

Mediation: A fresh approach to resolving disputes

Whatever our business or organisation, we frequently encounter disputes. Many of these can be minor, but some are more serious, or at least more difficult to resolve. They can arise inside our organisation, for example, between employer & employee, or externally, with suppliers, competitors and customers, or patients. Or they can arise personally with neighbours, or with family members in business or inheritance disputes. Sorting out these disputes requires time, money and energy that we would much rather invest in something more productive.

What's wrong with going to Court?

If parties to a dispute cannot sort it between themselves, they might turn to the law. Lawyers are important for advising on the legal position and negotiating tactics, especially where there is an imbalance of power between the parties. But adopting a legal 'position' can hinder settlement negotiations, and parties lose decision-making power (and money) as they defer to the legal experts. In litigation, power ultimately rests with a judge who imposes their decision on the part of the dispute they have been asked to rule on – whilst other elements of the dispute may not be dealt with at all.

What is mediation?

Mediation is a voluntary process whereby the parties to a dispute agree to allow an independent third party (mediator) to join them in facilitating dialogue and helping them reach a solution that works for them. The success of mediation is now well-documented, and it provides a welcome alternative approach to resolving conflict in a variety of settings. Rather than the costly and risky route to a trial, mediation offers a quicker, cheaper route to the certainty of an agreed outcome.

What happens at a mediation?

There is no set format to mediation, but it usually involves the mediator hosting a joint session, where the parties have an opportunity speak (if they want to), followed by a number of private sessions with the mediator. The mediator will gently listen, they may ask questions to work with each party, and will only pass on information or proposed solutions with the party's agreement.

Why does mediation work?

- **Voluntary** – it only takes place if both sides agree, giving you more control over the process and decisions.
- **Non-Binding** - until a final agreement is reached. This gives you flexibility to think outside the box and try out a solution.
- an **Independent** third party – the mediator is not there to judge, they will make no decision and are not there to give their 'view' of the dispute. Their role and training is to understand the dispute and help facilitate a workable solution.
- **Confidential** – this applies to conversations in the joint session as well as private sessions with the mediator.
- **Without Prejudice** – which means that if a final agreement is not reached, any offers, concessions, or admissions made in the course of the mediation cannot be used in subsequent proceedings.

So, if you feel your dispute may benefit from a less confrontational process of resolution that puts control back in your hands, saving you time and money, then why not try mediation? You may be surprised by how much more effortless and painless the road to resolution can be!

Please see overleaf for details of Toby Walker, Mediator



Toby Walker

Mediator Profile

Toby Walker is an accredited mediator and is a member of the ADR Group Panel. Toby brings to mediation a wealth of experience from his litigation practice, as well as insights from the Courtroom as an advocate. He is a Director and Head of Dispute Resolution at his firm based in Oxford. Whilst he has knowledge of the legal framework of most disputes, Toby tries to explore the practical, financial and other needs of parties involved, using that understanding to help them move towards a workable solution.

Toby is able to mediate most disputes, including those that arise between:

- Business partners, including family businesses
- Landlords, tenants and land owners
- Beneficiaries and Estates in inheritance disputes
- Employers and employees, including within charities and churches
- Hospital trusts and families

An ardent proponent of the mediation process as an alternative to litigation, Toby regularly speaks and writes on the subject. A favourite quote of Toby's is by Winston Churchill: "*Courage is what it takes to stand up and speak. Courage is also what it takes to sit down and listen.*"

Professional Background

Toby originally trained and practiced as a solicitor in London before moving to Hedges Law in Oxford, which was established in 1789. Toby advises on most Civil, Chancery and Commercial disputes. Toby's clients include multinational organisations, SMEs, commercial landlords, independent schools as well as private individuals and some charities. Toby is a member of the Society for Higher Court Advocates, the Property Litigation Association, and the Association of Contentious Trusts and Probate Specialists (ACTAPS).

Endorsements

"Toby was able to quickly grasp and navigate our complex and acrimonious dispute towards a settlement. This resulted in a quick and cost-effective conclusion. It also avoided potentially costly litigation and all the time, resources and risk that entails." - Hayley Beer-Gamage, Chief Executive, Experience Oxfordshire

"Toby is always in command of the details of a case and has excellent tactical instincts." - Will Beetson, Barrister, 42 Bedford Row Chambers

"After 25 years of good old fashioned litigation I would have described myself as a mediation sceptic, that is, until I experienced Toby Walker and the team at ADRg who showed me and my clients how it's really done and why it can be relied upon to produce results. I now rank mediation services not just above the 'austerity' Courts we are getting used to but just about any court in the land." - Allyn Walton, Solicitor for the Working Men's Club and Institute Union

To appoint Toby as mediator or for enquiries as to availability and pricing please telephone 01865 594271 or email Rachel.wilcox@hedgeslaw.co.uk or casemanagement@adrgroup.co.uk