

5 Problems and Strategies



Community Mediation Guides

These booklets cover a range of issues related to the setting up and running of community mediation services in Scotland, as well as broader issues in community conflict resolution.

sacro

Scottish Community Mediation Centre

Sacro
17 Gayfield Square
Edinburgh
EH1 3NX

tel: 0131 624 7263

email: infoscmc@sacro.org.uk

web: www.scmc.sacro.org.uk

Original publication sponsored by the Scottish Executive

Originally written by Ian McDonough

Revised July 2024

Revised September 2014

Original version created 2001

© Sacro / Scottish Community Mediation Centre 2024



THE SCOTTISH
MEDIATION
CHARTER
Partner

Contents

Introduction	1
1. Community Mediation	2
2. Community Mediation in Context	3
3. Problems and Strategies.....	4
4. A Foot in the Door	5
Agency Referrals	5
Training of agency staff	5
Publicity materials	5
Referral Processes	5
Self-Referrals.....	6
5. Getting Around the Table	7
6.1 General	9
Preparatory Sessions – Advantages.....	9
6.2 People who are angry	10
6.3 People who are upset/tearful.....	10
6.4 People who are withdrawn	10
6.5 People who keep interrupting.....	11
6.6 Handling your own reaction to difficult behaviour	11
6.7 Eleven handy hints for mediation meetings!.....	12
7. Blocking Strategies/Impasse.....	13
7.1 Blocking Strategies.....	13
7.2 Impasse	13
8. Problems with mediators.....	14
8.1 The Perfect Mediator	14
8.2 Mediator training	14
8.3 Mediator experience.....	14
8.4 Mediator attitudes.....	15
8.5 Time and resource constraints.....	15

Appendix 1: Referral form	16
Appendix 2: Response letter	17
Appendix 3: The Ethics of Mediation.....	18
Appendix 4: Code of Practice for Mediation in Scotland	19
Preamble	19
Definition of mediation	19
Voluntary participation and self determination	19
Conflicts of Interest	19
Competence	19
Confidentiality	19
Understanding of mediation	20
Advertising and solicitation	20
Gifts and favours	20
Discrimination	20
Complaints and Professional Indemnity Insurance	20
Further Information.....	21

Introduction

This guide is the fifth in a series of six which cover a range of issues related to the setting up and running of community mediation services for the resolution of neighbour disputes. Although hard to quantify exactly (most local authorities do not keep comprehensive records on complaints), evidence seems to indicate a significant rise in the incidence of neighbour disputes and the resulting challenge presented to social housing providers and other agencies.

The Sacro guides were originally part of a broader initiative by Sacro and the then Scottish Executive to assist social housing providers in developing the provision of mediation across Scotland to assist in meeting this challenge. All services offered under this initiative are free to local authorities and housing associations/co-operatives, and include the following:

- > Assistance to individual local authorities in identifying appropriate models and levels of delivery for community mediation in their area.
- > Assistance in establishing procedures, service standards and quality control measures.
- > Hosting of regional seminars on community mediation.
- > Provision of training in mediation awareness and mediation skills for local authority and housing association staff.
- > Production of a series of 'Good Practice' manuals on a range of issues relating to community mediation services (e.g. "Choosing A Model Of Service Delivery", "Community Mediation: Ensuring Good Practice").

As a provider of direct mediation services and training and consultancy on Community Mediation, young people/homelessness mediation and restorative justice, Sacro is committed to making communities safer by promoting and developing the provision of alternative methods of dispute resolution. We are grateful to the Scottish Government for enabling us to extend this work.

1. Community Mediation

Community mediation is a widespread and well-established tool for dispute resolution, with hundreds of community mediation centres operating both in the UK and the rest of the world. In Scotland alone, thousands of neighbour disputes have been handled by mediators, most involving two sets of neighbours, but some involving whole neighbourhoods of fifty to a hundred or more households. Community mediation has its own Code of Practice developed by the umbrella body Scottish Mediation (see Appendix 4), a stringent service accreditation scheme, and a standard qualification, with accreditation in Scotland by Scottish Mediation.

