

## Conciliation Improves Communication

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At the start up of any business, it is often the case that there is a general reluctance to contemplate what might actually happen if things go wrong. When a dispute does arise, it therefore often proves to be the catalyst for much resentment and disillusionment amongst the individuals involved. Whilst the reaction from some may be to immediately become embroiled in court proceedings, the risks and uncertainties inherent in that process are such that this may lead to yet further disappointment.

In franchised businesses where the key is to preserve a harmonious working relationship, it is well worth considering other forms of alternative dispute resolution. One particular form of dispute resolution which has gained particular momentum and has risen substantially in popularity over the past few years is mediation. Mediation is a conciliatory process whereby an independent neutral party assists the parties in resolving their dispute through cooperation and dialogue. It is a consensual process particularly suited to franchise disputes as it allows the parties to talk openly in order to air their grievances with the result that they are often able to retain an ongoing working relationship.

If a settlement is reached at mediation then it will become final and binding. However, since either party can walk away from mediation at any stage prior to final settlement, it is a process which relies on the parties' overall co-operation and willingness to resolve matters between them. This may have its downsides but of course has the benefit that the parties are actively involved in the resolution of their dispute and they will directly contribute to the outcome as opposed to having a decision imposed upon them. The mediator's role is to facilitate that process rather than to make any judgment as to the merits of either party's position.

Since settling a dispute outside of court has the distinct advantage of avoiding negative publicity as well as costs, those who wish to preserve existing business relationships and who do not want to become embroiled in "mud slinging" may welcome the opportunity to use mediation to resolve their disputes in a less confrontational manner. Furthermore, many standard form contracts now incorporate clauses binding the parties to the use of alternative forms of dispute resolution. In the event of a dispute, such mechanisms are therefore not necessarily a method of choice and can be forced upon the parties through a clause in a contract drafted many years earlier.

Mediation will not be suitable for every dispute and you will therefore need to think carefully about whether it is a process which is right for you. However, parties who do find themselves involved in a legal dispute should address the possibility of using mediation at the earliest possible stage and preferably before the matter ends up in Court. A failure to do so could have a direct impact on the way in which the court will view your conduct in any legal proceedings and could even place you at risk as to the imposition of cost penalties.

It has been predicted that mediation and other forms of alternative dispute resolution will increasingly become the first port of call for many and that frequent recourse to the Courts will become a thing of the past. This is in fact already happening. Not only have a number of Courts reported a marked decrease in the number of cases issued, stories are increasingly filtering through that judges are actively encouraging parties to make every effort to try to mediate their disputes to the extent that the parties may well find that they are asked to explain themselves to a judge in Court if they fail to do so!

The contribution of mediation to the appropriate and effective resolution of disputes should not therefore be underestimated or overlooked.

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