



A FREE GUIDE TO WORKPLACE MEDIATION

This free e-book covers the benefits of using mediation to resolve workplace disputes and the situations that are suitable for mediation, the principles of mediation, and how to set up a mediation initiative in the workplace.

1. Introduction

“How have we come to this?”

“He simply doesn’t or won’t understand!”

“I don’t know what else I can do? She simply won’t listen”

“I’ve told him if he doesn’t like it he can always raise a grievance”

“Mary isn’t talking to Jean and you can cut the atmosphere with a knife ”

If these statements resonate - you are probably in the grip of work based conflict! That will not come as a revelation to you I’m sure but read on and I hope to tell you something that you might not know..... In particular a mechanism available to you that has at least a 70% to 80% chance of achieving a long lasting win-win solution.

Recommended in the ACAS Code of Practice on Disciplinary and Grievance procedures **Mediation** offers an alternative to pursuing complaints and disagreements through costly and time consuming grievance procedures.

The best news is that Mediation repairs the relationship for the parties involved and restores a healthier environment for all around who are affected by the fall out from the conflict.

2. Why do we need mediation we have a grievance procedure?

The Grievance Procedure is adversarial process i.e. the parties in conflict present their own perceptions of what the solution to the conflict should be. These solutions tend to be incompatible with each other. The Hearing Chairmen makes the decision, which is not always satisfactory to both parties. Once the appeal process has been exhausted there are often residual unresolved relationship issues, which continue to be problematic for not just the parties concerned but their colleagues too.

Mediation requires the parties to take responsibility for the process, explore underneath their individual positions, and to help them identify shared interests to bring their positions closer together.

Mediation repairs the relationship for the parties involved and in so doing restores a healthier environment for all around who are affected by the fall out from the conflict.

The Mediator is an independent third party, who facilitates this dialogue to helping the parties to reach a satisfactory outcome.

Mediation is different from adversarial processes, as the focus is on the needs and interests of the parties. The emphasis being on helping both parties take responsibility for the outcome.

Workplace mediation is a positive opportunity for people to resolve practical problems and interpersonal issues.

It is cost and time efficient producing sustainable solutions.

3. Disputes suitable for mediation

Mediation can be particularly effective in addressing the wide range of issues that typically arise in employee grievances and situations where a manager perceives that a team member's behaviour is causing difficulties but the manager has been unsuccessful in addressing the behaviour.

Issues that are suitable for resolution through mediation include:

- a conflict over working practices;
- a conflict over scarce resources, often occurring between departmental or functional heads;
- a conflict resulting from individual behaviour;
- conflicting perceptions of performance, which can lead to a grievance or accusations of discrimination;
- a conflict arising out of allegations of discrimination, or unfair or unequal treatment;
- a conflict arising out of inequality of pay issues;
- a relational issue;
- an allegation of bullying or harassment;
- a severe breakdown in communication (which tends to be the manifestation of some of the issues listed above);
- a grievance or disciplinary situation, although in certain circumstances mediation may be unsuitable (see Disputes unsuitable for mediation); and
- agreeing fair and equitable terms of exit in the case of a settlement agreement (previously known as a compromise agreement); any agreement reached in this case would need to be countersigned by the employee's legal adviser.

See 10 below for issues not suitable for mediation.

4. Timing - when to start the process?

The mediation process is appropriate for use at any stage in a dispute, but there are more opportune times than others to activate a mediation process. For example, using mediation to resolve a dispute before an employee pursues a formal grievance process can prevent the discomfort that can be experienced when parties work together but are involved in formal processes. Early intervention will avoid the views of the parties becoming entrenched over time and reduce the likelihood of others being brought into the conflict. Therefore, early use of mediation can help to reach an outcome that is better for business.

5. Mediation approaches

There are three main approaches to mediation: facilitative, evaluative and transformative. Evaluative mediation is not used in the workplace, although employers may have heard of it or used it in other contexts. It is used in conflicts between businesses in the same industry, as the mediator works in an expert capacity to share his or her views, evaluate the relative strengths and weaknesses of each side, and recommend particular solutions to bring the dispute to an end. The facilitative and transformative approaches are used in the workplace.

5.1.Facilitative

Most workplace mediation practice uses the facilitative model of mediation, so this guide focuses on this approach. The key principles of the facilitative model of mediation are self-determination, free and informed consent and impartiality.

