



## MEDIATION - METHOD STATEMENT

Each of our Mediators is accredited with the ADR Group or the CEDR Group which are the oldest and most well established organisations in the UK dealing with alternative dispute resolution and mediation. As such we have behind us the standards and experience of large ADR organisations.

The process of mediation is an informal without prejudice process in which the parties use the services of a professional Mediator to help them explore their areas of agreement and disagreement in the light of their own needs and positions. The Mediator will assist the parties to try to find an agreed solution to their problem.

Before the day of mediation takes place, the appointed Mediator will ask the parties to prepare a Position Statement which they will send to the Mediator and each other in good time before the mediation appointment. The Position Statement for each party sets out that party's analysis of the case and the issues that they believe affect it and may, in addition, set out that party's position in relation to their analysis of the opponent's case. The Mediator will also ask the parties to prepare a bundle of any documents they want to refer to at the mediation which they should aim to agree upon. If they do not agree the bundle then they can prepare their own bundle, as long as they send a copy on to the Mediator. They will at that point need to decide with the Mediator whether and when to send a copy of their bundle to their opponent.

The Mediator will read the Position Statements and any bundle of documents prior to the mediation. The Mediator will also send to the parties a draft of a Mediation Agreement for them to agree upon and which may be signed on the day of mediation.

The Mediator will normally contact the parties' representatives by telephone before the mediation to clarify any issues that the Mediator believes needs to be clarified in advance of the mediation day arising from his/her study of the Position Statements and the documents supplied to the Mediator. Such contact will be entirely confidential between the Mediator and the party that he telephones unless otherwise agreed between the Mediator and that other party.

In advance of the mediation the Mediator will also ask each party to prepare a statement of the costs that they have so far expended in relation to the dispute with their lawyers, and a further statement of the costs that they believe are likely



to have to be spent if the matter is litigated before the courts or at arbitration. This statement of costs should contain sufficient detail to enable both the Mediator and the other parties to understand how the party preparing their statement of costs has reached the figures that they set out.

The Mediator recognises that it is possible that individual parties to the dispute might want to disclose documents to the Mediator but they do not necessarily wish the Mediator to disclose to their opponents in advance of the mediation. In that event, either party is at liberty to supply such statements of documents to the Mediator provided that these are clearly marked "NOT TO BE DISCLOSED TO THE OTHER PARTY WITHOUT PRIOR AUTHORITY".

The Mediator will ask the parties in any dispute to file their Position Statements and serve any documents that they want to rely upon in good time before the mediation appointment.

Paris Smith can normally provide appropriate accommodation for a mediation for the benefit of the parties at their offices provided they are given reasonable notice to do so. Alternatively the Mediator appointed will be prepared to travel to a third party location where the parties wish him to do so.

On the day of the mediation appointment, each party will be allotted their own room where they can remain with legal representatives throughout the day of the mediation. In addition another room will be made available for the use of the Mediator and as a room where the parties can meet jointly if it is appropriate to do so. During the period of the mediation, the parties will be kept supplied with water, tea and coffee at their request. Lunch arrangements may be made available upon request at cost.

If the parties require it, it is possible that secretarial, telephone and photocopying services can be made available if the mediation takes place at the offices of Paris Smith. A charge may be made at discretion.

At the start of the mediation, the Mediator will attend on each party to introduce himself/herself, to explain the way in which matters will proceed during the day, to answer any questions that the parties may have and to arrange for signature of the Mediation Agreement.

Subject to the Mediator's discretion, there will normally be a joint session of the parties at which the parties and their representatives will introduce themselves and each will be invited to make a statement on their case if they wish to do so.

Following the joint session, the parties and their representatives will normally break away into separate meeting rooms and the Mediator will see each party in turn for a confidential discussion as to their position in relation to the dispute. The Mediator will not disclose the content of those discussions with each party unless he is specifically authorised to do so by that party but the Mediator will attempt, in this process, to allow the parties to explore their areas of agreement and disagreement and will give them every possible assistance to try to explore commercial solutions to their dispute. At the Mediator's discretion, he/she may during the day arrange further joint meetings of the parties or of their professional advisers with a view to advancing negotiations on their proposal or for the purpose of exchanging information or for a discussion about the dispute or any part of it.

One of the advantages of mediation is that the parties are enabled to explore the possibility of settlement and proposals throughout the mediation day for terms of an agreement which the courts would not be enabled to Order if the matter



proceeded to a trial in court. It must be carefully noted that the Mediator will not take evidence from any of the parties and will not normally make any findings of fact or law. The Mediator may comment upon the parties' cases if asked to do so but it is important to remember that the Mediator's purpose is to enable the parties themselves to explore the issues in the case and their positions and needs within it with a view to finding their own solution.

If the mediation is successful and the parties reach an agreement, then the parties or their representatives will be asked to prepare Heads of Terms for their clients to sign before the mediation is concluded. An agreement will not be concluded between the parties until a statement of the terms they have agreed in writing is agreed upon and signed by them all. The Mediator will be on hand to assist in that process, although the terms of agreement will be drawn by the parties' representatives.