

Mediation Framework

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This document is available in other formats and languages. Please contact the Learning & Education Manager – Acute services for guidance.

Agreed 25th June 2014 at JB Russell House, Gartnavel Royal Hospital, 1055 Great Western Road, Glasgow G12 0XH with the authority of NHS Greater Glasgow and Clyde Area Partnership Forum.

Mediation Framework Appendices

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1. Introduction

- 1.1.** NHS Greater Glasgow and Clyde (NHSGGC) is committed to ensuring all our staff work together to deliver our patient services and to promoting fairness and good working relationships to all. It does, however, recognise that sometimes there can be issues arising with working relationships which require appropriate support to address. Mediation is one of the processes within the alternative dispute resolution (ADR) spectrum that attempts to address conflict by involving a neutral third party bringing the conflicting parties together with the aim of reaching a mutual agreement.

- 1.2** Mediation has a key role to play in settling workplace disputes. A recent review of employment dispute resolution in the United Kingdom¹ recommended that “a free early dispute resolution service, including mediation, be made available to workplaces.”

- 1.3** The NHSGGC Dignity at Work policy² identifies mediation as a potential option for employees in dispute. An informal approach, such as mediation, can provide greater flexibility to suit specific circumstances. The confidential nature of the process can offer a pause and a safe environment to facilitate more open and honest discussion.

¹ Michael Gibbons (2007) cited in Mediation- An employer's guide, ACAS, CIPD, 2008, p3

² NHSGGC Dignity at Work policy

<http://www.staffnet.ggc.scot.nhs.uk/Human%20Resources/Policies/Pages/default.aspx>

2. Purpose

2.1 This framework aims to encourage the appropriate use of mediation by:

- introducing mediation as an informal process;
- outlining the mediation process;
- providing practical guidance on using mediation; and
- emphasising the importance of monitoring and evaluating the mediation process.

2.2 It is hoped that this will have the effect of providing an alternative to formal procedures where appropriate. There is no prejudice to either party if mediation is felt not to be appropriate.

3. Scope of Document

3.1 This document is intended for use by any employee involved in or considering mediation. It will be of particular value to employees who intend to or currently act as mediators.

3.2 This framework emphasises mediation as an informal process which complements the Board's Disciplinary, Grievance and Dignity at Work policies.

4. Mediation

4.1 What is mediation?

“Mediation is where an impartial third party, the mediator, helps two or more people in dispute to attempt to reach an agreement. Any agreement comes from those in dispute, not from the mediator. The mediator is not there to judge, to say one person is right and the other wrong, or to tell those involved in the mediation what they should do. The mediator is in charge of the

process of seeking to resolve the problem but not the outcome.”³

4.2 When to use mediation

Although the use of mediation is encouraged in the organisation it is important to consider if it is always the most appropriate option. The following is offered as a guide but is not exhaustive⁴.

4.2.1 Mediation **may be appropriate:**

- to address a range of issues, including relationship breakdown, personality clashes, and communication problems;
- to resolve conflict involving colleagues of a similar job or grade, or between a line manager and a member of their team;
- to help re-establish working relationships after a formal dispute has been resolved / formal procedure completed;
- where an ongoing professional working relationship is required / or there is a requirement to act cooperatively;
- where there are questions over fairness and reasonableness; and
- where it is in the interest of both parties to resolve a situation without recourse to the Grievance Procedure.