The rationale behind the facilitative model is that people end up in conflict because they perceive their interests, goals or concerns to be incompatible. Therefore, they unintentionally act in ways to pursue their goals or interests at the expense of others. By helping the parties focus on the things that are most important to them, namely their needs and interests, the mediator aims to move them closer together, so that they are able to reach a mutually acceptable resolution to some or all of the issues in dispute.

The role of the mediator is to manage the process by setting ground rules, clarifying issues, establishing an agenda and helping the parties to generate options that ultimately shape the terms of their agreement. The mediator deploys a multitude of skills, for example empathetic listening, summarising, reframing and questioning, to help guide the parties through the process to a satisfactory outcome.

To be successful in this approach, the mediator must remain impartial, suspend judgment and prejudice, and act compassionately throughout the process. The mediator is in charge of the process, but the parties are in charge of the outcome.

The facilitative approach can be learnt. **See 11 below regarding training for mediators.**

The facilitative model also has time boundaries: if parties reach an outcome, this will usually occur within one or two days. On a practical level, this means that organisations can allocate a budget to mediation.

5.2.Transformative

The transformative approach is a very different and less widely used model of mediation in the UK, although some UK mediators use it successfully, and it is widely used in the US, most notably in the United States Postal Service.

The transformative approach was developed in the US by Joseph Folger and Robert Bush. It is based on the premise that, when people or groups end up in conflict and the conflict escalates, the quality of their interaction degenerates. Folger and Bush explain that this happens because

humans are susceptible to weakness and vulnerable, and have a limited capacity to consider the needs of others when faced with sudden conflict.

The transformative approach is also based on the proposition that people have an inherent capacity for strength and connection that is activated when they are challenged by conflict or difficult situations. It seeks to tap into these capacities and reverse the degenerative spiral of conflict in which people find themselves. This process is based on the premise that, when people are able to access their capacity for strength and connection, they are in a much better place to make decisions that enable them to resolve their conflict.

In this process, the mediator is there to create the opportunity for this shift to happen, by helping the parties to appreciate each other's viewpoints (recognition) and strengthening their ability to handle conflict in a productive manner (empowerment). The mediator intervenes in the conversation between the parties to call attention to moments of recognition and empowerment. Ground rules for the mediation are set only if the parties set them. The mediator does not direct the parties to topics or issues. Instead, the mediator follows the parties' conversation and assists them to talk about what they think is important. A transformative mediator will not offer an opinion on the strengths or weaknesses of either party's case or suggest solutions.

6. The principles of facilitative mediation

Facilitative mediation is based on a number of principles:

Confidentiality: Mediation is a confidential process: anything discussed during the mediation cannot be disclosed to anyone outside the process, unless the parties expressly agree to do so. Confidentiality begins when the mediator first makes contact with the parties. All notes taken by the mediator during the mediation are destroyed at the end of the process. However, there are limits to what is protected by confidentiality: it does not cover admissions of criminal activity or threats of imminent harm to others. One of the challenges facing the parties in mediation is to what extent this privilege can be enforced: the parties might reasonably expect to discuss the outcomes reached and the substantive issues raised with their family members. Mediators should discuss this with the parties to help manage their expectations.

Impartiality: The mediator is completely independent: he or she is an impartial third party with no vested interest in the outcome. Organisations that establish an internal mediation programme usually select mediators from a different part of the organisation to where the parties work to help ensure independence and impartiality.

Non-judgmental: The mediator does not establish who is right and wrong, as the process is non-judgmental. The emphasis is on learning about different perspectives and empowering the parties to take ownership of the solution.

Without prejudice: The term "without prejudice" means that anything revealed or discussed during the course of the mediation cannot be used to disadvantage either party in any subsequent litigation.

Flexible and informal: Parties can bring their dispute to mediation at any stage before, during or after a formal workplace or legal process takes place. The mediation process itself is entirely flexible: there are no limits as to what the parties can consider as agreement terms, provided that they are, in their view, realistic and achievable. The process is informal, to help the parties feel at ease, and is designed to be a safe and productive conversation, rather than a formal and restrictive process.

Voluntary and self-determining: One of the core strengths of mediation is that the parties are free to choose mediation to resolve a dispute, but are not compelled to do so. This puts responsibility and ownership of the process firmly in the hands of the parties. They decide whether or not they attend and stay for the duration, and what they agree to at the conclusion of the process. The process is designed to empower the parties to make decisions that best serve their interests. This helps to ensure that the parties are committed to the outcome.

7. The mediation process: pre-mediation

If an employer has a clear and transparent procedure for accessing mediation, this will dictate the route of entry to mediation. Employees usually access a mediator through discussions with their manager, HR department, or the HR Advisor.

