

A Practical Guide to ADR

Advice Services Alliance

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1

Why read this guide?

- 1.1 Advisers need to know about Alternative Dispute Resolution (ADR) for two main reasons:
 - because in many disputes ADR offers a flexible, accessible, cheap way to resolve a problem (see section 3)
 - because access to Legal Aid, access to the courts, or costs for their clients could be at risk (see section 15)
- 1.2 ADR has been promoted by the government in recent years as the best way to resolve many disputes. Advisers need to be able to help clients make an informed decision about responding to this promotion.
- 1.3 Many different ADR processes have developed in the UK over the last 20 years, but it is not easy to get information about what ADR options are available for different types of legal problem, or how to contact providers. This guide aims to bring together key information in a short booklet.
- 1.4 In 2004 the Advice Services Alliance (ASA) launched an independent ADR website www.ADRnow.org.uk. This booklet is a digest of more detailed information available on that site.

2

What is ADR?

- 2.1 Alternative Dispute Resolution (ADR) is a term used to describe a range of options designed to provide a way of resolving a dispute as an alternative to courts or tribunals.
- 2.2 The most common and widely used forms of ADR are arbitration, mediation and ombudsmen schemes.
- 2.3 **Arbitration** involves an independent arbitrator, chosen with the agreement of both parties. The arbitrator considers 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 it is not possible to go to court afterwards. Arbitration usually takes place on paper - there is rarely a face-to-face hearing.
- 2.4 **Mediation** involves an independent mediator helping disputing parties to reach a voluntary, mutually agreed resolution. Both parties have to agree to take part in mediation - it is never compulsory. The parties, not the mediator, decide the terms of the agreement. Mediation usually takes place at a face-to-face meeting. The three most common types of mediation available in the UK are:
 - community mediation (for example in neighbour disputes)
 - family mediation
 - mediation in civil or commercial disputes

Mediation is also available in disputes about special educational needs as an alternative to the Special Educational Needs and Disability Tribunal (SENDIST).

Note that some services use the term conciliation rather than mediation for what is essentially the same process. The most well-known services using the term conciliation are:

- Acas, which provides telephone conciliation in employment disputes
- the Disability Conciliation Service, which provides face-to-face conciliation in disputes arising from the Disability Discrimination Act

2.5 Ombudsmen are independent “referees” who investigate complaints about public and private organisations. Generally ombudsmen serve as a last resort when complaints are not resolved through an internal complaints procedure. There are two main kinds of ombudsmen in the UK:

- **Public sector ombudsmen**; in England these are the Parliamentary Ombudsman, the Local Government Ombudsman and the Health Service Ombudsman. In Scotland the three ombudsmen have been merged to form a single Public Services Ombudsman, and the same process is taking place in Wales during 2005.
- **Private sector ombudsmen**, such as the Financial Ombudsman Service, the Pensions Ombudsman and the Housing Ombudsman Service.

2.6 Public sector ombudsmen can usually only investigate claims of maladministration causing injustice. The definition of maladministration is reasonably wide and can include:

- delay
- incorrect action or failure to take any action
- failure to follow procedures or the law
- failure to provide information
- inadequate record-keeping
- failure to investigate
- failure to reply
- misleading or inaccurate statements
- inadequate liaison
- inadequate consultation
- broken promises

The maladministration must have also caused injustice to the individual making the complaint. The ombudsman does not usually criticise the merits of a decision which has been properly taken simply because someone may disagree with it. He or she will only look at the way the decision was made.

2.7 In Scotland, the Public Services Ombudsman can investigate:

- administrative failure

- failure to provide a service
- failure in a service provided

2.8 Private sector ombudsmen such as the Financial Ombudsman Service can investigate both the decision-making process and the content of the decision.

2.9 It is worth noting that though a full ombudsman investigation and decision can take a long time - up to a year - increasingly in public and private sector ombudsman schemes problems are being sorted out much more quickly through early dispute resolution facilitated by the ombudsman staff.

