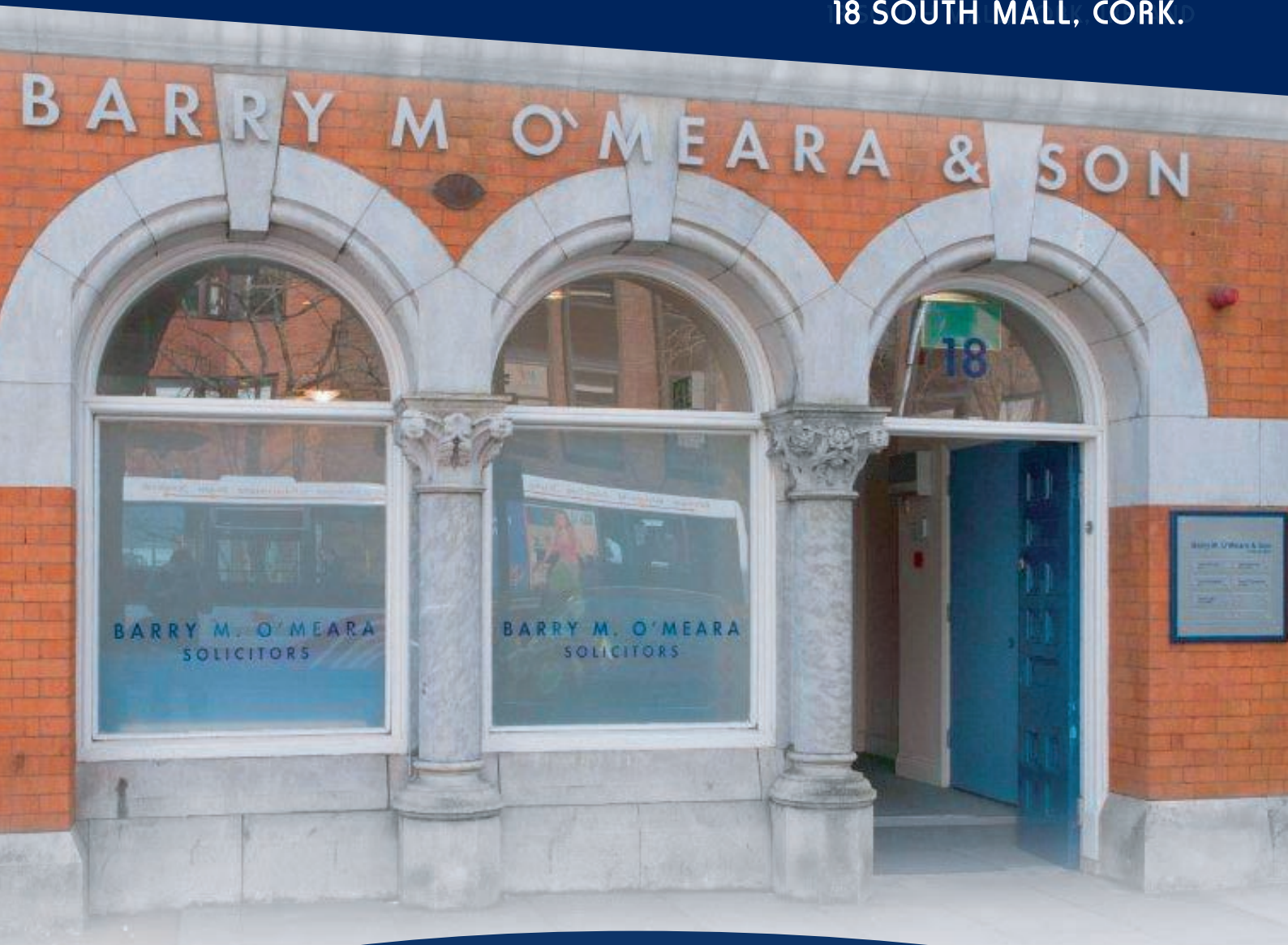


# Barry M. O'Meara & Son Solicitors

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online information:

## COMMERCIAL MEDIATION

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## Commercial Mediation

Commercial Mediation has been on an upward curve in Ireland over the past 5 to 10 years as an alternative mechanism for dealing with commercial disputes between parties instead of going to Court or to Arbitration.

With the introduction of new Legislation it is now within the power of the Courts to direct parties to a court case to engage in Mediation in an effort to try and settle their particular dispute and, accordingly, the importance of mediation has risen to new levels.

The main advantages of mediation are as follows:-

1. Mediations are held in private.
2. Mediations are confidential to the parties.
3. Mediations are informal.
4. A Mediation Agreement is an agreement which is the work of the parties themselves rather than an agreement imposed on them.
5. A successful Mediation can effect a serious saving in Legal costs.
6. A successful Mediation can save the on-going commercial relations between the parties in dispute and indeed can often subsequently lead to an even better and constructive relationship between the parties in their day to day business dealings.

Mediation can be entered into voluntarily by the parties themselves before or after the issuing of Legal proceedings. As referred to above, Mediations between the parties in dispute can also be directed by a Court. Once the parties have agreed to mediate they, normally through their Solicitors, will agree on a suitable Mediator and a date, time and place will be agreed at which to hold the Mediation. Mediations would normally be held on a neutral venue such as a city centre hotel.

At the outset of the Mediation the parties would normally convene in one room and the Mediator would set the tone of the Mediation and explain in broad terms how the day and the Mediation would be conducted. Once the Mediator has opened the proceedings a representative from each side will then be invited to give a brief statement.

At the conclusion of this segment the parties would then go to their own separate rooms and the Mediator would go back and forth between them in an effort to try to broker a Mediation Agreement. It is absolutely not the job of a Mediator to “hurry things along”.

The Mediator should give plenty of time to explore the nature of the dispute and the positions being taken by each party, identifying the precise areas of dispute and possible areas of ultimate agreement before moving on to the negotiation phase and ultimately, the concluding phase and, hopefully, to a Mediation Agreement being written up and signed off by the parties to conclude the day.

Mediations are informal and are held strictly on a without prejudice basis [anything said at the Mediation cannot subsequently be used in evidence in a Court case in the event of an unsuccessful Mediation].

Mediation provides a forum for the parties themselves to express their views, fears and aspirations in a forthright manner directly to the Mediator and, more often than not, the presence of their Legal Adviser is very much secondary to their own presence.

On reaching a successful Agreement the Agreement is then reduced to writing and signed by the parties and witnessed by their respective Legal Advisers. Only at that point does the Agreement become legally binding on the parties and can be relied on in future proceedings.

Another advantage of a Mediation is that any Agreement brokered does not need strictly to be confined to the areas in dispute and can identify other areas of the on-going commercial relationship between the parties which perhaps could be brought in to broker a successful Agreement such as the promise of additional business in return for giving way on a particular point in the dispute itself.

Needless to say, if parties to a dispute recognise and take the appropriate steps either before proceedings are issued or, as often happens, very shortly after proceedings issue, to set up a Mediation, there will have a huge potential saving on Legal costs which can escalate horrendously following the issue of Legal proceedings and as such proceedings progress to a Court hearing.

Overall, wherever possible in a commercial dispute, it is highly recommended that the possibility of holding of a Mediation be looked into by the parties as soon as practicable following the emergence of the dispute and, wherever appropriate and possible, it is incumbent on Legal advisers to advise their respective clients accordingly.

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## Your Contact:

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If you wish to discuss any of the above issues or any other family law issues that arise, please contact **Simon Murphy** at [simon.murphy@bmomeara.ie](mailto:simon.murphy@bmomeara.ie) or telephone 021-4273305

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