

clerk**sroom** | *Barristers & Mediators*

mediation guidance

the service
the people
the **quality**

intentionally blank

– inside front cover –



a flexible, modern approach

Clerksroom is a leading national provider of mediation, we also believe we are the most flexible. We are able to offer mediators for any civil dispute, budget or location.

**Contact Lisa or Felicity on
01823 704080 or 01823 704081**

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what is mediation?



Mediation as used in law is a form of alternative dispute resolution (ADR).

This is a way of resolving disputes between two or more parties. A third party, the mediator assists the parties to negotiate their own settlement.

Mediation has a structure, timetable and dynamics that “ordinary” negotiation lacks. The process is without prejudice*, private and confidential. The presence of a mediator is the key distinguishing feature of the process.

Mediators use various techniques to open, or improve dialogue between disputants, aiming to help the parties reach an agreement (with concrete effects) on the disputed matter. The mediator must be wholly impartial and independent.

Source: Wikipedia

**Without any loss or waiver of rights or privileges.*

Source: <http://legal-dictionary.thefreedictionary.com/without+prejudice>

mediation *n.*

Law - An attempt to bring about a peaceful settlement or compromise between disputants through the objective intervention of a neutral party.

why mediate?

Mediation is an effective way of resolving disputes without the need to go to court.

A court is not the only mechanism for resolving disputes. Mediation is an alternative. It allows the parties to the dispute, assisted by a trained mediator, to seek an outcome for themselves. The obvious advantages are speed, economy and certainty but there are many other possible advantages, for example, rebuilding or preserving relationships. You may be able to explore the issues that go beyond those a court could consider. You may be able to devise solutions which include elements a court could not or would not apply. You may be able to reach a solution that you can live with even if it is not your ideal solution.

A court is simply a mechanism for resolving disputes. It is a highly structured system where the judge will hear the evidence, apply the law and reach a decision based on the application of strict legal principles to that evidence.

A court will only answer the specific questions posed in the litigation. It is frequently an expensive, time consuming, stressful and uncertain process. It involves placing your problem in the hands of an unknown outsider. You lose control of the outcome. You are likely to become focussed on the process, on providing evidence to try to influence the judge in your favour instead of applying your energies to the resolution of the dispute itself.

Court proceedings may have other unwanted or unforeseen consequences. Any personal, trade or professional relationship that is under strain as a result of the dispute, is likely to be made worse or destroyed entirely by the time a decision is achieved. Ultimately, the decision may go against you, or worse still, the judge may reach a decision that suits neither party.

A failing party at court may end up paying their own costs, the other parties costs in addition to any amount decided by the judge. This can be on its own a very powerful reason to mediate.



80-90%

of mediations result in a successful settlement

Our Bronze mediation scheme starts from £500 + VAT per party.

See **fees made simple** - page 8

Contact Clerksroom Mediation on

0845 083 3000

anytime

our service

It's never been easier to find an independent mediator.

We know that when you're looking for a mediator, you want to find a fully accredited mediator with the right skills and experience, working in the right profession, based in (or able to travel to) the right location, and charging fees that suit your budget, usually as quickly and easily as possible.

The National Mediator Database has been designed around your needs, providing a central and standardised point to view professional profiles of civil mediators who meet all current EU, MOJ and UK guidelines.

You can search by name, specialist area of expertise, geographical location, profession, or using free text.

You'll find all the information you need in a clear and transparent format, enabling you to make an informed choice quickly, easily and confidently.

Finally, you'll benefit from efficient administration provided by Clerksroom, helping you to appoint, instruct and organise your mediator, from the first enquiry to the final billing.

If you have any queries, or you would like to instruct an independent mediator, please contact our administration team on 0845 083 3000 and we will be happy to help you.

