

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 opportunity to reach a fair solution with the help of a professional mediator.

"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 assist 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 conduct the mediation in accordance with our Mediation Principles, provided on page 15.

The mediators we provide are all Scottish Mediation Registered Mediators.

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





Why use mediation?

Mediation is a fast and effective way of resolving disputes. It also puts the parties in control of the outcome.

It's free

You don't need to pay to participate in mediation.

It's fast

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

It's flexible

The mediation will take place in a venue which is convenient for both parties. We can also organise mediation via Skype or telephone conference.

You're in control

With the help of the independent mediator we appoint, you are given the opportunity to explain your position and to negotiate a settlement that is acceptable to you. You are the decision-maker and have control over the outcome - the settlement is not imposed on you.



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 much better insight into 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 offer an opportunity to bring the relationship to a more amicable end or help preserve the business relationship.

It works

The majority 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.

The mediation will be arranged to take place in a venue that is convenient for you and the other party. We have rooms in our offices in Edinburgh which are often used for mediation but we can also use venues in other parts of Scotland, or arrange mediation by Skype or telephone conference.



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 perspective.

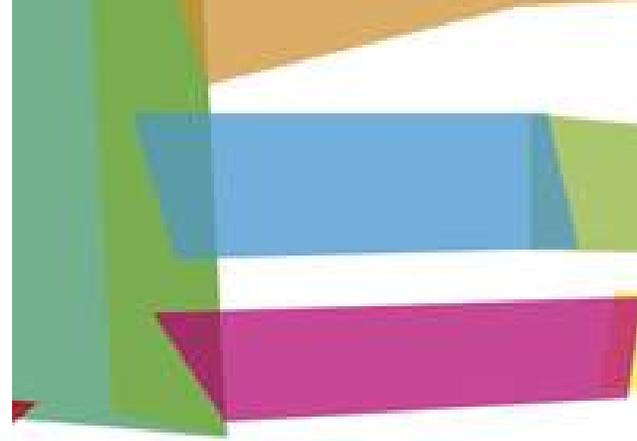
The other party will be asked not to

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 confidential 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.



What will be the outcome?

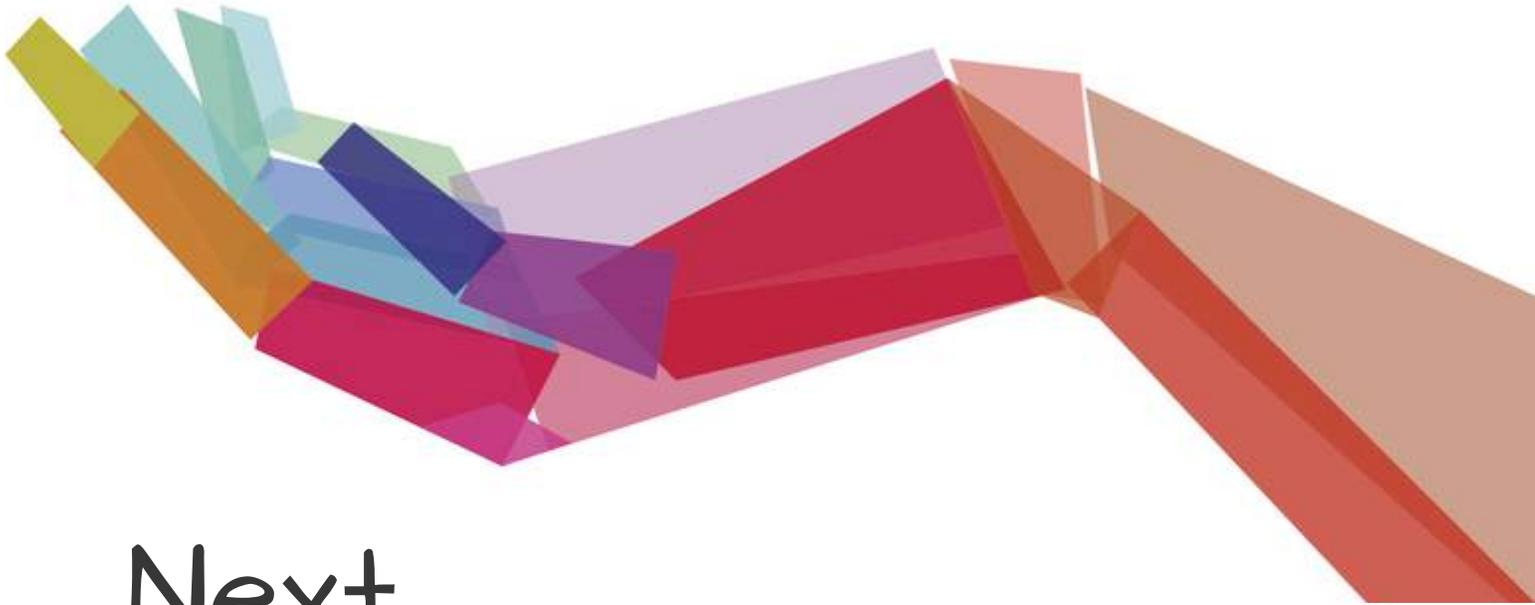
Because you and the other party decide how to resolve the complaint, the outcome will be different for each case. You might reach an agreement that the practitioner will apologise / reduce fees / pay compensation.

