

GUIDE TO MEDIATION

**In relatively low value
estates or for issues with no
monetary value.**

Hesketh Mediation

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Introduction

I have written this guide specifically for probate or inheritance disputes where the value of the estate is relatively low or the dispute does not have a monetary value - such as a disagreement about funeral arrangements. This is how I mediate these disputes - if you choose to work with a different mediator you will need to ask about their process as it will be different.

This is a shorter form of mediation designed to keep costs down. To do that:

- the mediation is online via Zoom;
- as the mediator I receive few documents in advance; and
- the parties are not represented by lawyers.

What is Mediation?

Mediation is a **voluntary** and **confidential** way to resolve disputes about wills, estates or trusts. I as the mediator work with all sides to help them negotiate and find a resolution that everyone can accept.

WHY USE MEDIATION?

Mediation can be **quicker**, **cheaper** and **less stressful** than going to court. It can remove the uncertainty of a trial and you can achieve creative, problem solving outcomes that a judge is unable to order.

WHERE DOES THE MEDIATION TAKE PLACE?

The mediation takes place **online** via Zoom. I will set up a private virtual room for each party and one for any joint discussions we may have together (these are voluntary).

WHAT HAPPENS BEFORE THE MEDIATION?

Some days before the mediation I will arrange a short call with you on Zoom to:

- check there are no technical issues using Zoom;
- get some background information about the dispute;
- answer your questions about the process;
- discuss what papers you might send the mediator to read advance;

- find out why the dispute has not yet been resolved;
- start thinking about what kind of resolution might be achieved.

I will send you the mediation agreement to sign which confirms that all parties must keep matters confidential.

WHAT HAPPENS ON THE MEDIATION DAY?

You start with a confidential meeting with me. This is in your private virtual room. You may have a number of private meetings with me throughout the mediation. They are all **confidential** - I will not pass on any information from these meetings to any other party without your express permission.

I use these meetings to:

- get to understand your point of view;
- help you consider any offers the other side makes;
- help you put forward your own proposals for resolution;
- break deadlocks if and when they occur.

DO YOU HAVE TO MEET WITH THE OTHER SIDE?

No. I usually encourage parties at some point to speak directly to each other but understand that relationships may well have broken down so the choice is always yours.

CAN I HAVE SOMEONE WITH ME?

Yes. You must tell me and the other side who is attending and everyone must sign the mediation agreement to confirm they will keep matters confidential.

WHO MAKES THE FIRST OFFER?

That depends but I will work with the parties to ensure they do not waste too much time deciding on who goes first.

HOW DOES THE MEDIATOR HELP?

Negotiations without a mediator fail when the parties reach an impasse and neither side is prepared to move further. I am skilled at helping parties move beyond these obstacles and generating ideas to move forward to resolution. I

enable communication between parties who otherwise would not speak directly to each other.

DOES THE MEDIATOR GIVE LEGAL ADVICE?

No, as a mediator I am not permitted to give legal advice to either party. Although you agree not to bring your lawyer to the mediation to keep the costs down, you are free at any point before, during or after the mediation to consult your lawyer for advice.

WHAT HAPPENS IF A SETTLEMENT IS AGREED?

The agreement can be written down and signed by each side but the parties will be responsible for writing the agreement. You may decide an agreement in principal and ask your lawyers to make it formal later. There may be some more work required to implement the agreement, for example a property may have to be sold or transferred, but the agreement will signal an **end to the dispute**.

WHAT IF NO SETTLEMENT IS REACHED ON THE DAY?

I invite parties to leave their best offers open for a period of time and keep in touch. Disputes often settle a short while after a mediation when the parties have had time to reflect on what was said at the mediation.

HOW LONG DOES THE MEDIATION TAKE?

To keep costs down the mediation is limited to 4 hours. There is also the pre-mediation discussion with me which will take up to half an hour.

WHO PAYS FOR THE MEDIATION?

Usually the fees are split equally between the parties but that can be varied by agreement. The fees are paid before the mediation can go ahead.

ANY MORE QUESTIONS?

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