

# Ways to resolve a commercial dispute



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## Legal matters

Cash flow is the lifeblood of business, so a dispute that stops or delays a business getting paid can be a serious problem.

Often these disputes arise from not agreeing at the outset on the contractual terms that will apply or not understanding the terms that have been agreed.

Having a good "Terms of Trade" that covers what will be done, when, for how much, when payment will be made and what happens if there is a dispute is a vital first step.

Professional advice can help you get a good contract sorted either a one-off or a standard form for multiple use.

Despite good Terms of Trade, disputes can still arise and the longer they are unresolved the worse the problem gets as people's views become entrenched or they simply lose interest in resolving the issue.

Discussing the dispute with the other party in a friendly but

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firm way and supported by the contract, notes of discussions, copies of emails, invoices and photographs (if applicable) at an early stage is usually the best way to resolve matters.

Having good documentation, including signed and dated handwritten file notes, wins many arguments before they get started. It is a good habit to create file notes as you go – eg, in a notebook.

If a direct discussion doesn't resolve matters early on, escalate the matter either to a person higher up or by getting professional help. That professional may recommend a more formal direct negotiation with the other party as the next step.

With professional help the issues can be clearly identified and the supporting evidence presented in the most helpful way.

If direct negotiation is not successful, the next step could well be to bring in independent assistance. This can take many forms ranging from an agreed expert or a conference of experts



There are many avenues for resolving a dispute without needing to take the matter to court.

to a mediation, arbitration or court process.

An agreed expert involves both sides agreeing on a relevant expert to assess the arguments and reach a decision. This is helpful when there is a dispute over a technical issue both parties

want resolved so they can continue to progress the commercial deal.

A conference of experts is where each side has their own expert and the experts meet and discuss the issues to try to resolve the often technical issues between

them. They then report back on the outcome of the dispute.


A mediation involves a person who has no decision-making power assisting the parties. This can be done without professional advice but often involves legal assistance for each party.

An arbitrator has the power to make a decision and often the parties are legally represented. It is a private process so there is usually no publicity. An arbitration can often be arranged quite quickly.

The Disputes Tribunal can be used if the dispute is for \$25,000 or less (up to \$30,000 by agreement). The Disputes Referee has the power to make a decision. No lawyers are allowed in the hearing, but it is common to get legal assistance in preparing the case before the hearing.

For larger disputes a court process may be the most appropriate resolution.

The court can make various orders, such as injunctions and preservation of property orders, as well as decisions that can be enforced in New Zealand and overseas.

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