



Online Mediation

A guide for practising mediators to manage disputes digitally

April 2020



Introduction

RICS adopts a robust, evaluative approach to mediation which is well suited to our area of specialisation: construction, property and land disputes. We appoint professionals with years of experience to help the parties analyse the situation in depth and reach a quick, pragmatic and commercially viable settlement. This is far better than letting it drag on or taking the matter to court.

In these unprecedented times, people are working remotely, and video conferencing is becoming the new normal. As we adjust to a digital approach, RICS online mediation could be the solution for you to manage your dispute and help you get to a pragmatic, cost effective and commercial settlement.

To meet this growing need, the RICS Dispute Resolution Service (DRS) is offering a new flexible, online mediation service.

With the current changes to the business world and the need to transform to a digital approach, online mediation has become increasingly popular. The entire process is conducted remotely using a digital platform. Unlike traditional mediation, the parties and the mediator will not meet face-to-face.

In this guide we will cover the following topics:

1. Tools needed
2. Setting up
3. Preparation
4. Guidelines
5. Documents
6. Help and support
6. Costs

This guide is designed to support mediators in arranging and being involved in remote procedures focussing on the use of video and audio conferencing.



Tools needed

Online mediation is an adaptable process and can be as simple or as complex as you need.

As a bare minimum you will need a telephone and email.

Mediations can work effectively using smartphones, but generally you get the most out of an online mediation if you use a tablet, laptop or desk computer. A headset or earphones with microphone are helpful because they cutdown any background noise.

Ideally though, you would benefit from access to a video-conferencing platform such as Skype for business, Microsoft Teams or Zoom. Most of these platforms will need you to download software. If your hardware is issued by your employer and does not host a video conferencing platform you will need to check with your system administrator if your system supports the download.

If you do not have access to any videoconferencing, DRS can help you.

Whilst not vital, complex mediations can generally work better if the participants have access to a large or double screen, to assist with viewing documents. Screen share facilities and a white board function to help with discussions and make the mediation run more smoothly.

Essential tools

- Smartphone, tablet, laptop or desktop computer
- Secure Internet connection

Supporting tools

- Headset or earphones with microphone
- Double screen to review documents
- Share screen and white board to share documents and facilitate discussion



Setting up

Virtual Rooms

In mediation proceedings, separate virtual breakout rooms for deliberations and discussions by parties are recommended. Party breakout rooms should never be visible or audible to people outside of the mediation to prevent the possibility of inadvertent communication or confidentiality. Should a party find that they are able to hear a separate discussion within a breakout room, they should report this to all participants immediately and cut the connection.

Some parties may have not used video conferencing previously, below are some helpful tips to ensure that all participants get the most out of a remote proceeding:

Lighting

It is important to ensure the surrounding area is well lit, this can be with natural or artificial light. Try to make certain that the light source is not shining directly behind you as this will make it difficult to see your face on screen.

Making eye contact

This creates a connection with everyone on the call. Try to resist the temptation to watch yourself in the corner of the screen.

Professional background

Ensure the area behind you looks professional, it is useful to remove any personal objects e.g. photographs from camera view.

Set virtual rooms for deliberation and discussion

Considerations for the video conference:

- Lighting
- Making eye contact
- Professional background
- Framing
- Microphone mute

Framing

Frame yourself in the camera, you can view what the participants will see in the corner of the screen. Try not to sit too close or too far from your laptop's camera.

Microphone mute

When taking part in the call try to get into the habit of muting your microphone when not speaking. This will help reduce any interruptions and background noise.

Preparation

Prior preparation and planning are the key to a successful mediation and elements of the mediation should be planned and agreed in advance.

Special circumstances, disabilities or illness of the participants

Every mediation is different, and many require different approaches or adjustments. The parties may have individual circumstances such as disabilities or illnesses that need to be taken into consideration.

Clear structure for the mediation and documents to be circulated

The participants need to be clear on the structure such as procedures to be followed. Schedules and deadlines should be organised prior to the event. This also includes any important information that should be circulated between all parties via email.

Extra timing to cover any technology issues

Parties will need access to a video-conferencing platform such as Skype for business, Microsoft Teams or Zoom. Technology, software, equipment and type of connection to be used in a remote proceeding should be agreed between the parties and tested with all the participants in advance of any meetings. Enough time should be allocated to any meetings to eliminate possible connection or other technical failures. The level of cybersecurity and security technology required should be discussed with the parties and taken into consideration and agreed.

Length of the mediation

Breaking it over two days may help maintain concentration and energy levels.

Prior planning requirements:

- Special circumstances, disabilities or illnesses of the participants
- Clear structure for the mediation and documents to be circulated
- Extra timing to cover any technology issues
- The length of the mediation
- Can any work take place prior to the mediation e.g. advance calls
- How the settlement will be executed between the participants

Advance calls

A significant amount of work may be completed in advance of the mediation.

