



west midlands
office of the police
and crime commissioner

Office of the Police and Crime Commissioner

Mediation and Resolution Policy – Resolving Disputes in the Workplace

1. The Office of the Police and Crime Commissioner (OPCC) is committed to the principles of equality and diversity. No member of the public, member of staff, volunteer or job applicant shall be discriminated against on the grounds of age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; or sexual orientation.

Introduction

2. The OPCC is committed to encouraging harmonious working relationships between all colleagues. Inevitably situations will arise when working relationships become strained, and the OPCC is committed to prompt resolution of any issues.
3. In most instances, conflict between colleagues is resolved informally as part of normal day-to-day practice, without recourse to more formal procedures. However, where resolution is not achieved, use of the mediation procedure (below) or the resolution procedure (page 6) may assist all parties in reaching a mutually agreeable outcome.

Part One - Mediation Procedure

4. Mediation is particularly effective prior to the instigation of the Resolution Procedure. It can also be of real value at various points during a formal Resolution, and if a matter proceeds to Appeal Stage, the individual submitting the Resolution will be contacted to discuss how mediation might assist in addressing aspects of the ongoing grievance.
5. Mediation is the process by which a neutral third party assists colleagues in the resolution of workplace disputes to reach a mutually agreeable outcome. Unless exceptional circumstances apply, the mediator(s) will not be previously known to either party.

Mediation aims to:

- resolve conflict and reduce tension, anxiety and fear
- resolve conflict at an early stage
- provide a way to deal with behaviour through constructive and efficient negotiations which focus predominantly on the parties' needs and interests and which broaden the search for options and alternative solutions

- encourage individuals to take charge of their own decisions and to accept responsibility for the consequences of their decisions.
 - The advantages of addressing a matter through mediation are that it will be confidential, relatively swift, informal, flexible, and the individuals involved are in control of the outcome.
 - Where all parties approach mediation in an open-minded, constructive way, it can prove to be extremely successful, and it is therefore recommended that mediation is considered as a means of resolution at the earliest possible opportunity. Mediation is voluntary on the basis that both parties must be committed to achieving a mutually agreeable outcome and solution. Managers must avoid appearing to coerce colleagues into mediation, but should emphasise the benefits whenever appropriate.
6. Successful mediation will lead to both parties feeling that the outcome is fair, reasonable and appropriate under the circumstances.

General Principles of Mediation

- Where there is conflict in working relationships, colleagues will be encouraged to consider mediation as a means of resolution.
- The appointed mediator will be neutral to both parties to ensure impartiality.
- Mediation will be strictly confidential between the two parties and the mediator. Once resolution has been achieved, an agreement may be shared between and/or signed by both parties, and this may, if appropriate, be shared with the line manager. Any notes made by the parties and the mediator will be destroyed immediately after mediation has taken place.
- Any agreements reached through mediation are morally binding. They are not legally binding on parties. Equally, any discussions and/or agreements are without prejudice. Opting for mediation does not compromise an individual's legal rights.
- Opting for mediation does not take away an individual's right and access to resolution procedure.
- Managers will monitor the well being of both parties and arrange for additional supportive measures to be introduced, where appropriate.

Confidentiality

7. No information relating to the content of the mediation is stored on personal files and it is the responsibility of all involved to be discreet. All notes created during the mediation will be destroyed on conclusion of the process. The mediator will explain at the start of the mediation that the only, very unlikely, scenario in which this would need to be reviewed (in conjunction with the parties), is if something is disclosed during the mediation relating to serious misconduct, a criminal matter, or possible harm to any individual. If this happens, they will suspend the mediation and discuss the implications with the individual(s) involved.

Undermining the right to manage

8. Sometimes colleagues feel reluctant to enter mediation because they feel this indicates an admission of guilt, abdication of responsibility, or simply lack of confidence. Alternatively, they may feel that they have matters in hand and do not need the intervention of a third party. Both positions are understandable, and no-one should feel forced to participate in a mediation process. A mediation can run alongside other processes (these processes may be suspended while the mediation proceeds, depending on the issue).

