

COLLABORATION IS NOW THE KEY TO EFFICIENT DISPUTE RESOLUTION

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Legal Briefings

Greater emphasis on collaboration between in-house and external lawyers, and between disputing parties, will lead the way for efficient resolution of commercial disputes.

EFFICIENCY THROUGH COLLABORATION

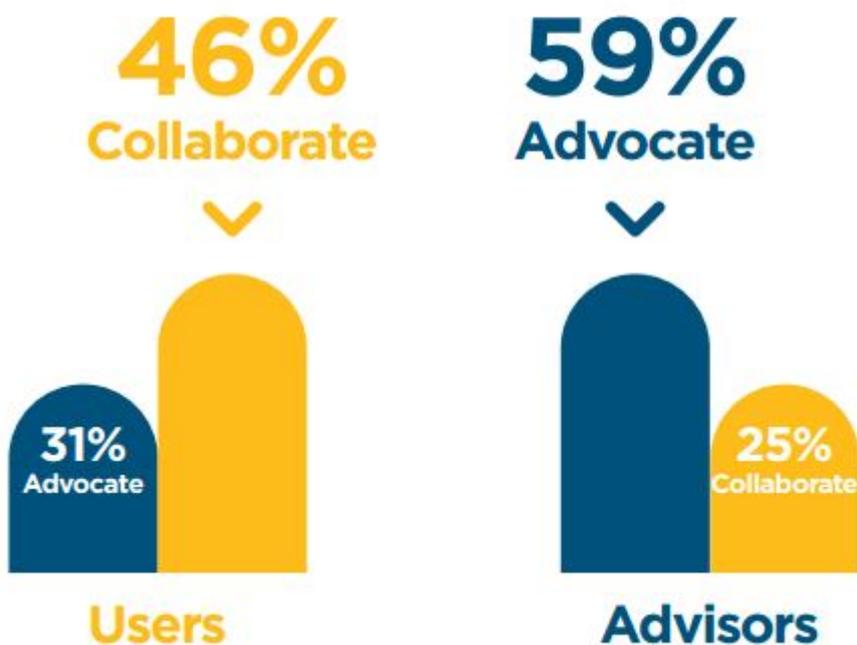
Most dispute resolution has as its frame of reference an adversarial process based on asserted legal rights. But a highly adversarial stance before trial can actually work against efficient resolution. The extended correspondence between advisors, and the cost and time this entails, can itself make the resolution harder to reach.

With business leaders focusing on cost reduction in the year ahead¹, alternative dispute resolution processes that often produce better results more quickly and at less cost², could have real appeal.

Facilitating the development of future commercial and civil dispute resolution is the aim of the [Global Pound Conference Series](#). Findings from these events held around the globe so far suggest that clients want closer working relationships to resolve their disputes.

Advisors think that **users want** them to **advocate**.

Users say that they **want lawyers** to **collaborate**



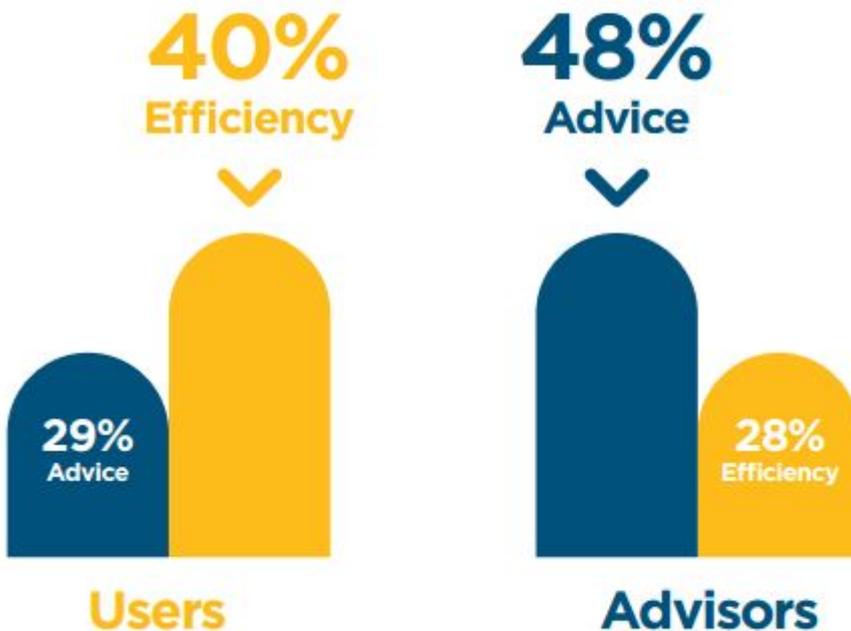
So what can be done to close the gap and make dispute resolution more efficient?

