

# **A Useful Guide to Mediation**

## What is Mediation?

The role of the mediator is to help parties reach a solution to their problem and to arrive at an outcome that both parties are happy to accept. Mediators avoid taking sides, making judgements or giving guidance. They are simply responsible for developing effective communications and building consensus between the parties. The focus of a mediation meeting is to reach a common sense settlement agreeable to both parties in a case.

### ***Mediation should be:***

- structured – mediators help people take things one step at a time, in a particular order (for example – clarifying and agreeing the problem/s before looking at solutions. Expressing concerns before creating ways forward)
- specific – people are expected to be clear about what is happening, how they feel, and what they want to do about problems.
- safe – it has inbuilt ground rules to help keep lines of communication open, maintain control, and encourage feelings to be expressed without aggression or blame.

### ***Mediators help the disputants:***

- communicate – say what they need to, hear what the other side has to say, and respond to one another's concerns.
- co-operate – work together on problems, and work towards settlement, rather than aiming to win, or at least be proved right.
- be more confident – trust themselves, trust one another, find creative ways of fixing problems. Use their interpersonal skills rather than falling back into negative patterns such as 'avoid' or 'fight'.

### ***Mediators do not:***

- make decisions for the parties
- judge who is right or wrong
- take sides

## The Mediation Process

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### 1. Get started on a positive note:

- create and keep ground rules (see page 2 'How to open a meeting')

### 2. Listening time – give each side a full hearing:

- focus on specifics
- move away from blame
- reflect and summarise what you hear
- separate performance from personality

### 3. Learning to work together:

- search for common goals
- agree the problem

### 4. Working towards agreements:

- encourage communication
- take one issue at a time
- create options
- check feasibility
- work out an action plan

### 5 Agreeing measurable actions:

- confirm details of action
- check understanding of tasks
- work out fall-back proposals and ways of continuing working on the problems
- arrange follow up

## Mediation - How to open a meeting

- 1) Welcomes and words of encouragement
- 2) Personal introductions – check what the parties prefer to be called
- 3) Explaining briefly the purpose of the mediation, and the role of the mediator(s) which is to:
  - give each side the opportunity to speak and be heard
  - control the session with the parties' help
  - explore ideas for settlement realistically
  - not make decisions for the parties or judge right or wrong
  - work towards the future rather than go back constantly over the past
  - help the parties work at their pace, and make the best possible use of the time
- 4) Introducing and agreeing ground rules, and what is expected from the parties  
(You may find it useful to have these on a flipchart. You could also give them to the parties on a card which they could read while they were waiting for the session to start.)
  - ❖ listening – speak one at a time
  - ❖ openness – it is requested that the parties are open with one another, information when requested and are also open to the possibility of a resolution.
  - ❖ patience – people are asked to stay in the room – we can discuss problems and doubts if they arise.
  - ❖ people are expected to remain seated at all times
  - ❖ confidentiality (and note-taking) – apart from an agreement anything said stays in the room, notes will be destroyed, things said in mediation cannot be used in court.
  - ❖ respect – avoid accusation and blame, and abusive language
  - ❖ control – people may be angry or upset, and they and mediators can call a break, but the mediator will use various kinds of control to keep both sides working as constructively as possible, for example, interrupting name-calling sessions.
  - ❖ voluntariness – people may decide the session is not working for them – they are asked to alert the mediators and can discuss this with them in a side meeting, if they want to.
- 5) Explaining how the session will be run:
  - comfort facilities and breaks, duration of session
  - who will speak first – outline of the process

- agreements may be reached, can be written, and are not binding in court

6) Dealing with questions

7) Checking with each disputant's willingness to participate

Guidelines for mediators' opening statement – during the statement the mediators should be:

- Engaging individuals without bias
- Dealing with misunderstandings, misapprehensions
- Introducing selves and process clearly, confidently and in a way that the parties can understand
- Building trust and rapport
- Creating a calm atmosphere
- Using appropriate, simple language

## Five Basic Methods of Resolving Conflict

METHODS	WHAT HAPPENS WHEN USED:	APPROPRIATE TO USE WHEN:	INAPPROPRIATE TO USE WHEN:
<b>DENIAL OR WITHDRAWAL</b>	Person tries to solve problem by denying its existence. Results in win/lose.	Issue is relatively unimportant; timing is wrong; cooling off period needed; short-term use.	Issue is important; when issue will not disappear, but will build.
<b>SUPPRESSION OR SMOOTHING OVER</b>	Differences are played down; surface harmony exists. Results in win/lose forms of resentment, defensiveness, and possible sabotage of issue remains suppressed.	Same as above, also when preservation of relationship is more important at the moment	Reluctance to deal with conflict leads to evasion of an important issue; when others are ready and willing to deal with issue.
<b>POWER OR DOMINANCE</b>	One's authority, position, majority rule, or a persuasive minority settles the conflict. Results in win/lose if the dominated party sees no hope for self.	When power comes with position of authority; when this method has been agreed upon.	Losers have no way to express needs; could result in future disruptions.
<b>COMPROMISE OR NEGOTIATION</b>	Each party gives up something in order to meet midway. Results in win/lose if "middle of the road" position ignores the real diversity of the issue	Both parties have enough leeway to give; resources are limited; when win/lose stance is undesirable.	Original inflated position is unrealistic: solution is watered down to be effective: commitment is doubted by parties involved.
<b>COLLABORATION</b>	Abilities, values, and expertise of all are recognized; each person's position is clear but emphasis is on group solution. Results in win/win for all.	Time is available to complete the process; parties are committed & trained in use of process.	The conditions of time, abilities, and commitment are not present.