



Guide To Mediation

SQUARING
Circles





What is mediation?

- Mediation is a flexible process where parties voluntarily agree to enter into discussions, facilitated by an independent and neutral third party (the mediator), to attempt to resolve differences or a dispute.
- It is a confidential process conducted on a “without prejudice” basis meaning that what is discussed in the mediation is confidential and cannot be disclosed to the outside world and that any offers, concessions or admissions made in the course of the mediation cannot be used as evidence in any subsequent proceedings such as court or arbitration proceedings, in the event a resolution is not achieved.
- Mediation is a self-determinative process, so the parties decide the outcome. The mediator does not make any decisions or impose a solution on the parties. Instead, the mediator uses their expertise to help the parties to try to find a resolution.
- The parties have the opportunity to explore creative solutions to resolve the dispute or agree a way forward which could not be granted by a court.
- Mediation often leads to improved communication which allows the parties to restore, preserve or even enhance their relationship.
- Mediation presents an opportunity to end wasted management time, damaged relationships, lost productivity and legal costs. It costs a fraction of going to court.
- If the parties agree a resolution, it is legally binding once recorded in writing in a resolution agreement and signed off by the parties.
- The mediation can usually start within a couple of weeks, and for online mediation it can usually happen sooner if necessary.

Do I need to be legally represented?

For commercial mediations, parties usually have legal representation. However, we have also conducted numerous commercial and civil mediations where the parties have no legal or professional representation. It is not a requirement for parties to be legally or professionally represented to instruct our mediators. Parties are free to decide whether to instruct a solicitor or other professional to represent or support them at the mediation. For workplace mediations the parties attend without legal or professional representation but can ask for a friend, family member or colleague to attend the mediation in a supporting role.

What is “in person” mediation?

“In person” mediations will usually be conducted on a “mediation day” as they involve the mediator, the parties and other participants travelling to an agreed venue. We can travel to any location in Scotland, the UK and beyond for an “in person” mediation. We recognise that parties may be more amenable to mediation if it is conducted in a familiar venue, or one where the parties feel most comfortable and relaxed.

Where parties are legally represented, ordinarily the mediation venue and refreshments would be arranged by the parties’ legal representatives. If so requested, and particularly in cases where the parties are not legally represented, we can make the necessary arrangements for an “in person” mediation in consultation with the parties. This includes arranging the venue hire and any refreshments. These costs are then invoiced to the parties directly, to be shared equally unless otherwise agreed.

Squaring Circles

PHILOSOPHICAL MEANING – to see equally in four directions – up, down, in and out
METAPHORICAL MEANING – attempting anything that seems impossible

SQUARING CIRCLES

Registration number SC641319. Registered office at Caledonian Exchange, 19a Canning Street, Edinburgh EH3 8HE
E: info@squaringcircles.uk T: 0131 259 4679 W: squaringcircles.uk



Squaring Circles is a signatory to the [World Mediators Alliance on Climate Change Green Pledge](#) which means we are committed to minimising the environmental impact of every mediation in which we are involved, including encouraging online mediation and promoting the use of technology and electronic documents wherever possible.

What is online mediation?

- Online mediation is where the mediation is conducted remotely using video conferencing technology. “In person” mediation needs to be conducted on a “mediation day” because it is impractical, inconvenient and cost-prohibitive to conduct it any other way. In our experience, parties and other participants greatly benefit from the flexibility offered by online mediation.
- We typically conduct online mediations using [Zoom Pro](#) as this is the platform that most parties request. If all parties do not agree to use Zoom, we can conduct the mediation through [MODRON Spaces](#) (“**SPACES**”), which is a market leading purpose-built online mediation platform. If the parties request another platform, such as Microsoft Teams, that can also be arranged.
- Zoom Pro, SPACES and other video conferencing platforms allow everyone to meet together in a virtual main room and have confidential private discussions in virtual breakout rooms. The mediator can easily move the parties between rooms and bring people together as needed, as well as share a whiteboard or documents as we normally would in “in person” mediation. Typically, breakout rooms will be created for all participants for Party A and all participants for Party B. Further breakout rooms can also be created, for example, for the parties’ lawyers or for the parties’ experts.
- The technology is managed by the mediator as the “host” making it very easy for parties and their advisers to use. It is our standard practice to offer a practice session before the mediation to make sure everyone is comfortable with the technology, can move between the virtual rooms and can share documents.
- All participants will require: (i) a laptop/tablet with a microphone and a camera; (ii) a secure and stable internet connection; (iii) device chargers and (iv) if possible, headphones or a headset with a microphone.

Preparing for mediation

We recommend that the parties consider the matters listed below for discussion with the mediator.

