

ASSOCIATION OF SOUTH WEST MEDIATORS
CIVIL AND COMMERCIAL FACULTY REGULATIONS

REGULATIONS

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CIVIL AND COMMERCIAL FACULTY REGULATIONS (cont)

1. ADMISSION TO THE FACULTY

- 1.1. Membership of the Civil & Commercial Faculty is restricted to those individuals who are Mediators accredited by approved bodies.
- 1.2. The Association accepts those bodies that are approved by the Civil Mediation Council as mediation providers and who accredit their members who have successfully completed initial training provided by those bodies¹.
- 1.3. Admission must be applied for in writing delivered to the Faculty Secretary.
- 1.4. Every proposal for Membership must be submitted to and considered by the Faculty Standing Committee at the meeting next following receipt by the Faculty Secretary of the application or as soon as it is practical to do so.
- 1.5. In addition to the above, it is a requirement of membership of the Association that Members agree to be bound by the European Code of Conduct for Mediators.
- 1.6. Application for membership of the Faculty is made by completing the application form. The completed form should be submitted to the Faculty Secretary together with proof of accreditation.
- 1.7. Upon acceptance, each member must pay an entrance fee and annually a membership fee as fixed by the Association in General Meeting. The fees currently applicable are as stated on the application form.
- 1.8. Members of the Faculty will be required to renew their membership annually on submission of their CPD and insurance certification and will be required to submit a renewal form every second year.

2. MEDIATOR PANELS

- 2.1. The Civil and Commercial Faculty will maintain two panels:
 - the general commercial disputes panel
 - the time- limited mediation paneland referrals will be made in accordance with the regulations of the Faculty.
- 2.2. The general commercial disputes panel comprises those Members that have demonstrated that they are an experienced mediator, having previously acted as lead mediator in at least five mediations in the three years prior to application for membership of the panel. Alternatively, Members must demonstrate that they have completed two mediations as Assistant² mediator in the year prior to application for membership of the panel and have received satisfactory reports from the lead mediators concerned; or Members must demonstrate other experience related to mediation which the Standing Committee regards as sufficient to justify admission to the Panel.
- 2.3. The demonstration as required above is to be provided by completing a Recent Experience Form, which is to list recent mediations carried out, whether as lead mediator or as Assistant. In addition, in the case of inexperienced mediators, a report from the lead mediator should be provided for both of the required mediations where the mediator has acted as Assistant. It is not necessary for the mediations reported to be ASWM mediations.
- 2.4. The time- limited mediation panel, which is intended primarily for time-limited court based mediation schemes, comprises those Members from the general panel who in addition have performed time-limited mediations or have attended a training course on the particular skills required for time limited mediations.

¹ Currently these bodies comprise The ADR Group, The Centre for Dispute Resolution, The Chartered Institute of Arbitrators, Regents College School of Psychotherapy and Counselling, Clerksroom, and The Academy of Experts.

² An Assistant Mediator does not normally participate in the mediation meetings but observes the Lead Mediator and discusses the mediation with him/her between sessions and in a review at the end of the mediation.

CIVIL AND COMMERCIAL FACULTY REGULATIONS (cont)

2.5. Candidates for panel membership may also be required to attend an interview with members of the Standing Committee for the express purpose of ensuring that they have a sufficient understanding of the mediation process, ethics and conduct and the necessary experience for the likely appointments.

2.6. All members of the two panels are required to demonstrate that they continue to maintain their skills and knowledge regarding mediation by complying with the Association's CPD requirements, which are set out below.

2.7. Acceptance as a panel member of the Association guarantees that the panel member will be included in lists presented to parties from time to time or nominated for Court Scheme mediations. It does not guarantee appointments.

2.8. Panel Members appointed to mediate disputes referred by the National Mediation Helpline should note the requirement to comply with the procedures published by the National Mediation Helpline from time to time and must use the standard documents issued by the National Mediation Helpline.

3. ADMINISTRATION AND SELECTION OF MEDIATORS

3.1. Other than for NMH Helpline and Court annexed mediation schemes, the Association does not appoint mediators.

3.2. The procedure for mediations which are non-Court and non-NMH mediations ("non-Court mediations") is as follows:

- 3.2.1. The Registrar is to maintain a list of panel mediators who have indicated a willingness to perform non-Court mediations. This list shall be ordered randomly and thereafter selections from this list will occur on a strict rota basis.
- 3.2.2. Enquiry received by the Association's Registrar. Details are logged of the enquirer, the names of the parties, the nature of the dispute, the amount of the dispute (if monetary) and any particular requirements as to the profession of the mediator or location for the mediation.
- 3.2.3. The enquiry is assigned a number.
- 3.2.4. Details of the enquiry are circulated to the mediator panel by email (and / or post if necessary). Details provided are made anonymous.
- 3.2.5. Panel members respond to indicate willingness to act as mediator, compliance with any specific requirements of the enquirer and availability. Panel members confirm their Professional Indemnity insurance remains current.
- 3.2.6. Responses are checked to filter out any that do not meet the specific requirements of the enquirer and three mediators are selected in accordance with their position on the rota.
- 3.2.7. CVs of these mediators are provided to the enquirer together with instructions as to how to proceed set out in the Association's "How to refer a dispute to mediation through the ASWM" leaflet.
- 3.2.8. The enquirer agrees with the other party which of the three mediators, if any, is to be appointed. The parties then approach the selected mediator and agree terms of the appointment.