Assuming that both parties to a dispute are willing to seek to resolve their conflict through mediation, and that the substantive nature of the conflict is suitable for mediation, the organisation may engage the services of an external mediator (someone outside the organisation who is independent and impartial). As an alternative to using an external mediator, some organisations have developed an internal capacity to mediate workplace conflict. If the organisation has in-house mediators, the organisation's mediation scheme coordinator will need to find a suitable internal mediator, who is seen to be independent by the parties, and can act in an impartial capacity as mediator.

In the event that the parties opt for mediation during the course of a formal process, for example in the course of a grievance process, the formal process should be suspended. If no satisfactory outcome is reached during the mediation process, the formal process can be reactivated. Failing to suspend a formal process is likely to undermine the success of a mediation process, and might deter future users from accessing the mediation facility.

8. The mediation process:

Individual sessions

Once the mediation scheme coordinator has appointed the mediator, the mediator will meet separately with each party (the meetings will take around 1 hour).

The purpose of this discussion is to allow the mediator to explain the mediation process in full to both parties, answer any questions and address any concerns, before exploring with each party their key issues in relation to the conflict. The mediator will want to know about the history of the conflict, the impact that it is having on the parties, their work and performance, and what they would like to achieve from the mediation.

Joint meeting

- Introduction

The mediator spends the first few minutes explaining the mediation process in detail, ensuring that the parties are familiar with the process and that there is an understanding of the process to which they have committed. The mediator explains the key principles of mediation: confidentiality, impartiality, flexibility and informality. The mediator recommends some ground rules, to enhance the quality of the conversation. Ground rules could include listening without interrupting, and avoiding words or language that may be seen as inflammatory.

Opening Statements

The next stage of the mediation meeting is for each party to have a short, uninterrupted period, to tell his or her side of the story. This includes explaining: the conflict from his or her perspective; how he or she sees events; how he or she has been affected by the conflict; and what he or she would like to achieve from the mediation process.

This can be an uncomfortable time for the parties, as they have to tell their story across the table from each other. Equally, both parties have to listen to what is being said, often hearing things with which they do not agree or are particularly uncomfortable. The mediator must ensure that this period of uninterrupted speaking is respected by everyone, including the mediator. Therefore, everyone should refrain from seeking to clarify information or asking questions at this stage. The parties often find that this is a cathartic process.

Following the opening statement by each party, the mediator summarises what the parties have said, including the facts and feelings that they have expressed.

Exploring

After both parties have spoken, the mediator invites the parties to respond to what has been said, ask any questions to clarify points made, or probe further into the issues. The purpose of the exploring phase is for all parties to improve their understanding of the issues and begin to formulate an agenda for further discussion. The mediator will use the exploration phase to investigate the issues and elicit the parties' interests and needs.

The parties' interests and needs can incorporate tangible interests, for example the control or distribution of resources, and intangible interests, for example being treated with dignity or receiving recognition for positive contribution to projects.

Problem-solving and negotiation

When the mediator and the parties have established their interests and prioritised the issues that need to be addressed during the mediation process, the mediator can assist the parties to generate ideas and options that satisfy each party's interests.

The mediation process is not necessarily about finding a compromise. Rather, it is about exploring a wide range of creative options that meet the needs of the parties. During this stage, the mediator will help the parties to distil their ideas and proposals by reviewing with them to what extent their proposed solutions satisfy their interests and are realistic, practical, robust and sustainable.

(source: CIPD, XpertHR; Steve Hindmarsh Ltd; ACAS)

In employment tribunals, the outcome is usually limited to a financial settlement. Mediation creates the possibility of a range of outcomes, because the focus is on finding a solution that satisfies the needs and interests of the parties. Empowering the parties to take charge of the outcome encourages them to be committed to following through with it.

For example, a mediation agreement could include: an apology from one party to the other, where the wording and nature of the apology is agreed; a “behavioural agreement” whereby the parties commit to acting differently towards each other in future, the specifics of which could include earmarking particular times to talk through challenges or to review progress; modifying an appraisal process to make it more transparent; and putting in place flexible working arrangements to accommodate the parties' respective needs.

Designing an agreement

In workplace mediation, the use of written agreements can vary between mediators and from case to case. However, in principle, there are two types of agreement. A pre-mediation agreement represents the parties' agreement to mediate and their willingness to enter into the process and sign up to the principles of confidentiality, self-determination and free and informed consent. Both parties receive the agreement from the mediator in advance of the joint mediation meeting and sign the agreement on the day of the joint mediation meeting, before the start of the meeting. They each retain a copy.

