



Preparing for a mediation in your workplace

“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)

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WHAT IS CONFLICT?

“Conflict is an expressed struggle between at least two interdependent parties who perceive incompatible goals, scarce resources, and interference from others in achieving your goals”

(William Wilmot and Joyce Hocker (2001) Interpersonal Conflict, p.41).

“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 p.3).

Mediation uses the idea that we can all acquire the skills to deal with conflict, by unlocking our innate ability to solve problems (empowerment). In this view, perception is at the heart of conflict. Communication is therefore crucial.

CONSTRUCTIVE CONFLICT

At its best, conflict can bring about change. The urge to right a wrong, or correct an injustice, can lead to conflict. Handled well, it can improve things and act as a learning and growth experience for all involved. Mediation is one form of conflict resolution where a third party is introduced into conflict with a view to finding a positive and productive outcome:

“At its most effective, conflict resolution can never be simply a set of techniques, put on or cast aside at will ... [it] requires an examination of one’s most deeply held values and spiritual beliefs”

(Wilmot & Hocker, p.62)

HOW A CONFLICT CAN ESCALATE.

- | | |
|---|--|
| <ul style="list-style-type: none"> ☀ Specific problem or issue ☀ Personal antagonism: ☀ Allegations are made ☀ Other person seen at the problem ☀ Labelling and stereotyping ☀ Defensiveness ☀ Push and push back (tit for tat) ☀ Defensiveness in one triggers the same in others ☀ Expansion of Issues ☀ Other issues brought in to justify stance ☀ More problems arise ☀ Talk is less specific ☀ Breakdown in Communication ☀ Less direct | <ul style="list-style-type: none"> ☀ Emotional element increases ☀ Understanding decreases ☀ Spiralling Mistrust ☀ Escalation ☀ Insult followed by insult ☀ Antagonism ☀ Becoming more and more entrenched ☀ Polarisation ☀ Seeking allies ☀ Groups organized into camps ☀ No backing down ☀ Belief that nothing can be the same again ☀ Fight to win and inflict defeat on adversary. ☀ Together into the abyss |
|---|--|

HOW DO YOU AND YOUR COLLEAGUES RESPOND TO CONFLICT

This quick survey calculates your preferred method of dealing with conflict, which is not to say you cannot learn or have more than one. Reflecting on the results is more important - and more reliable - than your "scores". There are no "right" or "wrong" answers, so use this to stimulate thoughts and discussions with others.

INSTRUCTIONS

Consider your response in situations where your wishes differ from those of another person. Note that statements A-J deal with your initial response to disagreement; statements K-T deal with your response after the disagreement has become stronger. If you find it easier, you could choose one particular real life conflict setting and use it as background for all the questions. Circle one number on the line below each statement.

WHEN I FIRST DISCOVER THAT DIFFERENCES WITH ANOTHER PERSON EXIST...

A	I make sure that all views are out in the open and treated with equal consideration, even if there seems to be substantial disagreement.						
Not at all characteristic	1	2	3	4	5	6	Very characteristic
B	I devote more attention to making sure others understand the logic and benefits of my position than I do to pleasing them.						
Not at all characteristic	1	2	3	4	5	6	Very characteristic
C	I make my needs known, but I tone them down a bit and look for solutions somewhere in the middle.						
Not at all characteristic	1	2	3	4	5	6	Very characteristic
D	I pull back from discussion for a time to avoid tension.						
Not at all characteristic	1	2	3	4	5	6	Very characteristic
E	I devote more attention to feelings of others than to my personal goals.						
Not at all characteristic	1	2	3	4	5	6	Very characteristic
F	I make sure my agenda doesn't get in the way of our relationship.						
Not at all characteristic	1	2	3	4	5	6	Very characteristic
G	I actively explain my ideas and just as actively take steps to understand others.						
Not at all characteristic	1	2	3	4	5	6	Very characteristic
H	I am more concerned with goals I believe to be important than with how others feel about things.						
Not at all characteristic	1	2	3	4	5	6	Very characteristic
I	I decide the differences aren't worth worrying about.						
Not at all characteristic	1	2	3	4	5	6	Very characteristic
J	I give up some points in exchange for others.						
Not at all characteristic	1	2	3	4	5	6	Very characteristic

If differences persist and feelings escalate...

