



DISPUTE
RESOLUTION
SERVICE

MEDIATION GUIDANCE
BOOKLET

Mediation Guidance

What is Mediation?

- A mediator is a neutral person who assists parties and their advisers to a resolution of the dispute.
- The mediator can chair joint sessions and meet with parties in private and find out underlying reasons for the dispute and identify interests of the parties in addition to their rights.
- A mediator will not make a decision or make any findings and the mediation process is confidential and without prejudice.
- It is intended that the whole mediation process should be completed within 90 days.

Is Mediation effective?

- Research shows that recourse to mediation has a high success rate; it is faster and can save legal costs and it can result in preserving the business relationships between the parties for the future.

When can you use Mediation?

- Mediation can be attempted at any stage of a dispute and the courts are likely to permit adjournments to litigation if there is a chance that mediation could resolve the dispute.
- If the mediation fails, the parties are free to proceed with litigation without prejudice to their legal rights. Most types of dispute can go to mediation provided the parties make a genuine attempt to mediate.
- Some cases where mediation has been regularly used include disputes involving family companies, partnerships, professional negligence, inheritance, employment, family and construction.

What is the Dispute Resolution Service (DRS)?

- The **Dispute Resolution Service (DRS)** was set up to provide a mediation service to assist with resolving disputes which would avoid the time, expense and stress associated with going to court.
- Mediation has now become well established as an effective means of resolving disputes and courts and advisers will now encourage parties to explore resolution of the dispute before coming to court.
- The DRS is managed by a management Board comprising experienced Solicitors and Barristers.

How does it operate?

- The DRS operates through a Panel of Solicitors and Barristers who are trained in mediation law and practice and who have learned mediation skills and who confirm they are eligible to act as mediators on behalf of the parties to disputes.
- All members of the DRS Panel must adhere to the DRS Code of Conduct and to the EU Code of Conduct for Mediators.
- Parties or their advisers can select a mediator from the panel or, if preferred, a mediator can be nominated by the DRS administrator.

If Mediation is suitable for me, how do I select a Mediator?

- First, contact the other party to the dispute and ask if they will agree in principle to try mediation as a method of resolving the dispute. This is essential and should be able to be done quickly.
- Many contracts now provide that if the parties have a dispute that they agree to use mediation.
- Mediation is a voluntary process and it cannot happen unless each party is willing to make a genuine attempt to resolve their dispute by mediation.
- If the other party agrees in principle to try mediation, select one of the mediators from the Directory of

Mediators. Each mediator has a profile page which lets you know what type of mediation they carry out. You should choose a mediator who is experienced in the type of dispute that is relevant to you.

- Tell the other party of your proposed choice of mediator and allow them time to consider the suggested mediator.
- The other party may accept your choice or propose an alternative and when a particular mediator is agreed in principle, the proposed mediator can be contacted. The mediator's contact details, including email address are on their profile page.

Referring the case to the Mediator

- Send brief details about the type of case and the parties involved to the mediator.
- Allow the mediator time to consider whether he will accept the case. The mediator may have acted for one of the parties in the past or may not be available at an early date.
- The mediator will inform you within **21 days** whether they are willing and able to deal with the dispute.
- If the mediator agrees to accept the case, he will write to the parties to confirm his appointment and to outline the fees which he will charge for the mediation.
- This will give you an opportunity to decide whether to go ahead with the mediation.
- The mediator will request that each party will provide to the mediator, within a reasonable period (usually **14 days** in advance of the date of the mediation), all necessary documents and arguments which are relevant for the mediation.
- What constitutes a reasonable period will depend upon the size and complexity of the dispute however the mediator will endeavour to ensure that the mediation is completed within **90 days** of the receipt by the mediator of the complete complaint file or if longer is

required by the mediator then within the time periods set out in "**WHERE DOES A MEDIATION TAKE PLACE AND HOW LONG DOES IT LAST?**" section.

- Once the mediator has all necessary documents and arguments, they will confirm to the parties that they now have the complete complaint file and are in a position to proceed.
- If the mediation proceeds, the mediator will make all the arrangements with you as to where and when the mediation will take place. He may also ask both parties for details about the dispute in advance of the mediation. You may bring your legal advisor or friend with you to the mediation, but you are not obliged to do so.
- Mediators with the DRS are willing to accept both domestic and cross-border disputes. Some disputes can be resolved using the EC Online Dispute Resolution platform.
- If the mediator has a conflict of interest and can no longer act in the mediation, this will be notified to the parties by the mediator who will also notify the Dispute Resolution Service, if necessary requesting that another mediator is appointed.
- An appointment of a new mediator is dealt with in the same way as appointment of the original mediator laid out above.

