

UKCS Mediation Process

Before the Mediation

Mediator selection

- Following receipt of the completed Declaration Form and Mediation Agreement CEDR will send within five working days to Party A and Party B a list of three mediators suitable to act and clear of conflicts from the UKCS Mediation Scheme Panel. The Parties should seek to agree a mediator from this list within 10 working days.
- If Parties cannot agree on the appointment of one name from the list of three mediators, they will be asked to rank the names in order of preference and CEDR will select the mediator with the highest collective ranking between the Parties.
- Should both Parties object to the CEDR appointed mediator, CEDR will appoint an alternate mediator from the UKCS Mediation Scheme Panel.
- If the Parties do not proceed with the CEDR appointed mediator then the Mediation will not proceed.
- Grounds for objection to a mediator are restricted to reasonable conflict of interest; or, previous direct experience of the party.

Confirmation of Mediation

Once the Mediator is selected the Parties exchange case summaries and supporting documents with each other and the Mediator at least five working days, but preferably 10 working days, prior to the Mediation. The Mediator will make contact with each party or their legal representative before the day, usually by telephone.

As a guideline documents provided should be:

- A Mediation submission outlining the factual, commercial, and legal issues – this can be a jointly agreed narrative of the issues or individual submissions. Length should vary from 4-10 pages for straightforward matters to 15-20 pages in more complex matters.
- A joint bundle. It should cover any supplementary information to the Mediation submission

including:

- Schedule of key documents, indexed and paginated
- Short statement outlining type of work/business of your party
- Chronology of key events and negotiation history up to last offer
- List of key individuals defining roles and responsibilities
- Identification of common ground and difference
- Mediation Glossary of technical terms, if relevant

The Mediation

The Mediation should take place no later than 35 working days from referral to CEDR.

The Mediation will begin with the Parties in private rooms and the Mediator will carry out informal introductions. Then, ordinarily, provided the Parties agree, the Mediation will begin with a joint meeting.

At this initial joint meeting, the Mediator will establish ground rules for the day, reaffirming the strict confidentiality of the Mediation and asking each party to respect the rights of the other side(s) to be heard.

The Mediator will ask each party to make an opening statement. This is a summary of the key issues making up their case, not a summary of the documentation. It will often be the first time each party will have heard the other's point of view first-hand. The opening presentation can be made either by the lawyer or party representative, but we recommend the business principals become involved from an early stage.

Private meetings

Following the joint meeting, the Mediator is likely to invite the Parties to go to their private rooms where the Mediator will spend time talking with them in confidence. During this time the Mediator will ask the Parties about their expectations and will ask them about the strengths and weaknesses of their case (reality testing).

Joint meetings

The Mediator may decide that progress would be made by bringing the Parties together again. At other times the Mediator may suggest bringing together just the lead negotiators or lawyers or experts to change the dynamics of the Mediation and bring speedier progress.

Settlement

A settlement is reached when the Parties come to an agreed solution. The lawyers present will draw up an agreement which, when signed, becomes binding. It's therefore essential that each party is represented by someone with full authority to settle the dispute.

Non-settlement

Disputes which do not settle on the day of Mediation can often settle shortly afterwards. In the event of non-settlement, it's likely that the Mediator will ask the Parties' permission to contact them within the following five to ten working days. Further progress can usually be made once the Parties have had time to reflect on the issues that have emerged during the Mediation.

Where Parties cannot reach a settlement, they can leave the Mediation and pursue arbitration, litigation or any other dispute resolution procedure. Everything said or done within the context of the Mediation is covered by without prejudice privilege and cannot be referred to outside the scope of the Mediation.



Outcome Statement

An Outcome Statement to be sent to the OGA within 45 working days of referral to Mediation. The Outcome Statement will summarise key issues settled or outstanding that for regulatory reasons the OGA need to be made aware.

After the Mediation

The Mediator will contact the Parties to check that there are no loose ends. CEDR will also be in contact for feedback on the Mediator's performance and the service provided.