



Konfliktrådet

The Mediator's Handbook

Basic principles and practice advice for facilitators of restorative justice
in the Norwegian National Mediation Service

Vision of the National Mediation Service
Meetings between people for a more secure society

Values of the National Mediation Service
Quality, innovative and faith in humanity



*“Conflicts ought to be used, not only left in erosion. And they ought to be used,
and become useful, for those originally involved in the conflict”*

(Nils Christie, 1977)

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PREFACE

This handbook is published by the Central Administration of the National Mediation Service (SFK as per its Norwegian initials). The SFK is governed by the Ministry of Justice and Public Security in Norway and is the central administration for twelve mediation offices across the country.

The reason for publishing this mediator's handbook in English is to contribute towards the development of restorative justice internationally and to share knowledge and experience with our partners. The Norwegian National Mediation Service is the primary provider of restorative justice in Norway and we would like to share information on how we organise and carry out our processes of restorative justice.

The National Mediation Service in Norway takes on more than 7,000 criminal and civil cases each year. Our mediation offices can be called upon to solve conflicts in cases where there is a requirement to build or to repair relations. Citizens can receive help from the National Mediation Service if they have been affected by an offence or conflict in which one or several people have inflicted injury, damage, loss or offence upon another.

Community and financial conflicts make up around half of the civil cases we take on. These constitute conflicts between neighbours and family members or disputes at the workplace or school. Three out of ten criminal cases concern violence, threats or violations of a person's integrity. The National Mediation Service also facilitates restorative meetings for children under the age of criminal responsibility (15) and their families.

Participation in restorative justice is always voluntary and mediators from the local mediation office will facilitate all conversations and meetings. The parties in a dispute work together to identify what has happened and what damages, needs and obligations have arisen. The objective is for the parties to jointly find a way to repair and to heal injustice and damage to the best possible extent.

This handbook describes step-by-step how meetings should be conducted between the parties and it should be viewed in the same context as basic training, guidance and collaboration between the mediator and their local mediation office administration.

The target audience for this handbook is primarily mediators within the National Mediation Service in Norway, but also other employees who practise mediation or who need to possess an in-depth understanding of the mediation process. The handbook may also be of interest to external parties with an interest in the work done by the National Mediation Service, such as partners, researchers, students, private individuals, external parties, etc.

I hope that you will find this handbook of use in building your confidence as a facilitator of restorative meetings.

All the very best of luck in your practising of restorative justice!

September 2020
Christine Wilberg
Director

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1 INTRODUCTION

1.1 Introduction: Purpose and Duties of the National Mediation Service

Introduction

The National Mediation Service in Norway is responsible for administrating processes of restorative justice within both civil and criminal cases.

This handbook has been written to help those tasked with facilitating processes of restorative justice. Restorative justice involves holding facilitated meetings between the parties of a conflict and has proven itself to be a successful tool in brokering conflict resolution. Local mediation offices aid the various parties in a conflict – victims, relatives and offenders – by offering restorative justice and meetings.

The National Mediation Service in Norway has a responsibility to follow up with youth and to prevent future criminality in connection with the criminal sanctions of youth punishment and youth follow-up. Furthermore, through a follow-up process within the National Mediation Service which is aimed especially at young adults and cases concerning domestic violence. Preventing criminality is a joint responsibility shared by the public sector at all levels, by private actors and by civil society at large.

In Norway, serving as a mediator in the National Mediation Service is a voluntary duty performed by lay mediators who are selected based on their personal suitability. Appointment as a mediator is also contingent upon the approved completion of a basic training programme.

About the handbook

This handbook has been developed for the Norwegian context. Some of the references do not have links to English translated documents and are marked throughout the handbook as in Norwegian only but can be translated via translating tools. Although the handbook is written for Norwegian mediators, we believe that the handbook can also be used as a source of inspiration in other countries. It describes procedures, practical tips and advice on how to perform the role of facilitator and mediator. Together with solid training and education, the handbook is an important tool for ensuring quality in processes of restorative justice.

The aim of the handbook is to help those tasked with facilitating a process of restorative justice to:

- Understand how restorative justice should be practised before, during and after a meeting between parties
- Conduct processes of restorative justice in a professional manner that safeguards the needs of all parties
- Understand the basic principles and praxis of restorative justice, also referred to as mediation meetings

This edition of the handbook (2020) has been adapted as a digital version. It contains links to websites or other sources of knowledge and information. All the references are up to date and there is also a specific chapter for checklists and procedures. The updating and revision of the handbook is a continuous process and the professional field is constantly developing, cf. structure in each country.

At the back of this handbook, you will find a chapter on domestic violence which contains useful and practical information on what you need to be aware of and look out for in these kinds of cases. The chapter is written from the perspective of Norwegian law and praxis.

Purpose and Duties of the National Mediation Service

The Norwegian National Mediation Service Act reads as follows:

"Section 1. The purposes and duties of the National Mediation Service

The National Mediation Service arranges meetings between the parties in disputes that arise because one or more persons have inflicted damage, injury or loss on or otherwise offended another person.

The National Mediation Service executes the following criminal sanctions: victim-offender mediation, follow-up by the National Mediation Service, youth follow-up and youth punishment.

The National Mediation Service handles civil cases brought by the parties or by government agencies, provided the case is suited for processing by the National Mediation Service. A meeting organised by the National Mediation Service may be a meeting between a few directly involved parties, a conference where more affected persons and support persons are present, a youth conference, an especially facilitated meeting, a follow-up meeting or other meetings organised by the National Mediation Service.

The activities of the National Mediation Service are based on restorative principles and processes which allow the parties and others affected by a violation of the law or a dispute, to participate in a collective process to determine how the effects should be handled.

The parties do not pay any fee for meetings organised by the National Mediation Service. The Ministry may issue regulations with further provisions concerning the organisation of the National Mediation Service."¹

Various laws and regulations make reference to the requirements placed on the mediator, the role of the mediator, the role of the parties, the principle of voluntarism, the independent position of the mediation meeting, a requirement that the parties must meet in person and what exceptions can be granted. General provisions on the activities and case handling of the National Mediation Service are set out in Chapters I and II of the National Mediation Service Act.

¹ [Section 1 – Mediation Act, Lovdata](#)

Chapters III, IV and V concern the processing of criminal cases. The relevant provisions of the Penal Code and the Criminal Procedure Act are set out in the National Mediation Service Act of 20/06/2014, no. 49. Circulars issued by the Director of Public Prosecutions in Norway regulate what kinds of criminal cases can be referred to the National Mediation Service².

The mandate of the National Mediation Service

The National Mediation Service shall facilitate the process between the parties as best possible and safeguard the interests of both/all parties during preparations, during the meeting and in connection with any agreement reached. Mediation is a voluntary process and it is the parties themselves who are responsible for reaching a solution. The role of the mediator is to create a secure framework for the meeting and to help broker a positive dialogue. Accurate information is fundamental in this regard.

As a member of the Council of Europe, Norway abides by the council's recommendation on mediation in criminal matters as a guide for good mediation praxis. Central principles in the [Recommendation CM/Rec\(2018\) \(8\) of the Council of Ministers](#) primarily concern the active and voluntary participation of parties in the process and the independence and impartiality of mediators.

Moreover, the recommendation also states that restorative justice services should be available at all stages of the criminal justice process; before, during and after court proceedings. In Norway, we can comply with this recommendation through the National Mediation Service Act and the provisions set out in the Norwegian Penal Code and the Execution of Sentences Act. More links to relevant international provisions concerning restorative justice can be found in [Chapter 9 "Sources, Literature and References"](#) and on the website of the National Mediation Service.

1.2 Restorative Justice and the Conceptual Basis of the National Mediation Service

Restorative justice can be defined as an approach whereby people who have been directly involved in or affected by a particular offence or conflict may work together to identify harm, needs and obligations stemming from what has happened, and to jointly identify ways to repair and to heal injustices and harm to the best possible extent. Its purpose is to help the parties involved to identify ways to repair and to heal injustices and harm to the best possible extent. As a method, it involves the use of both dialogue and mediated questions. Participation is voluntary and all meetings are facilitated by a mediator. It is the responsibility of the mediator to ensure a positive and constructive dialogue.

² The relevant circulars from the Director of Public Prosecutions are the following: "[Circular containing preliminary guidelines for the new sanctions of youth punishment, youth follow-up and follow-up within the National Mediation Service](#)" of 16/01/2015. In addition to "[Youth punishment – updated guidelines](#)" of 08/07/17 (Norwegian only)

The conceptual basis for mediation and restorative justice is based on Nils Christie's article entitled *Conflicts as Property* (1977)³. Christie is among the most important contributors to the core foundational values and ideas of the National Mediation Service in Norway:

“Conflicts ought to be used, not only left in erosion. And they ought to be used, and become useful, for those originally involved in the conflict” (Christie, 1977).

The use of a lay orientation and voluntary mediators within the National Mediation Service is a value choice grounded in the ideas put forth by Christie in his article. The article has inspired many approaches towards mediation both within the Nordic countries and beyond. Christie argues that the individual should play an active role in the restorative process in order to find positive solutions to their own conflicts.

Christie uses a village meeting in Tanzania to exemplify a conflict resolution process whereby the directly affected parties, their networks and the wider community all work together in order to help bring a conflict to resolution. His example stands in contrast with what ordinarily happens in a Norwegian courtroom, where the parties appear only as witnesses and where experts control proceedings. These professionals – primarily lawyers but occasionally also healthcare professionals and other experts – take over restorative processes, thereby, in the words of Christie, ‘stealing’ conflicts from people.

In many cases, the courtroom is the necessary and proper place to seek resolution, but Christie's point is that we should regard it as a last resort, preferring instead to use alternatives such as mediation to the greatest possible extent. If approached constructively, conflicts can result in positive change, and as many people as possible should have access to this manner of change and growth.

Knowledge of the history and foundational values of the National Mediation Service provide us with a steady anchoring and a comprehensive understanding of the civil project that mediators and the National Mediation Service are involved in. It provides insight into what can be expected from mediators, the role and mandate of the National Mediation Service – and it can equip us with a positive reflex that helps us to manoeuvre through the landscape of various conflict situations.

Today, the methods used by the National Mediation Service are described by the term *restorative justice*. The term has several different definitions. The National Mediation Service in Norway adheres to the definition put forward by Howard Zehr:

“Restorative Justice is a process to involve, to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs and

³ Christie, Nils (1977). [Konflikt som eiendom \[Conflicts as Property\]](#) In: *The British Journal of Criminology* – Vol. 6, No. 4. pp. 54-69. Originally the foundation lecture at the opening of the Centre for Criminological Studies at the University of Sheffield, England, 31 March 1976.

obligations, in order to heal and put things as right as possible.” Howard Zehr (2003), *The Little Book of Restorative Justice*.⁴

With a firm foothold in the National Mediation Act, international guidelines and recommendations and the references, the National Mediation Service has established ten basic principles for the restorative work undertaken by the National Mediation Service.

1.3 Basic principles which provide direction and *standards*

“Restorative justice is not a map, but the principles of restorative justice can be seen as a compass offering direction. At a minimum, restorative justice is an invitation to dialogue and exploration.” (Howard Zehr, 2015)⁵.

The National Mediation Service has developed 10 basic principles which provide direction and *standards*. The direction offered by the basic principles is written in ordinary text while the standards are in italics.

Voluntarism

Participation in restorative processes is based upon informed and voluntary consent. Voluntarism applies throughout the entire process.

The parties decide based on necessary and adequate information.

Confidentiality

In the interest of protecting a free and open dialogue, all participants and mediators are subject to a duty of confidentiality. If there is a desire for certain information to be passed on to others, then all participants must first agree on what can be repeated outside of the meeting.

All meeting participants must be informed as to what the duty of confidentiality entails.

Security

Processes of restorative justice must feel secure, predictable and well prepared. A sense of security is a prerequisite for participation and the National Mediation Service will seek to establish trust with all who participate.

Processes of restorative justice must be grounded in the needs, concerns and expectations of the parties. The parties must be informed of their right to be accompanied by a support person.

Participation

The National Mediation Service aims to facilitate an inclusive process in which the parties participate actively and understand both what happens and what is said.

Age, background, culture and any other needs are all taken into consideration to avoid passiveness or feelings of alienation. Nobody may act as a spokesperson/advocate for either of the parties.

⁴ Zehr, Howard (2003), [The Little Book of Restorative Justice](#)

⁵ Zehr, H. (2015), *The Little Book of Restorative Justice: Revised and Updated* (Justice and Peacebuilding) (p. 21). New York, NY: GoodBooks.

Proximity and ownership

The National Mediation Service seeks to help parties take responsibility together, within their local community and their relationships. We are all part of the same community both locally and globally.

Mediators are lay people recruited locally and the meetings are held locally based on the parties' needs. The parties meet face to face within a process over which they themselves have ownership.

Impartiality and equal treatment

The National Mediation Service safeguards the interests of all parties and recognises the equal value of all people. Solidarity with the parties is a strength which reinforces this equal value and facilitates equal treatment. No one person has more inherent value than anybody else; cf. the UN declaration of human rights.

The National Mediation Service must act impartially and not appear to be biased, prejudiced or judgmental.

Respect

Processes of restorative justice must recognise the individual, their inherent value and their boundaries.

The National Mediation Service displays humility towards the parties' process and provides space for it to unfold.

Understanding and flexibility

The National Mediation Service empathises with the parties and acts to safeguard them and their interests. We approach participants with an open mind which differentiates between action and person.

Our approach to the parties and their process is inclusive and flexible.

Open and exploratory

We encourage a process which opens the possibility to understand more about what happened, about the other party, and about our own actions and reactions. The process provides space for a wider perspective and the acquisition of new insights. It is through insights and understanding that we can reach the opportunity for change.

We listen to the parties actively and with genuine interest during the meeting.

Hope

Hope is a driving force towards making things better, both on an individual level and within society.

The National Mediation Service believes in a bright future on behalf of the parties. We take a positive outlook on the parties and their process.

1.4 How the National Mediation Service approaches conflicts and violations of the law

- All participation is voluntary, and we must respect any decision not to give consent or to withdraw at any point during the process.
- The parties own the conflict and therefore the solution.

- If the parties reach a solution, then the agreement that they enter shall stand as testament to that.
- In criminal cases (where the National Mediation Service is chosen as the sole sanction) then a written agreement between the parties will be a condition for closing the case.

The approach of the National Mediation Service is focused both on the process itself and on the final agreement. On the process to draw out experiences, feelings and needs so that the parties can begin to put the case behind them, and on the agreement to lock down a real and forward-looking solution to the conflict. The role of the mediator is to chair the meeting, to lead the parties comfortably through the process and to ensure an agreement which is realistic, attainable and representative of the parties' wishes.

Note that in English, the National Mediation Service refers to the perpetrator or the accused as the *offender* and to the injured party as the *victim* in all cases, both criminal and civil. In Norwegian, the terms *accused*, and *accuser* are used in criminal cases not because the placement of guilt is unclear, but in order to distinguish between the terminology used by the police.

Both the offender and the victim are also referred to as parties in both civil and criminal cases.

1.5 The role of mediator and facilitator

Our aim is for the parties in a case to feel as if they are treated with respect and courtesy when in contact with staff at the National Mediation Service and to feel well cared for and informed at all stages before, during and after the mediation process. We want for each conflict to be addressed with enough flexibility to allow for a process which adapts to the nature and form of each individual conflict.

It is the responsibility of the mediator to ensure a positive and constructive dialogue. This is something that mediators can ensure by being confident, informative and impartial in their role and by listening actively to the parties. The mediator acts as a role model by demonstrating active listening, not taking sides and showing respect for the parties.

As humans, our perception of reality is formed in part through our communication with other people. This means that one party's perception of another can change simply by witnessing them in communication with the mediator. The mediator must respect the parties' decisions, remain impartial and be able to see both perspectives. It is important to emphasise the parties' own ability and opportunity to resolve their own case.

The goal is to facilitate mutual understanding, respect and empathy between the parties at all stages in the process. This can then be reified and reproduced in an agreement which protects the needs of both/all parties, thereby repairing and restoring the harm, loss or violation that has taken place to the best possible extent.

Many of the cases received by the National Mediation Service do not necessarily entail the need to 'mediate' per se, but instead concern situations where the parties need help communicating or establishing a dialogue. The term facilitated meeting is therefore often used as an alternative to the word mediation.

An example might be a request from a family member who wants support in her dialogue with other family members, with friends or with others in her life. Another example could be a case from the Norwegian Correctional Service requesting a meeting between somebody who is serving a sentence and the victim or somebody else affected by a criminal offence.

The mediator is obligated to submit an exhaustive and extended police certificate prior to their appointment. Read more about the appointment process, general requirements and exclusion on account of conduct in [Sections 4 to 6 of the National Mediation Service Act](#).

1.6 Ethical guidelines

All employees and mediators at the National Mediation Service must act with loyalty to the foundational values and mandate of the National Mediation Service. This is made clear in the personnel policy for the National Mediation Service. The ethical guidelines in place at the National Mediation Service are consistent with and based upon the 'Ethical Guidelines for the Public Service in Norway' – legislation which regulates public services and the internal provisions of the National Mediation Service. The term employee encompasses both mediators and other staff members within the National Mediation Service.

- **Employees are subject to a duty of confidentiality** regarding the information they access in their work. The duty of confidentiality covers personal affairs and other details as set out in [Section 9 of the National Mediation Service Act](#).
- **Employees must demonstrate respect for users of the National Mediation Service and others with whom they come into contact through their work.** This means respect regardless of gender, age, cultural background, religion, political conviction, sexual orientation or their prior actions which have led them to the National Mediation Service. Employees must not act in a judgmental, moralising or discriminatory manner.
- **Employees must avoid conflicts of interest in their work.** Anyone with a personal relationship to or prior knowledge of one of the parties must disclose this to the others taking part in the mediation process. This also applies if the mediator is friends with one of the parties on Facebook or another social media platform. If at least one of the parties does not want the person in question to act as mediator on this basis, then both parties must be informed of this and the case must be returned to the local administration. As a rule, mediators must not accept friend requests from either of the parties after mediation.

