

# Catalyst Mediation



## MANAGING THE RISKS OF CONFLICT

### THE HUMAN RESOURCE MANAGER'S GUIDE TO EARLY DISPUTE RESOLUTION

#### Version 2

Contains new sections on the  
Pre-Mediation Meeting  
Section(11a) + what to discuss  
and starting an In House Early  
Dispute Resolution Initiative  
(Section 18 & Appendix 10).

*"We say that conflict is natural, inevitable, necessary and normal and that the problem is not the existence of conflict but how we handle it"*

[Bernard Mayer, 2000, The Dynamics of Conflict Resolution. \(Jossey-Bass, 2000\)](#)

*"Our lives are not dependent on whether or not we have conflict. It is what we do with conflict that makes the difference."*

[Thomas Crum, 1987, The Magic of Conflict\(Simon and Schuster, 1987\)](#)

'How are we going to solve this?' (us against the problem) is much easier to hear than 'What are you going to do differently?' (you are the problem) or worse 'Surely you can see that you need to change?' (I know the solution)

[Dana, D 'Conflict Resolution' McGraw-Hill \(2001\)](#)

March 2011

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Dear Colleague

### Managing the Risks of Conflict vs 2

Conflict never stands still and thanks to your input neither do we. So herewith Vs 2.

**New** as more of you develop your own mediation initiatives, here's more about the pre-mediation meeting – the one that gets commitment to the process – and what you might talk about, achieve and hope to get started.

**New** on the same theme, more on establishing your own in house initiative, from strategy, building a business case, to the policy issues, setting up a team, the training and a rough time plan to develop your initiative.

Conflict degrades team and individual performance and so causes a problem for the organisation. So as much as the conflict is a personal issue for those involved, it needs to be resolved in a way that also helps the employer, by creating new behaviours and actions that revive the productive working relationship.

This Guide should help you to achieve that.

**NEW scottish mediation network** If you (or your organisation) are not already a member, it might be worth serious consideration – annual membership is Local Authority/Scottish Public Body £100 and £175 for Other Organisations. For that you get access to people with experience of mediation AND the new IN House Mediation Interest Group which will meet quarterly and bring together those who have, are in the middle of or are just thinking about their own in house initiative. Membership packs and questions answered from [admin@scottishmediation.org.uk](mailto:admin@scottishmediation.org.uk).

We hope the guide will increase your comfort level with the process of mediation, assist you in discussions about when to use it with employees and trade unions and give you a template for how you might manage one for the benefit of your organisation and staff. There are ideas on:

- ✓ conflict and its effect;
- ✓ what mediation is, why it works and how it can be structured;
- ✓ analysing a workplace dispute to see if mediation could help;
- ✓ what your role might be in a mediation;
- ✓ using an external mediator: how to brief them and what to expect.

If this is of interest to you, we could run an interactive mock mediation or training course for your managers which would start them nipping conflict in the bud. Or show how an internal early dispute resolution team could significantly reduce your cost of conflict.

If you have any questions on any of this, please get in touch. We look forward to doing business with you.

Yours sincerely



Jeremy Scuse  
Managing Director

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## 1. WHAT IS MEDIATION?

There are lots of definitions, the simplest being

*“a facilitated negotiation.”*

*“A private dispute resolution process which is without prejudice and in which a neutral, skilled third person assists the individuals to reach a negotiated settlement which can be binding where appropriate.”*

To analyse that statement, mediation:

- ✓ Is conducted in private                      the mediation agreement binds everyone to confidentiality;
- ✓ a dispute resolution process              the statistics show that at least 75% of mediations result in an agreement which is satisfactory to and *delivered by* the individuals;
- ✓ is without prejudice                        thus allowing testing of creative solutions;
- ✓ neutral skilled 3rd person                the fundamental distinction between mediation and discussions between individuals is the suitably trained and experienced mediator;
- ✓ assists the individuals                      individuals are free to control their outcomes. No solution is imposed by a third person;
- ✓ which can be binding                        When, and if a formal agreement is made at the end of the mediation, such as a compromise agreement.

Managers can use “mediative skills” talking to two colleagues over a cup of coffee to sort out a problem before it becomes a conflict. So “the mediative process” is also a highly flexible tool.

## 2. WHAT CAN IT DO FOR YOUR ORGANISATION?

Conflict in any workplace is a costly fact of life. It can start for any number of real or imagined causes and will affect staff personally and in their capacity to work. Which will affect your organisation –

- ✓ from the lowering of efficiency or accuracy;
- ✓ to the loss of a day’s work; or,
- ✓ possibly a more prolonged absence and possibly,
- ✓ the costs of formal complaints and grievance procedures; or
- ✓ the risks of employment tribunal or civil court claims; and
- ✓ if they leave, the costs of recruitment, temporary staff, retraining, under strength teams .....

The Chartered Institute for Personnel & Development’s (CIPD ) Employers Guide to Mediation suggests:

- ✓ *“Mediation is especially effective when used at the initial phase of any disagreement, before conflict escalates. An early intervention can prevent both sides from becoming entrenched and the difference turning into a full-blown dispute. If the disagreement is resolved early on, there is less chance of the working relationship breaking down irrevocably. This improves the likelihood of maintaining good and productive employment relations in the longer term”.*



CIPD research in July 08 'Workplace mediation – how employers do it', presents the results of an on-line survey of 327 member organisations who said that they had experience of using mediation to try to resolve workplace disputes. The benefits most frequently mentioned were:



- ✓ it can improve relationships between employees (83%);
- ✓ it reduces the stress of more formal grievance or disciplinary procedures;
- ✓ it would help avoid the cost of defending employment tribunal claims (50%)

Respondents thought the most suitable issues for workplace mediation were in relationship breakdown or in claims of bullying, harassment or discrimination. In addition to the obvious signs of conflict, such as grievances and tribunal claims, there is a less obvious “symptom” of conflict – stress. HSE research suggests that stress affects a large percentage of the workforce:

- ✓ *“We all experience pressure regularly – it can motivate us to perform at our best. It is when we experience too much pressure and feel unable to cope that stress can result. The latest Labour Force Survey (LFS) results indicate that in 2009/10 an estimated 435 000 people who worked in the last year, suffered from stress caused or made worse by their current or past work. This equates to 1.5% of the working population.”*

<http://www.hse.gov.uk/statistics/causdis/stress/scale.htm>

Further CIPD surveys suggest further costs of conflict:

- ✓ businesses spend almost ten days on average dealing with an individual tribunal claim (including 7.7 days senior managers’ time ). (2007)
- ✓ 44% of UK employees feel under excessive pressure at work at least once a week, often leading to stress and time off work. (2008)
- ✓ Stress is the second biggest cause of short-term absence for non-manual workers. (2009)
- ✓ Annual cost of stress and stress-related illnesses: estimates range from £5 billion to £12 billion”

CIPD’s 2008 also research showed larger organisations spend up to 350 “man days” a year on disciplinary and grievance cases and tribunal applications. If this equated to 1.25 people, then some of the costs to the organisation would look like this:

A basic salary of say	£40,000
Add NI, pension etc	£20,000
Legal advice (say£2,500 x 4 cases a year)	£10,000
Legal costs for one tribunal	<u>£ 5,000</u>
Cost per year	£75,000

To train a reasonable number of managers in early resolution techniques, backed by a small number of trained in-house mediators, with policy changes and internal promotion would cost around £30,000 in year 1 and far less thereafter.

## Conclusion

The conclusion might therefore seem obvious – the early use of “mediative techniques” preferably through suitable trained managers, is a major risk management tool - it can nip all sorts of “disagreements” in the bud, and if some do become conflicts, mediation can still provide a quicker, less stressful solution, especially where the working relationship between colleagues needs to be retained.

### 3. WHY DOES MEDIATION WORK?

#### Because most people don't like conflict

The truth is most people do not want to be in a dispute – it takes up time, causes worry, distracts them from the important elements of their everyday lives. Mediation encourages them to confront the past, recognise its value as a pointer to improving the future and then agree in detail how that future will look. If they can reach an agreement that works for both of them, what's not to like?

#### The Presence of a skilled third person

The mediator's task is to reduce mistrust and emotions and assist the individuals to focus on the issues that are most important to them. By creating a calm forum, each person can have their story heard, help to increase understanding and enable simple expressions of regret or apology that in turn lead to a more open discussion of how to make the future better for both sides. The mediator can then assist the individuals to begin thinking of what their real interests and needs are in any agreement. In the hands of an experienced mediator, settlements can be achieved even if prior protracted discussions have been a total failure.

#### CASE STUDY 1

A Manager and his junior were part of a 25 strong team working in a key department within a public organisation. Their working relationship had worsened over a period of two years to the point where they each lodged bullying claims against the other. An internal investigation followed, recording a "not proven" decision on both claims, but in the meantime their team's output had suffered. The manager held strong beliefs about the respect he was due and the junior's general attitude towards authority. The junior saw this attitude as bullying and felt threatened in meetings. Their inability to work together was having a negative effect on the team and its delivery of targets.

Dispute Duration      2 years

Mediation Length      2 half day pre-mediations: 10 hours on one mediation day

Mediation Budget      total cost circa £3,000

Client Comments

*"I believe that the mediation has re-established a relationship which had almost collapsed beyond recovery. It allowed me to obtain a positive outcome from a difficult situation." (Department Head)*

*"We were able to agree specific behaviour that we would do and would not do with each other and that should form the basis of a better working relationship." (Junior)*

#### Effective discussions have never really occurred in the first place

It is difficult to be rational if your perception of the other person is clouded by emotion. In this mood, discussions descend into hard bargaining, unrealistic proposals and other tactics emphasizing differences. The individuals become defensive, entrenched and it is more difficult for them to find common ground.

Effective negotiations recognise a first phase about the "people issues" and a second looking at the practical problems. Discussions can be heated as long as this provides useful information but when that ceases the mediator – or the individuals – can call for time out. With skilful direction the focus of the discussions shifts from the emotional issues to an identification and constructive resolution of the real problem at hand.

#### Individuals can't see the wood for the trees

We all understand that feeling of being so close to the details that it becomes difficult to set a problem in its broader context. Being objective and not involved with the minutiae means the mediator can help everyone stand back and refocus on those issues which are of real importance to both sides.

## Realistic assessments

Mediation offers the chance to review and quantify the best result you might achieve if a solution is not agreed. As the client becomes clear on what they can "realistically" expect to achieve without a settlement, their initial positions often shift to accommodate their underlying interests.

## Mediation assists the individuals in developing creative solutions

The more options that are developed, the greater the chances of an agreed solution. In a legal setting, the option is normally an award of money damages. When in confrontational discussions, individuals can overlook creative options involving other types of "value" which could address their real interests. The mediator can help identify less obvious alternatives, prompting an evaluation of their advantages and opening eyes to the benefits of a new range of solutions.

## 4. WHAT FACTORS MIGHT SUGGEST MEDIATION?

There are factors in any dispute which if present, may help you to decide that mediation might be an appropriate suggestion. The most common ones are:

### The Individuals

- ✓ If the individuals had a positive working relationship and the organisation needs it to be maintained, the forward looking nature of mediation can help them to resolve their issues and identify a more productive, problem free working relationship.
- ✓ Mediation has strengths in managing multi-person discussions leading to an understanding of diverse needs and a team agreement on a way forward.
- ✓ Where individuals appear entrenched in a position, mediation will allow them to look at real alternatives that will satisfy the interests that really motivate them.

### The Conflict

- ✓ Mediation is good at handling complex disputes with multiple issues by helping the individuals identify and focus on solving those that they identify as being the most critical for the future.
- ✓ Confidentiality helps reduce the risk of reputational damage and encourages individuals to discuss more openly what is really important to them.
- ✓ Where facts are in dispute, as often happens in grievances, mediation enables a calm discussion about what went wrong, how to repair the damage and stop it happening again. This becomes a discussion about "needs" rather than "rights", so can be co-operative rather than adversarial.



