



Resolving conflict at work can sometimes feel like an uphill struggle. Mediation has a successful track record because the individuals want the resolution to work and return to their normal lives. If you are unsure whether it could work for your problem, call us for an honest view.

## **A New Approach to Workplace Mediation**

### **An Analysis of Workplace Mediations**

**conducted during 2005/2006**

# Catalyst Mediation

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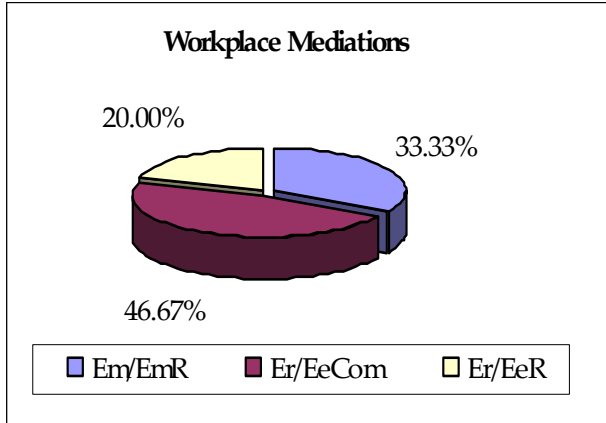
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## WHERE MEDIATION CAN HELP

Workplace conflict has accounted for almost 70% of Catalyst’s mediations over the last two years.

In almost all cases there is likely to be a perceived power imbalance between the sides, sometimes from another individual and sometimes resulting from changes within the organisation’s structure. There will probably be a long list of grievances, both real and perceived. Mistrust is obvious. Miscommunication or lack of it is likely to be central.



In looking at these conflicts, it seems there are, broadly speaking, three types of mediation that result, characterized by the parties involved and the objective of the mediation.

### **Employee/Employee (Em/EmR)**

Where two colleagues cannot work together and the employer hopes the relationship can be rebuilt.

### **Employer/Employee (Er/EeR)**

Where the relationship has broken down, but the Employer hopes it can be rebuilt.

### **Employer/Employee (Er/EeCom)**

Where the relationship has irretrievably broken down (or the employee has already left) and an “elegant parting” through a Compromise Agreement is required.

## **1. EMPLOYEE/EMPLOYEE (E/E)**

These mediations are characterized by several meetings addressing a complex mix of issues, events which lead to the initial suspicion as to the other’s motivations, the individuals’ internal belief systems and personal circumstances.

Frequently there are accusations of bullying or harassment and feelings of powerlessness which can lead to stress and time taken off work. If the individuals differ in sex, racial origin or age, negative behaviour may be seen as based on a discriminatory attitude.



If internal disciplinary or grievance procedures have been used, their formal nature, rules and the use of evidence from other staff, can reinforce the claimant’s feeling of powerlessness and bullying, this time by the employer. They can also result in the “team” being split because they are seen to support one individual vs. the other. Internal procedures often take months to complete, adding to stress and time off work.

Mediations seek first to create an atmosphere in which the two protagonists can start by reviewing past events and identifying how they felt as a result. This is often a painful and long drawn out procedure, but is vital for the individuals to have their feelings heard and acknowledged. Explanations can lead to an understanding that the action was not intended to create harm (“unintended cock up vs. deliberate conspiracy”) and apologies for any hurt caused can be expressed.

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An important objective is to enable both parties to make positive comments about the other's professional skills or performance, and identify the positive elements of their relationship before the conflict began. This helps the individuals to recreate a more positive attitude to each other and begins the process of re-establishing trust.

Finally the mediation encourages the individuals to look more rationally at what they could do to ensure future misunderstandings are minimised and what projects they could undertake jointly to reinforce the beginnings of trust. This can include recommendations to the employer about internal organisation or procedures which may have contributed to the conflict.

## **2. EMPLOYER/EMPLOYEE (ER/EE REBUILD)**

In these cases, the underlying requirement is for both parties to want, even if deep down, to continue the working relationship. The protagonists frequently involve one or more individuals who are characterized by the claimant as "management" i.e. representatives of the employer whose actions have created the conflict.



The conflict is normally based on some form of organizational change which lead to the claimant feeling unwanted, sidelined or demoted in some way, with their skills and contribution being unrecognized or undervalued.

