



NICHOLAS WOOLF & CO

S O L I C I T O R S

87 CHANCERY LANE, LONDON WC2A 1ET
T. 020 7242 6018 F. 020 3602 5538 E. info@nicholaswoolf.com
www.nicholaswoolf.com

MEDIATION

By Nicholas Woolf, Director and Principal of Nicholas Woolf & Co

What is mediation?

Mediation is a flexible, voluntary, (generally) confidential form of alternative dispute resolution in which a neutral third party assists the parties work towards a negotiated settlement of their dispute, with the parties retaining control of the decision on whether to settle or not.

Styles of mediation:

1. Facilitative (i.e. the mediator helps facilitate an agreement).
2. Evaluative (where the mediator, not acting as a judge, may evaluate the strengths and weaknesses of a case).

There may be a mixture of the two.

Other uses of mediation:

- (a) Scoping – identifying matters in dispute.
- (b) Deal – negotiating a deal.
- (c) Costs mediation i.e. liability has been agreed but costs haven't and mediation is used.
- (d) Agreeing policies, rules and regulations.

Typical mediation:

- (a) Choose a mediator (three of choice, many different professional qualifying bodies).
- (b) Directions.
- (c) Case summary agreed (maybe).
- (d) Open statements.

In the mediation:

1. Mediator introduces.
2. Opening statements from both parties.
3. Breakout rooms (possibly).
4. Shuttle diplomacy.

5. Interim joint meetings.
6. Conclusion of mediation, success or not.
7. If successful, an agreement is reached. It may not be binding unless incorporated in a Court Order.

Success rate:

74%

Can meetings be done virtually or by telephone?

Yes.

Timing:

Do it as early as possible – why:

1. Costs, there can be a penalty if the matter litigates and mediation is refused.
2. Generally learn more about the opponent's case. May vary from case to case.

Benefits:

1. Intervention by third party may help (intermediary).
2. Work through deadlock.
3. Easier to keep relationships.
4. Confidentiality and privilege generally maintained. It is without prejudice and cannot be referred to in Court.
5. Costs.
6. Speed.
7. Even if doesn't succeed you obtain a greater understanding of the other parties, their case and possibly your own case.

Disadvantages

1. Adds costs and time to dispute.
2. May expose case.
3. No disclosure orders.

Where it must be used:

Family cases

- (a) finance;
- (b) children;
- (c) smaller cases (adjourned for one month) or the use of the small courts' mediation service;

(d) remember, refusal to mediate may well result in cost consequences.

Where mediation should not be used:

1. Where there are points of law (rare).
2. An injunction is necessary.
3. Fraud (possibly only).

Assistance

If you require help, assistance or wish to discuss any of the issues in this note please contact Nicholas Woolf info@nicholaswoolf.com or +44 (0)7242 6018.

© Nicholas Woolf, Director and Principal, Nicholas Woolf & Co

13th May 2021

DISCLAIMER

This note comprises the view of the author as at 13th May 2021. This note is not a substitute for legal advice. Information may be incorrect or out of date and may not constitute a definitive or complete statement of the law or the legal market in any area. This note is not intended to constitute advice in any specific situation. You should take legal advice in specific situations. All implied warranties and conditions are excluded, to the maximum extent permitted by law.