

Mediation

This document outlines the Scottish Prison Service Policy in relation to Mediation

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1.0 Introduction

This policy provides:

- Information about Mediation.
- Guidelines for deciding whether mediation is appropriate for situations employees are faced with and whether the service is likely to produce results.

2.0 Aim

To provide a service for Scottish Prison Service (SPS) employees to seek structured, informal and impartial resolution to disputes within the workplace.

3.0 What is Mediation?

Mediation is a process by which an impartial third party helps people in a dispute work out an agreement. The disputants, not the mediator, decide the terms of this agreement. Mediation usually focuses on future rather than past behaviour.

It provides a structured, informal way of resolving complaints, grievances and disputes. Because mediation is not seeking a culprit or scapegoat, it can help rebuild relationships and restore broken communication and trust. More formal approaches such as disciplinary procedures or investigations can be extremely effective, but for issues such as personality clashes, disputes over roles, disagreements over work style or behaviour, mediation avoids the bureaucracy, the blame and the pain.

4.0 Scope

This guidance applies to all employees regardless of the nature of their contract of employment.

5.0 When to use Mediation

Mediation works best when it is a voluntary process. Decisions should be made on each case on its merits. The following factors should be considered:

- The history and dynamics of the conflict – early in the conflict is better than later.
- The possibility of physical threat – agreement for non-violence is essential.
- The nature of the relationship between disputants – on-going working relationships without unbridgeable status or rank differential.
- The intensity of feeling – if antipathy is extreme it may not work.
- Willingness to participate in the resolution – everyone needs to be able to contribute something.
- Capacity of the disputants to resolve the issues in dispute – extreme levels of stress can leave people unable to think clearly, or say what they need.

There will be maximum opportunity for resolution in cases that have the following characteristics:

- Low levels of anger and physical or verbal intimidation.
- No serious breaches of workplace guidelines.
- No formal or other action being taken which would counter the mediation process.
- Allegation and counter allegation.
- Insufficient evidence for other action.
- Facts which are unsubstantiated.
- Disputants who are willing to contribute to resolution.
- Room for improvement in relationships.
- Disputants who are not initially prepared to have face-to-face contact with their counterpart, but will with external help.

Remember, the mediators will discuss with each person privately prior to the meeting in order to:

- Listen to an outline of their issues and concerns.
- Explain how mediation works.
- Encourage them to use mediation, and attend a joint meeting with everyone involved when appropriate.

6.0 When not to use Mediation

Mediation is not a magic solution – it is not appropriate if:

- There is an extreme power imbalance between the parties which cannot be bridged. The SPS is committed to fostering a positive working environment that proactively promotes equality amongst employees and discourages power imbalances.
- Behaviour is going on between the parties which makes one or the other or both feel unsafe to conciliate.
- External rules need to be applied, for example if criminal activity is involved.
- One or other side or both sides are unwilling or unable to mediate.
- If a complaint involves behaviour which requires action against a perpetrator e.g. serious misconduct, poor performance.
- It is a policy issue.

7.0 What is involved in Mediation?

Mediation can be used to resolve disputes at all levels; peer, manager/direct report, or teams. It enables individuals or teams to improve their relationship and discuss the practicalities of working together. Workable solutions are essential but they also have to be human ones.

The most effective time to use mediation is early on in a dispute, before tribunals or other formal routes have been travelled down, and before people are entrenched in their positions. However, it can be used successfully when a dispute has gone on for some time. Mediation is a viable way to tackle disputes as it brings people together to talk about the situation and fosters a joint problem-solving attitude, both of which are essential if working relationships are to be maintained or improved. The key is that mediators provide a safe and confidential environment, enabling people to communicate freely.

There is a specific process for carrying out mediation effectively.

Phase One

The mediator will discuss the dispute with each party. During this initial discussion each party is asked to talk in detail about their perspective of what has been going on. They are asked to be open about how they feel and what they consider needs to happen to resolve the situation and to create effective structures for future communication.

The mediator provides each party with the reflective space to work through difficult issues and build commitment to agreements.

They do this by:

- Using reflective listening, empathy and rapport building to create a constructive atmosphere.
- Working with each party to identify issues, needs, concerns, vulnerabilities, habits and limiting beliefs.
- Exploring contributory factors on all sides, e.g. background issues, the general context.
- Highlighting with each party possible options, and ways forward.
- If it becomes apparent that at the Phase One meetings that the issues have changed then it may be necessary to change the agreed process.

Phase Two

The mediator meets with the parties together, ideally in the same room, for up to three hours. The time will vary depending on numbers involved. There are ground rules to enable even those who may be feeling vulnerable to take part.

While it is preferable if the parties agree to talk face to face with the mediator as the intermediary, it is possible to use “shuttle” mediation where the mediator works with the parties in separate rooms. Shuttle mediation can be particularly helpful in the initial stages if emotions are running very high.

At the face to face session the mediator works to enable the parties:

- To have the same opportunity to speak about their feelings and concerns without interruption.
- To look at the problems in turn, to move towards a mutual problem definition.
- To generate ideas for solutions.
- To plot potential hazards.
- To generate a time-frame for change.
- To create written agreements for future interaction where appropriate.

