

Contents

1	WHAT IS MEDIATION?	1
	How is mediation practised in the UK?.....	2
	Advantages and disadvantages of mediation.....	5
	Why is mediation successful?.....	11
	Some mediation providers in the UK	12
2	SUITABILITY OF THE CASE FOR MEDIATION	15
	Suitability.....	16
	Timing	16
	Case factors favouring mediation.....	17
	Factors possibly militating against mediation.....	23
3	ARRANGING A MEDIATION	25
	Client agreement.....	26
	Getting the other side to agree to mediation	30
	Selecting the mediator	36
	Length of the mediation.....	38
	Venue for the mediation.....	39
	Costs.....	40
	Checklist for arranging a mediation	40
4	BEFORE THE MEDIATION	43
	Preparation for the representative	44
	Preparation with the client	52
	The position statement.....	58
	The mediation agreement (also known as ‘the agreement to mediate’).....	59
	Guidance for your conduct in a mediation	60

5	AT THE MEDIATION	65
	The opening statement at the joint session	67
	Exploration in private sessions	69
	Negotiation	71
	Bridging the hard gap and some mediation techniques	74
	Techniques	75
	Drawing up heads of terms or a consent order	77
6	AFTER THE MEDIATION	81
	The case settled at mediation	82
	The case did not settle	83
	Use of information or documents gained at a mediation	83
	Was an agreement reached at mediation?	87
	Bad faith negotiating at mediation	87
7	MEDIATION IN DIFFERENT SECTORS	89
	Employment and workplace mediation	90
	Workplace mediation	90
	Employment mediation	92
	Shareholder, company and partnership disputes	93
	Construction	94
	Financial services	96
	Mediation in family disputes	96
	Community mediation	98
	Mediation in education	100
	Commercial litigation	101
	General litigation	102
	Personal injury	103
	Clinical negligence	105
	Probate and inheritance claims	106
	Mediation in other jurisdictions	107

APPENDICES

1	POSITION STATEMENT	109
2	MEDIATION AGREEMENT	113
3	TOMLIN ORDER	117
4	DIRECTIVE 2008/52/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 21 MAY 2008 ON CERTAIN ASPECTS OF MEDIATION IN CIVIL AND COMMERCIAL MATTERS	121
5	CHECKLISTS – ARRANGING A MEDIATION, PREPARATION WITH THE CLIENT, GUIDELINES FOR BEHAVIOUR AT THE MEDIATION	135
6	CIVIL PROCEDURE RULES (CPR)	139
7	PRACTICE DIRECTION 31 (HONG KONG)	143
8	KODEKS POSTĘPOWANIA CYWILNEGO (POLAND)	149
9	USEFUL INFORMATION	155