

MEDIATION CODE OF PRACTICE

I Principles of mediation

1. Mediation is a process in which a neutral mediator helps parties in dispute to try to work out their own principles and terms for the resolution of the issues between them. Mediators do not arbitrate and have no authority to make or impose decisions regarding the parties' issues.
2. Mediation is voluntary, and any party or the mediator may terminate at any time.
3. Notwithstanding that a mediator may be a solicitor, barrister, surveyor or other professional, when acting as a mediator he or she acts as a neutral facilitator of negotiations and does not give professional advice to the parties, individually or collectively, nor does he or she represent any party, and mediation is not a substitute for each party obtaining independent legal, accounting, tax or other professional or technical advice.
4. The mediator tries to assist the parties to reach a conclusion of the dispute which is appropriate to their particular circumstances, and not necessarily the same conclusion that might be arrived at in the event of adjudication by the court. That allows the parties to explore and agree upon a wider range of options for settlement than might otherwise be the case.
5. The mediator may meet the parties individually and/or together and may assist the parties for example, by identifying areas of agreement, narrowing and clarifying areas of disagreement, and defining the issues; helping the parties to examine the issues and their available courses of action; establishing and examining alternative options for resolving any disagreement; considering the applicability of specialised management, legal, accounting, technical or other expertise and generally facilitating discussion and negotiation; managing the process and helping them to try to resolve their differences.
6. The mediator will not act as such in a dispute in which he or she has at any time acted as a professional adviser for any party, nor in respect of which he or she is in possession of any further information which was obtained by the mediator (or any member of his or her firm) as a result of having so acted or advised; nor having once acted as a mediator will he or she act for any party individually in relation to the subject matter of the mediation.

II Confidentiality and privilege

1. The mediator will conduct the mediation on a confidential basis, and will not voluntarily disclose information obtained through the mediation process except to the extent that such matters are already public or with the consent of the parties. If however the mediator considers from information received in the mediation that the life or safety of any person is or may be at serious risk, the duty of confidentiality shall not apply; and in such event the mediator shall try to agree with the person furnishing such information as to how disclosure shall be made.

2. Where the mediator meets the parties separately and obtains information from any party which is confidential to that party and which is not already public, the mediator shall retain the confidentiality of that information from all other parties except to the extent that the mediator has been authorised to disclose any such information.
3. All discussions and negotiations during the mediation will be regarded as evidentially privileged and conducted on a 'without prejudice' basis, unless such privilege is waived by the parties by agreement, either generally or in relation to any specific aspect. No party is to refer in any proceedings that may subsequently take place to any such privileged discussions and negotiations, or require the mediator to do so, nor may any party have access to any of the mediator's notes or call any mediator as a witness in any proceedings.

III Duty of impartiality

1. 1. The duty of impartiality of the mediator is inherent in the mediation process.
2. 2. If a mediator believes that any party is abusing the mediation process, or that power imbalances are too substantial for the mediation to continue effectively, or that the parties are proposing a result which appears to be so unfair that it would be a manifest miscarriage of justice, then the mediator will inform the parties accordingly, and may terminate the mediation.

IV Information and documents

1. The mediator will assist the parties, so far as appropriate and practicable, to identify what information and documents would help the resolution of any issue, and how best such information and documents may be obtained.
2. Mediation does not provide for the disclosure and discovery of documents in the same way or to the same extent as required by court rules. The parties may voluntarily agree to provide such documentation, or any lesser form of disclosure considered by them to be sufficient. This may be considered and discussed in the mediation.
3. The mediator has no power and does not purport to make or require independent enquiries or verification to be made in relation to any information or documentation sought or provided in the mediation. If this may be material to the resolution of any issues, consideration may be given in the mediation to the ways in which the parties may obtain any such information, documents or verification.

V Relationship with professional advisors

1. Solicitors, barristers or other professional advisors acting for the individual parties may, but need not necessarily, participate in the mediation process. Such solicitors and/or advisors may take part in discussions and meetings, with or without the parties, and in any other communications and representations, in such manner as the mediator may consider useful and appropriate.

2. Professional advisors representing all the parties collectively, such as the accountants of a partnership whose partners are mediating their differences, may be asked to assist in the mediation in such manner as may be agreed.
3. Parties are free to consult with their individual professional advisors as the mediation progresses. The mediator may make recommendations to the parties as to the desirability of seeking further assistance from professional advisors such as lawyers, accountants, expert valuers or others.

VI Recording of proposed agreement

1. Agreements reached in mediation are ordinarily intended to be legally binding on the parties when (but not before) they have been recorded in writing and signed by the parties. Where appropriate, orders of the court or arbitration awards may be made by consent on the basis of such agreements.
2. At the end of the mediation, or at any interim stage, the mediator and/or the parties or their representatives may prepare a written memorandum or summary of any full or partial agreement reached by the parties, which may, where considered by the mediator to be appropriate, comprise draft heads of such agreement for formalisation by the legal advisors acting for the parties.
3. If the participants wish to consult their respective individual legal advisors before entering into any binding agreement, then any terms which they may provisionally propose as the basis for resolution will not be binding on them until they have each had an opportunity of taking advice from such legal advisors and have thereafter agreed to be bound.