2.10 More details about these options can be found on ADRnow.org.uk under "Types of ADR".

3

Reasons for using ADR

- 3.1** ADR options should be considered in two different contexts:
- ADR may be an alternative to going to court or to a tribunal, in which case the adviser should be comparing the two processes in terms of factors such as cost, timescale, and possible outcomes (see section 15 for other key information).
 - ADR may also be an option for attempting to resolve a problem where there is no viable alternative. This could include cases where the cost of court proceedings is disproportionate to the value of the dispute, or cases such as neighbour disputes where there is no easily available legal remedy (see 3.8 below).
- 3.2** There are ongoing debates about the advantages and disadvantages of different ADR options. Supporters of ADR would put forward a number of arguments in favour of ADR, which are outlined in this section.
- 3.3** ADR can help preserve a relationship between the parties, for example if they are neighbours, parents, a family and a local school, a landlord and tenant.
- 3.4** There is a much wider range of outcomes with ADR than with courts. Mediation or an ombudsman investigation may well be more appropriate than court when the main aim of the complainant is an apology, an explanation, or a change in policy or practice by an organisation.

- 3.5** ADR processes are more flexible than going to court, and can involve exchanges of information on paper (ombudsmen and arbitration), face-to-face discussions (most mediation) or telephone negotiations (Acas conciliation).
- 3.6** When it works, **mediation** can produce a win/win solution. Mediators generate creative discussions about a range of options; rather than just aiming for an acceptable compromise, they will try to end up with an agreement which reflects the best possible outcome for all involved. Research on family mediation indicates that agreements reached through mediation are more likely to work out in practice, and to last longer, than those imposed by a court.
- 3.7** **Ombudsmen** have the power to investigate problems in depth, and, like courts, can require information to be provided by the organisation complained about. Unlike courts, they are free to the user. Poorly performing local authorities and government departments can be named and shamed by the public sector ombudsmen, and systemic problems can be addressed.
- 3.8** Some ADR options provide a remedy where there are few other practical, affordable, available options; this could include issues such as neighbour disputes about noise or low-level anti-social behaviour, or complaints to the Financial Ombudsman Service about financial service providers.
- 3.9** Section 15 outlines some of the reasons for considering ADR as an alternative to litigation and the risks of ignoring it.

4

Reasons for not using ADR

- 4.1** There are some situations when ADR may not be appropriate, and may even carry a degree of risk for one of the parties. It is important for advisers to use their professional judgement in each case, but this section outlines key factors for consideration.
- 4.2** There may be an imbalance of power between the parties, which could make face-to-face mediation unfair. This could include family or neighbour mediation where there has been violence or the threat of violence; or mediation between an individual and a large organisation such as a local authority, where the size and resources of the organisation would put the individual at a disadvantage.
- 4.3** There may be an urgent need (for example to prevent eviction) which requires an immediate legal remedy.
- 4.4** Mediation and ombudsmen do not provide a legally binding, enforceable outcome, and decisions do not act as precedents in future cases.
- 4.5** Legal rights and human rights cannot be relied on in ADR processes, which are private, confidential, and not open to public scrutiny.
- 4.6** Ombudsmen investigations can be very slow.
- 4.7** Although ombudsmen can make compensation awards, they are often lower than is likely to be achieved in court.

4.8 There are no consistent quality standards or regulation for ADR providers, so it can be hard for advisers or their clients to know how to choose a good service.

5

The cost of ADR

- 5.1** The cost of different ADR options varies from free to extremely expensive.
- 5.2** Most **arbitration** schemes charge a fee for applying. Arbitration schemes run for a trade association by the Chartered Institute of Arbitrators are usually relatively low-cost to the consumer, compared with legal advice or court action. For example, over 90% of the claims under the ABTA arbitration scheme for holiday disputes currently have a registration fee of £72.85 including VAT.
- 5.3** **Mediation** costs vary depending on the type of mediation involved.
- **Community mediation**, for example for neighbour disputes, is usually free to users.
 - **Family mediation** is free to those eligible for Legal Aid; it is also worth noting that the statutory charge does not apply to Legal Aid covering the cost of family mediation and associated legal help. For those not eligible for public funding, not-for-profit family mediation services usually charge on a sliding scale, depending on the individual's income. Private sector family mediators, who are usually also family law solicitors, commonly charge a similar hourly rate to solicitors in their area. You should note that each party is responsible for their own costs. Where one party is eligible for Legal Aid and the other party is not, an initial intake appointment for both parties

(separately or together) is paid for by the Legal Services Commission (LSC). The non-eligible party will need to pay their share of the costs for subsequent mediation appointments.