- **Employees must act impartially.**
Employees must not prejudge or take the side of either party in their work on a case and they must work to safeguard the interests of all parties. If, during the process, an employee finds that they are no longer able to act impartially, then they must withdraw themselves from the process.
- **Employees must respect the responsibility and self-determination of the parties.**
This means displaying humility for the parties' own choices and respecting the voluntary nature of the process. Employees must ensure that the parties understand the contents of any agreement they enter. An agreement which unreasonably favours one party over the other or which is unfavourable for other significant reasons must not be approved.
- **Employees must avoid situations that can lead to conflicts between personal interests and the interests of the National Mediation Service.**
Employees must not extract personal benefit from the parties; for example, by offering consultancy, guidance or therapeutic services. When a person makes themselves available as a mediator, they act in the capacity of mediator and not in the capacity of their own profession.
- **Employees must not accept compensation or personal gifts from the parties.**
- **All information that employees provide about the activities of the National Mediation Service must be correct.** When using social media, employees must ensure that they do not make comments which conflict with their duty and tasks as a mediator.

1.7 When the ethical guidelines are breached

The ethical guidelines must be kept alive through continuous reflection and re-evaluation. Each individual is responsible for ensuring that their own actions are consistent with the ethical guidelines. If an employee should deviate significantly from the ethical guidelines, then their immediate supervisor should discuss this with the employee right away.

1.8 Health, safety and environment (HSE) at the National Mediation Service in Norway

The National Mediation Service has put together its own HSE handbook for its mediation offices to follow. In accordance with the comments on the HSE regulations, this handbook also applies to mediators. Mediators are mentioned specifically in the HSE handbook under the discussion on violence and threats against employees and mediators.

Procedures in cases with a potentially high threat level (section 7.2) are specified in the HSE handbook. Mediators are insured during processes of mediation. See also Procedures in dangerous situations – for employees and mediators in the National

Mediation Service (section 7.3) and Checklist in the case of violence and threats against employees/mediators (section 7.4).

For questions about HSE in the National Mediation Service, contact the administration at your local mediation office.

1.9 Personal data processing in the National Mediation Service

It is important that all personal data and sensitive personal data is processed in a manner which protects the privacy of the parties in accordance with that set out in the Personal Data Act.

Personal data is any and all data and assessments which can be linked to an individual such as names, address information, dates of birth, telephone numbers, etc.

Sensitive personal data is data which concerns information such as racial or ethnic origin, political opinions, religion, philosophical convictions, trade union membership, genetic information, sex life, criminal convictions, criminal offences and health information. The personal data we process in the National Mediation Service is subject to the duty of confidentiality under the National Mediation Service Act and the Public Administration Act.

The data controller is the person who collects, uses and stores personal data. As a part of the National Mediation Service, we are all responsible for ensuring that our personal data processing is lawful and proper.

In order to process personal data, it is necessary to have a **legal basis for data processing**. This can take several different forms: for example if the data processing is necessary in order for the data controller to fulfil an agreement or legal obligation, to complete a task in the public exercise, to exercise public authority or in cases where the data subject has given consent. If you do not have a legal basis for data processing, then you are not allowed to process or store the data. You are only permitted to use and store data if it is strictly necessary for case processing.

What you need to do in your role as mediator

As a mediator, you are obliged to maintain secrecy regarding all information you learn about the parties. This also entails an obligation to store all documents in such a way that prevents others from accessing them without authorisation; cf. the security procedure which you will have signed or will be asked to sign.

You must also be aware of the risks involved in the different forms of communication that you use when contacting the parties. The use of e-mail is not permitted as this is akin to sending an open postcard.

SMS messaging can be a practical way to confirm meeting times and so on but is not without risk of personal data going astray. Section 7.11. The use of SMS messaging with parties and participants at restorative (pre-)meetings provides some example texts that you can use to minimise any damage should your messages go astray.

Personal data which gets lost in the post is in theory a significant risk factor in communications between mediator and the mediation office, but fortunately experience tells us that this occurs very rarely.

If a particular correspondence that you are awaiting is not delivered to you within the expected timeframe or if you receive a letter which appears to have been opened or where the envelope is torn, you **must always report this to your mediation office or data protection officer** who will follow up on this deviation. It is important to report any such occurrences immediately as we have an obligation to inform the Norwegian Data Protection Agency and the parties affected within 72 hours.

Personal data of uncertain quality

On occasion, mediators will receive data from one party about the other. It can be difficult to know whether these details are correct or not – and it is often the case that these details are of no further importance to our continued processing of the case. We must therefore take great caution when it comes to this kind of data. Any notes that you make during preparational meetings and mediation meetings must be destroyed afterwards – and it is a good idea to inform the parties of this.

Remember that once you have finished your work on a case you will no longer have a legal basis for data processing and therefore no legal right to access or store any personal data about the parties in the case. After returning all case documentation in paper form or deleting all electronic documents, you must then check to make sure that you have deleted any text messages and party phone numbers from your mobile phone.

If you or any of the parties have questions about privacy, obligations or rights, you can contact the data protection officer at post.personvern@konfliktraadet.no

2 PREPARATIONS AHEAD OF THE MEETING

This chapter will look at some information and recommendations as to how you should prepare for a restorative meeting in your capacity as mediator. If you are in any doubt about the formalities of the case, contact your local mediation office administration for clarification before meeting with the parties.

As you read through the case documents, be sure to consider all the points set out below.

2.1 Do you know any of the parties?

If you do, then you should contact administration in order to jointly assess whether you can still act as a mediator in this case. If you are too close to either of the parties to act as an impartial mediator, then the case must be passed on to somebody else who will take over all work on the case.

2.2 Is it a criminal case or a civil case?

We will need to make sure that the parties are well informed of the formal framework for their meeting in advance, including whether it is a criminal or civil case. Knowing the formal framework of the meeting is a prerequisite for somebody to give their informed consent.

The main difference for the parties will be the consequences of the mediation meeting. If no resolution is reached in a criminal case, then there is a risk that the prosecuting authority will further pursue the matter within the criminal justice system. The same applies in cases where conflict mediation is part of a sentence or where it has been stipulated as the condition of a suspended sentence.

Unresolved civil cases will not result in any consequences within the National Mediation Service and it will be up to the parties to decide whether they want to further pursue the case or not.

Note: When asked about the consequences of a mediation process, it is important that we only provide correct information or refer to the proper body. If you are unsure whether a case is civil or criminal or what the consequences might be in the event of a particular outcome, consult your local mediation office administration for further information.

The parties can also contact the mediation office administration or the referrer of the case themselves (e.g. the prosecution authority in criminal cases).

Definitions of a civil and criminal case:

A criminal case concerns an action that has been reported to the police and considered to be a criminal offence by the prosecuting authority (police prosecutors). When an action is criminal, this means that it is covered by a penal provision in law, that guilt is considered to have been established and that the offender can be sanctioned.

Criminal cases are submitted to us in accordance with the Norwegian Criminal Procedure Act (specifically section 71a of the Criminal Procedure Act) (Norwegian only), where there is an indictment enclosed with the case documentation and where the offender is 15 years of age or older at the time they committed their offence. The referral sheet from the prosecuting authority (the top page on the case documentation sent over from the police) will state clearly whether the case is **criminal** or not.

Civil cases can be referred to the National Mediation Service from various bodies and from private persons.

Civil cases referred from the police

A civil case referred from the police is a criminal case that for whatever reason has been dismissed. Reasons for dismissal may include:

- The offender was under the age of 15 (age of criminal liability) at the time of the offence
- Lack of evidence
- Dismissed due to lack of capacity

Note: Some parties may assert that the dismissal of their case is evidence of their innocence. During your pre-meeting, it is important that you identify the party's motivation in participating, what they can contribute and whether they are able and willing to take responsibility for their actions. Contact administration if you have any doubts.

Civil cases from the parties themselves or other bodies

A civil case can be referred directly from the parties themselves or from public bodies such as schools, childcare centres, employers and more.

Civil cases in the National Mediation Service can include things such as conflicts between neighbours, domestic conflicts, financial disputes and similar, or they could be less serious crimes that the victim has chosen not to report to the police.

Civil cases in the National Mediation Service can also be used in conjunction with sanctions in serious criminal cases or as a part of a community service order.

Cases can be referred from:

- The probation service (in the case of community service and probation orders)
- The correctional services (prisons) for facilitated meetings during incarceration
- Other private initiatives (parties, relatives, lawyers, family members) in order to arrange such meetings alongside court proceedings and sentencing.

[Read an example on the website of the National Mediation Service \(Norwegian only\)](#)

2.3 Has everyone given their consent?

All parties must give their consent for the case to be processed in the National Mediation Service in order to ensure that everyone is informed that the meetings are **voluntary** and to make sure everyone is **familiar with the framework** of the meeting (civil or criminal case and who the participants are).

If a party is under 18 or under guardianship, then their legal guardians must give their consent.

- Who counts as the guardian? Usually both parents, even if Child Welfare Services have custody
- In some cases, there may be a guardian appointed; ask administration for the necessary details if this is the case
- **Note:** If the child's guardians (parents) do not live together, both parents must receive information and be given the opportunity to participate in the meeting. Seek advice from administration if you are ever unsure in an individual case.

Voluntarism is an important motivation for the parties to make independent decisions and reach a solution. It is key in protecting the interests of the parties. Nobody should be forced to meet with somebody under duress and/or under false pretences. The mediator must inform the parties that they can withdraw their consent at any time in the process.

2.4 Claims for compensation

Sometimes one party in a conflict may want the other party to cover financial expenses that have arisen. When you receive a case, you must check to see if there is a claim for compensation in the case documentation and ensure that it is documented and substantiated.

You must also ensure that the other party has been informed about the claim for compensation and discuss it with them to establish their position.

Note: Solvency, the reasonableness of the claim, deadline for payment and whether the amount is negotiable are all challenges of which you need to be aware.

2.5 The need for an interpreter

Interpreters are important as they help make sure that the parties and the mediator can understand one another and avoid misunderstandings. They also allow the parties to better express their feelings and to communicate with greater precision. The parties are entitled to the assistance of a qualified interpreter under section 16 of the National Mediation Service Act.

- First check the case documentation to see whether an interpreter was present during police interrogation.
- Make it a general rule to always use an interpreter if any of the parties (or guardians) has trouble speaking Norwegian. It should become evident whether an interpreter is necessary when speaking with the parties.

- Some parties may state that they do not need an interpreter, but you can tell them that you require an interpreter in your capacity as mediator and that this will be crucial to ensuring proper mediation of the meeting.
- Follow local procedures in connection with the booking of interpreters or telephone interpreters.
- The interpreter's fee and expenses will be settled between the interpreter and administration.
- Family members or friends/acquaintances must not be accepted as interpreters.
- Bring the meeting to an early close and reschedule if it turns out that one or several of the parties/guardians has an inadequate command of Norwegian or another common language and if it is not possible to arrange for an interpreter at short notice.

Find out more information about the use of interpreters in [the Norwegian Directorate of Immigration's brochure entitled 'Use of Interpreters'](#) – see also excerpt in section 7.5.

2.6 Need for a support person

The parties have the option to bring along a support person. A support person may be an acquaintance of the victim or the offender or somebody affected by the events transpired. A support person will often help embolden one of the parties to meet with the other. The role of a support person is to support one of the parties and not to speak on their behalf.

However, the mediator or facilitator may ask them to say a few words if appropriate. A lawyer may not act as a support person in their capacity as a lawyer and anything said in the meeting cannot be used in any further legal proceedings.

Both/all parties must be informed of this entitlement and all parties must approve the presence of any support persons.

2.7 Information on the duty of confidentiality

The National Mediation Service is obliged to inform all meeting participants of their duty of confidentiality. It is important that the parties understand they are subject to a duty of confidentiality under the **National Mediation Service Act** and not just under the Public Administration Act as the former **duty of confidentiality is stricter**.

The duty of confidentiality applies to everyone present during a mediation meeting; cf. Section 9 of the National Mediation Service Act: *"The duty of confidentiality under the National Mediation Service Act goes further than the one set out in Section 13 of the Public Administration Act in that more details are to be considered personal and therefore subject to the duty of confidentiality. This includes the parties' names, places and dates of birth, personal ID numbers, nationalities, civil statuses, professions, places of residence and places of work."*

The purpose of the duty of confidentiality is to allow for a free and open dialogue during the meeting so that nobody may misuse the information that comes forth. Ask administration if you have any questions. Be prepared to inform the parties about the

duty of confidentiality as it applies to the case in question and seek advice if needed from your local mediation office administration. See section 7.1 on information about the duty of confidentiality.

2.8 What happens if the duty of confidentiality is breached?

Any breach against the duty of confidentiality can be sanctioned under Section 209 of the Penal Code. Participants at the meeting must be informed of this. If we learn from one of the parties that a meeting participant has breached their duty of confidentiality then we may offer a meeting between the person entitled to confidentiality and the person who has breached their duty of confidentiality in order to discuss this issue.

If the parties do not wish to partake in such a meeting, then they must themselves decide how they wish to further pursue the matter. A breach of the duty of confidentiality is not automatically a breach of the agreement reached. If you learn in your capacity as mediator that the duty of confidentiality has been breached, then you must always inform the head of the local mediation office who will pursue the matter further.

2.9 Conference or ordinary mediation meeting

The meeting type will be determined by the needs of the parties and what is most appropriate for the case in question.

In most cases, the meeting type will have been determined before you receive the case. If the meeting type (conference or mediation meeting) is chosen through contact with the parties or if it changes over the course of your preparatory work on the case, you must always notify your local mediation office administration and discuss this further with them.

Conferences are a suitable meeting type for cases which affect an entire family or community, cases involving many people or young people who have committed several offences, conflicts between neighbours and family disputes. The police and National Mediation Service administration will often have already identified if a conference is necessary. However, you may sometimes discover this need yourself during your preparatory work on the case.

2.10 Where should meetings within the National Mediation Service take place?

"Mediation can take place at any location which is deemed appropriate, but not usually at any of the homes or properties of either party" – Section 5 of the National Mediation Service Regulations (Norwegian only). As a general rule, meetings should always take place in a neutral location for both of the parties.

Section 13 of the National Mediation Service Act states that: *"The case must be handled by the mediation office for the municipality where the complainant or the aggrieved party lives or is staying ..."*

2.11 Exemptions from personal attendance

The general rule in the National Mediation Service is that the parties must meet face to face and that they may not be represented by a proxy. This is set out in Section 12 of the National Mediation Service Act on personal attendance.

The exemptions from this rule are also set out in the same paragraph. Indirect mediation may be permitted between the parties. This may be mediation by telephone, video link or by the mediator acting as a go-between.

The exceptions mentioned may only be permitted when they are in line with the National Mediation Service scheme. Moreover, the advantages of pursuing mediation in this indirect way must be jointly assessed as outweighing the disadvantages.

Indirect mediation may also be used as part of a process which builds up to a meeting in person. Any exemptions to personal attendance must be granted in consultation with and approved by the administration.

2.12 Telephone or video meetings

There are strict requirements for mediation via telephone or video link as set out in Section 12 of the National Mediation Service Act. Telephone or video meetings must only be used if it is not possible to bring the parties together for practical reasons; for example because the parties live at a considerable distance from one another and video-conferencing is therefore necessary for reasons of time and money.

The local mediation office administration must always be contacted in such cases for a final decision. See the guidelines for telephone or video meetings which are set out in section 7.6.

2.13 Security, precautionary rules and procedures

In cases that involve violence and/or serious threats, consider your own safety and that of the parties, and:

- Always have two mediators present
- Always hold a preliminary meeting
- Hold meetings during the day at a time when several people are present in the same building

See section 7.2 for the National Mediation Service's procedures in cases with a high threat level and item 7.3 in the event of a dangerous situation. Be sure to also consult with the local mediation office for any local procedures that must be followed.

See chapter eight on the National Mediation Service's guidelines and procedures for cases involving domestic violence. These cases will also require special measures regarding security. Always contact administration for further advice and guidance.

2.14 If the parties request access to records

If you receive a request for document access, be sure to contact administration in order to clarify what parts of the case documentation the parties can read.

2.15 Invitation/confirmation of the meeting time

Call the parties, inform them about the National Mediation Service and clarify the meeting time. Book a venue. Follow local procedures. Send written confirmation to the parties (letter/e-mail/SMS depending on local procedures). See the 'invitation to pre-meeting/meeting' letter attached to the case files which the mediator can use.

If sending an SMS please refer to section 7.11 – Use of SMS messaging with parties and participants at restorative (pre-)meetings. Let the parties know that you will get in touch again before the meeting for a preparational meeting.

2.16 Reading guidance – use of case documentation

As a mediator, you will receive case documentation from the local mediation office administration to help you facilitate meetings and preparational meetings with the parties and other people affected.

In most cases, the most important documents sent from the police will be the referral sheet, the indictment (sometimes sentence), interrogation transcript and the police report. The case overview from the National Mediation Service will present key details on whether the case is civil or criminal and who the parties and mediator(s) are.

The National Mediation Service only processes criminal cases if the matter has been fully investigated and the offender has acknowledged and admitted to the facts of the case.

The case documentation will provide a description of the event(s) recounted under interrogation or in a police report and constitutes important background knowledge. At the same time, it is important to be aware and to recognise that once the parties begin speaking, the 'truth' may take on multiple facets as emotions come into play and different perspectives are shared.

Reading guidance:

1. Mediator(s) must read the case documentation that is sent out and make every effort to be well prepared for preparational meetings and restorative meetings.
2. The case documentation must not be produced during meetings between the parties and quotations from police reports or interrogation transcripts must not be cited aloud.
3. The accounts of the parties must be respected. The parties may occasionally have different views of events and other things; nevertheless, both of their descriptions must be respected. It is important not to confront the parties with references to the case documentation if their stories diverge from what is written there. If any considerable discrepancies emerge, the mediator might consider taking a break in order to communicate with the party concerned and clear things up.

Remember the importance of good preparation in this regard; and refer to section 2.17 on preparational meetings. A central principle to all processes of restorative justice in the National Mediation Service is the principle of proximity, participation and respect (see more under section 1.3: "10 basic principles which provide direction and standards for restorative work within the National Mediation Service").

The parties themselves have ownership over what has happened and what will happen going forward. The parties' experiences and descriptions of what has happened must be recognised in the meetings.

2.17 Preparational meetings

Preparational meetings are obligatory in all cases. This term pre-meeting or preparational meeting refers to meetings or telephone calls where the mediators speak with each party individually ahead of a mediation meeting or a conference. Preparational meetings are individual and structured conversations which must be conducted with everyone who is a party in the case, preferably via a physical meeting or alternatively over the telephone.

Several preparational meetings can be held. Preparational meetings should not be held on the same day as the mediation meeting. This is to ensure that the parties, guardians, support persons and the mediators are all well prepared. Physical meetings are to be preferred over telephone consultations insofar as is practically possible. The reason for this is that physical meetings can better help to reassure the parties compared with telephone consultations as they make it easier to identify what conditions are important for a positive and fruitful meeting between the parties.

