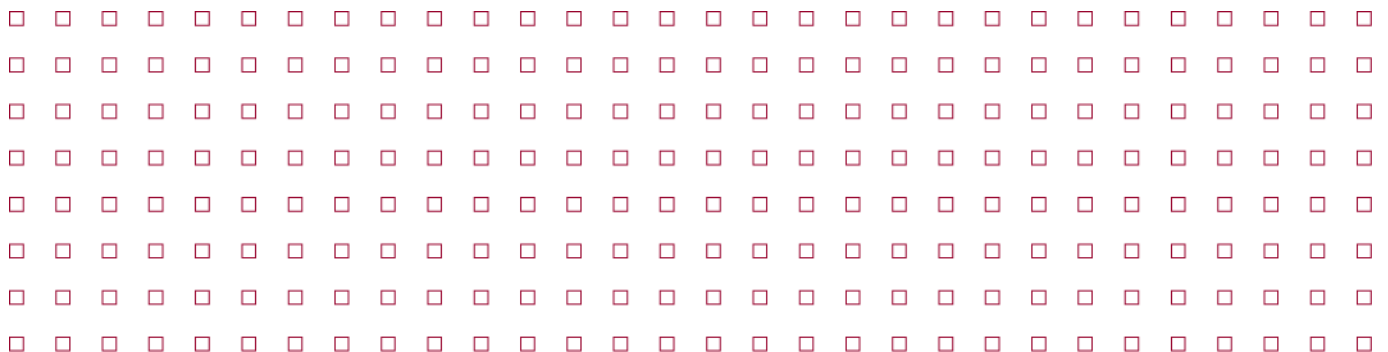


The Dispute Resolution Commitment

GUIDANCE FOR GOVERNMENT DEPARTMENTS AND AGENCIES

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1. Introduction

- 1.1 The Dispute Resolution Commitment (DRC) is aimed at encouraging the increased use of flexible, creative and constructive approaches to dispute resolution. The DRC offers the opportunity for government departments to demonstrate a best practice approach to business, and in particular how Departments resolve disputes. It allows departments to demonstrate a clear commitment to having in place a framework to avoid disputes where possible and to effectively manage and resolve disputes quickly and effectively utilising the most suitable dispute resolution mechanism.
- 1.2 All too often court has been seen as the first, rather than the last, resort for dealing with disputes. government departments, organisations and the public can all find themselves involved in court action when their disagreement or dispute might be better resolved at a much earlier stage and with a much more satisfactory outcome, rather than the adversarial ‘winner takes all’ approach provided by litigation. There is already a range of alternatives to court available to departments, organisations and the general public, these include; negotiation, mediation, early neutral evaluation, adjudication, conciliation and arbitration. As a government we should be leading by example in order to encourage organisations and individuals in disputes to play a greater role in proactively resolving them themselves. The intervention of the court should only be sought when a genuine point of law exists or when people or organisations are at risk.
- 1.3 Contractual disputes are time consuming, expensive and unpleasant. They can destroy client / supplier relationships painstakingly built up over a period of time and can impact the supply chain. They can add substantially to the cost of the contract, as well as nullifying some or all of its benefits or advantages. They can also impact on the achievement of value for money. It is in everyone’s interest to work at avoiding disputes in the first place and this is mirrored in the Government’s emphasis on improving relationships between the client and supplier through teamwork and partnering. Inevitably, however, contractual disputes do occur and when they do the importance of a fast, efficient and cost effective dispute resolution procedure cannot be overstated.
- 1.4 In general terms the Government’s objective is to ensure that relationships between the client and supplier are non-adversarial, that contracts should contain provision for the resolution of disputes which are appropriate having regard to their nature and substance and that such provision should, so far as possible, ensure that relationships with suppliers are maintained. In particular it is government policy that litigation should usually be treated as the dispute resolution method of last resort.
- 1.5 Oversight of disputes (on contracts of significant value) is now a key part of the new Crown Representative role. Crown representatives will act on behalf of all departments, to bring a complete picture of a supplier’s

portfolio of contracts. They will have a view of each supplier's performance (good and bad) across all central government departments, and will be able to provide invaluable advice on the process adopted and on the outcome government should be aiming for.

