

Dear Sirs,

**[Mr Ivor Claim] v [Mrs Ena Chance]  
ADR & Mediation Invitation  
Without Prejudice Save As To Costs**

Further to this matter, and the recent developments in this case, we are now in a position to seek to settle the claim without further litigation costs.

We propose to do so through mediation which is certainly proportionate and offers, in our view [*and that of our counsel*], the best opportunity for our client to see [*his/her/its*] case independently scrutinised and reality tested with a knowledgeable and neutral third party.

We have recently undertaken mediation in a number of matters, in preference to simple joint settlement meetings, and found the process to be very effective where the mediator is independent, knowledgeable, and skilled in the issues. Mediation is then effective, economic, and swift. In our view, this is an obvious case for mediation and we would be glad to enter into it with an open mind.

We propose, therefore, that we jointly appoint a mediator through Trust Mediation which is a not-for-profit personal injury mediation service established, as you may know, by Sir Henry Brooke, with the input of leading insurers and LEI insurers together with senior representatives of the personal injury sector who are, variously, members of FOIL, APIL, the Civil Justice Council, and the Civil Mediation Council. Trust Mediation has issued a Statement of Good Practice and a copy of this is attached. (For further information about Trust Mediation please see [www.trustmediation.org.uk](http://www.trustmediation.org.uk), phone Trust Mediation's Registrar on 0207 353 3237 or e mail:[info@trustmediation.org.uk](mailto:info@trustmediation.org.uk).)

We also attach six of the eminent Trust Mediation CVs for reference. We are content for you to choose from this list as you think best. We understand that all of the mediators are happy to discuss their approach to matters with parties, although not the case itself, if you wish. Contact numbers are on the CVs or the mediation can be arranged direct through Trust Mediation.

You will know that at mediation no witnesses or experts are required, you do not need to be represented through counsel, and there are no preconditions – save that everything that takes place there is confidential and without prejudice. Our client would attend with full authority to settle and an open mind.

As to location - we would suggest either of our offices. Alternatively we understand that Trust Mediation offers at-cost access to a neutral mediation suite in London (opposite the Royal Courts of Justice), and other suites in Leeds, Taunton, Birmingham, Newcastle and Bristol are available to us at a reasonable cost should you prefer. We can be wholly flexible.

As to dates - we have in mind:

- (a) .....
- (b) .....
- (c) .....

If these are unsuitable then we would be glad to consider alternative dates.

The time estimate is three to four hours.

We would agree to bear half the costs of the mediation (fixed at £575 each plus VAT including up to four hours mediation, administration, travel, and pre-reading) up front on the basis that it is a recoverable disbursement, subject to CPR Part 36 rules. You will appreciate that this is less than half the cost of a CMC.

In inviting you to mediate, we have in mind the principles espoused by Ward LJ in *Burchell v Bullard & Jothers* [2005] EWCA Civ 358 at [43] as well as the relevant paragraphs in the White Book on conduct in CPR Parts 44.3 and 44.5. Further, the "Practice Directions—Protocols" ([http://www.justice.gov.uk/civil/procrules\\_fin/contents/practice\\_directions/pd\\_protocol.htm](http://www.justice.gov.uk/civil/procrules_fin/contents/practice_directions/pd_protocol.htm)) provides:

"4.7 The parties should consider whether some form of alternative dispute resolution procedure would be more suitable than litigation ... Both (parties) 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. Parties are warned that if the protocol is not followed (including this paragraph) then the Court must have regard to such conduct when determining costs”.

The Courts are strong supporters of mediation and we are sure that the costs judge would see the point we would make if you decline to engage in the process.

We hope that this will not be necessary. We consider that this offer to mediate is sensible and should lead to a rapid resolution of this case. We look forward to hearing from you as soon as possible.

Yours faithfully,

Attached:

- Statement of Good Practice
- CVs

## TRUST MEDIATION LIMITED

...neutral not-for-profit personal injury dispute resolution...

### 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](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](http://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 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<sup>1</sup> and undergo regular CPD which is relevant to mediation and personal injury (a minimum of six hours per year in both subjects).

<sup>1</sup>Training Providers recognised by Trust Mediation include (at September 2007):

(a) ADR Chambers	(d) Clerksroom (which provides Trust Mediation's in house training)
(b) ADR Group	(e) MATA (Chartered Institute of Arbitrators)
(c) CEDR	(f) Regent's College (School of Psychotherapy and Counselling)

- (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 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.

## **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.

### **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.

### **Trust Mediation**