

DISPUTE RESOLUTION SERVICE



RICS Telecoms Alternative Dispute Resolution Service



Introduction

People and businesses across the UK desire a “fit for purpose” telecoms infrastructure that provides access to current and future generation broadband telecommunications. This requires installation of telecoms infrastructure such as masts, cabling, etc on private and public land.

The RICS Telecoms Alternative Dispute Resolution (ADR) Service has been developed on the back of consultation with stakeholders representing:

- network providers, who install infrastructure, and
- site providers on whose land infrastructure and apparatus are installed.

The Telecoms ADR Service is essentially designed to underpin the UK government’s wider initiative to encourage these two sector bodies to work together to ensure infrastructure is installed speedily, cost-effectively and limit falling out between parties, which can result in court costing both sides time and money.

The service works at two levels:

a. Evaluative mediation

The Telecoms ADR Service can be used to encourage parties to work together to come up with acceptable settlement terms on issues such as valuation, access to land, and compensation. By choosing to mediate, discussions between the network operator and landowner are conducted openly and honestly, with the support of a fair and impartial mediator who is an expert in the matter in dispute.

The mediator allows each party to have equal opportunity to respond, in a fair and safe environment, to matters raised by each other.

The mediator will not impose a decision or outcome and will help both sides to identify terms for resolving their differences.

b. Expert determination

Where mediation does not resolve things, or where parties wish to bypass mediation altogether, the expert determination element of the Telecoms ADR Service can be used.

Expert determination resolves disputes quickly and cost-effectively. RICS will appoint an independent professional who is an expert in the matters in dispute. The expert will consider what the parties have to say but will also apply their own expertise and experience to reach a final decision on how to resolve the dispute. Parties must agree that the expert’s decision will be binding.

Expert determination in a fast and cost effective way to resolve disputes with finality.



Background

The economic and social impact of the COVID-19 pandemic has seen real changes in the way people and businesses work, communicate and undertake transactions. Speed and reliability of electronic communications are critically important. It follows that if a large part of social interaction, commerce and industry is to be conducted online in the future, then the technology that underpins it needs to be reliable.

When it comes to telecoms installation, historically, relationships between network operators and landowners (site providers) have been strained. Delays and disputes, some of which have led to extremely long and costly legal action, have caused immense problems for the sector for years. Although there have been improvements to legislation and the Electronic Communications Code (ECC) was introduced in December 2017, but these issues continue to plague the sector.

Operators have statutory authority to install telecoms infrastructure on public and private land. They are allowed to legally access land, even if the owner of the land hasn't agreed to let them. A network operator must try to work with the landowner to agree the terms of access and must only use their right to ask the courts to intervene as a last resort.

Examples of issues faced by network operators include:

- Landowners refusing to engage, leaving no option but to apply for the court to intervene;
- Landowners seeking unrealistic compensation and/or payment;
- Agents acting for landowners prevaricate or put obstacles in the way of progress to agreements on access rights

Site providers encompass a range of landowners including public administrative bodies and private owners of land and property.

Examples of issues faced by site providers include:

- Concerns that legislation and the sector code of conduct is one-sided and favours network operators;
- Many local authorities, which are funded by taxpayers, often lack adequate financial and other resources;
- Network operators are well resourced and hold strong bargaining power to the extent that they can coerce landowners into conceding to deals that are not in their best interests.

The Telecoms ADR Service has been developed by the RICS Dispute Resolution Service (DRS) and draws on discussions between RICS, the Department for Digital, Culture, Media & Sport (DCMS), members of the RICS Telecoms Forum and a significant number of other stakeholders. All have provided a compelling case for the introduction of ADR to address the challenges involved in the sector.

The service is a simple and flexible process that can be adapted to suit disputes of varying size and complexity. The Telecoms ADR Service is ideally suited to determine telecoms issues such as:

- valuation
- compensation
- land access issues

Evaluative mediation

One of the benefits of mediation is that it can be used for a wide variety of different circumstances. Under the Telecoms ADR Service, it can be used

- To help parties to communicate with one another, or
- To resolve a dispute

To help parties communicate



Landowners and administrative bodies like housing associations and local authorities are sometimes unaware that providers are entitled to install infrastructure on their land. Furthermore, not only is it limited to one provider who enjoys such rights, competing providers are equally entitled to install their networks on the land.

