



Using Partnership to introduce mediation to resolve workplace disputes



A Social Partnership Forum Project

Why Introduce Mediation?

Change has been a fact of life in the NHS over the past decade. Constant change brings with it the increased potential for disputes and conflict at work, which are increasingly dealt with through process and procedures when perhaps conversation and dialogue at an early stage may produce a more productive outcome for all concerned.

In 2006, ACAS (Advisory, Conciliation and Arbitration Service), the Department of Health's HR capacity team and the NHS Social Partnership Forum worked together to pilot mediation as a method of resolving disputes in the workplace. It was hoped the work would equip NHS trusts and their employees with the skills needed to resolve conflict and bring about better employment relations in the long-term.

What is Mediation?

Mediation is an effective tool which local partnerships can use as a route to resolution of issues. It is an umbrella term that describes a range of processes where a neutral third party helps two parties resolve a difference or disagreement and, hopefully, find a mutually acceptable agreement. It is a speedy, informal approach that minimises the potential stress of a disagreement in the workplace. Resolving disputes before they escalate and become a tribunal complaint benefits all concerned. Those benefits can be greatest if the matter is nipped in the bud at an early stage. Mediation is voluntary and confidential, and can sit alongside formal procedures.

The pilot trusts

The five trusts who piloted the project were:

- Bedford and Luton Mental Health and Social Care Partnership Trust
- South Central Ambulance Service NHS Trust – Berkshire Division (formerly Royal Berkshire Ambulance Trust)
- Derby Hospitals Trust
- Guy's and St Thomas' NHS Foundation Trust
- Bradford Care Trust and Bradford PCTs

This project was sponsored by the Social Partnership Forum to provide the following support to the trusts:

- two half-day briefing sessions for managers and trade union representatives, led by ACAS;
- the services of an ACAS facilitator to support a joint management/trade union project team in developing a mediation scheme that met the needs of the individual trust; and
- a five-day accredited training course for up to 12 mediators in each pilot trust.

How was partnership working developed?

In each of the pilot trusts, a project team or board was established involving managers and trade union representatives. It was the role of this project group to agree the nature of the mediation scheme to be introduced within the trust and oversee its implementation. This involved reviewing the current working culture within the trust against the best conflict management approach and designing the scheme itself – for example, when and how mediation will be offered. Thought was given to where mediation fitted into the trust's existing conflict management resolution processes. Following an invitation to apply, the group was also responsible for selecting the volunteer mediators.

Within each trust, a programme for rolling out the scheme across the organisation was devised, with training and awareness-raising events for line managers, trade union representatives and individuals.

A focus group of the trusts piloting mediation identified better partnership working between employers and trade unions as one of the key benefits arising from setting up the schemes. Establishing the mediation arrangements had helped to embed good working relationships between management and staff side, through a process of building trust and sharing information. Although every trust already had adopted the principle of a partnership approach to working with staff side, the project had helped to cement these working relationships and draw in new people.

The HR Manager at Guy's and St Thomas' NHS Foundation Trust – one of the pilot sites – comments: "Setting up the mediation pilot gave us the opportunity to work with at least four or five trade union representatives on an issue of mutual importance. I think the only way to 'do partnership' is to do it and not just talk about it. Working on this project together meant that management and staff side could come together on an issue that is not contentious: typically management and staff side will come together on more potentially adversarial topics like discipline and grievance, so it was refreshing to work on something together and develop our working relationship in a positive way."

The Benefits of Introducing Mediation

Tangible benefits of establishing mediation arrangements were identified by the pilot Trusts, including:

- the mediators enjoyed their new role within the trusts;
- in some cases mediation had helped people return from long-term sick leave;
- the attainment of an accredited qualification on the part of mediators was seen as a skills enhancement;
- setting up a scheme involved a wide range of people and encouraged different people to come forward within the organisation;
- the mediation process itself was seen as effective, viewed as independent by the parties involved and thus gaining the trust of management and staff side within the pilot trusts; and
- the joint control – between staff side and management – was seen as a positive feature of the mediation scheme.

