

Opening Joint Meetings



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CONTINUALLY AT
THE FOREFRONT
OF MEDIATION.

Opening Joint Meetings



Areas to consider

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A Rationale for opening joint meetings

It is not uncommon for parties to comment that they think opening joint meetings are a waste of time. The IM mediators disagree with this view and recommend that such a meeting is held in all but a few exceptional cases.

Although parties may find sitting in the same room as the other party(ies), facing them across the table, quite (even very) difficult and stressful, that is not in itself a good reason for not holding such a meeting.

If such a meeting is really likely to be so confrontational as to be counter-productive to the mediation, then that may be a good reason for not holding it. It may still be worthwhile for the parties at least to attend a joint meeting but without any opening statements by any of the parties, at which the mediator will set the scene and remind the parties of the key elements/ground rules of the mediation. It is inherently unsatisfactory in a negotiation for a party not to meet or even to see, at the beginning of the day, the party it is negotiating with.

Some of the reasons for, and advantages of, an opening meeting are:

- **No intermediaries**

It is likely that it will be the first, and probably the only time, a party, particularly the decision-makers, can hear the other party's case direct rather than through its solicitor - and the first time a party can put its position and arguments direct to the other party/decision-maker.

- **Overview**

Hearing both parties' cases set out relatively succinctly and orally rather than in solicitor's copious correspondence and the position statements can enable a decision-maker to get a useful overview of both sides of the case. Sometimes it is the first time a decision-maker sees the dispute in a wider perspective and realises it may not be as straightforward as it was previously believed to be.

- **Face-to-face**

Just seeing and hearing the other party's decision-maker and/or lawyers face-to-face, particularly if for the first time, can have far more of an impact than seeing the dispute set out in writing.

B Discussions before the mediation day and meetings on the day before the opening meeting

The mediator is likely to have spoken before the mediation day to the parties' solicitors and discussed the sort of points set out below and the importance of planning how to do the opening meeting.

The initial open joint meeting usually happens after the mediator has had a brief introductory meeting with each of the parties in their private rooms. At these introductory meetings the mediator will usually discuss with each of the parties the order in which the parties will speak, who from each party is going to speak and the anticipated length of its opening. The mediator may also ask for a brief idea/outline of what each speaker is going to say and, if felt necessary, discuss with the speaker how that may impact the opening meeting.

Who makes the opening presentation?
Depending who is in the party's team the options are –

- **lawyer, solicitor or counsel**
 - to deal with the legal overview and particular legal points which may need to be highlighted, or expanded on.
- **decision-maker**
 - as the lead negotiator and decision-maker it is often useful if in general terms they speak about approach to the dispute and the mediation, and the hoped for outcome.
- **expert**
 - occasionally as a follow up to the lead speaker.

or a combination of these

Usually it is at this stage that the parties and the mediator will sign the mediation agreement which they will have seen before the mediation day.

C The Mediator's opening

The mediator will open the meeting by making sure everybody knows who everybody is. They will then briefly set out what they see as important for the parties to have in mind during the mediation, including the importance of confidentiality (also in the mediation agreement – see cl's 12-15 of IM Mediation Agreement) and the need for any binding settlement to be in writing and signed (see cl. 10 of the IM Mediation Agreement). The parties will then be asked to make their opening statements, as discussed at the earlier private meetings.

D Making an effective opening statement

In making an opening statement the following points should help to make it as effective as possible:

- not a speech – persuasion rather than “advocacy”;
- not read – and look at the party to whom the statement is directed;
- address the other party not the mediator;
- succinctness and brevity are likely to make more of an impact than a lengthy speech – emphasise a few key points;
- avoid an aggressive tone - it is likely to engender a hostile and non-receptive reaction;
- focus on looking for a solution and on the future - rather than on the history of the dispute which everybody is likely to know already and often is unlikely to be of much use in finding a solution;
- concession – consider making a concession - indicates a willingness to adopt a sensible approach to reaching a settlement without being a sign of weakness;
- proposal – a proposal as to how to approach the negotiations or how to approach to a particular issue can also indicate a willingness to adopt a sensible approach to reaching a settlement;
- keep it short, simple and to the point.

At the end of the opening statements the mediator may:

- bring the meeting to a close and ask the parties to go their private rooms;
- give the parties the opportunity to raise any questions for clarification of what has been said;
- suggest discussion on particular points which may usefully be raised in an open meeting at this stage.

€ In summary

Opening joint meetings are an important part of the mediation process, particularly if the parties use them effectively. They are a rare opportunity to put one's case face-to-face to the other party in a straightforward and persuasive manner. A party may have lost a unique opportunity if the opening meeting is side-stepped or treated as simply a little more than a procedural step in the mediation process.