



Should you have a lawyer present at mediation?

Practical Advice for other ADR users

Some people and organisations opt to have legal representation at a mediation while others don't. Here are some thoughts to help you make your choice.

What is important to note at the outset is that a mediator is a neutral, impartial facilitator of negotiations between the parties. A mediator is not a legal adviser and is not empowered to advise on the merits of proposals made during the mediation, nor on legal matters or procedures outside the mediation process.

Opting to have a lawyer present

If a case involves legal rights, then it's advisable to attend the mediation with a solicitor or legal representative, or with an appropriately qualified adviser. They can offer important advice, particularly when evaluating the alternatives for reaching a settlement.

Furthermore, when an agreement is reached at the mediation, this is usually written down and signed by all parties, thereby becoming a binding contract. Signing such an agreement can have implications for your legal rights, and a legal representative can advise you accordingly.

Attending mediations without legal representation

If circumstances mean you can't have legal representation, or if you simply prefer not to, then consider the following:

Mediation is intended to give you ownership of your case and the decision-making involved. However, it can be an intense and pressurised negotiating environment, and you may experience long periods of waiting whilst the mediator speaks with the other party. We would encourage you to bring someone with you to offer company and support during the day. This may be a friend, colleague or relative.

In some instances, for example employment cases, you may require legal sign-off to an agreement.

You may wish to arrange for telephone contact with your legal representative during the day and evening of the mediation.

Should you reach an agreement at the mediation, you may wish to seek advice before signing it. If you don't have access to legal advice at the mediation, think about asking for a breathing space of a couple of days. That way, you can seek appropriate advice and confirm in a less pressurised environment if the proposed agreement is acceptable. You should preferably notify the other party in advance of the mediation, and the mediator on the day, if you wish to adopt this approach.