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# Mediation in Practice

## 10 Things to Consider When Thinking About Mediation

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# Should I mediate?

- Accelerated dispute resolution
- Keeping control of the process
- Looking outside the litigation
- Having their say
- Having their day



# Do I have to mediate?

- Standard Directions require parties to consider ADR
- Clients like mediation
- Helps to control the costs risk of litigation
- Not yet compulsory, but in effect...



# Adverse costs orders?

- Unreasonable refusal can be penalised in costs – *Halsey*
- Judicial attitudes are hardening in favour of mediation



# Mediation v JSM?

- The more complex the case, the more a mediator can add
- Getting through the legal team
- Multiple defendants
- Multiple jurisdictions
- Cutting through the complexities



# When to mediate?

- When the parties have enough information to settle
- Before costs get out of proportion
- When it's time to move on – at interim payment stage?



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# How to set up a mediation

- Use a mediation provider
- Choose a mediator and go direct
- It's easier than you think
- Combination of a CMC and a JSM



# Who pays the mediator?

- Normally split between the parties
- Recoverable in the litigation if agreement provides for that
- Check the agreement



“The parties agree to pay their own costs of the mediation, and those costs and the cost of the mediator shall be costs in the case of the proceedings unless otherwise agreed.”



“No party to this mediation shall make any reference to this mediation in court proceedings save for the purposes of any assessment of costs, or as ordered by the court.”



# How do I prepare for the mediation?

- Prepare the client
- Prepare yourself, including costs
- Help the mediator
- What do I need, authority, costs details, CRU, interim payments.





# What do I need to think about on the day?

- Opening positioning statement
- Where do we want to get to?
- What do we tell the mediator, and when?
- Building rapport
- Pacing yourself and the client



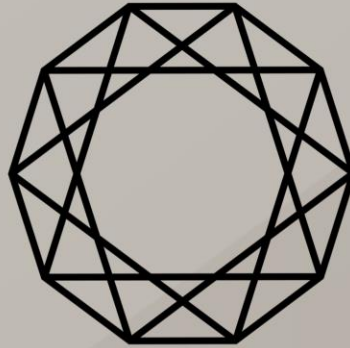
# Remote or in person?

- Mediation engages the human factors
- Best face to face
- Best should not rule out the good
- Remote can work
- Remote, but your team all together



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**Thank you for your attention**  
Questions?



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