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Civil Court Mediation Service Manual

Version 3 – February 2009



JUDICIAL STUDIES
BOARD

Foreword by Sir Anthony Clarke, Master of the Rolls

The first court based mediation scheme was pioneered by Central London County Court in 1996. We have come a long way in developing mediation as an alternative method of dispute resolution since then. During the past twelve years, a number of courts followed Central London's example, creating their own successful mediation schemes. However, this led to a range of different providers, offering broadly similar services but for quite widely differing fees.

In November 2004, the National Mediation Helpline was launched, and has since become established as an efficient means of providing mediation services throughout England and Wales. The helpline scheme was further enhanced by the Civil Mediation Council's (CMC) accreditation process for mediation providers. For the first time, this created a real quality benchmark for civil mediation, and in April 2006, the Helpline was re-launched to provide all courts with access to Area-based panels of CMC accredited mediation providers.

More recently still, in March 2007, following the successful small claims mediation pilot at Manchester County Court, HMCS began to appoint a number of small claims mediators across England and Wales. By October 2007, the first 10 mediators had already conducted some 1,000 mediations. A further 7 mediators were appointed in October 2007, and by April 2008 every HMCS Area will have an in-house small claims mediator.

This means that, any court user anywhere in England and Wales now has ready access to mediation in the form of a free in-house mediation service for small claims, and - for higher value claims - a low-priced time-limited mediation service via the National Mediation Helpline.

From April 2008, any court user can use the allocation questionnaire to highlight interest in using either service. This manual provides court staff, Court Managers, Area Directors and the small claims mediators with step-by-step guidance on how to respond to those requests and arrange mediations.

Although only a very small percentage of court cases currently go to mediation, I fully expect that over the coming years we will see a significant increase in the number of cases resolved via this route. These two major services, now available to all court users, will no doubt increase that prospect. I certainly hope so.

I therefore commend this Manual to you.

Sir Anthony Clarke
Master of the Rolls
January 2008

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1. Introduction

The overriding objective of the Civil Procedure Rules requires the court to actively manage cases, which includes: *encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure.*

When court-based mediation began to be introduced in some of our larger court centres (such as Central London and Birmingham), it was targeted at cases in the fast and multi tracks, where parties are generally represented and legal costs likely to be significant. However, it became clear that only the largest courts would be able to establish their own mediation schemes – many courts were simply too small to be able to provide the administrative support necessary to manage a court-based scheme. Consequently, towards the end of 2004, HMCS set up the National Mediation Helpline. The Helpline can provide low-cost, time-limited mediation to court users anywhere in England and Wales.

While the Helpline is primarily aimed at fast and multi track disputes (i.e. above £5000), the vast majority of hearings in the courts are small claims below £5000. Since it can cost as little as £25 to issue a small claim in the courts, it is unrealistic to expect small claims users to pay for mediation. HMCS therefore piloted a number of potential new ADR services – aimed at lower cost disputes – that were free to users. The in-house mediation service pilot at Manchester County Court was shown to be the most effective, demonstrating the highest levels of both settlement and customer satisfaction. One other unexpected result from this pilot was the use of telephone mediation - now over 90% of users manage to settle their small claims disputes over the telephone without either party having to attend court, resulting in savings of both time and cost.

Following agreement of the HMCS Corporate Board, and following consultation with the Association of District Judges, HMCS recruited a number of small claims mediators, so that now all court users in England and Wales have access to the in-house small claims mediation service.

Together, these services help to deliver the Department's strategic objective for "fair and simple routes to civil and family justice", in particular by "providing greater opportunities to help people resolve problems without needing to go to court" (Ministry of Justice Corporate Plan 2009-11).

The information contained within this mediation manual is therefore aimed at helping court staff better understand mediation, and to guide both court staff and judiciary through the 'nuts and bolts' issues of referring parties to mediation, for small claims as well as fast and multi-track disputes.

2. Judicial Referral to Mediation

The Legal Background

The overriding objective of the Civil Procedure Rules encourages the use of alternative dispute resolution (ADR). The CPR define ADR as *a collective description of methods of resolving disputes otherwise than through the normal trial process*. Consequently mediation is only one method of ADR that the court is encouraged to promote.

Rule 1.4(1) obliges the court to further the overriding objective of enabling the court to deal with cases justly by actively managing cases;

Rule 1.4(2)(e) defines “active case management” as including “*encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure*”.

Rule 26.4(1) provides that “*a party may, when filing the completed allocation questionnaire, make a written request for the proceedings to be stayed while the parties try to settle the case by alternative dispute resolution or other means*”. The court/judiciary can also stay the case if considered appropriate.

Rule 44.5(3)(a)(ii) requires the court, in deciding the amount of costs to be awarded, to have regard to the conduct of the parties, including in particular “*the efforts made, if any, before and during the proceedings in order to try to resolve the dispute*”.

The pre-action protocols contain standard wording on ADR, to the effect that:

"The parties should consider whether some form of alternative dispute resolution procedure would be more suitable than litigation, and if so, endeavour to agree which form to adopt. Both the Claimant and Defendant may be required by the Court to provide evidence that alternative means of resolving their dispute were considered. The Courts take the view that litigation should be a last resort, and that claims should not be issued prematurely when a settlement is still actively being explored. Parties are warned that if this paragraph is not followed then the court must have regard to such conduct when determining costs."

The courts have also given strong support for the use of ADR in general, and mediation in particular, in cases such as *R (Cowl) v Plymouth City Council* [2001] EWCA Civ 1935, [2002] 1 WLR 803, *Dunnett v Railtrack plc* [2002] EWCA Civ 303, [2002] 1 WLR 2434 and *Hurst v Leeming* [2001] EWHC 1051 (Ch), [2003] 1 Lloyds Rep 379.

In addition, in *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576, the Court identified six factors, which might be considered as justifying refusal to mediate when determining whether a party who has been successful in litigation should be deprived of their normal entitlement to costs:

- **The nature of the dispute**, as to which the Court warned that "*most cases are not, by their very nature, unsuitable for mediation.*"
- **The merits of the case**, by which a party which reasonably believes it has a strong case might be justified in proceeding to litigate.
- **Other settlement methods have been attempted**, though the Court noted that "*mediation often succeeds where other settlement attempts have failed*".
- **Costs of mediation would be disproportionately high.**
- **Delay** to a trial date.
- **Whether mediation had a reasonable prospect of success**, the burden of showing which lies with the unsuccessful party who proposed mediation, and not with the successful party who refused.

Judicial Encouragement

Evidence from the evaluation of court mediation schemes shows that at the local level a key factor in the success of a scheme is the commitment of the Designated Civil Judge and District Judges. The judicial role is important in driving the change process and encouraging parties to mediate.

Judges are able to give careful consideration to cases at the allocation stage, case management conferences or even at late stages such as the pre-trial review to see if there is scope for the case being diverted towards mediation. District Judges in particular can act as a single point of contact for all mediation queries and referrals.

Evidence from schemes in England and Wales (in particular the Automatic Referral to Mediation pilot at Central London County Court), indicates that voluntary mediation is more likely to achieve higher settlement rates when compared to compulsory mediation. Mediation is by its very nature a consensual process and works best when parties come to mediation willingly or of their own volition.

However, if court-based mediation is to rely entirely on parties requesting mediation, the demand for it is likely to remain small.

While members of the judiciary have complete discretion on what to do in a case, research shows that mediation works best when there is some form of judicial encouragement, and that such encouragement can be quite robust. But referral is a delicate balance. On the one hand, a "push" or gentle encouragement from the judge could possibly be viewed as a relief where the parties might not want to suggest mediation for fear of losing face. Even where there is strong judicial support for mediation, some parties still wrongly interpret a proposal to try mediation as a sign of weakness. But, research also shows that if a judge is too forceful, it could lead to unwilling parties going to mediation. Similarly, if a judge is over enthusiastic about mediation, unsuitable cases could be referred to mediation, which might be unlikely to settle particularly where the mediation is time-limited to 3 hours.

