



Alternative Dispute Resolution (ADR)

Popular methods include:

Nowadays there is considerable pressure on parties to settle cases and you must expect that to be so.

Negotiation

Negotiation should normally be the first step in attempting to resolve a dispute. If successful, this is likely to be the quickest and cheapest way to resolve the matter. Negotiations can take place both prior to issue of a court claim or after proceedings have commenced. Even if you are unable to settle the whole case, it is often possible to agree on certain matters. This is likely to reduce the cost of our work.

Mediation

You may choose to resolve a dispute by mediation. Mediation uses a third party (the mediator) to help the parties reach a solution. The mediator is not there to advise the parties on their case and cannot impose a solution on the parties. Mediation is voluntary and can only be undertaken with the agreement of both parties. You can withdraw at any time and if you do not like the proposed solution you do not have to accept it. We can arrange the mediation and assist you in assessing any proposals put forward as part of the process.

Advantages

- ⊕ as it is a voluntary process, mediation is usually less confrontational than court proceedings. The parties, assisted by the mediator, work together to try to find a mutually acceptable outcome
- ⊕ a settlement will only be reached if all parties can agree on the outcome, unlike the decision of the court which will nearly always produce a 'winner' and a 'loser'
- ⊕ mediation can be significantly cheaper and quicker than a court case
- ⊕ it is a private process, unlike most civil court hearings which are held in public
- ⊕ the mediation process gives the parties flexibility to reach a solution which is not restricted to legal principles and rules
- ⊕ due to the conciliatory approach, mediation may allow the parties to retain their business relationships which often can be more valuable than a legal solution
- ⊕ even if no settlement is agreed the parties may at least be able to narrow the issues

Disadvantages

- ⊕ mediation relies on both parties entering into the process voluntarily and in the spirit of co-operation
- ⊕ the parties are not bound by the procedure and have the option to withdraw from it at any time, which means there is no certainty of any final outcome being reached
- ⊕ one party may hold greater negotiating power than the other
- ⊕ if a solution is not reached, mediation may be viewed as a waste of time and money by the parties. However, the parties usually have been able to narrow the issues which are in dispute
- ⊕ one party may enter into mediation as a delaying tactic or to try to obtain valuable information

Arbitration

You may choose to refer your dispute to an independent third party (the arbitrator) who is selected to make a decision based on the evidence and arguments presented. The parties will agree in advance that the arbitrator's decision will be final and binding. Sometimes arbitration is an obligation within a contract which binds both parties in the event of a dispute.

Advantages

- ✦ arbitration normally provides finality to the dispute
- ✦ it is a private process and details of the awards will not be published
- ✦ the arbitrator is chosen for their expertise in a particular area
- ✦ arbitration can be less costly and quicker than a court case
- ✦ the result of arbitration can be enforced without commencing court proceedings

Disadvantages

- ✦ arbitration can sometimes be just as costly, time consuming and legalistic as litigation. It will be conducted by lawyers and may adopt many of the formal court procedures such as disclosure, witness statements and use of experts
- ✦ there is the possibility of an appeal of the award to a judge. Also, the arbitrator may have to refer certain legal points to a court at some stage prior to or during the arbitration process

There may be alternatives suitable for resolving your dispute and we will advise you on the basis of the information you provide.

This information is for general use only and is not case specific. You are recommended to seek legal advice regarding your particular case.



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