As in the previous case, the mediation seeks to allow misunderstandings to be analysed and the individual's feelings heard and acknowledged, with positive statements about their contribution and importance being made. The parties are encouraged to discuss what practical changes could be instigated to reassert the individual's importance to the organisation and how this can be communicated to co-workers.

## **3. EMPLOYER/EMPLOYEE (ER/EECOM)**

Where the relationship has broken down and the objective is to create a calmer, more reasonable compromise agreement than may be possible through a Tribunal.

These are often characterised by the individual having been off sick for some time or having resigned "under pressure". Both sides will have legal, and sometimes union, representation. The elements of the conflict will be similar to the other types mentioned above, but the attitude of the individual towards the employer will have hardened and they may, initially at least, be seeking to cause severe financial and public embarrassment.

The mediation will seek similar goals initially, in allowing the parties to have their story heard, their feelings acknowledged and individual events analysed to arrive at an understanding of whether they were deliberate or unintentional.

The mediators will also seek to identify from the claimant their real needs (rather than wants) and work with them to identify whether they are more likely to achieve them through negotiation or a Tribunal. These needs can include a mix of a written apology or public statement, future job references, re-training costs and payments, sometimes in the form of tax effective pension contributions.

Lastly the mediation will seek to gain agreement to the content of the compromise agreement for all sides to sign.

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## A New Mediation Process

The idea is to identify the ideal outcomes for both parties early on and then be as flexible as possible with the structure of the mediation, as this should reflect both the needs of the individuals and their desired outcome. At the same time budget control stages are included to ensure the mediation represents true value.



### **INITIAL DISCUSSIONS**

Initially, we would identify with you:

- the extent of the problem;
- how important it is to the Organisation to have the individuals working again either together or with others;
- realistic expectations as to what we can and cannot do;
- the opportunity and actual costs of losing one member, possibly under a legal cloud; and
- that the outcome will be up to the individuals involved.

The crucial “value” judgement for you will be the cost/ benefit assessment of a mediation process derived from experience, which gives you a realistic chance of achieving your goal. If the conflict has embedded over time, it may take several mediation days or part days to lay the grounds for a rebuilding process, so we will discuss with you:

- maximum and minimum budgets;
- the potential after the mediation for you to provide, if necessary, individuals with mentors / further training etc to help them in the future;
- the potential for you to respond to any suggestions that may be made about internal structures / processes if these come from the mediation.

### **POSSIBLE MEDIATION STRUCTURE**

#### **1) Pre-Mediation Meetings**

We recommend this 2 hour session for any individual who has not been involved in a mediation. It is a confidential session with a mediator to answer any questions about the mediation itself and seeks to allay any potential concerns. The details of the conflict are discussed, so that we get an idea of what outcomes the individual would like to achieve.

The mediator will also talk to the individual about how they might prepare, to help them think about how to get the best from the mediation. This may involve drafting a Summary of Issues paper, usually one or two pages, which helps the individual to focus on what they wish to address. This document is prepared by both “sides” and exchanged before the mediation, so that as far as possible, everyone knows what is to be discussed and there are as few “surprises” as possible.

The mediator would also ask the individual to consider the form of an opening statement that they might make at the beginning of the mediation.

These meetings are normally conducted at the employer’s offices, although they could be held at a local hotel if the individuals felt more comfortable with this.

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## **2) Main Mediations**

More than one day may be needed, depending on how difficult the individuals find the discussions. The greater the emotional element of the conflict, the more time this generally requires to be heard, acknowledged and reduced.

The mediators normally start at 09:00 with a half hour private meeting with one party, followed by an identical meeting with the second party at about 09:30. This allows the mediators to introduce themselves, ask the individuals if they have any questions and explain how the day is likely to proceed. Then the individuals would be brought together in a joint meeting and the mediation discussions would start. The session ends whenever the individuals are happy for it to conclude. Ideally the day is spent together, looking at the issues and helping them to determine how best to address each one. Any one can call a break at any time, either to get some air or to think through something they have just heard or to discuss something with the mediators.

Broadly speaking the stages of the mediation are to look at what happened, what lessons can be learned and how, in practical terms, they would like to work together in the future and avoid any recurrence of the conflicting issues.

## **3) Interim Half Day Sessions**

If there are any impasses on specific issues that arise on the first day, we may also suggest a half day private session with one or both of the individuals before the next day session, so that it can be more fruitful.

