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Mediation Insights:



HMCTS' Small Claims Mediation Service.

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What is it?

A new pilot scheme requiring parties in money claims valued at up to £10,000 to take part in a compulsory free one-hour mediation appointment, provided by HMCTS' Small Claims Mediation Service – before the claim can then proceed to Court if no settlement is reached. It came into force on 22 May 2024 and runs until 21 May 2026.

The small claims mediation service has been available as an option since 2007. However, last year the Ministry of Justice (MoJ) confirmed that mediation will become compulsory for cases allocated to the small claims track valued at up to £10,000, issued under Part 7 of the Civil Procedure Rules.

How will the Mediation Service work in practice?

The claimant will commence proceedings as normal. For eligible claims, once the parties have filed their directions questionnaires:

- for claims issued before 22 May 2024: the claim will automatically be referred to the Mediation Service where the parties have indicated that they consent to this
- for claims issued on or after 22 May 2024: the claim will automatically be referred to the Mediation Service as referral is compulsory.

The pilot will not apply in the following circumstances:

- Complex claims (eg professional negligence claims) are excluded;
- Road Traffic Accident and Personal Injury Claims are excluded; and

- Mediation will not take place where there are safeguarding concerns, eg where vulnerable parties are involved.

Where referral to the Mediation Service is compulsory, or where the parties have consented to it, the court will automatically refer the matter to the Mediation Service; there is therefore no requirement for the parties to:

- request the court for a stay to pursue a mediation, or
- contact the Mediation Service itself to commence the mediation

The mediator will make contact with all parties to the proceedings to discuss and arrange a time and date for the mediation. This will generally be by telephone rather than requiring the parties to attend a meeting.

The mediation will take place relatively quickly as the whole process for receipt by the court of the directions questionnaires through to the end of a mediation needs to take place within four weeks.

It is only compulsory to attend the mediation, it is not compulsory to reach a settlement.

What happens if the mediation is successful?

If a claim is settled, the proceedings will automatically be stayed with permission to apply for judgment for the unpaid balance of the outstanding sum of the settlement agreement or the claim to be restored for hearing of the full amount claimed, unless the parties have agreed that the claim is to be discontinued or dismissed.

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What happens if the mediation is unsuccessful?

Where the claim has been referred to the Mediation Service but the court does not receive written notice that a settlement has been agreed, the court will allocate the claim to a track (and where applicable, a complexity band). Allocation (and assignment where applicable) will take place no later than four weeks from the date on which the last directions questionnaire is filed. This does not appear to give much time from the filing of the directions questionnaire in which to hold the mediation and conclude a settlement (if possible), however, this is consistent with the intended aim of a swift and collaborative resolution of a dispute, rather than protracted litigation.

The aim

The move could see an extra 5,000 judicial sitting days per year made available, which judges can dedicate to efficiently resolving cases less suited to mediation.

Justice Minister Lord Bellamy KC said:

“We know successful mediation is quicker and less stressful than court battles. While not every case will be resolved in this way, by embedding mediation into the courts process, thousands more undoubtedly will.”

“Crucially this will improve the experience for those embroiled in a dispute, while freeing up time for our judges to focus on the most complex cases and keep our courts running smoothly.”

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