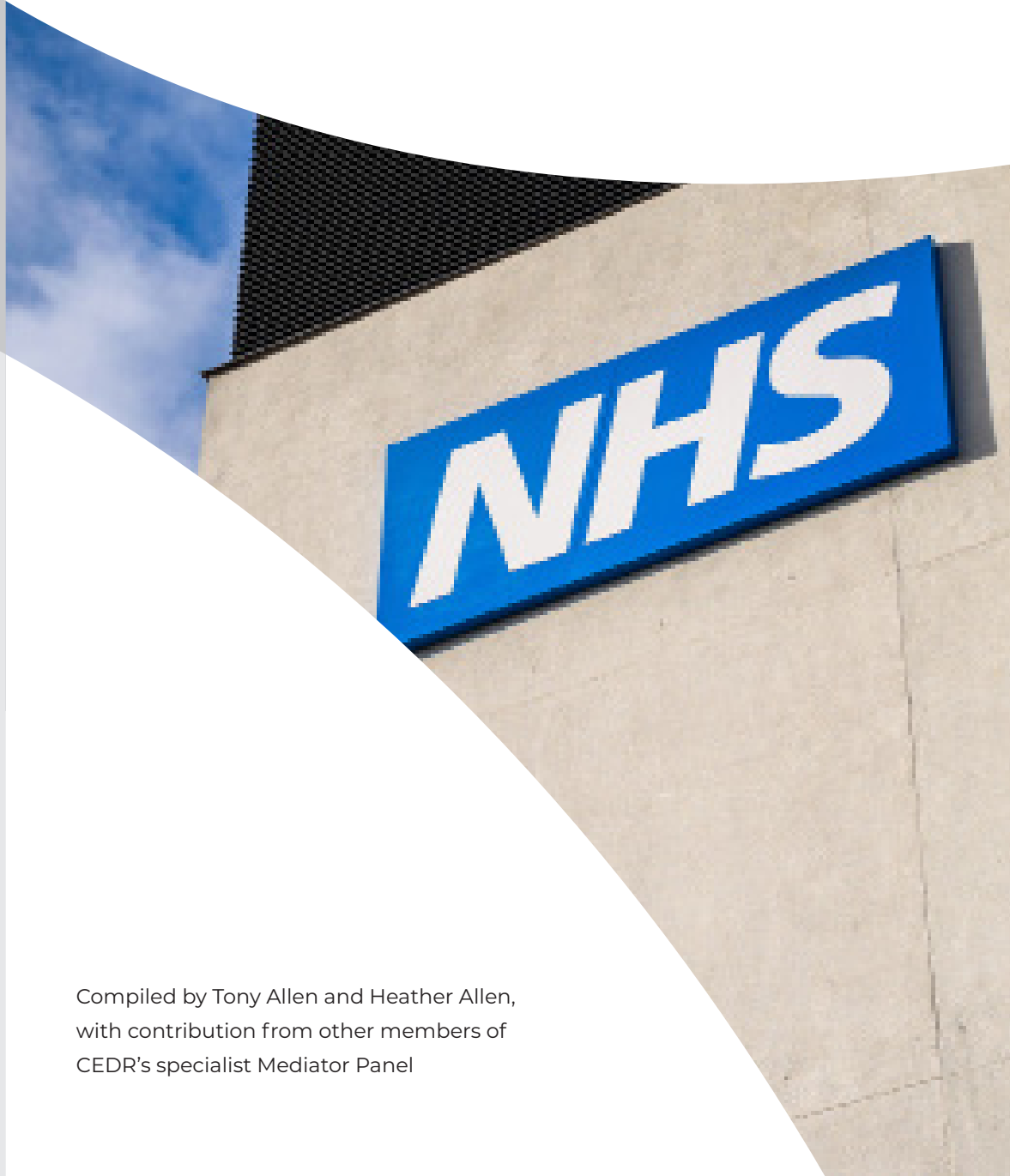


A Guide for Claimants



CEDR Services Ltd
100 St. Paul's Churchyard
London
EC4M 8BU

 +44 (0)20 7536 6000
 www.cedr.com
 info@cedr.com

Registered in England & Wales
No 3271988

Compiled by Tony Allen and Heather Allen,
with contribution from other members of
CEDR's specialist Mediator Panel

Making a clinical claim

Making a claim against healthcare professionals might be a worry because it can be complicated and involve revisiting distressing events. However, patients and their families who have not got what they wanted or needed from the complaints system may still feel that something did go wrong and they want to do something about it.

Often it's not just about compensation, but about:

- having a chance to express the impact of what has happened and feeling properly listened to
- having your concerns acknowledged
- where it seems right, to receive an apology – both for what went wrong and, perhaps, for how long it has taken for a meeting to be set up
- getting a frank and clear explanation about what happened and why
- being reassured that lessons have been learned to prevent anything like this from happening to others
- confirming that if you need the NHS again, it will be there for you and will treat you well
- Of course, where you have lost out financially because of what happened, you will want to raise the question of compensation.

All these topics can be included in a mediation, whereas a court can only decide whether the NHS or doctor was at fault and, if so, award compensation. For example, a judge cannot order an apology or changes in medical practice.

What is “Mediation”?

Mediation is usually a meeting - an occasion when the key decision-makers or their representatives attend to discuss **confidentially** all aspects of a claim or a dispute.

