

TELEPHONE MEDIATION: A FRESH LOOK AT A FAMILIAR SERVICE

The operation of a dedicated telephone mediation service alongside a traditional face-to-face mediation setting in a Government Department in New Zealand is discussed in this session.

Jessica Carter

Senior Advisor Mediation Practice
Department of Building and Housing, New Zealand
jessica.carter@dbh.gov.nz

Abstract

The New Zealand Government's mediation service for landlord and tenants in dispute was established in 1986 and, for 20 years, mediation by telephone was utilised intermittently as an option for parties who were unable to meet together in the mediation room. In 2006, a dedicated telephone team was established to continue this practice, and also to provide a faster, streamlined service for disputes which satisfied the criteria of a less-complex matter.

The new service recognised the need to provide increased access to mediation and to enable parties who were in remote areas, or separated geographically, to participate in a 3-way conversation in mediation as if they were in the room together.

In the last 18 months, the Department of Building and Housing has been streaming some of its 40,000 plus applications for mediation to a specialised team of telephone mediators. Located in New Zealand's largest City, Auckland, and covering the entire country, the telephone team receives the mediations which have been especially selected for a faster service. In the first 6 months of operation, 6 dedicated telephone mediators facilitated the resolution of 1,973 disputes which accounted for 12% of all the successful mediated outcomes during that period.

The applications for telephone mediation need to satisfy a set of criteria which determine which matters are likely to be resolved by telephone within the 24-hour window which is available for these disputes. If mediation cannot be completed in this timeframe, it is re-scheduled for a face-to-face mediation.

This session provides an insight into a service which utilises a 3-way facilitated mediation in real-time. Parties throughout New Zealand with single issues, or disputes that present as relatively simple, now have increased access to early resolution via the Department of Building and Housing's telephone mediation service.

Keywords: *mediation, facilitation, telephone, real-time,*

BACKGROUND TO THE MEDIATION SERVICE

The Residential Tenancies Act 1986 sets out the provision of information, advice and a dispute resolution service for landlords and tenants, plus a facility for the receipt and refunding of residential tenancies bond monies. The Act was first administered by the former Housing Corporation of New Zealand, and later the Ministry of Housing following its establishment in 1992. Since 1987, mediators have provided an opportunity for parties in dispute to meet and, where possible, reach an agreement as an alternative to proceeding directly to the Tenancy Tribunal for adjudication.

The Residential Tenancies Act enabled landlords and tenants to participate in New Zealand's first mediation service in the public sector. For the next 20 years, the service grew in size and in experience, and mediators took the opportunity to participate in specialist training and academic programmes in mediation and arbitration. In-house training for mediators featured leading practitioners, including Robert Baruch Bush and Joseph Folger, authors of 'The Promise of Mediation' and co-founders of the transformative model.

In 2004, the functions carried out by the Ministry of Housing were incorporated into the newly-created Department of Building and Housing. The mediation service continued its services for landlords and tenants and also added the weathertight mediation service. The Department took over a range of duties including the new Building Act and the Retirement Villages legislation.

Currently, the Department's mediation service employs 56 mediators, and approximately 34 contractors. More than 45,000 applications are made to the Tenancy Tribunal each year, and there are more than 500 active claims within the weathertight homes dispute resolution process. For both areas more than 60% of claims are mediated before going to the Tribunal.

THE DEVELOPMENT OF NEW SERVICES

In 2006, changes were implemented to enhance the way that services were delivered to landlords and tenants, in particular making the Department's services available to parties residing in New Zealand towns which were not serviced by an existing office.

At that time, the National Manager Tenancy Services explained the underlying rationale for the changes which were designed to improve landlords' and tenants' access to services and connect to more communities with regular, scheduled visits.

"People in many small towns will no longer have to travel to access services. Internet and expanded phone options will also give tenants and landlords more options for seeking advice and resolving disputes in the way that best suits them. Clients will still receive face to face advice or mediation at all existing Tenancy Services locations, with many additional small town locations visited regularly in response to demand. The rental market has changed significantly since the processes we use now were developed in the 1980s. There is a high proportion of landlords who own and operate just one or two investment properties and there are more people renting. One size no longer fits all and Tenancy Services has developed a range of ways to help tenants and landlords with information, advice or mediation," he said.

