

Mediation

The constructive way to resolve data disputes

Benefits of Mediation

- ▶ Private and confidential – avoids embarrassing publicity
- ▶ Quick and cheap
- ▶ Gets to the real problem
- ▶ Does not impose decisions but creates solutions
- ▶ Non binding until the parties find a solution
- ▶ Deals with underlying issues that courts and regulators cannot
- ▶ Conciliatory rather than adversarial

MEDIATING DATA PROTECTION DISPUTES is the clever new way to rebuild customer relations and reduce your company's exposure to litigation and non compliance actions. Each side has an opportunity to have their say in a private and confidential setting.

There is no decision as to who is right or wrong, just what agreement can be found to resolve matters. Mediation may help you to find out what is making the data subject angry so that you can deal with the underlying problem.

Our mediation service will be helpful where:

- ▶ Personal data disputes are taking up too much of your managers and customer service teams' time
- ▶ You discover a compliance problem and it needs to be sorted out quickly and cheaply
- ▶ You have a vexatious or frequent requester of personal information
- ▶ You have a Binding Corporate Rules Scheme in place as one of the measures to enable 3rd parties to enforce rights offered under the scheme.

THE PROCESS

We offer two forms of mediation

- ▶ **A Telephone Service** where our skilled mediators will act as an independent neutral to discuss matters confidentially with all sides and explore with each of the parties possible ways to resolve the dispute. This process will take place over a two week period.
- ▶ **A Meeting** where one of our independent mediators will work with the parties for up to five hours to try and help them to find solutions to the problem.

For an initial discussion, contact Stewart Dresner, Chief Executive, *PL&B*; or Anne Coles, Solicitor and Accredited Mediator.

For more information, see overleaf.

WHAT WILL IT COST?

A mediation can be arranged by *PL&B* for as little as £750 +VAT.

More information on *PL&B* Services at www.privacylaws.com

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Privacy Laws & Business Mediation Services

PRIVACY LAWS & BUSINESS is offering to resolve Data Protection Act and Freedom of Information Act disputes. The type of mediation services would depend on the nature of the dispute and the value of the claim.

Some of the largest high profile data protection and privacy scandals frequently start with a relatively low value and innocuous complaint. Mediation is a voluntary process, so mechanisms would have to be put in place to agree parameters and processes without removing fundamental rights to pursue claims.

A mediation process introduced reasonably early in the life cycle of a complaint which is built into the company's complaints procedure, coupled with analysis of the type of complaints arising and the underlying causes, could prove to be a valuable management tool. This could alert data controllers to problems before an escalation occurs.

FEATURES COMMON TO ALL MODELS OF MEDIATION

The process would be confidential, private and without prejudice to any further action. An agreement to this effect would be entered into in which the parties would agree to the mediation and to keep matters confidential and without prejudice.

The process must always be offered on a voluntary basis and it would be inappropriate in any agreement to make parties sign away any rights to take the complaint to the regulator or enforce the matter through the court.

POTENTIAL MEDIATION SERVICE MODELS

The mediation service could take a variety of forms as follows:-

Independent neutral evaluation of a claim by a data protection expert

The parties would voluntarily agree to appoint an expert to make findings of fact, law and of responsibility. Although this would not preclude a court or the Information Commissioner coming to a different view on another occasion, the expert's view would be persuasive. The system would enable the evaluator to consider submissions and let the parties have an opinion on the merits of the complaint and recommend financial compensation and other measures such as rectification, letter of apology, even an

audit of processes. Where the complaint had no merit, complainants might well find it easier to accept this from someone independent of the company. Equally, data controllers might find early warning of how a regulator might view a particular incident invaluable intelligence enabling remedial action to be taken before regulators become involved.

Independent neutral evaluation has the potential to be useful to data controllers even where there have been failures because it would provide an outsider view of internal processes. It also has the potential to "nip disputes in the bud"

Where failures were found, it would be possible to agree with data controllers, tariffs containing ranges of compensation and other measures which the Independent Neutral Evaluator could recommend as part of the evaluation.

If the parties were not satisfied with the outcome they would not be precluded from taking the matter further but the evaluation process would remain without prejudice and confidential and so could not be used or cited elsewhere.

Telephone conciliation service

A telephone service would work best where a data controller is experiencing or anticipating a lot of low value complaints. A mediation process could be set up where the parties make submissions to an independent mediator/conciliator. The mediator would then speak to the parties over the phone on a confidential basis and explore what each side could offer the other to resolve the dispute. The mediator could then help the parties to come to an agreement to resolve the issues and move forward. The agreement could be documented

and signed by the parties and the complaint would agree to withdraw their complaint. As with neutral evaluation, tariff ranges for different types of matters could be agreed and other measures that might cure the problem or objection.

Mediation at a meeting

For more complex cases with multiple issues, even for cases where the issues are not confined to data protection and privacy, a 3 hour, 5 hour or 8 hour mediation could be agreed where the parties come together under the facilitation of an independent mediator and the mediator would explore with the parties possible ways to resolve the dispute and then help the parties to draw up an agreement to that effect. The form of such mediation, although not fixed, usually comprises an initial joint meeting at which the ground rules are explained and parties make statements, private sessions where the mediator works with parties individually and then further joint sessions may be held when this is necessary. Skilled mediators very often can help the parties towards a settlement and to resolve some matters which a regulator or a court would not be able to deal with. Sometimes this latter type of issue (where there is no cause of action or right of recourse) is what has caused the problem in the first place.

The parties would be required to set the necessary time aside and those who attended would have to have sufficient authority to commit the party they represented to a settlement. Also a suitable and comfortable venue would be required providing for one room for the parties to come together in and a private room for each of the parties.

Where it is possible to agree a settlement by the end of the mediation, this is usually drawn up as an agreement, or heads of terms, or an action plan for the parties to take forward.

A frequent bonus of this form of mediation when settlement occurs and where the parties have met face to face is that it is often possible for the mediator to help the parties re establish a workable and business-like relationship for the future. In fact, because the process helps each party to understand better the other's perspective, it is possible to isolate and remove the anger which forces a complainant to complain to a regulator or commence litigation.

Please outline your problem:

Name: Contact Details: