



# Civil Court Mediation Service Manual

Version 1 - January 2008

## Foreword by Sir Anthony Clarke, Master of the Rolls

The first court based mediation scheme was pioneered by Central London County Court in 1996. We have come a long way in developing mediation as an alternative method of dispute resolution since then. During the past twelve years, a number of courts followed Central London's example, creating their own successful mediation schemes. However, this led to a range of different providers, offering broadly similar services but for quite widely differing fees.

In November 2004, the National Mediation Helpline was launched, and has since become established as an efficient means of providing mediation services throughout England and Wales. The helpline scheme was further enhanced by the Civil Mediation Council's (CMC) accreditation process for mediation providers. For the first time, this created a real quality benchmark for civil mediation, and in April 2006, the Helpline was re-launched to provide all courts with access to Area-based panels of CMC accredited mediation providers.

More recently still, in March 2007, following the successful small claims mediation pilot at Manchester County Court, HMCS began to appoint a number of small claims mediators across England and Wales. By October 2007, the first 10 mediators had already conducted some 1,000 mediations. A further 7 mediators were appointed in October 2007, and by April 2008 every HMCS Area will have an in-house small claims mediator.

This means that, any court user anywhere in England and Wales now has ready access to mediation in the form of a free in-house mediation service for small claims, and - for higher value claims - a low-priced time-limited mediation service via the National Mediation Helpline.

From April 2008, any court user can use the allocation questionnaire to highlight interest in using either service. This manual provides court staff, Court Managers, Area Directors and the small claims mediators with step-by-step guidance on how to respond to those requests and arrange mediations.

Although only a very small percentage of court cases currently go to mediation, I fully expect that over the coming years we will see a significant increase in the number of cases resolved via this route. These two major services, now available to all court users, will no doubt increase that prospect. I certainly hope so.

I therefore commend this Manual to you.

**Sir Anthony Clarke**  
**Master of the Rolls**  
**January 2008**

<b>CONTENTS</b>		<b>Page</b>
<b>1. Introduction</b>		<b>4</b>
<b>2. Judicial referral to mediation</b>		<b>5</b>
• The legal background		5
• Judicial encouragement		6
• The timing of mediation		7
• Case types		7
• Indicators and counter indicators for referral and selection of cases for referral		9
<b>3. Mediation Model – Fast and Multi-Track</b>		<b>10</b>
<b>The Process</b>		<b>10</b>
• Defence / Allocation		10
• Mediation Directions		10
• Flow Diagram – Fast and Multi-Track Mediation		12
<b>4. The National Mediation Helpline</b>		<b>13</b>
<b>5. Mediation Model – Small Claims</b>		<b>15</b>
<b>The Process</b>		<b>15</b>
• Defence / Allocation		15
• Mediation Directions		15
• Ending of mediation process		17
• Flow Diagram – Small Claims Mediation		19
<b>6. The Role of the Small Claims Mediator</b>		<b>20</b>
• Referral		20
• Initial Contact - Arranging the mediation		20
• Conducting the mediation		21
• Closing the mediation		22
• Statistical record management		23
• Mediation Support Officer		23
<b>7. Customer Service – Small Claims Mediation</b>		<b>24</b>
• The Customer Analysis and Feedback System (CAFé)		24
• Customer Feedback Questionnaire		25
<b>8. Small Claims Mediation – A judicial perspective – ‘Benchmark’</b>		<b>26</b>
<b>9. Diversity Statement</b>		<b>29</b>
<b>10. Templates</b>		
<b>Annex A – Example Judicial Directions – Small Claims</b>		<b>30</b>
<b>Annex B - Example Judicial Order (before allocation) inviting parties to use mediation service</b>		<b>32</b>
<b>Annex C - Example Judicial Order (after allocation) inviting parties to use mediation service</b>		<b>33</b>
<b>Annex D - Agreement to Mediate</b>		<b>34</b>
<b>Annex E - Example Settlement Agreement</b>		<b>36</b>
<b>Annex F - Example Tomlin Order</b>		<b>37</b>
<b>Annex G - Information sheet for Face-to-Face mediation</b>		<b>38</b>
<b>Annex H - Information sheet for Telephone mediation</b>		<b>41</b>
<b>Annex I - Checklist - Introductory telephone call</b>		<b>43</b>
<b>Annex J - Mediators Code of Conduct</b>		<b>45</b>
<b>Annex K - Case Contact Sheet</b>		<b>47</b>
<b>Annex L - Absence Planning</b>		<b>48</b>
<b>Annex M - Frequently Asked Questions</b>		<b>50</b>
<b>Annex N - Staff reference guide – short script version</b>		<b>56</b>
<b>Annex O - Staff reference guide – mediation process</b>		<b>58</b>
<b>Annex P - Staff reference guide – mediation checklist</b>		<b>61</b>
<b>Annex Q - Monthly Monitoring Report</b>		<b>63</b>
<b>Annex R - Contact information</b>		<b>64</b>

## 1. Introduction

The overriding objective of the Civil Procedure Rules requires the court to actively manage cases, which includes: *encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure.*

When court-based mediation began to be introduced in some of our larger court centres (such as Central London and Birmingham), it was targeted at cases in the fast and multi tracks, where parties are generally represented and legal costs likely to be significant. However, it became clear that only the largest courts would be able to establish their own mediation schemes – many courts were simply too small to be able to provide the administrative support necessary to manage a court-based scheme. Consequently, towards the end of 2004, HMCS set up the National Mediation Helpline. The Helpline can provide low-cost, time-limited mediation to court users anywhere in England and Wales.

While the Helpline is primarily aimed at fast and multi track disputes (i.e. above £5000), the vast majority of hearings in the courts are small claims below £5000. Since it can cost as little as £25 to issue a small claim in the courts, it is unrealistic to expect small claims users to pay for mediation. HMCS therefore piloted a number of potential new ADR services – aimed at lower cost disputes – that were free to users. The in-house mediation service pilot at Manchester County Court was shown to be the most effective, demonstrating the highest levels of both settlement and customer satisfaction. One other unexpected result from this pilot was the use of telephone mediation - now over 90% of users manage to settle their small claims disputes over the telephone without either party having to attend court, resulting in savings of both time and cost.

Following agreement of the HMCS Corporate Board, and following consultation with the Association of District Judges, HMCS recruited a number of small claims mediators, so that now all court users in England and Wales have access to the in-house small claims mediation service.

This is in line with the Lord Chancellor's breakthrough commitment that states: "Provide a simpler and quicker service in the county courts through introducing a presumption that all but the most complex small claims are dealt with by way of mediation."

The information contained with this mediation manual is aimed at providing a valuable reference tool to help guide staff and judiciary through the 'nuts and bolts' issues of supporting a mediation service for small claims as well as part and multi-track disputes.

## 2. Judicial Referral to Mediation

### The Legal Background

The overriding objective of the Civil Procedure Rules encourages the use of alternative dispute resolution (ADR). The CPR define ADR as *a collective description of methods of resolving disputes otherwise than through the normal trial process*. Consequently mediation is only one method of ADR that the court is encouraged to promote.

Rule 1.4(1) obliges the court to further the overriding objective of enabling the court to deal with cases justly by actively managing cases;

Rule 1.4(2)(e) defines “active case management” as including “*encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure*”.

Rule 26.4(1) provides that “*a party may, when filing the completed allocation questionnaire, make a written request for the proceedings to be stayed while the parties try to settle the case by alternative dispute resolution or other means*”. The court/judiciary can also stay the case if considered appropriate.

Rule 44.5(3)(a)(ii) requires the court, in deciding the amount of costs to be awarded, to have regard to the conduct of the parties, including in particular “*the efforts made, if any, before and during the proceedings in order to try to resolve the dispute*”.

The pre-action protocols contain standard wording on ADR, to the effect that:

*"The parties should consider whether some form of alternative dispute resolution procedure would be more suitable than litigation, and if so, endeavour to agree which form to adopt. Both the Claimant and Defendant may be required by the Court to provide evidence that alternative means of resolving their dispute were considered. The Courts take the view that litigation should be a last resort, and that claims should not be issued prematurely when a settlement is still actively being explored. Parties are warned that if this paragraph is not followed then the court must have regard to such conduct when determining costs."*

The courts have also given strong support for the use of ADR in general, and mediation in particular, in cases such as *R (Cowl) v Plymouth City Council* [2001] EWCA Civ 1935, [2002] 1 WLR 803, *Dunnett v Railtrack plc* [2002] EWCA Civ 303, [2002] 1 WLR 2434 and *Hurst v Leeming* [2001] EWHC 1051 (Ch), [2003] 1 Lloyds Rep 379.

In addition, in *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576, the Court identified six factors, which might be considered as justifying refusal to mediate when determining whether a party who has been successful in litigation should be deprived of their normal entitlement to costs:

- **The nature of the dispute**, as to which the Court warned that *"most cases are not, by their very nature, unsuitable for mediation."*
- **The merits of the case**, by which a party which reasonably believes it has a strong case might be justified in proceeding to litigate.
- **Other settlement methods have been attempted**, though the Court noted that *"mediation often succeeds where other settlement attempts have failed"*.
- **Costs of mediation would be disproportionately high.**
- **Delay** to a trial date.
- **Whether mediation had a reasonable prospect of success**, the burden of showing which lies with the unsuccessful party who proposed mediation, and not with the successful party who refused.

## Judicial Encouragement

Evidence from the evaluation of court mediation schemes shows that at the local level a key factor in the success of a scheme is the commitment of the Designated Civil Judge and District Judges. The judicial role is important in driving the change process and encouraging parties to mediate.

Judges are able to give careful consideration to cases at the allocation stage, case management conferences or even at late stages such as the pre-trial review to see if there is scope for the case being diverted towards mediation. District Judges in particular can act as a single point of contact for all mediation queries and referrals.

Evidence from schemes in England and Wales (in particular the Automatic Referral to Mediation pilot at Central London County Court), indicates that voluntary mediation is more likely to achieve higher settlement rates when compared to compulsory mediation. Mediation is by its very nature a consensual process and works best when parties come to mediation willingly or of their own volition.

However, if court-based mediation is to rely entirely on parties requesting mediation, the demand for it is likely to remain small.

While members of the judiciary have complete discretion on what to do in a case, research shows that mediation works best when there is some form of judicial encouragement, and that such encouragement can be quite robust. But referral is a delicate balance. On the one hand, a "push" or gentle encouragement from the judge could possibly be viewed as a relief where the parties might not want to suggest mediation for fear of losing face. Even where there is strong judicial support for mediation, some parties still wrongly interpret a proposal to try mediation as a sign of weakness. But, research also shows that if a judge is too forceful, it could lead to unwilling parties going to mediation. Similarly, if a judge is overenthusiastic about mediation, unsuitable cases could be referred to mediation, which might be unlikely to settle, particularly where the mediation is time-limited to 3 hours.

In addition, the vast majority of litigants, and many legal professionals – even if they know the term 'mediation' – probably know relatively little about the

potential of mediation in settling disputes. There is therefore a clear need for good information about mediation – both on what mediation is, as well as its potential for settling specific cases. This information should, wherever possible, be made available to the parties themselves, because research shows that parties represented by a lawyer choose mediation significantly less often than unrepresented<sup>1</sup> parties.

## The Timing of Mediation

There are different opinions about the most favourable time to refer parties to mediation. One school of thought believes that the choice should be made as quickly as possible, before parties have become entrenched and dug in their heels. Others believe that the dispute needs to have reached a certain stage of maturity before parties decide to turn away from the courtroom and go back to the negotiating table. Broadly, when a case is ready for settlement negotiations, it is ready for mediation.

However, it is generally agreed, that even in conflicts that run aground, a stage can be reached at which the parties realise the futility of more legal action and return to the original underlying basis of the conflict. But, there will always be some who let things escalate to the point where they would rather go to trial almost regardless of the outcome.

Overall though, one of the real benefits of mediation, when set against the court process, is that it can and should be quicker. Under the National Mediation Helpline arrangements providers are required to undertake a mediation within 28 days of being referred a case. At the same time, judges generally stay the case for no longer than six weeks. In the small claims mediation service at Manchester County Court, the in-house mediator takes an average of 5 weeks from allocation to mediation settlement - compared to an average of 12-13 weeks for a small claims hearing.

## Case Types

Most mediation providers suggest that nearly all cases are suitable for mediation. However, as a general rule, the following cases are generally regarded as inappropriate for mediation and should therefore not be considered for mediation at allocation stage:

- where a legal precedent is needed to clarify the law or inform policy;
- where settlement would not be in the public interest;
- where protective proceedings are required, such as injunctions; or
- where summary judgment is appropriate.

