



## Mediation Policy

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|-----------------|----------|
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| DOCUMENT CHANGE HISTORY |                   |  |
|-------------------------|-------------------|--|
| Initiated by            | Date              | Author   |
| Deborah Stockdale       | 6 August 2012     | Sara Longley   |
| Version                 | Date              | Comments (i.e. viewed, or reviewed, amended approved by person or committee) |
| Draft V 0.1             | 29/30 August 2012 | Comments from Snr HR Managers and Cheryl Cobby                               |
| Draft V 0.2             | 17 September 2012 | Review by HR Policy Group  |
| Draft V 0.3             | 27 September 2012 | Minor amendments made by Dawn Allen/Deborah Stockdale                        |
| Draft V 0.4             | 5 October 2012    | Sent to SPF for approval   |
| Draft V 0.5             | November 2012     | Sent to EMT for approval   |
| V1.0                    | 4 January 2013    | Approved   |
| V1.1                    | December 2014     | Minor edits to include option of mediation with staffside mediators.         |
| V2.0                    | 5 February 2015   | Noted at EMB following approval at SPF                                       |

## Mediation Policy

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|------------------------------------|--|
| Document Reference                 | HR Directorate   |
| Recommended at<br>Date             | Staff Partnership Forum<br>December 2014   |
| Approved at<br>Date                | EMB<br>5 February 2015   |
| Review date of approved document   | February 2018  |
| Equality Impact Assessment         | Completed 17 September 2012  |
| Linked procedural documents        | Grievance Policy<br>Disciplinary Policy (Managing Conduct and Performance)<br>Dignity at Work Policy |
| Dissemination requirements         | All managers and staff, via staff bulletins and the intranet   |
| Checklist completed?               | Yes  |
| Part of Trust's publication scheme | Yes  |

The East of England Ambulance Service NHS Trust has made every effort to ensure this policy does not have the effect of unlawful discrimination on the grounds of the protected characteristics of: age, disability, gender reassignment, race, religion/belief, gender, sexual orientation, marriage/civil partnership, pregnancy/maternity. The Trust will not tolerate unfair discrimination on the basis of spent criminal convictions, Trade Union membership or non-membership. In addition, the Trust will have due regard to advancing equality of opportunity between people from different groups and foster good relations between people from different groups. This policy applies to all individuals working at all levels and grades for the Trust, including senior managers, officers, directors, non-executive directors, employees (whether permanent, fixed-term or temporary), seconded staff and homeworkers.

All Trust policies can be provided in alternative formats.

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## **1. Introduction**

This document outlines the Mediation Policy and procedure for The East of England Ambulance Service NHS Trust (the Trust).

## **2. Purpose**

The aim of this Policy is to outline the framework for the consideration and use of mediation. This Policy applies to all employees of the Trust.

## **3. Duties**

### **3.1 Human Resources Department**

The Human Resources Department is responsible for keeping the provisions within this policy in line with employment legislation, best practice people management principles and NHS guidelines.

### **3.2 Managers, HR and Trade Union Representatives**

Managers, HR and trade union representatives are responsible for providing advice and guidance to employees on the application of this policy and procedure.

Management and Trade Union Representatives are responsible for bringing any mutually beneficial improvements to this policy to the attention of the Trust.

### **3.3 Employees**

Employees are responsible for providing information and documentation and also for complying with the processes and agreements contained within this policy.

### **3.4 Consultation and Communications with Stakeholders**

It is approved by the Staff Partnership Forum, which includes representatives from Unison, HR and Management. This policy has been written in partnership by management and staff side, and in accordance with current employment legislation.

Once published any individuals can submit comments and/or suggestions to the HR Policy Group via a dedicated email address ([hrpolicies@eastamb.nhs.uk](mailto:hrpolicies@eastamb.nhs.uk)) in relation to this Policy.

## **4. Definitions**

Mediation – please see section 6 below

## **5. Development**

### **5.1 Prioritisation of Work**

This policy has been developed to support the increased use of mediation as an effective means of resolving complaints, managing change and handling workplace disputes. It will continue to be developed as the mediation process is embedded within the Trust.

The Policy is required for information and reference and to support the use of mediation within the Trust.

