

Alternative Dispute Resolution

March 2008



What is Alternative Dispute Resolution (“ADR”)?

ADR encompasses many different procedures but the most popular is mediation. Mediation is a flexible, non binding method of resolving disputes which usually involves the appointment of a trained mediator, operating under agreed terms and in accordance with a code of practice.

What are the Advantages of Mediation?

Mediation is confidential and can be quicker and more cost efficient than litigation.

In What Type of Dispute Can Mediation be Used?

Mediation can be used as a means to resolve any type of dispute ranging from claims under the Inheritance (Provision for Family and Dependents) (NI) Order 1979 to multi-party construction litigation.

Is Mediation Mandatory?

You cannot be compelled to mediate but there is a growing body of case law which suggests that refusal to mediate is a high risk strategy. If a party unreasonably refuses mediation, adverse costs consequences are likely to arise.

Judicial Encouragement

The Judiciary in Northern Ireland have certainly demonstrated that they wish to encourage mediation. The pre-action protocol in the Chancery Division for the resolution of Family Provision claims, which became effective on 1 September 2005, endorsed mediation as an alternative to litigation and commended its' use in appropriate cases both before and after proceedings have been issued.

In particular, the Commercial Judge, Mr Justice Coghlin, has directed that, in appropriate cases, he may require parties to justify the decision not to resort to an appropriate form of ADR.

What Factors Should the Court Take into Account When Determining Whether or Not a Party has Unreasonably Refused ADR?

Guidance on this issue was provided by the English Court of Appeal in the 2004 case of *Halsey v Milton Keynes NHS Trust*. The factors include the nature of the dispute, the merits of the case, attempts to settle by other means and the prospects of success. The Court of Appeal made it clear that it would not compel parties to mediate but the Judgment has certainly made it more difficult for parties to flatly refuse to do so.

Dispute Resolution Service

The Law Society of Northern Ireland provides a Dispute Resolution Service. Trained mediators are appointed by the Law Society and are subject to a mediation agreement and code of practice. Mediators' fees are agreed with the parties in accordance with a Law Society scale and registration with the service currently costs as little as £120.00.

Please note: The content of this article is for information purposes only and further advice should be sought from a professional advisor before any action is taken.