What happens if we fail to agree a Mediator

- In the unlikely event that a mediator cannot be agreed with the other party, the matter may be referred to the Dispute Resolution Service to appoint a mediator.
- Send contact details about yourself and the other party to:

Mr Andrew Kirkpatrick

Assistant Secretary
Law Society of Northern Ireland
Law Society House
96 Victoria Street
Belfast BT1 3GN

You may email this information to
andrew.kirkpatrick@lawsoc-ni.org

Do not include any papers about the dispute as these are not required to select and appoint a mediator.

- Mr Kirkpatrick will contact both parties, usually by phone to speed matters up, to discuss selecting and appointing a mediator.
- If a mediator is agreed and accepts the appointment, the matter will be passed to that person to make all the arrangements for the mediation.
- The mediator selected will be one of those who is on the website directory.
- **A fee is not charged for this appointment process.**

Where does a Mediation take place and how long does it last?

- Mediation does not take place in a court building but in a neutral location which the mediator will agree with the parties to suit everyone. This can be anywhere where there are facilities with separate rooms for each of the parties and for the mediator and for refreshments.
- The time envisaged for a mediation will be discussed with the mediator in advance of the mediation. Most mediations are completed within a day.
- You may bring your legal adviser or a friend with you to the mediation – this should be mentioned to the mediator in advance to ensure that each party is aware of it and has a chance of doing likewise.
- Mediation can also be carried out by telephone conference between the parties if appropriate.

- The aim of the DRS is to complete all mediations within **90 days** of the receipt by the mediator of the complete complaint file.
- In highly complex matters however the mediator may need to extend this time period at their discretion. If this is required, the mediator will notify all parties in writing.

Conduct of the Mediation

- The mediator will conduct the mediation in accordance with the **DRS Code of Practice** and the **EU Code of Conduct**
- The mediator will conduct the mediation in an impartial way and does not provide advice to either party. They will assist the parties in defining the issues involved in the dispute and will work with the parties to settle the dispute.
- The mediator will encourage the parties to generate their own solutions however the mediator may suggest solutions to the dispute for the parties' consideration if necessary.
- Any party has the right to withdraw from the mediation at any stage.
- If a settlement is reached, the terms of that settlement will be documented by the mediator for the reference of both parties.

How much does a Mediation cost?

- The fees will be in accordance with the Consumer Mediation Fees scale which you can view on the following pages.

****Please note** that mediation for health disputes does not fall within Consumer Mediation. If you have health dispute which requires mediation, DRS members will be happy to deal with this using the Non-Consumer Mediation processes.

Consumer Mediation Fees

Mediation lasting up to one hour

- This is **free** to the consumer and the person or organisation being complained about.

Mediation lasting up to two hours

- This is **free** to the consumer. There is a **£25** charge for the entity being complained about.

Mediation lasting more than two hours

- This is **free** to the consumer. Mediations which require over 2 hours would be subject to agreement between the mediator and the entity being complained about and take in to account the fees set out in the table below. There is no charge for the appointment of a mediator by the DRS in the event that the parties cannot agree on the appointment themselves.

CONSUMER MEDIATION FEES - MEDIATIONS OVER TWO HOURS

VALUE OF DISPUTE	FEE
£50,000 or less	<ul style="list-style-type: none">• £250.00 for a mediation of over 2 hours but up to 4 hours.• £75.00 per hour thereafter.• Preparation time - £50.00 per hour.
£50,000 or over but less than £100,000	<ul style="list-style-type: none">• £325.00 for a mediation of over 2 hours and up to 4 hours.• £90.00 per hour thereafter.• Preparation time - £50.00 per hour.
£100,000 or over up to £250,000	<ul style="list-style-type: none">• £400.00 for a mediation of over 2 hours and up to 4 hours.• £90 per hour thereafter.• Preparation time - £50.00 per hour.
Over £250,000	<ul style="list-style-type: none">• By agreement with the Mediator.

- All of the figures in the table above are subject to VAT if applicable. The fees assume the mediation will complete within the day it begins. Different rates may apply if the mediation moves into a second day. Travel time will be charged to the entity being complained about at £50.00 per hour.
- The above fees do not include room hire, refreshments or secretarial charges if incurred.
- If the value of the dispute cannot be ascertained the Mediator's charge will be £80.00 per hour for the mediation and £50.00 per hour for preparation and travel.

Non Consumer Mediation Fees

An Appointed Mediator

- If parties request that the **Dispute Resolution Service (DRS)** nominate a mediator on their behalf then the following charges indicated in the table below will be applied.
- All of the figures in the **table below** are the fees per party and are subject to VAT if applicable.
- The fees assume the mediation will complete within the day it begins. Different rates may apply if the

mediation moves into a second day. Travel time will be charged to each party at **£50.00** per hour.

