

Proposed guidance to be issued by the Council

Guidance on mediation

What is mediation?

1. Mediation is a process of discussion with an independent person to help two sides find a way of resolving the issues between them and moving on.

Is mediation the best course?

2. It may well be, if the two sides want to find a way forward and maintain and carry forward a productive working relationship. It may not be, if the main concern of either side is the determination of the rights and wrongs of an issue or the establishment of legal rights.

What authority does the mediator have to decide the matter?

3. None. The mediator's role is to help the parties find common ground, but he or she cannot tell them what to do. It is not for the mediator to make judgments in the matter.

Who are the parties to a mediation?

4. The parties will include the aggrieved person and the person against whom the grievance lies.

Is the Head of institution or her or his representative a party?

5. That will depend on the circumstances of the matter and the mediator will advise.

How does the mediator work?

6. It is for the mediator to decide how he or she will go about the task. Commonly, however, the mediator will begin by talking to both parties separately.
7. The mediator will want to know your views and how you feel about things, and will want to know what you think should be done. The mediator may have her or his own ideas and suggestions and want your reaction to them. The mediator may encourage you to understand what the other party thinks and feels, and will want any ideas that you have as to a middle way.
8. Each side should speak frankly, because the mediator has to have a full understanding of the situation to do a proper job. Nothing that you say will be passed on by the mediator to anyone else without your consent.
9. When the time is right, the mediator will bring the two sides together and give each the opportunity to speak to the other and say what they feel without interruption. The mediator may then ask questions, as will have happened already in private session, and may suggest solutions for comment.

What if all goes well?

10. The mediator will write down what is agreed and ask both sides to sign to confirm its accuracy.

Must I stick to what I have signed?

11. You will be expected to do your best to do that, otherwise there is little point in the whole process. However any agreement reached will not be legally binding unless both sides have specifically asked for that, in which case you will be given the opportunity to take legal advice before signing other than provisionally.

What if it does not work?

12. At any time the mediator or either party may decide that mediation is unlikely to work and should be discontinued.

What then happens to the grievance?

13. It is unresolved and the formal process under the Code of Practice for the redress of grievances remains.

Can either side (or the Head of institution) insist on mediation?

14. No. Moreover either side can withdraw its agreement at any time.

Who will the mediator be?

15. The Council of the University will maintain a panel of persons willing to act as mediators. The mediator will be selected by the Registry from that panel and will be someone who has had no previous dealings with the parties involved.

Where will the mediation take place?

16. It will be held somewhere other than the institution concerned. A venue with at least two rooms will be needed for the mediator to meet privately with the two sides.

Can I bring a representative or friend?

17. Yes, but the mediator should be notified of who you propose to bring in advance as both sides need to know who is attending.

How do I prepare for mediation?

18. The mediator may give you guidance on preparation when the mediation is arranged. The parties may be asked to write down in advance the problem they want the mediator to help with and a short account of events. The mediator will also normally have received copies of papers relating to a grievance in order to help her or him prepare for the mediation.

Can I ask for recommendations from the mediator?

19. Yes, but both sides have to agree to that. If both sides agree, the mediator will provide written recommendations after the conclusion of the mediation process, but will only provide them if the mediation fails. (If it succeeds, there will be a record, prepared at the time, of what is agreed.)

Do I have anything to lose by mediation?

20. Not really. If mediation fails the grievance procedure will continue to be available.

Are there any conditions for mediation?

21. It is a strict condition of mediation that the parties to the process should maintain confidentiality. In particular it is a strict condition that the mediator should not be asked to give evidence on the content of the mediation at a later date.

Guidance on what constitutes gross misconduct

Gross misconduct, ~~constituting grounds for removal from office without notice~~, may include the following:

- gross negligence;
- conviction for an offence such as to render the person convicted unfit for the performance of the duties of her or his office or for employment by the University;
- conduct of an immoral, scandalous, or disgraceful nature incompatible with the duties of office or for employment by the University;
- misconduct in research;
- theft or misappropriation of University property, or the property of any member of the University community or visitor to the University;
- forgery;
- threatening or using physical violence against a member of the University community or visitor to the University, or against University property;
- serious acts of bullying or harassment of a member of the University community;
- wilful and serious breach of duty regarding non-disclosure of confidential information (otherwise than arising from the officer making a protected disclosure);
- wilful refusal to carry out the duties of, or comply with the conditions of, the office;
- unreasonable refusal to carry out a reasonable instruction;
- being unfit to perform duties as a result of un-prescribed drugs or alcohol;
- any other act of serious misconduct.

Reference in this guidance to a member of the University community includes any member of the University, staff or student and, where appropriate, a member of the staff of a College or of any institute, unit, or other organization associated with the University and a student of any institution. Reference to a visitor to the University includes any person legitimately present within the University precincts.