Mediation Information

What is Mediation?

Mediation can be a useful way of solving a dispute or a disagreement and finding a solution. It allows the people involved to make their own decisions about how to move forward for a more positive future. Mediation is a flexible process and can be used in a wide variety of situations, including:

- at work
- in your neighbourhood
- in your family
- issues involving contracts
- consumer or debt issues
- situations involving planning and/or the environment
- housing issues

Mediation involves an independent third party, the mediator, assisting people to have a discussion to help them find a solution to the issues that they are facing. The mediator helps people work out and express what their issues are. They then help to consider what the options are for moving forward. These options are then discussed and used to work out an agreement.

With the help of the mediator, the people with the dispute decide whether they can resolve things and what the solution should be. The mediator does not take sides or make judgements. The mediator will make sure that everyone gets a chance to tell their version of events, hear the other side, work through the issues that are important to them and make an agreement. The parties to the mediation are in control of finding the solution.

Mediation is a confidential process where nothing will be discussed with anyone outside of the mediation meeting, unless agreed otherwise by everyone involved.

Mediation can be a practical alternative to more formal methods such as grievance and complaints or going to court. If the people involved are unable to reach an agreement, they can still go to court, if this is appropriate in the circumstances. The details of what went on in the mediation will not be discussed at a court hearing.

If you are unsure if your dispute would benefit from mediation or, or you would like further information or clarification, please contact the **Scottish Mediation Helpline on 0131 556 8118**.

scottish mediation

Frequently Asked Questions

SECTION 1: WHY MEDIATION?

What are the benefits of mediation?

Mediation:

- helps people to solve problems that they are facing
- is confidential, unbiased and voluntary
- encourages early resolution of disagreements
- puts the people involved in control of the outcome
- is less formal than grievance and complaints procedures or court proceedings
- is less stressful
- could be cheaper
- could resolve your dispute quicker
- is less formal than grievance and complaints procedures or court proceedings
- shows that you are keen to resolve your dispute amicably

Why do people choose to mediate?

There are a number of reasons why people choose to mediate, including:

- they want to maintain a relationship with the people they have a dispute with.
- they want the dispute and settlement to be confidential.
- they are neighbours or businesses who deal in the same local area or type of work.
- they want to stay in control of the process
- they are worried about the costs of going to court or the delay in waiting for formal grievance or complaints processes
- there may be outcomes that can be agreed which formal processes could not award.
- they want to look for a settlement rather than take the risk of a judge finding against them.

Is mediation successful?

Yes – mediation projects show that not only is mediation successful in reaching agreements, but that people are more likely to stick to agreements made in mediation than when something was decided in court (see 'what is the success rate of mediation?' below).

Mediation is a voluntary process and only takes place if both parties agree that they want to find a solution. This explains the high success rate of mediation.

SECTION 2: WHAT'S INVOLVED?

Do I have to go to mediation?

No-one can force you to try mediation, however, it is likely that it will help you to solve your disagreement.

Will I have to do or agree to anything I do not want to do?

No – the process of mediation is totally voluntary. You do not have to agree to anything in mediation that you do not want to.

Is offering to mediate a sign of weakness?

No – there is nothing to lose by agreeing to mediate, even if you believe you are in the right or have a strong case. Mediation will help you to find a solution to the issue.

How long does it take to organise a mediation?

You will arrange this with the mediator. It is normally down to everyone's availability.

When is the best time for mediation to take place?

Mediation can be considered at any stage in a dispute or a conflict. Mediation can be helpful at any time if communication becomes difficult or relationships break down, or if there are practical arrangements that need to be resolved, such as child access arrangements following a separation.

Even if your dispute has already been taken to court, you can still consider using mediation at any stage, if both parties wish to mediate. The court will need to be told so that they can delay the court action until mediation has taken place. If you would like more information about delaying a court action (described as 'staying an action') for mediation you should contact your solicitor or the court at which the action is taking place.

Will I need to send anything to the Mediator?

The mediator will let you know if they need any documents from you before the mediation takes place.

If you would like to use any documents, photos or other relevant items as part of the discussions, it is suggested that you take copies of these with you to the mediation.

Where will the mediation take place?

This will be agreed between the parties and the mediator. Sometimes the mediator will have a venue available and other times a room will be found in another location. This will be arranged by the mediator and agreed with all parties in advance.

How long will the mediation take?

This depends on the situation and the people involved. Sometimes an agreement can be reached in one hour-long meeting, and other times more time is required. Often more time is needed for more complex situations. Once the mediator has discussed the situation with you, they will have a better idea of the likely time involved.

What will happen on the day?

On the day of the mediation meeting you will all meet in the agreed place at the agreed time. The mediator may meet with you separately prior to any joint meetings. The mediator will introduce the meeting and explain what is going to happen. The mediator will then ensure that everyone involved has time to explain the situation and what has been happening from their point of view. The mediator will then help you to discuss the issue and to find an agreement that everyone can live with. Should an agreement be reached, the mediator will usually write up what has been agreed and ask everyone to sign it.

Can I leave a mediation?

Yes – at any time, although most mediators will ask you to give them a few minutes before you do so to discuss your reasons and to see if there is another suitable option.

Can I bring someone with me to mediation?

It depends on the circumstances. You should discuss this with the mediator before the mediation takes place.

Does mediation always involve a face-to-face meeting?

