

## SEAMEDIATION CHAMBERS

### EARLY INTERVENTION MEDIATION (EIM)

#### An earlier and better informed solution

#### What is Early Intervention Mediation?

Early Intervention Mediation (EIM) is a highly flexible process developed by SeaMediation Chambers that seeks to take the key ingredients that make mediation so effective, but to introduce them earlier and in a more dynamic and fluid way to help the parties achieve an informed solution much sooner. Despite its name, it is a process that can be used at any time in the course of a dispute, sometimes as late as the final stages of preparation for a hearing.

Like a standard one day mediation, EIM introduces a neutral mediator to provide a trusted and independent third party with whom each party can discuss the case on a 'without prejudice' and confidential basis. However, unlike a one day mediation, those discussions take place in a more flexible way, usually over a period of days/weeks to fit the specific needs of the parties. The Mediator can also use his skills to help engage reluctant parties, when needed, at no initial charge.

#### What are the main benefits of using EIM?

- It saves time
- Saves unnecessary expense
- It 'nips in the bud' potentially damaging misunderstandings or assumptions that can lead to protracted and costly disputes
- It can be used at any stage in a dispute, but preferably as early as possible
- Promotes constructive understanding and trust
- Enables parties time to reflect on issues and options as they develop
- Facilitates more positive outcomes
- Settlements are negotiated but still commercially and legally binding
- It gives good creative lawyers another option to use for their clients

#### Why does EIM work?

All parties to a dispute want an outcome that suits them. Once there is a genuine dispute, therefore, the parties are best served by getting on with resolving it in a measured and planned way rather than commencing protracted litigation warfare. Without a sensible dialogue, full-on litigation may be the parties' only option. EIM provides a mediator who will help the parties focus on the realities of the dispute and help them identify where in the range of outcomes they might sit. Also, importantly, the Mediator can assist the parties clarify how their interests might best be served by doing something now.

To reach a solution on an informed basis, each party may need additional information or a better understanding of what the other side thinks and knows and might be able to prove. The Mediator can help to provide a safe conduit for that information (a shopping list), or help plan a way forward (a roadmap) to a

more measured process; or simply facilitate an earlier exchange of 'positions' and enhance understanding of why the dispute has got to where it is.

No other dispute resolution process provides this. Parties will not and cannot confide in a judge or arbitrator, nor will they expose their true positions to each other. They will do both with a mediator, often enabling mutually advantageous outcomes to be identified, explored and achieved

**It is worth considering the following questions:**

*What happens when a dispute starts?*

- The parties distrust each other
- The parties adopt postures which signal complete confidence - (though not always with foundation)
- The parties protect rather than share their information - (but ultimately they will probably be compelled to share it by the litigation process).

*What conventionally happens when a dispute settles?*

Usually it will be because:

- Costs and interest have increased; the cost of losing is much higher; settlement becomes an imperative
- Information has been acquired to enable a more informed decision - but often the information has been acquired at considerable cost through the litigation process
- Experts and lawyers have analysed this information - although the change between their initial and final opinions based on the expensively obtained information may only be a few percentage points
- Reality has started to set in

*What happens when the matter settles sooner with the assistance of a mediator?*

In addition to the above, there are other important outcomes:

- Distrust has been neutralised
- Posturing is neutralised
- Information may have been exchanged more readily and on a 'safer' basis

The significance of these last three ingredients should not be underestimated. Their presence – and that of the Mediator - will always make settlement more likely, sooner and at less expense. When a case settles in mediation in one day, after many months and years of litigation, it is these three ingredients which are at work. EI seeks to inject these at a much earlier stage in the process, thus reaping the rewards for clients and their legal representatives much sooner too.

### **What is the process?**

EIM is a very flexible process. The Mediator works with each party and their lawyers to explore all options including:

- Identifying key issues and concerns for each party
- Working out what each party needs to do to better inform the other of its position
- Working out a mutually agreed 'shopping list' or an improved 'roadmap' to take the dispute forward
- Identifying options for resolving the issues, or agreeing how to contest them most cost-efficiently.

The Mediator may include some or all of the following in the process:

- Exploring issues and options by email, phone, or video conferencing
- Chaired settlement meetings (in person or via video conferencing)
- Solution and process planning if no settlement is reached

### **Where do the lawyers fit in to this?**

Lawyers massively increase the prospect of success in any mediated settlement. Good lawyers (and P&I and Defence Clubs or other insurers, where involved) are a key part of the process – they see the good points and the bad points and they know the risks. EIM depends on the parties seeking and receiving sound advice. EIM gives lawyers another tool in their dispute resolutions 'toolbox' to use when more options are needed.

### **What are the fees?**

It costs nothing to explore!

Where the Mediator has been asked to approach another party to the dispute to invite them to take part in an EIM process, the Initial Exploration with each of the parties as to whether they will participate is free of charge (not exceeding a total of 1 hour per party and up to a maximum of 3 hours where there are more than two parties).

If, after such Initial Exploration, one or more of the parties declines to agree to the EIM Terms and/or if the Mediator is of the opinion that the process is unlikely to be of benefit to the parties, then the Mediator will terminate the process.

If the parties agree to participate in an EIM under the SeaMediation Chambers Early Intervention Mediation Terms (please see separate document), the Mediator will charge the parties £440 per hour (to be divided equally between the parties irrespective of how much time the Mediator spends in discussion with each party).

It is the standard practice of SeaMediation Chambers' mediators to set an initial budget for their fees at the outset of each EIM so the parties are informed as to a limit on the Mediator's fees (which, if reached, would trigger a discussion with the Mediator as to whether the EIM should proceed further).

**If I have one of these cases, how do I make Early Intervention Mediation happen?**

It is very easy to start an EIM. You can do either of the following:

- Discuss the option of an EIM with the other parties. If they wish to proceed, agree verbally or by exchange of email to proceed on the SeaMediation Chambers Early Intervention Mediation Terms (please see separate document). No formal signed agreement is necessary. Call or email SeaMediation Chambers to ask either (a) that the Mediator chosen by all the parties accepts the appointment, or (b) that the Senior Clerk nominates a Mediator to accept the appointment. The Mediator will then start the process.
- Alternatively, if circumstances are such that you would prefer not to discuss the possibility of an EIM with the other parties directly, you can approach SeaMediation Chambers on a unilateral basis to indicate that your side agrees to the EIM Terms and ask to appoint a Mediator of your choice or to ask the Senior Clerk to nominate a Mediator. The Mediator will then contact the other parties to undertake an Initial Exploration – in effect, to invite them to agree to participate in an EIM. The outcome of the Initial Exploration will either be that all the parties, or (occasionally) at least sufficient of them to make it worthwhile, agree to proceed on the EIM Terms or, alternatively that an insufficient number of them agree in which case the Mediator will terminate the process.

**To find out more or discuss if your case might be suitable, please call Senior Clerk, Rachel Sharman, who will arrange for you to speak to one of our mediators. The initial discussion is purely exploratory, is confidential and will cost you nothing.**

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