

<b>TRUST CORPORATE POLICY : MEDIATION AND RESOLVING DIFFERENCES IN THE WORKPLACE</b>			
<b>APPROVING COMMITTEE(S)</b>	Trust Policies Committee	Date approved:	Chair's action: 18/10/13
<b>EFFECTIVE FROM</b>	Date of approval		
<b>DISTRIBUTION</b>	All Managers in CAGs, Corporate Services and Non-Clinical Services via Trust Bulletin; all employees via Trust Intranet		
<b>RELATED DOCUMENTS</b>	Barts Health Disciplinary Policy Barts Health Grievance and Employment Complaints Policy Legacy BLT/NUHT/WX policies on Bullying & Harassment		
<b>OWNER</b>	Director of HR		
<b>AUTHOR/FURTHER INFORMATION</b>	Dionne Siley, Human Resources Manager, Surgery Clinical Academic Group		
<b>EXTERNAL REFERENCES</b>		Refer to:	
<b>SUPERCEDED DOCUMENTS</b>	Protocol on Mediation and Resolving Differences in the Workplace Core Policy (Barts and the London NHS Trust)		
<b>REVIEW DUE</b>	Three years from the date of approval shown or earlier subject to legislative or national policy changes or organisational need.		
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<b>CONSULTATION</b>	<i>Barts Health Working Groups</i>	HR Policy Working Group Trust Policy Committee
	<i>External Partners</i>	Capital Hospitals Ltd via the New Hospital Programme Control Team

<b>SCOPE</b>	<i>For the groups listed below, failure to comply with this policy may result in investigation and management action which may include formal action in line with the Trust's disciplinary or capability procedures for Trust employees, and other action in relation to organisations contracted to the Trust, which may result in the termination of a contract, assignment, placement, secondment or honorary arrangement.</i>	
	Application: All Trust staff employed on a contract of employment (for medical and dental staff, this policy must be applied in accordance with the [Maintaining High Professional Standards] policy and national framework)	
	Exclusions: e.g. students, agency workers, Bank (only) staff, honorary contracts and contractors working within the Trust	

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Please note that where words/phrases are inside square brackets [ ], this indicates that you can click on the word/phrase when and it will send you to the relevant area of the policy or (if you are using a Trust PC) the relevant supporting document/template.

This Policy is available in Braille, large print, Easy-Read and alternative languages by request. It is a manager's responsibility to ensure employees are aware of these options.

## MEDIATION AND RESOLVING DIFFERENCES IN THE WORKPLACE

### 1 INTRODUCTION AND AIMS OF POLICY

- 1.1 Barts Health NHS Trust is committed to resolving issues within the workplace wherever possible, and to encourage employees to work with their colleagues to resolve any internal disputes so that it has minimal or no impact on patient care. This is in line with the Barts Health Vision and Values
- 1.2 The aim of this policy is to ensure that the management of mediation and resolving differences in the workplace:
- Is fair, consistent, proactive and without discrimination in relation to any of the [\[protected characteristics\]](#) or any other prejudices
  - Is carried out in line with the [\[Equality Act 2010\]](#)
  - Ensures efficient and high quality care for our patients
  - Is monitored to identify effectiveness of implementation and usage within the Trust
  - Is used whenever possible to resolve issues without recourse to another policy within the Trust
- 1.3 This policy contains the process and principles for managing requests for mediation and help in resolving differences between staff only. For further details please read the supporting Management Guide.