- The people who will need to attend the mediation, for example, experts, solicitors, other professional advisers or a family member, friend or colleague for support.
- The background to the dispute and the documents that will need to be shared with the mediator and the other side. The parties will usually be asked to prepare a summary of the dispute from their perspective, to be produced together with any key documents.
- From where the attendees intend to participate if the mediation is going to be online, and whether the parties or any other participants would like a practice session with the mediator. We recommend that participants are in a comfortable and quiet room, away from any distractions or from where other people might overhear what is being said, and that they will not be interrupted during live sessions.
- The mediator will control, manage, and guide the parties through, the mediation process. As part of that, the mediator will offer guidance to the parties on how to best prepare for the mediation, to give the parties the best chance of having a successful mediation.

Squaring Circles

PHILOSOPHICAL MEANING – to see equally in four directions – up, down, in and out
METAPHORICAL MEANING – attempting anything that seems impossible

SQUARING CIRCLES

Registration number SC641319. Registered office at Caledonian Exchange, 19a Canning Street, Edinburgh EH3 8HE
E: info@squaringcircles.uk T: 0131 259 4679 W: squaringcircles.uk



The process to convene the mediation

1. **Conflict check.** Once we are notified that the clients wish to appoint one of our mediators, we run a conflict check.
2. **Agreeing logistics.** An email is sent by the mediator to the lawyers, advisers or clients as appropriate, confirming their appointment and listing the preliminary matters to be agreed including whether the mediation is to be conducted in person or online; if online, the preferred platform; documents that will be shared with the mediator and each of the parties in advance; and the people attending the mediation. This email also issues our terms of engagement and standard agreement to mediate. The mediator will agree these matters with the parties as soon as possible.
3. **An initial pre-mediation-day meeting** is conducted with each side privately by video conference. The purpose of this meeting is to give the parties an opportunity to meet with the mediator in advance of the mediation day, ask questions about the mediation process, provide the mediator with a high-level understanding of the issues in dispute and to test run the technology if the mediation is to be held online.
4. **The Agreement to Mediate** is to be signed by the parties, their advisers and all other participants, either electronically in advance of the mediation (using Adobe Sign), or “in person” at the beginning of the mediation day.
5. **Joining instructions for online mediation.** We circulate the unique access link for Zoom Pro or send an invitation to all participants to access SPACES.

What to expect from online mediation

- Feedback from mediators, lawyers and participants to online mediation has been overwhelmingly positive. Many participants often report feeling more at ease when mediating by video conference from the comfort of their own home or office.
- It is important for the mediator to be able to see the participants’ faces on the video conference. This is best enabled by any light being in front of you.
- It is important to remember there is a one to three second lag in transmission on video conference. The mediator will therefore encourage participants to wait for their turn to speak.
- We recommend that participants have a pen and paper to take notes of the points they wish to address when it is their turn to speak.
- Online video mediations can feel more tiring than face to face mediation. Comfort breaks will be encouraged at appropriate times and can be scheduled, for example, every one to two hours. Participants can also request to take a break at any time.
- Broadband interruptions or connection issues can and do happen. When they do, the mediation will be paused and restarted once all participants are reconnected.

Confidentiality

Our terms of engagement and the agreement to mediate set out the duty of confidentiality which applies to the mediator, the parties and all participants to the mediation. To ensure confidentiality in “in person” mediations

Squaring Circles

PHILOSOPHICAL MEANING – to see equally in four directions – up, down, in and out
METAPHORICAL MEANING – attempting anything that seems impossible

SQUARING CIRCLES

Registration number SC641319. Registered office at Caledonian Exchange, 19a Canning Street, Edinburgh EH3 8HE
E: info@squaringcircles.uk T: 0131 259 4679 W: squaringcircles.uk



the participants are required to undertake that they will not directly or indirectly record the mediation via any digital or non-digital means.

We take the following steps to ensure that the principal of confidentiality is respected in online mediation.

- The Agreement to Mediate contains an undertaking that only those named in the Agreement to Mediate will, for the duration of the mediation, be present in the room from where they are participating in the mediation.
- All participants will be asked to confirm at the start of the mediation that only those named in the Agreement to Mediate are, for the duration of the mediation, present in the room from where they are participating.
- The Agreement to Mediate contains an undertaking that all participants will not directly or indirectly record the mediation via any digital or non-digital means.
- Participants will be asked to confirm at the start of the mediation that they are not directly or indirectly recording the mediation via any digital or non-digital means.
- The Agreement to Mediate contains an undertaking that all participants will agree to conduct a 360 degree sweep of the room in which they are participating in the mediation with their webcam or other video conferencing device at the request of the mediator.

Squaring Circles

PHILOSOPHICAL MEANING – to see equally in four directions – up, down, in and out
METAPHORICAL MEANING – attempting anything that seems impossible

SQUARING CIRCLES

Registration number SC641319. Registered office at Caledonian Exchange, 19a Canning Street, Edinburgh EH3 8HE
E: info@squaringcircles.uk T: 0131 259 4679 W: squaringcircles.uk

Doing Disputes Differently

Copyright Squaring Circles
Company number SC641319

Registered office
Caledonian Exchange
19a Canning Street
Edinburgh
EH3 8HE

www.squaringcircles.uk

info@squaringcircles.uk