

Win, lose or draw! Mediating Construction Disputes

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Karen Gidwani and Lucinda Robinson

Fenwick Elliott LLP



Today's Agenda

- What is mediation?
- Why mediate?
- How mediation works
- Preparing for mediation
- Managing mediation on the day
- Questions

What is Mediation?



What is mediation?

Mediation Is

- A form of ADR that can run alongside proceedings
- A commercial negotiation, supported by an independent third party
- Confidential and without prejudice
- Consensual

Mediation Is Not

- Obligatory
- Binding – unless and until it results in a binding agreement
- A decision making process – the mediator will not decide the dispute or impose a solution

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Why Mediate?



Why mediate?



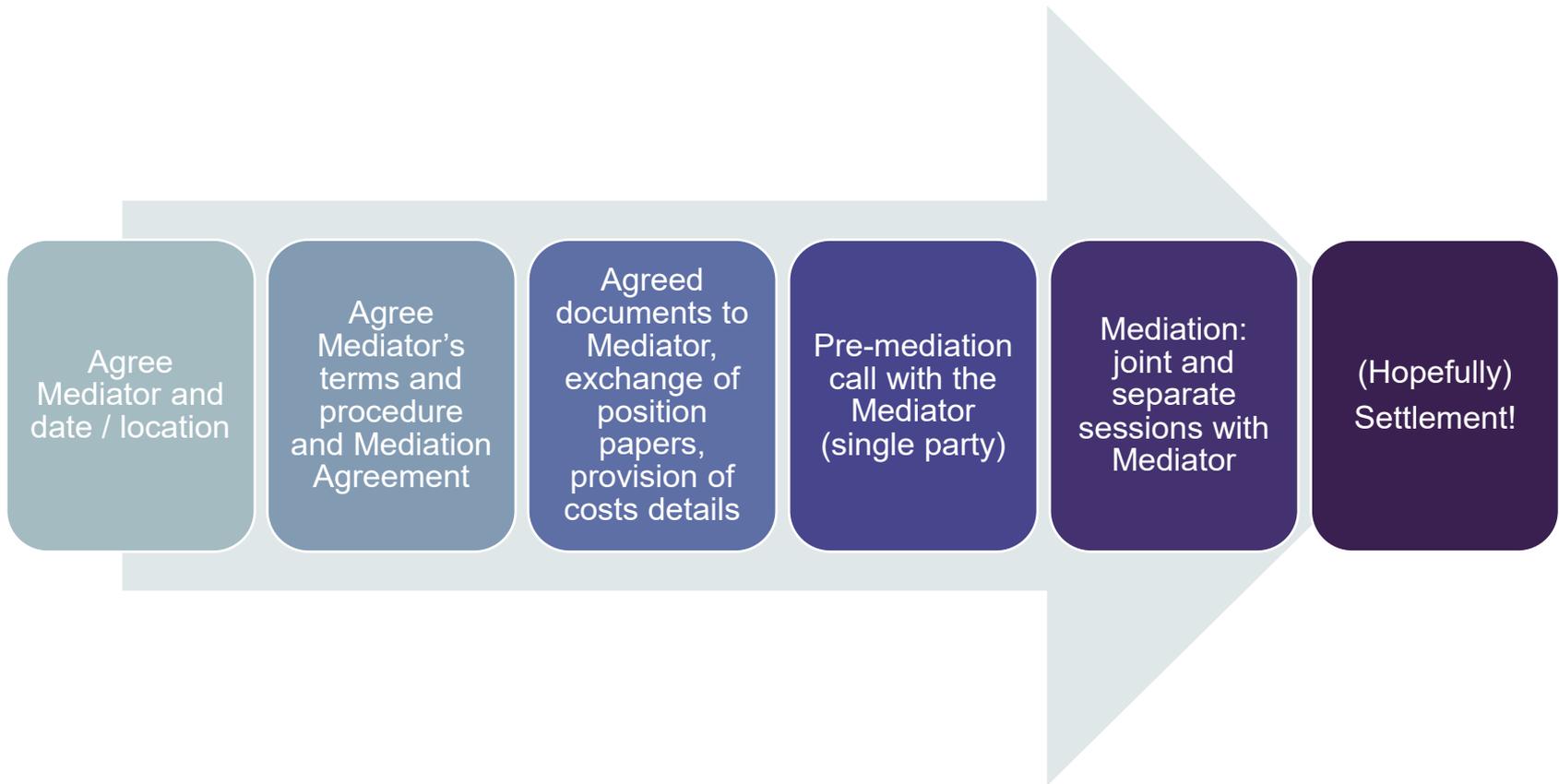
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How Mediation Works



How mediation works



Preparing for Mediation



Preparing for mediation



Time it right

- Too early – parties are not ready
- Too late – time and cost savings no longer relevant



Decide the style

- Evaluative vs facilitative
- Non-binding recommendations



Select a mediator

- Experience and expertise
- Approach and style



Decide who attends

- Authority
- Knowledge and relationships



Crunch the case and the numbers

- Strengths and weaknesses
- Quantum and costs

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Managing Mediation on the Day



Managing mediation on the day

Papers

- Position papers, key documents, costs
- Mediation agreement, draft settlement agreement

Format

- Plenary session
- Sub-groups – experts, figures, commercial leads

Work

- Shuttle diplomacy – or not
- Work the issues or read the paper

Energy

- Start early and finish late
- Old school tactics

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Thank you!

Questions?

Karen Gidwani and Lucinda Robinson

Fenwick Elliott LLP

