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Mediation at work

Learn how mediation can resolve conflict in the workplace

Introduction

Mediation is a voluntary process led by an impartial third party that organisations can use to resolve conflict. Conflict can occur in any employment relationship and is best dealt with early at source. If left unchecked, it can fester and escalate, potentially leading to grievance and discipline procedures or employment tribunals. Mediation, a form of alternative dispute resolution, avoids these more formal and costlier routes by guiding participants towards reaching mutual acceptable solutions.

This factsheet looks at workplace conflict, how mediation can help resolve different disputes, and what it entails. It outlines the mediation process, including what sort of situations mediation can help with, who should be involved, and when mediation should be called upon. Importantly, it also considers when mediation might not be appropriate. Finally, it offers guidance on implementing mediation including training, gaining buy-in, raising awareness and allocating resources.

What is mediation?

Mediation is a tool to resolve workplace conflict or disputes. It's often described as a form of alternative or informal dispute resolution as it's less formal than grievance and discipline procedures and employment tribunals. It nonetheless follows a structured approach.

Mediation seeks to give a speedy solution to individual workplace conflict, and can be used at any stage of a disagreement or dispute. The process is flexible and voluntary, and any agreement is morally rather than legally binding. It also seeks to provide fuller solutions that address underlying causes and are more genuinely win-win than adversarial approaches. The process aims to create a safe, confidential space for those involved (the 'parties') to find solutions that are acceptable to each side. Specifically, mediation provides the potential to:

- help parties involved in conflict to hold open conversations that would normally be

too difficult to have constructively

- help parties to understand and empathise with each other's emotions and situations
- explore all parties' issues and concerns of all parties and use joint problem-solving to find a solution that each side feels is fair
- encourage communication and establish workable relationships
- help participants develop the skills to resolve workplace difficulties for themselves in future.

A trained mediator's role is to act as an impartial third party who facilitates a meeting between two or more people in dispute to help them reach an agreement. Although the mediator is in charge of the process, any agreement comes from those in dispute.

Mediation is preferable to more formal processes in various ways:

- It encourages people to be more open to compromise.
- It can maintain and improve relationships.
- It is less stressful for those involved.
- It avoids the costs involved in defending employment tribunal claims.

Workplace conflict

At some point, conflict is almost inevitable in work relationships. A certain degree of conflict over technical issues – such as what tasks to do and how to do them – can be helpful, as it injects critical evaluation, potentially leading to improvements. But interpersonal tension can easily damage relationships and lead to wider discord and malfunctioning teams.

In general, most in the UK have positive work relationships. Our 2020 Managing conflict in the modern workplace research finds that almost nine in ten employees report good working relationships with colleagues in their team and other colleagues at work. Almost four in five rate the overall working environment and culture as 'good' or 'very good'.

But despite these generally positive assessments, some people experience conflict or unfair treatment at work: a third have experienced some form of interpersonal conflict, either an isolated dispute or ongoing difficult relationship, over the past year. Fifteen percent report being bullied over the past three years, but just 4% report sexual harassment and 8% other forms of harassment in the last three years. Most people trust their line manager to take their concerns seriously, but one in five say their manager would hold a mistake against them and that their manager is a cause of conflict in their team.

The organisational costs of conflict can include:

- management time in dealing with the conflict instead of focusing on managing the business
- the risk of costly formal proceedings such as employment tribunals
- unworkable relationships and a decline in productivity
- lower staff morale and employee engagement
- sickness absence
- staff turnover and associated recruitment costs.

Our Managing conflict research report also describes employees' experiences of interpersonal conflict at work. It shows how conflict – both isolated clashes and ongoing difficult relationships as well as bullying and harassment – can arise, affecting individuals' health and well-being and their work. When conflict isn't addressed and resolved early on, the situation tends to fester.

What happens in mediation?

There are distinct phases in a mediation.

