

# Alternative dispute resolution

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Anna Chapter heads the Litigation team in a large firm of solicitors. She is talking to a client about alternative dispute resolution.



'Alternative dispute resolution, often abbreviated to ADR, is well-established in a number of jurisdictions, including the USA, Canada and Australia. Over recent years, we've seen the emergence of mediation organisations and dispute resolvers, some on the Internet. In the UK, ADR is positively promoted for use in a wide range of civil disputes, including small claims, family matters, construction or building contracts, and complex international commercial disputes. It's generally proposed as a cost-effective alternative to the litigation process and entered into on a voluntary basis by disputants, or because of contractual provisions, that is, the conditions of a contract. Many commercial agreements now include dispute resolution clauses in which the contracting parties agree the method to be used if a dispute occurs during the life of the contract. However, parties may also be referred to ADR by the court during the course of litigation. A Civil Procedure Rule requires the UK civil courts, as part of the case management process, to encourage and facilitate parties to use ADR procedure if appropriate. A National Mediation Helpline has also been set up to provide advice by telephone or online.'

## ADR procedures

ADR refers to a number of different procedures used to reach a settlement. Some frequently used methods are:

- **Arbitration** – this is a more formal and binding process where the dispute is resolved by the arbitrator nominated by both parties.
- **Mediation** – possibly the most popular process. An independent third party, normally with appropriate expertise in the area of contention or dispute, is appointed by the parties to act as a mediator. The mediation process begins with an all parties discussion; following this the respective parties separate to discuss the issues and, with the assistance of the mediator, seek to negotiate a settlement. If settlement is reached, it can become a legally binding contract.
- **Med-Arb** – the dispute is initially submitted to mediation but if mediated settlement cannot be reached, then the matter is referred to arbitration.
- **Adjudication** – the method most commonly used in construction disputes. A quick decision is made by the adjudicator and a time period is specified during which either party may give notice to refer the matter to arbitration or litigation. The adjudicator's decision is binding upon the parties and must be followed, unless and until a later decision is made by an arbitrator or the court.