

Mediation

A fast and effective way to resolve your complaint



scottish legal
complaints commission **slcc**

What is Mediation?

If your complaint is suitable, we'll write to you and offer you the option of mediation.

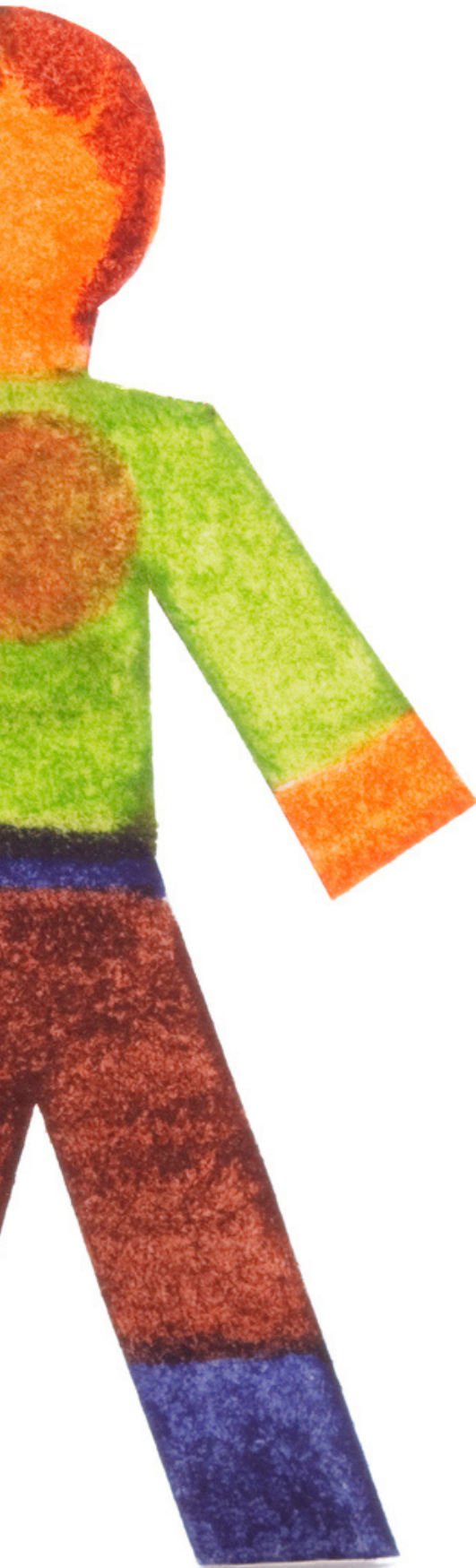
Mediation gives you and the other party the chance to reach a fair solution with the help of a professional mediator.

Mediation will only discuss and potentially settle, eligible 'service' issues of a complaint. Where there are mixed 'service' and 'conduct' eligible issues in a complaint, those categorised as 'conduct' issues involving solicitors must be investigated by the Law Society of Scotland and cannot be mediated. Therefore, the information in this brochure about mediation only applies to service issues of a complaint. The Eligibility Determination Report on a complaint shows whether individual issues are service, conduct or a mixture of both.

"Mediation is a private process..."

Mediation is a private process which gives you and the other party the opportunity to meet together with an independent third party so you can decide how to sort out the complaint.

The mediator helps you to talk through the problem to see if you can agree a fair and reasonable solution.



Who are the mediators?

We provide professional, independent, experienced mediators from a variety of backgrounds.

Their role is to listen carefully and to help the discussions.

"We provide professional, independent, experienced mediators."


The mediator is neutral and is not an SLCC member of staff. They are not there to take sides or to give advice. They won't make any judgements or decisions.

The mediator will carry out the mediation in line with our Mediation Principles, shown on page 17.

The mediators we use are all Scottish Mediation Registered Mediators.

For more information see www.scottishmediation.org.uk.





Why use mediation?