The changes had been precipitated by the significant developments in the rental market in New Zealand. More New Zealanders needed or were choosing to rent with over one third of households living in rental housing. The changes recognised that over 80 percent of rental housing was being provided by the private sector and tenants and landlords required improved access to information and opportunities to attend mediation in many more locations in New Zealand.

The range of new services included:

- increasing the number of locations for mediation to more than 85. Mediators now visit community venues with mobile facilities so that people no longer have to travel long distances to attend a mediation;
- making more locations available for face to face appointments;
- making telephone advice available during extended hours. Customers can now make free phone calls to an advice line from 8.00am to 5.30pm, Monday to Friday;
- making a Tenancy Tribunal application online and paying by credit card. A new, easy to use application service enables applications to be received promptly and processed faster;
- an ability to resolve simple disputes quickly through a new dedicated telephone mediation service, where appropriate.

ESTABLISHING A TELEPHONE MEDIATION SERVICE

The mediation service is largely an 'in person' experience and applicants and respondents have been, for more than 20 years, scheduled to attend mediation at one of the Department's 20 offices throughout New Zealand. In this setting, parties are

guided through an assisted negotiation to explore options for settlement. This face-to-face experience of mediation is the most utilised and over 40,000 mediations each year are scheduled for 'in person' mediation.

Telephone technology is often utilised when one of the parties cannot attend in person and makes a request to join the mediation by telephone, at the time that the other party is in the room with the mediator. Conference calling telephones have made it possible for all parties in the room to receive and contribute to the conversation, and for the mediator to conduct private sessions if necessary.

In 2006, a dedicated telephone team was established to provide a faster, streamlined service for disputes which satisfied the criteria of a less-complex matter. The new service recognised the need to provide increased access to mediation and to enable parties who were in remote areas, or separated geographically, to participate in a 3-way conversation in mediation, as if they were in the room together.

During the design stage of the telephone mediation service, practising mediators worked with managers and system developers to ensure that the new telephone service retained the authenticity of the mediation setting, embraced the ethical principles of mediators, and matched the needs of the parties in New Zealand's changing landlord/tenant environment.

The telephone service, named *Swift*, has been operating for nearly two years. During that time, the telephone mediation team has received specialised training and mediators have presented their experiences at an international conference¹. As an ongoing search for best practice in telephone mediation, several telephone mediation services are currently being studied² to provide insight, comparison and support for the *Swift* team and for the Department's future development of mediation services.

The team of telephone mediators is located in the largest city, Auckland, and the service it offers extends to all areas in New Zealand. In the first 6 months of operation, the 6 dedicated telephone mediators facilitated the resolution of 1,973 disputes which accounted for 12% of all the successful mediated outcomes during that period.

The telephone service, named *Swift* mediation, is an opportunity to resolve a dispute at a very early stage and is not designed to be a substitute for face-to-face mediation. The key purpose of *Swift* was to introduce a service which would enable a faster resolution of applications, at a lower cost, for parties in dispute. Two flow-on benefits have emerged: there are substantially lower administration costs as venues, stationery and communication by mail have been replaced by faster and efficient lines of communication; and, *Swift* is also contributing to the reduction of the 'carbon footprint' and the New Zealand Government's commitment to the Kyoto Protocol.

If the telephone mediation option is used, tenants and landlords benefit by settling disputes within 24 hours of an application being made. This short time frame enhances an already streamlined service for face-to-face mediation which aims to offer disputants a mediation appointment within 10 days of making an application. *Swift* applications are assigned to the team, and on occasions more than one *Swift*

mediator is involved in resolving an application. Applications that meet the criteria are considered for *Swift* by the case coordinators and offered to the parties. The *Swift* telephone mediation service sits alongside the Department's other forms of mediation and does not compete with face-to-face mediation – rather, it enhances the delivery of the mediation service. A special feature of the service is that it cannot be requested by the parties. It is an option for the Department's scheduling specialists, the case coordinators, who identify single issue, non-complex claims which may benefit from the 24-hour, streamlined service.

