



INSPIRED
RESOLUTION



Mediation

An Inspired Choice for Resolving your Dispute

Guide to Mediation

Background

What is Mediation?

Mediation is a process by which parties to a conflict or dispute can resolve their differences without having a solution or judgement imposed on them by a third party. The aim of mediation is to explore possibilities, breakdown barriers and facilitate an agreement.

Mediation is conducted in private and the parties sign a confidentiality agreement which means they can not discuss or use any materials produced at the mediation outside of the mediation or in court proceedings.

Role of the Mediator

The Mediator's role is to listen to the parties and feedback authorised possibilities and solutions to the conflict as instructed by each party. The Mediator acts as a neutral facilitator and hopes to bring the parties closer together.

Why Mediate?

- ◆ To save legal costs by effectively settling the dispute before it escalates
- ◆ To keep the dispute private
- ◆ To preserve business and personal relationships
- ◆ The process is voluntary and flexible, the parties can leave at any point



Guide to Mediation

Process

Appointment

The parties may agree to appoint anyone as a Mediator. It is advisable to appoint an Accredited Mediator who has undergone specialist training. It may assist to have someone who has industry knowledge where the conflict have arisen out of technical concepts.

Terms of Engagement

Are produced by the Mediator and signed by all the parties to the mediation. They set out the terms of the Mediator and details regarding confidentiality.

Venue

The Venue should have comfortable surrounding where each party can feel at ease. Each party should have a private room where they can freely discuss their thoughts without interruption. Washroom and refreshment facilities must be available. The Parties normally make all the arrangements and payments direct to the venue.

Preparation

A good starting point is to consider the following:

- ◆ How did the difference of opinion or conflict arise?
- ◆ Who are the key people involved?
- ◆ What steps have been taken so far to come to a solution and were any of them helpful?
- ◆ What are the key sticking points to resolving the dispute?
- ◆ What exactly do you want to achieve at the mediation?
- ◆ Think of 5 possible outcomes which would be an acceptable way of resolving the dispute on the day.
- ◆ What would happen if the matter was not settled on the day?

If lawyers are involved they sometimes like to create a mediation bundle of key documents and set out their respective position. This can be very helpful although not always essential.

Guide to Mediation

Pre- Mediation Meeting

This meeting is to iron out any potential problems before the main mediation commences. This may be done in person or over the telephone.

At this meeting the parties should let the Mediator know who they would like to attend the mediation and whether they have any special requirements. The Mediator will check everyone knows who will be attending from each side.

On the Day

What to wear?

Parties and lawyers should wear anything they feel comfortable in whether this be jeans or a business suit. A Mediation is very informal compared with court or arbitration hearings.

Authority to Settle

It is essential that the person with the authority to settle the dispute is present at the mediation. Difficulties may arise if the person is just at the end of the telephone as they are not necessary party to all of the discussions and do not get a real feel for what has gone on thorough out the mediation.

Introductions

The Mediator will normally meet each party in their private rooms then invite the parties to join a joint session.

Joint Sessions

A joint session is normally held at the start of the mediation so common ground can be covered and each party can define their position without interruption and make suggestions as to the way they would like to settle the dispute. The beauty of mediation is the parties can agree on exactly how they would like to run the day or the mediator can make suggestions as to how they might like to proceed. Sometimes Inspired Resolution does not use a joint session to start as parties are not on speaking terms and don't want to be in the same room.

Guide to Mediation

Break out meetings

Break out sessions allow the parties an opportunity to reflect on the information provided by the other side and reconsider their own position. The Mediator with the authority of the parties will move between the break-out rooms passing on authorised possibilities and solutions to settle the conflict. Sometimes it may be beneficial for just the lawyers to talk or just the parties to the dispute without their lawyers. Parties can of course refer to their lawyers at any point throughout the mediation.

Drafting the agreement

Once agreement has been reached a settlement agreement (Heads of Agreement) needs to be drafted. If Lawyers are present they often like to draft the agreement but the mediator will be happy to assist the parties putting their agreement in to writing if no lawyers are present. Once the Heads of Agreement has been signed by all of the parties it is binding like any other contract would be and can be enforced in a Court of Law. A copy of the agreement is normally provided to each party for their reference.