It can be unclear who in an administrative body has the responsibility and authority to work with providers to make the necessary arrangements. Policies may also be unclear as to what arrangements should be put in place to keep disruption to a minimum.

All of this makes effective communications between the telecoms service provider and the owner or administrative body very difficult, with resultant delays, frustrations and even

disputes. At any stage during the process, either the landowner or administrative body or the provider can apply to RICS to appoint a neutral mediator with a thorough understanding of the law and the telecoms sector to assist the parties.

The mediator will:

- Approach the other side to identify the correct person to act on its behalf, in circumstances where RICS has been unable to do so prior to the mediator's appointment
- Ensure that both parties understand the legal situation – what their rights and obligations are under the law
- Work with both parties to help develop a clear action plan – allowing the providers the access they need with the least disruption to the residents
- Work with the parties to help them to agree applicable levels of compensation for disruption caused by installation works where appropriate and allowed for by law
- Be an independent and accessible point of contact during the course of the installation works should the parties require the mediator's comment or clarification on a matter
- Help the parties to agree and confirm proper sign off at the end of the project with any issues regarding remediation or clean-up dealt with.

To resolve disputes

Mediation is well suited for managing and resolving any telecoms dispute, and particularly larger complex cases where there is genuine capacity and appetite between the parties to reach a settlement. On application by the parties, RICS will appoint an experienced mediator with a solid understanding of the telecoms sector.

The mediation process:

- creates a meaningful dialogue between the parties that focuses on achieving a mutually acceptable outcome, and
- is flexible and allows the mediator to adopt a procedure and timetable that suits the specific issues and the needs of the parties.

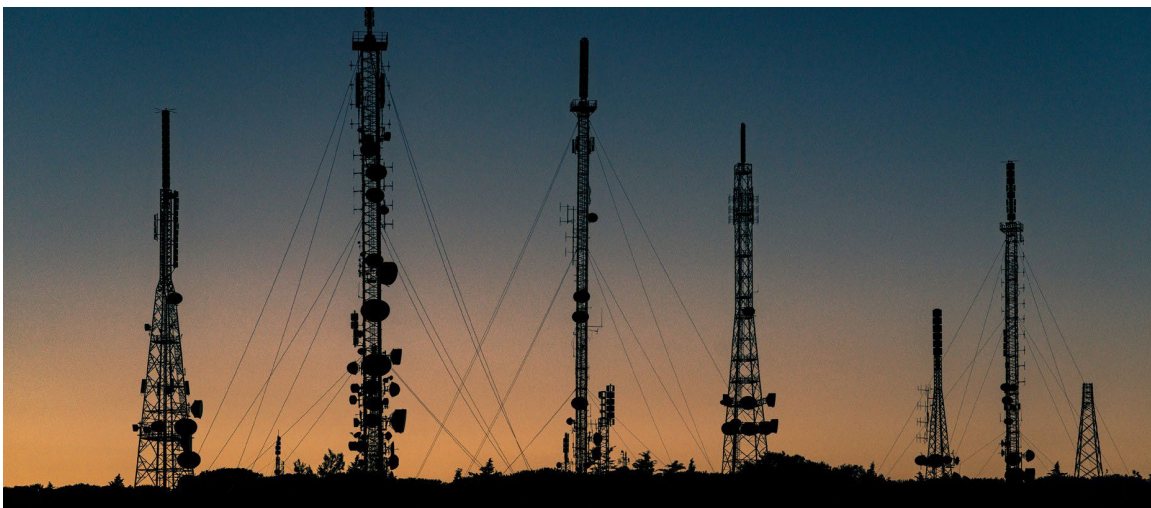
RICS mediators are appointed specifically because of their knowledge and experience of the industry. They are able to assist the parties engage in a fair and balanced discussion, identify and narrow the issues between them and achieve an outcome that is agreeable to all sides. The main function of the mediator is to get the parties talking to each other about how to resolve the dispute. If required, the mediator can also provide the parties with impartial views and recommendations for settlement, based on the information disclosed during the course of the discussions.

