



THE ESCALATE GUIDE TO:

Alternative Dispute Resolution



Escalate's successful track record is based on its reputation for being an aggressive litigator when the need arises, as well as taking a commercial approach and resolving disputes through negotiation, mediation and adjudication where possible.

Our skill at employing these so-called forms of 'alternative dispute resolution' (ADR) is what sets us apart from traditional law firms and enables us to recover money for our clients quickly and pragmatically.

What is ADR?

The term ADR covers a range of techniques which assist parties in dispute to reach a negotiated settlement without the use of a judge or arbitrator. ADR seeks to promote imaginative solutions to disputes in which traditional negotiation techniques are not producing settlement.

What is the procedure in ADR?

There is no prescribed format. We will advise you on the best procedure for your particular circumstances, which may include:

Mediation

This is the most common form of ADR. The parties meet at a mutually agreed time and location and the process begins with a joint session at which the parties set out their case. A trained mediator then meets the parties separately and shuttles between them, trying to develop common ground and testing out ways of resolving the dispute. Until a settlement is achieved, the mediation process is non-binding and the parties are free to walk away. If agreement is reached, it will be documented and signed. The agreement will then be enforceable as a contract.

Expert opinion

The parties appoint an agreed expert and ask them to consider particular points of dispute between the parties, usually of a technical nature. The parties can either agree in advance to be bound by the expert's conclusions, or simply to use the expert's conclusions as a guide for further negotiation, discussion or further expert analysis.

Adjudication

Adjudication is a statutory procedure by which any party to a contract has a right to have a dispute decided by an adjudicator. It is intended to be quicker and more cost effective than litigation or arbitration. It is normally used to ensure payment (although most types of dispute can be adjudicated). The Adjudicator must generally decide the dispute in less than 42 days. The decision is binding and is usually upheld by the Courts.

Mini trial

A mini trial, or 'executive tribunal', is a more formal type of mediation hearing. Presentations are made to a panel which would typically comprise the mediator and a senior executive from each party. Following the presentations, the executives will attempt to settle the case with the assistance of the mediator if necessary.

What are the benefits of ADR?

- **Flexibility** - ADR offers the opportunity to agree more creative, flexible settlement options than a Court could order.
- **Speed** - ADR can be arranged within days or weeks rather than the months or years that can be involved in litigation or arbitration. Typically, the average case is resolved in less than a day.
- **Control** - The parties agree the mediator or expert, the venue, the timetable, the procedure and the agenda. They also determine what information is disclosed to the other side. Control over the decision making is therefore retained by the parties.
- **Confidentiality** - ADR is entirely private, so potentially unwelcome publicity can be avoided and any agreed settlement will not set a precedent.

Common questions answered

Q) Is a willingness to mediate an indication of weakness?

A) No – quite the opposite. A willingness to talk through a problem rather than to keep your arguments in reserve is indicative of confidence in the case – and the defendant will recognise this.

Q) Is an agreement reached by mediation binding?

A) An agreement reached at mediation is binding on all parties once it has been signed. All discussions up to this point are conducted without prejudice and are therefore non-binding.

Q) How confidential is it?

A) The whole process is treated as a 'without prejudice' negotiation. All discussions and documents generated in connection with an ADR process will be privileged communications and will not be referred to in any court hearing that might subsequently take place.

Q) What do you do if no agreement is reached?

A) Currently, about 70%-80% of voluntary mediations result in settlement. Even if a settlement is not achieved, ADR has more benefits than risks. In all likelihood, most of the work carried out in preparing for ADR would have been undertaken during the litigation anyway.

Furthermore, the information gleaned from the other side during the process may well assist in narrowing the issues and highlighting the real areas of dispute. If ADR does not work, then litigation can be commenced or continued.

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