Your contact phone number:	
Email address	
Cost Centre (for Mediators to book travel/accommodation against)	

2. Details of participants for contact purposes

(Please note that the Mediator(s) will contact all participants by telephone in advance of mediation)

Name	Participant One	Participant Two
Position		
Department/section/directorate		
Preferred phone number		
Typical availability		
Nature of participant's working relationship		

3. Please provide a brief summary of the situation.

Please give any further information or documentation that you feel is relevant to the case. Please advise if the issues are part of any formal procedure or of any allegations that could include statutory discrimination.

4. Please provide details of any action taken to date to resolve, investigate or otherwise manage the situation including outcomes.

Please continue on separate sheet if required.

5. Please advise us of any specific needs of the participants.

6. Please outline your expectations of mediation.

These will form our terms of reference.

7. Other relevant details. *Please tick*

	Yes
a. Please ensure all participants are aware that this case is being passed to the Internal Mediation Service for mediation?	
b. Have the participants been provided with a copy of "Guide to Workplace Mediation"?	
c. Are all participants aware of your expectations of mediation?	
d. Are all participants aware that the Mediation Meeting will take a full day?	
d. Are all participants aware that they will be contacted by telephone prior to the mediation?	

Confidentiality Agreement

Workforce

CONFIDENTIALITY AGREEMENT

Confidentiality is central to the success of the mediation process. As such, all participants involved in mediation are asked to sign this standard agreement prior to mediation taking place.

The purpose of this agreement is to ensure that all participants are able to take part fully, openly and honestly during the mediation process.

I agree that:

1. Any information or documents received or developed during the mediation process will not be used for any purpose other than that for which it was intended i.e. resolving this conflict through mediation.
2. All information received by me during the mediation process is done so in the knowledge that it must remain confidential and will not be disclosed to any one else. However, documents which would in any event be disclosable at either Employment Tribunal or Court hearing will not become privileged by reason of having been referred to in the Mediation and will therefore still be disclosable.
3. All discussions during the mediation process are “without prejudice” and “privileged” which means that nothing that is said by anyone during the process may be put forward as evidence in any subsequent internal determination process, appeal, Employment Tribunal or Court action.

What you can expect from your Mediators:

That mediators will be unable to give evidence at Employment Tribunal or other formal or informal hearing/investigation, or make a statement at any time in the future, relating to any issues arising from or during the mediation process.

That all notes taken by mediators during the process act solely as aide memoirs for the mediators and only by mutual agreement will notes be retained on files. If not agreed, they will be destroyed at the end of the mediation process.

To enable the situation to be managed beyond mediation, by mutual agreement of the parties the person who referred the case may receive a copy of the final agreement. They will not receive feedback about any issues raised and/or discussed during mediation or any other factors that occurred during the day.

I confirm that I am in agreement with the above

Signed Date

Print Name

Your Goals for Mediation

Workforce

This **confidential** questionnaire has been designed to give you an opportunity to consider your personal needs and goals before we start mediation.

However, there are no right or wrong answers! Please use this space to reflect on the positive aspects of what you hope to achieve and, if possible, please avoid making negative statements about or demands on the other person – do be as open and honest as possible. Your answers will be discussed between you and the mediator during the early stages of mediation. Once underlying needs have been discussed, we will be able to develop a framework for mediation.

Please note: The questionnaire should be completed **after** you have read the Guide to Workplace Mediation.

Don't forget to bring your completed questionnaire with you on the day of the mediation.

Your name:

1. Briefly, please outline the areas that you wish to discuss during mediation

2. What are your personal needs/goals that you would like to be met through mediation and why are these important to you?

3. What would a fair outcome look like for all participants?

4. What are the potential blocks and barriers to achieving the above outcome?

5. You will be asked to prepare a short opening statement for use at the start of the joint Meeting. Please use this space to consider those areas you wish to include in your opening statement.
Please bear in mind that the mediator will ask all parties to refrain from using blaming, derogatory, sarcastic, demeaning or other inflammatory language.

6. Do you have any further comments or suggestions regarding the mediation process? (Please continue on a separate sheet if required).