Community Mediation services deal with a range of neighbour disputes, including issues around noise (normally around 50% of all cases), children, boundaries, use of common areas, abusive behaviour, vehicles, rubbish, pets, and a variety of other issues. The disputes resolved by mediation range from the seemingly trivial and short-lived (although trivial disputes can often get out of hand), to those which are serious and chronic, making the lives of all involved a misery and taxing the resources of the police, housing officers, social workers and other public agencies.

Mediation works according to the following principles:

- > Mediators are neutral – rather than representing the interests of one party they are there to help both parties reach a mutually agreed settlement.
- > The mediation process gives both parties the opportunity to be fully heard, and to hear what the other side of the story is.
- > Mediators do not pass judgement or impose solutions – the parties to a dispute are encouraged to voluntarily take responsibility for finding a practical solution to their own problems, although mediators will assist in exploring whether all the issues have been covered and whether an agreement is liable to hold.
- > The dispute is not aired in public – mediation is a private process involving only the mediators and the parties to the dispute, and mediators act under a code of confidentiality.
- > An important part of the mediator's job is to identify and help resolve the underlying causes of a conflict as well as the symptoms – this means that any agreements reached are more likely to lead to long-term solutions
- > While mediation usually involves discussion of issues around past events, its main focus is on what is going to happen and how people will behave towards one another in the future.
- > Because mediation is informal it can be a quick and comparatively cheap method of resolving disputes.

The first four Sacro guides in this series describe the valuable role Community Mediation can play in housing management, models of service delivery, ways of establishing good practice, and measuring service effectiveness: this guide will describe some of the more common problems faced by community mediators in resolving disputes and possible strategies to overcome these problems.

2. Community Mediation in Context

Experienced community mediators do not make exaggerated claims about mediation's efficacy as a dispute resolution tool. They are aware that mediation has a demonstrated and well-established track record in resolving neighbour disputes, and will almost certainly have seen cases where this approach has worked when agencies such as the police and housing departments have written the dispute off as irresolvable. Mediators will have brokered solutions where the disputants have started off from positions of contempt for each other, and will have brought resolution where otherwise the end result seemed destined to be a conflict escalating into sustained violence.

They will also, however, have applied mediation techniques to seemingly low-level and straightforward situations only to find that all their efforts come to nothing, that the parties to the dispute remain entrenched in their positions, and the conflict continues to fester and grow.

This failure to make an impact can leave even the most highly skilled mediator doubting their abilities, and as mediation is a complex and demanding process, it will sometimes be the case that better training and a different approach may have brought a different result. Far more often, however, the reason for failure to reach a resolution will lie elsewhere.

This should not be surprising: as a tool for intervention in situations of conflict, mediation can uncover practical solutions, demonstrate more positive forms of communication, reframe contentious issues into shared problems, and sometimes give disputants a different perspective on the actions of themselves and others. What it cannot do, other than in the rarest situations, is to change the personal, social, economic and political environments that disputants find themselves in.

People involved in neighbour disputes may have other issues to deal with. They may have relationship difficulties within the family, feel their social status is low, live in damp and cramped accommodation, and be beset by the host of difficulties poverty brings. In such a context, the problem with their neighbour may be low on their list of priorities, something on which they can afford to expend only limited energy. Of course the dispute may exacerbate their other problems considerably, but its resolution is unlikely to remove them. In such situations, mediation can play a useful, if limited, role given the opportunity, but

it should surprise no one if the disputants are unable to summon the considerable effort involved in constructively resolving the dispute.

Fortunately, only a minority of the population are seriously beset by such problems, and mediation has a proven success rate in most situations where it is applied. What this guide intends to do is to maximise this success rate in these cases, which although capable of being resolved, can still frequently present barriers which require to be overcome. We will examine the commoner problems mediators have to face, examine the source of these problems, and outline possible strategies for overcoming them.

