

# Organisation of a Mediation

## Areas to consider

- A. Selecting a Mediator
- B. Venue – date – requirements
- C. Representation at the Mediation
- D. The Mediation Agreement
- E. Documentation and liaising with the Mediator

### A. Selecting the Mediator

1. This decision is key to the success of the Mediation process and should be given the thought it deserves. The selection has to be agreed between the parties and should be discussed between client and solicitor at the outset:
  - Do you require a lawyer as the Mediator?
  - What other attributes should the Mediator possess?
  - Is it a complex Mediation? If yes an experienced Mediator is essential
  - Try to choose a Mediator who:
    - o Can quickly build trust and confidence with the parties
    - o Is comfortable switching from facilitative to evaluative
    - o Is not afraid to reality test robustly
    - o Is skilled in the numerous techniques that assist in settlement
  - If the dispute is of a technical nature or law specific you may also need to consider their knowledge in these areas e.g. IT, Medical Negligence or Employment
2. If you do not know a suitable Mediator how do you locate one who will have the experience/expertise?
  - If you do not know a suitable Mediator, you can take advice from colleagues in your firm or from other solicitors you know
  - If not, you can speak to us for advice and information on each of the Mediators. You can then take recommendations that can be discussed with the other parties.
  - It is Independent Mediators view that costs should be transparent and where possible they should be the same for all the mediators to avoid the choice being an economic one rather than skill based.
  - You will have access to the proposed Mediators and have the chance to talk to them by phone or in person before selection if you believe that is required.
  - It is generally best to suggest a couple of names to the other parties so that they do not feel pressured and see that they have a choice.

3. When you speak to Independent Mediators, be ready to:
  - Describe dispute
  - Give details of attributes parties have agreed Mediator requires
  - Reasons why mediation is taking place
  - Time frame
  - Value of dispute
  - Preferred venue for mediation
  - Names of parties and representatives
  - Any other info mediator/Independent Mediators should know

## **B. Venue – Date – Requirements**

1. When you have agreed the Mediator you need to finalise the date and venue.
2. Independent Mediators should be able to co-ordinate and agree dates with both parties that are convenient to the Mediator.
3. The parties will have decided if they are happy to mediate at one of their premises or at an independent location. We can assist with this if required.

## **C. Representation at the Mediation**

1. The issue of who should attend the mediation is one that needs a good deal of thought;

- Client

It is essential that the client is represented, not only by those who have knowledge of the dispute, but also the individual/s who have the ultimate responsibility and authority to settle the case and make the financial or strategic decisions to do so.

- Experts

Is the case of such complexity that there is not only a need for an experts report but also to have the expert there to advise the client and assist the mediator?

- Advocate

Are you as the solicitor going to represent and speak for your client or will you require counsel

2. The decisions above could have a bearing on the location you choose for the mediation, and the physical venue when you have considered the travel time and costs for the parties compared to the mediator being asked to travel; and the number and size of the rooms required etc

## **D. Mediation Agreement**

The Mediator has a Standard Form Agreement that will cover such topics as:

- Names of the parties
- Mediator
- Venue/date/timing
- Fees
- Nature of dispute
- The procedure to be adopted at the mediation
- What happens in the event of an overrun
- Confidentiality
- Without Prejudice
- Non binding – until Settlement Agreement signed

## **E. Documentation and Liaising with the Mediator**

1. It is Independent Mediators policy to provide, at the time of sending out the Mediation Agreement to the parties, a timetable for the provision of documents to be supplied to the mediator prior to the Mediation:
    - Mediation Case Summaries
    - An agreed bundle
    - Experts reports
  2. You will also need to prepare an opening statement
  3. The most important part of the process after agreeing who will be appointed as the mediator is for contact to be made by the mediator with the parties. This allows trust and understanding to be developed and helps the process and saves time on the day of the mediation.
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