



A Guide to Personal Injury Mediation

What is Mediation?

Mediation is a way of settling your compensation claim. It's 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. The parties also invite me or another neutral and impartial mediator to help settle the claim.

A mediator is not a judge. I do not decide who has the best case or who is right and who is wrong. Instead I work with all parties to help them find **their own settlement** to 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 and 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);

What happens at mediation?

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

Meet and greet

I meet you and whoever you have brought along to help. You have your own private room for the mediation. I remind you it is not a trial and the aim is to help you settle your claim.

Opening joint meeting

When everyone is ready we usually start with a joint meeting of all the parties. **(Note: this is not essential and in some circumstances we will start without a joint opening meeting, you will not be forced into one against your will.)**

I explain 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 me in your private room are confidential – I 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.
- I am not a judge – my role is to help you and your opponent settle the claim. However, there may be times in the private meetings when I ask 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.

I then invite and encourage 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**. I may also ask some questions of my own to identify exactly what the issues are.

Private meetings

I visit one party at a time in their private rooms for confidential meetings. This help me find out what the parties really want and explore possible solutions. I am usually instructed to pass offers between the parties. I help ensure the negotiations keep flowing and intervene when problems arise. This will continue until a settlement is reached.

Further joint meetings

It is very common for me to ask the parties to meet together again during the course of the mediation. Sometimes I get everyone together, sometimes it's just the lawyers and sometimes just you and the decision maker on the other side. I only do this if I think 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, I can congratulate you on settling your claim and you can go home to get on with your life.

Frequently asked questions

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 or spouse. 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. I would be happy to speak to you on a confidential basis to explain the mediation process in more detail. I will let the other side know we have spoken.

For more information call me on **0845 056 3625** or visit www.heskethmediation.com