

Catalyst Mediation

PREPARING FOR A MEDIATION

Introduction

The background to these notes is that you have a conflict with another organisation and may be considering mediation as a method of reaching a positive resolution. These notes are intended to inform you of what may happen at the mediation and to help you to prepare for an effective and satisfactory meeting. At all stages you may have a solicitor or other advisor with you if you wish and you may want to share these notes with them.

Before the Mediation

A pre-mediation meeting may be suggested. This is a confidential session with a mediator where you can ask any questions about the mediation itself. The mediator will also talk to you about the notes at the end of this document on preparing for the mediation, to help you focus on what you may need to think about to get the best from the day. He will also ask you to consider an opening statement that you could make at the mediation to explain to the other side, in your own words, how you think the dispute started and what you hope to achieve through the mediation.

Any papers you want to use at the mediation will be shared with the other side (and vice versa), so these should be sent to us one week before the mediation date. You don't have to present any documents and any you do want to use, don't need to be very detailed. Again the discussion about preparing yourself will cover this. The mediator will also discuss with you whether a whole day mediation or one or more half day mediations would suit best everyone's work schedules and agree a neutral location and choice of the most suitable Panel mediators.

What to expect on the day

1. What the mediators will do.

The mediators will:

- ✓ play a neutral role as they attempt to help you resolve or better manage your conflict;
- ✓ assist you in understanding one another and in reaching agreements;
- ✓ ask questions to help you identify the issues and interests in need of resolution;
- ✓ remove or reduce conflict;
- ✓ encourage co-operation in the generation of solutions;
- ✓ help with the final agreement that comes from you and the other party.

2. What the mediators will not do.

The mediators will not:

- make decisions for you and/or the other party about how your dispute will be resolved;
- determine who is "right" or "wrong" ;
- talk with the other party about any private conversations with you, without your permission;
- disclose any details of the mediation or how it went to anyone not involved.

3. Arriving

You will have your own room and there will be a joint meeting room. You can ask for time out to use your room to consider what is happening at any time during the mediation. The mediator will meet you, show you to your room and ask if you have any questions. Then he will ask you if you are happy to make your opening statement and agree a start time before meeting the other party in the joint meeting room.

4. Introduction and Preparation:

In the joint meeting room, with both parties present, the mediators set the stage for the process. Among other things, the mediators will:

1. explain the process and their role as a facilitator to discussion, airing the issues and helping you and the other party to explore solutions;
2. set 'ground rules' and give you and the other party an opportunity to add additional ground rules to facilitate the process. For example: no attacking or interrupting one another;
3. create an atmosphere where you have the best chance of coming to a solution.

5. Identifying the Problem/Dispute:

At this point, each of you will be given the opportunity to explain to the other side, in your own words, how you think the dispute started and what you hope to achieve through the mediation.

At the end of this, the mediator will ask you if you have any comments on what you have heard and carry on the conversations for as long as they are helping to generate a solution. The mediators' role is to grasp the key issues and to start helping you to sort out points of agreement from points of disagreement.

If anyone feels they need "time out" or if the mediator feels the joint meeting has served its initial purpose, you may move back to your break out room for a private conversation with the mediator. The mediator will treat any conversation with you in your private room as confidential and will not pass on anything to the other party unless you specifically agree to this.

Hopefully after some time to consider, you will feel able to return to the joint meeting room and start the next stage of your negotiations.

6. Beginning the Resolution:

This is the actual problem-solving phase of the process. The mediators try to find points of commonality and then begin working on disputed issues – possibly starting with those that appear to be less contentious.

They may help you concentrate on your "needs" rather than your "wants" - what you absolutely must get as part of the settlement agreement. Either in a joint meeting or in private meetings with the mediators, you will be encouraged to generate solutions and the mediators will help to explore them by posing 'what if' questions.

This process can take some time. You may be left for periods alone while the mediators meet with your colleague or advisor in a private meeting. During this time, you may have things to think about in connection with the mediation, but you may also wish to have something else to do which will help you to pass the day constructively.

7. Reaching Agreement:

This is the step in which the when, the what, the where, and the who of the agreement you have reached are summarised for everyone to have the chance to agree. If you feel it is appropriate, these can be formalised on paper by you as a written, binding settlement agreement, for you to check, confirm that you are happy with what has been agreed and then sign.

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Mediation tries to achieve a “win-win” result, where you and the other side agree how to resolve the problem together. By giving some careful thought to what both you and they might need as part of an agreed outcome, compared with the consequences of not reaching an agreement, you are more likely to reach a mutually acceptable settlement.

These notes are intended to help you prepare for an effective and satisfactory mediation. The list is not exhaustive, but you may like to use it as the start of your preparation checklist.

1. What are the risks / rewards of pursuing a court case?

➤ What are our chances of winning or losing if we go to court?
➤ If we win, how much will we win?
➤ If we lose, how much will we lose?
➤ What losses may result from not doing business with the other party following a lawsuit?
➤ What would publicity surrounding a court case do to my staff and other customers?
➤ What are our estimated legal fees and manpower resource requirements if we go to court?

2. What are your negotiating strengths & weaknesses?

➤ What do we want? What do we absolutely have to have in a settlement?
➤ What do they want? What do we think they absolutely have to have?

➤ What can we offer? What are the benefits of our offer to them and to us?
➤ What are our strong and weak points in fact – have we the evidence? – will our witnesses be credible/ helpful in a court setting? Is all our paperwork in order?
➤ What are our strong and weak points in law? – is it clear? has the advice been firm or guarded?
➤ What are our strong and weak points in commercial bargaining power? – can we afford a long and expensive court action? – what impact will it have on our business? Will a court action get on the way of moving our business forward?
➤ Consider carefully your perception of where the other side stand in relation to the same issues.
➤ What is the best possible outcome we could hope for from a mediation?
➤ What is the least favourable outcome of mediation that we could accept?

3. Who is your mediating team?

➤ Who do I want to be at the mediation?
➤ Will you/ they have absolute authority to settle? If not:
i) will the person with that authority be available on the day ?
ii) by phone?
➤ Do I need my legal advisor present? If so :
iii) what will he charge me?
iv) what will he do for me on the day ?
v) when will we meet before the mediation?
➤ Do I need any experts present to give their view on any element of the dispute? If so:
vi) what will they charge me?
vii) what will they do for me on the day ?
viii) when will we meet before the mediation?
ix) could they be consulted during the mediation by phone?

4. What documents should I prepare for the mediation?

Some points to remember:

- 1) Any papers prepared for the mediation are strictly confidential and prepared on a “without prejudice” basis – that is they can only be used at the mediation.
- 2) Any documents you or your colleague prepares will be shared between both of you and the mediator before the mediation begins.
- 3) You don’t have to prepare a document to use at the mediation unless you think it would help to clarify the issues as you see them. You could simply write down what happened for your own reference as a way of focussing on the issues and what you want to raise in the mediation.

You may find it useful to list below what you may want to demonstrate in either a private (“for your eyes only”) document or one you would share before the mediation:

The stages or timings of actions that lead to the conflict.	
Your key points;	
The <u>real</u> issues as you see them;	
What you would like the mediation to achieve;	
What you would like life to be like after the mediation.	

If you have any questions please do not hesitate to speak to Jeremy Scuse on 07811 141 4 82.

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