

Using Mediation a Practical Guide	
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Applicable for	This provides England Netball Managers, Disciplinary Secretaries, Regional Management Boards, Netball Clubs and Regions with guidance on how mediation can help to resolve conflict and disputes.
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An introduction to using Mediation

England Netball have a Codes of Conduct which sets out the high standards expected of those who are participating in the sport of netball. They promote respect, good sportsmanship, high standards of behaviour and ethics.

The Codes of Conduct have common standards which apply to all and some specific standards to the role being carried out e.g. official, coach, committee members and parents/carers.

All members are required to abide by these Codes. In addition, clubs should ensure that the Codes are well known and promoted, so that there is a culture of mutual respect and a discrimination free environment for all to enjoy the sport.

England Netball have established a disciplinary process which is used at County, Regional and National level. On occasions when behaviour falls below the standards set out in the Codes of Conduct, the Disciplinary Regulations are used to advise on the decision making process. Each County Netball Association and Regional Management Board must have a Disciplinary Secretary who is responsible for the administration of

the disciplinary process and for advising on procedural matters. Independent members are trained to a common standard to make decisions at each stage of the process.

England Netball encourage Disciplinary Secretaries supported by Regional Management Boards and County Netball Associations, to consider resolving disputes between parties informally prior to the formal process in the Discipline Regulations.

One method used to resolve disputes between parties is known as mediation. This guide will help to support those who deal with a breach of the Codes of Conduct, by providing more information on the mediation process, when it can be used and which situations are more favourable to mediation.

Not all situations will be suitable for mediation. This guide will help you assess those disputes which may benefit from early intervention through mediation. It is important to act quickly in the early stages of a dispute when considering mediation. All parties should be reassured that confidentiality will be maintained and mediation is a voluntary process.

The advantages of resolving conflict through mediation include: -

- It allows each party to re-establish communications if they have broken down
- It can change disputing behaviour and resolve conflict
- Work out realistic workable solutions
- Treat people fairly and maintain a balance between parties
- Empower people to find their own solutions
- Mediation can help all parties where preserving a future relationship is important.

This guidance is part of a toolkit which England Netball have produced to help support managers and volunteers who are dealing with different issues on a daily

How does Mediation work?

The mediation process works in different stages. Initially it is important to find out more about the situation and check it is something which mediation would benefit from. Before seeking third party assistance, Disciplinary Secretaries should have a good

understanding of the dispute. A good starting point is the Mediation Information Sheet (appendix A) which can be used to collect information about the dispute.

Once this has been assessed, mediators will aim to resolve the conflict by empowering each party to work out their own solutions. The mediation process is confidential and voluntary. Each party may feel at any stage during the process that they do not wish to proceed.

A mediator will then need to decide which party to meet with first. The first meeting with each party in dispute is important, as it gives a chance for the mediator to explain his or her role and how the mediation process works. It is also a chance for the mediator to build rapport and trust with each of the clients and explain the need for confidentiality throughout the process. Once the introductions have been explained to each party, the mediator will try and use the first meeting to find out more about the situation by listening carefully and explore ideas to establish what each party is seeking. It is important that each party is given the opportunity to describe the situation and how it has affected them.

Once this stage has been completed, the mediator will start working on the dispute by identifying the next steps and the best way to progress the case. At this point the mediator will need to consider choosing either face to face mediation or continue with shuttle mediation as a proposed way forward.

The first contact meeting with each party will usually establish if a face to face meeting can take place. It is important to agree ground rules with face to face mediation so that both sides understand the process.

The benefit of face to face mediation is that both parties meet usually in a neutral venue with a mediator and open a direct line of communication with each other. Communication often breaks down in a dispute, so a meeting will allow each party to listen and talk about the issues with a mediator present. This type of mediation can be harder to manage, but has the benefit of each party being able to see each other's reactions and the impact the dispute is causing.

Where a face to face meeting is not possible or face to face mediation has failed, it may be possible to try shuttle mediation. In this case the mediator will see each party separately and although shuttle mediation can take longer, it has the benefit of being useful in cases where one party is nervous or has serious concerns about meeting the other party. It can also allow the parties space and thinking time as they do not need to respond immediately.

