

# Kluwer Mediation Blog

## Troubled Software Projects: Early Conflict Resolution

Gerard Doolin (Be Amorgos IT Contractual Services) · Wednesday, April 2nd, 2025

### Understanding the Challenge

From 2019 to 2022, the New Zealand International Arbitration Centre (NZIAC) collaborated with Gerard Doolin on an international research initiative exploring the causes of software project misalignment and the role of Alternative Dispute Resolution (ADR) mechanisms in mitigating or resolving emerging contract disputes. Gerard Doolin, an NZIAC Panel Mediator and member of the Vienna International Arbitration Centre (VIAC) Mediator List, specializes in software project disputes.

The findings of this research, published in the report *Avoiding Conflict and Improving Dispute Resolution for IT Projects*, highlight that misalignment often originates in the analysis, design, or build phases due to gaps or omissions in requirements. These issues may stem from vendor-customer engagement during procurement, deficiencies in the vendor's solution, or a combination of both.

Software project misalignment can have severe consequences, including cost overruns, missed deadlines, and, ultimately, project failure. When issues remain unresolved, disputes often escalate into formal contract claims, leading to arbitration or litigation, which can be costly and time-consuming.

In such scenarios, engaging a neutral mediator with industry expertise at an early stage can help prevent disputes from escalating. To support this approach, NZIAC and Mr. Doolin developed [contract modules](#) based on Agile or Waterfall governance frameworks. These modules encourage early identification of delivery risks, exhaustive dialogue to find solutions, and, if necessary, engagement with a mediator with industry knowledge or an adjudicator with technical expertise to issue interim binding determinations. The aim is to reset project delivery rather than allow disputes to spiral out of control.

The key factors for successful resolution after a software project becomes misaligned are confidence in the solution, its delivery, and the relationships between stakeholders. Without these elements, project recovery can be significantly more challenging.

### The Mediator's Role in Software Project Disputes

#### Preparation: Framing the Issues

A mediator's role extends beyond reviewing contractual terms. They should request that each party provide a concise summary of their commercial, technical, and project delivery perspectives on the causes of misalignment. Given that software project disputes often arise in the early to mid-project phase, common issues include delays, dissatisfaction with solutions, personnel performance concerns, skill gaps, or budget constraints.

To ensure a structured approach, the mediator should issue a thematic questionnaire asking each party to articulate their views on misalignment within a specific project phase (e.g., analysis, design, build, or test) and a corresponding matter (e.g., scope, deliverables, personnel, schedule, or budget). This helps to clarify whether the issue stems from a lack of understanding of business requirements, miscommunication between teams, or unexpected technical challenges.

The mediator can then consolidate the responses into a list of key commercial, technical, and delivery issues, along with any differences in perspective, to guide discussions in mediation. By identifying gaps in understanding early on, the mediator can help focus the discussion on the most critical areas.

### **Process: A Workshop Approach**

For software project disputes, an initial workshop-style meeting with a structured agenda is recommended. This format allows parties to discuss key subject matters in a neutral and open setting.

Key considerations for the mediator in this process include:

- **Neutral Facilitation:** Creating a safe space for parties to share their perspectives without prejudice, ensuring active and respectful listening.
- **Prioritization of Issues:** Carefully listening to the evolution of the parties' commercial, technical, and contractual positions, intervening where necessary to reframe and prioritize interlinked issues.
- **Hierarchy Considerations:** Noting whether individuals in project management or technical roles feel free to speak openly in the presence of senior managers and encouraging their participation.
- **Joint and Separate Sessions:** Beginning with a joint session to share respective views, followed by breakout sessions as needed to explore priority issues in depth and bridge gaps between parties.

Ensuring the presence of key decision-makers—senior project managers, software specialists, service area managers, and executives—is crucial. While legal counsel may participate, the mediation process should initially focus on open exploration rather than rigid legal positioning.

### **Tools: Creating an Issue Framework**

Software project disputes often involve complex technical and delivery issues. To manage this effectively, the mediator should develop an Issue or Negotiation Framework, a structured document that organizes subject matter issues:

- By project phase (e.g., analysis, design, build, test)
- By category (e.g., technical issues, commercial budget concerns, system design specifications, integration scope)
- By priority level based on resolution urgency (e.g., critical milestone deliverables)

The mediator should continuously update and share this framework with parties throughout the process. By doing so, the mediator helps maintain momentum in resolving issues and ensures that all concerns are tracked and addressed systematically.

## **Managing the Mediation Process**

### **Structuring the Mediation Timeline**

Each issue may require time for review beyond the mediation sessions. Before concluding an initial mediation day, the parties should agree on the scope of outstanding issues, the parameters for their review, and a realistic but accelerated timetable for resolution.

Key stakeholders who participated in mediation must remain engaged in follow-up discussions rather than delegating matters to new colleagues, unless a subject matter expert is required. Consistency in participation helps ensure continuity in understanding and decision-making.

### **Observing, Assisting, and Reinvigorating**

Mediating software project disputes demands acute observation and facilitation skills. Software systems are inherently complex, and project stakeholders often attend mediation while simultaneously managing ongoing project responsibilities.

Project managers, in particular, hold crucial granular knowledge of project delivery issues. The mediator should observe signs of fatigue, frustration, or loss of confidence in the process and, where necessary, intervene to reset and reinvigorate the discussions. Encouraging breaks, revisiting priorities, and fostering constructive dialogue can help maintain engagement and focus.

### **The Interplay of Project Relationships and Conflict Resolution**

Software project misalignment is not just about technical and delivery concerns—it also impacts relationships. Strained relationships, particularly among project managers who engage in daily operational discussions, can exacerbate conflict.

During joint and private sessions, the mediator should facilitate discussions that help reset working relationships alongside resolving technical issues. This relational reset can be vital to ensuring successful ongoing collaboration.

### **Avoiding Pitfalls: Balancing Monetary and Delivery Resolutions**

A key risk in software project mediation is prioritizing financial settlements over resolving technical misalignment. Organizations may push for early agreement on revised costs before completing a comprehensive technical review. However, this can lead to:

- Incompletely addressed costs, requiring subsequent internal approvals that may be difficult to obtain
- Ongoing project risks, as unresolved technical issues may resurface and disrupt progress before contractual variations are finalized

To mitigate these risks, the mediator should guide parties toward resolving financial and technical disputes in parallel, ensuring a holistic resolution. Encouraging parties to consider both immediate and long-term implications of their agreements can help prevent recurring disputes.

## Conclusion

Mediating misaligned software projects requires a multifaceted approach. The mediator must systematically triage and align the parties on core issues while fostering patience and persistence. Utilizing structured tools such as the Issue Framework and maintaining momentum through a well-monitored resolution timetable are crucial.

When software projects become mired in delays and disputes, the mediator serves as a neutral facilitator, providing a space to re-explore, review, and reset both the project and stakeholder relationships. By doing so, mediators help parties find solutions that prevent costly and prolonged arbitration or litigation, ultimately restoring confidence in project delivery and collaboration.

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A graphic for a survey report. It features a dark background with a circular inset showing a gavel on a glowing digital circuit board. The text is white and blue. A blue button with a white arrow points to the right.

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