### The Outcome

- ✓ Working relationships can be put back on a positive basis – with practical behaviours identified to reduce the risk of a repeat of the conflict.
- ✓ Issues outside the workplace can be raised for the organisation to address if it so wishes. If these are important to the individual, it is unlikely they will be mentioned during an adversarial process.
- ✓ Where the employee is leaving, a compromise agreement can be negotiated where the elements agreed are high value to the leaver but low cost to the organisation.
- ✓ Mediation allows a systemic analysis of what contributed to the dispute and how the organisation could improve processes to reduce the risk of a repeat of the problem.

### Conflict Analysis

Dan Dana, a very experienced American workplace mediator, suggests 6 elements form the structure of conflicts. These may help you to decide when to tackle a particular conflict using mediative skills and when

to consider calling in external help. Using the criteria below, the worksheet allows you to analyse a conflict and score its level of complexity. The lower the score, the more likely it is that you can resolve it yourself using mediative skills taught on a mediative skills course.(See Appendix 9)

This worksheet is adapted from Dana, D (2001) Conflict Resolution New York: McGraw Hill

Conflict characteristic	Description	Score
<b>Interdependency</b>	Low – parties need to interact occasionally to get their jobs done	3
	Medium – parties interact frequently to exchange information or resources	2
	High – parties interact daily and have a high need for voluntary cooperation to do their jobs satisfactorily	1
<b>Number of interested parties</b>	Two parties	1
	Three or four parties	3
	Five or more parties	5
<b>Constituent Representation</b>	None (each party is an individual who is not negotiating on behalf of others)	1
	One or two other people are being represented by the individuals who are involved in resolving the conflict	2
	Several other people constitute an identifiable team or group that is being represented by the people negotiating	3
	A large, disorganised group is being represented	7
<b>Negotiator authority</b>	Absolute – parties are individuals without constituents or they don't need to get approval from constituents for their decisions	1
	High – parties can make compromises with confidence that constituents will agree	3
	Low – parties may offer compromises but need to check with constituents for approval	5
	None – parties only deliver messages from constituents	7
<b>Critical Urgency</b>	None – the current situation, although not desirable, can continue indefinitely without causing great harm	1
	Urgent – a solution is needed within days	2
	Crisis – a solution must be reached immediately	6
<b>Communication Channels</b>	Parties can meet face-to-face (same time, same place)	1
	Parties can meet only by phone or videoconference (same time, different place)	3
	Parties can only write message (different time, different place)	5

## 5. WHEN TO SUGGEST MEDIATION – THE ISSUE OF TIMING

Theoretically there are three points when conflict resolution could be suggested:

- ✓ **Before there is any hint of conflict.** You can advise on the dispute resolution clauses which can be included in employment contracts. The use of mediation clauses will set the scene and provide a way of controlling the resolution of contractual problems. Catalyst Mediation can offer assistance in putting together well crafted and relevant hierarchical dispute resolution clauses and procedures.
- ✓ **As conflict emerges.** With a team of “mediative managers”, with or without trained mediators, you will reduce the risk of the conflict escalating into a time consuming and outcome degrading conflict.
- ✓ **In the course of a conflict.** Disputes can be mediated at any stage even during the tribunal process. In some cases, mediation can resolve non-legal issues and identify those which require a court to decide, creating a faster, less expensive and more focused formal process.

## 6. THE ADVANTAGES YOU COULD MENTION

Having decided the time is right to raise mediation – as a risk management tool if nothing else - what are the most relevant advantages worth mentioning?

- ✓ 75% of mediations succeed. A trained, independent facilitator, not buried in the detail, assists the individuals to focus on future interests.
- ✓ Speedy resolution. Mediations rarely take more than one full day. The time taken to prepare for the mediation is agreed between the individuals and the mediator.
- ✓ The relative costs. The cost of organising and providing suitable mediators will be a fraction of the cost of internal grievance procedures or litigation and will be clear in advance of any commitment.
- ✓ They retain control over the outcome so are more likely to deliver it than if it was imposed.
- ✓ Saving in management time and opportunity cost. The speed of resolution allows the individuals to concentrate on their work and careers.
- ✓ It is voluntary so either person can leave at any time. However, given the adversarial alternative, very few actually do.
- ✓ It is confidential. Avoiding the publicity of a tribunal hearing. The whole process, as well as the outcome, is conducted in complete privacy and confidentiality.
- ✓ Continuing working relationships. Rarely do employees stay after a tribunal.
- ✓ It provides a reality check. Individuals can overlook tough realities, such as the impact of their own behaviour or the reliability of a witness – which will be crucial in a grievance or tribunal. A mediator can create the chance for them to review their true strengths and weaknesses.
- ✓ Mediation can produce creative and forward-looking solutions. The individuals are free to look at solutions which are outside the scope of a formal process. With help from the mediator, they can think creatively and consider solutions which can positively influence future behaviours.

## 7. COUNTERING THE SCEPTICISM YOU MAY FIND

Some of the arguments against mediation that may be posed, especially by an employee’s legal advisor, or union representative include:

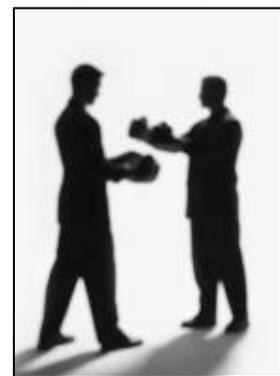
### **“The mediator creates pressure to settle”**

You or the employee may have heard that this happens and it absolutely should not. A key principle of mediation is self determination and were a Catalyst panel mediator to ignore this it would result in their removal from the panel as it is specifically against our Code of Practice (See Appendix 1). There is no agreement until the individuals are happy with what they have developed and have been given time to think it through.

### **“Mediation meetings can be unstructured shouting matches”**

Part of the mediator’s role is to maintain the structure of the process, while giving the opportunity for individuals to express emotions directly to their “adversary”– often resulting in a breakthrough in understanding and the ability to leave the past behind and “think clearly” about their future. For example, family mediation has had a good track record of successful outcomes for over 20 years in Scotland, yet disputes involving more emotional circumstances are hard to imagine.

Pre-mediation meetings with the individuals in private are helpful in agreeing how the circumstances for a calm atmosphere can be created. Having a trained, neutral, empathic mediator, who has no investment in the outcome of the dispute, can create an atmosphere in which emotions become constructive not destructive, and this often provides the key ingredient to a successful negotiation.



### **“It is just another delaying tactic”**

If it is perceived to be a delaying tactic, it is a pretty poor one, as it takes a relatively short time to organise and hold a mediation.

### **“They’ll just tell lies”**

It’s more difficult to maintain a lie in a joint meeting and this is the perfect opportunity to give a different version if you don’t agree.



### **“There are no real cost savings”**

The reality is that the average external mediation, even with the costs of an external venue, will be a small percentage of the internal and external costs of a grievance or tribunal.

### **“It will never work”**

How can you be sure of that? There are thousands of mediations every day around the world and the vast majority work. It might be useful to talk things over with someone neutral. There’s everything to gain by trying this option.

If a lawyer or union member is involved, they may also raise the following concerns:

### **“My clients’ legal case is so strong, a mediation may compromise their outcomes and they could emerge with an apparently worse result than if they had gone to tribunal”**

First, if their case is that strong, then presumably they are certain of winning at tribunal. Yet most cases settle before proof suggesting the client has other considerations than the case in law – getting the matter over; costs; delays; the loss of control; the sheer time taken up; and the overall effect on their lives.

Second mediations are not about compromise. The mediator’s creative problem solving approach will identify new elements of value which they can exchange without conceding points of principle. Bear in mind nothing is agreed until the individuals are satisfied that it represents their best achievable outcome.

### **“Their lawyer may abuse the process and use it to find out how strong our case is (go on a fishing exercise). This may prejudice our case in any subsequent hearing if mediation does not work”**

If you suspect this is happening discuss any concerns with the mediator who will terminate the mediation if he/she feels the process was being abused or you could walk away with no penalty. In practice this arises very rarely as there is no need to disclose any information to the other side which you do not wish to. In a tribunal, most of the relevant information is likely to be discovered in any event. All information disclosed to the mediator in the course of the mediation is confidential unless otherwise specifically agreed.

### **“Going to mediation displays weakness or is an admission of liability”**

The reality is that it is more a sign of a person’s professionalism, a recognition that being able to control the outcome is most important. Any organisation faced with a dispute will wish to manage the risk involved, and mediation is one proven way of doing so.

## **8. WHEN NOT TO USE MEDIATION**

- ✓ there is a desire for legal precedent;
- ✓ You wish to make a public statement on an industry practice;
- ✓ There are accusations of criminality or a potential disciplinary issue that requires formal action.
- ✓ there is a need to compel and examine witnesses;
- ✓ a person wants the issue before a judge – this includes a “vexatious litigant”;
- ✓ There is a risk of harm to one of the individuals by the other.

## 9. SELECTING A MEDIATOR

### Mediation vs Sector Experience

It is not necessary for a mediator to have detailed “industry” knowledge to resolve a conflict between colleagues or an employer and member of staff – indeed some organisations prefer the mediator to be unconnected with their industry. However you should look for their experience with your type of organisation – are you large, small, public or private sector or a charity? Whichever you are, a mediator with relevant experience will give you– and the individuals involved – more confidence.

You would check the number of mediations they have undertaken and that their CPD hours are up to date. Mediation is like many professions, the more you practice the better you are, as long as you keep your skills challenged through CPD. The majority of our panel are both practiced and well trained, with at least 17.5 hours of CPD in each of the last 4 years through our own training programme. In addition many are shown on the Scottish Mediation Register. This is an independent register of mediators who meet benchmark standards of quality and is maintained by the Scottish Mediation Network, an independent charity supported by Scottish Government to promote awareness and use of mediation.

<http://www.scottishmediation.org.uk/mediators/index.asp>

### CASE STUDY 2

Rachel, an independently qualified professional, was contracted by her employers to provide services to a client. The manager of this client violently disagreed with her recommendations and banned her from the site. Despite several complaints to her employers that the manager had no right to act this way, they took no action. After two years of waiting for a response, during which she had to work at similar establishments, Rachel resigned and lodged a Tribunal action.

Dispute Duration      2 years

Mediation Length      2 half day pre-mediations: 9 hours on one mediation day

Mediation Budget      total cost circa £2,500

Client Comments

*“It has enabled us to maintain a relationship with the ex employee which may assist in avoiding similar conflicts in future.”*

*“My ex-employers had the opportunity to say important things that helped me to move on and the adversarial aspect was greatly reduced.”*

*“The involvement of the mediators enabled us to reach a very good outcome, which was within our control.”*

### Generate a Costed Proposal

As a first step, we would normally receive a simple brief along the following lines:

- ✓ Dispute Type                      Workplace ; between colleagues or employer / employee
- ✓ Brief Outline                      No more than 50 words to identify some key issues.
- ✓ Timescale                          Deadlines for the response and the mediation.
- ✓ Independent Venue              Will you organise this or should the mediator.

We would then normally respond with a written proposal – a draft is shown in Appendix 2. The basis of fees is shown in Appendix 3. You may also consider a Systemic Review, which would analyse what processes and policies could be improved to reduce the risk of repeats. If you have not used the mediators before, ask for a meeting to discuss the proposal and to check on their Code of Practice (see Appendix 1) and Terms of Business. Ultimately you need to trust the individuals involved, so a face to face discussion is best.

## 10. POSSIBLE MEDIATION STAGES

Mediators would normally discuss these stages to choose those which will increase the chances of a workable resolution. The overall objective is to give both individuals a chance of creating a better outcome by thorough preparation and time to consider options calmly.

