

Mediated
Dispute
Solutions



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Information Sheet – Civil & Commercial Mediation – Stages in Mediation

Before the mediation

It is helpful to the mediator if each party prepares a briefing note which summarises their case. This is supplied to the mediator, but can also be exchanged with the other party. The document sets out the party's view of the nature of the dispute, any concerns and possible stumbling blocks. It should focus on expectations and it should be as brief as possible, preferably not more than two to three sides of A4. It may be submitted by email. If there are any relevant documents that would be helpful for the mediator to see these should be supplied with the note. Documentation should be kept to a minimum, although it may help to have a full set of papers on the day for your own reference.

Please feel free to provide any confidential information to the mediator which you consider may assist at this stage. It will not be disclosed to the other party without your agreement.

Please note that it is important that each party attending the mediation has full authority to settle the case and this will be checked with all the parties. The mediator should also be informed of any offers to settle and/or negotiations (and the stage reached) that have taken place to date.

Agreement to Mediate and Fees

Before the mediation, the parties will be asked to sign an *Agreement to Mediate*. This protects the parties and the mediator, especially in respect of confidentiality and the without prejudice nature of the meeting.

Fees must be paid by close of business two days before the date of the mediation or as otherwise specified on the invoice.

The Mediation Meeting

The dispute can be resolved by a face-to-face mediation, or, often in lower value cases, by telephone mediation. Part of the preliminary discussions between the parties is to determine the most suitable type of mediation.

The Conclusion

Once an agreement has been reached the parties will be asked to translate it into a formal document '*The Mediation Settlement Agreement*' which when signed will be binding on each party. If their legal advisers are not present, parties are asked if they wish to consult with their advisers before signing any binding document. If necessary, following the mediation, the settlement agreement should be lodged with the court as soon as possible.

Follow up

Sometimes agreement is not reached at the end of the allotted time. The time available can be extended by the parties by mutual consent, or adjourned to another day. On those occasions when parties are close to settlement but an impasse is reached the mediator will seek to follow up the case after the mediation, as this can often lead to settlement within a few days. In any event after the mediation the mediator will ask the parties to complete a feedback form.

Memorandum of Understanding

In some disputes a *Memorandum of Understanding*, or set of agreed *Guiding Principles*, can be drawn up which would either enable the parties to resolve the dispute without the need for a formal document; or as a means of allowing further discussion between the parties which might lead to further mediation and/or the signing of a settlement agreement or other suitable contract.

Legal Representation.

Parties are always encouraged to consider seeking legal advice if they have not already done so. Mediators must remain neutral and refrain from providing legal advice to either party unless absolutely necessary.

The Court's Position.

Courts normally encourage mediation as an alternative to trial. Judges can enquire if any effort has been made to resolve the dispute through dispute resolution including mediation. They are also known to direct mediation prior to listing for trial.

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

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