3. Problems and Strategies

The problems described in the following sections are ones which have all been encountered by community mediation services in Scotland, and the proposed strategies to overcome these problems are ones which have all been found to be effective. This does not mean, however, that these strategies will always be the only or even the most effective ones to adopt; individuals involved in disputes are just that – individuals – and each dispute and disputant will have particular characteristics which require particular responses. If conflicts were susceptible to resolution by the application of a simple standard formula, trained and experienced mediators would not be required. This guide should therefore be used as a toolbox and not as a definitive set of rules.

It is also important to remember that for mediated agreements to be effective in the longer term, the process must be voluntary. By using polished and rehearsed arguments it may be possible for the mediator to persuade reluctant disputants round the table against their wishes and better judgement. But in such circumstances an agreement is unlikely to last. The aim of the mediator should be to assist people to an understanding of the opportunities mediation gives to find positive ways out of a conflict; this may involve them changing previously entrenched positions, but the change of position should be genuine, not forced by relentless argument. This, of course, is a fine line – when does prompting people to face up to the reality of their situation turn into undue pressure? But by keeping the issue in the forefront of their minds, mediators should be able to avoid major errors of judgement.

The common problems faced by mediators have been grouped into five sections. Inevitably, however, some issues cut across the categories: fear of reprisal, for instance, can cause difficulties in people agreeing to an initial meeting, but can also cause difficulties in getting disputants to meet, or in reaching a realistic agreement during a face-to-face meeting. Similarly, lack of clarity about the mediator's role can emerge at all stages of the mediation process. Problems have therefore been described at the stage where they are most likely to first appear.

4. A Foot in the Door

As mediation is a voluntary process, both sets of neighbours in a dispute need to agree to participate, and it is part of the mediator's task to help them see the benefits of mediation. Often, however, there is a task prior to this in getting people to agree to an initial meeting: this is particularly true for second parties (usually the neighbours who are being complained about).

First contact with potential participants will depend on the nature of the referral – some services restrict themselves to referrals by agencies such as housing departments, others accept direct referrals from the public, and will usually require only one party in a dispute to make initial contact. In both cases the way mediation is presented, whether through written materials, phone contact or personal contact, will impact on the take up rate.

Agency Referrals

Services which rely on agency referrals need to be sure that these agencies are presenting the option of mediation in an accurate and positive manner. As services will not see people who refuse mediation and are unlikely to learn the reason for refusal, effort is needed in the following areas:

Training of Agency Staff

Representatives of agencies such as police, housing departments and environmental services have to understand the basics of the mediation process and be able to “sell” it effectively. Mediation awareness sessions can be held for staff, they can be given the opportunity to “shadow” mediators at work, and can be given written background materials on mediation and reports on the service's activities.

Publicity Materials

Often, representatives of referring agencies will do little more than leave a leaflet for neighbours to consider. It is therefore essential that service leaflets are written clearly and simply and put over an attractive message. It is useful to include success rates, examples of successful cases, and quotes from satisfied clients.

Referral Processes

Referral of clients should be a simple and quick process, requiring as little paperwork as possible from agency representatives. Systems should therefore be agreed with referring agencies and should, as far as possible, be tailored to the needs of the agency rather than the mediation service. See sample referral form in Appendix 1.

Self-Referrals

In services which seek direct contact from the public, it is necessary to address the following:

Advertising – How easy is it for the public to find out about the service you are offering? Are you easy to find in the phone book? Are there posters in local libraries, doctors' surgeries, and council offices? Attractive advertising need not be expensive, and will ensure the message gets across to those who need it.

Publicity Materials – Sometimes, potential clients will decide whether or not to approach the service on the basis of a leaflet they have picked up. It is therefore essential that service leaflets are written clearly and simply and put over an attractive message. It is useful to include success rates, examples of successful cases, and quotes from satisfied clients.

It is vital, if financially possible, for services to get specialist advice on leaflets, both in terms of language and visual impact.

First Contacts – Potential clients will usually make their first contact by telephone. It is therefore essential that all staff/volunteers answering enquiries are able to explain the mediation process and its benefits in a clear and positive manner. This will require training in telephone techniques, and some services have developed a “script” to help ensure consistency of approach. In depth discussion of issues and decisions on whether mediation is appropriate should only be made by trained mediators.