### 2 VISION, VALUES AND BEHAVIOURS

- 2.1 Our vision is to change lives.
- 2.2 Our values define what is important in the way we deliver this vision. Our core behaviours set out how all of us will work regardless of the role we hold in the organisation. These behaviours consistently carried out will help embed the Barts Health values in our everyday working lives. Individual decisions to do the right thing ultimately change an organisation's culture. Every time it happens it makes it easier for others to follow the example.
- 2.3 At Barts Health we champion dignity, compassion and respect, putting the individual at the heart of all decisions, striving to get it right for every person, every time.
- 2.4 Managers must ensure the principles held by the values & behaviours in order to support the achievement of our vision to 'Change Lives' are upheld when implementing this policy.
- 2.5 Our Values:
- Caring and compassionate with patients, each other and our partners
  - Actively listening, understanding and responding to patients, staff and our partners
  - Relentlessly improving and innovating for patient safety
  - Achieving ambitious results by working together
  - Valuing every member of staff and their contribution to the care of our patients

### 3 WHAT IS MEDIATION?

- 3.1 Mediation is an informal, voluntary process conducted confidentially, and normally involves two impartial Trust mediators ("co-mediators") working together to actively assist the participants in reaching a negotiated agreement of a dispute or difference, with the participants in ultimate control of the decision to settle and the terms of resolution.

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3.2 All internal Trust mediators have an accredited mediation qualification.

3.3 The principal features of mediation are that it:

- Normally involves a neutral pair of Trust mediators to facilitate negotiations
- Is flexible, with no set procedure, enabling the process to be designed and managed by the mediators to suit the participants, in consultation with them
- Enables the participants to devise solutions which benefits all the participants, particularly if the parties are expected to continue to work together afterwards
- Can be used in two-party and multi-party disputes.

3.4 Mediation is appropriate when:

- The parties want a resolution or at least a change to the current situation, and previous informal discussion has not resolved the issues
- The parties agree to participate
- It may also be recommended as a way forward at the end of a formal process, such as after a disciplinary or grievance investigation or a capability management process
- It may also be used during a formal process, or to avoid a situation escalating into a formal complaint

Mediation is not appropriate when:

- Either party is unable, or unwilling, to participate
- Mediation would conceal organisational problems that need to be addressed
- A power imbalance makes a fair agreement unlikely
- Levels of distress around an incident are too high for mediation to be successful. (Mediation may however be more appropriate after the passage of some time).
- A serious incident has occurred and is more appropriately addressed via a formal process e.g. racial harassment/discrimination.

3.5 What can mediation be used for?

Mediation can be used to address a range of issues within working relationships, including relationship breakdown, personality clashes, and communication problems.

3.6 When should mediation be used?

Mediation can be used at any stage of a conflict, including before a formal procedure has been initiated to try and resolve issues before they escalate to a formal stage. To help achieve this, mediation is incorporated into core HR policies including:

- Grievance and Employee Complaints
- Disciplinary
- Bullying and Harassment (legacy policies)
- Mediation can also be put forward as a recommendation after a formal procedure has been completed to help to rebuild relationships.

## 4 DEFINITIONS

4.1 The following definitions are used in this policy:

<b>Mediation</b>	An informal, voluntary process conducted confidentially, and where the participants reach a negotiated agreement of a dispute or difference, where they are in ultimate control of the decision to settle and the terms of resolution.
<b>Mediator</b>	An impartial employee of the Trust, who has been specifically trained to act as a

	mediator and works in collaboration with another trained mediator and the employees to reach an agreed conclusion
<b>Mediation Coordinator</b>	Facilitates the arrangements for mediation to take place, including liaising with the mediators and participants to agree a date. They will also monitor the use of mediation within the Trust, in line with the protected characteristics.
<b>Mediation agreement</b>	A written agreement for all parties, which sets out how they will contribute to the working relationship in the future. It is given to the participants as part of the preparation process for the mediation, and any proposed amendments can then be discussed and inserted if agreed. The mediation agreement will normally be signed at the beginning of the mediation day by the participants and the mediators. In any pre-mediation contact with the parties, Trust staff and any Trust mediator once appointed will observe its terms as to confidentiality, even though the agreement will have not yet been signed.

