

# Essential Mediation

resolution wrapped up

## Preparing for Mediation



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The aim of mediation is to find an agreement which is acceptable to all parties and which enables the dispute to be settled.

Whilst a high percentage of mediations are successful in reaching an acceptable solution there are some that are not. The most common reason for mediation failing, is that one or both of the parties have failed to prepare well enough for the day, or have attended with unrealistic expectations.

The key to maximising your chances of getting a good outcome in mediation is to have prepared well beforehand. A prepared party will have a better chance of persuading those on the other side that they should think again about the strengths and weaknesses of their case.

Mediation involves facilitated discussion of the issues in a case, not a presentation of evidence, remember that this is not a court. You will have a skilled mediator and may have a solicitor or other professionals present, but at the end of the day the decision to reach an agreement is down to you and the other parties. This means that you are in control of the final outcome.

This document and the 'Essential Preparation in 10 Steps' document is intended to assist your preparations for a mediation session. It is not an absolute guide and some of the information will not be relevant to all circumstances. However, if you have considered all of the points below then you should be in a position to ensure that you get the most out of the mediation day.

The better informed you are about the mediation the more confident you will be.



## Know your case

The more aware you are of the issues of the dispute and the other parties reasoning for its position, the easier it will be for you to successfully present your case on the day. Prior to the mediation day you should take into consideration the following:

- What are the key issue(s)? - Take some time to think about the issue(s) you want to talk about at mediation. Write them down, then think why it is important to you;
- Highlight the most important issues to you and think about what the other parties in the dispute might say are the issues. Consider whether they will be the same as yours;
- List the strengths and weakness of your case and do the same for your opponents if possible;
- Once you understand the issues start to think about the options for dealing with each one and write them down. Think outside of the box and turn constraints into opportunities;
- Decide whether there are any facts that you do not want to disclose to the other party. Either keep them to yourself or tell the mediator in confidence. However, rarely should there be information that should not be shared with the mediator, sharing it confidentially means that the mediator has a better understanding of the true issues and therefore where a settlement may be possible;
- Who you would like to attend, do you need support? You will need to inform the other parties and the mediator prior to the mediation day of the names of the persons attending on behalf of your party.

## Develop a settlement approach

Think about your options for ending the dispute. If you have not developed a settlement approach, then reaching an agreement on the mediation day will be more difficult.

### You therefore need to consider before the mediation day:

- What would be an acceptable outcome for you?
- Determine what range of outcomes would be acceptable to you. The range(s) that you create (and keep to yourself) gives your discussions a flexibility which often is necessary for a successful resolution to be obtained;
- What issues or information may cause you to change your mind?
- Consider options, alternatives and “what ifs” in advance;
- Be open and honest with your mediator as all your discussions and meetings are confidential and you can use him/her to test solutions.

## Understand your emotions

It is important to understand and recognise your emotions so that you can plan how to deal with them on the mediation day. You may have strong feelings about this dispute which is normal and understandable, however you should try not to be confrontational.

Try to put your emotions to one side and be realistic. If you know what the other party's position is, do you have any common interest and would what you want be possible? Focus on the problem, not on the people associated with it.

### On the mediation day you could consider:

- Asking the mediator for a break;
- Explaining to the other party how you are feeling;
- Asking to have a support person at the mediation.

## Authority

The aim of mediation is to reach an agreeable solution on the day. It is therefore important that all parties come with not only the people who are informed of the issues, but with a person who has authority to commit the party to any agreement reached as a result of the mediation.

If the authorised person for a party will or may need authority from any person or body not present at the mediation to enter into any agreement, that party will need to inform the other parties and the mediator before the date of the mediation and ensure that they are able to contact the appropriate person on the day if required.



## Position statement

In order to assist the mediator to prepare for the mediation day he/she will ask you to provide a summary (position statement) of the disagreement(s), along with any other relevant documents, so that the mediator can have some background information prior to the meeting.

Position statements should be seen as the first important step in the mediation process, so you should consider including the following information:

- General information relating to the names of the parties, attendees, date and location of the mediation day;
- A brief background to the case. A list of issues and/or a chronology of the key events is useful to the mediator;
- The key issues and what you perceive to be the strengths;

- Anything different or unique about the case that the mediator should be aware of;
- Any agreements already offered;
- The outcome you hope to achieve by the end of the mediation day;

### **In addition the following information would be helpful:**

- A short summary of what you think the other parties position is and details on the outcome you think they are looking for;
- Any further information or documents which are not to be disclosed to the other parties which you think will assist the mediator's understanding of your case. These documents should be clearly marked that they are confidential to the mediator.

The position statement and the documents will need to be sent to the mediator and to the other parties not less than seven days before the mediation day, or on a date that the mediator and the parties may agree.



## Opening statement

On the mediation day you will be given the opportunity during a joint session to make a short opening statement (usually 5-10 minutes) directly to the other side to explain your position. If you decide to take up this opportunity you need to be prepared and should consider the following when planning your statement:

- Introducing yourself and your party, confirming your willingness to work towards an agreement;
- Be realistic and consider your delivery i.e. tone and body language;
- Provide an overview of the facts and issues as you see them, avoid focusing on how you got into this situation;
- Comment on the other side's statement if they went first and indicate any agreements or disagreements;
- Avoid at this stage stating any specific settlement and emotive language as the other party may then focus on this, rather than actively listening to the facts as you see them.

## On the day

Mediation works best when people are able to listen to each other, regardless of their positions, and are willing to work with each other to find a solution to move forward;

- Be prepared to listen carefully to the opening statement by the other party;
- Be prepared to work hard;
- Be prepared to change your view;
- Be prepared for a long day;
- Expect the unexpected;
- Be willing to accept that new information and/or developments may arise. See these as opportunities to reduce or eliminate problems.





If you would like any further assistance preparing for mediation or you have any further question then please contact us by email: [admin@essentialmediation.co.uk](mailto:admin@essentialmediation.co.uk) or call: 01908 246023

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