Policy on the provision of mediation services to non-salaried members

June 2017

This document concerns the mediation services provided by the BDA’s Advisory Services department. It provides guidance on the mediation services offered by the Advisory Services team, to whom they are available and when they are available. This policy does not confer any rights upon members of the BDA and mediation is provided at the absolute discretion of the BDA in line with the terms of this policy and the Association’s Membership Definitions, which can be found at www.bda.org/tsandcs.

Interpretation

“associate” a dentist in private practice and/or the NHS, who is engaged by a practice owner to provide his or services from the practice, usually under a licence fee arrangement

“associateship dispute” a dispute between an associate and the practice owner which engages or engaged the associate

“association” the British Dental Association and any references to “we” and “us” and “our” shall be construed accordingly

“BDA” the British Dental Association and any references to “we” and “us” and “our” shall be construed accordingly

“dental body corporate” a body corporate carrying on the business of dentistry in line with section 43 of the Dentists Act 1984

“mediation” the services we provide in accordance with this policy

“mediator” a member of BDA staff trained in mediation

“member” a member of the British Dental Association and any references to “members” and “membership” shall be construed accordingly

“practice owner” an individual, partnership or dental body corporate which owns a general dental practice

Members to whom mediation is available

1. Mediation services relating to associateship disputes are reserved for members of the BDA with Essential, Extra or Expert tier membership, and access to mediation will be provided subject to the terms of the remainder of this policy.

2. Mediation services relating to other types of dispute are reserved for members of the BDA with Expert tier membership only, and access to mediation will be provided subject to the terms of the remainder of this policy.
3. All dentist parties to a dispute must be BDA members within the appropriate tier of membership as outlined in paragraphs 1 and 2 above, subject to paragraph 4 below.

4. The Association may at its absolute discretion provide mediation where a party to the dispute is a dental body corporate, provided that at least one of the dental body corporate’s directors is a member within the appropriate tier of membership as outlined in paragraphs 1 and 2 above and all other parties to the dispute are BDA members within the appropriate tier of membership.

5. In relation to access to and the provision of mediation services we will not discriminate on the grounds of colour, race, nationality, ethnic or national origin, disability, sex, marital or civil partnership status, sexual orientation, age, religion or belief.

**Description of mediation services**

6. The nature and purpose of the BDA’s mediation service is set out below:

   - Mediation is a process by which an independent person (the mediator) attempts to facilitate a resolution of a dispute between two or more parties. Mediation is a form of alternative dispute resolution (ADR) that avoids costly adversarial litigation that only allows for one winning party. Litigation can be very time-consuming and take years for a result to be achieved. Mediation meetings can be organised very quickly before the parties become entrenched in their positions.

   - The aim of the BDA’s mediation scheme is to allow dentists in dispute (or dentists and third parties such as members of staff) to resolve conflict. Where the parties to a dispute have an on-going business relationship, mediation can help preserve and strengthen that relationship. For example, where partners fall out, resolving the dispute may prevent the breaking up of a successful practice. Where associates and practice owners come into conflict, resolving the issues can lead to a continuing successful relationship or an amicable ending of an agreement.

   - The BDA’s mediation scheme uses principles of both interests-based and rights-based mediation to resolve disputes (see below). The style of mediation that is chosen by the mediator will depend on the circumstances and nature of the dispute. Normally an interests-based mediation will be used first and, if that does not lead to resolution, non-binding rights-based mediation may be used.

**Interests-based mediation**

Interests-based mediation involves a neutral third party mediator or mediators helping the parties resolve their conflict by:

   - talking together in a non-adversarial situation
   - identifying interests which may not be apparent at the outset
   - considering options that satisfy some or all of these interests
   - selecting one option that is the best possible solution
   - closing the mediation (either agreeing one option or ending the mediation without agreement).

The mediator’s role is to facilitate communication between the parties to encourage a mutually acceptable solution (that preserves their relationship). A crucial component of the mediation is to give both parties the opportunity to tell their story in their own words and to express how they feel. In many cases listening to the other party and responding can lead to an appreciation of the other person’s viewpoint which is the basis for reaching agreement.

**Rights-based mediation**

Rights-based mediation is offered where interests-based mediation has failed to obtain a resolution or in some cases instead of interests-based mediation. Rights based mediation involves a mediation meeting at which the mediator or mediators will listen to the case put forward by both parties, as well as their statements, and attempt to obtain resolution by making a recommendation to the parties on a fair and reasonable solution.
Conditions of mediation service

7. Mediation is offered at our absolute discretion and we will not offer mediation unless the following conditions are satisfied:

- the subject matter of the mediation is an employment/self-employment issue or general practice matter in which we have knowledge and expertise (such as associateship or partnership disputes);
- we have staff capacity to offer mediation services within the timescales required;
- all parties indicate a willingness to pursue mediation in good faith;
- we are provided with all of the relevant and necessary information from the parties in a timely manner and in accordance with any Terms of Mediation provided to the parties;
- all parties have complied with all reasonable requests we have made;
- we assess, in our reasonable opinion, that the matter is suitable for mediation; and
- the parties sign the BDA’s Terms of Mediation.

8. In some circumstances, mediation may be offered where litigation is in its very early stages. In other cases, the parties will also be asked to give a written undertaking that they will not proceed to litigation until the mediation process is at an end.