It is sometimes possible for mediation to take place using another format, for example, online or over the telephone. Your mediator will discuss this with you and decide on the most appropriate format for your situation.

SECTION 3: THE OUTCOME

Who decides the outcome of the mediation?

The parties decide the outcome of the mediation. The role of the mediator is to help parties reach a solution to their problem and to arrive at an outcome that both parties are willing to accept.

What happens if there is no agreement at the end of a mediation?

Mediation is not suitable for every case, but it can still help to settle some of the issues in a dispute. If appropriate, you can still take your case to court if mediation does not work. All discussions during the mediation process are 'without prejudice' – in other words, anything said in the mediation cannot usually be used later in court or another legal action.

What is the success rate of mediation?

Mediation has a high success rate. Research into mediation pilots at Glasgow and Aberdeen Sheriff Courts, supported by the Scottish Government, found that 90% of all mediated cases reached an agreement and then implemented that agreement. This is compared to a rate of 67% implementation of judgements made in traditional court procedures.

To view the Report on Evaluation of the In Court Mediation Schemes in Glasgow and Aberdeen Sheriff Courts, please use the following link: http://www.scotland.gov.uk/ Publications/2010/04/22091346/0

SECTION 4: COSTS

How much does mediation cost?

The costs of mediation vary and depend on the type of mediation involved, the type of dispute and who is providing the mediation. Mediation providers will be able to advise on the costs they will charge for mediation. There are some mediation services, such as some community and family mediation services, which are either low cost or free. The Scottish Mediation Helpline (0131 556 8118) can provide information on how to access mediation and mediation services.

If you decide to set up a mediation through the Scottish Mediation Helpline, the cost is likely to be £125 per hour (please note that VAT may be charged and there may be an additional cost for the venue). The length of time the mediation will take is likely to depend on the complexity of the dispute. Before you agree to go ahead, a mediator will be able to give you a more accurate idea of time and costs for the mediation.

Who pays for the mediation?

If there is a charge for the mediation, this is usually shared equally between the people involved, unless stated otherwise by one or all parties.

You may be eligible to receive Legal Aid to cover the costs of mediation. For guidance please see a solicitor for more information or contact the Scottish Legal Aid Board on 0845 122 8686.

Do I pay if we do not reach an agreement?

Yes – the fee is paid for the mediator to facilitate the mediation, regardless of the outcome. An agreement is reached in the majority of cases but there can be no guarantee of success.

SECTION 5: THE MEDIATOR

What is the role of the mediator?

The role of the mediator is to help parties reach a solution to their problem and to arrive at an outcome that both parties are able to accept. The mediator will not take sides. The focus of a mediation meeting is to reach an agreement that both parties are able to live with.

Mediators come from many different backgrounds and are all trained and experienced in helping people settle their disputes.

What training and experience will the mediator have?

In order to be a Scottish Mediation Registered Mediator, mediators must meet practice standards. These standards stipulate a number of criteria that mediators must satisfy before being admitted onto the Scottish Mediation Register:

- Adequate training from a trainer or team of trainers with appropriate experience
- A requirement of initial mentoring or co-mediating to gain experience
- Post-training Continuing Professional Development (CPD) and practice support
- Adherence to an appropriate Code of Conduct
- An appropriate system for addressing concerns and complaints
- Appropriate indemnity insurance

How do I find a mediator?

There are a number of options to find a mediator in Scotland:

- Call the Scottish Mediation Helpline on 0131 556 8118
- Search the Scottish Mediation Register by using 'Find a Mediator' on the Scottish Mediation website: www.scottishmediation.org.uk

Alternatively, contact the office where we will be pleased to assist you.
Email: admin@scottishmediation.org.uk/Post: 18 York Place, Edinburgh, EH1 3EP

SECTION 6: LEGAL ADVICE

Will the mediator offer legal advice?

No – if you feel that you may need legal advice you should make your own arrangements before the mediation. The mediator is an independent third party and must not take sides. Whilst you may be very open with the mediator, they will not offer any advice.

Can I have a lawyer present?

You may feel that your dispute is complicated and that you would prefer legal advice throughout the mediation. If you would like a lawyer to be present, you should discuss this with the mediator in advance of the mediation.

In addition to the mediation fee, if you do have a lawyer present, you are responsible for paying your own legal costs as well.

Many parties choose not to bring legal representation to the mediation and still manage to resolve most, if not all, of their dispute.

Can you give me the name of a good lawyer?

If you are looking for a solicitor then we suggest that you contact the Law Society of Scotland.
Web: www.lawscot.org.uk
Email: lawscot@lawscot.org.uk
Tel: 0131 226 7411
Text phone: 0131 476 8359
Fax: 0131 225 2934

Where can I find the telephone number for my local court?

To contact your local court, please visit the Scottish Courts website: http://www.scotcourts.gov.uk/locations/index.asp where you can search for the contact details of your local court.

SECTION 7: COMPLAINTS

How do I complain about a mediator?

In the unlikely event that you have cause to complain about a Registered Mediator please contact Scottish Mediation on: admin@scottishmediation.org.uk or 0131 556 1221, or refer to the complaints procedure on the Scottish Mediation website: http://www.scottishmediation.org.uk/.

If your mediation has been arranged via an alternative mediation service, such as a community mediation service, they will have their own complaints procedures. Please speak to them directly.

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