

What is mediation?

Mediation brings together people who are in dispute to help them resolve their issues. It is an entirely confidential form of dispute resolution which involves an independent, impartial person helping two or more participants reach a positive solution acceptable to all parties. The focus is on restoring relationships and moving forward rather than focusing on the past. These relationships can be between individual, teams, or at an organisational or commercial level. Mediation also allows for the termination of relationships in a confidential, amicable and constructive way if appropriate.

When is it used?

Ideally mediation will be used in the early stages of a dispute. Where formal procedures have already begun, they can be put on hold to allow mediation to take place. Mediation can continue to be used at any stage after employment tribunal or court proceedings have started. It is entirely without prejudice to any legal rights and proceedings. Solicitors, Counsel and trade union representatives can attend.

Why use mediation?

Whatever the issue, mediation is a quick and cost-effective way of resolving things. It allows participants to come to an agreed and confidential resolution of their differences and to take control of the outcome of the dispute. Mediation is not a soft option. Nor is it a form of counselling.

Mediation requires commitment from all participants. Mediation necessitates listening and learning. It allows people to acknowledge their differences, to give recognition to concerns, and to devise better ways of working, without prejudicing legal proceedings. It can restore and repair relationships whether commercial or with colleagues. It allows for creative solutions and an agreement that may be outwith the powers of the courts and tribunals.

What can it deal with?

Whenever conflict occurs, it damages motivation and morale, it creates distrust and suspicion, it demands emotional energy and valuable management time, and it costs money. Conflict can arise for many reasons.

In the workplace

- perceived discrimination
- perceived unfairness
- incompatible working styles
- conflicting personalities
- ineffective communication
- inappropriate management styles
- concerns about capability to do the job
- concerns around absence from and return to work
- disability recognition and need for reasonable adjustments



In the provision of goods and services

- perceived discrimination
- poorly delivered services
- failure to pay for goods or services
- disagreement about terms of delivery
- perceived failure of public authorities to consider the needs of minority groups when planning and reviewing policies and services

Risk Management

Finding opportunities to manage and resolve disputes and differences through the use of mediation principles can be good risk management. With the statutory rights of both parties unaffected, it might be said that there is little to lose, and much to be gained.

ACAS Code of Practice

In employment disputes, the guidance to the ACAS Code of Practice which employers and employees are expected to comply with in managing employment problems, asks employees and employers to consider mediation in dealing with both disciplinary and grievance procedures.

Employment Tribunal

In the Employment Tribunal in Scotland, the parties to proceedings which include a complaint of discrimination and which are likely to require a hearing of at least three days may be asked by the Employment Tribunal to consider judicial mediation. All of this makes it prudent to consider the use of mediation at an early stage in workplace disputes, and before incurring the costs that are involved in legal proceedings.

In fact we recommend that mediation is always considered wherever disputes arise.

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