



NCVO WORKFORCE DEVELOPMENT

How to... Implement mediation

Introduction

Daniel Dana, in 'Conflict Resolution', defines conflict as 'A condition between workers whose jobs are interdependent, who feel angry, who perceive the other(s) as being at fault and who act in ways that cause a business problem.' It is likely that many, if not all, voluntary organisations will have dealt with such 'business problems' in their workplaces!

But what are the best ways of dealing with such conflicts? One effective way of tackling conflict in the workplace is through **mediation**. Workplace mediation is where a third party helps the individuals in dispute to find a solution that is acceptable to everyone. It is therefore a **win-win** approach, rather than a win-lose approach. It is about getting past blame and fault and about discovering an effective resolution through discussion. Mediation can help achieve a result that allows parties to move on, look to the future and, wherever possible, rebuild and strengthen relationships. The mediator does not make judgements or decide outcomes, but simply helps the parties to find their own solutions.

Acas, the Government funded Advisory, Conciliation and Arbitration Service, states:

'The overriding aim of workplace mediation is to restore and maintain the employment relationship wherever possible. This means the focus is on working together to go forward, not determining who was right or wrong in the past.'

'Many kinds of dispute can be mediated if those involved want to find a way forward. It can be used at any stage in a dispute but is most effective if used early on.'

The cost of conflict

Conflict is expensive. The CIPD's 'Managing Conflict at Work' survey 2007 gathered data from a number of organisations employing an average of 2,800 employees per organisation. The CIPD found that these organisations each devoted more than 350 days in management and HR time a year to managing discipline and grievance cases and in responding to employment tribunal claims! Further, these employers faced average annual costs associated with employment tribunal (ET) claims and hearings of more than £20,000 per organisation.

The survey also found that organisations providing mediation training had received on average 3 employment tribunal claims in the previous 12 months,

compared with an average of 3.5 claims received by organisations that didn't provide such training.

The wider benefits of mediation

Mike Emmott, Employee Relations Adviser at the CIPD, argues that mediation can be seen not just as a means of tackling conflict, but also in wider terms as a way of improving organisational performance and employee engagement 'not as a technical intervention for dealing with a small minority of workplace issues, but as a tool for transforming cultures and building high-performance organisations', where trust, fairness and respect are engendered.

Levels of mediation

Mediation can occur at many different levels.

Level 1

The **first level** of mediation happens within a team, where managers who are trained in conflict resolution skills are able to 'nip things in the bud', to support staff to resolve day to day problems before they get bigger. Conflict resolution training can help managers to use an approach which is very different from skills they may use in other aspects of their management role. See '*a story of manager mediation*' below.

Level 2

The **second level** is where HR staff or more senior managers, or simply managers at the same level who are not in the management chain, may support two or more parties in conflict to resolve their differences. Such interventions might take place when it has not been possible to resolve the conflict at service or department level. As the individuals mediating are not directly involved in the relationship, they may be able to adopt greater objectivity. Such mediation may be undertaken by one mediator, or could be done by two individuals as joint mediators.

Level 3

The **third level** is where a conflict has become serious or intractable and/or where greater independence is required from the mediator. It may be difficult for internal staff to have the required 'distance' from the conflict and its origins. At this level, a fully trained and experienced external mediator may be engaged. Such mediation could be to address conflict between two individuals; or to address conflict within a team.

Level 4

The **fourth level** is called **conciliation** and is provided by Acas. Acas has a *legal duty* to offer **free conciliation** where a complaint about employment rights has been made to an employment tribunal, and a *power* to offer conciliation in appropriate cases where a claim could be made, but hasn't yet been made. It's essentially the same process as mediation, but conciliation is the term that tends to be used if an employee is making a specific complaint against their employer.

Any agreement that may be reached via conciliation is legally binding. For further information, see the Acas PDF '[Conciliation and tribunals](http://www.acas.org.uk/CHttpHandler.ashx?id=1046&p=0)' <http://www.acas.org.uk/CHttpHandler.ashx?id=1046&p=0>.

