

BFA Dispute Resolution: Mediation Scheme Procedure

What is a mediation?

The mediator is an independent third party whose role is to facilitate negotiations between the parties in dispute. The process is 'without prejudice' which means parties are not bound to settle their dispute and can walk away at any stage. The mediator does not give an award or make a decision, but any settlement agreed by the parties will be recorded in writing and will be final and binding.

Should the British Franchise Association (BFA) be contacted by a party involved in franchise a dispute and that party wishes to use the BFA Mediation Scheme, the following procedure will be followed.

1. The referring party will be requested to complete the BFA's mediation application form and to provide the following details:
 - the names, addresses, telephone and e-mail addresses of the parties,
 - a brief description of the dispute and copy of the relevant franchise agreement,
 - details of the parties' legal representation (if known or at all),
 - deposit of £250+VAT paid if the applicant or respondent franchisor is a BFA Member. £400+VAT if not.
2. On receipt of an appropriately completed application form and deposit, the BFA will contact the referring party or parties acknowledging receipt. If the application form has not already been completed by the other party or parties, the application form will then be referred to the respondent party or parties for completion, and payment of their deposit of £250+VAT (£400+VAT if the franchisor is not a BFA member) is taken.
3. If the respondent party declines to mediate then the applicant's deposit will be refunded to them.
4. On receipt of the fully completed mediation application form and both deposits, the BFA will contact each of the parties to:
 - provide details of the procedure to be followed,
 - nominate potential mediators,
 - identify any other issues or matters which should be made known or require urgent attention,
 - Assess potential convenient dates for the mediation.

Please note that participation in the BFA's Mediation Scheme is entirely voluntary and not compulsory.

5. The BFA shall nominate mediators based on their experience, availability and taking into consideration that there is no conflict of interest between them and either party. Both parties will be invited to agree a mediator and in default of agreement the BFA may appoint one.
6. On receipt of the above information the BFA will contact all of the parties (including the mediator) to establish a suitable date, time and venue for the mediation. The parties should thereafter confirm to the mediator the number of persons attending and their status and titles.

7. The BFA will discuss costs to the parties. The fees for the mediation are set out in the mediation agreement which will then be provided.
8. The mediation fees shall be paid to the BFA, prior to the mediation meeting. Unless the parties agree otherwise, the costs and any expenses of the mediation will be split equally between the parties and paid at least 5 working days prior to the mediation.
9. The parties must sign and return the mediation agreement once their mediator is appointed. This shall be returned with the mediation fee prior to the start of the mediation meeting. The mediation cannot proceed until the completed and signed mediation agreement has been returned to the BFA and the mediation fees paid in full.
10. The mediator will be encouraged to contact the parties prior to the mediation to discuss briefly any issues or concerns that the parties may have concerning the mediation process. The mediator may also request that the parties in dispute prepare additional documents or provide further information.
11. The mediation will then take place on the appointed day. As soon as is practicable thereafter, the mediator will inform the BFA in writing whether or not the mediation has been successful. The mediator will respect the confidentiality of the parties to the mediation at all times. Please be assured that the whole process and the mediation will be treated in the strictest of confidence.