Considerations before making a referral for mediation

9. Most situations involving workplace dispute between individuals will be suitable for mediation. However, there are some issues that will impact on the engagement of the parties, and therefore the general prospect of success, which should be considered:
 - What are the circumstances of the people involved? Does their health mean that they may be particularly vulnerable or need extra support during a mediation process?
 - What is the length of service of the parties? Is any party likely to be leaving the force in the near future? Please note that this may possibly be deemed as age discriminatory. Even if not, aggrieved parties may want their issues dealt with regardless of whether they or the other person is due to leave. It is clearly undesirable for people to leave without issues being resolved. The matter should ideally be raised with the parties for their views
 - What is the likelihood of the parties meeting or working together in future?
 - How keen are the parties to mediate? Do they need reassurance about the process?
 - Do the parties have a realistic understanding and expectations of mediation?
 - Are the parties clear about what they hope to achieve? If not, a mediator may help them to define and prioritise their objectives.
 - Are there ongoing formal processes which may impact on mediation, or be affected?
10. These are not necessarily barriers, but should be brought to the attention of the mediation coordinator. It may be helpful for them to speak with a mediator beforehand to ask questions.

Relationship with the Resolution Procedure

11. Given the positive outcomes that can be achieved, individuals should seriously consider mediation prior to instigating a formal Resolution.
12. To maximise the opportunity for a successful outcome, individuals who are part way through the resolution procedure may also opt for mediation. Where mediation is opted for part way through the resolution procedure, the formal procedure will be temporarily stayed pending the outcome of the mediation.

13. Mediation may also be beneficial at the close of a Resolution to help restore trust and repair working relationships.

Representation

14. Given the value of the additional support that a Union representative/ colleague/friend can provide, representatives will be permitted to provide such support to individuals at the first stage of the mediation process. This is on the strict understanding that they do not intervene during the one-to-one meeting and respect the ground-rules set. However, during the face-to-face meeting (stage two) between the two parties and the mediator, representatives/friends should not be present, other than in exceptional circumstances.

The Mediation Process

15. Once one or more parties wish to pursue mediation they should contact their line manager. The line manager will then identify a suitable mediator. Wherever possible, consideration will be given to ensuring that any specific preferences of the parties are taken into account (eg mediator's job role) and travelling distance between the mediator and parties. The Chief Executive has final responsibility for appointing the mediator.
16. There may be instances where two mediators are appointed to mediate between two parties. This may be because the dispute is particularly complex, or may assist in the development of the trained mediators.
17. Given that mediation is designed to enable colleagues to resolve issues at the earliest opportunity, every effort will be made to organise mediation meetings as quickly as possible. All parties and mediators will need to prioritise the mediation in order for this to be possible. Swift action often has a positive effect on the outcome.
18. Both parties must indicate their agreement to the ground-rules set out by the mediator.
19. In multi-party mediations the mediator will hold one-to-one meetings with all parties and then agree with the parties who should be brought together for a joint meeting and when. It may not be the case that all parties need to meet with each other, and joint sessions will not be likely to involve more than four people at a time.

Stage One – Pre-meeting

20. The mediator will meet both parties individually for the purpose of:
- explaining the role of the mediator and the process of mediation, including confidentiality; and defining the core issues and identifying the ideal outcome expected by both parties
 - ensuring that both parties agree to mediation
 - confirm that during stage two, work-related uniforms will not be worn by any party.
21. The mediator may need to meet either or both parties again to clarify any further issues arising from stage one.

Stage Two – Face-to-Face Mediation

22. The mediator will arrange a suitable venue, where there will be no interruptions and confidentiality will be preserved. Ideally this will be at a mutually agreed location. The face-to-face mediation should be arranged at the earliest possible opportunity.

Setting the Scene

23. The mediator will:

- welcome the parties and make any necessary introductions
- set the boundaries and ground-rules
- explain and agree the process with both parties
- clarify and summarise the agreed areas of conflict.

Identifying the Issues

24. The mediator will:

- explore the issues with both parties
- encourage communication
- manage any conflict during the early stages of the discussion
- encourage a mutual understanding about the issue(s)
- identify any concerns about the issue(s)
- encourage a change of focus from the past to the future
- summarise areas of consensus and disagreement.

Building Agreements

25. Mediation will work towards:

- generating and evaluating options
- encouraging problem solving
- an acceptance or acknowledgement of conciliatory gestures
- encouraging both parties to focus on future resolution rather than the past problem
- constructing agreements
- creating fall back arrangements
- identifying what to do next if no agreement is reached.