- 1 Legal Pre-mediation Meeting (Optional) Between the mediators and the legal advisors if relevant to identify the legal points; solutions they felt were possible; is a compromise agreement needed; would individuals make their own opening statements; etc.
- 2 Pre-mediation Meeting (Recommended): A 2 hour private meeting with each individual to answer any questions on the process, discuss the dispute and ideal outcomes. Then preparation and possibly sharing information on issues / ideal outcomes etc before the day.
- 3 The Main Mediation: usually a long day of discussions in joint and private sessions (see later).
- 4 ½ Day Sign Off Meeting (Optional): reduces pressure to settle when tired on the main day, allowing solutions to be checked for potentiality and to calmly sign off the final document.
- 5 Follow up: some individuals like to have the option of calling on the mediator after the mediation to check on progress – a failsafe if relations become strained again.

## 11A. PRE-MEDIATION MEETINGS

These private meetings serve a number of useful purposes, of which three are worth some detail:

### 1. Allaying Fears / Gaining Commitment

We usually start on the basis that the individual doesn't know enough about what mediation is to make an **informed decision**. So the opening question is usually something along the lines of "what would you like to know about the process called mediation?" – then go from there. The end result should be understanding and commitment – especially if you have questioned them on the alternatives they think are available to them and compared timescales, control of outcomes, stress levels etc.

### 2. Listen to their Story

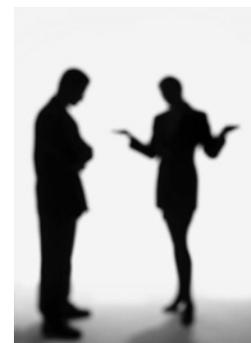
As the first objective person to have offered to listen, "Can you tell me what you think this is all about?" you may not be able to stop them. However in listening you will get a good idea of when it all started (the longer ago, the longer the mediation may take as a rough rule of thumb), their most important issues, what they would like to happen and so where the mediation might go.

### 3. Start the Organisation

You can get dates and other details agreed.

### 4. Begin their Preparation

You may be able to start them thinking about the next section, Preparation options.



## 11B. PREPARATION OPTIONS

A key part of mediation is the information each person needs to make a realistic analysis and assessment of their position. We frequently suggest they prepare the documents outlined below, not necessarily to use at the mediation – they are most useful in preparation before the mediation itself. However there are two documents which could be prepared and shared if this would be helpful and is agreed with both individuals.

- ✓ **Issues Agenda.** The key issues your client must have resolved. The Mediator could combine Agendas to share before the mediation so each person can see that their issues will be discussed and gains an insight into which issues are common and which are not.
- ✓ **Time Line.** Time plan of the key stages leading up to and after the dispute began noting the key issues that arose at each stage can also be helpful.

## 12. THE AGREEMENT TO MEDIATE

The terms of these agreements are quite routine when an organisation or lawyers are involved. Where the mediation is a colleague to colleague conflict we suggest a simpler but no less important version. Appendix 4 & 5 show examples of both versions which can be signed before or at the start of the mediation.

## 13. WORKPLACE SETTLEMENT AGREEMENTS

It is not unusual for a settlement agreement to be an “Aide Memoire” (See Appendix 7) or series of points recording the areas of their working relationship that they will work to improve.

This is confidential to the individuals and any agreed follow up meetings would be to see if any solutions were not working and how to fix them.

Where the employer and employee wish to have any resolution recorded as a Compromise Agreement, they will require legal advice on all sides. Appendix 6 has an example of such an agreement.



## 14. THE MEDIATION DAY

Arrival times will have been agreed at the Pre-mediation meeting. The individuals are met and shown to their rooms by the mediators, who will check for last minute questions, make sure they are happy signing the Agreement to Mediate, recognise nerves and ensure they have a calming cup of tea or coffee. When all are ready they will be brought into the joint meeting room. What follows is :

- ✓ a *rough* guide to the mediators opening statement which reminds them of key points, starts to focus minds and creates a natural start for their discussions; followed by
- ✓ a *rough* timetable of what you might expect, although the process can vary to suit all sorts of different situations, numbers of individuals, time constraints etc. This also reflects our practice style which keeps the Individuals together for as long as possible on the principle that they have the problem so they need time for constructive dialogue/negotiations. Private sessions are used to stop destructive dialogue or allow time for reflection and response generation. If needed the mediator can then act as the “go-between”.

### Mediators Opening

Welcome	Welcome everyone, thank them for attending, check use of first names, confirm their private room suitable, housekeeping points.
Dispute Disruption	Acknowledge disruption caused by conflict, effect on individuals and organisations, the success rate of mediation.
Mediator Role	Chair/ Neutral/ Impartial/ Not advisor or judge. Not involved in detail – help to bring clarity about key issues.
Benefits of Mediation	Voluntary; face to face communication creating an understanding of motivations / interests; Self determination in how to resolve interests.
Format for Today	Together while constructive; time out at any time; private room to consider key points. Interruptions / emotion– form of information
Outcome from Today	Negotiation to solve problems; behaviours to rebuild working relationship or solutions to enable elegant parting of the ways for both sides; get on with normal life. Long day, other dates are available. Check timing issues.
Confidentiality	Of mediation; of private meetings; Only share with permission;
Without	Test “What if” options; not binding till agreement signed (if relevant).

prejudice

Agreement to Mediate Signatures of all present to confidentiality and authority to reach an agreement.

### The Morning

Mediator's Opening. As above

Their Opening. A 5/10 minute summary of their understanding of the dispute and what they hope the mediation will achieve. This is done with no interruptions so everyone has been heard.

Opening Discussions. The mediator asks if either would like to respond to anything they have just heard or whether (if one has been issued) they would like to start with the Issues Agenda. Main issues are agreed / confirmed and time given to "unpick them" to see what solutions could exist.

Individuals Exchange Information /Expand Knowledge. Discussion usually starts without much prompting. Mediator says little. May ask if Individuals would like to flipchart key issues as a common agenda (or the Issues Agenda if completed). Stories of past behaviour/actions are useful examples of key issues, but not as points to pick over endlessly. Individuals may need time in their private rooms to consider information they have heard and how it affects their view of the dispute and their position.



Alternatively if the discussions are slowing, the mediators may suggest a coffee break taken in private rooms. The mediators may then visit each person at the end of the break to see how they think the meeting is proceeding and see if there are any points they specifically wish to discuss in private or raise in the next joint meeting.

This is useful time for both sides to consider alternatives to reaching an agreement and alternative ways of doing so.

Agreement on Key Issues. By Lunchtime there should be one flip chart per main issues showing the detailed elements and some initial thoughts on how the issue could be resolved. Before the lunch break, they will be asked whether they are ready to look at possible solutions after lunch. The mediator will ask if they can meet with each person at the end of lunch to make sure this is OK.

### The Afternoon

Solution Generation. New issues can be discussed or the Mediator can use the flipcharts of issues and ask which one the individuals would like to start developing detailed options for.

For easier issues, options can be developed in a joint meeting, with the mediator recording on the flip chart the key elements and asking questions about each "solution" – who does it, how, when, etc. The objective is to cover every aspect to ensure the solution will work.

On the harder issues, the mediator will ask how the individuals would like to tackle them – usually the answer is to talk through each one together, identify options, then retire to think through details in private and perhaps use the mediator to take ideas to the other side to test the waters, rather than doing it themselves and risk a face to face rejection.

Draft Settlement Agreement. A draft of a Settlement Agreement could be started (if relevant), while the mediators work with the individuals together or individually on a particular issue that is troubling them or start them thinking about how to avoid the same thing happening again – the "what have we learned" conversation.

Review and Sign. The Individuals will need "calm time" to consider any draft Settlement Agreement. The mediator may repeat some of the basic questions, to test whether the procedures in the Agreement will work.

### CASE STUDY 3

George and Martha were senior colleagues unable to work with each other for over two years, with rumblings about formal bullying / discrimination claims from Martha who had involved her union and had been off sick for 9 months through stress. George lodged a formal grievance of bullying and an internal review followed with a not proven decision, which did not make the situation any better. Their employer needed them to lead on a major contract so the two needed to work together. The HR Director had tried everything but Martha had adopted a deeply held position and a public Tribunal looked almost inevitable.

Dispute Duration        2 + years  
Mediation Length        2 half day pre-mediations: 10 hours on one mediation day ; 1 follow up meeting  
Mediation Budget        total cost circa £3,000  
Client Comments

*“There was a lot we needed to say to each other that we wouldn’t have had the strength to do without the help the mediators gave us. We learned a lot about ourselves and how not to behave in the future”*

*“I could have left a very good job that I enjoyed. The mediators showed me how to assess what I really needed from life, what was really important”.*

*“Without mediation we could have lost one or both of them and possibly a major contract as a result.*

### 15. OPTIONAL SIGN OFF MEETING

In complex cases the Settlement or Compromise Agreement may run to many pages and are not best reviewed by tired eyes and minds. If a Sign Off meeting is agreed, the mediator will remind everyone of the confidential nature of the Agreement and, if other people need to be contacted – for example to check tax implications or gain commitment to a solution - they would be identified and agreed by everyone.

### 16. SYSTEMIC REVIEW

The mediator should be able to create a confidential “Systemic Review” for the organisation, which covers with the individual’s agreement, amongst other things:

- Resolution            how are minor disputes dealt with; at what level and with what authorities; how quickly
- Hierarchy            can they be resolved internally, up to Director level if necessary.
- Contract            where internal resolution attempts have not worked, would a mediation clause help;
- Structure            what wording could be used; how would a mediator be chosen, etc.
- Communication    how and at what level did breakdowns contribute to the dispute? What suggestions were made or could be made to rectify this in future.
- Working Practices / Policies    Did these contribute to the dispute in any way and if so how could they be avoided in future.

### 17. POST MEDIATION FOLLOW UP

Sometimes the individuals may welcome the idea of a follow up meeting a few weeks or months after the mediation to check that the elements of the solution are working and to help them re-negotiate any that are not. There are also occasions when a joint statement is to be made and the mediators are involved in drafting the text. Finally, in workplace mediations, a mediator may be asked by a person to provide ongoing coaching or mentoring in certain circumstances. The principle of the organisation supporting this would have



been agreed prior to the start of the mediation as a “what if ..” review of possible outcomes.

## 18. SETTING UP YOUR OWN EARLY DISPUTE RESOLUTION INITIATIVE

### EDR – A Summary

EDR (Early Dispute Resolution) initiatives are common sense, highly flexible, save time and money and are becoming much more popular.

The key is in the title – **early** resolution – because it means you don’t have to have trained **in-house mediators**. If you train enough line managers in the necessary skills, they will nip 90% of potential disputes in the bud, which is where the major savings will take place. Then you can have a Service Level or Framework Agreement with a local mediator to provide services on the odd occasions when you need them.

This is a simple risk management or prevention strategy and works best if your organisation experiences a lot of internal grievances but few tribunal cases.

On the other hand if you have a lot of Tribunals in train or simply a large number because of the size of your organisation, training in house mediators may be worthwhile – but don’t do too many at first. Unused skills get rusty quickly.

Building a case for a budget to invest in an EDR initiative requires some key facts from within your own organisation and the ability to compare these with objective “industry” data. These facts should enable you to quantify time and money spent managing conflict and therefore provide a simple cost/benefit analysis.

### Key Facts to Support an EDR Initiative – CIPD Research on Conflict Management

The CIPD undertook a survey of employers’ experiences of managing workplace conflict in November/December 2010, with two main aims in mind. One was to find out what changes have taken place in employers’ use of different forms of conflict management since our survey report *Managing Conflict at Work* was published in 2007. The second was to feed into their response to the consultation paper on *Resolving Workplace Disputes* published by the Department for Business, Innovation and Skills and the Tribunal Service in January 2011. This report is well worth reading – some extracts are given below.