- **Civil/commercial mediation** costs can be high; the Centre for Effective Dispute Resolution (CEDR) currently charges an instruction fee of between £250 and £350, and then an hourly rate of £140-£450 split between the parties.
- Mediation can be provided through the new national mediation helpline, supported by the Department for Constitutional Affairs, for disputes which would otherwise go to court. The providers in this scheme make a fixed charge of £250 (small claims), £500 (fast track) or £750 (multi-track).
- Don't forget that in court cases, the loser usually pays the costs of the winning side, except in the small claims process. Unless it is agreed otherwise, in mediation the usual arrangement is that each side pays their own costs.
- Remember that clients eligible for Legal Aid can claim the cost of mediation as a disbursement under the funding code.

5.4 Ombudsman schemes are free to use, though individuals should consider the cost of copying and sending documents used to illustrate their complaint.

6

ADR in different problems

- 6.1** ADR provision varies significantly, depending on the type of problem involved. This guide gives an overview of the ADR options available in the following areas:
- Benefits
 - Consumer affairs
 - Education
 - Employment
 - Family
 - Health and social care
 - Housing
 - Money
- 6.2** More details on all of these problems, and a detailed profile of all of the ADR schemes discussed, can be found on ASA's independent ADR website www.ADRnow.org.uk

- 7.1** It is important to distinguish between challenging a benefit decision and making a complaint about how a benefit decision was made.
- 7.2** In most cases, challenging a benefit decision involves an appeal to a tribunal. It is important for clients to get independent advice about such appeals. It is also important to note that there are strict deadlines for appealing against benefit decisions. For example, for social security benefits the usual limit is one month.
- 7.3** ADR is rarely used in disputes over benefits. Most ADR schemes cannot overturn a decision made by any of the agencies which are part of the Department for Work and Pensions (DWP), though Social Fund decisions are an exception (see 7.4 below). However, some ombudsmen, or ombudsman-like schemes, can examine complaints about the way benefit decisions were made. If your agency is experiencing large numbers of complaints about a particular problem, such as delay in assessing and paying housing benefit, it might be worth considering a complaint to the relevant ombudsman scheme, in order to try to effect organisational change. Such complaints can include:
- delay in dealing with the case
 - being treated badly or unfairly
 - bias or discrimination

- being given misleading advice at any stage
- not being told about a right to appeal a decision

- 7.4** Complaints about decisions on Social Fund requests can be made to the Independent Review Service (IRS). The IRS can review both the way the decision was made and the decision itself.
- 7.5** Complaints concerning the way decisions are made by the Inland Revenue about tax credits can be taken to the Adjudicator's Office.
- 7.6** Details of the ADR options for complaining about the way benefits decisions are made can be found on ADRnow.org.uk under "Types of problem : Benefits".

- 8.1** There are currently limited ADR options for low-cost consumer disputes. In 2004 the National Consumer Council (NCC) conducted a survey on consumer ADR options for the Department of Trade and Industry. The NCC research raised the following concerns:
- lack of information about ADR
 - lack of funding to develop ADR schemes
 - problems with enforcing decisions
 - lack of consistent quality standards for ADR providers
- 8.2** The sectors that attract the highest number of consumer complaints - home maintenance, second-hand cars, and electrical appliances - are the very sectors that have little or no ADR provision.
- 8.3** Where there are existing specific ADR schemes, such as **ombudsmen**, these usually should be the first port of call for consumers who have not been able to resolve the matter satisfactorily directly with the company. In particular, the Financial Ombudsman Service investigates complaints about a wide range of financial services providers such as banks, insurers and mortgage providers.
- 8.4** If the company or trader is a member of a trade association, the consumer might be able to use a low-cost **arbitration** scheme run by the Chartered Institute of

Arbitrators, such as the National House Building Council Arbitration Scheme.