In addition, the vast majority of litigants, and many legal professionals – even if they know the term 'mediation' – probably know relatively little about the

potential of mediation in settling disputes. There is therefore a clear need for good information about mediation – both on what mediation is, as well as its potential for settling specific cases. This information should, wherever possible, be made available to the parties themselves, because research shows that parties represented by a lawyer choose mediation significantly less often than unrepresented¹ parties.

The Timing of Mediation

There are different opinions about the most favourable time to refer parties to mediation. One school of thought believes that the choice should be made as quickly as possible, before parties have become entrenched and dug in their heels. Others believe that the dispute needs to have reached a certain stage of maturity before parties decide to turn away from the courtroom and go back to the negotiating table. Broadly, when a case is ready for settlement negotiations, it is ready for mediation.

However, it is generally agreed, that even in conflicts that run aground, a stage can be reached at which the parties realise the futility of more legal action and return to the original underlying basis of the conflict. But, there will always be some who let things escalate to the point where they would rather go to trial almost regardless of the outcome.

Overall though, one of the real benefits of mediation, when set against the court process, is that it can and should be quicker. Under the National Mediation Helpline arrangements providers are required to undertake a mediation within 28 days of being referred a case. At the same time, judges generally stay the case for no longer than six weeks. In the small claims mediation service at Manchester County Court, the in-house mediator takes an average of 5 weeks from allocation to mediation settlement - compared to an average of 12-13 weeks for a small claims hearing.

Case Types

Most mediation providers suggest that nearly all cases are suitable for mediation. However, as a general rule, the following cases are generally regarded as inappropriate for mediation and should therefore not be considered for mediation at allocation stage:

- where a legal precedent is needed to clarify the law or inform policy;
- where settlement would not be in the public interest;
- where protective proceedings are required, such as injunctions; or
- where summary judgment is appropriate.

Some examples of types of case that are suitable include:

Contracts for goods and services

¹ H Brown & A Marriott, *ADR Principles and Practice*, 32 (1999); H Genn, University College of London, Faculty of Laws, Research Series, The Central London County Court Pilot Mediation Scheme (1998)

- Printing, electrical work, carpet fitting, double glazing, beauty treatment and therapy contracts - between businesses and between businesses and consumers

Contracts for services

- Holiday companies and customers.
- Non-payment of professional fees – solicitors and architects

Landlord and Tenant

- Non-payment of rent

Insurance disputes

Building disputes

In general, as far as small claims are concerned, the experience of the judiciary is that the vast majority of cases are susceptible to mediation. There are only a few exceptions:

- Road traffic accident (RTA) cases, where both sides have solicitors and neither side wants to admit liability;
- Bank charge claims, where the banks appear not to want to engage in the court process until a few weeks before the hearing, and tend to settle in any case;
- Claims from HM Revenue and Customs, the Child Support Agency, the Water Companies and DVLA - these organisations will generally not be interested in mediation.

Personal Injury

There is an ongoing discussion about whether personal injury cases are suitable for mediation. During the Automatic Referral to Mediation Scheme at Central London County Court, a common reason for opting-out of mediation in personal injury cases, was that the case would settle anyway, and so mediation was unnecessary. As a result, over the year of the pilot fewer than 10% of the personal injury referrals actually resulted in a mediation. However, of those that did mediate the settlement rate was 59% - significantly higher than the settlement rate of non-PI cases (47%). Indeed, in the 40 PI cases where both parties accepted the referral to mediation from the outset, and proceeded to a mediation, the settlement rate was as high as 65%.

Consequently, there should be no automatic assumption that PI cases will fail to mediate successfully. Judges should feel free therefore to refer suitable PI cases to mediation. But this should be on the understanding that if a party objects to mediation, it would probably not be worthwhile attempting to persuade them to change their mind.

Indicators and Counter Indicators for Referral and Selection of Cases for Referral

While a judge, in making the referral, will want to make sure that the case in question is suitable for mediation, there are other criteria that are just as important in indicating the success of mediation. While research has shown that there are no uniform criteria for making referrals to mediation², there are what could generally be termed "referral indicators".

The key indicator is the willingness of the parties to negotiate. Experienced mediators agree that it is not the type of case that determines the chances of successful mediation, but the attitudes and insights of the parties themselves. They have to be prepared for and capable of discussing a solution to their conflicts while also being able to develop an eye for their mutual interests. However, good mediators can frequently overcome unwillingness to help parties in problem-solving and risk assessment of their case, even if parties are initially reluctant to get around a table.

The other most critical indicator is the presence of room for negotiation, for example, mediation may not be suitable for a simple debt recovery action.

Research shows that these two fundamental conditions need to be met - otherwise the other indicators (see below) can be ignored.

Table 1 below gives a general outline of the indicators and counter-indicators.

Table 1: Referral Indicators

Indicators	Counter indicators
A result other than that possible through a court ruling is desirable Speedy solution is desired 'Legal proceedings fatigue' Long-term relationship (family, neighbours, business contact, company, long-term contract, etc.) Common future interest(s) More litigation or more conflicts than presented in the proceedings Importance of confidential treatment, with possibility of separate interviews More parties involved in the conflict than just the parties in the proceedings A longstanding solution is essential	Both parties are unwilling Earlier mediation attempt failed A precedent is desired Public decision is desired Too great a power imbalance Parties with a cultural background which has no place for mediation Legal procedure in which only a court ruling can bring about a solution

See [Annex A](#) for a judicial perspective on the small claims mediation service.

² H Brown & A Marriott, *ADR Principles and Practice*, 32 (1999); H Genn, University College of London, Faculty of Laws, Research Series, The Central London County Court Pilot Mediation Scheme (1998)

3. Fast and Multi-Track Mediation

The National Mediation Helpline

The National Mediation Helpline began in November 2004, and has since become established as an efficient and effective means of providing mediation services throughout England and Wales. The NMH operates nationally as a source of information about mediation and a mechanism for setting up mediation appointments, with panels of local mediators that have been accredited by the Civil Mediation Council³, on a standard fee scale.

The NMH is managed by Clerksroom, and trained call operators are on duty between 8:30am and 6pm, Monday to Friday with the exception of Public Holidays. The NMH can be contacted by phone (0845 60 30 809) or fax (0845 083 3001), and also has a web site - www.nationalmediationhelpline.com.

Costs

Amount of claim	Fees - per party	Length of session
£5,000 to £15,000	£300 + VAT	3 hours
£15,000 - £50,000	£425 + VAT	4 hours

If the claim is for more than £50,000, the fees are agreed with the organisation providing the mediation.

Where a claimant/defendant has demonstrated to the court that they are eligible for a **fee remission** in their current case, they will be eligible for a **free mediation**. To access this free service, when the court refers the case to the National Mediation Helpline (see below), the Helpline adviser will need to be informed so that they can pass the details to LawWorks, which has a panel of mediators that can provide free mediations.

LawWorks Mediation is an independent charity, offering **free** civil and commercial mediation to those unable to afford to pay for a commercial provider and without other means of paying. This service is available throughout England and Wales and is free to both parties if one party qualifies for pro bono help. Fee remission is an automatic gateway; in other cases LawWorks will assess whether the applicant can afford to pay.



³ The Civil Mediation Council is an association of academics, professionals and providers in the field of civil mediation. The organisation encourages mediation as a way to settle disputes. More information about the CMC can be found at www.civilmediation.org

Accommodation

The parties should try, where possible to provide a suitable venue for the mediation. However, if no other option is available, some courts may be willing and able to provide suitable accommodation at no charge.

The Mediation Process:

Defence/Allocation

Once the court receives a defence to a part 7 claim, it sends both parties a notice of defence, allocation questionnaire (N150) and leaflet EX305 'The fast track and the multi-track'. The allocation questionnaire asks the parties whether they would like a stay for mediation, and whether they would like the court to arrange a mediation appointment (via the National Mediation Helpline). Alternatively they can arrange one themselves with a commercial mediation provider. Leaflet EX305 explains more about the process.