([http://www.cipd.co.uk/binaries/5461%20Conflict%20manage%20SR%20\(WEB\).pdf](http://www.cipd.co.uk/binaries/5461%20Conflict%20manage%20SR%20(WEB).pdf))

Use of different methods of dealing with workplace conflict in last two years			
	Increased	Decreased	The same
Disciplinary action	49.5	8.6	41.9
Grievance procedures	47.7	10.3	42.1
Internal or external mediation	49.4	3.5	47.1
Independent arbitration	10.3	6.6	83.1
Early neutral evaluation	7.5	8.3	84.2
Training line managers to handle difficult conversations	61.5	6.9	31.6
Troubleshooting by HR department	65.3	7.3	27.5



### Management Time

*The number of days of management time spent on handling grievances in the public sector (9 days) is two-thirds as high again as that in private services (5.5 days), although the amount of HR time spent on handling grievances is much closer (7.9% in the public sector compared with 7.5% in private services).*

*The number of days of management time spent on handling disciplinary cases is almost twice as high in the public sector (9 days) as in private services (4.9 days), though other sectors report even higher figures: 9.6% in manufacturing and 11.3% in*

Table 2: Time spent managing disciplinary and grievance cases

Days per case	Discipline	Grievances
Management time	7.8	6.8
HR staff time	10.2	7.6
In-house lawyers	2.2	0.7
Total	20.2	15.1

the voluntary, community and not-for-profit sector.

### Tribunals

Half of all survey respondents (50%) had been involved in responding to at least one tribunal claim in the last two years, almost all of which had gone to a hearing. A majority of respondents in manufacturing (56.4%), private services (56.2%) and voluntary/not-for-profit (50.0%) organisations had not been involved in responding to a single claim; but this was the case with only one in five (20.3%) public sector organisations.

2009/2010	Maximum award	Average award
Unfair Dismissal	£234,549	£9,120
Race Discrimination	£374,922	£18,584
Sex Discrimination	£442,366	£19,499
Disability Discrimination	£729,347	£52,087
Sexual Orientation	£163,725	£20,384
Age Discrimination	£48,710	£10,931
Costs Awarded	£13,942	£2,288

### Use of Mediation

57.3% of respondents report that they use mediation. This supports anecdotal evidence from a number of sources (see for example the box on TCM on page 4) that more employers are now using mediation to resolve workplace issues. One-half of respondents (49.4%) say their organisation has increased its use of mediation in the last two years. This is overshadowed by the proportion making increased use of training line managers in handling difficult conversations (61.5%). Some 82.8% of public sector employers report that they use mediation, compared with 47.9% in private services.

Table 17: Costs of external mediation

	Median (£)
Direct financial costs	1,000
Management/employee time	1,000
Other	500

### Internal or external mediation?

More than two in five respondents say they use internal mediation only, while fewer than one in five rely on external mediation only. Two in five use both. The report contains a useful case history of the use of internal mediation from Arcadia Group.

From *Resolving Conflict at Work: 12 stories of conflict* by Clive Lewis to be published in April 2011.

Internal	External
(+) Knows and understands the organisation culture (+) Potentially requires less briefing (+) Little or no cost  (-) May not be perceived as impartial (-) May have historical baggage (-) Experience level may be low	(+) Comes with little or no knowledge of the organisation or parties in dispute (+) May be a more experienced mediator with the ability to pick up issues quickly (+) Likely to gain trust of parties more readily (+) Able to provide the organisation with fresh view of possible cultural or organisational issues  (-) Charges for services

### “Celebrating the effective management of conflict at work”

Global research report by OPP® in association with the CIPD July 2008

“Our research shows a clear link between training in conflict management and conflict’s impact as a catalyst for positive change.

Among all employees, 76% have seen conflict lead to a positive outcome, such as better understanding of others (41%) or a better solution to a workplace problem (29%).

This figure rises to 84% and 81% in Brazil and the US – where training (in conflict management) is most common. Belgium and France, where employees experience the least training, also have the lowest incidence of positive outcomes.”



### Scottish Mediation Network : Scotland Only Data

“£300 million was the estimated cost of stress related absences from work to Scottish Employers last year”

*“£58,302,969 was the cost of litigation to Scotland’s local authorities and the health service”*

**Possible Management Time Cost of Conflict**

This will give you a rough measure of the cost of management time alone to handle one grievance.

Assume our manager has a basic salary of say £40,000 p.a. this is a day rate of £110. Add NI, pension etc at 50% of salary, or £55 per day, gives a total “day rate” of £165.

Management time	6.8	£165.00	£1,122.00
HR staff time	7.6	£165.00	£1,254.00
In-house lawyers	0.7	£165.00	£115.50
<b>Total</b>	<b>15.1</b>		<b>£2,491.50</b>

If we take CIPD’s Table 2 (Page 16) for grievances **only**, you could build a management time **only** cost of something like **£2,500** for one grievance (i.e. excluding the cost of an employee being off work through stress, any external advice or legal costs etc).

**Comparative Costs of an EDR Initiative**

An outline budget to set up an EDR team could look like something this, assuming you needed to train both line managers **and** mediators and wanted some form of support from the training organization in developing the business case.

Year two costs would be in CPD.

**We have added membership of the Scottish Mediation Network because it has an In House Mediation Interest Group where you can gain ideas and swap best practice with other organizations once a quarter.**

You could even cost an internal mediators time for a mediation (say 8 hours total for more than one meeting, telephone calls etc) at the same “day rate” to make a true comparison.

<b>Year 1 cost</b>		
• Strategic support		£ 2,000
• 2 day “Communication Skills” Course for 20 managers		£ 6,000
• 6 day Accredited Mediator training for 6 people		£12,000
• CPD 15 hours for 6 mediators		£ 3,000
• Join Scottish Mediation Network		£ 175
	<b>Total</b>	<b>£23,175</b>
<b>Year 2 Costs</b>		
• CPD 15 hours for 6 mediators		£ 3,000
• Join Scottish Mediation Network		£ 175
	<b>Total</b>	<b>£ 3,175</b>

**Example Breakeven Business Case**

Using these numbers, the breakeven for Year 1 would be the Cost of the EDR Initiative (say £25,000) divided by the cost of one grievance (say £2,500) or 10 grievances. So if training the managers and the mediators could save just 10 grievances in year 1 it would pay for itself.

If you then spread this over two years, the number reduces because of the low year 2 costs for the EDR initiative.

**If you add external costs, for example legal costs, tribunal average awards, the risk management /cost benefit argument becomes almost unarguable.**

**Other Points to Consider**

You will want to think about

- ✓ Who would act as gatekeepers/organisers of the mediators – we would suggest HR, who would do most of the same training as mediators without the accreditation – so they know it, but don’t become used as the people everyone else leaves their conflicts to be cleaned up by.
- ✓ What dispute resolution clauses might you include in employment contracts?
- ✓ What policies or procedures would change / need developing?
- ✓ How would you involve union representatives – train them as mediators?
- ✓ Which organisations could deliver the strategic support, training and a service level agreement to support your mediators / provide initial mediations – would you ask the Scottish Mediation Network?

## APPENDIX 1: CATALYST MEDIATION CODE OF PRACTICE

### Summary

Our Code of Practice assures you that we operate to best standards with scrupulously fair, experienced, mediators who observe confidentiality and will not press anyone into agreeing something against their will.

### 1. Introduction

All mediations conducted by Catalyst Mediation and all mediators working with Catalyst Mediation will comply with this Code and with the terms of the Agreement to Mediate signed by the individuals.

### 2. Voluntary participation and self determination

Mediators will observe the voluntary participation and un-coerced self-determination by the individuals.

### 3. Understanding of mediation

The mediator shall ensure that the individuals understand the purpose and procedure of the mediation; the role of the individuals and the mediator and the obligation of confidentiality.

### 4. Impartiality

The mediator shall be independent of any person to the dispute, shall have no interest in the outcome and shall act impartially and fairly, without discriminating on any grounds. The mediator shall not act in any capacity for any of the individuals in connection with the dispute. An individual shall not be appointed as mediator if a firm or company with which they are connected has acted in any capacity for any of the individuals in dispute in connection with that dispute.

### 5. Conflict of interest

In the event of the mediator becoming aware of a conflict of interest or possible conflict of interest of any kind or of any circumstances occurring which give rise to reasonable doubts about the mediator's impartiality, the mediator shall immediately disclose this to all the individuals to the dispute in person or in writing. The mediator shall only then continue to act if all the individuals to the dispute acknowledge the disclosure and agree to the mediator continuing to act as mediator.

### 6. Confidentiality

The mediator shall keep confidential and not disclose to any third person for any purpose:

- ✓ the fact that a mediation may take place, is to take place or has taken place;
- ✓ the information (whether given orally or in writing) produced for or at the mediation;
- ✓ the Settlement Agreement (if any) arising out of the mediation; unless:
- ✓ all individuals to the dispute consent to disclosure;
- ✓ the mediator is required by law to make disclosure;
- ✓ the mediator reasonably considers that there is serious risk of significant harm to the life or safety of any person if the mediator does not make such a disclosure; or
- ✓ the mediator requires ethical advice, or is receiving supervision, subject to confidentiality, from an experienced Catalyst Mediation supervisor.
- ✓ the mediator reasonably considers that there is serious risk of a breach of the money laundering

#### **7. Advice**

The Mediator shall not decide or give an opinion or advice on the factual or legal issues involved.

#### **8. Withdrawal of mediator**

The mediator shall withdraw from the mediation if so requested by any of the individuals to the dispute, or if the mediator considers that it is necessary to do so. In particular, the mediator may withdraw from the mediation at the mediator's own discretion if the mediator considers that any of the individuals is acting or has acted in breach of the Agreement to Mediate or in an improper or criminal manner or continuing the mediation is unlikely to result in a settlement.

#### **9. Fees**

Catalyst Mediation shall advise individuals to the dispute, before the mediation begins, of the fees and expenses which will be charged for the mediation or, alternatively, the basis on which fees and expenses will be charged.

#### **10. Complaints Procedure**

Should either person to the mediation have any complaint against either Catalyst Mediation or their appointed mediator, the following procedure shall apply. In the first instance the Managing Director of Catalyst Mediation will meet to discuss the complaint with the relevant person with a view to agreeing a solution in writing.

If no agreement can be reached the complaint will be forwarded in writing to the Scottish Mediation Network, an independent charity, with a request to provide the names of three independent mediators. The complaining person will have the option to choose a mediator to meet them and Catalyst Mediation, with a view to mediating a satisfactory solution. At all times the complainant shall retain the right of recourse to normal legal process.

#### **11. Disciplinary**

In the event that a complaint against a mediator appointed by Catalyst Mediation is upheld through the complaints procedure, Catalyst Mediation shall offer to re-convene the mediation at no further cost to the individuals. The Individuals may choose a mediator in discussion with the Scottish Mediation Network. Catalyst Mediation shall also undertake that their mediator be suspended from its panel either temporarily pending further training or where appropriate, permanently.

#### **12. Insurance**

The mediator shall hold professional indemnity insurance in an adequate amount with a responsible insurer.

#### **13. Scottish Mediation Network**

Catalyst Mediation is a member of the Scottish Mediation Network and subscribes to the Guidelines on the Practice of Mediation issued by that organisation.

## APPENDIX 2: DRAFT MEDIATION PROPOSAL

### Introduction

This proposal summarises our understanding of the current position and proposes stages for the possible mediation and the estimated costs.

### Background Information

Brief Details of the case [Mediation is being considered as a method of enabling an employee and their immediate line manager to reach an agreement on their future working relationship. ]

### 1) Pre-Mediation Meetings

This is recommended for anyone who has no experience of mediation. It is a confidential session with a mediator to allay any potential concerns about the process. Essentially this should enable the individuals to make an informed decision, ensure their commitment to and understanding of what is involved and make their preparations.

The details of the conflict are discussed to identify the key issues they wish the mediation to address. They will also be given materials which will focus their thinking on how to get the best from the mediation. For example an "Issues Agenda" can be created and shared to give an understanding of what the other wishes to discuss and also the confidence that their issues will be covered. Other materials will help them to identify how the conflict arose, how they responded and identify ways they could resolve the issues.

The mediator would also ask them to consider the form of an opening statement they might make at the beginning of the mediation. These meetings can be held at any suitable location or if diaries do not allow, by telephone conference call.

