

## What happens in a Mediation?

Once the parties have decided in principle that they wish to resolve their dispute by mediation they will select a mediator and agree the terms of the mediator's appointment.

There will usually be a need for a preliminary meeting (which may be conducted by telephone, online or in person) involving the parties and/or their advisors. The meeting(s) may consider several procedural matters including:

- the timetable and venue;
- a draft of the agreement to mediate
- representation at the mediation day
- the preparation of case summary documents
- the procedure on the mediation day
- the appointment of an assistant or co-mediator.

The mediator will, if required, organise the exchange of case documents that summarise the matter and the issues at dispute as seen by each party. The Mediator may seek to agree a format and style for these documents with the two parties. Where relevant, the documents will be prepared by the parties and their advisors and sent to the Mediator in order that they can be circulated to the parties in good time for the Mediation Day.

The Mediation Day will normally be scheduled for a full day and will be chaired by the Mediator who determines the procedure. Sometimes, for example in the case of remote mediations, the 'mediation day' may be split across two days to respond to scheduling needs or reduce screen time in a single day.

On the mediation day, there may be initial meetings between the Mediator and each party in their private rooms (and in the case of remote mediations this will be in private virtual rooms where confidential discussion can take place). These private meetings will normally be followed by a joint meeting at which the Mediator will clarify the process and each party will make a presentation of their case to the other party and the Mediator.

The meeting then moves into joint dialogue. At the request of either party or the Mediator, there may be private meetings between the mediator and each party to explore the issues and identify options for moving forward. The Mediator will not discuss anything from a private meeting with the other party unless authorised by the first party.

As the mediation progresses private meetings may be followed by joint meetings. The mediator may hold meetings with any combination of the parties and their advisors as he/she considers may assist the negotiation.

The parties will be free to withdraw from the Mediation at any time after informing the Mediator and if this happens the Mediation will terminate.

The Mediation may be adjourned by agreement between the parties to be resumed at another time and place.

Other than by reaching a settlement or by a party withdrawing, the Mediation may be terminated by the Mediator if he/she considers the Mediation is unlikely to reach a settlement or another substantive matter is discovered such as a conflict of interest becomes known.

If a settlement is reached a Settlement Agreement will be drawn up and executed by the parties. This records the parties' agreement in their terms and the mediator may assist them in drafting the document. Where the parties have legal advisers involved in the mediation, the Settlement Agreement will normally be drafted by the legal advisers. In some situations, such as workplace mediations, the agreement may be of a less formal nature.

If a settlement is not reached on the mediation day the mediator may continue to liaise with the parties if they wish and it is quite common for mediations that do not reach settlement on the day to settle within a few days.