Dickins Hopgood Chidley
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To discuss this and to obtain more information contact
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Mediation

At Dickins Hopgood Chidley we understand that becoming involved in a dispute, whether it be with a business, customer, or between individuals, can be stressful, time consuming and expensive.

So when we look at how best to resolve your dispute, we look not only at Court proceedings, but also at methods of Alternative Dispute Resolution (ADR).

There are many varieties that are suitable for different types of dispute, but this fact sheet considers Mediation.

What is Mediation?

Mediation is a voluntary process whereby the parties agree to appoint an independent third party, the mediator, whose role is to assist the parties in coming to a mutually agreed resolution to a dispute. The mediator is not a judge; they will not decide the case or come down on one party's side. Instead they discuss the parties' positions on the case and settlement offers and discuss risks of the case and other factors that a Court would consider, to help the parties narrow the issues and eventually, all being well, come to a negotiated position.

Mediation is confidential and without prejudice, which means that nothing said at the mediation can later be used in any court proceedings. This gives the parties the freedom to say what they like and come to any agreement they wish, which a Court may not be able to award.

Proceedings do not need to have been issued for a mediation to be attempted between the parties to a dispute; indeed the trend is moving towards early mediation to avoid the costs of issuing Court proceedings at all.

How does Mediation work?

The parties, either together or at the suggestion of one, will agree to attend mediation. This will not be ordered by the Court, as Mediation is a voluntary process, but the Court does have an expectation of the parties to attempt to settle the dispute at all stages, and can impose cost sanctions on a party that unreasonably refuses to mediate.

Once the parties have agreed to attend mediation, they will propose mediators and agree which one is to be appointed. Some mediators specialise in certain areas and it is important that a mediator is appointed who has the relevant knowledge of the area of law the dispute covers. Sometimes a party wants 'their' mediator to be appointed, but in reality, as the mediator is independent, it makes little difference which party nominates him or her.

Once the mediator has been appointed, the parties will agree a bundle of documents, known as the mediation bundle, which the mediator will review prior to the mediation. The parties may, and the mediator may require them to, exchange a position statement, which is a document that sets out their position on the dispute and what they wish to achieve at the mediation. The position statement may even set out thoughts on offers they would make. A 'for the mediator's eyes only' statement may also be produced, which would only be disclosed to the other party with the consent of the other.

Continued overleaf

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On the day of the mediation, it may begin with a joint session, where all parties sit in one room and the mediator chairs a discussion of the issues of the case. This is not a requirement and it may be that the parties do not meet through the entirety of the mediation. The parties will then break out to their own room and the mediator will shuttle between them, initially discussing the dispute generally to get an understanding of the parties' position, perhaps facilitating an exchange of legal arguments before building up to the exchange of offers and counter offers until, hopefully, a settlement is reached.

Mediation is a voluntary process and one party may stop participating at any time. Equally, mediations can be quite long, with discussions going on into late evening.

Once an agreement has been reached, it is not binding until it has been recorded in writing and signed by all parties. This is usually undertaken by the legal advisers with assistance from the mediator.

What does Mediation cost?

The fees of a mediator are variable and are sometimes based on the value of the dispute being mediated. Typically, a contractual dispute mediator would charge a fee in the region of £800-£1,500 per party. Additional costs on top may be travel, and additional charges if the mediation runs over a certain time of the day.

On top of the mediator's fees are legal fees, which also vary depending on the complexity of the dispute being mediated, and whether there is a requirement for barrister attendance, which is sometimes beneficial in complex disputes.

If you would like more information regarding mediation or any other method of ADR, please contact **Paul Owen** to arrange a consultation on **01488 683555** or email **powen@dhc-solicitors.co.uk.**