



Mediation and other alternatives to court

Standard Note: SN/HA/4176
Last updated: 6 June 2013
Author: Diana Douse
Section: Home Affairs Section

Alternative dispute resolution (ADR) is the collective term for settling civil disputes with the help of an independent third party and without the need for a formal court hearing. Alternatives to litigation include: mediation, ombudsmen schemes and arbitration. In relevant circumstances, ADR schemes may offer certain advantages over going to court in that they can be more flexible, quicker, less stressful and less expensive.

Anyone seeking to use an ADR scheme should consider taking legal advice. Legal advice should be given by a suitably qualified person with professional liability insurance. A separate Library standard note, SN/HA/3207, [Legal help: where to go and how to pay](#) includes information about sources of legal help.

The Library is unable to endorse or take responsibility for the content of any website, directory or publication mentioned in this note. An online version of this note, including links to leaflets and guidance, is available at:

<http://www.parliament.uk/briefing-papers/SN04176>

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

This information is provided subject to [our general terms and conditions](#) which are available online or may be provided on request in hard copy. Authors are available to discuss the content of this briefing with Members and their staff, but not with the general public.

Contents

1 Introduction: what is alternative dispute resolution? 2

2 Mediation 2

2.1 What is mediation? 2

2.2 Where can I get information about mediation services? 4

Ministry of Justice 4

The Civil Mediation Council 4

Gov.uk 5

The Law Society 5

Centre for Effective Dispute Resolution (CEDR) 5

2.3 Help with mediation costs 5

3 Ombudsmen 5

4 Arbitration 6

1 Introduction: what is alternative dispute resolution?

Alternative dispute resolution (ADR) is the collective term for settling civil disputes with the help of an independent third party and without the need for a formal court hearing. Alternatives to court include: mediation, ombudsmen schemes and arbitration. ADR can offer a low-cost and fast alternative for consumers and businesses seeking to resolve disputes, which they cannot resolve between themselves. Where ADR procedures are completed entirely online this is referred to as online dispute resolution (ODR).

The [Advice Services Alliance](#), describes itself as “the umbrella body for independent advice services in the UK.”¹ They used to run the ADRnow website up until July 2012 when its funding ended.² Two leaflets by the Advice Services Alliance are still available: [Why use ADR? Pros & cons](#) and [Finding and choosing a mediator](#). The Advice Services Alliance also manage the [Advicenow](#) website which provides general information on rights and legal issues for the public.³

2 Mediation

2.1 What is mediation?

Mediation is a voluntary process during which an impartial third party helps both sides to resolve their dispute by mutual agreement. Mediators can provide general information on the law and how the legal system works but generally do not provide legal or professional advice to the parties. The parties will still need to consider taking their own legal advice, not least to decide whether proceeding to mediation is appropriate and to consider whether they should have legal representation at the actual mediation.

¹ Advice Services Alliance, [About ASA](#) [accessed 5 June 2013]
² Advice Services Alliance, [ADR](#) [accessed 5 June 2013]
³ Advicenow, [About us](#) [accessed 5 June 2013]

Mediation may be used to deal with a range of disputes including: family disputes involving children (in appropriate circumstances) and/or money; neighbourhood disputes; consumer disputes; and civil and commercial disputes (including, for example, disputes relating to building works or breach of contract).

The [Ministry of Justice](#), which is responsible for developing policy on alternative dispute resolution, has set out information about mediation, its benefits and in what circumstances it can be used.

Mediation, in particular, can be a flexible, speedy and cost effective way to resolve disputes. It is a confidential process that enables both parties to explain and then discuss what their needs and concerns are to each other in the presence of an independent third party – the mediator – so that they reach an agreement between themselves.

The individuals concerned have greater control and responsibility in resolving disagreements than if they went to court. Mediation empowers parties to control the length of the process, the issues they would like to discuss, and the outcome. Mediation can also be less stressful, particularly for any children involved, and in the long run, can be cheaper than going to court.

Mediation for civil disputes

Mediation can be used to resolve a whole range of everyday disputes – including:

- housing issues
- business disputes
- small claims
- debt claims
- boundary disputes
- employment disputes
- contractual disputes
- personal injury and negligence claims, and
- community disputes such as nuisance or harassment issues.

The Small Claims Mediation Service deals with monetary claims under £10,000 that are already going through the courts. If both parties agree to using mediation, they will be contacted by the service. As most cases are dealt with by telephone, they save the time and the expense of having to go to court.

The Civil Mediation Directory is an online tool listing a number of local and national civil and commercial mediation providers, all of whom are accredited by the Civil Mediation Council.

You can search the directory for a mediation provider that is local to you; and the cost of mediation is based on a fixed fee, depending on the value of the dispute.

Mediation for family cases

Mediation can be particularly beneficial where there will be a continuing relationship following dispute resolution – such as in family cases.

Family mediation can help reduce hostility and improve chances of long-term co-operation between parents and couples, for example in agreeing arrangements for their children and financial matters.

There is currently an expectation, that before applying to the Family Court, people will need to prove they've considered mediation first. They can do this:

- by showing they are exempt from having to consider mediation, for example, if domestic violence is involved; or
- by proving to the judge that they have been to a 'mediation information and assessment meeting' with a family mediator but that mediation is not suitable for them.