The second type of agreement is the settlement agreement, which documents the agreements reached between the parties during the joint mediation meeting. (These are not the same as legally binding settlement agreements referred to in Disputes suitable for mediation.)

Neither agreement is legally binding or enforceable; rather, they reflect the parties' readiness to engage in the process and their commitment to following through with the outcomes reached.

In practice, the mediator will record the details of any agreements reached, and the terms of the agreement, during the course of the mediation, often using a flip chart for assistance. After the mediation process, only the parties to the mediation should keep a copy of any settlement agreement, unless they agree otherwise. Equally, they should inform the mediation scheme coordinator of the outcome of the process only if both parties agree.

In some workplace disputes, for example where relationships have broken down, formalising the conclusion of the mediation process by drawing up a written agreement can seem too formal and the parties might be reluctant to do so. The process of discussing their differences may have cleared up misunderstandings between the parties or they may have made verbal commitments to behave differently towards each other in future. However, a written agreement is designed to represent an explicit joint commitment to improve the parties' situation going forward and can remind the parties of how well they worked together during the mediation process to reach an agreement.

If the parties are reluctant to sign an agreement, the mediator should stress the purpose of the written agreement in a workplace dispute and emphasise that it is not a legally binding agreement that can be enforced. The mediator should invite the parties to formalise their agreement and explore their resistance if necessary. However, the mediator should stress that the parties are not compelled to enter into a written agreement.

Whether or not the parties enter into a written agreement, the mediator should help them design a SMART agreement: one that is specific, measurable, achievable, realistic and time-lined.

One challenge of workplace mediation is the possible imbalance of power between the parties. If one party is line managed by the other, or if there is a difference in gender or culture between the parties, this could result in a difference in power that could derail the mediation process if not appropriately addressed. The mediator should be alert to this and explore the extent to which this is a concern for the parties during the pre-mediation meetings or discussions. The mediator could declare the imbalance of power at the start of the joint mediation meeting, and ask the parties to let him or her know if they feel disadvantaged as a result of the difference in power.

9. The mediation process: general considerations

It is widely accepted that in workplace mediation, if an external mediator is used, the employer pays the mediator's fee.

The mediator and both parties to the conflict should be present at the mediation meeting. Mediation is a confidential and informal process, so neither party should bring along a third-party representative, for example an HR representative or someone from the employer's legal department, unless he or she is directly involved in the conflict, or unless both parties expressly request his or her presence for the purpose of clarifying any terms of the agreement. A third-party representative might create an imbalance of power, or might try to sway the emphasis of the meeting to what is best for the party he or she is representing.

It is not uncommon for parties to request moral support at the mediation meeting in the form of a colleague, relative or trade union representative. If either party wishes to bring along another person in a supportive capacity, the mediator should ensure that the other party is notified of this in advance of the mediation meeting, so that the other party can also bring someone if he or she chooses.

Everyone who attends the mediation meeting must agree to the confidentiality of the process. Anyone acting in a supportive role should not actively take part in the mediation meeting.

The employer should find a suitable venue in which to hold the mediation meeting. It is preferable if the location is off site, at a neutral venue, and somewhere where confidentiality can be protected.

The room should be large enough to accommodate everyone comfortably. Consideration should be given adequate lighting and ambient temperature. Each person should have a chair there should be no table and the chairs should be placed so that the parties face each other and they are equidistant from each other and close enough to hold a conversation without straining to hear but mindful of personal space.

Facilitative mediation process usually can be achieved in one day:

You should allow approximately 2 hours for the 2 individual sessions and around 3.5 hours (or half a day) for the joint session.

In addition there will be half a day to administer and set up the mediation process.

There are no notes from these meetings and none of the trappings of more formal adversarial processes. The time and resources that are required for a formal internal or legal process usually far outweigh the time and resources required for mediation.

10. Disputes unsuitable for mediation

There are a number of issues and contexts where mediation may be unsuitable:

Performance management: Mediation is not a substitute for performance management. If the organisation's mediation scheme coordinator or the mediator feels that a manager is using the process to avoid his or her managerial responsibilities, including performance management, mediation is unsuitable.

Coercion: Mediation is inappropriate when the mediator feels that either party has been coerced into using mediation and would have preferred the organisation to carry out a formal investigation or to take advantage of the organisation's other formal processes.