4.2 For a full list of terms, please see the [\[Glossary\]](#) in [\[Appendix 1\]](#)

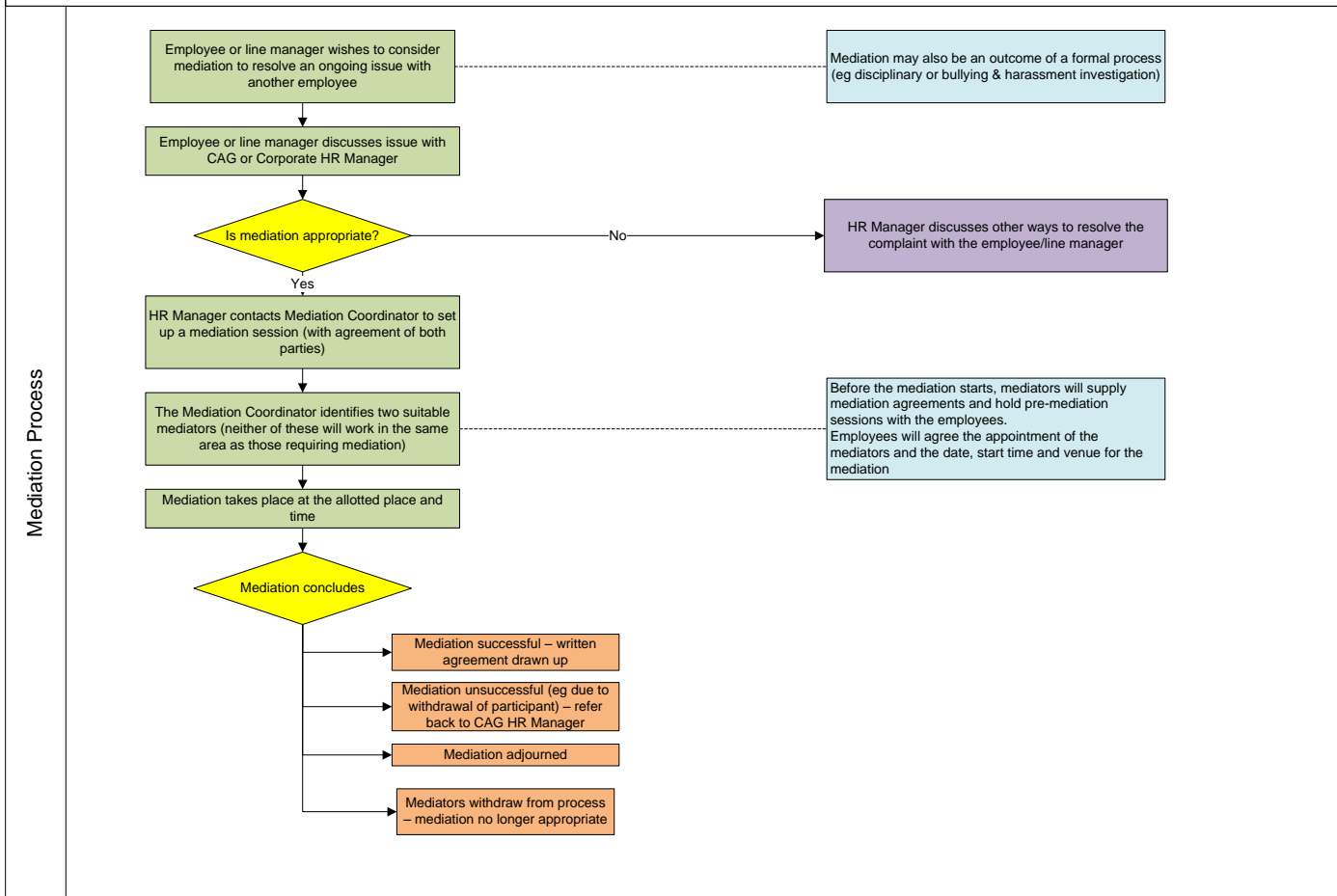
## 5 DUTIES AND RESPONSIBILITIES

<b>Employee</b>	<ul style="list-style-type: none"> <li>• Exercise right to request mediation where they feel it is appropriate</li> <li>• Endeavour to be available on the date set for mediation to ensure that the issues are resolved as quickly as possible</li> <li>• Participates in the mediation process and agrees on the appointment of the mediators and the date of the mediation process</li> <li>• Suggest mediation as a means of conflict resolution to other parties</li> </ul>
<b>Manager</b>	<ul style="list-style-type: none"> <li>• Ensure employees are aware of and understand the policy, their responsibilities and how to request mediation if appropriate</li> <li>• Liaise with the CAG HR Manager or mediation coordinator if they feel that mediation is appropriate to resolve issues within the workplace</li> <li>• Maintain confidentiality when making requests for mediation to the CAG HR Manager</li> <li>•</li> </ul>
<b>Human Resources</b>	<ul style="list-style-type: none"> <li>• Advise managers about how to use this policy and give appropriate support as required</li> <li>• Liaise with the Mediation Coordinator if mediation is felt to be appropriate for the given situation</li> </ul>
<b>Mediator</b>	<ul style="list-style-type: none"> <li>• Makes individual contact with each participant to assist in the preparation for the mediation through pre-mediation meetings.</li> </ul> <p>Liaise with the employees and Mediation Coordinator to identify a suitable date, time and venue for the mediation to take place</p>
<b>Staffside/ Trade Union representative</b>	<ul style="list-style-type: none"> <li>• Advise employees on the application of this policy</li> <li>• Suggest mediation as a means of conflict resolution to members</li> </ul>

## 6 HOW A REQUEST FOR MEDIATION IS MANAGED

6.1 The process of managing a request for mediation is set out in the flowchart below:

The Mediation Process



## 7. THE MEDIATION PROCESS

6.2 The process to follow when an employee or manager requests mediation is set out in the table below:

<p>Referral to mediation</p>	<p>A request for mediation should be made via the CAG or Corporate HR Manager. Staff should contact their relevant HR Manager in the first instance, either by phone or email to discuss whether mediation is appropriate for the situation. The request can come from either a relevant manager aware of a dispute or a member of staff that would like to use the service directly.</p> <p>The HR Manager will liaise with the Mediation Coordinator to identify an appropriate pair of co-mediators to take the mediation forward if mediation is considered the most appropriate course of action, and all parties agree to participate in the process.</p>
