

SEAMEDIATION CHAMBERS

EARLY INTERVENTION MEDIATION (EIM)

Frequently Asked Questions - Clients

In one sentence, what is Early Intervention Mediation?

Early Intervention Mediation takes the ingredients that make mediation so successful (over 80% of mediated cases usually settle) and uses them in a more fluid and less formal way to seek an earlier and more informed solution.

My dispute is not in its early stages - so will EIM help?

When EIM was first conceived the expectation was that it would be used in the early stages of a dispute. In the event its application and appeal has proved to be much wider and on a number of occasions parties have turned to it as late as the final stages of preparation for trial or arbitration. Its flexibility enables the parties to explore final solutions at all stages.

Why has it been thought of?

To address the question we are often asked – “I have just settled - why has it cost me so much to get here?” The deal was always there to be done but getting there was expensive.

So it's about lawyers charging too much?

No – most lawyers want to resolve disputes as cost effectively as possible but often have to get a long way down the litigation route before they are in a position to do so. It is the litigation system within which they work which leads to expense, not the lawyers themselves. If good lawyers can get greater access to facts and opposing arguments earlier - through the unique early involvement of a neutral mediator - the sooner they will be able to give their clients informed guidance on settlement.

So lawyers are part of the process?

Almost always the answer will be "Yes". EIM only really works if the parties have good lawyers. The mediator will understand and challenge the arguments but a good lawyer will almost certainly be needed to give the client a real perspective. The idea is to give lawyers more tools to use for the benefit of their clients, and to spread the word that costs are best reduced by involving the lawyers, not by trying to curtail their involvement or to suppress their charging rates - which is a common initial response to high litigation costs.

What makes it different?

No other dispute resolution process, other than mediation, provides a genuine neutral to assist the parties and to understand all aspects of each case (on a strictly confidential basis) so be able to see ways ahead which may be of mutual benefit. No judge or arbitrator is ever in a position to do this.

How do I approach the other side?

If the parties are in deadlock, one of the parties may ask the mediator to make the first approach to the other side. This is another unique feature of Early Intervention Mediation.

Doesn't starting the process make me look weak?

The better view is that starting a process shows confidence and a willingness to grapple with a problem. The time to be strong is in the negotiation itself.

Is it suitable for all cases?

Probably not. Many cases can be resolved by negotiation or involve legal issues which require a court's guidance. Similarly debt collection offers little scope for compromise. EIM is better suited to disputes which are intractable or complicated by particular issues, the volume of evidence or the number of parties/jurisdictions involved.

Does it cost a lot?

Less than litigation as it has no formal procedures, no court fees, and can readily cross jurisdictions and systems of law. Even if it cannot resolve the dispute, it will almost certainly help it on its way to a structured resolution. Further, it can be stopped at any time without penalty. An overall cap on the mediator's fees is always suggested at the outset, which may be adjusted later by consent if this seems appropriate.

Can it only work for an English law dispute?

No. All of the strengths and weaknesses of the issues under all relevant laws and jurisdictions can be brought into consideration when options are explored. Indeed EIM is particularly suited to multi-party/multi jurisdiction disputes, but good legal advice may be essential for the parties to assess their positions.

Is it just another form of mediation?

It uses the key ingredients of mediation – namely that the Mediator deals with position-taking, distrust, the sensible exchange of key information and arguments, and mapping a route towards resolution -but it is not the traditional one day mediation. EIM adopts a more flexible format, which will hopefully avert a more protracted dispute developing/escalating.

What if I want to do something more forceful e.g. seek security for my claim?

You are free to do whatever best protects your position. This may create tensions but those are for the Mediator to deal with. The only rule of the process – which you will be required to agree to – is that all exchanges with the Mediator are confidential to the EIM process and are without prejudice to any formal court or arbitration proceedings.

Recent feedback from solicitors regarding EIM:

"I have nothing but praise for your assistance and the procedure in general"

"Many thanks for your help. I found the Early Intervention process a good one and will use it again"

You can start the process (or simply find out more) by calling SeaMediation Chambers on +44 (0)7824 879427 or emailing clerks@SeaMediation.com