Second Parties – Where a referral has been made by one neighbour, it will often come as a surprise to the other neighbour when they are contacted by the mediation service. Whether this is done by letter, phone or personal visit, the message should always be that the service has made contact to assist both parties in resolving the difficulty: the tone should be positive, and words such as complaint and grievance should always be avoided. See sample second party letter in Appendix 2.

5. Getting Around the Table

Mediators are frequently called in to situations where neighbours have been in dispute for more than a year; over the course of the dispute stakes will have been raised and communications may have broken down completely. All too often contacts between the parties will be limited to exchanges of abuse or hostile glances when they accidentally meet. Under the influence of this negative reinforcement it is only to be expected that many disputants are reluctant to meet face to face, even with the presence of a neutral third party.

Other reasons for being reluctant to meet include lack of faith in the efficacy of the process, perceptions of the other party being unable/unwilling to consider compromise or change, and a suspicion that any agreement reached will never be adhered to.

These are all potentially valid and realistic reasons for not engaging in the mediation process; equally they may be inaccurate perceptions or misplaced fears. It is the job of the mediator to help both parties explore these anxieties and assist in working through those which are counter-productive to the resolution of the dispute. How far should the mediator go in persuading disputants of the potential benefits of mediation?

As has already been stated this is a matter of balance, but it will assist mediators to be aware of their own values and ethical base. If, as is likely to be the case, the mediator is ethically committed to the non-violent, mutually agreed resolution of disputes wherever possible, they should not feel inhibited from “selling” mediation in every context where it is appropriate. Most services have referral criteria giving guidance on when mediation is not appropriate, and these should always be adhered to. Where the mediator may be acting outside their appropriate role is where they apply pressure on participants to agree in inappropriate situations, and where the situation is appropriate but agreement to participate remains forced and reluctant, despite the mediator’s best efforts. We must always remember that mediation is a voluntary process that depends for its success on genuine engagement.

The following are a series of reasons for resisting mediation, and potential strategies for dealing with these; the assumption has been made that mediators will apply these strategies only in genuinely suitable cases.

Problem	Response
My neighbours won't participate	How do you know? What do you have to lose by finding out?
My neighbours won't listen	The way a mediation is set up is to make sure everyone listens, and it is the mediator's job to ensure everyone is heard
They'll just tell lies	How do you know? Do you think their agreement to get involved might mean they are serious about getting things sorted out?
Things have gone too far for mediation to work	If you both agree to meet it means that things haven't gone too far yet
They'll just be abusive towards me	There are ground rules and it is the mediator's job to ensure everyone obeys them
We see things so differently there's no room for compromise	If the mediation service didn't think there was a chance of agreement, we wouldn't suggest a meeting
I'm right, so why should I give in?	We're not asking you to give in, just to think about a solution that will suit everyone.
They're out of touch with reality	If the service thought anyone was incapable of reaching an agreement and keeping to it we wouldn't hold a meeting
As far as I'm concerned, it's not a problem	Your neighbours seem to think there's a problem so wouldn't you like to get things sorted out?
I have no intention of ever being friends with them	No-one will ask you to be friends with them, just to help reach an agreement you both can live with
Things will settle down if we leave them alone	It's possible, but most conflicts get worse if you don't try to resolve them
I'm hopeless at putting my point over	Part of the mediator's job is to make sure everyone's point of view is heard and understood
I want to take them to court and let a judge decide	That's your right, but legal action is often unpredictable and usually expensive
An agreement will never hold	It's possible but most agreements hold very well, and plan for what to do if things go wrong
If I agree to mediation, doesn't that mean I'm admitting I'm partly at fault?	Mediation is not about fault or blame – it is about finding a solution for the future that both of you can agree on.

6. Handling Emotions

6.1 General

Facing your neighbour across the table after a sometimes prolonged and bitter period of conflict is inevitably a highly charged experience. Meetings seldom occur without some emotional content, and it is often both therapeutic and useful for people in conflict to be able to show how deeply the conflict is affecting them. It is a vital part of the mediator's function to ensure that the emotional content in a meeting remains constructive and does not start to hinder the process of finding a resolution.

