

Finding and choosing a mediator

Thinking about mediation?

This leaflet is for you if you've heard about mediation and you're interested in trying it to resolve a dispute you are involved in. Or perhaps you are being asked to mediate by someone you have a dispute with.

This leaflet will help you to understand:

- What mediation is and how it works
- How to find a mediator
- How to choose the right mediator for you

For more detailed information on the pros and cons of mediation see our other leaflet 'Why use ADR? Pros and cons'.

We try to explain any technical or unusual language as we go along. But you may also find it useful to check out the jargon buster at the back of this leaflet, where we explain some of the terms you may come across when looking into mediation.

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Note: Fees information in these leaflets applies to England and Wales only.

What is mediation?

In mediation, an independent third party (the mediator) helps you and the other person with the dispute to try to reach an agreement. The people with the dispute, not the mediator, decide whether they can resolve things and what the outcome should be.

There are many types of mediation. All of them have the following in common:

- It is voluntary – it is your choice whether to mediate or not.
- It is private and confidential – what you talk about in mediation can't normally be used in court (if it comes to that) later unless you both agree.
- You and the other party make the final decision on how to resolve your dispute.
- The mediator is impartial – he or she does not take sides or say who is right and who is wrong.
- The mediator is independent and is not working on behalf of either party (you or the other side).

What happens at mediation

Mediation usually takes place at a face-to-face meeting between you and the person you have the dispute with. But in some cases the parties stay in separate rooms and the mediator moves from room to room with ideas and responses (this is sometimes called 'shuttle mediation').

Some mediations are done by telephone, either in separate calls between the mediator and the parties or by a telephone conference call, in which everyone can speak together. The small claims mediations in court are usually done by telephone rather than in face-to-face meetings, and they last about an hour.

Most mediation meetings are concluded within one day and take from two to ten hours, but it is possible for mediation to take place in several meetings over a few months or weeks, particularly family mediation.

Where it happens

Ideally, mediations take place in a neutral venue – a place that is not associated with one side or the other. This might be a hotel or a community centre. Sometimes, however, they are held in the offices of one side in the dispute – such as a local authority’s offices, a workplace or a school. This only happens if both sides agree to it.

Many mediation providers have their own offices where mediations can take place. They can also arrange for mediations to take place in convenient locations near you and the other side. Mediators make sure the locations are accessible to people who have special needs including mobility impairments.

When mediation takes place over the telephone, you can be at your home or work.

How it works

Mediation is more than just an informal chat around a table. Mediation meetings have a structure. There are a number of stages, which usually include:

- Working out what the issues are – the mediator will start by finding out from you what you think are the important issues that need to be sorted out. Sometimes this happens before the mediation.
- Asking questions and discussing different perspectives – mediation can be an opportunity to tell the other side what you think happened, to hear their view of it, and to ask each other questions.
- Working out what your options are – there is always more than one solution to a problem. Mediation gives you the freedom to think about a wide variety of options and possible solutions. The mediator will help you to explore all the choices open to you, and to think about what the advantages and disadvantages of each might be, but won’t tell you what to do.

- Working out an agreement – the mediator will make sure that you and the other party are both clear about what you have agreed, and may put together a document setting it out in writing. If you both agree to it, you can make it legally binding.

The mediator's role

The mediator is there to help the discussions run smoothly and to manage this process. The mediator doesn't decide the outcome and doesn't make a legal ruling. The outcome is decided by you and the other side.

Styles of mediation

Different mediators have different approaches to their role. The main difference is how much the mediator controls what happens. The most common models in the UK are:

- 'facilitative' mediation, in which the mediator does not steer the parties towards any particular settlement. Some facilitative mediators feel it is appropriate to offer suggestions; others do not. Another way to describe this style of mediation is that the mediator is in charge of the process, while the parties are in charge of the content.
- 'evaluative' mediation, in which the mediator makes suggestions as to the likely outcome of the dispute. If you are looking for a mediator to suggest a resolution, you would probably be more satisfied with an evaluative approach than a facilitative one.
- 'rights-based' mediation, in which the mediator ensures that any mediated agreement reflects statutory rights and legal entitlements. However, the decision to reach an agreement is still yours.