Feedback

The mediation process is confidential. The detail of what is discussed between the mediator and the parties **will not** be provided to the referring client.

8.0 Information for the Parties Involved

The following pages explain how mediation works and are provided so that, when mediation is organised, each party can be given a copy before it takes place.

How Does Mediation Work

Mediation is when an impartial, trained person helps two or more people in a dispute to talk about their situation, exchange their concerns and come up with ideas about how to move forward. What is discussed in a mediation session is confidential and there are ground rules to help people feel confident and safe enough to communicate their needs, feelings and concerns.

Mediation Ground Rules

These apply to the parties involved and to the mediators.

We ask you to:

- Listen to what each person has to say and speak one at a time.
- Speak and behave in a non-threatening way; think how you would like to be treated and refrain from discriminatory behaviour as this will not be tolerated.
- Be as open as you can about what your concerns are and what you need.
- Be as specific as you can, about what you want to happen, what you can do and what you'd like others to do.
- Stay seated and discuss any problems and doubts with the mediator or request a private space with them if you feel you need to.
- The mediator may pause the mediation or end it if he or she feels it necessary.
- Keep the detail of what is discussed private; the mediation is confidential; notes will be destroyed, things said in mediation cannot be used in court or in later internal procedures.

The mediator(s) will:

- Ensure that everyone has equal opportunities to communicate (speak and listen), negotiate and work out realistic and fair agreements.
- Prevent name-calling, abuse or behaviour which stops people negotiating fairly.
- Not take sides or make decisions for you.

The Stages of Mediation

A preliminary discussion with the mediator will be arranged so that you can:

- Describe the situation from your point of view.
- Think clearly about ways of moving the situation forward.
- Get to know more about how mediation works and the benefits of using mediation to find a settlement.

A face to face meeting will be held which has five stages;

1. **Describing the problem** – Setting the scene – hearing both sides of the situation.
2. **Exploring the issues** – Being clear what the important issues are, checking facts, comparing views of the problem, agreeing what issues can realistically be settled by mediation, agreeing to continue.
3. **Building agreements** – Exploring what people want and what can be done about the situation, working through differences, managing conflict, problem solving, preparing for decisions.
4. **Making agreements** – Testing likely outcomes, describing in detail what will happen next, future arrangements, what if something goes wrong?
5. **Closure and follow-up** – Evaluating the session and ending the session, agreeing plans for future contact between the mediators and the disputants concerned, if needed.

9.0 How to Access the SPS Mediation Service

A number of important principles underpin the operation of the SPS Mediation Service:

- The service must operate in a way which eliminates any kind of bias from mediation.
- Mediation should be arranged on the site at which the employees are based.
- Mediators will not mediate with people with whom they have previously had contact.
- Mediations will be confidential and there will be no reporting back on issues, outcomes or the process itself without explicit consent from the parties involved.

Requests for mediation should be forwarded to the appropriate local HR Team.

Prior to submitting a request for mediation, there are a number of support measures which can be utilised for individuals to discuss their issue and its suitability for mediation:

- Their local HR Representative.
- Their line manager, or if that individual is involved in the issue, another manager.
- Their TUS representative.

Once the decision to use mediation to resolve the issue has been made locally:

- The local HR Team will contact the service provider to make the necessary arrangements.
- The local HR Team will make the referral to the service provider uploading all relevant information and forms.
- The employees involved will be contacted by email by the service provider to allocate a mediator and arrange a mutually convenient date to hold the mediation, normally within 14 days.

Further Information:

The SPS recognises that from time to time employees may have questions or concerns relating to mediation. In certain situations employees' rights and obligations regarding mediation may change. In these circumstances the SPS will abide by any statutory obligations.

The SPS wishes to encourage open discussion with employees to ensure that questions and problems can be resolved as quickly as possible. Employees are encouraged to seek clarification on any issues with the appropriate line manager in the first instance.

Sustainability

Improving our environmental performance and doing things in a more sustainable way should be seen as integral to our core business practices.

In line with the SPS Sustainable Policy and to demonstrate compliance with the Scottish Government's commitment to improving environmental and sustainable development performance, please be mindful if printing this document – keeping paper usage to a minimum (print only version), printing on both sides, and recycling.

Equality Statement

The SPS is an equal opportunities employer where all employees are treated with dignity and respect. We are fully committed to equality, diversity and human rights and to ensuring our culture, working environment, policies, processes and practices are free from bias. This policy applies to all employees regardless of protected characteristics, and, subject to any eligibility criteria, length of service, grade, working pattern or operational status.

Inclusive Communications

It is our ambition to ensure that SPS documents are readable, accessible and engaging for employees.

In formatting this document, good practice principles around engagement and inclusive communications have been adhered to.

If you require this document in an alternative format please contact Human Resources.

Review and Monitoring

This guidance will be reviewed every three years or sooner where applicable to reflect changing business and legislative requirements.

Human Resources Policy and Guidance in SPS

SPS policies and guidance take into account current legislation, rules, regulations and best practice guidance from a range of professional and public bodies, including the following:



UK Civil
Service
Management
Code



UK Legislation



EU
Legislation



ACAS



CIPD Best
Practice