<p>Preparation for mediation</p>	<p>The mediators will make the necessary arrangements for the mediation as required or agreed by the participants including:</p> <ul style="list-style-type: none"> <li>• Supplying a mediation agreement, submitting it for agreement by the participants and preparing the final form for signature, incorporating any agreed amendments.</li> <li>• Make contact with each of the participants before the mediation to assist in preparation for the mediation through pre-mediation meetings agreed by the participants. These may be conducted on the telephone or in person.</li> <li>• Liaise with the participants and the mediation coordinator to identify a suitable date, time and venue for the mediation to take place.</li> </ul> <p>The participants will:</p> <ul style="list-style-type: none"> <li>• agree the appointment of the mediators</li> <li>• agree the date, venue and start time for the mediation</li> </ul>
<p>During mediation</p>	<p>The likely procedure is:</p> <ul style="list-style-type: none"> <li>• preliminary meetings with each of the participants when they arrive at the venue (these meetings could be held in advance of the mediation meeting if required);</li> <li>• a joint meeting of all attending the mediation, at which each of the participants will normally be invited to put across their point of view;</li> </ul>

	<ul style="list-style-type: none"> <li>• a mix of further private meetings and joint meetings as proposed by the mediators and agreed by the participants.</li> </ul>
Conclusion of the mediation	<p>The mediation may end in a number of ways:</p> <ul style="list-style-type: none"> <li>• By the agreement of a resolution to the dispute. The agreement is normally written down and participants decide with the mediator with whom they wish to share it. Alternatively, they may simply ask the mediator to let it be known to agreed individuals e.g a relevant manager, that the mediation was successful and that no further action is planned for the present.</li> <li>• by one or more participants leaving the mediation before a resolution is agreed. If the mediation fails because a party withdraws unilaterally, the voluntary nature of mediation means that there should be no resulting adverse consequences for that individual and that their rights to pursue alternative courses of action remain;</li> <li>• by an agreed adjournment for such time and on such terms as the participants and the mediators agree;</li> <li>• by withdrawal of the mediators in accordance with the mandatory and optional circumstances set out in The Code.</li> </ul>

