

Advantages of Mediation

ADVANTAGES

- Depending upon the point at which the Mediator is brought in, the savings on costs can be considerable. The savings are then for the Parties to share.
- During the Mediation the principals meet across the table, when previously the dispute had been aired between the lawyers. That in itself might break the logjam.
- A Mediator's questioning might bring out new facts, or a new way of looking at the facts.
- Mediation allows the Parties to stand back and reassess their respective positions.
- Time spent at Mediation by the participating executives is but one day (usually), whereas a trial is likely to take much longer. There is every reason to settle so as to avoid any further loss of management time.
- Any offer tabled can be withdrawn without explanation: there is almost nothing to lose in trying to reach a solution by making offers.
- The Mediator is entirely neutral; so you know that at least he isn't against you.
- A Mediator's interest is only in getting Parties to agree, he doesn't mind on what terms you do it.
- As the Mediation process is both confidential and without prejudice, it would be almost as if nothing had happened if, uncharacteristically, no settlement were reached and a trial had to be held.
- Courts now encourage the parties in a dispute to try resolving the matter through Mediation. A trial should be seen as a last resort and there could be cost penalties for parties who decline Mediation.

DISADVANTAGE

- It is unlikely that you will win the case outright with all costs paid: Mediation is all about compromise and usually this means settling on less than perfect terms.

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Cost of Mediation

The cost of a Mediation is dependent upon several factors: the number of parties, the amount of the claim, the time taken up and whether rooms have to be hired.

Costs may be estimated by completing our easy to use cost estimator on our web site. www.specialistmediators.org/pricing.html

Interpreter Service

There may be occasions when it might be helpful to use the services of an interpreter during Mediation. Suitably qualified interpreters can be provided by Specialist Mediators. Although the interpreters are not CEDR trained, they nevertheless have an understanding of the Mediation process.

Contact Us

For Robin Bryant

Email: rbryant@specialistmediators.org
Tel: +44(0)1730 813915 Fax: +44(0)1730 816497

For Richard de Rivaz

Email: rderivaz@specialistmediators.org
Tel: +44(0)1825 790294 Fax: +44(0)1825 790119

Full contact details are available on our website:

www.specialistmediators.org

Specialist Mediators LLP is registered in England No.OC306496

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You have a dispute... what do you do?

On the one hand: On the other:

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| You could go to trial | ▶ You could use Mediation |
| You could spend a lot of money and still lose | ▶ You could pay a small fraction of that and still achieve a good result |
| You would have to submit to the legal process | ▶ You could regain control of events |
| The process is adversarial: it might get very unpleasant | ▶ You could talk to someone who is neutral |
| You would go over all the same old arguments you've already been over before, many times | ▶ Your Mediator might have some new and constructive ideas to assist settlement |
| You might win, you might lose. The decision could be appealed | ▶ A mediated settlement is an agreement on your terms which cannot be appealed |
| If you win, you might make an enemy for life | ▶ You might continue to do business together |
| Running a case to trial requires management time and money | ▶ A mediated settlement stops the haemorrhage there and then |

Specialist Mediators LLP supplies Mediators with industry and business backgrounds, arranges venues and organises the flow of documents. If you are in a dispute that you would like resolved, without the time and cost of having to appear in Court, then please give us the opportunity of trying to help.

Member of the Civil Mediation Council

Who Are We?

Specialist Mediators LLP was set up in 2003 to meet the growing need throughout the UK for Mediators with business experience. All too often, parties to a dispute wish to employ a Mediator who really understands their business and has experienced a similar type of dispute and understands the strong emotions that such disputes can cause. Specialist Mediators LLP has gathered together a group of CEDR Accredited Mediators who have business experience in a number of activities.

Most commercial disputes arise from within the following sectors:

- Accountancy
- Banking/Finance
- Clinical/Personal Injury
- Construction/Civils
- Employment
- General/Mechanical Engineering
- Information Technology
- Insurance
- Intellectual Property
- Property/Boundary

If the heading you require is not listed then please contact us for further information.

