



NINESTJOHNSTREET

MEDIATION

A User's Guide to Mediation

Introduction

Mediation is an opportunity for the parties, with the assistance of the Mediator, to resolve their dispute on their own terms and outside the strict limits of what a Court or other tribunal may impose on them.

Mediations work best where the parties have spent some time preparing for them, in particular by thinking about the key elements of their case (and that of their opponent) and how they can best use the Mediation process to help them achieve their ultimate aim of settling the dispute on terms that work for them.

The purpose of this note is to provide some pointers for those who are not familiar with the Mediation process as to what they can be thinking about as they prepare for the Mediation.

What we need from you

If proceedings have been started the statements of case, and any other key court documents, are a great starting point. If proceedings haven't yet begun, the formal letter of claim, along with the response to that, are also good places for the mediator to start their preparation.

It is much better if you can agree with the other party what documents the mediator needs to see and let the mediator have those in the form of an agreed bundle. If that is not possible, our mediators are happy to receive documents from both parties separately.

Summaries of the case ("Position Statements") are always helpful, both to the mediator and to you because they help everyone to focus on what needs to be resolved to bring the dispute to an end. If the parties' cases are set out in the statements of case our mediators are happy for you to dispense with Position Statements to cut down on costs.

If there is any information which you want to provide to the mediator on a '*for the mediator's eyes only*' basis prior to the mediation you can do that – just make sure that you make it clear that that is the basis upon which that information is being provided!

To allow the mediator time to prepare for the mediation we ask that our mediators receive the papers a few days before the date fixed for the mediation. We will also ask you for contact details (phone or email) so that our mediator can get in touch with you before the mediation day to talk through any questions you or the mediator might have.

What you need to do

Mediations work best when you have spent some time before the mediation thinking through what your strong points are, and where you might be on less strong ground. Preparing a position statement and/or list of issues will help you to do that.

Checking whether you have all the information that you will need to either make an offer or be able to respond to an offer made by the other party is important; up to date valuations and other evidence to support the amount of the claim are essential.

If the other party hasn't seen your evidence on those matters you should consider disclosing it to them before the mediation so that they have the chance to review it. Producing it on the day can often lead to the information being rejected out of hand.

You also need to have an idea of the range of offers which might be acceptable to you. Although the strengths (and sometimes the weaknesses) of your case will be apparent from the position statements (or statements of case), there may be other factors which are personal to you which will influence your approach to the negotiation.

Whilst we would not expect you to disclose those factors to the other party, it is helpful for the mediator to know about them at an early stage of the mediation so that he or she can have them in mind in discussions with both sides.

Finally, you need to consider what you know about your opponent's position. Naturally your immediate focus is on achieving a settlement which is acceptable to you, but that settlement also needs to be acceptable to the other party. It is sensible, therefore, to think through what you know about the other party's needs in making any proposals for settlement, and how you might be able to accommodate those alongside your own.

A mediation is your opportunity to achieve a resolution to this dispute. The better prepared you are, the more likelihood there is of that resolution being one which is acceptable to you.