

Alternative Dispute Resolution: A Guide

Being involved in a dispute is never a pleasant experience. In order to attempt to resolve matters, parties are often encouraged to consider using [Alternative Dispute Resolution \(ADR\)](#) as an alternative to matters progressing to a court hearing.

This article looks at the ways in which a dispute can be settled amicably without the need to go to court.

Different Types of ADR

There are various types of ADR to consider to resolve a dispute. The options fall in to three categories:

Non-binding without third-party involvement – this could simply involve correspondence between the parties or a “round the table meeting” in order to resolve matters;

Non-binding processes with third-party involvement – this could include mediation where an independent third party (usually a trained mediator often with a legal background) is appointed to encourage the disputing parties to reach an agreement

Binding processes – This could include Arbitration where a third party is appointed by the disputing parties to evaluate the evidence and come to a binding decision or Expert Determination where an expert is appointed by the disputing parties to make a decision on particular issues (typically not of a legal nature)

Advantages of ADR

The benefits of using ADR are obviously case specific. Generally, the use of ADR can avoid the need for lengthy court proceedings which, in turn, can reduce a party's legal costs.

Certain methods of ADR, as detailed above, are not binding and are usually conducted “without prejudice” meaning that any discussions cannot be referred to in any subsequent Court proceedings if the dispute was not resolved.

Even if matters are not resolved, ADR can narrow the issues in dispute and allow the parties to evaluate the strengths and weaknesses of their own cases.

Disadvantages of ADR

If matters are not resolved using ADR, the arrangement of the same may have caused a delay in progressing matters and may also increase legal costs incurred.

ADR is not always suitable, especially where there are urgent matters that need Court involvement.

Parties can also be concerned that suggesting mediation may put across a sign of weakness to the other party.

Refusing ADR

It should be noted that the Courts encourage the use of ADR. If there is a refusal by a party to engage in ADR without valid reason then there could be costs penalties against the refusing party. Careful consideration needs to be made before a party refuses to cooperate with any proposed ADR.

The content of this article was accurate as at December 2021. The law may change over time following changes in legislation or new court cases. We do not actively update our articles once they are published.

As such, the content of this article is not intended as specific legal advice but as general guidance only.

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