



KEY NOTES

Advantages of Mediation

Resolving disputes, either in public courts or privately within organisations occupies a great deal of time. The classic processes using litigation externally or grievance procedures internally are increasingly seen as being far too expensive, taking too long and causing excessive amounts of stress for all involved. There is an alternative way, though, which is growing in popularity, where by an independent, neutral third party assists those in dispute to reach settlements that they are content to live with – mediation.

Mediation works overwhelmingly well to settle employment litigation and yet it is chronically underused. It is also a far cheaper and quicker method of resolving disputes than litigation.

According to research carried out by the Employment Lawyers Association, 75% of law firms surveyed revealed that employment disputes referred to mediation settled at or shortly after a mediation.

Faster than litigation

The survey also revealed that between 2009 and 2015 a total of 11,492 court hearings went to mediation rather than a hearing and the annual success rate was in the region of 70%, although some judges claim a 90% success rate.

On average and broadly speaking, every day spent mediating saves three days spent in a tribunal. It is not at all uncommon for cases listed for well over a week to be settled in one day.

Minimal publicity

Mediating is a private process and avoids the problems caused by excessive and intrusive reporting. While it was all very well for Jeremy Bentham to have complained that “where there is no publicity there is no justice”, we know that there is a great deal of injustice in the way cases are reported in a grossly tendentious (and often plainly inaccurate) manner on social media and elsewhere.

Resolving workplace grievances

Workplace disputes and grievance procedures often result in parties taking sides in a confrontational manner that becomes adversarial and defensive. In large organisations the grievance processes have become both cumbersome and expensive, which is why many businesses are setting up in-house mediation programmes as an alternative to using the grievance route or to entirely replace grievances.

For example, East Sussex County Council has been using mediation for a number of years as an alternative, and reports increased retention rates as a result. Many other well-known larger employers have done the same, such as Marks & Spencer, EDF Energy, Royal Mail, HSBC and National Express.

Why doesn't everyone mediate?

Mediation is not a new concept, but it requires a dedicated mediator to ensure it is handled correctly and not all law firms are able to offer clients this service.

Despite the success record of mediations resolving disputes, it can often be seen as a distraction from preparing for courtroom litigation which would still be needed if the mediation failed.

Trade unions also often have reservations about using mediation based on several factors such as fear of being replaced, dislike of closed procedures, fear that who pays the piper calls the tune, and concerns that systemic problems are buried and not resolved. If you are intent on introducing a mediation alternative to your workplace, then union resistance is best resolved by involving them from the outset to address and allay these concerns.