K	I enter more actively into discussion and hold out for ways to meet the needs of others as well as my own.						
Not at all characteristic	1	2	3	4	5	6	Very characteristic
L	I put forth greater effort to make sure that the truth as I see it is recognized and less on pleasing others.						
Not at all characteristic	1	2	3	4	5	6	Very characteristic
M	I try to be reasonable by not asking for my full preferences, but I make sure I get some of what I want.						
Not at all characteristic	1	2	3	4	5	6	Very characteristic
N	I don't push for things to be done my way, and I pull back somewhat from the demands of others.						
Not at all characteristic	1	2	3	4	5	6	Very characteristic
O	I set aside my own preferences and become more concerned with keeping the relationship comfortable.						
Not at all characteristic	1	2	3	4	5	6	Very characteristic
P	I interact less with others and look for ways to find a safe distance.						
Not at all characteristic	1	2	3	4	5	6	Very characteristic
Q	I do what needs to be done and hope we can mend feelings later.						
Not at all characteristic	1	2	3	4	5	6	Very characteristic
R	I do what is necessary to smooth the other's feelings.						
Not at all characteristic	1	2	3	4	5	6	Very characteristic
S	I pay close attention to the desires of others but remain firm that you need to pay equal attention to my desires.						
Not at all characteristic	1	2	3	4	5	6	Very characteristic
T	I press for moderation and compromise so we can make a decision and move on with things.						
Not at all characteristic	1	2	3	4	5	6	Very characteristic

STYLE INVENTORY TALLY SHEET

When you are finished taking the inventory, write the number you circled for each statement beside the statements letter on the tally sheet below.

Add the numbers you have entered in each column (e.g. A + G) and put that total in the box below.

Scores	A	K	B	L	C	M	D	N	E	O
	G	S	H	Q	J	T	I	P	F	R
Totals										
	Calm	Storm	Calm	Storm	Calm	Storm	Calm	Storm	Calm	Storm
	Collaborating		Forcing		Compromising		Avoiding		Accommodating	

Now list your totals below from highest to lowest total for Calm scores with your style names and then the same for Storm totals.

CALM

Response when issues/conflicts first arise.

STORM

Response after the issues/conflicts have been unresolved and have grown in intensity.

E.G.

Score	Style
9	Compromising

Score	Style
11	Avoiding

INTERPRETING THE SCORES:

This exercise gives you two sets of scores for each of the five approaches to conflict.

- ☀️ Calm scores apply to your response when disagreement first arises.
- ☀️ Storm scores apply to your responses if things are not easily resolved and emotions get stronger.

The higher your score in a given style,(i.e. Avoiding) the more likely you are to prefer using this style in responding to conflict. If two or more styles have the same score you are equally "preferred."

The second highest score indicates ones' "backup" style if the number is relatively close to the highest score. A fairly even score across all of the styles indicates a "flat profile." Persons with a flat profile tend to be able to choose easily among the various responses to conflict.

WHAT IS MEDIATION?

There are lots of definitions, the simplest being *"a facilitated negotiation."*

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 you 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 your current or past work. This equates to 1.5% of the working population."

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

WHY DOES MEDIATION WORK?

BECAUSE MOST PEOPLE DON'T LIKE CONFLICT

You would probably agree that most people do not want to be in a dispute – it takes up time, causes worry, distracts from the important elements of everyday lives. Mediation encourages you 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 you can reach an agreement that works for both of you, what's not to like?

THE PRESENCE OF A SKILLED THIRD PERSON

The mediator's task is to reduce mistrust and emotions and assist you to focus on the issues that are most important to you. By creating a calm forum, you can have your 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 you to begin thinking of what your 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.

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. You 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 You – 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.

YOU 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 see 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 you can "realistically" expect to achieve without a settlement, your initial positions often shift to accommodate your underlying interests.

MEDIATION ASSISTS YOU 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, you may overlook creative options involving other types of "value" which could address your real interests. The mediator can help identify less obvious alternatives, prompting an evaluation of your advantages and opening eyes to the benefits of a new range of solutions.

THE ADVANTAGES OF MEDIATION

What are the main advantages worth mentioning?

- ☀ 75% of mediations succeed. A trained, independent facilitator, not buried in the detail, assists You 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 You 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.
- ☀ You retain control over the outcome so are more likely to deliver it than if it was imposed.
- ☀ The speed of resolution allows You to concentrate on your work and careers.
- ☀ It is voluntary so you 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. You can overlook tough realities, such as the impact of your own behaviour or the reliability of a witness – which will be crucial in a grievance or tribunal. A mediator can create the chance for you to review your true strengths and weaknesses.
- ☀ Mediation can produce creative and forward-looking solutions. You are free to look at solutions which are outside the scope of a formal process. With help from the mediator, you can think creatively and consider solutions which can positively influence future behaviours.

WHEN NOT TO USE MEDIATION

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

PREPARING FOR A MEDIATION

ISSUES AGENDA

Mediation tries to achieve a “win-win” result, where you and the other person agree together how best to resolve the problems between you.