The occurrence of unproductive emotion can be minimised by careful planning and preparation on the part of the mediator. People often react emotionally when they are feeling threatened or challenged, and particularly when something happens or is said that they weren't expecting. Ideally, there should be no surprises in a mediation meeting; both sides should be clear about their own needs and what the other party is likely to feel and say. It is therefore often useful to have a separate session with each party specifically to prepare them for the mediation meeting.

Preparatory Sessions – Advantages

- > Participants can be helped to be clear about their feelings, interests and needs.
- > Participants can be helped to anticipate what the other party's feelings, interests and needs might be.
- > The mediator can act as “devil's advocate”, putting possible counter-arguments that may emerge.
- > The mediator can explore with the participant how they will react to particular points made by the other party.
- > If the meeting is likely to be highly emotionally charged, or if the participant expresses concerns about being able to control themselves, the mediator can help participants work out strategies to remain calm.

Even with the most careful planning and preparation, however, there will be times when situations can get fraught. The following are some suggestions for handling different emotions when they become counter-productive to a constructive resolution of the issues:

6.2 People who are angry

- > Remain calm – part of the mediator’s role is to model constructive behaviour. If the mediator gets agitated or panics, this will make the situation much worse.
- > Watch your body language - allow angry participants adequate personal space. Leaning towards or pointing at someone can be interpreted as threatening, as can too much eye contact.
- > Encourage talking – ask specific questions (e.g. What needs to happen to make you feel better?), use open attending body language, don’t interrupt.
- > Reassure – acknowledge they are feeling angry. Use the person’s name - repeat yourself if necessary - use neutral language.
- > Show your commitment - emphasise your wish to help find a way forward and acknowledge the importance of the issue for them.
- > Help them save face - offer other options to pursue the matter.
- > Call a break – If someone is very angry, think about calling a cooling-off break where you can talk privately to each party.

6.3 People who are upset/tearful

- > Give them space – sometimes people need to get upset before they can say what they really feel.
- > Acknowledge what is happening - recognise and acknowledge the feeling behind the behaviour - “I can see that you’re really upset about things..” It is important, however, to avoid being patronising – you can’t share someone’s pain so don’t pretend you can.
- > If someone is so upset they can’t continue, call a break and check out with them in private whether anything can be done to make things less upsetting.

6.4 People who are withdrawn

- > Focus first on something they may feel more comfortable with and then lead them gently up to the problem.
- > Focus on specific questions to get more details.
- > Show patience and give people space.
- > Support people when they begin to open up - “Thanks for that....is there anything else you want to say?”
- > Call a break and find out – in private - what needs to be done to make them feel able to contribute.

6.5 People who keep interrupting

- > Start by being patient and avoid blaming – “Could you please talk one at a time because I can’t hear what’s being said if you talk over each other.”
- > Remind participants of the ground rules.
- > If interruptions persist, consider negotiating a further period of uninterrupted time, where each party takes it in turn to describe their position and wishes.
- > Call a break and find out – in private - from each party what needs to be done to make them feel able to stop interrupting.
- > If all else fails, explain that you cannot continue the meeting unless the interruptions are stopped. Explain that by constantly interrupting they are in danger of throwing away a chance to get the situation resolved.

6.6 Handling your own reaction to difficult behaviour

- > **Unhook:** Monitor your body stress, control your own feelings. Breathe deeply - loosen areas of tension - change position if need be.
- > **Check things out:** Make sure you are reading the situation right (particularly if it is non-verbal behaviour). Don’t make assumptions about what is going on - take time to notice what is happening and how others are affected.
- > **Describe the effect on you:** State assertively how what is going on is affecting you. “When you both speak at once I can’t concentrate”.
- > **Have a break:** If you feel yourself getting worn out, agitated, or confused as to what to do next, call a break and use the time to plan/compose yourself.
- > **Know your boundaries:** part of the ground rules for the meeting should be that the mediators, as well as the parties to the dispute, are treated respectfully. Make it clear if you feel this isn’t happening, state the consequences if the disrespect continues, and be prepared to follow through.