It is worth thinking about which style you would find most helpful, and perhaps discussing this with the mediator in advance.

Is it for me?

Mediation might not be right for you or for your dispute. Some things that might suggest mediation isn't right for you include:

- If you want or need a legal ruling – for instance, do you need a decision about whether a law was broken or a contract was broken?
- If you need an injunction (an order from a court) to make someone do something or to stop someone from doing something immediately – for instance, are you at risk of losing your home?
- If you want or need an investigation of the facts.
- If the other party is unlikely to take part in mediation in good faith.
- If you are afraid of the other party.

In these cases, you might need to consider going to court. For more information on going to court see Advicenow's guides:

<http://www.advicenow.org.uk/how-to/going-to-court,10340,FP.html>

Other options

Other options for resolving disputes include:

- using an ombudsman
- using arbitration
- making a claim to a tribunal

You can also decide not to do anything – for example, not to take a complaint any further. Only do this if you are sure it won't make the problem worse. If someone is taking action against you (because they say you owe them money, for example), it's best to get advice before deciding not to do anything.

Not all of these are available for every type of dispute, however. You can find out more about these different options in our leaflet 'Why use ADR? Pros and Cons'.

Get advice

It is helpful to get independent advice about which option is best for you and your circumstances. You will need to consider:

- Are there time limits for making a claim to court or tribunal or making a complaint to an ombudsman? You don't want to try mediation, find that the case does not reach a settlement and then discover that you have missed a legal deadline.
- How much does each option cost – for example, in court fees, mediator fees or other charges?
- How much will it cost you to go to a hearing or mediation meeting – for example, in travel expenses, child care, lost earnings?
- Will the other side do what they say they will, or do they need to be forced to?
- If you are seeking payment of money, does the other side have money to pay you, if you win?

You can view a list of organisations that give advice here:

<http://www.advicenow.org.uk/finding-help-html,314,FP.html>

More information about deciding whether mediation is right for you see our other leaflet 'Why use ADR? Pros and cons'.

So you want to try mediation. Where to start?

You have decided that mediation is for you and that you want to try it to solve your dispute. The first thing you need to think about is what type of dispute or problem you have.

Family disputes

If you are going through a separation or divorce and are considering mediation for help, you would look for a family mediator. Family mediation is a specialist form of mediation, and you need someone who is trained and experienced in separation and divorce. It is not about getting back together and it is not the same as marriage counselling.

You can find out more about family mediation from the Family Mediation Council:

www.familymediationcouncil.org.uk.

Disputes with a neighbour

If you want to try mediation to help with a problem with your neighbour, you would look for a community mediator. Community mediation is usually offered in your local area. You can search a directory which includes community mediators at

www.intermedial.org.uk

Disputes with a business

If you have a problem with a company, or maybe someone owes you money, or you owe them money, you would look for what is known as a civil or commercial mediator, or use a court-based mediation service. You can find out more about civil mediation here:

[www.civilmediation.org/.](http://www.civilmediation.org/)

Disputes at work

If you think mediation might help with a problem at work, you would need a workplace mediator. You can get advice and help through ACAS, which offers a free telephone service that tries to help employees and their employers reach agreements. ACAS can also provide workplace mediators, although there is a charge for this. If you make a claim to an employment tribunal you might be offered mediation.

You can find out more about workplace mediation from ACAS here:

www.acas.org.uk/index.aspx?articleid=1680

and you can search for a workplace mediator on the website of the Civil Mediation Council:

www.cmcregistered.org/.

Other problems

There are other specialist mediation services for many types of problem – problems with schools and special educational needs; with your local council; with a housing issue such as homelessness; with discrimination.

Top Tip

There might be a specialist mediation provider that has experience with your type of problem.

Many mediators deal with a range of different types of disputes and some say they can handle any type of dispute. No doubt some can, but don't be afraid to ask mediation providers for examples of cases they have handled so you can get a feel for how well they understand your type of case.

Do I choose a mediator myself?

