

**PRO FORMA 1<sup>ST</sup> EMAIL TO THE PARTIES' LEGAL REPRESENTATIVES (MEDIATION BY VIDEO LINK) – version to be used when mediating non-CEDR cases through Mediation Resolution.**

Dear /// & ///,

Thank you for asking me to mediate in this case.

I write following the [introductory telephone conversations which we had] [v/m message(s) that I left for you (both)] earlier today.

Plainly it will be helpful to all of us, and the process, to have certain things confirmed early on and for me to suggest a pre-mediation preparation timetable. This I do below.

So as facilitate each of you when replying, and for ease of reference at 'all ends', please use the headings and numbering below. Hopefully, my suggested timetable can be agreed.

**VIRTUAL VENUES AND TIMING OF MEDIATION**

1. My instructions are that the Mediation is to take place on /// by ZOOM Video Link. I have and maintain a secure ZOOM PRO ACCOUNT for which no charge will be made to the Parties (PLEASE SEE [1] Attached CEDR's Guide to Online Mediation for Barristers, Solicitors and Clients & [2] [www.https://zoom.us](https://zoom.us)) and note that my ZOOM account will provide us with an uninterrupted duration slot of 24 hours for the Mediation and that there are ample facilities for breakout rooms and thus private 'on the day' dialogue);
2. I note that the commencement time is fixed for /// hours. Please have it in mind that initially I shall need to have a private session with each Party plus their advisers.
3. At an agreed time 24 hours or so before the Mediation, I shall want each Party's legal representative and all of the Parties themselves if they are to access the Mediation from venues different to those of their lead representative, to participate in a practice ZOOM session set up and managed by me (likely duration 10 – 15 minutes);
4. I shall decide upon and then set up the requisite number of secure breakout rooms for the Mediation once I know who will be attending, where from and whom they will be with during Mediation Day. Please note and keep it in mind that the provision of secure break out rooms will allow each Party and their 'team' to have their own separate virtual room where they may discuss matters with the me in private as Mediator, or amongst themselves confidentially in my absence. Attached to this email is a 'Virtual Rooming Arrangements/Locations' template which I use and shall be completing in advance of the Mediation. It will be shared with the Parties legal representatives shortly beforehand if all agree that I should do so. Unless I am told to the contrary, I shall assume that your clients will be happy for me to disclose their email addresses.

**PRE-MEDIATION PREPARATION**

1. Ideally the two of you should agree upon what is to appear in one paginated mediation bundle rather than there being several bundles or worse still, a 'confetti like' array of papers produced on the Mediation Day;
2. One of you will need to agree to take on responsibility for preparing an electronic copy, which will no doubt be password protected, before sending it to me by email **to arrive by no later than ///// please.**

3. I recommend that the Parties' Position Statements are prepared and exchanged after the Mediation Bundle has been agreed, then prepared and delivered. The former should be exchanged between you and copies sent to me as **Word documents, please**, again by email;
4. As is usual for the Mediator to do, I shall want to conduct some private one to one post reading pre-mediation discussions with each of you. I suggest that we do so using ZOOM (which again I shall be happy to set up), or by telephone, during the **////////** of **////////** at the times suggested below: recognising though that these may not be convenient to you in which case please email me immediately to say when you will be available on that day, or possibly beforehand.

### **SUGGESTED TIMETABLE FOR YOU TO CONSIDER AND THEN AGREE ('AS IS', OR AMENDED)**

#### **On or before:**

1. **////** - Draft Mediation Agreement (pro forma attached as is the Model Procedure referred to therein) to be agreed;
2. **////** - Top copies of the final version must be signed by all parties, and any individuals partaking in the Mediation who will need, or be expected, to sign up to confidentiality. Once signed please email a top copy for me to sign as Mediator.
3. **////** - Mediation Bundle to be agreed;
4. **AM ////** - An electronic copy of the agreed Mediation Bundle to be emailed to me please together with any other papers which the Parties want me to see (including any 'for my eyes only' papers, **SUCH TO BE MARKED SO AT THE HEAD OF THEM**);
5. **By 1600 hours on ////** - Position Statements to be exchanged between you by email and **Word document copies** emailed to me (again together with any statement intended 'for my eyes only' **AND AGAIN, SUCH TO BE MARKED SO AT THE HEAD OF IT**);
6. **On ////** - Me to telephone you **////** at **////** hours and you **////** at **////** hours to conduct my private one to one post reading pre-mediation discussions (or to do so by ZOOM video link);
7. **On ////** - At a time or times to be agreed on the day before the Mediation, me together with both Parties and at least one of their legal advisers are to partake in a ZOOM practice session which will be set up by me beforehand;
8. **////** - The Mediation Day. Start time fixed for **////** hours.

