

The best ways to resolve a dispute

D asks what the differences are between mediation, arbitration and negotiation.

All three are types of “alternative dispute resolution (ADR)”.

ADR has become popular as an alternative to the courts as a means of resolving disputes in a private way.

Mediation involves an independent mediator. They do not make decisions on the case, but assist the parties to reach a resolution if possible. Mediators try to find areas of agreement so both sides can work on achieving an agreed outcome.

No one can be forced to accept any particular outcome in mediation, so an agreed outcome has to have something for everyone involved.

Outcomes can involve things that a court cannot order such as an apology or reference.

Negotiation is done directly between the parties and any representatives or lawyers without the assistance of an outside person.

It also relies on agreement between the parties.

Negotiations can occur in conjunction with a mediation, arbitration or court process and often run in parallel.



LEGAL MATTERS

ALAN KNOWSLEY

RAINEY COLLINS LAWYERS

Arbitration involves an outside person being given the power to make a binding decision on the issue.

The arbitrator acts more like a judge, hearing evidence and making a ruling.

Arbitration can be quicker and cheaper than court proceedings and the process and outcome remain confidential.

Court hearings are mostly open to the public and media so confidentiality is usually not possible.

Arbitration can be good if the parties have an ongoing relationship, but need to have a quick decision on a point of dispute and then move on.

G writes about her problems with a sewing machine that has failed after only eight years of moderate use. The retailer and manufacturer have refused to

honour their obligations, citing a one-year warranty.

The retailer has obligations under the Consumer Guarantees Act to fix, replace or refund goods that are not fit for purpose. A good-quality machine should last longer than eight years, so G should chase up the retailer to meet their obligations.

If they will not fix the machine, she can bring a claim in the Disputes Tribunal to enforce her rights.

N asks about problems with Kiwisaver for an estate.

Kiwisaver funds are dealt with the same as other assets. They will be transferred into the pool of assets of your estate. If you have assets of more than \$15,000, your executor will have to apply to the High Court for probate of your will.

This is the same even if the funds were in a bank account. To assist your executors, it helps to leave details of your Kiwi-saver scheme so they know whom to contact.

■ Column courtesy of Rainey Collins Lawyers, ph 0800 733484. If you have a legal inquiry, email Alan on aknowsley@raineycollins.co.nz.