

# What if things go wrong?

Kate Matthews, partner at Boddy Matthews Solicitors, explains how to resolve disputes on a step-by-step basis

 Owning a franchise can be a fruitful business relationship, where success for franchisor and franchisee is interdependent. Clear and effective communication is a key factor for that success.

It's therefore all the more important to swiftly address concerns arising during the course of this relationship, however big or small, to avoid potentially long lasting adverse damage to the relationship or, at worst, its ultimate early termination.

A well drafted and ethical franchise agreement, as promoted by the British Franchise Association and the European code of ethics for franchising, will contain a clear alternative dispute resolution (ADR) clause. This clause will set out how to resolve disputes on a step-by-step basis.

How to choose? Which ADR step is best? What should I know?

## STEP 1: COMMUNICATE

Lack of communication may often be the root of a problem.

While some disputes cannot be avoided, many can be resolved through clear, open and effective communication.

A cost effective solution may simply be to open a dialogue with your franchisor and together negotiate and work towards a resolution. This is often the first ADR step.

## STEP 2: MEDIATE

Mediation is a private, confidential and flexible form of ADR, facilitating the parties in reaching an agreement where possible.

If the parties have agreed to mediate, discussions are carried out on a without prejudice basis. Therefore, it's not binding unless the parties, with the help of a neutral third party mediator, reach an agreement, which is then recorded in writing and signed by all parties.

A mediation can include all aspects of the relationship and is not limited to the legal issues.

A facilitative mediation can with agreement become an



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evaluative mediation if the parties so choose, where the mediator can provide a solution the parties agree to honour.

The franchise relationship can be preserved and it's cost effective. The bfa operates a mediation scheme.

## STEP 3: ARBITRATE

Arbitration is more formal than mediation and an alternative to litigation.

The parties agree to resolve their disputes through arbitration, not court. While it tends to follow a similar structure to court proceedings, depending on the arbitration rules applicable, it's a private process that's confidential and binding.

The parties choose and pay for the process and the arbitrator/s and their expertise. Arbitration is usually less expensive than litigation.

## STEP 4: LITIGATE

Litigation/court proceedings is often the last resort.

The parties follow court rules. An independent, impartial judge will make a binding judgement. Court fees apply, but not for the judge or venue.

## TOP TIPS

- Avoid communication breakdown
- Seek an informal solution
- Negotiate
- Check the alternative dispute resolution clause and steps
- Check the governing law and jurisdiction
- Seek a solution using alternative dispute resolution

