

In Place of Strife

is a dispute resolution practice dedicated to cutting the cost, time and stress of civil litigation.

www.mediate.co.uk

IN PLACE OF STRIFE
dispute resolution by mediation

Mediation – A Means to an End?

Forward thinking in Dispute Resolution

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“In death avoid hell, in life
avoid the law courts”

Chinese proverb

The joys of litigation

- Procedural complexity
- Delay
- Unpredictability
- Imposed solution
- “Winner takes all”
- Lack of creative solutions
- Cost

Mediation - its features

- Neutral third party mediator.
- Informal, non-binding and confidential setting.
- Principled, constructive negotiation replaces adversarial confrontation.

Mediation - the process

Typically:

- One or possibly two days only.
- Those present have authority to settle.
- Lawyers in attendance.
- Case summaries, not full documentation.

Mediation - the process

Typically:

- Short joint session to outline respective cases.
- Thereafter separate confidential sessions with the mediator.
- Mediator has unique position from which to explore common ground and solutions which serve the interests of all.
- BUT, parties remain in control always.

When to mediate

- Do you want to find a settlement?
- Can you assess strengths and weaknesses?
- Are you in negotiation?
- Are you making progress?

When not to mediate

- No dispute - refusal to pay
- Important precedent in the making
- Tactical advantage of delay
- Publicity wanted

Mediation - the benefits

- Speedy settlement of disputes
- **Cost saving**
- Saves management time and stress
- Confidentiality
- Can remove antagonism and restore relationships

Mediation - the risks

None

Mediation and Insurance

- History to date
- Why slow to take off?
- Arbitration v Mediation
- Loss Adjusters and mediation
- Inter-market disputes
- 'Follow Settlements' clauses
- Mediation clauses?

Advantages of early mediation

- Proactive not reactive
- Less chance of entrenchment and escalation
- Preserves ongoing relationship
- Keeps the lid on costs
- Cuts down management time and distraction
- Commercial solution to commercial dispute

The track record

Around 80% of cases mediated are settled at or shortly after the mediation session.

Development of ADR

In the UK:

- Woolf promotes ADR.
- Civil Procedure Rules adopt it.
- Courts routinely stay proceedings for ADR.
- Costs sanctions against those unwilling to participate.

Who mediates? Specialist or generalist?

Understanding the issues

-v-

avoiding judgement

In Place of Strife was established in 1995 to provide a high quality, cost-effective mediation service.

It provides:

- Free consultation service to the parties.
- Choice of top mediators from its panel.
- Effective administration of the process.

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