6.7 Eleven handy hints for mediation meetings!

1. **Create the climate:** be informal, accepting of people, friendly, relaxed.
2. **Set a positive tone:** expect hard work and good faith.
3. **Establish Ownership:** disputants are in charge of working towards their own solution. Mediators are in charge of the framework (the session) within which that happens. They must be ready to take control of the process and be directive when necessary.
4. **Hold people to speaking for themselves:** “I think ...” not “My husband thinks that ...”. “Her yelling makes me mad” not “The neighbours all down the street are fed up with her”.
5. **Keep language simple:** use vocabulary like the vocabulary of the disputants - avoid jargon.
6. **Look for points of agreement.**
7. **Be suspicious of agreements reached too easily:** test them out - play devil’s advocate, poll each person, have disputants think through consequences.
8. **Deal with the problem at hand:** do not try to solve everything that surfaces during mediation. If necessary, set another time to work through other problems.
9. **When (and only when) necessary, offer ideas but in impersonal terms:** “Have you considered ...?” not “If I were you I’d ...”. “Some people have tried...” not “Why don’t you ...” Offering several ideas is better than offering just one.
10. **Remember, touching can be touchy:** it comforts some people, offends others. It can also be interpreted as evidence that you have taken someone’s side.
11. **When stuck or in doubt, call separate meetings.**

7. Blocking Strategies/Impasse

7.1 Blocking Strategies

On occasion mediators find themselves tested to the limits by disputants who reject every possible solution offered by the other party. This can simply be because none of the proposed solutions meet the disputant's needs, and in such cases all that is required is some further creative thinking by the parties, or as a last resort, the mediator. Sometimes, however, it seems that perfectly reasonable compromises are being continually and systematically blocked, with the likely consequences being that the mediation will founder. In such cases the following is worth considering:

- > Does one of the disputants have an interest in maintaining the conflict? If so, this should be uncovered and discussed, and if there is no change of position the mediation should be abandoned.
- > Is there someone else with influence over the dispute who is not present but has an effect on what can and can't be agreed to? If so, is it possible to adjourn the mediation and get agreement for them to participate?
- > Is one of the disputants worried about losing face? If so, it may be worth calling a break for the mediator to give private reassurance that an agreement secured through mediation is something they should be congratulated on.
- > Is the dispute really about the issues that are being discussed, or are there other unspoken issues which may be more important?
- > Is the conflict suitable for resolution through mediation? If the root of the conflict is not mediatable (e.g. strongly held religious, political or ethical convictions), it may be possible to get the disputants to understand each other's perspective better, but there is unlikely to be agreement.

7.2 Impasse

Around 90% of mediation meetings are successful, but most experienced mediators will have experienced situations where, despite the best efforts of the participants and themselves, it becomes clear that an impasse has been reached. In such situations it is worth asking each of the disputants in turn to do the following:

- > Describe what their ideal outcome would be.
- > Describe their "bottom line"
- > Describe one area they feel they have compromised over.
- > Describe one area they feel there is still potential for agreement on.
- > Describe what they think the outcome will mean for them if mediation is unsuccessful.

If in the end it is clear that no agreement is possible, the mediator should, if appropriate and relevant, describe other possible options for resolving the dispute, such as arbitration.

8. Problems with mediators

8.1 The Perfect Mediator

We have already said that it should surprise no one if disputants are sometimes unable to summon the considerable effort involved in constructively resolving a dispute. A good mediator, however, will also be aware of possible failures and limitations on their own part. Sometimes mediations can fail simply because the mediator's style or personality engenders a bad reaction in one or more of the participants, although this can be minimised where there is an experienced co-mediator who can step in and play a leading role. At other times, there may be shortcomings in technique, approach, communication or a host of other areas – mediation requires high level skills and the perfect mediator does not exist. The following are some of the commoner areas where problems related to the mediator rather than the client can contribute to a failure to resolve disputes.

8.2 Mediator training

Training is crucial in mediation. All mediators conducting a mediation meeting should have had both a basic (at least 30 hour) mediator training course run by people who are themselves experienced mediators as well as trainers, and should have been through a system of mentoring with an experienced mediator.