26. If a mediation stalls, or the parties are having difficulty identifying ways to resolve a problem, it may be possible for them to ask a mediator to suggest some options for them to then consider. The mediator will only do this if invited and if they feel they are able to provide the required support.
27. Agreements reached through mediation are morally, not legally, binding, even if signed.

Closure and Follow Up

28. The session will be concluded when both parties agree that they have dealt with the conflict and have reached a mutual agreement with a clear understanding of what has been agreed.
29. An agreement may be drawn up in clear unambiguous language for signing by both parties. If the parties prefer not to formally record their agreement they may choose to communicate the main elements in an email or memo which they share.
30. It will be agreed who retains copies of any written understanding. An appropriate manager may require a copy to monitor that any agreed action is followed through and maintained. Confidentiality will be respected.
31. The mediator will close the session, provide evaluation forms which are to be returned to the line manager, and arrange follow up (if necessary).
32. In the event that mediation does not achieve the desired outcome, a party may opt for the resolution procedure to be instigated, or resumed, as necessary. Given the confidential nature of the mediation process, where this is the case, papers relating to the mediation process will not be disclosed. The line manager will be updated on the final outcome of mediation (in terms of whether the issue has been resolved).

Part Two - Resolution Procedure

Introduction

33. The Resolution Procedure is not a mechanism to establish blame. It is designed to repair workplace relations when they have been damaged in some way.
34. The Resolution Procedure aims to adhere to the timescales set, although on occasions these may need to be adjusted to reflect patterns of work etc. Where timescales cannot be met, both parties should agree and record the new timeline with a rationale explaining the change.
35. This procedure is in accordance with the ACAS Statutory Code of Practice on Disciplinary and Grievance Procedures.
36. Before a formal Resolution is initiated, managers should take all practical steps possible to resolve issues informally, help the party raising the grievance to express their concern(s) and identify their objective(s) clearly. Mediation must be offered, and remains an option at all stages, although it is a voluntary process, and is most effective early on in a dispute. The timescales for the Resolution process will be suspended while mediation takes place.

37. Throughout the resolution process, the reasonable adjustments required by all participants will be taken into account. Where it is difficult for colleagues to complete or review paperwork due to a disability, then the relevant forms and reports will be converted into accessible formats or extra support will be arranged to assist colleagues, and time will be built into the process to allow this to be done in a meaningful manner. Similarly, some colleagues may require additional support when attending meetings due to their disability, and every effort will be made to accommodate this, for example by delaying a meeting in order to facilitate the attendance of a British Sign Language interpreter.

Manager's Responsibilities

38. Managers appointed to administer a Resolution process must ensure that matters raised are dealt with in a timely and appropriate manner. They must ensure that all parties are kept informed of progress and are realistic about what the process can achieve

39. It is the responsibility of the appointed manager to ensure that, throughout the process, appropriate documentation is retained, to provide an accurate record of actions taken. If a line manager is named in a Resolution submission, the matter will be delegated by the Chief Executive to an appropriate alternative manager.

Representation and Support Networks

40. Colleagues have the right to be accompanied at all stages of the Resolution Procedure. They can choose to be represented by individuals from the recognised Trade Unions. Alternatively, individuals may wish to be accompanied by a work friend, colleague or member of a support network, who will be permitted time off to attend appropriate meetings. The right to be accompanied must be communicated to all individuals involved.

Confidentiality

41. All matters dealt with under the procedure should be conducted in confidence. This applies at all stages, and to any notes and correspondence. However, relevant information will need to be disclosed to specified parties if criminal, disciplinary or health and safety issues emerge. Where such instances occur, the appointed manager will inform the individual(s) concerned.

Relationship between Resolution Policy and Disciplinary / Misconduct procedures

42. Disciplinary/misconduct procedures are separate from the Resolution Procedure. There may be instances where matters of disciplinary/misconduct are identified through the fact-finding process. In such instances, the fact-finding manager will refer all cases to the Chief Executive for review. Depending upon the circumstances it may be necessary to suspend the Resolution Procedure until the outcome of the discipline/misconduct enquiry is known.

Any cases affected by this will be reviewed on a monthly basis to ensure timely progression, and all parties will be informed accordingly.

