

A Short Guide to ADR

(Alternative Dispute Resolution)

'ADR' is a general term given to describe processes by which disputes can be settled without going to court. There are many forms of ADR and we have given basic descriptions of the most common forms of ADR below. ADR may not be suitable for your particular case and so specific legal advice should be sought in each case.

ARBITRATION

Arbitration is a form of alternative dispute resolution conducted in private. An arbitrator is appointed by the parties in dispute to hear each side and make a decision on the case. As arbitration is voluntary, each side must agree to arbitration. Sometimes contracts require the use of arbitration and the process that should be followed.

There are some advantages to arbitration over a hearing at court. It can prove to be cheaper in some circumstances. Some parties have preferred arbitration because the hearings with the arbitrator are less formal than attending court. The parties can participate in choosing the arbitrator whereas the parties would not have choice over which Judge hears their case! Sometimes it is helpful if the parties choose an arbitrator who has experience in their industry. The arbitration process is largely confidential and the rules of the arbitration are decided by the arbitrator so they can be adapted to suit a particular dispute.

Parties can still be represented by their lawyers (or someone else of their choosing), but it is only the arbitrator that will ask questions and the arbitrator can ask questions directly to the parties if the arbitrator wishes. There is no 'cross-examination' of witnesses as there would be at court—but that can be a disadvantage to some parties as well as an advantage to others. A party to the arbitration may however propose questions to be put to the other side. The arbitrator may help a party if they have problems in explaining their case.

The decision made by the arbitrator is binding and there are only limited cases in which a party may appeal the decision. Some may see this as a disadvantage compared with court proceedings. Awards made by an arbitrator can usually be enforced at court if a party refuses to pay.

MEDIATION

Another form of ADR is mediation. This involves the use of a qualified mediator, who will usually see the parties face to face, although in some cases mediators can deal with cases over the phone or by email. The mediator's job is to facilitate discussions between the parties, in the hope that this will lead to settlement. The Mediator does not give legal advice or make a judgement on the case.

In our experience the success rate of mediation is high. It is also attractive to clients because it is almost always cheaper than going to court and less stressful, although often both parties contribute to the mediator's costs. There is no obligation on the parties to reach an agreement at the mediation and in that sense they have nothing to lose apart from the mediator's costs and those of the representatives, assuming they choose to take their lawyers with them. Even if the parties fail to reach an agreement at the mediation they usually discover a bit more about the strengths and weaknesses of their own case and that of their opponent, which causes the matter to settle later on. So time spent mediating is rarely time wasted.

ADJUDICATION

Adjudication can be used as a quicker way of resolving disputes in construction cases as a tight timetable is used. Adjudication is usually provided for in construction contracts. The parties will often have involvement in choosing a suitable arbitrator but a confidentiality agreement may be needed to keep documents confidential. There is also a statutory scheme which will set out the procedure for adjudication in some circumstances.

EXPERT DETERMINATION

This is another private process by which disputes may be settled. It is often provided for in commercial contracts in specific industries that an 'expert' in that industry is appointed to determine the dispute. The procedure will be governed by the parties involved but depending on the process the decision may not be enforceable. However, determination by an expert may contribute to evidence if the matter eventually went to court.

Metcalfe Copeman & Pettefar LLP

Kings Lynn ♦ Thetford ♦ Wisbech ♦ Peterborough

www.mcp-law.co.uk

01945 464331

info@mcp-law.co.uk