3.3. Panel members are informed by email when their CV has been put forward to an enquirer. At this stage they are provided with the names of the parties and their attention is drawn to the following:

- 3.3.1. the guidance fees set out in the Association's "How to refer a dispute to mediation through the ASWM" leaflet, although these fee levels are not mandatory;
- 3.3.2. the requirement to inform the Registrar should they be appointed mediator, in order to maintain records and ensure the feedback procedure can be implemented;
- 3.3.3. the requirement to pay an introduction fee to the Association of 10% of the fees charged (*refer Article 21.10 of the ASWM Articles of Association*);
- 3.3.4. the opportunity to promote the Association by using the Association's notepaper and Mediation Agreement, and writing to the parties afterwards to thank them for using the Association;
- 3.3.5. the opportunity to have another Association member attend as Assistant to assist in raising the experience and skill of the Association as a whole.

CIVIL AND COMMERCIAL FACULTY REGULATIONS (cont)

- 3.4. The procedure for Court or CMC Helpline mediations is as follows:
- 3.4.1. A request for a mediator is received from the Mediation Clerk of the Court or CMC Helpline, usually by phone. Any deadline or date for the mediation is recorded in addition to the information recorded for non-Court enquiries;
 - 3.4.2. The procedure followed is generally the same as for non-Court mediations except that the email request is only sent to the next three panel members appearing on the Registrar's rota list (time-limited mediations will only be sent to members of the time-limited mediation panel);
 - 3.4.3. Of the suitable responses, the mediator is selected, or if there are no responses, the selection procedure is repeated by the Registrar until a mediator is selected. Panel members are required to confirm that their Professional Indemnity insurance remains current.
 - 3.4.4. Once a mediator has been selected, the Mediation Clerk is informed;
 - 3.4.5. The Court sends copies of the pleadings to the Association and these are passed on to the mediator concerned;
 - 3.4.6. The selected mediator is sent copies of feedback forms and stamped addressed envelopes to hand to the parties at the mediation;

4. MENTORING SCHEME: MEDIATION ASSISTANTSHIP

- 4.1. The purpose of the Association's mentoring scheme is to help its inexperienced and/or recently accredited Mediator Members make the transition to a lead mediator role.
- 4.2. The mentoring scheme applies to those mediator members who have just completed their training and gained accreditation from their training body but have not yet gained sufficient mediation experience to enable them to perform the lead mediator role. Through providing the opportunity for assistantships the aim of the Association is to qualify its mediator members to apply for membership of the Civil & Commercial Faculty's Disputes Panel.
- 4.3. As a condition of membership of the Association Panel members have made a commitment, whenever possible, to offer opportunities to members who have registered their interest to act as Assistant Mediators. A schedule of members who have registered an interest in the mentoring scheme can be obtained from the ASWM Administrator or downloaded from the Members Area of the ASWM website. The curriculum vitae of members can be similarly obtained from the Administrator or the website.
- 4.4. Assistant Mediator opportunities will be offered on a rotation basis, the rota to be maintained by the Registrar. Members who cannot, for any reason, accept such an opportunity when offered will move to the end of the list.
- 4.5. Assistant Mediators do not receive any payment for their participation in the mediation, nor is any contribution made towards their out-of-pocket expenses. The role of Assistant Mediator is viewed as a valuable learning opportunity enabling the mediator to apply to join the Civil & Commercial Faculty's Disputes Panel.
- 4.6. It is for the Lead Mediator to decide the role of the Assistant Mediator and the Assistant Mediator should make contact with the Lead Mediator in advance to discuss this. It is noteworthy that assistants are taking an increasingly active and participatory role in mediation proceedings.
- 4.7. The Assistant Mediator is required as soon as possible after the mediation to complete and return to the Administrator a Mediation Report Form: Assistant.
- 4.8. Assistant Mediators should ask the Lead Mediator for oral feedback after the mediation on their role and performance. The Administrator will provide the Assistant Mediator with a copy of the Lead Mediator's written report, which includes feedback on the Assistant Mediator.

CIVIL AND COMMERCIAL FACULTY REGULATIONS (*cont*)

5. CONTINUING PROFESSIONAL DEVELOPMENT

5.1. Mediator Members are required to ensure that they only accept appointments as mediator that they are competent to undertake and to ensure that they undertake sufficient CPD on an annual basis to maintain their mediation skills and knowledge.

5.2. Every member of the Faculty's mediator panels shall comply with the CPD scheme of their accrediting body (e.g. CEDR accredited mediators shall maintain CEDR registration and comply with CEDR's CPD requirements),

OR -

5.3. Every member of the Faculty's mediator panels shall undertake on an annual basis the following minimum CPD:

5.3.1. Six hours of structured training on mediation related subjects. This can be carried out through the Association or through any CMC Accredited Mediation Provider or training organisation considered acceptable by the Association; and

5.3.2. Attendance at two mediation briefing / debriefing sessions with another mediator or one ASWM briefing / debriefing session.

5.4. The Association wishes to be confident that its mediators are competent so that it is able to provide a first class service to its Clients. To this end, all Mediator Members are required to show on annual membership renewal evidence of current compliance with their CPD requirements by completing the Association's CPD Report Form.

6. FEEDBACK AND EVALUATION

6.1. . It is important that the Association obtains feedback on mediations from Mediators, Assistant Mediators and the Parties involved. These requirements relate to those mediations that stem from the Association, Court Scheme appointments and other direct appointments and nominations.

6.1.1. Feedback provides information on how well the Association performed: how the service could be improved; the performance of the Mediator and the Assistant Mediator and on valuable lessons learnt that could be shared with other mediators (anonymously). It also assists in recording statistics on the number of mediations that reach a settlement.

6.1.2. Feedback from the Parties (or more often their representatives) gives similar information from the perspective of the Client. It also provides more detailed information on the performance of the mediator.

