

**Mediation Standard Operating Procedure**

Date	Version	
May 2013	1	
<b>Purpose</b>		
<p>This Standing Operating Procedure (SOP) sets out the procedures to be followed when staff are referred/self refer to the Employee Assistance Service (EAS) for mediation. The SOP clarifies how a referral is taken forward and the procedure for conducting mediation and the associated administrative tasks.</p>		
<b>Who should read this document?</b>		
<p>This procedure document is applicable to the SHWB EAS team and all Trained Trust Mediators.</p>		
<b>Key messages</b>		
<p>This SOP aims to provide guidance regarding how the mediation process works, to ensure consistency.</p>		
<b>Accountabilities</b>		
<b>Production</b>	Head of Employee Assistance Service (Mediation Service Manager)	
<b>Review and approval</b>	Health & Wellbeing Steering Group	
<b>Ratification</b>	Director of HR & OD	
<b>Dissemination</b>	Occupational Health & Wellbeing department and all trust mediators	
<b>Compliance</b>	Health & Wellbeing Steering Group	
<b>Links to other policies and procedures</b>		
<p>Supporting Staff Policy  Management of Stress Standard Operating Procedure  Bullying and Harassment Standard Operating Procedure</p>		
<b>Version History</b>		
0.1	November 2012	Draft SOP produced
1	June 2013	Final version approved
<b>Last Approval</b>		<b>Due for Review</b>
June 2013		May 2018

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## Mediation Standard Operating Procedure (SOP)

<b>1</b>	<b>Purpose and scope</b>
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The OH&WB, EAS Service is available to support all staff in their psychological wellbeing; both from a work related perspective and personal perspective. The EAS is able to offer, to support staff that are experiencing interpersonal conflict, a mediation service. The SOP covers how a referral is triaged and how the mediation process is conducted.

PHNT is committed to creating a fully inclusive and accessible service. Making equality and diversity an integral part of the business will enable us to enhance the services we deliver and better meet the needs of employees and clients. We will treat people with dignity and respect, actively promote equality and diversity, and eliminate all forms of discrimination regardless of (but not limited to) age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage/civil partnership.

<b>2</b>	<b>Definitions</b>
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**2.1 Mediation** – is an informal dispute settlement process run by a trained third party, called a mediator. Mediation is intended to bring two parties together to clear up misunderstandings, find out concerns, and reach a resolution. The process is voluntary, although it may be suggested as an appropriate way forward by HR, management, or Staff Health and Wellbeing.

**2.2 OPAS** – is the Occupational Health Computerised Management System used by the Occupational Health & Wellbeing Department (OH&WB).

<b>3</b>	<b>Regulatory Background</b>
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**The Health and Safety at Work Act 1974** states that an employer must make provision for securing the health, safety and welfare of persons at work and for protecting others against risks to health or safety in connection with the activities of persons at work.

<b>4</b>	<b>Key Responsibilities</b>
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**Staff Health & Wellbeing Department EAS and all Trust Mediators have a responsibility for:**

- Ensuring they are familiar and comply with this SOP and associated policies/guidance.

**The Staff Health & Wellbeing Department (SH&WB) EAS service has responsibility for:**

- Providing confidential advice and on-going support to the member of staff wishing to seek advice on the mediation process.
- Referring where appropriate to alternative internal support (i.e. HR advisors)
- Reviewing and updating this SOP in line with local/national guidance.

## **5 Training**

External formal training is provided to an accredited level to all trust Mediators.

In house ongoing support and further training will be provided as appropriate.

## **6 Monitoring and Assurance**

Monitoring will be maintained by the Head of SH&WB department along with the Head of the Employee Assistance Service and will be fed into the Wellbeing Steering Group by form of a quarterly report.

The Wellbeing Steering Group in turn, reports to the HR and OD committee.

