

**Health Professions Council
Conduct and Competence Committee – 19th April 2005**

MEDIATION

Executive Summary and Recommendations

1. Introduction

Article 26(6) of the Health Professions Order 2001 provides that, where an Investigating Committee Panel concludes that there is a case to answer in relation a fitness to practise allegation (but not a fraudulent or incorrect register entry allegation), it may, instead of referring the matter to the Conduct and Competence Committee or the Health Committee, undertake mediation.

Similarly, Article 29(4) of that Order provides that, where a Conduct and Competence Committee or Health Committee Panel finds that an allegation is well founded but does not consider that it is not appropriate to take any further action by way of sanction, it may undertake mediation.

Those powers provide an effective mechanism which enables Practice Committee Panels, if they are satisfied that further steps do not need to be taken in order to protect the public, to resolve outstanding issues between the registrant concerned and any complainant or other third party.

As mediation is essentially a consensual process, any decision to mediate needs to be supported by both the registrant concerned and the other party. Clearly, there can be no guarantee that mediation will always achieve a mutually acceptable resolution and therefore, before determining that mediation is appropriate, the Panel must be satisfied that it does not need to take any further steps to protect the public, irrespective of the outcome of the mediation.

In practice mediation is not undertaken by the Panel itself but by a trained mediator appointed to act on its behalf. The Council has standing arrangements with a mediation provider (ADR Group) for the appointment of mediators throughout the UK at the request of Practice Committee Panels. Where mediation is ordered by a Panel the Director of Fitness to Practise will arrange for ADR Group to allocate the matter to an appropriately qualified mediator.

What is mediation?

Mediation is a process for resolving disagreements in which a neutral and independent mediator helps the parties to explore options and work out their own mutually acceptable resolution. It involves use of a common-sense approach which:

- gives the parties an opportunity to step back and think about how they could put the situation right;
- enables participants to come up with their own practical solution which will benefit all sides.;

- allows people to rebuild relationships as they work together to find an agreement.

Mediation is a collaborative problem solving process which focuses on the future and places emphasis on rebuilding relationships rather than apportioning blame for what has happened in the past. It also makes use of the belief that acknowledging feelings as well as facts allows participants to release their anger or upset and move forward.

What is the role of the mediator?

Whatever the context, the role of the mediator is to be impartial and help the parties identify their needs, clarify issues, explore solutions and negotiate their own agreement. Mediators do not advise those in dispute, but help them to communicate with one another.

How is mediation conducted?

First, the mediator will meet each party separately and ask them to explain how they see the current situation, how they would like it to be in the future and what suggestions they have for resolving the disagreement.

If both parties agree to attend a joint meeting, the following steps then take place:

- the mediator will explain the structure of the meeting and ask the parties to agree to some basic rules, such as listening without interrupting;
- each party will then have a chance to talk about the problem as it affects him or her. The mediator will try to make sure that each party understands what the other party has said, and allow them to respond;
- the mediator will then help both parties identify the issues that need to be resolved. Sometimes this leads to solutions that no one had thought of before, helping the parties to reach an agreement;
- the agreement is then recorded and signed by both parties and the mediator. However, it is not legally binding unless the parties decide to make it a legal contract.

2. Decision

The Committee is requested to note the document. No decision is required.

3. Background information

None

4. Resource implications

An arrangement has been made with an outside organisation to be HPC's mediation provider.

5. Financial implications

If a case were to be referred for mediation, HPC would have to meet the cost of the mediation

6. Background papers

7. Appendices

Draft order for referral to mediation

8. Date of paper

11th April 2005

DRAFT ORDER OF REFERRAL TO MEDIATION

The decision of the Committee is that [there is a case to answer in respect of the allegation] [the allegation is well founded] for the following reasons:

Having considered all of the options open to it the Committee is satisfied, for the following reasons, that it would not be appropriate to [refer this matter to the Conduct and Competence Committee or the Health Committee] [take any further action]:

The Committee orders that the following matter, which remains unresolved between [name of registrant] and [name of other party] be referred to mediation:

The Committee further orders that:

1. the mediation be conducted on behalf of the Committee by [name of mediator or description of how the mediator is to be appointed];
2. the mediator inform the Committee of the result of any mediation.

The Committee notes that the parties named above have agreed:

1. to attend the mediation;
2. to inform each other and the mediator in writing, before mediation commences, of what they consider to be the issues to be mediated;

3. to file sufficient documents or other material with the mediator to enable a settlement to be reached at mediation;
4. that the mediator may inform the Committee of the outcome of the mediation.

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