

Mediation Procedure

Contents

- 1 – Aim
- 2 – Introduction
- 3 – Scope
- 4 – Benefits of Mediation
- 5 – Suitability of Cases
- 6 – Advocacy
- 7 – The Mediation Process
- 8 – Mediation Outcomes
- 9 – Mediation Service and Roles
- 10 – Mediation Costs
- 11 – Mediation Time Scales
- 12 – Concluding the Mediation Process
- 13 – Unsuccessful Outcomes
- 14 – Alternative Dispute Resolution
- 15 – Other Relevant Processes
- 16 - Review

Appendices

- Appendix 1 - Mediation Process Flow Chart
- Appendix 2 – Mediation Referral Form
- Appendix 3 – University of Hull Mediation Service Information (PDF)
- Appendix 4 – Travel Claim Form

1. Aim

1.1 The aim of this document is to:

- Explain the Mediation Procedure, what it can be used to achieve and the steps involved
- Explain the roles of the Corporate Customer Feedback Team, the Mediator and staff in the process
- Provide information and guidance to staff about how mediation may assist in resolving complaints and disputes

2. Introduction

2.1 Mediation is an informal but structured approach to resolving disputes which maintains ongoing working relationships between the parties and averts potential costly and prolonged alternatives such as court or similar formal adjudication processes. It is an example of an Alternative Dispute Resolution (ADR) to legal action.

2.2 A skilled mediator helps the parties to:

- Discuss the issues underlying their dispute
- Reach a settlement that is shaped by both parties and reflects their interests and priorities.

2.3 To achieve this, the mediator will generally use a series of joint and individual meetings to explore:

- the origins and nature of the dispute
- the parties' interests and needs
- possible resolutions which could satisfy all involved

2.4 The role of the mediator is not to impose a settlement but to help the parties reach a practical and satisfactory agreement themselves.

2.5 The intention is that at the end of the process all parties will sign a binding and legally enforceable agreement drawn-up by the mediator in accordance with their wishes.

2.6 Mediations will usually be concluded within a single day.

2.7 Legal representation or assistance is not usually necessary.

3. Scope

3.1 This mediation procedure has been created to assist with resolving corporate complaints. It may be considered at any stage of the council's formal corporate complaints process – or within the informal, pre-complaint phase of a developing issue.

- 3.2 Regarding mediation issues in relation to statutory Adults Complaints, or to statutory Children and Young People's Services Representations and Complaints, please refer to the Council's relevant complaints procedures in section 15.

4. Benefits of Mediation

- 4.1 Mediation can be especially helpful in cases where an ongoing working relationship needs preserving or rebuilding over a particular issue but where previous attempts to reach resolution have failed. Where parties have become stuck in entrenched positions, a process of mediation can produce more creative solutions.
- 4.2 Mediation can be quicker, less stressful and less costly compared to court action or referral to similar formal adjudication processes.
- 4.3 Mediation can facilitate a lasting, flexible path to solving disputes.
- 4.4 The mediation role will, in most cases, be undertaken by a trained professional, accredited and subject to the Code of Practice of the Centre for Effective Dispute Resolution (CEDR) or equivalent training organisation. They will remain wholly impartial and independent of both parties.
- 4.5 Mediations are completely confidential and the information discussed within them cannot generally be used in Court or in any other legal action issued at a later date. (There are some finance, safeguarding and crime-related exceptions.)
- 4.6 Once a settlement has been reached a Settlement Agreement can be drawn up – which the parties tend to keep to because they have prepared the terms themselves.

