Edinburgh Gestalt Institute (EGI)

Mediation and Facilitated Conversations: Procedure

This policy is available in other languages and formats on request.

1. Introduction

EGI is committed to the fair, effective and timely resolution of disputes and complaints. As part of this, EGI positively supports mediation and facilitated conversations. EGI will always consider these options when disputes arise. We believe mediation and facilitated conversations are flexible and relational options which can offer the possibility of increased mutual understanding and creative ways to come to an agreement which both parties accept.

This procedure should be read in conjunction with EGI’s complaints procedure, and understood as one option within that process. The mediation and facilitated conversations procedure does not preclude subsequent formal complaints in line with the complaints procedure – i.e. formal complaints can still be pursued. EGI’s complaints procedure is available online at http://egi.uk.com/wp-content/uploads/2016/04/comments-complaints.pdf, or you can request a paper copy from us on 0131 228 3841 / info@egi.uk.com.

The following policy is adapted from good practice information produced by Scottish Mediation (www.scottishmediation.org) and The Centre for Effective Dispute Resolution (www.cedr.org).

2. What is mediation?

Mediation is a voluntary, flexible and confidential process in which an independent person actively assists the parties to be fully heard, to hear the other’s perspective, and to work towards a negotiated agreement of a dispute or difference. The parties are in ultimate control of the decision to come to an agreement and the terms of resolution. Mediation may occur in person, by phone or online conferencing/video conferencing.

3. What is a facilitated conversation?

This is a voluntary, flexible and confidential process in which a nominated person facilitates the parties to be fully heard, to hear the other’s perspective, and to work towards a negotiated next step. The facilitator is not necessarily entirely independent of EGI – for example, they could be an EGI trustee or a member of the EGI team who is acceptable to both parties. Both parties should perceive the facilitator as sufficiently neutral and balanced in perspective to be able to offer facilitation. Use of the facilitated conversation process does not preclude subsequent mediation or use of the complaints process. Facilitated conversations normally occur in person; where this is not possible, EGI will consider the use of phone or online conferencing.
4. Request for mediation or facilitated conversation

Any person using EGI’s services, or EGI, can suggest mediation or facilitated conversation as a route to resolve difficulties. This request should be made in writing (electronic or hard copy is acceptable). Both parties need to agree in writing to the mediation or facilitated conversation before the process can proceed.

EGI, as with all parties, reserves the right to refuse to enter mediation or facilitated conversation where we believe this is unlikely to be a productive route. Where all parties agree to proceed, mediation/facilitated conversation will occur as quickly as possible, depending on the availability of both parties, the mediator/facilitator and the venue.

5. Choosing the mediator/facilitator, logistics and fee arrangements

a) Mediation

There are two options for accessing mediation, and both parties need to agree in writing in advance which, if any, route to pursue. The options have different financial implications which are laid out below. Additional expenses are laid out in section 12.

1. Mediation through the GPTI ethics committee
   The Gestalt Psychotherapy Training Institute (GPTI) ethics committee may be able to arrange mediation in certain circumstances. The ethics committee would seek a mediator with the appropriate skills who is neutral and impartial. If either party wishes to explore this possibility, they can contact the GPTI ethics committee and discuss the situation informally in the first instance. The up-to-date contact details for the ethics committee can be obtained from the GPTI administrator on admin@gpti.org.uk / 01225 482135. GPTI does not charge for discussion or mediation.

2. A mediator from the Scottish Mediation Register (www.scottishmediation.org.uk)
   As a third sector organisation, EGI may be able to access up to a day’s mediation through Scottish Mediation at a reduced rate (c. £300.00 at time of writing). As a SCIO (Scottish Incorporated Charitable Organisation) EGI has a duty to consider carefully whether this cost is a responsible use of the charitable funds and may seek confidential professional advice regarding this decision. Where mediation costs are in excess of the daily reduced rate, and EGI considers it appropriate to proceed, the difference should be shared equally between the two parties. The mediator may be able to give an idea of costs before proceeding, once he/she is aware of the details of the case, and the likely length of time/complexity.

In either circumstance, the mediator will notify both parties promptly of any conflicts of interest should these arise, whether before or during the work. Conflicts of interest arising during the work will normally necessitate a new mediator, unless all parties wish to proceed.

