

# Travel Arbitration Commercial Services Mediation Service & Information Notes 2020

First Edition (6 October 2020)

## 1 Introduction

1.1 The Travel Arbitration Model Mediation Procedure (TACS Mediation) has been developed by Hunt ADR Limited (we / us) to facilitate the resolution of commercial disputes involving businesses operating in and around the travel industry including but not limited to:

- Tour operators and travel agents (including cruise lines)
- Airlines and airports
- Domestic and international hotels
- B&Bs, Guest Houses and private rentals as holiday and overnight accommodation
- Hospitality
- Theme parks and attractions

By mediating the issues rather than going to arbitration or the courts, disputes are often settled more quickly, making them less expensive and less of a burden on the business.

1.2 Any party to the dispute can apply for TACS Mediation although all parties must agree in writing before the mediation can start.

1.3 All parties should read the TACS Mediation Information Notes (see TACS Mediation Information Notes) before referring a dispute to us.

1.4 When we receive a referral for TACS Mediation we will consult with the parties about appointing a Mediator.

1.5 TACS Mediation usually applies to disputes between two parties but, if the parties and the Mediator agree, the procedure may cover disputes involving three or more parties. If there are more than two parties to the dispute, we may renegotiate the cost of TACS Mediation before any costs arise in connection with it.

1.6 There are no registration or application fees. Case fees are shown in the case fee table under Section 3.2.

1.7 We manage TACS Mediation and are responsible for appointing the Mediator based on information provided to us at the time that the parties ask us to handle their dispute using TACS Mediation.

1.8 The parties are responsible, together and separately, for paying all TACS Mediation fees, and costs of accommodation, refreshments, travel and all other out-of-pocket expenses.

## **2 TACS Mediation procedure**

2.1 Before TACS Mediation can start, we must receive a communication from all parties to the dispute confirming that they want us to appoint a Mediator.

2.2 Once the TACS Mediation fees are paid, we will appoint the Mediator from our network of qualified, accredited and insured mediators, who may from time to time be included within our TACS Mediation Panel. All Mediators will be bound by relevant codes of ethics.

2.3 Once the Mediator is appointed he or she will contact the parties to agree arrangements for the future conduct of the mediation and to arrange for the signing of the TACS Mediation Model Mediation Agreement.

2.4 TACS Mediation takes the form of an in person or online session attended by each party to the dispute and up to one representative each (unless the parties and the Mediator agree otherwise). Each party is responsible for their own costs of going through TACS Mediation, including the cost of having a representative, unless any settlement agreement states otherwise.

2.5 We may appoint an assistant mediator. The parties may refuse to accept an assistant but should bear in mind that any assistant is there to help the Mediator at no cost to the parties.

2.6 TACS Mediation will take place at a venue arranged by and paid for by the parties. If required the mediation can take place using online technology.

2.7 Before starting TACS Mediation, the Mediator will tell all the parties how he or she will conduct the session, and will ask the parties to sign the TACS Model Mediation Agreement to confirm that they understand the process and their responsibilities within TACS Mediation.

2.8 If the dispute is settled during mediation, the parties must make a written record of the agreement they have reached. This is known as the TACS Mediation Settlement Agreement. The signed TACS Mediation Settlement Agreement will be a binding contract and can be enforced by a court.

2.9 If the original Mediator resigns, dies or becomes unable to act competently or quickly enough, or without a conflict of interest, we will appoint another Mediator. There will be no extra charges made should this happen.

### **3 Costs of TACS Mediation**

3.1 The parties are jointly responsible for the costs of TACS Mediation which form the Mediator's fees and our administration fee and include the Mediator's fees and expenses as described in 1.8.

3.2 The cost of TACS Mediation not including room hire, refreshments, travel time and other agreed disbursements for one day mediation is:

- Total claim value (including counterclaim if any) of up to £100,000: Fee capped at £950 plus VAT
- Total claim value (including counterclaim if any) of between £100,001 and £250,000: Fee capped at £1,950 plus VAT
- Total claim value (including counterclaim if any) of between £250,001 and £500,000: Fee capped at £2,950 plus VAT
- For disputes in excess of £500,000 please contact us for a quote.

One day is defined as the equivalent of the time it takes to read up to 100 sheets of A4 documentation in preparation time (50 sheets maximum per party) and eight hours mediation time.

3.3 Payments are to be made by each party on application, and cover Hunt ADR's administrative costs and the Mediator's fees. If more than eight hours are spent at the mediation or more than 50 sheets per party of pre-mediation reading is sent, then an additional fee of £125 per hour plus VAT is payable by the parties for each additional hour spent on the mediation.

3.4 Each party must pay their own costs of preparing their case and going to any TACS Mediation session. The parties agree that neither one of them will take legal action against the other to recover these costs.

3.5 If the dispute involves more than two parties or is for more than £500,000 the cost of TACS Mediation will be agreed between Hunt ADR and the parties before the mediation begins.

### **4 Documents**

4.1 Each party may prepare for the other Parties and the Mediator prior to the TACS Mediation the following:

- A Mediation Bundle – to be agreed between the Parties

- A Position Statement

4.2 In addition, but without obligation, each party optionally may elect to prepare a Confidential (for your eyes only) Position Statement and submit this privately and confidentially to the Mediator. The fact of such submission as well as the contents of the Confidential Position Statement shall remain confidential between the Mediator and the party submitting it.

4.3 A Mediation Bundle containing documents the parties have agreed to produce to the Mediator, together with each party's Position Statement, shall be provided to the Mediator by close of business no less than 3 working days before the date of the TACS Mediation unless other arrangements have been agreed with the Mediator. It is for the parties to determine in advance if they wish to exchange their Position Statements with each other prior to the TACS Mediation taking place.