4.2.2 Situations where mediation **is not suitable include:**

³ Mediation – An employer’s guide, ACAS, CIPD, 2008, p8

⁴ Ibid, p11

- as a first resort – because people should be encouraged to speak to each other and talk to their manager before they seek a solution via mediation;
- to address issues of Bullying, Harassment and/or Victimisation. These issues are dealt with under the Disciplinary Policy & Procedure or, if evidence is unclear, they are investigated by a Joint Investigation Panel and the issue may then proceed, depending on findings, to the Disciplinary Policy & Procedure (please refer to the Dignity at Work Policy, Section 5 - Dealing with Bullying, Harassment and Victimisation);
- where a decision about right or wrong is needed, for example where there is possible criminal activity;
- where there is an unbridgeable imbalance of power;
- where the individual bringing a discrimination case wants it investigated;
- where someone has learning difficulties or mental health problems (the party may be permitted to have someone to attend in an “advocacy” capacity – if agreed, the latter would only be permitted into the mediation if they signed a confidentiality agreement);
- where the parties do not have the power to settle the issue; and
- where one side is completely intransigent and using mediation will only raise unrealistic expectations of a positive outcome.

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4.3 Additional underpinning principles of mediation

- 4.3.1** Mediation is voluntary and will take place only where all parties involved in the dispute agree to participate.
- 4.3.2** The process can be stopped at any point by any participant, including the mediator.
- 4.3.3** The mediator will be impartial and independent to the situation and parties involved.
- 4.3.4** Every individual involved will keep information about the mediation confidential and not disclose it to a third party, nor use it for any other purpose other than mediation. The only exception would be if there was a legal duty to disclose information that was shared at the meeting.
- 4.3.5** The mediation framework, including any written agreement, is non-contractual in status, binding by honour only. To encourage employees to participate in mediation and to emphasise its use at informal stages of disputes, ACAS advise that the content of mediation discussions and agreements should not be used in any formal process.
- 4.3.6** Any evaluation of the mediation process will retain the commitment to confidentiality described in 4.3.4.

4.4 Role of the mediator

4.4.1 Mediators are not counsellors or legal advisors. **Appendix 1** outlines the range of skill, competencies and qualities expected of a mediator.⁵ These reflect the importance of parties needing to develop confidence and trust in the mediator.

4.4.2 This framework therefore identifies these key activities and principles of the mediator role:

- Manage Stage 2 and Stage 3 of the process;
- Emphasise confidentiality;
- Remain impartial and non-judgemental;
- Create a safe environment through facilitation of the meeting process and management of the feelings and behaviour of participants;
- Encourage development of solutions and a shared agreement;
- Support evaluation of the mediation process; and
- Engage with any mediator support opportunities and keep up-to-date with best practice.

4.4.3 NHSGGC has identified a number of staff who have completed appropriate training and are included on the NHSGGC central register of mediators. Mediators are currently largely drawn from the extended Human Resources service, staff partnership representatives and

⁵ Ibid, p21

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operational employees. Ongoing in-house training programmes have been developed to support mediator skills.

4.4.4 The mediator should not be associated with either party or likely to be involved with them in the normal course of their duties.

5. The mediation process

5.1 Accessing mediation (Stage 1)

5.1.1 **Appendix 2** outlines the mediation process.

5.1.2 When an issue is referred for mediation, whoever is responsible for overseeing the process – or the mediator in more informal schemes – needs to make an assessment of whether the mediation should go ahead and ask the following types of question:

- What is the conflict about?
- Do the parties want to resolve the issue or are they seeking to apportion blame?
- Is it the right time to intervene or is there a more suitable process available?
- Has the manager tried to resolve the issue?
- Are both parties willing to participate and do they understand that it is voluntary?”⁶

⁶ Ibid, p24

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5.1.3 Local Human Resource advisors and partnership representatives are generally the first point of contact regarding mediation enquiries from line managers and individual staff. This framework document should be used as a guide to establishing whether mediation is an option for the parties. This will require that both parties are made aware of the mediation process and are willing to proceed before referring to the mediation co-ordinator.

5.1.4 The following individuals will act as co-ordinators for the process and as point of contact for HR/Partnership reps/ to access the services of a mediator within the constituent parts of the organisation. HR staff and Staff Side reps will act as gatekeepers to mediation and not the individual staff themselves:

Head of Staff Governance will act as co-ordinator for Corporate Services in terms of the application and monitoring of the process.