### 2) The Mediation

**Mediation Length** normally we suggest a whole day for the mediation to allow the momentum built up in the early stages to carry through towards a resolution. However the individuals may choose other formats, such as a number of half days if this better suits their diaries. The mediation day can be extended at the time by the individuals if they agree this would provide a more realistic chance of a successful outcome.

**Meeting Structure** The arrangements are for the individuals to decide, but we would suggest that the mediators start at 09:00 with a 15 minute private meeting with one, followed by an identical meeting with the other at about 09:15. This allows the mediators to introduce themselves, ask if there are any questions and explain how the day is likely to proceed. Then everyone would be brought together in a joint meeting to start the mediation discussions.

**Sign Off Meeting** In addition we usually recommend an optional half day "wrap up" meeting to be pencilled in some 5 days after the main day. This can be useful if the main day has proved very tiring for one or more of those involved and the mediators are concerned that decisions should be made in the clear light of day; or when certain elements of the solution need to be checked out before a final agreement is signed.

### 3) Follow Up – 3 & 6 Months

The individuals have contact details for the mediators to use in the event that they have difficulty implementing an element of their resolution. Only rarely does the level of contact require a discussion about reconvening a meeting and any budget implications. A 3 hour follow up meetings is arranged for 3 months

after the mediation, to see how the resolution is being implemented. Ideally a 6 month meeting is cancelled by the individuals – they no longer need our help.

### Potential Mediation Dates

We understand the individuals are keen to resolve this as quickly as possible so dates for the pre-mediation and mediation meetings would be organised as soon as diaries allow.

### Potential Venue

An independent location is recommended, such as a hotel or other suitable location. Ideally three rooms are used, one private room for each Person and one joint meeting room, all equipped with flip charts. Tea and coffee are organised throughout the day and a lunch is provided. If requested, Catalyst Mediation will organise the venue and agree the costs.

### Estimated Fees

As an aid to budgeting, we would suggest the following could be allowed for:

Pre Mediation	for 2 x three hour meetings	£
Materials	Preparation materials, creating Issues Agenda etc	£0
Main Mediation	Assume whole day	£
Sign Off Meeting	Three hour (if required)	£
Venue Costs	Assume 8 hours ; 3 Rooms, Lunch etc for 8 people	£ - £
Follow Up	Three hour meetings 3 and 6 months after the main day.	£0

No costs will be incurred without your express agreement. We would also confirm this budget estimate after the pre-mediation meetings when we will have a better idea of what might be involved. Our Standard Terms are appended for your information. No VAT is chargeable.

### Further Questions

If you have any further questions please let me know. You may also find the information on our website helpful.

Yours sincerely



Jeremy Scuse  
Managing Director  
Blackberry 077 33 88 2543

Email: [jeremy@catalystmediation.co.uk](mailto:jeremy@catalystmediation.co.uk)

## APPENDIX 3: WORKPLACE MEDIATION FEE

### WHEN TO CHOOSE THIS OPTION.

Where the conflict involves one of the following:

- ✓ Employee/Employee: Where two colleagues are unable to work together and their value to the employer means they hope the relationship can be rebuilt.
- ✓ Employer/Employee: Where the Employer / Employee relationship has broken down, but the Employer hopes it can be rebuilt; or
- ✓ Where the relationship between the Employer and Employee has broken down (or the employee has already left) and an “elegant parting” through a Compromise Agreement is required.

### FEE STRUCTURE

This option allows you to design the most suitable progression from the pre-mediation work through the mediation and follow-up with a firm idea of the process structure, the potential benefits and costs.

All work done by Catalyst Mediation at each stage will be agreed in advance. Where more than one mediation session may seem appropriate, 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.

### WHAT IS INCLUDED IN THE ESTIMATE?

- ✓ the provision of 2 mediators;
- ✓ organising the mediation, including the venue and any other support;
- ✓ any pre-mediation meetings with either or both individuals and their advisors;
- ✓ all mediator preparation;
- ✓ one or more eight hour mediation days;
- ✓ interim meetings if required;
- ✓ post-mediation feedback and follow-up.

### WHAT IS NOT INCLUDED?

- ✓ the costs of an independent venue for the mediation for example a hotel;
- ✓ any additional hours, for example if the individuals agree to continue the mediation beyond 8 hours; additional hours are charged at 1/8th of the relevant mediation day rate;
- ✓ any agreed travel costs and overnight accommodation and subsistence costs for the mediators;

### 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 up to the agreed total.

#### PAYMENT

Unless otherwise agreed, the first invoice is payable no later than one week in advance of the start of the first main meeting as a precondition of the mediation taking place. This reassures the individuals involved that the mediators will not press for a particular outcome in order to be paid.

The second and subsequent invoices are payable no later than 14 days from the invoice date.

Payments by BACS should be made to:

Catalyst Mediation

Sort Code 82 20 00      Account Number 90326122

#### CANCELLATION

In the event of cancellation in writing by either person after the mediation date has been confirmed, Catalyst Mediation will be entitled to:

- ✓ 14 days or more before the mediation date, any non recoverable expenses and a £175 per person charge.
- ✓ Less than 14 days but more than 7 days before the mediation date, 50% of the mediation day fees and any non recoverable expenses.
- ✓ Less than 7 days but more than 24 hours before the mediation date, 75% of the mediation day fees and any non recoverable expenses.
- ✓ Less than 24 hours before the mediation date, Catalyst Mediation will be entitled to 100% of all the mediation day 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. Individuals will be liable for irrecoverable expenses such as venue hire charges and any agreed work that has already been completed. Any subsequent postponement will incur standard cancellation provisions.

### APPENDIX 4: AGREEMENT TO MEDIATE (FORMAL)

The Individuals to this Agreement are:

	of		("Person A")
	of		("Person B")

(together "the Individuals")

Catalyst Mediation Ltd	of	39 Kelvin Court, Glasgow G12 0AE	("Catalyst Mediation")
			of Catalyst Mediation
			of Catalyst Mediation

(together "the Mediators")

The following other persons are to be present at the mediation:

Name	Role [Person A/B Advisor/ Supporter / Representative ]

## Appointment and the mediation

The Individuals have agreed with Catalyst Mediation that they wish to seek a resolution using mediation and to appoint the Mediators. The place of the mediation will be : [            ]. The time of the mediation will be: [            ] o'clock on [            2011]. The mediation will continue, if necessary, on such other days as shall be agreed.

## The Catalyst Mediation Terms of Agreement and Catalyst Mediation Code of Practice.

The Individuals acknowledge that they have seen and been given copies of the Catalyst Mediation Terms of Agreement to Mediate and the Code of Practice and agree that they will apply to the mediation.

## Costs

Unless otherwise agreed the costs of the mediation will be borne equally by The Individuals as agreed with Catalyst Mediation, who will be responsible for reimbursing the Mediators and any location costs.

Signed by or on behalf of :

Person Name	Name of authorised signatory	Signature	Date
[Person A ]			
[Person B ]			
[Mediator ]			
[Mediator ]			
Catalyst Mediation			

*(Note: Where a representative is signing for their organisation, their position and authority should be shown)*

The following to be signed by all other persons attending the mediation, if any:

*"We acknowledge and agree to be bound by the confidentiality provisions of the Catalyst Mediation Terms of Agreement to Mediate."*

Name	Signature	Date

## AGREEMENT TO MEDIATE : TERMS

### 1. Appointment and the mediation

The Individuals acknowledge the terms of Catalyst Mediation's Code of Practice ("the Code of Practice"), which is attached. The Mediators will comply with the Code of Practice. The Individuals and their representatives have authority to reach a resolution. The Individuals respective legal rights are reserved, should the mediation not result in a resolution. Anyone may withdraw from the mediation at any time.

### 2. Resolution

If an agreement is reached, a written Settlement Agreement will, if required by the Individuals, be prepared and signed by them or their representatives. The Individuals shall then be legally bound by such Settlement Agreement and will give effect to it.

### 3. Confidentiality

The mediation, including all communications prior to and during the mediation, will be kept confidential and no one may access the Mediators' notes or call the Mediators as witness in any court, tribunal, arbitration or other proceeding relating to the subject of the mediation. It will be conducted on the same privileged basis as without prejudice negotiations in an action in the courts or tribunals or similar proceedings. This paragraph shall not apply where:

✓ the Individuals agree to specific disclosure;

- ✓ disclosure is necessary to implement and enforce the Settlement Agreement;
- ✓ the Individuals to the conflict or the Mediators are , or any other person is, required by law to make disclosure;
- ✓ the Mediators reasonably consider that there is serious risk of a breach of the money laundering regulations (Proceeds of Crime Act 2002)
- ✓ the Mediators reasonably consider that there is serious risk of significant harm to the life or safety of any person if the Mediators do not make such disclosure;
- ✓ the Mediators require assistance in confidence from any senior officer of Catalyst Mediation on any ethical or other serious question arising out of the mediation.

Unless otherwise admissible, all documents, submissions and statements made or produced for the purposes of the mediation, whether oral or written, shall be inadmissible as evidence in any court or tribunal or arbitration or other proceeding. Unless otherwise recoverable, all such documents, submissions and statements shall be treated as confidential in any procedure for recovery by way of Commission and Diligence or other similar proceedings.

#### **4. No liability for Catalyst Mediation or Mediators**

Neither Catalyst Mediation nor the Mediators appointed by Catalyst Mediation shall be liable to the Individuals for any act or omission in connection with the services provided by them.

#### **5. Applicable Law**

This agreement shall be governed by the laws of Scotland.

### **APPENDIX 5: AGREEMENT TO MEDIATE (INFORMAL)**

As you have chosen to try mediation as a way of reaching an understanding about your future working relationship, we thought this simple agreement would help in outlining some of the “ground rules” we could all adhere to. Those subscribing to this are:

- 1)
- 2)
- 3) Catalyst Mediation Ltd of 39 Kelvin Court, Glasgow G12 0AE
- 4) a mediator with Catalyst Mediation Ltd.
- 5) a mediator with Catalyst Mediation Ltd

*Other persons, if they are present at the mediation, are:*

- 6)
- 7)

#### **The Mediation**

The mediation, including all conversations, emails or documents prior to and during the mediation, will be confidential to the people signing this agreement. The Mediators may make notes during the mediation and these will be confidential to the Mediators. You will have the opportunity to discuss anything freely on the same privileged basis as without prejudice negotiations in a tribunal or similar proceeding.

The only reasons why this confidentiality might not apply could be where:

- ✓ You both agree to disclose specific elements;
- ✓ Should the mediation fail and there is a legal requirement to disclose specific elements;
- ✓ the Mediators reasonably consider there is serious risk of significant harm to the life or safety of any person if the Mediators do not disclose specific elements;
- ✓ You may withdraw from the mediation at any time or, if you feel it would be helpful, continue it at any future times.



**Resolution**

If you reach an agreement you do not have to write anything down, but if you wish, you can prepare a note of the points agreed for future reference. If you decide to do this, it is usually helpful to sign and date it. If you want other people to have a copy, it would only go to those you agree should receive it.

**No Resolution**

If you are unable to reach an agreement, the Mediators cannot be called as witness in any tribunal or other proceeding relating to the subject of the mediation. Neither Catalyst Mediation nor the Mediators are liable to you for any act or omission in connection with the services provided by them. Your legal and other rights are preserved, should the mediation not result in a resolution between you.

Signed by or on behalf of :

Name	Signature	Date
[Party A ]		
[Party B ]		
[Mediator ]		
[Mediator ]		
Catalyst Mediation		

**APPENDIX 6 : MEDIATED SETTLEMENT AGREEMENT (COMPROMISE)**

**The Parties**

	Of		("The Employee")
	Of		("The Employer")

Together "the Parties".

**Preamble:**

Whereas the Parties have resolved a dispute between them, using mediation, and have agreed to record the agreement in a binding written agreement, the Signatories being the individuals detailed in Part 1 of the Schedule.

**Agreement**

The parties agree to the Agreed Terms set out in Part 4.

