

Deeping St Nicholas Parish Council

Mediation Policy

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Definition

Mediation is a voluntary, interactive process for resolving disputes, facilitated by a neutral third party, the mediator, who assists disputing the parties in resolving the conflict through the use of communication and negotiation techniques.

Purpose

Mediation can help to settle disputes at a low level, avoiding the need for more formal processes. It can prevent both sides from becoming entrenched in their positions, and open a pathway to a mutually agreed and implemented solution which may not otherwise have been available. For example, successful mediation will prevent a dispute escalating to a formal complaint, grievance or disciplinary issue. Mediation aims to create a safe, confidential space for those involved to find solutions that are mutually acceptable.

Application

The Council expects that councillors and employees in conflict will try mediation before going through formal processes. It may also be used at any stage of an existing disagreement or dispute as it gives the parties the option to pause the formal process at any time and turn to mediation. This makes it particularly useful in issues which fall within the remit of the Council's Dignity at Work and Zero Tolerance policies. Mediation can be used by two people and also by groups.

Benefits

As mediation can help in settling disputes at a low level, there are immediate benefits in time and cost savings. Participants are also likely to:

- Find the process quicker and less stressful
- Improve communication
- Focus on the future, not the past

- Reach solutions that are more genuinely win-win and that everyone agrees to
- Commit to and take control of implementing the agreed solution
- Address underlying relationship difficulties
- Increase the chances that relationships can continue or even improve afterwards.
- Prevent future complaints and grievances arising

Using mediation

When to use mediation

Mediation can help to settle disputes before going through formal processes. It may also be used at any stage of an existing disagreement or dispute as it gives the parties the option to pause the formal process. It is often used to resolve disagreements arising from relationships. For example, mediation can be used to resolve issues arising from:

- bullying and harassment
- communication problems
- personality clashes
- relationship breakdowns

When not to use mediation

Mediation should not be used to resolve disputes such as pay or issues related to dismissal or conduct. Mediation is also not suitable when:

- A decision with a right or wrong answer is required, such as in cases of criminal activity or overt abuse, when disciplinary procedures are more appropriate.
- The dispute is about an HR issue such as performance management or a workplace adjustment request.
- An individual has requested a formal investigation, for example of a discrimination or harassment case, or the allegation is of a serious nature.
- An individual is experiencing mental health problems or has learning difficulties that will be an obstacle to a joint meeting.
- The parties don't have the remit or authority to settle the issue.

Principles of mediation

Voluntary

As stated, mediation is voluntary; if the parties involved do not want to take part, they do not have to. Parties to a mediation are typically ready to work mutually toward a solution. This often has the benefit of preserving the relationship they had before the dispute. Both the parties must agree to meet with mediator, to discuss and identify the sources of conflict. If the parties involved cannot agree to accept and act on an agreement they make, they cannot use mediation to resolve their dispute. Any such agreement is morally rather than legally binding.

Interactive

Mediation is an active not passive process. Both parties must agree to partake fully in the discussion/s, to avoid a solution being imposed on either of them. They must also commit to implementing the agreed actions and outcomes. Mediation focuses on the needs, interests, and concerns of the individuals involved, rather than imposing a solution from an external authority.

Confidential

The mediation meeting/s will place in a safe and secure environment. The mediator will agree with everyone involved what information can be shared outside the mediation and how. For example, the parties to a successful mediation will usually share specific points such as agreed actions or outcomes with their fellow councillors or colleagues, but not the conversations that led to them. A mediator may report to the head of the HR Committee or Chair that a meeting has taken place, but not disclose the detail of what was discussed or agreed.

If the parties do not reach an agreement, anything said during the mediation must be kept confidential and cannot be used in future procedures such as a grievance or an investigation.

The only exceptions to default confidentiality are where an unlawful act has been committed or there is a serious risk to health and safety. In these cases, the Council is obliged to follow proper proceedings to avoid falling foul of the law itself.

Flexible

Although there is a defined process for mediation, a key principle is that it is owned by the participants. Therefore, if both parties agree to use a different process, this should be encouraged as it is more likely to lead to an agreed, implemented and owned outcome.

Representation

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. There may be an exception if an individual is experiencing mental health problems or has learning difficulties that will be an obstacle to a meeting; the parties may wish to consider whether mediation is appropriate in these circumstances.

Solutions focused

The parties work together to develop their own agreed outcomes. Although there is likely to be an element of negotiation in this, it should not be a tit-for-tat discussion but a genuine agreement to finding and implementing the best possible outcome/s. These should include an acknowledgement of each party's views, and a commitment to change their behaviour. They may also include a commitment to regularly review the agreement reached, and where appropriate to make joint recommendations to the Council, such as to review policies and procedures, to prevent the issue recurring.

Mediation process

The role of the mediator

A 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 oversees the process, any agreement comes from those in dispute. Mediators do not have the authority to make binding decisions, ensuring that the resolution reflects the voluntary agreement of the parties involved.

In the event that no appropriately trained person is available within the Council to facilitate these meetings, or such a person is perceived as being biased towards one of the parties, an appropriate mediator may be sought from outside the Council.

Stage one

Before mediation can start, both parties must agree to meet with mediator and each other. They should also be made familiar with the principles of mediation; reading this document may help. They will also complete the mediation preparation form and email it to the mediator.

Stage two

In the next stage the mediator will meet 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.

Stage three

Following this, the mediator will run one or more facilitated meetings. He/she will encourage the parties to explore their differences and suggest their own mutually acceptable solutions and outcomes. The parties should also agree what if any of their discussions may be shared with their fellow councillors or colleagues – usually just the solution/s and outcome/s. The mediator will also facilitate a discussion as to how these may be implemented and reviewed by the parties involved.

Stage four

The participants will share their solution/s and outcome/s with those who need to know – usually only fellow councillors or colleagues. They may also share recommendations with relevant committees that – for example – certain policies and/or procedures be reviewed to prevent a recurrence of the issue.

Stage five

The mediation preparation forms will be destroyed and deleted from any computers where they may be stored. After an appropriate interval, which may be from a month to a year depending on the issue, the parties should review their solution and agree:

- If it is still working, and whether it is appropriate
- If not, what else they could do instead
- What else needs to be done to prevent a recurrence
- Whether and when a further review should take place.

This meeting may also be facilitated by a mediator if appropriate.

This is a non-contractual policy and procedure which will be reviewed from time to time.

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