6.2. All panel mediators carrying out Association mediations are required to submit a completed Mediation Report form as soon as possible after the mediation has been completed. Part of the information to be provided on this form is the names and addresses of the parties, or if thought to be more appropriate, their representatives. The Association will write to the parties and ask for feedback by asking them to complete a Mediation Evaluation form which should be provided to them before the mediation takes place. Any party feedback received is copied to the mediator concerned.

6.3. Members should note that as the mediation process is confidential, they must obtain the agreement of the parties before completing the Mediation Report form. This agreement will usually be obtained by including a suitable term in the mediation agreement. Members are encouraged to use the Association's Mediation Agreement pro- forma where possible which includes the following:

6.3.1. *"The ASWM requires feedback from the Mediator regarding the conduct of the mediation as part of its quality management procedures and in order that any valuable lessons may be learnt and used to enhance the process in future mediations. The Parties agree that the mediator may provide information to the ASWM for the above purposes and for those purposes only. The parties will not be identified and will only be referred to in generic terms eg claimant and defendant or Party 1 and Party 2 "*

6.4. The task of monitoring Mediation Evaluation forms received from parties is allocated to a member of the Faculty's Standing Committee. If any feedback is received which indicates that the mediator concerned did not perform adequately, then this will be drawn to that mediator's attention and his comments requested. If an answer is received that tends to demonstrate that the criticism was unwarranted, then no further action will be taken.

CIVIL AND COMMERCIAL FACULTY REGULATIONS (*cont*)

6.5. If it is considered that further action is required then it will be raised with the Faculty's Standing Committee. Further action might include a meeting between one of the Association's very experienced mediators and the mediator concerned. In some cases it may be appropriate that the mediator is removed from the panel until further training has been undertaken.

6.6. Records are kept of all feedback received including the outcome of mediations.

7. GRIEVANCE AND DISCIPLINARY PROCEDURES.

7.1. The Faculty has Grievance Procedures that may be invoked by any member (or applicant for membership) when he/she considers that any action taken in relation to that person by the Standing Committee (e.g. following a Complaint, or in response to an application to be a Member of the Faculty or of a Panel of mediators maintained by the Faculty) is not warranted. The Faculty also has Disciplinary Procedures which may be invoked following complaints received concerning Members.

7.2. These procedures cover the following:

- 7.2.1. an appeal by a applicant who has applied to join the Faculty as a Mediator Member and who has not been accepted by the Standing Committee;
- 7.2.2. an appeal by a Member against the Standing Committee for not validating him/her as a member of the Civil and Commercial Disputes Panel;
- 7.2.3. the procedure for investigating and resolving the issues when a complaint is received about the conduct of a Panel Member by one or more parties to a Mediation;
- 7.2.4. the procedure for the investigation of allegations made against a Member for breach of the European Code of Conduct.

7.3. An appeal related to election of a new Member

7.3.1. The procedure for the nomination and election of a new Member is described in the Faculty Regulations and its Appendices. Following receipt from an applicant of a Application Form, the procedures in the Faculty Regulations allow for rejection of an application by the Standing Committee on the grounds that the applicant is judged not to meet the requirements for Membership. An applicant may appeal against rejection by writing to the Association stating the grounds for the appeal

Action	Responsibilities	Notes and Additional Information
Appeal submitted in writing addressed to the Association	Appellant	
Compile information pack on appellant, including application form and copies of all related correspondence related to the application	Faculty Secretary or Administrator	
Review information pack and prepare report to The Standing Committee	Review Panel comprising 3 members of the Standing Committee or senior members of the Association appointed by the Standing Committee	The Review Panel shall meet to review the information within two weeks of receipt of the written appeal
Possible actions are: <ul style="list-style-type: none"> • reject appeal • uphold appeal and propose that the appellant is accepted as a Member 	The Standing Committee	The Standing Committee considers report and decides on action to be taken.
The decision of The Standing Committee is final. An appellant has no further grounds for appeal.	Write to the appellant stating the outcome of the appeal	Secretary / Administrator

CIVIL AND COMMERCIAL FACULTY REGULATIONS (cont)

<p>7.4. An appeal related to validation of a Mediator Member as a member of the Commercial Disputes Panel</p>		
<p>7.4.1. A Member who has applied to The Standing Committee to be validated as a member of the Commercial Disputes Panel and is aggrieved that The Standing Committee has not agreed to validate them, may appeal against that decision by writing to the Association stating the grounds for appeal</p>		
Action	Responsibilities	Notes and Additional Information
Appeal submitted in writing to the Association	Appellant	
Write to appellant, acknowledge receipt of appeal and state that the appeal is being considered.	Faculty Secretary/ Administrator	Compile information pack on appellant including application form, and copies of all correspondence related to the application.
Review information pack and prepare report to The Standing Committee	Review Panel comprising 3 members of the Standing Committee or senior members of the Association appointed by the Standing Committee	The Review Panel shall meet to review the information within two weeks of receipt of the written appeal. The Review Panel may seek further information from the appellant and those who have scrutinised the application
<p>Possible actions are:</p> <ul style="list-style-type: none"> • reject appeal • uphold appeal and validate the Member as a member of the Commercial Disputes Panel • decide that Member's application will be re-evaluated utilizing alternate scrutineers 	The Standing Committee	The Standing Committee considers report and decides on action to be taken.
Write to the appellant stating the outcome of the appeal	Faculty Secretary/ Administrator	The decision of The Standing Committee is final.

