

Fact sheet – When mediation is unsuitable

CJC provides services to help people manage and resolve their disputes; including free, confidential and impartial mediation.

CJC wants to be able to help everyone settle their disputes but sometimes mediation is not suitable for everyone or every type of dispute.

Why CJC cannot always provide mediation?

The most common reason CJC cannot arrange mediation is that the other party does not want to attend, or does not make contact with our services. CJC is a voluntary service and cannot make people attend mediation.

However mediation may not be offered for your situation as CJC may determine that your matter is unsuitable for mediation, even though everyone has agreed to attend. Examples of what can contribute to making mediation unsuitable include, but not limited to:

- Existing criminal charges, court orders, bail conditions or court undertakings that prevent mediation.
- Where a party might have limited capacity to make decisions for themselves.
- History of how one or both parties previously engaged with CJC.
- A lack of good faith towards the process and spirit of mediation.
- A history of violence between the parties (including domestic and family violence).
- Fear of the other party or fear of retribution by a party.
- Health, welfare and wellbeing of a party

- One or more parties is unwilling to resolve the dispute or unwilling to negotiate
- The parties cannot agree on a date, time, location and/or attendees for the mediation.
- Parties' attitudes towards each other.

Why is being respectful to staff important for CJC to assess if mediation is suitable?

CJC understands that by the time a party has contacted our service they may already become frustrated as they have not been able to resolve their dispute. Frustration could also come from other legal processes a party has been involved in which can be costly: financially, in time and emotionally.

CJC's aim is to support and assist everyone who contacts the service and will treat everyone with respect and courtesy. CJC welcomes this same level of respect and courtesy from parties.

Part of the assessment is to determine if a matter is suitable for mediation and to consider how parties have interacted with CJC staff and mediators. A party's communication style, ability to listen and to talk respectfully can be an indication of how the party might communicate in their mediation.

If one or more parties communicates or behaves in a way that is hostile, inappropriate and/or rude towards CJC staff, then CJC may assess the matter unsuitable for mediation.

What basis does CJC have to refuse to provide mediation?

The *Community Justice Centres Act 1983* gives the Director of CJC, or their delegate, the discretion not to provide mediation services:

"24 Refusal or termination of mediation

(1) The Director may decline to consent to the acceptance of any dispute for mediation under this Act at a Centre."

When does CJC assess when mediation is not suitable?

CJCs decision to decline to offer mediation can occur at any point in time prior to mediation. This includes from the time you contact the service yourself, or when the matter is referred to CJC from another service such as the Court. Unsuitable assessment could also be as a result of one or more party's ongoing discussions with CJC.

What will CJC report back to referrers?

If a party does not want mediation or does not contact CJC, we will write to referrers advising of this outcome.

If CJC decides a matter is unsuitable for mediation, CJC will write to the referrer advising of this decision.

To protect everyone's privacy, CJC will only tell referrers that the matter was unsuitable for mediation. CJC will not disclose the reason/s mediation was unsuitable to the referrer.

What can you do if CJC cannot provide mediation?

CJC can discuss other options available for you including referring you to other more appropriate resolution pathways, legal information services and/or other support services for your welfare and wellbeing.

Can you come back to CJC if your circumstances change?

Yes. If the nature of the dispute changes and you would like to try and organise mediation again you are welcome to contact CJC. CJC will re-assess the situation to decide whether it is suitable to proceed to mediation. However, CJC may assess the matter as unsuitable again due to any of the factors on first page.

Apprehended Personal Violence Orders (APVOs)

CJC sometimes receives requests for mediation for disputes involving APVOs (application, interim and final orders). CJC assesses the suitability of every one of these requests for mediation.

Many factors are taken into consideration in deciding if an APVO matter is suitable for mediation, including:

- Whether existing court orders between the parties prohibit the parties from being in contact with each other. Court orders include APVO or ADVO interim or final orders, court undertakings and Bail conditions.
- Whether existing court orders allow parties to be in contact for the purposes of mediation or to attend CJC services.
- Whether there are current criminal proceedings related to the parties.
- If a support person is available.
- Whether there are any other factors that may make mediation unsuitable (see factors on first page).
- If parties or their representatives fail to provide copies of court applications and/or orders to CJC.

Please note CJC is unable to mediate matters for Apprehended Domestic Violence Order matters which are referred from the Court.

For more information

Visit the website www.cjc.justice.nsw.gov.au

Freecall: 1800 990 777

Email: cjc@justice.nsw.gov.au

If you are deaf or have a hearing impairment or speech impairment, contact us through the National Relay Service on 1800 555 677 and ask for 1800 990 777

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