Compliance

- UK Civil Mediation Council CMC Registered
- Ministry of Justice and Court Scheme Compliant
- EU Code of Conduct adopted by every mediator

Quality Assured

- All mediators' accreditation is checked and recorded for your peace of mind
- Insurance and training certificates held on file
- Transparent, third-party feedback on all profiles provides an independent perspective

Up-to-date training

- All mediators undertake at least six hours continuing professional development every year
- In-house seminars and training provided on the latest mediation topics



It's **never been easier** to find an independent mediator...

search the National Mediator Database:

www.nmd.clerksroom.com



Transparent, competitive fees

- Reduced rates available to suit your budget
- Variable fees from £500 + VAT per party offer you flexibility
- Fixed rates agreed with key mediators offer you transparency
- No additional travel costs throughout the UK when instructed through our service
- Our own mediation suites in Leeds, London, Manchester, Birmingham, Cardiff and Taunton help you to cut costs – or we will attend any agreed venue for your convenience
- Efficient administration by market leaders, Clerksroom – fully transparent and accountable
- Experienced staff to manage each case
- Unique reference per party to ensure client confidentiality
- Single point of contact and 24/7 helpline
- Independent feedback collected from each party following every mediation

quality

Mediators may join our database at any time by setting up a profile online. We are proud of our high quality service and require mediators to meet all current standards for mediation in England & Wales. Once a mediator meets every standard set by the Ministry of Justice, Civil Mediation Council and European Union, we will review each profile and only publish when appropriate to do so.

Mediators all have the ability to request feedback on any mediation undertaken by them. Feedback is collected and shown in each profile with all performance - good or poor - monitored. Every mediator must meet all current standards to qualify for **“Certified Mediator Status”**.

Clerksroom was awarded Investor in People in 2002 and has retained the quality standard since.

CERTIFIED MEDIATOR

nationalmediatordatabase



INVESTOR IN PEOPLE

Database Status - **Compliant**

EU/CMC/MOJ Compliance checked

| | | |
|------------------------|---|---------|
| Profile submitted | ✓ | Checked |
| Independent feedback | ✓ | Checked |
| History | ✓ | Checked |
| Insurance provider | ✓ | Checked |
| Insurance certificate | ✓ | Checked |
| Expiry date | ✓ | Checked |
| Level of cover | ✓ | Checked |
| Training requirement | ✓ | Checked |
| Qualification date | ✓ | Checked |
| Training certificate | ✓ | Checked |
| E.U. Code of conduct | ✓ | Checked |
| Observations completed | ✓ | Checked |
| Annual CPD log | ✓ | Checked |
| Mediator status | ✓ | Checked |
| Specialist panels | ✓ | Checked |
| Geographical location | ✓ | Checked |
| Professional status | ✓ | Checked |
| League table position | ✓ | Checked |

fees made simple

clerksroom mediation fees are simple and transparent

We like to keep things simple. Our aim is to ensure our mediation costs are clear and transparent, so there are no hidden extras. All of our mediators are self employed, so they are independent. You can choose the mediator.

Fixed Priced fees: See right >

The alternative – we will provide a quote

- ✓ Mediator of your choice or we provide 3 options based on your requirements
- ✓ Mediation times to suit you
- ✓ Certified mediator from the National Mediator Database (<http://nmd.clerksroom.com>)
- ✓ Any value of claim
- ✓ Catering as required
- ✓ High quality service
- ✓ We can work to any budget or provide a quote

The fees stated on this page do not include the following additional costs:

- 1 Any “additional agreed preparation time if required”,
- 2 Catering, if required (such as lunches/sandwiches) other than Gold Package.
- 3 Overtime past 5pm (if the parties wish to continue and the mediator agrees). If the parties continue into the night, hotel or travel costs may be incurred. This should be discussed and agreed at the time.

£500 + VAT per party

Bronze Mediation Package

- ✓ Full day mediation from 10am to 5pm
- ✓ Certified mediator
- ✓ Designed for claims up to £80,000 in value
- ✓ Includes administration fee
- ✓ Includes appropriate preparation
- ✓ Two rooms included at one of our mediation venues (London, Birmingham, Taunton, Cardiff, Liverpool, Manchester or Leeds) or our mediators can attend any venue that the parties arrange between themselves
- ✓ Costs based on two parties attending
- ✓ High quality, cost effective service
- ✓ Choose from a junior mediator (0-25 mediations to date) for the day or you can request 4 hours with a senior mediator (25-50 mediations undertaken to date)