5. Suitability of Cases

- 5.1 Mediation is now used as a form of dispute resolution in a wide range of contexts. The guidance in this procedure relates to corporate complaints. Regarding statutory complaints and mediation services please contact the Children and Young People's Service Complaints Manager or the Adults (Care Services) Complaints Manager for advice as applicable.
- 5.2 The likelihood of mediation being useful is highest where confidence exists that the complaint is fully understood and where both parties:
- recognise the need to preserve their ongoing working relationship
 - have good faith and are motivated and committed to reaching a resolution
 - wish to avoid the stress or worry of more formal procedures

Mediation Procedure (08.03.16)V07

- have agreed the material facts, but become 'stuck' in their positions
- have capacity and are fully able to 'settle on the day'
- understand the process will be 'paper light'
- are willing to discuss and contemplate a range of potential outcomes which could resolve the underlying issues, or
- desired resolution/s lie along a pathway which offers some movement
- understand the limitations of the mediator's role

5.3 Specific problems where mediation could help include:

- Tenant –Landlord disputes
- Property vendor - purchaser disputes
- Consumer related disputes
- Business partnership/role disputes
- Neighbour disputes
- Claim/Loss cases
- Long-term service user complaints

5.4 Not every case is suitable for mediation. Other alternative options for resolution may become apparent before, during or following the process. The mediation process will **not** be suitable for the following:

- 'Fact finding' or deciding what's 'true' or not – the facts must be set out and agreed prior to pursuing the process
- Deciding who is right or wrong in a situation
- Positions or situations where there is no possibility of flexibility
- Parties with very serious problems or disadvantages as regards communicating or understanding the issues (but please refer to section 6)
- Parties with a recent history of threatening or intimidating behaviour

6. Advocacy

6.1 Advocacy is when a person speaks for another individual to ensure their views and wishes are heard or when an individual is supported to speak up for themselves.

6.2 In mediation a friend or supporter can often be helpful to support a party who is less confident, or who is less articulate. This can be discussed with the mediator in advance, and may be suggested by the mediator in appropriate cases – though should also be agreed by the other party in advance.

6.2 As very vulnerable parties who require representation will not generally be regarded as suitable parties to a structured mediation process, advocacy may be a better alternative option to explore.

7. The Mediation Process

7.1 Please refer to Appendix 1 for a copy of the Mediation Process Flow Chart.

Mediation Procedure (08.03.16)V07

- 7.2 Mediation may be considered or requested at any stage within the Council's corporate complaints procedure by the:
- Service Area
 - Complainant
 - Corporate Customer Feedback Team (CFT).
- 7.3 Mediation Requests should be forwarded to the CFT for initial consideration. A Mediation Referral Form is available – please refer to Appendix 2.
- 7.4 Requests should outline the nature of the complaint, any remedies already offered and the reasons why mediation may be suitable to reach a resolution.
- 7.5 At the Initial Consideration stage the Customer Feedback Team Leader will:
- Request full case details from the Service Area
 - Review the details against the mediation criteria
 - Contact the Service Area to arrange to discuss the case
 - Consider any Alternative Dispute Resolution (ADR) options and, where necessary and appropriate, formal legal process
- 7.6 Where mediation looks feasible the Service Area will:
- Provide the CFT with the name and contact details of their representative who will be authorised, on behalf of the Council, to engage in the mediation, and make decisions about remedy 'on the day' as required
 - Confirm customer/complainant contact details
- 7.7 The Customer Feedback Team Leader will make a referral to the Mediation Service, by completing their Enquiry Form with the Council's contact details (though not yet the customer's) and the general background information about the case.
- 7.8 The Mediation Service will confirm initial case suitability or not for their process to the CFT with reasons.
- 7.9 Where a mediator assesses that the mediation process would be *unlikely* to succeed the CFT and the Service Area will be informed and will discuss any suitable ADR options, including, where appropriate, formal legal process. The CFT will close the mediation request and the Service Area will proceed with the alternative option. This will normally be a process within the service area – which could be an appeal, a housing relocation process, or a claim procedure, for example.
- 7.10 Where the case is assessed as suitable for mediation the CFT will inform the Service Area and will contact the complainant to:
- Explain the offer of mediation
 - Provide information about the mediation process
 - Obtain consent to provide their personal contact details to the mediator
 - Provide the Council representative's contact name for the mediation process