- 1.6 In dealing with non-contractual matters, such as claims made against a government department or agency by an organisation or member(s) of the public, it is also recommended that departments work with the organisation or person making the complaint or claim to manage the dispute effectively and expediently, utilising the most suitable dispute resolution mechanism.
- 1.7 This guidance gives an overview of the main options that are available for the resolution of disputes. It is not a self-help guide to dispute management. Good dispute management involves selecting and using the most appropriate resolution procedure available. When contemplating arbitration or alternative dispute resolution clauses agreements or considering the use of dispute resolution mechanisms or how to reach or enforce settlement it is essential to obtain legal advice.
- 1.8 The Dispute Resolution Commitment 2011 replaces the Alternative Dispute Resolution Pledge 2001.

2. Dispute Resolution Commitment

- 2.1 The Dispute Resolution Commitment covers two main areas of dispute;
 - Contractual disputes for goods and services – via the insertion of relevant alternative dispute resolution clauses in all such contracts, stating a clear intention to use resolution techniques as an alternative to court in the event of a dispute;
 - General claims brought by individuals or organisations against government departments, and their agencies.
- 2.2 Government departments and agencies have made these commitments to;
 - be proactive in the management of potential disputes and in working to prevent disputes arising or escalating, in order to avoid the need to resort to the use of formal dispute resolution mechanisms;
 - include dispute resolution mechanisms within their complaints and disputes handling procedures;
 - engage in a process of appropriate dispute resolution in respect of any dispute which has not been resolved through their normal complaints procedure, as an alternative to litigation;

- adopt appropriate dispute resolution in their contracts with other parties;
- use prompt, cost effective and efficient processes for undertaking and completing negotiations and resolving disputes;
- choose processes appropriate in style and proportionate in costs to the issues that need to be resolved;
- make informed choices by considering the benefits to both the Department, and to whomever they are in dispute, of all the available processes in achieving resolution;
- recognise that the use of appropriate dispute resolution processes can often avoid the high cost in time and resources of going to court;
- educate their employees and officials in appropriate dispute resolution techniques in order to enable the best possible chance of success when using them.

2.3 As a result of adopting the Dispute Resolution Commitment:

- Government departments and their agencies will provide appropriate clauses in their standard procurement contracts on the use of dispute resolution techniques to settle their disputes. The precise method of settlement will be tailored to the details of individual cases;
- Departments will improve flexibility in reaching agreement on financial compensation, including using an independent assessment of a possible settlement figure.

2.4 In making its commitment to the use of appropriate and proportionate dispute resolution techniques, a key objective is to actively consider and attempt the use alternative dispute resolution techniques whilst making going to court to resolve the dispute a last resort wherever possible. In the event of a dispute between a government department or agency and another organisation, business, or individual, the department or agency, will be prepared to actively explore with that party, resolution of the dispute through the range of dispute resolution techniques before considering or pursuing litigation. However if either party believes that the dispute is not suitable for dispute resolution techniques, or if such techniques do not produce results or a settlement agreement satisfactory to the parties either party may proceed litigation via court or Tribunal.

2.5 The terms of the Dispute Resolution Commitment are mandatory in relation to government departments and their agencies. However it is recognised that there may be cases that are not suitable for settlement through alternative dispute resolution mechanisms, for example cases involving intentional wrongdoing, abuse of power, Public Law, Human Rights and vexatious litigants. There will also be disputes where, for example, a legal

precedent is needed to clarify the law, or where it would be contrary to the public interest to settle.

- 2.6 In terms of the European Convention on Human Rights, the referral of the dispute to mediation in accordance with the agreement does not affect any rights that may exist under Article 6 of the European Convention on Human Rights. If the dispute is not settled by mediation, the rights of the parties to a fair trial remain unaffected.

