

Mediation

Helpful Tips

Mediation - the first option

Resolving disputes at the earliest opportunity makes commercial sense.

Calculating the costs of litigation before embarking on an adversarial court-focused path is worth a discussion at board and senior management level. Don't underestimate the time involved, costs and the risks involved in lengthy court proceedings.

Time to find an in-house alternative dispute resolution (ADR) champion?

Given the widespread support amongst the judiciary for ADR in the UK, mediation is difficult to avoid. Significant costs implications can result if there is no demonstrable attempt to resolve disputes prior to a trial.

First Mediation

Be Prepared!

Too close to a trial, lack of clarity around the full disclosure of facts or the lack of a frank and open discussion about the strengths and weaknesses of the case might limit resolution.

Less formal than a court process, discussions in a mediation can have more breadth to include relevant past, present and future interests.

The key to moving to a settlement without delay is finding common ground and that means being open to seeing all sides of the concerns. It is best for all parties to also understand the finances involved, and the tax implications before they arrive at the mediation table. Quite a lot of time can be wasted, whilst parties research and look at costs that they have not thought about prior to the mediation. Some parties become dispirited, if they are waiting around whilst the mediator spends a great deal more time with another party because they do not have all the relevant facts and figures to hand.

Remember, mediation is not about persuading the mediator that your case is winnable. "I've not yet mediated a dispute that is 100% 'winnable' by one party". The mediator does not determine outcomes and instead enables discussions to move towards your own negotiated settlement.

Suitable for Mediation

If there is any aspect of criminality involved, the answer is NO. Beyond that, if the parties are prepared to take part, then mediation is always an option.

Paperwork

The Mediator is not a judge, or judgemental. Mediations are not a platform for pleadings or the presentation of documentation of relevant case law to the Mediator, however the Mediator does

need to understand the dispute and to clarify any issues around the process before the mediation. It is encouraged that parties agree to one bundle of paperwork, ideally a lever arch file that the Mediator sees about a week before the mediation.

Encouraging nervous participants

Some disputants and their solicitors are understandably nervous. Gillian Hall is very practised in encouraging all parties to engage in the process. The adversarial nature of disagreements is far more familiar, which is why people are so amazed when they soon realise that discussions revolve around areas of possible agreement rather than continuing around areas of discord.

Agreement to Mediate

Before the mediation, all parties sign an Agreement to Mediate (a copy is available on request). All parties will have paid their mediation fee, arriving on an equal footing & demonstrating that all are committed to finding a resolution. It is advised that all arrangements, payments and an agreed bundle are with Gillian Hall about a week before the mediation takes place.

Prior to the Mediation

Gillian Hall will be in touch with each party by telephone to clarify any points and check key details of the dispute. She will answer any queries about the mediation process, but will not divulge any information to another party. The conversation, held with each party's representative, usually the solicitor, is confidential.

The Mediation

Upon arrival at the mediation

After being welcomed & settling into your private room (soundproof & not overlooked by other parties), the Mediator addresses all the parties together briefly & parties can make a brief statement if they wish. All attendees sign a confidentiality agreement before the mediation gets underway. The process is without prejudice. Resolutions are written & signed by the parties at which point they become binding.

Disputants have their own private room, in which all discussions are confidential, as is anything that is said to the Mediator remains confidential. Any uncertainties & queries can be ironed out with the mediator, in the knowledge that these discussions won't be disclosed to the other parties.

Remember the experience is very different to the courtroom.

Sometimes it is far better for a quicker resolution for the mediator to invite the parties to join for

some of the discussion. It's not always appropriate & only happens with the parties' agreement. The mediator may think that a particular point would be good to share with the other party - this is only done with express permission.

The Mediator spends more time with the other party!

If it feels like the mediator is elsewhere more than with you – it means the other parties have more to discuss & does not mean you are being unfairly treated. What matters is that the mediator brings you tangible elements to discuss. It might be that it takes the other party longer to rationalise their views.

Mediation is Voluntary

A party can withdraw at any point. The Mediator can adjourn or terminate the mediation.

Mediation costs

Each party bears their own costs in preparation and share equally any other costs associated with the mediation day itself.

Binding Agreements

Mediation has a very high rate of success which sometimes takes quite a long day to achieve. It is imperative that once resolutions have been established, these need to be captured in writing & signed before you go home. It is essential that someone is present with authority to agree to resolutions and can sign the agreement.

After the Mediation

There are a multitude of scenarios, which is for discussion with the Mediator if necessary.

Ongoing Support

Whatever the outcome, Lucent Talking always provides telephone support for as long as required.

Lucent Talking

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All communication with Lucent Talking is confidential.