Settlement

Agree in advance how a settlement agreement will be executed. Talking through the agreement to mediate with the parties can be a helpful way of dealing with queries.

Guidelines

Transparency is essential to create a successful mediation. Therefore, all parties must sign up to the rules of the mediation. Transparency creates clarity and confidence in the mediation. You should always discuss the set of procedures you intend to follow with the participants. Some of the key principles are:

Confidentiality

Mediations are confidential. It is important to consider the confidentiality provision and the effect of without prejudice privilege.

Privacy

It is important that only individuals listed on the application form may attend or be present in the rooms where each party member is joining.

Recording

Agree in writing that recording is not permitted, this will help to create confidence and trust.

Planned or possible interruptions

Being at home can create planned and unplanned interruptions from other household members. If this happens, it is important to alert the parties. Not doing so can negatively impact the trust between parties and the mediator.

Use of phones/checking emails during the mediation

Parties will receive emails and communications on the device they use to log-in to the mediation. It is important to disable any email or messenger facilities whilst the mediation is taking place.

Key guideline rules will help to ensure the mediation is successful:

- Confidentiality
- Privacy
- Recording
- Planned or possible interruptions
- Use of phones and emails



Documents

Digital technology is rapidly becoming a widely accepted business and legal tool; however, it is advisable to keep key procedural documents in both soft and hard copies, especially those containing the signature of participants. This also applies to mediated settlements or any other outcomes of remote dispute resolution proceedings. Some national courts may reject enforcement if such documents are produced solely via digital means.

It is considered good practice to have a list of documents to be presented during the mediation, for example, slides, the mediation agreement and any graphics. These should be available to all parties in digital form.

Participants should agree a procedure and a digital platform for transmission and storage of documentation prior to the mediation. This will prevent duplicate communication of documents and ensure the accessibility of all documentation that has been made available.

Parties should agree and list any documents to be shared with all or with only certain participants during the proceedings and create secure digital platforms to this end. It is recommended to choose platforms which allow files to have permissions set to allow or restrict the ability to download and/or print the documents shared.

- Advisable to keep documents in hard and soft copy
- Have a list of documents to be presented at the mediation
- Participants to agree the procedure and digital platform for transmission and storage of documents
- Participants should agree and list any documents to be shared with all or with only certain participants

The use of electronic bundles is also encouraged to allow participants to share content concurrently (for instance, in a “share screen” mode).

Help and Support

The Process

Parties will need to make a joint application to RICS. Where only one party applies, DRS will attempt to contact the other side to encourage them to engage with the process.

Once both parties have agreed to the process, DRS will appoint an appropriately qualified specialist to act as the mediator. DRS will undertake reasonable due diligence to ensure that the mediator is properly qualified and free of conflicts of interest. DRS will also obtain a potential date(s) for the mediation.

RICS DRS will then formally appoint the mediator and notify the parties. RICS DRS will liaise with the mediator and the parties on setting up calls/online sessions as appropriate.

Payment

Parties will submit a non-refundable administration fee payment borne equally (or wholly by the applicant) with their documents for the mediation to RICS DRS.

In addition, parties will be required to pay the fixed period mediator fees in advance and before the mediation begins.

Address:

RICS Dispute Resolution Service

55 Colmore Row

Birmingham

B3 2AA

Email:

drs@rics.org

These fees will normally be paid equally by both parties; however, one party may choose to pay the full amount.

Any additional hours will be billed for immediately after the mediation and the parties will be jointly and severally liable to pay for these.



Costs

We have two different pricing categories for disputes:

- Disputes up to £25,000
- Disputes over £25,000

Disputes up to £25,000

A non-refundable administration fee payment of £50+VAT each (or £100 + VAT if paid by the applicant)

Mediator's Fees

Amount in disputes	Number of mediation hours	Payment per party
0 - £5,000	2 hours	£150
£5,001 - £15,000	3 hours	£300
£15,001 - £25,000	4 hours	£400

Additional hours will be charged at £100 per hour

Disputes over £25,000

A non-refundable administration fee payment of £100+VAT each (or £200 + VAT if paid by the applicant)

Mediator's Fees

Amount in disputes	Number of mediation hours	Payment per party
£25,001 - £50,000	5 hours	£500
£50,001 - £75,000	6 hours	£650
£75,001 - £100,000	7 hours	£800

Additional hours will be charged at £150 per hour

All figures are exclusive of VAT

DRS will recoup a fee of 10% of the total fee charged by the mediator from the mediator upon completion of the mediation proceedings. This does not impact on the parties.

Delivering confidence

We are RICS. Everything we do is designed to effect positive change in the built and natural environments. Through our respected global standards, leading professional progression and our trusted data and insight, we promote and enforce the highest professional standards in the development and management of land, real estate, construction and infrastructure. Our work with others provides a foundation for confident markets, pioneers better places to live and work and is a force for positive social impact.

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