To get there will almost certainly require a lot of detailed information to be exchanged about what is important to each of you. Looking at what happened that lead to the conflict is useful in generating examples of the things (language, principles, behaviour) that matter most to you – but the idea is to use these examples to focus on what you represent to you rather than as an opportunity to start a negative argument.

The evidence is that the clearer you are about what you need to discuss, the less time the mediation will take, the less stressful it will be and the greater the likelihood you will reach a mutually acceptable outcome.

Date	What Happened	Issue Raised

This timeline could be shared before the meeting, so that each has an idea of the issues the other wishes to discuss, has time to think about them and knows that your own issues will be on the agenda. In this case, your thoughts on this page only could be emailed to the mediator who would combine them and issue them before the mediation.

WHAT PAPERWORK IS INVOLVED?

THE AGREEMENT TO MEDIATE

This is mainly about confidentiality and the mediator’s code of conduct. Appendix 1 shows an example.

WORKPLACE SETTLEMENT AGREEMENTS

Usually these are “Aide Memoires” or series of points recording the areas of your working relationship that you will work to improve. It is confidential to You 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, you will require legal advice on all sides.

THE MEDIATION DAY

Arrival times will have been agreed with the mediator. You would be met and shown to your room by the mediators, who will check for last minute questions, make sure you are happy signing the Agreement to Mediate, recognise nerves and ensure there is a calming cup of tea or coffee. When everyone is ready you 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 your 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 You, time constraints etc. This also reflects our practice style which keeps You together for as long as possible on the principle that you have the problem so you 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 private room suitable, housekeeping points.
Dispute Disruption	Acknowledge disruption caused by conflict, effect on You 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 prejudice	Test “What if” options; not binding till agreement signed (if relevant).
Agreement to Mediate	Signatures of all present to confidentiality and authority to reach an agreement.

THE MORNING

Mediator’s Opening.	As above
Your Opening.	A 5/10 minute summary of your understanding of the dispute and what you 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 you have just heard or whether (if one has been issued) you 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.
You Exchange Information /Expand Knowledge	Discussion usually starts without much prompting. Mediator says little. May ask if you 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. You may need time in your private rooms to consider information you have heard and how it affects your view of the dispute and your 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 you think the meeting is proceeding and see if there are any points you 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	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, you

Issues will be asked whether you are ready to look at possible solutions after lunch. The mediator will ask if you 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 You 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 You 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 Settlement Agreement could be drafted once the issues that are troubling you have been aired, dissected, solutions tested and combined.

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

SYSTEMIC REVIEW

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

Resolution Hierarchy how are minor disputes dealt with; at what level and with what authorities; how quickly can they be resolved internally, up to Director level if necessary.

Contract Structure where internal resolution attempts have not worked, would a mediation clause help; 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 Did these contribute to the dispute in any way and if so how could this be avoided in future.

COMMUNICATION PROTOCOLS

Where you have agreed that the way you communicate with each other in different situations needs to be clarified to give you some certainty about the future and to avoid any hiccups, you may be asked to complete the questions in Appendix 2.

Doing this allows you to demonstrate your concern that communications are as positive as they can be to begin to rebuild trust and to agree common language where you both know the meaning (so reducing further misunderstandings).

POST MEDIATION FOLLOW UP

Sometimes You 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 you 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.

APPENDIX 1: AGREEMENT TO MEDIATE

As you have chosen to try mediation as a way of reaching an understanding about what your future working relationship might be, this agreement outlines the “ground rules” we should all adhere to.

Who is involved

Those subscribing to this agreement are:

- 1)
- 2)
- 3) Catalyst Mediation Ltd of Aspect Court, 116 West Regent Street, Glasgow G2 2QD
- 4) a mediator with Catalyst Mediation Ltd.

Confidentiality

The signatories will treat as strictly confidential the fact that these discussions are taking place, the discussions themselves, including all conversations, emails or documents created for them, and any agreements or outcomes of the discussions. That way you will have the opportunity to discuss freely anything you feel is important without worrying that it will be repeated to anyone not present at the discussion.

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

-  The signatories both agree to disclose specific elements;
-  Should there be a legal requirement to disclose specific elements;
-  the facilitator reasonably considers there is serious risk of significant harm to the life or safety of any person if you do not disclose specific elements;

It may also be a provision of any agreement reached between you that any breach of this confidentiality would render the rest of the agreement null and void.

Voluntary Participation

A signatory may withdraw from the discussions at any time for a short break or, if you feel the discussions are not creating anything positive, you can leave them permanently. However if it would be helpful to have further discussions, you can be continued at any agreed future dates.

