

# THE MEDIATION DAY

## Key issues:

- Arrival and settling in
- Opening joint session
- Private (caucus) sessions
- Concluding the Mediation

## A. Arrival and Settling In

Parties should aim to arrive at the venue approximately 30 minutes before the mediation is due to start.

The mediator will greet the parties and take them to their private room for a short introductory chat to get to know names and faces and to answer any final questions about the day. The mediator will ensure that the parties have signed the mediation agreement and that any other attendees (such as lawyers, experts or supporters) have signed a separate confidentiality agreement. She will also check that each party has someone in attendance who has authority to settle the dispute on behalf of that party.

The mediator will then call everyone into an opening session.

## B. Opening joint session

We are strongly of the view that, save for a few exceptional cases, opening joint meetings are an important part of the mediation process. Although parties may find it uncomfortable and stressful sitting in the same room as the other party(ies), it is our view that this is not a sufficient reason not to hold such a meeting.

Our experience is that the opening meeting sets the tone and agenda for the day and allows the parties to meet the people with whom they are negotiating.

Once everyone has settled, the mediator will open the mediation, will formally introduce herself and will ask all those present to do the same. She will then give an opening address which will cover matters including:

- The purpose of the mediation
- That the process is forward-focused rather than an exercise in apportioning blame
- Use of first names
- That only one person should speak at a time and people should not interrupt one another
- The process is entirely private and confidential
- The process is without prejudice
- That either party is free to leave at any time but are asked to give the mediator 5 minutes before doing so to see whether they can be persuaded to stay
- The process is non-binding until the parties agree and sign settlement terms

The mediator will then invite the parties (or their representatives) to each make a short opening statement. The opening statement is an opportunity for each party to present their case and to explain their position. In general, short and succinct opening statements have greater impact on the other party than lengthy speeches and each party's opening statements will be limited to between five and ten minutes. It is helpful to avoid aggressive or inflammatory language and to focus on finding a solution rather than seeking to apportion blame for what has happened to date.

The mediator will then normally invite the parties to go to their private rooms. The mediator will then move between the rooms.

### **C. Private (Caucus) Sessions**

The private sessions between each party and the mediator are to allow the mediator to understand the case from each party's perspective.

During the private meetings, the mediator will strongly reality test the party's case and try to ascertain their true negotiating position.

Before leaving a private session, the mediator will always ask:

- What information they can convey to the other party
- Whether the party has any questions which she should put to the other party; and
- Whether there are any concessions which they should try and encourage from the other party

If the party wishes to make an offer, the mediator will ask that party to put the offer in writing for the mediator to pass to the other party.

### **D. Concluding the Mediation**

The mediator will continue to move between the two private rooms until the parties reach an agreement. The mediator will then bring the parties or their lawyers together to draft the settlement agreement.

Once the parties have signed the settlement agreement, the mediator will bring the mediation to a close.

**HG Consulting**