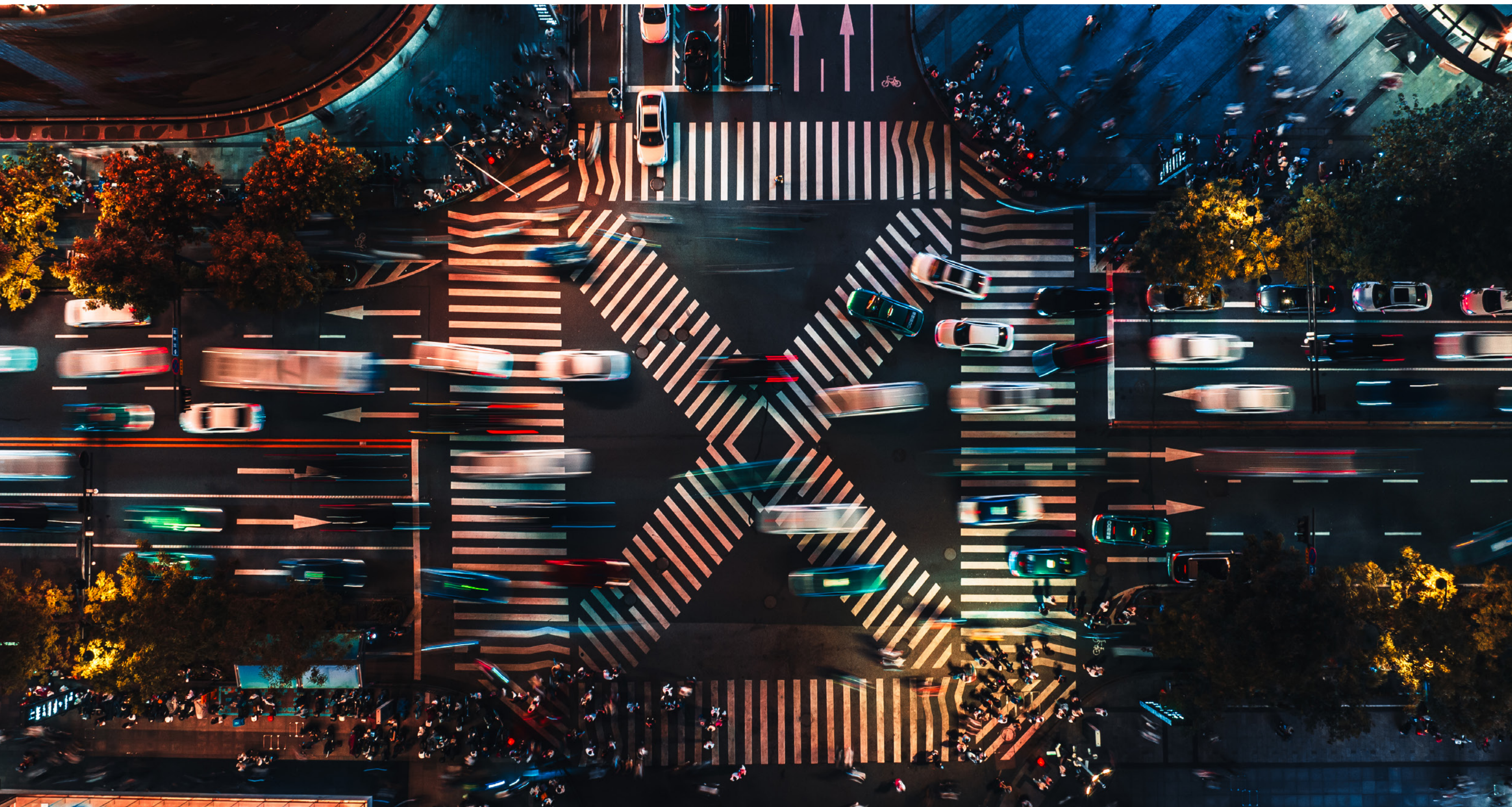
HERBERT SMITH FREEHILLS KRAMER

IMPROVING CONFLICT MANAGEMENT

A TOOLKIT TO ENHANCE THE WAY YOUR ORGANISATION USES ALTERNATIVE DISPUTE RESOLUTION



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Improving the way organisations use ADR

Most in-house counsel are aware of the potential for alternative dispute resolution (ADR) to minimise dispute-related costs and business disruption. However, optimising the use of ADR to achieve real efficiencies can require changes to systems and mindsets. This guide has been designed to provide those wishing to improve the way their organisation uses ADR with insights and tools to help them do so.