Mental health concerns: Mediation should not be used when one of the parties has learning difficulties or is experiencing mental health problems. These difficulties can surface during the course of a mediation process, in which case the mediator should stop the process and advise the parties accordingly.

First resort: The parties to a dispute are often tempted to take advantage of mediation at the first sign of a disagreement. They should be encouraged to resolve their differences by talking directly to each other in the first instance. Only when this fails should the parties resort to mediation.

Intransigence: It is normal for parties to feel that their situation is hopeless and that mediation will not be able to assist them to address their conflict. The role of the mediator and referring party is to help the parties understand the mediation process and the possibilities that could emerge through mediation. However, there are occasions when the parties are intransigent and their "zone of agreement" is too narrow for them to contemplate the possibility of finding common interests or a way forward. This is normally something that emerges during the course of the mediation process. It may become clear that the parties are unable to reconcile their differences and want to pursue alternative and more formal routes. The mediation process should not be started, or if it has already started, should come to a stop.

Safety: Mediation is unsuitable when the parties to a dispute feel unsafe in each other's company, or where the behaviour of one party leads the mediator to think that the other party's safety is at risk of being compromised.

Disciplinary situations: It can be difficult to judge whether or not mediation is appropriate for matters relating to conduct and capability issues, particularly when the employer feels that the line manager has acted fairly and wishes to reinforce a message that certain standards or behaviours will not be tolerated. Employers should evaluate each situation on a case-by-case basis and remember that mediation is a cost-effective and flexible process.

A breach of the ground rules: If one of the parties to the mediation disregards the ground rules, or becomes aggressive, abusive or threatening, or if one of the parties becomes too distressed to continue or requests a halt to the process, the mediator should stop the mediation.

11. Overcoming resistance to mediation

Despite government measures to encourage early resolution of conflict through mediation, employers have been slow to implement organisation-wide mediation programmes and to explore the possibility of addressing workplace conflict through mediation. Some employees remain sceptical about using mediation to resolve disputes. Introducing a mediation initiative into any organisation can generate significant business benefits, but its success will hinge on a number of factors. An employer that wishes to introduce mediation as a dispute resolution method will need to brief key stakeholders about the benefits of mediation.

Senior management

Launching a successful mediation initiative requires senior-level stakeholder buy-in, so that adequate resources can be made available for the initiative.

For some employers, mediation can appear to be a weak approach to resolving disputes, partly due to its informality, but principally due to a lack of understanding by senior management. However, there is nothing “soft” about mediation, as it puts responsibility on the parties for addressing their conflict directly with each other. Other employers might view mediation as a last resort, and something to explore in the days leading up to an employment tribunal hearing.

A sound business case will need to be made out to achieve senior-level buy-in. Organisations that advocate and support a collaborative culture for addressing workplace conflict are more effective. Research by the American Arbitration Association reveals that the most successful organisations adopt a more strategic approach to resolving conflict and pursue collaborative win-win channels of resolution. These organisations are more profitable, maintain stronger relationships with customers and stakeholders and have greater confidence in the management of the organisation. A survey of small and medium-sized enterprises (SMEs) conducted for ACAS in February 2008 found that the majority of managers in SMEs thought that mediation would improve line managers' ability to manage conflict and would reduce the number of employment tribunal claims.

Approximately 80% of mediations reach some form of agreement on all or some of the issues. This can save the business significant costs. The direct costs involved in mediation, when using an external mediator, are generally limited to the mediator's fee and the costs attached to hiring a venue for a day, which are paid by the employer. The direct costs associated with defending a claim in an employment tribunal far exceed this, on the basis that the employer's legal representatives are likely to spend considerably more time preparing for the case in the lead-up to the tribunal, on top of the day or days spent at the employment tribunal hearing, and may incur further costs on instructing expert witnesses and barristers. Further, should the claimant be successful, the tribunal will in most cases make a compensatory award.

Other costs that can be incurred as a result of workplace conflict include an increase in staff turnover and absenteeism, and wasted management time and resources. Areas that HR can explore to evaluate the cost of workplace conflict to the business include:

(source: CIPD, XpertHR; Steve Hindmarsh Ltd; ACAS)

- the frequency and volume of grievance and disciplinary processes, and the time and resources absorbed in pursuing them (including management and workforce time taken up with the conflict);
- staff turnover and reasons cited for leaving the organisation during exit interviews;
- recruitment costs for replacing members of staff who have departed for reasons associated with conflict; and
- sickness and stress-related absenteeism and the opportunity costs associated with under-resourced teams.

