

Mediation Procurement:
Service Description/ Specification

Background

The NHS Litigation Authority (NHS LA) is a Special Health Authority and an arm's length body (ALB) of the Department of Health established in 1995. The NHS LA is a not-for-profit part of the NHS which provides:

- Indemnity cover for clinical and non-clinical liabilities for the NHS in England;
- Learning from claims and things that go wrong in the NHS;
- Legal and professional services;
- Dispute resolution between commissioners and contractors; and
- Help for healthcare providers and practitioners in the performance management of doctors, dentists and pharmacists through advice, training and support.

The NHS LA ensures that claims for compensation involving the NHS are resolved fairly and efficiently by experts in the field. It offers an impartial tribunal service via the Family Health Service Appeals Unit (FHS AU) for contractor disputes and supports the service by resolving concerns about the performance of doctors, dentists and pharmacists via National Clinical Assessment Service (NCAS). In doing so, it balances the interests of patients, NHS staff and the taxpayer and supports the NHS.

Vision and Values

Any successful bidder is expected to operate in accordance with the vision and values of the NHS LA in all their contacts and written and oral communications.

- **Professional**
We are dedicated to providing a professional, high quality service, working flexibly to find effective and efficient solutions.
- **Expert**
We bring unique skills, knowledge and expertise to everything we do.
- **Ethical**
We are committed to acting with honesty, integrity and fairness.
- **Respectful**
We treat people with consideration and respect, and encourage supportive, collaborative and inclusive team working.

Attributes of Mediators

The NHS LA expects mediators to have the following personal attributes:

- Significant experience of conducting mediations in personal injury and clinical negligence claims and/or the mediation of legal costs.
- Ability to work effectively with a range of clinical and non-clinical staff and stakeholders.
- Excellent oral and written communication skills.
- A thorough understanding, commitment and respect for equality and diversity.
- Ability to deal with complex issues confidentially.
- Flexible time management and the ability to meet deadlines.
- Willingness to liaise in a timely manner with a range of stakeholders.

The following requirements are **mandatory**:

- 1.1.1 Delivery of high quality mediation services for the resolution of disputes arising from incidents, litigated and pre-action clinical negligence and personal injury claims and/or the high quality delivery of mediation services for the resolution of disputes arising from the recoverability of legal costs.
- 1.1.2 Registered mediation providers and/or registered mediators of the Civil Mediation Council.
- 1.1.3 The operational capacity in terms of personnel and infrastructure to cover the NHS LA's claims geographically.
- 1.1.4 The ability and capacity to handle confidential and sensitive information in a secure environment and to demonstrate compliance with the information governance requirements of the Department of Health (DH), NHS and Cabinet Office, as well as those in statutory and common law.
- 1.1.5 Compliance with the NHS LA's policies and procedures relating to, but not limited to, staff vetting, security and equality and diversity; below is a link to the NHS LA's published policies:
<http://www.nhs.uk/AboutUs/Pages/Policies.aspx>
- 1.1.6 Suppliers shall be required to interact securely and remotely with the NHS LA's bespoke Case Management System (CMS) and to utilise its Document Transfer System (DTS).

1.2 The following services are **desirable**:

- 1.2.2 Delivery of training to NHS LA staff and the NHS LA's legal panel firms, at no cost to the NHS LA.
- 1.2.3 Contributions to the NHS LA's publications, extranet and website content

1.2.4 Speakers at conferences and seminars hosted by the NHS LA

Tenders should also include offers of additional ‘value added’ services at no cost to the NHS LA not mentioned above

Allocation of work

The NHS LA will not guarantee volumes of work.

All instructions will proceed in accordance with the NHS LA’s mediation procedure. The supplier will receive written instructions from the NHS LA directly, via its legal panel or from members of the NHS LA’s schemes and shall take the following action.

- Assign a Case Manager within 3 days of receipt of instructions to provide logistical support and guidance to the parties throughout the process;
- Draft the mediation agreement and submit it for review by the parties and prepare the final form for signature, incorporating any agreed amendments; the Supplier shall use the form of model mediation agreement attached as Appendix 1 (or such other form as is notified by the NHSLA to the Supplier from time to time).
- Appoint the mediator with the agreement of the parties from a mediator selected from the organisation. The supplier shall seek NHS LA approval of all new mediators joining the supplier organization who wish to join the NHS LA’s panel.
- The supplier will only appoint a mediator who, in their view, possesses the relevant skills and experience to mediate the dispute for the parties effectively, and who will comply with such code of conduct as is endorsed by the Civil Mediation Council from time to time (which is currently the European Model Code of Conduct for Mediators) and the supplier’s code of conduct. Any appointed mediator will be required to confirm immediately to the supplier if there is any matter which might prevent them from complying with the code of conduct relation to the mediation of the dispute, such as a conflict of interest. The supplier will then notify the parties of any such matter immediately it is disclosed to them.
- Facilitate agreement as to the date, venue and start time for the mediation.
- Mediations will not take place at the NHS LA’s premises. The supplier will ensure that the parties will have a private room for confidential consultations on their own and with the mediator during the mediation and a further room large enough for all parties to meet with the mediator jointly.
- Organise delivery of case documentation to the mediator.
- Send a feedback questionnaire to the parties following the mediation; the Supplier shall use the form of questionnaire attached as Appendix 2 (or such other form as is notified by the NHSLA to the Supplier from time to time).
- Provide a final Invoice for payment within 30 days of the date of the mediation. The NHS LA will pay the supplier within 30 calendar days of receipt of a valid Invoice.

