

## Practical Steps to Make Mediation Work

- Examine the range of options for helping the client to resolve the problem. Find out the client's objectives, real needs and concerns and discuss the options to achieve these. If mediation seems to offer a possible way forward, remind yourself and your client of the benefits of mediation including, speed, cost-effectiveness, control over the outcome, confidentiality, flexibility, creative solutions and closure.
- Approach the other party or solicitors and inquire about their willingness to use mediation.
- Alternatively, if a direct approach may not or does not work, approach a mediation provider and ask it to make contact with the other party/lawyer to discuss the suitability of the case for mediation and the way forward; it can often be helpful to have this initial approach made by a neutral provider.
- If the client on either side (or legal adviser) is unsure, suggest an exploratory meeting, without commitment, with a mediation provider when the suitability of the matter for mediation can be addressed and information provided on costs, timescales and preparation.
- If there is reluctance at any stage, ask the other party/lawyer questions about their concerns (rather than simply setting out one's own position) and listen to the response.
- Consider the alternatives to mediation and the consequences in terms of costs, time, outcome and publicity.
- Broaden the focus of the mediation process from solely achieving resolution to include exchange of information, gaining of understanding and narrowing of issues.
- Create an action plan with clearly identified steps moving towards mediation; remember it is not just a one off day – it is a flexible process which can be tailored to the requirements of the matter in dispute and requires good preparation and possible follow up.
- Seek to work collaboratively with the other solicitor in the preparation of papers for the mediation; prepare a "shopping list" of the information you need from the other party to make negotiations in mediation meaningful; consider what information and/or documents you can disclose to the other party and which might assist them in better understanding your position and moving forward towards a solution; consider preparing a joint schedule of information/issues in dispute.
- Suggest that the other party/lawyer selects the mediator and that you will agree to their choice.
- Offer to pay mediation costs – perhaps even the other party's legal costs for representation at the mediation.
- View strong emotions being expressed by clients and/or the other side as helpful – it is material which can be used in the mediation process.