Education and understanding remain at the heart of effective ADR use. However, organisational change takes a deeper understanding of how business colleagues, counterparties and external counsel behave. It also takes a commitment by an organisation to adopt an approach to dispute resolution that prevents the escalation of conflict where possible and promotes ADR.

The prize is worth striving for. Organisations that have worked to embed ADR are likely to reduce the costs of conflict materially, while also increasing efficiency. When it comes to resolving disputes, organisations are to some extent in control of their own destiny. Other stakeholders – such as lawyers, mediators and judges – can influence them but it is ultimately in-house counsel, the relevant business units and, critically, senior management who can develop a holistic approach to ADR and maximise its use.

Preliminaries – an audit of ADR use

Before embarking on a systematic review of how an organisation might optimise its use of ADR, it is helpful to undertake an audit of current usage. Investigating the following points will yield useful data before moving on to consider what systems could be put in place.

What disputes does the organisation face?

- Identify disputes by type, size, frequency and geography.
- Are there any patterns or typical categories of claims, including repeat claims attached to a particular product line or business unit?
- Are systems in place for reporting actual or potential disputes to the legal department? At what stage do disputes come to the legal department's notice?

What are the costs of resolving disputes and how long does it take?

- What is the spend on external dispute resolution lawyers and other related experts (forensic accountants, expert witnesses, electronic document management service providers etc)?
- What is the internal cost of dispute resolution in terms of time spent by in-house counsel and business personnel?
- At what stage of a dispute is settlement typically reached and through what dispute resolution processes?
- Is an assessment of the indirect costs of disputes possible (such as disruption or damage to business relationships)?

What is the capability of the in-house legal team?

- Assess the number of in-house counsel, their capacity and experience.
- Assess understanding of and skills in using ADR processes.
- What ADR training is currently undertaken by the in-house legal team?

What use is made of ADR clauses in contracts?

- Review dispute resolution provisions in standard terms and conditions or particular categories of contract.

What understanding of ADR do stakeholders in the organisation have?

- Assess the understanding of the business unit personnel that generate disputes.
- Assess the engagement of the board and/or senior management.

What is the approach of external dispute resolution lawyers to ADR?

- Assess the ADR-specific skills of external lawyers.
- When and how is ADR discussed with external counsel, which processes are favoured and which processes are most effective given the shape of the disputes portfolio?
- What ADR metrics, if any, do the external lawyers generate?

Role of the legal department

When it comes to making changes to an organisation's approach to ADR, the role of the legal department is critical. What can the legal department do, and who is appropriate to undertake this mission?

Actions include designating appropriate leadership, identifying systems that encourage ADR use in a manner compatible with the organisation's profile and culture, training and incentivising in-house counsel to implement and follow those systems, and measuring what has been achieved.

Leadership – identifying an ADR Lead

Organisations that achieve the greatest success in embedding the use of ADR in the management of disputes are likely to have a designated senior in-house counsel to lead the organisation's efforts – an "ADR Lead". These organisations are likely to have a positive experience of ADR organisation-wide and to use ADR most frequently.

The ADR Lead could be the General Counsel, the Head of Litigation or another designated senior lawyer who is sufficiently versed in ADR issues and, most importantly, enthusiastic about the benefits.

