

Save time and money by resolving conflicts before court

Alternative dispute resolution (ADR) provides a range of resolution processes for small businesses and other parties who find themselves at loggerheads



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From time to time, the owners of SMEs will have to deal with disputes with external suppliers. Such situations are thankfully rare, but when they do arise, they need to be addressed, ideally quickly and inexpensively.

In most cases differences are the result of a simple misunderstanding, and with early discussion can be resolved quickly. Sometimes they can escalate into a dispute that requires diplomacy and negotiation to resolve, but occasionally there is no agreement or resolution.

This will usually leave one party aggrieved that it has provided a service or supply without payment, and the other party aggrieved that it is being asked to pay for something with which it is not satisfied. Positions can become entrenched to the point of deadlock.

Usually, there would then be an exchange of correspondence culminating with one party advising that they will see the other in court, but that is not so easy to achieve.

There will be a long delay in reaching court, causing the emotional drain of uncertainty. In addition, any previous mutually beneficial business relationship with the other party will have been lost.

When the case eventually reaches court, which could take many months if not years, the costs are likely to be substantial. It is then possible that a resolution will be reached on the court steps, where the question will be asked "could there have been another way?".

And the answer is yes, there is another way. Alternative dispute resolution (ADR) provides a range of resolution processes outside the courts. The leading promoter of ADR in Ireland is the Chartered Institute of Arbitrators, a not-for-profit, British-registered charity working through an international network of over 40 branches and more than 700 members across the island of Ireland.

The four primary ADR processes are mediation, conciliation, adjudication and arbitration. Mediation



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involves the assistance of a third party to facilitate the parties reaching their own agreement. Conciliation is similar to mediation except that if the parties cannot agree on a resolution, the conciliator will, on request, provide a recommendation that can be accepted or rejected.

Adjudication is a more formal process set against a timetable, usually 28 days, whereby the adjudicator reaches a decision that is temporarily binding subject to either party challenging the decision, which is rare.

Arbitration is primarily used for more complex disputes where there are technical issues to be addressed, requiring a longer timetable. The ar-

bitrator will issue a decision or award which is to all intents binding, as the grounds for challenge are very narrow and rarely successful.

The appropriate process can be selected in proportion to the dispute that has arisen. This avoids a court process that is in excess of what is required to secure resolution. ADR has the advantages of being private, quicker, cheaper, less adversarial and more efficient than the traditional court process. It is voluntary, and flexible in meeting the needs of the parties.

It is not unusual to have a dispute resolved through ADR in six to eight weeks. Having reached an early res-

olution, the parties can then put the dispute behind them and move on with their lives. ADR has the full support of the court system where it is common for judges to recommend it before proceeding with a case, to encourage early resolution and settlement.

The membership of the Chartered Institute of Arbitrators in Ireland represents the full breadth of the industry across Ireland in both the public and private sectors. Apart from qualified experts in business, the institute has experts in areas such as human resources, workplace relations, sport, transport, environment, construction, agriculture, consumer, technology, family and intellectual property. This expertise is reflected in the dispute resolution schemes the institute has established for organisations including the Society of the Irish Motor Industry, the Irish Farmers' Association and Transport Infrastructure Ireland.

In addition to providing the necessary training for dispute resolution practitioners, the Chartered Institute of Arbitrators acts as an international centre for policymakers, academics and all those concerned with the cost-effective and early settlement of disputes. This ensures that those who avail of its support can be confident that they are getting the best expertise to help them avoid or resolve their disputes.

Peter O'Malley is a fellow of the Chartered Institute of Arbitrators and committee member of the Irish branch