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 there is agreement, the mediator writes up what has been agreed and you and the other party will sign the document. We will check that any agreed action has taken place and then the complaint file will be closed.





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, as 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.

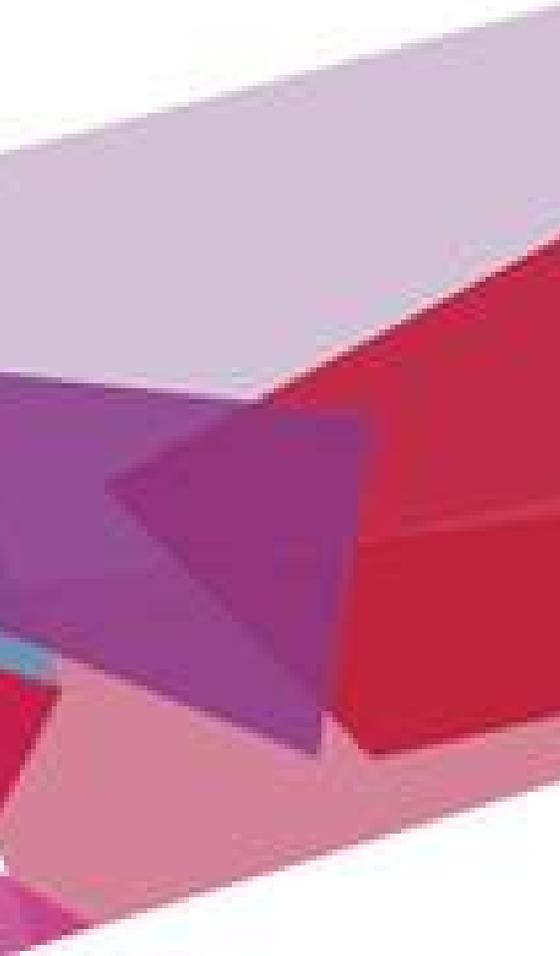
An investigation of the complaint will then be undertaken by one of our Case Investigators who will make a recommendation about

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/makingacomplaint/mediation.aspx.



Mediation success rate

The majority of 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 excellent.

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

Staff were helpful and easy to deal with.

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

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

Direct quotes from clients and practitioners who have engaged in mediation.

Mediation FAQs

How much will mediation cost?

Mediation is a free service offered by the SLCC. You will not be asked to pay to participate 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 in a place that is convenient for both parties. We can also provide mediations by Skype and telephone conference.

What do I need to do in preparation for mediation?

You do not necessarily need to prepare but it may help to read over and bring any relevant files with you. You may also want to bring along relevant correspondence you have had with the other party and the SLCC. You may wish to 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 propose any settlement and/or agree to accept any settlement that has been proposed.

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

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

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 meet with you and the other party individually when you arrive, on the day of the mediation. They won't meet with you beforehand.

Mediation FAQs

Can I bring someone with me to the mediation?

If you want to bring someone with you to the mediation you should let the SLCC's Mediation Coordinator know in advance of the mediation so they can let the other party know.

Do I have to be present at mediation?

You can send someone on your behalf to represent you at mediation provided the other party agrees. Whoever attends mediation as the representative should have full authority to settle the complaint. If you want to send someone else you should let the Mediation Coordinator know in advance of the mediation. If you prefer, we can organise mediation to take place via Skype or telephone conference.

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.

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

We have a Policy on Settlements and Disposal of inadequate professional service complaints. 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 or 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 ensure that both parties have reached agreement about what will happen next and when. We will then follow up on this and ask the parties to confirm that there has been compliance with the 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.

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.

Mediation principles

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
The Stamp Office
10-14 Waterloo Place
EDINBURGH EH1 3EG**

**Phone: 0131 201 2130
Fax: 0131 201 2131**

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

Twitter: @slcccomplaints