Actions

- Identify a senior in-house counsel to act as an "ADR Lead" within the legal department. Consider whether the General Counsel, Head of Litigation or another senior lawyer is appropriate.
- The ADR Lead can drive ADR initiatives, act as (or designate colleagues as) a repository of knowledge on ADR topics and be tasked with delivering the organisation's ADR goals.

Challenges

- Do you have a team member with sufficient time to devote to this role? Few organisations will have the ability to appoint a full time ADR Lead so this is likely to be an additional responsibility for an existing team member.
- Do you have the necessary skill levels within the legal team to perform this role? Will additional training be necessary?
- If the legal department has an international reach, how will the ADR Lead carry out their role in other jurisdictions? It may be helpful to identify and train others to act as local ADR Leads.
- Does the ADR Lead have a good understanding of the business environment within which they operate? Understanding the commercial and cultural drivers will be important in establishing credible leadership.

Top Tip

Leadership

A few committed individuals can make a big difference in the process of embedding an ADR culture.

Systems and procedures for encouraging use of ADR

The principal objective of implementing an ADR strategy is to ensure that ADR processes are considered and used by the organisation more consistently, more frequently, and preferably at as early a stage of a dispute as possible. There are two basic approaches. The first is to use a formal or semi-formal Early Case Assessment (ECA) system, which is a project management-based tool to establish procedures for the management of disputes. The second is to establish a culture of early and proactive settlement of disputes using ADR through less formal methods. We set out below some considerations to help in deciding which approach may be suitable and effective for your organisation.

Early Case Assessment systems

ECA systems are conflict management processes by which organisations analyse disputes in a systematic way at an early stage and make informed decisions as to the appropriate dispute resolution strategy. Although some ECA processes have developed to become quite complex, current thinking in this area is strongly in favour of keeping the approach as simple as possible in order to ensure easier and consistent use of the system.

The key objective is to ensure consistent execution of the steps that the organisation considers critical to managing disputes, with a view to early assessment and, where possible, settlement.

Top Tip

ECA systems

Whether through formal or informal systems, the key is to ensure that ADR is considered early, proactively and repeatedly in all disputes.

Role of the legal department

Do I need an ECA system?

- Any organisation can consider using an ECA system. The system simply seeks to encapsulate good practice in dispute management.
- Organisations with large caseloads are likely to see greater benefits since the purpose of the ECA process is to embed a consistent approach by in-house lawyers and/or case handlers.
- The ECA system can be adapted to suit particular categories of disputes. High volume, low value and non-complex claims may merit simpler processes.

Actions

Establishing an ECA system for the organisation is likely to need a small team of in-house lawyers, perhaps with support from business unit personnel, to devise and execute an appropriate process. The objective is to establish a system to ensure that the following actions occur within a specified time frame:

- Early investigation of facts by a team of appropriate legal and business personnel.
- Early legal analysis of the claims with internal and, if appropriate, external legal resources.
- Assessment of relevant commercial interests and relationships.
- Assessment of the available dispute resolution methods: negotiation, ADR including mediation, arbitration, litigation, or some combination of these or other processes.
- Analysis of the external costs (lawyers, experts etc) and internal costs (business unit time commitment) in pursuing the available range of strategies.
- Take strategy decisions based on the above assessments.
- Regularly review the strategy and case assessment (eg every three or six months).
- Following resolution, analyse lessons learned.
- Consider generating management information such as a tailored dashboard reporting metrics to test efficiency and demonstrate value.

Challenges

- Does the organisation have enough disputes to warrant the investment in an ECA system?
- The successful implementation of the ECA system will be strongly influenced by the culture of the organisation, hence the importance of buy-in from business units. Consider whether implementation will be assisted by a directive or statement of support from the General Counsel and/or the board or senior management.
- Business units and external lawyers operating in jurisdictions unfamiliar with ADR processes may need education, persuasion and occasionally direction.
- ECA systems that are overly formal or complex can appear intimidating and may give rise to non-compliance. A focus on simple procedures which do not appear burdensome is likely to be most effective.