The mediation, including any recommendations made by the mediator, are protected by the rules of confidentiality and 'without prejudice' privilege. Therefore, they cannot be disclosed to third parties and are not admissible as evidence in any other proceedings, including expert determination or in court.

Any recommendations made by the mediator are an unbiased expert evaluation, based solely upon what has been said during the course of the mediation, of what an appropriate settlement may look like. This can prove invaluable to parties seeking to reach settlement.

The evaluative mediation will conclude in any of the following circumstances:

- The parties settle all issues.
- The agreed timetable has come to an end, and the parties fail to agree for the process to continue further.
- One or both parties decide to withdraw from the mediation.
- The parties decide to refer disputed issues to independent determination.



Mediation fees and costs

The fees payable will vary depending on whether the mediator has been appointed to (i) facilitate discussions between parties or (ii) resolve a dispute between parties.

The mediator's fees when facilitating discussion

In this instance, unless otherwise agreed, the mediator's fees will be met by the network provider with no cost to the landowner, administrative body or residents.

The mediator's fees when resolving a dispute

In this instance, unless otherwise agreed, each party will:

- bear their own costs and expenses in relation to the mediation;
- pay the fees and expenses of the mediator and the fees of RICS equally;

Unless agreed otherwise, each party will bear their own costs and expenses in relation to the independent determination.

RICS charges **£300 (plus VAT)** to process the application for the appointment of an appropriately qualified mediator. This appointment fee will be paid by the parties equally, in advance.

The fees payable to the mediator are **£260 (plus VAT) per hour** to a maximum of **9 hours**, plus reasonable expenses. Should the parties agree that more time is necessary, an hourly rate of **£275 (plus VAT)** will apply.



Expert determination

Where parties are unable to agree on something, and do not wish to mediate, expert determination provides an impartial decision that is final and binding.

Expert determination is well suited to single-issue disputes, where parties have been unable to achieve resolution through negotiation and they wish to achieve a quick, binding, finalisation of the matter.

The expert determiner appointed by RICS will be a surveyor or lawyer who is both a telecoms expert and an experienced dispute resolver.

Expert determination is where parties to a dispute agree to be bound by the decision of a neutral dispute resolver who has expertise in the subject matter in dispute. An independent expert's role is one of investigation. They will come to a final and binding decision on how to resolve the dispute by taking into account evidence and arguments from the parties as well as their own knowledge and expertise of the matter.

The expert determiner shall not be liable for anything done or omitted in the discharge or purported discharge of the role, as long as the expert determiner acts in good faith.

The expert determiner will decide the dispute on the basis of:

- evaluation of evidence and argument submitted by the parties in writing (or orally at a joint meeting if held);
- the results of their own investigations and enquiries;
- the application of their subject matter knowledge and expertise.

The decision

- The independent determiner's decision will be in writing and include reasons.
- The decision will be final and binding on the parties (unless they have previously agreed that it will not).
- The independent determiner will release their decision once all fees are paid.





Expert determination fees and costs

Unless agreed otherwise:

- each party will bear their own costs and expenses in relation to the independent determination
- pay the fees and expenses of the expert determiner and the fees of RICS equally

RICS charges **£300 (plus VAT)** to process the application for the appointment of an appropriately qualified independent determiner. This appointment fee will be paid by the parties equally, in advance.

The fees payable to the independent determiner are **£260 (plus VAT)** per hour to a maximum of **12 hours**. (N.B. The 12 hours is an objective timetable and will normally include pre-meeting preparation and engagement with the parties of up to 3 hours.)

Should the parties agree that more time is necessary, an hourly rate of £275 (plus VAT) will apply. The independent determiner will also be entitled to reasonable travel and other expenses incurred.

Delivering confidence

We are RICS. Everything we do is designed to effect positive change in the built and natural environments. Through our respected global standards, leading professional progression and our trusted data and insight, we promote and enforce the highest professional standards in the development and management of land, real estate, construction and infrastructure. Our work with others provides a foundation for confident markets, pioneers better places to live and work and is a force for positive social impact.

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