Mediation is an informal, voluntary, confidential process in which parties to a dispute can, with the help of an independent intermediary, meet to work out a settlement. It is an alternative dispute resolution (ADR) method.

Mediation is a applied across private and the public sector in the UK where vested interests are locked at impasse; where "jaw jaw rather than war war" is acknowledged by the use of a nonpartisan as the best means to settle an issue. In the UK mediation surfaces in business disputes, marital breakdown (where it is compulsory), workplace conflict and employment issues and as a tool for improving community relations. All practitioners in the private sector are accredited independent neutrals and tend to specialise in the same area as their early careers.

Changes to the Justice System of England and Wales are far reaching across all branches of law but have not reduced cost and delay to those intent on pursuing justice in the courts. Access to litigation remains the privilege of the few rather than the right for all.

Mediation, arbitration, adjudication and conciliation are society's response to offer a legal alternative to litigation. Each method has its own features. There are four main differences between mediation and the others. First, it is the only form of ADR that involves an intermediary and is non-adjudicative. Second, all settlements flow from the parties themselves. The parties decide whether they wish to settle and so the mediator does not impose a settlement. Third, the mediator assists negotiation between the parties. Finally, any settlement, because it is a contract, is not limited necessarily to a narrow monetary award but can encompass imaginative variations or alternatives to compensation, including an apology.

In 2013 across England and Wales, there were approximately 9,500 civil and commercial mediated cases. It's a growing profession to whom disaffected litigants realise the benefit of curtailing legal costs (in most cases, rather late in the day, the commercial advantage of a confidential legal settlement conducted without public record and without prejudice to future proceedings. Given its

cloak of secrecy, no true market analysis is possible as user profiles, types of cases and actual detail of outcomes are not disclosed. In the UK hotel sector, anecdotal evidence suggests that mediation is used successfully and achieves a typical settlement rate of 90% of cases. But it is used with less frequency, because its practice is unknown and its workings are misunderstood. In the US, hotel mediation steps into contractual arbitration provisions in supplier disputes as a nimble method of settlement in franchising, management and owner issues and construction matters. Many believe that mediation is at a tipping point in Europe and here in the UK, where consumer rights are changing, it may be the experience of the hotel guest and staff that may well be a strong advocate for it going forward across the spectrum.

I have not met any business leader who likes to discuss customer complaints, employee grievances or supplier disputes in any industry, let alone in hospitality or hotels. Yet when I catch-up with friends or family, there is no paucity of example of a negligent contractor, discriminatory boss or the dissatisfaction with a recent hotel, dining or retail experience.

We contribute and recycle mixed messages that confuse and ultimately fatigue us into doing little more than showing immediate dissatisfaction when something we purchase is not what is originally promised. Evidence suggests that hotel customers tend to complain less but depart hotels dissatisfied, neither to return nor recommend to others. Oddly, a dissatisfied hotel guest is more likely to complain about an unsatisfactory retail purchase than over a disappointing stay. Hotel related complaints are low, but guest dissatisfaction polls much higher levels of discontent. The dissatisfied tend either to be mute or vent grievance in TripAdvisor or in post-stay guest surveys. According to academic research, only 5% of hotel customers formally complain, half that in retail. For every 20 dissatisfied hotel customers, only 1 guest formally complains. But 19 remain dissatisfied and chose not to escalate a grievance to a written complaint.

Research into formal claims made through the small claims court shows that two amongst the five worst hotel companies rated in the 2014 Which? Annual ‘Best’ and the ‘Worst’ hotels in the UK

survey, defended a total of 31 cases over the past 5 years. The roll shows claims as much £15,000 to as little as £59 have been pursued and settled. Whilst the register does not show dismissed or suspended cases these figures are remarkably low given the annual volume of transactions that pass through these businesses.

Either hotel staff are skilled at resolving complaints or a guest venting a grievance on social media is cathartic and therefore an end to it. As far as business leaders are concerned, complaints are taken seriously with an inevitability to them as a cost of doing business. The low levels of formal complaint in the industry is surprising, maybe simply worthy of praise of hospitality being well delivered across the board; but I think not and an EU Directive, new Regulations and UK adaptation may well distil a more honest picture, that will actually benefit the industry.

These suite of changes will provide consumers online and in person new rights of redress and measures to be adapted and (in some instances) funded by business.

Consumer access to ADR will increase and mediation will become more commonplace and its benefits understood. Experience in the EU has shown that ADR has a high success rate and satisfaction with customers in resolving their issues with traders. The adoption by the UK of the directive is mandatory and whilst its provisions are not invasive for business they are prescriptive. From October 2015 all e-commerce platforms will need to notify customers of their right of access to a third party to help resolve any grievance with the trader only if the company is prepared to progress with it. If so, the company will fund it.

The traditional system for civil claims below £10,000 remains, unreformed, as an unwieldy beast. Despite efforts by the Ministry of Justice to offer online applications for monetary claims from and a single venue for handling physical claims (Northampton County Court), the process remains complex and cumbersome, susceptible to delay, costly (fees rose earlier this year) and not without litigation

risk. Decisions are made by reference to matters of law that can make the judicial outcome seem quite harsh.

The Money Claims Online is the most direct way to lodge a claim against an individual, organisation or company through a court process. The formalities are aimed at a claimant whose case against the defendant is small and barely merits legal advice (the cost of which, if indeed required, is unlikely to be part of any award on costs). Furthermore, if experts are required, these costs will also not be recovered. Couple the 'at risk' costs with the probability of success never exceeding 70%, is it worth claiming though the courts? Claims can be considerable from hotel customers, individually or as multi-claimants, but clarified consumer rights, interpretive company's terms and conditions all point to consumer mediation becoming not an alternative to court but the principal route for justice.

Lord Justice Neuberger in a speech to the Civil Mediation Council earlier this year restated his belief the Mediation is an important part of the justice system. He was careful to remind an audience overwhelmingly filled with mediators, that it is a fundamental human right to have access to justice in a court of law and that no alternative to it should deny the right of full and complete access to it. He supports mediation as a means to provide access to justice for all as an affordable and swift means to resolve dispute. But he emphasises that mediation is not suitable for all issues.

Over the past 2 years developing case law within the sector shows examples of where litigation can only be the correct course of action. The horrific case of Thomas Cook where the tragic deaths of two children could have been avoided needed full openness of the law to publicly find them in breach of duty of care. Barclays Bank action against Grant Thornton over the issues behind the collapse of the Von Essen Group, exposed the importance of a disclaimer of responsibility on an auditor's report; the case of Mr and Mrs Bull who operated a B&B with a policy that stated on their online booking form that double bedrooms are only available to heterosexual couples.

But for those cases that have greatest chances of settlement outside the court (or on the court steps) the choice of mediator must be driven by what a party thinks the person will do for him or her. This drives to the heart of why a mediator is needed – to settle the dispute. A mediator is like a cabbie with two passengers in the back in a hurry to get to the Airport. Each passenger has their own route to get to there, but there is only one driver behind the wheel.