That usually means that the claimant and family members will be there with their own legal team, as well as representatives from the NHS Trust, the GP Practice or the private doctor concerned, plus their legal team and the decision-makers who will cover the cost of any compensation and legal costs if agreement is reached.

It is run **informally**, so you might find everyone using first names if everyone is comfortable with that.

Each party has a **private room** in which to discuss whatever they wish throughout the mediation. Everything the mediator is told when in any party's private room is confidential to that party, and the mediator will always get permission before telling the other party anything.

Everyone at the mediation can participate as much or as little as they like.

The mediator is fully trained and qualified with knowledge and experience of mediating medical and similar claims. The mediator is there to help everyone to make the most of the opportunity that mediation provides and, importantly, can act as an **independent** and experienced sounding board and can discuss and test out aspects of the case in private and in confidence.

The mediator will ensure that there is time for the parties to exchange views about all of their concerns. This is not limited to medical and legal issues.

Mediation is a flexible process and the mediator will consult with each party over the order of events. No one has to agree to any suggestion about what should happen or when.

The Mediator's role is to facilitate the parties to reach a resolution, not to make a decision.

Settlement depends entirely on whether the parties find an acceptable basis for agreement. In order to put an end to a claim all parties need to sign clear written settlement terms for a **binding outcome**.

Frequently Asked Questions

Q: How much will it cost me?

If liability is admitted in full or in part or if you do not have a lawyer, the cost of the mediation will be met by the NHS Resolution, otherwise you will have to contribute to the cost of the mediation.

Q: Can I choose my mediator?

Yes. You and your lawyer will be given a choice from a panel of expert mediators and will then need to agree the mediator with the other party. If both parties wish, an independent provider can suggest an appropriate mediator for your case.

Q: What happens if we don't reach an agreement?

In most cases agreement is reached on the mediation day or soon afterwards, providing closure for everyone. Unresolved cases or issues can still be referred to a judge for decision.

Q: Can a mediation only be held after a claim has been started at court?

No – a mediation is often held (and leads to settlement) before court proceedings are started, which saves a lot of time and expense. Your lawyer will advise you as to whether it is a good idea to try to settle early, when not all the information needed for a full trial has been exchanged.

Q: How long does a mediation take?

Usually between four and eight hours; some are quicker, some are slower - so do bear that in mind when planning travel and child care arrangements.

Q: How will the mediator work with me?

The mediator will want to understand how you see things, both from reading the papers sent in advance and by talking with you on the day.

The mediation will consist of joint meetings, involving all or some members of each party, which the mediator will run. There are also private meetings, at which the mediator will be present if invited into the room by you. The mediator will have private meetings with the other party too, so that you will have time for private discussions with your own advisers about what to do before discussing options with the mediator. Everything the mediator is told when in any party's private room is confidential to that party, and the mediator will always get permission before conveying anything to the other party.

Frequently Asked Questions

Q: As the mediator spends time with the other party, how can I trust the mediator to work fairly?

Working independently and fairly between the parties is an essential part of the mediator's skill set and training. It is really important that the mediator earns and retains your trust. You can always say something if at any time you feel worried about what the mediator says or does – the mediator will be glad to respond and explain.

Q: Will the agreed settlement at a mediation be the same as a judge's award?

This is very unlikely, as a judge can usually only make a decision in favour of one party. At a mediation the parties can discuss ideas for settlement that might be acceptable to both, and it is possible to reach agreement if the parties and their advisers think it is sensible to do so in order to achieve settlement quickly and avoid the risks for both parties of losing at trial. It is important to remember that you can decide not to settle if you and your legal team think that it is better to go to trial. The mediator does not make judgments about who is right and wrong. Compromises or offers suggested but rejected during a mediation cannot be disclosed to the judge, who also cannot be told any of the reasons why a mediation did not produce settlement.

Q: Can settlements at a mediation be legally binding?

Yes, so as to avoid the need for court proceedings or to bring them to a permanent end there needs to be a legally binding agreement. If agreement is reached before legal proceedings start, a formal binding agreement is drawn up and signed at the mediation. If legal proceedings have started, a Consent Order setting out the agreed terms is drawn up, signed and sent to the court.

A settlement can include non-monetary agreements, such as future relations between claimants and the NHS. Where claims are made on behalf of children or of adults who lack legal capacity, the court has to approve any settlement even though the parties agree terms at the mediation.

Q: What about getting “my day in court”?

In fact, almost all clinical claims settle without going to trial. Even when they are fought out at trial, claimants do not always get a chance to give evidence, and there is always a risk of losing at trial. At a mediation you are guaranteed the opportunity to speak across a table to the defendant party at meetings run by the mediator, and can tell them how you feel, as well as what you think about what happened, with the chance to hear and assess how the defendant party responds. This gives you a really good “day in court”, as well as the mediation process giving you a very good chance of settling your claim.


If you have any questions that are not covered here please refer them to your lawyer, or to CEDR or Trust Mediation who will be happy to help.

To discuss a mediation in confidence, contact the CEDR team on:

 +44 (0)20 7536 6060

 adr@cedr.com

or contact Trust Mediation on:

 +44 (0)20 7353 3237

 tim.wallis@trustmediaton.org.uk



CEDR Services Ltd
100 St. Paul's Churchyard
London
EC4M 8BU

 +44 (0)20 7536 6000
 www.cedr.com
 info@cedr.com