Embedding ADR use without an ECA system

While many organisations will see the benefits of an ECA system, it may be that their portfolio of disputes does not justify the investment and additional process. The challenge in the absence of an ECA system is to ensure that in-house counsel and case handlers still investigate cases thoroughly and consistently at an early stage and take an informed strategic approach to dispute resolution using ADR whenever practically possible. What steps can such organisations take if they want to see more consistent use of ADR to resolve disputes?

Actions

- Devise a high level policy statement or more specific dispute management guidelines. A policy statement or guidelines could:
  - make ADR a default choice of dispute resolution method so that for each matter the onus is on in-house counsel or the case handler to explain why a case is not or not yet suitable for ADR;
  - encourage in-house counsel and case handlers to raise ADR with external lawyers at an early stage. Put the onus on external lawyers to explain why ADR is not suitable;
  - make advising the business on early commercial settlement a core value of the in-house legal or case handling team;
  - acknowledge the value of mediations attempted early in the life of a dispute as learning experiences even if unsuccessful. Encourage in-house counsel or case handlers to try again; and
  - potentially be shared with counterparties and opponents either generally or on a case by case basis, to avoid any perceived weakness in suggesting ADR. Make early ADR use "company policy".
- The policy or guidelines should be endorsed by senior management, if possible at board level, or by the General Counsel or Head of Litigation as appropriate.
- Encourage regular discussion of ADR experiences and use to share know-how and reinforce collective expectations of usage.
- Establish a periodic case review and reporting procedure to include consideration of whether ADR has been attempted and, if not, whether and when it will be suitable.

Challenges

- Achieving cultural change can be difficult and will likely require visible personal commitment by an appropriate leader, ideally the ADR Lead.
- To avoid inconsistent approaches, consider what techniques will suit the organisation in building collective experience. Are team meetings or conference calls a suitable forum to discuss the policy? Can it be an agenda item on a legal department annual gathering?
- In the absence of any systematic approach such as an ECA, there is likely to be an even greater premium on ensuring that in-house counsel and case handlers are well trained in using ADR processes confidently and are able to overcome internal or external resistance.

Role of the legal department

ADR education and training

ADR specific training for in-house counsel and case handlers is vital, particularly so that any resistance to ADR use, whether encountered internally from business colleagues or externally from counterparties or external lawyers, can be met confidently. A deeper understanding of ADR techniques can bring a range of benefits to an organisation.

In addition to an enhanced ability to see a problem from both sides, advanced ADR training (including mediator skills training) develops communication skills. This can help improve personal and team performance beyond case management decisions. While on-the-job experience is invaluable, it may be necessary to engage in some formal training if the desired result is a certain base level of ADR knowledge to be spread throughout the legal department.

Actions

- Identify what level of training and skills is required:
  - The ADR Lead and/or other senior lawyers overseeing a dispute resolution portfolio should have high skill levels to provide effective leadership. Consider undertaking mediator skills training courses leading to accreditation by reputable training providers, or advanced negotiation and mediation advocacy skills training.
  - In-house counsel may need to be trained to a consistent level. Consider whether training can be provided by in-house personnel such as the ADR Lead or others with high skill levels (ie a "train the trainer" programme), by an external training provider such as one of the ADR institutions, or by external law firms.
- Reinforce training and skill levels through sharing information and know-how. Publicise successes. Share lessons learned from cases where using ADR faced challenges.

Challenges

- The choice of training provided by ADR institutions can be bewildering but the key distinction is between:
  - basic training in the mediation process and concepts, likely to be regarded as a minimum for all in-house counsel and case handlers;
  - mediation advocacy training, which focuses on the skills that in-house counsel or case handlers need in order to attend mediations and play a confident and active role as advocates on behalf of the organisation; and
  - mediator skills training which gives a thorough understanding of the communication, negotiation and deadlock breaking techniques that mediators use, which is likely to be valuable for the ADR Lead and other senior litigation lawyers.
- Ensure that new personnel joining the legal or claims handling team are also given training opportunities. Skill levels need to be sustained and refreshed and opportunities to share practical experiences in a training environment can be beneficial.

