



WHAT TO EXPECT AT MEDIATION

Mediations are now quite common as a means of attempted settlement and the courts expect mediations to take place in most cases. The process is particularly useful as it is confidential and anything said at mediation cannot later be used in evidence at a court hearing. It is common practice for each party to pay an equal share of the mediator's fees and the costs of room hire.

Before the mediation:

- The lawyers for each party will agree on the contents of a bundle of relevant documents to be provided to the mediator.
- We will prepare a 'position paper' setting out a summary of your claim and a suggested compensation amount which will represent your claim at its highest.
- The lawyer for the defendant/s will prepare a similar document setting out their arguments as to whether your claim will succeed. A suggested compensation amount is not usually included.
- The mediator will circulate a draft mediation agreement. A mediation agreement is a document that outlines the roles and functions of all the parties involved in the mediation. The document is agreed upon and signed by the parties involved and it states each parties obligations to:
 - Cooperate during negotiations.
 - Pay the costs of the agreed & appointed mediator's fees.
 - Have adequate representation & authority.
 - Confidentiality & privilege provisions; and
 - The method for settlement of the claim or termination of the mediation.



On the day of the mediation:

- You will be present with your legal representatives.
- The defendant/s will usually be represented by a barrister, a solicitor and an insurance claims officer. It is not common for a defendant to attend personally.
- The mediation will usually start at 10 am, but we should meet for a short time before that. There is no set time by which the mediation must end. Most seem to take all day.

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- The mediation agreement and confidentiality agreement is signed by all persons present.
- The mediator will ask everyone to come into a room for an 'opening session' which usually takes only 30 minutes or so.
- Your barrister / solicitor will then say something about your claim, if necessary, to supplement the position paper.
- You will be invited to say something if you wish. We can discuss the content of what you may wish to say, in advance. However the other parties are not permitted to 'cross examine' (ask questions) of you.
- The barrister / solicitor for the other parties may also speak about your claim, to supplement their position papers.
- The different parties then break off into private rooms and the process of discussing the claim and exchanging offers begins. The mediator does not have the power to make a decision about the value of a claim. The mediator can only resolve if the parties reach an agreement.
- If an agreement is reached, documents will be signed by you and your lawyers, to document the settlement. Those documents will usually provide that the settlement will be remain confidential.

In our experience, most matters resolve at mediation, or in negotiations which continue in the days and weeks afterwards.

If you have any questions at this stage about the process, please contact us to arrange a time for a discussion.

Negotiations: Offers and counter offers

Whether at a mediation or otherwise, it is important to remember that:

- If the other party makes an offer and you make a counter offer, that counter offer operates as a rejection of the other parties offer. Once an offer is rejected, the other party is under no obligation to make the same offer again. The other party may then reply with a reduced offer or no offer at all.
- The other party may make an offer which has an expiry date – for example, the offer may be open for acceptance for 3 days. Once the time for acceptance has passed, the other party is under no obligation to make the same offer again. The other party may then reply with a reduced offer or no offer at all.
- The other party's attitude to settlement may change over time. One cause for a changed attitude may be the outcome of a pre-hearing meeting of expert witnesses. Based on new evidence or on other factors such as increasing legal costs, the other party may choose to make a reduced offer or no offer at all.

This document is not legal advice and is intended to provide a general guide to the subject matter. Specialist advice should be sought about the circumstances specific to your situation.