

Main Methods of ADR

### Alternative Dispute Resolution (ADR)

- Methods of resolving a civil case outside of the courts.
- Encouraged by Part 1 **Civil Procedure Rules 1998** following the **Woolf Reforms**.
- Courts can 'stay' proceedings to allow parties to try ADR. Cannot force parties to use ADR but can sanction if parties unreasonably refuse to try it.

### Reasons for Alternative Dispute Resolution

Court action (litigation) is not always the most appropriate means of resolving a dispute because of the following reasons:

- Complexity of legal procedures.
- The delay in resolution.
- The cost of court action.
- Intimidating atmosphere of the courts.
- The public nature of court action.
- The adversarial nature of court action which will result in a deterioration of the relationship between the parties.

TYPE	KEY FEATURES	ADVANTAGES	DISADVANTAGES
<p><b>ARBITRATION</b> Commonly used in commercial and contract cases, and most notably high-profile sports cases.</p>	<ul style="list-style-type: none"> <li>• The parties agree to let an independent arbitrator make a <b>binding</b> decision.</li> <li>• Many contracts include a <b>Scott v Avery</b> clause to agree pre-contractually to arbitrate in the event of a dispute.</li> <li>• This is the most formal method and is <b>adjudicative</b>.</li> <li>• The decision of the arbitrator is called an 'award'.</li> <li>• There can be a hearing though many cases are conducted using 'paper arbitration'.</li> <li>• An award can be appealed only on the basis of serious irregularity in the proceedings or on a point of law (<b>s.65 Arbitration Act 1996</b>).</li> </ul> <p><b>Key authority</b></p> <ul style="list-style-type: none"> <li>• Arbitration Act 1996</li> <li>• Institute of Arbitrators</li> <li>• Scott v Avery</li> <li>• The European Directive on Alternative Dispute Resolution</li> </ul>	<ul style="list-style-type: none"> <li>• The parties have discretion as to the choice of arbitrator with the existence of the <b>Institute of Arbitrators</b>.</li> <li>• The hearing procedure is left to the discretion of the parties; they can choose the venue, date, number of witnesses etc.</li> <li>• There is rarely any publicity.</li> <li>• The award is <b>binding</b> and can be enforced by the courts.</li> <li>• The arbitrator is an expert in the field.</li> </ul>	<ul style="list-style-type: none"> <li>• Public Funding is not available, so one party may have an advantage from the outset.</li> <li>• Appeals are restricted in the arbitration process.</li> <li>• Parties may feel they do not get their "day in court".</li> <li>• If a legal point arises, there is not always a legal professional in the hearing.</li> </ul>
<p><b>MEDIATION</b> Commonly used in family disputes or any area where a relationship needs to be maintained.</p>	<ul style="list-style-type: none"> <li>• The parties are encouraged to come to their own settlement with the help of a neutral third-party mediator who acts as a "go-between".</li> <li>• Mediator's role is facilitative rather than active.</li> <li>• The Ministry of Justice funds the Civil Mediation Online Directory. Individuals can search the directory for a mediation provider that is local to them; and the cost of mediation is based on a fixed fee, depending on the value of the dispute.</li> <li>• Not automatically binding unless a contract is drawn up.</li> </ul> <p><b>Key authority</b></p> <ul style="list-style-type: none"> <li>• <b>Dunnett v Railtrack</b></li> <li>• <b>Halsey v Milton Keynes NHS Trust</b></li> <li>• Neighbour disputes</li> <li>• Mediation in <b>Divorce Cases under s.10 Children and Families Act 2014</b>. In most cases involving a dispute over finances or children, the parties will be required to attend a <b>Mediation Information and Assessment Meeting (MIAM)</b>.</li> <li>• <b>Small Claims Mediation Service</b></li> <li>• <b>Court of Appeal Mediation Scheme</b></li> <li>• Online Dispute Resolution e.g., <a href="http://www.mediate.com/odr">www.mediate.com/odr</a></li> <li>• CEDR – commercial mediators</li> </ul>	<ul style="list-style-type: none"> <li>• It is a private and confidential process.</li> <li>• The parties enter into mediation <i>voluntarily</i>.</li> <li>• It is quick, cost-effective and accessible.</li> <li>• There is a good chance that the parties can maintain a relationship.</li> <li>• CEDR reports 80% of cases are settled at mediation.</li> </ul>	<ul style="list-style-type: none"> <li>• The dispute may end up going to court anyway if mediation fails, resulting in greater costs.</li> <li>• Increasingly being seen as a compulsory step in the process.</li> <li>• Where parties are "forced" into mediation, there is a half-hearted commitment; decreasing the chances of success.</li> </ul>
<p><b>CONCILIATION</b> Commonly used in industrial disputes.</p>	<ul style="list-style-type: none"> <li>• The third-party plays a more active role in the proceedings in order to push them in the direction of a settlement.</li> </ul> <p><b>Key authority</b></p> <ul style="list-style-type: none"> <li>• ACAS</li> <li>• Early Conciliation</li> </ul>	<ul style="list-style-type: none"> <li>• It is a cheaper option than litigation.</li> <li>• It is a private and confidential process.</li> <li>• ACAS adopts a prevention rather than cure approach to dispute resolution.</li> <li>• It identifies and clarifies the main issues in the dispute.</li> <li>• Conciliator plays a more active role.</li> </ul>	<ul style="list-style-type: none"> <li>• Heavily relies on the skills of the conciliator.</li> <li>• The dispute may end up going to court anyway if conciliation fails, resulting in greater costs.</li> </ul>
<p><b>NEGOTIATION</b> Used in most cases at the outset of the dispute.</p>	<ul style="list-style-type: none"> <li>• Resolving the dispute between the parties themselves; can involve solicitors.</li> <li>• Can be completed using letters, email, phone, meeting, etc.</li> <li>• At its most basic, involves returning faulty goods to a shop; its most complex involves solicitors and settlement offers being exchanged.</li> </ul>	<ul style="list-style-type: none"> <li>• Completely private.</li> <li>• Quick resolution, maintaining relationships.</li> <li>• Relatively informal method of resolution.</li> </ul>	<ul style="list-style-type: none"> <li>• Involving solicitors can make the process costly.</li> <li>• Offers are often exchanged and are not agreed until the day of court, wasting time and money.</li> <li>• People see it as a "halfway" house and think that they are not receiving as much as if they had gone to court.</li> </ul>