The Head of Staff Governance should also be contacted where the services of a mediator external to NHSGGC is potentially required (the other local co-ordinators should not be contacted in these instances). This will be for a limited number of extremely challenging cases on an annual basis which involve disputes between very senior staff and for which external mediation is deemed to be the most appropriate route.

Learning and Education Manager – Acute Services will act as co-ordinator for the application and monitoring of the process within Acute Services.

The Head of Human Resources, Partnerships - will act as co-ordinator for the application and monitoring of the process within Partnerships.

5.1.5 The relevant mediator will take forward the process thereafter. The local co-ordinator will maintain a record of mediation interventions.

5.1.6 Mediation should not be a drawn-out process. Every effort should be made to ensure that the next stage does not extend over four weeks.

5.2 Mediation meetings (Stage 2)

5.2.1 Mediation meetings should be held on NHSGGC premises. Venues should be accessible to the parties but not located in the ward or department where the parties normally carry out their duties.

5.2.2 Involving representatives in mediation is not generally encouraged, whether that be a lawyer, a trade union representative, employee representative or friend. The central tenet of mediation is, after all, to provide an opportunity for those in conflict to find their own solution to the situation they find themselves in, and for the parties to remain central to the process. Restricting mediation meetings to the parties themselves can allow more open and honest discussion. One situation when a 'representative' may be unavoidable, is where you have a disabled employee or non-English-speaking employee:

- A disabled employee may need to be accompanied by a carer or, in the case of a deaf employee, for example, by a sign language interpreter.
- A non-English speaker, or someone who does not have sufficient command of the language to express complex feelings and emotions, will need an interpreter.

- A member of staff with mental health issues as per 4.2.2.above:

“In these cases you will need to ensure that the representative clearly understands their role and that they, like the mediator, have established practice standards [and commit to conducting themselves in a way] that guarantee[s] their independence, impartiality and commitment to confidentiality.”⁷

5.2.3 If a “representative” (as described above) is involved they will be required to sign an agreement demonstrating the same commitment as the mediator.

5.2.4 Separate meetings:

After the mediation process has been outlined with the participants and agreement established (including an outline of the evaluation process) the mediator will arrange a separate meeting with each person.

All letters to workplace addresses should be marked “Private and confidential” and “For addressee only”.

This meeting will inform the mediator of each side of the issue and identify what each party hopes to achieve. The result of these meetings will also confirm willingness to participate in any joint meeting(s).

Participants should be encouraged to identify and record personal outcomes in preparation for the joint meeting(s).

⁷ Ibid, p27

The mediator should be aware that participants may convey strong feelings. The role of the mediator is not to judge the situation but to gain an understanding of each party's view and encourage each party to identify acceptable outcomes.

The mediator will need to take notes at each of these meetings. A suggested meeting outline is provided in **Appendix 3**. Participants should be reassured that all notes will be destroyed at the end of the process (advised by ACAS).

No importance should be placed on the order in which these meetings take place. The order and timing will be driven by various factors e.g. availability of the parties, the mediator, venue(s).

One hour would be a reasonable time to set aside for each of these meetings.

5.2.5 Joint meeting(s):

The mediator and parties involved will decide arrangements for the joint meeting e.g. appropriate venue, date and other practical matters relating to the mediation itself. **Appendix 4** outlines how a joint meeting might be conducted.

All letters to workplace addresses should be marked "Private and confidential" and "For addressee only".

The mediator should be aware that participants may convey strong feelings. The role of the mediator is not to judge the situation but to help the parties identify common ground (based on the outcomes each identified in the separate sessions) and reach an agreement.

The initial separate meetings will help gauge the duration (number) of joint meetings. Successful mediation may be achievable in one joint session with both parties participating. Sufficient time should therefore be allocated to facilitate a successful outcome and minimise the need for repeat meetings. This could be up to a half-day.

