

*clear | compelling | approachable*

# MEDIATION POLICY

East Midlands Mediation Centre

## Mediation Policy East Midlands Mediation Centre

---

### Panel Membership

- 1 | Membership of the EMMC panel is only open to members of KCH Barristers who have successfully completed a formal, professional mediation training course comprising at least twenty four hours of formal training including ethics, mediation theory, mediation practice, negotiation and role play exercises. Certificates of training are to be maintained by the individual members, with copies submitted to the Secretary.
- 2 | It is a requirement of panel membership that each mediator agrees to be bound by the European Code of Conduct for Mediators.
- 3 | It is a requirement of panel membership that each mediator agrees to complete at least six hours of structured, mediation-related continued professional development in each calendar year. Copies of CPD Records are to be submitted each year to the Secretary.
- 4 | It is a requirement of panel membership that each mediator attends at least one EMMC debriefing session per calendar year.
- 5 | It is a requirement of panel membership that each mediator agrees to comply with the EMMC feedback, monitoring and complaints policy.
- 6 | A panel member is not eligible for appointment as lead mediator until he or she has observed at least three civil or commercial mediations in the previous 12 months.
- 7 | Each panel member must have observed or conducted at least two civil or commercial mediations in the previous 12 months in order to ensure current practice experience.
- 8 | Each panel member is self-employed, independent and liable to arrange his or her own professional liability insurance in respect of his or her mediation practice.
- 9 | Each member is responsible for keeping a record of his or her CPD, which may be inspected from time to time.
- 10 | EMMC is merely a name by which the panel members market their mediation services. EMMC has no independent responsibility or liability.

## Mediation Policy East Midlands Mediation Centre

---

### Administration and Fees

- 1 | Mediations will be administered by the KCH clerks. Russell Hobbs and Louise Bodin have particular responsibility for mediation.
- 2 | It is the mediator's individual responsibility to ensure that the correct mediation agreement is sent to the parties, that the appropriate terms are in the agreement and that the agreement is signed by all relevant parties.
- 3 | Mediation fees are administered and invoiced in the same way as brief fees. It is the mediator's responsibility to liaise with the clerking team to agree an appropriate fee and to ensure that it has been invoiced correctly.
- 4 | No administration fee is charged to clients, although KCH Barristers Limited may charge for use of chambers' facilities. Each mediator pays a percentage of his or her mediation fee to chambers, in exactly the same way as for a barrister's brief fee.

### Feedback, Monitoring and Complaints

- 1 | EMMC seeks to obtain and retain feedback on mediations. Mediators should distribute Feedback Forms to the parties and their representatives at the conclusion of each mediation and ask for them to be completed and returned.
- 2 | In addition, after each mediation, the mediator should complete a Mediation Report Form.
- 3 | The current versions of the Feedback Form and the Mediation Report Form are attached to this policy.
- 4 | Mediators should note that they must obtain the agreement of the parties before completing the Mediation Report Form. This agreement will usually be obtained by including a suitable term in the mediation agreement (currently clause G5 in the standard mediation agreement).
- 5 | The Feedback Form includes information about the EMMC Complaints Policy. Any complaint is to be made in writing and addressed to the Senior Clerk at KCH Barristers, who will refer the complaint to the Secretary or another member of EMMC (in the event that the complaint relates to the Secretary or if the Secretary is unavailable). Each complaint will be acknowledged in writing (usually by email) within five working days and investigated by two members of EMMC, who will provide a written report and recommendations to the complainant within 20 working days.

*clear | compelling | approachable*

## Mediation Policy East Midlands Mediation Centre

---

### Appendices

- i | Standard Mediation Agreement;
- ii | Feedback Form;
- iii | Mediation Report Form.

Tom Russell

*Secretary, East Midlands Mediation Centre*

*clear | compelling | approachable*

# STANDARD MEDIATION AGREEMENT

---

i. |

---

# Standard Mediation Agreement

---

Between:

1 | .....

Represented by

2 | .....

Represented by

Being the parties to the dispute, collectively known as “the parties”,

3 | .....

(“The Mediator”)

## Terms and Conditions

We the parties and the mediator, agree that the mediation shall be conducted on the following terms and conditions:

### 1 | Terms and Conditions

The parties and the Mediator agree that these terms and conditions shall be deemed to apply to the mediation of the dispute notwithstanding the absence of any one or more signatures to the agreement.