Agreement Format

If an agreement is reached, a note of the points agreed will be drafted for future reference. The notes can be prepared as an aide memoire or as a legally binding document or contract between you. If it is agreed by you that others should have a copy, it would only go to those people you agree should receive it. Similarly the facilitators may make notes during the meetings and these will be confidential to them and destroyed at the end.

If your discussions do not result in an agreement, then you can agree the wording of any communication necessary to inform others of the outcome and either send it to them yourselves or the facilitator will do this for you.

Signed by or on behalf of :

- | | | |
|---------------------------|-----------|------|
| 1) Name | Signature | Date |
| 2) Name | Signature | Date |
| 3) Catalyst Mediation Ltd | | |
| 4) Name | Signature | Date |

1. APPOINTMENT AND THE MEDIATION

- 1.1 The Parties shall, in good faith, try their hardest to achieve a resolution using mediation.
- 1.2 The Mediators will comply with the Catalyst Mediation Code of Conduct.
- 1.3 The Parties and your representatives have authority to reach a resolution.
- 1.4 The Parties respective legal rights are reserved, should the mediation not result in a resolution between them. Any Party may withdraw from the mediation at any time.

2. RESOLUTION

A Settlement Agreement will, if required by the Parties, be prepared and signed by them or your representatives. The Parties shall then be legally bound to perform your obligations shown therein.

3. CONFIDENTIALITY

- 3.1 The proceedings are confidential both between the parties and between the parties and the mediator. As a result even if the parties agree that matters can be referred to outside the mediation, the mediator can enforce the confidentiality provision.
- 3.2 The preceding paragraph shall not apply where:
 -  the Parties and the Mediator agree to specific disclosure;
 -  disclosure is necessary to implement and enforce the Settlement Agreement;
 -  where a Court of law holds that it is in the interests of justice for evidence to be given of confidential matters or that evidence should be heard in relation to an argument that an Agreement apparently concluded between the Parties should set aside on the grounds of fraud, misrepresentation or undue influence or on some other ground;
 -  the Mediators reasonably consider that there is serious risk of a breach of the money laundering regulations (Proceeds of Crime Act 2002) or 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.
- 3.3 Unless otherwise admissible, all documents and written submissions produced for the purposes of the mediation shall be inadmissible as evidence in any court or tribunal or arbitration or other proceeding. Unless otherwise recoverable, all such documents and submissions shall be treated as confidential in any procedure for recovery by way of Commission and Diligence or other similar proceedings.
- 3.4 No Party may have access to the Mediators' notes or call the Mediators as witness in any proceeding relating to the subject of the mediation. Where a mediator is called by the Court, your costs shall be born equally between the Parties.
- 3.5 A breach of confidentiality by any Party may result in disciplinary proceedings under relevant Employment policies or the appropriate Code of Ethics of any relevant professional body.

4. WITHOUT PREJUDICE PRIVILEGE

Negotiating positions or offers made during the mediation shall not be binding on the parties until written in a settlement agreement which both parties have signed. Nor shall such offers or positions be admissible in any subsequent court proceedings. This is a privilege which exists only for the parties, which you can waive.

5. NO LIABILITY FOR CATALYST MEDIATION OR MEDIATORS

Unless negligence is proven, neither Catalyst Mediation nor the Mediators appointed by Catalyst Mediation shall be liable to the Parties for any act or omission in connection with the services provided by them

6. APPLICABLE LAW

This agreement shall be governed by the laws of Scotland.

SUMMARY

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

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 parties.

VOLUNTARY PARTICIPATION AND SELF DETERMINATION

The mediator shall observe the principle of voluntary participation and un-coerced self-determination by the parties.

UNDERSTANDING OF MEDIATION

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

IMPARTIALITY

The mediator shall be independent of any party 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 parties in connection with the dispute which is the subject of the mediation. An individual shall not be appointed as mediator in a dispute if a firm or company with which the individual is connected has acted in any capacity for any of the parties in dispute in connection with that dispute.

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 parties to the dispute in person or in writing. The mediator shall only then continue to act if all the parties to the dispute acknowledge the disclosure and agree to the mediator continuing to act as mediator.

CONFIDENTIALITY

The mediator shall keep confidential and not disclose to any third party 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:
 - a. all parties to the dispute consent to disclosure;
 - b. the mediator is required by law to make disclosure;
 - c. 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
 - d. the mediator requires ethical advice, or is receiving supervision, subject to confidentiality, from an experienced Catalyst Mediation supervisor.
 - e. the mediator reasonably considers that there is serious risk of a breach of the money laundering regulations (Proceeds of Crime Act 2002)

ADVICE

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

WITHDRAWAL OF MEDIATOR

The mediator shall withdraw from the mediation if so requested by any of the parties 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 parties 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.