FIRST STEPS

An early case assessment is a good example of how closer collaboration can help increase efficiency. In-house counsel and external lawyers work together to review not just the legal merits of the case, but the wider issues and underlying interests too. Do the financial sums add up and justify the cost of taking the case through court? What are the reputational consequences of embarking on litigation? What are the chances of being able to enforce the court's judgement?

Addressing these questions early focuses attention on the issues that matter. It helps organisations make a more informed decision about whether they want to follow a litigious route or whether an alternative process would produce a faster, more cost-efficient resolution.

Users value efficiency when selecting the type of dispute resolution process. **Advisors think that the parties prefer advice**



Approaches that combine elements of adversarial and alternative dispute resolution processes can also save time and money. At the outset parties typically feel the need to set out all matters in a dispute, inevitably advancing some arguments that are stronger than others. But adopting a more collaborative approach to help narrow the differences later will be more cost effective and time efficient than a traditional approach.

When **advisors** are **advising the user**, the **choice of process** is primarily **driven by** the **outcomes desired** or the **familiarity** with the **process**; **costs** are **relatively unimportant**



Technology also has a role to play, as achieving efficiency is about more than a shift in attitude. Technology, in the form of social tools and online platforms, is making it easier than ever for lawyers to work more closely with each other and with their clients too. Advancement in data analysis enables expert advisors and legal teams to review and investigate large amounts of data quicker than ever to disclose the who, what and when of investigations.

ARE USERS READY FOR CHANGE

More collaboration could bring about an important shift in the way disputes are resolved. But not all users are ready for this change. When commercial disputes arise, the instinct to fight hard and prove a point is strong. The idea of collaboration may sound appealing; the reality less so.

Collaboration in practice can also be uncomfortable. For in-house counsel, it may sometimes be easier to report back to business leaders, 'this is what the court decided' than to bear the message, 'this is what I negotiated with the other party'.

Finally, there's the culture aspect. Different countries and continents have different attitudes to resolving disputes. Common law and civil law systems deal with the process of establishing facts and expert opinions in very different ways. Improving collaboration isn't just about process efficiency but about acknowledging differences and finding ways to accommodate different views.

Similarly there is a wide range of approaches to the use of mediation or similar processes as part of or in parallel with litigation or arbitration. Some cultures have long traditions of facilitated informal dispute resolution without the process bearing the name mediation or forming any part of formal dispute resolution. Others have chosen to mandate mediation before or during the litigation process to compel participation and overcome resistance by litigants or their advisors. Increasing collaboration given the spectrum of views and experiences will be easier in some jurisdictions than in others.

All agree that **changes in corporate attitude**, and a greater **emphasis on collaborative instead of adversarial processes** are **most important** for the **future of commercial dispute resolution**



NEXT STEPS

For a more efficient process, organisations embroiled in commercial disputes need to give their legal advisors a clear signal that they are ready for a more collaborative approach. Lawyers and all other advisors must tune into organisations' priorities. This includes showing a commitment to explore all avenues for dispute resolution, not just litigation, in order to represent their clients' best interest.

If your organisation is looking for greater efficiency in dispute resolution, how can you make greater collaboration a reality?

Here are key questions to consider:

1. Are your expectations on costs realistic? Even when you choose a more collaborative approach, proper legal advice will often still be essential to provide a framework for negotiations.
2. Are you clear that greater efficiency has its own costs? A more collaborative process may cost less than an extended fight through the courts, but you will often need to compromise on your expectations as the price of achieving control over the outcome. You'll need to be clear-eyed about what is at stake (and what isn't).
3. How ready are your organisation's leaders for more collaboration? Will concerns about status and hierarchy trump the desire for speedy, cost-efficient resolution? Will those leaders be brave enough to take difficult decisions with imperfect information in order to achieve resolution?

Add your voice to the debate at a local Global Pound Conference Series event and help shape the future of dispute resolution.

Footnotes

¹ www.pwc.com/ceosurvey?, PwC, January 2017

² 'The inside track - how blue-chips are using ADR', www.hsf.com/adr

[VISIT ALTERNATIVE DISPUTE RESOLUTION HUB>](#)

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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