£1,250 + VAT per party

Silver Mediation Package

- ✓ Full day mediation from 10am to 5pm
- ✓ Any level of certified mediator
- ✓ Designed for claims with a value of £80,000 to £250,000
- ✓ Includes administration fee
- ✓ Includes appropriate preparation
- ✓ Venue fees included
- ✓ Costs based on two parties attending
- ✓ Catering (tea, coffee, water and sandwich lunch) for up to 5 people per party
- ✓ High quality, cost effective service

£1,750 + VAT per party

Gold Mediation Package

- ✓ Full day mediation from 10am to 5pm
- ✓ Certified mediator of Elite level status (50+ mediation experience)
- ✓ Designed for claims over £250,000
- ✓ Includes administration fee
- ✓ Includes appropriate preparation
- ✓ Venue fees included
- ✓ Costs based on two parties attending
- ✓ Catering (tea, coffee, water and sandwich lunch) for up to 5 people per party
- ✓ High quality cost effective service

selecting a mediator

Parties get to decide which mediator to appoint.

Clerksroom will send suggested mediators' profiles together with a fixed fee quotation. Fees vary depending on their level of experience. We will always try to accommodate parties if they have a budget.

Parties need to bear in mind that any accredited mediator can mediate any civil dispute. It makes no difference to the process if the mediator is legally trained. If the claim is complex or of a very high value then parties may feel a senior or elite mediator may be required.

On the day it is important to feel as comfortable as possible. All mediators are very personable but it is important to decide which level of mediator is right for you. Clerksroom mediators are a mix of lawyers, non-lawyers, doctors and retired judges.

Alternatively, parties can give Clerksroom the details of the dispute and we will appoint a mediator on the parties' behalf.

levels of mediator

- ✓ **Observer & Trainee:** Plays no part in the mediation
- ✓ **Junior Mediator:** undertaken 0-25 mediations to date
- ✓ **Senior Mediator:** undertaken 25-50 mediations to date
- ✓ **Elite Mediator:** undertaken over 50 mediations to date with feedback all positive



with a choice of **over 500** qualified mediators and national coverage, **Clerksroom can help**



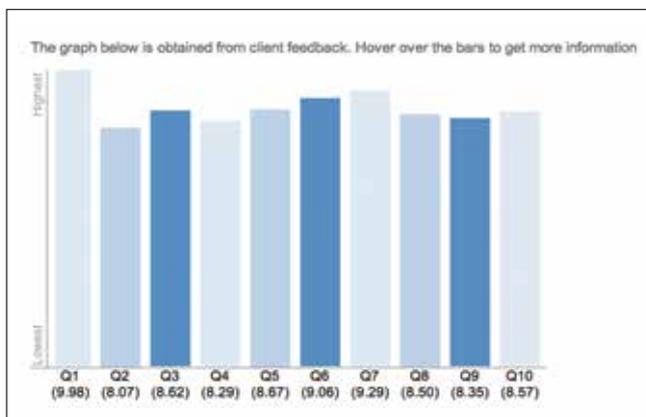
search:

www.nmd.clerksroom.com

profiles explained

Every profile that is live on the National Mediator Database is subject to all of our stringent compliance checks before it's displayed. The database is dynamic so each check is carried out every time the profile is displayed. Non-compliant profiles are removed automatically by our system for your security. Once displayed on our website, each profile will provide you with general information about the mediators strengths and in most cases a photograph. The feedback tab provides you with a graph setting out all feedback received to date for the individual mediator. Hover over each column and it will show you the questions we asked the parties following a mediation. History shows you a list of mediations undertaken, the nature of the dispute and the outcome. Insurance tab sets out level of cover and every mediator is required to have a minimum of £1m Professional Indemnity cover in place. CPD & Training confirms that the current year's CPD is up to date and a copy of the mediators training certificate issued by the training provider can be viewed. Certified Mediator tab confirms the dynamic checks undertaken to ensure the profile is compliant with all current standards.

On the right you will see various information such as the mediators' feedback score, league table position, number of mediations undertaken to date, their status (i.e. junior, senior, elite) and their selected panels such as specialist area (each mediator is only allowed to select one panel each), geographical location, profession and local court scheme.