3. Dispute Avoidance

- 3.1 In relation to contractual matters, given the expense and disruption caused to any contract when a dispute arises and the potential damage incurred to client/supplier relationships, the importance of following dispute avoidance techniques cannot be over-emphasised. However, notwithstanding the emphasis on the desire to avoid dispute, officers should not act in a way which compromises departments' rights.
- 3.2 In relation to contractual matters, the first important step is to have clear wording in the contract that reflects the intentions of the parties. That wording should include provision for the appropriate dispute resolution techniques to be applied in the event of a dispute arising, with suitable arrangements for escalation. Bear in mind however that overly prescriptive provision may reduce the options available to parties if there is a dispute.
- 3.3 Once the contract is in place good contract management is key. Contract management techniques should include monitoring for the early detection of any problems. In any contract both parties should be required to give the earliest possible warning of any potential dispute and regular discussions between the client and supplier should include reviews of possible areas of conflict.
- 3.4 When a contract is initially established the importance of bearing in mind how the expiry of the contract is to be managed (especially if there is a need for ongoing service delivery, not necessarily by the contractor) should be borne in mind and reflected in the contract.
- 3.5 Equally in relation to a dispute relating to a non-contractual matter made by an organisation or individual(s) against a department, or agency, there is a risk of high costs to both parties in terms of both time and money and the importance of following dispute avoidance techniques cannot be over-emphasised. However, notwithstanding the emphasis on the desire to avoid disputes, officers should not act in a way which compromises departments' rights.

- 3.6 For non-contractual disputes the first important step is to establish and promote a clearly defined framework of dispute resolution techniques and processes within the organisations complaints handling and/or their dispute resolution policy or procedure. That wording should include provision for the appropriate dispute resolution techniques to be applied in the event of a dispute arising, with suitable arrangements for escalation.
- 3.7 For non-contractual disputes the complaints or dispute handling procedure should include monitoring processes for the early detection of any problems. For example where an initial complaint is made by party, clearly defined processes should be in place to deal with this expediently, in order where possible to resolve the area of conflict or dispute and thus prevent the issue escalating from a minor complaint to a much larger formal complaint or claim against the department. All departments and agencies should produce, publish and make available a clearly defined complaints and disputes handling procedure.

4. Dispute Management

- 4.1 In relation to contractual disputes if a dispute arises, it is important to manage it actively and positively and at the right level in order to encourage early and effective settlement. Unnecessary delays and inefficiency can lead to rapid escalation of costs and further damage the client/supplier relationship.
- 4.2 In relation to non-contractual matters if a dispute or complaint arises, it is essential to manage it actively and in a positive manner and at the right level in order to encourage early and effective settlement. This may involve making an apology or where possible correcting an error which may have been made. Unnecessary delays and inefficiency can lead to a rapid escalation of the disputes and the associated costs in terms of time, money and resources in dealing with it and achieving a settlement. Unnecessary delays may cause the initial dispute to escalate to a point where the use of dispute mechanisms outside of court are not deemed possible, as the other party may become unwilling to utilise a less formal, flexible approach. As such the dispute may unnecessarily end up being dealt with in court, with the associated costs and time involved in undertaking resolution via litigation.

5. Dispute Resolution

- 5.1 Dispute resolution, in its widest sense, includes any process which can bring about the conclusion of a dispute. Dispute resolution techniques can be seen as a spectrum or scale ranging from the most informal negotiations and discussions between the parties themselves, through increasing levels of formality and more directive intervention from external sources, to a full court hearing with strict rules of procedure.
- 5.2 Alternative Dispute Resolution is a commonly used term to include a range of processes which involve the use of an external third party and which are regarded as an alternative to litigation, however they do not replace litigation. ADR is defined in the Civil Procedure Rules glossary as, “a collective description of methods for resolving disputes otherwise than through the normal trial process”. There is some debate as to whether arbitration is or is not a form of ADR. For the purposes of the Government’s Dispute Resolution Commitment arbitration is a form of ADR. Negotiation and litigation are not forms of ADR, but form part of the suite of techniques available for consideration and use in dealing with disputes in the most appropriate, proportionate and cost effective manner, and form part of the available techniques or mechanisms to be considered under the Dispute Resolution Commitment.
- 5.3 There is also some cross-fertilisation between litigation and ADR - the Pre-action Protocols, introduced under the Civil Procedure Rules in relation to civil court claims, and intended to codify and streamline the pre-action conduct of the parties, emphasise the importance of parties taking steps to achieve a settlement where possible before issuing proceedings, whether by ADR or other means. Also within civil proceedings parties may be directed by a judge to consider or attend mediation with the aim of resolving the dispute collaboratively between the parties with the aid of a mediator, prior to the matter moving to judicial determination via a court hearing. A further example of helpful cross-fertilisation between procedures is that it is now becoming fairly common for parties to arbitration proceedings to agree to mirror relevant provisions of the Pre-action Protocols in those proceedings.
- 5.4 In terms of the Dispute Resolution Commitment government departments and agencies should consider all forms of dispute resolution techniques from negotiation and mediation through to litigation as part of the dispute resolution process. A key objective is to actively consider and utilise the most proportionate and suitable dispute resolution techniques whilst making going to court to resolve the dispute a last resort wherever possible.

