PROCEDURE SUMMARY

This procedure sets out the procedure for the EPUT Mediation Service in which employee disputes and / or conflict can be dealt with informally and confidentially to seek prompt resolution.

The Trust monitors the implementation of and compliance with this procedure in the following ways;

This procedure will be subject to review as per the agreed review schedule of Trust HR policies and as agreed by the Trust’s Partnership Committee.

Compliance with this procedure will be against the Trust’s agreed minimum requirements/standards as detailed within its Auditable Standards and Monitoring Arrangements, as well as the use of internal reporting and recording within the Human Resources Directorate.

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The Director responsible for monitoring and reviewing this procedure is
Executive Director of People and Culture
ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

MEDIATION PROCEDURE

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Appendix 1: Staff Mediation Referral Form
Appendix 2: Confidentiality & Liability Agreement
Appendix 3: Staff Mediation Agreement Form
Appendix 4a: Mediator Assessment Form
Appendix 4b: Staff Mediation Evaluation
ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

MEDIATION PROCEDURE

ASSURANCE STATEMENT

This procedure sets out the framework for the Trust to the management of the staff mediation procedure.

The management of the staff mediation procedure within the Trust will be built on and demonstrate the Trust’s corporate values and behaviours. These values are in being:

- Compassionate
- Empowering
- Open

In demonstrating these behaviours and values, supporting the achievement of its strategic priorities:

- To continuously improve service user experience and outcomes through the delivery of high quality, safe, and innovative services.
- To be a high performing health and care organisation and in the top 25% of community and mental health Foundation Trusts.
- To be a valued system leader focused on integrated solutions that are shaped by the communities we serve.

1. INTRODUCTION

1.1 Essex Partnership University NHS Foundation Trust (the Trust) is committed to encouraging harmonious working relationships between all colleagues. Inevitably situations will arise when working relationships become strained, and the Trust is committed to prompt resolution of such issues.

1.2 In most instances, conflict between colleagues is resolved informally as part of normal day-to-day practice, without recourse to more formal procedures. However, where resolution is not achieved, mediation may assist all parties in reaching a mutually agreeable outcome.

1.3 Mediation can be used to rescue failing workplace relationships before formal policies and procedures need to be invoked or before relationships have reached breaking point. It is also extremely valuable in helping to mend relationships where issues have arisen, complaints have been investigated and action taken.

1.4 Although particularly effective prior to the instigation of the formal procedures it can also be of real value at various points during any of the subsequent stages of a formal procedure, before matters become too entrenched. There is a time and place for formal procedures, but it is in everyone’s best interest if reconciliation can be achieved before this point.
1.5 Dealing with conflict at an earlier stage - at the ‘tension’ or ‘clashes’ stages of conflict - will mean a higher likelihood of resolution where individuals have the opportunity to explain their viewpoint and be encouraged to speak directly to each other.

For this reason, a trust-wide mediation service for dealing with workplace-based issues has been established for use by all, with the expectation that wherever possible, mediation is attempted as an informal method of conflict resolution.

1.6 This service uses a core of identified workplace mediators, who have been specifically trained to ensure they are equipped and able to provide mediation. This includes keeping their skills and training refreshed and up-to-date, as well as having an infrastructure in place to ensure appropriate support.

It is recognised that mediation skills are not exclusive to this group of people, however the named Trust mediators are the only individuals recognised as part of this service.

1.7 This service is complemented and supported by a network of Anti-Bullying Ambassadors whose role is to support staff, act as a ‘listening ear’ and be a signpost to further sources of support and information.

1.8 Staff Mediation is available for all workers directly paid by the Trust as a substantive, fixed term or bank worker. It is not available for agency workers or contractors.

2. **WHAT IS MEDIATION**

2.1 Mediation is the process by which a neutral third party assists colleagues in the resolution of workplace disputes to reach a mutually agreeable outcome. Mediation aims to:

- resolve conflict and reduce tension, anxiety and fear
- resolve conflict at an early stage
- provide a way to deal with behaviour through constructive and effective negotiations which focus predominantly on the parties’ needs and interests and which broaden the search for options and alternative solutions
- encourage individuals to take charge of their own decisions and to accept responsibility for the consequences of their decisions.

2.2 The advantages of addressing a matter through mediation are that it will be confidential, relatively swift, informal, flexible, and the individuals involved are in control of the outcome.

2.3 Where all parties approach mediation in an open-minded, constructive way, it can prove to be extremely successful, and it is therefore recommended that mediation is considered as a means of resolution at the earliest possible opportunity.

2.4 Mediation is voluntary on the basis that both parties must be committed to achieving a mutually agreeable outcome and solution. Parties must not be coerced into mediation, but should have the benefits emphasised to them whenever appropriate.
2.5 Successful mediation will lead to both parties feeling that the outcome is fair, reasonable and appropriate under the circumstances.

