



Think Ahead



# The ACCA Mediation Scheme

**Administered Independently by the Chartered Institute of Arbitrators**

# **The ACCA Mediation Scheme**

Welcome to the Chartered Institute of Arbitrators' cost-controlled mediation scheme (the scheme) developed to resolve disputes involving members of the Association of Chartered Certified Accountants (ACCA) more quickly, cost-effectively and privately than they could be dealt with through arbitration or in the courts.

# 1. Introduction

- a. This scheme is designed to give members of ACCA and any other parties with whom they are in dispute the opportunity to have their dispute settled more quickly, cost-effectively and privately than it could be dealt with through arbitration or the courts.
- b. The scheme does not apply to disputes where any of the parties have already started legal proceedings, unless all parties agree to suspend that legal action.
- c. Any party to the dispute can apply for mediation under the scheme, although all parties must agree in writing before the mediation can start. At least one of the parties must be an ACCA member or firm.
- d. All parties should read the guidance notes for mediation (see section 5) before filling in the application form. The application form is available from us at:

The Chartered Institute of Arbitrators  
12 Bloomsbury Square  
London WC1A 2LP  
Phone: 0207 421 7444  
Fax: 0207 404 7150  
E-mail: [das@ciarb.org](mailto:das@ciarb.org)  
Website: [www.ciarb.org](http://www.ciarb.org)

- e. When we receive the application form signed by all parties to the dispute (or their representatives), together with the relevant appointment fee (see section 2b below), we will proceed to appoint a suitable mediator in the case. The appointment fee must be sent with the application for mediation.
- f. The scheme usually applies to disputes between two parties but, if the parties and the mediator agree, the scheme may cover disputes involving three or more parties.
- g. We manage the scheme and are responsible for appointing the mediator. Whilst the parties may put forward proposals as to the background, experience and/or qualifications of the mediator to be appointed, the decision as to who to appoint lies with us.
- h. The parties are responsible, together and separately, for paying all fees relating to the mediation, including our appointment fee, the mediator's fees and expenses, and any venue costs.

## 2. Mediation Procedure

- a. Before mediation can start, we must receive a mediation application form, signed by all parties, plus:
- a written statement from each party setting out the details of the dispute; and
  - the appropriate appointment fee.
- b. The appointment fee payable to us with the application is a fixed fee and is dependent on the amount in dispute.

Amount of Claim	Appointment fee
Up to £7,500	£150 + VAT
£7,501 to £20,000	£200 + VAT
Over £20,001	£250 + VAT

- c. We will appoint the mediator from our panel of civil and commercial mediators, who will be bound by our relevant codes of ethics. The mediator will be invited to make a written declaration, prior to their appointment, that they are independent and impartial. The mediator will also be invited to disclose any circumstances that may call into question their independence and/or impartiality, such as a prior relationship with any of the parties.
- d. We will send to the appointed mediator a copy of the application form and of the parties' written statements. The mediator will contact the parties to agree arrangements for the future conduct of the mediation.
- a. The mediation will take the form of a session attended by each party to the dispute and up to one representative each (unless the parties and the mediator agree otherwise). Unless any settlement agreement states otherwise, each party is responsible for their own costs of going through mediation, including the cost of having a representative, the costs preparing their case, and going to any mediation session. Accordingly, the parties agree that neither one of them will take legal action against the other to recover such costs.
- e. The mediator will be paid at a fixed rate, depending on the sum in dispute. At the end of the mediation, the mediator will invoice the parties for their fees and any out-of-pocket expenses.

Amount of Claim	Fixed fee for <b>each</b> party	Time allocated for mediation
Up to £7,500	£125 + VAT	2 hours
£7,501 to £20,000	£300 + VAT	4 hours
Over £20,001	£475 + VAT	6 hours

- f. The mediation will take place at a venue arranged by and paid for by the parties.
- g. Before starting the mediation, the mediator will tell all the parties how they will conduct the session, and will ask the parties to sign a mediation agreement to confirm that they understand the process and their responsibilities within the mediation.
- h. If the dispute is settled during mediation, the parties may make a written record of the agreement they have reached. This is known as the settlement agreement. The signed settlement agreement will be a binding contract and can be enforced by a court.

- i. If the original mediator resigns, dies or becomes unable to act competently or quickly enough, or without a conflict of interest, we will appoint another mediator. We reserve the right to charge an additional appointment fee for the appointment of any replacement mediator.