- 8.5** Many **regulators** handle individual complaints about utilities, or have partner organisations with a statutory remit to investigate consumer complaints. For example, Energywatch investigates consumer complaints about gas and electricity suppliers, and Watervoice investigates complaints about water and sewerage services.
- 8.6** Mediation is used in civil and commercial disputes, but the cost is such that it is not usually justified in relatively low-value consumer disputes.
- 8.7** Many courts have linked mediation schemes as an alternative to fast track court procedures. These usually have lower fixed costs (see 5.3). One county court, Exeter, also has a mediation scheme for small claims cases. Details of these schemes can be found on the Courts Service website.
- 8.8** Details of specific schemes can be found on ADRnow.org.uk under "Types of problem : Consumer affairs".

9

Education

9.1 ADR is an option in some types of education dispute; in particular, disputes about special educational needs (SEN) can be resolved through mediation, and complaints about admissions policy can be taken to the Local Government Ombudsman.

SEN Mediation

9.2 All Local Education Authorities (LEAs) are required to make provision for independent dispute resolution services; in most LEAs the type of dispute resolution used is mediation. Most LEAs have an arrangement with an independent family or community mediation service in the region to provide mediation while the parties are waiting for a tribunal hearing to take place. The choice about using mediation is voluntary, and does not prevent the tribunal considering the case if an agreement is not reached.

9.3 The national Disability Conciliation Service provides an alternative to a tribunal hearing in cases involving complaints about disability discrimination in the provision of education.

The Local Government Ombudsman

9.4 People who believe that there has been maladministration in the way the authority has made a decision about special education needs can go to the Local Government Ombudsman. In most cases

maladministration means delay in assessing a child's needs or amending a child's statement, or failure to provide support as specified in a statement. In several decisions in 2003 the ombudsman recommended both compensation to the parents, and a review of the local authority's procedures; several other cases were resolved through "local settlement", a mutually agreed resolution facilitated by the ombudsman's office. Making a complaint to the LGO is free.

9.5 The LGO will also investigate complaints about how a decision was made in cases involving admissions or exclusion.

9.6 More information and details of specific schemes can be found on ADRnow.org.uk under "Types of problem : Education and training".

- 10.1** It is important to note that most employment claims have a three-month time limit. If going to a tribunal is an option, advisers should consider lodging a claim with the tribunal before initiating any ADR process, so as not to risk being out of time.
- 10.2** Although the Employment Act 2002 encourages the early resolution of employment disputes within the workplace, neither employment legislation nor the Employment Tribunals' rules of procedure refer to mediation as a method of dispute resolution.
- 10.3** There are a number of ADR options for employment disputes; mediation is an option worth considering where the employee hopes to keep their job, so that maintaining a constructive relationship between employee and employer, or between two disputing employees, is important.
- 10.4** Mediation can also produce a wider range of options than an employment tribunal, including an apology, reconsideration of a request for flexible working, reinstatement, a change in policy, staff training, an agreed reference, and compensation. A tribunal can usually only award compensation, and although it can recommend that an employer reinstate an employee, it cannot force the employer to do so. Employment Tribunals can also make recommendations about practice to employers in discrimination cases.
- 10.5** Mediation in employment disputes is offered by around 60 community mediation services; phone Mediation UK, the national community mediation umbrella body, for details of your nearest service. Commercial mediation providers such as CEDR, and specialist employment mediation providers such as Mediation at Work provide mediation in employment disputes, but charge a commercial rate. It is sometimes agreed that employers will pay for the cost of mediation, but advisers should discuss with clients whether they feel that the mediation would still provide an independent forum if this is the case. LawWorks, a pro-bono mediation service offered by solicitor mediators, provides mediation and associated legal advice without charge in London and Birmingham.
- 10.6** The Advisory, Conciliation and Arbitration Service (Acas) uses telephone-based conciliation to try to resolve claims that have been registered with the Employment Tribunal or where there is a right to tribunal. The Acas officer will speak to both parties, and try to negotiate a settlement. Any agreement will depend on the parties, but if no agreement is reached, a tribunal hearing can be held. Acas also offers face-to-face mediation in some circumstances.
- 10.7** Acas offers arbitration in individual employment disputes, where an Acas arbitrator hears both sides, and imposes a decision. Parties who agree to this cannot then go on to an employment tribunal. This scheme has a very low take-up rate.
- 10.8** More information and details of specific schemes can be found on ADRnow.org.uk under "Types of problem : Employment". Website links for all the organisations mentioned here can be found in the ADRnow.org.uk directory.