You're in control

With the help of the independent mediator, you have the chance to explain your views and try to find a solution you are happy with. You get to help decide what the solution should be. You're in control of the outcome, not the SLCC or the mediator.

It's free

You don't need to pay to take part in mediation.

It's flexible

The mediation can take place online by video call, or by telephone. It can also take place in person at the SLCC office or a place convenient for both you and the other party.

It's fast

Mediation is often a much faster way of resolving complaints. The formal investigation process can take months. Mediation can take place in a matter of weeks. This means both parties can move on with their lives.



Mutual understanding

Often, when the parties sit down in a room together and listen to each other, it can be easier to understand why the other party acted in a certain way.

Things may not always come across quite the same way in writing.

Through hearing the complaint in the complainer's own words, the practitioner often gets a better understanding of what the complaint is really about.

Less paperwork

Because mediation focuses on sorting out the problem in person it often avoids the need for complex and time consuming correspondence back and forth between the parties.

It's not a 'win or lose' situation

If you and the other party reach an agreement, it's a mutual agreement. It's not 'one party wins and the other party loses'.

An open and honest conversation can also give you the chance to end the business relationship in a better way, or even help save it.

It works

Most of mediations at the SLCC result in an agreement. People who negotiate their own settlements often feel more empowered and pleased with the outcome than those who use a third-party decision maker.



What happens at a mediation?

The format of the mediation is flexible and depends on what you and the other party are most comfortable with.

We will arrange the mediation to take place at a date and time that suits both you and the other party. It can take place:

- by video call
- by telephone conference
- in rooms at the SLCC office in Edinburgh, or
- at a mutually convenient place elsewhere in Scotland.

Format for video mediation

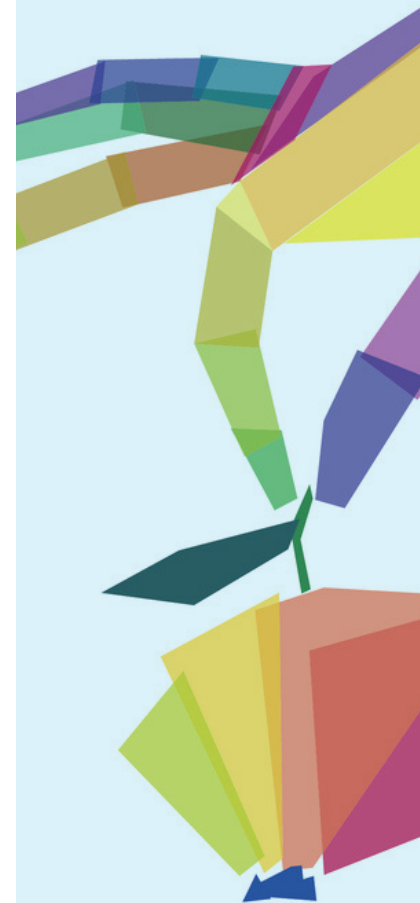
We will send you an email invitation to an online meeting before the mediation.

When you first join the meeting, you will likely be in a waiting room. The mediator will admit you to either the main meeting room or a 'Breakout Room'. This feature allows the mediator to spend some time with each party separately.

A mediation meeting might start with both parties and the mediator in a joint meeting. Or, the mediator may split the parties into individual meetings at first - using Breakout Rooms - then have a joint meeting.

Only the mediator will move between the Breakout Rooms. They will enter the room to begin private discussions with you. There is a function which lets you check who is in the room with you. The mediator will then leave and have private discussions with the other party. Once the mediator has decided to end individual meetings, you will be told the Breakout Room is closing. Both parties will return to the main meeting room.

We will give you further guidance on how to use the video call platform before mediation takes place.





Format for face-to-face mediation

After you arrive at the venue, the mediator will speak to you and the other party separately to talk through the process and answer any questions you might have.

After that, the format depends on what you and the other party want.