On the expiry of the time limit for AQs, the file is referred to a district judge for directions about allocation/stay/mediation in the usual way.

Mediation Directions

At this stage, the judge considers whether the case is suitable for mediation on the paperwork before him/her. If both parties wish to try mediation, the judge can decide to stay the claim for 6 weeks and direct the court to contact the Helpline. If only one party (or no party) wants to use mediation, the judge considers the arguments for not wanting mediation. The judge can consider whether an allocation hearing is needed to talk through the matter further with the parties, or he/she can order the claim to proceed straight to trial. Any mediation directions can be given in Form N150a 'Allocation to Track – Master's/District judge's direction'.

However, there may be other stages that would enable the judiciary to consider whether mediation is appropriate (e.g. Boxwork, Case Management Conference)

If the judge requests the court to arrange a mediation, the mediation officer⁴ should immediately do one of the following:

1. Phone the National Mediation Helpline on 0845 60 30 809 and ensure that the case details are relayed to the Helpline:
 - Parties' names
 - Parties' Solicitors, Address, telephone and reference and email if possible

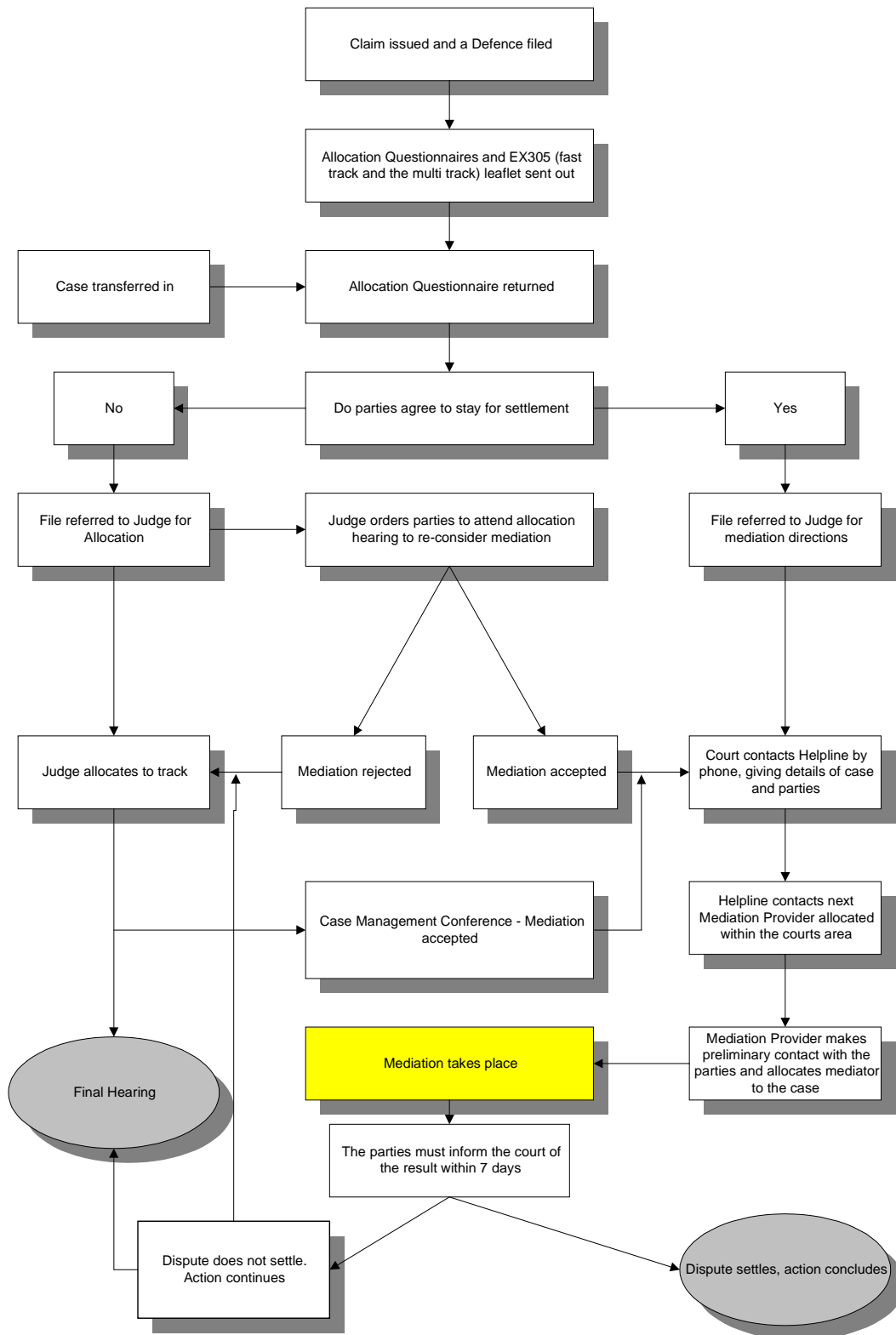
⁴ For the purpose of this manual, the mediation officer is simply a named officer, who has some basic knowledge of mediation, and who is responsible for contacting the National Mediation Helpline.

- Court Details (case number and name of court contact)
 - Level of claim (to confirm fee level) - unspecified claims need to be checked with case files to decide on mediation fees
2. Print out Caseman details of the parties and fax this over to the NMH on 0845 08 33 001 together with the Court contact details.

A note on Caseman (using Caseman code 555) should be made that the phone call was completed. If faxed, use Caseman code 999. It is important that all records are updated accordingly for internal and external inspection.

Once the NMH has the details, they will refer the case to a local mediation provider, which will appoint a mediator, who will aim to complete the mediation within 28 days.

Flow Diagram – Fast and Multi-Track Mediation



4. Small Claims Mediation

The Small Claims Mediation Service

Following the success of the Manchester pilot, the small claims mediation service was rolled out across the whole of England and Wales. Over the past 12 months to the end of February 2009, the mediators had conducted almost 9,000 mediations with a settlement rate of 71%. The vast majority of mediations (>90%) are conducted by telephone, enabling parties to settle their claims without ever having to travel to court. Of more than 3,000 users that have completed the on-line survey, 98% are satisfied or very satisfied with the professionalism and helpfulness of the mediators, with 94% saying that they would use the service again.

Stage 1: Pre-Allocation

Once the court receives a defence to a part 7 small claim it sends both parties a defence pack containing - notice of defence, small claim allocation questionnaire (N149) and leaflet EX307 'The small claims track'. The allocation questionnaire asks the parties whether they would like to use the free small claims mediation service.

It is hoped that at this stage, claimants in particular will be attracted to the free mediation service since the leaflet makes it clear that settling the case at mediation will save the cost of the hearing fee.

Stage 2: Allocation

If the Allocation Questionnaire (N149) is returned, it will be sent with all papers for allocation.

At allocation, the DJ will consider which of the mediation directions is most appropriate to the case depending on whether, both parties, only one party, or neither of the parties has asked to use the mediation service.

Evidence from those courts that support a small claims mediation service has shown that nearly all cases are suitable for mediation (around 80% of all small claims). However, as a general rule, the following cases are generally regarded as inappropriate for mediation and should therefore not be considered for mediation at allocation stage:

- Road Traffic Accident (RTA)
- DVLA
- Child Support Agency (CSA)
- HM Revenue and Customs
- Bank Charges

- Water Rates

If a case is suitable for mediation, the judge just needs to tick a box to indicate this, and then give standard directions orders (either to stay the case, or to allocate to small claims track and ask the court to arrange a hearing). The directions are usually noted in form N150a (Allocation to Track), although some judiciary like to use their own forms (as shown in Annex B). The expectation is that in most circumstances the case would not need to be stayed.

Not all cases referred to mediation will proceed to mediation. Where a party has already indicated on the allocation questionnaire that they are not interested in mediation, they are less likely to respond to an invitation to mediate in a Judicial Order. Practice shows therefore, that in general, it is better not to stay, since a stay could unnecessarily delay the final settlement of the case.