5.5 Dispute resolution techniques include:

- Negotiation - the most common form of dispute resolution where the parties themselves attempt to resolve the dispute. Negotiation also covers round-table discussions and similar face-to-face meetings between the parties.
- Mediation - a private and structured form of negotiation assisted by a third party that is initially non-binding. If settlement is reached it can become a legally binding contract.
- Conciliation - as mediation, but a conciliator can propose a solution.
- Neutral evaluation (sometimes termed Early Neutral Evaluation) - a private and non-binding technique whereby a third party, usually legally qualified, gives an opinion on the likely outcome at trial as a basis for settlement discussions.
- Expert determination - a private process involving an independent expert with inquisitorial powers who gives a binding decision.
- Adjudication - an expert is instructed to rule on a technical issue – primarily used in construction disputes as set out in the Housing Grants, Construction and Regeneration Act 1996 where awards are binding on the parties at least on an interim basis - i.e. until a further process is invoked.
- Arbitration - a formal, private and binding process where the dispute is resolved by the decision of a nominated third party, the arbitrator or arbitrators.
- Litigation - the formal process whereby claims are taken through the civil courts and conducted in public. The judgments are binding on parties subject to rights of appeal.

5.6 Sections 6 - 12 below provide information about each dispute resolution method, together with an overview and indication of the advantages of each method.

6. Negotiation

6.1 Negotiation is by far the most common form of dispute resolution. The objective of sensible dispute management should be to negotiate a settlement as soon as possible. Negotiation can be, and usually is, the most efficient form of dispute resolution in terms of management time,

costs and preservation of relationships. Negotiation should be seen as the preferred route in most disputes. Its advantages are:

- speed
- cost saving
- confidentiality
- preservation of relationships
- range of possible solutions
- control of process and outcome

6.2 If you are unable to achieve a settlement through negotiation, you will need to consider what other method or methods of dispute resolution would be suitable. But remember it will still be possible or may be necessary to continue negotiating as part of or alongside other forms of dispute resolution.

7. Mediation

7.1 Mediation is negotiation with the assistance of a neutral third party. It is often referred to as “structured negotiation”. It has all the advantages of conventional negotiation as set out above but the involvement of the neutral can make the negotiation more effective. It should be seen as the preferred dispute resolution route in most disputes when conventional negotiation has failed or is making slow progress. Mediation is now being used extensively for civil and commercial cases (including cases involving government departments), frequently for multi-party and high value disputes. Some 75% of commercial mediations result in a settlement either at the time of the mediation or within a short time thereafter.

7.2 Use of mediation has increased significantly since the introduction of the Civil Procedure Rules (“CPR”) in 1999. The CPR state that “Active case management includes encouraging the parties to use an ADR procedure if the court considers that appropriate”. CPR Part 26 includes specific provisions about using ADR.

7.3 **Format** - mediation is essentially a flexible process with no fixed procedures, but the format tends to be along the following lines. At an opening joint meeting each party briefly sets out its position. This is followed by a series of private confidential meetings between the mediator and each of the teams present at the mediation. This may lead to joint meetings between some or all members of each of the teams, or separate

meetings with each of the parties with the mediator acting as go-between between each of the parties. If a settlement is reached, its terms should be written down and signed.