FEES

Catalyst Mediation shall advise parties 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.

COMPLAINTS PROCEDURE

Should either party to the mediation have any complaint against either Catalyst Mediation or your 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 party with a view to agreeing a solution in writing.
-  If no agreement can be reached at this point, 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 party will have the option to choose from the list, a mediator who will meet with the complaining party 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.

DISCIPLINARY

In the event that a complaint against a mediator appointed by Catalyst Mediation is upheld as a result of the complaints procedure, Catalyst Mediation shall offer to re-convene the mediation, at no further cost to the parties, with a mediator of the Parties' choice after discussion with the Scottish Mediation Network. Catalyst Mediation shall also undertake that the mediator be suspended from its panel either temporarily pending further training or where appropriate, permanently.

INSURANCE

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

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 : COMMUNICATION PROTOCOLS

BACKGROUND

The first section contains some tips on communication that others have found useful.

Then there are some standard interactions you may have with space for you to add ones which are specific to your working relationship. It also asks you to think both how you would approach the interaction and how you would hope the other would respond. By sharing your ideas and with input from your mediator if required, over a few iterations you should have refined them to the point where you have clarity and certainty of the basis of your working relationship in the foreseeable future.

COMMUNICATION

Some simple definitions:

“the imparting or interchange of thoughts, opinions, or information by speech, writing, or signs.”

In biology:

“activity by one organism that changes or has the potential to change the behaviour of other organisms.”

QUESTIONING TECHNIQUES

In a mediation you will observe the mediator using questions to generate information. This is intended to give you some of the tools they use so you can create your own flow of information.

CLOSED ENDED QUESTIONS

Have “Yes” or “No” as the only real answers : “Do you trust this person?”

It generates very little information and tells you nothing about what is uppermost in the recipients mind about either trust or the individual or how they interact.

OPEN ENDED QUESTIONS

Where a Yes/No answer is impossible.

“Would you tell me / help me to understand about the trust in this relationship?”

May take you in directions you never knew existed, but will give you much information about what is important to the recipient, how they see the topic, its place in the world and so on. This generates not only *information* but increases *understanding*.

QUESTION STYLE

The way we ask questions is very important. The more polite, the more the individual is likely to respond on a rational level – so giving you the information you seek. Be careful with “why”- it can be difficult to use without initiating the immediate defensive response “why not” or “because I said so / wanted to etc” – it generates no information for you and may only serve to increase the emotional temperature.

DON'T SHOOT THE MESSENGER

In the immediate future any discussions you have will naturally be slightly difficult or strained as you feel your way back into a working relationship. One risk is that when you do communicate you automatically treat as negative any message that you don't like. So one thought is to communicate in two stages something you believe will not be received well.

Stage one could be an email, carefully worded, that outlines the issue and the pro's and con's surrounding it. DO NOT communicate that a decision has been made – rather invite reflection and then suggest time to discuss their thoughts.

If you communicate a negative message face to face, you will be shot as the messenger and in the early days this will work against trust being re-established. So convey the message and allow time for the emotional response to dissipate and some calmer reflection to take over.

VOICE VS WRITTEN WORD

Voice is good for communicating warmth and empathy – human characteristics that can help to reduce negative emotions and attributions in the listener. Written material – especially an email - is good for communicating information, sometimes in detail, for consideration and response.

So a “communication” could include

- ✨ an initial conversation (face to face or by phone) which outlines possible objective of the discussion or meeting and topics to be discussed; and
- ✨ asks permission to put these in writing for the person to consider and change/ add to.

Invite the other person to respond either by phone or in written form, their choice. When they do respond, try to always respond to them by voice – again to reinforce the human characteristics. Then:

- ✨ If you are content with their comments you can have a hopeful tone to your voice, thanking them and looking forward to a productive meeting
- ✨ If you would like to change some of their ideas, voice will be a more persuasive way of asking them if they would consider some alternatives and would it be OK if you were to send these through in writing for their comment.

Keep doing this until you have agreement on:

ARRANGEMENTS

- ✨ Where and when you are going to meet (is where a suitably neutral location for them?)
- ✨ Who else will be there (if anyone)
- ✨ What their role will be (supporter, facilitator)
- ✨ When it starts and finishes

GROUND RULES

- ✨ Ability to stop and take a breather at any time
- ✨ OK to take notes?
- ✨ If notes, who show them to?
- ✨ Who tell about the meeting?

