



ADR ODR

INTERNATIONAL

The process during mediation

There should be no need for either of the parties to send any documentation for the mediator to see prior to the online mediation, as you will have time to explain everything in detail to the mediator during the online mediation.

Each party must have the authority to settle and the process that takes place during mediation is as follows:

1. OPENING SESSION

During this preliminary session everyone part of the online mediation will be present. The mediator will begin by introducing himself/herself and the mediation process to take place during the session. The main points that will be emphasised will be the nature of the mediation such as that mediation is:

- a) 100% voluntary;
- b) Confidential¹; and
- c) Without Prejudice;²
- d) Non-binding up and until the point of agreement;
- e) The main aim is that the parties come up with the solution.

¹ Everything said during mediation is confidential and cannot be revealed to anyone outside the mediation without all of the parties' permission.

² Any offers, concessions and /or admissions made within the mediation cannot be disclosed to any third parties and they cannot be used in court to hold the party who made the offer, concession or admission to what they said during the mediation.

Subsequently, each party will have the opportunity to share their side of the dispute in front of the mediator and the opposing party.

2. EXPLORATION SESSION 1: GETTING THE WHOLE STORY

This is the first private session where each party will be asked to attend in confidence with the mediator and explore all of their issues and needs at the heart of the dispute during which the mediator will facilitate a detailed discussion in order to move the process forward.

3. EXPLORATION SESSION 2: NEGOTIATION

During the second private session the mediator will aim at guiding both parties to explore a future without conflict. Thus, the main objective will be for the mediator to facilitate a negotiation between the parties and ensure that the process is on track so that hopefully offers can be exchanged with the view to find possible mutually workable, fair and acceptable solutions.

4. FINALISING MEDIATION SETTLEMENT AGREEMENT

Once a suitable solution is reached and agreed verbally by both parties the mediator will assist them to put it in writing in the form of a mediation settlement agreement, which once signed by both parties will be enforceable in court in the same way as any other contractual agreement. Therefore, should one of the parties decide not to abide by what was agreed during the mediation the other party may bring that party to court for breach of contract.

NOTE:

Although, the process set out above is the order of phases in which we encourage every mediator to follow where possible, not all mediations will require to be exactly the same. The process of each mediation will be subject to the mediator who will assess the nature of the issues in the dispute and the progress made by the parties for the most effective process to be followed. It is important to bear in mind that although the mediator is in charge of the process of mediation and he/she is to facilitate negotiation between the parties as well as to assist them in finding a solution to their dispute the parties are in control of the outcome.