The mediator will normally offer tools to support the mediation process, such as:
• drafting a consent agreement for mediation,
• compiling names and roles of attendees for the circulation of a participants’ form before the mediation takes place;
• facilitating agreement as to the date, start time and venue. Mediation meetings will normally be held at EGI’s premises with no cost to the other party, unless this is impractical or not agreed by all parties. Where another venue is required, any costs for hiring it will be shared equally between both parties.
• supporting the sharing of brief case summaries and supporting evidence (see ‘documentation’ section below).

b) Facilitated Conversations

For facilitated conversations, any party may propose a facilitator, normally from within the EGI team or Trustees. The facilitated conversation will only take place with the agreement of all parties and the facilitator.

There is no charge for a facilitated meeting (excepting room hire costs, see below). EGI meets these costs, and therefore, as a SCIO, may be required to use discretion seek confidential professional advice regarding the appropriate use of charitable funds for this purpose.

The facilitator will normally be responsible for:

• facilitating agreement as to the date, start time and venue. Facilitated conversations will normally be held at EGI’s premises with no cost to the other party, unless this is impractical or not agreed by all parties. Where another venue is required, any costs for hiring it will be shared equally between both parties.
• supporting the sharing of brief case summaries and supporting evidence (see ‘documentation’ section below).

6. Attendance at mediation and facilitated conversation

EGI will normally have a minimum of two representatives present in facilitated conversation and mediation. In a mediation setting, these representatives will have the full authority to settle the dispute. In a facilitated conversation, the representatives may delay to liaise with the EGI executive team seek professional advice as required. Any person using EGI’s mediation process or facilitated conversation process is entitled to one or more support persons present. Professional advisors may also attend the mediation meeting(s) and may attend facilitated conversations at the discretion of EGI.
For mediation and facilitated conversations, the names and role of all attendees should be circulated amongst all parties no less than one week before the meeting. Attendees must be agreed by all parties including the mediator/facilitator before the mediation/facilitated conversation begins. By the nature of EGI’s training, supervision and psychotherapy work, there are frequently sensitive professional boundaries which all parties including EGI must consider respectfully when considering attendees at mediation/facilitated conversation.

7. Documentation prior to mediation and facilitated conversation

a) Mediation

The advice and requirements of the mediator should inform any exchange of documents before the mediation session. In the absence of this information, no less than one week before meeting, both parties will exchange documents outlining their case summaries, with any relevant supporting evidence attached, and circulate these to the mediator. Late submission of documents could call into question the good faith of the relevant party and be detrimental to the success of the mediation process. All documents should also be sent to the mediator no later than a week before the mediation. All documents should be held confidentially by all parties. The success of mediation is not determined by exhaustive disclosure of documents, and summaries can usually be brief whilst containing all key points.

b) Facilitated conversation

Documents may be circulated between attendees at the discretion of all parties. Where this occurs, the exchange should take place no less than three days before meeting. Documents should be held confidentially by all parties. The success of facilitated conversations is not determined by exhaustive disclosure of documents, and summaries can usually be brief whilst containing all key points.

8. Mediator and facilitator responsibilities before the mediation/facilitated conversation

a) Mediation

The mediator will read each case summary and supporting evidence. They will make contact with a representative of each of the parties before the mediation to assist in preparation for the mediation and discuss issues arising. They will provide a contact email address for the submission of case summaries and supporting evidence. They may provide a mediation agreement/contract /consent form laying out the terms and conditions of the mediation, which all parties sign up to before proceeding. This agreement will not normally contradict any part of EGI’s mediation policy. Where there is any contradiction this should be discussed with all parties.

b) Facilitated conversation

The facilitator will read submitted documentation. They will make contact with a representative of each of the parties before the facilitated conversation, to assist in preparation and discuss any issues arising. They will provide a contact email address for the submission of any documentation.
9. The mediation / facilitated conversation itself

The mediator/facilitator will chair and take responsibility for determining the procedure at the session, in consultation with the parties. The likely procedure will comprise:

• preliminary meetings or conversations with each of the parties;

• a joint meeting of all attending the mediation/facilitated conversation, at which each of the parties will normally be invited to make an oral presentation

The mediator/facilitator shall ensure that the parties understand:

• the purpose and procedure of the mediation/facilitated conversation;

• the role of the parties and the mediator/facilitator;

• any fee arrangement;

• the obligation of confidentiality

The mediator/facilitator will then ensure that everyone involved has time to explain the situation and what has been happening from their point of view. The mediator/facilitator will then help all parties to discuss the issue and find an agreement which everyone can live with. Should agreement be reached, the mediator/facilitator will usually write up what has been agreed.

No verbatim recording or transcript should be made of the mediation/facilitated conversation by the parties or the mediator/facilitator in any form, but participants can make their own private notes which will not be disclosable to anyone else, including in any subsequent litigation or arbitration.