First, it helps to understand how mediators work. There are many different ways. Some work on their own, and you can contact them directly to find out more. Others work for a mediation-providing organisation, and you can look on the provider's website or contact them to find out more. They either tell you who will mediate your case, or they give you a list to choose from.

For example, if you have a problem with a company, or you are a business and you are having trouble getting an invoice paid, you might want to take out a small claim (if the claim is under £5,000). If the other side defends the claim, and it can't be resolved directly between you, you will be offered free mediation by the court. You won't have a choice of mediator.

Top tip

When you aren't paying for the mediator yourself, you often don't get to choose the mediator but you usually get a chance to say whether the mediator you've been given is acceptable to you. This is true whether the service is free of charge or the other side is paying for it. But especially if the other side is paying for the mediation, you have to feel reassured that this won't mean the mediator will take their side. So it's important to speak to the mediator yourself to be sure you feel the mediator is impartial.

When you don't get to choose a mediator

Sometimes you have a choice of mediator, and sometimes not.

If you use the small claims mediation service in court, for example, you don't choose your mediator. Instead, the court provides a mediator for your case.

Or, if you have a family dispute, your ex might have contacted a mediator, who then contacts you to see if you are willing to use mediation.

If you have a problem with a neighbour and decide to use your local community mediation service, the service will assign a mediator (or sometimes two mediators) to your case. They will want to check that you don't know the person they have given your case to – knowing one of the parties might make it hard for that person to be impartial, which is important for a mediator.

When you are paying for a mediator

If you are paying for mediation, you usually get a choice of mediator. There are various places to go to look for a mediator – we describe these in the following section. Most of these places are online, but you can also telephone. Sometimes you get to choose from a list of mediators, and you get some information about them to help you decide.

For more on what to look for in a mediator, see page 13

Places to look for a mediator

Deciding which mediator to contact can be difficult – unless you have heard of a particular mediator or mediation provider, it might seem hard to choose one. It depends on where they are and whether you feel they have the right kind of experience, as well as how much they cost. There is more information about how much mediation costs below, including questions to ask. But cost shouldn't be the only issue you consider.

Civil Mediation Directory

For disputes about a business or a contract, you can use the government's online Civil Mediation Directory to find a list of organisations that provide mediation. Civil Mediation Directory:

<http://www.civilmediation.justice.gov.uk/>

You put in your postcode and you will be given a list of mediation providers that cover your area. Some will be local to you, but others will be national providers.

You would then need to contact the providers yourself to make arrangements for mediation. If you contact a mediator through this Directory then they have to offer you mediation at a fixed price.

Family Mediation Directory

For family disputes, you can use the government's online Family Mediation Directory to find a list of mediators that specialise in this type of mediation.

Family Mediation Database:

www.familymediationhelpline.co.uk/find-service.php

Top tip

Word of mouth is always worth a try. Ask your friends, family and workmates if they have ever tried mediation and if so, would they recommend anyone. If you have a solicitor, you can ask them to help you find a mediator or suggest a mediator they know about. The final decision is yours, and you will still want to check out any possible mediator for yourself, but it gives you a head start.

Websites

If you are finding a mediator for yourself, you can also use the lists of mediators on various websites:

- The Law Society (for lawyers trained in mediation)

http://www.lawsocietyapproved.com/Civil_and_Commercial_Mediation.aspx

- The Bar Council (for barrister-mediators)

<http://www.barcouncil.org.uk/about-the-bar/find-a-barrister/mediation-directory/>

- Family Mediation Directory (for trained family mediators)

<http://www.familymediationhelpline.co.uk/find-service.php>

- Family Mediation Council (for trained family mediators)

<http://www.familymediationcouncil.org.uk/10.html>

- The College of Mediators (for trained family and community mediators)

<http://www.collegeofmediators.co.uk/>

- Civil Mediation Directory (for mediators in civil and commercial cases)

<http://www.civilmediation.org/about-cmc/15/accredited-mediation-providers>

- The Civil Mediation Council Registered (for trained workplace mediators and other mediation-providing organisations)

www.cmcregistered.org/

What should I look for? How do I know they are any good?