Action for staff:

If the judge decides that a stay is not appropriate, but wants to invite the parties to use the small claims mediation service: the claim should be allocated to the small claims track and the following paragraph inserted in the **N157 notice of allocation to the small claims track** (use **Event Code 210 – N157 ALLOC S/CLM HRG** on Caseman – claims **BMS Task JH60** automatically).

*“The Judge considers your case is suitable for mediation and you are therefore encouraged to use the Small Claims Mediation Service. This service is **FREE** for court users with a current small claims case. Mediation appointments can be done by telephone (saving the need to come to court), or face-to-face; parties can also mediate without the need to meet or speak to one another. The mediation is usually limited to one hour and is confidential.*

If you would like to take up this offer of mediation - or find out more about the mediation process - you should contact the Court Mediator on [Tel. No.], or email [.....] within 7 days of receipt of this order.

Alternatively, if you do not wish to try mediation, a hearing has been arranged as follows.”

If the judge decides that a stay is appropriate, the following paragraph should be inserted into the N24 stay of settlement (use **Event Code 103 – N24 Stay for Settlement - claims BMS Task JH67** automatically). An obligation should also be added to Caseman in relation to the end of the stay to ensure that further action is taken in the event that parties fail to contact the mediation service or contact the court as to progress the case further.

*“The Judge considers your case is suitable for mediation. You are therefore encouraged to use the Small Claims Mediation Service. This service is **FREE** for court users with a current small claims case. Mediation appointments can be done by telephone (saving the need to come to court), or face-to-face; parties can also mediate without the need to meet or speak to one another. The mediation is usually limited to one hour and is confidential.*

If you would like to take up this offer of mediation - or find out more about the mediation process - you should contact the court mediator on [Tel. No.], or email [.....] within 7 days of receipt of this order.

Alternatively, if any party does not wish to engage in mediation, or if mediation does not result in the settlement of the claim, the case will be listed for a hearing together with any other directions the court considers necessary.”

The IT Support Manager should create these as variable paragraphs on Caseman so that staff can easily insert them into the order (as shown in the stay for settlement ([Annex C](#)) and notice of allocation to the small claims track at [Annex D](#)).

In either case, if the judge has ticked the mediation directions, court staff should notify the mediator by sending the mediator the information that has been agreed locally in consultation between the mediator and court staff.

Stage 3: Mediation begins

If a party contacts the mediation service an explanation will be given of how the service works. If they agree to use it, the other party will be contacted to seek their agreement to mediate.

If both parties agree to use the service, the mediator will arrange a suitable day and time for either face-to-face or 'phone mediation. The mediation session will be limited to 1 hour.

The mediator will send both parties a copy of the agreement to mediate and information letter. During the initial contact with the parties they will be told that in accepting the mediation appointment they accept to abide by the terms contained in the agreement to mediate.

Stage 4: Outcome of mediation

Mediation can be settled if:

- The claimant withdraws the case;
- The defendant withdraws a counter claim where one has been issued
- Payment is made immediately or
- An agreement is reached for further action to be taken by one or both parties which they have agreed will act as a full and final settlement of the case. This can be recorded on an agreement which may be signed

by both parties or alternatively have a Tomlin order attached which in normal circumstances will attract a court fee.

The mediator will inform both parties of what action they can take in the event that the agreement fails. This is dependent on how they have chosen to settle their case. In certain circumstances this could mean that enforcement action could be taken.

The fundamental task of the mediator is to help the parties reach a settlement and the parties on reaching that settlement agree that they will honour the terms of the agreement. Therefore the role of the mediator is at an end at the point that a settlement is reached and any necessary administrative matters are completed. The mediator will not therefore be responsible for taking any further action on behalf of either party if the terms of the agreement are breached.

Action for Staff

If the case has <u>settled pre-allocation</u> use Event Code 73 - Settled Pre-Judgment (claims BMS Task JH81 automatically).
If Tomlin order received use Event Code 136 - General Form of Application (claims BMS Task JH11 automatically) and Event code 332 - General Form of Order (claims BMS Task JH12 automatically).
If <u>settled after allocation</u> and there is a hearing date, ensure the listing officer is informed to remove the case from the list. Use Event code 73 - Settled Pre-Judgment (claims BMS Task JH81 automatically) and update the F11 Hearings screen 'S' – settled .
If Tomlin order received use Event Code 136 - General Form of Application (claims BMS Task JH11 automatically) and Event code 332 - General Form of Order (claims BMS Task JH12 automatically).
If the claim is settled prior to mediation, the claimant can send the court a Notice of Discontinuance. Use Event code 73 - Settled Pre-Judgement (claims BMS Task JH81 automatically).

Summary of process

Action for staff:

- If the DJ ticks that the case is suitable for mediation:
 - Include the mediation variable paragraph either within the order or in the notice with the date of hearing.
 - Send the information that has been agreed locally to the mediator.
 - Deal with Tomlin orders arranged through mediation in normal way fee handling, sealing of order, post out sealed order to parties, discontinuing of case etc.

Listings officer: if settlement achieved, need to vacate hearing and note Caseman.

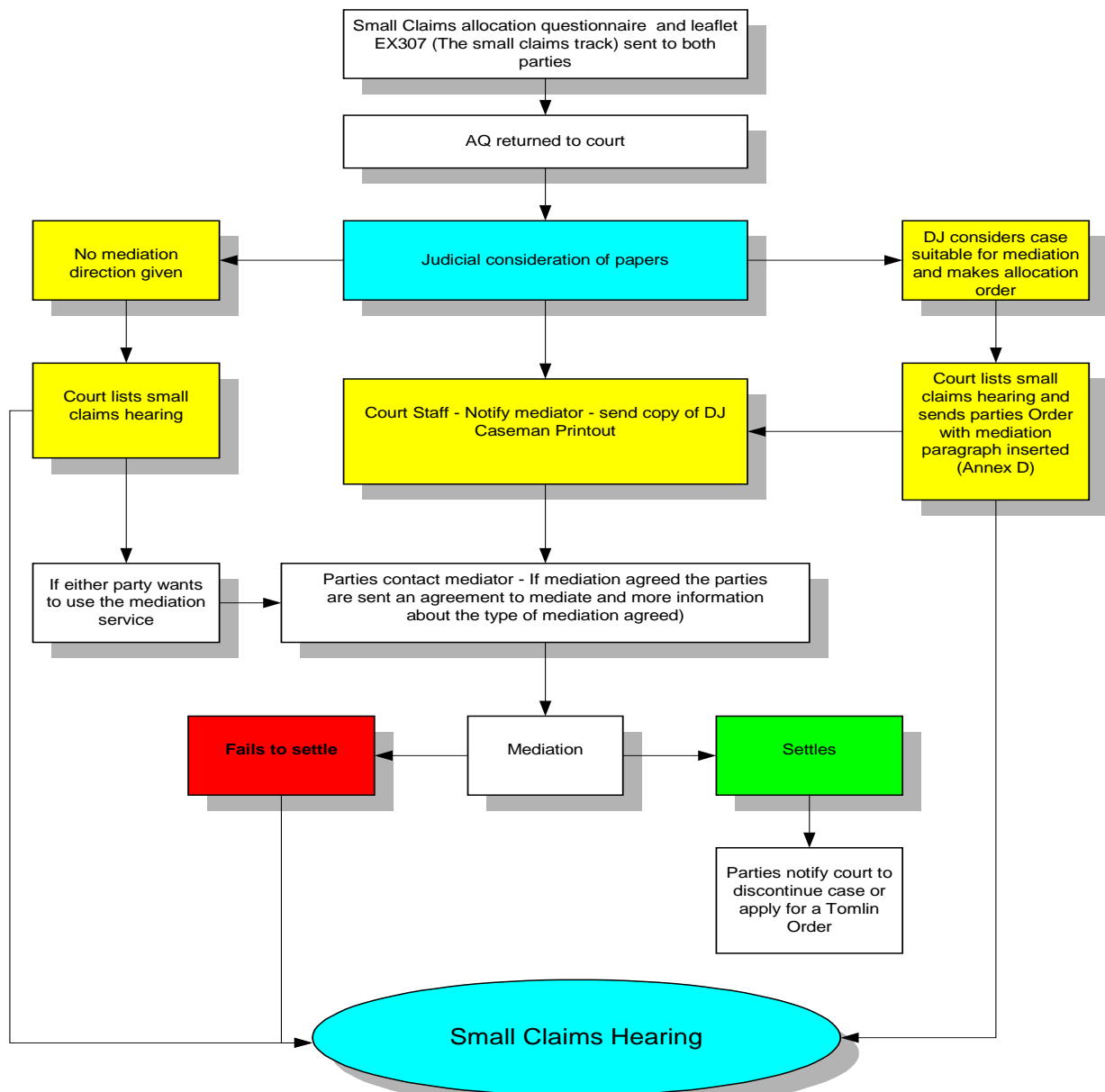
See Annexes G & H for a short guide and checklist to the mediation process.