## **5.2 Identification of Stakeholders**

Primary stakeholders are the Chief Executive, Director of Business Transformation, the Associate Director of Human Resources and the Human Resources (HR) Department.

## **5.3 Responsibility for Document's Development**

The HR Department are the authors of this Policy. It is recommended by the HR Policy Group to the Trust's Staff Partnership Forum and Executive Management Team for ratification.

## **6. Overview of Mediation**

The overall aim of mediation is to bring about effective resolution of disputes at the earliest stage possible. It involves a neutral third party bringing two or more parties together with the aim of reaching a mutually acceptable agreement.

It is based on the principle of collaborative problem-solving, with a focus on the future and rebuilding relationships, rather than apportioning blame. Individuals are encouraged to take charge of their own decisions and to accept responsibility for the consequences of their decisions or actions.

Successful mediation should leave both individuals feeling that the outcome is fair, reasonable and appropriate. However, if mediation does not succeed, it does not affect an individual's legal rights or their right to access the Trusts other forms of dispute resolution.

Mediation distinguishes itself from other forms of conflict resolution in a number of ways. Mediation is:

- Informal
- Flexible
- Voluntary
- Morally binding but has no legal status
- Confidential
- 'Faster than other dispute resolution procedures'
- Generally individuals are not represented at the meetings

## **7. What Mediation Seeks To Achieve**

Mediation seeks to provide an informal and speedy solution to workplace conflict, and it can be used at any point in the conflict cycle. This is done by:

- Exploring the issues, feelings and concerns of all participants and rebuilding relationships using joint problem-solving;
- Allowing those involved to understand and empathise with the feelings of those they are in conflict with;

- Giving participants insights into their own behaviour and that of others and opening up opportunities for change;
- Helping participants develop the skills to resolve workplace difficulties for themselves in future;
- Encouraging communication and helping the people involved to find a solution that both sides feel is fair and offers a solution;
- Using energy generated by conflict in a positive way to move things on.

## **8. When Can Mediation Be Used?**

### **8.1 Who?**

It can be used for conflict involving colleagues of a similar job or grade, team members or between a line manager and their staff. It can be used, exceptionally, where there is conflict between teams, or groups of employees and management.

### **8.2 When?**

It can be considered to be used:

- at any time where issues, such as those described in paragraph 8.3 below, have been identified but have failed to be resolved through local discussion;
- at any time before or during the Dignity at Work, Grievance or Disciplinary procedure as long as any ongoing formal procedure is put on hold;
- after a dispute has been resolved formally to rebuild a relationship.

### **8.3 What?**

It can be used to address a range of professional issues, including relationship breakdown, personality clashes, communication problems, bullying and harassment.

### **8.4 A Judgement Call**

There are situations where it may not be appropriate to use mediation, but it is often not clear-cut and it will be up to the Mediator(s) to make a judgement on a case-by-case basis. Mediation should not be:

- Used as a first resort – because people should be encouraged to speak to each other and talk to their line manager before they seek a solution via mediation;
- Used by a manager to avoid their managerial responsibilities;
- A decision about right or wrong is needed, for example where there is possible criminal activity;
- The individual bringing a discrimination or harassment case wants it investigated;
- Someone has learning difficulties or mental health problems;
- The individuals do not have the power to settle the dispute;
- One side is completely inflexible and using mediation will only raise unrealistic expectations of a positive outcome.

## **9. How Do I Decide If Mediation Is Appropriate For Me?**

Mediation may be appropriate for you if:

- Your aim is to bring about some sort of resolution that allows you and the other individual to have a professional, working relationship;
- You are willing to resolve the issue and not apportion blame;
- You have tried to resolve this with the individual and it has not been resolved;
- You have discussed this with your manager and together tried to resolve this;
- The other individual is also willing to voluntarily go to mediation;
- You want to avoid going through a formal process.

The HR Department will be able to provide further information and support.

## **10. Representation**

Involving representatives in mediation is not generally encouraged. The central principle of mediation is to provide an opportunity for those in conflict to find their own solution to the situation and for the individuals to remain central to the process. Restricting mediation to the individuals can allow more open and honest discussion. Representatives could however play an important supportive role behind the scenes without being directly involved in the mediation.

