



## COURT OF APPEAL MEDIATION SCHEME (CAMS)

### 1 Introduction to CAMS

- 1.1 The Court of Appeal Mediation Scheme (CAMS) has been running in its present format since 2003. It provides affordable mediation for all Civil Division appeals (other than family and immigration appeals). The Scheme does not extend to cases involving extremely complex issues or very large amounts of money with parties able to fund commercial mediation rates.
- 1.2 CAMS will continue to be available in any appeal where the jurisdiction of the Court of Appeal has been invoked (typically where permission to appeal (PTA) has been granted, but also where the permission procedure has been adjourned on notice (“adjourned”) either where the single Lord or Lady Justice (the single Judge) dealing with PTA recommends it, or the parties themselves agree to mediate through CAMS. In 2012, the Master of the Rolls approved an “Automatic Referral Scheme” whereby certain specified types of appeal are automatically referred for mediation. See section 4 below for full details of the types of appeal which fall within the scheme. Such cases will **automatically** be referred to CAMS unless the single Judge who grants (or adjourns) PTA considers it inappropriate to do so.

### 2 Referral to CAMS

- 2.1 The CAMS administrators are currently CEDR, the services arm of the Centre for Effective Dispute Resolution, 100 St. Paul’s Churchyard, London EC4M 8BU, telephone 0207 536 6060.
- 2.2 In cases outside the Automatic Referral Scheme, the single Judge who considers an application for PTA, or who first gives directions in an appeal where PTA was granted in the lower court, will at the same time consider whether he or she should recommend that the appeal be mediated through CAMS. If the single Judge decides to make such a recommendation, he or she will indicate this to the Civil Appeals Office (CAO) on the PTA form or when giving directions. The CAO will then notify the parties to the appeal and CEDR of both the PTA decision and the recommendation to mediate through CAMS. CEDR will then invite the parties to participate in a mediation.
- 2.2 In cases that fall within the Automatic Referral Scheme, once PTA has been given by the single Judge, the case will be **automatically** referred by the CAO to CEDR who will invite the parties to participate in a mediation **unless** the single Judge specifies in the order granting permission to appeal that the appeal is not suitable for CAMS referral, giving reasons for that decision. The CAO will then progress the case in the usual way and list the appeal.
- 2.3 In either type of case, once the parties have agreed to mediate through CAMS, the normal CAMS process, as set out in Section 3 below, will be followed. The CAO will still list the appeal but not before 10 weeks has elapsed, to give time for the parties to mediate.

### **3 The normal CAMS process**

- 3.1 Mediators on the CAMS panel (the Panel) are duly accredited by a recognised training provider and regarded as sufficiently experienced to be admitted on due application to the CAMS panel by the Court of Appeal, which regulates the Panel. They are independent mediation practitioners and not judges or agents, representatives or employees of HM Courts and Tribunals Service.
- 3.2 A CAMS mediation may take place in-person or remotely via Zoom or Microsoft Teams. CEDR has conducted hundreds of online mediations since March 2020. Settlement rates for online mediations mirror performance for in-person mediation. The parties should seek to agree the format for the mediation.
- 3.3 Once a CAMS mediation has been agreed, CEDR will nominate three mediators from the Panel as mediators suitable to mediate the appeal in question and require the parties to agree a single mediator within 5 days, and in default of agreement by that date, CEDR will appoint a mediator from the three names submitted.
- 3.4 Once a mediator has been agreed or appointed, CEDR will seek to agree a date for the mediation with the parties and the mediator, and will render a fee note in accordance with the fee schedule currently in force (set out in Section 7 below), such fees being payable by each party no later than 7 days before the date of the mediation.
- 3.5 The mediator must be independent of the parties and any actual or perceived conflict of interest must be raised in writing with CEDR by any party or the nominated mediator as soon as it emerges.
- 3.6 If the parties choose to proceed with an in-person mediation, the parties are responsible for arranging the venue for any CAMS mediation and paying any related cost.
- 3.7 CEDR will submit a draft mediation agreement to all parties for approval, which will be signed by them no later than the start of the mediation. This will provide, among other matters, that what transpires at the mediation (whether the appeal settles or not) is confidential, both overall and in relation to any private meetings between the mediator and any individual party; that the parties will not be bound unless and until settlement terms are put in writing and signed by each party; and that the parties agree not to call the mediator or staff of either CEDR or the CAO as a witness of anything that transpired at the mediation.
- 3.8 Each party should attend the mediation armed with sufficient authority to settle the dispute on any terms that might foreseeably emerge at the mediation.
- 3.9 The mediator will manage and make suggestions about the process to be adopted at the mediation, whether by way of joint or private meetings, and will consult fully with those attending the mediation.
- 3.10 The mediation fee payable covers CEDR's administration costs for CAMS on each case, and also the mediator's time for up to 4 hours preparation and 5 hours mediation. The cost of any extra hours of the mediator's time is to be agreed before the mediation between the mediator

and the parties, either direct or through CEDR. Where the mediator has to incur travelling expenses in order to attend the mediation, the mediator may apply through CEDR for travelling expenses in addition to the standard fee.

- 3.11 The Court of Appeal will receive no report from either the mediator or CEDR as to what happened during a mediation, and will make no enquiry about such matters if the appeal hearing proceeds following a CAMS mediation, except to be given confirmation that the mediation did or did not take place, and that settlement was not reached or was reached so as to end the appeal.

