



**ANGLICAN CHURCH OF AUSTRALIA
DIOCESE OF NEWCASTLE**

**COMMITTEE TO MONITOR ALLEGATIONS OF
SEXUAL MISCONDUCT**

A GUIDE TO MEDIATION

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INFORMATION FOR MEDIATORS

INTRODUCTION

Religious communities function in many ways like family systems and human families are rarely, if ever, perfect. It is inevitable that within human family relationships there will be conflict. In issues of conflict relating to allegations of sexual misconduct that may occur between members of our diocesan family, mediation, if appropriate, may be offered as a means to reach agreement and resolution.

The Guide to Mediation has been compiled to assist Contact Persons integrated with the Diocesan Committee to Monitor Allegations of Sexual Misconduct [CASM] when acting in the neutral role of mediator.

PREAMBLE

Mediation is a voluntary process and requires the agreement of both complainant and respondent. It is a process by which the participants [i.e. the complainant and respondent], together with the assistance of a neutral person or persons [the mediator/s], isolate issues in order to develop options, consider alternatives and reach a mutually acceptable resolution to their dispute. The mediator is a facilitator of the communication process.

A mediator should be:

- Acceptable
- Impartial
- Neutral
- An advocate for a fair process.

BASIC MEDIATION STRATEGIES

1 *Communication Skills*

The use of questions, along with active listening, are the key information gathering tools of the mediator. *Open-ended questions* encourage a person to elaborate and describe a situation, thought, or feeling e.g. 'Could you tell me about'. Open-ended questions offer the widest range of opportunities for an individual to tell his/her story. *Specific questions* look for an answer to a particular question and are not as general as open-ended questions, e.g. 'Have you discussed this situation with your parish priest?'

Avoid questioning tendencies such as:

Using too many questions.

Asking more than one question at a time.

Asking too many 'why' questions.

Including the answer in your question.

Active listening or reflective listening may be defined as 'a special type of listening that involves paying respectful attention to the content and feelings expressed in

another's communication. It is hearing and understanding and then letting the other know that he or she is being heard and understood'. [Katz and Lawyer, 1985]. Active listening provides an opportunity for a person to clarify or further explain their communication. Active listening also lets the person communicating know the mediator is really listening. Active listening is usually said to involve the skills of 'attending' and 'responding'.

Attending skills

- *Listen!!*
- *Contact* .. e.g. eye contact is essential, but too much or too little has a negative impact; proximity, i.e. appropriate public distance is important – too close or too distant offends.
- *Posture* .. open posture; a slight lean towards the individual speaking, signals attending; be relaxed ... anxiety is infectious.
- *Gestures* .. avoidance of distractive gestures.
- *Environment* .. ensure privacy; structure the physical setting – seating should be arranged for comfort, communication and control.

Responding skills

- *Acknowledgement* that the person communicating has been heard by use of non-verbal gestures, e.g. nodding and/or brief one to three word statements.
- *Repetition* of a word or phrase [sometimes referred to as the 'echo response'].
- *Restating* the content of information or the feelings expressed or inherent in the communication. This allows for clarification.
- *Summarising*, reflecting back on the main points of the communication.

2 PARTICIPANTS' ANXIETY LEVELS

- A person who is in a highly emotional state is unable to communicate or negotiate effectively. It is important not to minimise people's emotions; give them time to express them. Mediators can serve as role models for the participants by remaining calm. Some suggestions to manage high anxiety levels include:
 - (a) *Define* high anxiety/emotion e.g. 'I know you're upset.'
 - (b) *Legitimise* e.g. 'I can understand that that upsets you.'
 - (c) *Diffuse* e.g. 'Let's take a minute to calm down; slow down a little ; sit back and take a deep breath; let's take a break.'
 - (d) *Support* e.g. 'Good, you're doing well; you're much calmer now.'
[Eisenhardt, CPMT, 1988]
- However, it may be necessary to limit emotion where it could escalate or become destructive. Other interventions include: refer back to the identification of issues/problems; identify unacceptable expressions of emotion; remind participants of ground rules and their initial agreement to participate in the process.

3 IDENTIFICATION AND CLARIFICATION OF ISSUES/PROBLEMS

- (a) Ask open-ended questions;
- (b) actively listen;
- (c) ask more specific questions;
- (d) summarise information.

That is, *ask, listen, ask, summarise*. Issue/problem identification using this basic technique will assist the participants to generate as many options and alternatives as possible.

4 'WHEN ALL ELSE FAILS'

- (a) Point out the advantages of reaching an agreement.
- (b) Ask, 'What will you do if we cannot reach an agreement?'
- (c) Return to issue/s and identification of problems.
- (d) Use your silence as a tool and wait the participants out in the hope that they will move themselves forward.

PRAYERS FOR MEDIATION

Opening Prayer

Heavenly Father, giver of all good gifts, hear us as we seek the blessing of the Holy Spirit on what we say and do in this mediation process.