CIVIL AND COMMERCIAL FACULTY REGULATIONS (cont)

7.5. The procedure for investigating and resolving the issues when a complaint is received about the conduct of a Panel Mediator by one or more parties to a Mediation		
Action	Responsibilities	Notes and Additional Information
One or more parties to a Mediation for which a Member of the Association was the Mediator submit a Complaint to the Association using the Association's Complaint form (or otherwise in writing) or a Mediator appeals in writing to the Association.		One or more parties to a Mediation
Secretary/Administrator acknowledges receipt of submission from the Complainants.	Faculty Secretary/ Administrator	
Standing Committee appoints an Investigation Panel.	Standing Committee	Investigation Panel comprised of: <ul style="list-style-type: none"> the Faculty Chairman two other members of the Commercial Disputes Panel
Review the complaint, seek further information from the Complainant and the Mediator concerned and (if Investigation Panel deem it necessary) invite the Mediator concerned to a meeting to discuss the complaint.	Investigation Panel	Decide whether there are grounds for any action to be taken by the Association in relation to the complaint and report accordingly to the Standing Committee (who will be required to ratify and implement the recommendations of the Investigation Panel)
<p>No</p> <ul style="list-style-type: none"> The Chairman will write to the Complainants stating the reasons why no action has been taken against the Mediator concerned. The Chairman will write to the Mediator concerned to advise that no further action is to be taken in relation to the complaint 	Investigation Panel/ Standing Committee	
<p>Yes</p> <ul style="list-style-type: none"> Write to the Mediator concerned specifying the corrective actions that are to be taken in relation to the complaint and giving him/her 28 days to appeal against this decision 	Investigation Panel/ Standing Committee/ Chairman	Corrective actions may include: <ul style="list-style-type: none"> The appointment of a mentor from within the Association's Commercial Disputes Panel. Temporary suspension from the Commercial Disputes Panel pending satisfactory completion of specified training or CPD. An invitation to resign from the Association. Expulsion from the Association.
Respond in writing to the request for corrective action. Letter to be addressed to the Chairman of the Association	Mediator against whom complaint has been made	Mediator may submit evidence in rebuttal and/or alternative proposals for corrective actions.
<p>Accepts</p> <p>Review the response from the Mediator and establish whether he/she accepts the proposed corrective actions or whether the alternative(s) proposed would be adequate.</p>	Investigating Panel	If the Mediator accepts the corrective actions proposed, agree a timetable and reporting/monitoring requirements if appropriate
<p>Challenges proposed corrective action</p>	Investigating Panel/ Mediator against whom complaint has been made	Appoint a mediator from the Commercial Disputes Panel to convene a mediation between the Mediator and the Association (Investigating Panel) to resolve what corrective action (if any) shall be taken.

CIVIL AND COMMERCIAL FACULTY REGULATIONS (cont)

7.6. Investigation of allegations made against a Member for breach of the European Code of Conduct		
7.6.1. If there are grounds to believe that a Member is in breach of the Code of Conduct, the evidence will be referred to the Standing Committee		
Action	Responsibilities	Notes and Additional Information
Review information that a Member has breached the Code of Conduct.	Standing Committee	
Are there grounds for believing that a breach of the Code of Conduct has occurred	Standing Committee	
No No further action taken, unless the evidence has been provided by a third party (the Complainant), in which case the Chairman of the Association will inform the Complainant that no further action is to be taken.	Chairman of the Association	
Yes The Standing Committee proposes removal, suspension, completion of specified training or CPD of the Member on the grounds of a breach of the Code of Conduct.	The Standing Committee in this case would be the Complainant	Matter dealt with under Section 7.5 above, commencing at "Yes"

7.7. Records

7.7.1. The Secretary/Administrator is/are responsible for maintaining the following records:

- a) A confidential record of each complaint including the evidence presented
- b) the correspondence,
- c) minutes of any meetings of the Investigation Panel,
- d) minutes of the Standing Committee that relate to implementation of the Grievance Procedure and
- e) any other documents pertaining to implementation of the Grievance Procedures.

This record shall be kept in a locked cabinet and access to the record shall be restricted to the Officers of the Association.

CIVIL AND COMMERCIAL FACULTY REGULATIONS (cont)

APPENDIX A RECENT EXPERIENCE FORM (Civil & Commercial)

The Association of South West Mediators

The purpose of this form is as follows:

1. To enable ASWM to play a constructive part in the development of its members as mediators by providing them with appropriate opportunity – perhaps as assistant mediators- whenever ASWM is able to do so.
2. To assess whether a member has sufficient recent experience for inclusion of the Association's mediation panel.
3. The form should be periodically updated as experience is gained

Name				
Address and contact details				
Accredited by:		Date:		CPD Status
Whether Registered as a Practicing Mediator with an Accrediting Body (State which)			Sector Preferences & any other comments you wish to add	

Mediation experience

Try to restrict descriptions to a few sentences but include sector, amount and time. It is suggested up to three cases are included.

