

# Negotiated Dispute Resolution (NDR)

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# My Problem

You are in a dispute or difficulty and you need a solution that:

- **CONTAINS** your **COSTS**.
- Has a **FIXED TIMESCALE**.
- Is **MINIMUM RISK**.
- Has a **HIGH RATE** of **SUCCESS**.

# Mediation

Mediation is a flexible and confidential process used to settle a dispute or difficulty between two or more Parties. It is facilitated by an independent and impartial third person (a Mediator) who guides the parties through a detailed discussion of the issues and their options. In the overwhelming majority of cases this leads on to the negotiation of a mutually agreeable resolution.

It is **NOT**:

- Simply a “cheap” version of litigation or adjudication.
- A “test-drive” for a court case.
- An opportunity to “see what the other Party has got”.

# Core Principles

1. It is entirely **VOLUNTARY**.
2. It is truly **IMPARTIAL**.
3. Every aspect is fully **CONFIDENTIAL**.
4. It is **SELF-DETERMINING** where the Parties remain in control throughout and no settlement is reached until it meets with mutual agreement.

## Who is it For

Mediation is for those who seek a non-adversarial means of resolving a dispute or difficulty. One that offers a high probability of success at minimal risk.

It is available to self-referring Parties in a dispute and it is also available to a “contracting Client” where they may have individuals or teams within their organisation who they feel would benefit from Mediation.

# How?

Following referral and initial contact:

## **CONSULTATION**

Parties attend an independent Consultation with the Mediator where they have broad discussions in respect of the situation and their current position. They are briefed on what to expect and have the opportunity to explore all aspects of Mediation without coercion or conditions as to participation. Parties confirm if they wish to proceed to the next step and, where they indicate their desire to do so, they sign an Agreement to Mediate.

## **PREPARATION**

Parties provide the Mediator with a brief outline of their position (oral or written) and any other information they deem relevant at this stage. Parties are provided with sufficient neutral resources and support to ensure they are fully prepared.

## **NEGOTIATION AND SETTLEMENT SESSION**

This takes place over a half or full day with as many joint and individual sessions as required.

# What to Expect

Mediation provides Parties with a **safe** and **confidential** space to explore the situation they find themselves in. The process offers the opportunity to **examine** the **issues, needs** and **underlying interests** of the Parties.

Most importantly it ensures that all participants have the opportunity to articulate matters from their perspective without interruption, judgement or qualification.

Once confidence in the process is established parties progress from the background of the challenge to a more neutral examination of the situation and the **exploration of options** and **alternatives for resolution**.

This **co-design** of any potential outcome is key to a lasting resolution.

Where Mediation is successful participants can expect an outcome where the Parties confirm they have reached a Settlement Agreement and that the matter is resolved to their **mutual satisfaction**.

# Confidentiality

A key principle of Mediation is that it is fully confidential.

This is a significant benefit where there are personal/professional or individual/organisational implications or reputational risks.

It also gives participants the reassurance that their discussions, negotiations and exploration of offers and options will be conducted in complete confidence without fear of subsequent revelation.

This confidentiality can extend to the fact that a Mediation is even taking place.

It is a requirement of our service that no-one other than the Parties, the contracting Client (if involved), ourselves and such other professional advisors as are necessary are made aware of the Mediation.

Additionally, all Parties and any other participants will be required to sign a Confidentiality Agreement that confirms their commitment to both this general responsibility and additional undertakings in respect of communications, meetings, discussions, or information shared.

Whilst this requirement relates to the entire NDR process, it is also in effect between the Mediator and each individual Party at all times. Permission to share relevant information arising at any stage (and in particular any individual Mediator/Party session) will always be sought and confirmed and will only take place at the express request of each Party.

# Participants

## **Party/Parties**

The individuals or groups involved in a dispute or difficulty who have agreed to mediate.

## **“Contracting Client”**

The contracting organisation or individual who confirms the overriding aim of the intervention and requests that other Parties be offered Mediation.

## **The Mediator**

The Mediator, provided by Dispute Negotiators, is a neutral third person who assists the Parties in their negotiations to reach a mutually agreeable settlement that is entirely of their design and meets their needs. The Mediator will act at all times in an impartial manner and they will remain truly independent of the Parties and the outcome.

## **Facilitator/Co-Mediator**

Where appropriate, Dispute Negotiators may utilise a Facilitator/Co-Mediator to be responsible for:

- Initial client liaison.
- Identifying the Parties and all other potential participants.
- Co-ordinating the Parties for attendance at their Initial Consultations.
- Party liaison during the Preparation Phase.
- Co-mediation during the Negotiation and Settlement Session.

# Benefits

In Mediation the Parties remain in complete control throughout.

From timing and scope of the process, right through to the format and content of the final outcome. This makes it a very effective way of resolving a dispute or difficulty.

Mediation will only progress at a pace where all Parties are content that it is meeting their needs. All participants are heard and recognised. This ensures that the outcome of negotiations and choices that Parties take are based upon informed decisions.

In contrast with other more formal and adversarial dispute resolution methods, Mediation is not bound by a “sterile” examination of the facts resulting in a win/loss determination.

Nor are you leaving judgement in the hands of a third party.

Parties (within the limits of their mutually agreed scope) have the opportunity to explore every aspect of the dispute and to be as creative as the situation allows in how they arrive at their jointly designed Final Settlement Agreement.

The Mediator will facilitate you to arrive at a resolution that meets your needs; however the decision on whether or not to reach a Final Settlement Agreement is yours.

It is your Mediation.



# Settlement

A Settlement Agreement can take many forms; some common examples:

- A formal and binding Final Settlement Agreement outlining the mutually agreed resolution. It will be structured with explicit terms and conditions that have the intent of resolving the dispute in its entirety.
- A less formal undertaking but one that contains specific references to mutually agreed undertakings or acknowledgements (e.g. payments, performance, standards of behaviour, understandings, recognitions etc).
- A mutually agreed “Code of Conduct” or other such agreement that sits within a wider context.
- A “note” providing an outline of what was agreed at Mediation.

It can however take any format that the Parties are in agreement with.

# Next Steps

If you would like to explore how Mediation could meet your needs in addressing your problem then please visit our website and review the resources at:

[www.disputenegotiators.com/initiate](http://www.disputenegotiators.com/initiate)

Here you will find information on our Negotiated Dispute Resolution (NDR) service and guidelines on how to approach other Parties in a dispute along with a guide to your Initial Consultation.