

# GUIDE TO MEDIATION

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## Wills & Inheritance Disputes

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# Guide to Mediation

## What is Mediation?

Mediation is a **voluntary** and **confidential** way to resolve disputes about wills, estates or trusts. A Mediator, chosen and appointed by the parties, works with all sides to help them negotiate and find a resolution that works for everyone.

### WHY USE MEDIATION?

Mediation can be **quicker**, **cheaper** and **less stressful** than going to court. It can remove the uncertainty of a trial and you can get outcomes that a judge is unable to order.

### WHO CHOOSES THE MEDIATOR?

The parties agree which mediator to appoint. Both sides can put forward proposals - if you are represented your solicitor can advise you about suitable mediators. You can always speak to any proposed mediator to help you decide if they are the right person for your dispute.

### WHERE DOES THE MEDIATION TAKE PLACE?

Mediations can take place **online** using a video platform such as Zoom or Teams. If you prefer you can have an in person mediation. In that case the parties need to agree on a suitable venue which will have at least one room for each party and ideally another room large enough for any joint meetings.

### WHAT HAPPENS BEFORE THE MEDIATION?

Your solicitor will have a discussion with the mediator to give them some background information about the dispute. You can also ask for a meeting with the mediator and ask them any questions about the process or just get to know them in advance. Your solicitor will send the mediator some relevant papers as well as a position statement that sets out information about the dispute and how it might be resolved.

### WHAT IF I DO NOT HAVE LAWYERS ACTING FOR ME?

The mediator will arrange to have a discussion with you and help you prepare for the mediation.

## WHAT HAPPENS ON THE MEDIATION DAY?

You start with a confidential meeting with the mediator. This is in your private virtual room online or private room if meeting in person. You may have a number of private meetings throughout the mediation. They are all **confidential** - the mediator will not pass on any information from these meetings to any other party without your express permission. The mediator uses these meetings to get to understand your point of view, to help you consider any offers the other side makes and to help you put forward your own proposals for settlement.

## DO I HAVE TO MEET WITH THE OTHER SIDE?

No. The mediator may suggest the parties meet with each other at different times but it is entirely up to you if you do so. The mediator may ask to have mediator and lawyer only meetings involving the mediator and each parties' lawyers. These meetings help the exchange of information and are opportunities to explore potential solutions that may settle the dispute.

## WHO MAKES THE FIRST OFFER?

That depends but the mediator will work with the parties to ensure they do not waste half of the day deciding on who goes first.

## HOW DOES THE MEDIATOR HELP?

Negotiations without a mediator fail when the parties reach an impasse and neither side is prepared to move further. The mediator is skilled at helping parties move beyond these obstacles and generating ideas to move forward to resolution. The mediator enables communication between parties who otherwise would not speak to each other.

## WHAT HAPPENS IF A SETTLEMENT IS AGREED?

The agreement is written down and signed by each side to create a **binding settlement**. Your lawyers will help preparing this document. There may be some more work required to implement the agreement, for example a property may have to be sold or transferred, but the agreement will signal an **end to the dispute**.

## **WHAT IF NO SETTLEMENT IS REACHED ON THE DAY?**

The mediator will invite parties to leave their offers open for a period of time and will keep in touch. Disputes often settle a short while after a mediation when the parties have had time to reflect on what was said at the mediation.

## **HOW LONG DOES THE MEDIATION TAKE?**

Most mediations about inheritance disputes take between 4 and 8 hours - set aside a full working day.

## **WHO PAYS FOR THE MEDIATION?**

Usually the mediator's fees are split equally between the parties but that can be varied by agreement between the parties.

## **DO I NEED A LAWYER AT THE MEDIATION?**

You can attend a mediation without a lawyer. However, you are aiming to reach a legally binding settlement which may require further legal work so you should consider very carefully before you take part without a lawyer. The mediator can not provide legal advice and will not draft any settlement agreement for you.

## **WHAT IF I HAVE MORE QUESTIONS?**

Don't hesitate to contact me:

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