In addition to the free conciliation service, Acas also offers a fee-paying mediation service at an earlier stage (see **third type** above).

What happens during mediation?

An important point is that the *outcome* of mediation is owned by the parties, but the mediator owns the *process*. Mediation typically follows a number of stages, as follows:

Individual meetings

The mediator meets with each party separately to explain the process and to find out what each wants from the mediation. The meeting also gives each party the opportunity to 'rehearse' their concerns – this may be the first time they have fully articulated them.

Joint meeting

Hearing the issues

Each party has the opportunity to state, without interruption, the issues as they see them. The mediator draws up a list of the main areas for further discussion.

Exploring the issues

Each main issue is explored, with the support of the mediator. The aim is to move the focus gradually from the past to the future working relationship.

Options generation

The parties are encouraged to generate options as to how they will address the issues in the future and how they will best work together.

Building and writing an agreement

The mediator supports the parties to draft a workable agreement on how they will work together in the future and how they will aim to resolve problems that may recur in the future.

Closing the mediation

The mediator closes the mediation and will give a copy of the agreement to each party. A follow up meeting may be agreed, so that progress/ problems can be discussed and resolved.

If agreement is not reached, other procedures may be used to resolve the conflict, but nothing said in the mediation can be used in any further proceedings.

When is mediation appropriate?

Mediation cannot solve every dispute or disagreement in the workplace. Rather, it is an additional tool to use when appropriate.

Mediation is used particularly by organisations to resolve situations of interpersonal conflict, such as relationship breakdown, personality clashes or communication problems. It can also be used to resolve bullying/harassment cases.

Mediation won't be appropriate if:

- A disciplinary offence is, has been or is alleged to have been committed, such as alleged abuse of a service user.
- The two parties haven't yet had a chance to try to sort the matter out between themselves.
- An individual bringing a complaint wants it investigated.
- Both parties do not agree to mediation.
- There is no long-term working relationship.
- If a manager is bringing in a mediator to avoid taking managerial responsibility.
- Where the resolution of the matter is not in the power of the parties concerned to resolve.

What are the potential benefits?

According to the 2008 CIPD survey on workplace mediation ('Workplace Mediation – How Employers do it', June 2008, reference 4427, CIPD, London), the main benefit in using it is for improving relationships between individuals, cited by 83% of respondents. The other most common benefits include:

- reducing or eliminating the stress involved in using more formal processes (71%)
- retaining valuable employees (63%)
- reducing the number of formal grievances raised (57%)
- developing an organisational culture that focuses on managing and developing people (55%)
- avoiding the cost of defending employment tribunal claims (49%)
- reducing sickness absence (33%)
- being able to maintain confidentiality (18%).

Another benefit is the speed of mediation. A full mediation could take half a day, but this period of concentrated time compares favourably with the hours than can often be spent dealing with a grievance.

How to implement mediation in your organisation

Options for introducing mediation

Think about what you want to achieve. For example:

- Do you need to improve the skills of front line managers to deal with conflict? In this case, training all managers on conflict resolution and basic mediation skills will be useful.
- Do you want to develop an in-house mediation scheme, with trained internal mediators? This may be appropriate if you have the resources to run such a scheme and if your organisation is of such a size that mediators can be sufficiently distanced from the parties in conflict and the subject of the conflict. The upfront cost of this approach is likely to be more than if external mediators are used.
- Do you want to use external mediators? If so, this might be as part of an 'as and when needed' arrangement.

The above approaches are not mutually exclusive - you could adopt all three approaches, to suit different circumstances.

Gaining the support of your senior team and your managers

Think about how your mediation scheme might work and discuss the options with your senior team and managers in your organisation. Be clear on the benefits versus the costs. You could refer to the CIPD report, 'Mediation, how employers do it' for ideas, available at <http://www.cipd.co.uk/NR/rdonlyres/56C9AC4E-B5D4-4F13-846F-28C861203148/0/workplacemediation.pdf>.

Mediation is most successful when it is a part of the organisation's wider approach to people management. Consider how mediation will be reflected in the organisation's policies and practices.

