

Mediated  
Dispute  
Solutions



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## Information Sheet – The Mediation Process

The mediator's role is to assist the parties in trying to find an acceptable commercial settlement to the dispute.

### The Mediation Process

The process of mediation is confidential and without prejudice. Matters discussed in a private meeting with one party will not be disclosed to the other without consent. An agreement made in mediation can become a legally binding document once it is signed. The parties are not bound by anything proposed or offered during the mediation unless it forms part of a signed settlement agreement.

It is not the mediator's role to make a decision on the merits of the case or to advise the parties – the mediator helps the parties to 'do a deal'.

A mediation takes place in the context of the legal system but the mediator does not make definitive rulings on any legal points. It might be that one party completely persuades the other on a legal matter but that would be unusual. The parties need to help each other to see the strengths and weaknesses of their cases and take these into account when considering possible outcomes if the dispute was to proceed beyond the mediation. This can inform the parties of a 'zone' within which a commercial settlement is preferable to continuing with court proceedings.

As well as the legal framework, there are the factual circumstances that give rise to a dispute. Looking back at the causes is useful, but only to assist the parties'

understanding of each other's position. Particularly in a time limited mediation, there will come a point when the mediator will discourage reliving the issues and move the parties on to exploring possible solutions to the dispute

Mediation is without prejudice so the parties can be creative with possible solutions without being bound by them, when and until they form the basis of a signed settlement agreement. Commercial considerations can be embodied in a mediation settlement which go beyond the remedies a court could offer.

Mediation can take place at any time in a dispute before or after legal proceedings have been issued. In small claims, before is particularly attractive as it avoids the parties incurring additional fees and the legal costs of a court appearance.

The parties are protected by an agreement to mediate [see Information sheet - Stages in Mediation] and when an agreement has been reached this can be captured in a contract or settlement agreement.

If proceedings have been issued the settlement agreement can be attached to a Tomlin Order.

Should the parties not reach agreement, as the mediation was conducted without prejudice, little is lost but usually a greater insight into the dispute has been secured. The courts put great weight on the parties willingness to try to resolve their dispute other than going to court.

For further information or a no obligation discussion please contact us at:  
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