Training should also be an integral part of a mediator's continuing professional development, and should cover both the acquisition of new or more specialist skills and refresher courses in established skills.

It is good practice for mediation services to conduct a training/skills audit, and to track individual skills levels and training requirements through support and supervision systems (see guide number 4 - Community Mediation: Measuring Service Performance).

8.3 Mediator experience

Initial mediator training will provide mediators with the basic techniques necessary to begin undertaking casework, but there is no doubt that the crucial skills are learned through long experience. It is therefore advisable for services to ensure that inexperienced mediators are partnered by more experienced colleagues until both they and the service have confidence in their ability to act autonomously.

8.4 Mediator attitudes

Meeting your neighbour across the table is a daunting proposition, and in most cases people will require some degree of persuasion and reassurance. For this persuasion to be convincing, it is necessary that the mediator has a belief in the 'product' they are 'selling'. Services should be clear how they expect their mediators to present both themselves and the service on offer, and should provide training on presentation skills. Mediators should also be clear as to the underpinning ethical principles of their service – see Appendix 3 – Sample Statement Of Ethical Principles.

Maintaining enthusiasm for the process can also be difficult if mediators carry large caseloads over long periods of time. Services should ensure that support and supervision mechanisms are adequate to address this issue, and should consider issues such as caseload control and the use of sabbaticals for mediators.

8.5 Time and resource constraints

One of the most frequently heard comments from satisfied clients is that the mediators had time to listen to their hopes and fears and to explore in detail where possible solutions might lie. Because mediation is concerned with uncovering and resolving the underlying issues in a conflict, it is by its very nature time consuming. If mediators are operating under narrow time constraints, or are limited in the number of meetings they can arrange in any one case, the result is likely to be a rushed and unsatisfactory process with a decreased chance of a satisfactory outcome. Caseload management requires to be balanced carefully against available resources if quality of service is to be maintained. Services should consider the following:

- > What is the maximum number of live cases any one mediator should carry?
- > Are there contingency arrangements for circumstances where mediators get involved in very time-consuming cases (e.g. multi-party disputes)?
- > How are service targets arrived at for the number of cases in a year?
- > What is the service policy on response times to client contacts?
- > What is the service policy on waiting lists?

Appendix 1: Referral form

BRIGADOON COMMUNITY MEDIATION SERVICE: REFERRAL FORM

Any other agency involved	Date	<i>31/07/2024</i>
<i>Police</i>	Referred by	<i>self</i>
	Address	
	Telephone	

Party A	
Title	<i>Mrs</i>
Name	<i>Jamieson</i>
Address	<i>55 (1F2) Glencoe Drive</i>
Postcode	
Work Tel.	<i>672 1183</i>
Home Tel.	
Available	

Party B	
Title	<i>Mrs</i>
Name	<i>Bryce</i>
Address	<i>55 (2F2) Glencoe Drive</i>
Postcode	
Work Tel.	<i>672 8776</i>
Home Tel.	
Available	

Other parties

Issue
<p><i>Mrs J says that Mrs B is constantly complaining about every noise her family make and particularly when her grandchildren are visiting. She says It makes family visits difficult.</i></p>

Appendix 2: Response letter

BRIGADOON COMMUNITY MEDIATION SERVICE

Brigadoon Community Mediation Service
27 Misty Way, Brigadoon
Tel. (0111) 555-2101

Dear Ms Pelt,

We understand that there have been some difficulties between your neighbour Mr Reus and yourself.

Brigadoon Community Mediation Service can very often help to get difficulties such as these resolved, and in order to explain mediation and what our service can offer, two of our mediators will call to see you around 10am on Mon 1 April 2002. If this is not convenient, or if you want to discuss our service further, please call us on 555-2101.

