

ASSOCIATION OF NORTHERN MEDIATORS
GUIDELINES FOR MEDIATION (EDITION No.10)

1. Application of these Guidelines

- 1.1 Mediation is available to parties who have a dispute or difference arising out of a contract or some other legal relationship and who wish to resolve their dispute or difference amicably without recourse to the procedures of litigation or arbitration.
- 1.2 The parties may by agreement adapt these guidelines to suit their particular purpose.

2. Commencement of Mediation

- 2.1 The parties should sign an agreement to mediate. It can either be in a prescribed form or in a written form that evidences the agreement to mediate.
- 2.2 The official application form requires each party to put down some basic information such as the names and addresses of the parties and brief details of the dispute.
- 2.3 Mediation will be both confidential and privileged. At no stage can any of the notes arising during the mediation be used to prejudice one or other of the parties and the Mediator can never be called on to give evidence in any subsequent process. Documents that are produced during the mediation may not subsequently be privileged if they would otherwise be disclosable in any existing or subsequent litigation. Please note the important exception to the confidentiality rule at 4.3 below.

3. Appointment of a Mediator

- 3.1 The Association of Northern Mediators ("the Association") maintains a list of Mediators with their specialisms. Whilst expertise in a particular subject is sometimes helpful, it is not essential. Full details can be obtained from the list available by post or on the web site on www.northernmediators.co.uk.
- 3.2 Where a Mediator is not chosen by the parties, the parties shall ask for one to be appointed. The Association of Northern Mediators does **not** appoint Mediators. Most Court Schemes use the Law Society to appoint regional Mediators on a rota basis. Appointments can also be obtained by contacting the ADR Group, The Academy of Experts, CEDR, the Law Society, the RICS, and the Chartered Institute of Arbitrators. There are a large number of other private providers. Full details of schemes and useful addresses can be found on the web site or by telephoning the Association. There is also a links section provided with all the major providers.
- 3.3 If the parties agree, a Co-Mediator may be appointed at no cost, or on an expenses only basis save in cases where there are two or more lead mediators agreed and appointed.

4. Procedure

- 4.1 The Mediator will act in an independent, impartial and just manner. The informal procedure is intended to assist the parties to reach an amicable and equitable settlement of their dispute or difference and the Mediator may conduct the proceedings in any manner he or she considers appropriate and will take particular account of the following matters:-
- (a) the general circumstances of the cases;
 - (b) the business relationship of the parties;
 - (c) the parties' wishes;
 - (d) the need for a speedy and economic settlement.
- 4.2 The Mediator will fix time limits within which the parties should make brief written submissions and supply any relevant documents.

- 4.3 Unlike a Judge or Arbitrator, the Mediator can see the parties separately. However, any information disclosed can only be disclosed to the other party for comment providing the disclosing party consents.

5 Confidentiality

- 5.1 Mediation is an entirely confidential process and the documents prepared for and disclosed within mediation are not disclosable elsewhere. The same applies to what is said within the meetings and disclosed to the other party(ies). Save what is said in 5.2 below the mediator may not disclose anything either to the other party(ies) or to third parties without being specifically authorised to do so.

- 5.2 Most practitioners are aware of the practical implications of Part 7 of the Proceeds of Crime Act 2002. The parties are respectfully reminded that a mediated agreement is potentially an “arrangement” within the meaning of s328. As has recently been made clear by the President of the Family Division [P v P 2003 EWHC Fam 2260 8th October 2003] there is no legal professional privilege exemption to s328. Accordingly any mediator would be potentially committing an offence in continuing a mediation once he or she suspects that any such agreement may facilitate (by whatever means) the acquisition, retention, use or control of “criminal property” by or on behalf of another person. Property is “criminal property” if it constitutes a persons benefit, in whole or part, directly or indirectly, from criminal conduct. This is a very wide definition and would, for example, include assets derived in whole or part from untaxed income. If such an allegation is raised a mediator would then be required to make an authorised disclosure to the National Criminal Investigation Service (NCIS) if the mediation is to continue. In practical terms this risks bringing the mediation process to an end. This represents an exception to the outright confidentiality of mediations.

