

Can I really design my own dispute resolution system??

Thought it couldn't be done? – Please read on...



by

Douglas Beckwith LLB (HONS) PGDIP(BAR) LLM FRICS
Director, Mensura Limited
douglas.beckwith@mensura.co.uk

Straight to the Point

- Executive Dispute Resolution (EDR) is a new, structured, approach to resolving business conflict at the project level by harnessing the commercial acumen of senior managers.
- Successful EDR leads to a commercially realistic, robust and legally binding settlement without the disadvantages that traditional mediation and adjudication procedures provide.
- EDR allows you to control the outcome (and the costs) of negotiations rather than have decisions imposed upon you by a Judge or an Adjudicator.

Conflict is inevitable

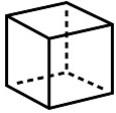
"*We don't have disputes.*" I hear it all the time. But of course you do – they simply don't all end up in court. Conflict is inevitable because construction and engineering contracts involve time, risk and considerable amounts of money. Most of all they involve people. Conflict is prevalent in our industry (though often unnoticed) and you don't need to have a formal dispute to damage your business relationship. It doesn't matter whether you are a developer, consultant, contractor or a specialist we all experience conflict at some time – and it is generally not a pleasant one!

Cash is King

Many people take the view that they won't press for their cash. They don't want to be seen as "contractual". The preservation of business relationships is thought to be more important so that businesses can keep their order books - full even at times of a severe skills shortage. However, as the cost of living crisis bites harder and construction inflation continues to rise, those same businesses are now demanding payment and are increasingly willing to resort to the enforcement of their contractual rights. As a result greater numbers of industry clients and head contractors are finding it necessary to commit resources to respond to notices of adjudication from their contractors, specialists and consultants. Conflict is on the up! Have you noticed it yet?

Is there a way of doing business better?

Although adjudication is now the construction and engineering industry's way of resolving disputes and it is quick and cheap when compared to litigation, it still brings with it a certain level of cost, stress and business downtime. Worse still, it promotes those adversarial attitudes that we have all worked so hard to resist for two decades or more. To add salt to the wound, the final decision is made by a third party with no particular interest in the parties continuing business relationship.



Mediation, too, is a useful method of alternative dispute resolution which is actively supported by the courts and which is often *required* to be considered prior to litigation. But, have you ever felt that you had a good case that was lost in a “horse-trade” just to reach a settlement? Your lawyers certainly have! Ask them.

Construction and engineering disputes are among the most complex and time consuming in the civil justice field. Fortunately EDR is particularly suitable for their resolution. The key to success lies in each party having a genuine desire to collaborate in designing their own dispute resolution process and then applying it with a view to achieving a commercially realistic, robust and legally binding settlement.

All the benefits, none of the cost

Well almost. Some cost is inevitable. The EDR structured negotiation method offers senior managers an opportunity to better understand the issues at hand and each Party’s position in the dispute. EDR can be used after a dispute arisen or before a dispute crystallises; that is when the Parties are aware that a matter is starting to get out of hand but before any precipitate steps are taken. Don’t waste your money on a dispute board! Make EDR your primary method of reducing conflict and diffusing tension over issues. Benefits include:

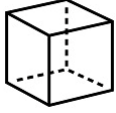
1. Provision for a hearing of the dispute whilst avoiding the delays traditionally associated with court procedures;
2. Control of the dispute resolution process remains in the hands of the parties;
3. EDR is cathartic and allows the people involved at the project level to feel that they have been heard – and to actually hear them, something frequently not achieved in other forums;
4. Emphasis is placed on senior managers working together to produce commercially acceptable business outcomes;
5. EDR saves on costs when compared to litigation and adjudication and is generally no more expensive than other forms of mediation.

Visit mensura.co.uk to see how EDR can help resolve your project issues.

About Us

Douglas Beckwith leads Mensura’s dispute resolution service across the UK. He is a practising mediator, adjudicator and surveyor-advocate. He is the author of the ‘Executive Dispute Resolution’ structured negotiation method. He provides Clients with advice and assistance in the following ways:

1. Developing procurement (including public sector) strategies for Clients;
2. Undertaking contract reviews and managing claims for Employers or Contractors;
3. Providing opinions for Early Neutral Evaluation and Expert Determination;
4. Serving on Dispute Resolution Boards on request;
5. Working with multi-disciplinary teams to help them understand how to collaborate on and manage development agreements, programmes of work, and project activity.



A Mensura Blue Touch Paper

You may also be looking for advice on project management or cost consultancy. If you would like more information on our range of “deconstructed” professional services and how they can help you then please visit us at mensura.co.uk.

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