# 3. Confidentiality

a. We, the mediator, the parties to the dispute, and anyone else present in the mediation must not give any details of the mediation to anyone not involved in it unless this is necessary by law or to enforce the settlement agreement. Despite this, we and the mediator may:

- process information relating to the use of the scheme;
- compile, analyse, keep and publish anonymous information and statistics from the use of the scheme; and
- monitor and review the use of the scheme;

as long as no personal or confidential information is published (except with the relevant person's or party's permission).

## 4. Protection of Liability

- a. We will not be liable for anything we do or fail to do in appointing a mediator unless we act in bad faith. By accepting these rules, the parties agree to indemnify us against any possible legal action brought by any third party for anything we do or fail to do in appointing a mediator (unless we act in bad faith).
- b. We will not be liable for anything the mediator (or their employees or agents) does or fails to do when acting as mediator. By accepting these rules, the parties agree to protect us against any possible legal action arising from the mediator's actions, unless we have acted in bad faith.
- c. The mediator (and their employees or agents) will not be liable for anything they do or fail to do in meeting their responsibilities as mediator, unless they act in bad faith. The parties will indemnify the mediator against any possible legal action arising from their actions.

# 5. Guidance Notes for Mediation

We have designed the scheme to help parties settle their disputes more quickly and cost-effectively than through arbitration or the courts.

The value of this scheme, and of mediation in general, is that it reduces the time, cost and uncertainty of legal action. Preparation is the key to achieving successful results through the scheme. The following guidance notes set out the basic steps of preparing for mediation under the scheme.

## The mediation process

The mediation procedure is set out in this document. However, as mediation is non-binding and can be ended at any time, the parties stay in control. If a party is representing a company or organisation, they should have the authority to settle the case.

Although each mediator has their own style of mediation, sessions are usually informal. Before the session, the parties should ask the mediator about their approach and any preference they have in how cases should be presented.

## Confidentiality

It is important that all parties to the dispute have signed the mediation application form, and that they and the mediator sign the mediation agreement at the start of the mediation session. This will confirm the confidentiality of all information provided during the mediation session and will explain that the information cannot be used later against someone in court or in other proceedings such as arbitration. During the mediation session, the mediator will get a party's permission before passing on information they revealed privately.

## Preparing for the mediation

To prepare for the mediation the parties should:

- Make a list of the critical issues in dispute. This will allow them to focus the negotiation on those issues.
- Make sure they have all the information they need about liability and damages before the session. If legal research is involved, bring copies of that research to the session to share with the mediator.
- Evaluate the strengths and weaknesses of their case. They should consider what conclusions a judge or arbitrator would make. They should also consider what expectations are realistic, based on the evidence available. This allows for a balanced approach to the case.

- Consider what information about their interests and the facts of the case they want to give to the mediator, and what information they want to give to the other party. (Usually, telling the mediator everything helps to get a successful settlement.)
- Be prepared to talk to the mediator, before the session, about their approach to the case and what information they believe they and the other parties need.
- Prepare a simple summary of their case.
- Be prepared to present, as an opening statement, the facts of the case, the issues in dispute, the damages claimed and other relevant factors.
- Consider whether to give the mediator a confidential statement which includes their thoughts on what criteria they will use to decide whether any proposed agreement is fair, how they think the other party realistically views their chances of success, and what they think the other parties may view as a fair outcome for all sides.

## **Developing a negotiation strategy**

Although the mediator will meet both parties to communicate offers, each party should have a clear idea of how they want the negotiation process to proceed. They should also consider how to make their proposals appeal to the other side.

To develop a negotiation strategy each party should do the following.

- Review the negotiations to date so they know where to begin, or where the other parties might expect the negotiations to begin. This is a good opportunity for the parties to remind themselves of their shared goals.
- Determine 'wants' and 'needs'. These are the things that motivate people to change their positions in a negotiation. A party's position is something they have decided upon, while their interest is what caused them to decide that.
- Consider what's at stake. Each party should evaluate their case through information gained through research or studying the decided cases.
- Put forward favourable views. Negotiation is a series of communications in which the parties try to alter each other's perceptions of how they view the situation. To be successful, each party must be able to manage the information the other party receives. They do this by listening actively, respecting the other party's claim, posing arguments, making proposals and offering alternatives.

## **Having authority to settle**

Before the mediation session, each party should make sure they have the resources, power and authority to settle the dispute.

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