6. Settlement of Disputes and Narrowing the Issues

- 6.1 A Mediator shall not express his or her personal view on the dispute or difference referred to them unless the parties expressly request that the Mediator gives such a preliminary view. It must be stressed that such a step would be unusual.
- 6.2 Where a settlement is reached, the parties must draw up a settlement agreement with or without the assistance of the Mediator. This agreement when signed and witnessed by the Mediator will make the settlement legally binding. The contents of the agreement will be confidential and may not be disclosed by a party except for the purposes of enforcing it in legal proceedings. Without a written agreement, further disputes may arise as to what was agreed.

7. Termination of the Mediation

- 7.1 The Mediation may be concluded at any time by:-
- (a) the withdrawal of any party from the proceedings;
 - (b) written notice from all the parties to the Mediator;
 - (c) written notice from the Mediator to the parties stating that continued attempts to mediate are no longer in his or her estimate fruitful;
 - (d) upon the parties reaching a settlement agreement.

8. Enforcement

- 8.1 Once the mediation proceedings have been brought to an end, the parties may refer the case to arbitration or to litigation on only such questions that have not been settled by the mediation or any questions arising out of the settlement agreement itself.
- 8.2 In any subsequent proceedings the parties may not call in evidence:-

- (a) the views expressed by either party or the Mediator in connection with the settlement or proposed settlement;
- (b) admissions made by either party during the mediation;
- (c) proposals (if any) suggested by the Mediator;
- (d) evidence of abortive or draft settlement agreements or other document arising out of or during the mediation.

9. **Costs**

9.1 Unless the parties agree otherwise in the settlement agreement, the costs of the mediation will be borne equally between them. These costs include:-

- (a) the reasonable fees of the Mediator, whether or not a settlement is reached;
- (b) the travel and other out of pocket expenses of the Mediator;

9.2 Fees for multi-party mediations are subject to individual negotiation.

9.3 Unless they agree otherwise, the parties will bear their own costs of preparing and submitting their cases to mediation. These costs include such items as room hire, travel and other out of pocket expenses of witnesses, legal or other advisers.

9.4 If appropriate the appointed Mediator can complete the blanks below to guide the parties to be apportioned equally or as agreed and these guidelines can then be attached to the Mediation Agreement.

Agreed maximum fee for day(s)	£
Standard hourly rate (preparation)	£
Standard hourly rate (hearing)	£
Travel or waiting time	£
Car mileage	£
Room hire	£
Other	£

The fixed fee includes [] hours preparation. The Mediator reserves the right to claim an hourly rate in the event that the preparation involves more time or if the mediation continues beyond 7.00 p.m on a full day's mediation or beyond 4 hours on a half day mediation.

10. **Payment**

10.1 Unless otherwise agreed the fixed mediation fee is payable in advance of the mediation, or if agreed otherwise within 28 days of the mediator's invoice. Solicitors should be aware that as with barristers fees they will be invoiced for the mediation fixed fee directly and shall be responsible for the payment of the same. All representatives are therefore urged to secure or otherwise be assured of the mediation fees from their clients.

10.2 Interest will be chargeable on amounts overdue at 15% per annum.

11. **Cancellation**

11.1 Whilst no cancellation fees would normally be payable, in the event that preparatory work had been done the mediator reserves the right to charge a proportion of the mediation fee at an hourly rate or at an appropriate proportion of the fee agreed.

12. **Quality Assurance**

12.1 The Association is concerned to maintain the best possible quality for all mediations. All panel Mediators have completed their training and have been approved as lead Mediators by the training providers listed in paragraph 3.2. The Association itself cannot be held responsible for any appointment or nomination whether agreed or otherwise. Users of mediation may be asked to complete a questionnaire. Feedback is in any event always helpful particularly with court schemes.

12.2 All practising Mediators must carry professional indemnity insurance cover to a value of at least £250,000.

12.3 In the event of any complaint about the way the mediation was conducted by the Mediator, users should write to the organisation that trained the Mediator, respectively the ADR Group, ADR Chambers, the Academy of Experts ,CEDR or the Chartered Institute of Arbitrators, full details of which are available from the Association and can be found on the web site below .

12.4 For any other complaints or comments on the service provided by the Association these should be addressed to:-

The Chairman
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