Signed by or on behalf of:

	At:	Date	Name	Signature
The Employee				
The Employer			XXXXXX on behalf of "The Employer"	

**Part 1: The Signatories:**

	Name	Position	
The Employee			
The Employer			

## **Part 2 : The Agreement to Mediate**

The Agreement to Mediate amongst the Parties, dated:

## **Part 3 - The Litigation**

There are no existing proceedings between the Parties.

Or : Employment Tribunal, Glasgow. ET1 lodged XXXXXX2008, Claim number XXXXXXXX2008.

## **Part 4 - The Agreed Terms**

The Signatories confirm and warrant that they have full authority to sign this agreement and to perform their obligations under this Agreement.

Except as may be required for the purposes of enforcing this Agreement, the terms of settlement and of this Agreement will remain confidential between the parties and their appointed representatives, and will not be revealed to or discussed with any other party, with the exception of; (i) the Employee's immediate family, (ii) the Inland Revenue and other statutory bodies, (iii) any other person to whom the Employer or the Employee is bound to report, or (iv) as required by law (including any court or tribunal appearance as a witness).

In particular, no information will be given to the media, either directly or indirectly.

The Employee will not at any time in the future make any detrimental or derogatory statements about matters concerning the Employer, its employees or directors, his employment with the Employer or the termination of that employment. The Employer will, similarly, not at any time in the future make any detrimental or derogatory statements about matters concerning the Employee.

The Parties confirm that they have read carefully and understood the terms of this Agreement which clearly reflect the terms agreed at the conclusion of the Mediation.

All sums paid are in full and final settlement of all claims arising out of the Employee's employment with the Employer or its termination [including Employment Tribunal Claim number XXXXX/2008] , unfair dismissal, wrongful dismissal or entitlement to notice under contract or statute, discrimination on the grounds of sex, race, disability, age, sexual orientation, religion or belief; less favourable treatment or harassment of whatever kind, breach of contract, equal pay, The Working Time Regulations 1998, unlawful deduction of wages and all other claims in respect of which an Employment Tribunal may have jurisdiction. [The Employee shall withdraw his claim under the Litigation.]

The Employer undertakes to provide the Employee with a reference on request in accordance with the agreed terms as per Schedule 1.

The Employee accepts the payments made by the Employer are made without any admission of liability, and are also in full and final settlement of all other claims, which he has or may have against the Employer arising out of his employment or the termination of his employment, being claims in respect of which an Employment Tribunal has no jurisdiction.

The Employee by his subscription of this agreement renounces his whole right title and interest to present a complaint to or institute or continue any proceedings before an Employment Tribunal or Court of Law seeking reinstatement, re-engagement, specific implement, declarator, damages, compensation or other statutory or common law remedy in connection with his contract of employment or the termination thereof.

The Employee acknowledges that before signing this agreement, he received advice from a relevant independent adviser, namely XXXXX (who has also signed the Certificate attached to this Agreement), as to the terms and effect of this agreement, and in particular its effect on his ability to pursue his rights before an Employment Tribunal.

The Employee warrants that he has given full details to the relevant independent adviser of any claim, complaint or concern that the Employee has in relation to the termination of the Employee's employment with the Employer or the treatment of the Employee or any act or omission regarding the Employee by the Employer or any of its agents, officers or employees.

This agreement sets out the entire compromise between the parties and supersedes and replaces all prior negotiations, agreements, arrangements or understandings between the parties.

The conditions regulating Compromise Agreements under the Employment Rights Act 1996, Sex Discrimination Act 1975, Race Relations Act 1976, Trade Union and Labour Relations (Consolidation) Act 1992, Disability Discrimination Act 1995, National Minimum Wage Act 1998, Working Time Regulations 1998, Part- Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, Employment Equality (Sexual Orientation) Regulations 2003, Employment Equality (Religion or Belief) Regulations 2003 and The Employment Equality (Age) Regulations 2006 (all as may be amended from time to time) are satisfied in relation to this Agreement.

When this agreement is signed and dated by the Employee and the Employer and the certificate is signed by the adviser, it will become binding.

The Employee's employment with the Employer will terminate with effect from XXXXXXXXXXXX 2011. It is agreed that the Employee shall not be required to attend his place of work during the period up to XXXXXXXXXXXX 2011.

In consideration for the Employee entering into this agreement and complying with the terms of the same, the Employer will pay to the Employee the sums shown in Schedule 2. The sums paid by virtue of this paragraph will be paid net, where applicable, of income tax, national insurance and pension contributions. The Employee shall confirm to the Employer by [Date] the preferred methods by which these payments should be made and the Employer confirms that it shall make such payments as soon as practicable thereafter.

[The Employee agrees to apply for his pension as soon as practicable. It is understood by the Parties that the Employee will be entitled to a pension as outlined in Schedule 3. The sums paid by virtue of this paragraph will be paid net of income tax and national insurance. ]

[It is agreed that the Employee shall advise the Employer of learning points in relation to his experience by Date.]

[Schedule 4 contains the text of an apology made by [xxxxxx and xxxxx] on behalf of the Employer which shall be sent to the Employee on the Employers headed notepaper. It is agreed that the text shall remain confidential between the Parties in accordance with Clause 2.]

[The Employer agrees to issue an email, the text of which is shown in Schedule 5, announcing the Employee's retirement.]

The Parties agree that in the event of any dispute arising between them in relation to this Agreement or any other matters covered by the Mediation, they will return to Catalyst Mediation in good faith with a view to resolving such dispute by mediation before resorting to court or other action.

This Agreement shall be governed by Scots Law.

Signed by or on behalf of:

<u>Name</u>	<u>Position</u>	
		The Employee
		The Employer

**Solicitor's Certificate**

I [name ] of [ firm] having a place of business at [ address ] hereby confirm that I have advised [party] residing at [ party address ] as to the terms and effects of the foregoing Compromise Agreement, in particular its effects on his ability to pursue his rights before an Employment Tribunal or Court. I further confirm that there was in force when I gave said advice a current insurance policy covering the risk of a claim by the Employee in respect of loss arising in consequence of this advice.

Signed: \_\_\_\_\_ Witness: \_\_\_\_\_

Firm Name: \_\_\_\_\_ Date: \_\_\_\_\_

### **Schedule 1: The Reference**

To whom it may concern.

I have been asked to provide a reference for [ ] who has recently retired from [ ], after [ ] years service.

[Name ] worked as a [job function ], latterly at [ location ].

Over the past [ period of time], [name ] has worked as [ description of professional characteristics and contribution to the Employer, stressing where possible significant contributions and achievements.]

[Reflection on personal characteristics as a work colleague]

### **Schedule 2: The Agreed Sums**

The agreed sums, [which it is agreed will be subject to the nationally agreed pay award], are:

A redundancy payment of £XX

Notice pay for a period of three calendar months with effect from XXXX2008.

Accrued and untaken holiday pay up to XXXX 2008.

Back pay to which the Employee is entitled.

### **Schedule 3: The Pension**

The sums referred to in Clause 15.

An annual pension of £XX.

A lump sum of £XX.

### **Schedule 4: The Apology**

Dear [ ]

Thank you for agreeing to participate in mediation to enable us to reach an agreement on the way forward on your employment position. We are genuinely sorry that we were unable, either personally or through others, to deal with your employment position and we regret that this has caused you considerable distress.

Our sincere wish is that we will be able to resolve your position in a manner which you will considered fair and reasonable. We acknowledge that you are a well respected individual who has given long and exemplary service to the [Employer] and we regret that the last [time period] of your career have been much less rewarding than those that went before. You can be assured that we both hold you in high regard and we wish you good health and happiness for the future.

Yours sincerely

### **Schedule 5: The Email**

I am writing to advise that [ name ] will be retiring from the service on [date].

[Name] has worked in [Employer] for XX years, for many years at [Location ] and latterly as [Latest major role]. [Name] has made a significant contribution to [specific work area ] and to [specific work area ].

There will be a formal presentation to [Name] at [location] on [ ] at [ ] to which you are invited.

If you would like to make a contribution to his gift, please send this to [ ] at [ ]. Cheques should be made payable to [ ]. Please pass on this email to all colleagues who would wish to recognise [Names] retirement.

## APPENDIX 7: SETTLEMENT AGREEMENT : INFORMAL AIDE MEMOIRE

### Distribution

This document will only be seen by CM, RS and KN in the HR Department. Wider circulation requested by any of these 3 people will need the written confirmation from CM and RS. No members of the CM / RS team are to see this. CM and RS believe the Team will understand better what has happened by witnessing the behaviours noted below.

### Objective

The behaviours below are agreed between CM and RS as those necessary to begin developing an improved working relationship. CM and RS recognise they might not all work as planned, in which case they will develop variations between themselves or in conjunction with the mediators if necessary.

### Change Management

No changes to these points can be made by anyone other than CM and RS and then only with their written agreement.

### Communication

Planning Meetings: will happen every second Monday of each month, starting at 08.45 and ending at 10.00am. CM will chair and invite RS, the team and others where relevant. The Agenda for the meeting will only include:

- ✓ actions delivered since the last meeting; implications of those for the next fortnight; responsibility for briefing ongoing actions; time plan for delivery of action.
- ✓ New actions required to be delivered over the next two months; briefing on objectives for those actions; responsible team member; time plan for delivery; relative priority.

Interruptions: When either RS or CM need to meet with the other on an ad hoc basis, they will first ask if it would be convenient for the other to spare a period of time and if it is not convenient, when it would be. They will also indicate the urgency of the meeting, but will respect the other's decision as to when they can make a meeting and move existing activities to make the time required.

Emails vs Verbal Discussions: Emails will be used to transmit information or data. Any requirement for the input of the other will create a need for a face to face meeting.

Respect: RS and CM confirm they respect each other's professionalism and will demonstrate this in their language and behaviour one the other.

### Role

RS Role : RS and CM will agree a clearer set of duties, responsibilities and authorities from RS' existing job description within 30 days of this document. This will be passed to KN in HR as a replacement for the existing RS job description.

### Performance

Standards: these will be reviewed and agreed by RS and CM within 30 days of this document, specifically with regard to:

- ✓ Liaison with client departments;
- ✓ Delivery of data required by clients to timescales
- ✓ Accuracy of data

Performance Reviews : these will be held quarterly for the next 12 months, starting on 30th March 2010. They will be held in CM's office between 09.00am and 10.30am. CM will deliver his score for each performance scale to RS at least one week before the review meeting. RS will deliver his assessment of his

scores to CM at least one week before the review meeting. It is understood that CM and RS will discuss their relative scores and that CM’s view of the score on each scale will be the final one.

**Career Development**

RS will consider the development path they would like to follow over the next two years and list what areas of training / skill development and experience they would need, and when, in order to meet that path. Where possible they will identify the source of that knowledge (but internal and external) and any associated costs.

This plan will be delivered to CM two weeks before the March Performance Review meeting for discussion. It will be agreed, in whatever final form, by the review meeting 3 months later.

**APPENDIX 8 : AGENDA FOR A MEDIATION DEMONSTRATION**

**Objective**

The idea is to help the audience understand:

- ✓ what implications mediation or “facilitated negotiation” may have for them e.g. control of outcome, speed, cost, continuing relationship etc
- ✓ when it may and may not be appropriate.
- ✓ what happens in a mediation. The demonstration can be tailored to reflect different dispute types, depending on the audience’s preferences.

**Draft Agenda / Timing**

Time	Activity
15 mins	Registration and refreshments
15 mins	Welcome and introductions
15 mins	Q & A on material sent out Review Mock Mediation Case History Attendees ideas on issues to be included in demonstration
1 hour	Facilitated mock mediation (Exploration phase) Pause to discuss issues raised Continue demonstration
15 mins	Working Break –Discussion of progress of mock mediation
1 hour	Facilitated mock mediation (Completion Phase) Pause to discuss issues raised Continue demonstration
15 mins	Next Steps / Feedback Forms

Experience shows that pausing the demonstration generates discussion on what is happening and draws out the different ways in which elements of a dispute could be handled – by legal or “mediative” methods.