Date of Mediation and Role (i.e. Mediator, Assistant Mediator, Party advocate)			Referral from	
Brief Description of Dispute (including amounts if applicable), without the names of the parties.				
Length of mediation (Hrs)		Result		
Any other comments				

Date of Mediation and Role (i.e. Mediator, Assistant Mediator, Party advocate)			Referral from	
Brief Description of Dispute (including amounts if applicable), without the names of the parties.				
Length of mediation (Hrs)		Result		
Any other comments				

Date of Mediation and Role (i.e. Mediator, Assistant Mediator, Party advocate)			Referral from	
Brief Description of Dispute (including amounts if applicable), without the names of the parties.				
Length of mediation (Hrs)		Result		
Any other comments				

Total number of mediations performed			
Results of mediations .	Settled	Not settled	Other result
Any other comments			

CIVIL AND COMMERCIAL FACULTY REGULATIONS (cont)

APPENDIX B MEDIATION REPORT (Civil & Commercial)

THE ASSOCIATION OF SOUTH WEST MEDIATORS

(to be completed by Mediator/Co-Mediator/Assistant Mediator after the mediation and returned to the Registrar)

PLEASE NOTE:

IN ORDER TO PROVIDE DETAILS ON THE MEDIATION TO THE ASWM, SOME OF WHICH MAY BE CONFIDENTIAL, YOU SHOULD HAVE USED THE ASWM MEDIATION AGREEMENT OR HAVE OBTAINED THE CONSENT OF THE PARTIES.

Mediator:		Assistant Mediator:	
Date of Mediation:		Amount in Dispute:	
Sector:		Non-Monetary items:	

Please give contact details of the Parties

Party A	
Party B	
Party C	

Please give brief details of what the dispute was about:

--

Please state roughly how long the dispute had been going on, and whether formal proceedings had been commenced:

--

Was the mediation at the Parties own volition or was it as a result of pressure from the Court?

--

What was the outcome? *(e.g. agreement was reached, oral/written, binding/non-binding, Tomlin order etc)*

--

CIVIL AND COMMERCIAL FACULTY REGULATIONS (cont)
APPENDIX B (cont)

Interesting aspects of the mediation including difficulties you had to overcome *(please consider writing a brief synopsis of the mediation if there were points that others could learn from)*

Were there any key turning points?

Post-Mediation Involvement *(Did or do you have any ongoing role?)*

Report on your Assistant Mediator/Co-Mediator

COMMENT ON ASWM's:

1. Administration

2. Support

**CIVIL AND COMMERCIAL FACULTY REGULATIONS (cont)
APPENDIX B (cont)**

How else/better could ASWM have assisted you?

Opportunities/Contacts ASWM should follow up arising out of the mediation

Are there any other comments you wish to make?

SIGNED DATE.....

CIVIL AND COMMERCIAL FACULTY REGULATIONS (cont)

APPENDIX C EVALUATION FORM (Civil & Commercial)

**ASSOCIATION OF SOUTH WEST MEDIATORS
CONFIDENTIAL**

BY FILLING IN THIS FORM THE PARTY AGREES TO THE ASWM USING THE INFORMATION CONTAINED HEREIN FOR QUALITY ASSESSMENT PURPOSES

Case Name:	
Mediator's Name:	
Your Name	
Date of Mediation:	

A THE PARTIES

What was your role in the Mediation? Claimant/Defendant/Solicitor/Expert	
Are you an individual or a company or other (Specify)	
Did you have a Solicitor or other representative or none	
Were you privately funded or Insured or publicly funded	
Was the other party an individual or a company or other (Specify)	
Did the other party have a Solicitor/other representative/ none (Specify)	
Was the other party privately funded/ Insured/publicly funded/don't know	

B THE DISPUTE

Professional Negligence		Construction		Intellectual Property		Clinical Negligence / Personal Injury	
Shipping		Financial		Insurance		IT	
Property Other		Engineering		Partnership		Employment	
Other – please specify							

What was the value of the dispute (aggregate claims and counterclaims)

£ 0 - £5,000		£5,000 - £15,000	
£ 15,000 - £50,000		£ 50,000 - £100,000	
£100,000 +			

C AGREEING TO MEDIATE

Who suggested Mediation?							
You		Your Representative		Other Party		Court	
Which factors affected your agreement?							
Advised by representative				Referred by Court			
Previous experience				Confidentiality			
Speed				Cost Effectiveness			
Less stressful				Desire to maintain relationship			
Other – please specify							

D THE MEDIATION

	Yes	No
Did you reach a settlement?		
If not, did it help move towards resolving all or part of the dispute?		
	Very satisfied	Content Dissatisfied
How do you feel about the mediation process		

**CIVIL AND COMMERCIAL FACULTY REGULATIONS (cont)
EVALUATION FORM (Civil & Commercial) (cont)**

E THE COST

	Yes	No
Do you consider that the fees in the mediation were reasonable?		
Do you think that the mediation saved money on the total cost of settlement?		

F THE MEDIATOR

Please evaluate the performance of the Mediator in the following areas on a scale of 1 to 6, by ticking the appropriate box (where 1 is very dissatisfied and 6 very satisfied);

1 is very dissatisfied and 6 very satisfied	1	2	3	4	5	6
Attitude – open, encouraged you to put your point of view						
Dealt fairly, impartially and helpfully						
Understood the issues in dispute						
Understood you, your needs & circumstances of your dispute						
Managed the Mediation well						
Was creative in trying to find a solution						
Was courteous to all						

G How did you hear about ASWM? Please specify

--

H What factors influenced you in your selection of a mediator/mediation provider?

Experience as a mediator		Expertise in the matter in dispute		Personal/professional recommendation		Other	
--------------------------	--	------------------------------------	--	--------------------------------------	--	-------	--

H Comments on ASWM's performance

	Yes	No
Was the mediation process and the preparation required in advance sufficiently well explained by ASWM and/or the mediator?		
Were the practical arrangements made for the mediation satisfactory?		

How would you rate the overall service provided by ASWM?	Very poor	
	Poor	
	Satisfactory	
	Good	
	Excellent	

I FUTURE MEDIATIONS

	Yes	No
Would you consider using mediation again?		
Would you consider using ASWM again?		
Please put your reasons below		

J ADDITIONAL COMMENTS

If you have any further comments that may be helpful, please use the box below

Thank you for completing this feedback form.