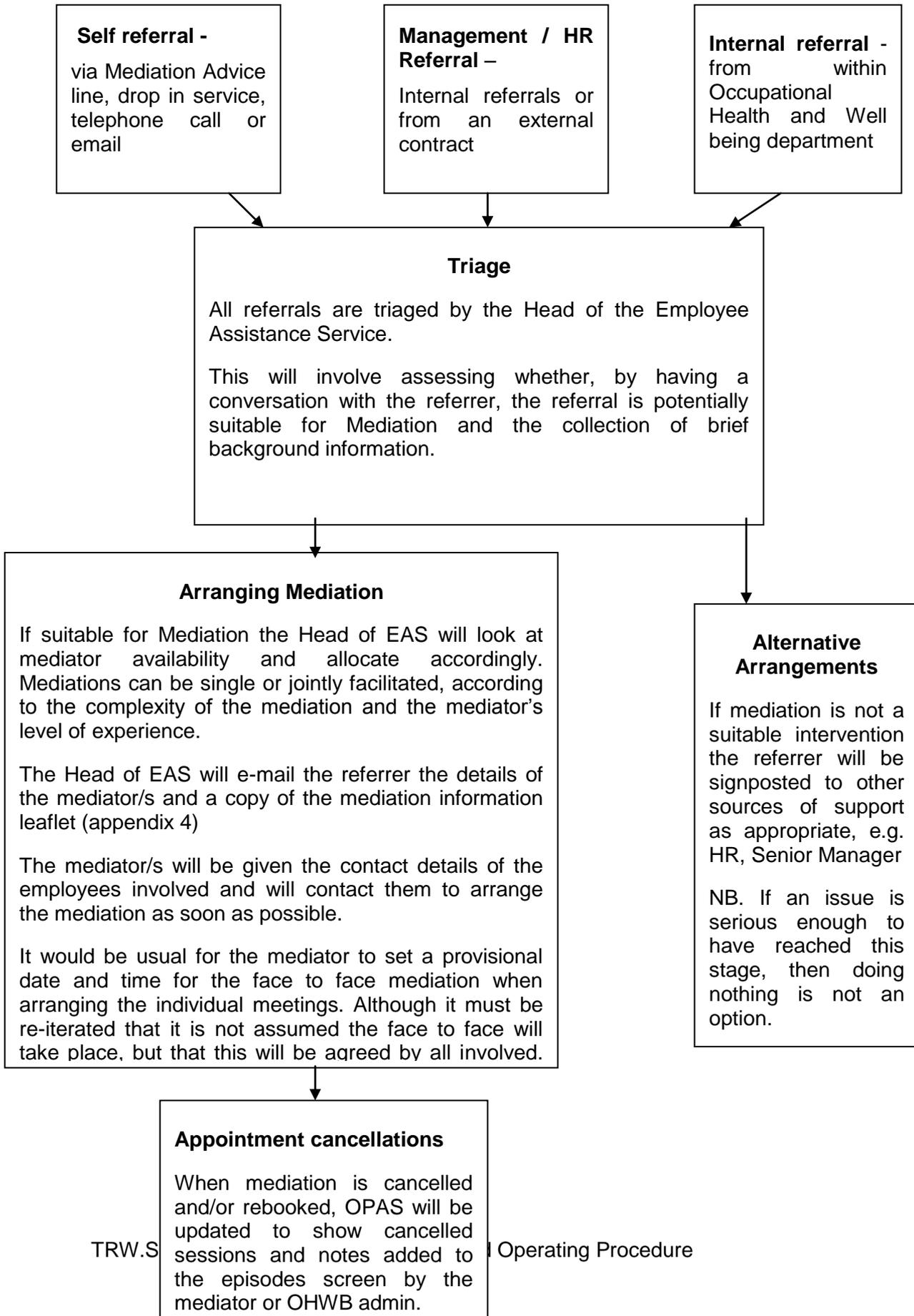
We will record all mediation referrals under the following categories:

- Self Referral
- Referral by SHWB practitioner
- Referral by Manager
- Referral by HR – pre formal process
- Referral by HR – post formal process
- External Mediation

We will record all mediation outcomes under the following categories:

- Not suitable for mediation – referred back to manager
- Not suitable for mediation – referred to HR
- Mediation started but not completed – referred back to manager
- Mediation started but not completed – referred to HR
- Mediation completed – unsuccessful in drawing up agreement
- Mediation completed – successful in drawing up agreement

## 7.0 Procedure for Triaging, Allocating and arranging mediation



## 8.0 Step-by-Step Guide for conducting a Mediation

1. The mediator will firstly meet with both parties in individual meetings of approximately 60 minutes with each party. If either party is concerned or anxious about the process, reassurance should be offered that this is quite normal and these can be discussed in the individual meetings. The parties should also be told the individual meetings are their opportunity to discuss the situation from their perspective and to confirm whether mediation is the route they wish to take. It would be normal for information to be disclosed in confidence by each party that may not be suitable to take into the mediation room and the mediator should clarify this at the time.