Absences

In the event of a short-term absence by the local mediator through leave or illness, the mediator should notify his/her mediation support officer, who in turn will contact the lead mediator, James Rustidge and/or the floating mediator, Andrea Neary to provide mediation cover for that Area. For their contact details, see Annex J.

For longer term absences, the lead mediator will work with the mediation support officer to manage the mediation appointment diary accordingly.

Small Claims Mediation – a flow diagram



Complaints and Feedback

Complaints and feedback are useful measurements of the service we offer our customers, and as a means for monitoring performance. We therefore need to accurately record the types of complaints and compliments we receive and why we are receiving them.

There are two systems to capture customer complaints and compliments on mediation:

1. Customer Feedback Questionnaire

An on-line customer feedback form (first page shown below) has been created for customers to access and complete in order to give feedback on the small claims mediation service. It is available at:

http://www.surveymonkey.com/s.aspx?sm=L2jj8Uo3DFunLrkKFZdbyQ_3d_3d



1. Your views

Dear Customer

This questionnaire is designed to help us evaluate the effectiveness of the Small Claims Mediation Service. We want to hear your views and we very much appreciate you helping us by answering the questions below. All responses are confidential and your answers will help us improve the service for all our customers. It would help us if you complete all 12 questions in this questionnaire.

2.

1. What was your role in the case?

- Claimant - I brought the case to court
- Defendant - the case was brought against me
- Adviser - solicitor for the client
- Adviser - solicitor for the defendant
- Other

3.

2. Which small claims mediator did you use for the mediation? Please state the court where the claims is being progressed.

Name of mediator

Name of court

3. How did you find out about the Small Claims Mediation Service?

- From a leaflet
- In a letter from the Court (or Court Order)
- From a member of the court staff
- Letter from the Small Claims Mediation Service
- Phone call from the Small Claims Mediation Service
- Other - please specify

If customers do not have access to the Internet, they can ask the mediator for a hard copy. If hard copy completed questionnaires are received back by the court, they should be sent to the PDR team for uploading onto the Surveymonkey website. The PDR team will regularly monitor this and publicise the information.

2. The Customer Analysis and Feedback System (CAFé)

The Customer Analysis and Feedback System (CAFé) has been devised to record complaints and feedback received by Courts and Area Directors. However, it is difficult for Customer Service Unit to gauge if the CAFé System is supplying realistic data unless complaints and compliments are logged consistently. Uniform logging of complaints will assist in providing an accurate reflection of the number of complaints handled by each court and area. Therefore, it is essential that ALL complaints / compliments are logged, whether received by telephone, letter or otherwise, formal or informal.

The complaint/compliment should be logged using the relevant category - for example '*Avon and Somerset SCMS*'. To prevent double counting of a complaint, it should only be counted in the statistics by the office dealing with the substantive reply. For example, if a court directly refers a letter of complaint to the Area Directors Office for reply, the Area Directors Office should account for it, not the court. If a substantive reply is prepared and sent by the court but the customer pursues their complaint to the Area Directors Office, then each consideration of the complaint should be recorded.

Note: If a complaint is referred direct to the Area Directors Office, the court still needs to log the complaint and then mark it referred to Area Directors Office/Court.

Some examples of the feedback received from customers that have used the small claims mediation service is shown in Annex E.

Annex A. Small Claims Mediation – a Judicial Perspective

Interview with District Judge Tony Harrison for 'Benchmark' magazine

Finding a middle ground

Last year [2005], Benchmark visited District Judge Ron Dudley in Southend to find out about a new DCA scheme to promote mediation. This month, District Judge Anthony Harrison, based at Manchester County Court, talks about another side of the scheme, and a slightly different approach - having a dedicated mediator on hand and running the scheme through the court.

"We had the usual steering committee - two judges, two representatives of DCA, James Rustidge the mediator and members of the court management team," says District Judge Harrison of the start of the scheme.

"The really interesting thing is how we changed our own views as district judges, with regard to our role so far as mediation was concerned.

"At the outset, we were looking at cases on the basis of 'can we personally see that mediation would succeed in this case?'. What I think was happening was that worrying about the chances of mediation being successful in particular cases led to a slightly slow start.

"Ultimately, we moved to the position where we became convinced that what we needed to do was simply promote the existence of the mediation scheme."

The results came as something of a surprise to the judges.

"There are few cases which are not susceptible to mediation, I think," says District Judge Harrison. "In small claims, unfortunately, it's mainly road traffic accident cases, where you have solicitors on both sides and neither side wants to admit liability. "

RTAs aside, the take-up for mediation was even higher than anticipated.

"When we started to flag up the existence of mediation we started to see take-up in cases where we would have thought there was no prospect of these people getting together and talking to each other," says District Judge Harrison.

"I think a lot of this was down to James Rustidge's persistence and ability to persuade - his success rate on reaching an agreement is somewhere in the order of 85 per cent of those matters which go to mediation.

"The satisfaction rate is 90 per cent - that's very impressive.

"Mediation was even accepted by parties with a good chance of victory in full court proceedings.

"For example, our local authority, as you can imagine, brings a fair number of small claims, in what we would regard as fairly safe cases for the claimant - statutory charges for work done, that sort of thing. They are usually 99.9 per cent certain of winning - but were willing to mediate a settlement with the defendant to avoid attendance at court, which was quite a surprising development.

"I think what they decided was that, if they obtained a judgment, they've got to enforce it, dealing with people who are going to be unwilling to satisfy the judgment, or don't have the immediate assets to do so because they're on benefits or a low income.

"If the local authority has an agreement with the defendant, the defendant is much more likely to be willing to pay. To get that agreement they might have to reduce the amount to which, strictly speaking, they are entitled - but their staff don't have to go to court, and they have a better chance of actually collecting that amount."

"James even carried out a successful telephone mediation between the Home Office and a serving prisoner. The prisoner did not have to travel to court, the Treasury solicitor was in London, and from our point of view it was a win-win situation all round."

To give mediation a chance, the judges listed small claims for a formal hearing - 13 weeks in the future - in the normal way, and then referred to the scheme as an option in the court order.

Provided mediation was agreed to by both parties, "James then had to do his work in that time; provided he did, we got the bonus of having the small claims hearing vacated".

Initially, these vacated hearings were used by the judges to catch up on paperwork and reading. However, once analysis was carried out on the effects of mediation on the lists, "we anticipate now being able to reduce the manpower commitment to small claims, thus freeing up time for listing other matters".

Mediation is not the court's only initiative to increase efficiency, so it is not possible to pinpoint the exact impact it has had. However, District Judge Harrison believes the scheme has made a significant contribution to reducing the time commitment to small claims by two judge days per week.

It is also popular with users - "two who had recently been through the mediation process told us it took away a great deal of the worry of coming to court; they felt it was important to be able to express themselves in their own words without the anxiety that otherwise they might have felt in the presence of a judge".