It is important that people in family disputes are made aware of this. The Children & Families Bill which is progressing through Parliament seeks to make this a legal requirement in Spring 2014.

There are a range of national mediation organisations that can either provide direct help or put people in touch with a mediator in their area.

You can:

- find details of the main mediation bodies on the [Family Mediation Council website](#)
- search for a family mediator on the [Family Mediation Service Finder](#)
- find out more information about mediation on the [Sorting Out Separation website](#).

Please Note: there is no longer a National Mediation Helpline phone number or website⁴

2.2 Where can I get information about mediation services?

There are a number of bodies which offer information on mediation services including:

Ministry of Justice

The [Ministry of Justice](#) mediation page includes links to relevant websites and services. It also provides a link to the [Civil Mediation Online Directory](#), which replaced the National Mediation Helpline. The Mediation Directory lists local and national civil and commercial mediation providers accredited by the Civil Mediation Council.

The Civil Mediation Council

The [Civil Mediation Council](#) (CMC), founded in 2003, describes itself as a “neutral and independent body” which represents and promotes civil and commercial mediation.⁵ The CMC's stated aims include:

- promoting the highest standards of skill, conduct and integrity in mediation;
- enabling access to high quality mediation services;
- engaging in the key debates that influence the growth and direction of mediation;

⁴ Ministry of Justice, [Mediation & alternatives to court](#) [accessed 5 June 2013]

⁵ Civil Mediation Council, [Civil Mediation Council Constitution](#) [accessed 5 June 2013]

- promoting an understanding of the value and practicalities of using mediation; and
- acting as a link between all who are interested in mediation, in particular our members, the public, businesses, the professions and the government ⁶

Further information about the Civil Mediation Council is available on its [website](#).

Gov.uk

Gov.uk is a one stop shop for information on Government departments. The site provides information on a range of subjects, including: [Solve a workplace dispute: Mediation, conciliation and arbitration](#).

The Law Society

The website of the [Law Society](#), which represents solicitors in England and Wales, includes information about the [Family Mediation Accreditation](#) and the [Civil and Commercial Mediation Accreditation Scheme](#). The purpose of the schemes is to ensure that the public can identify legal practitioners who provide mediation services, and to promote high standards in legal service provision. Only solicitors and legal executives who meet eligibility requirements are permitted to join the schemes.

Centre for Effective Dispute Resolution (CEDR)

[CEDR](#) was launched in 1990 with the support of The Confederation of British Industry (CBI) and leading law firms, business and public sector. It describes itself as “independent and neutral” and its website states that CEDR Solve is a leading independent commercial ADR provider in Europe and one of the largest ADR organisations internationally. CEDR provides training in mediation offering internationally recognised accreditation.⁷

Information about services provided by CEDR is available on their [website](#).

2.3 Help with mediation costs

Legal aid may, depending on the applicant’s circumstances, be available to help pay for mediation. The [legal aid calculator](#) on the Gov.uk website can provide an indication (although not a definitive answer) of whether legal aid will be available in any case.

3 Ombudsmen

Ombudsmen are an independent and impartial means of resolving certain disputes outside the courts. They deal with relevant complaints about certain public bodies and private sector services including:

- local and national government services
- health service
- prisons
- legal and financial services

The services provided by ombudsmen:

⁶ Civil Mediation Council, [Our Mission, Values and Aims](#) [accessed 5 June 2013]

⁷ CEDR, [About CEDR](#) [accessed 5 June 2013]

- are independent of the bodies they investigate
- are free to complainants
- are impartial
- provide a service only after an internal complaints procedure has been completed.

Each ombudsmen scheme has its own procedures. Below is a list of web links to the main Ombudsmen services in the UK:

[Property Ombudsman](#)

[Financial Ombudsman Service](#)

[Financial Services Ombudsman Scheme for the Isle of Man](#)

[Legal Services Ombudsman](#)

[Local Government Ombudsman \(England\)](#)

[Scottish Public Services Ombudsman](#)

[Public Services Ombudsman for Wales](#)

[Northern Ireland Ombudsman](#)

[Police Ombudsman for Northern Ireland](#)

[Parliamentary and Health Service Ombudsman](#)

[Prisons and Probation Ombudsman](#)

[Scottish Legal Services Ombudsman](#)

The [Ombudsmen Association](#) was set up in 1993. It does not deal with complaints but its website includes a list of ombudsmen services and other complaint handling bodies.⁸

4 Arbitration

In arbitration, an independent, impartial third party (arbitrator) hears both sides in a dispute and makes a decision to resolve it. In most cases the arbitrator's decision is legally binding on both sides, so usually there can be no appeal once a decision is made. The arbitration process can be tailored to the parties needs as to time and place for the hearings. The cost of arbitration varies. Some organisations offer a free service: for example the [Advisory Conciliation and Arbitration Service](#) (ACAS) offers a free conciliation service.⁹

Arbitration can be used in various contexts including:

- employment rights e.g. unfair dismissal
- consumer issues
- disputes over contracts

⁸ Ombudsmen Association, *The Association – Members* [accessed 6 June 2013]

⁹ ACAS, *Guidance on the Acas conciliation service* [accessed 6 June 2013]

- disputes between major corporations.