#### **4 Detailed scope of the Automatic Referral Scheme**

The cases within the scope of the Automatic Referral Scheme are:

- 4.1 All cases involving a litigant in person (other than immigration and family cases).
- 4.2 All appeals in personal injury, clinical negligence and all other professional negligence claims.
- 4.3 All contractual disputes of any nature with a judgment or claim value of up to £500,000. These cases will include appeals relating to building works, commercial, mercantile, banking or insurance transactions, claims for dilapidations, claims covering personal and real property, and claims relating to deceased estates as well as simple debt claims. These cases are not, however, intended to catch contractual disputes where the principal issue is non-contractual, e.g. whether a possession order should be made, or where the contractual claim is subsidiary to an issue falling outside the spirit of the scheme.
- 4.4 All inheritance disputes. These cases will include appeals arising from claims under the Inheritance (Provision for Family and Dependents) Act 1975; claims challenging the validity of a will or seeking rectification of a will and disputes between beneficiaries and executors or between co-executors.
- 4.5 All boundary disputes.
- 4.6 Appeals from the Employment Appeal Tribunal.
- 4.7 Residential landlord and tenant appeals.
- 4.8 It should be noted that CEDR does not apply the above criteria restrictively and if a case is referred by the court but falls outside the parameters of the Automatic Referral Scheme, CEDR will still seek to arrange a mediation under the Scheme if the parties consent to do so.

#### **5 Voluntarily opting to use CAMS**

Parties may at any time after PTA has been given (or adjourned) in any appeal opt of their own volition to use CAMS: a recommendation from a single judge is **not** a necessary condition precedent for use of CAMS.

#### **6. Declining mediation: costs implications and exclusion from CAMS**

- 6.1 CAMS is not a compulsory scheme, and participation in the Automatic Referral Scheme is not compulsory. Any party to an appeal is free to decline to participate in a mediation, whether it falls within the Automatic Referral Scheme or where the single Judge in giving PTA or making directions recommends the appeal is mediated through CAMS.
- 6.2 Any party to an appeal referred to CAMS may (subject to any cancellation fees payable under the CAMS terms and conditions if a mediation is cancelled late) withdraw from CAMS at any time.
- 6.3 However, the Master of the Rolls/Court of Appeal draws to the attention of all parties that the Court regards the court's recommendation that parties should attempt mediation through use of CAMS, or the Court's identification of Automatic Referral cases suitable for mediation through CAMS, as significant. If a party chooses to ignore such a recommendation or automatic referral or to reject another party's proposal to mediate, there is Court of Appeal authority that if such rejection of mediation is found to be unreasonable, this can be taken into account under CPR 44.5 when deciding what costs orders should be made, and can even result in a costs sanction against parties who otherwise succeed in their appeal. See, on the imperative to utilise litigation only if it is really unavoidable, *R (Cowl) v Plymouth City Council* [2002] IMR 803, and on the costs consequences of ignoring a recommendation to mediate, *Dunnett v Railtrack* [2002] IMR 2434, *Halsey v Milton Keynes NHS Trust* [2004] IMR 3002, *Burchall v Bullard* [2005] CP Rep 36, *Rolf v De Guerin* [2011] CP Rep 24. Parties should be aware that a refusal to mediate and the reasons given for refusal may be taken into account in determining costs.
- 6.4 Parties should be aware that the level and cost of representation at a mediation may be subject to proportionality when costs are decided, whether by summary or detailed assessment or otherwise: mediation is a process intended to encourage economy in cost.

## 6 Fees for CAMS mediations

### 7.1 The fee

The standard fee per party for CAMS mediation is set out below. The standard fee includes both the fee for the mediator and also CEDR's costs of setting up and administering the mediation. The fee is payable **as soon as all parties have agreed the identity of the mediator and the date of the mediation and in any event no less than 7 days before the mediation date**. The fee is payable to CEDR, who will issue a VAT invoice to each party for the due sum. If the fee is not paid by the due date, CEDR is authorised to vacate the date for the mediation and release the mediator from that commitment pending the fixing of another convenient date. CEDR will pay the mediator.

Value	Price Per Party Online	Price Per Party In-Person	Additional Hours price per party
Less than £1million	£950 + VAT	£1150 +VAT	£150 + VAT
£1 million +	£1,900 + VAT	£2,200 +VAT	£175 + VAT

## 6.2 Cancellation of a CAMS mediation

The full fee is payable if the mediation is cancelled (whether the appeal is settled or not) less than 24 hours before the start time fixed for the mediation. Reduced fees per party will be payable if the mediation is cancelled after the fee becomes payable but before the mediation date, in accordance with the following scale:

Date of cancellation	Fee payable
More than 28 days before the mediation	No fee
Less than 28 days but more than 14 days before the mediation	£125 + VAT per party
Less than 14 days but more than 7 days before the mediation	£400 + VAT per party
Less than 7 days but more than 24 hours before the mediation	£600 + VAT per party
Less than 24 hours before the mediation	Full fee

If a fee has already been paid before cancellation of the mediation, CEDR will refund the balance of any fee paid after making the appropriate deduction as set out above.

The mediator may ask CEDR to recover reasonable expenses for travel to the mediation venue equally from the parties.

## 6.3 Extra hours at the mediation

CAMS mediations are expected to take a maximum of five hours. If the parties agree to continue with the mediation for more than the five hours allotted, this additional mediation time is invoiced after the mediation at the rate of £150 + VAT per hour, per party if the mediation took place on-line or £175 + VAT per hour, per party if the mediation took place in person.

## 6.4 Cases of high value or complexity

Where it transpires that an appeal referred to CAMS is exceptionally complex or that sums well in excess of £1 million are at stake, and the parties are in a position to fund a mediation at commercial rates, CEDR is authorised by the Court to suggest to the parties that a commercial mediation outside CAMS be arranged, or (subject to Court approval) that higher fees be payable to the mediator if the mediation proceeds within CAMS.