Service Levels and performance

The NHS LA will measure the quality of the supplier's delivery at regular meetings with the NHS LA's Head of Claims Quality or a nominated deputy at the NHS LA's London offices.

The supplier shall provide the NHS LA with a quarterly service report on:

- The number of mediations completed during that quarter.
- The anonymised feedback received from participants and score for the mediator's performance collated from the outcome questionnaire.
- Any identified issues or barriers to a successful mediation.
- The response time in arranging mediations.
- The number and outcome of complaints against the supplier.
- 'Value adds' delivered at no cost to the NHS LA e.g. hours of training.

Appendix 1
Model Mediation Agreement

Model Mediation Agreement National Health Service Mediation

THIS AGREEMENT dated **IS MADE BETWEEN**

Party A

Click here to enter text.

of Click here to enter text.

Party B

Click here to enter text.

of Click here to enter text.

(together referred to as “**the Parties**”)

The Mediator

Click here to enter text.

of Click here to enter text.

(a term which includes any agreed **Assistant Mediator**)

and

in relation to a mediation to be held

on Click here to enter text.

at Click here to enter text.

(“**the Mediation**”)

IT IS AGREED by those signing this Agreement THAT:

The Mediation

1. The Parties agree to attempt in good faith to settle their dispute at the Mediation and to conduct the Mediation in accordance with this Agreement and consistent with the [supplier name] and Mediation Procedure National Health Service Mediation) and the Civil Mediation Code of Conduct for Mediators current at the date of this Agreement.

Authority and status

2. The person signing this Agreement on behalf of each Party warrants having authority to bind that Party and all other persons present on that Party’s behalf at the

Mediation to observe the terms of this Agreement, and also having authority to bind that Party to the terms of any settlement.

3. Neither the Mediator nor [name of supplier organisation] shall be liable to the Parties for any act or omission in relation to the Mediation unless the act or omission is proved to have been fraudulent or involved wilful misconduct.

Confidentiality and without prejudice status

4 Every person involved in the Mediation:

4.1 will keep confidential all information arising out of or in connection with the Mediation, including the fact and terms of any settlement, but not including the fact that the Mediation is to take place or has taken place or where disclosure is required by law to implement or to enforce terms of settlement or to notify their member organisation or the Department of Health.

4.2 acknowledges that all such information passing between the Parties, the Mediator and/or [name of supplier organisation] however communicated, is agreed to be without prejudice to any Party's legal position and may not be produced as evidence or disclosed to any judge, arbitrator or other decision-maker in any legal or other formal process, except where otherwise disclosable in law.

5 Where a Party privately discloses to the Mediator any information in confidence before, during or after the Mediation, the Mediator will not disclose that information to any other Party or person without the consent of the Party disclosing it, unless required by law to make disclosure.

6 The Parties will not call the Mediator or any employee or consultant of [name of supplier organisation] as a witness, nor require them to produce in evidence any records or notes relating to the Mediation, in any litigation, arbitration or other formal process arising from or in connection with their dispute and the Mediation; nor will the Mediator nor any [name of supplier organisation] employee or consultant act or agree to act as a witness, expert, arbitrator or consultant in any such process. If any Party does make such an application, that Party will fully indemnify the Mediator or the employee or consultant of [name of supplier organisation] in respect of any costs any of them incur in resisting and/or responding to such an application, including reimbursement at the Mediator's standard hourly rate for the Mediator's time spent in resisting and/or responding to such application.

Settlement formalities

7 No terms of settlement reached at the Mediation will be legally binding until set out in writing and signed by or on behalf of each of the Parties.

Fees and costs of the Mediation

8 The National Health Service Litigation Authority will be responsible for the fees and expenses of [name of supplier organisation] and the Mediator (“**the Mediation Fees**” subject to an agreement with the claimant to that effect being in place) including any provision for additional hours if the mediation process extends beyond the allocated hours.

9 Each Party further agrees that any court or tribunal may treat both the Mediation Fees and each Party’s Legal Costs as costs in the case in relation to any litigation or arbitration where that court or tribunal has power to assess or make orders as to costs, whether or not the Mediation results in settlement of their dispute.

Legal status and effect of the Mediation

10 This Agreement is governed by the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to decide any matters arising out of or in connection with this Agreement and the Mediation.

11 The referral of the dispute to the Mediation does not affect any rights that exist under Article 6 of the European Convention of Human Rights, and if their dispute does not settle through the Mediation, the Parties’ right to a fair trial remains unaffected.

Signed

Party A _____

Party B _____

Mediator _____

Appendix 2
Feedback Questionnaire

Mediation Feedback Questionnaire

1. Did you/your client achieve what you wanted from the mediation?
2. What did you/your client like about the way the mediator worked with you during the day?
3. Do you have any suggestions for how the mediator might have been more helpful?
4. On a scale of 1 to 5 where 5 is completely satisfied and 1 is completely unsatisfied how satisfied. Please rate the performance of the mediator.
5. Did you find this process useful and would you recommend it to others?