

## Questions & Answers: Civil & Commercial Mediation

Hi there - my name is Pete and I'm the founder of Pragmatism (UK) Ltd - I also carry out as many mediations as I can myself. Given that you've probably never taken part in a mediation before, I wanted to answer some of the most commonly asked questions upfront for you. You'll also be offered a 'pre-call' with your mediator prior to the mediation itself, so don't worry if your specific questions aren't covered here - jot them down and ask your mediator. He or she will be more than happy to answer your questions. The most important thing is not to worry about the mediation process itself - we make them as informal as possible and there really isn't anything to worry about. It's our job to ensure you feel as comfortable as possible and you will never be forced to do anything you don't want to do.



**Pete Colby**  
Director & Lead Mediator

### *What will happen on the day?*

The purpose of mediation is to allow both parties to express their true views and thoughts to the mediator in an honest and confidential manner. The mediator will use their discretion and may suggest an initial joint meeting in order for both parties to provide opening statements. The majority of discussions, however, will take place privately between the mediator and each party separately, with the mediator moving between parties at appropriate intervals.

Should both parties reach an amicable agreement they will draw this up between them in writing – this will normally be drafted jointly and signed at the conclusion of the mediation. The mediator will not form part of the actual agreement as it is an agreement between the parties.

### *Can I bring somebody with me?*

This is a discussion you can have with the mediator. Other than legal representation generally we prefer that parties attend alone, as mediation is a process that focuses on the specific issue between the parties. This is an opportunity, through having an impartial mediator facilitating the process, for you to reach a mutual agreement, and sometimes being accompanied can make things more complex. Each circumstance is different and if you wish to be accompanied you should raise this in advance with the mediator.

Where legal representation has been instructed regarding the matter in question it is a decision for either party as to whether they require their representative to attend. Each party will be responsible directly for legal costs incurred for representation during the mediation.

All attendees of the mediation must sign an Agreement to Mediate.

### *Is the mediation confidential?*

Absolutely – yes. You will be asked to sign a mediation agreement beforehand which will explain about the importance of confidentiality. Our mediators are governed by strict processes in terms of confidentiality.

One of the main benefits of mediation is confidentiality. Other than the situations outlined in the mediation agreement (eg disclosure is required by law) there are no restrictions on what you tell the mediator during private sessions and you don't need to worry how you say it – it's best to be yourself. This all helps towards gaining a mutual resolution to the issues.

### *Who will the Mediator be?*

The mediator will be fully trained, qualified and regulated by the Civil Mediation Council for civil and commercial mediations.

***Where will the meetings happen?***

The meetings will take place in rooms that will be pre-arranged by the referrer. The mediator will ask for rooms that are as discreet and private as possible, in order to minimise the scope for distraction or interruption, and to allow all parties to speak as openly as possible. In situations where people are unable to meet at the same venue the mediation can be carried out online, where the same processes and principles apply.

***Should I bring evidence?***

Sometimes the temptation is to try to prove to the mediator that you're right and others are wrong. The mediator is not there to judge and will not do so – they will focus on potential resolutions. The mediator will ask you to speak to him/her and not to read from extensive notes.

Appropriate documentation should be provided ahead of the mediation, which the mediator will read through in advance. You may want to bring these as reference documents, but the mediator will normally only spend time on these if it's helpful in moving forwards towards a resolution.

***What if I feel that I can't continue with the meeting?***

The mediator keeps a watchful eye on how each person is handling the process. Anybody can suggest a break at any time, including the mediator – sometimes you may need a few minutes to gather your thoughts or to talk with the mediator alone before resuming.

It's in everyone's interest to proceed with the process, if at all possible. The mediator may, however, decide there is no advantage to continuing that day and may suggest a halt is called to the process pending further discussions.

Part of the mediator's role is to manage the ongoing dialogue to ensure that each party respects the other and uses appropriate and constructive language to achieve a better understanding and hopefully an agreed way forward.

***What if things become confrontational?***

Sometimes a little tension in the discussion can help to generate some progress and the mediator will manage this accordingly. For this reason, the mediator will not always be able to make the discussion entirely comfortable, as it is important not to avoid the difficult issues. The mediator will make a professional judgment about when to intervene and ensure a sense of balance and cooperation in the process.

The mediator is independent and impartial and is there to make the process equal and fair to all parties. If behaviours are inappropriate, then the mediator will stop the meeting.

***What do you expect me to do on the day?***

All we ask is that you come to the process ready to express your views as clearly and respectfully as you can, and also be prepared to look at yourself and how you might make positive changes to help move the issue forward towards a resolution. You should not come to accuse, blame or to use the process to score points against other people, but genuinely to try and find a way of resolving the issues.

***What if I feel there's no chance of sorting things out?***

Don't enter into mediation just because someone else thinks it's a good idea, but do stay open minded even if you can't foresee a resolution - this is often the case. If you're not motivated to engage and look for solutions, you may end up wasting time for yourself and others - if you are open to trying to get a mutual way forward then you most probably will with the mediator's help. People are often surprised at how they can work out solutions through mediation.

***What preparation do I need ahead of the mediation?***

You should consider ahead of the day what you want to achieve from the process. The mediator will help you to focus on just three or four key things you want to communicate to the other person that will clarify your position at present and how you believe things can move forward.

Take time to consider the fact that no conflict situation is ever the result of just one person being at fault. We can all be stubborn and inflexible at times and thinking about how you might make changes as well as asking the other person to do the same will help to achieve a better outcome.

***Will the mediation be recorded?***

No. The mediation agreement that you and the mediator sign will stipulate that no recording of any kind will take place.

***Can I take notes?***

Yes, but only for use within the mediation – these must not be used after the session. Any notes taken during the meeting by the mediator will be destroyed following the mediation - you should do the same or hand them to the mediator for him or her to destroy.

***What information will be fed back and who to?***

The mediator may need to provide some feedback to the original referrer. In such circumstances the mediator will ask what the parties are happy to have communicated back to the referrer, and this will be agreed towards the end of the mediation. In many commercial disputes there is no specific referrer involved, in which case information is not shared further by the mediator. The mediator will not share any details without prior permission from the parties involved.

***Will any agreement we reach be legally binding?***

The only good outcomes to a mediation process are those in which both or all parties agree. Nobody will be forced or cajoled into 'signing up' to a way forward that is not right for them or in their interests.

If both parties reach a mutual agreement to settle the dispute as part of a commercial mediation, once the agreement is written and signed it becomes legally binding between the two parties.

***What if more time is needed?***

Mediation process is usually concluded within a single day. If you, the mediator or other parties believe that more time is needed to consider a resolution, it may be suggested that the process is adjourned and reconvened. Additional time would need to be approved by those paying the mediation fees.

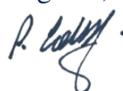
***If I've been through mediation does that mean I can't go to court?***

The intention of mediation is to resolve the issues that exist between parties in a mutually agreeable way so that nobody involved feels that they need to pursue litigation. As long as you and other parties involved are open to achieving a resolution there is a very high possibility that you will do so.

If mediation is unsuccessful it does not stop any litigation place from going ahead. Where mediation is successful and an agreement is signed between the parties, this is legally binding. Court action would not be required or be appropriate in this circumstance.

I hope you have found the answers to these questions useful ahead of the mediation. Every mediation is different, as is everybody's circumstances so if you do have a question or anything that's worrying you please do raise it with your mediator either at the pre-call, at the mediation itself or by contacting them at any other time. It's very important to us that you don't worry about anything - the chances are we can quickly ease your concerns.

Regards,



Pete Colby

**Director / Lead Mediator**