6.3 Points to note regarding mediation include:

- i. Although no verbatim recording or transcript will be made of the mediation by the mediators, participants can make their own private notes which will be not be disclosed to anyone else and should be destroyed at the end of mediation. Any further documentation intended to be treated as confidential by the mediator, such as a mediation agreement, must be clearly marked as such, and will not be circulated further without express authority.
- ii. Mediations can last beyond a normal working day and it is important that the key people remain present or at best available by telephone for so long as the mediation continues. Any time constraints should be reported to the CAG HR Manager or the mediators as soon as known, as any unexpected departure can be detrimental to the progress of the mediation and perceived as disrespectful by other parties.
- iii. Mediators will ensure at all times that The Mediators Institute of Ireland Code of Ethics and Professional Conduct (The Code) is complied with in respect of the mediation of the dispute, reporting any conflict of interest or other relevant matter, if any, to the Mediation Coordinator and (subject to any question of confidentiality or privilege) the participants, as soon as it emerges.
- iv. What happens at the mediation is to be treated as confidential by the participants, and the mediators including the fact and terms of a resolution. However, the fact that the mediation is to take place or has taken place is not normally deemed confidential as, for example, mediation may have been requested by a third party such as the manager of the participants.



- v. Apart from where the participants 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 process cannot be preserved, such as where:
  - the mediator or any party is required by law to make a disclosure;
  - the mediator 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;
  - serious criminal activity is disclosed or the mediator reasonably considers that there is a serious risk of being personally subject to criminal proceedings unless the information in question is disclosed.
- vi. Due to the differing complexities of the cases referred for mediation, the time frame from referral to the conclusion of mediation is likely to be variable, however, all efforts will be made to complete mediation within a five week time frame from the initial referral and in all cases in as timely a manner as possible.
- vii. Further mediation may be requested if conflict recurs for some reason; re-referral may be requested by a relevant manager, or the participants themselves.

## 7 IMPACT AND EQUALITIES ANALYSIS

- 7.1 An Equality Analysis has been carried out for this policy and has concluded that there are no detrimental effects and some positive effects of this policy. The analysis has been included here:

## 8 MONITORING THE EFFECTIVENESS OF THIS POLICY

Issue being monitored	Monitoring method	Responsibility	Frequency	Reviewed and followed up by
Use of mediation within the Trust	Analysis of request of mediation and success rates	Human Resources	Every 6 months	Staff Partnership Group

END

**APPENDIX 1: GLOSSARY OF TERMS**

<p><b>Equality Act 2010</b></p>	<p>Replaces previous discrimination law (e.g. Disability Discrimination Act 1995) and includes the following:</p> <ul style="list-style-type: none"> <li>• Extends the groups protected (protected characteristics)</li> <li>• Removal of health questionnaires</li> <li>• Bans discrimination by association</li> <li>• Bans discrimination by perception</li> <li>• Bans direct and indirect discrimination</li> <li>• Bans harassment, victimisation and failure to make reasonable adjustments</li> <li>• Replaces all previous discrimination law</li> <li>• Introduces harassment by third parties</li> <li>• Also relates to provision of services to patients, not just employment</li> </ul>
<p><b>Protected Characteristics (part of the Equality Act 2010)</b></p>	<ul style="list-style-type: none"> <li>• Age</li> <li>• Disability</li> <li>• Gender Reassignment</li> <li>• Marriage and Civil Partnership</li> <li>• Race</li> <li>• Religion or Belief</li> <li>• Sex</li> <li>• Sexual Orientation</li> <li>• (Pregnancy and Maternity – only some elements apply)</li> </ul>
<p><b>Disability (Equality Act 2010)</b></p>	<p>A physical or mental impairment (disadvantage) &amp; this has a substantial (more than minor/trivial effect) &amp; long-term (lasting/likely to last more than 12 months) adverse effect on his/her ability to carry out normal day-to-day activities.</p> <p>A person with Cancer, HIV infection or Multiple Sclerosis is defined as a person with a disability &amp; protected by the Act from the point of diagnosis.</p>