We acknowledge our shortcomings and limitations, our ignorance, our pride, our lack of faith; and yet we know your unfailing love through Jesus, your Son, our Lord.

Pour forth your grace into our hearts: cleanse us, illuminate us, direct us, use us; and grant that nothing in our lives may hinder your work, but that in all things we may walk in the way of Christ, for the glory of your Name. We ask this through Christ our Lord, who taught us to pray: *

Our Father in heaven,
 Hallowed be your name,
 your kingdom come,
 your will be done,
 on earth as it is in heaven.
 Give us today our daily bread.
 Forgive us our sins
 as we forgive those who sin against us.
 Save us from the time of trial
 and deliver us from evil.

For the kingdom, the power, and the glory are yours now and for ever. Amen

Closing Prayer

Loving Father, we thank you, for your presence among us, guiding our thoughts and strengthening us through this mediation.

Whatever we have now agreed to, in accordance with your will, give us the grace and power, love and forgiveness, to fulfil, to the glory of your name; and may your blessing continually rest upon us; through Jesus Christ, your Son our Lord, who lives and reigns with you and the Holy Spirit, one God, now and forever. Amen *

Prayers kindly compiled by the Reverend Chris Bird

The Grace

The grace of the Lord Jesus Christ,
 and the love of God,
 and the fellowship of the Holy Spirit,
 be with us all evermore. Amen.

A GUIDE TO MEDIATION

PRIOR TO MEDIATION

Assessment (a):

- Are there legal issues?
- Is there a safety risk?
- Is there a power imbalance?
- Is there an expectation of resolution, i.e. is there a willingness on the part of both participants to reach agreement?

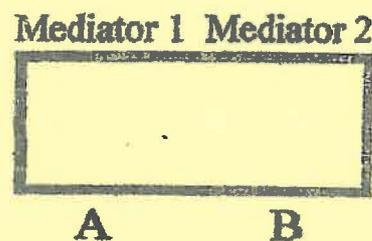
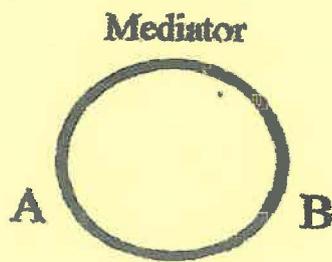
Assessment (b):

- The Chair of the Committee for Allegations of Sexual Misconduct [CASM] will consult separately with the Complainant's Contact Person and Respondent's Contact Person to determine if mediation is a viable option.
- If appropriate, mediation will be offered to the Complainant and Respondent as a means to reach agreement and resolution. A copy of 'Mediation – Information for Participants' [see Appendix A] will be forwarded to Complainant and Respondent by the Chair, CASM.
- The Complainant's Contact Person and the Respondent's Contact Person must ensure that the Complainant and Respondent have an understanding of the mediation process and are willing to participate.
- Contact Persons will advise the Chair concerning the willing participation of both participants; if either the Complainant or Respondent are unwilling to participate the process cannot proceed.

'SETTING THE SCENE'

- The Chair will appoint one or preferably two mediators who have not had prior communication with regard to the particular issue, with either participant.
- A venue will be arranged and should not be located in the parish or ministry sector of either the Complainant or Respondent.
- Options concerning venue/time/date will be determined and offered for consideration by both participants.
- Prepare the environment .. ensure that the environment is as comfortable and informal as possible. It is preferable to sit around a table .. do not sit participants close to each other, try and avoid eye contact between participants.
- If two mediators, assign one to be note-taker.

Examples of seating arrangements:



MEDIATION BEGINS.. 'There is no one way to mediate, it all depends on '

STEP ONE: Introduction

- * Introduce yourself, have participants introduce themselves, as well as support Contact Persons.
- * Opening Prayers.
- * Review the document 'Mediation – Information for Participants'.
- * Outline the ground rules:
- * No interruptions [participants can write down points as they think of them];
- * There is to be an environment of mutual respect; notes will be taken by mediator/s to assist in exploring the issue/s [remind participants that notes will be destroyed];
- * Complainant speaks first, then Respondent.
- * Reinforce that mediation is about resolution and is not fact finding, proving anything or an investigation.
- * Explain the process – i.e. a brief description of various 'steps'.
- * Obtain written agreement from both participants to proceed.

STEP TWO: Complainant explains the circumstances which lead to making a complaint

- Ask the Complainant to describe the circumstances that lead to making a complaint.
- Listen.
- Take brief notes as necessary.
- Keep things flowing .. ensure that the Respondent does not interrupt, reminder re 'ground rules' if necessary.
- Ask questions in an attempt to clarify the issue only .. try and keep questions until the end of the Complainant's statement.
- **DO NOT ASK WHAT THE COMPLAINANT WANTS AT THIS STAGE.**

STEP THREE: Respondent gives an account of the circumstances .. [this may include why he/she acted in a particular manner]

- Ask the Respondent to give his/her account of the circumstances.
- Listen.
- Take brief notes as necessary.
- Keep things flowing .. ensure that the Complainant does not interrupt, reminder re 'ground rules' if necessary.
- Ask questions for clarification only .. try and keep questions until the end of the Respondent's statement.

