

## Workplace and Employment Mediation Frequently Asked Questions

*Created by the SMN Workplace & Employment Initiative Group*

### What is the object of mediation in workplace conflicts?

The objective of mediation is for neutral, independent mediators to assist those in conflict to resolve their differences and reaching a mutual agreement on a way forward. Mediation is:

- A private and voluntary process
- Informal
- Flexible
- A chance for parties to consider their real needs and interests rather than their rights
- Future focussed, in addition to reviewing past events and present circumstances
- An opportunity for discussions on a without prejudice and confidential basis
- An opportunity for more creative solutions than those available through formal procedures

### Who are workplace mediators and what is their role?

Mediators are experienced people who have received formal and continuous training and may be associated with one of the bodies promoting the use of mediation (for example the Scottish Mediation Network). Mediators:

- Manage the mediation process
- Are neutral and independent
- Will have no vested interest in the outcome
- Will not impose a settlement or pass judgment
- Are only interested in helping the parties reach a mutually acceptable solution
- Maintain the momentum towards a solution so that, as each side adopts a more positive view, resolution becomes the common aim of the parties

The mediator's skill is in creating a safe environment and in supporting the parties to:

- Reduce tension and anxiety
- Talk honestly and frankly about what happened and how it affected them
- Use this information to clarify the problem and identify a path to resolution
- Identify and acknowledge each other's needs and interests
- Broaden the search for options
- Move toward improved relationships
- Make informed, considered and balanced decisions

## What are the benefits of using workplace mediation?

- Resolution can be achieved in days or weeks rather than months or years
- Mediation can get to the issues which contributed to the creation of the dispute
- There is greater satisfaction with the results as the parties control the outcome
- The costs are lower
- Management time is better employed
- Relationships can be preserved
- It avoids damage to the relationships within a team which could be caused by an internal investigation of a complaint
- Confidentiality
- Various options to achieve the resolution can be explored and tested
- The procedure is flexible and the dispute does not drift
- It is actively managed by the parties
- The parties are more likely to abide by the solution since they design and agree to it


## When can I use mediation?

At any time before or after formal proceedings have started as long as both parties genuinely want to see an end to the dispute. It may not be appropriate where:

- The other party has no genuine interest in settlement
- A party wishes to establish legal precedent or the case to be heard in public
- An interim interdict to preserve the rights of a party is required
- Legal action is needed to get the other party to the negotiating table

## Why should mediation work where negotiation has failed?

Negotiation can be confrontational. Parties and their representatives may seek to achieve a “win” from their own perspective, often in an emotional environment, ignoring the needs of the other side and the entrenchment this can create. The mediators:

- Can help to introduce objectivity and help the parties to view each other as collaborators in a problem solving exercise
  - Are in a unique position to help the parties to find ways in which they can satisfy their needs and help them to devise an agreement to resolve their dispute
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## How do you convince the person you disagree with to participate?

Not everyone will immediately agree to participate in mediation. People may be angry or so intent on proving the other “wrong” that nothing other than having their “day in court” will appeal to them. Sometimes, merely waiting a few days or weeks can make a difference and parties may be more willing to discuss the options more calmly and openly. They may need some time to realize the cost and time involved in taking the dispute to a Tribunal. Providing this information in a simple form for them to discuss with their advisors may help them. Or they may need more information about how mediation works and whether it meets their needs. It may be useful to suggest a confidential meeting with a mediator to answer any questions they have and arrive at a more informed decision.

## Is a Mediation Settlement binding?

During the final stage of the Mediation, the parties are encouraged to agree the way forward and formulate a plan of action. In most instances a written agreement will be neither appropriate nor necessary, as the individuals will have a clear idea of what they want to achieve, and are more likely to abide by the solution since they have designed and agreed to it. They can agree to have a less formal “aide memoire” on the way forward if they think it would be useful, which is not legally binding but is covered by the confidentiality of the mediation. If a termination of employment is likely or has already happened, then a “Compromise Agreement” may be appropriate. This will normally be drawn up by the legal representatives present at the mediation but will not be binding until both sides have signed it.

## Does mediation preclude any other form of dispute resolution if it is not successful?

Mediation does not preclude any other form of dispute resolution taking place if it is not successful.

## For information on mediation

**Visit:** [www.scottishmediation.org.uk](http://www.scottishmediation.org.uk)

**Call the Scottish Mediation Helpline:** 0131 556 8118

**Email:** [admin@scottishmediation.org.uk](mailto:admin@scottishmediation.org.uk)

The Scottish Mediation Network is a registered charity funded by the Justice Directorate of the Scottish Government.

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