

Disputes in a smaller state – bigger society

By Dr Karl Mackie CBE, Chief Executive, CEDR

In the context of the Spending Review to reduce public expenditure, the Government has said it wants to make society 'bigger' and the state smaller, giving over control of the facilities to others, such as local communities, a prime example is the NHS losing its top-layer of bureaucracy to be administered instead by GPs. With moves like this taking place there will be tricky negotiations which will need to be held around the country, not least around thousands of cancelled or renegotiated contracts, which suppliers, politicians and civil servants will need to be part of.

From the 16000 disputes that CEDR has seen over 20 years, we know that conflict can commonly arise from changing relationships, structures and the people running operations. New managers will naturally have different agendas and understandably will want to bring in their own ideas. New structures may create potential imbalances and new implementation and governance problems. The likelihood of conflict arising is dependent on the way in which these moves are made, the tone in which audiences are addressed and on the systems and capabilities laid down for effective conflict management.

Why use ADR?

Ultimately the reality of failing to manage or resolve a conflict is to face the trauma and cost of a courtroom or tribunal – a fate unappealing to organisations and individuals alike. CEDR, with its knowledge of managing and resolving over 16,000 disputes, understands that there are a number of different paths to avoiding such an outcome – including through the use of training and also the design and operation of the effective methods of Alternative Dispute Resolution(ADR).

ADR defines techniques which avoid the inflexibility of litigation and focus instead on enabling parties in conflict to achieve a better or similar result, with the minimum of cost. The main processes are mediation, negotiation, adjudication, conciliation, early neutral evaluation, expert determination, independent interventions and neutral fact finding. Other processes considered at times to be part of ADR include arbitration.

The benefits of ADR include:

- Cost-effectiveness – the speed and focus of negotiations in ADR saves legal costs and management time.
- Working relationships – because ADR is closer to business negotiations than courtroom procedures allow, it helps preserve and keep intact a willingness to work together.
- Control – in ADR parties remain in control of settling disputes, retaining legal rights if they do not. There are no imposed legal decisions, nor the sense of being a passive observer.
- Commercial focus - solutions in ADR are to meet parties' commercial and personal interests, rather than focusing only on legal merits.
- Confidentiality - processes are private with discussions and offers to settle being unreportable if litigation follows. Being confidential avoids any unwanted publicity too.
- Speed – ADR processes can be set up as quickly as desired and usually only last a day (over 70 per cent of mediations settle in one day).

With the implementation of the Spending Review in the offing it is important that, if it is to happen with as little adversity as possible for all concerned, that measures are not bogged down in disputes that might have been avoided had the negotiations taken place differently or the potential for conflict been foreseen and effective mechanisms introduced nationally and locally.