2.6 Workplace mediation may be helpful

- for resolving conflict and repairing workplace relationships between staff members
- for resolving conflict and repairing workplace relationships between managers and their staff
- for improving team working

2.7 Workplace mediation is unlikely to be helpful or successful

- in correcting individual competency or capability deficits
- as a substitute for ineffective line management and leadership
- where one or both parties have been pressured into accepting mediation
- where a wide power disparity exists between the parties
- where there have been breaches of Trust policy that are not being dealt with separately
- where either party has broken the law
- where there is long-established conflict or where patterns of behaviour are ingrained.

2.8 Mediation offers a safe framework in which to explore problems, because mediators are

- impartial - they do not take sides
- independent - they are not part of HR or line management
- confidential - what is said in mediation stays in mediation
- skilled – in helping the parties find their own solution.

3. GENERAL PRINCIPLES OF MEDIATION

3.1 Where there is conflict in working relationships, colleagues will be encouraged to consider mediation as a means of resolution.

3.2 The appointed mediator is there as an impartial person to help two people work out a solution they can both work with. It is not the role of the mediator to be judge or jury and they will be neutral to both parties to ensure impartiality.

3.3 Mediation will be strictly confidential between the two parties and the mediator. Once resolution has been achieved, agreement will be shared only between both parties.

3.4 Agreements reached as a result of mediation may be either a verbal or written agreement, and where agreed as appropriate, be shared with the line manager.

3.5 Any notes made by the parties and the mediator will be destroyed after mediation has taken place.

3.6 Any agreements reached through mediation are morally binding. They are not contractually or legally binding on parties. Equally, any discussions and/or agreements are without prejudice.

3.7 Opting for mediation does not compromise an individual’s legal or contractual
3.8 Opting for mediation does not take away an individual’s right and access to any of the Trust’s formal polices or procedures.

3.9 Managers will monitor the well-being of both parties and in conjunction with HR, arrange for additional supportive measures to be introduced as appropriate.

4. OBJECTIONS TO MEDIATION

4.1 It is common for parties to feel intimidated by the prospect of mediation. The objections to mediate are often because people are concerned that the process will not be impartial or confidential, they feel that their right to manage a situation themselves may be undermined, or they may be daunted by the prospect of what issues may emerge during the process and how they may be communicated.

4.2 Impartiality

Unless exceptional circumstances apply, the mediator(s) will not be previously known to either party. If there is a chance that the mediator knows one or more of the parties, they will only proceed with the prior agreement of the parties involved. Efforts will be made during the process by the mediator to ensure that they demonstrate their neutrality, and if any party feels the mediator’s impartiality is compromised, they should request a break and raise their concern immediately directly with the mediator.

4.3 Confidentiality

No information relating to the content of the mediation is stored on personal files and it is the responsibility of all involved to be discreet. All notes created during the mediation will be destroyed on conclusion of the process.

The mediator will explain at the start of the mediation that the only, very unlikely, scenario in which this would need to be reviewed (in conjunction with the parties), is if something is disclosed during the mediation relating to serious misconduct, a criminal matter, or possible harm to any individual. If this happens, they will suspend the mediation and discuss the implications with the individual(s) involved.

Likewise, in the unlikely event that a court of law demanded disclosure in establishing as fact that someone used mediation, then the Trust would have to act accordingly.

4.4 Undermining the right to manage

Sometimes colleagues feel reluctant to enter mediation because they feel this indicates an admission of guilt, abdication of responsibility, or simply lack of confidence. Alternatively, they may feel that they have matters in hand and do not need the intervention of a third party. Both positions are understandable, and no-one should feel forced to participate in a mediation process.

A mediation can run alongside other processes (these processes may be suspended while the mediation proceeds, depending on the issue). Mediations do not necessarily replace them, and cannot resolve all issues.
One of the aims of mediation is to enable colleagues to express and acknowledge feelings in a safe environment. Being given the opportunity to do so often assist colleagues in moving forwards and restoring trust between parties and/or themselves. Colleagues often find the process helpful to clear the air. There is much to gain in participating, whereas resistance may be interpreted negatively. Colleagues are encouraged to give the process a try, in good faith.

4.5 **Emotional impact**

Mediations can be emotional and cathartic experiences, which some colleagues find more difficult than others. The mediators are very sympathetic about this and will be patient. Parties often feel tired but ultimately much better having been able to unburden frustrations. All parties need to be sensitive to the impact of the mediation process itself.

Counselling and support is available through Occupational Health & Well-Being Service [www.optimahealth.co.uk] on 0345 643 4368 or via ang-sa.occupationalhealth@nhs.net and from the Employee Assistance Programme on 0800 731 8627 or via [https://eput.helppeap.com](https://eput.helppeap.com) using Organisational Code EPUT1.