Some examples of types of case that are suitable include:

Contracts for goods and services

---

<sup>1</sup> H Brown & A Marriott, *ADR Principles and Practice*, 32 (1999); H Genn, University College of London, Faculty of Laws, Research Series, The Central London County Court Pilot Mediation Scheme (1998)

- Printing, electrical work, carpet fitting, double glazing, beauty treatment and therapy contracts - between businesses and between businesses and consumers

#### Contracts for services

- Holiday companies and customers.
- Non-payment of professional fees – solicitors and architects

#### Landlord and Tenant

- Non-payment of rent

#### Insurance disputes

#### Building disputes

In general, as far as small claims are concerned, the experience of the judiciary is that the vast majority of cases are susceptible to mediation. There are only a few exceptions:

- Road traffic accident (RTA) cases, where both sides have solicitors and neither side wants to admit liability;
- Bank charge claims, where the banks appear not to want to engage in the court process until a few weeks before the hearing, and tend to settle in any case;
- Claims from HM Revenue and Customs, the Child Support Agency, the Water Companies and DVLA - these organisations will generally not be interested in mediation.

#### Personal Injury

There is an ongoing discussion about whether personal injury cases are suitable for mediation. During the Automatic Referral to Mediation Scheme at Central London County Court, a common reason for opting-out of mediation in personal injury cases, was that the case would settle anyway, and so mediation was unnecessary. As a result, over the year of the pilot fewer than 10% of the personal injury referrals actually resulted in a mediation. However, of those that did mediate the settlement rate was 59% - significantly higher than the settlement rate of non-PI cases (47%). Indeed, in the 40 PI cases where both parties accepted the referral to mediation from the outset, and proceeded to a mediation, the settlement rate was as high as 65%.

Consequently, there should be no automatic assumption that PI cases will fail to mediate successfully. Judges should feel free therefore to refer suitable PI cases to mediation. But this should be on the understanding that if a party objects to mediation, it would probably not be worthwhile attempting to persuade them to change their mind.

## Indicators and Counter Indicators for Referral and Selection of Cases for Referral

While a judge, in making the referral, will want to make sure that the case in question is suitable for mediation, there are other criteria that are just as important in indicating the success of mediation. While research has shown that there are no uniform criteria for making referrals to mediation<sup>2</sup>, there are what could generally be termed "referral indicators".

The key indicator is the willingness of the parties to negotiate. Experienced mediators agree that it is not the type of case that determines the chances of successful mediation, but the attitudes and insights of the parties themselves. They have to be prepared for and capable of discussing a solution to their conflicts while also being able to develop an eye for their mutual interests. However, good mediators can frequently overcome unwillingness to help parties in problem-solving and risk assessment of their case, even if parties are initially reluctant to get around a table.

The other most critical indicator is the presence of room for negotiation, for example, mediation may not be suitable for a simple debt recovery action.

Research shows that these two fundamental conditions need to be met - otherwise the other indicators (see below) can be ignored.

Table 1 below gives a general outline of the indicators and counter-indicators.

**Table 1: Referral Indicators**

Indicators	Counter indicators
<p>A result other than that possible through a court ruling is desirable            Speedy solution is desired            'Legal proceedings fatigue'            Long-term relationship (family, neighbours, business contact, company, long-term contract, etc.)            Common future interest(s)            More litigation or more conflicts than presented in the proceedings            Importance of confidential treatment, with possibility of separate interviews            More parties involved in the conflict than just the parties in the proceedings            A longstanding solution is essential</p>	<p>Both parties are unwilling            Earlier mediation attempt failed            A precedent is desired            Public decision is desired            Too great a power imbalance            Parties with a cultural background which has no place for mediation            Legal procedure in which only a court ruling can bring about a solution</p>

<sup>2</sup> H Brown & A Marriott, *ADR Principles and Practice*, 32 (1999); H Genn, University College of London, Faculty of Laws, Research Series, The Central London County Court Pilot Mediation Scheme (1998)

### 3. Mediation Model – Fast and Multi-Track

#### Defence/Allocation

Once the court receives a defence to a part 7 claim, it sends both parties a notice of defence, allocation questionnaire (N150) and leaflet EX305 'The fast track and the multi-track'. The allocation questionnaire asks the parties whether they would like a stay for mediation, and whether they would like the court to arrange a mediation appointment (via the National Mediation Helpline) – Alternatively they can arrange one themselves with a commercial mediation provider. Leaflet EX305 explains more about the process.

On the expiry of the time limit for allocation questionnaires, the file is referred to a district judge for directions about allocation/stay/mediation in the usual way.

#### Mediation Directions

At this stage, the judge considers whether the case is suitable for mediation on the paperwork before him/her. If both parties wish to try mediation, the judge can decide to stay the claim for 6 weeks and direct the court to contact the Helpline. If only one party (or no party) wants to use mediation, the judge considers the arguments for not wanting mediation. The judge can consider whether an allocation hearing is needed to talk through the matter further with the parties, or he/she can order the claim to proceed straight to trial. Any mediation directions can be given in Form N150a 'Allocation to Track – Master's/District judge's direction'.

However, there may be other stages that would enable the judiciary to consider whether mediation is appropriate (e.g. Boxwork, Case Management Conference)

If the judge requests the court to arrange a mediation, the mediation officer<sup>3</sup> should immediately do one of the following:

1. Phone the National Mediation Helpline ([www.nationalmediationhelpline.com](http://www.nationalmediationhelpline.com)) on 0845 60 30 809 and ensure that the case details are relayed to the Helpline (see below).
2. Print out Caseman details of the parties and fax this over to the National Mediation Helpline on 0845 08 33 001 together with the Court contact details.

---

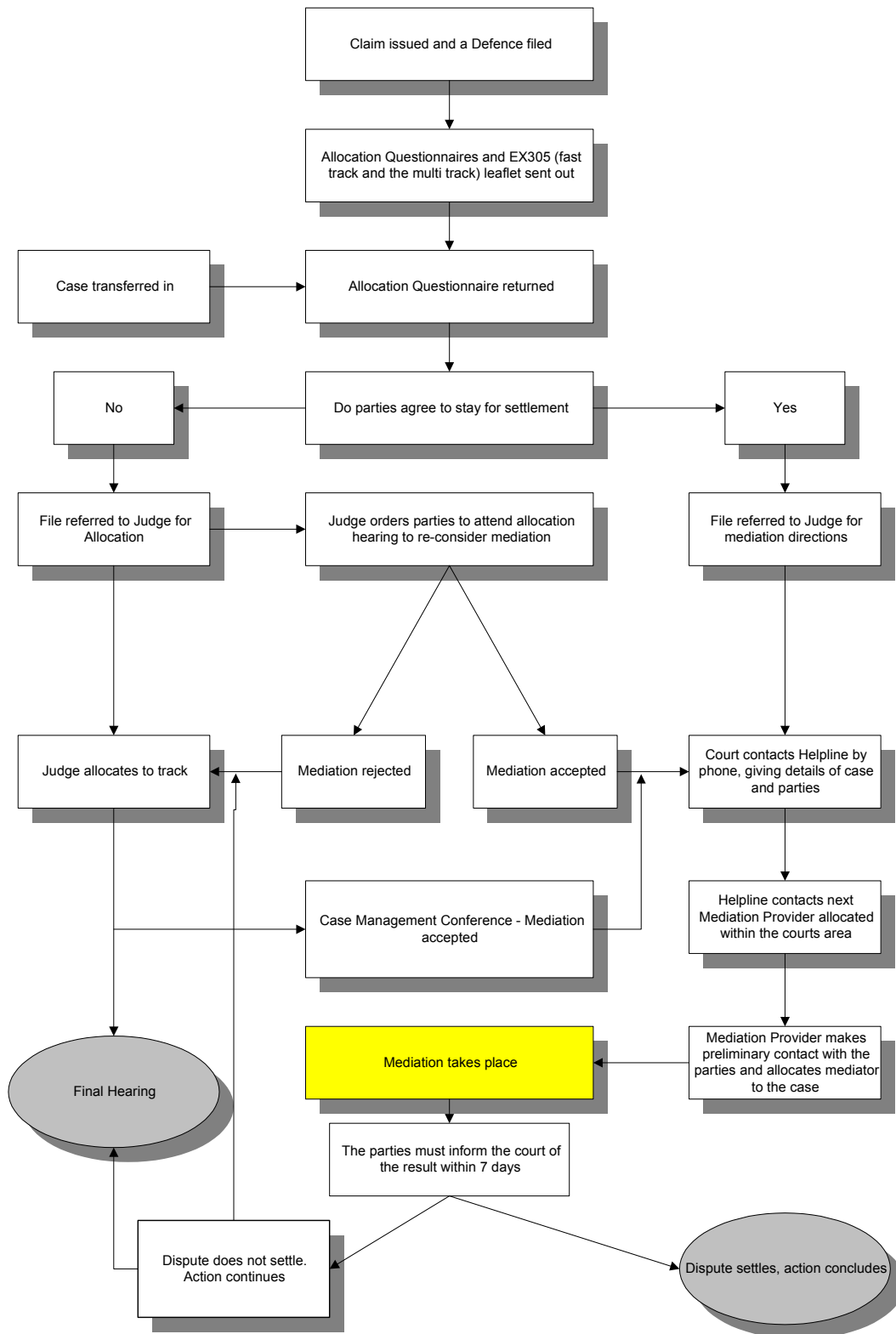
<sup>3</sup> For the purpose of this manual, the mediation officer is simply a named officer, who has some basic knowledge of mediation, and who is responsible for contacting the National Mediation Helpline.

The mediation officer would need to relay all the details required by the Helpline which are easily found on Caseman. These are:

- Parties' names
- Parties' Solicitors, Address, telephone and reference and email if possible
- Court Details (case number and name of court contact)
- Level of claim (to confirm fee level) - unspecified claims need to be checked with case files to decide on mediation fees

A note on Caseman (using Caseman code 555) should be made that the phone call was completed. If faxed, use Caseman code 999. It is important that all records are updated accordingly for internal and external inspection.

## Flow Diagram – Fast and Multi-Track Mediation



## 4. The National Mediation Helpline

In November 2004, HMCS with the support of the Civil Mediation Council<sup>4</sup>, launched the National Mediation Helpline. The NMH has since become established as an efficient and effective means of providing low-cost mediation services throughout England and Wales. The NMH operates nationally as a source of information about mediation and a mechanism for setting up mediation appointments, with area panels of local mediators on a standard fee scale, all of which have been accredited by the Civil Mediation Council.

The NMH is managed by Clerksroom, and trained call operators are on duty between 8:30am and 6pm, Monday to Friday with the exception of Public Holidays. The courts can contact the NMH by phone (**0845 6030809**) or fax (**0845 0833001**). The NMH also has a dedicated web site at [www.nationalmediationhelpline.com](http://www.nationalmediationhelpline.com)

### Costs

Amount of claim	Fees - per party	Length of session	Extra hours - per party
£5,000 to £15,000 - Fast Track	£250 per party + VAT	3 hours	£84 + VAT per hour
£15,000 - £50,000 - Multi Track	£375 per party + VAT	4 hours	£93.50 + VAT per hour

If the claim is for more than £50,000, the fees will need to be agreed with the organisation providing the mediation.

### Counter Claims

The NMH fee is set according to the original claim value, if a counter claim or claim presents itself then the fee will be set according to aggregate value and parties will need to liaise amongst themselves if they are unhappy with this.

Example: Claim £10,000 but counter claim £20,000 then fee payable would be £750 + VAT (shared between parties)

### Multiple Parties

The fees are based on single claimant / defendant disputes. If there is more than one claimant and/or defendant the length of the mediation session may need to be increased, and the next fee tariff applied - the mediation provider

<sup>4</sup>

The Civil Mediation Council is an association of academics, professionals and providers in the field of civil mediation. The organisation encourages mediation as a way to settle disputes. More information about the CMC can be found at [www.civilmediation.org](http://www.civilmediation.org)

or mediator will discuss this matter with the parties when organising the mediation.

