

## Preparing for a mediation

### *General preparation*

In preparation for a mediation all participants should spend time thinking about the following:

1. First, the mediation process gives parties the opportunity to communicate directly so parties should think about what they need to say about the different issues, as well as anything they may want to 'get off their chest'. In civil mediations, a written document often called a **position statement** is prepared.

- What do you want to ask to the other party?
- What do you think they will want to ask you?
- What do you need from the other party?
- What issues might they raise which you will find difficult?

2. Second, mediation is outcome-focused, so parties should think about what they want to achieve from mediation, both in terms of the process and the outcome.

- How much impact the dispute has had on them, emotionally and/or financially?
- What would be the benefit in terms of time and money if an agreed solution could be found?
- What additional negative outcomes can be avoided by reaching an agreement – such as avoiding adverse publicity, a formal complaint or permanent record of a grievance, or simply the stress of litigation?
- What positive outcomes can be reached for the parties by deciding the outcome for themselves?

3. Third, mediation is often chosen when attempts to resolve issues informally or through face-to-face discussions or negotiations have ground to a halt; therefore parties need to think about different or creative ways a resolution could be found.

- What are the possible options for agreement?
- What is the other party likely to want from you?
- Is there anything you can offer the party by way of a proposal or a concession to make an agreement possible (eg an apology, a change in policy, etc)?
- How will you feel if an agreement is reached at mediation?
- What will happen if an agreement is not reached at mediation?

## What is usually included in a position statement?

**Who the parties are:** Who is involved in the dispute and who will attend the mediation (the parties, legal team, supporters, experts).

**A brief outline of the facts:** If there is no agreed mediation bundle, briefly describe what events gave rise to the dispute including any information necessary for the mediator to understand the dispute. A chronology can be helpful; if possible, this should be agreed with the other side.

**An overview of any legal proceedings:** Include any significant developments, as well as any *without prejudice* or Part 36 offers.

**The issues to be mediated:** List the issues and the party's position or views in relation to each issue.

**The potential outcomes:** Set out what the party wishes to achieve from mediation. Include suggestions on how the dispute could be resolved and potential options for agreement.

**A list of key documents:** The documents can be attached as a bundle – a joint bundle will usually be prepared.

*Confidential material* Parties wishing to provide the mediator with confidential or sensitive material can do so in a separate document.

*Legal costs* Mediators may ask legal advisers to prepare a schedule of costs and bring it along to the mediation.

## What to take to a mediation

A notepad and pen

A calculator

A laptop computer

A copy of the *agreement to mediate*

All relevant documentation and a copy of your position statement

A draft agreement

## Presenting an opening statement

- Explain the issues in order of importance and, where necessary, explain why they have personal and emotional significance (even where that may differ from the legal position or the primary focus of the mediation).
- Try to stick to your own agenda and only respond to points made by the other party if they are relevant.
- Acknowledge the impact the dispute has had on the other part. Apologise if it is appropriate.
- Explain why you have come to mediation and what you hope to achieve (this is not necessarily the moment to start setting out more detailed proposals).
- Make any concessions or proposals which signal your intention to work collaboratively.

**Summary from 'Making Mediation Work for You: a practical handbook'**

**Published June 2012, Legal Action Group.**

**Garden Court Mediation**

Not to be reproduced without permission.