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### 5. CONSIDERATIONS BEFORE MAKING A REFERRAL FOR MEDIATION

5.1 Many situations involving workplace disputes between individuals will be suitable for mediation. However, there are some issues that will impact on the engagement of the parties, and therefore the general prospect of success, which should be considered:

- What are the circumstances of the people involved? Does their health mean that they may be particularly vulnerable or need extra support during a mediation process?
- What is the likelihood of the parties meeting or working together in future?
- How keen are the parties to mediate? Do they need reassurance about the process?
- Do the parties have a realistic understanding and expectations of mediation?
- Are the parties clear about what they hope to achieve? If not, a mediator may help them to define and prioritise their objectives.
- Are there ongoing formal processes which may impact on a mediation, or be affected?

5.2 These are not necessarily barriers, but should be brought to the attention of the relevant HR Business Partner, who acts as the mediation coordinator. It may be helpful for them to speak with a mediator beforehand to ask questions.

5.3 A referral can be made by an individual worker, a line manager or supervisor or by an HR Adviser or accredited representative of a recognised Trade Union where the reason for requesting mediation has been previously discussed with
individual(s) or line manager(s).

5.4 To instigate a request for mediation the Workplace Mediation Referral Form will be completed and sent to the HR Business Partner for an appropriate mediator to be appointed (Appendix 1).

6. RELATIONSHIP WITH THE GRIEVANCE PROCEDURE

6.1 Given the positive outcomes that can be achieved, individuals should seriously consider mediation prior to instigating a formal grievance.

6.2 To maximise the opportunity for a successful outcome, individuals who are part way through the grievance procedure may also opt for mediation. Where mediation is opted for part way through the grievance procedure, the formal procedure will be temporarily stayed pending the outcome of the mediation.

6.3 Mediation may also be beneficial at the close of a Grievance to help restore trust and repair working relationships.

7. IDENTIFICATION OF MEDIATION

7.1 Mediation identified by the Individual

There are a number of informal ways in which an individual may seek mediation – this may be through speaking to a work colleague, one of the Trust’s Anti-Bullying Ambassadors, or Occupational Health, or via one of the accredited representative of a recognised Trade Union.

Once one or more parties wish to pursue mediation, they should contact their local HR Business Partner, whose role is to act as a mediation coordinator and identify a suitable mediator.

In identifying a suitable mediator, wherever possible, consideration will be given to ensuring that any specific preferences of the parties are taken into account (e.g. mediator’s job role) and travelling distance between the mediator and parties.

The HR Business Partner has final responsibility for appointing the mediator. The HR Business Partner will also take responsibility for making contact with the relevant parties involved in the mediation process.

7.2 Mediation identified by HR

Where there is either an Occupational Health recommendation, or the HR Adviser believes that mediation would be a better method of resolution for a case that is currently being dealt with through a formal procedure, they will discuss it with the HR Business Partner.

Where staff raise concerns through the Staff Engagement Team and it is identified that mediation may assist with supporting resolution this will be raised to the HR Business Partner.
Where there is agreement that it is appropriate to try and mediate the situation, the line manager will seek agreement with those parties affected, and put the current formal process in abeyance pending the outcome.

7.3 **Mediation identified by the Manager**

Where a line manager believes that mediation is an appropriate course of action, this will be discussed with their local HR Business Partner and the steps as set out above followed.

7.4 **Multi Party Mediation**

There may be instances where two mediators are appointed to mediate between two parties. This may be because the dispute is particularly complex, or may assist in the development of the trained mediators.

Given that mediation is designed to enable colleagues to resolve issues at the earliest opportunity, every effort will be made to organise mediation meetings as quickly as possible. All parties and mediators will need to prioritise the mediation in order for this to be possible. Swift action often has a positive effect on the outcome.

Both parties must indicate their agreement to the ground-rules set out by the mediator.

In multi-party mediations the mediator will hold one-to-one meetings with all parties and then agree with the parties who should be brought together for a joint meeting and when. It may not be the case that all parties need to meet with each other, and joint sessions will not be likely to involve more than four people at a time.

7.5 The ultimate decision about whether mediation is suitable and is likely to be helpful in any particular case rests entirely with the mediator. The mediator may judge from the preliminary information that mediation is not appropriate or may decide after either or both of initial meetings that mediation will not proceed.

8. **THE MEDIATION PROCESS**

8.1 **Stage One – Individual Meeting**

The mediator will meet both parties individually for the purpose of:

- explaining the role of the mediator and the process of mediation, including confidentiality; and
- defining the core issues, exploring initial ideas and shaping expectation of what the parties want in terms of outcomes expected
- ensuring that both parties agree to mediation
- preparing both parties for the joint meeting

At the start of the Individual Meeting the individual and the mediator will read and sign the Confidentiality and Liability Agreement (Appendix 2).
The mediator may need to meet either or both parties again to clarify any further issues arising from stage one.