## **CONTROLS: MONITORING VALUE & THE MEDIATION OBJECTIVE**

At the end of each session, the decision of whether to move on to another would be taken by the individuals together with the mediators, based on whether they feel it would be constructive or not. This would be reported, (with the individuals' agreement) to the manager involved (assuming they are not in the mediation) and provides them with control over the overall value of the mediation.

This also allows for the objective of the mediation to change depending on the feelings of the individuals as the discussions develop. For example they can suggest that:

- 1) they believe the mediation is not leading anywhere, in which case we stop.
- 2) they believe the best route forwards is to move to an "elegant parting" so the next meeting would be designed to reach a compromise agreement. This would obviously involve others, such as lawyers and / or union representatives.
- 3) that a reconciliation is possible, but needs another session.

## **THE MEDIATORS**

Our mediators are sometimes controlling, sometimes strategic, sometimes educators, at other times reality testers, occasionally guiding, but always flexible. In other words, we adapt to suit the circumstances and the individuals. Our normal approach is to ask the individuals to reach their own conclusions through listening, questioning and hypothesising.

We are independent and will not lose our impartiality. We invariably use two mediators, working together, which allows us to mix male and female, if this is appropriate, and to bring in people with experience in the type of organisation involved. It would be important for both mediators to be present at any private sessions to maintain the atmosphere which both will have created and for

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them to hear what is being said and, so, to formulate strategies for the next session and agree these with the individuals.

## **BUDGETS**

All work done by Catalyst Mediation at each stage will be agreed in advance, based on rates which could vary between £250 and £400 per hour, depending on the experience of the mediators.

### **What is included in the estimate?**

- the provision of 2 mediators;
- organising the mediation, including the venue and any other support;
- all mediator preparation;
- post-mediation feedback and follow-up.

### **What is not included?**

- the costs of an independent venue, for example, a hotel;
- any additional hours, for example, if the parties agree to continue the mediation beyond 8 hours; additional hours are charged at 1/8<sup>th</sup> of the relevant mediation day rate;
- any agreed travel costs, overnight accommodation and subsistence costs for the mediators;
- VAT will be added to all charges.

## **INVOICING**

Invoices will generally be issued before each stage takes place.

- First invoice: will be on account for the agreed first stage(s) including all pre-mediation work mediation day/s and preparation time, expenses and professional support.
- Subsequent invoices: any additional mediation days, hours of mediation or hours of preparation and expenses not included on the first invoice.

The first invoice is normally payable in advance of the start of the first main meeting. Any subsequent invoices are payable no later than 14 days from the invoice date.

Payments by BACS should be made to:	Cheques should be sent to:
Catalyst Mediation	Catalyst Mediation
Sort Code 82 20 00	Baltic Chambers, 50 Wellington Street
Account Number 90326122	Glasgow, G2 6HJ

## **CANCELLATION**

In the event of cancellation in writing by either party after the mediation date has been confirmed, Catalyst Mediation would charge:

- 14 days or more before the mediation date, any non-recoverable expenses and a £175 per party charge.
- Less than 14 days but more than 7 days before the mediation date, 50% of the fees agreed for that stage and any non-recoverable expenses.
- Less than 7 days but more than 24 hours before the mediation date, 75% of the fees agreed for that stage and any non-recoverable expenses.
- Less than 24 hours before the mediation date, 100% of all agreed fees and any non-recoverable expenses.

## **POSTPONEMENT**

If a new mediation date within 14 days of the date of postponement is agreed, no cancellation provisions will apply to this postponement. Parties will be liable for irrecoverable expenses such as

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venue hire charges and any agreed work that has already been completed. Any subsequent postponement will incur standard cancellation provisions.

These figures are valid until 31st December 2007

If you have any questions you would like to ask us, please call us on [0844 800 0206](tel:08448000206) or contact us via the addresses below.

## **CATALYST MEDIATION**

Registered in Scotland No. SC 273815  
Baltic Chambers, 50 Wellington St. Glasgow, G2 6HJ  
Tel: 0844 800 0206 Fax: 0141 341 3466,  
Email: enquiries [@catalystmediation.co.uk](mailto:enquiries@catalystmediation.co.uk),  
[www.catalystmediation.co.uk](http://www.catalystmediation.co.uk)