CIVIL AND COMMERCIAL FACULTY REGULATIONS (cont)

**APPENDIX D APPLICATION FOR MEMBERSHIP – CIVIL AND COMMERCIAL FACULTY
(INCLUDING RENEWALS)**

**ASSOCIATION OF SOUTH WEST MEDIATORS
APPLICATION FOR MEMBERSHIP – CIVIL AND COMMERCIAL FACULTY
(INCLUDING RENEWALS)**

Complete in BLOCK CAPITALS or type and attach a copy of your full CV, other supporting documents required and a cheque for the appropriate sum.

Full name:
Address:
.....
Post Code:DX No: (if appropriate)
E-mail:
Web site:
Tel:(B) (H) (M) Fax:
Date of Birth Occupation:
Current Job Title and areas of responsibility
.....
Professional and Academic Qualifications:
.....

Membership

I wish to apply for the following class of membership:- Pupil Member.....
Mediator Member with Panel Membership (Civil and Commercial)

Accreditation

I have been accredited by
I attach a copy of my Accreditation Certificate issued by
[Applicants also applying to become a Panel Member (Civil and Commercial) of the Association must have been accredited by an organisation recognised by the Civil Mediation Council.]

Dispute Resolution Experience

Summary of experience:
.....
.....
.....
.....

Applicants applying to become a Panel Member shall complete the following section.

Have you completed post accreditation assessment with your training provider entitling you to hold yourself out as a Panel Mediator with the organisation or otherwise as a Lead Mediator trained by them?
Panel Member Lead Mediator (if no panel).....

Attach a copy of any certificate issued or letter of confirmation

Experience:

How many civil/commercial mediations have you completed as Lead Mediator?.....
How many civil/commercial mediations have you completed as Solicitor Advocate?.....
How were you appointed?
By an accredited Mediation Provider.....Direct..... Others
You can use the 'Others' section for appointments from private providers, trade panels or court schemes.
Please give brief details:
.....
.....

During these mediations have any complaints been made to the organisation that either appointed or trained you? Set out very briefly the nature of the complaint and the response.
Continue on a separate piece of paper if there is insufficient room.
.....
.....

CIVIL AND COMMERCIAL FACULTY REGULATIONS (cont)

Have you been involved in Community or Family Mediations as Lead Mediator? Yes/No
Briefly summarise your experience in Community or Family Mediations noting the training you have done and the panels you are currently on

.....
.....
.....

Have you also acted as Arbitrator? Adjudicator? Conciliator?
Briefly set out the details of arbitration, adjudication or conciliation panels you are listed on e.g. CI Arb etc

.....
.....
.....

Pupillage:

Applicants who have completed their accreditation but have not yet completed pupillage or completed the required post accrediting requirements of the organisation that trained them, should answer the following questions.

Have you done pupillage training Yes/No

Has your training included pupillage or co-mediating with another mediator? Yes/No

Would you like the Faculty to assist in securing you pupillage experience? Yes/No

Note: You must advise the Faculty when you have been registered as a Lead Mediator with the organisation that trained you. Once training is complete you must send the Faculty a copy of the certificate that confirms that your training is completed and you are registered with that body as a Lead Mediator.

Lead Mediators:

Applicants who are already registered as a Lead Mediator with their accrediting organisation should answer the following questions.

Does the organisation that accredited you require CPD to be undertaken as a condition of maintaining accreditation Yes/No

If yes, please attach a copy of your latest CPD records sent to the accrediting organisation or relevant pages from your logbook.

If no, please note that CPD is a requirement of the Association for all accredited mediators and that CPD requirements will be advised to you on confirmation of your membership.

Would you like the Association to assist in securing you pupillage mentoring experience as part of your CPD? Yes/No

Would you like the Association to arrange training and networking opportunities with other mediators as part of your CPD? Yes/No

Professional Indemnity Insurance

It is a requirement of all mediators practising as Panel Members to comply with the minimum requirements for Professional Indemnity Insurance cover identified by the Civil Mediation Council. This is currently £1,000,000.

Please confirm that you hold PI insurance of at least the above to cover your acting as a Mediator in civil and commercial mediations, and that you undertake only to take on mediations that come within the scope of your cover Yes/No

The Association requires that you **produce evidence of that cover**. This can be a certificate of insurance or cover note or confirmation from your firm/employer that you are covered to the minimum level

Specialisms

Whilst specialisms are not a requirement for a good all round mediator, it is helpful for users of the Association to be able to access basic information over and above your profession.

Insert here not more than 8 keywords words e.g. "employment, professional negligence, intellectual property, construction etc", you would wish to see against your entry.

.....
.....

Adherence to EU Code of Conduct for Mediators

By applying to join the Association and, if accepted as a member, you agree to be bound both by the terms and conditions of its constitution and to the European Code of Conduct for Mediators 2004.

CIVIL AND COMMERCIAL FACULTY REGULATIONS (cont)

By signing this application you agree to accept such monitoring and evaluation of mediations carried out by you as the Association may from time to time require. You also agree to maintain a log book of mediations, provide the parties with feedback forms and include within your terms and conditions details of the Association's complaints procedure.

Mentoring Scheme

Applicants who become Panel Members will be expected to participate in and actively encourage use of the Mentoring Scheme run by the Faculty, details of which are included in the Practice Manual.

Data Protection

Applicants acknowledge and accept that the Association may process their personal data for the purposes and business of the Association as set out in the Memorandum, Articles of Association, and the Practice Manual of the Association. Any processing will comply with the requirements of the Data Protection Act 1998.

