

Recent Developments in Alternative Dispute Resolution

Update No. 21

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Contents:

ADR research	2
Twisting arms – mediation under judicial pressure.....	2
Why don't more people try Family Mediation?.....	4
Nuffield research funding.....	5
ADR issues	6
Government pledge to use ADR – 5 th annual report.....	6
ADR news	8
Consumer credit disputes.....	8
Splitting up.....	8
New ADR schemes	9
Tenancy deposit disputes.....	9
ADR consultations	11
Employment disputes revisited.....	11
Court fees – more encouragement to mediate.....	12
Ombudsman news	13
Public ombudsmen reform.....	13
What is good administration?.....	14

*This **ADR Update** is intended to inform the advice sector of developments and initiatives in alternative dispute resolution. ASA wants to encourage dialogue between advisers and ADR providers so that the growing field of ADR develops in a way that ensures access to justice and informed choice.*

*If you know of others who might like to receive a copy of **ADR Update** by email, if you would like to be removed from the ADR Update email circulation list, or if you would like more information about any of these topics, please contact Val Reid, ASA's ADR policy officer.*

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ADR research

Twisting arms – mediation under judicial pressure

People just don't seem to want to mediate. Over and over again, in different contexts, research seems to show that people are not as enthusiastic about going to mediation as the judges and the government think they ought to be.

On May 21st Hazel Genn and colleagues published research for the Ministry of Justice on mediation at Central London County Court (CLCC). The Automatic Referral to Mediation (ARM) pilot scheme was set up to run for a year, from April 2004 to March 2005. The intention was to randomly select 100 cases each month to be referred to mediation. If one or both of the parties objected, they had to justify their reluctance to a judge. The judge would have the power to override their objections if she felt the case was suitable for mediation. A research project was set up to explore what happened when people were, in effect, compelled to mediate. Would it save them time and money? Would it save judicial and administrative time for the court? How would the parties and their lawyers react to being forced to mediate? You could lead a horse to water, but could you actually make it drink?

A few weeks after the pilot began, in May 2004, the Halsey judgment was made public. Lord Justice Dyson said, *"It seems to us that to oblige truly unwilling parties to refer their disputes to mediation would be to impose an unacceptable obstruction on their right of access to the court."*

This clearly had an effect on the pilot ARM project, as the court could no longer insist that parties tried mediation if they objected. Unwilling parties had to be allowed to opt out.

Hazel Genn found:

- In around 80% of cases, one or both parties objected to being referred to mediation
- When parties were called on to explain their objections to a judge, judicial pressure was unlikely to persuade them to mediate
- Only 14% of the cases initially referred to the scheme actually ended up in mediation
- The settlement rate followed a broadly downward trend over the year, from 69% to 38%
- The majority of cases in the ARM scheme settled out of court anyway, without going to mediation
- In cases where mediation took place, but which did not settle at mediation, parties found that they added £1,000 - £2,000 to their costs
- Parties who settled during mediation were generally positive about the process
- Parties who failed to settle during mediation complained about compulsion, pressure, and the risk of revealing their hand to their opponents. They also criticised the hot and cramped mediation rooms at the court
- Judicial time spent on mediated cases was lower, but administrative time was higher

Higher value cases, and cases not involving personal injury, were less likely to object to the referral to mediation. There were no obvious factors in predicting whether or not a case would settle.

It is also worth noting that following the *Dunnett v Railtrack* case in 2002, when cost penalties were first imposed on a successful party who refused to mediate, demand for the **voluntary** mediation scheme at Central London County Court rose significantly. However the settlement rate declined from a high of 62% in 1998, to less than 40% in 2003.

Comment

The full research report is detailed and fascinating, and will repay close study. But there are some questions which can be asked about the issues which emerge in this brief summary.

What added value does mediation bring to bilateral settlement negotiations?

When the benefits of mediation are set out, it is usually promoted as a much better alternative to a hearing – quicker, cheaper, less adversarial, giving the parties more control over the outcome to their dispute. It is clear from this and other research that most cases are settled before they reach the hearing stage, usually through negotiations between the parties or their solicitors. So the question we should be asking is, what added value does mediation bring to bilateral settlement negotiations?

Why don't people want to mediate?

For the last ten years, since Lord Woolf's Access to Justice report, it has been government and judicial policy to promote the use of mediation in both family and civil disputes. This research, along with the recent National Audit Office report into family mediation (see page 4 of this Update), indicates that people are still reluctant to use mediation. Why?

- Is it still lack of information, or unfamiliarity with the process?
- Are lawyers reluctant gatekeepers who don't want to lose their profitable clients?
- Is there something about the normal judicial process that is inherently more attractive to most parties?

Why is compulsion still on the agenda?

At the launch of Hazel Genn's research, Judge Paul Collins, the senior judge at CLCC, argued that the courts should promote compulsory mediation as an automatic stage in the court process. Robert Nicholas, head of the Proportionate Dispute Resolution team at the Ministry of Justice, also seemed baffled by court users' reluctance to choose mediation, an option that he believed was so patently for their benefit. He too was keen on some form of compulsion.