Where you have a choice of mediator, deciding which to use can be difficult. Mediators don't have to be licensed or have a particular qualification. And unlike lawyers or doctors, there is no single organisation that regulates mediation practice. In England and Wales there is not even a single body that can help you find a local mediation provider. However, all mediators should have some basic standards in place, covering training, a code of practice, complaints, and insurance. Later in this leaflet (see pages 15 - 16) we give details of websites which list mediators who meet the standards set by an umbrella body or other organisation.

There are some key things you should ask about when selecting a mediator.

- Check that the mediator and/or mediation provider has service standards (describing what you can expect from the service), a code of practice, a complaints procedure, and appropriate levels of professional indemnity insurance.
- Look for someone who has mediation experience and has dealt with the type of dispute you are involved in.

Top tip

CASE - the four main things you need to find out are (not necessarily in that order):

Cost - check what the total costs will be, including mediator fees, venue costs, travel

Availability - check how quickly a mediation can be arranged

Service standards and quality assurance - check that the mediator works to a recognised Code of Conduct and has service standards that let you know what to expect

Experience - check that the mediator has handled your type of case or similar and that she or he understands the context - such as workplace, education, consumer, family

- Make sure that the mediator can arrange a mediation when you need it – so check how available they are. If you have a legal deadline for issuing a claim and you are trying to mediate before issuing, you will need to know the mediation can be completed in time so you protect your rights if it doesn't sort things out at mediation.
- Find out how much it will cost – you can find out more about what to ask about mediation charges on pages 17–18.

Mediators don't have to be lawyers, but some good mediators are also lawyers. Remember that a mediator who is a lawyer won't give legal advice to either party; they are there as an impartial person. So don't rule someone out just because they are also a lawyer, or because they aren't! More important is whether the mediator has experience of the type of dispute or problem you have. Ask how many cases they've dealt with and how many of those were about the type of problem you want to mediate.

- Has the mediator completed a mediation training course provided by a recognised mediation trainer?
- How much practical mediation experience should the mediator have? There are a large number of 'qualified' or 'accredited' mediators who have completed a training course, but have little or no experience of actually conducting mediations.
- What other kinds of cases has the mediator handled, and were the parties satisfied? You can ask for references from people who have used the mediator before.
- Is the mediator impartial – in other words, are you confident that there is no conflict of interest and that the mediator has no interest in a particular outcome?
- What approach does the mediator use? Do you want a mediator who will manage your negotiations but not make recommendations, or one who will offer suggestions for settlement?

Places to go for particular types of mediators include various umbrella bodies for different areas of mediation practice:

Family mediation

The Family Mediation Council approves family mediation providers which meet its requirements. Family mediators who are trained and accredited by providers approved by the Council are listed on the government's Family Mediation Database:

<http://www.familymediationhelpline.co.uk/find-service.php>

Community mediation

There is no umbrella body for community mediation. To find a local community mediation service for neighbour disputes:

- search for your nearest community mediation service using an internet search engine
- get information from your local council; many community mediation services are funded by their local authority
- get information from your local telephone directory, library or CAB
- look at the Directory of UK Mediation which provides a searchable database of some community mediation services in the UK:

<http://www.intermedial.org.uk/>

Note that none of these options provides any quality assurance standards.

The College of Mediators is an independent professional body for mediators, which sets standards for training, supervision and practice, and keeps a register of mediators that meet these standards. Some (but not all) community mediators are accredited by the College and listed on their register:

<http://www.collegeofmediators.co.uk/>

Civil and commercial mediation

The Civil Mediation Council is a national organisation which represents and promotes civil and commercial mediation. It operates an accreditation scheme for civil and commercial mediation providers – but not for individual mediators. The accreditation scheme relies on self-certification by civil and commercial mediation services, and includes criteria for adequate training, insurance and complaints procedures:

<http://www.civilmediation.org/>

Fixed-rate mediation is available from providers listed on the government's Civil Mediation Directory, an online tool that helps you to locate a mediation provider for a money-based (commercial) dispute. All providers listed are accredited by the Civil Mediation Council.