There is also the question of convenience: James' measures for reaching a settlement have included telephone hearings, and travelling to visit each party. He has just expanded his remit to cover Altrincham, Stockport, Tameside, Oldham, Leigh and Salford, while encouraging parties to use email, fax, and any other measures that will save time and encourage a speedy settlement.

James is employed by DCA - something that had to be considered by the judges involved: "We had to ensure the mediation would be independent. We also needed to be re-assured as to the quality of training. The proof has been that we have no reservations on either score."

How mediation would be funded once the year-long pilot project ended was initially a concern. The success of the scheme has however been met with assurance of continued funding, which has indeed continued in place following the expiry of the year-long pilot.

Annex B. Example Small Claims Judicial Directions

- SC1 This claim is allocated to the Small Claims Track.
- SC2 The parties shall exchange the following not later than 4.00pm on.....(14 days prior to hearing)
Note to judge: if exchange required to assist mediation, please adjust date.
- (a) The written statements of evidence of any witness whose evidence is relied on in support of or in defence of the claim.
- (b) Copies of any documents which a party proposes to rely on.
- SC3 The Claimant may rely on the (written) expert evidence contained in the report prepared by(who shall attend the final hearing to answer questions as directed by the court).
- SC4 **Road traffic accident cases only: -**
- (a) The parties shall agree a sketch plan and photographs of the place at which the accident occurred which shall be produced at the hearing.
- (b) The parties shall attempt to agree the amount of the repair accounts subject to liability
- SC5 List for hearing before the District Judge in the Small Claims List on the first available date after 10 weeks with a time estimate of
- SC6 It is important to comply with these directions. Failure to do so may result in the hearing being adjourned or the claim or defence being struck out.

Mediation Directions

- SC7 **Pre-Allocation:** The Judge has considered your case is suitable for mediation and the case is stayed untilto enable the parties to attempt settlement. You are therefore encouraged to use the Small Claims Mediation Service. This service is **FREE** for court users with a current small claims case. Mediation appointments can be conducted by telephone (saving the need to come to court), or face-to-face; parties can also mediate without the need to meet or speak to one another. The mediation is usually limited to one hour and is confidential.

If you would like to take up this offer of mediation - or find out more about the mediation process - you should contact the court mediator on [Tel. No.], or email [.....] within 7 days of receipt of this order.

Alternatively, if any party does not wish to engage in mediation, or if mediation does not result in the settlement of the claim, the case will be listed for a hearing together with any other directions the court considers necessary.

- SC8 Post Allocation:** The judge considers your case is suitable for mediation and you are therefore encouraged to use the Small Claims Mediation Service. This service is **FREE** for court users with a current small claims case. Mediation appointments can be conducted by telephone (saving the need to come to court), or face-to-face; parties can also mediate without the need to meet or speak to one another. The mediation is usually limited to one hour and is confidential.

If you would like to take up this offer of mediation - or find out more about the mediation process - you should contact the court mediator on [Tel. No.], or email [.....] within 7 days of receipt of this order.

Alternatively, if you do not wish to try mediation, a hearing has been arranged as follows:

- SC9** This case is not suitable for mediation.

Annex C. Example Judicial Order (pre Allocation) Inviting Parties to use the Mediation Service

Standard Order for stay for settlement with consent of all the parties

In the X County Court	
Claim Number	
Claimant	
Defendant	
Date	

District Judge X orders that this claim is stayed until xxxxx to enable the parties to attempt settlement.

On or before xxxxx, one of the following steps must be taken:

either

the claimant must notify the court that the whole of the claim has been settled; (see note (i) below)

or

the claimant or defendant must write to the court requesting an extension of the stay period, explaining the steps being taken towards settlement and identifying any mediator, expert, or other person helping with the process. The letter should confirm the agreement of all the other parties. (see note (ii) below)

or

all the parties must file a completed allocation questionnaire at the court. Where a settlement of some of the issues in dispute have been reached, a list should be attached to the completed questionnaire. The list must be agreed with the other parties and must indicate that it has been agreed.

The Judge considers your case is suitable for mediation and you are therefore encouraged to use the Small Claims Mediation Service. This service is **FREE** for court users with a current small claims case. Mediation appointments can be conducted by telephone (saving the need to come to court), or face-to-face; parties can also mediate without the need to meet or speak to one another. The mediation is usually limited to one hour and is confidential.

If you would like to take up this offer of mediation - or find out more about the mediation process - you should contact the court mediator on [Tel. No.], or email [.....] within 7 days of receipt of this order.

Alternatively, if any party does not wish to engage in mediation, or if mediation does not result in the settlement of the claim, the case will be listed for a hearing together with any other directions the court considers necessary.

Note (i): Where settlement of the claim is achieved before the end of the period of stay, the following will be taken to include an application for the stay to be lifted:

- (a) an application for a consent order to give effect to the settlement
- (b) an application for approval of a settlement where one or more of the parties is a person under a disability: and
- (c) the filing of a notice of acceptance of monies paid into court, or an application to accept monies paid into court out of time.

Note (ii): Extensions to the period of stay will generally be no more than 1 month.

Annex D. Example Judicial Order (post Allocation) Inviting Parties to use the Mediation Service

Notice of Allocation to the Small Claims Track (Hearing)

In the X County Court	
Claim Number	
Claimant	
Defendant	
Date	

District Judge X has considered the statements of case and allocation questionnaires and allocated the claim to the **SMALL CLAIMS TRACK**.

The Judge considers your case is suitable for mediation and you are therefore encouraged to use the Small Claims Mediation Service. This service is **FREE** for court users with a current small claims case. Mediation appointments can be conducted by telephone (saving the need to come to court), or face-to-face; parties can also mediate without the need to meet or speak to one another. The mediation is usually limited to one hour and is confidential.

If you would like to take up this offer of mediation - or find out more about the mediation process - you should contact the court mediator on [Tel. No.], or email [.....] within 7 days of receipt of this order.

Alternatively, if you do not wish to try mediation, a hearing has been arranged as follows:

The hearing of the claim will take place at Time, Date at X County Court, Address, Postcode and should take no longer than 1 hr 30 mins. A hearing fee of £xxxx is payable by xxxxxx by the [claimant][defendant if proceeding on the counterclaim] unless you make a fee concession. Failure to pay the fee will result in the hearing being removed from the list.

The court must be informed immediately if the case is settled by agreement before the hearing date. The hearing fee will be refunded in full if the court receives notice in writing at least 7 days before the hearing date, that the case is settled or discontinued.

NOTES

- If you cannot, or choose not to, attend the hearing, you must write and tell the court **at least 7 days before the hearing**. The District Judge will hear the case in your absence, but will take account of your statement of case and any other documents you have filed.
- If you do not attend the hearing and do not give notice that you will not attend, the District Judge may strike out your claim, defence or counterclaim. If the claimant attends but the defendant does not the District Judge may make a decision based on the evidence of the claimant only.