The Court Mediation Service Toolkit, published in May 2007 by the Courts Service and the Civil Justice Council, states that *'research shows that mediation works best when there is some form of judicial encouragement, and that such encouragement can be quite robust.'* This statement is not borne out by Hazel Genn's research, which indicated that robust judicial encouragement did not increase the take-up of mediation; it also suggested that increased pressure to mediate resulted in a decreased settlement rate.

Why are judges and government so convinced that mediation is best for most court users, despite the reluctance which is evident in this research?

The full report can be found at:

www.justice.gov.uk/research210507.htm

Why don't more people try Family Mediation?

Since the Family Law Act was passed in 1996 (and finally dumped four years later), it has been government policy to promote the use of family mediation to resolve disputes when couples split up. If you want legal aid for representation, you are first required to have a meeting with a mediator to assess whether mediation is suitable for you. There are a few exceptions; in cases where there has been domestic abuse, for example, you can by-pass this stage. However, if you exclude those exempted for domestic abuse, only 20% of people funded by legal aid for dealing with family breakdown currently opt for mediation. A report by the National Audit Office (NAO), published in March 2007, examines the reasons for the low take-up, and makes recommendations to the Legal Services Commission (LSC) to help increase the number of mediations.

The National Audit Office

The NAO is an independent body, with responsibility for scrutinising public spending on behalf of Parliament. The findings are based on an eighteen month period, from October 2004 to March 2006. The report was published on March 2nd 2007. The NAO sent short written surveys to 4,000 people who had received legal aid for family breakdown cases, asking where they had first sought advice, whether their adviser had discussed mediation, and their reasons for choosing or rejecting mediation. The NAO also surveyed mediators for their opinions, and analysed data from the Legal Services Commission (LSC).

Key findings

- Around 20% of people funded by legal aid for family breakdown cases currently opt for mediation (this excludes cases involving domestic violence)
- 33% of those who did not try mediation said that their adviser had not told them about it
- 42% of those who were not told about mediation would have been willing to try it had they known about it
- The average cost of legal aid in mediated cases is £752, compared with £1,682 for non-mediated cases
- Mediated cases are quicker to resolve, taking on average 110 days, compared with 435 days for non-mediated cases

The report makes several key recommendations to the LSC, including:

- The LSC should actively promote mediation to solicitors and their clients
- Contracts between the LSC and solicitors should reflect a presumption that mediation should normally be attempted before other remedies are tried
- The exemptions from using mediation should be reviewed
- The LSC should consider paying for both parties to use mediation where only one party is eligible for legal aid

Comment

The NAO's brief is to save public money, and the evidence it has produced indicates that there is certainly money to be saved in this area. Mediated cases appear to cost the legal aid fund about half the amount that non-mediated cases cost. The NAO concludes that if 14% of the cases that proceeded to court had been resolved through mediation, then the taxpayer would have saved £10 million a year. The NAO is particularly concerned at the proportion of legal advisers who fail to tell their clients about the mediation option, and implies that the financial disincentive is a key factor. However the report makes it clear that there are often valid reasons why solicitors do not refer clients to mediation. In some cases it is clearly inappropriate, as there is a need for an emergency injunction, or a real fear of domestic abuse. In others the

solicitor has already ascertained that the other party would be unwilling to attend, that mediation is unsuitable, or that previous attempts at mediation did not work (see the table on page 12 of the report for details).

It is also clear from the separating parents who replied to the NAO survey that there are many reasons why they did not try mediation – 44% said they did not even attempt it because their partner was uncooperative, and a further 12% said they simply did not want to. “When there are two people who can’t stand each other,” wrote one survivor of separation acrimony, “no amount of talking will resolve matters.” Decisions about how best to sort out contentious issues post-separation are not wholly based on speed or cost. Attempts to persuade unwilling parties to go to mediation ignore the very real human factor in these decisions.

It is interesting to note that in the LSC strategy paper on family law, and the family fee consultation (both published in March 2007), the LSC picks up on the NAO suggestion to review the exemptions from mediation. In order to encourage a ‘stronger presumption to mediate’, the LSC proposes that mediators, rather than solicitors, should assess whether domestic violence is an issue and whether mediation is or is not suitable. However, the LSC does not seem to have picked up on the NAO suggestion that it should pay for mediation for both parties, even if one of them is not eligible.

The full report is on the National Audit Office website on:

www.nao.org.uk/publications/nao_reports/06-07/0607256.pdf

The LSC family law strategy paper and the family fee consultation can be found on:

www.legalservices.gov.uk/aboutus/news/legal_updates.asp

Nuffield research funding

The Nuffield Foundation has recently announced a research initiative in the area of administrative justice. For Nuffield, administrative justice covers ‘reactions to alleged deficiencies in first instance decision-making...that affect individual citizens, and the mechanisms available for the provision of redress’. The mechanisms referred to include ‘tribunals, ombudsmen, complaints handlers, internal review, and other forms of early dispute resolution’.