- The above fees do not include room hire, refreshments or secretarial charges if incurred. These outlays will be the responsibility of the parties equally between them unless otherwise agreed.
- If the value of the dispute cannot be ascertained the Mediator's charge to each party will be **£80.00** per hour for the mediation and **£50.00** per hour for preparation and travel.

Choosing your own Mediator

- If parties select a mediator themselves then the parties will be required to agree the fees with the appointed mediator.

TABLE OF NON CONSUMER MEDIATION FEES

VALUE OF DISPUTE

FEE PER PARTY

£50,000 or less

- £250.00 for a mediation of up to 4 hours.
- £75.00 per hour thereafter.
- Preparation time - £50.00 per hour.

£50,000 or over but less than £100,000

- £325.00 for a mediation of up to 4 hours.
- £90.00 per hour thereafter.
- Preparation time - £50.00 per hour.

£100,000 or over up to £250,000

- £400.00 for a mediation of up to 4 hours.
- £90 per hour thereafter.
- Preparation time - £50.00 per hour.

Over £250,000

- By agreement with the Mediator

Becoming a DRS Mediator

If you wish to be considered for inclusion as a mediator on **www.mediatorsni.com** please email **andrew.kirkpatrick@lawsoc-ni.org** or complete the registration form at the back of this document.

Code of Practice

1. Eligibility of Mediators

- 1.1 A person is not eligible to act as a mediator unless he or she has undergone such training as required by the Society and engages in appropriate continuing education and/or practical experience in mediation.
- 1.2 If a mediator or a partner or employee of the mediator has represented one of the parties to the mediation during the three years preceding the mediation, the mediator shall not act as a mediator.
- 1.3 Neither the mediator nor a partner or employee of the mediator shall represent any party to the dispute after the mediation in any matter related to the subject matter of the mediation.
- 1.4 The mediator shall not act as mediator if any party to the dispute would reasonably apprehend a bias on the part of that mediator.

2. Introduction of the Mediator

- 2.1 After appointment, the mediator should introduce himself or herself to the parties and the parties shall have an obligation to satisfy themselves as to his or her suitability as mediator.
- 2.2 The mediator should outline the principles of mediation as a voluntary and confidential dispute resolution process in which an impartial mediator facilitates negotiations between the parties with the object of concluding a voluntary and mutually acceptable settlement.
- 2.3 The mediator should establish with the parties the amount of disclosure which will be required for the mediation and that the parties are aware of the possible admissibility or inadmissibility in subsequent proceedings of information disclosed in the mediation.
- 2.4 The mediator should advise the parties of the desirability of their being able to present a brief outline of their case at the start of mediation.
- 2.5 The mediator should advise the parties that they are not legally required to make concessions or to reach an agreement.
- 2.6 The mediator should discuss any possible conflict of interests and disclose to the parties any facts which may be reasonably regarded as having a bearing upon his or her impartiality.
- 2.7 The mediator should discuss the costs of the mediation with the parties.
- 2.8 The mediator should ensure that each of the parties is aware of their right to legal representation during the mediation.
- 2.9 The mediator should ensure that the parties at the mediation hearing have authority to settle the matter.

3. Conduct of the Mediation

- 3.1 The mediator has a duty of impartiality to the parties and should not behave in any way which displays partiality or bias to either party.
- 3.2 The mediator should adopt an approach which is entirely free of any discrimination on the basis of race, gender, religion or political belief.
- 3.3 In discussing settlement proposals with the parties, the mediator should be sensitive to the fact that one of the parties may be under pressure to settle the dispute.
- 3.4 The mediator has no authority to impose a solution on the parties.

- 3.5 The mediator may attempt to define or to assist the parties to define the issues involved and to enable the parties to focus upon the underlying issues, interests and needs.
- 3.6 The mediator may propose possible solutions but it is desirable that the parties should first be encouraged to generate their own solutions.
- 3.7 Any proposals made by the mediator as possible solutions should be put forward as a suggestion for the parties' consideration and not as the mediator's preferred settlement.
- 3.8 The mediator has a duty to the parties not to breach confidences entrusted to him.
- 3.9 The parties are free to have legal representation at each part of the mediation process.
- 3.10 The mediator may adjourn the mediation if he or she reasonably considers it to be appropriate.
- 3.11 The mediator shall be under an obligation not to use any information gained from the mediation for personal gain.

4. Termination

- 4.1 Each party has the right to withdraw from the mediation at any time.
- 4.2 The mediator should terminate the mediation if at any time he or she believes that the parties are abusing the process, that there is no reasonable prospect of reaching a settlement or if a miscarriage of justice is likely to arise.
- 4.3 If the mediation results in a settlement, the mediator should seek to ensure that the terms of the settlement are put into writing and that the parties are advised as to the legal effects thereof.

5. Complaints and Discipline

- 5.1 The mediator shall submit to such complaints and disciplinary procedures as the Dispute Resolution Service may establish from time to time.