STEP FOUR: Ask Complainant and Respondent questions to define issues

- Do not ask meaningless questions .. ensure clarification of the issue/s by summarising [refer to notes if necessary].
- Endeavour to reach an agreement on the priority of issues .. list on whiteboard if available.
- Assess participants' attitudes towards each other, if reasonable and courteous, you may allow Complainant and Respondent to ask each other questions.
- **DO NOT ASK WHAT THE COMPLAINANT WANTS AT THIS STAGE.**
- Remind participants of subsequent steps; i.e. private confidential sessions beginning with Complainant. If practicable, at completion of private confidential sessions there will be a final joint 'coming-together'.

Time for a break

- Direct participants to separate waiting areas .. arrange for tea/coffee. Contact Persons for Complainant and Respondent to accompany their

respective participants to offer encouragement and support, affirming resolution of the issue/s.

STEP FIVE: If possible, all mediation sessions will be managed by two mediators – this is the time to meet with your co-mediator.

Mediators meet together and:

- Discuss the issue/s
- Discuss possible options for settlement
- Discuss strategies for the next step, i.e. private sessions .. including what sort of approach you plan to take.

STEP SIX: CAUCUS – Private, confidential meetings between mediators and each participant, a time to find out what each participant wants and needs. This important step may lead to a resolution of the issue/s.

- Mediators are to work together, meeting with each participant as a co-operative team.
- Spend equal time with each participant.
- Be specific, impartial and neutral .. try to keep 'it' simple.

(A): Private, confidential session with Complainant.

- Ask Complainant if he/she wishes their support Contact Person to remain.
- Build trust, be encouraging, use positive body language, remind Complainant that this is a confidential meeting .. what is said will not be discussed with Respondent.
- Summarise your understanding of what was said in the joint meeting with Respondent, focus on the issues/ as identified in the joint session.
- Ask if Complainant has anything else to add. Encourage the Complainant to speak freely, openly and confidentially.

- **NOW IS THE TIME TO ASK WHAT THE COMPLAINANT WANTS.**

(B): Private, confidential session with Respondent

- Ask Respondent if he/she wishes their support Contact Person to remain.
- Build trust, be encouraging, use positive body language, remind the Respondent that this is a confidential meeting .. what is said will not be discussed with Complainant.
- Summarise your understanding of what was said in the joint meeting with Complainant, focus on the issue/s as identified in the joint session.

- Ask if Respondent has anything else to add. Encourage the Respondent to speak freely, openly and confidentially.
- Inform Respondent of what the Complainant wants.

THIS IS WHERE NEGOTIATION BEGINS

STEP SEVEN: During the negotiation process .. a number of private confidential sessions with either participant may be necessary

- Your objective is to explore options for agreement and resolution.
- Focus on the priority of issue/s identified in the joint session.
- Give encouragement to the participants as each problem is resolved.
- Is the process productive? Continue or end negotiation?
- No agreement? Consult with co-mediator then advise parties that this matter is no longer amenable to mediation.
- Advise the Chair, CASM as soon as practicable that the matter is no longer amenable to mediation. [The Chair will consider further possible action, in consultation with Committee members].

AGREEMENT:

STEP EIGHT: Go over the terms of the negotiated settlement agreement with the participants .. return to a joint session if practicable .. see this as a time of 'coming together'

- Clarify the exact wording of the agreement.
- Prepare the agreement .. record in mutual terms e.g. 'Jack and Jill have agreed'.
- Ask participants to review the agreement .. ensure the agreement is practical and workable .. request participants to sign the agreement .. co-mediators to sign also.
- The agreement should be an agreement for future behaviours and is the product of mediation. The agreement is not a legal or binding document, it is a document of intent.
- Advise participants that a copy of the agreement will be forwarded to each of them by the Chair, CASM.
- Advise participants that the agreement will be stored in the Diocesan Office in accordance with the CASM protocol with regard to storing records of a confidential and sensitive nature.

CONCLUSION:

- Reiterate that mediator's notes will be destroyed by the Chair, CASM and confidentiality will be maintained at all times.
- Thank parties for participating in an effective and positive manner.

- Closing prayer.
- One or both participants may need referral to appropriate agencies, consult with the Chair, CASM.
- Mediator/s will be debriefed by the Chair, CASM.

SOURCES:

Katz, Neil H. and Lawyer, John W. *Communication and Conflict Resolution Skills*. Kendall/Hunt Publishing Co, 1985.

Eisenhardt, Howard, Cleveland City Prosecutor Mediation Training, 1988.

Hunter Institute of Mental Health, unpublished document, *The basic tool of interviewing*.