### **AUTHORITY TO SETTLE**

1. Before and then again on the Mediation Day, I shall be asking the Parties and/or their legal representatives who it is that has authority to settle on their behalf and, if conditional or qualified in any way, whether that is the case (I need not though at that stage be told of the terms of any condition or qualification);
2. If any person not attending the Mediation online may need to be called upon to provide an authority to settle or otherwise be consulted about a settlement offer before it is advanced or rejected, that person **must be** instructed please to be available on the telephone during as well as **outside normal office** hours as mediations do not always conclude by say 1700 hours!

### **EXPLANATIONS/RE-ASSURANCES/APOLOGIES**

1. Presently I do not know whether any are or might be required and if they are, what the Claimant's expectations are regarding how such should be proffered, and by whom;
2. This is a matter that I strongly urge you to think about and liaise between the two of you well in advance of the Mediation should there be any likelihood of such a requirement.

## **ATTENDEES**

Before the Mediation, both Parties will need to tell me and each other who will be attending it in each private breakout room, and in what capacity.

## **DURATION OF AND BREAKS DURING THE MEDIATION DAY(S)**

I urge the Parties' legal representatives to give serious consideration to this. It is a matter I shall want to discuss with you when we first speak substantively about the suggestions that I make in this email.

## **EVIDENCING A SETTLEMENT**

1. I intend to discuss the means of doing so with both of you before the Mediation Day;
2. Normally it is my practice to prepare a pro forma settlement agreement and circulate it as a Word document to the Parties' legal representatives prior to the Mediation day with the intent that the terms of settlement agreed can be written in on the day;
3. Similarly a Tomlin Order if proceedings have already been issued;
4. Usually a settlement achieved at the end of a virtual online mediation is best evidenced by one top copy of each document being signed by each Party or their legal representative respectively and for that copy to be email to me and the other Party so that he, she or it. and their legal representative, can likewise sign the settlement agreement and Tomlin Order, if required.

## **MEDIATION RESOLUTION'S TERMS OF BUSINESS**

These are attached. Presently my understanding is that //// is represented by you //// and that you //// act for ////. [I also believe that there is no conflict or likelihood of one as between your respective clients. That being so, my firm's fees will be charged on a two-party basis although I reserve the right to review this later should my understanding prove to be incorrect]. Given I am told that the claim has been quantified at £///// with there being no counter claim, and assuming that six hours of reading and general preparation time is undertaken by me, my firm's fee will be £///// one half of which will be payable by each of your respective clients. Should it appear that more than six hours of reading and general preparation is going to be necessary, you will both be told and an hourly charge of £/////to be shared between your clients equally will be made. My firm is not registered for VAT and hence none will be added to Mediation Resolution's fees.

## **MY CONTACT DETAILS**

1. See below please;
2. If telephoning it is usually best to call me on my mobile.

## **AND, FINALLY AT THIS STAGE .....!**

I intend to call you [again] in the next few days to start the ball rolling on the preparation front and attached you will find a pro forma checklist which I shall be using on that occasion. It will assist both of us if you look over it beforehand and gather up the information that I shall need then. If it can be emailed to me beforehand using the Word Doc pro forma, so much the better.

As you would expect me to do when performing my role as Mediator, once a Pre-Mediation Timetable has been agreed, I shall police it in whatever way I think is necessary in seeking to ensure that all of us are well prepared for the Mediation Day and thus more hopeful of a settlement than we might otherwise be were the reverse to be the case.

If you require elaboration or have any concerns, please do not hesitate to telephone me. All discussions that I have with you on a one to one basis will be private and remain confidential, unless agreed otherwise.

I look forward to working with you both and I shall of course do my very best to help the Parties reach a settlement in this case.

Meanwhile please acknowledge receipt of this email.

Best wishes,

Kevin.

**Kevin Smyth**  
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