

Why mediation works for legal disputes

Like so many things in life, the use of mediation to settle legal claims has been accelerated by the pandemic.

There is a huge backlog of cases waiting to be heard in most courts or tribunals, but mediation usually provides a much quicker way of resolving a case, whether it's an employment claim or a contract dispute.

For businesses, where any money disputed with a customer or employee is more likely to be in the hundreds or thousands of pounds than millions, mediation can often deliver an equally effective, swifter and more amicable route to justice.

It's also important to stress that mediation does not necessarily require major compromise. It simply means trying to resolve the issue without going to court.

Mediation is long-established and has been recognised by the UK courts for decades, and its use has grown steadily since the 1990s. In some sorts of legal action, it is now mandatory to at least consider mediation.

Since 2014, for example, anyone looking to start proceedings in a family law case must attend a Mediation Information and Assessment Meeting (MIAM) unless there is an exemption, such as domestic abuse cases.

Similarly, most employment tribunal claimants have to submit an Early Conciliation Form to ACAS. The Early Conciliation service that ACAS offers is not compulsory, but it isn't really possible to start an employment tribunal claim, without at least considering conciliation through the ACAS scheme.

One key reason that mediation and other forms of alternative dispute resolution (ADR) are not compulsory, is that the process only works because both parties take part voluntarily.

Heather Wilmot, Claims Operations Manager at ARAG, briefly explains how mediation works and why it is becoming a more and more important way of accessing justice and settling legal disputes.

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However, just because ADR isn't compulsory, doesn't mean courts have a 'take it or leave it' attitude to mediation. If one party has suggested going to mediation, but the other refuses without good reason, judges are entitled to take a dim view if the matter ever gets before a court.

At ARAG, we have always encouraged policyholders to consider mediation as a better way of resolving a legal problem. Whether it's for contract claims, employment issues or neighbour disputes, our experience with mediation has been a very positive one.

If success in settling disputes were not enough, then the huge court backlogs in the UK should provide the incentive at least to try mediation.

The decade of 'austerity' from about 2010 saw the Ministry of Justice cut budgets across the board. Spending on policing, prisons and the courts was significantly reduced. Over that time before the pandemic, the total number of court staff was cut by more than 20%, while caseloads were still increasing.

Inevitably, the backlogs got worse during the lockdowns over the past two years. The situation has improved, but we are still seeing some claimants waiting well over a year for court or tribunal dates.

As a result, mediation is becoming less and less 'alternative' and much more the preferred way to resolve a legal dispute. It may not be suitable in every case, of course, but most claims can be settled more amicably, more easily and much more quickly through mediation.