Less tangible but equally valid cost implications of workplace conflict include poor-quality decision-making, theft, sabotage and neglect of company property. Employees typically exhibit these behaviours when their organisation fails to deal with an issue. Another cost implication of workplace conflict is the business opportunities that can be missed as a result of delayed or inadequate information that arises out of poor communication between colleagues in conflict.

HR

There is often a lack of understanding among HR professionals about the mediation process. Some HR professionals are concerned that employees will use the process as a tactic to delay a formal process. Others are concerned that their workload will increase, as every employee with a grudge will use the process to vent his or her frustration.

However, with adequate procedures and an informed HR function, cases can quickly be categorised as those suitable and unsuitable for mediation. When used effectively, mediation can reduce the emotional energy, time and resources that are absorbed by workplace conflict, thus freeing up HR professionals' time to work on other tasks.

In many organisations, the HR department is stretched to capacity. HR professionals might perceive that a mediation initiative will add to their workload. However, they often find that using external or internal mediators to resolve disputes frees up more time to perform their duties, as the administrative burden of dealing with grievance processes is reduced as a result of agreement being reached on disputes during mediation.

Employers should demonstrate to HR the value of mediation and the role it can play in improving relationships and enhancing employee engagement. Unresolved conflict is problematic and damaging to employee relationships. When employees are in conflict with each other they tend to act in ways that generate negative consequences for themselves and others. For example, they can be less understanding, sympathetic, cooperative and generous of spirit. They often share their frustration with colleagues through gossip, without being accountable for their behaviour or addressing their concerns directly with the other person. This generates a climate of mistrust, where people seek to attribute blame to each other and avoid acknowledging the possibility that they have in some way contributed to the conflict.

Mediation helps to improve employee engagement because its central purpose is to encourage the parties to engage directly with each other and discuss the things that matter most to them regarding their work and relationships. It empowers people by making them accountable and creates the opportunity for them to influence directly how they are treated.

Trade unions

If employers involve trade union representatives early on when introducing a mediation initiative, they create an opportunity to address any concerns that they might have about the interference of mediation with employee rights. The implications of mediation in relation to employees' rights and the role of trade union representatives as protectors of those rights are normal concerns and can be addressed by emphasising the principles of mediation (confidentiality, its voluntary nature and free and informed consent). Providing reassurance that employees' statutory rights are not affected can help get trade unions on board and encourage them to promote the mediation initiative. Inviting external mediators to discuss mediation proposals directly with trade union representatives will maximise the effectiveness of any promotion efforts.

Employees

There are a number of reasons why employees might be resistant to mediation:

- They might be concerned because it is a new and unfamiliar process.
- They might fear the prospect of feeling vulnerable when having to address an issue directly with another party.
- They might need to overcome psychological barriers. For example, having to consider the possibility that their behaviour has had a negative impact on the welfare of another employee can be difficult.

Some employees invest emotionally in the conflict, which can serve to perpetuate the difficulties. The prospect of resolving a conflict can represent a huge loss to the employee, including a loss of face, a loss of support from peers and allies and even a loss of attention, as it is likely that the spotlight will have been on him or her throughout the conflict.

Employers should take steps to get their workforce on board, as they are the individuals who will decide whether or not to make use of the service.

Promotion of the mediation initiative

The first step in overcoming resistance to mediation is to educate the stakeholders about the process. It is crucial that all key stakeholders understand what mediation is, what it is not and how it works, and that they appreciate the benefits that the process can offer.

Employers can inform stakeholders about mediation by organising mediation awareness seminars and workshops, which could include demonstrating mediation sessions through role-plays. External mediators could facilitate these sessions, as they are likely to have expertise in engaging stakeholders with the process. Employers should invite key stakeholders to these sessions, including potential administrators of the initiative, senior management representatives (who are likely to allocate resources to the initiative), potential users of the service and union representatives (who can also support and champion the cause).

These sessions can be an effective way to inform perspectives on mediation and influence key stakeholders. Increasing transparency and awareness can increase the likelihood of the mediation initiative being taken seriously and getting off the ground. These sessions can create advocates and internal champions of the process.

Using an external mediation provider to run a controlled pilot can be an effective way of demonstrating the quick returns that mediation can generate.

Once mediation has been introduced into the organisation, the employer should continue to promote it to encourage workers to use the process to resolve disputes. Efforts to promote mediation across the organisation could include publishing success stories from previous mediation processes.

