



HK

Guide to Mediation

HK Humphries Kirk[®]
solicitors and arbitrators

For life in all its colours

What is mediation?

Mediation is an effective way of resolving disputes without having to go to court. It involves an independent third party, known as a mediator, who helps both sides come to an agreement.

What are the advantages to mediation?

Quicker	Settlement can be achieved earlier than it would be if the dispute went to court.
Cheaper	Settling at mediation can save thousands of pounds in court and solicitors fees. Agreements can also be reached in relation to legal costs.
Alternative outcomes	There are no rules about the outcomes and parties can come up with creative solutions which would not be ordered by a judge. For example, at mediation you may receive an apology which you would not receive in court.
Private and Confidential	Anything that is discussed in mediation is private whereas court settlements are on the public record. This makes mediation particularly attractive to companies.
Voluntary	All parties have to agree to attend mediation and therefore tend to be more willing to compromise.
Without prejudice	You are able to talk freely without anything you have said being used against you in later court proceedings. This means that even if a claim does not settle, the parties will have looked at the strengths and weaknesses of their own case and the issues between the parties are likely to have narrowed meaning that settlement is more likely in the future.

What can you expect at a mediation?

Your mediator will have been provided with a mediation bundle prior to the mediation so that they are fully aware of the details of the dispute before the mediation begins.

Mediators are experienced at getting the most out of the process and therefore will act as a facilitator to guide the parties through the mediation.

Your solicitor and/or barrister will also attend the mediation with you and will be able to answer any further questions you have on the day.

When you arrive you will likely have to sign a mediation agreement to confirm that the mediation will remain confidential.

Each party will be given their own room where they can have confidential discussions. It is normal for the mediator to move between the rooms to steer the parties and to relay any offers between parties.

Quite often, the mediator will suggest a round-the-table meeting with all parties at some point within the mediation, if everyone is agreeable.

What types of cases are suitable for mediation?

Most types of dispute can be resolved with mediation. For example:

- Probate disputes
- Contract disputes
- Family disputes
- Neighbour disputes
- Employment disputes

Frequently Asked Questions

1. Who is the mediator?

The mediator will be agreed by the parties and jointly instructed. The mediator will have received special training and will remain impartial and independent throughout the process.

2. Is mediation just about compromise?

The majority of claims are settled before trial, often after great stress and expense has been incurred.

Whilst mediation is a compromise by both parties, it is about trying to find the middle ground whereby the settlement will be satisfactory to both parties.

3. Will I still get my day in court?

Provided that the mediation is successful, no. Mediation is a form of alternative dispute resolution meaning that the dispute would be resolved outside of court. Unfortunately, for most people, the costs associated with litigation means that having “your day in court” is just too risky.

4. Is mediation the best option for me?

Mediation can help resolve most disputes however if you are still not sure whether it is suitable for you, you should discuss this with your solicitor.

5. Will the outcome of mediation be legally binding?

What is said during a mediation is privileged and without prejudice which means that it cannot later be used against you in court proceedings. For this reason, the outcome of a mediation is not legally binding until the parties agree for it to be. Normally an order would be drafted by the lawyers at the mediation or shortly afterwards.

Our Top Tips for the day

In some cases, mediation can be just as stressful and difficult as a court hearing and should not be under-estimated.

Here are our top tips for the day of the mediation:

1. Sleep – It is likely to be a very long and exhausting day. Ensure that you get plenty of sleep the night before the mediation.

2. Food – Bring lots of food. Although often lunch will be provided, mediations can quite often run late into the evening.

3. Transport – If possible, arrange a lift home so that you do not have to drive after the mediation has finished. Alternatively, you may wish to consider booking a hotel nearby as it is not unheard of for mediations to run until the early hours of the morning.

4. Key points for discussion – Prior to the mediation, make a list of all of the things that are important to you that you will want discussed on the day. As the day progresses and the issues narrow some things may be overlooked and a list helps to keep ensure that you do not forget anything.

5. Contact with other party(s) – Each mediator has a different approach and what is suitable for one case may not be suitable for another. However, quite often you will be asked whether you are happy for all parties to sit in a room together at some point throughout the day. This is not a necessity but you may wish to give some thought to this prior to the mediation itself.

6. End Result – It is normal to feel slightly disappointed at the end of the day. It is said that after a successful mediation both parties will walk away feeling like they have made a compromise.

Useful Websites

Civil mediation: www.civilmediation.org
www.mediate.co.uk

If you have any more questions regarding mediation you should not hesitate to contact one of the litigation team at Humphries Kirk.

■ **Dorchester**
01305 251007
hklaw.eu/dorchester

■ **London Meeting Rooms**
020 7269 9020
hklaw.eu/london
By appointment only

■ **Poole**
01202 725400
hklaw.eu/poole

■ **Bournemouth**
01202 421111

■ **Crewkerne**
01460 279100

■ **Parkstone**
01202 715815

■ **Swanage**
01929 423301

■ **Wareham**
01929 552141

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