

**The Commercial Online Dispute  
Resolution (CODR) Scheme**



**SQUARING  
Circles**





## Commercial Online Dispute Resolution Scheme

### What is ODR?

Access to justice is problematic for many businesses and individuals. Taking a dispute to court can be very time consuming, costly, slow and uncertain.

Online dispute resolution (ODR) at Squaring Circles allows those in dispute to engage in remote / online mediation, med-arb or arb-med to bring about a fast, efficient, convenient and cost-effective way of resolving their dispute.

### What is CODR?

The Commercial Online Dispute Resolution scheme (CODR) provides mediation, med-arb or arb-med for commercial disputes over £250,000. It is designed to resolve disputes in a matter of months entirely online. It provides cost certainty or predictability, at a fraction of the cost of going to court. Fixed fees or a fee range is agreed at the outset of the instruction.

### Summary of the process

1. Once all parties agree to proceed, they submit a joint application form to start the process. As part of the application, they choose a mediator and/or arbitrator from our panel or ask us to.
2. We then issue our terms of engagement and standard contract to formally appoint the mediator and/or arbitrator.
3. Depending on which process is selected, individual or joint preliminary video or telephone conferences are then arranged with the panel member appointed, to discuss the background to the dispute and to agree upon the necessary practical matters.

We guide each party through each step of the process. We provide all the standard form documents and explain what they mean.

It is anticipated that parties will usually have solicitors instructed for CODR. However, we will

discuss each party's requirements at the application stage.

### Practical considerations

Practical arrangements will be discussed with the parties and participants at the outset of the process and before any video conferencing sessions. This will include matters such as the required equipment, the sharing of documents and contingency plans for digital interruptions.

### Key features of CODR mediation

**Voluntary.** The parties agree to enter into negotiations, facilitated by an independent third party (the mediator), to work together to attempt to resolve differences or a dispute or agree a way forward.

**Confidential.** The parties have the opportunity to have candid and open discussions. What is discussed in the mediation cannot be disclosed to parties not participating in the mediation, or in any subsequent proceedings such as court or arbitration proceedings.

**Facilitative.** The mediator is independent and uses his or her expertise to help the parties try to find a resolution, and if necessary, record the terms of any agreement in a resolution agreement. The parties decide the outcome. The mediator does not make a decision or impose a solution on the parties. Nor does the mediator provide any legal advice.

**Flexible.** The ODR platform allows the mediation process to be adapted to the needs of the parties or other participants. It can follow the traditional face-to-face approach of having a "mediation day" or it can be used more flexibly.

### Med-Arb and Arb-Med

We offer a hybrid process of Med-Arb and Arb-Med. We use different panel members for each

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part of the process. If requested by the parties, the mediation can be in person rather than online.

Med-Arb is suitable for parties who want the benefits of mediation but the certainty of a binding decision if they are unable to reach a resolution at mediation. The main advantage of Med-Arb is that it allows parties who have been unable to settle their dispute through mediation to have an arbitrator impose a legally binding decision.

The parties have a choice of instructing Med-Arb at the outset of the dispute, where the dispute will automatically progress to arbitration if the mediation is unsuccessful. Alternatively, the parties can elect to progress to arbitration on completion of the mediation if an agreed outcome has not been reached.

Arb-Med is suitable for parties who want to obtain a binding decision from an arbitrator but the flexibility of turning to mediation during the arbitration process. Arb-Med allows mediation to take place at an appropriate window in an arbitration. It gives parties the option of deciding the outcome of the dispute themselves through mediation rather than continuing with an arbitration.

## Key features of CODR arbitration

**Expert decision maker.** The parties jointly appoint as arbitrator an independent and impartial panel member with expertise in the subject matter of the dispute.

**Confidential.** The process is private and confidential.

**Legally binding.** The arbitrator considers the information presented by the parties to reach a legally binding and enforceable decision (award), which has the same effect as a court judgment.

**Certainty.** An award is issued within 6 months, or within the shortest time possible for more complex disputes, without the delays and costs of going to court. There are very limited rights to appeal the decision of an arbitrator under the Arbitration (Scotland) Act 2010.

**Flexible.** The parties have a choice of arbitration on the papers only, where a legally binding decision is issued without any hearing by video conference for oral representations. Alternatively, they may wish the arbitrator to hear oral submissions via video conference. The arbitrator may also require a remote evidential hearing, which can be conducted virtually through the use of “breakout” rooms or spaces which replicate face-to-face hearings.

**Efficient.** If a hearing by video conference is requested by either party, it will be arranged within agreed timescales, bearing in mind the aim of issuing an award within 6 months.

**Informal.** The parties and the arbitrator determine what procedures should be adopted, as required by the [Scottish Arbitration Rules](#) (contained within the Arbitration (Scotland) Act 2010).

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# Doing Disputes Differently

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