Case study:

The benefits and challenges of introducing mediation at Derby Hospitals Trust

According to the HR manager, the benefits have been demonstrated by a number of cases being resolved through this alternative process, that might otherwise have proceeded to grievance or simply gone unnoticed and unresolved, leading to further workplace disharmony.

The HR manager notes that mediation training has given skills to the eight selected mediators, which they can use for their personal development and KSF portfolios. These mediators also deal with cases corporately and not specialty specific: this therefore gives them exposure to a corporate bandwidth. Mediation is accepted by the unions as a way forward and this wouldn't have been the case previously. A tangible benefit is that the trust has written in the opportunity to seek mediation at the forefront of a number of collective policies.

According to the HR manager, an intangible benefit is that the process is confidential, and ownership rests with the staff being mediated, rather than a panel making a judgement themselves. The unions accept it as a way forward and will suggest mediation to prevent cases proceeding to a position where they are more problematic to manage. In terms of partnership working and dispute resolution, setting up the scheme has changed behaviour to the extent that more consideration is given to finding a "win-win" solution to issues and less resorting to formal process as the only way forward.

The mediation training has highlighted the importance of managers being able to manage change effectively within the trust. As the majority of cases surround working relationships and communication, this has highlighted an area where effective leadership skills and emotional intelligence could avert a problem arising in the first place, says the HR manager. Mediation often throws up wider issues of organisational change and management style. A number of mediation cases highlighted that the point of origin often lay with a manager not handling a change situation well in terms of communication. Managers are equipped with the tools but also need to be able to communicate change to staff and thereby get them on board to thrive on change.

Case study:

How mediation has helped working relationships at Guy's and St Thomas' NHS Foundation Trust

The HR manager at Guy's and St Thomas' NHS Foundation Trust says that mediation has been "very well received" by those who have gone through mediation at the trust. The HR manager says that many of the cases coming forward for mediation involve communications issues, including scenarios where a manager is trying to manage – possible performance issues – but the management style is perceived as harassment by the employee. Some examples:

Case study 1

A is a scientific/professional. B is her manager and C is her manager's manager. A had a poor working relationship with B and C over a period of time and A was on sick leave due to stress. The advice from Occupational Health was that, for her to return to work successfully it would be necessary to improve the relationship with B and C and Occupational Health suggested mediation. An accredited mediator met with A, B and C separately, then with A and B together, with A and C together and then all three together. The result was an agreement between them and A was able to return to work.

Case study 2

D and E are both medical consultants who used to be good friends. A number of incidents occurred which damaged their relationship and this affected their ability to communicate. They were concerned that this could potentially have an affect on patient care if they were unable to communicate effectively. An accredited mediator met with both D and E separately and then with both together. They reached an amicable agreement on the way forward and D completed a very positive feedback form, in which she said that the issues would have rumbled on indefinitely had mediation not been available.

Top tips for successfully implementing a mediation scheme

Setting up and Developing Partnership Approach

- have a visible steering group – for example members should attend the training as observers and support recruitment
- establish a steering group that is broadly representative of the organisation
- know your stakeholders – who are they, are they involved
- have a clear understanding of what is involved in setting up mediation

Managing the Project

- draw up a project plan and hold ongoing reviews (quarterly)
- have an external facilitator
- have clear expectations from the scheme – understand what mediation can and can't achieve

Communications

- use existing structures to build the scheme – for example, use the in house magazine to publicise
- access existing materials
- use the fact that mediation is independent and voluntary to promote the scheme
- make mediation accessible – use leaflets, posters, electronic channels and face to face communication

Maintaining a Successful Scheme

- enthusiastic support from staff side/managers is essential
- ensure that there is a good mix of mediators in terms of profession, job grade, from staff side and managers, and in cultural, ethnic and gender terms
- ensure there is peer support for mediators
- base the scheme within the context of partnership working
- link mediation to other organisational policies
- identify the resources – such as rooms, admin support, funding – for running the scheme at the outset
- 'sell' mediation to line managers, staff, everyone
- consider how to keep the scheme going – for example, there will be a need to replace mediators

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