

trustmediation

~ not-for-profit dispute resolution ~

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www.trustmediation.org.uk info@trustmediation.org.uk



Trust Mediation Limited
218 Strand
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STATEMENT OF GOOD PRACTICE

Introduction

1. Trust Mediation is unique. It has been established following wide consultation with and the active cooperation of all sectors of the personal injury community. It is a not-for-profit organisation limited by guarantee to do exactly what it says on the tin: to make a trusted mediation service available at a fair price across the country.
2. FOIL, APIL, the Bar, the Law Society, judges, the Ministry of Justice, major insurers, the Motor Insurers Bureau, a range of solicitors, legal expenses insurers and leading personal injury mediators were represented or observed at the formation meetings. The meetings were chaired by Sir Henry Brooke and there were two common requests:
 - (a) that the service should be demonstrably neutral; and
 - (b) that the mediators should be expert in their field.
3. The Articles of Association enshrine the neutral objectives of Trust Mediation and ensure that under a voluntary Board of Directors there will be complete impartiality.
4. This statement of Good Practice sets out what the users of the service can expect from Trust Mediation's mediators.

Code of Conduct

5. Mediators will adopt and abide by the Code of Conduct embraced by the Civil Mediation Council - this is presently the 2004 European Code of Conduct for Mediators. The Code can, for example, be found online at http://ec.europa.eu/civiljustice/adr/adr_ec_code_conduct_en.pdf.

Accreditation Standards

6. Trust Mediation's mediators will also meet and exceed the standards required to be panel members of mediation provider organisations set by the Civil Mediation Council under its pilot scheme - or any later replacement. These standards are set out at www.civilmediation.org.
7. These standards are, however, the simply the starting point for Trust Mediation and its mediators. This statement details the full package.

Trust Mediation - a gold standard for mediators

8. Every member of the Trust Mediation panel of mediators will:
 - (1) **Be expert in the field of personal injury law, practice and procedure** - this is not because the mediator will be offer or provide any advice on the subject: that will always come from the legal advisers or insurers present at the mediation and Trust Mediation recognises the need for lawyers and representatives to be involved throughout the process. Trust Mediation

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requires such eminence because it believes that an ability to speak the common language of personal injury, to understand the needs and constraints of all those involved, and to be able to deal sensitively with the relevant issues is most likely to promote a legitimate and principled settlement of the claim.

- (2) **Be expert as a mediator** - panel members of Trust Mediation will demonstrate through a CV and an interview (which will have been preceded by research) that they have a strong track record in mediation, are fully up to date and have been formally trained by a recognised training organisation and undergo regular CPD which is relevant to mediation and personal injury (a minimum of six hours per year in both subjects).
- (3) **Be neutral and facilitate** - Trust Mediation does offer an Early Neutral Evaluation service but it is important to distinguish this from the role of a mediator. Trust Mediation mediators will work using only facilitative skills and will not themselves evaluate, or decide, any issue. Facilitation should not, however, be seen as a soft option: reflective questioning, reality testing, probing and objective criteria benchmarking are challenging key techniques.
- (4) **Be insured** - to a minimum of £1 million per claim and have higher insurance available for greater potential claims if needed.
- (5) **Be monitored** - all Trust Mediation mediators will be subject to direct monitoring during at least one in ten of their mediations by a skilled and experienced mediation trainer who will, following the mediation, discuss their performance and approach.
- (6) **Be mentored** - in addition to monitoring, each and every Trust Mediation mediator will be given a mentor with whom they will be required to keep in touch to discuss professional issues, their own personal development and matters arising from any mediation.
- (7) **Be subject to feedback** - every Trust Mediation mediation will be followed up with feedback forms which will invite comment on the performance and approach of the mediator and of the supporting administrative arrangements. These forms will be reviewed by the Director for Standards. If the feedback form appears to contain a substantive and unresolved complaint then this will be referred to the complaints procedure.
- (8) **Be subject to a complaints procedure** - this will be run in house, through the Director for Standards, using resolution techniques, conciliation and mediation. If unsatisfied, it will run up to the level of the Chair who will where appropriate convene a hearing. In the unlikely result of a complaint being unresolved, will be referable to the Civil Mediation Council service.
- (9) **Be sensitive to diversity, equality and confidentiality issues** - these are part of the core values of Trust Mediation which will be subject to routine monitoring and mentoring. Mediators must work with complete

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discretion and confidentiality.