## Refunds

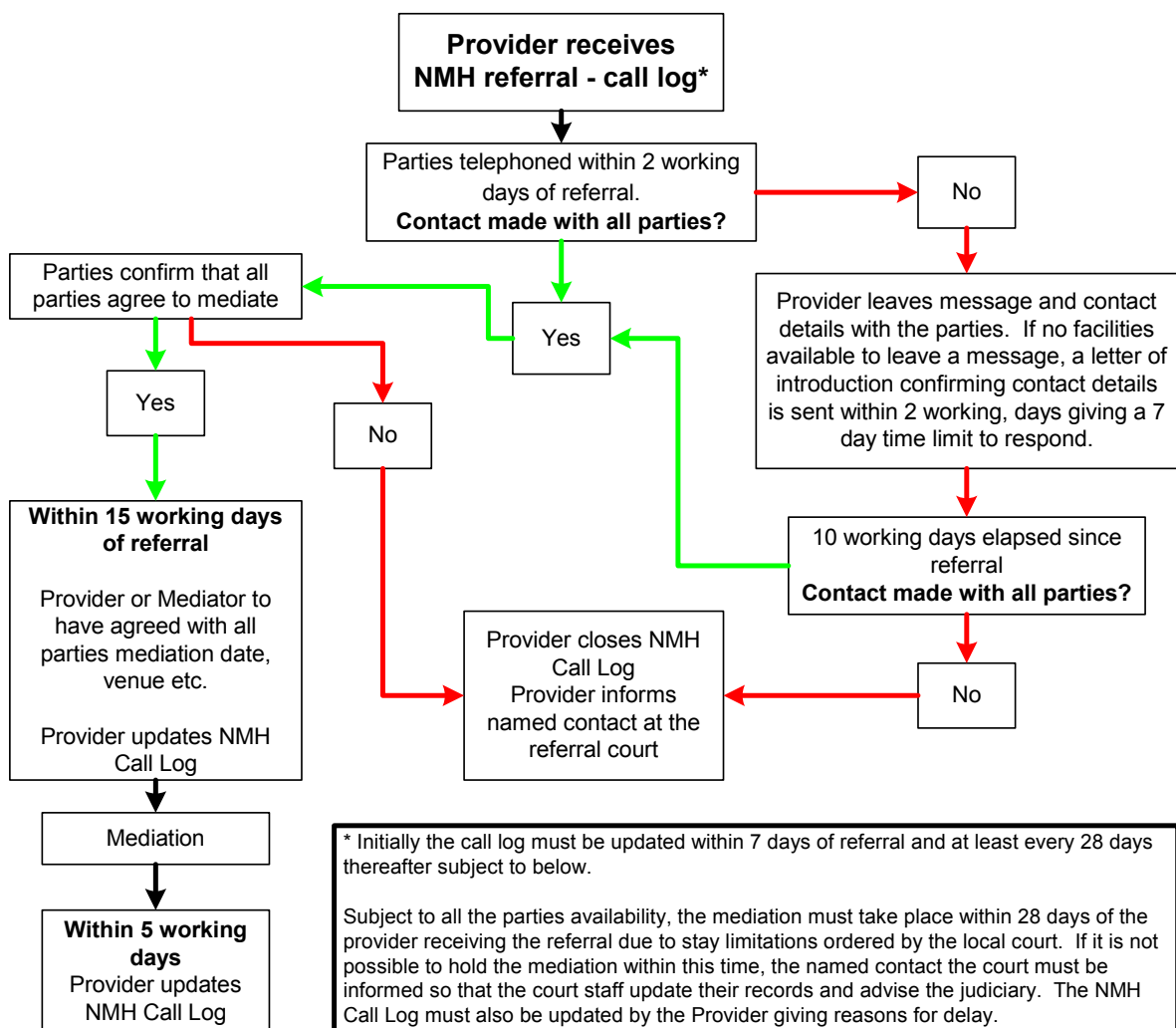
Refunds will only be granted if one or either of the parties contacts the Mediator/Mediation Provider by either email, phone call or letter before 5 working days of the mediation date.

## Additional Costs

The parties should try, where possible to provide a suitable venue for the mediation. If a venue has to be hired, the costs of the same are to be paid by the parties. However, if no other option is available, some courts are willing to provide suitable accommodation at no charge.

If parties are in receipt of public funding (legal aid) they may be able to claim reasonable costs of mediation.

## National Mediation Helpline - Provider Standard Practice Procedure for Court Referrals (January 2008)



## 5. Mediation Model – Small Claims

### Defence/Allocation

Once the court receives a defence to a part 7 small claim, it sends both parties a defence pack containing - notice of defence, small claim allocation questionnaire (N149) and leaflet EX307 'The small claims track'. The allocation questionnaire asks the parties whether they would like to use the free small claims mediation service.

It is hoped that at this stage, claimants in particular will be attracted to the free mediation service since the leaflet makes it clear that settling the case at mediation will save the cost of the hearing fee.

On the expiry of the time limit for allocation questionnaires, the file is referred to a district judge for directions about allocation.

### Mediation Directions

The judge at this stage now considers whether the case is suitable for mediation on the paperwork before him/her.

The absence of one or all allocation questionnaires does not prevent the judge encouraging the parties to use the small claims mediation service.

Evidence from those courts that support a small claims mediation service has shown that nearly all cases are suitable for mediation (around 80% of all small claims). However, as a general rule, the following cases are generally regarded as inappropriate for mediation and should therefore not be considered for mediation at allocation stage:

- Road Traffic Act (RTA)
- DVLA
- Child Support Agency (CSA)
- HM Revenue and Customs
- Bank Charges
- Water Rates

If a case is suitable for mediation, the judge just needs to tick a box to indicate this, and then give standard directions orders (either to stay the case, or to allocate to small claims track and ask the court to arrange a hearing). The directions are usually noted in form N150a (Allocation to Track), although it is

acknowledged that some judiciary like to use their own custom made forms (as shown in Annex A).

It is recommended that where both parties have indicated (on the allocation questionnaire) a desire to use the small claims mediation service, the case should be stayed.

Similarly, where just one party has indicated a preference for mediation, it may be better to stay the case.

Where neither party is interested in mediation, but the judge assesses the case as entirely suitable for mediation, it would probably be more appropriate not to stay the case, but to list it for a hearing in the usual way and encourage the parties to use the mediation service (see option below).

Some judges may prefer to stay a case even though neither party has indicated an interest in mediation. Although this can be done, it should be noted that where neither party has initially expressed an interest in mediation, only a small proportion of parties are likely to take up the further encouragement to mediate. Consequently, those parties that do not take up this subsequent offer to mediate will have had their case unnecessarily delayed.

If the judge decides that a stay is appropriate, the following paragraph should be inserted into the N24 stay of settlement (Caseman Code 103);

*You are encouraged to use the Small Claims Mediation Service. This service is **FREE** for court users with a current small claims case. Mediation appointments can be done by telephone (saving the need to come to court), or face-to-face; parties can also mediate without the need to meet or speak to one another. The mediation is usually limited to one hour and is confidential.*

*If you would like to take up this offer of mediation - or find out more about the mediation process - you should contact the court mediator on [Tel. No.], or email [.....] within 7 days of receipt of this order.*

*Alternatively, if any party does not wish to engage in mediation, or if mediation does not result in the settlement of the claim, the case will be listed for a hearing together with any other directions the court considers necessary.*

If a stay is not appropriate, the following paragraph should be inserted within the N157 notice of allocation to the small claims track;

*The judge considers your case is suitable for mediation and you are therefore encouraged to use the Small Claims Mediation Service. This service is **FREE** for court users with a current small claims case. Mediation appointments can be done by telephone (saving the need to come to court), or face-to-face; parties can also mediate without the*

*need to meet or speak to one another. The mediation is usually limited to one hour and is confidential.*

*If you would like to take up this offer of mediation - or find out more about the mediation process - you should contact the court mediator on [Tel. No.], or email [.....] within 7 days of receipt of this order.*

*Alternatively, if you do not wish to try mediation, a hearing has been arranged as follows:*

The IT Support Manager should create these as variable paragraphs on Caseman so that staff can easily insert them into the order (as shown in the stay for settlement (Annex B) and notice of allocation to the small claims track at Annex C).

If the judge has ticked the mediation directions, a District Judges Printout (Caseman) should be referred to the small claims mediator.

## **Ending the Mediation Process**

Where mediation reaches settlement, there are two options for ending the process.

**Option 1.** After a successful phone or face-to-face mediation, a confidential settlement agreement (Annex E) is drawn up. This can then be converted into a standard Tomlin order (Annex F), which would need to be signed and placed before a judge for approval. There can be up to 3 parts to this order:

1. The claim is stayed on the terms of a confidential settlement agreement signed by the parties.
2. The parties have permission to apply to the court for the purpose of enforcing those terms (if those terms are enforceable), or to claim for breach of the settlement agreement. If no such application to restore is made by (insert date agreed by parties), the claim will stand dismissed.

*If applicable*

3. The hearing fixed for \_\_\_\_\_ is adjourned generally with liberty to restore / cancelled.

If a hearing has been arranged, no fee is chargeable for this Tomlin order because it is worded as an adjournment of the hearing. However, if the settlement comes **pre-allocation** then a fee should be charged.

The mediator will then send the Tomlin order and the settlement agreement to the relevant court listings officer, and ask them to ensure that;

- a DJ signs the order and;
- a copy of the Tomlin order is sent to both parties.

If the case has settled pre-allocation, the following settlement codes should be used: 73 (Settled Pre-Judgment) and if applicable, 136 (General Form of Application) and subsequently, 332 (General Form of Order).

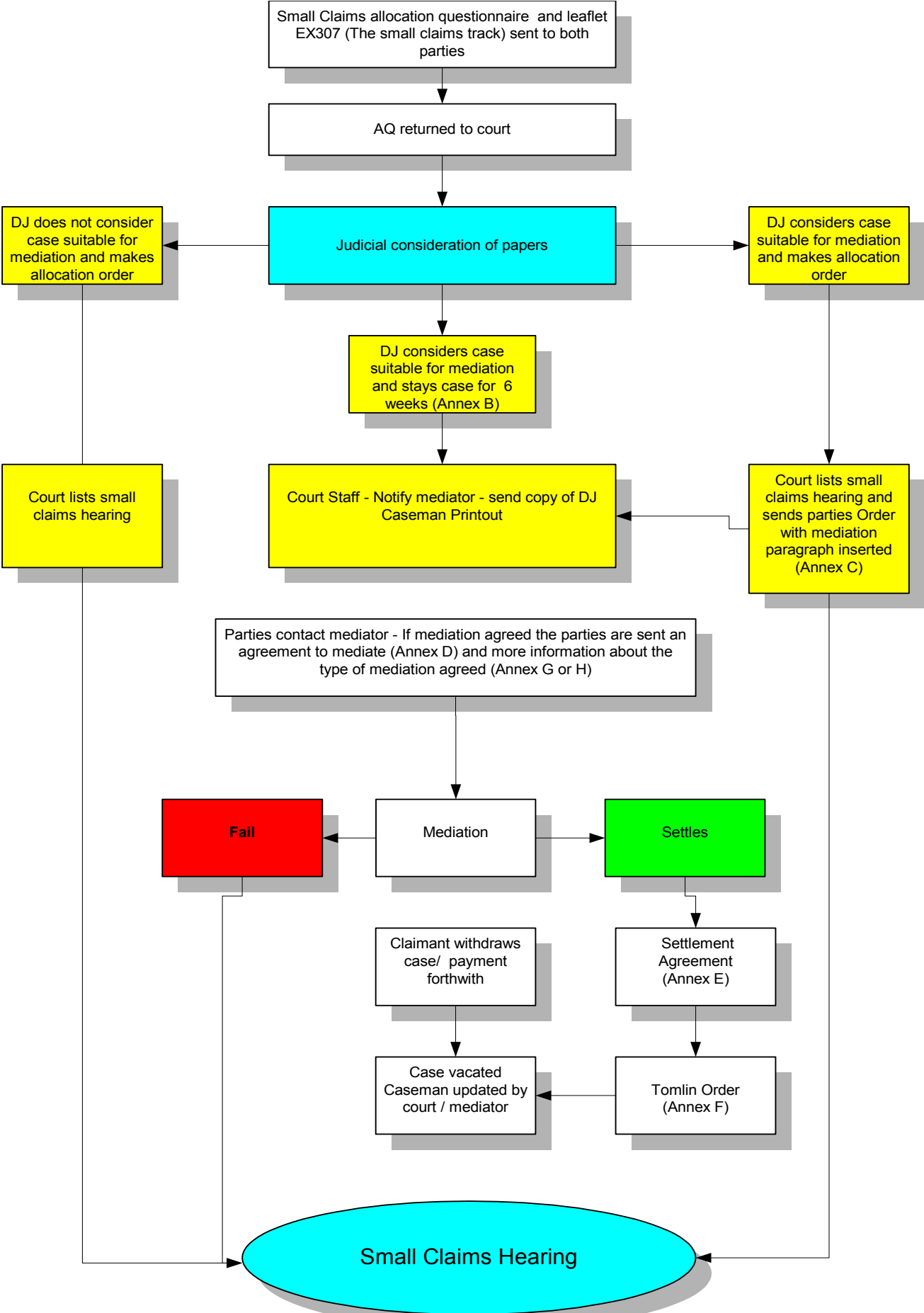
If the case has settled after allocation, and there is a hearing, the court listing officer should remove the case from the list. Caseman code 73 (Settled Pre-Judgment) should be inputted on Caseman, and the F11 Hearings screen should be updated, recording 'S' for settled. Finally, if a Tomlin order has to be approved this is accounted for under Caseman code 332 (General Form of Order).