Top Tip

Education and training

Teams change rapidly – regularly refresh your training and sharing of lessons learned.

Goals and incentives to use ADR

Some organisations measure and assess the use of ADR by their in-house counsel and case handlers and even link this to annual performance review targets and bonuses. The most difficult challenge is likely to be the nature of the link. This could be direct, so that personal rewards are affected by the percentage of cases resolved by ADR. It could be indirect, so that appropriate use of ADR is reviewed in the context of overall performance in managing a portfolio of disputes.

Actions

- Consider whether effective use of ADR should be a specific aspect of performance grading in performance reviews for in-house counsel and case handlers. Simply identifying the use of ADR where appropriate as an appraisal goal can have a positive effect by increasing awareness of ADR processes.
- In some circumstances, it may be appropriate to link the use of ADR directly to personal rewards, such as bonus schemes, particularly where an organisation seeks to incentivise a change in dispute resolution behaviour.
- Consider whether attending ADR training can be specified as an appraisal goal.

Challenges

- The principal risk arising from a direct link between ADR use and personal reward for claims handlers is that cases may be mediated and settled inappropriately in order for bonus targets to be met. Active monitoring of behaviour is likely to be required.
- Other risks are that individual in-house counsel or case handlers will allocate their time disproportionately in favour of cases that are capable of easier resolution through mediation.
- If ADR related goals are included in performance review targets, in-house counsel and case handlers will need to have adequate skill levels to ensure the goals are achievable.
- If attending ADR training is a specified goal, resources may be required to meet training costs unless such training is available eg from the organisation's retained law firms.

Top Tip

Goals and Incentives

Consider incentives to use ADR if you have good enough ADR metrics to assess outcomes.

Role of the legal department

ADR metrics

Many organisations will monitor their disputes portfolio and generate metrics linked to this, often in connection with tracking external legal spend. It may be helpful to generate ADR-specific metrics provided this is done in a manner consistent with the organisation's objectives. Usually the legal department will be best placed to generate the relevant metrics, although where non-lawyer claims handlers conduct dispute handling, the business units may be in a position to do so.

There are two main reasons to generate ADR metrics:

- Demonstrate time and costs savings and improved dispute outcomes. While costs savings will usually have a direct and positive impact on the bottom line, this information can also assist the legal department in adding value and convincing the organisation of the value of ADR processes.
- Allow ADR use to be monitored against dispute management objectives.

Actions

- Consider generating ADR metrics on some or all of the following:
    - savings in external legal costs through ADR use;
    - savings in management time through ADR use;
    - the impact (positive or negative) of disputes on business relationships and improvements/damage limitation through ADR use;
    - the stage at which disputes are settled; and
    - mediators used.
    - Formalise the process of debriefing following disputes and disseminating lessons learned.

Challenges

- The focus should be on information that will directly assist in achieving the organisation's dispute management objectives. Do not waste time and energy generating metrics that are of no practical use.
- Many organisations will not have enough disputes to generate meaningful metrics or benefit from them.
- If metrics are to be generated, the resources and structures should be in place to ensure that the information is shared and used appropriately. This is likely to be a responsibility of the ADR Lead.

Top Tip

Metrics

Nothing persuades the business like measurable and material costs savings.

ADR clauses in contracts

A clause that requires parties to attempt, or at least consider, ADR prior to litigation or arbitration can achieve significant time and cost savings if disputes arise. However, one size does not fit all. It is essential that the ADR process is appropriate to the parties involved, the type of disputes likely to arise and what the parties are seeking to achieve.

In most organisations, the legal department will influence preferences on the methods of dispute resolution specified in contracts. We highlight below considerations that organisations may want to take into account when deciding whether to use an ADR clause at all and, if so, what type.

