

Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) is a means of resolving disputes using an independent third party without the need to go to court. Normally ADR is a voluntary process and the parties are able to walk away if agreement cannot be reached.

ADR allows the parties to retain a large element of control as unlike court proceedings parties can dictate the pace of ADR and are not tied in to proceedings in the same way as litigation. ADR is encouraged by the courts as an alternative to litigation wherever possible.

Several forms of ADR exist from Negotiation between the parties through to Arbitration where an agreed arbitrator makes a binding decision. Technically, Arbitration is not ADR as the parties are bound by the decision, but it can be a more cost effective way of resolving a dispute than litigation.

An independent third party is an essential feature of ADR providing an unbiased view of the dispute and creating trust between the parties. ADR can be less costly and faster than litigation. Even if the ADR doesn't resolve the dispute it can help to narrow the issues allowing litigation to proceed more efficiently.

Unlike litigation ADR is takes place behind closed doors and is confidential. This can be important for client's who do not wish to publicise their disputes. ADR is also less formal than the court with meetings often taking place in local hotels without the strict rules of procedure. Client's are able to take an active role in ADR rather than sitting behind a barrister, these elements often mean ADR is seen as a less stressful option than court.

ADR is about compromise rather than the traditional winner and loser situation experienced in litigation. As such, it is often easier preserve commercial relationships as both parties can walk away relatively happy. Again unlike litigation ADR can be beneficial to commercial parties as creative solutions can be reached in settlement such as a reduction off the next order which would never be awarded by the court.

Failure to consider ADR or at least attempt to settle a dispute before issuing at court can lead to cost penalties at the conclusion of litigation. The court expects all parties to attempt to settle both before the commencement of litigation and after issue.

However, ADR is only productive where both sides are willing to engage in meaningful negotiation and attempts at settlement. If one party refuses to cooperate the ADR can simply cause delay and increase costs.

The most common form of ADR is Mediation. The mediator is often accredited and generally will have expertise in the area in dispute. Parties will begin in a joint room and will then move into separate rooms with their legal representatives. The mediator's job is to move between rooms and in confidence listen to the arguments of both sides and look for common ground. Ultimately, the aim is for both parties to reach a settlement agreement which both are satisfied with.

The settlement will then be drawn up as a written agreement and signed by both parties at which time it becomes binding and enforceable.

Other forms of ADR include early neutral evaluation or expert appraisal. This allows an independent third party expert to give a written opinion of the matter in dispute which can help parties to see their arguments from another point of view, which can help promote settlement.

ADR and in particular mediation is therefore an effective way of resolving disputes without the need for litigation and is often desirable where two commercial entities are involved that wish to retain a working relationship.