

# Court Practice Direction relevant to mediation

The Court Rules are made up of the Civil Procedure Rules (CPR), Practice Directions & Pre Action Protocols. Here are some extracts from the Practice Direction on the Pre action Protocol that relate to mediation.

Here is a link to the full text...

[https://www.justice.gov.uk/courts/procedure-rules/civil/rules/pd\\_pre-action\\_conduct](https://www.justice.gov.uk/courts/procedure-rules/civil/rules/pd_pre-action_conduct)

## The Practice Direction – Pre Action Conduct and Protocols

### Settlement and ADR

**8.** Litigation should be a last resort. As part of a relevant pre-action protocol or this Practice Direction, the parties should consider whether negotiation or some other form of ADR might enable them to settle their dispute without commencing proceedings.

**9.** Parties should continue to consider the possibility of reaching a settlement at all times, including after proceedings have been started. Part 36 offers may be made before proceedings are issued.

**10.** Parties may negotiate to settle a dispute or may use a form of ADR including—

- (a) mediation, a third party facilitating a resolution;
- (b) arbitration, a third party deciding the dispute;
- (c) early neutral evaluation, a third party giving an informed opinion on the dispute; and
- (d) Ombudsmen schemes.

(Information on mediation and other forms of ADR is available in the Jackson ADR Handbook (available from Oxford University Press) or at—

- <http://www.civilmediation.justice.gov.uk/>
- [http://www.adviceguide.org.uk/england/law\\_e/law\\_legal\\_system\\_e/law\\_taking\\_legal\\_action\\_e/alternatives\\_to\\_court.htm](http://www.adviceguide.org.uk/england/law_e/law_legal_system_e/law_taking_legal_action_e/alternatives_to_court.htm)

**11.** If proceedings are issued, the parties may be required by the court to provide evidence that ADR has been considered. A party's silence in response to an invitation to participate or a refusal to participate in ADR might be considered unreasonable by the court and could lead to the court ordering that party to pay additional court costs.

### Compliance with this Practice Direction and the Protocols

**13.** If a dispute proceeds to litigation, the court will expect the parties to have complied with a relevant pre-action protocol or this Practice Direction. The court will take into account non-compliance when giving directions for the management of proceedings (see CPR 3.1(4) to (6)) and when making orders for costs (see CPR 44.3(5)(a)). The court will consider whether all parties have complied in substance with the terms of the relevant pre-action protocol or this Practice Direction and is not likely to be concerned with minor or technical infringements, especially when the matter is urgent (for example an application for an injunction).

**14.** The court may decide that there has been a failure of compliance when a party has—

- (a) not provided sufficient information to enable the objectives in paragraph 3 to be met;

(b) not acted within a time limit set out in a relevant protocol, or within a reasonable period; or  
(c) unreasonably refused to use a form of ADR, or failed to respond at all to an invitation to do so.

**16.** The court will consider the effect of any non-compliance when deciding whether to impose any sanctions which may include—

(a) an order that the party at fault pays the costs of the proceedings, or part of the costs of the other party or parties;

(b) an order that the party at fault pay those costs on an indemnity basis;

(c) if the party at fault is a claimant who has been awarded a sum of money, an order depriving that party of interest on that sum for a specified period, and/or awarding interest at a lower rate than would otherwise have been awarded;

(d) if the party at fault is a defendant, and the claimant has been awarded a sum of money, an order awarding interest on that sum for a specified period at a higher rate, (not exceeding 10% above base rate), than the rate which would otherwise have been awarded.