### 2 | The Appointment

- i | The parties acknowledge that the Mediator is independent and neutral and that the Mediator does not give legal advice.
- ii | The parties also understand that the role of the Mediator is to facilitate settlement of the dispute by negotiation and agreement where it is possible, and that the Mediator will not adjudicate the dispute.
- iii | Save in the case of gross error or misconduct, the parties agree that they will respect the neutrality of the Mediator and any professional body to which the Mediator may belong, and not bring any claim, demands or proceedings against the Mediator.

## Standard Mediation Agreement

---

- iv | Any notes made by the Mediator are confidential to the Mediator and shall not be available to the parties at any time, nor subject to summons for production as evidence in any court, tribunal or other judicial hearing or proceeding. Such notes will be destroyed after the Mediation has been concluded or terminated.
- v | The parties acknowledge and agree that the fees due in accordance with this Agreement shall be paid direct to the Mediator at his business premises – 1 Oxford Street, Nottingham, NG1 5BH.
- vi | The Mediator confirms and warrants that he is fully trained or accredited in the field of civil mediation and ADR work in which he holds himself out, undertakes to comply with all relevant professional standards in respect of mediators, and undertakes at all times to have suitable and sufficient professional indemnity cover in place.

### 3 | Venue, Date and Times

The mediation will take place on the date and time agreed and at the venue stated below. If the Mediation is being conducted at the premises of a party or their representatives, then the parties will make whatever arrangements are required and advise the Mediator accordingly. The mediation will require three rooms, each available for uninterrupted use by the parties and the Mediator throughout the mediation. Alternatively, the Mediator will make the arrangements on behalf of the parties and charge the parties accordingly, such expenses to be paid before the mediation.

Venue  
.....  
Date  
.....  
Times  
.....

## Standard Mediation Agreement

---

### 4 | Fees

i | The Mediator's fee and any other fees or expenses are as follows:

.....  
Mediator's fixed fee

.....  
Mediator's hourly rate (*in the event of overtime*)

.....  
Mediator's expenses

ii | Each party shall pay the Mediator's fees and expenses in advance of the mediation.

iii | Following the conclusion of the mediation, the balance of the fees and expenses, if any, together with any additional charges payable pursuant to this agreement shall be paid by the parties to the Mediator within 14 days of receipt of an invoice.

iv | The parties agree that the fees and any additional charges shall be borne equally between them, unless provided otherwise by this agreement or, as a result of a mediation settlement, they agree otherwise.

v | VAT is payable on all fees and charges at the applicable rate from time to time.

vi | In the event of late payment of any sum, interest shall accrue on the said sum at the rate of 8% until payment and shall be added to the outstanding account.

vii | Additional charges shall be payable by the parties in respect of:

a. Overtime beyond the agreed times set out in this agreement plus any extraordinary travel expenses of the Mediator which may be incurred due to the lateness of the hour;

b. Additional preparation time by the Mediation occasioned by cancellation or adjournment by a party, to be calculated pro rata to the mediation fee;

c. Any agreed expenses of the Mediator;

d. Any incidental expenses, including venue hire, refreshments, and any other disbursements validly incurred by the Mediator in respect of the mediation;

e. Any costs, charges and expenses incurred in enforcing the payment of any fees or additional sums which shall be payable on demand entirely by the party in default, cancellation and re-scheduling.

## Standard Mediation Agreement

---

### 5 | Cancellation

- i | In the event of cancellation of the mediation otherwise than by the Mediator, whenever and for whatever reason, the parties agree that there shall be a cancellation fee in the sum of 50% of the Mediator's fee, plus any additional charges and expenses validly incurred pursuant to this agreement.
- ii | In the event of the re-scheduling of the mediation less than 10 days before the date set for the mediation, otherwise than by the Mediator, whenever and for whatever reason, the parties agree that there shall be a re-scheduling fee amounting to 50% of the Mediator's fee, plus any additional charges validly incurred pursuant to this agreement.
- iii | Notices of cancellation or re-scheduling shall be in writing to the Mediator.

