

New user's guide to mediation

Why use mediation?

Mediation is an effective way of resolving disputes without the need to go to court

A court is not the only mechanism for resolving disputes. Mediation is an alternative. It allows the parties to the dispute, assisted by a trained mediator, to seek an outcome for themselves. The obvious advantages are speed, economy, certainty, and informality, but there are other possible advantages. You may be able to explore issues that go beyond those a court could consider. You may be able to devise solutions which include elements a court could not or would not apply. You may be able to rescue valued relationships for the future. At the very least, you may be able to reach a solution that you can live with even if it is not your ideal solution.

A court is simply a mechanism for resolving disputes. It is a highly structured system where the judge will hear the evidence, apply the law, and reach a decision based on the application of strict legal principles to that evidence. A court will only answer the specific questions posed in the litigation. It is frequently an expensive, time consuming, stressful and uncertain process. It involves placing your problem in the hands of an unknown outsider. You lose control of the outcome. You are likely to become focussed on the process, on providing evidence to try to influence the judge in your favour instead of applying your energies to the resolution of the dispute itself. Court proceedings may have other unwanted or unforeseen consequences. Any personal, trade, or professional relationships that are under strain as a result of the dispute, are likely to be made worse or destroyed entirely by the time a decision is achieved. Ultimately, the decision may go against you, or worse still, the judge may reach a decision that suits neither party.

Before the mediation day

Once both parties have agreed to mediate, chosen a mediator, venue and agreed on a day or days for the mediation to take place, the mediator will get in touch with both parties to introduce himself and make sure that each party understand what to expect from the mediation and to answer any questions – remember the mediator is there to help.

The mediation day

Unlike a court, mediation does not have a formal structure. Much depends on the wishes of the parties, the nature of the dispute, the number of parties, the physical constraints of the venue, and the style of the mediator. For example, in a dispute about a boundary, it may make sense to visit the site. There are, however, certain common themes which frequently emerge.

The best venues will have one room for each of the parties plus a large meeting room where everyone can meet. The most common, but by no means universal format, is for there to be an opening session attended by everyone at which, after introductions and a few opening remarks by the mediator, each party sets out their views. After that, sometimes the discussion continues but frequently the parties move to the individual rooms and the mediator will shuttle between them giving everyone the time and space to develop

possible solutions. The mediator will usually work on the basis that anything he/she is told in private session he/she keeps confidential, unless authorised to disclose it.

A common misconception is that mediation is a fuzzy way of resolving disputes. It is not. Whilst it lacks the formality of a court, no one needs to give ground if they do not wish to do so. The object of the exercise is to resolve the dispute by negotiating a mutually acceptable solution for all concerned.

Remember that there may not be a perfect solution, or if there is, you may not achieve it in court – be flexible.

Remember that the mediator is not a judge. Do not try to convince him you are right. The mediator will not tell you if you have won him over even if you have, it would not achieve anything - it is the other party you need to convince.

If a resolution is achieved, you or your legal adviser will normally draft out an agreement which is signed by both parties. If court proceedings are ongoing, that can be expressed as an order bringing the proceedings to a close.

If unfortunately, no solution is found, then nothing is lost. Neither party will be able to rely on concessions made without prejudice at the mediation. At the very least you should have gained a greater understanding of the position adopted by the other party. Indeed it is not uncommon for disputes which fail to settle on the day of a mediation to settle shortly afterwards, when those involved have had time to reflect.

Preparing for the mediation

The mediator himself will need to know what the dispute is about, so will need to be supplied some information in advance. He will not need to know every detail. It is normally helpful for the mediator to have sufficient papers to familiarise himself with the dispute.

In advance of the mediation, you may wish to ensure the mediator has a short confidential written explanation setting out your views on the way forward.

The best way to prepare is to think about the dispute, the possible outcomes, potential solutions and the pitfalls. Go to the mediation with an open mind. You are not committed to anything until you agree to a resolution, so you have nothing to lose. Each party in the mediation process should believe and hope that a resolution can be reached.

The mediation agreement

The Mediation Agreement will be sent to you once the date has been agreed between the parties, and the mediator. Our standard agreement covers the following key points:

- Terms and Conditions
- The Appointment
- The Venue and Date
- Fees
- Cancellation & Re-scheduling
- Procedures
- Confidentiality
- Human Rights
- Law & Jurisdiction

You will have plenty of opportunity to ask questions and clarify any doubts and you should feel free to do this – the mediator is there to help.

The agreed date

The letter confirming an agreed date between the parties will confirm the following points:

- Date
- Time
- Mediator's name
- Mediator's fees
- Venue and cost
- Administration fee
- Where to send your mediation papers

Flexible fee policy

One of Secure Mediation's major plus points is its excellent fee structure. Secure Mediation will provide a solution based on any budget or parameter that you require.

Secure Mediation also has a policy of working to a fixed budget so that there are no nasty surprises at the end of a mediation case. The only additional costs you may incur, should the mediation proceed past the agreed time period, would be the overtime costs of the mediator at an agreed hourly rate, agreed travel expenses and the cost of the venue.