I confirm my agreement to the terms evidenced above

Signed: Date:

Name (Block Capitals)

CIVIL AND COMMERCIAL FACULTY REGULATIONS (cont)

APPENDIX E MEDIATION REPORT FORM: ASSISTANT (Civil & Commercial)

This Mediation Report Form should be completed by the Assistant Mediator for self assessment. The original should be retained for your log book and a copy forwarded to the Association soon after the Mediation.

You must ensure that the parties know you are completing this form and that you use every effort to maintain the confidentiality of the process.

Date of Mediation

Amount in Dispute:

Sector:

Non-Monetary items

Assistant Mediator:

Accredited by:

Mediator:

Accredited by:

Details of Parties –to preserve confidentiality the status of the parties only can be inserted e.g. employee, employer, insurer etc

Result (including whether any agreement was reached, oral/written, binding/non binding. Tomlin order etc)

Learning Points

Summary of the dispute

Please write a case summary of the mediation (taking into account confidentiality). Give a factual outline of the dispute and try to explain the different stages of introduction/caucus/conclusion. In particular, try to highlight the skills and strategy of the mediator. What methods did he/she use, and to what effect? continue on a separate sheet of paper if necessary.

Key turning points in the Mediation (if any)

Areas where you experienced most difficulty in the Mediation

Comments

Please note any further observations

Signed

Date

Association of South West Mediators

MEDIATION AGREEMENT

THIS AGREEMENT is made on

BETWEEN:

AND:

(each "a Party" and together "the Parties")

AND:

(the "Mediator")

RECITALS

- A. Disputes have arisen between the Parties ("the Disputes") as briefly described in Schedule 1 to this Agreement.
- B. The Parties have through the Association of South West Mediators ("ASWM") requested the Mediator, and the Mediator has agreed, on the terms and conditions of this Agreement, to assist the Parties to resolve, if possible, the Disputes.

AGREEMENT

Appointment of the Mediator

1. The Parties appoint the Mediator, and the Mediator accepts the appointment, to mediate the Disputes ("the Mediation") in accordance with the terms of this Agreement.

Mediator's fees and Costs

2. The parties are jointly and severally liable to pay the mediator's fees as outlined in Schedule 2 to this Agreement. A fee of £ is payable by each party to the mediator in advance of the mediation and the mediation will not take place unless and until the fees are paid.
3. If the Mediation does not result in an agreement to resolve the Disputes, the costs of the Mediation, including the Mediator's fees payable in accordance with Clause 2 and Schedule 2, the legal fees and disbursements of advisers (including solicitors, barristers and experts) shall, unless otherwise agreed, be costs in the case.

Mediator's Role

4. The Mediator will be neutral and impartial. The Mediator will assist the Parties to isolate the issues, develop and explore options for resolution of these issues and, if possible, achieve expeditious resolution of the Disputes by agreement between them.
5. The Mediator makes no representation that any such agreement between the Parties will equate with any result which might be achieved by a contested trial of the Disputes or any part of them.
6. The Mediator will not make decisions for a Party or impose a solution on the Parties. If the Parties request and the Mediator agrees, the Mediator may, if the Parties reach an impasse, provide the Parties with a non-binding recommendation based on the Mediator's own knowledge of the subject matter and law.
7. If in the course of the Mediation the Mediator becomes aware of any circumstances that might reasonably be considered to affect the Mediator's capacity to act impartially, the Mediator will immediately inform the Parties of those circumstances. The Parties will then decide whether the Mediation will continue with that Mediator, or with a new Mediator appointed by the Parties.

Co-operation

8. Each Party must use its best endeavours to comply with reasonable requests made by the Mediator to promote the efficient and expeditious resolution of the Disputes. If either Party does not do so, the Mediator may terminate the Mediation.

Authority & Representation

9. In the absence of consent by the other Parties and the Mediator, if a Party is a natural person, that Party must attend the Mediation. If a Party is not a natural person it must be represented at the Mediation by a person with knowledge of the relevant issues and with authority to settle within any range that can reasonably be anticipated and to make agreements binding on that Party in settling the Disputes.

10. Without limiting the responsibility of the Parties under Clause 9, if any Party has any limitation on their authority to settle, this must be disclosed to the Mediator before the commencement of the Mediation.
11. Subject to Clause 3 b., each Party may have one or more persons, including legally qualified persons, to assist and advise them at the Mediation.

Conduct of the Mediation

12. The Mediation, including all preliminary steps, shall be conducted in such manner as the Mediator considers appropriate having due regard to the nature and circumstances of the Disputes, the agreed goal of an efficient and expeditious resolution of the Disputes and the view of each Party as to the conduct of the Mediation.
13. Without limiting the Mediator's powers under Clause 12, the Mediator may give directions as to:
 - (a) the exchange of brief written outlines of the issues raised by the Disputes and a supporting bundle of documents which are relevant to those issues;
 - (b) providing the Mediator prior to the Mediation with any such outlines and documents, and any further information or documents that the Mediator may request following perusal of the outlines and supporting documents; and
 - (c) Preliminary conferences, by phone or meeting, prior to the Mediation.

Communication between the Mediator and a Party

14. The Mediator may meet as frequently as the Mediator deems appropriate with the Parties together or with a Party alone.
 15. The Mediator may communicate with a Party or the Parties orally and/or in writing.
 16. Except as the Parties may otherwise agree in writing, anything said or done by any person at the Mediation is said or done without prejudice and no Party shall be entitled to call evidence of anything said or done by any person at the Mediation.

