

The Mediation Process

Introduction

Consider these scenarios:

- You are the Club Secretary of a competitive swimming club. Parents of one very good young swimmer get very vocal at meets and sometimes shout instructions (swearing) at their daughter. Other parents complain that their behaviour is upsetting their children. You think you should ban the offending adults, but are worried that this will make matters worse. Is a ban the only way forward?
- You are parents of a talented young swimmer who is upset because she has been moved from the training squad where all her friends swim. She doesn't understand why she has been moved on and has become anxious and is talking about giving up the sport. The Club are sympathetic but say squad progression is a matter for the coach
- As club Chairman you have overseen an internal disciplinary process which has led to the exclusion of some unruly parents. What now happens to the training for their two children? You feel you the club may have no alternative but to take steps to remove them as well

These scenarios are highly representative of the types of real cases dealt with by ASA Friends and/or successfully mediated by ASA appointed Mediators.

This document attempts to demystify the early stages of the mediation process, explaining, in practical terms, what happens when mediation of a sports dispute is being set up by the ASA Office of Judicial Administration.

Why do disputes arise within sport?

Sport is a highly competitive, highly selective environment, at both amateur and professional level. Energy, focus and commitment, essential qualities for sporting success, can be negative factors when a dispute arises. Energy is expended on obsessive, distracting attachments to the dispute and the personalities involved. Focus becomes fixation on misunderstandings with an inability to see the bigger picture. Commitment creates an unwillingness to compromise or to concede that another person sincerely holds a different view, which they believe to be equally reasonable, and which may also have merit. The passion and emotion at the heart of sport is replicated in every dispute.

Underlying factors that impact upon the resolution of conflict may include emotions, self-esteem, personal values and the need to be heard. Appreciation of these factors is crucial in

resolving any sports dispute. In our experience, recognition of the need to be heard and how that need is managed is important in creating a workable solution which will enhance future relationships. Management decisions made when a dispute first emerges are crucial, and the wrong strategic decision at that point may inflame a situation.

What is Mediation? – A definition

Mediation is a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator.

What are the benefits of Mediation over an Arbitration hearing?

From a practical point of view:

- The parties retain ownership of the dispute, and do not hand power to the mediator. The mediator does not decide the case, or tell one or other party that they are right or wrong.
- There are discussions and negotiation but not a formal hearing. The parties do not have to prepare and present their case (including calling witnesses) as they would in an Arbitration hearing. The parties are able to control the outcome and cannot be forced to accept a solution this is unacceptable.
- A party is free to walk away at any time before a settlement agreement has been signed. In such circumstances and if appropriate the case will continue and be heard by an ASA Arbitration Committee.
- The process is flexible at the discretion of the mediator and can very often be a very speedy and efficient means of resolving a dispute.

Giving Mediation a chance to work

- For a mediation to work it is essential that a representative for each party with sufficient authority to agree terms and sign a settlement agreement attends on mediation day. This does not have to be a legal representative.
- The mediator uses learned techniques to assist the parties to settle their dispute. He/she will generally ask the parties to prepare for mediation by describing the dispute in a brief written statement, focusing on the outcomes sought, and the impact that success or failure in achieving those outcomes might have on others. In discussions prior to and on the mediation day, the mediator will explore the views of the parties in joint and/or private confidential sessions. The mediator will challenge preconceptions by testing thought processes, for example: “why do you think you were overlooked for the training camp? Is there another way of looking at what happened that seems plausible to you?” Remember that the mediator remains independent and neutral throughout.
- The aim of the mediator is the settlement of the dispute on terms that both parties are comfortable with, and not settlement at all costs. Mediation is intended to provide a forum in which to dissect the past whilst also thinking forward. It should not be seen as an opportunity for a slanging match, although strong views on both sides may be safely expressed. The mediator will not be afraid to call time if a line of discussion is proving fruitless.
- Not all cases settle on the day. This should not be seen as failure. The parties will at least have explored their differences, and may have greater understanding of the issues between them, leading to settlement shortly afterwards. Often a night’s sleep to reflect on the discussions will assist the parties in reaching agreement
- The process is confidential and generally without prejudice to ongoing proceedings and/or discussions relating to the dispute in question. The parties may be invited to sign a mediation agreement promising not to discuss what happens at mediation outside the mediation room. Everything said to the mediator in private session is confidential, and will not be disclosed without consent. The mediator may request consent as part of the process, if he or she believes that disclosure will assist in achieving the goal of settlement. The parties can say what they like (within the bounds of decency!) without fear of the information being used against them at a later date.

Selecting a date, time and place

The mediation will be held as quickly as required, given the demands of the particular case and the availability of the parties and the appointed ASA Mediator. We suggest starting one day mediations early or mid-morning to ensure that there is sufficient time for discussions without time pressures, which can arise towards the end of the day. For that reason we encourage those attending mediation not to arrange events for the evening which would require them to leave at a set time.

The venue for mediation also depends on the parties. The parties will not usually be asked to contribute towards room hire costs.

The ASA would wish to thank Sport Resolutions for kindly allowing the adaptation of their guidance materials in the production of this document. To learn more about Mediation in sport and the role of Sport Resolutions visit their website <http://www.sportresolutions.co.uk>

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