

Notes for the 10th edition of CEDR Solve's Model Mediation Agreement and Model Procedure and Code of Conduct

CEDR Solve keeps its Mediation Agreement and Procedure under constant review in the light of developments in law and practice and to keep it as useful and effective as possible. In the UK, the whole legal framework of any mediation is largely dependent on the contract formed between the parties to the mediation, which makes its terms absolutely crucial.

Much of what has been changed in the tenth edition has been for the sake of simplifying it and making it as accessible as possible to the parties to understand without legal advice. The key terms now fit on three pages. CEDR Solve will use this new format for all mediations with immediate effect.

The 10th editions make the following important changes:

- In **Clause 1** of the Agreement, all parties agree that the mediation is to be conducted in accordance with the Model procedure. This ensures for the purposes of ADR contract clauses in commercial contracts that, as required by *Cable & Wireless v IBM*, there is a clearly defined procedure to the parties to follow, preventing any suggestion that such a clause is a mere “agreement to agree”. Also, the mediator contracts to abide by the CEDR Code of Conduct.
- In **Clause 2**, each party warrants that someone has authority to bind them to the mediation agreement and to any settlement terms. In public cases, this may need amendment where a party only has authority to recommend settlement to a departmental Minister, local authority or board.
- **Clause 4** limits liability for a mediator to cases of fraudulent acts or omissions, or those involving wilful misconduct. In the old agreement, a mediator was liable only if shown “to have acted in bad faith”.
- **Clauses 5 to 8** tighten the rules designed to keep what happens at a mediation confidential. The fact that a mediation is taking place is still not confidential, unless the parties choose to amend the agreement to that effect.
- **Clause 11** makes a significant change to the old agreement by providing that where a court or tribunal has power to assess or order costs against a party, it may treat the mediation fees and any party’s legal costs of preparing for and attending the mediation as costs in the case, and therefore awardable on the merits of the litigation. It does **not** enable the court to enquire about what happened at the mediation to inform that decision: what happened at the mediation remains confidential by virtue of Clauses 5 to 8.
- The **Model Procedure** explains what mediation is and explains the roles of the mediator, each party and their adviser, and explains how complaints can be made.
- The **CEDR Code of Conduct** is now restricted to matters which impinge on the mediator’s ethical conduct of any mediation. Purely procedural matters have been shifted in to the Model procedure.