

Formal mediation – what it is and what it isn't

What it is

- A voluntary process; neither participation nor decision is imposed.
- Involves an independent third party, the mediator.
- The mediator helps parties to work out what their issues and options are, and then use those options to work out an agreement.
- Flexible, so can be used to settle disputes in a range of situations and to develop solutions not achievable in an adversarial system.
- As less adversarial, encourages early resolution of disagreement.
- Demonstrates intent to resolve the issue amicably.
- Parties in mediation are in control of the process - all parties are involved in the negotiated and agreed outcome.
- Less formal than arbitration or litigation, so likely less stressful and usually cheaper.
- Resolution of dispute can be a quicker process
- The process is confidential to the parties involved unless otherwise agreed.
- If agreement cannot be reached the parties are free to follow other processes, such as arbitration or court action.
- Mediation might be a step forward, e.g. 'the parties are talking', but not resolve the whole problem.

What it isn't

- Mediation is not about 'rights', but 'interests'. Rights are a separate system, involving often 'guilty parties'.
- It is not a form of court. Mediators do not take sides or make judgements - their role is to concentrate on the process.
- Mediation is not binding on the general public, but as many access cases have at their heart a neighbour or neighbourhood dispute, a mediated agreement may diffuse the situation to such an extent the access issue is resolved as a result.
- It does not establish case law.
- It is not arbitration
- It would appear possible for a mediated agreement to be non-LR(S)A compliant. If there is dispute about the LR(S)A compliance of the mediated agreement there remains recourse to court (or further mediation), however mediating parties can make their own agreement that is not binding upon anyone else.