- (10) **Be affordable** - Trust Mediation will operate under a fixed fee scheme which for 2008 will be (in Multi Track claims) £1,000 plus VAT for the mediator (divided between the parties in equal shares and paid in advance unless another arrangement is agreed). This fee will include travel, preparation and routine expenses. In addition, there is an administrative fee of £150 plus VAT payable to Trust Mediation (this is also divided equally and paid in advance unless otherwise agreed).
- (11) **Be accommodating** - Trust Mediation panel mediators will travel to any reasonable location required by the case: but they can also offer mediation facilities in their own offices or chambers in:
- * Central London (Temple)
 - * Greater London
 - * Plymouth
 - * Bristol
 - * Taunton
 - * Birmingham
 - * Manchester
 - * Leeds
 - * Newcastle
 - * Most other cities (by arrangement)
- (12) **Be available** - Trust Mediation will arrange a mediation to begin within 10 working days of receiving instructions from all sides of the dispute (should that be required) and can often arrange mediations within five days. In unusual emergencies, the clerks to Trust Mediation have organised mediations within 24 hours.

The Mediation Agreement

9. All mediations are conducted under a standard Mediation Agreement prepared by Trust Mediation for personal injury mediations.
10. The Mediation Agreement is signed before the mediation starts by all those present including the mediator and this will include observers and others whom the disputants agree can be present.
11. All notes taken by the mediator, and any documents provided to the mediator, are destroyed immediately after the mediation - the only document which is retained is the Mediation Agreement which will be endorsed with the start and finish times, the names of those attending and their signatures. No record of any outcome will be retained.

Mediation Rules

12. Trust Mediation has standard mediation rules - these are appended to the Mediation Agreement and are bespoke to personal injury. They are provided to the disputants in advance and mediators are required to keep to those rules unless they, and all the disputants, agree that they should be varied. If they are varied, then signed endorsements are placed on the rules.

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Mediation philosophy

13. Trust Mediation requires its mediators to abide by the Mediation Agreement, the mediation rules, and all of the principles set out above.
14. At the end of the mediation, Trust Mediation expects that all those who attended would agree that the mediator:
 - (a) prepared fully for the mediation;
 - (b) arrived at the mediation on time;
 - (c) explained the process and answered administrative questions;
 - (d) respected every attendee;
 - (e) conducted the mediation in good faith, with complete integrity, impartially and neutrality;
 - (f) ensured that each party had an opportunity to listen to the other;
 - (g) facilitated the negotiations but did not direct the outcome; and
 - (h) ensured that there was a fair, balanced and appropriate atmosphere for the negotiations to take place.

Continuing Professional Development

15. As part of its commitment to continuing professional development, Trust Mediation believes that it is alone amongst mediation organisations in that it:
 - (a) provides a full six hours mediation CPD to its panel members for free as part of their annual membership;
 - (b) provides access to discounted personal injury CPD to those who require it;
 - (c) requires its panel members to certify in writing which mediation CPD they have undertaken each year;
 - (d) requires its panel members to certify in writing which personal injury CPD they have undertaken each year;
 - (e) conducts routine random checks of CPD;
 - (f) supports the CPD programme with the one in ten monitoring scheme outlined at paragraph 8(5); and
 - (g) provides a nominated mentor for each mediator.

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Training of mediators

16. Trust Mediation does not believe that Multi Track personal injury mediations are the place for new mediators to begin their professional work because of the potentially complex issues that can be raised. Trust Mediation does, however, provide training for “time-served” mediators and for new mediators who wish to begin working under other schemes or in low complexity cases before graduating, once a track record has been demonstrated, towards more demanding work.
17. Trust Mediation provides, therefore, initial and refresher-training (as opposed to CPD) for mediators wishing to follow this route.

Professional administration

18. Trust Mediation is administered under the direction of its Board by an employed Chief Executive based in the Temple district of London. Each aspect of the administration is given oversight by the Board.
19. The administration is supported by the Mountain Software Professional Administration Package commonly used by barrister’s chambers and by a mediation clerk. All necessary returns and checks are automatically flagged up for scrutiny.

Oversight and due diligence arrangements

20. Trust Mediation is committed to complete transparency and openness in its administration except where confidentiality is an implicit part of its work or where individuals have a due and proper right to privacy. Trust Mediation’s direction, oversight and due diligence will be conducted by experienced accredited mediators, as follows:

(1) Chair	Sir Henry Brooke
(2) Company Secretary and Administration	Tim Wallis
(3) Training and Recruitment	Judith Kelbie
(4) Development	Martin Cockx
(5) Finance	Frances McCarthy
(6) Standards and Mentoring	Jonathan Dingle

21. The Directors have agreed that they will not be remunerated for their work (although they may request out of pocket expenses) and have loaned Trust Mediation its seed operating capital. Trust Mediation’s accounts will be published annually and any profit will either be invested in improving services or used to reduce costs in the following year.

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22. Trust Mediation is a company limited by guarantee registered in England & Wales under Number (TBC) with a registered office at 218 Strand London WC2R 1AT. Trust Mediation's insurers are Messrs (TBC) under policy number (TBC). Trust Mediation is not VAT registered at this point. Its next AGM will be in September 2008.
23. Trust Mediation will apply to join the Civil Mediation Council and to be accredited by it under the pilot scheme.

Update and review

24. This is version 1.0 of Trust Mediation's Statement of Good Practice dated 9th September 2007. It will be reviewed in November 2007.