The basic values and principles of the National Mediation Service should permeate such preparational meetings. The parties should be addressed and received in a respectful and non-judgmental fashion. The mediators must be impartial, open and receptive. They must be well prepared. The mediators must find out what the parties intend to bring to the mediation meeting. For example, is that which the parties intend to bring to the meeting of such a nature that the mediation process should be discontinued after the preparational meeting? Or does the preparational meeting determine whether mediation can take place?

A preparational meeting should first and foremost serve to convey general information about what will happen in the mediation meeting. The information given must be adapted to the age of the parties. Emphasis must also be placed on clarifying that participation is voluntary at all stages in the process. It is important to make sure that the parties have given their informed consent, i.e. that the parties know what mediation through the National Mediation Service entails and that they understand the formal framework and whether their case is a civil or a criminal one.

Mediators must take care to act impartially in preparational meetings, to not take the side of any party in the case and to not bring up anything previously disclosed in confidence at the mediation meeting. It is also important that the mediator does not begin by trying to negotiate an eventual agreement. Remember to inform the parties that compensation claims must be documented or substantiated.

If there are two mediators involved in the case, then both should participate in preparational meetings with the parties insofar as is practically possible. If an interpreter is needed, then this should be organised in collaboration with the office in advance.

Objectives of preparational meetings:

- Reassure the parties as to what will happen during the actual meeting itself
- Create predictability for the parties through information
- Confirm the existence of informed consent
- Identify any circumstances which may be of importance to the meeting
- Ensure that the use of any interpreters is agreed upon and that the parties have mutual trust.

Focus in preparational meetings:

- Information, what the National Mediation Service can offer
- The parties' needs for restoration
- The offender/party's acceptance of responsibility; in criminal cases with reference to what is stated in the indictment
- Identification of other affected/involved parties or professional bodies which may be relevant to include in the restorative meeting

What a preparational meeting is not:

- A hearing of the case
- A crime scene inspection
- An opportunity to build alliances with mediators

If you are unsure about any of the above after a preparational meeting, contact administration to discuss.

Use preparational meetings to ensure:

- That young people under the age of 15 have the maturity and the personal suitability to participate in the mediation process and that their guardians can protect their interests. This is particularly important in cases involving young people under the age of 15 who are subject to a child welfare measure.
- Parties with a disability and parties with a mental illness must not be made to feel embarrassed at any time throughout the mediation meeting.
- Parties who have only been resident in Norway for a short time should be informed of the mission and neutral function of the National Mediation Service, and that the National Mediation Service can therefore be 'placed' in the 'right' context; e.g. in collaboration with the police and other public bodies.

Provide the following information during preparational meetings:

- The structure of meetings at the National Mediation Service and the condition of voluntarism at all stages of the process.
- The parties can bring along a support person and that this must be agreed upon with the mediator in advance and accepted by the other party or parties.
- Withdrawal period for agreements made: Two weeks in criminal cases (except for reconciliation agreements which are fulfilled with immediate effect). Parties in civil cases may decide amongst themselves if they wish to establish a withdrawal period.
- Duty of confidentiality; cf. Section 9 of the Act. See point 7.1 on how to provide information about the duty of confidentiality.
- Mention the user survey. Collect e-mail addresses and telephone numbers so that participants can be sent a link to the survey after the mediation meeting/conference.
See section 2.19 and section 7.9

Before meeting, the parties should be encouraged to consider:

- What is important for them to say to the other party or parties at the meeting
- What they would like to achieve from the meeting
- What information if any would they like to be conveyed to the other parties in advance of the meeting

See the checklist in section 7.12 checklist, tips and reminders ahead of preparational meetings.

2.18 The mediator's assessment on process continuation

If, in your capacity as mediatory, you discover something in your preparational work with the parties which makes you unsure as to whether the process should continue, contact administration. Examples of this might be if one party makes threats or if you observe any indications which suggest that the security of the meeting could be threatened; or if one of the parties is not fit to participate and take ownership in the meeting due to illness or intoxication.

Mediators can consult with the head of their local mediation office in order to identify whether a mediation meeting should be held at the present time. Such deliberations must place the parties in focus: what best serves their interests; what are their wishes and needs in the current situation?

If the mediator feels unsafe to continue the process for any reason whatsoever, they may also contact administration to arrange a second mediator or to request that another mediator takes the case instead. See also section 7.2 'Procedures in cases with a potentially high threat level' for measures which can enable meetings to take place in spite of known risks.

If you have been assigned the case as sole mediator and feel that you require a co-mediator, then it is important that you notify administration. It is important that

mediators who work together take the opportunity to give each other feedback and to help each other to become better and improve.

It is a good idea to speak to your co-mediator from the very start of a case about sharing feedback and receiving input from one another. We are all different and some of us are happy to receive unsolicited feedback while others need to be prepared. The goal is for both mediators to understand that feedback is part of the learning process and that reflection enables mediators to further develop and hone their skills.

2.19 The user survey

As a state enterprise, the National Mediation Service is required to carry out a systematic user survey and to make the results publicly available in an anonymised form. [Click the link for a summary of the user survey \(Norwegian only\).](#)

The user survey is an important tool in the work done by the National Mediation Service to guarantee quality. All participation in the survey is voluntary. The survey is an opportunity for users of the National Mediation Service to give feedback on the service and all responses are anonymised. The aim is that everyone who participates in a National Mediation Service meeting will be sent an invitation to participate in the user survey after their meeting.

The National Mediation Service uses the tool Questback in order to administrate the survey. [See information on the user survey](#) in section 7.9. The method which has proven most effective at encouraging responses is e-mail invitations to the survey. As of November 2018, invitations are also sent out via SMS. Information on the user survey and the form are sent alongside case documentation from the administration.

The Central Administration of the National Mediation Services asks the mediation offices and mediators to inform the parties, guardians, support persons and any observers about the user survey and to clarify whether the Central Administration may send them an invitation to participate in the survey. Clarifying whether participants consent to the survey is important, cf. the Data Processor Agreement.

Experience has shown that it is best to provide information about the survey during your preliminary work, e.g. at the end of the pre-meeting. Adopting a positive approach to this information is very important in encouraging participants to agree to take part.

3 RESTORATIVE MEETINGS

3.1 Meeting structure and mediator responsibility

The structure of a mediation meeting is as follows:

- The participants give their own accounts of the incident
- The participants are given an opportunity to express their feelings, needs and wishes
- The mediator asks questions and summarises what the parties say during the process
- The process moves from the past via the present and into the future
- The solution to the conflict lies in the future

Different people and situations will require different approaches. The biggest challenge is to give the parties the space they need in the mediation process while simultaneously guiding them towards a constructive approach and outcome. Mediators listen actively and summarise intermittently in order to help move the process along. This also ensures that the facts which emerge are accurate and concordant with what the parties have experienced.

Mediators must demonstrate flexibility when it comes to the different phases of the mediation process. Mediators must respect the fact that the parties will have their own experiences and perceptions of the conflict/incident.

Mediators are facilitators who make the parties aware of their own responsibility; the parties are in control and are responsible for making their own decisions. The mediation process need not be a failure even if the parties do not reach an agreement.

What matters is that parties are given the opportunity to engage in dialogue and attain restorative justice.

Key fundamental principles are that all participation is based on voluntarism and active participation and that all mediators are lay people and peers who support the parties in their process.

Refer also to section 1.3 which sets out the 10 basic principles which provide direction and standards for restorative work within the National Mediation Service.

The general content of a meeting at the National Mediation Service is typically as follows:

Mediation meetings begin with an introduction where the mediator clarifies the background of the meeting and explains briefly whether it is a civil or criminal case. The mediator also restates their own and everyone else's duty of confidentiality and reminds participants that any breach of this duty is a punishable offence. By this stage, the parties should already have been informed of their duty of confidentiality both orally and in writing. The mediator repeats that the reason for this duty of confidentiality is to enable open dialogue during the meeting.

The principle of voluntarism applies to all aspects of the mediation process. By consenting to the process, the parties have already expressed an active and constructive willingness to resolve the conflict and this is worth highlighting at the start. The mediator may also go over any other information which is relevant to the parties in the case at hand.

Communicating the consequences that the incident in question has had for the parties – both practically and emotionally – is central to the process. The parties' needs and wishes for the future are important. They provide a basis on which the parties can put a close to the case and begin to look ahead.

3.2 Practical implementation of restorative meetings

Below are some key considerations and brief guidance based on the basic principles of the National Mediation Service. In practice, there will be a need for a certain degree of variation in approach depending on what is best suited to each individual case.

Welcome the participants

Remember that all contact with the parties, their support persons and their guardians is part of the conflict mediation process that we have invited the parties and other affected persons to participate in.

We are role models for the process that we wish to facilitate. Giving participants a positive welcome is important to the process and creates a sense of security. Remember eye contact and a firm handshake.

Mediators must arrive in good time to ensure that the parties are properly received upon arrival. Everything must be ready when the parties arrive in order to create a secure atmosphere where the parties will feel comfortable communicating with each other. Some light small talk unrelated to the case will often help to settle any nervousness before the meeting begins in earnest. Mediators should try not to be too formal, but not too casual either. Everyone present should be treated in a courteous, friendly and respectful manner.

- Matters pertaining to the case should not be discussed ahead of time by any of the parties.
- Take general care not to give either of the parties' undue attention which might raise questions about whether you are impartial.
- Parties who are intoxicated upon arrival: Clarify whether a new meeting is desirable. Furthermore, identify what needs, if any, the parties may have at a new meeting, e.g. any needs for support persons.

Contact the administration to discuss further in case you are unsure.

Placement of participants in the room

Carefully consider where to position each person in the room to best safeguard everyone's interests and to enable the best possible quality of communication.

Guardians and support persons should be positioned wherever the mediator considers most appropriate depending on the details of the case at hand. It is often appropriate for both parties to be seated so that they can make eye contact; usually across from one another. The mediator should be positioned so that they can make eye contact with both/all parties.

Introduction of participants

During the meeting, mediators should refer to the parties by name and not by using terms such as 'offender', 'victim', 'support person' and similar. Mediators must follow the script and introduce themselves and any co-mediators before asking the others present to introduce themselves. Introductions should be made even if the parties already know each other well so that the mediator has an opportunity to check that all names are correct.

The mediator should then provide some brief information on their preliminary contact with both parties. Pre-meetings should already have been held with both parties. If there have been any exceptions for any reason, it is important to state this from the beginning.

Introductory information from the mediator

The parties may have varying degrees of knowledge about the mediation process before the meeting, even if all preparational meetings have been duly held, and they may have different ideas as to what will happen. The mediator must therefore reiterate the mission of the National Mediation Service before the mediation process is begun, adapting the level of detail and form of presentation to the needs and ages of the parties.

The information should be as concise and straight-forward as possible. If the parties are nervous, it may be difficult for them to take in all that is said.

- What sort of case are we dealing with – a civil case or a criminal case?
- The mediator should briefly describe what the case concerns, placing focus on the event that the parties wish to discuss (civil cases) or on what the indictment concerns (criminal cases)
- The purpose of the mediation process – say a few words on this with reference to the case at hand
- Core principles of the National Mediation Service:
 - Participation is voluntary and the parties can stop during the meeting if they want to
 - The parties or the mediator can ask for breaks as necessary
- Clarification of roles – roles of the mediator, the parties, any guardians and of support persons. Further progress of the mediation process will largely be contingent upon everyone being familiar with their own roles and the roles of others.

- The mediator should emphasise that their role is to act as an impartial facilitator and that the parties are responsible for reaching a solution themselves.
- The mediator must remind all participants of the duty of confidentiality that they have already been informed about in advance both in writing and during the preparational meetings; cf. Script for civil and criminal cases – section 7.10.
- The mediator may also explain briefly how the mediation process will be carried out. Depending on the case type and the parties, it may also be appropriate to clearly establish the rules that will apply during the meeting, i.e. parties must listen to each other, not interrupt and similar; cf the basic rules. Also encourage everyone to set their phones to silent or to turn their phones off completely.
- Reassure the parties that they will have the opportunity to say everything that they want to.

3.3 Basic questions

Mediators/facilitators will largely base their mediation around the following basic questions:

- What happened?
- What was going through your mind?
- How did you feel? How do you feel now?
- Who has been affected by what happened?
- What has been the worst part for you?
- What can you do to rectify what has happened?

(Alternatively: what needs do you have now? Or: what would you like to happen now?)

The basic questions are intended to ensure that the process moves from the past via the present and into the future and to draw out specific actions and experiences that are connected to the incident. The questions asked are open and begin with: what, where, how and why: '**What** happened?', '**Where** did it happen?', '**How** did you feel about what happened?' '**How** do you feel about what happened?' Avoid closed questions which might lead to a certain response (are you, can you, do you want, will you, etc.).

The basic questions are the most important tool that a mediator has at their disposal. These questions will draw out the details of what happened, what consequences and feelings the events in question have aroused and who has been affected. The basic questions can help mediators to relate to the case and provide a good framework for their mandate as a facilitator of the process being undertaken by the parties. It is then up to the mediators to determine whether they need to go beyond this framework or not. If it is, then the tips below will be useful.

Mediators can help the parties to further elaborate on both actions and feelings connected to what has happened by using a few supplementary questions. For example:

- How would you like things to be?
- What sort of a relationship would you like to have to ...?
- What can you do in order to ...?
- What will happen if you do not reach an agreement?

The parties might require more time to answer these kinds of questions.

Questions which clarify agreement/disagreement are also important.

Examples:

- You say that ... am I right in saying that ...?
- You have now heard what he/she thinks; is that how you see things as well?
- What else would you like to say or add to what he/she has said?

These kinds of questions can help bring out any underlying disagreements or conflicts. You can also ask questions to try and facilitate the process going forward: 'How do you think this situation felt for the other person?'

There is not always a clear answer as to why somebody has acted in the way that they have, and the mediation process can easily be led off in a more analytical direction which can ultimately bring the process to a standstill. Questions are useful if they drive the process forward. Remember that tone and body language will play a role in how your questions are interpreted.

Mediators should not ask questions which begin with the word '**why**'. Such questions seek to assign motive and blame. The approach taken by the National Mediation Service must reflect a non-accusatory position.

What if the mediator's questions trigger feelings of anger in the parties?

The mediator must demonstrate that the process is under control by adopting a calm demeanour. If the parties become provoked or angered by the questions asked, the mediator cannot be blamed for the emotional reactions of the parties. Depending on the situation, the mediator may consider rephrasing certain questions to ensure that the process remains positive and focused on reaching a solution. This is where we need to follow our instincts and adapt to the reactions we observe from the parties.

3.4 Facilitating positive communication between the parties

Who should speak first?

The parties should each get to describe what happened from their own viewpoint. The mediator must decide who should speak first. If one of the parties is noticeably more upset or angry than the other, then they should probably be asked to speak first. This is because we tend not to listen very well whenever we are emotional or upset. On the other hand, experience shows that it is often positive for the victim to hear the offender express remorse for what has happened right from the very beginning of the meeting.

Active listening

It is important that mediators display a sincere willingness to listen to what the parties wish to convey. The parties may fall silent if they feel that the mediator is not listening.

The mediator must try to place themselves in the situation of the person speaking to really understand what they're saying and how they feel. Mediators can demonstrate their comprehension and understanding through their tone of voice, facial expressions, eye contact, arm movements and posture.

It is important for mediators to summarise continuously in order to check and verify their own assumptions. By summarising and recapping the most important elements of what is said, mediators can both demonstrate their interest and allow the parties to feel heard. Repeating key details also means that the parties can hear things twice. The mediator can begin to summarise by saying: 'You say that ...' or 'You have both said that you would like to put the matter behind you ...'

When the mediator summarises, they should rephrase things and use a more neutral language than the parties. This way the mediator can demonstrate their understanding while also reframing the statement more objectively. Do not use statements that will simply serve to reinforce or lend weight to an argument.

The mediator needs to ensure that they have understood the parties' accounts of what has happened and that their understanding is concordant with what the parties have experienced. Mistaken assumptions on the part of the mediator may steer the parties away from the problem at hand and lead to a solution which belongs to the mediator and not the parties.

Ensure that all voices are heard

Everyone should feel that they are seen and heard when participating at a meeting within the National Mediation Service. It is important that the mediator is willing to interrupt an ongoing discussion or a long monologue that appears to be leading in a destructive direction. Recognising when to do this is one of the many assessments that mediators must make during the process.

3.5 Practical tips if the mediation process begins to stall

Mediators will occasionally come up against cases which seem deadlocked and impossible to handle. Some cases can hit a wall even when both of the parties truly want to find a solution. It is worth emphasising once more in this regard that the basic questions can be of help in moving things on. Remember also that it is the parties who are responsible for coming to a solution. If the parties are struggling to do this then the mediator can try and help things along by using the following simple measures:

Take breaks

A mediation meeting can be tiring for the parties, especially if it goes on for a long time. When we get tired, we also get less creative. A short break can sometimes help the parties to see things with fresh eyes. Certain cases might require longer breaks. The mediator can even arrange a new meeting with the parties.

Talk about feelings

If the mediation process comes to a standstill, one solution is to take a step back and talk about feelings. Frustrations often arise if one of the parties feel that they have not

been able to clearly express how they feel about the situation. By talking about their feelings, the parties can expand their understanding of one another. How we talk about feelings is culturally dependent. Some cultures rely more on imagery or metaphors and not all the words we have for our feelings in Norwegian or in English exist in other languages. One suggestion is to ask something along the lines of: 'How did you feel inside when ...'

Summarise how the parties feel

Sometimes the parties may be so preoccupied with their own arguments that they show little interest in how the other person sees things. By summarising both viewpoints, the mediator can help ensure that the parties understand one another. Summarising things in an impartial, objective and neutral manner will help both parties to listen better.

Put agreement in focus

By focusing on the points of agreement, mediators can help the parties to feel more comfortable and positive about the mediation situation. They will therefore also feel more motivated to try and reach a solution.

Go back to the problem

Mediation processes can come to a standstill if the parties are unable to agree on a joint solution and have difficulty seeing other options. The mediator can try and bring things back to the original problem and work together with the parties to review what is already known. This may help uncover solutions that have not yet been discussed and which the parties may be able to accept. This can also be done via separate conversations with the parties. The mediator may also try and get the parties to focus more on the future and ask questions to their guardians or support persons.

Break the problem down

Mediation processes can sometimes break down because a problem feels too big and insurmountable. In such cases the mediator can break the problem down into smaller fragments and take them one at a time. This can help the parties to become less frustrated and more solution oriented.