OBJECTIVE

- ✨ To start a dialogue and see where it goes?
- ✨ Would it be helpful for them to understand your position better?
- ✨ To gain a better understanding of what the other would want to happen now?
- ✨ To clear up possible misunderstandings from the last meeting?

TOPICS

- ✨ Could we re-establish some form of communication with
- ✨ Was there anything specific they would like to raise?

This may sound a complex and time consuming sequence, but it is likely to be more effective in the end. This is preparation and negotiators and athletes will all tell you the power of effective preparation.

ENDING A MEETING

At the end of a meeting it may help to ask each other two questions:

- 1) What did you get that was good from our meeting?
- 2) What was not so good?

The answers can cover anything – from a feeling about how you were treated, to the decisions that were made. Be honest with each other – even if it is about something negative. This is an opportunity to check on how the underlying relationship is going, what specific topics or behaviours are working to strengthen the relationship and what issues still remain to be improved. This is information you need – without it you may make assumptions which are erroneous.

TONE OF VOICE : TRANSACTIONAL ANALYSIS

Like many learning tools, TA can be useful as a simple visual representation of how we can talk to each other and the effects of the language we use. And while there is loads of information available on the internet about TA, again like many tools it sometimes falls apart if you go into it too deeply. So this is intended to give you an introduction which may be useful, without going into too much detail.

TRANSACTIONS

The principle is simple – whenever we talk to each other we are engaging in a transaction. Most conversations have a purpose, for example:

- ☀ To get someone to agree with you
- ☀ To gain information
- ☀ To get someone to take an action

So the idea is that this involves a “transaction” between the people in the discussion – ideally both sides get something from the discussion.

PARENT ADULT CHILD “STATES”

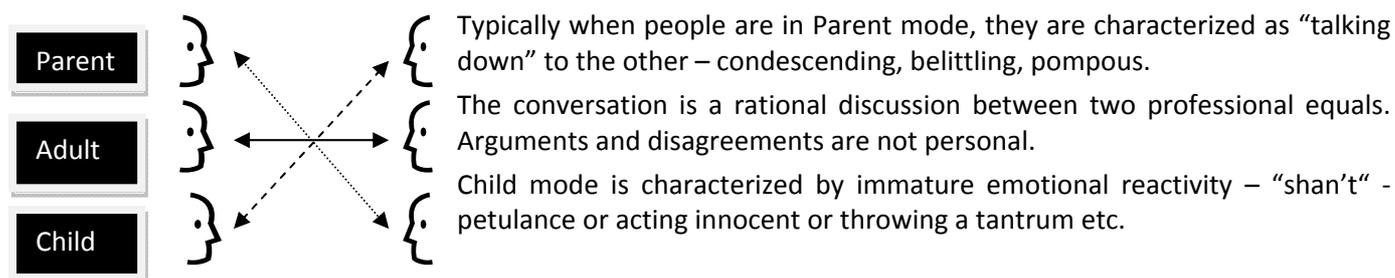
The idea is that in initiating a conversation or responding to it, we can adopt different communication styles, based on one of or a mix of three “states” we could adopt– as a parent or an adult or a child.

The idea is that certain “states” or a mix of them may be more appropriate depending on the outcome we seek to achieve from the conversation. Some basic points to remember about these states:

- ☀ None of them is “right” or “wrong”.
- ☀ You are not fixed into one state or another – we all have the power to move from one to the other, or adopt a mix depending on the circumstances.
- ☀ Each state is characterized by the type of language used, as shown below.

If we are in one state, by use of language appropriate to that state, we can encourage, or in some circumstances force, the other person into one of the other states.

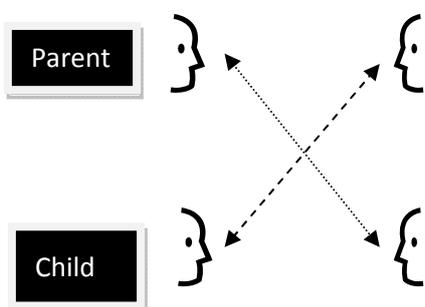
This latter point creates the diagram you may have seen that looks like this.



Now obviously you could have an Adult to Parent conversation or a child to adult, so the lines could become very complex – which is one reason for keeping this simple.

THE PARENT / CHILD TRANSACTION

In this type of conversation, one person tends to assume that the conversation is not between equals, so they can adopt, unconsciously, a number of assumptions which affect the style of communication they use:



- I am more experienced than you, so what I tell you is right.
- I don't expect or want a discussion about this.
- I want some instant action or outcome from you based on what I say.
- You don't care what I think
- Why should I listen to you
- I don't like this conversation, I want to be somewhere else.

