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PRAGMATISM

MEDIATION & EMPLOYEE RELATIONS

PREPARING FOR THE FINAL TWO DAYS

It's understandable that you may feel nervous about the next couple of days. This is normal and is taken into account. Alongside revisiting your your training manual, this document provides some reminders and key tips, which we hope will help you to prepare:-

Opening statements (individual meetings)

These are critical, as they set the scene for the mediation (you can assume that you've already had a pre-mediation call with each party). We would recommend that as a minimum you ensure the following are covered:-

- Really emphasise the importance of confidentiality (throughout the mediation). Explain about notes being destroyed, etc.
- Ensure people feel comfortable - they know where things are, they can take breaks, everything is voluntary, etc.
- Tell them about your role as a mediator – impartial, not judgemental, etc.
- Explain how you will structure the day, eg how individual sessions work, when you'll bring them together, how you'll deal with behaviours, call breaks, etc.
- Confirm that the agreement to mediate has been signed by you and the parties.
- Explain what 'without prejudice' in the agreement means in your own words.
- Clearly explain how your information sharing process will work – and stick to it!
- Talk about the ideal outcome of the mediation, ie a mutual agreement (but it's OK at this stage to feel that's unlikely).
- Ensure they have an opportunity to ask any questions and raise any concerns.

It will feel so much better if you make these your own – which order suits you best? How will you run through these in your own words, so you and the party feel most comfortable? It's fine to have a checklist to help you ensure you don't miss anything. It's perfectly OK in mediations to pause and just check there's nothing you've missed.

Confidentiality

This will always be the most important aspect throughout the mediation, and there may be a few times where you need to emphasise or remind parties of this for reassurance or clarity. If you're not sure if you have permission to share something, don't share it. If you're unsure, it's fine to go back and clarify – the person will appreciate you checked.

Don't panic if you think you may have breached confidentiality. Sometimes it can be about the falseness of the setup of the mediations (eg using one room rather than two). Please don't assume or give up - just carry on with the mediation.

Sharing information

Know how your system for sharing will work. Explain it, stick with it and don't be tempted to change it. Have a think about how you'll use your notes to help you to share key points with the other party. What you share doesn't need to be verbatim, but it does need to represent what has been said – have a think about how you will make this a conversation around interests, rather than just repeating what has been said, especially where these are rear view positions.

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Maintaining control

This is your mediation. Have a think about how you'll explain how things will work, how you'll facilitate the joint session, and how you'll make decisions where required. For example, if you have both parties together and you feel they need to separate or take a break then do so – you're the mediator, so don't feel shy about exploring options and making decisions.

Bringing the parties together

This can understandably be a nerve-racking part of the mediation process for the parties. Have a think about how you will prepare each party individually for the joint session, so they know what to expect. Think about how you will start the session when they're together (eg how will you introduce the session, who will you ask to talk first and second, what do you expect when the other is talking, etc) and then facilitate their discussions.

Working towards an agreed outcome

This is what we're all striving for as mediators – an amicable agreement which details the steps / actions they will both take to move forward. This is the key foundation for the relationship going forward and builds a platform for trust. You probably won't finalise the whole agreement by the end of the time allocated – that doesn't matter, it's about how you progress the discussions towards a detailed mutual agreement.

Using the skills you've learnt

Remind yourself of the key skills you've learnt such as reframing, open / closed questions, WATNA / BATNA, etc. Please don't think that the assessment is looking for (x) open questions and (y) reframes – that is not what it's about. What is important is that you're able to help the parties to listen and understand each other by using some of the skills you've been taught, and you can help them to move towards their own resolution.

Managing time

Keep an eye on the time (a very important skill in mediation). In real life, the discussions will generally be longer but try to stick to the guidance we have given, ie for individual sessions around 15 minutes per person, so you can share information between them. For the joint session, please restrict the individual preparation sessions to no more than 15 minutes in total (ie no more than 7-8 minutes per person) so you have an hour to facilitate the joint session. We will tell you when both sessions are finished – don't finish until we tell you to stop!

Reminder of the structure for the two days

On day 1 you will mediate the individual sessions only. On day 2 you will then prepare individuals for the joint session, then bring them together and facilitate the joint discussion. We would therefore recommend you focus your initial preparation on day 1, and that evening prepare for day 2 (you will be working with the same individuals on the same case).

If you have any questions or concerns, please do contact us. The last thing we want is for you to overly worry about the next two days.

Nickie, Charlotte & Pete

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