

The NHSLA Mediation Scheme



What is the NHSLA mediation scheme?

The NHSLA is the NHS Litigation Authority and is the body responsible for dealing with compensation claims made against NHS Hospital Trusts.

What is mediation?

Mediation is a process for resolving claims without the need for court proceedings. It looks to reach an agreed solution between the parties using an independent third party - the mediator. Because it is outside of the court proceedings, it can look for solutions beyond compensation (e.g.. explanations, apologies, reassurances it will not happen again).

Is my case eligible for the scheme?

This is a pilot scheme and only applies to cases involving elderly care or death.

How does it work?

When a Hospital Trust becomes aware of a potential claim for compensation, it must notify it to the NHSLA.

If it is a case which is eligible for the scheme, the NHSLA will decide whether to offer mediation. If mediation is offered, you do not have to agree to it but if you refuse mediation without good reason and pursue court proceedings, the court may order that you are responsible for your own legal costs and/or the legal costs of the NHS.

If you do agree to mediation, you will have a choice of mediator from those on the NHSLA's panel of approved mediators.

A list of these can be found on the website of the Centre for Effective Dispute Resolution (CEDR), which is the NHSLA's mediation partner. A date and venue for the mediation will then be agreed.

Prior to the mediation, each party can provide the mediator with a written statement setting out the issues it would like addressed and any relevant documentation.

At the mediation, each party will have their own room and the mediator will go between them to try and reach a negotiated resolution.

Face-to-face meetings between the parties can be arranged if you wish. For example, if you would like to discuss what happened directly with the doctors concerned.

If you would like a face-to-face meeting with particular NHS staff, you should make the mediator aware of this beforehand so that they may liaise with the NHS to ensure those people attend.

Family and friends can attend the mediation if you wish, as can your lawyer. The mediation process is confidential. This means that whilst you can tell people mediation has taken place, you cannot tell them what was discussed or disclose any documents you received as part of the mediation process.

If settlement is reached as a result of the mediation, you cannot tell people that you have reached a settlement or disclose the settlement terms. At the end of the mediation, if settlement terms have been agreed, the mediator will draw up an agreement for each party to sign and once signed, that settlement is legally binding.

As the purpose of the mediation is to resolve claims without court proceedings any settlement agreement is likely to contain a term prohibiting further legal action. It is therefore important that legal advice is sought before signing it.

The agreement does not have to be signed at the mediation even if settlement is agreed and it can be signed at a later date once you have considered it and sought appropriate advice.

What will it cost?

The NHSLA will meet the costs of the mediator and the venue. There is however, no provision within the scheme for the NHSLA to pay the costs of a lawyer attending the mediation with you or the cost of legal advice on the settlement agreement.

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If, therefore, you want legal advice throughout the mediation, or on the settlement agreement, you should seek confirmation the NHSLA will be responsible for these costs before agreeing to undergo mediation.

Further information

The binding nature of any agreement entered into at the conclusion of the mediation means it is very important people have legal advice before entering into such agreements.

If you wish to pursue a claim or make use of the NHSLA mediation scheme, please contact our specialist medical negligence lawyers for advice on **0117 325 2929** or fill out our online enquiry form at **barcankirby.co.uk**.

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