

## **RICS Consumer Mediation Scheme – Guidance Document**

RICS is a certified Consumer ADR Body for the purposes of the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities & Information) Regulations 2015. This certification enables RICS to offer an alternative dispute resolution service to resolve domestic or cross-border disputes brought by a consumer against a trader arising from alleged breach of sales and service contracts.

The RICS Consumer Mediation Scheme (the CMS) is an opportunity for consumers to attempt to resolve their disputes without the time and expense of taking the matter to court.

For the purpose of the CMS:

- A 'consumer' means an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession;
- A 'trader' means a person acting for purposes relation to that person's trade, business, craft or profession, whether acting personally or through another person acting in the traders name or on the trader's behalf;
- 'cross-border dispute' means a dispute concerning contractual obligations arising from a sales contract or a service contract where, at the time the consumer orders the goods or services, the traders is established in the United Kingdom and the consumer is resident in another member state;
- 'domestic dispute' means a dispute concerning contractual obligations arising from a sales contract or a service contract where, at the time the consumer orders the good or services the consumer is resident and the trader is establish , in the United Kingdom.
- 'sales contract' means a contract under which a trader transfers or agrees to transfer the ownership of goods to a consumer, and the consumer pays or agrees to pay the price, including any contract that has both goods and services as its object;
- 'service contract' means a contract, other than a sales contract, under which a trader supplies, or agrees to supply a service to a consumer and the consumer pays or agrees to pay, the price.

### **RICS Consumer Mediation Scheme**

Consumer disputes between parties are common. Mediation provides disputing parties with an opportunity to sit down and discuss their problems in an informal setting, supported by an independent mediator who will help them to reach a mutually agreeable outcome and avoid the need to go to court.

The RICS Consumer Mediation Scheme (the CMS) can be utilised by parties to a dispute only where one party is a consumer.

Following an application to use the CMS, RICS will nominate an impartial, accredited mediator who will help disputing parties to find a mutually acceptable solution. They will do this by facilitating discussions to help unlock entrenched positions and keep everyone focused on resolving the dispute.

## Why mediation?

Mediation is a quick, cheap, informal and confidential process that enables parties in dispute to reach an amicable and workable resolution.

One of the advantages of mediation is that a settlement cannot be imposed on the parties; this is a voluntary process (unless trade association membership requires it) and parties can leave the process at any time. The mediator will explore common ground with each party. The mediator will meet privately with each party to identify and discuss the issues in order to fully appreciate and understand each party's viewpoint. Regulations specify that this is an open process and all information will be shared with the other party.

Should the parties be unable to agree on a resolution, they can explore the more formal methods of dispute resolution including taking the matter to court.

## Grounds when RICS will refuse to process a case

There are a number of situations where parties will not be entitled to use the RICS Consumer Mediation Scheme:

- Where the consumer has failed to contact the trader to try to negotiate or has failed to exhaust the trader's own complaints procedure
- Where court proceedings are underway (unless there is evidence of a stay in proceedings)
- Where the consumer has not submitted the complaint to the trade associates within the timeframe specified by the body
- Where the dispute is outside the remit of the CMS
- Where the dispute is being considered by another Alternative Dispute Resolution (ADR) body
- Where the consumer has had the work/issues rectified
- Where the application is made by a commercial entity/business
- Where RICS or the mediator are unable to convince the trader/business to agree to participate in the mediation\*
- Where RICS considers the dispute to be frivolous or vexatious

Where to do so would seriously impair the effective operation of RICS and/or the CMS.

Should the case be refused by RICS, the applicant will be notified within three weeks of submitting the application.

The consumer will only initiate the application once all other forms of negotiation or complaints procedures have been exhausted.

\* The trader may be required to participate as part of his trade association rules. For the mediation process to work, **BOTH** parties must agree to it.

## The application process

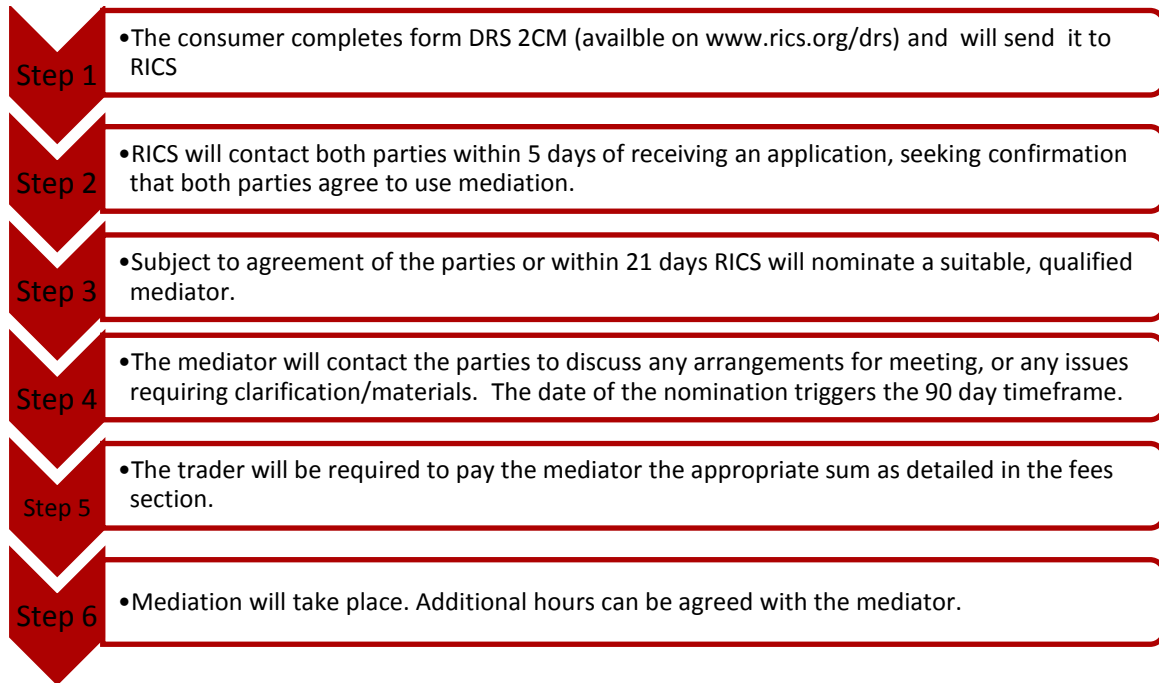
1. The consumer must in the first instance try to resolve the dispute with the trader, exhausting the trader's own complaints procedure.
2. The consumer applies to RICS for the appointment of a mediator. The consumer should complete the application form DRS2 CM available on [www.rics.org/drs](http://www.rics.org/drs) and send it to RICS Dispute Resolution Service by email to [drs@rics.org](mailto:drs@rics.org) or by post to 55 Colmore Row, Birmingham B3 2AA. The form should detail the issues in dispute.

3. Parties to the dispute are not obliged to retain a lawyer or a legal advisor, but they may choose to seek independent advice or be represented or assisted by a third party. They can do so at any stage of the process. Each party will be responsible for its own costs of preparing and submitting its case; legal action cannot be brought to subsequently recover these costs.
4. RICS will contact both the parties within 5 working days of receiving an application, and will seek their agreement to proceed with mediation. The parties have 5 days to submit any additional information they wish the mediator to be aware of.
5. Subject to the agreement of the parties, or within 21 days\*, RICS will nominate a mediator to take on the case. RICS will ensure that the mediator is suitably experienced in the subject matter of the dispute, is wholly independent, and has no conflicts of interest with either party.

\* If after 21 days only the consumer has applied and agreed to the procedure, RICS may still make the nomination of a mediator. It will be for the mediator to correspond with the parties, explain the process and obtain confirmation from the trader prior to proceeding with the mediation procedure. If the mediator fails to obtain agreement within 28 days, the file will be closed.