I have enclosed a leaflet which tells you some more about mediation

Yours Sincerely,
Ann O'Dine
Administrator

Appendix 3: The Ethics of Mediation

BRIGADOON COMMUNITY MEDIATION SERVICE: ETHICS OF MEDIATION

Ethics are beliefs about what is right and wrong in a particular situation. Our beliefs come from our values i.e. what we believe is important at a particular time in particular situations. They may change over time and be influenced by our culture, individual experience or current events. Ethics and values dictate what we consider appropriate action as an individual, as a member of a particular group, an employee, a practitioner and society as a whole.

Brigadoon's values for example (as stated in its strategic plan) are

- > mutual respect;
- > recognising and valuing diversity;
- > personal responsibility;
- > society's responsibility to all its members;
- > capacity for change;
- > capacity to work together to reduce conflict and repair harm.

From these organisational values a set of related values have been developed for Brigadoon mediation services. These include a duty to promote collaborative, non-violent conflict resolution, and assisting clients to come to their own decisions about what is best for them.

From these values a set of ethical guidelines for mediators have emerged which are based on Mediation UK's standards. Brigadoon's mediation services are accredited by Mediation UK (the umbrella organization for mediation in the UK) and uphold the following values that

- > people should be treated with respect;
- > people should be treated without discrimination;
- > confidentiality must be maintained;
- > mediators must be seen to be neutral and impartial;
- > mediators should not give advice, counselling or advocacy;
- > mediators should be aware of their own values and prejudices;
- > mediators should challenge discrimination.

Appendix 4: Code of Practice for Mediation in Scotland

Adopted by the Board of the Scottish Mediation Network on 19.11.08

Preamble

This Code is intended to form a baseline for the conduct of all forms of mediation in Scotland. It is expected that the different strands of mediation will, if they have not already done so, develop complementary and more detailed guidance.

Definition of mediation

Mediation is a process in which disputing parties seek to build agreement and/or improve understanding with the assistance of a trained mediator acting as an impartial third party. Mediation is voluntary and aims to offer the disputing parties the opportunity to be fully heard, to hear each other's perspectives and to decide how to resolve their dispute themselves.

Voluntary participation and self determination

A mediator shall recognise that mediation is based on the principle of voluntary participation and that it is the parties, rather than the mediator, who determine the outcome.

Impartiality and independence A mediator shall remain impartial and independent. If a mediator becomes aware of any reason which may diminish their impartiality or independence, they shall disclose this to the parties at the earliest opportunity and withdraw from the mediation unless the parties do not wish them to do so.

Conflicts of Interest

A mediator shall disclose all actual and potential conflicts of interest reasonably known to the mediator whether before or during a mediation and shall withdraw from the mediation unless the parties do not wish him/her to do so.

Competence

A mediator shall be responsible for undertaking sufficient training, supervision and continuing professional development to maintain necessary mediation skills. A mediator shall mediate only when she/he believes that he/she has the necessary skills to carry out the mediation.

Confidentiality

Confidentiality in mediation is important to encourage all participants to speak truthfully and candidly, and to enable a full exploration of issues in dispute. Unless compelled by law, or with the consent of all the parties, a mediator shall not disclose any of the information given during the mediation process.

Understanding of mediation

A mediator shall ensure that the parties understand:

- > the purpose and procedure of the mediation;
- > the role of the parties and the mediator;
- > any fee arrangement;
- > the obligation of confidentiality.

Advertising and solicitation

In advertising or offering services, mediators shall not guarantee settlement or promise specific results. All information provided by mediators about their education, background, mediation training and experience shall be accurate.

Gifts and favours

A mediator must not accept from or exchange any gift or favour with any party in any mediation. A mediator must use judgement that reflects the high ethical standards which mediation requires.

Discrimination

People should always be treated with respect and without discrimination.

Complaints and Professional Indemnity Insurance

A 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.

Further Information

For further information please contact:

Scottish Community Mediation Centre

Sacro
17 Gayfield Square
Edinburgh
EH1 3NX

tel: 0131 624 7263

email: infoscmc@sacro.org.uk

web: www.scmc.sacro.org.uk

SCMC trainers have delivered mediation skills training since 2000. The Centre, which is managed by Sacro, has provided services to a wide range of international, national and local government agencies as well as other bodies such as charities, social housing providers, police and Ombudsmen.