Subsequent joint meetings may be arranged but only if all parties (including the mediator) agree and if the initial meeting has provided evidence that progress is likely.

Participants may take notes during the meeting but these should be given to the mediator at the end for disposal.

- 5.2.6** An individual should agree appropriate time to be released from responsibilities to attend mediation sessions with their Line Manager.

5.3 Recording and reporting outcomes (Stage 3)

- 5.3.1** NHSGGC strongly recommends that any agreement be recorded and retained by the parties in order to reinforce commitment to agreed solutions or actions. A template for recording an agreement is provided in **Appendix 5**. This should be completed as soon as possible.
- 5.3.2** No record of the mediation should be retained other than this written agreement.
- 5.3.3** Mediation may or may not end in an agreement between the parties. However, 3rd parties will not be informed of the outcome or content of any agreement unless the participants have both agreed.

5.3.4 Participants should be reminded that, regardless of outcome, all mediation interventions will be actively evaluated by NHSGGC.

6. Support for mediators

6.1 NHSGGC has established a forum for mediators to share best practice and provide them with on-going development opportunities.

6.2 Mediators are encouraged to participate in these opportunities and keep up-to-date with best practice.

7. Monitoring

7.1 “Evaluating a mediation scheme can be more sensitive than the evaluation of other policies due to the confidential nature of the process. Asking for feedback from participants too soon can prove unfruitful because they may not feel like filling in forms directly after what can be a highly charged and emotional experience. Although no records are kept of the detail of the mediation, an evaluation is necessary to assess:

- satisfaction of participants on their experience of the process
- quality of the scheme
- independence and professionalism of the mediators
- the effect that mediation has on any reduction in formal discipline and grievance procedures
- costs and benefits of using mediation”⁸

7.2 The mediation co-ordinators listed in section 5.1.4. above will maintain a record of all mediation interventions in order to quantify and evaluate the effectiveness of

⁸ Ibid, p30

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mediation. The monitoring and evaluation will take place at two points.

7.2.1 At the end of Stage 3 (**Appendix 6**):

Form to be completed by the mediator. Document is then forwarded to the relevant local mediation co-ordinator. Additional information will be sought (anonymously) from participants as part of the overall evaluation process.

7.2.2 Approximately six months later (**Appendix 7**):

Additional information will be sought (anonymously) from participants as part of the overall evaluation process.

If the agreement has not been maintained and participants wish to consider mediation again they may do so. Access is outlined in section 5.1.3 of this document. It is recommended that a different mediator is identified.

8. Further Information

8.1 Local Human Resource Advisors, Learning & Education Advisors and partnership representatives are a point of contact in terms of further advice and guidance. In addition the local co-ordinators listed at section 5.1.4 above can be contacted.

8.2 The ACAS / CIPD publication – Mediation, An employer's guide (2008) is a valuable resource providing a more detailed and broader discussion of mediation in practice.

9. Review of Framework

9.1 This framework will be reviewed one year from its effective date.

Mediation Framework

Appendices

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Mediation Framework Appendix 1

