

GUIDANCE SHEET

WHAT IS ADR?

ADR or mediation is the way in which a dispute can be resolved without the need to refer matters to a court which is expensive and time consuming.

It is used to promote the early settlement in a dispute and thus reduce costs and delay. In essence it can cut the cost of conflict.

WHAT IS THE ADVANTAGE OF ADR?

A Court or tribunal proceedings can be expensive time consuming and stressful. The early settlement of cases should be promoted and both parties should consider the benefits of ADR.

- More cost effective than litigation.
- Speed - the process can be set up as quickly as the parties wish and in most instances only last a day or two at the most.
- It is independent – the expert mediator will be fully appraised of the issues involved and will have read the papers prior to the ADR process itself. A mediator's role is not to adjudicate or take sides but to try and assist the parties in reaching and agreeing a settlement of their dispute.
- Control – the parties will remain in full control of the process at any settlement agreed. If no settlement is reached the parties may abandon

mediation /negotiation process and start or continue with any court proceedings. ADR can be used at any time at the start of the dispute or during the court process.

- The court itself may order ADR to take place.
- Clarify/narrow the issues.
- You meet face to face with your opponent rather than negotiating through solicitors.

It gives you the opportunity to discuss the strength and weaknesses of your case in confidence with an independent mediator and help you assess your case more effectively.

It avoids an imposed resolution that has been imposed by the judge and in this situation at court there are always winners and losers with ADR both sides make a contribution to a final settlement and will be able to shape the terms of the settlement themselves.

WHAT HAPPENS IN A MEDIATION?

This is very flexible and the needs of both parties and their aspirations will be discussed in setting up the mediation meeting. There will be an opening presentation by each side and then usually each side will retire to their own room and will be consulted by a mediator who will pass between the rooms to try and effect an agreement. There may be a further joint session and if the mediation is

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successful a settlement will be achieved and recorded.

WARNING

In all existing court proceedings the court must consider whether a claim is suitable to be resolved by ADR. The court can put on hold any proceedings to allow an opportunity for ADR to take place.

Tough penalties are likely to be imposed if a party unreasonably refuses to explore the possibility of ADR.

HOW DO I CHOOSE A MEDIATOR?

There are various types of ADR and this can be adapted to the needs of the parties and the specific difficulties of their case. We will advise and liaise with all parties and recommend a referral to an organisation such as Centre for Dispute Resolution (CEDR).

A neutral person will be chosen by both parties and will conduct mediation by reference to CEDR policies.

The mediator may be drawn from a wide range of backgrounds including lawyers, accountants, surveyors, engineers, doctors and architects will be chosen with particular difficulties of the case in mind.

The parties can choose the venue for the ADR and the format can be altered to suit the needs of the parties.

HOW MUCH WILL IT COST?

The fees cover the mediator's fee and the services provided by the ADR Services Unit which can include liaising and advising all parties in setting up the mediation. It does not typically include any additional expenses such as room hire, travel expenses or preparation time with a mediator.

The fee per party per day can be provided on request as these fees do vary.

WHAT IS THE PROCEDURE?

Both parties to the dispute have to consent to ADR if it is to be entered into voluntarily.

Initially an approach will be made to your opponent and subject to their agreement an approach may be made to one of the recognised administrative centres for Dispute Resolution such as CEDR. If so, an agreement to do so would be reached and both parties would attempt to resolve the dispute by ADR. We would then provide you with copies of a sample agreement along with guidance notes of further information on assistance.