An example where adopting an extreme parent mode may be appropriate:	An example where adopting an extreme parent state may be inappropriate:
A child is walking towards a road. You say "Stop – come here". You know the road could be dangerous, they are moving towards it and you have no time for a detailed explanation. You want an instant response from them. You want to them to come to you where you can protect them. A detailed explanation can come later as part of their learning.	A Chairman is talking to a Director about a particular problem. Rather than listen to what the director has to say, the Chairman has his own ideas and starts by saying "well, in my experience, the only approach is for us to ...". He ignores the director's contribution, effectively saying it is worthless, expecting him to comply, so reducing his power & status, etc etc.
Possible response	Possible response
The child comes to you. They may be frightened by your tone of voice. You can calm and reassure them of your love and explain the need to be careful of the road. The child recognizes your love for them and your greater experience – hopefully next time you say stop, they will do so immediately, whatever it is they are doing.	The Director reacts against being treated like a child, disagrees with the Chairman's view (by now whether it is right or not); he may not implement the ideas or do so half-heartedly. The issue isn't dealt with and gets worse. In time the Director is so annoyed at being treated like this, he leaves the company.

LANGUAGE OF THE PARENT / CHILD STATE

The words we use in the parent state are fairly obvious:

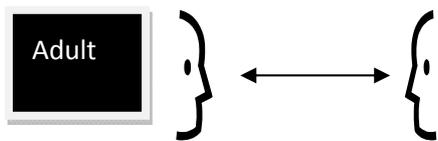
- Parent : " I believe", "you should", "my idea is", "it is my view that", "the only way" etc.
- Child : "I don't see why" "Why should I" You don't listen to me " etc.

SUMMARY

- There are times when the parent state, or a mix of parent and adult, can be appropriate to the situation or discussion.
- In adopting the parent state, we carry assumptions about the power balance in the discussion and tend to use different language accordingly.
- Parent language is "personal", often dominated by the word "I".
- We need to be certain that being in "parent mode" is going to result in the outcome we want – and
- that the effect we have on the other person is also the one we want, both in the short and long term.

THE ADULT / ADULT TRANSACTION

In this type of conversation, both individuals assume that the conversation is between equals, so their assumptions will again affect the style of communication they use:



- I am interested in gaining information from you.
- I am interested in your thoughts and ideas.
- I would like to reach a collaborative agreement between us on the action we should take.

An example where adopting an adult mode may be <u>inappropriate</u> :	An example where adopting an adult state may be <u>appropriate</u> .
A child is walking towards a road. You say “I wonder if you have considered the implications of walking into the road? Did you know that cars can be dangerous and could cause you harm?” You know the road could be dangerous, but you want to explain to the child why that might be.	The Chairman of a company is talking to a director about a particular problem. Rather than tell him what to do, the Chairman invites the Directors’ ideas and starts by saying “what are your thoughts about this problem, what would your suggestions be to overcome it”. He is encouraging the director’s contribution, effectively saying it is valuable, seeking information and views to balance with his own, so they can come to an agreement about what to do
Possible response	Possible response
The problem is the child may not be capable of understanding a detailed explanation, they may not stop moving towards the road as there is no urgency in your voice and they get hurt.	The Director reacts positively to being treated like a valued equal. They spend time having an interesting discussion about how to solve the problem – it is not a personal discussion where one could win or lose. They arrive at a mutually understood conclusion which the Director wants to implement whole heartedly. So the problem is dealt with properly. The Director is more prepared to listen to the views of the Chairman in future.

LANGUAGE OF THE ADULT / ADULT STATE

The words we use in the adult state are also fairly obvious:

- “What do you think about”, “How would you approach this”, “what ideas do you have about” etc.

SUMMARY

- There are times when the adult state can be appropriate to the situation or discussion.
- In adopting the adult state, we assume equality of power in the discussion and tend to use different language accordingly.
- Adult language is objective, about the problem not the people
- We use “adult state” language to encourage (lots of “you”) the other person to join in the discussion, to value their contribution in order to result in their support for the outcome – and
- To signal this is likely to be the type of conversation we could have in the future, so building trust.

TONE OF VOICE / ATTRIBUTION THEORY

Given the ideas in Transactional Analysis, think about the tone of your voice before you hold the conversation. Consider also the mind set of the other person – in conflict they will attribute negative motivations to your words and actions, so they will be ultra-sensitive to you sounding patronizing or bossy or dismissive or cold – all the things you would not want to feel were you in their shoes.

Low pitched, gently modulated voices are shown to be the most calming and persuasive – call centres would all employ 35 year old women from the Highlands of Scotland if they could.