- 11.1** Any issue arising out of a family breakdown - or potential breakdown - can go to mediation. Among these are:
- arrangements for any children after divorce or separation, including where they will live, which parent they will live with, and contact arrangements
 - sharing of parental responsibility
 - distribution of property and other assets
 - financial support and maintenance
 - future communication
- 11.2** The main advantages of family mediation are that it allows the parties themselves to take responsibility for any agreement made, it encourages good communication, and it offers a flexible range of outcomes.
- 11.3** The disadvantage is that it may not resolve any or all of the issues in dispute, so may simply add time and costs to the process.
- 11.4** Family mediation is not likely to be suitable where the parties cannot meet and negotiate safely, in cases where one party feels intimidated or bullied by the other, or where there is a history of domestic abuse.
- 11.5** Parties can choose to approach a mediator directly; they can also be referred by an adviser, a solicitor, or by the

court. In England and Wales clients seeking Legal Aid for representation in their divorce proceedings must first attend a meeting with a mediator to discuss whether mediation is suitable for the parties, the case, and all the circumstances. However, it is not compulsory for them to agree to the mediation process itself.

- 11.6** There is good provision of family mediation in the UK from both for-profit and not-for-profit mediators. Quality-marked mediation services in England and Wales are franchised by the LSC to provide family mediation to those eligible for legal aid. Contact details can be found through the Just Ask website, or through the UK College of Family Mediators.
- 11.7** More information can be found on ADRnow.org.uk under "Types of problem : Families".

12.1 The main ADR options for dealing with health and social care disputes are:

- mediation as an alternative to making a court application
- public sector ombudsmen schemes

Mediation

12.2 Section 5.3 of the pre-action protocol for clinical disputes states that *“mediation may be appropriate in some cases: this is a form of facilitated negotiation assisted by an independent neutral party. It is expected that the new Civil Procedure Rules will give the court the power to stay proceedings for one month for settlement discussions or mediation.”*

12.3 However, the provision of mediation in clinical disputes is very patchy. Currently only four community mediation services provide health care mediation; there are also a number of commercial mediation providers. Some health trusts and boards offer conciliation / mediation as part of their local resolution procedure. There is no requirement for them to do this, and there is little guidance on how it should be delivered.

12.4 More information can be found on the ADRnow website under “Types of problem : Health and social care”.

Ombudsmen

12.5 Complaints about health care can be taken to the Health Service Ombudsman (HSO). Historically the HSO, like the other public-sector ombudsmen, could only consider the way a decision was made or how a complaint was handled. In 1996 the HSO’s remit was expanded to include complaints about clinical judgements. This means that the scheme has become an option for serious complaints about clinical practice, provided that the complainant is only looking for an explanation, an apology, or assurance that practice will be changed as a result. The HSO is **not** able to award compensation.

12.6 Complaints about social and community care decisions can be taken to the Local Government Ombudsman (LGO). The LGO will investigate complaints about maladministration (see 2.6 above).

12.7 You should note that you cannot take a case to a public service ombudsman at the same time as making a court application. Clarification is currently awaited from case law as to whether the ombudsman can consider a complaint that has previously been the subject of court proceedings; similar clarification is needed as to whether courts can refuse to hear cases which could be taken to the ombudsman.

