

A GUIDE TO MEDIATION

Mediation is a form of alternative dispute resolution (ADR), used to attempt to resolve issues between parties without the need for legal proceedings. An independent 'mediator' will be appointed who will seek to guide the parties through the issues and facilitate negotiations between the parties with the goal of reaching common ground and finding a solution to the dispute.

Alternative Dispute Resolution (ADR) denotes a range of methods used to attempt to resolve any legal disputes without the need for litigation. These methods are often recommended by the court to settle parties' disputes, often at a much lower cost to the parties than court proceedings.



ENCOURAGEMENT OF MEDIATION

Mediation and other forms of alternative dispute resolution have been increasingly encouraged by the courts to settle matters without the need for a court hearing. In 2024, the then-justice minister Lord Bellamy KC, said that "mediation is quicker and less stressful than court battles. Whilst not every case will be resolved in this way, by embedding mediation into the courts process, thousands more undoubtedly will." The courts have moved from a culture of litigation to a culture of dialogue and communication to settle disputes, which is to be embraced.

THE MEDIATION PROCESS

1. Prior to the mediation

The mediator will conduct their initial assessment to understand the facts of the case, and how the issues have arisen. Prior to the meeting the mediator may contact each party individually to assist in their initial assessments.

2. Beginning of mediation

The mediator will begin with outlining guidance to each party which will consist of a set of ground rules for each party to abide by to ensure a calm environment where effective discussion can commence. Each party will usually be invited to give their opening statements which provides the parties a chance to communicate their perspective on the case, the issues that they have and what they are hoping to achieve from the day. The mediator will ensure that the parties can provide their version of events without interruption.

3. Identifying the issues

The mediator will have parties engage in conversation and ask further questions to uncover more detail about the issues at hand.

4. Negotiation stage

It is at this stage that the mediator will attempt to facilitate discussion surrounding the potential solutions for this conflict. The options for solutions will often be ranked by the parties in order of their priority, with the hope that common ground can be found at this stage.

5. Resolution

At this stage, once common ground has been found, closing statements will be put forward by each party, which is a chance for parties to express their feelings at the end of the mediation, and gives a chance to see if their opinions have changed and if a solution can be reached.

6. Agreement stage

If an agreement has been reached, the parties' legal representatives will draft a settlement agreement which may be legally binding upon the parties.

It is important to note that a mediation between parties does not need to occur face to face, so if a party is reluctant to see the person to whom they are in dispute with, the mediator will conduct separate meetings in a different room where the mediator will use their ability to find common ground without the parties coming face to face.

ADVANTAGES OF MEDIATION

Flexibility: with the ability to enter discussions between parties, often an advantage of mediation is that a more creative, suitable solution can be agreed, which may not have been reached if case proceeded to court.

Cost-Effectiveness: a case going to court comes with a considerable cost difference compared to that of mediation. Mediation will often only include paying legal fees and mediator's fees, whereas court can include a large amount of fees and expenses payable by each party.

Time efficiency: whereas the litigation process can take months, often years in some cases, a mediation on the other hand can be arranged within a week and any disputes can be resolved within one mediation meeting.

Confidentiality: mediation has the strict contingent of being private and confidential, and details from the mediation will not be published in any public records, whereas with a court hearing this is often available to the public.

Neutral: the mediator will be independent which leads to more open communication, better creative decision-making and fairness throughout the whole process.

Settlement: the key to mediation is that settlement is promoted within the discussion, and this can provide much less risk to that of traditional court proceedings.

Stress: undoubtedly, the court process can be stressful for parties and the long wait for the court date adds to this stress, whereas mediation can look to reduce the stress caused by an ongoing case.

DISADVANTAGES OF MEDIATION

Potential failure: the overriding disadvantage of mediation is that in some cases, it can ultimately fail, and legal proceedings will still be necessary, therefore additional costs would be incurred for the mediation that may not have been needed.

Enforceability: As mentioned, any agreement in mediation will only be legally binding if this has been noted in a written agreement, and consent has been given by each party. This amplifies how crucial it is for settlements to be written and signed by each party to avoid any issues arising with regards to the agreement being binding.

Suitability: In some cases, mediation can be unsuitable, but this depends on what the parties are looking to achieve in the case. For example, a party looking for a legal precedent to be handed down from a judge would find that mediation would not result in this desired outcome.

HOW SHOULD I PREPARE FOR MEDIATION?

Preparation is crucial for mediation to be effective. The first stage of preparation should involve compiling all documents that are relevant to the case and organise these prior to the mediation. The next stage would be to focus on the opening statement, and preparing this statement would ensure that sufficient detail is provided which helps to present your case in a structured and clear manner. This would also benefit the mediator, who will be able to understand the case in further detail.

A key element of mediation preparation is to assess the position of your case and determine what your goals are from this meeting; for example, what would you be happy to achieve from the mediation, what would be your next best alternative, etc. It would be suitable to identify any main issues that you would like to resolve at the mediation as this will help to guide the conversation towards a hopeful settlement. Finally, to prepare for mediation, we recommend actively listening to the other party's proposals as this will lead to a calm environment with productive dialogue between parties.

MEDIATION FAQ'S

How long does mediation take?

A typical mediation session will typically last either half a day or a full day depending upon what arrangements the parties have agreed beforehand. Occasionally, a mediation will overrun which may result in a further fee charged by the mediator.

How is mediation paid for?

The mediator's fee will be paid by each party equally, unless agreed otherwise. If the parties reach a settlement by the end of the mediation, then this is usually on the basis that each party pays their own cost, unless agreed otherwise.

Does the mediator provide legal advice?

The mediator will not provide any legal advice since their role is to seek a resolution based on the facts that has been presented. They will be there to assist and support the parties which will include testing their positions but will ultimately not provide any legal advice. It is not the mediator's role to determine whose case is strongest.

Will my mediation stay private?

Mediation is a confidential process, and the outcome will only be shared if consent is obtained from each participant. If the mediation fails and goes to court, all conversations are without prejudice and will not be able to be used in court. The parties will sign a mediation agreement prior to the meeting which will include a confidentiality clause.

Who will attend my mediation?

Along with the mediator, your solicitor will usually attend the mediation with you. Sometimes, such as where a dispute has reached an advanced stage through the court process or is particularly complex, then your barrister will also attend. Supporters (such as family or friends) may attend, but only with the agreement of the mediator and other parties.

CHESTER

2nd Floor
Knights Court
1 Weaver Street
Chester
CH1 2BQ

Telephone: 01244 354 800
Fax: 01244 403 485

LIVERPOOL

3rd Floor
No. 4 St Paul's Square
Liverpool
L3 9SJ

Telephone: 0151 321 000
Fax: 0151 230 1211