At the conclusion of the meetings the mediator will seek to obtain an agreement from each party. Written agreements have a practical and symbolic use. They are not legally binding, but are useful if parties require them for confirming what has been agreed when moving forward.

When can Mediation be used?

Not all situations are favourable to mediation. For mediation to be successful, it is important to start earlier in a dispute before either party have pursued legal action or litigation. Speed is also important, as mediation allows those involved to retain control of the outcome. If a breach of the Codes of Conduct or complaint has been received, emphasis should be placed on informal resolution at an early stage. Disciplinary Secretaries are advised to collect as much information as possible about the complaint or dispute by filling in the attached Mediation Information Sheet (appendix A) which will assist a mediator if they become involved.

It is important to note that if legal proceedings have already started, it may be the case that one or both parties need a legal judgment to decide the dispute rather than finding the solution with the help of a third party. If this is the case, then the situation would not be favourable to mediation. Other situations which involve drug or alcohol abuse, mental health issues, or if one or both parties are unable or unwilling to negotiate, mediation may not be favourable.

Quite often parties in dispute have stopped communicating with each other or may not have even tried to communicate. There are various reasons for this. It could be a lack of general trust or neither side have had the courage to open communications. If both sides

wish to settle the dispute but are unable to find a solution, mediation may be helpful in this instance. If ongoing future relationships are important to both sides, this also makes the situation more favourable to mediation.

For mediation to be successful, both sides should be participating on a voluntary basis and understand the need for confidentiality. This is important so that each side builds a rapport and establishes some trust. A mediator needs to be aware if there is an imbalance of power where one party tries to influence the outcome or events to their advantage. Examples include emotional imbalance, greater resources, more detailed knowledge or higher status, which are all possible situations of a power imbalance.

When faced with a situation like this, establishing ground rules can help with the balance of power. However, mediation works best in situations where there is no difference in the balance of power.

Circumstances **most favourable** to mediation: -

- Ongoing relationships are important
- Those involved want to retain control of the outcome
- There is no great difference in power between disputants
- Confidentiality is important
- Both sides need the opportunity to let off steam
- The parties have stopped communicating to each other and are prepared to use an impartial third party to help them communicate
- Not dealing with the dispute is unacceptable to both sides

Circumstances **least favourable** to mediation: -

- There is a great imbalance of power between the parties
- A higher authority judgment is required
- Legal action is already being carried out
- The parties are not willing to participate
- One or both sides feel unsafe
- Positions on both sides are extreme and have hardened

The role of the Mediator

A mediator is sometimes seen as a neutral independent third party who may be able to assist or facilitate those participating in resolving their dispute. The role of a mediator is not to impose or decide on a course of action, but to help guide parties towards a mutually acceptable agreement. A mediator can help the parties involved to talk about their problems, listen without judging and empower them to find their own solutions.

Whilst not prescriptive, a mediator's role will include exploring issues or problems and focusing on the future rather than past behaviour. A mediator will also help people to identify needs, clarify issues and explore situations which could ultimately lead to an agreement. A mediator needs to be impartial, maintain confidentiality and be flexible when the situation requires. In addition to this, the role requires certain skills such as active listening, ability to communicate well and solve problems.

A mediator requires certain skills and qualities to be able to assist parties in resolving their disputes. Unlike other methods of resolving disputes such as litigation or binding arbitration, a mediator will not impose a solution but empower individuals to find their own solution to the dispute. To be able to do this effectively, a mediator's role will include managing the mediation process from the start by helping individuals to remain focused on issues and facilitate dialogue between parties. Whilst mediating, it is important to have the ability and skill to remain impartial and non-judgemental with a genuine commitment to equality. We are all different, but all equal.

For each party to be able to discuss issues openly and freely, a mediator's role will include explaining the importance of maintaining confidentiality throughout the mediation process.

The role of the mediator is to facilitate parties in a dispute to build a realistic agreement which they are all willing to accept.