Exceptionally, there may be situations where assistance is unavoidable for example, on grounds of access, hearing or language difficulties.

In these cases the Mediator(s) will need to ensure that the representative clearly understands their role and that they, like the Mediator(s), have established practice standards that guarantee their independence, impartiality and commitment to confidentiality.

The Trust recognises there may be cases where individuals feel more at ease with a staffside mediator, and this can be requested.

## **11. Mediation Process**

There are distinct stages of the mediation process:

### **11.1 Separate Meeting**

#### **11.1.1 First Contact with the Individuals**

The Mediator will meet individuals separately. The aim of this first meeting is to allow each individual to tell their story and find out what they want out of the process.

### **11.2 Joint Meeting**

#### **11.2.1 Hearing the Issues**

The Mediator generally brings the participants together and invites them to put their side of the story. At this stage the Mediator will begin to summarise the main areas of agreement and disagreement and draw up an agenda with the parties for the rest of the mediation.

#### **11.2.2 Exploring the Issues**

Having identified the issues to explore, the mediation is now about encouraging communication between the individuals, promoting understanding and empathy and changing perceptions. The aim of this part of the process is to begin to shift the focus from the past to the future and begins to look for constructive solutions.



### 11.2.3 Building and Writing an Agreement

As the process develops the Mediator will encourage and support joint problem-solving by the individuals, ensure the solution and agreements are workable and record any agreement reached.

### 11.2.4 Closing the Mediation

Once an agreement has been reached, the Mediator will bring the meeting to a close, provide a copy of the agreement to those involved and explain their responsibilities for its implementation. In some cases no agreement is reached and other procedures may later be used to resolve the conflict. The Mediator or the Mediator Co-ordinator will discuss the other options for dispute resolution with the individuals.

## 12. Procedure for Making a Request for Mediation

Management or individuals can **request** mediation by completing the **Mediation Request Form (Appendix A)** and sending it to the relevant line manager.

Prior to making a request individuals are encouraged to try **other informal steps** to resolve the conflict e.g.:

- The individuals who are in conflict should meet to try to resolve the conflict;
- The individuals should approach their line manager and together try to resolve the conflict.

A Mediation Request Form must be provided outlining:

- The nature of the conflict
- The steps taken to resolve this
- Any preference over a HR mediator or staffside trained mediator.

The line manager and HR will decide whether or not mediation is appropriate. If mediation is agreed, arrangements will be confirmed in writing with the individuals to meet with a nominated Mediator. This meeting will be arranged to be heard within 14 days. Changes to this timeframe may be reasonably varied by mutual agreement between the employee and the Trust. Where mediation is not agreed, feedback will be provided to the line manager/individual. It is the intention of this Policy to resolve any disputes as quickly as possible.

## 13. The Mediation Agreement

Agreements reached through mediation are morally, not legally binding. Any discussion and/or agreements are 'without prejudice'.

The Mediation Request Form and the Mediation Agreement will be the only documents that remain from the mediation process. The individuals will agree on who should retain copies of the agreement e.g.; the manager may need to keep a copy to monitor that agreed actions are followed through and maintained.

In order for mediation to occur both individuals have to voluntarily agree to go to mediation and work toward resolving the conflict. Both individuals will be asked to sign a **Mediation Agreement Form (Appendix B)** agreeing to this. They will also agree to keep the details of the mediation confidential unless both agree to share any of the information. The

consequences of breaching that confidentiality will be that the mediation agreement is abandoned and could give rise to a grievance being brought against the individual in breach.

Once an agreement is made the Mediators will inform the relevant parties (where necessary):

- That the process has ended
- Whether or not the process had a positive outcome
- Whether or not another procedure needs to be instigated

#### **14. What Happens After Mediation?**

What happens after mediation depends on the outcome. If the individuals reach resolution they will be expected to adhere to the agreement and the manager would expect to see change for the better. If in the future the dispute erupts again or individuals do not reach resolution then appropriate action will be taken including further mediation, or instigating a formal process e.g. Dignity at Work, Grievance or if appropriate Disciplinary Policy.