### 6 | Procedures

- i | The parties may be represented if they wish, but legal representation is not a requirement. Where a party is not legally represented, such party is advised to obtain independent legal advice before, during and after the mediation and prior to finalising any agreement reached pursuant to the mediation.
- ii | No other person shall attend the mediation without the consent of the parties and the mediator.
- iii | It is acknowledged that Mediator does not offer legal advice or act as a legal advisor for any of the parties and will not analyse or protect any party's legal position or rights.
- iv | The parties should agree and prepare a Mediation Brief providing the relevant information about the dispute and copies of all relevant documents (these may include any statements of case which have been filed and served, any witness statements which have been disclosed, any other documents which have been disclosed in the course of the dispute and any relevant correspondence). Each party may also prepare a confidential brief to the Mediator which will not be disclosed to the other party.
- v | The Mediation Brief and any confidential briefs should be provided to the Mediator no later than three days before the date of the mediation. If the parties are in any doubt as to which documents to include in the Mediation Brief, they are welcome to consult the Mediator, although he cannot promise to be able to give a definitive (or any) view on any particular document.

## Standard Mediation Agreement

---

- vi | While it is recognised that mediation is a voluntary process and that the Mediator will not, and cannot, compel the parties to settle, nor even to continue the mediation, the parties agree to participate in good faith with the aim of resolving their dispute.
  - vii | The parties agree that they will present at the mediation people who are fully authorised to agree settlement terms, or ensure that they themselves attend the mediation with such authority.
  - viii | The parties agree that any settlement in the mediation will not be legally binding until written and signed by both/all parties. The Mediator will not sign or be party to any settlement agreement.
  - ix | There shall be no record of the mediation.
  - x | The parties or the Mediator may end the mediation at any time without giving reason.
- 7 | **Confidentiality**
- i | The parties recognise that the mediation is for the purpose of attempting to achieve a negotiated settlement and as such all information provided during the mediation is without prejudice and will be inadmissible in any litigation or arbitration of the dispute.
  - ii | Evidence which is otherwise admissible shall not be rendered inadmissible as a result of its use in the mediation. The parties will not subpoena, summons or otherwise require the Mediator or any other person attending the mediation with the Mediator to testify or produce records, notes or any other information or material whatsoever in any future or continuing proceedings.
  - iii | Every person involved in the mediation will keep confidential and not use for any collateral or ulterior purpose the fact that the mediation is to take place or has taken place, other than to inform a court dealing with any litigation relating to the dispute of that fact, save as otherwise may be required by statute or statutory instrument.

## Standard Mediation Agreement

---

- iv | All documents, statements, information and other material produced prior to or during the course of the mediation, save to the extent that these documents have been disclosed already and are in the domain of the litigation, whether in writing or orally, shall be held in confidence by the parties and shall be used solely for the purposes of the mediation save as otherwise may be required by statute or statutory instrument. At the termination of the mediation all such material shall be returned to the originating party or destroyed at their option.
- v | The Mediator is a member of East Midlands Mediation Centre at KCH Barristers (EMMC). EMMC usually keeps a record of each mediation as part of its quality management procedures. The parties agree that the Mediator may provide information relating to the mediation and its outcome to EMMC for these purposes only.

### 8 | Human Rights

The parties agree and acknowledge that the referral of this dispute to mediation does not affect any rights that may exist under Article 6 of the European Convention on Human Rights and that, if the dispute is not settled by mediation, the parties' right to a fair trial remain unaffected.

### 9 | Law and Jurisdiction

This agreement shall be governed by, construed and take effect in accordance with English Law. The courts of England and Wales shall have exclusive jurisdiction to settle any claim or dispute which may arise out of or in connection with the mediation.

# Standard Mediation Agreement

Name of Party .....

Signed .....

Date .....

*I (name and details of Legal representative)* .....

Have advised my client of the meaning and effect of this agreement, undertake to ensure that my clients fees are paid to the Mediator in accordance with the terms of this agreement, and acknowledge and agree that my firm is liable for the cost of the mediation in the same way as is liable for disbursements incurred in the course of litigation and shall be responsible to and shall indemnify the Mediator for payment of the fees set out herein the event of my client's failure to pay pursuant to the terms of this agreement.

Signature or representative .....

Name of Party .....

Signed .....

Date .....

*I (name and details of Legal representative)* .....

