

Mediation

What are the advantages of mediation?

- It is a non-binding and private form of dispute resolution.
- The parties retain control of the decision on whether or not to settle and on what terms, meaning that mediation allows more creativity and flexibility over settlement options than litigating in court or arbitration.
- Any settlement reached is consensual, unlike the determination reached by a court, and may reduce the risk of damage to ongoing business relationships.
- The use of an experienced third party can enable parties to reach a new perspective on their case, helping them to avoid or break deadlock resulting from direct negotiations.
- Although mediation is typically used once a dispute becomes apparent, it can also be used at the transaction/deal-making stage, in order to finalise the terms of a deal. This can be particularly useful for transactions with multiple parties or parties from different cultural backgrounds, where differences in commercial and negotiation approaches may create obstacles.
- A mediation can be arranged and undertaken quickly and relatively cheaply, in comparison to litigation or other more formal ADR processes such as arbitration or adjudication.
- Even if settlement is not reached at the mediation itself, the mediation process can

trigger the “conditions for settlement”, and engage relevant stakeholders in the dispute, increasing the possibility of settlement being reached in the days or weeks following the process.

What are the disadvantages of mediation?

- A mediation can be effective at helping parties reach agreement, but the process lacks the tools available to courts (or some formal ADR procedures) to compel the production of evidence or documents and to get to the “truth” of the matter. As a result, settlement may be less likely in cases where a party believes that there is an important point of principle at stake, or where they believe the other party is not acting in good faith.
- There may be cases involving a total breakdown in relationships, to the extent that mediation is unsuitable, notwithstanding the assistance of a neutral third party (for example, where allegations of serious commercial wrongdoing are made).
- Mediation is not appropriate where a party needs the certainty that settlement will be achieved on the day, since this cannot be guaranteed.
- Although the costs involved in mediation are often significantly lower than litigation, this is not always the case in lower-value disputes, and comes without the guarantee of settlement being achieved.

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