Your Guide to
Will Dispute Mediation
Introduction

People involved in a dispute about a will typically …

- Worry about paying for (and potentially losing) a fight in a public court with a relative;
- Suffer from a family relationship that has deteriorated or broken down completely; and/or
- Are unable to properly enjoy their inheritance.

I help people change will disputes in constructive ways that can not only preserve relationships but even improve on the results – financial and emotional – that those involved could get in court.

I do this using a process that can be arranged at short notice and at a fraction of the cost of a court trial. I remove the risks of losing legal arguments and save potentially tens of thousands of pounds in lawyers’ fees. I move parties away from a battle to determine a winner and loser - which is guaranteed to harm at least one side - towards taking control of the conflict so that they can make their own decisions on how, or how not, to deal with the dispute.

The result is that I have helped people settle a will dispute which started with the parties refusing to be in the same room together. I have settled another dispute which was heading for a 4 day trial and saved the parties thousands of pounds in legal costs.

The benefits for people involved in a will dispute are that they can:

- move from worrying about paying the legal costs of a fight in a public court against a relative, with no guarantee of success, to being able to enjoy their inheritance;
- avoid the potential financial and emotional harm of losing a court case;
- transform feelings of bitterness and resentment against a relative and start, if they choose to, the process of repairing that relationship;
- find emotional closure to the death of their relative.

What is Mediation?

It is a negotiation where the parties involved are assisted by a skilled, neutral and impartial expert in resolving disputes. The mediator helps the parties find a
solution that each side can accept. With the presence and guidance of a mediator even the most difficult and bitter disputes can be resolved.

The mediator is not a judge – the mediator does not decide if one side is right or wrong. This is very important because it means that the parties themselves stay in control of the outcome. If, and only if, all parties are in agreement is there a binding settlement.

Different mediators have different styles and no two mediations will follow exactly the same pattern. This guide describes one of my typical mediations.

What happens at a mediation?

A venue is agreed for the mediation. The parties attend the venue and meet me. I remind them of the basic rules of mediation and make sure the mediation agreement has been signed.

Opening Joint Meeting

When all the parties have settled in I usually invite them to join me in an opening joint meeting. At this meeting I invite each party to speak to the other parties about the dispute. This is a valuable part of the mediation. It is an opportunity for you to have your say. You can speak directly to the other side and let them know how the dispute has affected you, what you want to achieve, and what you want them to do to help you achieve that.

Where does it take place?

If one or more parties has a solicitor acting for it the venue may be the offices of one of the solicitors. Alternatively the parties may hire some meeting rooms in a hotel. You could even use the home of one of the parties – wherever you choose the venue should have one room for each party and one room big enough for a joint meeting of all the parties.

Do I have to meet the other side?

You may feel very reluctant to meet with the other side. you may have fallen out with them and blame them for the dispute. I understand that and can not force anybody to do something they do not want to do. BUT I do think this is a very valuable meeting and I will try and help you overcome your misgivings about a joint meeting.

Each side will have equal chance to speak and ask and answer any questions. It is a chance for you to really understand the other side’s point of view and for you to explain yours to them.

The meeting can highlight the areas of agreement and the issues that are in dispute and help me identify the best way of using the rest of the time available.
Private Meetings

After the joint meeting the parties separate and go to their private rooms where they can reflect on and discuss the ideas raised in the joint meeting. I will go from one room to the other having private and confidential discussions where we can discuss any obstacles to settlement, generate ideas to get over these obstacles and consider ways to move the negotiation forward.

Making Offers to Settle

At some point the parties will want to consider making offers. These can be discussed in the private meetings. Remember that any offers that are made are without prejudice – so they can not be referred to outside of the mediation. Sometimes I will take the offer to the other side but usually I ask you or a member of your party to deliver the offer. This makes sure the offer is exactly what you intended and gives you the opportunity of seeing the reaction to your offer which may tell you a lot about if your offer is anywhere near being acceptable to the other party.

One of the great advantages of mediation instead of a trial is that a judge is very limited in the type of order he or she can make. Often court solutions create winner and loser results – all or nothing. Parties in mediation can find solutions that not only avoid the need for a loser but also improve the outcomes that even a winner could get in court.

Further Joint Meetings

Sometimes I will recommend that there be more joint meetings. Maybe involving everyone or perhaps just the legal representatives or perhaps just you and the decision maker on the other side. I will always explain why I am recommending these meetings what I expect them to achieve.

Closing the Deal

70% to 80% of my mediations result in the parties reaching an agreement. At this point the agreement is written up and signed by the parties. This creates a binding agreement, an end to the dispute, and if the parties want it – the start of new relationship between them.
Frequently Asked Questions

- **What if we can’t reach an agreement?**

There are occasions when the dispute is not resolved. Often in these cases many issues have been clarified and the gap between the parties has been significantly reduced. This may mean that the parties have a further period of reflection and then settle the dispute in a week or two after the mediation.

Otherwise the parties continue with the dispute and litigation if it has started. I always keep in touch with the parties to see what further help I can be to make sure they keep talking about ways to resolve the dispute.

- **How much does it cost and who pays?**

My fees are set out on my website at [www.HeskethMediation.com/fees](http://www.HeskethMediation.com/fees)

Usually each party pays an equal share of the fee but you may make agreements between you that alter that.

- **How long does it take?**

Mediations can be arranged at very short notice – just a few days if everyone is available. The mediation meeting itself usually takes between 4 and 6 hours.

- **Do I need a solicitor?**

The aim of the mediation is to help you and the other side reach a legally binding agreement. For that reason I recommend that you have at least taken advice from a solicitor skilled and experienced in this area of law. If your solicitor is an experienced negotiator and you can afford it I would recommend the solicitor accompanies you to the mediation.

- **Do I need a barrister?**

You should make this decision in consultation with your solicitor but consider the following:
How much is the barrister going to cost you?
What experience does he/she have of mediation?
Does he/she understand the significant difference between mediations and trials?
What is he/she going to do at the mediation that your solicitor is unable to do?

If you have any other questions do not hesitate to contact me – details of the different ways you can do that are on my website.
Contact Me

If you would like more information about mediation services or just to find out if you dispute is suitable for mediation you can:

Call:

0845 056 3625 or 07595 365578

Email:

phil@heskethmediation.com

Write:

29 Victory Boulevard, Lytham St Annes, Lancashire FY8 5TG

About Me

I’ve been helping resolve disputes for 24 years. Since 2006 I have been doing this as a civil and commercial mediator in a wide range of cases. I enjoy mediating claims and helping clients – parties and their lawyers – resolve very difficult disputes. I have a particular interest in wills and trusts matters.

I qualified as a Solicitor in 1991. I practised mainly as a personal injury solicitor with Thompsons Solicitors and Russell Jones & Walker Solicitors in Liverpool and Manchester and then Clarkson Hirst Solicitors in Lancaster.

I became a self-employed full time mediator in 2008.

I have four children and live in the beautiful Lancashire coastal town of Lytham St Annes but my work takes me all over the country.