^ The feedback tab displays detailed feedback information from clients, and gives a score which determines league table position.



^ An example mediator profile, displaying comprehensive details of each mediator, enabling you to make the best decision on which mediator is right for you.

Results and memberships

Feedback score: **3745**

League table position: **10 / 155**

Total Mediations undertaken: **163**

Member Level: **Elite Mediator**

Harry is a member of:

Specialist Panel:
Business & Property Mediators

Local Panel:
London

Profession:
Barrister

Court Scheme:
Central London County Court

^ Sidebar displays feedback score, league table position, total mediations undertaken and member level.

feedback

Once a mediator has completed a mediation, the mediator is able to log into their profile and send an email to the parties requesting feedback. We encourage all mediators to do this because it affects their national ranking in the National Mediator Database. The system is automated and “sealed” so mediators or administrators cannot amend the feedback or scores. The feedback is automatically emailed to the mediator and the administration team to review. Any issue raised is followed up but the scores are sealed and locked into the feedback record – good or bad.

We currently ask 10 questions and feedback is supplied by way of a simple tick box rating the mediator and the administration for each aspect of the setting up, venue, preparation, day and fees. Hover over the graph to view the question asked.

Requests for feedback are sent directly by the mediator following a mediation having taken place, irrespective of the provider who organised the mediation.

Results and memberships

Feedback score: ?

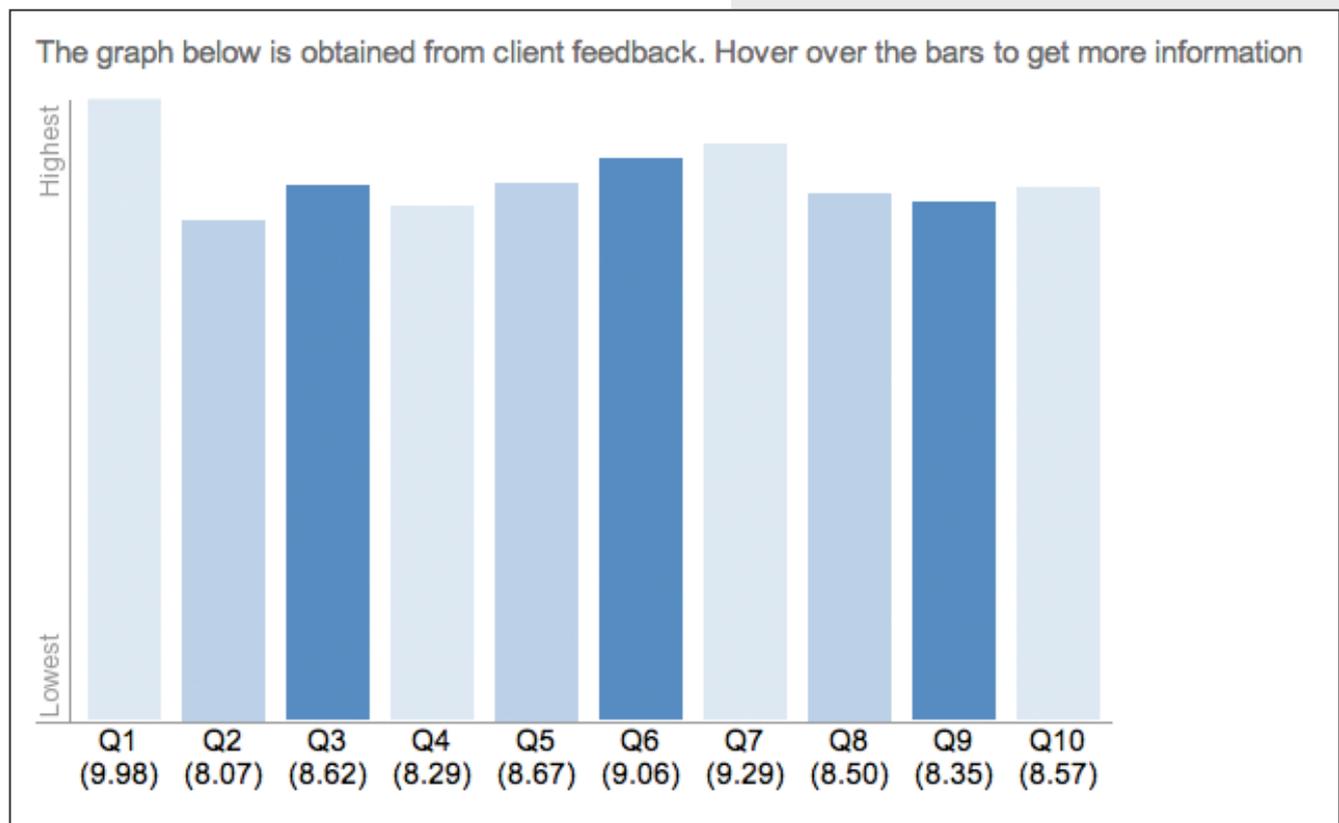
3745

[League table position:](#)

10 / 155

Total Mediations undertaken:

163



preparation

The mediator will need to know what the dispute is about so will need to be supplied some information in advance. They will not need to know every detail. It is normally helpful for the mediator to have sufficient papers to prepare for the dispute. In advance of the mediation, you may wish to ensure the mediator has a short confidential written explanation setting out your views on the way forward.

the agreement to mediate

The Mediation Agreement will be sent to you or your solicitor once the date has been agreed between the parties and the mediator. Our standard agreement covers the following key points:

- ✓ Terms and Conditions
- ✓ The Appointment
- ✓ The Venue and Date
- ✓ Fees
- ✓ Cancellation and Re-scheduling
- ✓ Procedures
- ✓ Confidentiality
- ✓ Human Rights
- ✓ Law and Jurisdiction

ready to mediate?

Contact **Lisa** or **Felicity** on
01823 704080 or **01823 704081**



setting up a mediation

The letter confirming an agreed date between the parties will confirm the following points:

- ✓ Date
- ✓ Time
- ✓ Mediator's name
- ✓ Mediator's fees
- ✓ Venue and cost
- ✓ Where to send your papers for mediation
- ✓ Payment is required in advance of the agreed date

places to mediate

Mediation Suites – England & Wales

We use facilities at the following locations on a regular basis:

- 1 Taunton**
Woodlands Castle
- 2 London**
218 Strand
- 3 Cardiff**
Cardiff Gate
- 4 Birmingham**
35 St Paul's Square
- 5 Liverpool**
The Plaza, 100 Old Hall Street (Bruntwood)
- 6 Manchester**
Centurion House, 129 Deansgate (Bruntwood)
- 7 Leeds**
Schofield Sweeney Solicitors

We also maintain an extensive list of suitable venues throughout England and Wales where we have fixed fees.

We are also happy to attend any venue that has been agreed between the parties. If you are unsure about what would be a suitable venue, please do telephone us to discuss the facilities normally required.

Please see further information on our website.



^ Meeting and mediation rooms at Centurion House, Manchester.

what to expect on the day

Mediation does not have the formality of a court. Much depends on the wishes of the parties, the nature of the dispute, the number of parties, the physical constraints of the venue and the style of the mediator. For example, in a dispute about a boundary it may make sense to visit the site. There are, however, certain common themes which frequently emerge.

The best venues will have one room for each party plus a large meeting room where everyone can meet. The most common format, but by no means universal, is for there to be an opening session attended by everyone at which after introductions and a few opening remarks by the mediator, each party sets out their view. After that, sometimes the discussions continue but frequently the parties move to their individual room and the mediator will shuttle between them giving everyone time and space to develop possible solutions. The mediator will work on the basis that anything he/she is told in private session he/she keeps confidential, unless authorised to disclose it.

A common misconception is that mediation is a “fuzzy” way of resolving disputes. It is not. Whilst it lacks the formality of a court no one needs to give ground if they do not wish to do so. The object of the exercise is to resolve the dispute by negotiating a mutually acceptable solution for all concerned.

Remember that there may not be a perfect solution, or if there is, you may not achieve it in court – be flexible.

Remember that the mediator is not a judge. Do not try to convince the mediator that you are right. The mediator will not tell you if you have won him/her over even if you have, it would not achieve anything – it is the other party you need to convince.