Firstly, the mediator meets with each party separately to understand their experience of the conflict, their position and interests and what they want to happen next. During these meetings, the mediator will also seek agreement from the parties to a facilitated joint meeting.

In joint meetings:

- Each party recounts their story uninterrupted and listens to the other party's story.
- The parties work towards a mutually acceptable solution.
- The facilitator usually writes an agreement approved by both parties.

The mediator will bring the meetings to a close, provide a copy of the agreed statement to those involved and explain their responsibilities for its implementation. If no agreement is reached, other procedures may later be used to try to resolve the conflict.

Changing mindsets

It's important that people are able to express their feelings to the other party about why they feel aggrieved and how the perceived unfair treatment has affected them. Often, they will not have been properly heard before, as avoidance or heated arguments will have prevented this. Feeling heard can be cathartic and hearing the other party's story can positively change feelings about them.

However, at some point during a joint meeting, a key stage is for the mediator to move

the focus away from the past (grievances and experiences) and towards what the parties want to happen now and in future.

A key way that mediators facilitate this process is to help people to think not in terms of the **positions** that they adopt in conflict (for example, 'I can never trust you again') and towards the **issues** that they care about (for example, 'I want to feel that I am supported, not undermined by my colleagues'). These subtle shifts in mindset can be hard to achieve but tend to be powerful. They are central to mediation.

Confidentiality

Anything said during mediation should be confidential to those taking part, unless all parties agree to share specific points, such as agreed actions or arrangements with their colleagues, managers, or HR. This means that a mediator may report to HR that a meeting has successfully taken place but not disclose the detail of what was discussed or agreed. The only exceptions to default confidentiality are where, for example, a potentially unlawful act has been committed or there's a serious risk to health and safety.

Representation

Some lawyers practice as mediators, as do managers, employees and trade union representatives through in-house mediation schemes. But representation by lawyers, trade unions, colleagues or relatives during mediation is generally discouraged. Mediation works best where there is direct interaction between those involved in the conflict, leading to open and honest discussion, a reframing of relationships, and solutions that the parties find themselves. In contrast, representation can lead to the formalisation of the mediation process. There's more in our employers' guide [Mediation: an approach to resolving workplace issues](#).

When is mediation appropriate?

Mediation isn't a panacea for every dispute or disagreement in the workplace, but there are signs it's underused and its potential not fully realised. Our 2020 [Managing conflict in the modern workplace](#) research finds that 23% of employers use internal mediation by a trained member of staff to deal with workplace issues. Fewer than one in ten use external mediation.

There are other informal conflict resolution approaches that can be helpful, such as 'facilitated conversations' by HR, which can be seen as a management-led version of mediation. Our research found that a quarter of employers used facilitated discussions or 'trouble-shooting' by HR.

There are no hard and fast rules governing when and how mediation should be used, but some principles include:

- **Who?** Mediation can be used for conflict involving colleagues of a similar job or grade, or between those with different jobs and levels of seniority. It can also be used where there's a disagreement between a line manager and a member of staff, or groups of staff.
- **When?** It can be used at any stage in the conflict including to rebuild relationships after a formal dispute has been resolved. In the early stages of a dispute, it has the benefit of stopping it from escalating. At a very early stage, a team manager may use mediation techniques informally to help people resolve differences, rather than bringing in a designated mediator. Equally, mediation can be useful when managers aren't well placed to deal with a dispute, for example because they're implicated in it or lack the skills to resolve it themselves.
- **What?** It can be used to address a range of workplace issues including relationship breakdown, personality clashes, communication problems, and bullying and harassment. Relationship breakdown is the issue most frequently cited by employers as suitable for mediation.

When mediation may not be appropriate

Mediation may be unsuitable if:

- a decision about right or wrong is needed, such as in cases of criminal activity or overt abuse, when disciplinary procedures are more appropriate
- an individual bringing a discrimination or harassment case wants it investigated formally, or the allegation is of a serious nature
- an individual has experiencing mental health problems or has learning difficulties that will be an obstacle to a joint meeting
- it's clear the parties don't have the remit to settle the issue.

