

“ Plain speaking legal advice ”

**We Help You Resolve Your Commercial  
Or Personal Disputes  
- Not Always By Going To Court!**

[www.herrington-carmichael.com](http://www.herrington-carmichael.com)

This publication is written as a general guide only. It is not intended to contain definitive legal advice, which should be sought as appropriate in relation to a particular matter.

## We Help You Resolve Your Commercial Or Personal Disputes - Not Always By Going To Court!

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Martin Salt, a senior solicitor in the Dispute Resolution team, dispels some of the myths about Dispute Resolution and introduces just some of the many alternatives to court action that are now available.

### **MYTH ONE: Dispute Resolution it's all about confrontation and the Courts.**

Many people assume that seeing a solicitor to help you resolve a dispute means that court action has now become inevitable. The reality is that for the vast majority of cases, disputes are resolved without ever having to cross the door of a court.

At our first meeting we will make sure we understand your personal or commercial objectives. Then having reviewed the facts and information available about the dispute we can agree a strategy and decide the most cost efficient method of reaching a resolution, a method that is best for you or your business.

### Some of the alternatives to Court

#### **Solicitor's Letter**

Very often a solicitor's letter or two, setting out the merits of your claim or responding to a claim being made by the other party can on its own resolve the dispute quickly and fairly inexpensively.

#### **Pre-Action Protocol**

This sets out steps that the courts themselves recommend that parties to a dispute undertake before starting a claim in court and which are designed to help them resolve their dispute. The steps include for example a formal exchange of correspondence and a round table meeting.

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### **Mediation**

The parties agree the appointment of an independent third person (“the Mediator”), who helps the parties identify the issues in dispute and explore the options for resolution and helps the parties to themselves work towards a solution. It is a voluntary, non-binding and private form of resolution which statistically is very successful. The mediator need not be legally trained but needs to be skilful in finding areas of common ground and creating the climate in which the parties can find solutions themselves. If an agreement can be reached this is then formalised, usually by a solicitor and itself becomes a binding agreement.

### **Expert Determination**

This is an informal process that produces a binding decision. The parties appoint an expert in the same field as the dispute. This process is usually used where the dispute is of a technical nature. The expert’s decision is contractually binding on the parties.

### **MYTH TWO: Seeing my solicitor will incur huge costs – can I not do it myself?**

It is certainly true that a dispute that goes all the way to a trial will be expensive. If you are successful at trial it is generally the case that the judge will order that the unsuccessful party pay the majority but not all of your legal costs. If you lose then you will have to pay your own costs and there is a high risk you will have to pay the majority of the other sides as well. Even if you are successful therefore there is usually a shortfall that you will have to pay. This is why at Herrington & Carmichael we are very keen to explore all the alternatives ways of resolving your dispute without committing you on day one to taking the matter to trial.

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The earlier you come and see us the more likely we are to be able to help you resolve the dispute early and at less cost. An early assessment of the legal merits of your case will provide you with a clearer idea of your chances of success if the matter ended up at trial allowing you to make an informed decision.

Sometimes despite best efforts matters do end up in court. If that happens we will do the best we can to keep your legal costs as low as possible whilst providing you with the high quality service you deserve. To help you budget, we will regularly provide you with details of the costs incurred and any future costs that are likely to be incurred.

### **MYTH THREE: Solicitors might know their stuff but I won't be able to understand what they say and I will lose control?**

At Herrington & Carmichael we pride ourselves on “Plain speaking legal advice”. Given what can be at stake it is very important that you fully understand our advice. After all we are here to help and serve you.

We believe in developing long term relationships with all our clients and want to ensure that you feel fully involved and supported through what can be a stressful process. Effective communication is therefore essential and we never lose sight of the fact that it is your life or your business that are of paramount importance.

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*Dispute Resolution Team*  
*Herrington & Carmichael LLP*  
*Waters Edge*  
*Riverside Way*  
*Watchmoor Business Park*  
*Camberley*  
*Surrey GU15 3YL*  
*Tel 01276 686222*  
*Email [frankie.tierney@herrington-carmichael.com](mailto:frankie.tierney@herrington-carmichael.com)*

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Watchmoor Park  
Camberley  
Surrey  
GU15 3YL

tel: 01276 686222

3&4 Market Place  
Wokingham  
Berks  
RG40 1AL

tel: 01189 774045

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