ADR clause options

There are three approaches to using ADR clauses:

- Mandatory clauses, which require the parties to attempt an ADR process (usually mediation) in advance of litigation or arbitration. These can be stand-alone ADR clauses or incorporated in a tiered or escalation clause.
- Non-mandatory clauses, whereby the parties agree that they may use an ADR process (usually mediation) but are not obliged to do so prior to commencing litigation or arbitration.
- Not to use an ADR clause at all, on the basis that an agreement to use ADR is best entered into at the point of dispute and not at the time of contracting.

Mandatory ADR clauses

There are various reasons for using mandatory ADR clauses, often depending on the nature of the underlying contract. Relevant factors include the following:

- Mandatory ADR clauses are popular in long term supply, service or project contracts where the preservation of the commercial relationship is of paramount importance.
- They may also be useful in contracts which are likely to give rise to smaller and more straightforward claims where it will benefit all parties if the claim is settled at an early stage, as the costs of litigation/arbitration may otherwise exceed or be disproportionate to the value of the claim.
- The organisation wishes to use an ADR process, usually mediation, as often as possible to resolve disputes and to do so before litigation or arbitration in the interests of minimising legal costs.

It may be difficult to persuade counterparties in jurisdictions unfamiliar with ADR processes to accept mandatory ADR clauses, but many organisations with a systematic and embedded approach to ADR actively seek to educate and persuade counterparties as to the benefits.

Mandatory ADR clauses require parties to undertake the specified ADR process, usually mediation, in every case. If the dispute is not yet ready for mediation, this requirement can be perceived as unnecessary and wasteful of costs. However, the process may well still lead to the issues being clarified earlier than might otherwise be the case.

Organisations should assess whether the burden of complying with such clauses outweighs the benefit. It may be that the risk of wasting time and costs on some unsuccessful mediations is outweighed by the number of successful mediations that prevent disputes escalating.

Role of the legal department

Non-mandatory ADR clauses

Non-mandatory ADR clauses can be useful for organisations unwilling to use mandatory clauses or unable to persuade a counterparty to accept a mandatory clause. A non-mandatory ADR clause generally requires the parties to consider whether to use an ADR process at the time a dispute arises (and at any stage subsequently), without obliging them to do so. Some of the considerations in choosing a non-mandatory clause are as follows:

- Even though neither party will be able to compel the other to use mediation, the presence of the clause helps to avoid any concern by either party that proposing mediation would be a sign of weakness.
- Many organisations prefer to retain flexibility in their choice of dispute resolution options at the point of dispute but are nevertheless strongly in favour of ADR. The use of a non-mandatory clause preserves flexibility but allows an organisation to make clear that it is in favour of using ADR.
- Even for parties that believe ADR clauses are unnecessary because they are willing to propose and use ADR at the point of dispute, there will rarely be any downside to including a non-mandatory clause which ensures that ADR is on the dispute resolution agenda.

Tiered clauses

"Tiered" or "escalation" clauses provide for contractual parties to seek to resolve disputes by progressing through a series of different steps, typically starting with senior executive settlement or negotiation discussions, then mediation or some other form of ADR process, then litigation or arbitration. It is usually mandatory for one step to be completed before a party can move to the next step.

Such clauses have the potential to take the immediate heat out of a dispute through informal discussions. They are particularly common in sectors involving long term projects, where maintaining relationships and keeping the project on track is a priority.

However, they pose particular challenges. The first is to design a stepped process that will be suitable for every type of as yet unknown dispute that may arise under the contract. The second is that the courts may take a relatively strict approach to such clauses and only enforce them where the clause is sufficiently clear as to when each step will be considered completed, including timings. Drafting to ensure this can be a very technical exercise.

If such a clause is to be used, it is important that the drafting is carefully considered. Treating these types of clauses as "boilerplate" can be counterproductive, complicating the dispute resolution process and leading to satellite disputes.

Top Tip

Clauses

Use ADR clauses thoughtfully and draft with care to ensure enforceability. One size does not fit all, but they can be a powerful tool in changing behaviours and preventing escalation of disputes.