**Option 2.** In simple terms, if party A has paid party B in full, then there is no need for the settlement agreement to be turned into a Tomlin order. The claimant, once satisfied that the agreement has been satisfied, can send the court a Notice of Discontinuance. Caseman code 73 (Settled Pre-Judgment) is used to capture this event.

If it occurs after allocation, the mediator or court should then record this using Caseman code 73 (settled pre-judgment), and if there is a hearing, the F11 Hearings screen should be updated, recording 'S' for settled. The court listing officer should be informed and e-diary updated accordingly.

To note: If the claim has settled 7 days before the hearing is due, and the court has been informed of this in time, then the claimant is entitled to ask for a full refund of the hearing fee.

# Flow Diagram - Small Claims Mediation Service



## 6. The Role of the Small Claims Mediator

### Referral

If a judge has made a mediation referral, it is the referring courts responsibility to ensure details of the case are sent to the small claims mediator. This can be done either by the court faxing the Caseman – District Judges Printout to the mediator, or they can put it in the post. On receipt, the mediator would need to file these printouts, probably in court name and sequential case number order so details can be easily retrieved if the mediator gets an enquiry. The mediator should also keep a note of the number of referrals per month since this will be needed for the monthly monitoring report ([Annex Q](#)).

### Initial Contact - Arranging the mediation

The parties may contact the mediator if they are interested in taking up the offer to mediate, or they simply want to find out more, at any stage in the proceedings.

A limited amount of time should be spent at this stage explaining what the service is, how it is carried out, and the benefits of using the service. It is worth pointing out to the claimant that if they choose to go to mediation, the defendant agrees and the case settles, they will save the cost of a hearing fee (this can range from £25 to £300 depending on the value of the claim).

Time is key here - a quick decision is required on whether the party wants to use the mediation service, and if so, whether phone or face-to-face (note: the mediator should promote the phone method as the best method for settlement). To help assist the introductory phone call, there is a checklist at [Annex I](#), setting out the main points that need to be covered. Once verbal agreement has been obtained, the mediator needs to obtain email / phone numbers (of both parties if possible – they may have this already) and dates to avoid. This should be recorded on the Case Contact Sheet ([Annex K](#)).

A phone call should now be made to the other party (if you haven't got a phone number then a letter will suffice). Remember, this party will have had the same information as the party that contacted the service first, so don't spend too long on setting out the merits of the service. Just try to get them on board as soon as possible. If they agree, you should try to fix a mediation session there and then. You will already have the other side's dates to avoid. Talk them through the Agreement to Mediate form ([Annex D](#)), spelling out the confidentiality of the process etc, then email, fax or send the Agreement to them. An information sheet ([Annex G or H](#)), which goes into much more detail about the mediation process, can be sent to them at the same time. This same procedure is then completed with the first interested party. Remember to update the Case Contact Sheet. Diarise the mediation session,

either using the Microsoft Outlook Calendar or a desk diary, whichever is most convenient.

**Useful Tip:** If a message is received on an answerphone, or a letter from a party asking to arrange a mediation, contact the other side first. If this party doesn't want to use the service it will save time speaking to the first interested party about the merits of the service etc.

## Conducting the mediation

With phone mediation it is useful to make a phone call to the parties 30 minutes before the agreed time to remind them of the process etc. Usually, the mediation will be carried out by shuttle negotiation (phoning one party after the other), rather than by telephone conference. The following steps should be considered:

- Welcome party(ies) to mediation
- Ask them to introduce themselves (check names)
- Explain that you will briefly cover the process to be followed
- Each party will be asked to give an opening statement – as explained in the material sent out before the mediation
- The opening statement should be:
  - 3-4 minutes in length – if it overruns, you will remind them, as this will eat into the time for mediation
  - about the issues – i.e. what really matters, and
  - about a way forward
- Remind both parties that mediation is about looking forward and finding solutions, not about raking over the problems of the past
- Remind parties that Mediators are not Judges, will not take sides or decide who is right or who is wrong, and cannot give advice. Role is neutral
- Mediation is limited to 1 hour
- Once mediation begins, the mediator will telephone parties in turn, gathering suggestions and ideas
- Everything the mediator is told is confidential – the mediator will only repeat to party B what party A want repeated
- Mediator will ask questions
- When parties are alone and waiting for another call, think about what has been said and gather some further ideas for a solution. Make sure there are no interruptions. Offers made are not binding, unless a solution is agreed
- If agreement is reached, it will be legally binding (the agreement will be signed and an order given by the judge, and all proceedings will then be halted). The agreement will be sent for signature by fax if possible, otherwise through the post
- The agreement can include an explanation or apology – so it's not just about money
- If no agreement is made, and a hearing date has already been arranged, that hearing will still take place as planned (taking part in mediation does

not delay the hearing) - alternatively, if no hearing date has yet been arranged, a date will be arranged without delay.

- If the claimant decides to withdraw the claim, or if either party feels that mediation is not working, the mediation can be stopped at any point without prejudice to the court proceedings
- Equally, if the mediator feels that mediation is not working, particularly if the hour is up, mediation can be halted
- You may make notes during your opening statement and in discussions
- Check if there are any questions before starting
- One final reminder: concentrate on finding a solution, the future not the past

During the session, remember to:

- recap
- check confidentiality of anything said
- check what can be said to other party
- keep an eye on the time

## Closing the mediation

If settlement has been reached the following process should be followed. The mediator will need to check with the parties that they understand the agreement. Usually, because the agreement is settled over the phone, and the parties are not represented, the responsibility for drafting the mediation agreement falls to the mediator. The mediator should therefore carefully check the wording of the agreement with the parties - explaining to them that the agreement needs to be emailed/faxed/posted for signature by both parties. The mediator will need to monitor the return of the agreement. An example of a standard settlement agreement is at [Annex E](#).

If the agreement needs to be converted into a Tomlin order, the mediator should first get the parties to sign the standard draft Tomlin order ([Annex F](#)). Once that is done, the Tomlin order (together with a copy of the settlement agreement) is passed to a judge for approval. If the mediator's 'local' judge is prepared to sign off other courts' orders all the better – if not then the draft Tomlin order will have to be returned to the home court for approval by a judge there. Once the Tomlin order is approved, the court posts a copy of the order to both parties. The court listing officer will ensure that the case is vacated once the order is approved.

**If a hearing has been arranged, no fee is chargeable for this Tomlin order because it is worded as an adjournment of the hearing. However, if the settlement comes pre-allocation then a fee should be charged.**

Finally, please ensure that customers are given the web link to access the on-line customer feedback questionnaire, or alternatively if they are able to access the online version, send them a hard copy.

## Statistical Record Management

The mediator is expected to keep a record of mediated cases on an Excel spreadsheet. The following information is required:

- court name
- claim number
- type of claim
- date of allocation
- time estimate of hearing
- date of hearing
- type of mediation (phone or face-to-face)
- date of mediation
- date of settlement
- outcome of mediation; and
- how long mediation took

The spreadsheet should be sent by email to PDRT and the local Area Directors and Performance Managers at the end of each month. The mediator is also expected to provide a monthly monitoring report, an example of which is at [Annex Q](#).

## Mediation Support Officer

Some mediators have a dedicated mediation support officer to help ensure the smooth running of the service. Generally, this person deals with most of the administration associated with the job, including dealing with phone and e-mail traffic from prospective users of the service, arranging mediation appointments, managing the local filing system and updating all mediation activity for inclusion on the mediation spreadsheet.

## 7. Customer Service – Small Claims Mediation

Complaints and feedback are useful measurements of the service we are offering our customers and as a means for monitoring our performance. It is our aim to learn more from the complaints that are made against us and in order to do this, more information has to be recorded about the types of complaints and compliments we receive and why we are receiving them. Therefore the accurate recording of information is essential to allow proper analysis of any statistical information taken from the system.

The two systems set up to capture customer complaints and compliments are as follows:

### The Customer Analysis and Feedback System (Café)

The Customer Analysis and Feedback System (CAFé) has been devised to record complaints and feedback received by Courts and Area Directors. However, it is difficult for Customer Service Unit to gauge if the CAFé System is supplying realistic data unless complaints and compliments are logged consistently. Uniform logging of complaints will assist in providing an accurate reflection of the number of complaints handled by each court and area. Therefore, it is essential that ALL complaints / compliments are logged, whether received by telephone, letter or otherwise, formal or informal.

The complaint/compliment should be logged using the relevant category - for example '*Avon and Somerset SCMS*'. To prevent double counting of a complaint, it should only be counted in the statistics by the office dealing with the substantive reply. For example, if a court directly refers a letter of complaint to the Area Directors Office for reply, the Area Directors Office should account for it, not the court. If a substantive reply is prepared and sent by the court but the customer pursues their complaint to the Area Directors Office, then each consideration of the complaint should be recorded.

**Note:** If a complaint is referred direct to the Area Directors Office, the court still needs to log the complaint and then mark it referred to Area Directors Office/Court.

## Customer Feedback Questionnaire

It is important that the service is regularly monitored for quality assurance, and diversity issues. To help achieve this an on-line customer feedback form (the first page is shown below) has been created. Customers can access this at [http://www.surveymonkey.com/s.aspx?sm=L2jj8Uo3DFunLrkKFZdbyQ\\_3d\\_3d](http://www.surveymonkey.com/s.aspx?sm=L2jj8Uo3DFunLrkKFZdbyQ_3d_3d)



### 1. Your views

Dear Customer

**This questionnaire is designed to help us evaluate the effectiveness of the Small Claims Mediation Service. We want to hear your views and we very much appreciate you helping us by answering the questions below. All responses are confidential and your answers will help us improve the service for all our customers. It would help us if you complete all 12 questions in this questionnaire.**

### 2.

1. What was your role in the case?

- Claimant - I brought the case to court
- Defendant - the case was brought against me
- Adviser - solicitor for the client
- Adviser - solicitor for the defendant
- Other

### 3.

2. Which small claims mediator did you use for the mediation? Please state the court where the claims is being progressed.

Name of mediator

Name of court

3. How did you find out about the Small Claims Mediation Service?

- From a leaflet
  - In a letter from the Court (or Court Order)
  - From a member of the court staff
  - Letter from the Small Claims Mediation Service
  - Phone call from the Small Claims Mediation Service
  - Other
- please specify

However, if customers do not have access to the Internet, they can ask the mediator for a hard copy if necessary. The completed survey should be sent to the PDR team for uploading onto the Surveymonkey website. The PDR team will regularly monitor this and publicise the information.

## 8. Small Claims Mediation – A judicial perspective

### Interview with District Judge Tony Harrison for 'Benchmark' magazine.

#### Finding a middle ground

Last year, Benchmark visited District Judge Ron Dudley in Southend to find out about a new DCA scheme to promote mediation. This month, District Judge Anthony Harrison, based at Manchester County Court, talks about another side of the scheme, and a slightly different approach - having a dedicated mediator on hand and running the scheme through the court.

"We had the usual steering committee - two judges, two representatives of DCA, James Rustidge the mediator and members of the court management team," says District Judge Harrison of the start of the scheme.

"The really interesting thing is how we changed our own views as district judges, with regard to our role so far as mediation was concerned.

"At the outset, we were looking at cases on the basis of 'can we personally see that mediation would succeed in this case?'. What I think was happening was that worrying about the chances of mediation being successful in particular cases led to a slightly slow start.

"Ultimately, we moved to the position where we became convinced that what we needed to do was simply promote the existence of the mediation scheme."

The results came as something of a surprise to the judges.