A mediator's role will involve collecting information by the effective use of questions. Setting the boundaries or guidelines during the process and when necessary if one side is less able to speak, will help to balance the negotiating power so that all can have a fair say.

The mediator must control the process by keeping an overview of the problem and looking at different possibilities and potential barriers. Although this does not include influencing the solution the parties select, it may include setting the agenda to help prevent discussion veering off course.

Definitions

There are a wide variety of terms in the field of mediation. The main ones are included below:

Third party/intermediary- a person or group who is not directly involved in a dispute and who helps the parties who are working towards a resolution

Mediation- A process by which an impartial third party helps disputing parties work out an agreement. The disputants not the mediator decide the terms of this agreement. Mediation usually focuses on the future rather than past behaviour.

Shuttle mediation- is a process where mediators assist the parties involved in a conflict to reach agreement without them being present in the same room at a mediation meeting.

Arbitration- A process in which an impartial third party makes a final, usually binding decision. The discussion and decision while structured, may not be as rigidly restricted by formal procedures and rules of evidence, as in Courtroom procedure.

Litigation- The process of settling a dispute in Court according to legal statutes, with advocates presenting evidence on behalf of the parties involved. Essentially an adversarial process.

Advocacy- Intervening or negotiating on behalf of another party.

Different methods of dispute resolution

Principles of Mediation

Mediation is different from other methods of conflict resolution. To understand how it is different, it is important to understand the principles of mediation and how it differentiates from other forms of conflict resolution. Where a Court or arbitration may concentrate on areas of disagreement between parties when making a judgment, mediation focuses on points of agreement and a positive way forward which both parties can agree.

Mediators are impartial. Whilst they will meet with each party involved in a dispute, they do not take sides. This is different to litigation and arbitration where evidence in some cases is used to discredit the other party and a judgment will favour one party or the other. It is also important to differentiate between mediation and other forms of conflict resolution, in that any final agreement reached with the parties through the mediation process is not legally binding on either side.

One of the main principles of mediation is confidentiality. Each party are usually asked to sign a confidentiality agreement before mediation is commenced which is different to litigation which can attract publicity and may be in the public domain if it reaches the Courts.

Litigation

Not all situations are suitable for mediation. When litigation is involved to resolve an issue through the Courts, communication between disputed parties has quite often broken down. In these cases, information is supplied to a lawyer or an advocate about the case. The lawyer will then represent their party's position and although each party may be asked to testify in support of their case, they are not involved in the resolution. a Judge or Jury will make the decision. With mediation, it is a voluntary process and all parties involved must agree or wish to take part. Unlike the Courts, any final decision on a way forward or settlement to the issue is made directly by the parties involved. The mediator will provide structure, encourage communication, exchange of feelings and help each side manage conflict. The parties involved have more control of the outcome unlike arbitration or litigation.

Arbitration

Another form of conflict resolution is called arbitration. Although not as formal or rigid as litigation, decisions are still made by a third party. Arbitration is different to mediation, because the disputed parties present information about their case to a third party. After listening to each side, the third party will work out an agreement to try and meet the interests of all parties involved without the direct involvement of each party. The agreement is also usually binding.

Active Listening Skills

A key task in mediation is active listening. In many disputes, the message people wish to give is not heard the way they intended and misunderstandings exacerbate the conflict. Listening with attention and respect shows that what people are saying is important. This is reinforced with reflection and clarification.

A core skill for a mediator is to be an active listener. The mediation process encourages active listening, because it is about the party's view not the mediators. If you can help people to listen to each other, then they will be able to understand the other person's perspective, rather than trying to score points over them. An active listener will tune in to how the other person is feeling by matching the feelings of the other person. This helps to ensure that you focus in on the other person's response rather than your own. An active listener does not interrupt and does not judge the other person either explicitly or in the mind.

Active listening skills check when you are not sure for example
'you seem to be very angry', 'am I right in thinking you said...'

Seeking clarification when unsure for example
'I am not sure I understand. Did you say....?' 'Did this happen three times, or did you say twice?'

Showing empathy when the situations requires for example
'I can understand why you are worried by this', 'I think this situation has been very difficult for you, and you are getting impatient.'

