Attitudes Towards Mediation
Prepared For:

in association with

Presentation of Results
June 2001
The Opinion Research Business were asked to conduct a study on behalf of Legal Director (in conjunction with Pinsent Curtis Biddle and the Centre for Effective Dispute Resolution) looking at attitudes towards the use of mediation.

The study establishes how many serious disputes companies are involved in, who they were with and which courses of action were taken. It also tries to understand what in-house lawyers fear the consequences of a serious dispute to be and who they would turn to for advice.

In particular it looks at mediation - who has used it, what it is used for and what the advantages and disadvantages of mediation are perceived to be. The survey also reveals what information about mediation people have and whether or not they perceive the usage of mediation to increase or decrease.
This study is a repeat of one conducted last year by MORI. For tracking purposes the questionnaire largely remained the same.

All interviews were conducted amongst the heads of/senior in-house legal departments and conducted over the telephone.

The average interview length was 22 minutes, fieldwork running from 21st May - 1st July 2001. A total of 202 respondents participated.
Throughout the presentation we make reference to the total sample and sub-groups within this sample. The definition we have used for one of these sub-groups is as follows:

**Company turnover**

- Small firms (n=36) = Up to £200m
- Medium firms (n=24) = £200m - £1bn
- Large firms (n=26) = £1bn+
In the last two years has your company been involved with any forms of serious business dispute or difficult negotiations. These may include disputes between your business and clients, suppliers, internally with employees or other people, which may or may not have resulted in legal proceedings?

More than three in four (77%) companies in the UK have experienced some sort of serious business dispute in the previous 2 years.

The incidence of these disputes would appear to be increasing, as the survey last year revealed that 64% of companies had experienced a serious dispute.
Of those that have been involved in a serious dispute in the previous 2 years, the average number of disputes is 47. This is considerably lower than numbers from the previous study where companies had experienced an average of 75.

In-house lawyers believe that, on average, 30% of these disputes have had a significant impact on their business, a marginal increase from 25% one year ago.
Q4 I would like you to think about a recent serious dispute you experienced in your business, whether or not it involved legal action and whether or not it was resolved. This dispute may still be ongoing. Who was the dispute primarily with?

- A customer / client
- A supplier/retailer
- An employee(s)
- A joint venture / business partner
- A contractor
- Other
- Refused
- Don’t know

• Slightly fewer than one-in-three companies (30%) have experienced a serious dispute with their customers / clients, falling from 38% in the previous study.

• There appear to have been an increase in disputes with suppliers / retailers / wholesalers (25% vs 18%).
Q5: I am going to read out a number of courses of action which may have been open to you to help resolve this dispute. Which of the following courses of action, if any, were used?

- Holding face-to-face discussions
- Sending letters to the other party yourself
- Instructing a professional adviser to act on your behalf
- Going to independent mediation
- Going to court/tribunal
- Arbitration
- Other

Base: Those that have had a serious dispute

<table>
<thead>
<tr>
<th>Course of Action</th>
<th>2001</th>
<th>2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Holding face-to-face discussions</td>
<td>74%</td>
<td>79%</td>
</tr>
<tr>
<td>Sending letters to the other party yourself</td>
<td>77%</td>
<td>87%</td>
</tr>
<tr>
<td>Instructing a professional adviser to act on your behalf</td>
<td>83%</td>
<td>82%</td>
</tr>
<tr>
<td>Going to independent mediation</td>
<td>19%</td>
<td>18%</td>
</tr>
<tr>
<td>Going to court/tribunal</td>
<td></td>
<td>52%</td>
</tr>
<tr>
<td>Arbitration</td>
<td></td>
<td>46%</td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td>16%</td>
</tr>
<tr>
<td></td>
<td>5%</td>
<td>3%</td>
</tr>
</tbody>
</table>
Dispute Outcome

Base: Those that have had a serious dispute

- Three in five reported that their disputes had been completely resolved (slightly lower than 61% in the previous survey).

Q6 What was the outcome of this dispute? Was it.....
Q7 To what extent were you satisfied with the outcome of the dispute? Were you….

Levels of satisfaction with the outcome in disputes have largely remained unchanged over the 12 month period.

More than four in five (83%) report that they are satisfied with the outcome.