Normalise the conflict

The mediator can help to normalise a conflict by stating that they have come across similar situations in the past and that such things are not so uncommon, etc. Doing this might help to remove some of the fear and insecurity that could be holding the parties back.

At the same time, however, extreme reactions and behaviours must never be normalised, and we must never belittle a conflict between parties.

Explore different solutions

A conflict may have several possible solutions. By identifying different outcomes, the mediator can encourage the parties to continue with the process.

Where appropriate, ask the parties what an ideal future would look like. For example: How will you feel in six months if this conflict is resolved? What has happened and what have you done to resolve the conflict?

The consequences of failing to reach a solution

The mediator can ask questions as to what will happen if the parties do not manage to resolve their problem. If the parties agree that failing to reach a solution will not do them any good in the future, then the mediator can encourage them to brainstorm once more and try to find a satisfactory solution.

3.6 Bring the meeting to a close

Summarise what conclusion the parties have come to (You have both/all said that you can imagine ...)

The agreement must be discussed. Refer to the various consequences of entering into an agreement in criminal and civil cases as set out in [chapter 4](#).

Provide information on the withdrawal period (2 weeks for a criminal case and must be agreed upon for a civil case) and arrange any new meetings, etc:

- Inform the parties as to what will happen next – the administration will follow up on any agreements entered and keep the parties informed, and the parties are also free to get in touch with the National Mediation Service if they need to
- If the case was referred from the prosecuting authority, then this body will also be informed of the outcome.
- Any further questions from the parties concerning criminal cases, including questions about criminal record certificates, should be directed to the police and the prosecuting authority.

Close the meeting

It is important to take the time to bring the meeting to a close in a positive way. The mediator should use whatever words they deem most appropriate for the parties and the case at hand.

The usual process is often to thank participants for the meeting, acknowledge their willingness and efforts to resolve the case and to wish them luck with their agreement, etc.

3.7 Checklist and tips

Step 1 – Preparation

Arrive in good time so that the room is ready, and you are already there when the parties arrive.

Have you:

- Gone through the case, read all documentation and identified relevant problems for discussion? Identified potential challenges and opportunities?
- Clarified responsibility and roles between you and any other mediators/facilitators?
- In the case of conferences – have you agreed how the script will be used?
- Thought about how you will welcome participants so that everyone feels included – among other things by entering the room at the same time (waiting room)

- Prepared the room – chairs, placement of the parties, guardians, mediator(s) and any others?
- Set out water and glasses (coffee, pens and paper for the parties, tissues?)
- Agreement form

Step 2 – The Meeting – Introduction

The welcome is an important part of the process:

- Consider how you will address the parties (first name/surname). Ask what they prefer.
- Give the participants positive feedback for attending e.g. it's great that you could make it here today
- State the background of the meeting: e.g. this is a criminal case in which A has exercised violence against B

Inform the participants that:

- Meetings within the National Mediation Service consist of facilitated dialogues where the mediator/facilitator will act as a chairperson
- The mediator/facilitator is impartial and will not take sides or decide what others should do
- All decisions shall be made by the parties themselves
- The National Mediation Service's methods are based upon a non-judgemental and inclusive approach
- Remind the participants that everything said in the meeting is to remain between them unless otherwise agreed. A duty of confidentiality applies to everyone at the meeting and breaching this duty is a criminal offence. Refer to previous information given on the duty of confidentiality in pre-meetings and in written form.
- Check that everyone present is there voluntarily

Restate the basic rules of the meeting if necessary:

- It is important that everyone agrees as to what the rules mean for them. Examples of basic rules might be: No interruptions, constructive and positive dialogue, avoid negative characteristics and words, etc.
- Inform the parties that they can ask for breaks at any time and remember to consider the need for breaks yourself during the process.

Step 3 – The Meeting – Chairing

The conflict is between the parties. Each case is unique.

- Be respectful and make the participants feel comfortable and secure
- Demonstrate clear leadership and take charge when necessary
- take your time! Take breaks during the meeting if necessary
- Consider the need to organise a new meeting and meet again at a later point

Step 4 – The Meeting Process

- The participants give their accounts of the event. Decide who should go first.
- Mediator asks questions and summarises along the way
- **NB!** Use the basic questions

- The participants are given the opportunity to express their feelings
- The process goes from the **past** via the **present** and into the **future**
- The solution to the conflict lies in the future

Scripts are used in conferences in order to guide the process. (See section 7.10 – Conference scripts) Scripts must be adapted to the case at hand and need only be followed to the extent appropriate in the current case. Participants always sit in a circle formation at conferences.

Step 5 – Agreement

- Do not focus too much on the agreement during the meeting. The agreement (the solution) should emerge as a natural result of the process undertaken between the parties
- Make notes along the way of possible points that the parties agree on
- Generally, agreements should always be made in writing, but verbal agreements can be used in civil cases if the participants so wish
- In criminal cases, if a final agreement is reached and entered then it must correspond to the indictment and be drawn up in writing. See chapter 4 for more information on agreements.

Agreements are a natural end to a process between participants and important in attaining closure. Focus on what the participants agree on.

The form and content of agreements

- Set the agreement out neatly and use bullet points
- Remember that the agreement is a public document which may subsequently be made available to others
(In criminal cases – e.g. to the police, public prosecutors, etc.).
- Ensure the accuracy of all information and any deadlines, account numbers, names, phone numbers, etc.
- Include any expressions of regret/apology and any positive statements that the parties have expressed
- Is the agreement balanced, realistic and workable?
- In criminal cases – does the agreement correspond to the indictment?

Step 6 – Conclusion

Summary

- Give the participants positive feedback for their participation and helping reach a solution
- Inform them about the withdrawal period in criminal cases and give the parties the opportunity to set a withdrawal period in civil cases.
- Remember to give a feedback form to the victim in the case.
- Remind participants about the user survey. Take down the e-mail addresses/phone numbers of those who are willing to be sent a link to the survey (If this has not already been done during your preparational work). Give out an informational sheet on the survey.

4 AGREEMENTS

4.1 About agreements within the National Mediation Service

An agreement should emerge as a natural part of the process undertaken by the parties and mediators and the distribution of responsibilities is as follows:

The mediator is responsible for:

- not focusing too much or too soon on an agreement
- ensuring that the parties enter into an agreement voluntarily and that they feel they have ownership over the agreement
- approving the agreement reached between the parties. The agreement should be workable and reasonable for the parties.

The parties are responsible for:

- setting out requirements or proposals for reasonable solutions
- bringing out the key details of the case as seen from their perspective
- establishing the content of their agreement and ensuring that it is ethically and morally sound (no unreported labour)

4.2 Working towards an agreement

- Take notes during the process regarding what the parties agree on.
- Are all the parties ready to enter into an agreement? The parties may be offered a break before the agreement is drawn up; this is particularly important if they seem hesitant or if they seem caught off guard by the proposals that have been put forth.
- Ensure that everything the parties agree on and that they consider important in resolving the case is included in the agreement. The National Mediation Service will not be able to follow up on anything that is not written down in the agreement.
- If things come to a standstill during the agreement proposal stage, you can provide input based on what the parties have discussed during the meeting.

4.3 Wording and form of the agreement

- Use the parties' own words and formulations to the greatest extent possible. The text of the agreement should reflect the process that the parties have undergone. Encourage the parties to include any expressions of regret/apology and positive statements in the text of the agreement
- Use the parties' names, not terms such as offender, victim, perpetrator, injured party, etc.
- The general rule is one agreement per victim.
 - In cases involving multiple offenders/perpetrators, then the decision may also be taken to draw up one agreement per offender/perpetrator.

- The National Mediation Service's case number must be included on the agreement (included automatically when the agreement form is printed from the administration).
- Check that details such as names, telephone numbers, e-mail addresses, etc. are correct.
 - **Exception:** Parties whose address/phone number are confidential or who do not wish to disclose their details are **not** obliged to disclose this information in the agreement.
- The mediator is responsible for ensuring that all necessary details are included.
- The mediator writes out the agreement unless the parties prefer to do this themselves.
- Write clearly! Remember that the agreement is a public document which will be subsequently available to read. Unclear handwriting, crossed-out text and similar may lead to misunderstandings and new conflicts in the future.

4.4 Contents of the agreement

- The content should be of such a nature that it helps to resolve the conflict and safeguards both parties.
- It must be realistic, balanced and workable. It may sometimes be necessary to ask the parties some additional questions about this.
- It must be clear, legible and predictable in order to avoid misunderstandings. It is important that the mediator asks clarifying questions and makes alternative suggestions if the text that the parties produce seems to be unclear in anyway.
- It must only compel persons present at the meeting.
- It must fix a date for termination of the agreement. All agreements must have an end date so that it is possible to define whether the agreement is fulfilled or breached. Perpetual agreements are to be avoided, e.g. A and B shall behave in a civil manner towards each other in the future. For these types of agreements, you may, if the parties are willing, suggest a date for a follow-up meeting when you can check to see whether the agreement has been fulfilled.
- In the case of financial compensation to be paid in instalments, the agreement should specify the dates of payments. For example: NOK 100 to be paid on the 15th of each month beginning on 15/01/2020 and ending on the 15/06/2020. Timeframe and feedback underway are both topics that the parties ought to discuss. The term of the agreement should not generally extend over too long a period.

- **Exception:** Agreements which are regarded as fulfilled upon conclusion, e.g. agreements which involve no further actions but simply just accepted apologies, etc.

Finally

- Read through the agreement and ask both parties to check that their account numbers and other such details are correct. Make the parties aware that they are responsible for ensuring they only provide correct details.
- Encourage the parties to contact the administration should any problems arise with the agreement.
- Give a copy of the agreement to each of the parties. Remember to include both sides.

Not the final settlement

If there is to be a final settlement between the parties, then the parties should tick the box which reads 'The agreement does not represent a final settlement between the parties'.

In such cases, the agreement only represents a partial settlement between the parties and/or the parties wish to acknowledge that a later settlement may occur; for example, once the full extent of an action has become clear. This means that the criminal case can be concluded, and that the offender can avoid a second criminal prosecution even if they are unable to pay the total compensation amount at the time. The victim can then pursue payment of the outstanding amount, but on a private basis and not via the National Mediation Service or through prosecution. The National Mediation Service closes the case as approved.

In such cases, the box indicating that the resolution does not constitute final settlement should be ticked. The victim can therefore retain their grievances with the offender.

Exception: Even if the parties tick the final settlement box on the agreement form, certain exceptions may still apply to any rights and obligations under the victim compensation scheme. This means that the victim will be entitled to victim compensation and that the offender may be required to pay recourse in accordance with the provisions set out in the Act of 20 April 2001 no. 13 on victim compensation. (Norwegian only)

For more information on victim compensation see: State compensation to victims of violence and abuse.

4.5 No agreement

- If the parties do not wish to enter into an agreement, then the mediator must respect this outcome.
- If a mediation attempt is discontinued and no agreement is reached – inform the parties of the following: Their option to attempt a new mediation process and/or to have a separate agreement meeting.
- Explain what the consequences are when an agreement is not reached in a civil or criminal case respectively – see section 2.2 'Is it a criminal case or a civil case?' Do not make assumptions about what the consequences might be if mediation is discontinued or no agreement is reached. Refer to the original referrer of the case or to the administration at the mediation office if the parties would like further information.

4.6 The importance of entering into an agreement

In criminal cases

- The agreement must be made in writing on the approved form, dated and signed by all parties, their guardians and by the mediator for it to be considered valid by the prosecuting authority.
- The administration will send the agreement to the prosecuting authority together with feedback on the result and details on whether the case has been resolved or not. If the agreement is breached materially then the National Mediation Service is obliged to inform the prosecuting authority of this.
- When the prosecuting authority is informed that the agreement has been fulfilled, the criminal case will be closed as *settled through mediation within the National Mediation Service*. The prosecuting authority will then no longer be able to impose other sanctions on the offender for the circumstances covered by the criminal case in question.
- For information on criminal record certificates for cases resolved via the National Mediation Service, contact the administration and follow updated information on the mediator network. Refer to the original referrer of the case or to the local mediation office if the parties would like further information.
- In the case of normal civil cases referred to the National Mediation Service, the following applies:

Criminal cases referred in accordance with Section 71a of the Criminal Procedure Act and resolved within the National Mediation Service are not noted on ordinary criminal record certificates but will be noted on the exhaustive police record transcript for two years. The annotation will only be removed after two years if no new criminal offences are committed.

In civil cases

Written agreements are recommended even if they are not a formal requirement. Verbal agreements can be used in civil cases, but these cannot be followed up on by the National Mediation Service.

- The ordinary rules of contract law apply to agreements entered into in civil cases. The agreement is binding between the parties. The parties are dependent on the willingness and ability of the other to fulfil the agreement.
- Entering into an agreement at the National Mediation Service does not mean that parties can legally enforce the collection of payments.
- In civil cases referred by the prosecuting authority and other referrers (e.g. schools, housing associations, sports clubs, etc.), consent of the parties is required in order to inform the referrer of the outcome of the agreement.

4.7 Approval of the agreement

Criminal cases

- In criminal cases, any agreement must be approved in writing by all concerned. This means that the parties, their guardians and the mediators must all sign the agreement.
- If the agreement is more than one page in length, then the pages must be numbered: e.g. page 1 of 2 or page 2 of 2 etc.
- **Note:** Each page of the agreement must be signed by all parties, guardians and mediators.

Guardian approval

As a rule, guardians must approve the agreement by signing it. Parties aged between 15 and 18 do not need to have their guardian present at the meeting if the guardian is unable to attend or if the party does not want them present. The guardian should be informed of the outcome and asked to approve the agreement over the phone. In such cases it should be stated on the agreement that the guardian has given their approval and the date of this should also be noted.

Be aware that an agreement might entail waiving the right to compensation, for example. The mediator must inform guardians of the agreement content and ask for approval each time an agreement is entered.

If the parties and/or their guardians do not approve the agreement, then the mediator should offer to arrange a new mediation meeting.

Mediator approval

Mediators have a right and a duty not to approve an agreement which 'unreasonably favours one of the parties or which is unfavourable for other significant reasons'. This applies even if both parties state that they want such an agreement (Sections 17 and 18 of the National Mediation Service Act).

If the mediator is unsure as to whether an agreement should be approved, they should ask questions to the parties to find out more. Take your time to ask questions and consider approval and inform the parties that you are in doubt as to whether the agreement can be approved. Justify your doubt and troubleshoot it in discussion with the parties. Give yourself and the parties time to reflect on the agreement and the opportunity to seek relevant advice.

In such cases, the mediator should seek guidance from the administration and consider arranging a new meeting before entering into a final agreement.

It should take a lot for a mediator to consider not approving an agreement that both parties want. At the same time, it is an important part of the mediator's responsibility to tackle any challenges that they might identify in an agreement proposal and to troubleshoot the issue together with the parties in order to help them reach a realistic, forward-looking and positive agreement.

If the mediator decides not to approve an agreement in a criminal case, then the agreement shall not be considered concluded and the criminal case will be sent back to the prosecuting authority for further processing.

In such a case, the parties will be entitled to a written explanation as to why the mediator decided not to approve the agreement. The explanation should be written on the agreement form and refer to the legal provision which entitles the mediator to refuse to approve the agreement (Section 17 of the National Mediation Service Act) and the factual considerations that the mediator has given weight to in making their decision. The explanation can be written after the meeting, in which case the mediator should seek advice from the administration of the National Mediation Service.

Civil cases

In civil cases, the mediator is not formally required to approve an agreement for it to be considered valid. It is nonetheless standard practice for mediators to approve agreements in writing. Mediators always have a responsibility to point out whenever an agreement is unreasonable or unfavourable and if necessary, to advise against its conclusion. Mediators should not sign agreements in such cases. The agreement will still be valid, but the mediator will have conveyed the important message that they do not consider the agreement to be a good idea.

Guardian approval: The agreement should generally be approved by the guardian both verbally and in writing. The same guidelines for criminal cases also apply in the case of verbal approval.

4.8 Withdrawal period

Criminal cases

The parties must be informed of the withdrawal period. Sections 17 and 18 of the National Mediation Service Act set out the parties' right to withdraw from an agreement they have entered. For criminal cases, there is a statutory two-week withdrawal period from the date on which the agreement is signed by all parties, guardians and mediators and approved by the mediator. The parties must be informed in writing of their right to withdraw from agreements and of the consequences that this will entail. Refer also to Sections 20 and 21 which refer specifically to criminal cases.

If one party decides to withdraw from the agreement, then the administration of the National Mediation Service must be informed immediately so that the other party or parties may be quickly notified that there is no longer an agreement in place.

The withdrawal period does not apply in the case of agreements that are already considered to be fulfilled, for example, negotiation agreements and reconciliation agreements which are fulfilled with immediate effect or other agreements fulfilled at the meeting.

If a party decides to withdraw in a criminal case, then the case will not be considered resolved and will be returned to the prosecuting authority where an assessment on how to proceed will be made.

The National Mediation Service will always consider the option to offer the parties the chance to renegotiate the agreement and to hold a new meeting.

Civil cases

The rules on withdrawal do not apply to civil cases.

The parties will be informed that they can agree a withdrawal period and they should be asked whether this is something they would like to do. If they do not want to do this, then the agreement will enter into force as soon as it is signed by the mediator and any guardians.

4.9 Breach of the agreement

Criminal cases

Read more about breaches of the mediation process and of the agreement in Chapter 3, Sections 20 and 21 of the National Mediation Service Act and in Chapter 3, Sections 6, 7, 8 and 9 of the National Mediation Service Regulations (Norwegian only). Further processing and communication with the parties will be handled primarily by the mediation office in these cases.

Civil cases

Breaches of agreement in civil cases will not entail any consequences beyond those agreed upon by the parties. The National Mediation Service can, however, offer to hold a new meeting to discuss the breach of agreement if both parties are willing to meet.

4.10 Agreement types and potential challenges

Exactly what the parties are to enter into an agreement on is a matter for them to decide. Nevertheless, we can group the agreements into the following main types: Reconciliation agreements, compensation agreements, labour agreements, combination agreements or other types such as agreements of a symbolic nature. In the following section we will look at various challenges that can arise when entering into an agreement.

Insurance for labour agreements

Offenders who enter into a labour agreement concerning the execution of a job for the victim shall be insured during the performance of such work. The Central Administration of the National Mediation Service has a collective accident policy with Tryg Forsikring (Norwegian insurance company).

Assessing reasonableness in compensation agreements

It is mostly in connection with compensation agreements that mediators find themselves obliged not to approve agreements which unreasonably favour one party in a criminal case. This can often pose difficulties and so below are some important points which may be of help in assessing the reasonableness of compensation agreements.