Mediation Procedure (08.03.16)V07

- 7.11 Where the complainant consents to mediation the CFT will contact the Mediation Service to make a full referral to the mediator, providing both parties' contact details and any relevant updated case information.
- 7.12 Following a conversation with both parties, the mediator will complete an Intake Assessment and will confirm the outcome to them both and advise CFT.
- 7.13 Both parties will sign a Mediation Agreement where the mediation meeting is assessed as suitable to progress.
- 7.14 The cost of the mediation will be determined with the Mediation Service and the CFT will liaise with the Service Area before the Mediation Agreement is signed.
- 7.15 The mediator will agree a time, date and venue with both parties to meet. Where the Hull University Mediation Service is used the mediation meetings will usually take place on the University Campus, Cottingham Road, Hull.
- 7.16 On the day of the mediation, the mediator will normally meet with both parties in the first instance and then continue with a flexible series of joint and individual meetings until a common ground is reached. (For further information about the University of Hull's Mediation Service please refer to section 9, below).
- 7.17 Where a resolution is found upon which both parties can agree, the mediator will write up a Settlement Agreement which is then signed by both parties. This normally consists of a brief summary of mutually important issues and is completely confidential.
- 7.18 The mediation process may be adjourned by mutual consent. The Mediator will confirm this outcome to the CFT.
- 7.19 Where no common ground is possible, or where the case breaks down or reaches an impasse, the Mediator will confirm this outcome to the CFT.
- 7.20 If at any point in the process it becomes apparent that mediation cannot progress or succeed, the CFT and Service Area will discuss any suitable ADR options, including, where appropriate, formal legal process, and the mediation request will be closed.

8. Mediation Outcomes

- 8.1 It is the aim of the mediation process that it should ideally be concluded with the two parties signing a binding, legally enforceable Settlement Agreement. This document will be drawn up by the Mediation Service in accordance with the wishes of the parties directly involved in and impacted by the issues.

- 8.2 Settlement Agreements are usually self-enforcing. The parties will tend to keep to it because they have prepared the terms themselves for going forward - based on their own interests and priorities.
- 8.3 Although mediation in suitable cases usually does produce a resolution that satisfies all parties, there can be no guarantee that agreement will always be reached. The mediator will not impose any decisions or settlement.
- 8.4 In cases where mediation does not conclude with a signed Settlement Agreement, often enough progress is made to 'break the ice' such that afterwards a way forward may emerge that the parties can agree on.
- 8.6 In all cases the CFT will maintain a record of, and follow up on, actions from the outcome of the process received from the Service Area representative. The details of any agreed settlement and how it was arrived at will remain confidential.

9. Mediation Service and Roles

- 9.1 A number of Mediation Services are available. Not all mediators are lawyers.
- 9.2 The Council's Customer Feedback Team (CFT) will contact and liaise with the Mediation Service as appropriate on behalf of the Service Area, making enquiries and referrals on behalf of potential parties. Where the mediation process goes ahead, the CFT will support the process and assist with the administrative arrangements on the Council's behalf. The CFT will play no direct role in any mediation meetings which will be attended solely by the parties concerned (including an appropriate 'friend/supporter' being present by prior agreement with the mediator and the other party; see section 6). The Customer Feedback Team Leader will liaise with the Service Area representative/s and attend meetings with them as required, to discuss the case, provide guidance, information and to support ongoing arrangements.
- 9.3 The Council has approached the Mediation Services provided by Hull University Law School to assist with its process. For further information details are available at the following link: <http://www2.hull.ac.uk/fass/law/mediation-service.aspx>. A PDF is also available – please refer to Appendix 3).
- 9.4 All Mediation Services are provided on the explicit basis that they will act independently in the process.
- 9.5 The University of Hull Law School Mediation Service, a 'not for profit' service, is provided by a Professor of Law who is accredited to the Centre for Effective Dispute Resolution. All mediations provided by the Law School's Service follow the CEDR Code of Practice.

