

Mediation

Frequently Asked Questions

What is Mediation?

1. Mediation is a creative way to resolve disputes. It may be considered as guided negotiation in which the parties are assisted to negotiate a settlement for themselves.
2. This is done by an impartial third party, the mediator, listening to everyone's point of view, talking to the parties privately and together, and guiding their dialogue towards a settlement.
3. By assisting communication between the parties and exploring the issues which are of real importance to them, the parties are encouraged to find ways to address their present and future needs, rather than dwelling upon who may have been right or wrong in the past.

Who is in Control?

4. Mediation is voluntary and any party may withdraw from the process at any time.
5. The outcome is always within the control of the parties. With the help of the mediator the parties decide for themselves upon a settlement they can live with.
6. The mediator does not impose a decision, nor make any kind of judgment - unlike court, tribunals, arbitration or ombuds; the mediator helps the parties to find their own, acceptable, solution.
7. Parties in mediation avoid the uncertainty and dissatisfaction often experienced in judicial systems where they have little choice but to accept the judgment made, which none of them may be happy with.

What is the position of the Mediator?

8. As an impartial third party the mediator's role is to chair the mediation and determine the procedure for the mediation in order to guide the parties to a settlement. The mediator will carry out this responsibility under the auspices of Eskhill & Co which will provide administrative support including liaison with the parties in order to find a suitable date and venue or remote medium for the mediation, exchange any relevant papers and deal with questions that arise about the process.
9. Eskhill mediators are experienced professional people on the Scottish Mediation Register who are trained in mediation techniques and achieved accreditation approved by Scottish Mediation.

Will my rights be protected?

10. Mediation seeks to achieve a settlement that is in the best interests of the parties in the circumstances of the dispute. Unlike the justice system, the mediation process is not intended to find fault, assign blame, or punish anyone.
11. The mediation process is 'without prejudice', so that on the rare occasion that a settlement is not reached litigation may be pursued without the parties needing to worry about having 'given away' anything that the other could use in other formal or judicial proceedings.
12. And, since mediation is voluntary; any party may withdraw at any time and pursue their rights through litigation or other formal proceedings.

Can I trust it to be Confidential?

13. Unlike the potential publicity of court proceedings, the parties to mediation are required to keep the proceedings and the outcome of the mediation confidential.
14. Before a mediation takes place both parties and the mediator, and any other person who is involved in the mediation, will enter into an agreement to mediate which includes a confidentiality clause.
15. The agreement to mediate requires all persons involved to observe the confidentiality of the whole process of the mediation including the written papers and oral communications.
16. This confidentiality can only be set aside with the specific agreement of the parties; if required at law; or, if non-disclosure may lead to significant harm to a person's life or safety.
17. Within the mediation itself the Mediator will keep confidential any information given by one party unless express permission is granted for some or all of that information to be disclosed to another party.

Where is the mediation held?

18. There are two location possibilities: Face-to-Face Mediation and Remote Mediation.
19. **Face-to-Face Mediation** - It is arranged at a venue convenient to the parties. The venue is normally a neutral place such as a hotel or other meeting facility. Each party will have their own room and there will be a separate room for joint meetings.
20. **Remote Mediation** – It may be by telephone or video conference. We generally prefer that it takes place by video conference and recommend the use of Zoom which has features which enable us to simulate the physical rooms in a face-to-face mediation. Please refer to our information note: An Introduction to Remote Mediation.

Who attends the mediation?

21. If the parties in the dispute are individuals they are likely to represent themselves at the mediation. If the parties are companies they should be represented by senior individuals who have full authority to reach a settlement.
22. The parties may be supported at the mediation by others who are there to support them or advise them. These people may be friends, or professional advisors such as their solicitor. The decision about who is to attend a mediation should be planned in advance with the mediator. The accompanying persons should sign the agreement to mediate and are bound by the whole mediation proceedings.

Is mediation time consuming or expensive?

23. Mediation resolves disputes fast, usually within a day. More than 80% of cases that go to mediation are resolved within the first mediation day and many more achieve a settlement within a few days of the mediation meeting.
24. Mediation can be set up quickly, within a matter of weeks or months. The parties' agreement to mediation will need to be obtained, a mediator appointed and a suitable date, time and location found which is suitable to all.
25. Mediation is significantly less expensive than litigation - because months or years of litigation are avoided, as are the consequent fees of lawyers and experts in lengthy proceedings. Parties may of course have legal or other advisors present during the mediation if they wish.
26. The Mediation can take place at any time - it is not limited to ordinary working days or hours. If it suits the parties to negotiate over a weekend, then that's when it happens.

Is Mediation Binding?

27. Nothing is binding upon any party until an agreed settlement is reached and a Settlement Agreement has been drawn up and signed as an enforceable contract between the parties.