- Compensation must first and foremost cover the victim's real financial loss as a result of the incident. Examples include the coverage of fees for costs such as medical bills, the repair of damage, and transport to and from the police station, hospital or the mediation office. Even when it is possible to document the cost of replacing a lost item with a new one, it is not always reasonable to demand the cost of a brand-new item; for example, when the item lost was old and worn.
- All claims for compensation must be documented insofar as possible, e.g. in the form of receipts for costs. Sometimes, however, we have no choice but to let a victim substantiate their own claim. If a family heirloom is stolen, for example, it will rarely be possible to produce an original receipt for the item.
- The claim for compensation must be causally related to the incident that the mediation meeting is about. It must also be more probable than not that the damage the victim wants compensation for was caused during the event itself or as a consequence thereof.
- Compensation for future financial loss presupposes that the future loss is foreseeable. In such cases, the parties should be asked during their preparational meetings to acquire documentation which confirms it is probable that the anticipated costs will arise in the future as a result of the incident. Such documentation might include a note from a doctor/dentist or similar, for example.
- In the case of criminal cases involving violent incidents and where the victim wants compensation for future expenses, the parties should be informed about the option to apply for victim compensation. Particularly in cases where it is

difficult for the victim to demonstrate the probability of the future losses or when the parties are unable to reach an agreement on this point. Be aware that state compensation to victims of violence is a secondary benefit and it is primarily the offender who is responsible for compensating damage; there is therefore no guarantee that the offender will not be sent a claim for recourse if the victim is awarded compensation. See section 4.4 – not final settlement.

- Loss of income as a result of the incident may be covered by a compensation claim in cases where this can be documented. It is also a requirement that lost income is not covered in another way, for example through sickness benefits or insurance. Note that lost income is often documented as salary before tax, but it is only the net loss which should be compensated.
- Financial losses which are covered by other bodies (such as insurance companies) cannot be the subject of a compensation claim in a mediation meeting. In such cases, the victim may be able to claim for the excess paid. The insurance company is entitled to seek recourse from the offender. It is up to the victim to decide whether to claim on their insurance or not; the point is that they should not have double coverage for their loss.

4.11 Children's liability – Damage Compensation Act

The Damage Compensation Act (25/05/73) (Norwegian only) sets out the liability of parents and children:

"Section 1-1. (children's liability)

Children and adolescents under the age of 18 shall be liable to compensate damages that they have caused through either wilful intent or neglect insofar as is reasonable regarding their age, development, manifested behaviour, financial ability and their general circumstances.

Section 1-2. (parents' liability, etc)

1. Parents are liable to compensate damages caused by children and adolescents under the age of 18 in cases where they have not enacted proper supervision or otherwise failed to take reasonable action under the circumstances to prevent the damage from occurring.
2. Regardless of their own culpability, parents are liable for damage caused through wilful intent or neglect by their children under the age of 18 who live together with them and who are under their care, up to NOK 5,000 for each count of damage."

4.12 Other common challenges

As a rule, mediators cannot approve agreements for compensation of a non-financial loss ('pain and suffering', loss of honour, loss of sleep, non-financial damages, etc.). There are also other problems to be aware of such as bans from shops/shopping centres, agreements concerning medical treatment and other various issues which will be discussed in this section.

Bans

In some shoplifting cases, the National Mediation Service has found that victims sometimes want an agreement which bans the offender from entering their shop during a longer period, often in conjunction with a compensation or labour agreement.

An agreement which entails such a ban is contrary to what we invite the parties to try and achieve. Offenders are shut out rather than included and held accountable in a positive manner. Bans foster continued mistrust, entail a punitive element and suggest to the offender that they have not been able to make up for their actions.

Such agreements may also mean that one party is shut out from public services such as essential health services and this is not something we can approve. From a social perspective, bans can be stigmatising – the individual may be forced to refrain from meeting friends, going shopping with their family and engaging in other social activities at the commercial area concerned.

Bans go against the National Mediation Service's objective to foster restoration and inclusion. Agreements must point forward in a positive manner and express mutual understanding and respect. The meeting and its agreement should seek to build up renewed trust between the parties. Moreover, settlement between the parties should be something that can be followed up on and fulfilled within a manageable timeframe. Bans are in practice difficult and unrealistic for the National Mediation Service to follow up on.

Even if the victim may have good reasons not to want the offender in their shop for a period, the parties should be encouraged to find an alternative solution rather than an agreement which bans the offender.

'Pain and suffering'

Parties may sometimes feel that they have lost something that does not have a monetary value. Examples of this might be a loss of security, sleep, happiness or the experience of pain, anxiety, etc. Even if such loss cannot be quantified, it can still constitute a considerable loss and on occasion the victim may want financial restitution for this in the form of what is known as compensation for pain and suffering⁶. However, there are specific requirements as to what can warrant such compensation and the term 'pain and suffering' should therefore not be used in an agreement entered through the National Mediation Service.

The National Mediation Service's general rule of thumb for compensation agreements is that they must build upon a concrete and calculable financial loss and that the agreement must clearly establish what costs the compensation is intended to cover.

The Central Administration of the National Mediation Service recommends exercising great caution when approving compensation agreements for non-financial loss. It is difficult for the mediator to determine whether such compensation may unreasonably favour one party over the other or not. Some of these losses may also be covered by

⁶Pain and suffering is a type of compensation seldom awarded in Norway and the victim will therefore not necessary be granted such compensation if their criminal case is sent back to the police unresolved.

other schemes. Compensation of this kind should be left to bodies which have the necessary expertise in this area.

Contact your local mediation office administration if this is something which comes up in your case.

Agreements on treatment

Agreements which involve outside third parties should generally be avoided within the National Mediation Service.

One reason for this is that the National Mediation Service is unable to follow up on agreements concerning medical treatment. The National Mediation Service cannot know whether the treatment in question is available before the deadline established in the agreement, and it will be difficult to incorporate the effects of treatment into an agreement in advance. Moreover, the institutions providing treatment will often be bound by a duty of confidentiality and will be unable to confirm whether treatment has been given or whether the outcome of treatment has been positive.

It is of course a positive development when parties acknowledge problems for which they want to seek help, such as addictions or violent behaviours. Such acknowledgement can help to reassure the other party. This can also be formulated in writing as an intention of one of the parties, but the parties must be informed that the National Mediation Service will be unable to follow up on this aspect of their agreement. If the parties nonetheless wish to draw up such an agreement, this should be discussed in detail and any agreement must be civil in nature.

Other possible challenges

Parties may sometimes wish to inform others that an agreement has been made and entered into; for example, in order to prevent acts of revenge and to allow others to rally around and support the resolution reached between the parties. Disclosing the content of the agreement to others requires the explicit willingness and consent of all parties involved; cf. the strict duty of confidentiality set out in the National Mediation Service Act which covers all meeting participants (refer to Section 9). Mediators must always consider such requests from different angles together with the parties, bearing in mind any potential negative consequences.

Should any other challenges arise – contact the administration for further guidance and advice.

4.13 Checklist for agreements in criminal cases

Criminal cases referred from the police and the prosecutorial authority concerning an offender who was over the age of 15 at the time of the incident. See more in section 2.2 – 'Is it a criminal case or a civil case?'

Wording and form of the agreement

- Written on the approved form bearing the National Mediation Service's case number.
- Check that all details (name, telephone number, e-mail address, etc.) are accurate and correct.

Contents of the agreement

- Does the agreement text reflect the indictment? And the process that the parties have undergone?
- Has the agreement and its wording come from the parties? Have all elements been included?
- Is the agreement realistic, balanced and workable?
- Does the agreement create as great a degree of predictability as possible for the parties?
- Does the agreement stipulate who should do what? How are things to be done? Where and when shall things be done?
- Labour agreements must cite a named contact person
- Does the agreement have an end date so that it can be determined if the agreement has been fulfilled or breached?
- Have interim deadlines been established in the case of an agreement that extends over a longer period?
- Does the agreement safeguard both parties?
- Does the agreement establish requirements on anybody who was not present at the meeting? If so then it must be changed!
- Will the agreement help to fully or partially resolve the conflict between the parties?

Finalising the agreement

- Have you written a draft agreement before writing it on the form so that the parties can easily request amendments?
- Ask the parties to check that their account numbers, phone numbers and other details are correct.
- If the agreement does not represent the final settlement, has the box for this been ticked?
- Signatures:
 - Have all parties and guardians signed the agreement? Alternatively, have guardians given verbal confirmation that they accept the agreement?
 - If the agreement spans multiple pages, have all the pages been numbered and signed?

Mediator approval

- The agreement is not valid until signed by the mediator.
- Are there any significant considerations/conditions which mean that the agreement should not be approved?
- Mediators always have a responsibility to point out whenever an agreement is unreasonable or unfavourable and if necessary, to advise against its conclusion.

Have you informed the parties that...?

- The agreement will be followed up on by staff at the administration of the National Mediation Service.
- The police and prosecuting authority will be informed of the agreement and its fulfilment in criminal cases.
- The agreement has a two-week withdrawal period from the date on which it is approved by the mediator.
- The withdrawal period does not apply to agreements which are already fulfilled and in cases where the parties consider the matter resolved at the meeting (reconciliation agreements and similar).

Have you:

- Given copies of the agreement to all parties?
- Given the feedback form to the victim?
- Encouraged both parties to contact the National Mediation Service right away if they encounter any problems with agreement fulfilment so that we can provide support in finding an appropriate solution?
- Provided details of the user survey and collected phone numbers and e-mail addresses for this?

4.14 Checklist for agreements in civil cases

Civil cases can come to the National Mediation Service from various bodies, including the police – see more in section 2.2 'Is it a criminal case or a civil case?'

Wording and form of the agreement

- The agreement must be made in writing on the approved form bearing the National Mediation Service's case number.
- Check that all details (name, telephone number, e-mail address, etc.) are accurate and correct.

Contents of the agreement

- Does the text of the agreement reflect the process that the parties have undergone?
- Has the agreement and its wording come from the parties? Have all elements been included?
- Is the agreement realistic, balanced and workable?
- Does the agreement create as great a degree of predictability as possible for the parties?
- Does the agreement stipulate who should do what? How are things to be done? Where and when shall things be done?
- A contact person must be named in the case of labour agreements.
- Does the agreement have an end date so that it can be determined if the agreement has been fulfilled or breached?
- Have interim deadlines been established in the case of an agreement that extends over a longer period?
- Does the agreement safeguard both parties?
- Does the agreement establish requirements on anybody who was not present at the meeting? If so then it must be changed!
- Will the agreement help to fully or partially resolve the conflict between the parties?

Withdrawal period

- Have you asked the parties if they would like a withdrawal period?

Finalising the agreement

- Have you written a draft agreement before writing it on the form so that the parties can easily request amendments?
- Ask the parties to check that their account numbers, phone numbers and other details are correct.
- If the agreement does not represent the final settlement, has the box for this been ticked?

Signatures

- Have all parties and guardians signed the agreement? Alternatively – have the guardians given verbal confirmation that they accept the agreement?
- If the agreement spans multiple pages, have all the pages been numbered and signed?

- In civil cases the mediator is not required to approve the agreement for it to be considered valid. It is nonetheless common practice for mediators to sign. Mediators always have a responsibility to point out whenever an agreement is unreasonable or unfavourable and if necessary, to advise against its conclusion.

Have you informed the parties that...?

- The agreement will be followed up on by staff at the administration of the National Mediation Service.
- For civil cases referred by the prosecuting authority or another third party, the referrer will be informed of the outcome of the agreement if both parties consent to this.

Have you:

- Given **copies** of the agreement to all parties?
- Given the feedback form to the victim?
- Encouraged both parties to contact the National Mediation Service right away if they encounter any problems with agreement fulfilment so that we can provide support?
- Provided details of the user survey and collected phone numbers and e-mail addresses for this?

5 AFTER THE MEETING

5.1 Reflection and colleague discussions

The form entitled 'Summary of the mediation meeting and pre-meeting' (section 7.13) should be filled out and returned for each case. This form is created automatically in the file system and merging fields are filled out automatically. The form is an appendix to the compensation form and does not automatically trigger the payment of salary or travel expenses. However, the form is important in enabling the administration to follow proceedings and collate expenses. The form can also be used as a basis for meetings and discussions between mediators and the administration.

The summary should distinguish between hours spent on mediation and on preliminary and follow-up work. Times should be rounded up/down to the nearest half hour. Note the date and time elapsed for both pre-meetings and mediation meetings on the form.

The Central Administration of the National Mediation Service recommends taking time to reflect after each case and to give feedback, exchange experiences and to learn from one another through reflection.

This can be done using the forms 'Summary of the mediation meeting and pre-meetings' (section 7.13) and 'Execution, dissemination and development of the mediator profession' (section 7.14).

Colleague discussions are held between two mediators after a mediation process and are based upon open and reflective questions. See the help sheet on carrying out colleague discussions – section 7.15.

5.2 Returning case documentation to the National Mediation Service

After the final mediation meeting is completed, all case documentation must be returned to the National Mediation Service without undue delay or alternatively erased in the event they were transferred digitally. If case documentation has been sent from the police, then it is the property of the police. Mediators are therefore not entitled to retain their own copies of agreements or other documents. Any scrap paper containing personal details such as names must be destroyed or returned to the National Mediation Service.

5.3 Mediator compensation and expense claims

The compensation form and any travel and expense claims should be submitted after each case. The form can be downloaded from the mediator network.

- Mediators will be sent a link granting access to the mediator network at <https://konfliktraadet.megler.custompublish.com/> (Norwegian only) where they can register with their own user name and password.

- In order to receive mediator compensation/travel expenses, mediators must also submit the following details to the administration: Name, address, bank account number, date of birth, personal ID number and e-mail address.
- In order to use the electronic compensation form, mediators must use MinID or BankID (electronic login systems used in Norway to access public services). See questions and answers on the website of the Norwegian Agency for Public and Financial Management (DFØ): <https://dfo.no/kundesider/reiseregning/reiseregning-for-honorarmottakere> (Norwegian only)
- You can also download the [DFØ app via Google Play or the App Store](#)

Any questions about the compensation form should be directed to your local mediation office administration.

6 MEDIATOR – ADMINISTRATION COLLABORATION

6.1 Collaboration between mediators and the administration

The National Mediation Service's mediators are its most important resource and often the only representative of the National Mediation Service that the parties meet in person. Mediators are appointed for a period of four years and are affiliated with the National Mediation Service as the holder of a public office. Mediators can be reappointed following application.

The mediator's role, including the relationship between the mediator and the local mediation office administration, is governed by the National Mediation Service Act, the ethical guidelines, internal provisions and the collaboration agreement between the mediator and the mediation office; see section 7.16.

Ongoing case guidance

Mediators are welcome to contact their local mediation office administration at any time in order to seek advice and discuss problems in a case.

Mediator discussions

Both mediators and the administration have a responsibility to facilitate such discussions taking place. A special programme has been established for colleague discussions and mediator discussions. Mediator discussions are held between the mediator and somebody from the administration and are based upon dialogue and the principle of equal treatment.

The idea is to discuss how the mediator performs their role and to identify what the mediator is satisfied with and what they feel can be done better. These discussions are also an opportunity for the administration to receive input which may facilitate their follow-up work and help to improve overall quality in the mediation process.

Observation and reflective discussions

The head of the mediation office, an advisor or another person with case responsibility at the office may occasionally attend mediation meetings so that their observations may then be used as the basis for a reflective discussion. This is a part of a mediator's continuous professional training and development.

Mediator conferences

Participating in mediator conferences is part of being a mediator. Mediator conferences are an opportunity to pool experience, disseminate information, refresh knowledge and to discuss professional and ethical issues. Mediators should participate to the greatest possible extent and should have good reason for not participating.

6.2 Website and mediator network

www.konfliktraadet.no // <https://konfliktraadet.megler.custompublish.com/> (Login req.)

Mediators can find updated information on the websites of the National Mediation Service. Relevant issues are discussed, and you can also upload your own posts onto the mediator network. This allows us to continuously improve the service we offer to our parties.

6.3 Mediator forum

The National Mediation Service's mediators in Norway have set up their own interests' organisation for mediators: the mediator forum (Meklerforum). Cooperation between the mediator forum and the National Mediation Service is governed by a collaboration agreement between the mediation forum and the Central Administration of the National Mediation Service.

As an organisation, the mediation forum exists to protect and safeguard the interests of its members.

Membership in the mediator forum is voluntary however you must actively opt out of membership if you decide you do not want to be a member. No membership dues are collected for being a member of the mediator forum as per the time of writing. Members of the forum elect a contact person at each individual mediation office. Ask the administration at your local mediation office if you would like to know who this is.

The forum's elected board represents mediators before any bodies that we may collaborate with. The mediator forum also functions as a partner and a link between mediators and management at the Central Administration of the National Mediation Service.

View information, statues and blog posts by logging onto the mediator network (login required): <https://konfliktraadet.megler.custompublish.com/>

Contact your local mediation office if you do not have access to the mediator network.

7 CHECKLISTS AND PROCEDURES IN THE MEDIATOR'S HANDBOOK

7.1 Overview and tips regarding the duty of confidentiality

The National Mediation Service is obliged to inform everyone participating in its meetings that they are subject to a duty of confidentiality under Section 9 of the National Mediation Service Act and that breaching this duty may be a criminal offence⁷.

Information is provided at the following stages of case processing:

1. Written information: The duty of confidentiality is mentioned briefly in the letter and informational sheet sent out from the National Mediation Service.

2. Preparational meetings: Mediators must always make the parties aware that they are subject to a duty of confidentiality. This allows any questions, needs or concerns regarding the duty of confidentiality to be clarified insofar as possible ahead of time.

3. Introduction to the meeting itself: The mediator reminds participants of the duty of confidentiality and refers to the information they were given in their preparational meetings. This reminder is important but should not take up too much time in the meeting. For example:

"I would just like to remind you all that everyone here today is subject to a duty of confidentiality under Section 9 of the National Mediation Service Act. Any breach of this duty of confidentiality is a punishable offence under Section 209 of the Norwegian Penal Code."

"I have previously spoken to each of you separately about this duty of confidentiality and what it means. Simply put, it means that everything said here today must remain within these four walls. That also goes for the names and other personal details of everyone who is present here today."

"The reason that the National Mediation Service Act is so strict on this point is so that we can all feel free to speak openly without having to worry about whatever we say being repeated to others."

(Depending on the situation, the mediator might also say: "If there is anything that any of you feel is important to disclose outside of this meeting, then we can discuss this at the end and agree together what may be said.")