Mediation Procedure (08.03.16)V07

- 9.6 Mediation meetings carried out by the University of Hull Law School Mediation Service will usually take place on the University Campus, Cottingham Road, Hull.
- 9.7 Once the mediation process commences, a Service Area representative must be appointed by the relevant City Manager to discuss the case details directly with the mediator and to attend the meeting/s as the Council's party in the process. This representative will need sufficient authority and knowledge to enable them to make delegated decisions 'on the day' (not being in the position of having to telephone back to the office).
- 9.8 It should be understood by both parties that the mediator is there to help both parties to listen to each other and understand each one's needs and concerns. They will not take sides or tell either party what to do. They will help with ideas and looking at solutions.

10. Mediation Costs

- 10.1 Fees incurred in the mediation procedure to assist with complaint resolution will in most cases be paid in full by the Council. Therefore the cost benefits should be established before the mediation process commences. Factors to be taken into account include potential external costs, such as Court fees, as well as internal resources such as staff time; and in some cases, reputational considerations.
- 10.2 There may be some exceptional cases where the cost of mediation is to be split between the parties. Where this applies any costs incurred to the customer will be notified and agreed in advance.
- 10.3 Where the University of Hull Law School Mediation Service is engaged, the cost of the mediation will be determined in accordance with the Council's partnership agreement with the University.
- 10.4 Where the customer/complainant wishes to claim reasonable travel expenses in connection with attending a mediation meeting, a request should be made in advance to the CFT with the details. A form for the complainant to complete is available – please refer to Appendix 4: Travel Claim Form.

11. Mediation Time Scales

- 11.1 Once the Council and the other party have agreed on mediation, and the Mediation Service has confirmed the suitability of the case for the process, an appointment can usually be arranged within 3 weeks.
- 11.2 Mediation meetings are in most cases concluded within a single working day; sometimes half a day – depending on the issues.

12. Concluding the Mediation Process

- 12.1 The objective of the mediation process is to conclude with the parties agreeing to sign a binding, legally enforceable and confidential Settlement Agreement which reflects their joint resolution to the issue.
- 12.2 If no settlement can be reached, the mediator will inform the Customer Feedback Team of this and any suitable alternative way forward that may be identified.
- 12.3 In some cases the mediation process may be adjourned by mutual agreement. But if the process breaks down before any agreed outcomes, the mediator will inform the CFT.
- 12.4 The CFT will maintain confidential records of mediation referrals, developments and outcomes and will liaise with the Service Area managers and the Mediation Services to conclude the process with the party customer.

13. Unsuccessful Outcomes

- 13.1 There can be no guarantee of a settlement being reached through mediation in every case. If the mediation process is unsuccessful in finding a resolution or suitable alternative way forward of any kind the Mediator will inform the Customer Feedback Team of this.
- 13.2 Where the mediation process has been unsuccessful the Customer Feedback Team Leader will discuss the case with the Service Area manager to identify any suitable ADR process, including, where appropriate, formal legal process, which may provide a way forward. If the mediation has taken place at an early stage within the corporate complaints procedure it will normally be appropriate for the complaints process to be reconsidered for completion where mediation fails.

14. Alternative Dispute Resolution

- 14.1 There may be other more suitable alternative processes, including, where necessary and appropriate, formal legal process, available to assist in resolving a complaint or dispute.
- 14.2 Please contact the corporate Customer Feedback Team for information.

15. Other Relevant Processes

- 15.1 The Mediation Procedure should be read in conjunction with:
- The City of Hull Children and Young People's Services Representations and Complaints Procedure

Mediation Procedure (08.03.16)V07

- The Council's Adult Complaints Procedures
- The Council's Corporate Customer Feedback Scheme

16. Review

16.1 This procedure will be reviewed annually or regularly as required to ensure it remains relevant and fit for purpose.