- 7.4 **Timing** - most commercial mediations last one day, with very few running for more than three days. A considerable number take place within a month of being initiated and this period can be shortened to days where necessary.
- 7.5 **The mediator** - the mediator's role is to facilitate the negotiations. The mediator will not express views on any party's position, although he/she may question the parties on their positions to ensure they are being as objective as possible about the strengths and weaknesses of their own and the other party(ies) legal and commercial stances. The mediator does **not** have the authority to impose a settlement or resolution on the parties, the mediators' role is to facilitate the process and help the parties reach a mutually satisfactory resolution of their dispute. The mediator will try to get the parties to focus on looking to the future and their commercial needs rather than analysing past events and trying to establish their legal rights. It is essential that the mediator has mediation training; it is not essential that the mediator has experience, or even knowledge, of the subject matter of the dispute. The most obvious method of identifying an appropriate mediator is to use the resources of a mediation provider organisation.
- 7.6 **Participants** - the team attending the mediation should be kept as small as possible but must include somebody ("the lead negotiator"), preferably a senior executive or official within the organisation with full authority to settle on the day without reverting to others not involved in the mediation. The lead negotiator should ideally not have been closely involved in the events relating to the dispute.
- 7.7 Where it really is not possible for the lead negotiator to have full authority to settle, the person attending must be of sufficient seniority that their recommendation on settlement is likely to be followed by whatever person or body makes the final decision. The fact that a binding settlement agreement cannot be reached on the day of the mediation and the reason for this should be made clear to the other parties in good time before the mediation.
- 7.8 Most mediation teams include a lawyer but a large legal representation on the team is rarely useful or necessary.
- 7.9 **Preparation** - each party usually prepares a brief summary of its position (not just its legal case) for the mediator and the other party, with the key supporting documents. These are exchanged between the parties, and sent to the mediator, at least a week before the mediation. The parties should enter into a mediation agreement once the details of the mediation (e.g. place, time, name of mediator) have been agreed.

- 7.10 **Approach** - most mediations go through a stage where it seems unlikely that there will be any useful outcome yet the majority settle, so optimism and determination to solve the problem is essential.
- 7.11 **Enforceability** - whether a mediation agreement is enforceable, should a party or parties renege on the agreement, depends on the type of agreement reached between the parties.
- 7.12 **Mediation providers** - in many cases it is sensible to involve a neutral mediation provider organisation to assist in setting up a mediation and helping the parties to select a mediator. The advantages of their neutrality and of utilising their experience and advice, and the saving of the parties' own time in dealing with the administration, will usually outweigh the cost.

8. Neutral Evaluation (Early Neutral Evaluation)

- 8.1 The aim of a neutral evaluation (sometimes termed Early Neutral Evaluation) is to test the strength of the legal points in the case. It can be particularly useful where the dispute turns on a point of law. Each side submits an outline of their case with an indication of what evidence they would be able to produce at trial. A neutral third party, usually a retired judge or a lawyer, gives a confidential opinion as to the likely outcome of a trial. This procedure can be carried out entirely on paper, saving the parties the time and expense of an oral hearing. The opinion can then be used as a basis for settlement or for further negotiation.
- 8.2 Sometimes the parties to a dispute have diametrically opposed perceptions about the law affecting their dispute or the weight or effect of the documentary evidence. Where such parties are both keen to find a commercial resolution but their widely differing perceptions of the issues in the case are getting in the way, an early neutral evaluation of those issues may assist. An independent view of the case or issues can sometimes clear the way for more constructive negotiations to take place.

9. Expert Determination

- 9.1 In expert determination, the parties agree to be bound by the decision of an expert in the field of dispute. This process can be useful where the dispute is about a technical matter. The expert will commonly be given powers to investigate the background of the dispute himself, rather than just relying on the evidence the parties choose to present.

10. Adjudication

10.1 The term “adjudication” is used almost exclusively for dispute resolution under Part II of the Housing Grants, Construction and Regeneration Act 1996 (HGCR) and before the passing of that Act adjudication was not a recognised form of ADR. Under the HGCR Act construction contracts must include a provision for adjudication, with the adjudicator giving a decision within 28 days of referral. The adjudicator’s decision is binding until a final determination reached by agreement, arbitration or litigation, or the parties may take the adjudicator’s decision as final. For these reasons adjudication is different in kind from other forms of ADR, which are optional and less tied to a single subject area. Like litigation and arbitration, adjudication is an adversarial process.