Communicating these stories is likely to be an effective marketing tool to promote the initiative, demystify it and ensure that it is well used. This should be done anonymously and with the permission of the parties to the mediation. Employers can use their intranet to publicise the mediation process, and could include a frequently asked questions section. For example, the United States Postal Service has a section on its intranet dedicated solely to mediation, where employees can find out more about, and how to access, the service.

12. Internal v external mediators

Employers should consider a number of factors when deciding whether their mediation service should be provided by in-house or external mediators.

The following factors might influence an employer to choose an external mediator over an internal one:

The complexity or sensitivity of the dispute may call for a more experienced mediator, preferably one from outside the organisation. For example, the parties to the dispute may need to discuss confidential information relating to the organisation's strategy.

A conflict involving senior managers might require an experienced and independent mediator.

Employees might perceive that the organisation is failing to take the matter seriously if it draws from a pool of internal mediators.

Using a junior member of staff to mediate might result in the parties being less responsive to the mediator due to his or her status.

For some organisations, introducing an internal mediation initiative is the most effective way of addressing workplace conflict. Some large public-sector organisations have trained a proportion of their staff in mediation skills, and they now operate as internal mediators, helping to resolve workplace conflict.

For smaller organisations, or those that are new to the idea of mediation as a means of addressing conflict, it may be more appropriate, in the first instance, to explore the possibility of

using experienced mediators from outside the organisation to help address disputes. It is possible for employers to combine the two approaches. Employers could use internally trained mediators to resolve minor workplace conflict and defer to more experienced and wholly independent mediators to resolve more challenging cases.

Choosing an external mediation provider

Ensure that the mediator is adequately trained. Employers could refer to the following organisations to obtain further information: -

- CEDR;
- Civil Mediation Council;
- ACAS; and
- ADR Group

Other considerations include: -

- the mediator's relevant mediation experience, for example whether or not he or she has dealt with similar disputes;
- the mediator's relevant training and consulting experience and continuing professional development;
- the mediator's approach and methodology;
- whether or not the mediator adheres to a code of conduct;
- whether or not the mediator has appropriate indemnity insurance; and
- the mediator's availability.

Developing an internal mediation capability

Employers that choose to train some of their own staff as mediators should consider a number of factors.

Selecting candidates

Developing a team of internal mediators is an effective way of addressing a high volume of minor workplace conflicts and developing a culture of addressing conflict through dialogue. Employers should take the following points into account when selecting candidates as mediators:

- Employers should ensure that the candidates have enough interest in, and understanding of, the process to commit their time and energy to what can be a challenging and difficult procedure.
- Employers should ensure that the workforce is fairly represented, by selecting candidates from a broad cross-section of the organisation, taking into account, for example, gender, culture, race, age, position and location.

Ideally, suitable candidates will already possess an inherent capacity to work with conflict. This might be reflected in their attitude to difference and their level of emotional intelligence. They might possess some of the core skills that effective mediators need, including interpersonal skills, process skills and an ability to explain and manage the process. A mediator needs to help create a safe environment for the parties to a dispute to talk directly with each other.

(source: CIPD, XpertHR; Steve Hindmarsh Ltd; ACAS)

The skills that a successful mediator will need include:

- empathetic listening;
- an inquisitive nature that will allow him or her to ask open questions to explore and closed questions to clarify or test assumptions;
- being alert to emotional needs, reflecting back observations and testing hypotheses;
- awareness of inferences made by him- or herself and other people and not treating those assumptions as fact;
- being alert to the reactions of others;
- being able to assist in brainstorming and problem-solving exercises;
- being able to keep conversations on track;
- the ability to ensure even-handedness;
- being able to maintain momentum;
- the ability to use a flip chart; and
- time management skills.

It is sensible for employers to consult with a mediation training provider to help identify which candidates would be successful mediators.

Training mediators

Once in-house mediators have been selected, they should be trained. Employers can train mediators by inviting an external provider to develop and run an in-house mediation training programme, which can be tailored to the particular needs of the organisation, taking into account the typical nature of the conflicts that exist across the organisation and the approach that will most suit the organisation's culture.

Employers should also appoint an internal person to act as a single point of contact for all mediations. The role of mediation scheme coordinator might be suitable for an HR professional. All referrals to the mediation service should be channelled through this point of contact. The mediation scheme coordinator can evaluate the suitability of cases for mediation and appoint an appropriate mediator from the organisation's internal pool of mediators, or, if necessary, an external supplier. The internal point of contact can assume responsibility for managing cases and monitoring and evaluating the success and effectiveness of the initiative.

