



Negotiated Dispute Resolution (NDR)

A guide to

INITIATING NDR

and making the Approach to Other Parties

Why and How?

Do and Do Not

Considerations

Highlights

Focus

WHY?

- To communicate in a neutral manner that you have been actively pursuing a means of resolving the dispute.
- To advise that you intend to explore NDR in more detail.
- To confirm that you will attend a Consultation with a neutral facilitator with whom you have had no previous discussions in respect of the dispute.
- To request the other party consider it as an option.
- To provide the other party with the details of the neutral facilitator.

HOW?

- Draft and send an email to the other party (see example).
- Attach a copy of the NDR Information Pack.
- Contact the neutral facilitator to arrange your Consultation (you don't need to wait for the other party/you don't need their permission) – even if both parties are unable to use NDR you will have spent your time wisely in reviewing your situation at no risk to your position.

DO

- Confirm your intentions to explore NDR and to attend an independent Consultation.
- Be confident, clear and concise about your goals in using NDR; explaining why you are reaching out and what you hope to achieve by mediating the dispute.
- Be respectful and professional and avoid including anything that may escalate the situation further.
- Be positive as to how you see NDR providing the opportunity for you both to reach a settlement.

DO NOT

- Threaten, place deadlines or make ultimatums.
- Blame or accuse the other party.
- Ask for a decision.
- Plead or compromise yourself or your position.
- Comment on previous offers or resolution attempts.
- Make reference to any ongoing legal or other proceedings (there is an opportunity to address these prior to parties agreeing to mediation).
- Be tempted to negotiate at this stage.
- Copy the neutral facilitator or anyone else in on your initial approach (keep it between parties).
- Make any additional or follow-on approaches prior to your consultation.
- Forget to factor in that they will at some point be likely to read this guide too!

HIGHLIGHTS

In your approach highlight those BENEFITS of using NDR that best match your unique understanding of the situation.

“NDR provides us with the chance to”:

- Have a neutral facilitation,
- Retain complete control over the process, scope and outcome of our negotiations (something we might otherwise lose in other dispute resolution options),
- Clarify our own positions and gain a facilitated insight into each other’s position,
- Break the problem down and build an agreed understanding,
- Tackle the challenge together,
- Review, Repair, Rebuild and Resume,
- Consider additional information and impacts that we each may not previously have been aware of,
- Test and reality check our assumptions,
- Offer and receive clarifications,
- Propose and consider different options and solutions,
- Negotiate in good faith without fear of prejudicing our positions; and
- Be as creative as we can be in reaching a Settlement Agreement that meets our respective needs.

CONSIDER

- What is the best time to make the approach?
- Make sure there is one authorised channel of communication within your organisation in respect of the dispute.
- Brief your partners/colleagues/advisors as to your intentions and reinforce agreed communication protocols (one bonfire is better than multiple wildfires).
- Keep it simple.

FOCUS

Focus on your prime objectives:

- To explain why you are reaching out (being clear and concise about your goals).
- To indicate your intention to explore NDR further at Consultation.
- To invite them to do the same.
- To highlight the Consultation as the opportunity for you both to review the situation and have a confidential and independent exploration of your options.

Subject: Suggestion for Mediation to Resolve Our Dispute

I hope this email finds you well. I wanted to reach out to you regarding the challenge we face.

I have been actively researching how we might work to resolve matters and I believe that mediation in the form of the Negotiated Dispute Resolution (NDR) service offered by Dispute Negotiators might present us with a means of addressing our situation.

Our challenge has caused frustration and tension for both of us, and I want to emphasise that my objective is to reach a mutually agreeable solution that respects both of our perspectives. I feel that the NDR model has several benefits that could help us achieve this goal where it offers:

- A truly **Neutral** and **Impartial** service – so we can both expect a fair and balanced process.
- A guarantee of **Confidentiality** – giving us the reassurance that we can be frank and open in a safe space where our discussions will remain entirely between us as we work towards a solution.
- Complete **Control** – we will remain in control throughout of the entire process and we will not be leaving the outcome to the judgement of others.
- A **Cost-Effective** option where expense, time and risk are minimised.

I genuinely believe that mediation can help us bridge the gap and work towards a resolution that is fair and acceptable to both of us. It provides an opportunity for us to discuss our concerns openly and collaboratively with the guidance of an accredited mediator.

Dispute Negotiators offer a free initial Consultation. I can confirm to you that I have had no contact or discussion with them in respect of our dispute other than to make arrangements for the consultation that I will be attending.

They have a number of resources available at www.disputenegotiators.com/initiate and I have attached a copy of their NDR Information Pack.

I would ask that you review their NDR resources and arrange your independent Consultation so that we can both benefit from an impartial and confidential review of our situation and our options for resolution.

Ultimately, the decision to pursue mediation is entirely voluntary, and I respect whatever choice you make.

Thank you for taking the time to consider this approach.

FINALLY

Avoid using jargon or legal terms.

Adapt these suggestions to address your specific dispute.

You will know both what is at the core of the dispute (payments, contracts, performance, behaviours, relationships, communications etc) and where there are other underlying issues - focus your approach accordingly.

Do not use terms such as “Without Prejudice” unless you fully understand their meaning, your intent and the implications.

Your pitch and tone are important - spend time getting them right.

If you are in any doubt, secure professional advice.