

Introduction to Mediation - Handout

1. Purpose

The objective of mediation is to enable the parties to find a solution to their dispute which minimises further expense and use of time, while achieving the certainty of resolution. It is often very useful in cases where there are a variety of issues, or difficult personal concerns, or other complexities which make straightforward negotiation between parties (or their professional advisers) difficult.

The presence of the mediator can serve to direct parties' energies towards practical outcomes which are beyond the more limited remedies available in a court, arbitration, tribunal or adjudication -or which cannot be achieved because conventional negotiations have become prolonged or stuck.

2. Roles

Mediation gives parties (and wherever appropriate, their advisers) the opportunity to work with an independent trained facilitator (the mediator). The mediator's role is to assist the parties in a dispute to find ways to address and resolve whatever differences they have. A mediator helps the parties to communicate with each other, identify the key issues, discuss concerns and problems which have arisen and look at the options for moving forward and finding constructive solutions. He or she does not make a decision.

The role of lawyers and other advisors is to support the process and assist their clients to make the best use of mediation.

3. How it Works

Meetings

Mediation will take place on an agreed day with all parties meeting for negotiations in one venue, often an independent setting. The mediator may meet jointly with all concerned and will also conduct a series of private meetings with the parties, exploring the issues and options and encouraging a frank assessment of strengths and weaknesses. This enables people to make an assessment of risk and to begin to work out possible solutions. Generally, mediation does not involve a detailed forensic analysis of past events although learning from what has occurred may be an important element in moving forward.

Outcomes

Mediation usually produces a satisfactory outcome within one day. Overall, the success rate is in the region of 80%. Even if a full resolution is not achieved, the issues are narrowed and parties will have a far better appreciation of the realities of their own and the other party's position.

Big Picture

The primary purpose of mediation is to find speedy solutions and ways forward which are, overall, in the personal, commercial and/or organisational interests of all concerned.

4. Some Key Points

- Mediation does not affect the parties' legal rights and is entirely confidential.
- Nothing said or done is binding on the parties unless they reach agreement. The parties are not bound to enter into any agreement or do anything they do not want to do.
- If a satisfactory outcome is achieved (and usually that is the result), that can be expressed in a formal agreement which has the same effect as any other contract.