13.5.Supporting mediators

Employers can use a co-mediator to develop the competence and confidence of newly trained mediators. Co-mediation is an effective way for mediators to learn and develop skills. It involves teaming a new internal mediator with an experienced external or internal mediator, who shadows or co-mediate with the new mediator during his or her initial mediation session or sessions. Over time this allows the organisation to build its capacity to mediate the majority of its disputes in-house. The employer could agree an arrangement with an external mediator, whereby the internal mediators are able to call on him or her for assistance when necessary.

Beyond the initial stages, employers should continue to provide adequate supervision, coaching and support for internally trained mediators, to ensure that they remain confident and competent. It is normal for internal mediators to have less opportunity to practise than

professional mediators. Therefore, employers should ensure that they have in place a supervision and support plan to develop their mediators.

It is advisable for employers to arrange for supervision of their mediators by someone from outside the organisation, for example the external mediation provider that helped to set up the internal mediation service. A key aspect of supervision is confidentiality, so that mediators can bring difficult cases to their supervisor, without having to limit the information that they share.

13. Mediation policies and procedures

It is important that employers embed mediation into the policies, procedures and culture of their organisation when setting up a mediation initiative.

The mediation policy and procedure needs to take into account and reflect the interests of the employees and other stakeholder groups affected by it. Employers should draft their policy in consultation with representatives from these groups. This will increase the likelihood that employees will use the mediation service appropriately, and enhance the credibility of mediation as an effective means of tackling a broad spectrum of workplace conflicts.

Once an employer has established its mediation initiative, all parties should be adequately informed of the process and how to access it, and about how mediation can exist within and alongside existing frameworks and procedures.

The employer could design a standalone mediation policy, containing supporting information. The supporting information could include: an explanation of what mediation is; an explanation of the benefits of mediation; a description of the conflicts that mediation can help to resolve; and guidelines on how to access and use the organisation's mediation process, including a frequently asked questions section. The mediation policy could be referred to in and cross-referenced with other policies.

Alternatively, the employer could embed a mediation clause within existing grievance and disciplinary procedures and other policy documents relating to employee welfare, referring to the process as an informal first step to resolving conflicts in the workplace.

Whichever it chooses, the employer should emphasise the voluntary and confidential nature of mediation: any policy should make clear that the parties are free to choose not to, but are nevertheless encouraged to try mediation, before considering a formal route for addressing conflict.

14 Monitoring the mediation process

Some organisations monitor and evaluate their mediation service, to gather information that might reveal organisational problems, and help to improve and promote the service across the organisation. Typically, the person best placed to monitor the mediation service is the person nominated as the contact point or administrator for mediation in the organisation.

Data that the employer can gather includes: demographic information on the users of the service, the nature of the disputes, and whether or not an agreement is reached in each session.

The permission of the parties to the mediation should be sought if the organisation wishes to make public any data, for example for promotion purposes, and the organisation should ensure that nothing in the publicised data can be attributed to anyone in the organisation. This allows success stories to be shared and data to be analysed to help address issues relating to the organisation as a whole.

15 What can be done if mediation does not produce an agreement?

If the parties fail to reach an agreement at the conclusion of the mediation meeting, the fact that they have gone through the mediation process can be a positive step towards reaching agreement. Sometimes, having the night to reflect on the conversation, or discussing the mediation with family can generate new thinking. Mediators should be open to the possibility that the parties may feel differently the following morning, and offer them the opportunity to discuss any afterthoughts or change of mind over the telephone.

At the conclusion of the joint mediation meeting, the mediator should discuss with both parties the options available to them if they decide not to settle. This helps the parties to the dispute to make an informed choice about their next steps. The mediator should refer the parties back to the internal contact and report that they were unable to reach an agreement.

The discussions that took place during the mediation process are strictly confidential. The mediator should destroy any notes that he or she has taken. The only information that the mediator should keep is that the parties tried mediation but were unsuccessful.

16. Mediation in Context

The efficacy of mediation in resolving workplace disputes was recognised and enshrined in employment law guidance in April 2009, following a review of the statutory dispute resolution procedure in force at the time commissioned by the then Labour Government and conducted by Sir Michael Gibbons.

Following the review, the ACAS code of practice on disciplinary and grievance procedures (on the ACAS website) was introduced, which suggested that employers and employees consider using an internal or external mediator to resolve disputes. While the provisions of the code do not make mediation compulsory, in part to remain consistent with the voluntary and confidential principles of mediation, parties to a dispute are encouraged to consider mediation to resolve their differences.

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