Gaining the support of trade unions or your employee forum

Discuss and agree mediation with any collective consultation forums. They can help promote the scheme to staff and they can help engender trust in the process.

Communicating about mediation

The CIPD report, 'Mediation, how employers do it', found that 25% of respondents stated that communicating the aims and benefits of mediation to all staff was the single most important thing that could be done to promote the wider use of workplace mediation.

Many people will know little about mediation, so you'll need information to explain the process to people. This could be in the form of a mediation policy, a section on mediation in your grievance and harassment/bullying policies, a leaflet for employees, which explains the process and/or face-to-face employee briefings.

Consider not just initial communication, but ongoing promotion of your mediation scheme.

See the Good Guide to Employment (NCVO 2008) for a suggested section on mediation, which you could include in your grievance procedure.

Selecting and training internal mediators

If you are looking to train internal mediators, think about how you will select, train and support them.

The joint CIPD/Acas publication, 'Mediation, an Employer's Guide' describes a skills-set for mediators that you could use as a basis for selecting and training your mediators. The guide is at [Mediation – an Employer's Guide.](http://www.acas.org.uk/CHttpHandler.ashx?id=949&p=0)
<http://www.acas.org.uk/CHttpHandler.ashx?id=949&p=0>.

Ensure confidentiality

It is vital that all concerned 'sign up' to the requirements of confidentiality. Confidentiality is a key element of mediation and anything said during mediation should not be shared with others, including managers or HR. The only exception may be the written agreement that is produced at the end of the mediation. It can sometimes be helpful for the line manager to have a copy of this agreement, so that he/she can support the parties back in the workplace. If the agreement is to be shared, this needs to be agreed specifically with the parties at the start of the mediation.

Resources

Think about what resources you will need to manage the scheme on an ongoing basis. For example, what amount of time off from their normal work may internal mediators require? Who will be responsible for the mediation scheme?

Evaluation

Evaluating mediation is not straightforward, because the mediation meetings themselves must remain confidential between the parties. However, you might consider the following measures:

- Satisfaction of individuals taking part in mediation
- Any reduction in the use of formal procedures (eg discipline, grievance and harassment/bullying)
- Informal feedback from managers on workplace relations
- Costs versus benefits.

A story of manager mediation

The following is a fictitious case study that first appeared in Voluntary Sector Magazine in an article by the author of this fact sheet, in April 2008. It gives an example of how managers can use mediation/conflict resolution skills to resolve everyday workplace problems (see 'first type' of mediation above).

BOB AND PRECIOUS – THE DISPUTE

The grievance route.....

Bob is unhappy about his colleague, Precious. He feels that Precious is over-critical of what he does. Precious finds Bob 'touchy' and hostile to her. Over time, the relationship between Bob and Precious starts to break down, to the extent that the two hardly speak to each other. Bob decides to drop an email to his manager, Angela, complaining about Precious and asking what can be done. Angela receives the email, decides she had better treat it as a formal grievance and sends Bob a copy of the organisation's grievance procedure. An investigation follows, which seeks to find the 'causes' of the conflict and the 'rights' and 'wrongs'. Bob states his case and Precious makes counter-allegations. There is a formal grievance hearing and a decision is made about Bob's grievance.

Whether Bob's grievance is upheld in full, upheld in part, or not upheld, let's consider now what has happened:

*The grievance procedure has made a determination as to how Bob and Precious have related to each other in the past – and who is right and wrong. However, it has focused much less on helping the two individuals to consider how they should work together in the future. They still have the differences between them that they had in the first place!

*In addition, the grievance procedure may have actually encouraged Bob and Precious to develop their cases against each other, because, of course, both wanted the dispute to be found in their favour. This is likely to further entrench their respective positions, rather than help them to see each other's point of view.

The mediation route.....

Let's consider now that Angela decides to take a different approach.