At certain points summarising for example

‘so there seems to be several things that are important to you....’ ‘it started out quiet but suddenly the noise seemed to get worse’. ‘There were three incidents over a period of two months’.

There are many benefits from active listening you will learn about facts, feelings, what people believe and how they see situations rather than your own assumptions. Good active listening skills will ultimately result in more effective resolution of problems and disagreements.

Summary of active listening skills

Active listening	Non-active listening
Repeat conversationally back to them, in their words, your understanding of their meaning	Give the other person your version of what you have heard
Don't talk about yourself	Give your own opinions and advice. Talk about your experience
Don't introduce your own reactions or well-intentioned comments	If you're helping with a problem, try hard, make sure you know what to say next
Let the speaker take lead	Introduce new topics to get off the subject if it's uncomfortable
Let them come to their own answer. Don't advise	Give them your answers and advice
Acknowledge their feelings. Don't diagnose, reassure, encourage or criticise them	Reassure them; <i>'it's not that bad'</i> or talk them out of it
Reflect back to them, not only so they know you understand, but so they can hear and understand themselves	Make sure you fix, change, or improve what they've said, especially if you know they're right

Questioning skills

During the mediation process people will describe their issues to the mediator. Quite often things can get jumbled up as sometimes the priorities are not clear and different

parts of the story do not fit together. By asking gradually more focused questions, the mediator can build a clear picture of what is going on.

Effective questioning serves many functions in mediation, such as:

- gathering information
- clarifying or understanding
- refocusing a wandering speaker
- stimulating thinking
- opening up a position
- closing in on a decision

Types of questions

Open questions

Open questions help obtain information and help a party to open up.

Some open questions (and statements) include the following:-

“Tell me more about this . . .”

“How does this affect you?”

“What was your understanding of the situation?”

“Can you describe . . .”

The use open-ended questions or statements early in the mediation can help to gain an understanding of the problem and allows parties to vent and establish rapport.

Closed questions

The use of closed questions, such as those listed below, require a one word or two-word answer, often a “yes”, or a “no”.

“Did you tell her . . .?”

“Did you call him . . .?”

“Can you remember what the time was when . . .?”

The use of closed questions can re-focus when the speaker is rambling, helps direct a party to a specific issue, checks details or gets a quick response.

Other types of questions which a mediator might use include: -

Focused question

This type of question can be used to get the speaker to disclose more facts or information about a specific event or incident.

“Can you tell me how the accident affected your work performance in the last 12 months?”

A focused question can be used when there is time pressure, or the mediator needs to achieve direction.

Clarifying question

This type of question can be used to verify or check facts, content or meaning.

“Is it correct that you were under the impression the machine had been serviced shortly before the accident?”

A clarifying question can be used when you need more clarity on a specific issue or the speaker is not being clear. This can be a useful question to use in separate mediation meetings.

Challenging question

This type of question can be used to check relevance, explore motives, encourage the speaker to be clear.

“How is this relevant to.....?”

“So why do you think they might be doing this?” (seeking motive)

By gradually asking more focused questions, framed in the appropriate tone of voice, will help the speaker and listener clarify facts, identify key issues, demonstrate an interest in the speaker’s perspective and prepare the way for problem solving.

How do I get some help?

England Netball has produced this guidance to help support Disciplinary Secretaries, Regional Management Boards, Netball Clubs and Regions by recognising the principles of mediation and how it can help resolve conflict and disputes.

Whilst it is recognised that sometimes disputes will require external help from a trained mediator, it is for the Regional Management Boards and Netball Clubs to decide if they are willing to support this type of intervention to help resolve disputes.

To assist with the collecting of information relating to a dispute or conflict and to speed up any referral to a trained mediator, a Mediation Information Sheet has been attached to this guidance (appendix A). This will help collect relevant information about the dispute or conflict prior to seeking external assistance.



Appendix A

Mediation Information Sheet	
Person making the request	
Date of the request	
Role or organisation	
Contact Address	
Contact email and Mobile	

Please provide any supporting information about the nature of the dispute or conflict

Have all parties been approached about the possibility of mediation

Signed