Ministry of JUSTICE

Have You Considered Mediation? – Information for the Parties

Part 1 of The Civil Procedure Rules makes it clear that litigation should be a last resort; parties should wherever possible seek to resolve their dispute using alternative dispute resolution (ADR). The most widely used form of ADR is mediation.

If a party unreasonably refuses to mediate Judges have the power to penalise the party refusing in terms of costs even if that party wins their case. (Part 44 Civil Procedure Rules 1998)

Therefore the parties should seriously consider whether mediation is suitable as they could be required by the court to provide evidence to explain why they did not consider mediation was appropriate. (Part 44 Civil Procedure Rules 1998).

What is mediation?

Mediation is the name given to the confidential process whereby parties to a dispute invite a neutral individual (the mediator) to facilitate negotiations between them with a view to achieving a resolution of the dispute.

I can negotiate; why should I mediate?

If your negotiation leads to a conclusion with which you are happy then there is no need to mediate. However, where negotiations break down or there is deadlock, a mediation session can break that deadlock.

Why should mediation work when negotiations fail?

Negotiation tends to be confrontational. The parties perceive themselves to be opponents and each wants to "win". The mediator will try to shift the dynamics of the negotiations away from the entrenched position.

By a series of questioning techniques the mediator encourages the parties to move away from positional bargaining to a negotiation where the parties view each other as collaborators looking for a way to solve the problem.

In a mediation the parties are not in a confrontational situation. They negotiate through a mediator who helps to introduce objectivity.

The discussions with the mediator are private. Therefore the parties can share confidences with the mediator and reveal their true interest. The mediator obtains a unique overview of the dispute and can help identify ways in which the parties can satisfy their needs. The mediator encourages the parties to explore alternative options, which they may not have been able to consider within a litigation framework.

Mediation offers the parties an opportunity to bring into discussion issues which they cannot or are not allowed to raise in court. But these issues may be fundamental to reaching a resolution.

Is agreeing to mediate a sign of weakness?

No. Both parties have already made their positions clear. All they are really saying is that they are looking to try to enter into dialogue to see if they can resolve the dispute in a way that satisfies their

respective needs. The aim is to avoid further delay, expense and anxiety associated with the traditional methods such as litigation.

In mediation you have nothing to lose. The mediation process is conducted on a without prejudice basis. If anyone is unhappy with the way it is going they can walk out. Nothing has to be revealed to the other side unless you want it to be. If mediation fails then you can turn/return to litigation. The preparations that you and/or your professional advisers have done for the mediation will still be useful. However, what happens during the mediation cannot be used in any subsequent Court proceedings should the mediation not result in a settlement.

What happens in a mediation?

It's a flexible process that can be tailored to the parties' needs. Joint or separate meetings can be arranged. In typical civil/commercial style mediation there is usually a joint meeting and then the parties have their own rooms to talk privately with the mediator.

If the parties reach agreement this is usually drawn up into a consent order which once signed by the parties is legally binding.

If I decide to mediate what happens to any existing court proceedings?

The parties can ask the Judge to stay proceedings (put them on hold) for a relatively short period of time – usually 6-8 weeks. By the end of the stay if the parties are still arranging the mediation they can usually ask the Judge to extend the stay. If the mediation has not been successful then at the end of the stay the Judge may well have given directions as to how the case should proceed and they will then take effect.

If the Judge has already given directions that don't include a stay then a mediation can still be set up any time. The setting up of the mediation runs in parallel to the proceedings. Therefore parties continue to deal with the court directions at the same time. It is up to the parties to decide at what point in the directions timetable they would like the mediation to take place.

How much will it cost?

The cost of the mediation will depend on the complexity of the case and value. As a guideline the cost of a mediation can be: £300 + vat per party for a dispute of £5k-£15k; £425 + vat per party (dispute value of £15k - £50k); with higher value disputes (over £50,000) negotiated on a case by case basis. The mediation provider will be able to advise.

If a party is unable to pay the mediation fee they can contact LawWorks 020 7092 3950. Provided they meet LawWorks' financial eligibility criteria they will be entitled to a free mediation.

How long will it take to arrange a mediation?

Mediations can be set up within a matter of days.

If you want to find out more about mediation or arrange a mediation You can find out more by visiting the civil mediation directory at: www.civilmediation.justice.gov.uk. ***These mediation providers are all accredited by the Civil Mediation Council and approved by the Ministry of Justice to provide mediators for cases in the Birmingham Civil Justice Centre and courts in the West Midlands region.***