Have advised my client of the meaning and effect of this agreement, undertake to ensure that my clients fees are paid to the Mediator in accordance with the terms of this agreement, and acknowledge and agree that my firm is liable for the cost of the mediation in the same way as is liable for disbursements incurred in the course of litigation and shall be responsible to and shall indemnify the Mediator for payment of the fees set out herein the event of my client's failure to pay pursuant to the terms of this agreement.

Signature or representative .....

*clear | compelling | approachable*

# Standard Mediation Agreement

---

For and behalf of the Mediator

Name .....

Signed .....

Date .....

*clear | compelling | approachable*

# FEEDBACK FORM

# Feedback Form

---

This form should be handed to parties and their representatives after a mediation administered by East Midlands Mediation Centre (EMMC).

Parties and their representatives are asked to complete this form to assist EMMC in its quality management procedures and to help with the keeping statistical records.

The completion of this form is voluntary. Please do not feel under any obligation to complete the form, although EMMC does value your feedback and is grateful for your comments.

*Your attention is drawn to the complaints procedure at the end of this document.*

## Questionnaire

Date of mediation  
.....

Name of mediator  
.....

## About you

1 | Were you the Claimant (C) or Defendant (D) or other (please specify) in the dispute?  
.....

2 | Are you an individual (I) or a company (C) or other (please specify)?  
.....

3 | Were you represented at the mediation by a solicitor (S) or a barrister (B) or unrepresented (U) or other (please specify)?  
.....

4 | Were you privately funded (P) or insured (I) or publicly funded (Pub)?  
.....

## Feedback Form

---

### The other party

1 | Was the other party an individual (I) or a company (C) or other (please specify)?

---

2 | Was the other party represented at the mediation by a solicitor (S) or a barrister (B) or unrepresented (U) or other (please specify)?

---

3 | Was the other party privately funded (P) or insured (I) or publicly funded (Pub)?

---

### The dispute

1 | What type of dispute was it?

---

2 | What was your valuation of the dispute?

---

### Agreeing to mediate

1 | Was the mediation your idea or was it suggested by the other party or imposed by the court?

---

2 | What factors affected your decision to mediate?

---

## Feedback Form

---

### The Mediation

1 | Did you reach a settlement agreement?

---

2 | If not, did the mediation help to resolve part of the dispute or to move the dispute towards settlement?

---

3 | How do you feel about the mediation process?  
*Please score between 1 and 5 (1 being very dissatisfied and 5 being very satisfied).*

---

### Cost

1 | Do you feel that the mediator's fee was reasonable?

---

2 | Do you feel that the mediation saved money on the total cost of settlement?

---

### The Mediator

How do you rate the mediator's performance in relation to the following matters?  
*Please score between 1 and 5 (1 being very dissatisfied and 5 being very satisfied).*

- 1 | Attitude .....
- 2 | Explaining the process .....
- 3 | Understanding of the issues .....
- 4 | Impartiality .....
- 5 | Management of the process .....
- 6 | Questioning techniques .....
- 7 | Courtesy .....
- 8 | Creativity .....

## Feedback Form

---

### **Additional comments**

If you have any additional comments, please write them below.

---

---

---

---

---

---

---

---

### **Complaints Procedure**

If you have any complaint about EMMC’s service or your Mediator, which you would like to refer to our complaints procedure, you should set out your complaint in writing addressed to:

Senior Clerk at KCH Barristers  
1 Oxford Street  
Nottingham  
NG1 5BH

Your complaint will then be referred the Secretary of EMMC or another member of EMMC (in the event that the complaint relates to the Secretary or if the Secretary is unavailable). The complaint will be acknowledged in writing (usually by email) within five working days and investigated by two members of EMMC, who will provide a written report and recommendations to you within 20 working days.

*clear | compelling | approachable*

# MEDIATION REPORT FORM

---

iii |

---

# Mediation Report Form

---

To be completed by the Mediator after the mediation and returned to the Secretary.

*Please note: in order to complete this form, the Mediator needs the parties' written, signed consent, preferably contained in the mediation agreement.*

Date of Mediation .....

Amount in dispute .....

Type of dispute .....

Mediator .....

Parties and representatives .....

How long had the dispute been ongoing? .....

Had proceedings been commenced? .....

Outcome of mediation .....

Key turning points .....

Other points of interest .....

.....

.....

.....

.....

Thank you for your time.