



Mediation Procedure (in relation to legal costs mediation)

1. What is mediation?

Mediation is a confidential and flexible process that can be used to settle disputes. Mediation is an effective way of resolving disputes without the need to go to court.

It involves an independent, neutral third party - a mediator - who helps parties work towards a mutually acceptable agreement of a dispute.

Mediation is a voluntary process and will only take place if both parties agree. It is a confidential process where the terms of discussion are not disclosed to any party outside the mediation hearing. If parties are unable to reach agreement, they can still go to court. Details about what went on at the mediation will not be disclosed or used at a court hearing (Civil Mediation Council).

The parties retain ultimate control of the final settlement decision and its terms, and are entitled to remove themselves from the mediation at any point should they so wish.

The process is confidential including the facts and terms of the mediation (unless agreed otherwise in writing between the parties) and without prejudice.

The process is controlled by the parties; the date, the mediator, the location, the length and is quicker than going to court; mediations are conducted within 30 days of the enquiry being received (subject to mediator availability).

Mediation enables the parties to identify outcomes which may not be possible through litigation.

Even if mediation does not work, it may resolve some of the issues.

*Party representatives must have full authority to settle at the mediation.

2. Why Mediate?

- Costs dangers of refusing an offer to mediate. If paying, you cannot realistically advance an argument that “we have an unanswerable defence and the claimant will never settle”: in Detailed Assessment, the Paying Party cannot contest liability for the costs, only quantum;
- Mediation is no guarantee of a result. In detailed assessment, there will be a winner and a loser;

- Mediation is final. No right of appeal and once the settlement agreement is signed; it is too late to change your mind. Detailed assessment has a right of appeal with permission;
- Mediation is private, the court is public;
- The participants choose the mediator, the court chooses the judge;
- The participants choose where and when the mediation will take place. St John's Buildings Limited's mediations take place within 30 days of receiving the enquiry, in the Senior Courts Costs Office you may have to wait a year.

3. When should a party consider mediation for legal costs disputes?

Parties (whether paying or receiving) should consider mediation regarding legal costs disputes after the bill, points of dispute and replies have been served.

4. Outline of the NHS Resolution claims mediation process

- Mediation enquiry received including details of the case.
- St John's Buildings Limited will provide a list of appropriate mediators approved for this service.
- Parties are to agree on the mediator (if this is not possible, St John's Building's Limited will appoint a mediator through a cab rank system of appropriate mediators).
- Details of the mediation will be agreed between the parties, the mediator and St John's Buildings Limited (length of mediation, location and start time).
- Model mediation agreement will be circulated by St John's Buildings Limited to the parties for review along with documentation for the mediator in advance of the mediation. The mediation agreement must be signed at least 7 days in advance of the mediation.
- Documents are to be sent to St John's Buildings Limited, 7 days in advance of the mediation through secured delivery services and these will be provided to the mediator also using secured delivery services.

5. Preparation in advance of the mediation

The parties responsibilities:

The parties are to provide St John's Buildings Limited with the following details of the case in order for appropriate 'approved mediators' to be put forward:

- Case name
- Size of the bill
- Where the mediation is likely to be conducted
- Recommended length of the mediation
- Main contentious issues
- Brief outline of the case

The parties will agree with St John's Buildings Limited the date, start time, location and mediator for the mediation.

The parties will inform St John's Buildings Limited of all individuals attending the mediation. All parties and the Mediator will be informed in advance of the mediation who shall be in attendance. Parties shall also confirm to St John's Buildings Limited who from each party has full authority to settle.

The individual who attends the mediation with full authority to settle must be the individual signing the mediation agreement which must be signed in advance of the mediation.

The parties will send any preparation documents for the Mediator to St John's Buildings Limited by secured delivery at 24a-28 St John Street, Manchester, M3 4DJ, 7 days in advance of the mediation.

St John's Buildings Limited responsibilities:

St John's Buildings Limited will assign a Case Manager within 3 days of receipt of instructions to provide logistical support and guidance to the parties throughout the process and provide a

list of appropriate mediators who have been approved for this service. Appropriate mediators are mediators who:

- Possess the relevant skills and experience to mediate the dispute for the parties effectively;
- Comply with the European Code of Conduct for Mediators, 2004;
- Comply with the Civil Mediator Council's individual and scheme requirements.

Once appointed the mediator is to inform St John's Buildings Limited immediately if any issues of conflict arise or any matters which may arise cause issue with compliance with the EU Model Code of Conduct. St John's Building's Limited will inform the parties immediately should any issues arise. It is for the parties to agree whether they wish to proceed with the mediation being aware of the issue raised. Parties alternatively have the option to choose a different appropriate mediator.

If parties are unable to agree on an appropriate mediator, St John's Buildings will appoint the mediator through a cab rank system of appropriate individuals.

St John's Buildings Limited will facilitate agreement of mediation arrangements and following this, confirm final arrangements as agreed in advance of the mediation between the parties and the Mediator. St John's Buildings Limited will confirm the venue, the date, the start time, the mediator and the length of the mediation.

St John's Buildings Limited will provide the standard NHS Resolution Model Mediation Agreement (specific for legal costs mediations). The model agreement will be circulated to the parties for review and St John's Buildings Limited will prepare the final agreement for signature. The parties are to notify St John's Buildings Limited regarding any amendment requests. Subject to agreement of the amendments, St John's Buildings Limited shall incorporate accordingly.

