

SOME PRACTICAL SUGGESTIONS TO ENSURE THAT THE PARTIES GET THE BEST OUT OF MEDIATION HEARINGS

After acting as a mediator on a number of occasions I should like to make the following practical suggestions as to how representatives, whether solicitors or counsel, could better prepare parties for the mediation hearing. These simple points would make the process easier for the parties and therefore more productive.

1. Informality

It cannot be emphasised enough that mediation really is informal. To help the parties understand this make sure they understand the following points before they attend the mediation hearing.

Clothes.

So often the first question is what should I wear.

The answer is whatever you feel comfortable in. Any lawyers involved are likely to wear suits and ties because that is how they always dress for work. That does not mean that everyone else has to wear both or either or that anyone gains points for doing so!

Names

The next question may well be what do I call the mediator and the other people present?

In many mediations the parties and the mediator (whether judge, barrister, solicitor or none of these) use first names. That is not essential but helps to take the mediation out of the court scenario.

The parties probably know the first name of the other party or parties and it makes it easier for them to speak to the mediator and representatives if they only have to remember a first name. This also puts everyone on a helpfully equal footing.

A representative can reassure a client that he or she can write down any names they did not know and keep a piece of paper with the names on in front of them.

2. The room where the mediation takes place

The mediator and representatives should try to ensure that everyone is sitting round a table so it looks as little like a court hearing as possible. This is not always possible but worth having in mind. If a representative thinks there is a better way of setting the room out it would be helpful if he or she mentioned it to the mediator. Any problems about lighting/heating etc should also be raised as soon as possible.

3. Refreshments

Tea, coffee and biscuits are usually available. These can pall during a long day. Mediation can be a tiring process so it is important to keep up everyone's energy levels.

Most mediation providers would be happy to arrange a sandwich lunch if this is requested in advance. Representatives should find out before the mediation whether their clients would like this (cost may be relevant) or whether they wish to bring their own lunch (and is there somewhere to keep this) or buy sandwiches, fruit etc if there are shops near where the mediation is taking place

The mediator should suggest a pause to give everyone a break around the middle of the day. Representatives should indicate to the mediator if they notice that their client is flagging.

4. Mediation brief

This needs to be sent to the provider of the mediation at least a week before the mediation so that the mediator gets it in good time.

It should be short, succinct and clear.

5. Documents

It is essential that all the documentation which is needed for the mediation has been obtained and circulated well before the mediation hearing otherwise valuable time is used up by waiting for documents to be faxed through and parties needing time to consider them.

HH Audrey Sander – Retired Circuit Judge and Mediator – 0845 083 3000