12.8 Generally ombudsmen expect people to complete the service complaints procedure before they will consider their complaint. The LGO will, however, accept a complaint where the local authority has delayed unreasonably in responding to the complaint.

13 Housing

- 12.9** A full investigation may take up to a year, but many complaints are resolved at an earlier stage through some form of local settlement facilitated by an LGO caseworker.
- 12.10** Be warned: delay could prejudice future litigation, so the client should get specialist advice about the best course to take before making an application to an ombudsman.
- 12.11** More information can be found on ADRnow.org.uk under “Types of problem : Health and Social Care”.

- 13.1** The main ADR options for dealing with housing disputes are:
- ombudsmen
 - mediation in neighbour disputes
 - disrepair arbitration
- 13.2** The Law Commission is currently undertaking a fundamental review of what causes housing disputes, and how people can best resolve them. ADR is of particular interest. A consultation paper will be published in the autumn of 2005.

Ombudsmen

- 13.3** The Local Government Ombudsman (LGO) can investigate the way in which decisions have been taken by a local authority in relation to any kind of housing dispute where the council is the landlord. This can include allocation and transfer decisions, and responses to complaints about disrepair. The LGO can also investigate payment of housing benefit.
- 13.4** A pre-action protocol for housing disrepair cases came into force in December 2003, covering claims in England and Wales. It is intended to encourage litigating parties to exchange information, and if possible achieve an early and appropriate resolution, before going to court. The protocol specifies that ADR should be

considered, and in particular recommends the use of the ombudsman. If the parties make a court application, the court has the power to apply cost sanctions to parties who have unreasonably failed to consider these other options.

- 13.5** An LGO investigation and full report can take up to a year but increasingly problems are being sorted out much more quickly through early dispute resolution facilitated by the ombudsman staff. This process has been endorsed by the courts in the case of *Maxhuni v LB Newham* in 2002.
- 13.6** Housing disputes involving registered social landlords, and some private landlords, can be referred to the Housing Ombudsman Service.
- 13.7** More information can be found on the ADRnow website under “Types of problem : Housing and Homelessness”.

Mediation in neighbour disputes

- 13.8** Disputes about noise, nuisance, boundaries, high hedges or low-level anti-social behaviour, can be taken to a community mediation service. A mediator will discuss the problem with the party making a complaint, and approach the other party to discuss the possibility of mediation. However, mediation can take place only if both parties agree. There are currently 160 community mediation services throughout the country. You can locate your nearest service on the Mediation UK website.
- 13.9** Community mediation is nearly always free to the users,

and can work well where both neighbours want to resolve the dispute. It can result in better communication and better relationships.

- 13.10** Harassment or serious anti-social behaviour may need a more pro-active form of intervention from the local council or the police. Note that the council has a responsibility to respond to such complaints whether or not the complainant is a council tenant. Some councils are better than others at dealing with these problems. Complaints about the way in which the council has responded can be taken to the Local Government Ombudsman.

Disrepair arbitration

- 13.11** A few local authorities, such as the London boroughs of Hackney and Southwark, have set up arbitration schemes to deal with disrepair cases.
- 13.12** Cases dealt with under these schemes can be resolved more cheaply and quickly than by going to court, but compensation levels are usually lower. This can be a problem in cases where high levels of compensation should be paid, for example where medical ill health has resulted from prolonged disrepair.
- 13.13** A recent court case in Southwark (*Fuljan Bibi v L.B. Southwark 2004*) established that councils cannot compel tenants to use these schemes, even if they form part of the tenancy agreement.
- 13.14** More information can be found on the ADRnow website under “Types of problem : Housing and Homelessness”.

13.15 Other ADR schemes are available for tenancy deposit disputes, valuation disputes, planning disputes, and disputes about sheltered or retirement housing. More information about all of these schemes can be found on ADRnow.org.uk under “Types of problem : Housing and Homelessness”, and in the website directory.