Mediator Skill-set

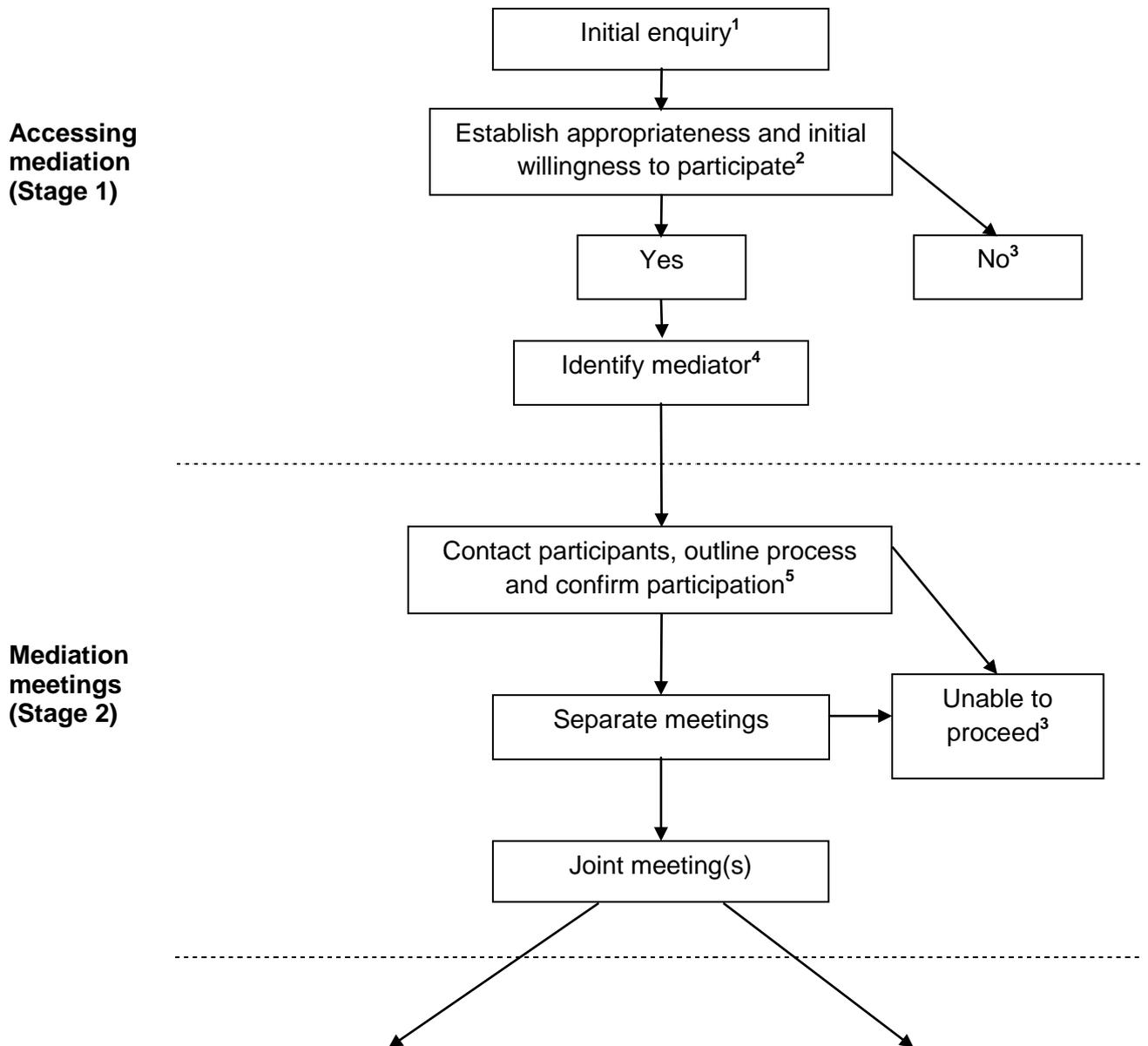
This describes the range of skills, competencies and knowledge/experience that make up the mediator skill-set – not all of these are essential, and it is unlikely that every mediator will possess all those listed. Many of the specific skills needed will depend on the context, and most mediators develop their skill-set as they build up their experience.