Usually, our mediations are run as joint sessions with you, the other party and the mediator in one room. After the mediator explains the process and the principles of mediation, they will usually invite the complainer to explain the circumstances of the complaint from their point of view.

The other party will be asked not to interrupt and to listen carefully. Then it's the practitioner's turn to speak without interruption.

It's usually through a process of asking questions and hearing each other that the discussion moves towards agreement.

Another option is for you and the other party to be in separate rooms with the mediator going between the two having private discussions about possible ways to resolve the complaint.

If things seem to be moving towards an agreement the mediator might invite you both for a joint meeting.



Format for telephone mediation

Telephone mediation is a series of telephone calls. At the start of the mediation, the mediator will call each party separately to have a private conversation with them.

After that, the mediator may invite you for a joint conference call or continue with separate calls with the mediator acting as a liaison. If at any point either party wishes to speak to the mediator privately, they can let the mediator know.

Whatever the format, the mediator will decide when to bring the meeting to an end. It may last up to a maximum of 3 hours. The length of time depends on the parties.

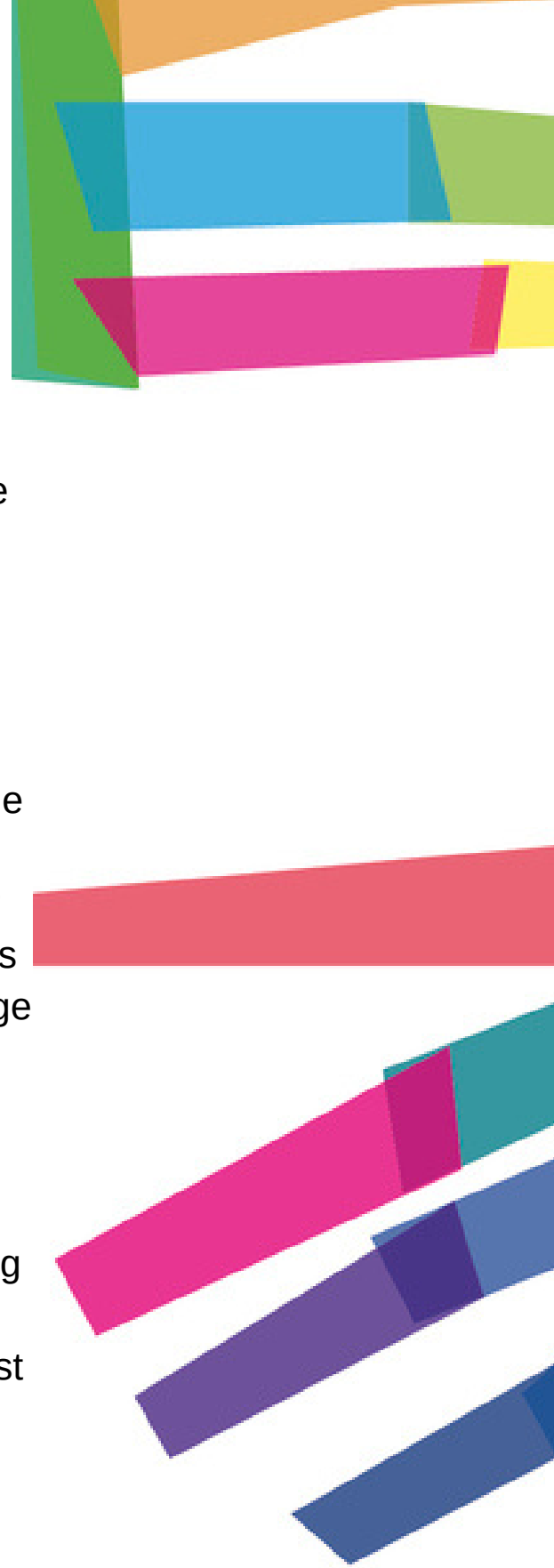
What will the outcome be?

Because you and the other party decide how to resolve the complaint, the outcome will be different for each case. You might reach an agreement that the practitioner will apologise, reduce fees or pay compensation.

