

A QUICK GUIDE TO MEDIATION

What is mediation?

Mediation is a voluntary method of resolving disputes. It is less formal than litigation (court proceedings) or arbitration.

The mediation process is controlled by a specially trained mediator who is not a judge. The mediator is an impartial catalyst who helps the parties to arrive at a solution.

A mediation is "without prejudice" which means that if the negotiations break down, anything that has been said at the mediation cannot be referred to in any later proceedings.

How does mediation work?

During the mediation process the parties are given the opportunity to explain their position to the other party and to the mediator at an opening joint session.

During subsequent private sessions with the mediator each party will have the opportunity of exploring proposals for settlement. Any information given to a mediator in private session is confidential.

Why should you use mediation?

Understandably the parties to a dispute are often reluctant to commit to formal Court or Arbitration proceedings which may take some time to be resolved and prove costly. Mediation can be used as a means of overcoming difficulties in a negotiation. Through mediation the parties are often able to preserve and restore an ongoing business relationship.

The mediation process allows the parties to be creative and to create their own solution, assisted by the mediator. In many cases the solution achieved by mediation could not have been granted to the party by a Court.

What sort of cases are suitable for mediation?

Mediation is appropriate for most kinds of disputes, including commercial disputes, employment disputes and landlord and tenant matters.

What is the legal status of mediation?

The Civil Procedure Rules implemented in the United Kingdom in April 1999 encourage the parties to consider mediation at regular stages of the litigation process. Disputants are encouraged to consider mediation at an early stage and to use the courts as a last resort. There can be costs consequences for a party who has unreasonably refused to attempt mediation.

What is the cost of mediation?

Most mediations are arranged subject to a standard fee structure, which will vary depending on the duration, location and complexity of the dispute. The standard mediation costs will exclude any legal or other professional fees incurred by the parties. Although it is not essential, it is usually recommended for parties to be represented at a mediation. Parties are free to consult with their legal advisors and other professionals before and during the mediation.

Is going to mediation an admission of failure?

No. Negotiations can break down for a number of reasons and mediation offers another opportunity for keeping the negotiations going.

Would it be a sign of weakness to propose mediation?

No. People usually propose mediation when they are confident of the merits of their case but are concerned about the economics. Going to mediation is normally a sign of common sense and should not be interpreted as a weakness.

Does mediation simply add to my cost without any guarantee of success?

No method of dispute resolution guarantees success. If successful, mediation should mean the end of legal and other costs. Whatever the outcome mediation usually clarifies the issues and leads to a costs and time saving in the long run.

For further details on the Mediation process please contact Mark Summerfield or Jeremy Harris, partners in our Litigation and Dispute Resolution Team.

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