2. In the individual meetings the mediation process is explained in full, anxieties are addressed and information gained. A 'provisional agenda' is agreed from each employee's perspective. It is not unusual for participants to state that they feel the mediation 'won't work', 'will break down', 'is useless' etc. While acknowledging their feelings, it is important that the mediator remains positive and points out the value of trying this over other alternatives (which would still be open to staff anyway if the mediation is not successful).

3. Once mediation has been agreed as the way forward/or as an outcome of an HR process, it is important to make clear to both parties that if the mediation does not take place, then other management actions may have to be taken to address the issues, as doing nothing is rarely an option in these circumstances. If the mediation cannot proceed the mediator should inform the Head of EAS to follow up accordingly.

**Mediation has a very high success rate and even if it is not fully successful it often gives clarity to the 'real issues' and makes potential alternative solutions easier to identify.**

4. If both parties and mediator/s are in agreement for the mediation to proceed then the face to face meeting is confirmed and an agreement to mediate is signed (Appendix 1) The ground rules will be discussed and a written confirmation of these provided (Appendix 2).

5. On the mediation day, time needs to be allowed for brief individual meetings (approximately 15 minutes) with both parties before the mediation begins. These individual meetings will be used to determine and confirm the issues that will be taken into the mediation and to prepare the opening statements with both parties.

6. The mediation meeting is held with both parties. Mediators should ensure access to a break out room for when/if the parties need separating, and arrange to have someone else around, or contactable during the mediation, who is a trained and experienced mediator, to consult with if needed during the mediation process, and as a safety measure.

7. The contract is drawn up in draft during the mediation on a flip chart or A4 paper, as appropriate. Closing statements are made by the mediator and invited from both parties at the end of the process.

8. Individual de-brief sessions for each party with the mediator are offered at the end of the mediation – these are not compulsory and most people decline the offer.

9. The mediator also has an opportunity for de-brief and a review of the mediation with another trained and experienced mediator, this will usually be the Head of EAS.

10. Within 10 days (unless there are specific circumstances to prohibit this) the mediator types up the draft contract, using the mediation service template (Appendix 3) and it is sent to both parties for their approval. The mediator should also send the draft to the Head of EAS for information. Also, if applicable, agreement is confirmed as to who else may need to receive a copy (it would be usual for this to be the line manager of those involved).

11. The approved contract is signed by both parties. At this point there may be issues that are outside the remit of the mediation that need to be acted upon that HR and / or the manager needs to be made aware of. (With permission for disclosure).

12. A review date with the mediator is set approximately one month from the date of the agreement, to check the progress of the mediation and to assess whether any further action is required.

13. A copy of the mediation contract should be held by both parties and the referrer and /or line manager as appropriate. The agreement belongs to the two parties. Any notes made by the mediator/s, both paper and electronic are destroyed.

14. At the review, the mediator/s should meet with both parties individually, and if necessary, a joint meeting should be arranged and the contract re-explored to identify any problems.

15. The mediator/s should inform the Head of EAS when the review has taken place and the outcome if appropriate, the referring manager will also be informed.

## 9 Document Ratification, Dissemination and Implementation Process

The design and process of review and revision of this procedural document will comply with the Trust's formal policy on policy and procedural documents. The review period for this procedural document is set as default of five years from the date it was last ratified, or earlier if developments within or external to the OH&WB Department indicate the need for a significant revision to the procedures described.

**Significant reviews and revisions** - to this document will include a consultation with the following named groups:

- Head of Department
- SHWB EAS Team
- Trust mediators

***This document will be approved by the Health and Wellbeing Steering Group and ratified by the Director of HR***

**Non-significant amendments** - to this document may include informal consultation with groups, or individuals who are directly affected by the proposed changes. Changes may be made, under delegated authority from the Head of the EAS. These must be ratified by the Director of HR and should be reported, retrospectively, to the Health and Wellbeing Steering Group.