"There are few cases which are not susceptible to mediation, I think," says District Judge Harrison. "In small claims, unfortunately, it's mainly road traffic accident cases, where you have solicitors on both sides and neither side wants to admit liability. "

RTAs aside, the take-up for mediation was even higher than anticipated.

"When we started to flag up the existence of mediation we started to see take-up in cases where we would have thought there was no prospect of these people getting together and talking to each other," says District Judge Harrison.

"I think a lot of this was down to James Rustidge's persistence and ability to persuade - his success rate on reaching an agreement is somewhere in the order of 85 per cent of those matters which go to mediation.

"The satisfaction rate is 90 per cent - that's very impressive.

"Mediation was even accepted by parties with a good chance of victory in full court proceedings.

"For example, our local authority, as you can imagine, brings a fair number of small claims, in what we would regard as fairly safe cases for the claimant - statutory charges for work done, that sort of thing. They are usually 99.9 per cent certain of winning - but were willing to mediate a settlement with the defendant to avoid attendance at court, which was quite a surprising development.

"I think what they decided was that, if they obtained a judgment, they've got to enforce it, dealing with people who are going to be unwilling to satisfy the judgment, or don't have the immediate assets to do so because they're on benefits or a low income.

"If the local authority has an agreement with the defendant, the defendant is much more likely to be willing to pay. To get that agreement they might have to reduce the amount to which, strictly speaking, they are entitled - but their staff don't have to go to court, and they have a better chance of actually collecting that amount."

"James even carried out a successful telephone mediation between the Home Office and a serving prisoner. The prisoner did not have to travel to court, the Treasury solicitor was in London, and from our point of view it was a win-win situation all round."

To give mediation a chance, the judges listed small claims for a formal hearing - 13 weeks in the future - in the normal way, and then referred to the scheme as an option in the court order.

Provided mediation was agreed to by both parties, "James then had to do his work in that time; provided he did, we got the bonus of having the small claims hearing vacated".

Initially, these vacated hearings were used by the judges to catch up on paperwork and reading. However, once analysis was carried out on the effects of mediation on the lists, "we anticipate now being able to reduce the manpower commitment to small claims, thus freeing up time for listing other matters".

Mediation is not the court's only initiative to increase efficiency, so it is not possible to pinpoint the exact impact it has had. However, District Judge Harrison believes the scheme has made a significant contribution to reducing the time commitment to small claims by two judge days per week.

It is also popular with users - "two who had recently been through the mediation process told us it took away a great deal of the worry of coming to court; they felt it was important to be able to express themselves in their own words without the anxiety that otherwise they might have felt in the presence of a judge".

There is also the question of convenience: James' measures for reaching a settlement have included telephone hearings, and travelling to visit each party. He has just expanded his remit to cover Altrincham, Stockport, Tameside, Oldham, Leigh and Salford, while encouraging parties to use email, fax, and any other measures that will save time and encourage a speedy settlement.

James is employed by DCA - something that had to be considered by the judges involved: "We had to ensure the mediation would be independent. We also needed to be re-assured as to the quality of training. The proof has been that we have no reservations on either score."

How mediation would be funded once the year-long pilot project ended was initially a concern. The success of the scheme has however been met with assurance of continued funding, which has indeed continued in place following the expiry of the year-long pilot.

## 9. Diversity Statement

The Ministry of Justice serves a diverse society. That is a society made up of men and women; of people of different races, cultures and religions; of people with and without disabilities; of young people and older people; of straight and gay people; of people with and without caring responsibilities; and of people with many other differences. We recognise, respect and value that diversity and the mediators will strive in all they do to serve the interests of people from all sections of society.

The small claims mediators should ensure the service they provide complies with this statement.

HMCS leaflets explain to court users that if they have a disability that makes going to court or communicating difficult, they should contact the Customer Service Officer of the court concerned. However, if a party has already made telephone contact with the small claims mediator, who is then made aware that a party has a disability, the mediator should be prepared to help them rather than just refer them on to the Customer Service Officer.

That does not mean that the mediator will know what to do in every case, but at least the mediator can take up the matter with the Customer Service Officer on the party's behalf. It is therefore recommended that the small claims mediator makes contact with the Customer Service Officer on taking up post, to find out in advance what range of options can be made available for helping people with disabilities.

For example, if parties are deaf or hard of hearing, a minicom service is available on 0191 478 1476.

**Annex A. Example Small Claims Judicial Directions**

- SC1 This claim is allocated to the Small Claims Track.
- SC2 The parties shall exchange the following not later than 4.00pm on.....(14 days prior to hearing)  
Note to judge: if exchange required to assist mediation, please adjust date.
  - (a) The written statements of evidence of any witness whose evidence is relied on in support of or in defence of the claim.
  - (b) Copies of any documents which a party proposes to rely on.
- SC3 The Claimant may rely on the (written) expert evidence contained in the report prepared by .....(who shall attend the final hearing to answer questions as directed by the court).
- SC4 **Road traffic accident cases only: -**
  - (a) The parties shall agree a sketch plan and photographs of the place at which the accident occurred which shall be produced at the hearing.
  - (b) The parties shall attempt to agree the amount of the repair accounts subject to liability
- SC5 List for hearing before the District Judge in the Small Claims  
List on the first available date after 10 weeks with a time estimate of .....
- SC6 It is important to comply with these directions. Failure to do so may result in the hearing being adjourned or the claim or defence being struck out.

**Mediation Directions**

- SC7 **Pre-Allocation:** The Judge has considered your case is suitable for mediation and the case is stayed until .....to enable the parties to attempt settlement. You are therefore encouraged to use the Small Claims Mediation Service. This service is **FREE** for court users with a current small claims case. Mediation appointments can be conducted by telephone (saving the need to come to court), or face-to-face; parties can also mediate without the need to meet or speak to one another. The mediation is usually limited to one hour and is confidential.

If you would like to take up this offer of mediation - or find out more about the mediation process - you should contact the court mediator on [Tel. No.], or email [.....] within 7 days of receipt of this order.

Alternatively, if any party does not wish to engage in mediation, or if mediation does not result in the settlement of the claim, the case will be listed for a hearing together with any other directions the court considers necessary.

**SC8 Post Allocation:** The judge considers your case is suitable for mediation and you are therefore encouraged to use the Small Claims Mediation Service. This service is **FREE** for court users with a current small claims case. Mediation appointments can be conducted by telephone (saving the need to come to court), or face-to-face; parties can also mediate without the need to meet or speak to one another. The mediation is usually limited to one hour and is confidential.

If you would like to take up this offer of mediation - or find out more about the mediation process - you should contact the court mediator on [Tel. No.], or email [.....] within 7 days of receipt of this order.

Alternatively, if you do not wish to try mediation, a hearing has been arranged as follows:

**SC9** This case is not suitable for mediation.

## Annex B. Example Judicial Order (before Allocation) Inviting Parties to use the Mediation Service

**Standard Order for stay for settlement with consent of all the parties**

In the X County Court	
Claim Number	
Claimant	
Defendant	
Date	

District Judge X orders that this claim is stayed until xxxxx to enable the parties to attempt settlement.

On or before xxxxx, one of the following steps must be taken:

**either**

the claimant must notify the court that the whole of the claim has been settled; (see note (i) below)

**or**

the claimant or defendant must write to the court requesting an extension of the stay period, explaining the steps being taken towards settlement and identifying any mediator, expert, or other person helping with the process. The letter should confirm the agreement of all the other parties. (see note (ii) below)

**or**

all the parties must file a completed allocation questionnaire at the court. Where a settlement of some of the issues in dispute have been reached, a list should be attached to the completed questionnaire. The list must be agreed with the other parties and must indicate that it has been agreed.

The Judge has considered your case is suitable for mediation and you are therefore encouraged to use the Small Claims Mediation Service. This service is **FREE** for court users with a current small claims case. Mediation appointments can be conducted by telephone (saving the need to come to court), or face-to-face; parties can also mediate without the need to meet or speak to one another. The mediation is usually limited to one hour and is confidential.

If you would like to take up this offer of mediation - or find out more about the mediation process - you should contact the court mediator on [Tel. No.], or email [.....] within 7 days of receipt of this order.

Alternatively, if any party does not wish to engage in mediation, or if mediation does not result in the settlement of the claim, the case will be listed for a hearing together with any other directions the court considers necessary.

**Note (i):** Where settlement of the claim is achieved before the end of the period of stay, the following will be taken to include an application for the stay to be lifted:

- (a) an application for a consent order to give effect to the settlement
- (b) an application for approval of a settlement where one or more of the parties is a person under a disability: and
- (c) the filing of a notice of acceptance of monies paid into court, or an application to accept monies paid into court out of time.

**Note (ii):** Extensions to the period of stay will generally be no more than 1 month.

## Annex C. Example Judicial Order (after Allocation) Inviting Parties to use the Mediation Service

### Notice of Allocation to the Small Claims Track (Hearing)

In the X County Court	
Claim Number	
Claimant	
Defendant	
Date	

District Judge X has considered the statements of case and allocation questionnaires and allocated the claim to the **SMALL CLAIMS TRACK**.

The judge considers your case is suitable for mediation and you are therefore encouraged to use the Small Claims Mediation Service. This service is **FREE** for court users with a current small claims case. Mediation appointments can be conducted by telephone (saving the need to come to court), or face-to-face; parties can also mediate without the need to meet or speak to one another. The mediation is usually limited to one hour and is confidential.

If you would like to take up this offer of mediation - or find out more about the mediation process - you should contact the court mediator on [Tel. No.], or email [.....] within 7 days of receipt of this order.

Alternatively, if you do not wish to try mediation, a hearing has been arranged as follows:

The hearing of the claim will take place at Time, Date at X County Court, Address, Postcode and should take no longer than 1 hr 30 mins. A hearing fee of £xxxx is payable by xxxxxx by the [claimant][defendant if proceeding on the counterclaim] unless you make a fee concession. Failure to pay the fee will result in the hearing being removed from the list.

The court must be informed immediately if the case is settled by agreement before the hearing date. The hearing fee will be refunded in full if the court receives notice in writing at least 7 days before the hearing date, that the case is settled or discontinued.

#### NOTES

- If you cannot, or choose not to, attend the hearing, you must write and tell the court **at least 7 days before the hearing**. The District Judge will hear the case in your absence, but will take account of your statement of case and any other documents you have filed.
- If you do not attend the hearing and do not give notice that you will not attend, the District Judge may strike out your claim, defence or counterclaim. If the claimant attends but the defendant does not the District Judge may make a decision based on the evidence of the claimant only.

## Annex D. Agreement to Mediate – Small Claims

### Agreement to Mediate

Name of Court	Claim No.
Name of Claimant	
Name of Defendant	

We, the parties, agree to enter into mediation of the above dispute, Claim No. ...., on the following terms and conditions:

#### 1. The mediator

The parties agree to the appointment of (*insert name*)

as the court based mediator.

The parties understand that the mediator is independent, neutral, and is employed by Her Majesty's Courts Service (HMCS). The parties also understand that the role of the mediator is to facilitate settlement of the dispute by negotiation and agreement where it is possible. The mediator does not give legal advice and will not adjudicate the dispute.

The Mediator may ask the parties to consent to a co-mediator or observer to be present at the mediation if the parties agree. The parties may be asked to assist in the ongoing assessment of the present mediation scheme.

Save in the case of gross error or misconduct, the parties agree that they will respect the neutrality of the mediator, any professional body to which the mediator may belong, and HMCS, and not bring any claim, demands or proceedings against any or all of these, arising out of the appointment of the mediator or the conduct of the mediation.

#### 2. Good faith and authorisation to negotiate

Whilst it is recognised that mediation is a voluntary process that enjoys the support of HMCS, and that the mediator will not, and cannot, compel the parties to settle, nor even to continue the mediation, the parties agree to participate in good faith with the aim of achieving settlement. The parties agree that they will have present at the mediation such people as are authorised to agree settlement terms, or ensure that they themselves have such authority.

### 3. Private sessions

During the mediation the mediator will probably speak to the parties separately in order to improve the mediators understanding of the each party's views. Information given to the mediator during such private talks will be treated by the mediator as being confidential unless the party involved allows the mediator to give the information to the other party.

### 4. Confidentiality and the without prejudice nature of mediation

The parties agree to keep confidential the fact that mediation is to take place. Any information – whether written in a document prepared for mediation or written or spoken during the mediation – can only be used for the purpose of mediation and cannot be referred to in any court action unless the parties agree. The parties agree that they will not call the mediator to give evidence in any court action. The terms of the memorandum of agreement remain confidential, but if the memorandum of agreement forms part of a court order, the parties have permission to apply to the court for the purpose of enforcing those terms (if those terms are enforceable), or to claim for breach of the memorandum of agreement.