If a resolution is achieved, you or your legal adviser will normally draft an agreement which is signed by both parties. If court proceedings are ongoing that can be expressed as an order bringing the proceedings to a close, or staying them pending compliance with the terms of the settlement agreement.

Most mediations settle, but if, unfortunately, no solution is found, then nothing is lost. Neither party will be able to rely on concessions made without prejudice at the mediation. At the very least you should have gained a greater understanding of the position adopted by the other party. Indeed it is not uncommon for disputes which fail to settle on the day to settle shortly afterwards, when those involved have had time to reflect.



with a choice of **over 500** qualified mediators and national coverage, **Clerksroom can help**



search:

www.nmd.clerksroom.com

observer

Newly qualified mediators need to observe three mediations in order to lead their first mediation and help others in the future. With your agreement it is likely that an observer will attend your mediation but will play no part in the process. An observer will also be asked to sign the Agreement to Mediate to ensure confidentiality. This is normally dealt with at the outset of the mediation day.

Time spent with the Mediator

The mediator will try to spend an equal amount of time with each party during the mediation day. Sometimes it may seem or be the case that the mediator is spending more time with one party than the other. This time spent is helping the mediation progress and is often for the good of the party who may be feeling ignored. If you feel this way during your mediation please let the mediator know who can then explain what is happening. Please don't leave it until after the event to raise any concerns you may have.

what do I wear?

You may think it strange that we even mention what to wear in our guidance. We do think it can be quite important in certain circumstances. An example may be that each party is bringing a solicitor, barrister and trainee to the mediation day and a client wearing very casual clothes may feel intimidated by the suits. Each circumstance will be different so it may be worth asking the mediator or parties if you feel it appropriate.

Food!

Mediation days can be long and demanding. It may sound silly but, we strongly recommend you have a good breakfast and have something with you during the day if food has not been pre-ordered via the venue. Most venues will have tea, coffee and water available throughout the day but food normally needs to be pre-ordered. Please check if you can. Knowing where you can get a snack during the day will save valuable time and interruption. Most mediators will invite the parties to take a set lunch break but each mediator will have a personal style and approach so please go prepared.



with a choice of **over 500** qualified mediators and national coverage, **Clerksroom** can help



search:

www.nmd.clerksroom.com

CPD and training

We offer various 1 hour talks by our mediators. We are happy to come to your offices and provide mediators for training sessions.

Jonathan Lux - Elite Mediator

- 1 Quiz the Mediator
(1 hr) Q&A session with a mediator where you set the agenda

Mark Mattison - Senior Mediator

- 2 How to get the best out of the mediation process
(1 hr) (Manchester)

Alistair Pye - Elite Mediator

- 3 Making Mediation Work – A Mediator’s Perspective

Harry Hodgkin - Elite Mediator

- 4 Meet the Mediator & Questions
(1 hr) Q&A session with a mediator where you set the agenda

Michael Cover - Elite Mediator FCI Arb CARb

- 5 ‘Modern Mediation Methods’, in which he explores topics such as mediator selection, preparation for mediation, negotiation strategies, breaking deadlock and writing up the deal, as well as hybrids, such as med-arb and dispute boards. The general theme is Improving Outcomes at Mediation and the workshop lasts for one to one and a half hours, typically over a lunchtime.

All our workshops are free of charge. Lisa can be contacted on 01823 704080.

train as a mediator

Clerksroom Mediation does not offer training courses but we are happy to recommend the leading national training providers and offer advice and guidance on the process, costs and what happens after qualification. It is important to understand clearly what is involved, the costs and the likely volume of work available once you have undertaken the training. Our mediation clerks will also have information about upcoming courses which tend to be 5 days in length (40 hours).



One of our key strengths is being able to provide a solution at short notice. We are able to offer our services throughout the UK within a very short timescale, or we can work towards any deadline.

We can react to any situation as and when required.

If the parties prefer us to provide a mediator based on a specific “fixed” budget, we can offer suggestions. All we need to know is what you require.

If you need a venue, we can organise that for you.

Contact Clerksroom Mediation on **0845 083 3000** anytime.

frequently asked questions

When should I mediate?