Other stakeholders

While the role of the legal department is crucial in effecting change in the organisation's approach to using ADR, there are other important stakeholders.

Business units

Business units will generally wish to resolve disputes quickly and amicably, recognising that litigation or arbitration is an expensive and time-consuming diversion from normal trading activities. Nevertheless the onus will usually be on the legal department to suggest ADR, especially as the concepts may be unfamiliar to those not regularly involved in disputes.

The legal department also has a training role to play in relation to ADR.

For many organisations, the costs of conducting a dispute are borne by the business unit in which the dispute originated. While this of itself should provide a powerful incentive for business units to settle cases through ADR processes where appropriate in practice the legal department can sometimes face challenges when interfacing with business unit personnel.

Actions

- Organisations that use ADR in a systematic and embedded way should consider including ADR training as part of broader education to the business units on dispute resolution. Such training can be delivered on a rolling basis and should not be confined to situations when disputes have arisen. The frequency and nature of disputes for business units will dictate the level of training required.
- If training is not available in advance, it can also be given once an actual dispute arises, to allow business unit personnel to participate appropriately.
- Generating ADR metrics that record cost and time savings can help demonstrate the benefits of ADR to business units.

Challenges

- For almost all organisations there will be a challenge in resource terms if the legal department is to carry out ADR training.
- For organisations operating in jurisdictions that are less familiar with ADR, the education task may be more difficult:
  - Some business unit personnel may need to be convinced that a mediator can assist the parties when direct discussions have failed.
  - Other business unit personnel may want to "have their day in court" and need persuading that the interests of the organisation are better served through settlement.
  - Some may view ADR processes with suspicion.

Top Tip

Business Units

Business people "get" the principle of ADR in practice – help them accept the opportunity.

Other stakeholders

Board and senior management

In most cases, the senior in-house counsel with responsibility for disputes – the General Counsel or the Head of Litigation – will provide leadership in terms of an organisation's approach to ADR.

However, support for ADR use from board or senior management level can provide valuable assistance in seeking to change an organisation's dispute resolution culture.

Actions

- The board and senior management are ideally placed to endorse organisation-wide use of ADR. In some organisations, a single individual on the board or in senior management can motivate and support the legal department's efforts to use ADR more consistently.
- Where the legal department establishes an early case assessment system or promotes policies or guidelines on using ADR, a statement of support from the board or senior management can encourage personnel to follow a new approach.
- It may be useful to have an internal or public-facing organisation-wide statement or pledge to use ADR in all appropriate circumstances. This type of pledge can assist those who want to suggest ADR to a counterparty but are concerned that it may be viewed as a sign of weakness, on the basis that ADR is company policy.

Challenges

- In order to persuade a member of the board or other senior management to commit time and resources to the use of ADR, it may be necessary to generate metrics that illustrate savings in costs and time spent by business unit personnel.
- Some organisations question the value of a public pledge or statement in support of ADR, regarding such matters as internal to the organisation. Pledges may also be perceived as restricting flexibility at the point of dispute, although in practice the language is usually neutral and allows for flexibility on a case-by-case basis.

Top Tip

The board and senior management

A senior management ADR sponsor can be a game-changer.

External lawyers

This section of the guide is not intended to suggest how organisations should manage relationships with their external lawyers. It simply sets out some techniques that can be used by organisations to ensure that their external lawyers are appropriately aligned with the organisation's objectives in relation to ADR.

Actions

- Ensure that appropriate questions about ADR are asked in the context of a procurement exercise, panel review or pitch process.
- Include in the terms of engagement with external lawyers a requirement that ADR will be actively considered at an early stage on all dispute mandates and that the possibility of settlement (including through ADR) will be revisited and discussed on a regular basis, perhaps every three or six months.
- Where the organisation uses an early case assessment system, external lawyers will need to be aware of the requirements for advice to be provided within the timetable prescribed by the system.
- Some organisations place the onus on external lawyers to explain why a particular dispute is not suitable for ADR.
- When assessing value added services to be provided by external lawyers, consider the extent to which they can assist with ADR training.
- Check whether external lawyers generate metrics on their own ADR use.