In some mediations, the person making the complaint might accept an explanation given by the practitioner and go no further with the complaint. Other times, the parties might agree that the practitioner will change the way they have been doing something so that other clients aren't affected in the same way.

You will never be forced to accept anything against your will. For an agreement to be reached, both you and the other party must agree on what they want to happen.

If both you and the other party reach an agreement, the mediator will write this up and ask you to confirm that you agree with the terms. The complaint file will be closed when everyone has signed the agreement.





Next steps?

It may be that you and the other party can't agree on how to resolve the complaint.

This doesn't mean that the mediation has been a waste of time. It's often a very helpful way of clearing the air and focusing on the key issues of the complaint.

If there is no agreement, we will move the complaint on to the investigation stage.

One of our Case Investigators will then investigate the complaint. They will make a recommendation about

whether or not the complaint should be upheld.

The mediation is confidential and the Case Investigator won't be informed of any offers that were made during the mediation.

If you have any questions or would like to try mediation, please contact our Mediation Coordinator on slccmediation@scottishlegalcomplaints.org.uk or telephone 0131 201 2130.

Further information on our mediation process, including a video, is available from our website at: www.scottishlegalcomplaints.org.uk/your-complaint/our-process/mediation/



Mediation success rate

Most of the mediations at the SLCC result in an agreement. This means that you leave with peace of mind that the complaint has been sorted out and you do not have to wait for a formal investigation.

Most importantly, you have control over the words and terms – no one will force any agreement on to you.

What people say about mediation?

I found the process straightforward and was kept informed as the mediation progressed.

The mediator was well-prepared....I would recommend the mediation process to any parties involved in complaints.

The mediator was excellent.

Staff were helpful and easy to deal with.

The team that chaired the mediation put me at ease and ran through how the mediation process would be conducted.

The mediator was empathetic... she moved at the right pace and gave an accurate synopsis of the position at each stage.

Mediation FAQs

How much will mediation cost?

Mediation is a free service offered by the SLCC. You will not be asked to pay to take part in mediation. However, we cannot reimburse your travel costs or other expenses.

Where will the mediation take place?

We will arrange for the mediation to take place online by video call, or by telephone. It can also take place in person at the SLCC office in Edinburgh or a place convenient for both you and the other party.

What do I need to do in preparation for mediation?

Make sure that you have signed and returned the Agreement to Mediate well before the day of the mediation. You should also read over and have to hand or bring any relevant files with you to the mediation. You may also want to have to hand or bring along relevant correspondence you have had with the other party and the SLCC. You should familiarise yourself with the issues of the complaint that the SLCC has accepted as eligible service issues for investigation.

What will be discussed at mediation?

The issues that the SLCC has accepted as eligible service issues for investigation will be discussed at mediation.

Who decides the outcome of mediation?

Mediation is only successful if both parties reach agreement. It is up to you to decide whether or not to suggest any settlement and/or agree to accept any settlement that has been suggested.

What if I don't think there is any point in mediation?

At mediation, you will be given the chance to explain your views. It may be that giving an explanation at mediation can resolve the complaint. Mediation requires both sides to be flexible.

Mediation FAQs

Will the mediator offer legal advice?

No, the mediator is not qualified or allowed to provide legal advice.

Does the mediator meet with the parties beforehand?

The mediator will usually arrange to speak to you and the other party by telephone or video call before the mediation takes place. If the mediation is in person, they will meet with you and the other party individually when you arrive on the day of the mediation.

Can I get someone to help me by joining the mediation as a support person?

Yes, if you want to have someone with you or bring someone to the mediation you should let the SLCC's Mediation Coordinator know before the mediation so they can let the other party know.

Do I have to be present at mediation?

You can arrange for someone to represent you at mediation provided the other party agrees. Whoever takes part in the mediation as your representative should have full authority to settle the complaint. You should let the Mediation Coordinator know before the mediation.

