

## INFORMATION ABOUT MEDIATION

### **What is mediation?**

Mediation is a process in which an independent person assists two or more people or organisations in dispute to negotiate and make mutually satisfactory decisions on their dispute. It is a form of 'assisted decision-making'.

### **Events leading up to mediation?**

Typically (though every mediation process is different), a mediation involves the following steps:

- The mediator is approached by someone with a request to assist.
- The mediator contacts the other persons or organisations involved and asks if they are willing to take part in mediation.
- If so, the mediator sends to each person information about mediation, the mediator's background and a mediation contract to complete and, if necessary, a request for background information on the dispute.
- The mediator makes contact with each individual or organisation to explain the process and to assess the suitability of the dispute for mediation. This may be telephonic, email or personal contact and is designed to prepare each side for the mediation.
- A time and place, usually at a neutral venue, is arranged for the mediation meeting.

### **What happens in the mediation meeting?**

The mediator goes through the Agreement to Mediate, explains the mediation process and asks each person to talk in turn (without interruption from the other) about their interests and concerns.

The mediator clarifies the parties' concerns and translates them into issues for discussion. The issues are written up and listed in order of priority, providing a structure to the discussions. Each party is asked to explain his or her position to the other on each issue, and together the parties explore options for resolving the points of difference. Thereby an agreement is pieced together, like a jigsaw.

### **Who can be present?**

Advisers and supporters can be present at the mediation if all parties agree. The parties can also agree on what will be said publicly about the mediation. Nothing said at the mediation can be used subsequently in a court or tribunal.

## **Are agreements reached at the mediation binding at law?**

Agreements can be made binding if the parties so wish. The mediator will assist the parties to record the outcome in a Heads of Agreement document which contains both matters which have been agreed and the issues, if any, which are still to be settled. The parties can redraft the agreement into a formal legal document after receiving advice from lawyers, accountants or other advisers.

## **What if I feel uncomfortable?**

Some of the mediator's tasks are to try to balance the strengths of each person, to improve the communication process, and to help participants feel comfortable.

You can ask to speak to the mediator separately. It is a normal part of the mediation process for the mediator to meet separately with each party on a confidential basis. Or you can express your concern immediately and the mediator will try to deal with it openly. You can also ask for the mediation session to be adjourned to give you time out.

## **What does it cost and how long does it take?**

There is a fixed fee for the mediation, regardless of the amount of preparation time or the duration of the meeting. There may be additional costs for venue, travel and lunch. Many mediations are completed after 4-10 hours of work but it is impossible to predict the duration of a particular mediation.

## **What happens afterwards?**

One aim of mediation is to model a method of working through disputes so that the parties can solve their own disputes in the future. Mediated agreements often contain a dispute resolution clause in terms of which parties commit themselves, in the event of the agreement not working, to come back to mediation before taking other steps.