Skills and Qualities competencies	Desirable knowledge / experience
<ul style="list-style-type: none"> • Active listening • Oral, written and non-verbal communication • Questioning • Reasoning • Observing • Summarising • Problem-solving • Reflecting • Building rapport • Facilitation • Reframing • Objectivity • Information analysis • Planning • Time management • Conflict management • Negotiation • Following procedures • Organising • Generating options 	<ul style="list-style-type: none"> • Empathetic • Impartial • Approachable • Non-judgemental • Professional • Honest • Creative • Credible • Flexible • Integrity • Theory of conflict resolution • Experience of conflict resolution • Understanding of equality and diversity issues • Understanding of HR policies and practices • Knowledge of power and minority issues • Experience of facilitating informal groups • Knowledge of the mediation process • An awareness of the legal context of mediation • Some knowledge of employment relations

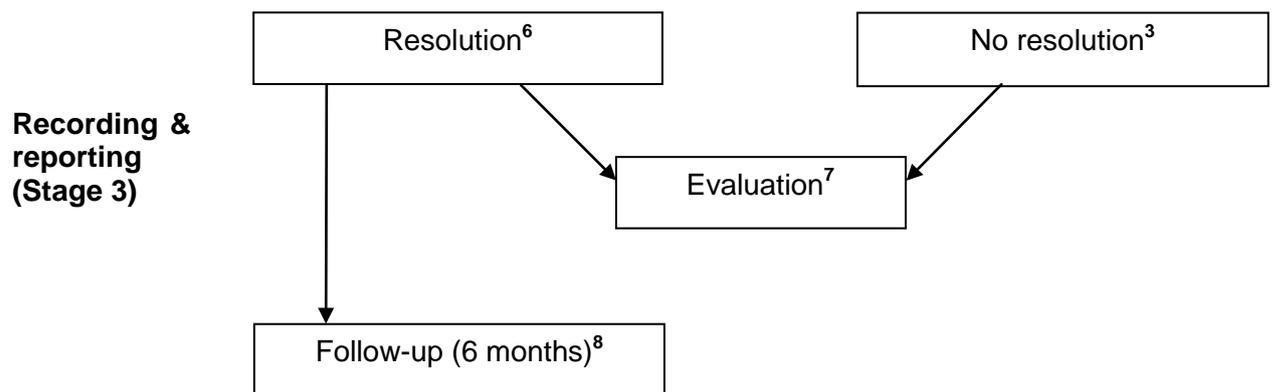
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Mediation Framework Appendix 2

Mediation process pathway



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Notes

1. Local Human Resource advisors and partnership representatives are generally the first point of contact regarding mediation enquiries from line managers and individual employees. (5.1.3)
2. This framework document should be used as a guide to establishing whether mediation is an option for the parties. This will require that both parties are made aware of the mediation process and are willing to proceed before referring to the mediation co-ordinator. (5.1.3)
3. Participants pursue alternatives.
4. The local co-ordinators listed at section 5.1.4 above will contact an appropriate mediator (someone not associated with the parties or likely to be involved with them in the normal course of his / her duties). The mediator will take forward the process thereafter. (4.4.4, 5.1.5 & 5.1.6). The co-ordinator will also maintain a record of all mediation interventions (5.2.4, 5.2.5 & 5.3).
5. Mediator contacts each party separately – probably by phone in the first instance with a follow-up letter. Arranges a one-hour meeting for each (5.2.4). C.f.

Appendix 3 for suggested outline of individual meeting and a standard letter confirming the arrangement. Essential that each party identifies explicit outcomes. Once agreement has been established for a joint meeting to proceed the mediator arranges the meeting (4.2.5). C.f. Appendix 4 for a suggested outline of joint meeting(s) and a standard letter confirming the arrangement.

All letters to workplace addresses should be marked "Private and confidential" and "For addressee only".

N.B. Any notes taken by participants should be left with mediator. Be aware of potential for subsequent joint meetings.

6. A suggested mediation agreement template is provided at Appendix 5.
7. Monitoring /evaluation forms (Appendices. 6 & 7) both to be sent to local co-ordinators (see section 5.1.4 above) for collation.