To be streamed to *Swift* an application must:

- have active telephone numbers for both parties;
- have attachments which make it possible for the *Swift* mediator to conduct mediation over the phone;
- be legally valid.

To have the potential to be resolved in *Swift* the application must:

- be a single issue or relatively simple in nature;
- appear to be able to be resolved in 24 hours;
- indicate no significant dispute between parties;
- not have a counter-claim;
- be able to be dealt with quickly to the advantage of both parties.

Exceptions include applications where:

- one party lives outside New Zealand unless they are easy to contact;
- a vacated (tenancy) application where one party has stated they do not want mediation;
- an application made by phone which has not been signed.

The new application forms ask the applicant to state whether the respondent has been told that the application is being made and what it is about. This helps case coordinators decide if the application is appropriate for *Swift* and if it reduces the 'cold call' factor, where the respondent is not aware of the application.

Swift mediators follow a checklist during their first phone call to the other party to ask if:

- they are aware of the application and if they can discuss it now;
- they want to deal with the application via the *Swift* process;
- they fully understand the application;
- there are any other related issues;
- they understand that this process could lead to a mediated [legal] court order.

This process covers the same information mediators currently cover during their introduction to the process.

The *Swift* online work queue is the primary case management tool for *Swift* applications. It captures all *Swift* applications and assigns them a status such as new, action, wait or seal to help mediators prioritise their work.

The *Swift* clock will automatically start when an application is streamed to *Swift*, and this ensures that all applications move through a 24-hour process. Applications which are unresolved at 24 hours are promptly scheduled for face-to-face mediation.

Swift takes two forms:

1. Standard
After a case co-ordinator receives an application online from the Processing Centre, applications that meet the *Swift* criteria are streamed directly to the telephone mediation team.
2. Call Ins
The respondent will be offered the option of *Swift* in mediation appointment letters and will call in within a limited time frame if they choose to take up this option. The scheduled mediation will continue, unless the application is resolved through *Swift*.

Applications which are successfully resolved through telephone mediation are sealed by the Tribunal in the normal way. The telephone mediator assists the parties who have reached agreement by reading the Order word-for-word to the parties. The Mediator's Order is also sent to the parties before it is forwarded to the Tribunal for sealing.

In summary, applications for telephone mediation need to satisfy a set of criteria which determine which matters are likely to be resolved by telephone within the 24-hour window which is available for these disputes. If mediation cannot be completed in this timeframe, it is re-scheduled for a face-to-face mediation.

This session provides an insight into a service which currently utilises a 3-way facilitated mediation in real-time. The Department has plans for an upgraded telephone system which will enable telephone mediators to have:

- more than 3 parties on the line;
- a senior mediator listening to and observing the telephone mediation for quality control;
- an ability to hold a private session with each party.

CONCLUSION

Parties throughout New Zealand with single issues, or disputes that present as relatively simple, now have increased access to early resolution via the Department of Building and Housing's telephone mediation service.

Author

Jessica Carter
Senior Advisor Mediation Practice
Department of Building and Housing, New Zealand
jessica.carter@dbh.govt.nz

Jessica Carter

Jessica, based in Auckland, provides national support and advice to regional managers, team leaders and mediators regarding mediation best practice, training and professional development. Jessica's role includes responsibility for training and development, quality control systems and implementation, ethical guidelines for mediation practice and ensuring that the mediation practices within the Department meet the highest standards. The Department of Building and Housing employs 56 mediators, and approximately 34 contractors and mediation is offered at more than 85 locations around New Zealand. More than 45,000 applications are made to the Tenancy Tribunal each year, and there are more than 500 active claims within the weathertight homes dispute resolution process. For both areas, more than 60% of claims are mediated before going to the Tribunal.

Endnotes

¹ 7th Australasian Residential Tenancies Conference, Melbourne, Australia, September 2007

² Case studies are currently being made of two telephone mediation services. One, in the United Kingdom and a second in the United States of America