#### **15. What Happens If Mediation Breaks Down?**

If at any point during the proceedings one of the individuals wants to withdraw from mediation, for whatever reason, the Mediators will inform the relevant line manager that mediation will not continue.

There may be cases where the Mediator feels that mediation should be stopped. This might happen if:

- It becomes clear that the situation is serious enough that it should be dealt with as a formal grievance;
- One individual's behaviour is unacceptable;
- One individual becomes too distressed to continue.

#### **16. Confidentiality**

Anything said during mediation is confidential to the individuals. That confidentiality must be respected by all those involved in the mediation, as referred to throughout this Policy. The only exceptions are where, for example, a potentially unlawful act has been committed or there is a serious risk to health and safety.

No formal notes or minutes will be taken during the mediation sessions. Participants and the mediators will be able to make hand written notes for their own personal use during mediation but these are then destroyed at the end of the process.

#### **17. Advice on Mediation**

Managers and individuals can seek advice on mediation from staff-side or the HR Department.

## **18. Policy Review**

This policy will be reviewed on an annual basis or amended in the light of new employment legislation and/or relevant case law.

## **19. Equality Impact Assessment**

An Equality Impact Assessment has been undertaken. See Appendix E.

## **20. Dissemination and Implementation**

### **20.1 Dissemination**

This Policy will be disseminated to staff via the Trust intranet. Significant revisions and updates to the Policy will also be promoted in the staff bulletin.

### **20.2 Implementation**

Awareness of the Policy and compliance with its requirements will be promoted via Human Resources training sessions and through the induction programme for new Trust staff and annual refresher training for existing staff.

The HR Department will monitor staff compliance with the requirements of the Policy as part of their ongoing work, and take action to rectify any perceived weaknesses in compliance as necessary.

## **21. Process for Monitoring Compliance and Effectiveness**

See Appendix D – Monitoring Table.

The security and integrity of the mediation processes within EEAST will be monitored for compliance by the HR Department who will escalate any areas of concern to the Staff Partnership Forum.

## **22. Standards/Key Performance Indicators**

This work stream has been led from an objective to resolve workplace disputes as quickly and effectively as possible. Key Performance Indicators may be developed once this policy is embedded further.

## **23. References**

Grievance Policy

Disciplinary Policy (Managing Conduct and Performance)

Dignity at Work Policy

## **24. Associated Documents**

EEAST Respect Charter

EEAST Mediation Policy V2.0

**Appendix A - MEDIATION REQUEST FORM**

**Section 1    Personal Information**      To be completed by the Line Manager/Individual

**Names of individuals for mediation:**

**1.**

**2.**

**Name of referring manager (if applicable):**

**Department:**

**Telephone Number:**

**Section 2 Outline of Issue**

To be completed by the Line Manager/Individual

Outline briefly the situation and the reasons why mediation is requested

What steps have the individuals taken to resolve the conflict?

What steps has the manager taken to resolve this conflict?

Please state if you have a preference over the mediator being a member of HR or staffside. Wherever possible this will be accommodated:

.....

**I agree to this mediation process taking place**

**Signed:** .....

**Date:** .....

**Print Name:** .....

**Now send to the HR Department for processing, who will arrange for a mediation meeting to take place within the next 14 days.**

|

**Appendix B The Mediation Agreement**

To be completed by the Mediator

Section 1

I voluntarily agree to go to mediation with **[NAME]** to work toward resolving the conflict between us. I also agree to keep the details of the mediation confidential unless – we both agree to share any of the information.

**Signatures of individuals**

1. ....

2. ....

**Section 2 Mediator's Report**

To be completed by the Mediator

With the agreement of the individuals please briefly feedback to the referring manager. Include any points which the manager will have to action.



**Section 3 The Confidentiality Agreement**

To be completed by the Mediator

I agree that the contents of the report can be released to:

**Signature of individuals**

1. ....

2. ....

**Signature of mediator**

.....