Satisfaction with Outcome of Dispute

- Very satisfied: 36% in 2000, 38% in 2001
- Quite satisfied: 47% in 2000, 48% in 2001
- Neither: 7% in 2000, 9% in 2001
- Fairly dissatisfied: 7% in 2000, 4% in 2001
- Very dissatisfied: 3% in 2000, 2% in 2001

Base: Those that have settled their serious dispute.
### Concerns About Serious Disputes

(MEAN SCORE: 1 Not at all concerned - 10 Extremely concerned)

<table>
<thead>
<tr>
<th>Concern</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>The financial consequences</td>
<td>7.66</td>
</tr>
<tr>
<td>The effects on company reputation</td>
<td>7.23</td>
</tr>
<tr>
<td>Losses incurred in management time</td>
<td>6.85</td>
</tr>
<tr>
<td>The exposure in the public domain</td>
<td>6.35</td>
</tr>
<tr>
<td>The risk to your customer base</td>
<td>6.03</td>
</tr>
<tr>
<td>The effects on company morale</td>
<td>5.13</td>
</tr>
<tr>
<td>The effects on personal reputation</td>
<td>4.83</td>
</tr>
<tr>
<td>The risk to employee/trade unions</td>
<td>4.74</td>
</tr>
<tr>
<td>The risk to your supplier base</td>
<td>4.68</td>
</tr>
</tbody>
</table>

Q8: From what you have seen, read or experienced, when considering the potential impact of serious disputes, how concerned would you be about the following?
Q9: If you felt a serious dispute was developing, how effective do you believe each of the following sources of advice would be in informing you about how to resolve the dispute?

- Accountants: 36% (30%) Very/Quite effective, 58% (64%) Fairly/Very ineffective
- Business consultants: 18% (13%) Very/Quite effective, 80% (79%) Fairly/Very ineffective
- Industry associations: 33% (39%) Very/Quite effective, 64% (60%) Fairly/Very ineffective
- Mediation organisations: 65% (52%) Very/Quite effective, 28% (31%) Fairly/Very ineffective
- Solicitors: 89% (87%) Very/Quite effective, 9% (14%) Fairly/Very ineffective

(Last Year’s Figures in Brackets)
More Lawyers Talking about Mediation

- Two in three (65%) firms have been spoken to about mediation by their external legal firms. This figure has increased from 61% in the previous study.

Q10 Have your company's external legal firm ever spoken to you about mediation as a means of alternative dispute resolution?

- Yes: 65%
- No: 33%
- Don't know: 2%
Q11 If you were looking for information about the use of mediation in business disputes, which sources would you use?

<table>
<thead>
<tr>
<th>Sources of Information about Mediation</th>
<th>2000</th>
<th>2001</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current legal firm</td>
<td>49%</td>
<td>56%</td>
</tr>
<tr>
<td>CEDR</td>
<td>28%</td>
<td>41%</td>
</tr>
<tr>
<td>Industrial/Trade Association</td>
<td>11%</td>
<td>14%</td>
</tr>
<tr>
<td>Other mediation organisation</td>
<td>7%</td>
<td>12%</td>
</tr>
<tr>
<td>Legal directories / publications</td>
<td>6%</td>
<td>14%</td>
</tr>
<tr>
<td>Other</td>
<td>0%</td>
<td>36%</td>
</tr>
<tr>
<td>No answer</td>
<td>2%</td>
<td>0%</td>
</tr>
</tbody>
</table>

The largest increase as a source of information about mediation is the CEDR - increasing from 28% last year to 41% now claiming that they would use them as a source.
Q12a Thinking about the information that is available about mediation, would you say that you get too much information, the right amount or not enough information?

- Just under one in three (32%) of in-house lawyers feel that there is not enough information about mediation. This finding would appear to be confirmed later in the study when most agree that the best thing to make mediation more attractive is to “publicise it more”

- Not surprisingly, those that think mediation should be compulsory are most likely to claim that there is not enough information at present.

- The data also reveals that those that have been purchasing legal services for the shortest amount of time (<5 years) are most likely to want more information.
Q12b If information on mediation was available on the web, if you involved in a serious dispute how likely would you be to access it?

- One of the possible solutions to the demand for information would be a website that contained details about mediation. More than two in three (72%) in-house lawyers claim that it would be “very/quite likely” that they would access it.

- This figure increases to 76% amongst those that have never used mediation before (with 50% of these saying “very likely”)
Q13a Assuming that your face-to-face negotiations are not succeeding in resolving your disputes, which of the following best describes your attitude to mediation in business disputes with a supplier?

- Mediation would be my preferred method of resolving a dispute
- I would only choose mediation if the dispute would otherwise go to court
- I would consider mediation but would prefer to use other methods
- I would only use mediation as a last resort
- I would never consider mediation
- Don’t know
Q13b Which of the following best describes your attitude to mediation in business disputes with a client or customer?

