

Mediation Factsheet

To help you decide if mediation is the right choice for you, we've answered some of the questions that we think will be on your mind.

What is mediation?

Mediation is a voluntary and confidential process for resolving disputes in which an unbiased third person (the Mediator) helps people in dispute to find a mutually acceptable resolution without going to Court.

Mediation is a non-adversarial procedure at which a neutral, trained professional assists the parties in reaching a settlement of a dispute or difference.

Mediation is quite simply a process of finding a solution that the parties can live with.

What are the advantages of mediation?

- Cost effective – can cost less than litigation
- Non-confrontational atmosphere - avoids the court, which can be intimidating
- More control – the disputing parties (and adviser) ultimately decide how a case will be settled
- Confidential – information revealed in a mediation session cannot be used in A Court proceeding at a later date
- Easy and quick to arrange - can be arranged quickly and at short notice (it is possible to arrange at 24 hours notice)
- More focus on feelings and fairness – courts tend to concentrate on legal rights, wrongs and duties whereas mediation acknowledges feelings and parties needs
- Choice of mediator – Brethertons can offer a choice of mediator to suit the particular case
- Encourages future cooperation between parties
- Reduces the need for enforcement – a high level of compliance can be achieved because parties have chosen their own solution
- Win Win situation - there are no losers because a solution is mutually agreed

What are the disadvantages of mediation?

As with any method of settling disputes, there are always going to be advantages and disadvantages. We recommend that you speak to a Brethertons Mediator to discuss your situation and find out what will work best for you.

What kind of disputes or disagreements can be referred to mediation?

The answer is almost anything.

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Lord Justice Dyson, Master of the Rolls said at the Court of Appeal in May 2004:

"All members of the legal profession who conduct litigation should now routinely consider with their clients whether their disputes are suitable for ADR".

He also stated that in all his experience he had never dealt with a case that he did not think could be resolved by mediation.

Mediation can resolve disputes between companies, families, communities, neighbours and employers and employees.

Why choose mediation for disputes arising from the employer/employee relationship?

Disputes frequently arise concerning:-

Discrimination – be it sex, race, or age

Pay and Benefits

Working hours

What happens in a mediation session?

Each Mediator has a preferred method of dealing with mediation. Some Mediators prefer to work with the parties keeping them separate throughout the process, bringing them together at the end if agreement is reached. Others prefer to start with a joint meeting and then separate the parties and shuttle between them. Sometimes the parties do not initially wish to meet at the outset as feelings may be running high.

Generally, mediation will proceed as follows:

- A venue will be agreed between the parties. This could be at the offices of one of the Solicitors representing one of the parties in a dispute, or at the Mediator's premises, or at a completely neutral venue such as a hotel or conference centre.
- The Mediator will explain the process to the parties and set out the ground rules for the mediation. These will include:

The signing of a mediation agreement

Explaining that the process is confidential and without prejudice

Explaining that the process is voluntary and that the parties are free to leave at any time.

- The Mediator will ask each party to give an opening statement briefly setting out what they believe the dispute is about. The Mediator will then suggest a

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series of confidential private meetings and will move between the meetings and, if appropriate, bring the parties together for a joint session.

- Everything the parties say to a Mediator during the private meetings is confidential, although the Mediator may seek permission of either party to release certain facts if they are likely to assist in the mediation process.
- The Mediator conducts a series of private meetings with each party during which the Claim, Defence, arguments and positions are discussed and analysed.
- The parties are free to discuss matters with their legal advisers at any time and are free to ask the Mediator to vacate the room whilst they do so. The Mediator is not a Judge and is not a legal adviser to any of the parties.

It is important that the parties present at the mediation have a commitment or authority to settle a dispute.

The Mediator may have asked the parties to provide him/her with a short written statement outlining how the dispute has arisen, their view of the dispute and the steps that have been taken in attempting to resolve it. This statement is sometimes known as a "position statement".

What is the role of the Mediator?

To give the parties hope!

The Mediator will encourage the parties to look forward not backwards.

The Mediator will in separate meetings carry out "reality tests" to enable the parties to independently assess their positions.

The role of the Mediator is to assist the parties to reach a solution, not to impose one.

Will mediation work?

The research suggests that 80% of commercial disputes that are referred to mediation reach agreement. The figure is slightly lower at 75% in respect of family cases.

There is one school of thought that maintains there is no such thing as an unsuccessful mediation. Even those that do not reach agreement on the day, may reach agreement weeks or months later, as the parties have the opportunity of hearing the other side, acknowledging feelings and this may prompt the parties to settle at a later date.

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If agreement is reached, the parties will be required to draw up a mediation settlement agreement, which the parties' lawyers (if any) can produce to the Court in order to conclude proceedings.

A mediated agreement can result in a settlement which would not have formed any part of the core Judgment, but ultimately would work for the parties. It may be that an agreement can create value – the parties continue trading with each other.

- Takes into account the parties' respective personal, emotional business or commercial needs.
- Preserves a relationship that can leave both parties with a "win win" agreement or an agreement in which they equally share the pain.

How long does mediation take?

It depends. Some mediations can last a few hours. Others can take a whole day. Much depends on the subject matter of the dispute and the number of parties involved.

What will mediation cost?

This again varies depending on how long the mediation takes.

I would like to mediate, what do I do next?

You can contact Brethertons Mediation Department by telephone or e-mail. In the first instance, contact Shaun Jardine on Tel: 01295 270999 or

shaunjardine@brethertons.co.uk Strathmore House, Waterperry Court,

Middleton Road, Banbury OX16 4QD

<http://www.brethertons.co.uk/site/business/mediation-solicitors/>

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