Annex E. Customer Satisfaction and Feedback

Between September 2007, when the online customer survey questionnaire was first introduced, and February 2009, more than 3,000 users of the small claims mediation service gave their views as follows:

How satisfied were you with the following aspects of your contact with the Small Claims Mediation Service?			
	Satisfied/ Very satisfied	Neither satisfied nor dissatisfied	Dissatisfied/ very dissatisfied
Written information received about the service	93.9%	5.1%	1.1%
How easy was it to get in touch with the service	91.3%	5.9%	2.9%
Explanation of how the service could help me out	95.9%	3.6%	0.4%
Helpfulness of the mediator	97.5%	1.8%	0.7%
Answered question			3238

How satisfied were you with the following aspects of the mediation?			
	Satisfied/ Very satisfied	Neither satisfied nor dissatisfied	Dissatisfied/ very dissatisfied
Your opportunity to participate and express your views	95.8%	3.2%	1.0%
The time allowed for the mediation	94.6%	4.1%	1.5%
The professionalism of the mediator	98.1%	1.5%	0.5%
Answered question			3235

Would you be prepared to use the mediation service again?		
	Response Percent	Response Count
Yes	94.5%	3040
No	1.7%	55
Don't know	3.8%	123
Answered question		3217

Qualitative Feedback to the online survey

- I was dealing with my wife's illness and under stress owing to financial and family business. The help from the mediator and his staff was invaluable. Being 88 years of age the advice was much appreciated. I am disabled and have problems walking - it helped to discuss the case on the 'phone.
- Initially very sceptical due to the intractable stance of the other side. It proceeded well via telephone conversations and quickly resolved to my satisfaction.
- An excellent opportunity to sort out problems before going into court. I would happily have paid a percentage to the mediator.
- I would recommend this procedure to anyone who finds themselves in a similar circumstance. The courtesy and understanding I received was refreshing to say the least.
- As I am 68 years old, it would have been difficult for me to travel from London to Manchester. The settlement was accepted. Very easy to get in touch with the service, the mediator was extremely helpful & pleasant.
- Really good service, very fair and impartial. I hope I never have to use it again, but would recommend it to anyone. I had been trying to sort out my case for 12 months. It was all done in less than one hour to both parties' satisfaction.
- Brilliant! Very professional, the support and guidance given by everyone concerned made the whole experience run with ease and credibility.
- Effective, warm, friendly, human and humane. Everything a court is not. A professional service, which has been greatly appreciated by this claimant and one which I would wholeheartedly advise people to make full use of.
- The mediator was a very nice man and I felt comfortable and at ease talking to him! I think mediation is a brilliant idea as I would have hated the thought of going to court. In just over an hour we had all come to an agreement without wasting court time and money.
- Excellent process. All dealt with efficiently without the need to involve the District Judges time and saves instructing Agency Solicitors to attend the Small Claims Hearing.
- I am very happy with this service. I am only a small business and over the last few years I have lost a lot of money through the courts long-winded system. This mediation has given me back a fighting chance to put my side of the case. I don't expect to win just achieve a fair hearing, you have done this for me. Thank you very much.
- Excellent service and saved me time, money, stress in not having to go to court.

Some further feedback received by letter and email:

- I would just like to thank you for all your help and let you know how much I appreciate the work you have done for me. The whole process was dignified and fair, and I think your service is invaluable to people such as myself that have no idea relating to the law and seem to spend most of our time banging our heads against a wall. I know I was the bad guy in this case, but at no time was I made to feel as such and it made everything that much easier to come to an agreement. Your service is greatly needed and although you must feel that it is a thankless task at times, please be assured that you are doing a great job.
- I am writing to thank you for your invaluable services and all your help at the mediation. I particularly appreciated your re-arrangement of your diary and your willingness to travel to Northampton on such a busy day. Thank you again for facilitating a successful conclusion to this case.
- I would like to express my thanks to the court office staff for their patience and efficiency. I am also very grateful to X [the mediator] for her friendly but highly professional assistance over what has been a very stressful time.
- We have today completed a process with the assistance of X, the Small Claims Mediator; and although we have completed the on-line survey as requested, we felt it important to write to praise the service we have received. X was approachable, efficient and exceptionally professional throughout the whole process; and from the time of our initial contact to today's outcome, she made a difficult issue more bearable to deal with.
- Thank you very much for your excellent and very patient mediation this morning! It is really very much appreciated.
- We were extremely pleased with the mediation, which we thought was professionally and cleverly brought to a resolution.
- Thank you for your help and understanding - it made the process a lot easier than I had imagined it would be.

Annex F . Frequently Asked Questions

What is Mediation?

Mediation is a well-established process for resolving disagreements in which an impartial third party (the mediator) helps people in dispute to find a mutually acceptable resolution.

Mediation is based on the following principles:

- Collaborative problem solving between those in dispute, reaching a settlement situation which is acceptable to all.
- A focus on the future, with emphasis on rebuilding relationships rather than apportioning blame for what has happened in the past.
- A belief that acknowledging feelings as well as facts allows participants to let go of their anger and upset and move forward.

The structure and common-sense approach of mediation:

- Gives those involved an opportunity to step back and think about how they could put the situation right. This can mean looking at their own behaviour as well as that of other people.
- Enables participants to come up with their own practical solution which will benefit all sides.
- Allows people to rebuild relationships as they work together to find an agreement. This is different to the legal process, where hostility often remains between parties once the case is over.

Mediation is often more cost effective and quicker to the user than going to court, and is a flexible process that can be used to settle disputes in a whole range of situations. It is also an excellent preventative tool and can be used effectively to stop problems escalating and becoming worse. For those cases that have come to court, if no agreement is reached the court process will be re-activated. This will then continue until a judge makes an order of the court on the final hearing date.

When does Mediation work?

One of the strengths of mediation is that people are offered the opportunity to come together to resolve their disputes in a less adversarial way. This works best when those in dispute are:

- willing to take part;
- prepared to be as honest and open as they can about the situation and the part they have played in it;

- willing to want to work co-operatively with the other person to find a solution;
- willing to consider continuing to have a relationship in the future as neighbours, colleagues, family or businesses.

Small Claims Mediation

Will the mediator's contact details appear on the information about mediation?

Any information sent out should include reference to small claims mediation, with the contact details of the small claims mediator.

What happens if someone comes to the counter?

If the query is simple (e.g. is the service free?), you should be able to answer it. If it is more complex or they want to discuss mediation, you can call the mediator, or, if you cannot reach the mediator, give their number to the customer.

What happens if someone asks for more information than we can give?

Refer it to the mediator – give them the 'phone number.

Is every case suitable for mediation?

No. Some cases are automatically excluded because there are:

- fixed penalties (DVLA for example);
- complex legal/insurance issues (RTAs, bank charges) or
- no mechanisms in place for mediation in the organisation concerned (HM Revenue and Customs, CSA, Water Rates) :

Cases where legal liability is an issue are also likely to be unsuitable.

How many cases does that leave?

A lot. For example, in March, Manchester County Court received 76 small claims and 68 were recommended for mediation. Small Claims Mediators have mainly dealt with breach of contract, non-payment of goods and services and building/building works disputes.

What are the typical turnaround times?

This will vary. After initial contact, it could take a week or so to talk to all parties and get their agreement to mediate and a date for the mediation itself.

The mediation takes about an hour, and there is some follow-up work. Anywhere from 10 days to a few weeks, depending on the case.

How will this help us hit our targets?

A stay on proceedings for mediation may not be necessary and the case should follow the normal track; if the case settles, then it can be removed from the list. The mediator's aim is to try to settle cases 28 days before the hearing date, so the court can make use of the time, and parties do not have to file documents. This won't always be possible, especially if parties have only 2 weeks to go before the hearing.

Some cases may require a stay.

The mediation service will not affect the small claims process unless the case is settled. It should even free up some judicial time and help the court towards achieving its targets.

How will the mediator access the parties?

The parties will be told in the notice to parties that “the judge considers your case suitable for mediation”, and are asked to contact the mediator if they wish.

Staff will send the mediator a copy of the caseman printout which the mediator will retain and refer to if there are contacted by one of the parties.

If one of the parties then contacts the mediator, and decides to use the service, the mediator will contact the other party/parties. The mediator will ensure that the first party is happy that the second party knows that they have approached them to mediate – in case they are sensitive about this. Only if all agree can the mediation go ahead.

Initial discussions with the parties will identify any sensitivities (e.g. if parties do not wish face-to-face confrontation).

Cases will not be pursued that have not been granted directions and/or are not approved for mediation by a judge.

Does the mediator need to have the court file?

No. The Caseman print-out should be sufficient. That said, the mediator may need to contact the court and ask someone to look at the file to get other information to help contact the parties (e-mail, fax, etc), or to ask for the particulars of the claim. This will be very much the exception.

The mediator will get information from the parties about the case and the main issues when they speak to them. Remember that the mediator's role is very different to that of the judiciary – they will not judge or weigh up the evidence, and therefore do not need to read the case. The role is to facilitate the

negotiation of the parties' dispute to reach a resolution, where this is possible.