- Mediation would be my preferred method of resolving a dispute: 27% (2001), 17% (2000)
- I would only choose mediation if the dispute would otherwise go to court: 36% (2001), 37% (2000)
- I would consider mediation but would prefer to use other methods: 26% (2001), 21% (2000)
- I would only use mediation as a last resort: 5% (2001), 13% (2000)
- I would never consider mediation: 5% (2001), 4% (2000)
- Don’t know: 7% (2001), 7% (2000)
The Use of Mediation

- Following a prompted definition of mediation, slightly less than one in two (46%) in-house lawyers claim that their companies have in fact used mediation.

- Amongst those who have used mediation (n=92), an average of 4.0 disputes were resolved using mediation.

Q15 Just to check, have you ever used mediation (as defined above) as a means of resolving a business dispute?
Q16 In these disputes that your company has been involved in, how many, if any were resolved using mediation?
Q19 In comparison to other methods of dispute resolution, how effective or ineffective do you think mediation is as a means of resolving business disputes?

- Much more effective: 25% (2000), 11% (2001)
- Slightly more effective: 29% (2000), 16% (2001)
- No difference: 21% (2000), 3% (2001)
- Slightly less effective: 10% (2000), 7% (2001)
- Much less effective: 13% (2000), 4% (2001)
- I have nothing to compare with: 13% (2000), 13% (2001)
- Don’t know: 16% (2000), 10% (2001)
Q20 What, if any, do you consider the benefits of mediation to be? *Probe*…..And what else?
Q21 And what do you consider the drawbacks of mediation to be? *Probe*.....And what else?

- **A solution is not guaranteed**: 34%
- **Want the resolution to be legally binding**: 21%
- **It is a slower process**: 15%
- **Extra costs**: 15%
- **Other sides may not agree to participate**: 11%
- **Other parties may not behave with honesty**: 14%
- **There may not be a winner**: 10%
- **Other**: 37%
- **Other (specify)**: 6%
Q22 At what point in a serious dispute would you consider using mediation?

When to Use Mediation in a Serious Dispute

- Pre-issue: 65%
- Allocation questionnaire stage: 6%
- CMC stage: 16%
- Exchange of witness statements: 6%
- Exchange of expert reports: 5%
- Listing questionnaire stage: 2%

• One
Q25 How likely is your company to increase your use of mediation as a means of resolving business disputes in the future?
Q26 And irrespective of your own firm, over the next 12 months do you think that the usage of mediation within your industry as a whole will......
Q28 How strongly do you agree or disagree with the suggestion that mediation should be made compulsory if a business dispute goes to court?

Strongly agree: 9% (2000), 13% (2001)
Tend to agree: 14% (2000), 19% (2001)
Neither agree nor disagree: 14% (2000), 7% (2001)
Tend to disagree: 20% (2000), 24% (2001)
Strongly disagree: 28% (2000), 37% (2001)
Q29 In your contracts with suppliers/customers or other counter-parties, do you use a clause that outlines the process to follow if a dispute occurs?

Three in four companies (73%) claim that their contracts with suppliers / customers currently contain clauses about the processes to follow if a dispute occurs.

- Of these, 55% claim that mediation is included in the process. This would therefore suggest that approximately two in every five companies mention mediation in their contracts with suppliers / customers.

- Amongst those that do not have a clause in their contracts, 64% say that they would consider such a clause.
Demographics
<table>
<thead>
<tr>
<th>Region location</th>
<th>%</th>
<th>Legal expenditure</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>North</td>
<td>12</td>
<td>Less than £50,000</td>
<td>20</td>
</tr>
<tr>
<td>Midlands</td>
<td>9</td>
<td>£50,000-£100,000</td>
<td>9</td>
</tr>
<tr>
<td>London</td>
<td>51</td>
<td>£100,000-£250,000</td>
<td>13</td>
</tr>
<tr>
<td>South</td>
<td>25</td>
<td>£250,000-£500,000</td>
<td>8</td>
</tr>
<tr>
<td>Scotland/Wales</td>
<td></td>
<td>£500,000-£999,999</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>£1,000,000+</td>
<td>26</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Years purchasing legal</th>
<th>%</th>
<th>Gender</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1</td>
<td>6</td>
<td>Male</td>
<td>80</td>
</tr>
<tr>
<td>1-5 years</td>
<td>33</td>
<td>Don’t know</td>
<td>3</td>
</tr>
<tr>
<td>6-10 years</td>
<td>25</td>
<td>Female</td>
<td>20</td>
</tr>
</tbody>
</table>
Q21 What is your main role in the appointment of external lawyers for handling your legal service requirements?