Using mediation at different stages of conflict

Early intervention can prevent both sides from becoming entrenched and avoid a full-blown dispute in which an employment tribunal claim becomes more likely.

Acas has a statutory duty to offer free '[early conciliation](#)' before employees lodge an employment tribunal claim. The principles of conciliation are identical to those of mediation, but any agreement reached in conciliation is legally binding.

In some organisations, mediation is written into formal [discipline and grievance procedures](#) as an optional stage. Where this isn't the case, it's useful to know whether the

discipline and grievance procedure can be put on hold if mediation is appropriate.

During mediation, it can become clear that one or both parties feel the employment relationship is beyond repair. The focus then shifts from helping people find ways to work together better, to instead ending the employment relationship in as mutually beneficial a way as possible. This may be a legal matter and require different facilitation skills.

Implementing mediation

How organisations introduce mediation is important for its effectiveness. Success factors include:

- Commitment from senior leaders, line managers and trade unions (where they are recognised).
- Raising awareness so that employees know that it's available and understand its value.
- Linking it to other HR processes. For example, creating an expectation that colleagues in conflict try mediation before going through formal processes, and keep the option to halt the formal process at any time and return to mediation. In a more challenging approach, some have argued that grievance procedures should be overhauled, centred on mediation and renamed 'resolution procedures'.

Planning resources for internal or external mediators

There are two approaches to mediation which can be used alongside each other:

- Developing an in-house mediation scheme, with trained internal mediators.
- Using external mediator services, possibly as part of a call-on/call-off arrangement to deliver services as and when necessary.

Factors to consider include:

- Size of the organisation – it may be more appropriate for a small organisation to use external mediators who will be perceived as independent.
- Cost – setting up an internal scheme is likely to demand more upfront investment, but may be more cost-effective in the longer term.
- How to select, train and manage a pool of internal mediators.
- The amount of experience internal mediators get – it needs to be enough for them to maintain their skills.
- Ongoing support and supervision of mediation arrangements is needed, particularly if the organisation is operating its own scheme.
- If internal staff are responsible for conducting mediations, adequate time off needs to be factored into their working week.

- It's good practice for there to be a dedicated person responsible for overseeing the mediation arrangements.

A number of organisations run accredited training courses for internal mediators.

Manager training

Management training is key to ensuring organisational behaviour complements the provision of mediation. According to our report [Real-life leaders: closing the knowing-doing gap](#), managing conflict and having difficult conversations are the top two challenges for leaders at all levels. Managers can apply mediation skills informally to resolve low level conflict, helping build robust teams in which disagreement can be expressed safely.

Useful contacts and further reading

Contacts

[Acas – mediation](#)

[Civil Mediation Council](#)

Books and reports

LIDDLE, D. (2017) *Managing conflict: a practical guide to resolution in the workplace*. London: Chartered Institute of Personnel and Development and Kogan Page.

SEAMAN, R. (2016) *Explorative mediation at work: the importance of dialogue for mediation practice*. London: Palgrave Macmillan.

SAUNDRY, R., LATREILLE, P. and ASHMAN, I. (eds) (2016) *Reframing resolution: innovation and change in the management of workplace conflict*. London: Palgrave Macmillan

Visit the [CIPD and Kogan Page Bookshop](#) to see all our priced publications currently in print.

Journal articles

LEIGH, T. (2019) [Do you need an external mediator?](#) *People Management* (online). 22 August.

LIDDLE, D. (2020) [HR needs to be braver in challenging the status quo on workplace conflict](#). *People Management* (online). 17 January.

SAUNDRY, R., BENNETT, T. and WIBBERLEY, G. (2018) Inside the mediation room - efficiency, voice and equity in workplace mediation. *International Journal of Human Resource Management*. Vol 29, No 6, March. pp1157-1177.

SIMMS, J. (2017) There's more than one way to solve a dispute. *People Management* (online). 25 July.

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