

RAMSKILL MARTIN

Mediation

1. Introduction

Commercial mediation is a voluntary non-binding dispute resolution process in which a neutral person helps the Parties to reach a binding negotiated settlement. Over recent years, however, the courts have encouraged mediation, and, indeed, if Parties refuse to mediate then it is likely that the Party will not be able to recover all of its costs in any subsequent litigation. Often, for example, the ICE suite of contracts, standard form contracts include a requirement that the Parties resolve their disputes by mediation.

Most mediations last only one day but some more complex disputes may take up to three days, but it is unusual for mediations to take any longer. It is important, however, to be properly prepared for mediation which involves exploring all the issues in dispute and also preparing evidence that you may have to rely on at some stage.

ramskill martin has been involved with a number of mediations which are often informal and less rigorous than other forms of dispute resolution.

2. Mediation Process

In the mediation process, no one tells the disputing Parties who is right or wrong. The Parties are encouraged to resolve their disputes on a commercial basis, which may involve other considerations other than applicable law and evidence; for example, it may involve consideration of other contracts.

If the pre-action protocol is followed, and negotiations between the Parties fail, then it is likely that the Parties will end up in a mediation. Although mediation is an informal process a claimant will want to be sure that it has the best chance of success and proper preparation will, of course, be a huge advantage. ramskill martin can help with the mediation process in many ways:

- Early evaluation of the strengths and weaknesses of the dispute (See ramskill martin Risk Review Service Profile)
- Preparation of position statement
- Assembly of evidence
- Assisting with the appointment of a suitable mediator
- Continuation of negotiations during the mediation process
- Consideration of factors that may be outside of the immediate dispute
- Presentation of the position during the mediation
- Assistance with the drawing up of the agreement following the mediation

3. Post Mediation

A particular advantage that mediation has over other forms of dispute resolution is that there is a better chance that relationships between the parties can be preserved. Neither Party will be proved wrong and the Parties have the opportunity to construct their own agreement.

The procedure is private and confidential between the mediator and the Parties, so that the Parties can talk frankly about their strengths and weaknesses without it prejudicing their position if the case does not settle and goes to court.

Mediation is growing in popularity, is encouraged by the courts, and should be considered as an effective alternative in the dispute resolution process. In the construction industry, however, statistically Adjudication is the preferred method of dispute resolution. ramskill martin can assist and advice on the most effective form of dispute resolution for disputes in the construction industry.