

## **Mediation in the University**

### ***What is 'mediation'?***

Mediation is a process that aims to help two or more parties to resolve their differences and find solutions which enable them to move forward positively. An impartial third party, 'the mediator' helps the parties through the process which is confidential and entirely voluntary.

### ***What is the role of the 'mediator'?***

The mediator helps to create a safe environment in which all parties can discuss their needs and differences. They help the parties to explore and agree ways of resolving these differences and, if required, of rebuilding effective working relationships.

Any agreements reached come from the parties involved. The mediator facilitates the process; they do not pass judgement or tell those involved in mediation what they should do to resolve their differences.

### ***Considering and agreeing to Mediation***

The University will always seek to resolve conflict informally and in a positive way. Therefore, all parties will be encouraged to give informed consideration to mediation as a means of resolving their differences.

To help staff consider mediation and make an informed decision, the University will provide information regarding:

- the aims of mediation;
- the role of the mediator; and
- the mediation process.

This information will normally be provided during individual meetings with an HR Advisor or an accredited mediator.

By agreeing to mediation, all parties are indicating that they are willing to attempt to resolve the issues between them. However, in the event that mediation fails to resolve the conflict, all parties will retain their rights under the University's formal policies.

## Mediation - A Guidance Note

### Introduction

The University, whilst acknowledging that mediation is a voluntary process, will always seek to resolve conflict in a positive way and therefore, expects the parties who are in conflict, to give informed consideration to mediation as a means of resolving the conflict. This approach has been agreed with the University's Joint Unions.

### What is Mediation?

ACAS defines mediation as a "process where an impartial person – the mediator – works with people who have a disagreement to help them to find their own solution and reach an agreement that will sort out their problem or improve the situation".

Mediation will normally be used to quickly, effectively and with as little disruption as possible to resolve workplace conflict. The mediator will work with all parties in a dispute to establish their underlying needs and interests; to encourage dialogue and to facilitate a mutually acceptable solution. This is known as the "facilitative" approach to mediation and is the approach that will normally be used in the University.

### When can mediation effectively be used?

Mediation works best when it is used as early as possible in any conflict. The following situations are all suitable for mediation:

- Conflicts and disagreements between employees;
- Conflicts and disagreements between a manager and a member of staff;
- Conflicts arising from change;
- Allegations of bullying, harassment, discrimination and other inappropriate behaviours;
- Conflicts arising from the reintegration of an employee after e.g. disciplinary action; suspension or return from a long period of absence;
- Personality clashes;
- Severe breakdowns in communication (which often stem from conflict);
- A grievance or other complaint

### Key Features of Mediation

**Confidential** - 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 will be destroyed at the end of the process.

**Impartial** - The mediator is completely impartial and will conduct mediations fairly, diligently, even-handedly and with no personal stake in the outcome.

**Non-judgemental** - The mediator does not seek to establish who is right and wrong and does not judge. The emphasis will be on allowing the parties to hear different perspectives and empowering them to create and take ownership of their solution.

**Without Prejudice** - The term “without prejudice” means that anything revealed or discussed during the course of the mediation cannot be used to the disadvantage of either party in any future internal process or any subsequent litigation.

**Informal and Flexible** - 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 - the parties can consider as wide a range of solutions as they wish, provided that they are realistic and achievable within the University. The process is as informal as possible in order to help the parties feel at ease and to facilitate a safe and productive conversation rather than a formal and adversarial one.

**Voluntary** - One of the core strengths of mediation is that the parties are free to choose mediation to resolve a dispute but cannot be compelled to do so. However, the University expects that this should be an informed decision and therefore, the parties will be encouraged to discuss mediation with the mediator (or by reference to the University’s statement on mediation and its supporting documents) prior to deciding whether to agree to mediation taking place. This means that responsibility and ownership of the process rests firmly with the parties.

**Self-determining** - The process is designed to empower the parties to make decisions that best serve their interests - it is their solution. This assists in ensuring that the parties are committed to the outcome which can be considered to be morally binding on both parties.

**Safe** - It is the mediator’s job to ensure that the process is safe and to do so, the mediator will set ground rules which will be followed by both parties throughout the process.

### **The Mediator (s)**

As stated previously, the mediator does not judge and does not reach a decision or impose a solution on any party. Rather, the mediator helps those involved in the conflict to talk to each other, thereby allowing them to resolve the dispute themselves. The mediator makes the initial contact with the parties and seeks to secure their agreement to mediate. The mediator then facilitates the mediation session and remains impartial throughout. The mediator will also draw up any agreement and will facilitate the formal signing of the agreement.

There is no set “rule” as to how many mediators should be involved in the process. However one or two is the norm and given that the University currently has a small pool of accredited mediators, it is likely that no more than two mediators will be involved.

### **The Process**

**Agreement to Mediate** - Once the possibility of a mediation has been raised, the mediator will contact the parties separately. These discussions, which may be face-to-face or over the phone or even by email will allow the mediator to discuss what mediation is; to explain the mediator’s role and to go over the mediation process.

#### **Initial Meetings**

The mediator will meet separately with each party and it is likely that each meeting will take up to an hour. The purpose of these meetings 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 ask the parties to describe the history of the conflict, the impact that it is having on them, their work and performance, and what they would want to achieve from the mediation.

## **Joint Meeting**

**Introduction** - The mediator will go over the mediation process in more detail including the key features of mediation and will also set some ground rules which may include things like listening to each other; showing respect and not raising voices.

**Uninterrupted Speaking Time (UST)** - The next stage of the mediation meeting is for each party to have a short UST. The purpose of this period is for each party to make an opening statement which tells 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. Each party has to listen to what is being said (often hearing things with which they do not agree or which may be uncomfortable to hear). The mediator must ensure that this UST is respected by everyone (including the mediator). 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 Stage** - After both parties have spoken, the mediator asks 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 to discover the parties' interests and needs.

**Problem-solving** - When the parties have established their interests and identified 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 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 explore their ideas and proposals by reviewing to what extent their proposed solutions satisfy their interests and are realistic, practical, robust and sustainable. 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 generate the outcome encourages ownership of the solution and a commitment to make it work.

**The Agreement** – Where agreement has been reached, the mediator will summarise the range of solutions that have been generated by the parties and will then record these in a formal document (the Agreement). The Agreement is not legally or contractually binding but it is morally binding on both parties in that it will reflect the parties' willingness to commit to the outcome. The Agreement may be shared with others in the University with the express agreement of both parties. However, where there is no agreement to do this, the mediator will advise appropriate parties of the outcome but without any further details.

## **Follow-Up**

The mediator will normally contact the parties one month, three months and one year after the Agreement has been reached to discuss how the Agreement is working.

# CONFLICT RESOLUTION PROCESS