Angela receives the email, takes a deep breath and asks Bob to meet with her. She decides to try out training she has recently had on conflict resolution. While explaining to Bob that he has a right to follow the grievance procedure if he wishes, she suggests she mediate between the Bob and Precious to try and help sort the matter out. She explains that if mediation does not work, Bob can still follow the grievance procedure. She asks Bob to tell her more about the situation. As the two of them talk, Angela is careful not to judge, but to summarise at key points, gently 'reframing' some of Bob's statements into more positive language where appropriate. Bob is able to acknowledge that what he wants is to get some

kind of workable relationship back between himself and Precious. He agrees that Angela should meet with Precious to explore a way forward. Angela meets with Precious. She starts by explaining that Bob has raised concerns about how the two of them are working together. Precious becomes angry and defensive; Angela feels that she would prefer to run away! But she continues to speak calmly and in a non-judgmental manner, asking Precious to tell her about how the relationship is working from her point of view. By the end of the meeting, Precious says she is willing to try a three-way mediation meeting. In the three-way meeting, Angela uses the following structure:

- Introduction and ground rules (for example respectful behaviour and confidentiality)
- Hearing what has happened, from each individual in turn
- Defining the key issues of concern
- Seeking specific ideas and agreements as to how Precious and Bob might work differently in the future
- Drawing up a brief document to record what has been agreed.

The meeting, especially at the beginning, is not easy, but, with Angela's skilful management of the process, the two individuals are gradually able to find more common ground than they had initially imagined possible. They find out more about each other's needs and motivations, and past misunderstandings are discussed. Towards the end of the meeting, they are able to agree how they will work together in the future. The whole process has taken an afternoon of concentrated time, but Angela now feels that Precious and Bob are on a firmer footing to work together in the future.

Case study - PEACe

PEACe is the Personnel Employment Advice and Conciliation Service of the London Voluntary Service Council. It supports voluntary sector employers across London.

Peace has recently developed a mediation service for the workplace.

Shirley Briggs, PEACe Advisor, has noticed an increasing awareness of mediation as an option in situations of workplace conflict. She feels there is more appreciation that there are different ways of resolving conflict. In Shirley's experience, mediation may be requested in circumstances of interpersonal conflict such as bullying, differences of work styles and frequently when communication has broken down. Shirley says that mediation has enabled people to change their behaviour so that they feel equipped to work together again.

Shirley also comments that it is important to know when mediation is not appropriate. This might be, for example, when a situation has progressed too far and people are not willing or able to seek a mutually agreeable resolution.

Shirley cites the key benefits of mediation as:

- An opportunity to reframe situations and to look beyond the positions people have taken to see what needs and interests lie beneath.
- A safe environment to resolve misunderstandings and learn to communicate better.
- A voluntary process. Nothing can be imposed and any agreement is in the hands of the participants.

Further information

Mediation – an Employer’s Guide.’ This is a joint publication by Acas and the Chartered Institute of Personnel and Development. It is available from the Acas website www.acas.org.uk at the following link:

<http://www.acas.org.uk/CHttpHandler.ashx?id=949&p=0>, or from the CIPD website www.cipd.org.uk at the following link:
<http://www.cipd.co.uk/NR/rdonlyres/18ABEE43-37D8-4845-A6A0-87ACCE435BF5/0/mediationemployersguide.pdf>

You can find a general introduction to mediation, plus a set of frequently asked questions about the process, on the Acas website at <http://www.acas.org.uk/index.aspx?articleid=168>.

Acas has an advisory booklet on managing conflict at work, which can be downloaded from the Acas website by going to the following link:
<http://www.acas.org.uk/CHttpHandler.ashx?id=960&p=0>

‘Workplace Mediation – How Employers do it’ – a survey produced by the CIPD and available at the following link:
<http://www.cipd.co.uk/NR/rdonlyres/56C9AC4E-B5D4-4F13-846F-28C861203148/0/workplacemediation.pdf>.

The ‘Good Guide to Employment’, published by NCVO. Chapter 9 concerns the handling of disputes. Available from NCVO, www.ncvo-vol.org.uk.

‘Conflict Resolution’ by Daniel Dana. Publisher: McGraw-Hill. 1 edition (December 13, 2000)

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