

Guidance Sheet

Mediation

What is Mediation?

Mediation is a way of solving conflicts and disputes without the need to go to court (though it does not prevent a party later choosing to go to court). Mediation involves a 'third party' trained mediator who operates as an impartial and neutral catalyst aiming to assist parties to reach a solution to their dispute.

Background

Increased interest in mediation has developed as a result of recommendations put forward in the recent Gibbons Report. Gibbons (2007) concludes in his report that the 2004 Dispute Resolution Regulations have failed and should be repealed. He instead recommends greater use of mediation within employment disputes, with the aim of resolving cases before they enter the legislative arena of the Employment Tribunal. These recommendations have been integrated into the Employment Simplification Bill introduced within the current legislative programme.

Origins of Conflict

Origins of conflict are vast and varied, but may be one of the following: differences in relation to values or priorities; conflicts of interest; the understanding of boundaries; poor induction; lack of terms of reference; poor understanding of role; amongst various others. Conflicts in the Third Sector may arise between employer and employee, board members, partners and other stakeholders.



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How mediation works

Mediation initially requires the consent of all parties to participate (thought to be one of the most difficult elements). The aim of the process is to allow all parties to express their interests and feelings, and explore underlying issues where necessary. The mediator will assist the parties to examine areas of agreement and disagreement, with the aim of identifying common ground and guiding the parties to the best resolution for all—a potential 'win win' remedy as opposed to court which often results in 'win lose'. Note that the mediator's role is not to impose a decision or judge the merits of the case, and that it may take some time to identify the common ground, which is believed always to exist (somewhere). Once an agreement is reached, this should be documented and signed by all parties (ideally the same day). Mediation can take place jointly with parties in one room, or with parties in separate rooms, and may also make use of co-mediators as opposed to one mediator. A neutral venue is also considered essential.

Some of the benefits of Mediation

- ◆ Cost and time effectiveness over going to court;
- ◆ Its flexibility to solve a variety of disputes;
- ◆ Its ability to reduce tension, anger, and misunderstanding between parties;
- ◆ Its ability to be used whether or not parties have commenced legal proceedings;
- ◆ Mediation is voluntary and any party can withdraw at any point;
- ◆ The mediation process is 'without prejudice', that is, other than factual information given during the process, information cannot be later used in court;
- ◆ Mediation does not affect parties' legal rights;
- ◆ The outcome of mediation is within the control of the parties themselves;
- ◆ Mediation can be carried out at a time and place suitable to the parties.

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Are there disadvantages to Mediation?

As with many processes, there are counter-arguments to the use of mediation, in many aspects the opposite side of the same coin e.g. mediation does not prevent the dispute from ending up in court; the system is voluntary not compulsory, and mediation may not be suitable for all cases.

How might we use Mediation in our practices?

Your organisation will need to research and discuss mediation further and consider how it can be incorporated into your practices. This may involve building the agreement to use mediation (or other alternative dispute resolution) into policies, contracts, governing documents, and service level agreements. Your organisation will need to consider the costs involved in doing this, and how it will budget for such a need. Your organisation may wish to consider mediation training for staff, with providers such as ACAS.

Further literature

Laurance & Radford (2003) *You're not listening to me! Dealing with disputes: mediation and its benefits for voluntary organisations* London: NCVO Publications

Bibliography: Laurance, Linda (2007) '16th Charity Law Conference 2007'; Legal Services Commission (2007) [on-line]; National Mediation Helpline (2007) [on-line]; and ADR (2006) [on-line]

If you have any questions regarding the above information please contact our advice team on 01226 286841 or Email: advice@vabarnsley.org.uk