## **Dissemination and Implementation**

Following approval and ratification, this procedural document will be published on the Trust's formal documents library (G Drive) by the Document Controller and all applicable staff will be notified through the Department's normal notification process, currently the e-mail system. Document control arrangements will be in accordance with the Trust's formal policy on policy and procedural documents. The Head of the EAS will be responsible for agreeing the training requirements associated with the newly ratified document with the Head of the Department.

Party A..... And

Party B .....

Agree to a mediation process with the following terms and conditions.

**1. Mediation Procedures**

- 1.1 The mediation shall be held and conducted according to the process explained to you in the pre-mediation meeting.
- 1.2 Any mediation agreement reached will be produced in written form by the mediator as a contract and will be signed by both parties.
- 1.3 A mediation contract would normally be shared with the line manager of those involved, so that they can help support both parties in maintaining the mediation agreement. Your permission will be asked for this to take place.
- 1.4 If the mediation contract needs to be shared with another party (e.g. HR) then that will be discussed.

**2. Mediator**

- 2.1 The parties agree that ..... will be the Mediator.
- 2.2 The parties and the Mediator agree that the mediator is impartial and neutral. They do not offer legal advice and can not take part in any present or future proceedings.

**3. The Mediation**

- 3.1 The mediation will take place at.....  
On .....Starting at .....

**4. Private Sessions**

- 4.1 Information gathered by the Mediator through such a session is confidential unless it is in any event publicly available, or the mediator is authorised by that party to disclose it. This is subject to clause 5.

**5. Confidentiality**

- 5.1 The Mediator and the Parties undertake to one another that they will maintain confidentiality in respect of matters and statements arising out of the mediation, with the exception that any party needs to disclose such statements and matters in order to comply with any statutory obligation, NHS policy, or to obtain professional advice.
- 5.2 If during the mediation any of the following issues are raised then the mediator will ask that the discloser takes appropriate action. If the discloser will not or cannot take action, then the mediator would need to report appropriately.

This includes;

- If you are believed to be a serious risk to yourself, or someone else.
- A child protection or adult safeguarding issue is raised
- Working malpractice that places anyone at risk.
- Terrorist Activity.

**SIGNED .....** (Party A)

**SIGNED .....** (Party B)



While there is an understanding that emotions can run high during a mediation process, we ask that all parties agree to follow the ground rules below;

1. One person speaks at a time.
2. No excessive voice raising.
3. No name calling or personally abusive language.
4. No offensive gestures.
5. Everybody will usually remain seated during the mediation.
6. Parties are requested to be open and honest with each other.
7. What is said stays in the room, no notes are to be retained once the agreement is in place, and what is disclosed in mediation cannot be used later in other formal proceedings.
8. Either of the parties or the mediator can ask for a private side meeting if a need arises.
9. Either of the parties or the mediator can call a break if needed. If necessary the mediation process can be stopped at any time.

Participants are asked to not just walk out and away from the mediation without the opportunity for a de-brief.

The purpose of the session is to resolve conflict and find workable agreements.

1. This Mediation Agreement is made between:

Party A .....

And

Party B .....

This agreement is written from information provided and agreed during a facilitated mediation process.

By ..... (Mediator)

On .....

2. The Mediation Agreement

2.1 Write an 'overview' of mediation session

*The rest of the mediation should be written up under specific headings – for example*

2.2 Communication

2.3 Roles

2.4 Boundaries

2.5 Responsibilities

2.6 Supervision

2.7 Trust

*Under each heading describe the issues as discussed and specific actions to be followed in the future.*

**3. Conclusion**

**3.1** In the event of a dispute arising from the terms of this agreement, the matter shall be immediately referred to the Mediator. It may be referred by either party.

**3.2** It is a condition of the Mediation that the Mediator will not be called upon by either party as a witness in any litigation or dispute between the parties.

**3.3** The mediator will contact both parties approximately one month from the date of signing and review how the working relationship is functioning with reference to this agreement.

**SIGNED** .....

**NAME (Party A)** .....

**SIGNED** .....

**NAME (Party B)** .....



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