Court notification

Where there are court proceedings pending the parties will decide who will lodge a copy of the settlement agreement at the Court.

Documents used in the Mediation

Documents provided to the Mediator by a party will be returned to that party at the end of the Mediation or before if requested. The parties will also be entitled to recover all documents provided to the other party during in the course of the mediation. Any notes made by the Mediator during the Mediation will be shredded once the final invoice has been settled.

Post Mediation Feed Back

In the unlikely event that no solid agreement is reached on the day, there is nothing to stop the parties having a further mediation at a later date or settling the dispute a few days later.

If requested the Mediator will be happy to summarise the progress made throughout the day and give encouragement.

Guide to Mediation

Tele-Mediation

Benefits of Tele-Mediation

- ◆ No travelling is required
- ◆ Parties do not have to meet face to face
- ◆ Parties can talk from the comfort of their own home or office
- ◆ It is great for busy people
- ◆ With careful planning International time zone barriers can be avoided
- ◆ Some people find it easier and less stressful to talk on the telephone
- ◆ The Mediation may be shorter
- ◆ Mediations can be arranged at very short notice with less costs and expenses

So how does it work?

The process is similar to that already described. The Parties appoint a Mediator and sign the Mediation Agreement. The Parties prepare for the Mediation and exchange any agreed documents prior to the Mediation conference call.

The Mediator telephones each party for a pre-mediation meeting to gain more insight into the party's position.

The Mediation conference call is commenced at a pre arranged time. This will normally start off with a joint session where each party can put forward their feelings on the situation and make suggestions on how they see the dispute being resolved.

The Mediator will then privately telephone each party and seek to reduce barriers to settlement and encourage each party to come up with workable solutions. The Mediator will pass authorised information and suggestions between the parties and convene additional conference calls if appropriate. This is normally done within a time scale.

Once agreement has been reached between the parties a Settlement Agreement (Heads of Agreement) will be produced and signed by each party. This can be done by fax or email with originals been sent by post.

Guide to Mediation

Creating the perfect solution

Inspired Resolution provides mediation with a difference.

Having an understanding of human behaviour and psychology the Mediator is able to explore the barriers to settlement at a deeper more fundamental level. Often the thing which parties say is in dispute is not the real reason the parties feel the way they do about the situation.

To understand the true barriers to settlement the Mediator may ask some difficult questions which require heart felt answers. The Mediator does this not to judge the person but to understand exactly where the party is coming from. It will also get the party thinking about how they can overcome the barriers.

Lateral thinking and looking at the whole picture is very important when thinking of the perfect solution. The best results come from the most flexibility.

Things which may help during the Mediation:

Mind Mapping: think of all the ways the dispute could be resolved however silly or impracticable they may be.

Flip Charts: Write down all your ideas using pictures and coloured pens.

Think about:

- ◆ What do you really want?
- ◆ Why is it so important?
- ◆ Is it realistic?
- ◆ If you could not have your desired result what would be the next best thing and why?
- ◆ By not settling the dispute at the mediation how will it affect you, your loved ones, your co-workers, your finances, your reputation, your health and your mission in life?

Guide to Mediation

About Inspired Resolution :

Inspired Resolution was created to provide a top quality alternative to going to the National Courts and offers Mediation, Arbitration, Conciliation and Conflict Prevention Seminars.

Fees:

Our Fees are arranged on a case by case basis depending on the complexity, number of parties and the estimated time it will take to come to a successful outcome for all parties.

A first invoice will be produced on booking the Mediation, this will cover known expenses and time booked for the Mediation. A balancing invoice will be produced at the end of the Mediation to cover any additional expenses or professional fees. Both are immediately payable by the parties in equal shares. Where a mediation is cancelled or reschedule a refund may be given depending on how close it is to the mediation day.

Information

For more details about Mediation, Conciliation, Arbitration, conflict prevention training and the research of Inspired Resolution please contact us:

Inspired Resolution

www.inspiredresolution.com

mediation@inspiredresolution.com

United Kingdom Office: +44207 193 8001