Workplace mediation

You can get advice and help with trying to resolve employment disputes through Acas conciliation which offers free telephone conciliation. Acas can also provide experienced workplace mediators, though there is a charge for this:

<http://www.acas.org.uk/>

You can also locate workplace mediators through the Civil Mediation Council Workplace Mediation Register. This lists individual mediators and mediation providers:

<http://www.cmcregistered.org/>

Costs and paying for mediation

You will need to find out in advance how much the mediation will cost. Mediation can be very expensive, and may depend on the amount of money in dispute or the length of time the mediation takes. But it can also be free, and some mediations are paid for by one party, such as the employer or the local authority you are in dispute with.

If you use a mediator you contacted through the government's Civil Mediation Directory, the mediation is provided at a fixed, subsidised rate, which starts from £50 + VAT per party for a one-hour session for small claims (of less than £5,000), increasing to £425 + VAT per party for a four-hour session (for claims up to £50,000).

Some questions to ask mediators about charges are:

- Find out how the mediation fee is calculated. Is it worked out on an hourly or daily basis, or is it a flat fee? Do you pay more for a high-value dispute?
- You should also check if the fee quoted is per party, or per mediation, and what the charges include.
- Will you have to pay extra for the cost of the venue? Will there be VAT on top?
- Will you have to provide or pay for refreshments? The mediation may last a whole day!
- In commercial mediation the parties are often accompanied by a legal adviser but this is not always necessary. Do you want a legal adviser to attend? If so, how much will this cost you? Can you get help from an advice agency in your area? You should be aiming for a good balance – it probably won't be a good idea if one side has legal representation and the other does not.
- After a court hearing, it is usual for the losing side to pay the winning side's legal costs. In mediation, it is usual for each side to pay their own costs. But of course you can always agree something different between you at the mediation. Make sure you discuss this with your legal adviser and with the mediator.

If you have a solicitor and are eligible for legal aid, mediation costs can be paid for as part of your legal aid certificate. Ask your solicitor about this.

Some mediation providers, such as LawWorks, provide free or lower-cost mediations to parties who can't afford to pay and aren't eligible for legal aid. LawWorks:

http://lawworks.org.uk/lw_mediation

Some mediation is free of charge to one or both of the parties. For example:

- In England and Wales, mediation is offered free of charge by the courts to both parties in small claims that have been issued in county court.
- Community mediation is usually offered free of charge in neighbour disputes; the service is often funded by the local authority and local housing associations.
- Mediation in cases involving special educational needs is usually paid for by the local authority or school involved and there is no charge to the parents.
- For workplace disputes, mediation is often paid for by the employer.

Top tip

When contacting a civil mediation provider, it is important to mention that you located them through the government's Civil Mediation Directory, in order to get the fixed-fee rate. It is also important to check with the provider whether any additional charges will apply - such as the costs of room hire, travel for the mediator or administration charges.

Jargon buster

The jargon	What it means
Accreditation	A system of recognised qualifications; a mediator who is 'accredited' has those qualifications and meets those standards. Note there is no single accreditation for mediators, but most mediators who are said to be 'accredited' have been trained and meet standards of a particular mediation organisation.
Mediation agreement	This is a form or letter that both parties sign before starting mediation. It should explain how the mediator will work and ask each party to agree to things such as paying the mediator's fees and keeping the discussion confidential. It might also be where the mediator explains service standards, or what to expect from the service.
Mediation provider	An organisation that provides mediation; it usually has a panel of mediators from which it can appoint one for your case, and it handles all the setting up of the mediation.
Neutral	Mediators are sometimes described as 'neutral' or 'impartial', which means they do not take sides and they treat people fairly. 'Neutral' also sometimes refers to where mediation takes place – a 'neutral' place is one that doesn't belong to either party.
Party	Sometimes the people in dispute are referred to as 'parties' – meaning you and the other side. You might also hear parties referred to as 'claimant' and 'respondent'.
Service standards	Every mediator or mediation provider should have service standards that tell you what to expect from the service. It might be called something else, and it might be set out in a mediation agreement. If you haven't seen something like this, ask.
Umbrella body	Litigation usually means using the courts or tribunals. It can also apply to what goes on before a case goes to court, such as negotiation between solicitors representing parties in dispute.

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