6. Once nominated, the mediator will contact the parties to discuss any arrangements for the meeting and any issues requiring clarification. Each party will have an opportunity to express their views.
7. If the mediator requests additional information, this must be submitted within 7 days of the nomination.
8. If after 28 days from the date of the nomination the parties have not agreed to the mediation process the mediator will close the file and notify RICS.
9. The mediation must conclude within a period of 90 days from the date the mediator is nominated. In 'highly complex' disputes this may be extended with agreement of the parties.
10. Any documents or information submitted or provided to the mediator will be exchanged with the other party who will be given an opportunity to comment.
11. Prior to the mediation meeting, the mediator will require payment from the trader of the sum detailed below depending on the value in dispute and the length of the session. This payment will cover the mediator's costs including reading and preparation in addition of the mediation meeting and facilitated negotiations. The fee is non-refundable once the mediator receives this.
12. The trader will bear any additional costs such as room hire, refreshments etc and any additional hours the parties request the mediator to undertake. These costs (or the basis on which they will be calculated if costs are not available) will be made known to the trader **prior** to their commitment to the mediation process. Transparency in costs is paramount.
13. On completion of the mediation, the mediator will notify RICS who will seek feedback from the parties on how the process worked for them.
14. Where the mediation procedure is one that aims to resolve the dispute by proposing a solution, if the parties are dissatisfied with the procedure under the CMS, they can withdraw from process. The ability to withdraw from the process does not apply to the trader who is obliged to participate either because they are legally required to do so, or they are a member of a trade association and the trade associate rules require it.

## Mediation process



## The mediation process

1. The mediator will begin with a joint session with the parties to agree the basic ground rules to ensure a productive discussion. Ideally the session will be at a venue agreed by the parties. If there is a requirement to book/hire meeting rooms there may be an additional cost to the parties.
2. Each party will then be invited by the mediator to present their views of the dispute. The mediator will manage the process to ensure that each party can speak uninterrupted. The mediator will summarise the issues raised by the parties and encourage both parties to suggest and consider possible solutions. The mediator will remain completely impartial and will not pass judgement on what either party has said.
3. The mediator may break into individual sessions with each party in turn to explore their needs and interests and to help them to reflect on what the other side has said. This is an open process and information will be shared with both parties in accordance with the ADR principles.
4. The mediator can call for a break at any time.
5. The session will continue up to the time specified in the fees section below. The session may end at any time when :
  - a. A settlement agreement is signed by the parties; or
  - b. The parties feel that a settlement cannot be reached and they notify the mediator that they wish to terminate the mediation; or
  - c. The allotted time limit has expired and the parties have not agreed to extend that time limit (N.B. if the time limit is extended there may be additional costs for the mediator's time).
6. Where agreement is reached, the mediator will help the parties to draw up a mediation agreement so that it can be formalised and signed by both parties.
7. Where agreement is not possible, either or both parties are free to continue to court action.
8. Where there are cross-border disputes, the mediator must be familiar with the laws of the European country where the consumer is a resident.
9. The mediator should make it clear that the RICS Consumer Mediation Scheme does not impose a settlement on the consumer.
10. The parties should note that where the mediator proposes a solution, that:
  - They have the choice as to whether or not to agree or follow any proposed solution;
  - Participation in the mediation process does not prevent the possibility of seeking redress through court proceedings;
  - The proposed solution may be different from outcome determined by a court applying legal rules; and
  - There may be a legal effect of agreeing to or following the proposed solution

## Fees

*To be agreed with trader/trade association depending on the value in dispute.*

RICS offers a fixed fee mediation service for disputes of a certain value. The fees are a **guideline only**.

Amount in dispute	Fees to be paid by trader	Length of session
£5,000 or less*	£50 +VAT	1 hour
	£100 + VAT	2 hours
£5,000 - £15,000	£200 + VAT	3 hours
£15,000 - £50,000**	£400 + VAT	4 hours

\* The mediator should agree in advance whether this should be dealt with in one or two hours. For the one hour rate, the option is available to facilitate the settlement over the phone if appropriate, and if the parties agree

\*\* If the claim is more than £50,000 the mediator's fees will be agreed with the mediator prior to the nomination by RICS.

If the mediation involves commercial parties, the case will be processed under the RICS ACRE Mediation procedure.

Please note the mediator may have additional expenses, i.e. booking of venues, refreshments, etc. this should be confirmed to the trader prior to undertaking the cost.

To apply to the RICS Consumer Mediation Scheme, please complete the DRS2 CM Mediation application form which can be found in the Downloads section below.

**RICS provides a helpline which is available for any party who is not professionally represented. The telephone number is +44 (0)20 7334 3806 and the caller may be eligible for up to half an hour of free advice from a chartered surveyor.**

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