European Union Code of Conduct for Mediators

The European Union Code of Conduct for Mediators launched in July 2004 is as follows:

"This code of conduct sets out a number of principles to which individual mediators can voluntarily decide to commit, under their own responsibility. It is intended to be applicable to all kinds of mediation in civil and commercial matters. Organisations providing mediation services can also make such a commitment, by asking mediators acting under the auspices of their organisation to respect the code.

Organisations have the opportunity to make available information on the measures they are taking to support the respect of the code by individual mediators through, for example, training, evaluation and monitoring.

For the purposes of the code mediation is defined as any process where two or more parties agree to the appointment of a third-party – hereinafter "the mediator" - to help the parties to solve a dispute by reaching an agreement without adjudication and regardless of how that process may be called or commonly referred to in each Member State.

Adherence to the code is without prejudice to national legislation or rules regulating individual professions.

Organisations providing mediation services may wish to develop more detailed codes adapted to their specific context or the types of mediation services they offer, as well as with regard to specific areas such as family mediation or consumer mediation.

1. COMPETENCE AND APPOINTMENT OF MEDIATORS

1.1 Competence

Mediators shall be competent and knowledgeable in the process of mediation.

Relevant factors shall include proper training and continuous updating of their education and practice in mediation skills, having regard to any relevant standards or accreditation schemes.

1.2 Appointment

The mediator will confer with the parties regarding suitable dates on which the mediation may take place. The mediator shall satisfy him/herself as to his/her background and competence to conduct the mediation before accepting the appointment and, upon request, disclose information concerning his/her background and experience to the parties.

1.3 Advertising/promotion of the mediator's services

Mediators may promote their practice, in a professional, truthful and dignified way.

2. INDEPENDENCE AND IMPARTIALITY

2.1 Independence and neutrality

The mediator must not act, or, having started to do so, continue to act, before having disclosed any circumstances that may, or may be seen to, affect his or her independence or conflict of interests. The duty to disclose is a continuing obligation throughout the process.

Such circumstances shall include

- *any personal or business relationship with one of the parties,*
- *any financial or other interest, direct or indirect, in the outcome of the mediation, or*
- *the mediator, or a member of his or her firm, having acted in any capacity other than mediator for one of the parties.*

In such cases the mediator may only accept or continue the mediation provided that he/she is certain of being able to carry out the mediation with full independence and neutrality in order to guarantee full impartiality and that the parties explicitly consent.

2.2 Impartiality

The mediator shall at all times act, and endeavour to be seen to act, with impartiality towards the parties and be committed to serve all parties equally with respect to the process of mediation.

3. THE MEDIATION AGREEMENT, PROCESS, SETTLEMENT AND FEES

3.1 Procedure

The mediator shall satisfy himself/herself that the parties to the mediation understand the characteristics of the mediation process and the role of the mediator and the parties in it.

The mediator shall in particular ensure that prior to commencement of the mediation the parties have understood and expressly agreed the terms and conditions of the mediation agreement including in particular any applicable provisions relating to obligations of confidentiality on the mediator and on the parties.

The mediation agreement shall, upon request of the parties, be drawn up in writing.

The mediator shall conduct the proceedings in an appropriate manner, taking into account the circumstances of the case, including possible power imbalances and the rule of law, any wishes the parties may express and the need for a prompt settlement of the dispute. The parties shall be free to agree with the mediator, by reference to a set of rules or otherwise, on the manner in which the mediation is to be conducted.

The mediator, if he/she deems it useful, may hear the parties separately.

3.2 Fairness of the process

The mediator shall ensure that all parties have adequate opportunities to be involved in the process.

The mediator if appropriate shall inform the parties, and may terminate the mediation, if:

- *a settlement is being reached that for the mediator appears unenforceable or illegal, having regard to the circumstances of the case and the competence of the mediator for making such an assessment, or*
- *the mediator considers that continuing the mediation is unlikely to result in a settlement.*

3.3 The end of the process

The mediator shall take all appropriate measures to ensure that any understanding is reached by all parties through knowing and informed consent, and that all parties understand the terms of the agreement.

The parties may withdraw from the mediation at any time without giving any justification.

The mediator may, upon request of the parties and within the limits of his or her competence, inform the parties as to how they may formalise the agreement and as to the possibilities for making the agreement enforceable.

3.4 Fees

Where not already provided, the mediator must always supply the parties with complete information on the mode of remuneration which he intends to apply. He/she shall not accept a mediation before the principles of his/her remuneration have been accepted by all parties concerned.

4. CONFIDENTIALITY

The mediator shall keep confidential all information, arising out of or in connection with the mediation, including the fact that the mediation is to take place or has taken place, unless compelled by law or public policy grounds. Any information disclosed in confidence to mediators by one of the parties shall not be disclosed to the other parties without permission or unless compelled by law."



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