



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

October 2023

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
“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”	a dentist who individually or in a partnership who owns a general dental practice

Members to whom mediation is available

1. Mediation services relating to associateship and partnership disputes are a benefit to members only and access to mediation will be provided subject to the terms of the remainder of this policy. All parties to the mediation must be BDA members.
2. BDA Expert Members have access to a fee-paying consultancy service which includes mediation of interpersonal employment disputes between members of the practice dental team. Such mediations fall outside the scope of this policy. Further information on mediation that fall under the [BDA's consultancy services](#) are available. Please contact the BDA's Consultancy Services team by emailing consultancyservices@bda.org.

3. 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.

Requesting mediation

4. Any member who is in dispute with another dentist can request mediation 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.

Description of mediation services

5. 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 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.
 - Mediation can also help parties reach closure on relationships that have ended by providing a quick resolution that allows the parties to move on without incurring substantial legal fees.
 - The style of mediation that is chosen by the mediator and will depend on the circumstances and nature of the dispute.

Role of the mediator

6. The role of the mediator involves a neutral third party 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).
7. The mediator's aim is to facilitate communication between the parties to encourage a mutually acceptable solution. 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.

Conditions of mediation service

8. 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 one of which we have knowledge and expertise;
 - 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 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.
9. 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.

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 may not be used in court
 - the mediation meeting is as informal as possible although the mediator will lay certain ground rules at the beginning
 - A legal adviser or companion may accompany a party if they wish, but the mediation is between the parties, not the parties' representatives.
 - normal standards of politeness and courtesy 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 on to a formal legal process. 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 may not be used subsequently by either party or companion. 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 and documentation

13. Each party shall complete the BDA's mediation summary preparation form. Any relevant and supporting documentation must be sent to the BDA and shared with the parties 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 virtual face to face meeting. The parties must be available to participate in mediation for a whole working day and an agenda will be provided to the parties in advance. 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 role of the companion

18. The parties may be accompanied to the meeting by a companion, who is a friend, family member 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 companion speaking on their behalf. The parties will be asked for the name of any accompanying person prior to the meeting.

Following the mediation

Where resolution is achieved

19. 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.
20. The resolution in the form of an agreement reached by mediation. This will be confirmed in writing to the parties within three working days of the settlement.

Where resolution is not achieved

21. Where resolution is not achieved the parties can pursue a formal legal process. The BDA does not offer an arbitration service and does not provide litigation services.

Withdrawal of mediation services

22. 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 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

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

Complaints

24. 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.