

Top 10 things to know about Business mediation

What do you know about mediation? Did you know that it is becoming much more prevalent when looking at alternative dispute resolution options and it is even being set as the first option by the Courts to come to an agreement prior to heading to Court to litigate? The following top 10 things to know about business mediation may help you to decide upon this as your first route in your dispute resolution strategy.

1. **It's confidential**

Everything that takes place at the mediation is confidential or, in legal terms, "without prejudice". If the case doesn't settle, and most do, then none of the negotiations and discussions can be referred to during the course of the litigation.

2. **It's confidential**

Just to emphasise the above point, it's all confidential. The mediator may choose to meet with the parties in separate rooms during the course of the mediation to understand the dispute from their individual perspectives. Everything that is said to the mediator during these meetings remains private unless the mediator obtains permission to disclose information discussed.

3. **It can and often does take all day**

Mediations can take half a day, a full day and even run to 12 hours or more if structured over several days. It is therefore important to be prepared to commit to this time. It is an investment and one worthwhile when upon successful conclusion you will be able to work away focusing on the future and not on a dispute in the past. Parking in a long term and not short term car park is important and whilst refreshments are usually provided, it

will be important to check and come prepared if not.

4. **The mediator is neutral**

The mediator is there to facilitate the negotiations and not to act as a judge or arbitrator. He or she will show no bias and will support both parties through the mediation process to secure their best possible outcome.

5. **The mediator is not a decision maker**

It is for the parties of the dispute to make the decisions not the mediator. Any offers therefore come from the parties themselves and whilst a mediator may assist the parties to consider how to frame an offer, it will always be the party's decision to reach an agreement.

6. **You will have an opportunity to speak to the other party should you wish**

Usually a mediation incorporates an initial session during which each party has the opportunity to present their case. This is not like a court hearing. It is an opportunity to for those attending to highlight their key issues and concerns. The mediator manages the session and decides as and when the parties separate into their individual rooms for the mediation to progress. This isn't compulsory, but it can be very helpful and should be used to highlight the key issues in the case.

7. **Individuals can attend by themselves or accompanied by a friend and/or legal representatives**

There are parts of the day when each party is on their own for long periods. It is therefore often helpful to attend mediation with someone else. It is helpful to have legal representation or access to a legal representative

Top 10 things to know about Business mediation

although not essential. The mediator cannot however advise and it is therefore important that a party has access to suitable advice on the day if not in person. Some financial and commercial transactions carry tax implications and it is therefore important to have advisors on call should it become necessary to reach them during the mediation.

8. The mediator is not an advisor

A mediator is able to support the parties but not to advise them. This is left to those instructed by each party and the mediator will not step into this role.

9. The mediator is likely to ask challenging questions

A mediator will want to understand each side's position in terms of the past, present and the future impact. This can seem challenging but it is helpful to fully appreciate whether a settlement proposed should be accepted when weighed up against the prospects of a court case.

10. There is no agreement until it is in writing and signed

For an agreement to be reached, it must be in writing and signed by both parties. Nothing is binding until that point is reached and it can sometimes take as long to agree the formal written document finalising the dispute as it did to reach the agreement.

For further information about mediation or to discuss your strategy in resolving a dispute, please contact:

Sarah Canning on 01604 828282
or email

sarah.canning@franklins-sols.co.uk



Milton Keynes: 01908 660966 | Northampton: 01604 828282



Legal needs covered:

- Corporate Services
- Commercial Property
- Commercial Dispute Resolution
- Debt Recovery
- Employment Law
- Family Law
- Intellectual Property
- Mediation
- Residential Property
- Wills Trusts and Probate

www.franklins-sols.co.uk