

RIBA Mediation Procedure - Guidance Notes

Introduction

1. Mediation is an alternative to adjudication, arbitration and litigation. It is an informal process that does not impose a resolution to a dispute and only becomes binding with the consent of all of the parties. Mediation allows the parties the freedom to explore ways of settling the dispute with the assistance of an impartial and independent person (the Mediator). It is essentially a process in which the Mediator assists in negotiations between the parties to arrive at a settlement.

2. The overall intention of Mediation is to reach an agreed solution. If that proves to be impossible then the Mediator will attempt to narrow the issues and, if requested to do so by the parties, will make a recommendation as to how the dispute might be settled. The recommendation is in no way binding unless the parties wish it to be so.

3. The proceedings are conducted on a privileged and 'without prejudice' basis. Nothing disclosed during the Mediation process can be used as evidence in any subsequent proceedings whether adjudication, arbitration or litigation. Nor can the Mediator be appointed as adjudicator or arbitrator or called as a witness in any subsequent proceedings.

4. The information given to the Mediator may not necessarily be comprehensive. It is not given under oath nor affirmation; nor is there any cross-examination. The Mediator is not bound by the rules of natural justice or by the rules of evidence and can be guided only by what the parties choose to tell the Mediator, and by the Mediator's own professional knowledge and experience.

5. In the event of the parties requesting a recommended settlement from the Mediator it follows that, because the information given to the Mediator may be selective, a recommendation is in no way comparable to the decision of an adjudicator, an award by an arbitrator, or a court judgment. A recommendation represents the opinion of the Mediator of how the dispute might be settled in the most practical way.

Procedure

1. Under the Scheme Mediation is offered as an alternative means of dispute resolution (ADR) where differences or disputes arise, for example, between members of the RIBA and their clients, between an employer and a contractor, between a contractor and subcontractor or between members of the RIBA. It is only suitable where the parties have a genuine wish to settle. Mediators are selected from those listed by the RIBA for appointment under the Scheme

2. Unless requested to do so by the parties the Mediator will not make a recommendation for settlement but will attempt to bring the parties to a settlement by discussing their differences and the strengths and weaknesses of their respective cases. The proceedings will be conducted in confidence, on a without prejudice basis, and

nothing disclosed in confidence to the Mediator by either party shall be conveyed to the other party unless it is agreed that the Mediator should do so.

3. The scheme is not available for resolution of disputes where adjudication, arbitration, or litigation is already in progress unless the proceedings are suspended for mediation.

4. The Scheme is co-ordinated centrally by a member of RIBA HQ staff reporting to the director of Practice. Parties wishing to apply for Mediation under the Scheme will apply jointly or individually to the Administrator setting out in concise terms the nature of the difference or dispute.

When the Administrator is satisfied that both parties agree to the procedure the Administrator will, on receipt of the application fee, nominate a Mediator who will proceed with the case with a minimum of delay upon the signing of the Mediator's Agreement.

The Administrator reserves the right to decide whether a matter referred to the RIBA is suitable for the RIBA Mediation Procedure. If the Administrator deems that the matter is not suitable for the procedure, any application fee received will be returned to the applying party.

If a settlement is reached the parties will be required to sign an agreement which, if agreed, will be binding. The contents of the agreement will be confidential. Copies will be retained by the parties, the Mediator and the Administrator.

5. A Mediation may be abandoned at any time by the withdrawal of one of the parties or if the Mediator is of the opinion that no useful purpose can be achieved by continuing.

6. Neither the RIBA nor the Mediator shall be liable for anything done or omitted in the discharge or purported discharge of their functions and any employee or agent of the Mediator is similarly protected from liability.

Guidance on Fees

Application fee: £150.00 plus VAT

On receipt of payment, a receipted invoice will be sent directly to the applicant.

Mediators fee: Mediators will normally charge a fee for their services at a day rate that, depending on the nature and complexity of the case, may vary from £750 plus VAT upwards.

The parties shall be jointly and severally responsible for the payment of the fees and will normally be required to share them equally unless otherwise agreed.