Confidential Information

17. Information, whether orally or written, disclosed to the Mediator in private will be treated as confidential by the Mediator unless:-
 - (a) the Party making the disclosure states otherwise;
 - (b) the law imposes an obligation of disclosure; or
 - (c) The Mediator believes that the life or safety of any person is or may be at serious risk.
18. The Parties and the Mediator agree in relation to all confidential information disclosed to them during the Mediation, including the preliminary steps:
 - (a) to keep that information confidential;
 - (b) not to disclose that information except to a Party or a representative of that Party participating in the Mediation or if compelled by law to do so; and

- (c) not to use that information for a purpose other than the Mediation save that the information may be used to the extent required to enable ASWM to properly monitor mediations arranged through them and in an anonymised form by ASWM and its mediators for training purposes.
19. Each representative in signing this Agreement is deemed to be agreeing to this provision on behalf of the Party he/she represents and all other persons present on behalf of that Party at the Mediation.

Privilege

20. The Parties and the Mediator agree that, subject to Clause 18, all documents or statements produced, used or made in the Mediation, not otherwise available or known or subject to other obligations of disclosure, will be privileged and will not be disclosed in or relied upon or be the subject of an application to give evidence or to produce documents in any arbitral or judicial proceeding in respect of the Disputes.

Subsequent Proceedings

21. The Mediator will not accept an appointment in relation to any arbitral or judicial proceeding relating to the Disputes or any of them.
22. No Party will take action to cause the Mediator to breach Clause 20.
23. No Party will summons the Mediator to give evidence or to produce documents in any arbitral or judicial proceeding in respect of the Disputes.

Termination

24. If a Party does not wish to continue the Mediation, the Mediator must terminate the Mediation in so far as it relates to that Party and may terminate the Mediation as regards all the Parties.
25. The Mediator may terminate the Mediation if:
- (a) after consultation with the Parties, the Mediator feels unable to assist the Parties to achieve resolution of the Disputes;
- (b) The Mediator considers it appropriate for any other reason, which the Mediator may decline to give the Parties.
26. The Mediation will be terminated upon execution of a written settlement agreement in respect of the Disputes.
27. Termination of the Mediation does not terminate the operation of Clauses 17 - 31.

Settlement

28. Unless otherwise agreed by the Parties, a settlement reached at the Mediation will need to be written down and signed by the Parties or their representatives in order to be binding on the Parties. If the Mediation has been ordered by a Court, the Parties will advise the Court of the outcome of the Mediation if required by the Court Rules to do so.

Enforcement

29. In the event that one or more of the Disputes is or are settled, as the case may be, either Party may:
- (a) enforce the terms of the settlement agreement by judicial proceedings; and
 - (b) In such proceedings adduce evidence of and incidental to the settlement agreement (other than matters which are privileged by reason of Clauses 17- 19).

Indemnity and Exclusion of Liability

30. The Mediator will not be liable to a Party, except in the case of fraud by the Mediator, for any act or omission (whether negligent or misleading or otherwise) in the performance or purported performance of the Mediator's obligations under this Agreement.
31. The Parties together and separately indemnify the Mediator against all claims, except in the case of fraud by the Mediator, arising out of or in any way connected with any act or omission by the Mediator in the performance or purported performance of the Mediator's obligations under this Agreement.

Governing Law and Jurisdiction

32. This Agreement is governed by, and is construed and takes effect in accordance with English law. Unless otherwise specified in any settlement agreement, the Courts of England will have exclusive jurisdiction in relation to the settlement of any claim, dispute or matter of difference that may arise out of or in connection with the Mediation.

SCHEDULE 1

**DESCRIPTION OF THE
DISPUTES**

SCHEDULE 2

COSTS OF THE MEDIATION

Commercial Disputes

The fee for the mediation should be discussed and agreed with the mediator in advance of the mediation, and recorded in a signed mediation agreement. Ensure you understand if the fee is per party or in total.

The Mediator's fee for a mediation involving two parties is broadly as follows, although individual mediators may charge more or less:

Amount in dispute	Fees (per party)	Length of session	Extra hours (per party)
£0 to £10,000*	£50 + VAT £100 + VAT	1 hour Up to 2 hours	£50 + VAT
£5,000 to £15,000**	£300 + VAT	Up to 3 hours	£85 + VAT
£15,000 - £50,000 ***	£425 + VAT	Up to 4 hours	£95 + VAT

* For cases where a telephone mediation is appropriate and both parties agree.

** Non telephone mediation where the parties meet with a mediator.

*** If the claim is for more than £50,000, the fees will need to be agreed with the mediator.

Mediator's expenses (including travel where chargeable) will be charged at cost.

If you are unable to afford to pay these fees you may qualify for a free mediation from LawWorks -- <http://www.lawworks.org.uk>.

If your dispute is worth less than £10,000 you may be able to access the county courts in house small claims mediation service, which is free. However in order to do so you must issue proceedings, for which there is a fee, unless you are approved to be 'court fees exempt' by the courts.

Venue

If it is necessary for a venue to be sourced by the ASWM then the costs of the venue and any refreshments will be in addition to the mediation fee and payable by the parties.

Multiple Parties

The above fees are based on a two party mediation. If there are more than two parties, the length of the mediation session may need to be increased, and the next fee tariff applied - the ASWM or mediator will discuss this matter with you when organising the mediation.

Time for Payment

(a) The Mediator's fee must be paid before commencement of mediation.

(b)The Mediator's fees for any additional time and any expenses are to be invoiced after the mediation is completed and are payable within 14 days of the Mediator's invoice. The Mediator is entitled to require the provision of suitable undertakings or other security in relation to fees and expenses.

SIGNED:

On behalf of the Claimant

On behalf of the Defendant

Mediator