

Resolving disputes

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Jacqui Joyce discusses why RICS has published new guidance on mediation

If a client walks into a surveyor's office with a potential dispute, normally the surveyor will advise on the technical matter at hand and whether they think the client has a case on the merits. Occasionally, they may get involved in advising on tactics on how to deal with the matter and maybe even have a meeting with their opposite number on the other side. If the matter becomes protracted, surveyors will usually pass the matter to lawyers to deal with any legal issues and issue proceedings when necessary. The next stage for the surveyor would then be giving expert evidence by report and at trial.

However, increasingly matters are not reaching court rooms and a growing part of a surveyor's remit is how to advise when cases are dealt with by a form of Alternative Dispute Resolution, the most common of which is mediation.

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Surveyors need to know about the process of mediation whether they are attending as an expert as part of a team or advising their clients at the initial stages of any dispute on possible ways it might be dealt with.

Recognising the increasing involvement of surveyors in this area, [RICS](#) carried out a survey about their knowledge of mediation. Most thought they had a 'fair', 'good' or 'very good' understanding of mediation as a method for resolving disputes. However, almost 90% said they would like to improve their knowledge.

As a result, RICS put together a working party to produce a [mediation guidance note](#) for its members. The committee was made up of mediators from both the surveying and legal community, working closely with the [Property Litigation Association](#).

Explaining the benefits

The guidance note is aimed at helping surveyors to represent their clients at or before mediations (with or without lawyers), rather than those who wish to be mediators. It covers what needs to be considered before and during the day:

- when mediation should be considered
- how it works in practical terms
- the benefits of mediating over litigating

- the consequences if parties do not mediate
- the principles behind mediation, namely that it is voluntary, without prejudice and confidential
- the role of the mediator as a neutral third party helping parties do a deal
- the costs benefits
- the practical and commercial resolutions that can be achieved that a court cannot order
- choosing a mediator
- finding a venue
- entering into a mediation agreement
- preparing documents including bundles and position statements
- the process on the day
- documenting any settlement.

The guidance note also looks at factors that parties should consider before the day of the mediation. These include what they want to achieve and how they can do that, how they will deal with costs and, importantly, thinking about what the other party wants to achieve and its drivers.

Property cases

Surveyors are involved in a wide variety of property disputes from large commercial property and construction disputes to lower value disputes, e.g. boundary or other neighbour disputes. All of these are ideally suited for mediation, particularly where the cost of proceedings can quickly outweigh any financial benefit of the claim. A significant benefit is that the parties can choose a mediator who is an expert in the area of the dispute, which cannot be guaranteed of a judge. They are therefore fully able to understand the issues, robustly test the parties' view of their cases, and also suggest practical solutions.

Recent statistics show that just over 75% of mediations settle on the day, with another 11% shortly thereafter. Surveyors clearly need to be confident that they can advise their clients on this very effective tool for settling their disputes.

Jacqui Joyce is a co-author of the RICS Mediation guidance note, Chair of the RICS Mediation Guidance Note Working Party and a mediator at [The Property Mediators](#)

Further information

- Related competencies include: [Conflict avoidance, management and dispute resolution procedures](#)
- This feature is taken from the RICS *Building surveying journal* (December/January 2015)