

ALTERNATIVE DISPUTE RESOLUTION (ADR)

WHAT IS ADR?

ADR is the collective term used for means of settling disputes with the help of a third party, in a non court related forum. ADR has become increasingly popular over the last few years and is actively encouraged by the Courts. Whilst the Courts cannot force parties to resolve matters by way of ADR, they will often Order that a matter be stayed (be put on hold) to allow parties to explore ADR, usually by mediation or arbitration. Failure to agree to undergo an ADR process may prejudice your case if you unreasonably refuse to attend and may result in you incurring cost penalties, imposed by the Judge.

SMALL CLAIMS MEDIATION SERVICE- Debts less than £10000

Mediation is a way of negotiating a compromise with the help of an impartial third person. The courts provide a free mediation service to attempt to settle monetary claims before they go to Trial. The cost of using the service is covered by the court fees paid by the Claimant

It can be worth trying mediation, rather than proceed to a Trial because it can mean matters are dealt with more quickly. Mediation appointments are listed earlier than court hearings; a session can take about an hour and can take place over the telephone, rather than the parties having to travel to Court.

If the matter is concluded by a successful mediation, then you are entitled to a full refund of the Hearing Fee, providing you give at least seven days written notice to the Court, before the hearing date.

FAST TRACK AND MULTI TRACK MATTERS-Debts over £10000

Whilst mediation is advocated by the courts as a possible means of resolving all disputes, a free service is not provided where your Claim is valued in excess of £10000 and not allocated to the Small Claims Track. There is a list of experienced mediators who are accredited by the Civil Mediation Council available for all areas on the Ministry of Justice web site. Their fees which are payable privately are displayed on the web site. There is also the cost of venue hire to be considered on occasions and travel costs to attend at the Mediation itself.

It is important to note that whilst mediation is generally less expensive than going to Trial, success cannot be guaranteed. If the matter is not resolved at the Mediation, then the costs of the mediation will ordinarily not be recoverable, even if you are ultimately successful at Trial. Dispute resolution procedures may therefore increase your costs liability. However mediation does have its advantages. Many parties favour the informality and the speed at which a mediation can be arranged, rather than waiting on a distant Court date. A confidential meeting between the parties can enable frank discussions to take place and possibly salvage an on going commercial relationship. If a compromise can be reached, then the mediator will record the agreement reached in an Order which is then binding on the parties.

IT IS IMPORTANT TO REMEMBER THAT MEDIATION IS AVAILABLE AT ANY STAGE IN THE LITIGATION PROCESS. FURTHER DETAILS ARE AVAILABLE UPON REQUEST.

SHOULD YOU WISH TO MEDIATE YOUR DISPUTE, PLEASE NOTIFY US.

The Court Rules – The Civil Procedure Rules 1998, emphasise the importance of, and encourages open and early negotiations. This is set out in the pre-action protocols and practice directions. You can view these at www.justice.gov.uk. The Court will scrutinize the conduct of the parties. Where it is considered that a party has acted unreasonably i.e. by failing to follow the spirit of the protocols the Court has wide powers to penalize them, usually by way of an adverse costs Order. Therefore, if it is appropriate, we would recommend that you enter into negotiations and keep a record for future proof of your attempts to bring the matter to an early settlement.

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