What about confidentiality?

Discussions with the mediator are confidential and therefore without prejudice – if the mediation fails, no details will be entered on the file. The mediator will only retain their notes for a short period, and they will be kept securely.

The exceptions would include disclosure of a criminal act or breach of ethics.

Confidentiality is spelt out to the parties to ensure they don't use mediation as evidence in court and that they are comfortable making difficult decisions that may cause loss of face.

How many cases will the mediator do?

This depends on how many cases are referred, and depends very much upon the support of the judiciary. But over time their aim is to achieve 2 settlements per day.

At any given time, the mediator would expect to have 70/80 cases, all at different stages in the process. In Manchester, where the service has been running for some time, the mediator has settled over 270 cases in a year. None has yet required enforcement.

How will paperwork (e.g. caseman printouts) reach the mediator?

Please address any envelopes clearly to the mediator and mark them "confidential".

What happens if someone has a complaint about the mediator?

Any complaints will go to the Court Manager to be processed in the usual way.

Is small claims mediation the same as that offered by the National Mediation Helpline?

The approach is the basically the same, although the HMCS in-house small claims mediation is free.

Fast and Multi-Track Mediation

What is the National Mediation Helpline?

In conjunction with the Civil Mediation Helpline, HMCS set up a telephone helpline (www.nationalmediationhelpline.com), which provides civil court users in England and Wales with information and advice on mediation.

The scheme is primarily advertised by leaflets, which are distributed by county courts to parties at Allocation stage, and by posters, which have been placed in public areas within the courts.

The Helpline can be accessed by phoning 0845 603 0809 (local rate) between 8.30am and 6.00pm. The Helpline staff offer parties information on the potential benefits of mediation and they will talk parties through the mediation process. The Helpline does not provide advice on individual cases or mediators. If the call is a request for a mediator then staff will ask a series of questions and pass the enquiry to a mediation provider accredited by the Civil Mediation Council.

Fees charged by the National Mediation Helpline:

Amount of claim	Fees - per party	Length of session
£5,000 to £15,000	£300 + VAT	3 hours
£15,000 - £50,000	£425 + VAT	4 hours

If the claim is for more than £50,000, the fees will need to be agreed with the organisation providing the mediation.

How does a commercial mediation session work?

Venue: The mediation venue will have one room where everyone can meet and also a separate room for each party to use as their home base. Normally the mediator will welcome the parties and settle them into their rooms and ensure that any queries are answered before the mediation commences. It is important that the parties feel comfortable and relaxed and that refreshments are available.

Open Meeting: Most mediation starts with an open meeting where everyone meets in the same room. The mediator asks everyone to agree to some basic rules, such as listening without interrupting and not using offensive remarks. Each person will then have a chance to talk about the problem as it affects him or her. The mediator will try to make sure that everyone understands what each person has said, and allow them to respond. They will then help both parties identify the issues that need to be sorted out and to try to understand why the others feel strongly about their case.

Separate Sessions: At an appropriate time, the mediator breaks up the joint session and sends the parties to their separate rooms. The mediator will then hold private meetings shuttling between the parties and gathering information in confidence. In this way the mediator builds a unique picture of the dispute, and of each party's needs, and so can help the parties to move towards a solution. The mediator seeks to earn the trust of each party that nothing disclosed confidentially will be disclosed to any other party, creating a safe environment for exploration and problem-solving.

Final conclusion: The mediator ensures that everyone knows what is going on and that they stay committed to the mediation, even when the mediator is spending long periods with the other party. The overall aim – that of giving the parties the best chance of achieving a settlement – must never be lost, and the mediator manages the process to ensure that the parties are kept focused on this outcome. If the parties are able to reach a solution, then a document is drawn up by the parties and signed by both of them. Otherwise, everything said at the meeting remains confidential.

Court notification: The parties must notify the court in writing whether the dispute has been settled or not. The court will record settlements and bring the action to a close. If no settlement has been reached the matter will be referred to a judge who will give directions for trial.

Who are the NMH mediators?

The mediators come from different backgrounds. They are experienced in helping people settle their disputes. Anyone can call himself or herself a mediator. However, the majority have been accredited by at least one of the main mediation providers who also offer training. The responsibility will be on the mediation provider to ensure that individual mediators are properly trained insured, supervised, allocated and supported to gain accreditation from the Civil Mediation Council. Most mediators believe that it is important to have a high level of expertise and knowledge to be effective as a mediator.

What is the Civil Mediation Council?

The Civil Mediation Council (www.civilmediation.org) was founded in April 2003 to represent the common interests of mediation providers and mediators in promoting mediation and similar forms of dispute resolution.

Annex G. Staff reference guide to small claims mediation - short script version

If:

- A case has been issued and a defence filed; and
- The claim is an ongoing Small Claims case (value less than £5000) and
- The case **is not** Road Traffic Accident/DVLA/CSA/HM Revenue and Customs/bank charges/Water Rates.

Please:

- let the parties know about the **free** Small Claims Mediation Service and how they can access it.
- Give them the leaflet EX307 'The small claims track', which explains more about the service.

How can mediation help them?

- The Small Claims Mediator can help court users settle many disputes without the need to come to court.
- Mediation sessions last one hour and can be conducted over the telephone or, if preferred, on the court premises.
- Mediation is less formal than a court hearing, is confidential and helps keep costs to a minimum.

How do they access the service?

Parties can ask for mediation by:

- filling in the allocation questionnaire; or
- telephoning the mediator.

Important things for you to know

- Mediation is voluntary and both parties have to agree to take part.
- Mediation will not impact on the normal progress of the case. If both parties agree settlement, the hearing will then be vacated. If not, the hearing continues as planned.
- Mediation can help parties communicate and resolve their dispute without having to attend a court hearing.

Annex H. Staff reference guide – mediation checklist

REFERRAL TO DISTRICT JUDGE	YES	NO
1. Allocation Questionnaires received and ready for referral to DJ		
2. Is it a Small Claim (under £5000)?		
3. Is it a Small Claim for one of the following? <ul style="list-style-type: none"> • Road Traffic Accident (RTA) • DVLA • Child Support Agency (CSA) • HM Revenue and Customs • Bank Charges • Water Rates <p style="text-align: center; color: magenta; margin-top: 10px;">IF YOUR ANSWER IS “YES” - THEN THIS CASE IS NOT SUITABLE FOR MEDIATION</p>		
BACK FROM DISTRICT JUDGE		
4. Has DJ ticked “Suitable for Mediation”?		
5. If NO – then continue as usual –notice of hearing and list etc.		
6. If YES either: <ul style="list-style-type: none"> • Draw Standard Order for stay for settlement and insert “Variable Paragraph” for Small Claims Mediation or; • Draw Notice of Hearing and insert “Variable Paragraph” for Small Claims Mediation. <p>Then;</p> <ul style="list-style-type: none"> • Print “DJ Printout” and send to mediator at xxxx court • Enter Caseman Event 555 and enter “referred to mediator” in comments box <p>NOTE: though Mediation has been suggested, this does not mean the mediator will be contacted – it is voluntary and therefore the listing and case management of these cases should continue as normal</p>	(Name) Small Claims Mediator (Address)	

BACK FROM SMALL CLAIMS MEDIATOR

If agreement made - Mediator will help the parties to produce an agreement

- Place papers on the file
- Vacate hearing
- Note Caseman with Event 332 (Tomlin order) and Event 73 – settled pre judgment and update F11 Screen

If a Tomlin Order is requested by either party; This will be forwarded to both parties for them to sign. Generally it would be up to the claimant to forward the signed documents and the appropriate fee where payable to the court to be dealt with in the normal manner.

Note: If an agreement is not reached – the Mediator will inform court by fax and email and hearing stays in the list as normal.

Annex J. Contact Information

Proportionate Dispute Resolution Team

2nd Floor, 2.19
102 Petty France
London SW1H 9AJ

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