4. At the end of the meeting: The mediator ascertains whether there is anything that the participants would like to share with others. Everyone must then agree on this and on what can be said.

⁷[Section 9, third paragraph of the Mediation Service Act](#) cf. [Section 13c, first paragraph of the Public Administration Act](#).

7.2 Procedures in cases with a potentially high threat level

The cases received by the National Mediation Service can be very broad in terms of their degree of seriousness. Even if escalated situations have only rarely occurred in the history of the National Mediation Service, it is nonetheless necessary for us to consider this issue and to have procedures in place should such situations occur. We must adopt a precautionary principle.

Neither the administration nor the mediators will have any previous relationship with the parties, and it can therefore be difficult to assess the risk that they will make threats or act violently ahead of the mediation meeting. We may nonetheless get an indication that the level of conflict is high through either the case information or through pre-meetings with the parties.

1. Measures ahead of the mediation meeting:

- If the administration receives any indication that the level of conflict is high or if they receive any information that suggests difficulties may arise, then two mediators must be assigned to the case instead of one. Cases involving violence, bullying or threatening behaviour should generally use two mediators.
- If the mediator receives any indication of potential violence or threats beforehand, then they must inform their local mediation office administration which will then assign a second mediator to the case.
- One of the facilitators should have a mobile telephone on hand.
- Consider holding the meeting in the premises of the mediation office or other suitable premises where support will be immediately available.

2. Measures during the mediation meeting:

- Mediators must be familiar with the location of the exit.
- Before the meeting begins, the parties must be informed that the meeting will be discontinued immediately upon the first sign of threatening or violent behaviour.

3. Measures if the mediators or administration are subjected to threatening or violent behaviour:

- The police (and healthcare staff if applicable) must be contacted as soon as possible and the incident must be reported to the police.
- The head of the mediation office must be contacted and meet the mediator/employee as soon as possible to discuss what has happened.
- An assessment should be made as to whether any further action is necessary.

4. What the mediator should do if one party threatens another during the mediation meeting:

- The mediator should contact the head of their mediation office after the mediation meeting has ended.
- An advisor will then offer to chat with the mediator.

From the HSE folder: Contact the administration if you would like to know more about HSE procedures

7.3 Procedures in dangerous situations – for employees and mediators in the National Mediation Service

In the case of fire – 110

- All employees are made aware of the office's evacuation routes and shall follow established procedures
- All mediators are aware of the mediation premise's evacuation routes and follow established procedures

In the case of illness – 113

- Should somebody fall urgently ill or if anyone is seriously injured ring 113
- There is a first aid kit in all mediation offices

In the case of threats and violence – 112

- Notify your colleagues if during contact hours and in serious situations contact the police
- In the evenings, alert the police – 02800

If you become aware of any threats or imminent dangers then you are obliged to inform the manager of your local mediation office; cf. **Duty to Prevent Harm – Penal Code Sec. 196**. For more information on the Duty to Prevent Harm, read more at **www.plikt.no** (Norwegian only).

All incidents must be reported to a manager as soon as possible.

From the HSE folder: Contact the administration if you would like to know more about HSE procedures.

7.4 Checklist in the case of violence and threats against employees/mediators



Date of incident: _____

Checklist in the event of violence and threats against employees/mediators at the Mediation Office
Objective: Ensure that the Mediation Office Manager follows up on the employee/mediator who is subjected to violence and/or threats

Measures	Documentation/source	Person responsible	Deadline	Actioned on	Comment
Report					
Notify manager		Employee/mediator	ASAP		
Notify relatives as needed	See the relatives list	Mediation Office Manager	ASAP		
Report the incident to HR at the Central Administration and to the Chief Safety Officer	See the contingency plan	Mediation Office Manager	ASAP		
Identify support within network/need for follow-up/ provide feedback to the employee/mediator		Mediation Office Manager	Before the employee/mediator or travels home after the incident		
Follow-up					
Assess whether or not to report the incident to the police		Mediation Office Manager	ASAP		
Seek medical attention if needed		Employee/mediator	ASAP		
Have a support talk with employee/mediator		Mediation Office Manager	ASAP		
Fill out the deviation management form	Deviation management form – form no. 02.03 (HSE folder)	Employee/mediator	Within 3 days		
Draw up a plan for further contact/follow-up of the employee/mediator if needed	1. HSE form – action plan – form no. 02.04 (HSE folder) 2. Risk evaluation form – form 02.05 (HSE folder)	Mediation Office Manager	Within 3 days		
Debriefing at the office		Mediation Office Manager	Within 3 days		

Measures in the event of injury/damage	Documentation/source	Person responsible	Deadline	Actioned on	Comment
Submit an injury report to NAV	NAV form 13-07.05	Mediation Office Manager	Within 3 days		
Inform the employee/mediator about occupational injury insurance via the Norwegian Public Service Pension Fund		Mediation Office Manager	Within 3 days		
Send an injury report to the Norwegian Public Service Pension Fund	www.spk.no https://www.spk.no/globalassets/skjema/s014_bm.pdf		Within 1 week		
Submit written notice to the Norwegian Labour Inspection Authority (Work Environment Act 5-2) in the case of serious injury. Submit a copy to the chief safety officer	www.arbeidstilsynet.no Notice of occupational accident involving serious injury or death	Mediation Office Manager	Within 2 weeks		
Notify the employee/mediator that their doctor is obliged to report the matter as an occupational injury		Mediation Office Manager	Within 2 weeks		
Registration in ePhorte					
The matter should be registered in ePhorte – all activity relating to the case must be documented.	See: Procedures in ePhorte for personnel archive	Mediation Office Manager	Continuously		
Upload the deviation management form to ePhorte	See: Procedures in ePhorte for personnel archive	Mediation Office Manager	Within 3 days		

It is hereby confirmed that the checklist has been completed and that procedures have been followed up as necessary:

Manager/Mediation Office Manager

Employee/mediator

7.5 The use of interpreters

Below is an extract from the Norwegian Directorate of Immigration's brochure on the use of interpreters which you may find useful when engaging and working with interpreters. See the mediator network for the entire brochure which contains practical advice on the use of interpreters.

Excerpt from the brochure

The work of an interpreter is governed by a set of professional ethics. Interpreters are bound by the following ethical principles:

- The interpreter must translate everything expressed during the conversation – and not omit, amend or add anything.
- Interpreters must be impartial in their work and their own beliefs must not influence their interpretation.
- Interpreters must not take on other roles in connection with their interpreting work.
- Interpreters are bound by an absolute duty of confidentiality.

Absolute duty of confidentiality means that

- The duty of confidentiality covers everything the interpreter learns in connection with their assignment.
- The duty of confidentiality applies to everyone, including their superiors, colleagues and family.
- The duty of confidentiality applies even after the interpreter has left their position. For those being interpreted this means:
 - You yourself are responsible for everything you say during the meeting.
 - The interpreter is not responsible for ensuring that what you or anybody else says is correct or truthful.

Remember to look and speak directly to the person you are communicating with and not the interpreter. The interpreter should be practically invisible.

7.6 Guidelines for mediation via telephone or video link

Collaboration between several mediation offices

Meetings via telephone and video link should only be used when it is not possible to bring the parties together physically⁸. When such meetings are held, the following guidelines apply:

- The mediation office which received the case (MO1) records the case and is responsible for proceedings.
- MO1 contacts the party who lives in another district and clarifies where (municipality/town) is the best location for them to participate in the mediation process from (this is not always their municipality of residence). All parties must be informed and made aware that the case will be mediated via telephone or video link with support from another mediation office.
- MO1 contacts the mediation office at the location of the other party (MO2). MO2 is given information such as case history, names, ages and any other relevant details about the case.
- MO2 selects a mediator and arranges contact between the mediator and MO1. Unless there is any subsequent feedback to be passed on, the administration at MO2 is now finished with the case. MO2 should not register the case.
- The mediator at MO1 is always the principle mediator. In the case of any disagreement between the mediator at MO1 and the mediator at MO2, the praxis used at MO1 is adopted and any questions are to be settled by the head of the mediation office or advisor at MO1.
- The mediator at MO2 must have copies of all documents and all other relevant details that the mediator at MO1 (the principle mediator) has.
- Mediators at MO1 and MO2 must hold a preliminary meeting to discuss and agree on the division of work. The mediator at MO1 (principle mediator) is responsible for ensuring that this meeting is held. Unless otherwise agreed, the mediator at MO1 is also responsible for any preliminary contact, for making appointments and for the writing and distribution of agreements. The mediators must be aware in advance of any potential difficulties relating to different dialects.
- The mediator at MO2 is finished with the case upon conclusion of the mediation meeting, but if appropriate they may be sent the agreement to sign and they may also provide support in collecting their party's signature. Mediators should summarise the mediation meeting after its completion. The mediator at MO1 is responsible for this.
- The mediator at MO2 must return all documents and submit a carefully completed compensation form to MO1.
- Any feedback from MO1 shall be passed along to the mediator from MO2 upon agreement and in consultation with management at MO2.

⁸These guidelines apply when mediators are present in the same room as the parties and use the Mediation Service's video equipment to communicate with another mediation office via an encrypted connection.

7.7 Copy of the informational sheet given to parties in a criminal case

What happens at the National Mediation Service?

Criminal case: A criminal offence where the prosecuting authority or judge has decided that conflict mediation is the most suitable sanction.

<p>Before the meeting</p> <p>The mediator will contact both parties by telephone to provide further information about the meeting.</p> <p>They will talk to you about pre-meetings and support persons, among other things.</p> <p>The mediator will be impartial and bound by a duty of confidentiality.</p> <p>Meetings at the National Mediation Service are voluntary, and you can stop participating whenever you like.</p> <p>If you are under 18 then your guardian is entitled to be present at the meeting. If you are under 15 then your guardian <i>must</i> be present.</p> <p>All participants are bound by a duty of confidentiality cf. Section 9 of the National Mediation Service Act</p> <p><i>What is important for you to say or ask the other person about during the meeting?</i> It can be good to think about this before the meeting. Furthermore, it is also a good idea to think of some ideas for what an eventual agreement between you and the other party might involve.</p>	<p>During the meeting</p> <p>During the meeting all parties will have the chance to talk about their <i>experiences, reactions, feelings</i> and <i>needs</i>. The mediator's job is to help the parties to speak to one another.</p> <p>The key questions they will ask are: What happened? What was going through your mind at the time? How did you feel at the time? Who else has been affected? What has been the worst part for you? What do you need to happen now?</p> <p>It is the parties who are responsible for reaching and formulating the contents of an agreement.</p> <p>Agreements in criminal cases must be drawn up in writing, approved by the mediator and signed. If a party is under 18 then their guardian must sign as well.</p> <p>Generally, parties will have a two-week <i>withdrawal period</i> to change their mind before the agreement enters into force.</p>	<p>After the meeting</p> <p>If you have any questions about the agreement after the meeting, then you should contact the National Mediation Service right away.</p> <p>The National Mediation Service must be notified as to whether the agreement is fulfilled or breached.</p> <p>If the agreement is fulfilled, then the case is closed.</p> <p>The National Mediation Service will inform the police that the agreement has been fulfilled. If the agreement is breached, then the police may return to the case and consider imposing other sanctions.</p> <p>Criminal cases resolved through the National Mediation Service do not appear on an ordinary police certificate. Any questions regarding your exhaustive police certificate should be directed to the police.</p> <p>If you have any other questions, then you should contact the National Mediation Service.</p>
<p>Copy (abridged) from the back of the sheet:</p> <p>About the National Mediation Service</p> <p>The Norwegian National Mediation Service is a state service which aims to resolve conflicts in various civil and certain criminal cases.</p> <p>Meetings held within the National Mediation Service are facilitated by local, qualified lay mediators.</p> <p>The activities of the National Mediation Service are regulated by the National Mediation Service Act and associated provisions and subject to the Ministry of Justice and Public Security in Norway.</p>	<p><u>www.konfliktraadet.no</u></p> <p>On our website you can find information about how the National Mediation Service can be used in both civil cases and in criminal cases. You can also read the answers to some <i>frequently asked questions</i> and watch our <i>informational videos</i>.</p>	<p>About the user survey</p> <p><i>What worked well and what can we do better?</i> This is something we would like feedback on from those who have participated in our meetings.</p> <p>All responses will be treated as confidential and cannot be traced back to individuals.</p> <p>The survey is administered centrally by the Central Administration for the National Mediation Service.</p> <p>You can find the survey on our website or you can give your e-mail address to the National Mediation Service and we will send you a link to the survey.</p>

7.8 Copy of the informational sheet sent to parties in a civil case

What happens at the National Mediation Service?

Civil case: Various interpersonal conflicts or a criminal offence which has either not been reported to the police or which has been dismissed as a criminal case by the prosecuting authority.

<p>Before the meeting The mediator will contact both parties by telephone to provide further information about the meeting.</p> <p>They will talk to you about pre-meetings and support persons, among other things. The mediator is impartial and bound by a duty of confidentiality.</p> <p>Meetings at the National Mediation Service are voluntary, and you can stop participating whenever you like.</p> <p>If you are under 18 then your guardian is entitled to be present at the meeting. If you are under 15 then your guardian <i>must</i> be present.</p> <p>All participants are bound by a duty of confidentiality cf. Section 9 of the National Mediation Service Act</p> <p><i>What is important for you to say or ask the other person about during the meeting?</i> It can be good to think about this before the meeting. Furthermore, it is also a good idea to think of some ideas for what an eventual agreement between you and the other party might involve.</p>	<p>During the meeting During the meeting, all parties will have an opportunity to express their <i>experiences, reactions, feelings</i> and <i>needs</i>. The mediator's job is to help the parties to speak to one another.</p> <p>The key questions they will ask are: What happened? What was going through your mind at the time? How did you feel at the time? Who else has been affected? What has been the worst part for you? What do you need to happen now?</p> <p>It is the parties who are responsible for reaching and formulating the contents of an agreement.</p> <p>The agreement must be approved by the mediator. You can also agree a withdrawal period for the agreement. There is no requirement for agreements to be drawn up in writing in civil cases. The National Mediation Service does however recommend that agreements are drawn up in writing to avoid any ambiguities later.</p>	<p>After the meeting If the agreement establishes a deadline then the National Mediation Service should be informed as to whether the agreement is ultimately fulfilled or breached.</p> <p>If the agreement is fulfilled, then the case is closed.</p> <p>If the agreement is breached then the National Mediation Service may offer to hold a new meeting if the parties so wish.</p> <p>If the mediation process is to be discontinued, then the parties are free to approach other bodies for assistance in the case.</p> <p>If you have any other questions, then you should contact the National Mediation Service.</p>
<p>Copy (abridged) from the back of the sheet:</p> <p>About the National Mediation Service The Norwegian National Mediation Service is a state service which aims to resolve conflicts in various civil and certain criminal cases.</p> <p>Meetings held within the National Mediation Service are facilitated by local, qualified lay mediators.</p> <p>The activities of the National Mediation Service are regulated by the National Mediation Service Act and associated provisions and subject to the Ministry of Justice and Public Security in Norway.</p>	<p>www.konfliktraadet.no On our website you can find information about how the National Mediation Service can be used in both civil cases and in criminal cases. You can also read the answers to some <i>frequently asked questions</i> and watch our <i>informational videos</i>.</p>	<p>About the user survey <i>What worked well and what can we do better?</i> This is something we would like feedback on from those who have participated in our meetings.</p> <p>All responses will be treated as confidential and cannot be traced back to individuals. The survey is administered centrally by the Central Administration for the National Mediation Service.</p> <p>You can find the survey on our website or you can give your e-mail address to the National Mediation Service and we will send you a link to the survey.</p>

7.9 Information about the user survey

The National Mediation Service is required by the Ministry of Justice and Public Security in Norway to collect feedback from meeting participants. The parties in a case will be asked to complete a user survey so that the National Mediation Service can collect information and insights as to how they experienced the process.

Positive feedback will be used to support current praxis while critical feedback will be used to further develop the training we provide to mediators based on the different needs of the parties.

The mediators at the National Mediation Service will collect consent to send the user survey by e-mail or SMS and experience shows that the best time to do this is at the end of the preparational meeting.

The parties are given the following text on the user survey:

THE NATIONAL MEDIATION SERVICE'S USER SURVEY

What worked well? And what could we do better?

We need your help to improve. By responding to our user survey, you can make an important contribution to helping us develop.

Visit our website at www.konfliktraadet.no to access the user survey (bottom right of the page, Norwegian only) and tell us about your experience with the National Mediation Service in Norway and what it was like to participate in a mediation meeting or conference.

All information given in the user survey will be kept confidential. No details which can be traced back to individual persons will be published or used in any other way.

We would be very grateful if you could take five minutes to respond to our survey.

Thank you in advance for your feedback!

Kind regards,
The Central Administration of the National Mediation Service

7.10 Conference script

Use these scripts (manuscripts) when facilitating a conference. The titles indicate when each one should be used. In this part of the Mediator's Handbook you can find scripts for use in criminal and civil cases, while the additional booklet on restorative justice in youth punishment and youth follow-up cases contains scripts for use in youth conferences and meetings where the victim is not present.

You will need to adapt the script to the case at hand and remove/add questions as you see fit. Feel free to change the wording and make the questions your own. Many people may struggle with the word: 'affected'. It is fine to use a different word. Similarly, many young people might have difficulties with the word: 'feel'.

Conference script for use in criminal and civil cases
(Consider the case and adapt the script accordingly).

Introduction by the facilitators

Welcome. As you know, my name is ... and sitting beside me here is ...
Before the meeting begins, I would just like to go around the room and allow everyone to introduce themselves. Would you like to start us off?

At this meeting we are going to talk about what happened on *[day/date]* at *[location]* when *[short description of the incident]*. It is important to remember that this meeting will focus on what *[the offender]* did and how their action has affected others.

We are going to discuss how you have been affected by what's happened and we are going to try and reach an agreement on how to repair the damage done.

Everyone will have the chance to say what's on their mind. I would also like to encourage you all to listen attentively to what everyone else has to say. Once everyone has spoken, you will have a chance to ask questions or comment on what's been said.

Could I now ask anyone with a mobile phone to please switch it off?
Please bear in mind the duty of confidentiality that you have all been informed about previously.

Accounts

To the offenders (address by name):
(If there is more than one offender you may change the order in which you ask them questions so that the same offender does not always answer first).

Past:
I would like to start by asking *[offender's name]* what it was that happened.
What did you do?
What did you do next?
What was going through your mind at the time?
How did you feel at the time? Or: What was the experience like?
What went through your mind afterwards?

