

## **ALTERNATIVE DISPUTE RESOLUTION (ADR) – AVOIDING COURT!**

GOOD NEWS - Court proceedings are no longer the most obvious option to help you resolve a legal dispute. In fact, there are many alternatives which could provide you with a quick, cheap and commercially realistic solution to your legal problem. So, what are these options and are they suitable?

### The Nature of ADR

ADR is a voluntary and without prejudice process. It is a means of resolving a dispute by appointing an independent third party who will help the parties reach their own solution. If either party does not like the proposed solution they do not have to accept it and can withdraw from the process at any time.

### Types of ADR

**Mediation** is the most obvious form of ADR. A mediator would be agreed and appointed by the parties. The process will be very informal and it will present each side with a chance to put points across about the case that they may not wish to discuss in court. The objective is to try and narrow the issues of dispute and hopefully reach a settlement. The mediator will come up with possible solutions and each side will have the chance to spend time alone with their legal advisors to consider the proposed solutions properly. The mediation can last as long as the parties want. You are the ones in charge!

**'Med-arb'** is a form of ADR where the parties agree to take their case to a mediator and that, if this does not work, they will refer the matter to arbitration. The difference being that the arbitrator can impose a binding decision on the parties whereas the mediator cannot. Time and money can be saved by agreeing that the same person will act as mediator and then arbitrator if necessary.

**'Mini-trials'** involve the parties appointing a neutral who will sit as chairman of a tribunal composed of himself and a senior representative of each of the parties. The representatives will listen to each others case (with the help of the chairman) and try to negotiate a settlement.

**Expert** assistance can take many forms of ADR. In effect, the parties can agree to instruct a mutually acceptable expert to either reach a decision or just give his opinion on what a fair outcome might be. The parties can dictate in advance exactly how much power they want the expert to have and whether they want his findings kept confidential.

There are other forms of ADR available which are not covered here. The key is to look at the circumstances of the case and decide what suits your needs.

### So why ADR?

The main benefit is that it is more flexible, cheaper and quicker than court proceedings. The parties do have to pay for the services of a mediator but the cost is shared equally and the process can often be set up within a few weeks. A skilled neutral may have a better chance of leading the parties to a settlement and sometimes very little is lost by trying to resolve the case in these informal surroundings. After all, if it fails, you can pull out at any time and start/continue with court proceedings. The reality is that some agreed settlements are far more suitable than what a court would order especially if you are trying to preserve a commercial relationship. Many businesses are also attracted by the idea of keeping the case confidential.

What this does for you is give you options. ADR is not always the best way forward – sometimes full court proceedings to trial are just inevitable. As your legal representatives it would be our job to advise you on your options depending on the facts of the case. But, at least, you do have options rather than the dreaded court!

If you have any questions about this subject then please feel free to contact Ryan Mowat on [ryanmowat@boltburdon.co.uk](mailto:ryanmowat@boltburdon.co.uk) or Marcella Cox on [marcellacox@boltburdon.co.uk](mailto:marcellacox@boltburdon.co.uk) or by telephone on 020 7288 4700 to the Commercial Litigation Department. Alternatively, visit our website at [www.boltburdon.co.uk](http://www.boltburdon.co.uk)

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