

**The ADR Practice Guide: Commercial Dispute Resolution**  
by Karl Mackie, David Miles, William Marsh and Tony Allen  
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Reviewed by Gordon Blanke

In its third edition since it was first published in 1995, this book was then the *only* and remains now the *leading* primer in the field of dispute resolution in the United Kingdom. It is also currently the most recent and up-to-date one. It is true that in the interim, other texts have forayed onto the market, but in terms of style and coverage, these cannot assert the same status as *The ADR Practice Guide*. Compared to competing publications,<sup>1</sup> this guide

<sup>2</sup> Judgment of March 8, 2006, 4P.278/2005 (2006) 24 *ASA Bulletin* 3, 521, with a commentary by Phillip Landolt.

<sup>3</sup> Regulation 1/2003 [2003] OJ L1/1.

<sup>1</sup> The main one being probably C. Newmark and A. Monaghan (eds), *Butterworths Mediators on Mediation: Leading Mediator Perspectives on the Practice of Commercial Mediation* (Tottel Publishing, 2005). This book is an anthology with contributions by various contributors and as such does not constitute a coherent text authored by one set of writers alone. Further competing publications include: E. Carroll and K. Mackie, *International Mediation—The Art of Business*

does not only deal with mediation, but with a wider range of alternative dispute resolution methods that are in use as an alternative to or in combination with mediation in the world of practice today. Even though the guide's focal point remains mediation, the authors seek to place it within the broader dispute resolution landscape that has shaped over the past two to three decades or so.

Previous editions of the guide—and no doubt the present one to date—have enjoyed wide acclaim. The scope of its readership has proved extremely broad, including practising mediators, advising (mediation/ADR) counsel, academics specialising in and teaching ADR, their students, public officials entrusted with the development of ADR policies as well as members from the bench, who have increasingly come to adjudicate on the desirability of mediation as an alternative dispute resolution mechanism and as an integrated procedural component of the civil justice system.

The uniqueness of the text undoubtedly resides in the high-level experience its four authors bring to bear in the text<sup>2</sup> and the approach they have chosen to writing it. As they alert us in their foreword (p.ix):

“We have each contributed different parts of the book ... Sometimes we have covered the same ground, but we have done so in a way that sees the same issues from different perspectives[:] the conceptual, the legal and the practical, mirroring the three perspectives that we encounter in various proportions in every dispute we mediate—the commercial, the legal and the personal.”

In accordance with this approach, the guide is divided into three main parts, covering the conceptual, the legal and practical frameworks of ADR in turns. The first part defines the various forms of ADR and places them in their proper context, highlighting how they differ from and interrelate with each other. This part comprises an introductory chapter on the use of ADR in civil and commercial disputes (Ch.1), followed by another chapter on the way from negotiation to ADR (Ch.2) and concluding with a final chapter that provides an overview of the dispute resolution landscape (Ch.3).

The second part sets out in great detail the common law of mediation and the way mediation has been promoted by the UK courts and the policymakers over recent years. Chapter 4 outlines the historical development of ADR in the United Kingdom and in particular the way it has been embedded in English civil procedure culture by its express enshrinement in the Civil Procedure Rules 1998. Chapter 5 then discusses the role of the courts more particularly and their practice of making ADR orders, followed by a detailed treatment of the possible cost consequences for refusing court-ordered ADR in Ch.6. The legal foundations of mediation, as one of the most prominently used forms of ADR, are fully discussed in Ch.7, taking account in particular of the question of mediation privilege and the scope of mediation confidentiality. Litigation costs and funding in the context of mediations are dealt with in Ch.8. The issue as to whether parties can enter into binding ADR clauses at all is treated in Ch.9. The European dimension, i.e. the roles played by the EU Draft Directive on mediation, which in the interim has been adopted verbatim, the European Code of Conduct for Mediators and the European Convention on Human Rights receive exhaustive treatment in the final chapter of the second part (Ch.10).

*Diplomacy* (Tottel Publishing, 2006), which is primarily targeted at the business community; and K. Mackie, T. Hardy and G. Massie (eds) together with J. Singer, *The EU Mediation Atlas: Practice and Regulation* (LexisNexis, 2004), which gives an overview of the mediation regimes operating in the various EU Member States and is as such based on brief country reports rather than delivering an in-depth treatment of mediation or alternative dispute resolution per se.

<sup>2</sup> Dr Karl Mackie being a practising mediator and chief executive of the Centre for Effective Dispute Resolution (CEDR); David Miles practising as a mediator, arbitrator and adjudicator; William Marsh working as a full-time mediator and international ADR consultant; and Tony Allen, director of CEDR and a full-time mediator.

The final part three deals with the practical, hands-on aspects of mediation proceedings as they unfold in the real world. It adverts to practical issues, such as the duty to use ADR at any particular stage of a dispute and how ADR and in particular mediation can be put to use most efficiently (Ch.11). Chapter 12 deals with the practical arrangements that need to be made for setting up a mediation, advising on how to choose a mediator, what ground rules to agree for the mediation and how to deal with the costs aspects of a mediation. Chapter 13 sets out the various practical steps at a mediation proceeding itself, followed by the most important phase of a mediation, i.e. the settlement agreement and its enforceability, treated in Ch.14. Chapter 15 concludes the guide with some useful guidance for the mediator, the lawyer and the parties on their respective roles in a mediation. Last but not least, the guide contains some useful appendices, including most importantly some model settlement agreements and model ADR contract clauses.

If any criticism can be made of this book, it is that it is very light on references to academic literature in the field and that it, therefore, can only serve as a very limited tool for research. Its usefulness as a full-grown practitioner's handbook is, on this ground alone, somewhat limited. On the other hand, many a reader may perceive this criticism as unjustified and rather consider it a virtue as it adds to the fluidity of the text and renders the book itself highly readable. Despite being lightly-referenced, the guide does not suffer from lack of argument or density of information. It no doubt highlights any perceivable aspect of mediation within its wider ADR context any practitioner, policymaker or academic may need to be aware of fully to engage in the mediation process or debate.

Last but not least, even though being the most up-to-date text as I write, further significant developments in mediation have taken place since this guide was last published.<sup>3</sup> Most prominently, Directive 2008/52<sup>4</sup> has entered into force. This is no criticism of the text, as we all know it is well-nigh impossible to keep a monograph updated in real time. In any event, given that the Mediation Directive has been adopted without any amendments to its previous draft, the authors' treatment of the topic may require no major substantive adjustment of the text as it currently stands.

Overall, this is a very fine book, which deserves to see many editions to come. I, for one, look forward to the fourth and hope not to be kept waiting for too long.