Challenges

- External lawyers may show resistance to ADR, particularly in relation to early use in the life-cycle of a dispute. In-house counsel may be better equipped to confront resistance with greater skills in ADR and empirical evidence from ADR metrics.
- External lawyers in some jurisdictions may be unfamiliar with ADR and need to be educated about the process or be given explicit instructions to attempt ADR.

Top Tip

External lawyers

Challenge your external lawyers to support and implement your organisation's desired approach to ADR.

Other stakeholders

Counterparties

When organisations propose ADR to counterparties, they may encounter two types of resistance: lack of understanding of the process; and, less frequently, lack of resources to engage in it.

Actions

- When counterparties are reluctant to engage in ADR because of lack of understanding or suspicion of the process, in-house counsel in an organisation can play an essential role in explaining its value.
- In some circumstances, it may be useful to fund the costs of the mediator and/or venue (rather than the customary sharing of such costs) in order to persuade a counterparty to engage in the process. This tends to be limited to situations where either the counterparty is of limited means or has very little experience of ADR, and the organisation believes the mediation process will likely lead to or materially assist with the resolution of the dispute.

Challenges

- In house counsel will need to be able to meet all of the objections typically advanced by counterparties in such circumstances, such as:
  - "Proposing ADR is a sign of weakness"
  - "The mediator will add nothing to direct discussions"
  - "ADR is another procedural hoop to jump through and will just take time and further costs".
- Where one organisation funds the costs:
  - Will the counterparty take the mediation seriously if they have made no financial contribution to the process?
  - Might the counterparty think that the dynamics of the mediation are unfavourably weighed against them?
- It is useful to be able to point to concrete examples of mediation being used successfully.

Top Tip

Counterparties

Be positive, be persistent and be prepared to meet objections and explain the opportunity that ADR presents.

Engagement with ADR organisations

There are many ADR organisations and institutions providing a wide range of ADR related services to the commercial and legal communities. Some are focused on helping parties use ADR, some on training and disseminating ADR learning and know-how, and others provide a forum for in-house counsel to exchange experiences with and learn from peers.

Many organisations that decide to adopt a systematic and embedded approach to ADR are also members of one or more ADR organisations. They typically take the view that such organisations play a valuable role in enhancing the environment for dispute resolution.

Actions

- Membership of ADR organisations can provide access to the latest developments and know-how in ADR processes.
- Membership may confer discounts on training and other services provided by ADR organisations.
- Active engagement with ADR organisations can provide an opportunity to meet with like-minded organisations and share experiences on dispute management and ADR best practice.
- Membership sends a positive message both within an organisation and externally about the organisation's commitment to dispute resolution through ADR.

Challenges

- Membership subscriptions represent an additional cost to business, although they are generally modest for most organisations of any size.
- In order to ensure that proper value to the organisation is derived from membership, it may be necessary to appoint one or more personnel to manage the relationship with the ADR organisation and disseminate learning appropriately, perhaps the ADR Lead.

Top Tip

ADR organisations

The dispute resolution landscape has changed hugely, in no small part due to the efforts of ADR organisations. Work with them to benefit from their experience and to help shape the future landscape.

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Further resources

Herbert Smith Freehills Kramer maintains a range of resources to keep clients up to date on all matters relating to ADR and to assist them in making the best use of ADR in managing their disputes.

ADR Practical Guides

Our ADR Practical Guides series is a collection of short guides designed to provide assistance on various aspects of ADR, with a particular focus on mediation. Topics include deciding when to mediate, choosing a mediator and preparing for the mediation. It also includes a business-friendly guide for those less familiar with the process, summarising what mediation is and what participants should expect of the process.

ADR Blog

Our blog ADRNotes reports on ADR news from across the world, including legal and industry developments. You can either search by topic or jurisdiction, or subscribe to be notified when a new update is posted.