### 5. Ending the mediation

The mediator, or either of the parties, may end the mediation at any time without giving a reason. In that event the trial judge will only be aware that mediation has taken place and that it has failed.

### 6. Customer Feedback Questionnaire

HMCS would be very grateful if you could spend a few minutes completing our on-line survey so that we can learn from your experiences and ensure that our service is of the highest standard. You can access the survey at [http://www.surveymonkey.com/s.aspx?sm=L2jj8Uo3DFunLrkKFZdbyQ\\_3d\\_3d](http://www.surveymonkey.com/s.aspx?sm=L2jj8Uo3DFunLrkKFZdbyQ_3d_3d)

If you cannot access the internet, the mediator can provide you with a copy of the survey form.

Signed:

Claimant:	Defendant:
Mediator:	Date

## Annex E. Example Settlement Agreement

### SETTLEMENT AGREEMENT

<b>Name of court</b>	
<b>Claim No.</b>	
<b>Name of Claimant</b>	
<b>Name of Defendant</b>	

On ..... (date), the parties agreed that:

Terms

- The defendant will pay £ .... in full and final settlement no later than ..... (date) to claimant by cash/cheque/direct bank transfer.
  
- The action will be stayed and the parties will consent to an order in terms of the attached Tomlin Order.
  
- The action will be dismissed with no order as to costs.
  
- The agreement is in full and final settlement of any causes of action the parties to this dispute have against each other.
  
- This agreement supersedes all previous agreements between the parties.
  
- If any dispute arises out of this agreement, the parties will first attempt to settle it through the mediator before issuing enforcement proceedings through the court.
  
- The parties will keep the information contained in this agreement confidential and not use it for any collateral or ulterior purposes. Other than a final written agreement, any information – whether written in a document prepared for mediation or written or spoken during the mediation – can only be used for the purpose of mediation and cannot be referred to in any court action unless the parties agree. The parties agree that they will not call the mediator to give evidence in any court action.

Claimant:	Defendant:
Date:	Date:

**Annex F. Example Tomlin Order**

Name of court	
Claim No.	
Name of Claimant	
Name of Defendant	

**BY CONSENT IT IS ORDERED THAT**

1. The claim is stayed on the terms of a confidential settlement agreement signed by the parties.
2. The parties have permission to apply to the court for the purpose of enforcing those terms (if those terms are enforceable), or to claim for breach of the settlement agreement. If no such application to restore is made by (insert date agreed by parties), the claim will stand dismissed.

*If applicable*

3. The hearing fixed for \_\_\_\_\_ is adjourned generally with liberty to restore / cancelled.

Claimant:	Defendant:
Date:	Date:

## Annex G. Information Sheet for Face-to-Face Mediation

### HMCS Small Claims Mediation Service

The information below should help you gain a greater understanding of the principles of a time limited, one-hour mediation as well as setting out some basic steps to take to help you prepare for the appointment.

#### What is mediation?

In mediation, each side to a dispute has a chance to put its case and to hear what the other side has to say. A mediator helps both sides reach agreement about how a dispute should be settled. To get the best out of the process it is important that the parties understand it and come prepared.

#### What does it involve?

You will see a mediator who has been trained to help people to settle their disputes. The mediator is not a Judge. He or she will not take sides or decide who is right or who is wrong. They cannot give advice.

If you have a face-to-face mediation appointment then on the day set for the small claims mediation appointment, please arrive at the court building 15 minutes before the appointment is due to start. You will be directed to small claims conference rooms where the mediation will take place. The time set aside for the appointment is 1 hour.

However, the mediator and parties may decide that more time is needed on the day to facilitate an agreement. Please therefore try to make suitable arrangements to cover this possibility. There is no need to call witnesses.

You can go to the mediation by yourself or with a friend or a legal adviser/solicitor. The court cannot provide you with legal assistance on the day of the mediation.

If you think there may be a language barrier, ensure you bring an appropriate interpreter with you. You should also inform the mediator and/or court that you will be relying on this assistance.

#### **Before the day of the mediation, you should try to be prepared.**

You want the mediator and the other side to understand your case. Decide what is the best way of explaining your position. It may be helpful for you to make a list of the strengths and weaknesses of your case and, if you can, the strengths and weaknesses of the other side's case.

**Remember that the mediator will be looking for solutions, which are in your best interest. The mediator will not tell you what your rights are.**

Mediation is not a substitute for legal advice. If you need advice, and are not legally represented at the mediation, try to take it before the day fixed for the mediation. The court cannot provide duty solicitors to give legal advice on the day of the mediation appointment.

### **What happens at mediation?**

Mediators have different ways of working, but what usually happens is that everyone involved may first meet in one room. The mediator will make sure everyone knows who is present and will briefly explain the process. Each side will be given the chance to tell the mediator and the other side what their case is about and what they are looking for.

After the open session, each side is likely to go to separate rooms and the mediator will visit each in turn. These are private sessions. The mediator will not tell the other side what he or she has been told unless given permission to do so. During the private sessions, the mediator will briefly discuss the case with you. The mediator will be looking for solutions to problems and will be interested in what each side needs.

By moving between sides, carrying information, suggestions, ideas, explanations or offers, the mediator will seek to help everyone to reach a solution to their dispute.

If agreement is reached, the mediator will bring everyone together again and a settlement agreement will be drawn up and signed.

### **At the mediation**

Remember that the mediator is not a Judge. When you are asked to present your case in the open session, try to get across to the other side what you think the dispute is about. Do not worry about details; the mediator can find out about these in the private sessions. Be brief. If you feel difficulty in talking about the case when the other side is present; tell the mediator.

In the private sessions, try to work with the mediator to find a solution. Be frank. What you say is confidential; you may know something that will help the mediator in talking to the other side.

When the mediator is with the other side, use your time. Think about what has been discussed. Consider what you may be able to offer or accept. Decide exactly what your needs are.

If you reach agreement, remember that it will be binding on you and the court proceedings will be ended. Make sure you can comply with the agreement.

If agreement is not reached, the normal court timetable will continue and the legal action will go ahead. However, remember that the negotiations and any terms of settlement proposed during the mediation appointment are confidential and cannot be repeated once proceedings have been referred back to court.

Even if the mediation does not end with agreement between the two sides, you may find it was helpful and that each side understands the other's point of view more clearly. You can always try to settle the case at a later date between the mediation and the date fixed for the hearing.

### **What do I have to do if I am unhappy with the conduct of the mediator?**

If you have any complaints or issues to raise regarding the court procedure or the conduct of the mediator, these should be addressed in writing to the court manager.

## **Annex H. Information Sheet for Telephone Mediation**

### **HMCS Small Claims Mediation Service**

The information below should help you gain a greater understanding of the principles of mediation as well as setting out some basic steps to take to help you prepare for the appointment.

#### **What is mediation?**

In mediation, each side to a dispute has a chance to put its case and to hear what the other side has to say. A mediator helps both sides reach agreement about how a dispute should be settled. To get the best out of the process it is important that the parties understand it and come prepared.

#### **What does it involve?**

You will talk to a mediator who has been trained to help people to settle their disputes. The mediator is not a Judge. He or she will not take sides or decide who is right or who is wrong. They cannot give advice.

If you have a telephone appointment then please ensure that you are free from any interruptions and possible distractions. The time set aside for the appointment is usually 1 hour. However, the mediator and parties may decide that more time is needed to facilitate an agreement. The telephone negotiations may take place on the same day or carried over until another mutually convenient day.

#### **Before the day of the telephone appointment, you should try to be prepared.**

You want the mediator and the other side to understand your case. Decide what is the best way of explaining your position. It may be helpful for you to make a list of the strengths and weaknesses of your case and, if you can, the strengths and weaknesses of the other side's case.

Remember that the mediator will be looking for solutions, which are in your best interest. The mediator will not tell you what your rights are. Mediation is also not a substitute for legal advice. If you need advice, and are not legally represented at the mediation, try to take it before the day fixed for the appointment.

#### **What happens at the telephone mediation appointment?**

What usually happens is that the mediator will phone one party first. He or she will briefly explain what the process is about. You will be given the chance to tell the mediator what your case is about and what you are looking for. Be brief. Remember that the mediator is not a Judge. Within the

sessions, try to work with the mediator to find a solution. Be frank. What you say is confidential; you may know something that will help the mediator in talking to the other side.

After this first session, the mediator will phone the other party to see what their case is all about and what they are looking for. These are private sessions. The mediator will not tell the other side what he or she has been told unless given permission to do so. However, the mediator will be looking for solutions to problems and will be interested in what each side needs.

When the mediator is with the other side, use your time. Think about what has been discussed. Consider what you may be able to offer or accept. Decide exactly what your needs are.

By moving between sides, carrying information, suggestions, ideas, explanations or offers, the mediator will seek to help everyone to reach a solution to their dispute.

If you reach agreement, remember that it will be binding on you, and the court proceedings will be ended. Make sure you can comply with the agreement. If agreement is reached, a memorandum of the terms will be prepared by the mediator and an order will be made staying the claim except for the enforcement of the agreement.

If agreement is not reached, the normal court timetable will continue and the legal action will go ahead. However, remember that the negotiations and any terms of settlement proposed during the mediation appointment are confidential and cannot be repeated once proceedings have been referred back to court.

Even if the mediation does not end with agreement between the two sides, you may find it was helpful and that each side understands the other's point of view more clearly. You can always try to settle the case at a later date between the mediation and the date fixed for the hearing.

### **What do I have to do if I am unhappy with the conduct of the mediator?**

If you have any complaints or issues to raise regarding the court procedure or the conduct of the mediator, these should be addressed in writing to the court manager.

## Annex I. Checklist – Introductory Telephone call

### Introductory 'Phone Call

- Check identity of person being called
- Introduce self
- Ask if:
  - convenient to speak for a few minutes
  - notice to parties received
  - they noticed invite to mediate (no need if they are calling in)
- Explain that you will tell them more about mediation, and about what happens.
- Ask if they have ever encountered mediation before.
- Explain:
  - Mediation is FREE and conducted by member of HMCS staff
  - Disputes can be settled without need for either party to attend court
  - Can be done over the 'phone, although parties can have a face to face mediation if they wish
  - Limited to an hour.
  - Isn't as formal as going before a judge.
  - Confidential
  - Quicker than a formal hearing
  - Can reduce costs building up – explain about the hearing fee if applicable
  - Focus is on the real issues of the case, and how the parties can move forward.
  - The agreement can include an explanation or apology – so it's not just about money.
  - If the mediation does not settle, and the court hearing date has already been arranged, it will still take place as planned – taking part in mediation does not delay the hearing.
  - If the hearing date has not yet been arranged, and if the mediation takes place

and settles, the claimant will not have to pay any hearing fee - so there is a real incentive to mediate before any hearing fee is paid.

Ask if they want to know a little more about what would happen next:

- Before the day, will send out an agreement to be signed and returned, with some further more detailed information about what to expect.
- On the day, will ask each party to give a short (3-4 minute) summary of the key issues and the way forward.
- Then will speak to each party in turn, discussing issues and taking suggestions and ideas back and forth.
- Any information given in confidence, is kept that way.
- If agreement reached, a formal agreement can be signed.
- If needed, consent order from judge – therefore agreement is legally binding.
- If hearing already arranged, it will be cancelled – hearing fee refunded.
- If no agreement, hearing proceeds as normal.

Ask if they want to do this.

If not, thank them for their time.

If yes, explain will contact other party (unless already done) and explain process to them.

Say that you assume 'phone mediation would be better for them.

Get some suitable days/times.

Tell them you will get back to them to agree day/time after speaking to other party.

Get their fax and e-mail details (if not already held).

### Small Claims Mediator Code of Conduct

#### Introduction

1. This Code applies to any person who acts as a neutral third party ('the Mediator') in an ADR procedure under the auspices of Her Majesty's Courts Service.

#### Competence

2. The Mediator shall be competent and knowledgeable in the process of mediation. Relevant factors shall include proper training and continuous updating of their education and practice in mediation skills, having regard to any relevant standards or accreditation schemes.