14 Money

- 14.1** ADR is not usually an option in debt problems, though court-based mediation schemes may be used to negotiate debt repayment.
- 14.2** Problems with financial services providers such as banks, insurers and mortgage lenders can be taken to the Financial Ombudsman Service (FOS). This is free to complainants, who retain the right to take the case to court if they are unhappy with the ombudsman’s decision.
- 14.3** Like the LGO, the FOS will try to resolve a dispute informally at an early stage, in order to provide a speedier solution. If this is not appropriate, a formal investigation and decision will be made.
- 14.4** All financial services regulated by the Financial Services Authority are covered by the FOS. Awards made by the FOS can be enforced by the complainant through the courts if necessary, but it is virtually unknown for firms to refuse to comply with an ombudsman decision.
- 14.5** Complaints about the Inland Revenue (IR), which deals with income tax, national insurance contributions and tax credits, can go to the Adjudicator. The independent Adjudicator’s Office was set up to investigate complaints about the way a case has been handled by the IR, though it cannot consider complaints about the actual amount of tax a complainant has been asked to pay.
- 14.6** More information can be found on ADRnow.org.uk under “Types of problem : Money and Tax”.

15 ADR - an alternative to litigation

15.1 If you and your agency are regularly involved with litigation, you will probably already be aware of these key provisions:

Legal Aid

15.2 The Funding Code has two main provisions which promote the use of ADR, a carrot and a stick:

- People can claim for the cost of mediation or another ADR option as a disbursement. *Section 3C - 010*.
- Funding for representation may be refused if there are “complaint systems, ombudsman schemes or forms of ADR which should be tried before litigation is pursued”. *Criterion 5.4.3*. This does not affect funding for legal help.

Pre-action protocols

15.3 Pre-action protocols set out a step-by-step procedure for trying to clarify and resolve disputes before making an application to court. Five of the protocols, including housing disrepair, specifically require the parties to consider ADR. The general practice directions require both claimant and defendant to state whether they are willing to try mediation or another form of ADR. Courts can and do impose costs penalties if these protocols are not followed.

Civil procedure rules

15.4 Courts are required to actively manage cases, and the rules state that this means “encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate, and facilitating the use of such procedure.” *Civil Procedure Rules Part 1.4*. Courts can impose costs penalties on parties unreasonably refusing to consider mediation or other kinds of ADR. *Civil procedure Rules S 44.5 (3)*.

Court cases

- 15.5** The most important case on using ADR is the Halsey judgement in May 2004. *[2004] EWCA Civ 576*.
- The judgement offers guidance on how courts should approach ADR, including the statement that “all members of the legal profession who conduct litigation should now routinely consider with their clients whether disputes are suitable for ADR”.
 - The judgement makes it clear that courts cannot compel parties to use mediation or another form of ADR, as this would be contrary to article 6 of the European Convention on Human Rights.
 - Courts can deprive a winning party of the costs of the case, if they have unreasonably refused to consider mediation or ADR.
- 15.6** More details about all of these provisions, and notes on the key court cases, can be found on ADRnow.org.uk under “Points to consider”.

16 Where to get more information

- 16.1** For more information on all kinds of ADR options, and a directory of ADR providers in the UK, go to www.ADRnow.org.uk
- 16.2** There are website addresses for all the services mentioned in this booklet in the ADRnow website directory.
- 16.3** The ADRnow website is run by the Advice Services Alliance and is independent from government and from any ADR providers. It is written in accessible language, and can be used by advisers and by clients.
- 16.4** For legal information on these and other problems, go to www.advicenow.org.uk or www.clsdirect.org.uk or phone the CLS Direct helpline 0845 345 4 345.
- 16.5** A useful information leaflet on ADR for clients is CLS Direct leaflet 23 “Alternatives to Court”. This can be found online on the CLS Direct website www.clsdirect.org.uk. Copies can also be ordered free from the LSC leaflet line on 0845 3000 343.
- 16.6** Make contact with local ADR providers such as family or community mediation services. They can provide information about what they do and advise on referrals. National ombudsman schemes are often prepared to run local workshops for advisers. Websites and contact details are on the ADRnow website.

Thanks are due to the following:

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