At any time you wish, irrespective of whether or not proceedings have been issued at court or at what stage the dispute or court proceedings may have reached.

Is offering to mediate a sign of weakness?

No – there is nothing to lose by offering to mediate even if you believe you have a strong case. Few lawyers would advise their clients that they are bound to win a court case

Are mediators insured?

Yes - all Clerksroom mediators are insured.

Are mediators trained?

The mediator will be fully trained and accredited with current Civil Mediation Council standards.

Will I have to do anything I do not want to do?

No – the process of mediation is totally voluntary.

Who pays for the mediation?

Usually all sides of the dispute pay the mediation fee in equal proportions and it is normally paid in advance of the mediation.

Do I pay if the dispute does not settle?

Yes – the fee is paid for the mediator to facilitate the mediation regardless of the outcome. However, the majority of cases do settle though there can be no guarantee of success.

Who decides the outcome of the mediation?

The mediator does not decide the outcome – the decision making is left entirely to the parties involved. The mediator's role is to help the parties strike a deal which they are all happy with.

Can I leave a mediation?

Yes – at any time, although most mediators will ask you to give them a few minutes before you do so.

Does the mediator meet with the parties before the mediation?

Generally no – the first time the parties usually meet with the mediator will be on the day.

Will the mediator offer legal advice?

No – if you feel that you may need legal advice you should make your own arrangements beforehand. The mediator is an independent third party and must remain impartial and neutral and whilst you may have candid discussions with the mediator, no advice will be given.

Can I have a lawyer present?

Yes – if you wish. You may feel that your dispute is rather complex and that you would prefer legal advice throughout the mediation bearing in mind that the mediator cannot give any legal advice to the parties.

What happens if there is no agreement at the end of a mediation?

Mediation is not suitable for every case but it can still help to settle some of the issues in a dispute. All discussions during the mediation process are “without prejudice” – in other words, anything said in the mediation cannot be used later in court or another legal action.

Can I recover the costs of mediation in a court case?

Most judges will award the winning party the costs of litigation and if there has been a mediation it can be argued that the costs may be recoverable. Please note though, the cost rules are complicated and you should seek legal advice if you have any queries or concerns about this issue.

What is the court’s attitude towards mediation?

Courts encourage the use of mediation wherever appropriate and in certain cases can order some costs to be paid if a party has unreasonably refused to participate in mediation.

What is the Civil Mediation Council?

The Civil Mediation Council is an association of academics, professionals and providers in the field of mediation. The organisation encourages mediation as a way to settle your dispute. It also gives advice and guidance to the organisations that offer mediation.

How long does it take to organise a mediation?

This is normally down to the parties and how quickly they wish to proceed.

Will I need to send anything to the mediator?

Once a date has been agreed, the confirmation letter will provide more information about this. It is suggested that you bring sufficient copies of documents, photographs and/or any other relevant items along to the mediation should you wish to use them as part of your discussions.

Can I bring someone with me to the mediation?

This is entirely up to you. Out of courtesy, please inform the mediator and the other parties who will be attending with you.

What is a stay?

If court proceedings have been issued in relation to a dispute that the parties wish to mediate, the court must be contacted and an application will need to be made to the judge to stay the proceedings. The order of stay basically puts the proceedings on hold for a specified period of time to allow the parties to reach settlement outside the court process.

examples of feedback

“An excellent service overall and one I would strongly recommend”

Jo Moffat, Managing Director Woodreed

“Service provided by Clerksroom both good value and effective”

Christopher Dolton, Fulton Robertson

“This was the first time we have used you and we were very pleased with the service offered and with David Rawlinson as mediator”

Caroline Kean, Wiggin & Co.

“A thoroughly professional service”

Roger Cheves, Slee Blackwell

“The speed and efficiency of your service and the standing of names put forward was exemplary. Thank you”.

Peter Kenyon

“Very happy with the service provided. Really good administrative staff”

Harold Michelmore & Co.

“Again, we have had a successful mediation through Clerksroom. Your team does not disappoint. Many thanks to Roger Hollings, our mediator, without whom settlement would not have been reached”.

Sara Bryan, Burley Geach

