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LITIGATION DEPARTMENT

LITIGATION FACT SHEET

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1. What is Mediation

Mediation is a form of alternative dispute resolution in which a neutral third party assists parties to work towards negotiating a settlement.

There is no rigid form that mediation may take and it is really up to the parties as to how they would like the day to go. The parties may meet at the start of the day and give opening statements. Parties will then usually remain in separate rooms whilst the mediator moves between them, facilitating the discussions and trying to narrow down the issues. The mediator remains neutral and impartial, and can often play devil's advocate to test a party's strengths and weaknesses.

If a settlement is reached, the mediator or the lawyers representing the parties will draw up an agreement, which will not be binding until it is signed by each party.

The cost of the mediation is usually agreed to be split between the parties.

If the value in dispute is under £10,000 and a claim has already commenced at court, the parties, if they agree to do so, will be referred to the small claims mediation service. This free one hour service takes place over the telephone rather than in person.

Your lawyer will attend the mediation with you to ensure the day is dealt with productively. Your lawyer will also be able to identify the key issues and desired outcomes and let the mediator know in advance.

2. Without prejudice and confidentiality

Mediation is conducted on a without prejudice basis which means anything that is discussed or written at a mediation cannot be later used as part of existing or future court proceedings.

The mediation is also confidential and the parties may be asked to sign a separate confidentiality agreement at the start. This enables parties to freely discuss their strengths and weaknesses with the mediator.

The principles of without prejudice and confidentiality mean that the mediation process will be better facilitated and permits parties to reveal key details that they know cannot be used against them if the mediation fails.

3. Should I take part?

Mediation should not be seen as a sign of weakness. It can lead to endless possibilities that are considered an acceptable solution to parties.

The cost of mediation is negligible compared to the cost of litigating to a trial.

The courts do not look favourably on a party that refuses to mediate, and less so if that party cannot give a reasonable reason for their refusal. A party risks an adverse costs order being made against them if an unreasonable refusal is given.