8.2 **Stage Two – Joint Meeting**

The mediator will arrange a suitable venue, where there will be no interruptions and confidentiality will be preserved. Ideally this will be at a mutually agreed location. The face-to-face mediation should be arranged at the earliest possible opportunity.

**Setting the Scene**

The mediator will:

- welcome the parties and make any necessary introductions
- set the boundaries and ground-rules
- explain and agree the process with both parties
- clarify and summarise the areas of conflict.

**Identifying the Issues**

The mediator will:

- explore the issues with both parties
- seek clarity where necessary to ensure understanding
- encourage communication
- manage any conflict during the early stages of the discussion
- encourage a mutual understanding about the issue(s)
- identify any concerns about the issue(s)
- encourage a change of focus from the past to the future
- summarise areas of consensus and disagreement.

- **Building Agreements**
  - Mediation will work towards:
  - generating and evaluating options
  - encouraging problem solving
  - an acceptance or acknowledgement of conciliatory gestures
  - encouraging both parties to focus on future resolution rather than the past problem
  - constructing agreements
  - agreeing any review periods
  - creating fall back arrangements
  - identifying what to do next if no agreement is reached.
8.3 If a mediation stalls, or the parties are having difficulty identifying ways to resolve a problem, it may be possible for them to ask a mediator to suggest some options for them to then consider. The mediator will only do this if invited and if they feel they are able to provide the required support.

If mutually agreed the outcomes of mediation can be recorded on a Mediation Agreement Form (Appendix 3) which is only shared with the individual parties and the mediator unless all parties agree to share with another third party, for example the line manager.

It is reinforced that agreements reached through mediation are morally, not legally, binding, even where recorded as written agreements and signed.

8.4 Closure and Follow Up

Mediation will be concluded when both parties agree that they have dealt with the conflict and have reached a mutual agreement with a clear understanding of what has been agreed. Alternatively, where the mediator feels as much progress has been made as reasonably can be expected to have been achieved at that time.

An agreement may be drawn up in clear unambiguous language for signing by both parties. A template of a written agreement is attached as Appendix 3. If the parties prefer not to formally record their agreement they may choose to communicate the main elements in an email or memo which they share.

It will be agreed who, if anyone, retains a copy of any written understanding. Confidentiality will be respected.

In the event that mediation does not achieve the desired outcome, a party may opt for the Grievance procedure to be instigated, or resumed, as necessary. Given the confidential nature of the mediation process, where this is the case, papers relating to the mediation process will not be disclosed as part of any subsequent formal procedure.

The Mediation Adviser is responsible for updating the relevant HR Business Partner(s) on the final outcome of the mediation. This is in terms only of whether the issue has been resolved and no further information will be shared. The HR Business will provide updates to the Workforce Transformation Group in respect of mediation activity which will be anonymised and relate only to number of referrals for mediation received and number of resolutions achieved.

On conclusion of the mediation, the HR Business Partner will request that both parties involved in the mediation process complete and return a Mediation Assessment form (Appendix 4). Individuals will be asked to complete and return these on a confidential and anonymous basis to the HR Business Partner(s) who have responsibility for the monitoring and management of the Trust’s Staff Mediation Service.

In addition to this, the HR Business Partner will be responsible for ensuring the Mediation Adviser also completes and returns their mediation evaluations form.
9. REPRESENTATION

9.1 Individuals will be allowed to bring an accredited representative of a recognised Trade Union or current work colleague as additional support at any pre-meeting stage of the mediation process.

Any such ‘pre-meet’ is for the purposes of explaining the mediation process and it would therefore be appropriate to allow such additional support at this stage.

9.2 Individuals are not however permitted to be accompanied at the actual mediation stage - during either the individual (Stage 1) or joint face-to-face meetings (Stage 2) with the mediator. In very exceptional circumstances this may be permitted, the mediator will have the final decision should this occur in consultation with the HR Business Partner.

10 MONITORING OF IMPLEMENTATION AND GOVERNANCE

10.1 This procedure is subject to review as per the Trust HR review schedule and as agreed by the Trust’s Partnership Committee.

10.2 Compliance with this procedure will be against the Trust’s agreed minimum requirements /standards as detailed within its Auditable Standards and Monitoring Arrangements

11 POLICY/PROCEDURE REFERENCES /ASSOCIATE DOCUMENTATION

- Employment Rights Act 1996
- Equality Act 2010
- Professional Codes of Conduct

12 REFERENCE TO OTHER TRUST POLICIES & PROCEDURES

12.1 This policy should be read in conjunction with other policies in place that may be relevant. These include

- Dignity, Respect and Grievance Policy
- Respect and Dignity at Work Procedure

END