#### Impartiality and conflict of interest

3. The Mediator will at all times act, and endeavour to be seen to act, fairly and with complete impartiality towards the Parties in the Mediation without any bias in favour of any Party or any discrimination against any Party.
4. Any matter of which the Mediator is aware, which could be regarded as involving a conflict of interest (whether apparent, potential or actual) in the Mediation, will be disclosed to the Parties. This disclosure will be made in writing to all the Parties as soon as the Mediator becomes aware of it, whether the matter occurs prior to or during the Mediation. In these circumstances the Mediator will not act (or continue to act) in the Mediation unless all the Parties specifically acknowledge the disclosure and agree, in writing, to the Mediator acting or continuing to act as Mediator.
5. Information of the type which the Mediator should disclose includes:
  - having any financial or other interest (whether direct or indirect) in any of the Parties or in the subject matter or outcome of the Mediation; or
  - having any confidential information about any of the Parties or in the subject matter of the Mediation.

#### Confidentiality

6. Subject to paragraph 8 below, the Mediator will keep confidential and not use for any collateral or ulterior purpose:
  - the fact that a mediation is to take place or has taken place; and
  - all information (whether given orally, in writing or otherwise) arising out of, or in connection with, the Mediation, including the fact of any settlement and its terms.

7. Subject to paragraph 8 below, if the Mediator is given information by any Party which is implicitly confidential, or is expressly stated to be confidential (and which is not already public), the Mediator shall maintain the confidentiality of that information from all other Parties, except to the extent that disclosure has been specifically authorised.
8. The duty of confidentiality in paragraphs 6 and 7 above will not apply if, and to the extent that:
  - all parties consent to disclosure;
  - the Mediator is required under the general law to make disclosure;
  - the Mediator reasonably considers that there is serious risk of significant harm to the life or safety of any person if the information in question is not disclosed; or
  - the Mediator wishes to seek guidance in confidence from any senior officer of HMCS on any ethical or other serious question arising out of the Mediation.

### **Commitment and availability**

9. Before accepting an appointment, the Mediator must be satisfied that he/she has time available to ensure that the Mediation can proceed in an expeditious manner.

### **Parties' agreement**

10. The Mediator will act in accordance with the agreement (whether written or oral) made between the Parties in relation to the Mediation ('the Agreement to Mediate') (except where to do so would cause a breach of this Code) and will use his/her best endeavours to ensure that the Mediation proceeds in accordance with the terms of the Agreement to Mediate.

### **Withdrawal of Mediator**

11. The Mediator will withdraw from the Mediation if he/she:
  - is requested to do so by any of the Parties;
  - is in breach of this Code; or
  - is required by the Parties to do something which would be in material breach of this Code.
12. The Mediator may withdraw from the Mediation at his/her own discretion if:
  - any of the Parties is acting in breach of the Agreement to Mediate;
  - any of the Parties is, in the Mediator's opinion, acting in an unconscionable or criminal manner;
  - the Mediator decides that continuing the mediation is unlikely to result in a settlement; or
  - any of the Parties alleges that the Mediator is in material breach of this code.



## Annex L. Absence Planning

**Short term planned absences** (e.g. a flexi-day, or a day out of the office):

- The mediator's answerphone will let people know that he/she is not there, and will be set to receive messages.
- Email: The mediator's 'Out of Office Assistant' will also let people know they are not there (and when they will be back).

**Court Action:** None.

**Longer-term planned absences** (e.g. annual leave, training courses)

- The answerphone will let people know the mediator is not there and ask them to call back on his/her return – it will not be set to receive messages. The mediator should give the name and contact details of another mediator if users wish to pursue mediation urgently.
- Email: The out of office assistant will also let people know the mediator is not there, and will ask them to leave messages for his/her return. It should also give the contact details of another mediator (or someone who can assist them).

**Court Action:**

- Check fax machine for incoming faxes periodically (some faxes may be for other sections). This may mean refilling the fax machine with paper.

Contact details for the other small claims mediators (who are happy to answer questions and give advice as necessary) are at Annex R.

**Court action for short term unexpected absence** (e.g. sick leave, domestic crisis)

- If the absence is likely to be very short (e.g. domestic crisis), contact the parties and apologise for the mediators absence. Explain that he/she will contact them on return to rearrange the appointment.
- If the length of absence is unknown (e.g. sick leave), or if there are any difficulties with either party, contact another mediator to see if they are able to cover the appointment, and give them the contact details of the parties. Send them a copy of the Caseman printout.
- Alert the court's IT System Manager (ITSM) – they will amend outgoing answerphone message as follows:

“The small claims mediator [name] is unfortunately unavailable at the present, but we expect him/her back within a few days. Please leave a message, with your name and number, for him/her after the tone. If you need mediation urgently, please contact [enter details of mediator to contact, with name and ‘phone number].”

**Court action for long term unexpected absence** (e.g. long-term sick leave):

- Continue with other actions as above.
- Contact another mediator to ask them to provide cover. Send them a copy of Caseman printouts as necessary.
- As with planned absences, check the fax machine.
- Alert ITSM, who will amend answerphone message and set it to answer only. Amend the message as follows:

“The Small Claims Mediator [name] is unfortunately unavailable at the present, but we expect him/her back within a few days. This machine will not take any recorded messages. If you need mediation urgently, please contact [enter details of mediator to contact, with name and ‘phone number].”

- If there are any answerphone messages, the ITSM should alert staff.
- Also get ITSM to access the Outlook Express account and place an out of office assistant message as follows:

“The Small Claims Mediator [name] is out of the office at present, and unfortunately his/her date of return is not known. If you require mediation urgently, please contact [enter the name and ‘phone number of another mediator who has agreed to cover the work]”

## Annex M. Frequently Asked Questions (for court staff)

### What is Mediation?

Mediation is a well-established process for resolving disagreements in which an impartial third party (the mediator) helps people in dispute to find a mutually acceptable resolution.

Mediation is based on the following principles:

- Collaborative problem solving between those in dispute, reaching a settlement situation which is acceptable to all.
- A focus on the future, with emphasis on rebuilding relationships rather than apportioning blame for what has happened in the past.
- A belief that acknowledging feelings as well as facts allows participants to let go of their anger and upset and move forward.

The structure and common-sense approach of mediation:

- Gives those involved an opportunity to step back and think about how they could put the situation right. This can mean looking at their own behaviour as well as that of other people.
- Enables participants to come up with their own practical solution which will benefit all sides.
- Allows people to rebuild relationships as they work together to find an agreement. This is different to the legal process, where hostility often remains between parties once the case is over.

Mediation is often more cost effective and quicker to the user than going to court, and is a flexible process that can be used to settle disputes in a whole range of situations. It is also an excellent preventative tool and can be used effectively to stop problems escalating and becoming worse. For those cases that have come to court, if no agreement is reached the court process will be re-activated. This will then continue until a judge makes an order of the court on the final hearing date.

### When does Mediation work?

One of the strengths of mediation is that people are offered the opportunity to come together to resolve their disputes in a less adversarial way. This works best when those in dispute are:

- willing to take part;
- prepared to be as honest and open as they can about the situation and the part they have played in it;

- willing to want to work co-operatively with the other person to find a solution;
- willing to consider continuing to have a relationship in the future as neighbours, colleagues, family or businesses.

## **Small Claims Mediation**

### **Will the mediator's contact details appear on the information about mediation?**

Any information sent out should include reference to small claims mediation, with the contact details of the small claims mediator.

### **What happens if someone comes to the counter?**

If the query is simple (e.g. is the service free?), you should be able to answer it. If it is more complex or they want to discuss mediation, you can call the mediator, or, if you cannot reach the mediator, give their number to the customer.

### **What happens if someone asks for more information than we can give?**

Refer it to the mediator – give them the 'phone number.

### **Is every case suitable for mediation?**

No. Some cases are automatically excluded because there are:

- fixed penalties (DVLA for example);
- complex legal/insurance issues (RTAs, bank charges) or
- no mechanisms in place for mediation in the organisation concerned (HM Revenue and Customs, CSA, Water Rates) :

Cases where legal liability is an issue are also likely to be unsuitable.

### **How many cases does that leave?**

A lot. For example, in March, Manchester County Court received 76 small claims and 68 were recommended for mediation. Small Claims Mediators have mainly dealt with breach of contract, non-payment of goods and services and building/building works disputes.

## **What are the typical turnaround times?**

This will vary. After initial contact, it could take a week or so to talk to all parties and get their agreement to mediate and a date for the mediation itself. The mediation takes about an hour, and there is some follow-up work. Anywhere from 10 days to a few weeks, depending on the case.

## **How will this help us hit our targets?**

A stay on proceedings for mediation may not be necessary and the case should follow the normal track; if the case settles, then it can be removed from the list. The mediator's aim is to try to settle cases 28 days before the hearing date, so the court can make use of the time, and parties do not have to file documents. This won't always be possible, especially if parties have only 2 weeks to go before the hearing.

Some cases may require a stay.

The mediation service will not affect the small claims process unless the case is settled. It should even free up some judicial time and help the court towards achieving its targets.

## **How will the mediator access the parties?**

The parties will be told in the notice to parties that “the judge considers your case suitable for mediation”, and are asked to contact the mediator if they wish.

Staff will send the mediator a copy of the caseman printout which the mediator will retain and refer to if there are contacted by one of the parties.

If one of the parties then contacts the mediator, and decides to use the service, the mediator will contact the other party/parties. The mediator will ensure that the first party is happy that the second party knows that they have approached them to mediate – in case they are sensitive about this. Only if all agree can the mediation go ahead.

Initial discussions with the parties will identify any sensitivities (e.g. if parties do not wish face-to-face confrontation).

Cases will not be pursued that have not been granted directions and/or are not approved for mediation by a judge.

## **Does the mediator need to have the court file?**

No. The Caseman print-out should be sufficient. That said, the mediator may need to contact the court and ask someone to look at the file to get other

information to help contact the parties (e-mail, fax, etc), or to ask for the particulars of the claim. This will be very much the exception.

The mediator will get information from the parties about the case and the main issues when they speak to them. Remember that the mediator's role is very different to that of the judiciary – they will not judge or weigh up the evidence, and therefore do not need to read the case. The role is to facilitate the negotiation of the parties' dispute to reach a resolution, where this is possible.

### **What about confidentiality?**

Discussions with the mediator are confidential and therefore without prejudice – if the mediation fails, no details will be entered on the file. The mediator will only retain their notes for a short period, and they will be kept securely.

The exceptions would include disclosure of a criminal act or breach of ethics.

Confidentiality is spelt out to the parties to ensure they don't use mediation as evidence in court and that they are comfortable making difficult decisions that may cause loss of face.

### **How many cases will the mediator do?**

This depends on how many cases are referred, and depends very much upon the support of the judiciary. But over time their aim is to achieve 2 settlements per day.

At any given time, the mediator would expect to have 70/80 cases, all at different stages in the process. In Manchester, where the service has been running for some time, the mediator has settled over 270 cases in a year. None has yet required enforcement.

### **How will paperwork (e.g. caseman printouts) reach the mediator?**

Please address any envelopes clearly to the mediator and mark them "confidential".

### **What happens if someone has a complaint about the mediator?**

Any complaints will go to the Court Manager to be processed in the usual way.

### **Is small claims mediation the same as that offered by the National Mediation Helpline?**

The approach is the basically the same, although the HMCS in-house small claims mediation is free.

## Fast and Multi-Track Mediation

### What is the National Mediation Helpline?

In conjunction with the Civil Mediation Helpline, HMCS set up a telephone helpline ([www.nationalmediationhelpline.com](http://www.nationalmediationhelpline.com)), which provides civil court users in England and Wales with information and advice on mediation.

The scheme is primarily advertised by leaflets, which are distributed by county courts to parties at Allocation stage, and by posters, which have been placed in public areas within the courts.

The Helpline can be accessed by phoning 0845 603 0809 (local rate) between 8.30am and 6.00pm. The Helpline staff offer parties information on the potential benefits of mediation and they will talk parties through the mediation process. The Helpline does not provide advice on individual cases or mediators. If the call is a request for a mediator then staff will ask a series of questions and pass the enquiry to a mediation provider accredited by the Civil Mediation Council.

Fees charged by the National Mediation Helpline.

Amount you are claiming	Fees – per party	Length of session	Extra Hours – per party
£5,000 to £15,000 – Fast Track	£250 + VAT	3 hours	£84 + VAT per hour
£15,000 to £50,000 – Multi Track	£375 + VAT	4 hours	£93.50 + VAT per hour

If the claim is for more than £50,000, the fees will need to be agreed with the organisation providing the mediation.