Senior Members



Robin Bryant was in merchant banking before setting up a consultancy business to provide debt recovery services to banks and other financial services companies. He is an associate of the Chartered Institute of Bankers (Institute of Financial Services), a member of the Expert Witness Institute and the Academy of Experts.

Robin has provided expert evidence to the High Court in some 200 cases of litigation involving banks. Many of these related to professional negligence. One such action led to the use of mediation and this set him on the road to becoming a mediator. He is CEDR Accredited.



Richard de Rivaz has had a long career in industry, having gained an Industrial Engineering and Management degree at Loughborough University of Technology. He has a Diploma in Industrial Studies and is a member of the Chartered Management Institute.

Richard is a CEDR Accredited Mediator. He became interested in mediation having successfully used mediation to resolve one particular dispute. Through his work he has become familiar with contractual and intellectual property matters, as well as the legal process.

Mediation for the Uninitiated

Mediation is a way of settling disputes. The following is a simple guide to a process which is a lot less harrowing than a trial.

Mediation is best done when all the relevant facts are out in the open. Nobody is going to feel comfortable discussing settlement terms when they are uncertain about some important aspects of the case.

A cost/benefit analysis might show how Mediation would compare with a trial and how both might compare with settling through solicitors.

Trying to settle by negotiation can take a lot of time and can be nerve-racking and works best only when both Parties have decided that then is the time to settle. It can take some time for this synchronisation to take place.

By opting for Mediation, the Parties agree to meet with a readiness to try to find a mutually agreed settlement.

Prior to the Mediation the Mediator sees the case summaries of the respective legal teams and might make some initial approaches to the Parties, or their lawyers, so as to clear up any misunderstandings or obvious queries or inconsistencies. The Mediator should take the opportunity of enquiring as to the Party's experience of Mediation, to gauge the amount of help that might be necessary to overcome any anxiety.

Each side decides who shall be present at the mediation and who shall lead the negotiations. The leader might be one of the Party members or might be a lawyer. The team must include someone with the necessary authority to settle the dispute at the Mediation.

The Mediator will agree the format of the Mediation with both/all Parties so that each knows who is going to be present and who has authority to settle.

On the day of the Mediation, the Parties meet at the appointed venue in their own rooms and the Mediator introduces himself. The room is a private one and available to the Party for the duration of the Mediation.

To commence the Mediation, it is customary for the Mediator to call the Parties together in a third room. The Mediator will then emphasise the two senses in which the Mediation is confidential. It is confidential as between the Mediator and each of the Parties and also confidential as regards the outside world. (At some point later in the Mediation, the Mediator might ask that the confidential views or information of one Party be divulged to the other, so as to make progress towards settlement. Only with the tacit approval of the Party will the Mediator so divulge this 'confidential' information.)

The Mediator will emphasise that all discussion is without prejudice – meaning that nothing said is binding on the Parties until they want it to be, when it is then committed to writing. Up until that time, any offer made can be withdrawn or varied.

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The Parties are then invited to state their cases briefly - opening statements - and many believe it preferable that this should be done by the Parties themselves rather than their legal representatives, as the effect on the opposition can be greater.

Some discussion might continue after the opening statements but it is usual for the Mediator to break up the joint meeting and hold private meetings - caucuses - with each Party in turn.

The Mediator uses his skills to steer the Parties towards settlement during the course of the allotted period. The time available might be agreed in advance or be open ended (but not normally lasting more than 15 hours).

At any time that a Party chooses, it can leave the Mediation. The Mediator will do all in his/her power to prevent this, but this option is always available in any Mediation process.

When the Parties have agreed a settlement (and, surprisingly, some 80% of all Mediations do reach a settlement), an agreement is drawn up, usually by the legal representatives. This should settle the matter once and for all without further ado and remove the uncertainty of taking the matter to a trial.