Present:

How do you feel now, sitting here today?

Who do you think has been affected by what you have done?

(Or instead of 'affected': impacted, upset)

If applicable: Who else has been affected?

Thank you for what you have told us.

We shall now hear how the others have been affected. I will come back to you so that you will have a chance to comment on what the others say.

To the victims (address by name):

Past:

What happened on ... when ...?

What was going through your mind at the time?

What did you feel or know at the time?

What went through your mind afterwards?

Present:

How do you feel now?

What are you thinking now, sitting here today?

What has been the worst part for you?

Who else has been affected by this?

Thank you for what you have told us.

We shall now hear how the others have been affected. I will come back to you so that you will have a chance to comment on what the others say.

The victim's support persons and the offender's support persons (address by name):

Past:

How did you first become aware of what happened?

What was going through your mind at the time?

What did you feel or know at the time?

What went through your mind afterwards?

Present:

How do you feel now?

What has been the worst part for you?

Who else has been affected by this?

Thank you for what you have told us.

We shall now hear how the others have been affected. I will come back to you so that you will have a chance to comment on what the others say.

To the offenders (address by name):

Try not to encourage overly long answers here. The idea is that the victim(s) should express their needs first.

You have now heard what the others have said about your actions and the harm that they caused.

What do you think about what they have said?

How can you set things right again?

What can you do to repair/restore the harm done?

Thank you!

Future:

To everyone:

It is important that we all think about what needs to happen in order to repair the harm that has been done (to 'set things right again').

To the victim(s), the victim's support persons and the offender's support persons (address by name):

What would you like to come out of this meeting?

What needs have you got?

Thank you

To the offenders (address by name):

You have heard what the others have just said. What do you think should happen next?

What do you think is the best way to set things right?

(Allow a discussion and questions in order to formulate an agreement).

Thank you

To the professionals, e.g. the police, the school, child welfare services (address by name):

What are your thoughts now after having heard what the parties have said?

What do you think might be important in ensuring that this meeting can lead to a positive outcome for all involved?

Thank you

To everyone:

Does anyone have any questions they would like to ask or anything else they would like to say?

Conclusion

To summarise:

[Names] have agreed that ... (list all the actions that have been agreed, even if it is just a verbal apology) Am I right in saying all that?

Checklist for the facilitators:

Who will do what now and how?

The withdrawal period for criminal cases is two weeks; cf. Section 18 of the National Mediation Service Act.

In civil cases, it is up to the parties to agree on any withdrawal period.

There are no withdrawal periods in negotiation agreements or agreements which involve a payment being made directly at the meeting.

Remind everyone about the duty of confidentiality.

Thank you for the meeting!

7.11 The use of SMS messaging with parties and participants at restorative (pre-)meetings

Mediators can send SMS messages to parties to remind them of a meeting, to confirm a meeting or in cases where the mediator has otherwise been unable to contact the parties. It is important not to use names in SMS messages or to write in such a way that any confidential information may be disclosed.

Below are some example SMS messages that mediators can use:

Meeting reminder:

I am writing to remind you about our meeting today (or tomorrow) at [time] in/at [location/venue].

Kind regards,
[Mediator name], National Mediation Service

Meeting confirmation:

Following our conversation on the phone I hereby confirm that the meeting will be held on (DATE) at [time] in/at [location/venue].

Kind regards,
[Mediator name], National Mediation Service

Unable to contact the parties:

With reference to the letter sent on (DATE). I have been trying to get in touch with you without success and would kindly ask that you contact me as soon as possible on telephone number ...

Kind regards,
[Mediator name], National Mediation Service

SMS messages should be sent individually and not as a group message. This is to minimise the risk of parties gaining access to each other's contact information via the mediator.

All SMS messages must be deleted from the mediator's phone following the conclusion of a case. Telephone numbers must not be saved.

SMS messages sent between the mediators and the parties do not need to be archived. The only exception to this is cases where the mediator receives SMS messages of a threatening or offensive nature, or which contain other details which the mediator believes need to be followed up on. In such cases, the mediator should forward SMS messages to the administration.

7.12 Outline and checklist for the pre-meeting

If there are two mediators working on the case, then a pre-meeting should be held between the two mediators. If an interpreter is needed, then this should be organised in collaboration with the office in advance.

Objectives of preparational meetings:

- Reassure the parties as to what will happen during the actual meeting itself
- Create predictability for the parties through information
- Confirm the existence of informed consent
- Identify any circumstances which may be of importance to the meeting

Preparational meetings are individual and structured conversations which must be conducted with everyone who is a party in the case, preferably via a physical meeting or alternatively over the telephone. Several preparational meetings can be held. There should be a bit of time between the preparational meetings and when the restorative meeting takes place.

The core values of the National Mediation Service should permeate preparational meetings. The parties should be addressed and received in a respectful and non-judgmental fashion. The facilitators must be impartial, open and receptive. They must be well prepared.

Focus in preparational meetings:

- Information: what the National Mediation Service can offer
- The parties' needs for restoration
- The offender/party's acceptance of responsibility – with reference in criminal cases to what is stated in the indictment
- Identification of other affected/involved parties or professional bodies which may be relevant to include in the restorative meeting

Structure and content of the preparational meeting:

During the first half of the preparational meeting we will talk ABOUT what the National Mediation Service is, what is going to happen, etc. In the second part, we will speak WITH the parties.

1. Introduction:

- The mediators introduce themselves and outline their role, including the fact that they are impartial.
- Information about the duty of confidentiality. State that everybody who will be present at the restorative meeting is invited to a preparational meeting and that everyone will receive the same information.
- Set out the agenda for the preparational meeting: information about the National Mediation Service and then a discussion of the parties' needs, concerns and expectations.
- State the details of the case, where it was referred from and whether it is a civil or a criminal case.

1.1 Information:

- What will happen at the meeting: what questions will be asked to the parties and in what order (offender, victim, guardians, network)
 - Mention the order in the script.
 - Distribute the questions.
 - Explain the aim of the meeting, which is to restore the harm done so that the parties may put what has happened behind them.
 - Explain that it is the parties who will reach an agreement themselves. In criminal cases, the written agreement must reflect the indictment as the prosecuting authority will be provided with a copy of the agreement reached.
 - Inform that the agreement will be followed up on.
 - Say something about what the seating arrangement might be like (with or without a table)
 - Inform them about the principle of voluntarism.
 - Check whether an interpreter will be needed.
2. Discussion with the parties (remember open questions):
- Check consent:
'How do you feel about meeting after hearing the information you have just received?'
 - Ask the parties how they feel about the questions they will be asked:
'How do you feel about answering the questions that we are going to ask you?'
(Repeat the questions for reference if necessary)
 - Check that the offender/party is clear on how they can take responsibility for what they have done
 - Need for support persons:
'Who do you think should be there with you?'
 - Talk about needs, concerns and expectations:
'What **concerns** have you got about the meeting?'
(Something you dread/fear/which poses a risk to you?)
'What **expectations** do you have for the meeting?' (for yourself/for us?)
'What needs do you have ahead of the meeting?'
 - Brief information about the agreement:
'Think about what is important for you to have included in the agreement'
3. Finishing up:
- Leave some time for questions, a little chat towards the end and a summary
 - Speak briefly about options on when and where to hold the meeting
 - Ask the parties to go home and prepare for the questions, to think about what they want to get out of the meeting and what they would like to see included in the agreement.
 - Tell them about the user survey and ask whether they consent

If there are any uncertainties/problems that you need help with in advance or following a preparational meeting, then you should contact your local mediation office.

7.13 Summary of the meeting and preparational meetings

If more than two weeks elapse from when you receive the case and when it is mediated, please get in contact with the administration.

Case number: merging

Mediator 1: _merging_____ Use of interpreter: Yes No

Mediator 2: MERGING_____ Mediation date:_____

Meeting has not been held – why?

– Agreement has not been entered into – why?

– Other comments:

How many participants were at the meeting? (excl. mediators) _____

Was a script used in the meeting? Yes No

Was anyone other than the direct parties in attendance? Yes No

What were their roles?

Have the parties been given copies of the agreement? Yes No

SUMMARY OF HOURS SPENT:

	Mediator 1:	Mediator 2:
Hours spent on mediation meeting:		
Hours spent on preparatory work:		
Hours spent on follow-up work:		
Travel time:		
Total number of hours:		

Contact the case officer on the case with any questions you may have.

7.14 Execution, dissemination and development of the mediator profession

Reflection after the meeting

What did you do that worked well?
In your preparatory work?

During the meeting itself?

What could you have done differently?

Did you come up against any challenges in this case? How did you handle them?

How did the two mediators collaborate (interaction, communication and challenges)?

Is there anything that you would like the administration to be aware of following this mediation case?

Other information

The deletion of personal data

I/we confirm:

- If the case was received via ordinary post, all case documentation has been returned
- If the case was received digitally, all documents have been deleted from my/our personal Digipost account(s)
- All telephone numbers and any SMS messages to the parties have been deleted from my phone

Date: _____

Signature – Mediator 1: _____ Mediator 2: _____

This form can be sent via e-mail to the case officer if it does not contain any confidential information or information which would enable identification of the case. This form should not be archived or recorded in the case file and is only for internal use and follow-up.

7.15 Help sheet for colleague discussions

Goal:

Employees of the National Mediation Service must:

- Act impartially and treat each other and the parties in a fair and equal manner.
- Demonstrate respect for the parties' responsibility and self-determination throughout the process.
- Demonstrate respect for each person's inherent and equal value and for our users.

The purpose of this discussion is to help mediators to learn more about themselves and to make changes that will help them improve as mediators. The colleague discussion should follow the ethical guidelines of the National Mediation Service.

Procedure:

Co-mediator: Asks questions and listens. Focus is placed on the mediator's problem

Mediator: Reflects on and thinks about the questions and about what needs to be improved upon

Questions the co-mediator might ask:

Employees at the National Mediation Service must demonstrate respect for the inherent value of all people and show respect for our users.

- What impressions are you left with as a mediator right now?
- In what way did the parties have an opportunity to get their message across?
- What could you possibly do differently in order to facilitate the parties in a way that would leave you with a positive impression of the meeting?
- What was it about the parties that affected you or triggered emotions in you?

Employees at the National Mediation Service must act impartially and treat one another and the parties in a fair and equal manner.

- What did you do to create balance between the parties? What got in the way of this balance?
- What did you observe during the meeting with the parties? (Happiness, anger, frustration, irritation, defeat, a sense of success, etc.)

Employees at the National Mediation Service must demonstrate respect for the parties' responsibility and self-determination in the conflict resolution process.

- Give examples from the mediation process where you respected the choices and responsibility of the parties.
- How did things go when discussing an agreement? What went well and what was problematic? Were there any aspects of the agreement that you had problems approving?
- Did you consider discontinuing the mediation process at any stage?

Here and now: What reflections do you have now?

Future: What will you take away from this experience?

7.16 Collaboration agreement between the National Mediation Service and the mediator

Collaboration agreement between the National Mediation Service and the mediator

Mediation processes are subject to the National Mediation Service Act in Norway. Mediators are appointed for four years and the agreement continues to apply if they are reappointed.

Good internal collaboration between the National Mediation Service and our mediators is crucial in order to ensure the quality of all services provided to our users. Our expectations for the collaboration are as follows:

Mediators can expect from the National Mediation Service:

- Professional training and community in the form of mediator conferences, guidance and colleague discussions.
- The administration will be available to provide consultancy and advice.
- Compensation for hours worked and the coverage of expenses.

The National Mediation Service expects from the mediator:

- The capacity to mediate at least two cases per month. Actual workload will vary. Parties must be contacted within three days and if the mediation process does not take place within two weeks then the administration must be informed.
- Mediators must be available, respond to e-mails and phone calls and notify the National Mediation Service of their holidays
- Loyalty to the basic values, methods and principles of the restorative work undertaken by the National Mediation Service and to its ethical guidelines.
- Familiarity with and active use of the Mediator's Handbook.
- Mediators must seek guidance when needed.
- Participation in mediator conferences.
- Submission of the compensation form within good time following completion of a case.
- Mediators must consult their manager if they wish to make a media appearance in their capacity as a mediator
- Address controversial circumstances which they observe in connection with mediation. (For example, venue problems, threats made in the mediation process, concern for children, etc.).

Place and date

.....
NN
Head of the Mediation Office

.....
NN
Mediator

8 DOMESTIC VIOLENCE

8.1 Introduction about violence

This chapter is written for mediators in Norway and meant to be used in the Norwegian context, but there might also be some aspects which can be transferred to the local context of the reader. The chapter will cover some basic information about the phenomenon of domestic violence and the use of restorative justice and facilitated meetings in these cases. This chapter also aims to provide mediators and facilitators with some recommendations for further reading and advice on how to go about meeting with parties in cases where one party is subject to a restraining order.

Within the context of conflict resolution, preparatory work is absolutely crucial to achieving restorative justice in cases concerning domestic violence. The manner in which such preparatory work is carried out will be of crucial significance as to whether or not it is appropriate to hold a meeting between the parties and how any such meeting should be facilitated. The basic principles for meetings in cases concerning domestic violence are the same as for other meetings. The contents of this chapter should therefore be regarded within the wider context provided by the rest of the Mediator's Handbook.

There are several different definitions as to what constitutes violence. The definition offered by Per Isdal is widely used: "Violence is any act directed against another person, who by his/her act hurts, pains, frightens or offends, gets the victim to do something against their will or to stop doing something the victim wants to do" (Råkil, 2018).

According to the World Health Organization (WHO), violence is "the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation." This definition therefore also includes sexual and psychological abuse as well as neglect.

What we can discern from the above is that violence is not always a clear and unambiguous phenomenon. We must always consider the context within which the action occurs. An action is an act of violence if it serves or intends to control or to affect another person. An act of violence is an action which violates the freedom and integrity of another (*ibid*).

8.2 A societal problem and a public health issue

There are several definitions of domestic violence which cover different areas and target groups. The National Mediation Service uses the definition put forth by the Norwegian Centre for Violence and Traumatic Stress Studies (NKVTS) which can be found in 'Guide for the health sector in their work on domestic violence':

Domestic violence is both a societal problem and a public health issue at once. Domestic violence encompasses different forms of violence and abuse between current and former family members and it also covers children who bear witness to such violence. Similarly, it is also important to understand that negative forms of

social control, forced marriage and genital mutilation are also covered by the term (NKVTS: guide on domestic violence) (Norwegian only).

"A distinction is made between violence perpetrated in close relationships (domestic violence) and violence perpetrated outside of this context. In the Norwegian Penal Code of 2005, Section 282 defines close relationships as current or former spouses or cohabiting partners, the relatives of current or former spouses or cohabiting partners in direct line of descent, a relative in direct line of ascent, a member of the person's household or any person in their care.

That is to say that close relationships also encompass siblings, children, parents, grandparents and grandchildren. This guide also includes extended family members, partners, boyfriends/girlfriends and others within shared accommodation as close relationships."

This definition of domestic violence is extensive and goes beyond the definition of domestic violence established in the Norwegian Penal Code. The definition covers violence by men against women and by women against men, as well as violent acts committed in a same-sex relationship. However this definition does not include friends or close acquaintances.

8.3 Forms of violence

Violence is a learned behaviour and it is important to understand that threats and acts of violence or violation committed against a partner or a family member can take many different forms⁹:

- Physical violence
- Psychological violence
- Material violence
- Economic violence
- Latent violence
- Neglect – including violence used in child-rearing and the absence of care
- Negative social control/structural violence
- Forced marriage
- Genital mutilation
- Sexual violence

In some contexts, violence in a domestic setting can take on a sexual form. Persons who visit crisis shelters or centres for victim of sexual abuse often report having been subjected to an abuse of power (physical or psychological) ranging from sexual harassment to rape and sexual torture.¹⁰ As a mediator, it is important to recognise what this can mean for the victim. It is also important to recognise that perpetrators of

⁹ Various forms of violence and assault, NKVTS(Norwegian only)

¹⁰ Although most victims of sexual abuse are women it is important to note that men can also be victims of this kind of violence. The centres for victims of sexual abuse are open for everyone, and many shelters can also assist men in need of a safe place to live.

domestic violence can often come across as charming and articulate, and that they may lie and manipulate facts for their own benefit¹¹.

Effects and feelings related to domestic violence

'Sexual violence' is often associated with the perpetrator's abuse of position, power or relationship of trust over another person and of that person's body or sexuality for their own satisfaction. Some men can treat women as if they have rights to exploit and use the woman's body, either for their own sexual gratification or for the sexual gratification of others. This type of violence often feels taboo and many women feel ashamed to talk about it.

Terms such as sexual violence and sexual abuse encompass actions such as unwanted touching, forced sexual activity, painful sexual activity, rape, sadistic sexual actions, forced sexual activity with others at determined times or forced sexual activity while others watch. Such forms of violence can also include the use of objects which cause the victim great pain and/or injury to their genitals, nipples or to other parts of their body.

Parties may be experiencing severe repercussions from the acts of violence and abuse that have occurred. The victim may be experiencing physical or social effects of violence such as fatigue, exhaustion, an increased degree of relational conflicts, sleeplessness, social withdrawal, loss of closeness in their personal relationships, heightened startle reflex, impaired work effort, greater physical pain, decreased satisfaction, mistrust, an upset stomach and feelings of vulnerability.

In addition to the above physical and social effects, a range of emotional and cognitive functions can also suffer in the person exposed to violence, for example, concentration and memory. Perpetrators of violence may have been subjected to violence in their childhood and adolescence and may experience some of the same effects and feelings of powerlessness. Nonetheless, responsibility for the act of violence lies with the perpetrator.

The effects of violence on women and men can be extensive. They may develop a fear of unfamiliar situations, become less trusting and suffer from nightmares, sorrow, a loss of happiness and a difficulty experiencing feelings of affection and intimacy. Confusion, guilt, sadness and impaired self-esteem are often mentioned as repercussions which follow from being subjected to violence.

Persons who are subjected to abuse of a sexual or another sort of physical nature may often commit acts of self-harm which can be understood as a reflection of what the victim has endured. This can be understood as an attempt to convey to themselves and to others that something has happened. Self-harm in the present can bear symbolic references to trauma in the past or may indicate an unwillingness to acknowledge that trauma directly¹².

