

Resolving Disputes by Mediation, Geraldine Kennedy

It is an unfortunate fact of life that most businesses become involved in a dispute at some stage no matter how they try to avoid them. When problems arise it's important to address them cost efficiently and quickly. Historically the only way to resolve a dispute was through the courts. This is often appropriate but there is also now the option of mediation. Mediation often takes place after litigation has started but it can take place at any time during the dispute.

Mediation is a voluntary process. If the parties agree to mediate they appoint a specially trained Mediator whose role is to assist the parties in finding a mutually acceptable resolution to their dispute. It is not his role to decide who is right or wrong or decide points of law.

The mediation usually starts with a joint meeting at which each party outlines their position to the other party and to the Mediator. The parties then retire to separate rooms and the Mediator moves between the two and tries to facilitate a settlement.

What is said to the Mediator in the private rooms is confidential. This confidentiality enables a party to speak openly with the Mediator about the strength and weakness of their position and also about what they hope to achieve in a settlement. This openness helps the Mediator to move the parties towards a settlement.

If the parties agree terms during the mediation, those terms become binding on them. However if no agreement is reached what has been offered and discussed during the course of the mediation remains non binding and confidential. It cannot be used in any subsequent litigation.

In a commercial setting mediation can be very useful. It is flexible, unlike a court situation where the Judge is limited in what he can order as a settlement, usually monetary compensation. The mediation settlement can include any terms the parties want, whether or not they are directly related to the dispute. For instance if there is a dispute over the price due for the supply of services the Judge could only set the price for those services whereas a mediation settlement could include a provision that the parties enter into an agreement for the supply of new services.

A negotiated settlement which is acceptable to all parties may enable them to continue a commercial relationship whereas a trial may make it difficult for the parties to resume trading together.

Successful mediation saves the parties legal costs by bringing a dispute to an early end and reduces the management time which is spent on the dispute, which can be more usefully spent growing the business.



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