Length of sessions will vary according to the complexity of the situation, and may range from one hour to a series of meetings depending on the complexity of the situation and the wishes of the participants. It is important that the key people attending for each of the parties remain present or, at least available by telephone or online/video conference whilst the mediation/facilitated conversation session continues. Any time constraints should be reported to the mediator/facilitator as soon as known, as any unexpected departure can be detrimental to progress and perceived as disrespectful by other parties.

10. Confidentiality

Confidentiality in mediation/facilitated conversations is important to encourage all participants to speak truthfully and candidly, and to enable a full exploration of issues in dispute. The process and outcome of mediation will be strictly confidential to both parties. The fact that the mediation/facilitated conversation is taking place or has taken place may be disclosed unless otherwise agreed by both parties.
Apart from where the parties agree in writing to consent to disclosure of what would normally be confidential, there may be rare circumstances in which the confidentiality of the mediation/facilitated conversation process cannot be preserved, such as where:

- the mediator/facilitator or any party or their representative is required by law to make disclosure;
- the mediator/facilitator reasonably considers that there is a serious risk of significant harm to the life or safety of any person if the information in question is not disclosed; or
- the mediator/facilitator reasonably considers that there is a serious risk of being personally subject to criminal proceedings unless the information in question is disclosed.

11. Conclusion of the mediation/facilitated conversation

The mediation/facilitated conversation may end in a number of ways:

- by settlement of the dispute in whole or part, when all agreed matters must be written down and signed by the parties to be binding;
- by an ‘in principle settlement’ of the dispute with an agreement to draft binding terms after the mediation/facilitation day;
- by the mediator/facilitator advising the parties that a settlement, for the time being, at least, cannot be reached;
- by one or more parties leaving the mediation/facilitated conversation before settlement is achieved. Where any party intends to leave before a resolution, mediators/facilitators normally encourage parties to delay departing for a few minutes, to discuss their reasons and explore whether there is a different way forward;
- by an agreed adjournment for such time and on such terms as the parties and the mediator/facilitator agree;
- by withdrawal of the mediator/facilitator
- by production of a document of summary or recommendations from a mediator/facilitator, if requested by all parties and agreed by the mediator/facilitator. The mediator will facilitate the drawing up of any settlement agreement. Drafting may be done by lawyers representing each of the parties where relevant.

Where mediation does not end in complete settlement, the mediator may make contact with the parties thereafter to see whether further progress might be possible. Many disputes which do not settle at the mediation stage settle later, usually as a result of what occurred or was learned at the mediation. Where the mediator is in contact with the parties after a mediation, the provisions of the mediation agreement should be taken to continue to apply. In the event that a settlement is not reached, the mediator if requested and if agreed by each of the parties and the mediator, may produce a non-binding opinion or recommendation in an effort to take the matter forward.
Disputes can be resolved in different ways, for example: paying compensation; a refund; an apology; an explanation; replacement goods/services; a change in policy and/or behaviour. The mediator doesn’t decide the type or value of the settlement – the parties decide this.

12. Expenses

Each party is normally responsible for their own expenses with regard to mediation and facilitated conversation (e.g. travel expenses, costs of any representatives).

EGI will provide premises for mediation where possible. Where EGI’s premises are not available or suitable, the cost of alternative premises will be shared equally by both parties.

Individuals may be eligible to receive Legal Aid to cover the costs of mediation. For guidance please see a solicitor for more information or contact the relevant legal aid board (e.g. Scottish Legal Aid Board on 0845 122 8686).

Costs for mediation itself, where applicable, are explained in section 4.

All costs are payable as outlined above even where there is not a successful or satisfactory outcome.

13. Litigation, mediation and facilitated conversations

Any contemplated or existing litigation or arbitration in relation to the dispute may be started or continued despite the mediation, unless the parties agree or a Court orders otherwise. If settlement terms cannot be agreed through mediation, the parties can revert to formal complaints, litigation or arbitration. All discussions during the mediation process are ‘without prejudice’ – in other words, anything said in the mediation cannot usually be used later in court or another legal action.

Facilitated conversations will not normally occur when litigation is contemplated or existing.

14. Complaints about mediation / facilitated conversations

The mediator shall provide information about the process for handling any complaint made about their conduct or service, and about any professional indemnity insurance cover they may have.

Complaints regarding facilitated conversations should be handled within EGI’s complaints procedure. Details of how to access this procedure are in section one of this document.

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