The mediation agreement must be signed by all parties at least 7 days in advance of the mediation.

St John's Buildings Limited will arrange for the mediation bundle to be sent to the mediator by secure delivery.

St John's Buildings Limited will ensure all preparation requirements are being adhered to in a timely manner.

The mediator's responsibilities

The mediator will ensure they comply with St Johns Buildings Limited Code of Conduct and the Civil Mediation Council's Code of conduct at all times.

The mediator will ensure conflict of interest is reported.

6. Documentation in advance of the mediation

The mediator will be provided with a bundle of relevant documents by St John's Buildings Limited at least 7 days in advance of the mediation.

St John's Buildings Limited recommends standard documents to include:

- a. A copy of the bill of costs;
- b. A copy of the points of dispute, annotated as necessary in order to show which items have been agreed and their value and to show which items remain in dispute and their value;
- c. A copy of any replies served;
- d. Copies of all orders made by the court relating to the costs which are to be assessed;
- e. Copies of the fee notes and other receipts for disbursements as served on the paying party;
- f. Copy of the risk assessment/statement of reason in support of any success fees and copy of the ATE insurance certificate (if any);
- g. Transcript of judgment at trial (if any);
- h. Any further documents which may be of use on contentious issues.

Document submissions which support contentious issues are vital for preparation by the Mediator if you are considering utilising evaluative mediation (the parties are able to request a confidential, non-binding view from the mediator either in open or private session).

It is worthwhile discussing the bundle with all parties involved in advance of the mediation to avoid duplication (most, if not all documents mentioned above are usually provided by the receiving party).

Lastly, a mediation position statement is often submitted in advance of the mediation from all parties.

There is no prerequisite as to what documents are to be submitted by the parties and it is at their discretion as to whether they submit any at all. The above is a recommendation but if you are of the view any items are unnecessary, please don't feel they must be submitted. All documentation must be received by St John's Buildings Limited at least 7 days in advance of the mediation.

All documentation supplied will be treated as confidential by the mediator and St John's Buildings Limited and will not circulate further without express authority.

The documents will be destroyed following conclusion of the mediation.

7. The mediation

Each party attending the mediation will have a private room for confidential discussions both on their own and with the mediator. There will be a separate large room where all parties are able to come together for open discussion with the mediator.

The mediation will take place, if possible, at one of the parties' offices to save costs. If this is not possible, St John's Building Limited will arrange the venue in the city agreed between the parties for the mediation to take place. Should there be a cost, this is to be split equally between the parties.

The mediator will determine the process and control the mediation, in consultation with the parties.

Common procedure for mediation is as follows:

- The mediator will engage in initial private meetings with all parties at the start of the mediation;
- The mediator will engage in a joint meeting with all parties in attendance. Usually, each party will have the opportunity to outline their position;
- Following this, joint and private sessions will take place directed by the parties and the mediator. St John's Buildings Limited will provide the following service:
 - *Facilitative mediation* – the mediator participates in open session with the participants and then may go into closed session with each participant. Anything told confidentially in closed session cannot be disclosed in open session. If there is an agreement, the mediation will terminate when a settlement agreement is signed.
 - *Evaluative mediation* – if facilitative mediation fails, the parties, can invite the mediator to conduct an evaluative mediation. This is no more than asking the mediator to offer a view. There is no further closed session. The participants present their cases without a right of reply. Usually the mediator delivers his evaluation orally. It is for the participants

to decide if they wish to accept the evaluation and if so, draft and sign an agreement reflecting it and if not, to terminate the mediation.

The mediation may conclude with settlement of the dispute in part or whole. All agreed matters must be drafted in a settlement agreement by the parties and signed by the representative who has full authority to settle. The mediator is able to assist in drafting any settlement agreement however control is retained by the parties. This agreement is binding and if any party fails to comply with their obligations as stated in the settlement agreement, the contract can be enforced by legal action.

Parties are able to leave the mediation at any point, even if a settlement is not achieved. Parties are to inform St John's Buildings Limited should they require further assistance from the mediator following the mediation in a further attempt to settle the dispute. Mediations that do not settle at the mediation usually settle shortly after.

The mediator is also able to withdraw in accordance with the circumstances in the European Code of Conduct for Mediators, 2004.

8. Fees

The mediator's fees, travel/accommodation expenses and any supplier costs will be paid by NHS Resolution. Each party, however, will bear its own legal and other costs and expenses of preparing for and attending the Mediation.

The Mediation Agreement provides that the mediation fees and the parties' legal costs and expenses shall not be treated as costs in the case. Parties and their lawyers should consider what costs arrangements are suitable (whether the case settles, or whether it does not) prior to the mediation.

9. Feedback

St John's Buildings Limited will circulate feedback forms following conclusion of the mediation. All parties will be sent feedback forms. All feedback will remain confidential to St John's Buildings Limited and the appropriate mediator. Any comments will contribute to the mediator's ongoing training and learning. St John's Buildings Limited will also share anonymised feedback with the NHS Resolution as part of their quarterly service reports.

10. Complaints

If you have a complaint about St John's Buildings Limited or any mediator, please see St John's Buildings Limited complaint procedure set out in the Policy at <https://stjohnsbldings.com/complaints-procedure>.