11. Arbitration

11.1 Arbitration is governed by statute, principally the Arbitration Act 1996. It is a process for resolving disputes in which both sides agree to be bound by the decision of a third party, the arbitrator. If court proceedings are begun by one party they will normally be stayed on the application of the other party relying on the arbitration clause. The agreement to arbitrate should be in writing. It can take the form of a clause within the original contract or can be made after a dispute has arisen. It is possible, as long as all parties agree, to amend an arbitration agreement at any stage so that it serves the needs of the parties better. The Arbitration Act gives the widest discretion to the parties to decide between themselves how their dispute is to be resolved but provides a fallback position if agreement cannot be reached. Like litigation and adjudication arbitration is an adversarial process. The grounds for appeal are limited.

Advantages:

- some control of process - parties/arbitrator can tailor procedures
- possible cost saving over litigation
- confidentiality
- parties can choose an arbitrator who is an expert in the relevant field
- resolution is guaranteed
- decisions are legally binding and enforceable

12. Litigation

12.1 If the use of a consensual process is not provided for in the contract and cannot otherwise be agreed, the only alternative is litigation. Litigation will involve preparation for trial before a judge, and may well be a lengthy, drawn out and costly process. Parties often agree a settlement before the case comes to court but in some cases not until months or even years of effort have been spent on expensive preparatory work.

Advantages:

- it is possible to bring an unwilling party into the procedure
- the solution will be enforceable without further agreement

Disadvantages:

- potentially lengthy and costly
- adversarial process likely to damage business relationships
- the outcome is in the hands of a third party, the judge

12.2 It should be noted that the court can refer parties to mediation or another form of alternative dispute resolution, if appropriate.

12.3 As part of the case management process where litigation has been issued, round-table settlement meetings are often undertaken, with the aim of gaining a settlement agreement on the issues at dispute, without the need for a court trial and judicial determination. Use of round-table settlement meetings, utilising negotiation between the legal representatives for each party can allow a flexible settlement to be reached, which may not be possible via a judicial determination, substantial savings in terms of time and costs can be achieved through avoidance of the trial process.

13. Factors Governing Choice of Procedure

13.1 Sections 6 to 12 of this guidance have described the dispute resolution procedures available including some of their advantages and disadvantages. The purpose of this section is to summarise how in practice the most appropriate procedure or procedures should be selected.

- 13.2 Dispute resolution procedures are selected either when the contract between the parties is negotiated or when a dispute arises. It should be noted that the contract negotiation stage is of the greatest importance since, if the parties agree in the contract to adopt certain procedures in the event of a dispute arising, one party cannot insist on the use of other procedures, or even other methods of implementing agreed procedures, without the consent of the second party.
- 13.3 Prior to the implementation of the Civil Procedure Rules 1999 and the ADR Pledge in 2001 most contracts, especially those between parties both based in England and Wales, contained very simple dispute resolution clauses providing for disputes to be settled in the courts or, sometimes, by arbitration. There was no express reference to negotiation and alternative dispute resolution had scarcely been heard of. In practice, of course, the parties frequently did try to negotiate directly before embarking upon the costly process of litigation. The impact of the ADR Pledge and the introduction of the CPR Rules 1999 (as amended) has been to significantly increase the inclusion of a range of dispute resolution clauses within contracts, and the utilisation of various dispute resolution techniques in seeking to gain a settlement in appropriate cases.
- 13.4 The current recommended MOJ practice, exemplified by the drafting of the dispute resolution machinery of the Cabinet Office (ex OGC) Model Agreements in relation to Central Government Contracts (see paragraph 14 below), is to provide a full framework for the escalation of disputes beginning with a reference to the project board, followed by negotiation between named representatives of the parties and thereafter, if necessary, recourse to a non-binding ADR procedure (primarily mediation) and, in the event of failure to agree a settlement, ultimate resort to litigation in the courts or, if preferred, arbitration. Arbitration is often the procedure of last resort where confidentiality is required and is regularly adopted in, for example, Ministry of Defence contracts. The other main attraction of arbitration is the possibility of choosing an arbitrator or arbitrators who are experts in the particular field. Expert determination is a less formal alternative procedure to arbitration used primarily for making awards in limited technical areas.
- 13.5 Although the dispute resolution machinery of the Cabinet Office Model Agreements represents a good working model for many contracts, the approach adopted may not be appropriate in every detail for every government contract. For example, mandatory use of mediation where negotiation fails may not always be appropriate in contracts for the procurement of smaller value goods and services where it is perhaps more likely that the contractor may elect to use the process in bad faith merely to delay settlement. In such cases it may be preferable to include a provision for mediation which is triggered only where both parties desire it. Departments must exercise discretion in such matters especially since the Government's pledge requires the use of ADR techniques only in all suitable cases.