Mediation Framework Appendix 3

Outline of individual meeting

Introductions

- Will already have communicated by phone and / or email but introduce each other – highlighting that the meeting will last for about an hour.
- Affirm that the order in which you meet the parties is of no consequence.
- Explain once more what mediation is: -
“A confidential and voluntary process in which a neutral person helps people in dispute to explore and understand their differences so that they can find their own solution”.
- Explain mediator’s role – listen, impartial, non-judgemental, help to identify common ground.
- Confirm with the party that the session is confidential (excepting section 5.3.4) and that you need to take some notes. The notes will be destroyed at the end of the mediation process.

The account

- Invite the party to detail the situation and capture the key elements in your notes.
- At appropriate points check your understanding of the situation by:
 - restating the main points;
 - asking if what you have said is correct and amend your notes as required; and
 - asking about the feelings associated with the situation and confirming that you have understood them correctly.
- The participant may inadvertently convey his / her expectations of the process – these should be noted.

Outcomes

- When the account has been completed ask the participant to identify the outcomes (what they hope to achieve). Some of these may have already been mentioned but now is the time to explicitly identify them and confirm that these are complete and accurate.

- Highlight that the participant will want to think about (and record) these in preparation for the joint meeting.

Close

- Thank the participant and confirm continued willingness to meet jointly.
- Indicate that you will make contact shortly to arrange joint meeting.

Acute Services Divison

(Sender's address.....)

Learning & Education Service



(Recipient's address.....)

Date:
Ref:
Direct Line:
Fax:
email:

Dear.....

I am writing to confirm the details of our recent conversation and your agreement to participate in the informal and voluntary mediation process.

I will conduct a separate one-to-one meeting with each party (of approximately one hour duration). The purpose of these will be to identify the issues and potential areas of 'common ground' that will eventually be explored and discussed at the subsequent joint meeting(s).

This initial one-to-one meeting with you will take place:

on (insert date.....)

at (insert time.....)

in (insert venue details)

NB – provide directions as required

At this initial one-to-one meeting I will:

- explain the mediation process and my role in it
- ensure provision of a 'safe and confidential environment' for you to communicate in
- listen to your version of the issues in an objective and non-judgemental way
- capture and summarise the key areas you wish to discuss at the joint meeting
- explain the purpose and format of the subsequent joint meeting(s)

(The outcome of any joint meetings would hopefully be a signed agreement or action plan, detailing the working compromises and arrangements that all parties feel will enable acceptable and better ongoing working relationships.)

Important information

- Mediation is an informal and confidential process. Workplace disputes or workplace conflict, if resolved through mediation, may not need to progress to a formal grievance.
- I will only share information from any mediation meetings with the people you give me permission to share it with.
- At the end of each mediation all records / notes etc. will be collected and destroyed by me.

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- You can find out more about mediation and obtain a copy of the Mediation Framework on (Staffnet - provide link) or by contacting me or your local HR Representative.
- Additional information will be sought (anonymously) from participants as part of the overall evaluation process.

I look forward to seeing you on the **(insert date)**. Give me a call if you have any questions before we meet.

Yours sincerely,

Insert name/ signature

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Mediation Framework Appendix 4

Outline of joint meeting

Introductions

- Welcome and introduce self.
- State – thanks for attending and agreeing to be involved & your willingness to explore and seek a mutually acceptable way forward.
- Explain once more what mediation is: -
“A confidential and voluntary process in which a neutral person helps people in dispute to explore and understand their differences so that they can find their own solution”.
- Explain mediator’s role – listen, take you through the process, impartial, non-judgemental, help to identify common ground.
- Check parties are still willing to participate.

Ground rules

- Introduce ground rules to help the process along and promote a “safe environment”.
 - Confidentiality (mediator and both parties) – excepting section 5.3.4
 - Courtesy/respect
 - Honesty
 - No interruptions
 - Note taking (allowed, but destroyed straight after)
 - Time outs if required, etc
- Gain agreement from parties to ground rules / additions

Discussion

- Outline the following process to the parties.
 - Both parties will get uninterrupted time to talk (e.g. 15 mins). Probably commence with the aggrieved party or if both aggrieved, the first person seen by the mediator the 1:1 meeting.
 - Mediator summarises after each person has talked and check that summary with them.
 - When both parties completed – mediator to state – let’s look at common ground / issues which may be identifiable as the basis of moving forward (these will probably reflect

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explicit outcomes identified by each party during the individual meetings).

