

Getting the best from a mediation

The following advice for lawyers has been put together from the perspective of CEDR mediators, many of whom are experienced litigators. They have seen both good and bad practice from lawyers representing clients in a mediation.

If you have power over the choice of mediator, don't limit yourself to names only known by your colleagues. Even if the specialism required is the same, their character and style could be different to your client's needs.

Understanding the mediator's role and the mediation process is also crucial. The mediator is there not to pass judgement but to facilitate the clients reaching a mutually acceptable commercial solution. The mediation itself provides the best opportunity for the direct negotiation of deals and the quick resolution of otherwise time-consuming and expensive disputes.

What lawyers need to know and do before entering the mediation process

- Understand the mediation process is different to any legal process.
- Appreciate that the lawyer plays a different role – moving away from one of advocate and controller towards one of adviser and supporter, allowing their client to be in control.
- Provide advice in the context of a commercial negotiation and not dominate the process with legal issues, albeit reassessing the client's legal position throughout the mediation.
- Understand the dynamics within their team, particularly the pressures and problems for experts and consultants, and keep them focused on achieving a commercial settlement.
- Accept that asserting or defending a client's best case may not produce the best commercial solution for that client.
- Agree tactics for the mediation but be reactive and flexible to developments during the mediation; a prior risk analysis may need adjustment in the light of developments during the mediation.
- Use the mediator's neutrality to test out each side's case.
- Be pro-active by offering suggestions to the mediator, meeting with the other lawyers and testing alternative solutions.
- Have a strategy for using waiting time in the mediation usefully and creatively, reassessing risk analyses or testing alternative solutions.



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See also:

[**Referring a case to CEDR**](#)

[**What to expect in mediation**](#)

[**When is it reasonable to refuse mediation?**](#)