### How does a commercial mediation session work?

**Venue:** The mediation venue will have one room where everyone can meet and also a separate room for each party to use as their home base. Normally the mediator will welcome the parties and settle them into their rooms and ensure that any queries are answered before the mediation commences. It is important that the parties feel comfortable and relaxed and that refreshments are available.

**Open Meeting:** Most mediation starts with an open meeting where everyone meets in the same room. The mediator asks everyone to agree to some basic rules, such as listening without interrupting and not using offensive remarks. Each person will then have a chance to talk about the problem as it affects him or her. The mediator will try to make sure that everyone understands what each person has said, and allow them to respond. They will then help both parties identify the issues that need to be sorted out and to try to understand why the others feel strongly about their case.

**Separate Sessions:** At an appropriate time, the mediator breaks up the joint session and sends the parties to their separate rooms. The mediator will then hold private meetings shuttling between the parties and gathering information in confidence. In this way the mediator builds a unique picture of the dispute, and of each party's needs, and so can help the parties to move towards a solution. The mediator seeks to earn the trust of each party that nothing disclosed confidentially will be disclosed to any other party, creating a safe environment for exploration and problem-solving.

**Final conclusion:** The mediator ensures that everyone knows what is going on and that they stay committed to the mediation, even when the mediator is spending long periods with the other party. The overall aim – that of giving the parties the best chance of achieving a settlement – must never be lost, and the mediator manages the process to ensure that the parties are kept focused on this outcome. If the parties are able to reach a solution, then a document is drawn up by the parties and signed by both of them. Otherwise, everything said at the meeting remains confidential.

**Court notification:** The parties must notify the court in writing whether the dispute has been settled or not. The court will record settlements and bring the action to a close. If no settlement has been reached the matter will be referred to a judge who will give directions for trial.

### **Who are the NMH mediators?**

The mediators come from different backgrounds. They are experienced in helping people settle their disputes. Anyone can call himself or herself a mediator. However, the majority have been accredited by at least one of the main mediation providers who also offer training. The responsibility will be on the mediation provider to ensure that individual mediators are properly trained insured, supervised, allocated and supported to gain accreditation from the Civil Mediation Council. Most mediators believe that it is important to have a high level of expertise and knowledge to be effective as a mediator.

### **What is the Civil Mediation Council?**

The Civil Mediation Council ([www.civilmediation.org](http://www.civilmediation.org)) was founded in April 2003 to represent the common interests of mediation providers and mediators in promoting mediation and similar forms of dispute resolution.

## Small Claims Mediation

### A note for court staff

If:

- A case has been issued and a defence filed; and
- The claim is an ongoing Small Claims case (value less than £5000) and
- The case **is not** Road Traffic Accident/DVLA/CSA/HM Revenue and Customs/bank charges/Water Rates.

Please:

- let the parties know about the **Free** Small Claims Mediation Service and how they can access it.
- Give them the leaflet EX307 'The small claims track', which explains more about the service.

### How can mediation help them?

- The Small Claims Mediator can help court users settle many disputes without the need to come to court.
- Mediation sessions last one hour and can be conducted over the telephone or, if preferred, on the court premises.
- Mediation is less formal than a court hearing, is confidential and helps keep costs to a minimum.

### How do they access the service?

Parties can ask for mediation by:

- filling in the allocation questionnaire; or
- telephoning the mediator:

### Important things for you to know

- Mediation is voluntary and both parties have to agree to take part.
- Mediation will not impact on the normal progress of the case. If both parties agree settlement, the hearing will then be vacated. If not, the hearing continues as planned.

- Mediation can help parties communicate and resolve their dispute without having to attend a court hearing.

### Small Claims Mediation: process

#### Stage 1: Pre-Allocation

Once the court receives a defence to a part 7 small claim it sends both parties a defence pack containing - notice of defence, small claim allocation questionnaire (N149) and leaflet EX307 'The small claims track'. The allocation questionnaire asks the parties whether they would like to use the free small claims mediation service.

It is hoped that at this stage, claimants in particular will be attracted to the free mediation service since the leaflet makes it clear that settling the case at mediation will save the cost of the hearing fee.

#### Stage 2: Allocation

If the Allocation Questionnaire (N149) is returned, it will be sent with all papers for allocation.

At allocation, the DJ will decide if an invitation to use the small claims mediation service should be issued. They can decide either to stay the case for mediation or allocate and ask for a hearing but also encourage the parties to use the mediation service. This may happen whether or not the participants have asked to use the small claims mediation service.

Small Claims Mediation is:

- NOT mandatory;
- Not suitable for Road Traffic Accidents, CSA, Water Rates, HM Revenue and Customs, bank charges or DVLA cases.

Action for staff: If the Judge orders a stay the following paragraph should be inserted in the Standard Order for stay for settlement.

*“Upon one or all parties having indicated their wish to engage in mediation OR The Judge has considered your case is suitable for mediation*

*You are therefore encouraged to use the Small Claims Mediation Service. This service is **FREE** for court users with a current small claims case. Mediation appointments can be done by telephone (saving the need to come to court), or face-to-face; parties can also mediate without the need to meet or speak to one another. The mediation is usually limited to one hour and is confidential.*

*If you would like to take up this offer of mediation - or find out more about the mediation process - you should contact the court mediator on [Tel. No.], or email [.....] within 7 days of receipt of this order.*

*Alternatively, if any party does not wish to engage in mediation, or if mediation does not result in the settlement of the claim, the case will be listed for a hearing together with any other directions the court considers necessary.”*

If a stay is not appropriate, but the judge still wishes to encourage mediation, the claim should be allocated to the small claims track and a notice of hearing given. However, the order should include an additional paragraph:

*“The judge considers your case is suitable for mediation and you are therefore encouraged to use the Small Claims Mediation Service. This service is **FREE** for court users with a current small claims case. Mediation appointments can be done by telephone (saving the need to come to court), or face-to-face; parties can also mediate without the need to meet or speak to one another. The mediation is usually limited to one hour and is confidential.*

*If you would like to take up this offer of mediation - or find out more about the mediation process - you should contact the Court Mediator on [Tel. No.], or email [.....] within 7 days of receipt of this order.*

*Alternatively, if you do not wish to try mediation, a hearing has been arranged as follows:”*

In either case, court staff will notify the mediator of the case by sending him/her a copy of the Caseman DJ printout.

### **Stage 3: Mediation begins**

If a party contacts the mediator, he/she will explain the service and how it works. If they agree to use it, the mediator will contact the other party, and seek their agreement.

If both parties agree to use the service, the mediator will arrange a suitable day and time for either face-to-face or 'phone mediation. The mediation session will be limited to 1 hour.

The mediator will send both parties a mediation agreement and information letter; the agreement should be signed and returned to the mediator prior to the start of mediation. The mediator will do this by fax wherever possible.

## Stage 4: Outcome of mediation

Mediation can be settled if:

- The claimant withdraws the case;
- Payment is made immediately or
- An agreement is reached with defendant and claimant. In this case, the mediator will obtain a signed settlement agreement and a Tomlin order.

Where mediation reaches settlement, the mediator will:

- notify the listings officer, who will vacate the case and note Caseman;
- send the Tomlin order and the settlement agreement to the listings officer, and ask them to ensure that:
  - a DJ signs the order and
  - a copy of the Tomlin order is sent to both parties.

If the agreement is not kept, enforcement action can then be taken.

There will be cases where mediation fails to settle, either because agreement cannot be reached and one or both parties withdraw from mediation, or where the mediator decides to stop mediation (e.g. if the mediation is going nowhere, or ethical issues arise). No further action will be taken, although the mediator will send an e-mail to the listings officer, which can be placed on the file.

## Summary of process:

Any information re mediation pre-allocation needs to include reference to the small claims service.

Action for staff:

- Ensure that all small claims cases going to a DJ for allocation include the option of small claims mediation.
- If the DJ ticks that the case is suitable for mediation:
  - Include the mediation variable paragraph either within the stay order or in the notice with the date of hearing.
  - Send the Caseman DJ print-out to the mediator.

Listings officer:

If settlement achieved, need to:

- Vacate hearing
- Note Caseman
- Ensure DJ signs order
- Issue order and agreement to parties.

## Annex P. Staff reference guide – mediation checklist

<b>REFERRAL TO DISTRICT JUDGE</b>	<b>YES</b>	<b>NO</b>
1. Allocation Questionnaires received and ready for referral to DJ		
2. Is it a Small Claim (under £5000)?		
3. Is it a Small Claim for one of the following? <ul style="list-style-type: none"> <li>• Road Traffic Act (RTA)</li> <li>• DVLA</li> <li>• Child Support Agency (CSA)</li> <li>• HM Revenue and Customs</li> <li>• Bank Charges</li> <li>• Water Rates</li> </ul> <p style="text-align: center; color: #ff00ff; margin-top: 10px;"><b>IF YOUR ANSWER IS “YES” - THEN THIS CASE IS NOT SUITABLE FOR MEDIATION</b></p>		
<b>BACK FROM DISTRICT JUDGE</b>		
4. Has DJ ticked “Suitable for Mediation”?		
5. If <b>NO</b> – then continue as usual –notice of hearing and list etc.		
6. If <b>YES</b> either: <ul style="list-style-type: none"> <li>• Draw Standard Order for stay for settlement and insert “Variable Paragraph” for Small Claims Mediation <b>or</b>;</li> <li>• Draw Notice of Hearing and insert “Variable Paragraph” for Small Claims Mediation.</li> </ul> <p><b>Then</b>;</p> <ul style="list-style-type: none"> <li>• Print “DJ Printout” and send to mediator at xxxx court</li> <li>• Enter Caseman Event 555 and enter “referred to mediator” in comments box</li> </ul> <p><b>NOTE:</b> though Mediation has been suggested, this does not mean the mediator will be contacted – it is voluntary and therefore the listing and case management of these cases should continue as normal</p>		<b>(Name)</b> Small Claims Mediator <b>(Address)</b>

## BACK FROM SMALL CLAIMS MEDIATOR

If agreement made - Mediator will draw agreement and Tomlin Order and send to court for referral to DJ and sealing:

- Place papers on the file
- Refer draft order and file to DJ for signing
- Vacate hearing
- Note Caseman with Event 332 and Event 73 – settled pre judgment and update F11 Screen

**Note:** If an agreement is not reached – the Mediator will inform court by fax and email and hearing stays in the list as normal.

## Annex Q. Monthly Monitoring Report

### Mediation Service Monitoring Report - July 2007

<b>Date:</b>	31/7/07
--------------	---------

<b>Mediator:</b>	
------------------	--

Latest Progress:		Number of Referrals	Number of Mediations	Number of Settlements
	<b>1.07.07 to 31.07.07</b>	111	28	23
	<b>Year to Date</b>	444	88	68
<b>Judicial Time saved:</b>	<b>July</b>	25 hours 30 minutes		
<b>Working days available:</b>	<b>July</b>	15		
<b>Other Issues to raise:</b>				

## Annex R. Contact Information

### Proportionate Dispute Resolution Team

5<sup>th</sup> Floor

Selborne House

54 Victoria Street

London SW1E 6QW

Jeremy Tagg	Head of ADR Policy and Projects	020 7210 1414
Ramesh Rajagopal	Project Manager	020 7210 2174

### Small Claims Mediators

Pete Etherington	Hull Combined Court Centre	01482 212107
James Rustidge	Manchester County Court	0161 240 5131
Carol Collings	Newcastle Law Courts	0191 201 2069
Trudy Dyer	Leicester County Court	0116 222 5751
Salia Anandan	Central London Civil Justice Centre	0207 917 7867
Kim Izzard	Bedford County Court	01234 760 423
Richard Marshall	Bristol County Court (weds, thurs, fri) Gloucester County Court (mon, tues)	0117 910 6711 01452 834952
Lee Kingdon	Cardiff Civil Justice Centre	02920 376440
Peter Dodd	Leeds Combined Court Centre	0113 306 2735
Claire Bayley	Norwich Combined Court Centre	01603 728234
Jason Haines	Preston Combined Court Centre	01772 844920
Geoff Downer	Canterbury Combined Court Centre	01227 819316
Clive Grant	Liverpool Civil and Family Court	0151 296 2120

Richard Harrison	Birmingham Civil Justice Centre	0121 250 6780
Toni Burrows	High Wycombe County Court	01494 651025
Carol Read	Southampton Combined Court Centre	02380 213200
Jo Holland	Nottingham County Court	0115 910 3413
Mary Hamilton	Haywards Heath Magistrates' Court	01403 280 801 01403 252 474