

Access Disputes Committee

The Benefits of Mediation

Mediation is a flexible process conducted **confidentially** in which a **neutral person actively assists** parties in working towards a **negotiated agreement** of a dispute or difference, with the **parties in ultimate control** of the decision to settle and the terms of resolution.

Mediation has a number of advantages over adjudicative processes:

- Successful – around 80 per cent of cases referred to CEDR result in parties agreeing to settle (either on the day or shortly thereafter).
- Quick - most mediations are arranged within a few weeks (and can be arranged even more quickly) and the formal mediation session usually lasts for one or two days only.
- Cost effective - compared with litigation and arbitration processes, mediation is a less expensive route to resolving disputes.
- Gives parties control over the process often resulting in a better quality outcome especially where there are ongoing relationships, as it has been designed by them.
- A wide variety of settlement options can be achieved in mediation over and above monetary settlements and, being informal and confidential, do not establish standards or precedents.
- Informal and flexible - the process can be designed to suit industry, company or individual specific differences.

What to expect in a mediation

Before the mediation

The parties are expected to exchange case summaries and supporting documents with each other and the mediator before the mediation.

A submission should cover

- factual summary
- short statement outlining type of work/business of your party
- chronology of events if relevant
- outline the factual/legal issues
- identify common ground and difference
- details of any negotiations/offers to date
- arbitration timetable should dispute remain unresolved

- glossary of technical terms if relevant
- schedule of key documents, indexed and paginated

These documents should be

- Delivered to CEDR at least seven and preferably 14 days before the mediation
- Length should vary from four to ten pages for straightforward matters to 20-25 pages in a more complex matter
- Papers should aim to educate the mediator and persuade the other party to negotiate
- Papers should *not* be a trial advocacy brief nor bundles of pleadings, witness statements or footnotes supporting a brief submission
- Additional core documentation can be given if it adds to the mediation submission rather than replaces it

Once received, the mediator will almost certainly introduce him/herself to each party or their legal representative before the day, usually by telephone. The mediator may ask questions about the documents received and will check that each party will be represented by someone with the requisite authority to settle. The mediator will reinforce that their role is not to propose or impose any solution on the parties, but to facilitate their negotiations. The mediator may also ask the parties to begin thinking about their commercial interests in the dispute, rather than the purely legal arguments.

At the mediation

The venue will provide a room large enough to sit all participants in the mediation should there be a joint meeting and each party will have their own room used for private meetings with the mediator.

Beginning the mediation

The mediator will often begin with informal introductions in the parties' private rooms. Then, ordinarily, the mediation will begin with a joint meeting.

At this initial joint meeting, the mediator will establish ground rules for the day, reaffirm the strict confidentiality of the mediation and ask each party to respect the other side's right to be heard.

The mediator will ask each party to make an opening statement. This is a summary of the key issues making up their case, not a summary of the documentation. It will often be the first time each party will have heard the other's point of view first-hand. The opening presentation can be made either by the lawyer or party representative, but we recommend the business principals become involved from an early stage.

Private meetings

At some point the mediator is likely to invite the parties to go to their private rooms where the mediator will spend time talking with them in confidence. During this time the mediator will assist parties to identify what their key interests are and therefore the key issues for negotiation and begin to help each party identify the strengths and weakness of their case (reality testing). It is important to remember that nothing will be repeated to the other party/ies unless the mediator seeks express permission to do so.

You should be prepared for long periods of waiting, while the mediator is talking to the other party/ies. Sometimes the mediator will set a task, such as procuring further documentation, re-assessing risk analyses or testing alternative solutions in the light of developments that emerge during the day.

Joint meetings

The mediator may decide that better progress might be made by bringing all parties together again. At other times the mediator may suggest bringing together just the lead negotiators or lawyers or experts to change the dynamics of the mediation or speed up the process.

Settlement

A settlement is reached only when the parties come to an agreed solution. The lawyers present will draw up an agreement which, when signed, becomes binding. It is therefore essential that each party is represented by someone with full authority to settle the dispute.

Non-settlement

In the rare event of non-settlement it is likely that the mediator will ask the parties' permission to stay in touch during the following week or two. Further progress can usually be made once the parties have had time to reflect on the issues that have emerged during the mediation as evidence shows that many go on to settle shortly afterwards or enable previously deadlocked negotiations to continue. Where parties cannot reach a settlement, they can leave the mediation and pursue arbitration, litigation or any other dispute resolution procedure. Nothing revealed or offered in the mediation can be referred to outside the scope of the mediation.

After the mediation

CEDR will contact the parties for their feedback on the mediator's performance, the service provided and their thoughts on the settlement (or non-settlement) outcome.