

## Mediation Case Study

A Company approached us to help them reduce the number of employee disputes.

At the time the Company was dealing with a large number of informal grievances a year, with a significant proportion of these turning into formal grievances.

Some disputes were taking a long time to resolve, damaging working relationships and taking an enormous emotional toll on the employees concerned.

The financial costs were also high. Disputes that ended up in an employment tribunal were typically taking up around 32 days of senior managers' time at a cost of over £30,000.

Looking at all these aspects it was clear there was a better way of dealing with conflict in the Company which addressed the issues more quickly.

We had used mediation in other companies and suggested the Company began looking at the possibility of using mediation.

A project team was set up, made up of other senior managers and HR who worked out the details and a mediation service was launched.

To keep costs down and make sure that mediators understood how the Company worked, in-house mediators were trained. The company uses our company as external mediators only in exceptional circumstances.

Initially a small section of the team attended a training course. After passing an exam at the end of the course, they became accredited mediators. They then shadowed our team of mediators to build up their confidence and understanding of mediation. Finally, they began offering their services within the Company, at first mediating only in relatively straight-forward disputes.

### How mediation works

It is important to always work in pairs. So once an employee has agreed to try to resolve a grievance through mediation, the Company will allocate a lead mediator and an assistant.

The mediation itself usually starts with the mediators holding meetings with each of the parties, generally meeting the person who has brought the grievance first to establish exactly what he or she is aggrieved about. Each party then signs a pre-mediation agreement.

This states that:

- They are entering mediation voluntarily.
- The process is confidential and no information provided by either party during the mediation will be used in any future legal claim.

On the day of the mediation, the two parties deliver opening statements setting out their position and what they are hoping to achieve through the mediation. Aggrieved parties can deliver this statement themselves or ask someone else to do this on their behalf.

After the opening statements, the two sides retreat to private rooms, while the mediators go back and forth, trying to bridge the differences between them. If the mediation has been successful up to this point, there will then be another collective meeting where final terms are agreed and the two parties sign a

written agreement. While this document is not necessarily legally binding, it provides a symbolic gesture that the two parties have reached agreement.

If the deal says that the aggrieved employee will leave the Company with financial compensation, lawyers for the two sides will turn that informal agreement into a formal settlement agreement. But if the mediation results in the employee returning to the workplace, the mediators will hold follow-up meetings with the two parties after six weeks, three months and six months. This enables them to check that the agreement is holding and identify any emerging problems that need to be addressed.

Originally, the Company used mediation only to settle grievances brought by employees and not disciplinary cases. However, once a culture of resolving conflict through mediation took hold, it became difficult to justify the distinction between the two kinds of cases.

The Company still has traditional policies covering disciplinary and grievance issues, as well as those linked to performance, attendance and restructuring. But all these policies now refer to mediation. The same goes for contracts of employment, which state that mediation is the Company preferred way of dealing with workplace conflict.

Employees do not have to accept mediation and even if they do, can opt out of the process at any stage and revert to a formal grievance procedure.

According to the team, mediation has transformed employee relations across the Company.

The impact of mediation on tribunal claims is less clear-cut. The Company has never had to defend many claims, though one year the number reached 30. Currently there are around six claims a year - a modest number for the size of company.

Mediation cannot be used in every situation. The Company does not use it in cases involving allegations of fraud or other criminal conduct.