¹¹ [National Centre of Expertise for Personality Psychiatry \(NAPP\)](#) (Norwegian only)

¹² Fladby and Haavik (2004)

If one party refuses to speak about their feelings, it is important not to put pressure on them. Your job as a facilitator in the preparational meeting or meeting with the parties is also to instil hope and to protect underlying traumas from being triggered. You can ask open questions and refrain from 'guessing' at what feelings the victim or perpetrator might be experiencing. Avoid suggestive or closed questions (were you frightened, ... were you such and such, ... etc.). The person will often need time to answer, so ask one open question at a time and wait for their answer. The person will need plenty of time to get their feelings, thoughts and memories in order and to formulate their answer.

The perpetrator, the victim and any observers may all have different feelings around what has happened. Feelings and emotions are an important part of individual existence. Feelings provide us with a sense of preparedness for when we experience danger or injustice. Feelings allow us to forge connections with others, to experience kindness and intimacy. Feelings give meaning to our existence. By knowing our feelings, we can become better at understanding ourselves and others.

The most important of the fundamental emotions are fear, anger, interest/engagement, happiness, disgust, shame, guilt and sadness. These feelings can in turn lead to other feelings. Anger, shame and sadness can lead to jealousy, which can in turn lead to violence. Other feelings or states of emotion can include guilt and disgust which can lead to feelings of powerlessness that trigger violent behaviours towards one's self (self-harm) or towards others.

Somebody who is treated with empathy, warmth, love and appropriate boundaries from birth will store all of this in their memory. Each person is a repertoire of feelings, emotional expressions and behaviours which can be used when interacting with others, with their own children or partner – and in high-pressure situations. Somebody who is subjected to threats, violations and violence in their childhood and formative years will likewise store this experience in their memory.

In high-pressure situations, people will often make use of what they have learned and experienced, given that they have an internal repertoire of actions to take. This can sometimes lead to violent behaviours and abuse of power as a way of venting repressed feelings, frustrations and a sense of powerlessness.

However, it is also possible for those who have experienced or been subjected to violence to learn new and more appropriate ways to express their anger, powerlessness and frustration than by harming themselves or others. This is true regardless of gender. It is therefore important for mediators and facilitators to recognise what things can trigger different feelings and desirable/undesirable behaviours.

It is beyond any doubt that:

- Violence is a learned behaviour; nobody is naturally violent from birth
- Acts of violence cause harm
- Children who witness violence at home are also subjected to violence

- Violence is illegal
- The offender is always responsible – and they must demonstrate that they accept their responsibility
- Respect and equal treatment must permeate our approach to these kinds of cases

8.4 Facilitated meetings and the role of the facilitator

The National Mediation Service's handling of cases

The National Mediation Service works with trust. As a mediator, you play an active role in inspiring trust in the parties so that they feel comfortable engaging in dialogue and revealing their emotions. As a mediator, you can contribute towards a positive change in people's lives by facilitating dialogue between the parties; but this process is **voluntary** and the parties are under no obligation to meet or reach an agreement.

Cases involving domestic violence require special treatment considering that there are close links between the people involved. Children are often involved directly or indirectly and it will be necessary to safeguard their needs in particular. All parties will have different needs and the most appropriate methods and meeting form (one-to-one, conference etc.) will vary from case to case.

It is therefore necessary for those facilitating meetings of this kind to be flexible. The administration at your local mediation office will be available to discuss any professional problems, to help clear up any questions and to discuss your feedback and views in all cases. As a mediator, you are responsible for contacting the administration to discuss any professional problems or to clear up any questions that may arise from the process of restorative justice.

Should any problems or circumstances arise which put you in doubt or where children are involved – **you must always contact the administration at your local mediation office.**

For more information on domestic violence, we recommend consulting the website www.dinutvei.no/en. This is a national guide which provides additional information on domestic violence, rape and other forms of sexual abuse. The website is operated by the Norwegian Centre for Violence and Traumatic Stress Studies (NKVTS).

At the National Mediation Service, we recognise that domestic violence can be harmful and destructive to those involved and to other parties affected. The absence of physical or psychological security will result in consequences for a person's health. People who are exposed to violence have a need to share their experiences with others they trust.

Domestic violence is an abuse of power expressed as threat, violation or abuse. At the National Mediation Service, we want perpetrators to take responsibility for their actions against the victim.

The National Mediation Service Act uses the term mediator, but the National Mediation Service has taken a conscious decision to use the term facilitator and not mediator and mediation in cases which concern domestic violence.

The term mediation is open to misunderstandings and so in the context of the National Mediation Service we often refer to these meetings as 'facilitated meetings'. The method is the same and so is the role of facilitator. However the terms 'facilitator' and 'facilitated meetings' are preferable as the situation is not something in need of mediation – it is already clear where the guilt lies – but in need of discussion.

Those involved in violence, both the perpetrator and the victim, will have a need to find a solution that can put an end to violence. The victim may need to talk to the other party in a safe space in order to understand what it was that led them to be subjected to domestic violence and what can be done to stop this violence.

Facilitators working in cases concerning domestic violence must have an understanding of the topic which is why the National Mediation Service offers a further training course for facilitators working in these kinds of cases.

The course aims to help prepare facilitators to recognise important signals which indicate that something must be done in order to equalise the balance of power between the parties. For example, recognising the degree of influence that the offender might have over the victim through manipulation.

The facilitator must take plenty of time for preparational meetings with both the victim and the offender. It is important to possess knowledge of the different forms and effects of violence in order to develop an understanding of what the parties have been through before they are brought together for a facilitated meeting.

In addition to a further training course, we also addressed the cycle of violence model at the mediator conference in 2019. We have also initiated work on developing extensive guidelines and guides which focus on restorative justice in cases involving the violation of a person's integrity where domestic violence occupies a central space.

8.5 The cycle of violence

Violence is an extensive field of study and the cycle of violence concept is one of several methodological approaches aimed at understanding what happens in violent relationships and at better understanding the distribution of power between the parties involved.

The cycle of violence is a model taken from Norwegian Official Report (NOU) 2003: 31, *The Right to a Life Without Violence* (p. 51) (Norwegian only, name translated to English) and serves as a useful representation as to how these mechanisms function within a family context. The model is a simplification of reality, but it nonetheless helps to visualise contexts and dependencies. In the model below the perpetrator is referred to as «him» and the victim as «her». It is important to note that this is not

always the case. It can be reversed, or the violence can occur in a same-sex relationship.

Not all violent relationships will necessarily follow this pattern and there are many different types of perpetrators and victims, so you will no doubt encounter deviations from this model.

The reason for highlighting this model, though, is to help you as a facilitator to identify which phases the parties might be in. The idea is to make you aware that even in your capacity as mediator can be manipulated by somebody who says that everything is okay and that things are just peachy again.

The goal is not for you to attain a thorough knowledge of this model but simply to be aware of its different phases. The cycle of violence concept is also addressed in the further training course on domestic violence and passing this course is mandatory before you can act as a facilitator in these kinds of cases. Below is a description of the three phases in the violent relationship.

PHASE 1 – Tension building

The first phase is where we find the bulk of the psychological strain from living with violence.

- Aggression builds up
- Family members find themselves walking on eggshells
- Everyone feels like something is about to happen
- ... but nobody knows when or in what form
- The perpetrator(s) may seek to isolate their victim(s)
- The perpetrator shouts at children and other family members
- The perpetrator makes threats
- The perpetrator is moody and critical

Being in this phase is often described as very tiring. The family are quite simply waiting for the violence to materialise. Remaining in this phase can feel so tough that the victim may seek to provoke an outburst of violence by doing or saying things that will trigger a violent response. In extreme cases, the victim might take to violence themselves in order to trigger an explosion.

PHASE 2 – Explosion

And when the explosion occurs, some victims may even experience it as a relief. The family can soon expect a moment of peace to descend. It is at this stage that the police, doctors and friends might be contacted. Their story of fear, isolation and violence comes forth relatively unvarnished. Both children and adults are more open to speaking out at this stage in time.

PHASE 3 – Honeymoon

But after minutes, hours or days, phase three will begin. The honeymoon or the reconciliation phase. The perpetrator asks for forgiveness, buys flowers and promises that it will never happen again. The victim feels that it is difficult to leave the perpetrator, despite the serious abuse suffered.

A number of factors come into play here:

- Financial dependence
- Children's interests
- Religious/family pressure
- Fear of being alone
- Fear that the violence will get worse
- Loyalty to the marriage
- Denial
- Internalisation of the perpetrator's words: "I deserve this"
- Love
- Shame
- The belief that everything will get better

The victim might put the brakes on any attempts by public bodies to intervene in the family and begin to minimise incidents. It is not uncommon at this stage for victims to offer up new explanations where they mention their own anger and propensity for violence. Perhaps in order to trivialise what the perpetrator has done. In this phase the police often find that:

- Applications for prosecution are withdrawn
- Restraining orders are repealed
- Assault alarms are returned

8.6 The effects of facilitated dialogue and meetings

It is sometimes argued that facilitated meetings are inappropriate in certain cases where there are disparities in the balance of power. It is also claimed that many perpetrators participate in facilitated meetings exclusively in order to obtain advantages in their case and not out of a genuine desire to set things right.

Both arguments can be valid, but if the perpetrator is willing to take responsibility for their actions then a process of restorative justice can also result in positive effects for those involved. Furthermore, the victim must also have a genuine desire to receive an explanation for what has happened and not simply feel pressured into participating. By seeking to ensure that the parties' consent is genuine and voluntary, and that the preparational meetings are properly conducted, the parties can feel assured that the facilitators are impartial and there to enable a constructive dialogue in the room.

Facilitated meetings which concern criminal offences should take the form of a facilitated dialogue. The most important thing is that focus is placed on the victim's needs, concerns and expectations. We should not create expectations of forgiveness

or connect forgiveness to the process. If the meeting can serve to help the victim to reconcile with what has happened, then a great deal of good can be achieved.

8.7 How are cases of domestic violence referred to the National Mediation Service?

The police generally refer criminal cases concerning domestic violence whenever the parties are willing and have given their consent. This means that the police have performed a thorough assessment as to whether or not the case is suitable for conflict mediation. In accordance with Section 20 of the National Mediation Service Act, the National Mediation Service is obliged to accept and process these kinds of cases.

The police can also send across dismissed criminal cases where the parties consent to mediation but where the case itself has been dismissed for various reasons. In these kinds of cases, culpability may not have been established and administration will therefore need to conduct a thorough preliminary assessment before the case is assigned to a facilitator in order to determine whether it is suitable for conflict mediation.

Prisoners who have been convicted for domestic violence may also register a civil case in which they want to meet with the victim. According to Section 2, Paragraph 2 of the Execution of Sentences Act, *"restorative justice shall be offered in connection with the execution of sentences"* Civil cases can also come in from victims who want to meet with an offender who is serving time in prison. A thorough preliminary assessment will be made in these cases as well in order to ensure their suitability.

In some domestic violence cases, the perpetrator may be the subject of a restraining order, which will mean a few additional points that the facilitator will have to pay extra attention to. See section 8.11. Cases involving a restraining order.

8.8 Pre-meetings

The purpose of the pre-meeting is to reassure and prepare the parties for the restorative process ahead. It is important to take stock of the parties' expectations for the facilitated meeting and to identify what the parties want to get out of the meeting.

More information about pre-meetings can be found in section 7.12. Outline and checklist for the pre-meeting. The points below are supplementary in connection with cases concerning domestic violence.

- Pre-meetings must **always** be held with the individual participants in domestic violence cases (and these can be via video link only when absolutely necessary due to geographic or other deviating conditions. Must be cleared with the administration first).
- In some cases it might be necessary to hold several pre-meetings with both parties in order to ensure that their motivation is genuine and that they do not feel coerced.

- The pre-meetings must ensure that the parties understand what it is they have consented to. People who live with psychological and physical violence are often subjected to great stress and anxiety and so may have trouble understanding what they have said yes to and what facilitated meetings will mean for them.

It is therefore important that facilitators take their time to explain what the National Mediation Service offers, to identify what needs the parties have and to clear up any questions at pre-meetings before holding a facilitated meeting between the parties.

- Preparational meetings should never be held directly before the meeting between the parties as the facilitator will need time to assess whether or not it is appropriate for the meeting to go ahead. The parties should also be left with some time to decide whether they want a facilitated meeting, an indirectly facilitated meeting or not to participate at all.
- The facilitator must inform the parties that they are entitled to have a support person with them in the meeting. In cases involving domestic violence it is often particularly advisable for the parties to have a support person they can turn to both before, during and after the meeting.
- The parties can also ask for participants from professional networks to be present at the meeting; e.g. staff from the Norwegian Support Centre against Incest and Sexual Abuse (SMISO), a legal aid lawyer or staff from the Victims Support Centre. This must be approved by the other party and support persons should be invited along to the preparational meeting.
- The parties should be offered several preparational meetings if this is necessary. It can sometimes be difficult to assess whether one party actually wants to meet with the other. Flexibility is therefore key and as a facilitator you should use your preparatory work and the preparational meetings to convey messages between the parties to determine how they feel about the restorative process.
- The facilitator must also inform the parties that for meetings which concern domestic violence, the National Mediation Service will offer a follow-up meeting sometime after the facilitated meeting.
- Preparational meetings are to be held in the same premises as the facilitated meeting. Both facilitators must attend. Remember to arrive in good time!

Prepare the parties for the questions that will be asked

- How does it feel to be sitting here right now?
- What was it that happened?
- How are things now?
- What needs have you got?
- What would you like to see happen going forward?

Explain what role the facilitators will play

- Inform the parties about the role and the mandate of the National Mediation Service and its facilitators in this case
- Facilitators must act impartially and seek to ensure that both parties are confident enough to speak so that we can facilitate a good and positive dialogue.
- Both parties shall be treated with respect; meaning the victim must understand and accept that the facilitators will smile at the offender and speak cordially to them. It is important to make the victim aware of this in advance.
- Acting impartially does not mean minimising violence or threats. It is expected and required that the offender will take responsibility for their violent actions and put themselves at the disposal of the victim.

NB! The normalisation and minimisation of violence/threats can come from either party.

- In order to generate predictability, it is a good idea to say something about what the facilitators will do in the meeting. Who will ask questions to whom, etc.
- Ask if the victim would like to enter the room first and what kind of seating arrangement they would prefer.
- If either party in the case is subject to a restraining order, then inform the parties that any agreement must keep within the framework of the current restraining order. See also section 8.11 on restraining orders.

Provide information on safety procedures

- Parties will not be informed as to when the other party is invited to their pre-meetings.
- The victim will be invited to the facilitated meeting 30 minutes ahead of time.
- The victim will be escorted into the room and one of the facilitators will stay by their side up until the meeting begins.
- The offender will be invited to the meeting at the time it is due to begin.
- The offender will be met by the other facilitator who is not accompanying the victim.
- The victim will be allowed to leave the facilitated meeting at least ten minutes before the offender. The victim will be escorted out by one of the facilitators while the other will remain with the offender.
- Outerwear, large bags and similar will be left outside the meeting room.
- The parties will be asked to switch off their mobile phones.
- The victim can choose where in the meeting room they would like to sit (close to the door, away from the door, etc.).
- Both parties will be informed of the safety procedures during the preparational meetings.

Male and female facilitators

Cases involving domestic violence must be handled by two facilitators, one male and one female. This will help to emphasise our impartiality which will in turn help promote communication between the parties.

8.9 The meeting

Generally meetings at the National Mediation Service are held between the parties and facilitators. However, on occasion there may also be others present if the parties wish to be accompanied by a support person or a participant from a professional network. It is also important to point out that the meeting at the National Mediation Service is not an appropriate setting to present gifts or similar.

Agreements

All agreements entered into between the parties must be the result of their wishes and preferences. In cases concerning domestic violence it is important that the agreement places responsibility with the offender and not with the victim.

In cases where there is a restraining order in place, you must take extra care to ensure that the agreement does not circumvent the restraining order. See more information on this under [section 8.11 on restraining orders](#).

8.10 Follow-up meeting

The facilitator must offer or recommend the parties one or several follow-up meetings following the conclusion of an agreement. There is no guarantee that all of the parties will make a request for this and it will be easier to assess the matter if it is presented as an offer or a recommendation from the facilitator.

Duty of confidentiality

When working in collaboration with other agencies, it must be ensured that the parties exempt all public bodies (such as child welfare services) from the duty of confidentiality. This must be done in cases where public bodies participate in the meetings and hold information that may be relevant or necessary in the case. There is a separate form for exemption from the duty of confidentiality; see [Appendix 1 – Form – Exemption from the duty of confidentiality](#).

8.11 Cases involving a restraining order

A restraining order means that one party is banned from making contact of any kind with the other party. A restraining order can be imposed when there are solid grounds to believe that the person subject to a restraining order would otherwise commit a criminal offence, pursue or otherwise harass the person protected by the restraining order.

Police working for the prosecuting authority can impose a restraining order if the victim requests one or if one is considered necessary under the circumstances. When a case subject to a restraining order is referred to us from the police, this means that the prosecution has already asserted that a meeting at the National Mediation Service shall not constitute a violation of the restraining order.
NB!

- In such cases it is important to prevent the parties from meeting on the way to or from the meeting; [cf. Safety procedures under point 8.8](#).
- The same safety procedures apply for cases involving a restraining order as for cases without a restraining order.

In civil cases referred directly to the National Mediation Service by the parties themselves, the administration will have already ascertained whether there is a restraining order in place and considered the suitability of the case for mediation. Nonetheless, you must always contact the administration whenever you are assigned a case in which one party is subject to a restraining order. Always contact the administration if you are in any doubt or if you have any questions whatsoever.

NB! It is important to remember that the parties must not formulate an agreement which circumvents an existing restraining order in cases where a restraining order is already in place. This means that you cannot approve an agreement which involves follow-up meetings between the parties or where the parties call each other or exchange SMS messages for as long as the restraining order is in force.

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Appendix 1 – Form – Exemption from the duty of confidentiality

CASE DETAILS		
Received by the National Mediation Service: Mediation Service case no. Time of event:		National
The case concerns: External ref.		
PARTIES		
Offender: Name:	National ID number:	
Address:		
Victim: Name:	National ID number:	
Address:		
I give my consent for the case to be processed by the National Mediation Service. I consent to the collection of all information which is necessary and relevant to the case, regardless of the duty of confidentiality, by the following bodies:		
	The Norwegian child welfare services (Barnevern)	
	The Norwegian Labour and Welfare Administration (NAV)	
	Schools	
	Follow-up service	
	Healthcare services	
	Specialist healthcare services	
	Family (specify):	
	Others (specify):	
SIGNED CONSENT		
Date:	Offender:	Guardian:
Date:	Victim:	Guardian:
VERBAL CONSENT OBTAINED FROM		
Date:	Offender:	Guardian:
Date:	Victim:	Guardian:
Obtained by:		