

Early intervention – the new alternative dispute resolution process



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Can we use the key ingredients that make mediation such an effective process and introduce them into the dispute much earlier?

Mediation

In the *Defence Special Edition of the Standard Bulletin* in January, the club explained the process of mediation and why it works.

It is well publicised that mediation is a highly effective process, with around 80% of cases settling. The Civil Mediation Council recently estimated that, in the last 25 years, cases to the value of £65bn have been mediated, with savings in wasted management time, damaged relationships, lost productivity and legal fees of £17.5bn.

But can we use the key ingredients that make mediation such an effective process, and introduce them into the dispute earlier and in a more dynamic or fluid way, in order to achieve an informed solution much sooner, and perhaps in an even more time-efficient way?

The leading mediation provider in the UK – *CEDR* – believes we can and has worked with shipping mediator Stephen Mills to develop its new early intervention concept.

Early intervention

Early intervention is a simple concept. It seeks to introduce a truly impartial, confidential and independent 'Neutral' into a dispute at an early stage, on an entirely **without prejudice and confidential** basis, in the hope that it will encourage a new dialogue between

the parties. Talking to and through a Neutral can make things happen which otherwise would not.

What is the process?

Through early intervention, **CEDR** will nominate one of its experienced shipping mediators to act as a Neutral and explore with the other party its willingness to engage in the process.

The other side may say no, which is always a possibility, but experience shows that if people can talk on the right terms – those of trust and confidentiality – they will usually do so, and progress will be made.

The **Neutral** will work with each party, and its lawyers, to explore all resolution options, including:

- identifying key issues and concerns for each party;
- working out what each party needs to do to inform the other of its position;
- working out a mutually agreed shopping list, or an improved road map, to take the dispute forward;
- identifying options for resolving, or agreeing, how to contest the issues.

Such options may include:

- chaired settlement meetings;
- exploring a possible settlement by phone or email;
- solution planning if no settlement is reached;
- agreeing a timetable to mediation, which will also serve the litigation process, should facilitated negotiation fail.

All of this is on a strictly confidential basis and without prejudice to the parties' rights in the litigation.

What are the benefits?

The Neutral may help to identify any vital information that each party needs to discuss and resolve this claim, or help plan a way forward to a more measured process, or simply facilitate an earlier exchange of 'positions' and an enhanced understanding of why the dispute has got to where it is. The early intervention process and its terms provide a safe and confidential wrapper for these discussions.

As CEDR points out, no litigation process provides confidential access to a true Neutral. Parties will not and cannot confide in a judge or arbitrator, nor will they expose their true positions to each other. They will do both with a Neutral, often enabling a mutually advantageous outcome to be identified.

The parties effectively control the outcome. They can decide to settle or not to settle, but will do so on an informed basis.

Finally, the parties can walk away at any point in the process if they feel it is not serving their needs.

Why does it work?

When a dispute starts, the parties:

- distrust each other;
- adopt postures which signal complete confidence – though not always with strong foundations;
- protect, rather than share, their information – but ultimately they will probably be compelled to share this information eventually, through the litigation process.

With the assistance of a Neutral:

- distrust can be neutralised;
- posturing can be neutralised;
- information can be exchanged more readily and on a 'safer' platform.

The significance of these three ingredients should not be underestimated. Their presence – and that of the Neutral – will always make settlement more likely, happen sooner and cost less. When a case settles in mediation in one day, after many months and possibly years of litigation, these ingredients are at work. Early intervention uses and seeks to inject these ingredients at a much earlier stage in the process, thus reaping the rewards for clients and their legal representatives much sooner too.

When to use it?

CEDR says that early intervention:

- can be used with equal effect on low-value, or on difficult or high-value or simply intractable cases;
- is particularly suitable where there are multiple parties or multiple proceedings, or several jurisdictional options;
- can be invoked unilaterally. The selected Neutral will, if needed, make the first approach to the other parties, or CEDR will make that approach and appoint the Neutral and explain their involvement.

Where do my lawyers fit in to this?

Early intervention depends on the parties seeking and receiving independent advice. Lawyers are vital to the process and are likely to see early intervention as another tool to use to achieve their client's needs and serve their best interests.

For more information:

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for further information.

Alternatively, visit the [CEDR website](#) where the full early intervention procedures and terms can be found.