9. Normally mediation will take place within four weeks of the offer to mediate being confirmed by the BDA.

Principles of mediation

10. The principles of the BDA’s mediation service can be summarised as follows:

- the role of the mediator is to facilitate the parties reaching agreement;
- the mediator does not arbitrate or decide who is right or wrong, but remains neutral;
- the disputing parties must enter the process in good faith and wish to achieve a settlement through mediation;
- the proceedings are confidential and information disclosed during the proceedings will not normally be able to be used in court;
- the mediation meeting is as informal as possible although the mediator will lay certain ground rules at the beginning;
- parties are not “represented” in the same way as in a court or tribunal although a legal adviser may accompany the parties if they wish;
- the mediator will encourage the parties to say how they feel; only one person will be allowed to speak at a time;
- normal standards of politeness and decorum are expected and personal attacks are not permitted;
- the parties to a dispute may both gain from a settlement and the mediation process enables them to both see what they have to gain;
- in some cases the result of the mediation will be that one or both parties decide to go to law. This is not necessarily a failure, it might be that during the process it becomes apparent that the parties have no interests that can be used as the basis of an agreement;
- mediation is voluntary and either party involved in the mediation may exit at any time;
- the mediator cannot impose a solution on the parties;
- the success of mediation is not guaranteed, but depends on the desire of the parties to try to reach a solution.

Mediators

11. BDA mediators are experienced advisers who have been trained in mediation techniques and have detailed knowledge of general dental practice. The BDA may decide at its discretion whether one or two mediators will deal with each case and which mediator(s) are to be appointed to deal with the mediation.
Confidentiality

12. The mediation meeting will be conducted “without prejudice”. All documentation provided and everything said by the parties for the purposes of setting up a mediation meeting, and everything that is written or said about the dispute during the meeting is confidential and cannot be used subsequently by either party. The mediator’s notes are usually destroyed within a day of conclusion of a mediation and would not normally be subject to a Court order or summons. The mediator is unlikely to give or be called to give evidence in court.

Summary of issues and documentation

13. Each party should prepare a written summary of the issues in the dispute as they see them. The summaries should be a maximum of three pages in length with any relevant contracts/correspondence appended. The summaries and relevant documentation must be sent to the BDA and the other party at least five working days before the mediation meeting.

14. As the summaries are sent to the other parties, they should be drafted in a clear, factual style.

15. The BDA reserves the right to cancel the mediation immediately if it does not receive the summary of the issues and relevant documentation from both parties at least five working days before the mediation meeting.

16. Both parties will be required to return signed Terms of Mediation that set out their agreement, amongst other things, to the principles of mediation.

The mediation meeting

17. Mediation takes place at a face to face meeting. The meeting will usually be scheduled to start between 9am and 10am. There is no scheduled end time and a mediation might continue until either the parties reach agreement, we conclude that no agreement can be reached, a party has to leave or we are unable to carry on due to mediator or building availability. As mediation is voluntary, either party may leave at any time (subject to a request that they allow the mediator five minutes of private discussion before leaving), or the mediator may terminate the meeting. The mediation might continue over more than one day.

18. Mediation would normally be held at the BDA’s London office or another mutually agreeable venue at a date and time convenient to the parties. If either of the parties wish to suggest a venue which is more convenient to them, it must have at least two rooms that are available for up to six hours, one of which must be large enough to accommodate six people comfortably around a table. Suitable catering will also be required. The costs of using a venue other than BDA Headquarters and any others expenses incurred by us as a result of using an alternative venue must be shared equally between the parties, unless otherwise agreed.

19. Parties have the right to be accompanied to the meeting by a friend or legal adviser. Legal advisers should be advised that the mediation is not a hearing and that statements will not be taken under oath. The mediator will encourage the parties to speak on their own behalf rather than having their adviser speaking on their behalf. In many cases the success of the mediation may be jeopardised by the presence of a legal adviser who may feel that it is his or her duty to adopt an adversarial style and “win” the dispute for his or her client. The parties will be asked for the name of any accompanying person prior to the meeting and whether he or she is a legally qualified.
Following the mediation

Where resolution is achieved

20. Should mediation lead to an agreed settlement, the mediator will write some heads of agreement for the parties. Where appropriate, letters of assurance will be written and exchanged. In some cases, it might be possible to draft and sign a settlement agreement at the end of the mediation.

21. The resolution (in the form of a Statement of Settlement) will be confirmed in writing to the parties within three working days of the settlement.

Where resolution is not achieved

22. Where resolution is not achieved the parties can go to law if they wish. The BDA does not offer an arbitration service and does not provide litigation services.

Fees and costs

23. We will not charge for mediation services provided by BDA staff, subject to paragraph 24 below.

24. The costs of using a venue other than BDA Headquarters and any others expenses incurred by us as a result of using an alternative venue must be shared equally between the parties, unless otherwise agreed.

Requesting mediation

25. If all parties to a dispute wish to request mediation, they should discuss their request with a member of the BDA’s Advisory Services team. We will then discuss the possibility of mediation with all parties and inform all parties as soon as reasonably practicable whether the BDA believes the dispute is suitable for mediation.

Withdrawal of mediation services

26. The BDA may withdraw from the mediation process immediately and at our absolute discretion if:

• Any of the parties ceases to be a member of the BDA or a member within the appropriate tier of membership as outlined in paragraphs 1 and 2 for whatever reason
• Any of the parties fail to comply with any reasonable request we make
• Any of the parties decides to proceed with litigation, if litigation has not already been started (unless such litigation is started only to comply with statutory time limits, and we conclude at our discretion that the mediation should proceed)
• Any of the parties demonstrate a lack of interest in reaching a negotiated settlement

What to do next

27. If you are interested in proceeding with BDA Mediation, please contact the BDA’s Advisory Services team by emailing advice.enquiries@bda.org.

Complaints

28. Any member who is not entirely satisfied with our advice is encouraged to contact us. A copy of our complaints policy is available by contacting Advisory Services, British Dental Association, 64 Wimpole Street, London W1G 8YS, by emailing advice.enquiries@bda.org or by calling 020 7935 0875.