**Documentation**

Mock Mediation “Scenario” sent before the seminar to give an idea of what the format and background is and time to think of issues they would like the demonstration to address.

## APPENDIX 9 : OUTLINE TRAINING COURSES IN MEDIATION SKILLS

### Background

The intention of these courses is not to train people as mediators, rather to give them basic skills which they can use in their working lives to manage disputes as they arise.

The course covers the core skills of managing workplace disputes, handling difficult conversations and working with angry people.

### General Learning Outcomes

The central learning outcomes are:

- ✓ Increased awareness of various personal responses to conflict and models to understand them.
- ✓ Experience in the core communication skills of listening, summarising and acknowledging.
- ✓ Experience of approaches to negotiation and identify the elements of interest based co-operation.
- ✓ Understanding of different conflict styles and of a tool for analysing conflict.
- ✓ To understand the basic model of mediation and be able to explain it clearly to others.
- ✓ Resolving conflict involving Trades Unions
- ✓ Generating agreements that will improve behaviour and work
- ✓ Identifying core issues for the organisation to prevent repeat conflict

### Training Format

A mix of pre-course reading, trainer lead discussion and small group practice to embrace both the theory and the practice of each element.

### Location

Courses can be delivered at your premises.

### Costs

Normally £500 per person per course, with discounts for organisations sending more than 3 people on one course. There is no VAT payable. All course documentation and Handbooks are delivered within the fee.

## APPENDIX 10: THE EDR TEAM AN APPROACH

### Background

Logic suggests that a “mediative culture” of conflict management in an organisation should look something like this.

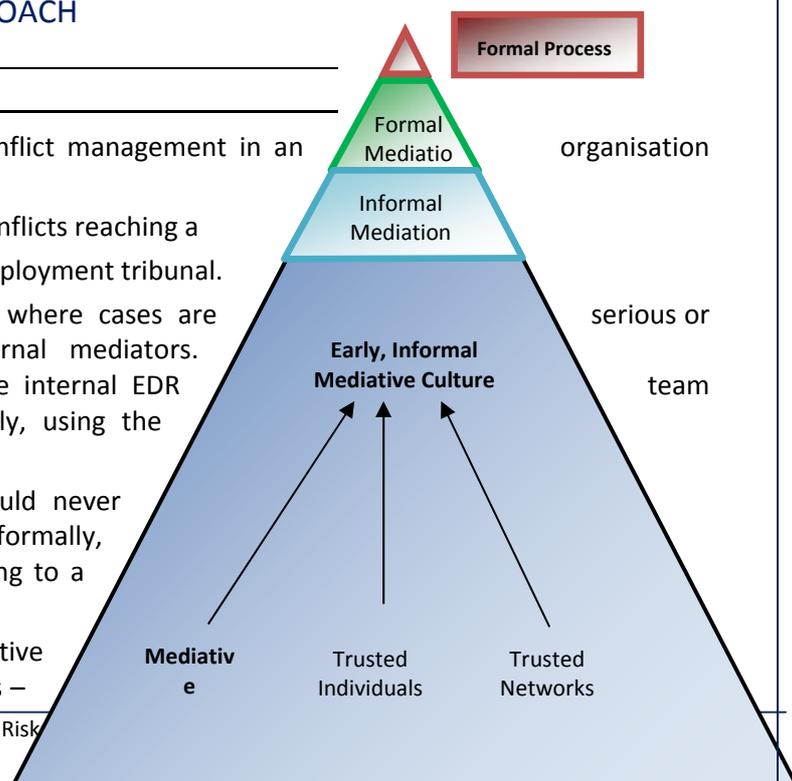
At the peak would be the very small number of conflicts reaching a **Formal Process** – a grievance or disciplinary or employment tribunal.

**Formal** mediations would be the next section where cases are sensitive or senior enough to warrant external mediators.

**Informal** mediations would be those where the internal EDR would resolve the conflict quickly and amicably, using the agreed internal process.

**However** the vast majority of “problems” should never become conflicts – they should be resolved informally, over a cup of coffee, “close to source”, by talking to a trained “**mediative manager**”.

Given the skills, this network of “mediative managers” can therefore do as their title suggests –



manage their people and help their colleagues do so as well. This approach would create a “talent bank”, comprising trained mediators and the “mediative management network”, which would together encourage a culture of solving problems as quickly and as close to home as possible.

## Management Structure

A simple, effective management structure for this approach could be as follows:

- ✓ Steering Group, drawn from within and outside the organisation;
- ✓ Mediation Teams, directed and managed by the Steering Group;
- ✓ Mediative Managers, a network with light touch management requirements.

### Steering Group

Establishing an in-house initiative is far easier with a collaborative approach, where practical experience from those who are already managing initiatives can enable the new team to become more expert, faster. This is especially true as those leading a new initiative could be expected by others to:

- ✓ act as the “fount of knowledge” concerning the use of mediation
- ✓ develop and monitor the quality standards expected
- ✓ measure outcomes
- ✓ contribute to all relevant policy and strategic discussions
- ✓ respond where these are not being met
- ✓ compare these in the organisation and with external benchmarks.

In effect they will be seen as mediation champions, which could create a considerable time burden, particularly for individuals operating on their own.

### MAIN UNIONS

The benefit of involving union members in strategic development has proven itself on more than one occasion and having at least one representative from each of the main unions would help to promulgate the initiative throughout the organisation and give the Steering Group a leadership and education role.

### SCOTTISH MEDIATION NETWORK (SMN)

We would recommend all internal initiatives join the SMN and, in time, register their mediators with the Scottish Mediation Register as a public demonstration of the professionalism they have achieved. The individuals from the Steering Group could also join the SMN In House Mediation Initiative group where they would be able to share and receive best practice from other organisations and the wider mediation community.

## Mediation Team : Composition

From the experience of a number of organisations, we recommend that **the majority of trained mediators should not be HR staff.**

The reasons for this are:

- ✓ cultural – if the majority of problems are to be resolved in a way which is “**early, local and informal**”, then this should be done by line managers. To have the entire HR team as mediators would run the risk of creating the culture of “leave it to HR – they’ll handle it”.
- ✓ to do with the mediator’s role – they must establish trust quickly so individuals can honestly discuss what is going on and what solutions are in their best interests. There are instances of HR departments being trained as mediators and receiving no cases. The reason seems to be “independence”- HR will always be seen as “management” and staff may be reluctant to discuss something they will impart to a line manager from another department.

### Mediative Managers Team: Composition

This should represent as wide a cross section of the organisation as possible and should include

representatives from the main unions. There are three reasons for this.

- ✓ This network should eventually resolve the vast majority of “disagreements” before they become conflicts, and so should be spread – in time - across every department and location.
- ✓ By achieving this spread, each location will have its local “champions” so awareness of the initiative will be maximised.
- ✓ Our experience is that once involved, unions become both supporters and recommenders of a mediative approach to their members.

### Overall Team Size

Where the organisation has more than one location we would suggest a mix of managers and mediators in each location which allows:

- ✓ **mediators to work in pairs** wherever possible, to boost their confidence and give them the maximum opportunity to develop their skills. Therefore the mediator numbers must be in multiples of two per location.
- ✓ There should be at least one mediator pair per location, with the potential to call on colleagues from other locations, as regional “teams” are important and “branch offices” are likely to utilise the initiative if they are seen to have their own “team”.
- ✓ While awareness of the initiative develops and word of mouth on its benefits circulates, the number of mediations during the first year is likely to be low. To train too many mediators initially, who would not be able to practice, would affect their confidence in their skills and could be wasteful of the initial, scarce, resource.

A rough guide, assuming an organisation with a number of departments and several offices in different locations, the principles involved could be something along the following lines:

- ✓ Where many departments are involved, ideally each would have at least one mediative manager plus one member from each of the main unions.
- ✓ In addition HR may wish to have all their team members trained at this level in order to support managers and act as “signposters” to the mediator team.
- ✓ Where this results in some 30 – 40 people, then think of a number of around 6 - 8 mediators (initially) on a 1:5 ratio principle.

### Overall Team Selection Process

There are a number of alternative approaches to selection which can be discussed with the Steering group members, including using recommendations by colleagues, existing roles / skill sets (i.e. internal counsellors), questionnaires identifying the contributions each would bring to the initiative, etc.

### Policy issues: Mediative culture

In developing the initiative, the Steering Group will want to gain senior management support for the principles behind it, some words which demonstrate that support, a policy statement which makes early resolution the “default” for the organisation and some operating principles which everyone can work by. Here are some initial suggestions,

#### STATEMENT OF OVERALL POLICY

Examples of the possible contents of a supportive policy statement, such as the one below, provide a starting point, but the final version is most likely to pick up on the organisations stated policy of interaction with it’s stakeholders;

#### EXAMPLE

*The Mediation Initiative is designed to enhance the experience of working within the Organisation by providing an early, informal and confidential means of resolving issues as they arise. It stresses our individual as well as our institutional responsibilities. It is designed to embody the principles of fairness, equality, diversity and accessibility and to maximise benefit and minimise costs. It is also designed ultimately, to serve*

*the community at large, by providing staff with collaborative skills and a sense of personal responsibility for benefit locally, nationally and internationally.*

#### GRIEVANCE AND DISCIPLINARY POLICIES

We normally recommend a “Linking Policy” be created which allows existing and new policies to be developed to cope with their specific issues and then be linked to the overall conflict resolution policy. A shortened example of the policy developed by the University of Dundee is given here as an example :

#### RATIONALE

It is acknowledged that conflicts and differences are best resolved at the earliest stage possible. Whether the difference or conflict is between employees as work colleagues or with individual managers, each should endeavour to resolve the difference informally and as early as possible under the normal terms of the relevant policy.

#### REMIT OF MEDIATION

Mediation is an additional tool available in conflict resolution. It does not replace or negate any rights of the Organisation as employer, or the rights of any employee, in whatever capacity. Participation in mediation cannot be forced or insisted upon by either party to a conflict.

#### PROCESS AND REFERRAL

A team of trained and accredited mediators within the Organisation is available to assist parties at any stage of their conflict by facilitating an informal discussion as an impartial third party. Information on how to access the Mediation Initiative, its core values and the Organisation’s internal mediators is available at (internal website address)

#### DISCIPLINARY AND CAPABILITY MATTERS

The most appropriate course of complaint regarding any action taken within this area will normally be through any approved disciplinary or capability procedures. This does not prevent either party, their adviser or line manager suggesting an attempt to resolve a difference by mediation. If this is acceptable to both parties a referral to mediation may be made and if agreed by all parties, the disciplinary process may be suspended for that agreed period. In the event that the mediation does not resolve the conflict, the disciplinary and appeal process shall immediately be reinstated. It may be appropriate for mediation to be agreed as time limited to preserve the rights of the parties.

### **Operating Principles**

Our experience suggests that in house mediators and mediative managers need a clear set of guiding principles as well as criteria for deciding when it is appropriate (and inappropriate) to become recommend mediation. It would also be helpful to staff to have widely available guidance on when they might “self refer”. We would suggest that a draft along the following lines, again using a précis of the one developed by the University of Dundee, would inform discussion with the Steering Group, as it reflects European and UK best practice and includes both general and specific principles.

#### USE OF EARLY RESOLUTION

The process will be used in good faith by the parties to see if they are able to reach a creative and workable outcome to a conflict or disagreement. It is one of a range of tools available for working towards resolution and it is recognised that some conflicts may not be suitable for this process. Where possible the Organisation would encourage the parties to use mediation at the earliest possible opportunity.

#### VOLUNTARY

Using this process to resolve conflicts is a totally voluntary choice and it is essential that parties make an informed choice and are fully aware of what it entails.

#### NON JUDGEMENTAL

The Mediator shall not impose their judgement or decide on any issues but enable the parties to identify issues and explore options towards mutually agreeable action.