Victimisation

43. No member of staff will be victimised or discriminated against as a result of raising an issue under this process, managing the process, or by giving evidence or information in relation to complaints that have been made.

Written Notice

44. If the matter cannot be dealt with informally and/or mediation is not successful, details of the individual's concerns must be submitted in writing to their line manager explaining the desired resolution. If the line manager is central to the complaint, the form should be returned to the Chief Executive who will allocate an alternative manager to supervise the process.

First resolution meeting

45. The appointed line manager will meet with the individual and their representative as soon as possible, within a maximum of 10 working days from the date of receiving the notice. The purpose of that meeting is to establish the key issue(s) and reasonable, achievable ways to resolve the concern(s) raised.
46. If the Chief Executive is named as a part of the complaint the OPCC's Legal Adviser will oversee the process.
47. The manager will meet with or request comment from all appropriate parties. The fact-finding process must be proportionate and limited to understanding the perspectives of the main parties involved.
48. At the conclusion of this stage, the manager will, within 15 working days, meet with the individual and confirm their findings and proposed resolution in writing. If the individual accepts the proposed resolution, they should confirm this in writing to the manager. All other parties will be informed of the outcome.
49. If the individual is not satisfied with the proposed resolution, they may proceed to an appeal. The individual or their representative must notify this in writing to the Chief Executive no later than 5 working days from receipt of the proposed resolution, outlining their reasons for appeal and their proposed resolution.

Appeal

50. Following submission of an appeal there will be a "cooling off" period for 5 working days, during which a mediator will contact the individual to discuss their objectives and explore alternative solutions.
51. When it is confirmed that the appeal will progress, the appeal will be heard by a more senior manager from within the OPCC. If no suitable senior manager is available, an independent adjudicator will be appointed to meet with the parties. They will be external to the OPCC and have appropriate experience of workplace dispute resolution. The senior manager or independent adjudicator will be advised by a Management and a Trade Union or Staff Association representative. Neither the senior manager/adjudicator nor the advisers will have had any previous involvement in the Resolution. Details of the panel members will be circulated prior to the hearing. Any objections to members must be raised promptly with the Chief Executive who will consider the concerns.
52. The parties will be able to make written submissions, which must include a chronological order of events, to the senior manager/adjudicator. This must be submitted at least 7

working days before the meeting date so that it can be exchanged and reviewed in advance. The submissions may be presented on the day.

53. Legal representatives are not permitted to be present, although the parties are free to obtain prior legal advice. Parties may be accompanied or represented as outlined at Stage 1. The senior manager/adjudicator will have full control of the meeting, and has discretion to allow witnesses or new material to be submitted.
54. The purpose of the appeal is to consider the findings of the first stage, and review whether a reasonable outcome/resolution has been proposed. It should take place no longer than 20 working days from the date the appeal notification was confirmed. New or separate matters may necessitate a subsequent Resolution.
55. Within 10 working days after the appeal meeting, the senior manager/adjudicator will confirm their findings and recommendations in writing. They will consider advice provided by other panel members but the final content of their report is the sole responsibility of the adjudicator. The recommendations submitted are not binding on either party. The senior manager/adjudicator's report will summarise the background of the issue, all arguments, their considerations and their recommendations. Their recommendations may suggest further remedial steps, but will not make specific proposals regarding financial compensation, promotions, postings, and issues affecting operational resilience.
56. Recommendations will be considered promptly by the individual's line manager(s) in consultation with the Chief Executive. The manager(s) will outline how and when the recommendations might be implemented, and communicate their intentions in writing to all the parties as quickly as possible, and at the same time.
57. The implementation of the senior manager/adjudicator's recommendations will be evaluated by a number of internal review methods to ensure that lessons are learned by the organisation.

Applying the Resolution Policy where an Individual has left the OPCC

58. An individual leaving the OPCC may submit a written Resolution within 13 weeks of their leaving date. This should be sent to the Chief Executive. An independent line manager will be identified to investigate and a written response provided within 30 working days. No further appeal can be made.

Learning the Lessons

59. Within 8 weeks of the completion of a Resolution or subsequent formal process, it is recommended that managers consider commissioning a structured debrief to support any necessary learning to take place. Debriefing arrangements and a subsequent dissemination of any learning can then take place.