- 13.6 For non-contractual disputes similar decisions need to be taken in terms of the selection of the dispute resolution procedure. Both parties need to agree on the use of a particular procedure or procedures in order for dispute resolution to be undertaken, as the voluntary nature of involvement in and use of alternative disputes resolution mechanisms are key to their success.
- 13.7 The Government places great importance on achieving value for money in dispute resolution and procedures should be selected with this in mind.

14. ADR Contract Clauses

- 14.1 Including alternative dispute resolution clauses in contracts allows the settlement process to begin at an early stage and obviates the frequent problem of persuading the other party to the dispute to engage in an ADR process. Model clauses are available in Annex A and the Dispute Resolution Commitment (see above) requires that an appropriate clause be incorporated into all contracts.

15. Law

- 15.1 This guidance is drafted on the basis that the law of England and Wales applies and you should consult your legal advisers if the contract is made under the law of Scotland or Northern Ireland. Use of this guidance is not mandatory, but a statement of good professional practice. Departments should consider incorporating it into their purchasing and supply manual.

Annex A: Extracts from the Cabinet Office Model Agreements for Contracts for Goods and Services

These provisions are only intended to be model provisions and to act as examples of dispute resolution provisions. These provisions will need to be amended according to the particular circumstances of the procurement and agreement in question. Appropriate legal advice should be sought before applying the information contained in these provisions to specific issues or problems.

Full details of the Cabinet Office Model terms and Conditions of Contract can be found at:

www.ogc.gov.uk/Model_terms_and_conditions_for_goods_and_services.asp

I Disputes and Law

I1 Governing Law and Jurisdiction

I1.1 Subject to the provisions of clause I2, the Client and the Contractor accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

I2: Dispute Resolution

I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the [finance director (or equivalent)] of each Party.

I2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

I2.3 If the dispute cannot be resolved by the Parties pursuant to clause I2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause I2.5 unless (a) the Client considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.

12.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.

12.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

- (a) a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to *[an appropriate mediation provider]* to appoint a Mediator.
- (b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from *[an appropriate mediation provider]* to provide guidance on a suitable procedure.
- (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- (e) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts / *[unless the dispute is referred to arbitration pursuant to the procedures set out in clause 12.6.*

12.6 Subject to clause 12.2, the Parties shall not institute court proceedings until the procedures set out in clauses 12.1 and 12.3 have been completed save that:

- (a) the Client may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7.
- (b) if the Contractor intends to commence court proceedings, it shall serve written notice on the Client of its intentions and the Client shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7.
- (c) the Contractor may request by notice in writing to the Client that any dispute be referred and resolved by arbitration in accordance with clause 12.7, to which the Client may consent as it sees fit.

12.7 In the event that any arbitration proceedings are commenced pursuant to clause 12.6:

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- (b) the Client shall give a written notice of arbitration to the Contractor (the “Arbitration Notice”) stating:
 - (i) that the dispute is referred to arbitration; and
 - (ii) providing details of the issues to be resolved;
- (c) the London Court of International Arbitration (“LCIA”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with 12.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;

- (e) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Client under clause I2.7 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

Disclaimer

The guidance and model documentation has been developed specifically for use on low to medium risk common goods and services procurements. Any government department or other contracting authority using the model documentation or guidance on the Website should take their own legal and other relevant professional advice in respect of any specific procurement project intending to use any documentation from the Website. Whilst the Cabinet Office shall use reasonable endeavours to ensure that the information contained in the guidance and model documentation is correct, no warranty, express or implied, is given as to its accuracy. Cabinet Office OGC does not accept any liability for loss or damage, which may arise from reliance upon any documentation of the Website and use of any of the documents, is undertaken entirely at the user's risk.