- Create an agenda based on these areas of common interest / areas which need to be explored.
 - Agree this agenda with both parties.
 - Look to change the focus from the past / blame to the future and resolution.
 - Seek to generate and agree potential options and solutions under each area identified.
 - Recommend a written and signed agreement and agree how parties will review the process.
 - Advise regarding options if mediation / agreement breaks down.
- Start the process.
 - The mediator should take notes highlighting potential common ground.
 - A quick tea break may be appropriate after both parties have had their initial uninterrupted time.
 - Each party now has an opportunity to respond. The mediator should now be able to gauge the initial reactions and begin to facilitate the remainder of the session.

Time outs

- It is likely that strong feelings will be conveyed. The timing and degree of Intervention by the mediator is a matter of judgement and the suggestion of a “time out” may help. It is essential to be explicit with the parties that talking about how each feels is not only acceptable but very important. However there may be times when a little “space” is helpful.

Close

- If agreement is achieved within the time then the mediator should highlight section 5.3 and confirm the appropriate actions.
- If no agreement can be achieved by the end of the session or an impasse develops where both parties need more than a “time-out” but would like to meet again then a subsequent meeting can be arranged.

Acute Services Divison
Learning & Education Service

(Sender's address.....)



(Recipient's address.....)

Date:
Ref:
Direct Line:
Fax:
email:

Dear.....

I am writing to confirm that all parties have agreed to continue with the mediation process and attend a joint meeting of approximately three hours duration.

This meeting will take place:

on (insert date.....)

at (insert time.....)

in (insert venue details)

NB – provide directions as required

At the outset I will explain the format and expectations of the meeting (including adjournment and possible further joint meetings). A detailed outline (part of the Mediation Framework) has been included with this letter.

At the joint meeting I will ensure:

- a 'safe environment' for people to communicate in
- 'space' where necessary within mediation meetings to allow people time to reflect or process information
- that behaviours are appropriate at the mediation meetings

I will:

- chair the meeting
- take notes that will be incorporated into any joint signed agreement document
- collect any notes / records produced (from each party) during the meeting
- within 2 working weeks, produce the final mediation agreement and send it to each party
- finalise the details with all parties as to who will have access to the signed agreement
- outline any follow up arrangements

I look forward to seeing you on the **(insert date)**. Give me a call if you have any questions before we meet.

Yours sincerely,

Insert name/ signature

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Mediation Framework Appendix 5

Mediation agreement template

We agree the following underlying principles:

- This agreement will not be shown to anyone other than any third party specifically mentioned within this document.
- The document will be reviewed by both parties according to any timescales agreed within this document.
- This document will not be used as part of any formal process either internal or external to the organisation.

Others may be added

Heading (specific to situation e.g. communication, relationship, training) – several may be required.

The following actions were agreed:

-

Third parties (identify agreed third parties who would have sight of this document)

-

Signed:

Date:

Signed:

Date:

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Mediation Framework Appendix 6

Monitoring and evaluation (initial)

Mediation Process

Initial Evaluation (to be completed by the mediator)

General

Mediator

Directorate

Staff group(s) e.g. nursing,
AHP, medical, admin.

Process

Individual meetings
(dates)

Joint meeting(s)

Date(s)

Duration

Agreement
(please circle)

verbal

written

none

Comments

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Mediation Framework Appendix 7

Monitoring and evaluation (follow-up)

Mediation Process

Follow-up Evaluation (six months)

Outcome

Agreement (please circle)	maintained	amended	not maintained
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Reflections on Process