#### CONFIDENTIALITY

Any matters discussed within the mediation will be confidential and the Parties and the Mediator will sign up to a Confidentiality statement.

#### IMPARTIALITY AND CONFLICT OF INTEREST

Each Mediator will be trained and certified as suitably qualified and his or her qualifications will be made known to the parties. The Mediator will at all times act, and endeavour to be seen to act, fairly and with complete impartiality towards the Parties without any bias in favour of or any discrimination against any Party. At the outset of the process the Parties will be able to select and agree on an appropriate mediator to ensure impartiality. Any matter of which the Mediator is aware, which could be regarded as involving a conflict of interest (whether apparent, potential or actual), will be disclosed to the Parties.

#### COMMITMENT AND AVAILABILITY

Before accepting an appointment, the Mediator must be satisfied that he/she has time available to ensure that the mediation can proceed in an expeditious manner.

#### WITHDRAWAL OF MEDIATOR

The Mediator will withdraw if he/she is requested to do so by any of the Parties, is in breach of these principles, or is required by the Parties to do something which would be in breach of these principle, or believes any of the Parties is in breach of these principles.

#### FEEDBACK

Parties will be asked to provide written feedback which will be used to take forward suggestions on how the process may be improved and to provide feedback for the mediator's future practice.

### Internal Promotion of the Initiative

#### WORD OF MOUTH NETWORKS

We suggest the Steering Group identify within each Organisation those existing networks which could be encouraged to promote the principles of the mediation initiative. These may be networks that already exist, for example internal counsellors, staff committees, union committees etc.

Materials explaining the purpose of mediation, its benefits and how the process can be accessed can then be developed for dissemination via the networks, an internal website, the Staff Handbook and so on.

### Measurement

#### Background

Most organisations will wish to measure both quantitative and qualitative scales covering a variety of issues, to analyse the impact of interventions and to identify other policy or strategic developments which might help address the causes of organisational conflict.

#### SPECIFIC MEASURES FOR THE AUDIT

The Steering Group will have a number of sources of areas for the audit from benchmarking organisations such as CIPD, Models such as the Dan Dana Conflict Audit and the Scottish Mediation Network, but from our own experience the basis of an audit would include such qualitative and quantitative measures as:

**Absence:** A variety of measures where absence through stress is a defined factor; these can include the number of days, the salary cost of absence, the Team cost measured as a delay in achieving objectives, etc.

**Case Stage:** measuring whether mediation was initiated before or after a formal Grievance / Disciplinary process had been triggered; ideally over time the percentage "before" will increase as the initiative becomes more widely accepted.

**Conflict Cause:** enables comparisons of the type of conflict brought to mediation with national CIPD data from employers surveys; measured as key words, for example, bullying / harassment, discrimination type (race, sex etc), conditions of employment, pay, workload etc.

**Management Time:** classic measure of the time spent by line managers / HR managers on formal grievance / disciplinary matters (including Tribunals).

**Costs of Conflict:** again classic elements such as the financial cost of the Management time measurement, plus external legal and other costs.

**Mediation Statistics:** classic measures of hours taken, cost (hours x mediator's salary) and a simple success / partial success / not successful tick box as part of the Party's feedback form.

### **Organisational Conflict**

The **Centre for Conflict Control (CRC)**, an organisation within the American **National Institutes of Health**, started a Root Cause Analysis (RCA) approach in identifying systemic issues from individual mediations. The Directors, Susan Sturm and Howard Gadlin, published a paper in 2007 in the Journal of Dispute Resolution, which is relevant to any discussion about conflict audits and systemic change. Their paper is available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=982364](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=982364).

To quote from Sturm and Gadlin:

“Well-structured linkage of individual conflict resolution and systemic change enhances the efficacy and legitimacy of both. Indeed individual conflict resolution and systemic change are interdependent. Individual mediations provide knowledge, legitimacy, and participation needed to generate and sustain systemic change. If individual problems are rooted in a system that remains unchanged, the problem is likely to resist remediation or to recur. Often searching for systemic problems enhances legitimacy even when the search results in a determination that the system worked well, and that an individual intervention was appropriate. Unresolved individual problems breed dissatisfaction with reform, and can foster resistance or backlash.”



<b><u>PHASE 1: Set Up and Consultation</u></b>	
<b><u>Review Tender Proposals</u></b>	
Review detail of proposals with Organisation.	Week 1
Agree /Amend this Work Plan	
<b><u>Steering Group</u></b>	
Agree potential members and Objectives; meeting dates and “launch date” of initiative for each Organisation.	
1 <sup>st</sup> Steering Group Meeting: Agree Objectives, meeting dates and launch dates.	Week 4
<b><u>Mediative Culture</u></b>	
Provide template Organisation policy statement and “Floating Policy” statements to Steering Group.	Week 1
1 <sup>st</sup> Steering Group Meeting : Initial response to policy statements	Week 4
<b><u>Operating Principles</u></b>	
Provide templates for mediator principles / Code of Practice / mediation process / internal explanatory texts.	Week 1
1 <sup>st</sup> Steering Group Meeting: Initial response to texts.	Week 4
<b><u>Awareness Campaign</u></b>	
Identify existing Organisation networks as potential promoters / filters for mediation process	Week 1
Provide templates for internal promotion materials / website contents etc	Week 1
1 <sup>st</sup> Steering Group Meeting : Initial response to promotional materials / contents	Week 4
<b><u>Internal Capability</u></b>	
Provide template program contents for Line Managers and Mediators.	Week 1
1 <sup>st</sup> Steering Group Meeting: Initial response to program contents.	Week 4
Provide draft selection procedures for Line Managers and Mediators.	Week 1
1 <sup>st</sup> Steering Group Meeting: Agree selection procedures for Line Managers and Mediators.	Week 4
Propose training timing for Line Managers and Mediators	Week 1
1 <sup>st</sup> Steering Group Meeting: Agree program timing for Line Managers and Mediators.	Week 4
<b><u>Audit</u></b>	
Agree collaboration brief for CRD on audit elements, systemic approach etc.	Week 4
<b><u>PHASE 2 : Gaining Agreements Phase</u></b>	
<b><u>Mediative Culture</u></b>	
2 <sup>ND</sup> Steering Group Meeting: agree Organisation policy statement and “Floating Policy” statements.	Week 7
<b><u>Operating Principles</u></b>	
2 <sup>ND</sup> Steering Group Meeting: agree operating principles and mediators principles.	Week 7
<b><u>Awareness Campaign</u></b>	

2 <sup>nd</sup> Steering Group Meeting : Penultimate response to promotional materials / contents	Week 7
<b><u>Internal Capability</u></b>	
2 <sup>nd</sup> Steering Group Meeting : Confirm training program contents	Week 7
Review selection progress for Line Managers and Mediators	Week 7
Confirm training timing for Line Managers and Mediators	Week 7
<b><u>Audit</u></b>	
Agree response to CRC proposals on audit elements, systemic approach etc.	Week 7
<b><u>PHASE 3 : Initial Implementation Phase</u></b>	
<b><u>Mediative Culture</u></b>	
3 <sup>rd</sup> Steering Group Meeting: Ready to publish Organisation policy statement and “Floating Policy” statement.	Week 11
<b><u>Operating Principles</u></b>	
3 <sup>rd</sup> Steering Group Meeting : Ready to publish Operating Principles	Week 11
<b><u>Awareness Campaign</u></b>	
3 <sup>rd</sup> Steering Group Meeting : Agree promotional materials / contents	Week 11
<b><u>Internal Capability</u></b>	
3 <sup>rd</sup> Steering Group Meeting : Confirm teams and training dates for Line Managers and Mediators	Week 11
Training for Line Managers 20 People 2 Days	Managers : Week 12
Training for Mediators one location: 2 Days	All 16 Mediators, ideally in Week 13
<b><u>Audit</u></b>	
3 <sup>rd</sup> Steering Group Meeting : Progress with to CRC proposals on audit elements, systemic approach etc.	Week 11
Invite to Launch event?	
<b><u>PHASE 3 : Launch Phase</u></b>	
<b><u>Steering Group</u></b>	
4 <sup>th</sup> Steering Group Meeting: Host Launch event.	Week 15
<b><u>Mediative Culture</u></b>	
4 <sup>th</sup> Steering Group Meeting: Publish Organisation policy statement and “Floating Policy” statement.	Week 15
<b><u>Operating Principles</u></b>	
4 <sup>th</sup> Steering Group Meeting : Publish Operating Principles	Week 15
<b><u>Awareness Campaign</u></b>	

4 <sup>th</sup> Steering Group Meeting : Publish promotional materials / web site contents	Week 15
<u>Internal Capability</u>	
4 <sup>th</sup> Steering Group Meeting : Publish team members CVs and contact details	Week 15
<u>Audit</u>	
Progress with to CRC proposals on audit elements, systemic approach etc.	

## APPENDIX 11: BIOGRAPHIES

### David Semple Non Executive Chairman

David was for many years in private legal practice, dealing with commercial property matters, on which he lectured regularly and wrote articles for the Journal of the Law Society of Scotland. He subsequently specialised in corporate and commercial matters, including contractual work, partnership, information technology and intellectual property, was chairman of his firm (Semple Fraser) and a Past President of the Glasgow Chamber of Commerce. In addition to being a CEDR Registered Mediator, David holds a Certificate in Mediation from the Woodbury Mediation College in Vermont. He was a founder Board member of the Scottish Mediation Network and is Chairman of Catalyst Mediation Ltd, which he co-founded in 2005.



He has mediated cases relating to senior employees, disputes amongst shareholders, disputes relating to contracts, property developments, construction contracts, multi ownership buildings, partnership fall-outs, responsibilities under leases and many more. He regards building trust with the individuals as crucial to providing them with the best opportunity of settling their dispute, that good preparation increases the likelihood of a successful outcome and in the flexibility of the process.

### Jeremy Scuse MD Catalyst Mediation Ltd

Jeremy has a degree in Psychology and spent 25 years in senior international marketing positions with manufacturing and service companies, followed by 10 years setting up a series of his own companies. He became an accredited Mediator with CEDR in 2003, co-founded Catalyst Mediation and contributed to the Gibbons review of the 2004 Employment Act and Lord Gill's 2009 Scottish Civil Courts Review.



He has mediated many cases involving staff at all levels, buyer / supplier contract cases, IPR disputes, partnership disputes, legal practice disputes, insurance claims, personal injury claims and was a volunteer mediator in the Edinburgh, Glasgow and Aberdeen in court mediation schemes. He has a special interest in the development of in house mediative capabilities among managers and has been involved in developing a number of such training programs.

### Charlie Irvine Director Catalyst Mediation Training Ltd

Charlie has an LLB Hons from the University of Glasgow, a Diploma in Public Law from the Université d'Aix-en-Provence and an MSc with Distinction in Conflict Resolution from Birkbeck College, University of London. He has been a mediator for 15 years, and is a highly experienced trainer, having developed courses for Stratford and Glasgow Universities. He recently co-wrote and delivered the pilot for a diploma in therapeutic mediation for a national charity and has resolved a variety of workplace conflicts in the Public Sector and NHS, as well as conflicts in a University and Education Authority context. He is Chair of SMN and Visiting Lecturer at Strathclyde Law School.



### Ewan Malcolm Director Catalyst Mediation Training Ltd

Ewan was a lawyer for nearly two decades and started his mediation training in 1995. He is trained as a commercial, a family and a community mediator. He works as a professional mediator in high value family and commercial conflicts. Ewan was named Mediator of the Year at the Law Awards of Scotland 2008 and is one of few people in the UK to hold an SVQ Level IV qualification in mediation. Ewan has presented training across the UK. Ewan set up the Scottish Mediation Network office in September 2002 and was its full time Director until 2009 when he moved to London where he is now studying for a Masters in Conflict Resolution at Birkbeck. He co-edited the book, A guide to mediating in Scotland 2009 published by University of Dundee Press.



# Catalyst Mediation



Website [www.catalystmediation.co.uk](http://www.catalystmediation.co.uk)

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