**APPENDIX 2: OTHER LINKED TRUST POLICIES AND GUIDELINES**

	<b>Title differences where policies have not been amalgamated</b>		
	<b>Barts and The London (&amp; CHS)</b>	<b>Newham University</b>	<b>Whipps Cross University</b>
<b>Bullying and Harassment</b>	Harassment & Bullying amongst Staff (CHS equivalent)	Dignity at Work: Standards of Behaviour	Bullying & Harassment at Work
<b>Stress Management</b>	Managing Work Related Stress Policy and Guidance (CHS equivalent)	Policy for the Prevention and Management of Stress at Work	Stress Management Policy
<b>Career Break</b>	Flexible Working Policy (CHS equivalent)	Special Leave	n/a
<b>Part-Time/Flexible working arrangements</b>	Flexible Working Policy (CHS equivalent)	Flexible Working Policy	Flexible Working Policy and Procedure
<b>Carer's Leave</b>	Special Leave Trust Core Policy (CHS equivalent)	Policy on Special Leave	Special Purposes Leave Policy and Procedure
<b>Grievance and Employee Complaints Policy</b>	n/a	n/a	n/a
<b>Disciplinary Policy</b>	n/a	n/a	n/a
<b>Employee Performance (Capability) Management Policy</b>	n/a	n/a	n/a

**APPENDIX 3: EXTRA SOURCES OF INFORMATION AND SUPPORT**

<p><b>Access to Work</b></p>	<p>A scheme run by the Government to provide free advice &amp; grants to employees &amp; employers to facilitate an individual to attend work. This might include funding for equipment or transport to &amp; from work.</p> <p>Further info: <a href="http://www.direct.gov.uk/en/DisabledPeople/Employmentsupport/WorkSchemesAndProgrammes/DG_4000347">http://www.direct.gov.uk/en/DisabledPeople/Employmentsupport/WorkSchemesAndProgrammes/DG_4000347</a></p>
<p><b>Employee Assistance Programme</b> <i>provided by CiC</i></p>	<p>A free service to all employees provided 24 hours 7 days a week which includes advice on debt, legal issues, caring and childcare and offers face to face counselling services.</p> <p><b>Tel. 0800 085 1376</b> Or access them via <a href="http://www.well-online.co.uk">www.well-online.co.uk</a></p>
<p><b>Management Advice Line</b> <i>provided by CiC</i></p>	<p>A dedicated helpline for managers, offering guidance and support on dealing with the interpersonal aspects of their role as a line manager, such as how best to manage a difficult situation or sensitive subject with an employee.</p> <p>If you are a Manager please call <b>0800 085 3805</b> to access the Managerial Adviceline.</p> <p>Or access them via <a href="http://www.well-online.co.uk">www.well-online.co.uk</a></p>

## **APPENDIX 4: CONFIDENTIALITY AROUND MEDIATION**

### **What will be held confidentially?**

The mediators will maintain the confidentiality of all communications, written or oral, which occur prior to, during, or after mediation. This includes:

- Discussion with participants
- Information from the referral source (e.g line manager)
- What participants said or did during mediation sessions
- The content of any agreements reached

Any written notes taken by the mediators in any mediation session(s) will be destroyed.

### **Exceptions**

There may be rare circumstances in which the confidentiality of the mediation process cannot be preserved, such as where:

- The mediators or any participant is required by law to make a disclosure
- The mediators reasonably consider that there is serious risk of significant harm to the life or safety of any person if the information is not disclosed.
- Serious criminal activity is disclosed or the mediators reasonably consider that there is a serious risk of being personally subject to criminal proceedings unless the information is disclosed.