Now send this form to the Manager (if applicable) and a copy to the HR Department

**Appendix C –Checklist for the Development or Review and Approval of Procedural Document**

|           | <b>Title of document being reviewed:</b>  | <b>Yes/No/<br/>N/A</b> | <b>Comments</b>  |
|-----------|---|------------------------|--|
| <b>1.</b> | <b>Purpose</b>  |                        |  |
|           | Are the reasons for the development of the Document stated?   | Yes                    |  |
| <b>2.</b> | <b>Definitions</b>  |                        |  |
|           | Have all key terms been clearly defined?  | Yes                    |  |
| <b>3.</b> | <b>Consultation</b>   |                        |  |
|           | Have relevant stakeholders and/or users been consulted with?  | Yes                    |  |
| <b>4.</b> | <b>Equality Impact Assessment</b>   |                        |  |
|           | Has the Trust Equality Impact Assessment Screening Form been completed and attached by the author and approved by the responsible Executive Director? | Yes                    | Completed, but ED sign off to happen prior to EMT sign off |
| <b>5.</b> | <b>Monitoring</b>   |                        |  |
|           | Has the Monitoring Table been fully completed and attached?   | Yes                    |  |
| <b>6.</b> | <b>References/Associated Documents</b>  |                        |  |
|           | Are key references cited?   | Yes                    |  |
|           | Are linked documents identified where appropriate?  | Yes                    |  |
| <b>6.</b> | <b>Approval</b>   |                        |  |
|           | Does the Document identify which committee/group will approve it?   | Yes                    |  |
| <b>7.</b> | <b>Dissemination and Implementation</b>   |                        |  |
|           | Is there an outline/plan to identify how this will be done?   | Yes                    |  |
|           | Does the plan include the necessary training/support to ensure compliance?  | Yes                    |  |
| <b>8.</b> | <b>Review Date</b>  |                        |  |
|           | Is the review date identified?  | Yes                    |  |

|  |  |      |  |
|--|--|------|--|
| <b>Information Governance Lead (or delegated authority)</b>  |  |      |  |
| This Procedural Document complies with the Policy for the Development of Procedural Documents      |  |      |  |
| Name   |  | Date |  |
| <b>Clinical Quality Team</b>   |  |      |  |
| The Procedural Documents complies with the relevant NHSLA standards                                |  |      |  |
| Name   |  | Date |  |
| <b>Please attach to the procedural document and forward to the relevant committee for approval</b> |  |      |  |

Mediation Policy

**Appendix D – Monitoring Table**

| What                                 | Who                          | How  | Frequency                                   | Evidence  | Reporting arrangements   | Acting on recommendations    | Change in practice and lessons to be shared   |
|--------------------------------------|------------------------------|--|---|---|--|------------------------------|---|
| <b>Confidentiality of processes</b>  | <i>Relevant Line Manager</i> | <i>Observe/assess + completion of signed Mediation Agreement</i> | <i>Every occasion mediation is required</i> | <i>Completion of Mediation Agreement</i>                      | <i>Local management responsibility to determine any breach of confidentiality through their line manager</i> | <i>Next Line Manager</i>     | <i>Referral to HR Policy group for formal policy review and then ratification through SPF</i> |
| <i>Speedy Resolution of Disputes</i> | <i>HR</i>                    | <i>HR Mediation tracker spreadsheet</i>                          | <i>Monthly</i>                              | <i>No. of mediations taking place/no. successful outcomes</i> | <i>Board Report</i>  | <i>HR Professional Forum</i> | <i>Referral to HR Policy group for formal policy review + then ratification through SPF</i>   |

**Appendix E**

**Equality Impact Assessment: Executive Summary**

| <b>Executive Summary Page for Equality Impact Assessment:</b>   |                                  |
|---|----------------------------------|
| Document Reference:   | Document Title: Mediation Policy |
| Assessment Date: 17 September 2012  | Document Type: HR Agreement      |
| Responsible Director: Christina Youell  | Lead Manager: Tracey Leghorn     |
| Conclusion of Equality Impact Assessment:   |                                  |
| Recommendations for Action Plan:  |                                  |
| Risks Identified:   |                                  |
| <b>Approved by a member of the executive team:</b>  |                                  |
| <b>YES</b>  | <b>NO</b>                        |
| Name:   | Position:                        |
| Signature:  | Date:                            |
| <b>This whole document should be stored with the master document and a final approved electronic copy must be sent to the Equality &amp; Diversity Lead at Bedford Office</b> |                                  |