

A Guide to Mediation

in Personal Injury and

Clinical Negligence claims

What is Mediation?

Mediation is a way of settling your compensation claim. It is an alternative to going to court.

It involves negotiation between you and your lawyers with the lawyers and insurers of the person responsible for your injuries. A mediator skilled in assisting in negotiations also attends.

A mediator is not a judge. The mediator does not decide who has the best case or who is right and who is wrong. Instead the mediator works with all parties to help them find **their own settlement** of the claim.

If, **and only if**, all parties agree to a settlement then a **binding agreement** will be written up and your claim will be settled. **You** have to agree to any settlement so you can never “lose” at mediation – if you don’t agree there is no deal.

You benefit from a mediated settlement because:

- it puts an end to the stress caused by the claim and the worry of going to court;
- it saves time that you would spend preparing for and attending the trial;
- it removes uncertainty about the outcome;
- you get your compensation money more quickly;
- it is your solution, not one imposed by a judge;
- it can save legal costs (including paying some or all of an opponent’s costs if you lose at court or fail to beat the other side’s offer);

What happens at mediation?

Mediation is a flexible process and no two mediations will ever be the same. What follows is typical of many mediations.

Meet and greet

The mediator meets you and whoever you have brought along to help. You have your own private room for the mediation. The mediator reminds you it is not a trial and the aim is to help you settle your claim.

Opening joint meeting

When everyone is ready you usually start with a joint meeting of all the parties. **(Note: this is not essential and in some circumstances there is no joint opening meeting, you will not be forced into one against your will.)**

The mediator explains the **golden rules** of mediation which are:

- It is confidential – whatever happens at the mediation the parties agree to keep confidential.
- Any discussions you have with the mediator in your private room are confidential – the mediator will not pass anything on to the other side without your permission.
- It is without prejudice – so nothing that is said at the mediation can be referred to in court if the mediation does not result in settlement.
- It is voluntary – any party can leave at any time for any reason.
- The mediator is not a judge – his/her role is to help you and your opponent settle the claim. However, there may be times in the private meetings when the mediator asks challenging questions about your case – this is simply part of the process.

- There is no binding agreement until it is written and signed by all the parties – at that point the agreement is binding.

The mediator then invites and encourages each side to make an optional opening statement. This is your opportunity to explain your view of the case to your opponent. You can do it yourself, ask your solicitor to do it or you can both do it. You might want to tell your opponent some or all of the following:

- what you want to achieve at the mediation;
- how you feel about your injuries and how it has affected you;
- why you think the other party should pay what you are claiming;
- why it is in their interests to resolve the dispute now.

Each side has the opportunity to respond. Parties can ask questions if there is anything they do not understand about their opponent's case **although neither side is obliged to answer any questions**. The mediator may also ask some questions to identify exactly what the issues are.

Private meetings

The mediator visits one party at a time in their private rooms for confidential meetings. This helps the mediator find out what the parties really want and explore possible solutions. The mediator may be asked to pass offers between the parties. The mediator helps ensure the negotiations keep flowing, intervenes when problems arise and helps generate ideas when the negotiations stall. This will continue until a settlement is reached.

Further joint meetings

The mediator may ask the parties to meet together again during the course of the mediation. Sometimes everyone meets together and sometimes it is just the lawyers. The mediator only suggests these meetings if he/she thinks it is going to help move towards a settlement.

Signing the agreement

If an agreement is reached it is written and signed by both parties. You then have a binding agreement, the mediator can congratulate you on settling your claim and you can go home to get on with your life.

Frequently asked questions

How does having a mediator help the negotiation?

The mediator can help you and your lawyers communicate effectively with the other side – even if the relationship has broken down. The mediator can help break deadlocks in the negotiation and help the parties create ways around obstacles.

Who should attend the mediation?

- You should attend – you are the decision maker, it is your claim. You may want to bring somebody for support such as your partner, spouse or a friend or relative. However generally speaking the fewer people involved the better so you do not need to bring witnesses along for example.
- Your legal adviser (if you have one).

Can I speak to the mediator before the mediation?

Yes. The mediator would be happy to speak to you on a confidential basis to explain the mediation process in more detail.

Ask your solicitor for more information or visit www.TrustMediation.org