In such a case, the mediators may make an assessment that this information needs to be communicated to the appropriate person within the organisation. If so, then this will be discussed with the person prior to the disclosure taking place.

Additionally, where the participants agree that it would be helpful to disclose their agreements to others this will form part of the agreement. Where a participant agrees that it would be helpful to disclose any other matter to others then this will be agreed with the mediators.

### **Non-judgemental process**

The mediators will not advocate for the participants or pass judgment. The mediators' personal views are not conveyed to the participants or any other persons.

### **Protecting the privacy of participants in mediation**

Minimal information about mediation cases will be held securely by the Trust Mediation Co-ordinator. This will include a copy of any written agreement reached by participants in mediation, where they have agreed for the document to be shared with the co-ordinator.

Other information held by the Mediation Co-ordinator will be restricted to:

- The Clinical Academic Group and Service Line within which the staff members that will be undergoing mediation sit, and the staff group to which they belong (in line with the protected characteristics of the Equality Act 2010).
- Whether the mediation was successful in reaching a resolution or not.

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This information will only be used for monitoring the uptake of mediation and the quality of this service so as it can be maintained and improved.

Mediation session evaluation forms will be kept in a separate, secure place by the Mediation Co-ordinator. Trust mediators will meet on a regular basis to review evaluation forms and feedback about the mediation service so as the quality of the service is maintained and improved where required.

## APPENDIX 5: PARTICIPANT GUIDELINES AND CONFIDENTIALITY AGREEMENT (EXAMPLE)

### ***To be signed by each of the participants and mediators***

As mediation is a good faith process, each participant is invited to agree to the following guidelines. In order to facilitate a free and open discussion between all parties involved in the mediation process, I agree to abide by the following guidelines:

1. I agree to conduct myself throughout the mediation in a respectful manner.
2. I understand that this is an informal, confidential, voluntary and non-prejudicial process and that no party to the process or the mediators may be compelled by another party to disclose information discussed during the mediation process.
3. I understand that my participation in this mediation process does not prevent me from taking subsequent action should I decide that the issues are not satisfactorily resolved.
4. I understand that as this is an informal process which is intended to allow for a free and open exchange and that no minutes will be taken of the discussion.
5. I understand that it is not the role of the mediators to impose a resolution on the participants and that the mediators will maintain an impartial role in assisting the participants to discuss their concerns with each other and hopefully reach a mutual agreement.
6. All participants and the mediators may take hand-written notes for their own reference at meetings and I agree that these notes will not be used by anyone to produce any written record of the meetings and will be destroyed at the end of the process.
7. Should a voluntary agreement be reached between certain participants for certain actions to be taken following the meeting I agree to attempt to make that agreement work in good faith.
8. If it is agreed that it would be helpful to prepare a written voluntary agreement I agree that a copy of any agreement arrived at will be retained by each party to the agreement and any others agreed as appropriate by the participants.
9. I understand that it may be helpful for the mediators to provide some guidance or input to my managers or HR in the event that we do not reach an agreement or to assist us in implementing any agreement and that this is subject to prior agreement by the participants.
10. As a sign of good faith and in an effort to promote an open and free exchange I will maintain confidentiality throughout the process and subsequent to the conclusion of the process.
11. I understand that the mediators will also be bound not to disclose anything said by me during the mediation process including any private sessions without my express permission to do so, except where something is disclosed that places an obligation on the mediators to disclose that information to the appropriate person/s or organisation (this may be for example if the mediators are required by law to do disclose information, if there is the risk or harm to an individual or others should a disclosure not be made, or if mediators are made aware of information related to a criminal act).
12. I understand that I am free to choose to pause or discontinue my participation in the meetings at any time.

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13. I agree not to call the mediators as witnesses in any future proceedings pertaining to this case.

Participant Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Mediator 1: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Mediator 2: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_