## **5 Confidentiality**

5.1 We, the Mediator, any assistant mediator and the parties to the dispute must not give any details of the mediation to anyone not involved in it unless this is necessary by law or to enforce the TACS Mediation Settlement Agreement. Despite this, we and the Mediator may:

- process information relating to the use of the procedure;
- compile, analyse, keep and publish anonymous information and statistics from the use of the procedure; and
- monitor and review the use of the procedure;

as long as no personal or confidential information is published (except with the relevant person's or party's permission).

## **6 Protection of Hunt ADR**

6.1 We will not be liable for anything we do or fail to do in appointing the Mediator unless we act in bad faith. By accepting these rules, the parties agree to indemnify us against any possible legal action brought by any third party for anything we do or fail to do in appointing the Mediator (unless acting in bad faith).

6.2 We will not be liable for anything the Mediator (or his employees or agents) does or fails to do when acting as Mediator under these rules. By accepting these rules, the parties agree to protect us against any possible legal action arising from the Mediator's actions, unless we have acted in bad faith.

## **7 Mediator's protection**

7.1 The Mediator (and his or her employees or agents) will not be liable for anything they do or fail to do in meeting their responsibilities as Mediator, unless they act in bad faith. The parties

will indemnify the Mediator and any assistant against any possible legal action arising from their actions.

## **TACS Mediation Information Notes**

We designed TACS Mediation to help parties involved in commercial disputes involving businesses operating in and around the travel industry to have disputes resolved by mediation.

The value of TACS Mediation is that it reduces the time, cost and uncertainty of legal action. Preparation is the key to achieving successful results through any mediation process.

The following information notes set out the basic steps of preparing for TACS Mediation.

### **The TACS Mediation process**

The TACS Model Mediation Procedure describe the formalities of mediation. However, as mediation is non-binding and can be ended at any time, the parties stay in control. If a party is representing a company or organisation, they should have the authority to settle the case.

Although each mediator has his or her own style of mediation, sessions are usually informal. Before the session, the Mediator will communicate with the parties and explain their approach and any preference he or she has in how cases should be presented.

### **Confidentiality**

We will not accept and action a request to use TACS Mediation unless we have confirmation that all parties are willing to take part and that the TACS Mediation fees are paid in advance of the mediation. It is essential that all parties, and the Mediator, sign the TACS Mediation Agreement at or before the start of the mediation session. This will confirm the confidentiality of all information provided during the mediation and will explain that the information cannot be used later against someone in court or in other proceedings such as arbitration. During the mediation, the Mediator will get a party's permission before passing on information they revealed privately.

### **Preparing for TACS Mediation**

To prepare for TACS Mediation the parties should:

- Make a list of the critical issues in dispute. This will allow them to focus the negotiation on those issues.
- Make sure they have all the information they need about liability and damages before the session. If legal research is involved, bring copies of that research to the session to share with the Mediator.

- Evaluate the strengths and weaknesses of their case. They should consider what conclusions a judge or arbitrator would make. They should also consider what expectations are realistic, based on the evidence available. This allows for a balanced approach to the case.
- Consider what information about their interests and the facts of the case they want to give to the Mediator, and what information they want to give to the other party. (Usually, telling the Mediator everything helps to get a successful settlement.)
- Be prepared to talk to the Mediator, before the session, about their approach to the case and what information they believe they and the other parties need.
- Prepare a simple summary of their case.
- Be prepared to present, as an opening statement, the facts of the case, the issues in dispute, the damages claimed and other relevant factors.
- Consider whether to give the Mediator a confidential statement which includes their thoughts on what criteria they will use to decide whether any proposed agreement is fair, how they think the other party realistically views their chances of success, and what they think the other parties may view as a fair outcome for all sides.

### **Developing a negotiation strategy**

Although the Mediator will meet both parties to communicate offers, each party should have a clear idea of how they want the negotiation process to proceed. They should also consider how to make their proposals appeal to the other side.

To develop a negotiation strategy each party should do the following.

- Review the negotiations to date so they know where to begin, or where the other parties might expect the negotiations to begin. This is a good opportunity for the parties to remind themselves of their shared goals.
- Determine 'wants' and 'needs'. These are the things that motivate people to change their positions in a negotiation. A party's position is something they have decided upon, while their interest is what caused them to decide that.
- Consider what's at stake. Each party should evaluate their case through information gained through research or studying the decided cases.
- Put forward favourable views. Negotiation is a series of communications in which the parties try to alter each other's perceptions of how they view the situation. To be successful, each party must be able to manage the information the other party receives. They do this by listening actively, respecting the other party's claim, posing arguments, making proposals and offering alternatives.

### **Having authority to settle**

Before the mediation each party should make sure they have the resources, power and authority to settle the dispute.



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## Payment Form

This Payment Form is for use by applicants applying to use TACS Mediation. Payment will be taken using secure WorldPay facilities which comply with all relevant data protection legislation. All information recorded on this form is necessary in order for us to properly process a payment and this form will be destroyed once payment is taken. Please complete the form carefully in block capitals.

### Personal Details

Name \_\_\_\_\_

Email \_\_\_\_\_ Telephone \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

### Payment Details

Payment Method (state Credit Card or Debit Card) \_\_\_\_\_

Amount to be taken including VAT is (delete as appropriate) £1,140 | £2,340 | £3,540

Name on Card \_\_\_\_\_

Card Number \_\_\_\_\_

Security Code \_\_\_\_\_ Start Date (if shown) \_\_\_\_\_

Expiry Date \_\_\_\_\_

Please upload this form with the Mediation Notice to the Platform or email with your application to [admin@travelarbitration.co.uk](mailto:admin@travelarbitration.co.uk).