

OFFICE OF CONSUMER AND BUSINESS AFFAIRS RETAIL AND COMMERCIAL LEASES MEDIATION SCHEME

INFORMATION FOR PARTIES

WHAT IS MEDIATION?

Mediation is a process in which a neutral third party assists parties to a dispute to resolve their dispute by reaching agreement.

Primarily, the Mediator will facilitate discussion and communication between parties.

The procedure for the mediation is at the discretion of the Mediator. However it will generally be an informal process and will not require the presence of legal or other representation.

To prepare for mediation each party should:

- **make written notes setting out their case for use at the mediation**
- **bring a copy of the lease**
- **bring copies of all other documents - letters, notices and accounts which may be relevant to the proceedings**

COSTS OF MEDIATION

The landlord and tenant must each bear their own costs of mediation - any loss of trade, costs of legal or other representation on the day, costs of extra shop staff on the day etc are costs each party incurs individually.

Fees and expenses of the Mediator are the joint responsibility of parties to the dispute.

The Mediator may request a deposit from each party, or may request the full amount to be paid in advance. If the parties do not pay the amounts requested, there will be no mediation.

REPRESENTATION AT MEDIATION

Parties do not require legal or other representation at mediation, however they may choose to have support from an adviser or friend. Any person who is present at a mediation must be a party to the confidentiality agreement.

PARTIES

- a) **It is essential that each party be present in person or be represented at mediation by a person with full authority to negotiate and settle the dispute.**

- b) **At the heart of the mediation process is the opportunity for each party to make a dispassionate and fundamentally objective reappraisal of the whole situation in the free and totally protected discussions that take place within the mediation. A constraint or a predetermined limit on the authority of a representative denies that party the full benefit of on-the-spot informed reappraisal and inhibits the prospect of a successful outcome.**
- c) There can, of course, be cases where unquestionable full authority cannot be present (eg an overseas Lessor). It should, however, be possible for the representative attending the mediation to give a confident and responsible assurance of expectation that a recommendation will be accepted.
- d) Mediations which fail are often mediations in which one or more of the parties has viewed the procedure as simply involving settlement discussions or pre-trial conferences such as some court systems require and has sent along a representative with limited authority in the contemplation of seeing whether the other party can be talked down (or up) to not more (or less) than some arbitrarily predetermined figure. Such an approach inhibits the potential value of the mediation. If the representative feels the need, or is required, to consult before concluding a settlement agreement, then the person or persons to be consulted should be present at the mediation throughout so that they, too, can take part in the discussions and appraisal.

LEGAL AND OTHER ADVISERS

Legal and other advisers present at a mediation with their clients will take such part in the proceedings as their clients wish. It should be borne in mind at all times that a mediation is an informal meeting between the parties themselves in a non-legal context. It is essentially directed to the parties being able to engage in a free, and totally protected, person to person exchange of views about the dispute and ways in which it might be able to be settled.

Legal and other advisers are not present as advocates or for the purpose of participating in an adversarial courtroom-style contest with each other, still less with the opposing party.

The role of legal and other advisers is essentially twofold-

- i. to advise and assist their clients in the course of the mediation
- ii. to discuss with the Mediator, with each other, and with their respective clients such legal, evidentiary or practical matters as the Mediator might suggest or their clients might wish.

WHAT HAPPENS IF PARTIES REACH AN AGREEMENT AT MEDIATION

The terms of settlement, or heads of agreement, recording the agreement reached at the end of the mediation, will be prepared by the Mediator for signature by the parties prior to departure at the end of the mediation.

Each party should ensure they are in total agreement with the terms of the agreement because, once signed, it is a legally binding document.

MEDIATION RULES

The Mediation Rules should be read in conjunction with this document.