Our voices become higher pitched if we are tense and lower pitched and more natural as our vocal chords warm up – why singers practice scales before a performance – so before each conversation, practice out loud what you wish to say. This will both help you to hear the tone of your voice and feel the impact of your words, but also warm the vocal chords.

CAREFUL USE OF LANGUAGE

Meaning is in the mind of the listener – what you meant by using a word will not necessarily be the listener's interpretation, especially if they are attributing negative motivations to everything you do or say.

Also remember you are attempting to inject an objective tone to the language being used, so think carefully about some of the phrases you might commonly use, but which might open the way for an emotional and unexpected response.

For example :

- ✨ You suggest something and ask “would you feel happy with / like that”.
- ✨ The response you get is “I would feel happier / like it better if you jumped off a cliff”.

So you could suggest something and ask:

- ✨ I wonder what your thoughts would be on that
- ✨ I would welcome your thoughts on this

ACTIVE LISTENING

Hearing someone is a biological act we all do unless we're deaf. Listening requires that we process the information we have heard to create *understanding*.

If Open Ended questioning is designed to generate information, then Active Listening is how you show you have understood (you do not necessarily need to have agreed with) what you have listened to. It is based on the simple salesman's premise that you have two ears and one mouth – use them in that proportion!

Active Listening involves two things:

1. Positive body language : lean slightly towards the speaker, engage eye contact, nod occasionally, make the occasional encouraging noise.
2. Responsive Questions/Statements : statements or questions which demonstrate or check your understanding of what they have just said (so showing you have listened, not just heard).

Initially these seem clumsy, but they demonstrate care and politeness and put the recipient in a frame of mind to answer carefully, rather than react emotionally about the questioner rather than the question.

ACTIVE LISTENING STATEMENTS

ACKNOWLEDGING	AFFIRMATION
That sounds really important to you	Thanks for explaining that so clearly
CHECKING/CLARIFYING	INFORMATION GATHERING
Am I right in thinking you said? Can I just ask what you meant by? Can you explain that a bit more? Can you help me with this? If Then is ...?	Can you help me to understand what you think about? What is most important to you about? Can you say a bit more about? What are you thinking now?
UNDERSTANDING ATTITUDES/MOTIVATIONS	REALITY TESTING
What needs to happen for you to do? Any thoughts on how we might move forward? Where do you think this is going? If you had a magic wand what would the future look like? What could that (a desired result) look like?	If you don't get a settlement today, what happens next? If this is/isn't resolved today, how will you feel tomorrow? If you were doing their job, how would you see this? What would be the effect of that? How do you think they see the situation? What could you live with?
SUMMARISING	
I think this is what you said, but can I check that it was	So, if I've got this right, there are three things we need to deal with. First

COMMON INTERACTIONS : HOW WOULD YOU PHRASE THEM

YOU NEED TO TELEPHONE YOUR COLLEAGUE

What words do you use to greet each other	What response do you want to get?

YOU NEED TO EMAIL YOUR COLLEAGUE

What words do you use to greet each other	What response do you want to get?

YOU GET AN ABRUPT EMAIL FROM YOUR COLLEAGUE

Do you respond by email or by telephone?	What response do you want to get?

YOU MEET YOUR COLLEAGUE UNEXPECTEDLY

What words do you use to greet each other	What response do you want to get?

YOU ARE GOING TO BE IN A MEETING WITH YOUR COLLEAGUE

What words do you use to greet each other	What response do you want to get?

Do you sit next to or opposite them?	What response do you want to get?

YOU NEED TO RAISE A TOPIC THAT YOU THINK MAY BE DIFFICULT FOR YOUR COLLEAGUE.

Do you call them first or write them an email?	What do you want them to do initially?
What words do you use to introduce the topic?	What response do you want to get?

YOU ARE IN A MEETING WITH OTHERS FROM YOUR ORGANISATION AND YOUR COLLEAGUE SAYS SOMETHING YOU DISAGREE WITH.

What words do you use to introduce your doubts?	What response do you want to get?
Having made your point, what do you say then?	What response do you want to get?
They still disagree with you. What do you say?	What response do you want to get?

YOU ARE IN A MEETING WITH OTHERS FROM ANOTHER ORGANISATION AND YOUR COLLEAGUE SAYS SOMETHING YOU DISAGREE WITH.

Do you raise your concern or keep it for later?	
How do you warn them that you disagree?	What response do you want to get?
If you decide to raise your doubts, what words do you use to introduce them?	What response do you want to get?
Having made your point, what do you say then?	What response do you want to get?
They still disagree with you. What do you say?	What response do you want to get?