Will it be held against me if I decide not to mediate?

No, if you decide not to mediate it will not be held against you.

Will the Case Investigator be told what has happened at mediation if it is not successful?

No, the Case Investigator will not have access to any correspondence about the mediation.

Mediation FAQs

Have you got any guidelines on how the SLCC decides settlements following investigation?

We have a policy on Settlements and Disposal of inadequate professional service contained within the 'Remedies' section of our Policy and Procedure Manual. This includes information on how we determine what sanction should be imposed and the level of any compensation. A copy of the policy is available on request. The Policy and Procedure Manual can be downloaded from our website at www.scottishlegalcomplaints.org.uk

Should I participate in mediation if there is an ongoing court action?

This is a matter for your discretion. We suggest you consider the specific issues that the SLCC has determined are eligible for investigation and decide whether discussing these at mediation could have any bearing on any ongoing litigation. If you are unsure you can contact us to discuss it further. Alternatively, practitioners may wish to seek advice from the Law Society of Scotland's Professional Practice Department (telephone number: 0131 226 8896).

If mediation is successful, what happens next?

If mediation is successful the mediator will make sure both parties agree about what will happen next and when. This will be recorded in a settlement agreement. The complaint file will be closed when everyone has signed the settlement agreement.

Mediation Principles

Mediation is a process in which parties seek to build agreement and/or improve understanding with the assistance of a trained mediator acting as an impartial third party. Mediation is voluntary and aims to offer the parties the chance to be fully heard, to hear each other's perspectives and to decide how to resolve their dispute themselves.

Voluntary Participation and Self Determination

Mediation is based on the principle of voluntary participation and self determination. This means that no one is forcing the parties to be there and no one will force them to come to an agreement. The mediator is there to facilitate agreement between the parties.

Impartiality, Independence and Neutrality

The mediator will be impartial, independent and neutral. If a mediator becomes aware of any reason which may affect their impartiality, independence or neutrality, they shall disclose this to the parties at the earliest opportunity and withdraw from the mediation unless the parties do not wish for them to do so.

Conflicts of Interest

The mediator will disclose all actual and potential conflicts of interest reasonably known to them whether before or during a mediation and shall withdraw from the mediation unless the parties do not wish them to do so.

Competence

The mediator is responsible for undertaking sufficient training, supervision and continuing professional development to maintain necessary mediation skills. A mediator shall mediate only when she/he believes that he/she has the necessary skills to carry out the mediation.

Mediation Principles

Understanding of Mediation

The mediator shall ensure that the parties understand the purpose of the mediation and how the process works, the role of the parties and the mediator, and the obligation of confidentiality.

Advertising and Solicitation

In advertising or offering services, mediators shall not guarantee settlement or promise specific results. All information provided by mediators about their education, background, mediation training and experience shall be accurate.

Gifts and Favours

A mediator must not accept from or exchange any gift or favour with any Party in any mediation. A mediator must use judgement that reflects the high ethical standards which mediation requires.

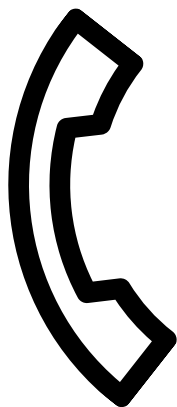
Discrimination

People should always be treated with respect and without discrimination.

Complaints and Professional Indemnity Insurance

A mediator shall provide information about the process for handling any complaint made about their conduct or service, and about any professional indemnity insurance cover they may have.

For more information, visit www.scottishmediation.org.uk.



0131 201 2130

If you require this information in an alternative format (such as audio, large print or braille) please contact us.

**Scottish Legal Complaints Commission
Capital Building, 12-13 St Andrew Square,
Edinburgh, EH2 2AF
Phone: 0131 201 2130**

**<https://www.scottishlegalcomplaints.org.uk>
enquiries@scottishlegalcomplaints.org.uk**

Twitter: @slcccomplaints