

MEDIATION PROCEDURE

Introduction

Mediation is a process for resolving disputes in which the Parties to the dispute use the services of an independent third-party or neutral - a Mediator - to assist them in reaching an acceptable solution. Solutions are achieved quickly and without loss of face. The Parties to a successful mediation will have agreed to something they can live with. Both control of the process and determination of an acceptable settlement remains with the Parties to the Mediation.

The Mediator will discuss the problem with the Parties both together and separately in private sessions known as "caucuses". These private sessions should be frank and open and enable the Parties to focus their attention on underlying interests and priorities. The Mediator does not make judgements but assists the Parties to discover an acceptable solution. His role is that of a facilitator, not judge or arbitrator.

At any time during the Mediation either Party is free to leave and terminate the Mediation. However, this rarely happens and it will obviously be more conducive to a settlement if it does not.

Confidentiality

All discussions between the Mediator and the Parties are private and confidential, subject to compliance with statutory obligation, and "without prejudice", which means that nothing revealed to another party can be used by him in subsequent or existing legal proceedings. It is not necessary for you to disclose during the Mediation anything which you prefer not to. The decision as to what information to release is entirely within your control.

The Mediator will not agree to act as a witness for any party to the Mediation in any subsequent action concerning the matters in dispute. The Mediator will undertake not to divulge anything he learns during the Mediation to anyone else, unless required by law, and may destroy any notes he has made during the Mediation in front of all the Parties at the conclusion of the proceedings. He will return any documents he has been given.

What happens at a mediation

It is essential that all the parties attending a mediation have real and sufficient authority to reach a settlement on the day.

You should prepare yourself for the Mediation: be sure of your facts and what you are trying to achieve and why. Your lawyer, if you have appointed one, will help you to do this.

Your lawyer, if you have appointed one, will have been asked to send the Mediator a short written summary of the dispute, as you see it. This allows the Mediator to come prepared. He does not want too much detail at this stage. You are not asking him to prejudge the outcome. You will have ample opportunity to put your case thoroughly

at the Mediation. The Mediator does, though, need to know what the dispute is about in advance.

Mediators have individual approaches and, although the procedure outlined in this paper is commonly followed, you may find your mediator varying it.

Venue

A mediation can be held at the premises of the Parties in dispute or at any suitable neutral venue.

There will be a room in which with the Parties jointly meet with the Mediator and smaller rooms for private discussions between any one Party and the Mediator.

Preliminaries

The Mediator will make the necessary introductions, identifying the people present and their roles and ensuring that the Parties have authority to reach agreement. (Without such authority from both Parties present the Mediation cannot proceed.)

The Mediator will introduce himself and summarise his qualifications as a mediator and the methods and principles of mediation. He will explain how he proposes to proceed and how the Mediation will be conducted and will answer any questions you may have.

The Parties' statements

The Mediator will invite each Party in turn and without interruption, to describe the dispute as he or she sees it. His purpose at this stage is to ensure clarity and full communication; this is not a time for argument. The Mediator will ask any questions necessary to ensure he understands just what the speakers intend. The order in which the Mediator invites you to make your statements will be of no significance whatsoever.

The Parties have their first opportunities at this stage to state their cases. You should not try to turn the procedure into a confrontation with the other Party. This would be most unhelpful. It is useful for the Parties to say how they feel and to attack the problems in the dispute, but not attack the other Party.

Private or "caucus" sessions

"Caucus" is an American term and the sessions are equally known as "private sessions". They provide the main working sessions of the Mediation and in them the Mediator will talk to each Party, one at a time. There will be no significance to be given to the order in which he picks the parties for the sessions, or the length of time each takes. Several such discussions are usually necessary, alternating between the Parties in shuttle sessions. The Mediator may carry offers, counter-offers and other

messages between the Parties. Nothing will be told to the other Party, and no offer will be made, without your specific agreement and permission.

Mediation is a flexible process and caucus sessions may take place between lawyers, experts or clients alone if the Mediator considers that this will assist in the resolution of the dispute.

General Sessions

The Mediator may also occasionally convene General Sessions in order to confirm points of agreement or progress in discussion, or in order to free a logjam in negotiations. He will certainly call a General Session once he considers that he has agreement to a settlement. If no settlement appears possible the Mediator will call a General Session to terminate the Mediation.

The Agreement

Once the Parties have reached a settlement of their dispute the Mediator may agree, at the request of the Parties and in the absence of a lawyer, to draft a written agreement in the presence of the Parties. The Mediator will ensure that each item is recorded to the satisfaction of all present. The Parties will then sign the agreement. If one or more of the Parties is represented by a lawyer then it is usual for a lawyer to draft the agreement.