The Foundation is inviting applications for funding for research in a number of related streams. Sample research topics include:

- Examining and comparing the outcomes of different complaints procedures
- Exploring whether particular features make specific types of dispute resolution more suitable in certain areas
- Enquiring why institutional independence is valued at the outset in some circumstances, but not others
- Establishing the circumstances in which negotiation or mediation might be an appropriate alternative to adjudication

Nuffield wants to encourage empirical research – what Hazel Genn refers to as ‘law in the real world’. They are also keen, as an independent funding body, to focus on the interests of the citizen.

More information can be found on the Nuffield website:

www.nuffieldfoundation.org

ADR issues

Government pledge to use ADR – 5th annual report

In March 2001 the Lord Chancellor made a government commitment to use ADR to resolve disputes wherever possible, aiming to avoid the need for expensive legal proceedings.

Each year the DCA publishes a report on the effect of this pledge on the resolution of disputes involving the government. Each government department and agency, including the NHS Litigation Authority, is asked to monitor their use of ADR throughout the year, and to provide information to be collated by the DCA for this report.

The fifth report was published by the DCA in January 2007, and indicates that during 2005-6 ADR was used in 336 cases, with 241 leading to settlement. The report estimates costs savings of £120.7m.

The following table compares the results with the previous years:

	Number of cases	Number of settlements	Success rate	Estimated costs savings
2005-6	336 cases	241	72%	£120.7m
2004-5	167 cases	125	75%	£28.8m
2003-4	229 cases	181	79%	£14.6m
2002-3	163 cases	Not given	83%	£6.4m
2001-2	49 offers of ADR	Not given	Not given	£2.5m

There is clearly an increase in the number of cases using ADR, and a huge increase in estimated costs savings. However, ASA has some questions about the assumptions behind these headline figures, and some concerns about whether ADR is always appropriate in these cases.

Are the cost savings estimates realistic?

There is no detailed information on how these 'cost savings' are estimated – many seem little more than guesses. Take the following example, quoted in the DCA report:

Mediation was used in respect of a claim arising out of the wrongful seizure of a lorry by Customs Officers which led to a dispute over economic losses. The claim was originally for £100,000 but settled for £37,500 plus payment of £14,500 costs. Although the claim was inflated and settled at a realistic level, the real saving was in costs which if it had proceeded could have amounted to £25,000 per side.

The vast majority of cases are settled before a hearing anyway, so it may not necessarily be realistic to claim that any savings are the result of using ADR. It is also worth noting that the amount of the cost savings claimed is purely speculative.

Is ADR always the 'best' way to resolve a dispute?

The 2001 pledge recognised that 'there may be cases that are not suitable for settlement through ADR, for example, cases involving intentional wrongdoing, abuse of power, public law, Human Rights and vexatious litigants'. It also acknowledged that 'there will also be disputes where, for example, a legal precedent is needed to clarify the law, or where it would be contrary to the public interest to settle'. The DCA website states that 'We are responsible in government for upholding justice, rights and democracy'. Surely there are issues of justice, rights and democracy which need to be taken into account when resolving a dispute – saving money is not the only criterion. Take the following example, a case study quoted in the DCA report:

Public Law. The claimants brought an action for damages for unlawful detention, sex and race discrimination and negligence arising from their immigration detention. Significant and sensitive issues concerning policy and procedure in immigration were raised. The matter was successfully mediated.

It is not appropriate that 'significant and sensitive issues concerning policy and procedure in immigration' should be resolved in a private settlement rather than in court.

Is ADR always in the best interests of the claimant?

Here is a further case quoted in the DCA report:

A former prison officer sought damages as a result of his medical retirement after injuring his back in a workplace accident. Mediation was offered and accepted; although agreement was not reached – the parties' expectations could not be reconciled – a useful insight into the background of the claim was gained, which culminated in a successful application for specific disclosure against the claimant.

Negotiations which take place during mediation are supposed to be privileged. In this case it appears that information disclosed during the mediation was used to elicit evidence used in subsequent court proceedings. Advisers may want to bear this in mind when discussing the most appropriate dispute resolution options with their clients.

The full report can be found on:

www.dca.gov.uk/civil/adr/adrrep_0506.pdf

ADR news

Consumer credit disputes

Don't forget that from April 6th 2007, the Financial Ombudsman Service (FOS) covers all consumer credit disputes. Around 70% of consumer credit, such as credit and debit cards or loans, is provided by banks, building societies and other lenders - these are already covered by the FOS. But new services covered will include consumer credit and hire, credit brokerage, debt adjusting, debt counselling, debt collecting and the operation of credit reference agencies. Disputes with any of these providers can now be taken to the FOS. However, the FOS cannot backdate its investigations – it will only look at disputes arising after April 6th 2007.

For more information about how the FOS can help in these disputes, follow the link on the home page of the FOS website:

www.financial-ombudsman.org.uk

Splitting up

Over the last year, Advicenow, ASA's public legal advice and information website, has been working on a DCA project to provide easy-to-read, accessible information about family mediation.

In May 2006 the DCA launched the family mediation helpline, providing a single number for England and Wales where people could ask questions about family mediation, and get information about local mediation services. To support the helpline, Advicenow has produced three leaflets in its signature style – real life stories, cartoons, top tips, easy-to-follow checklists and jargon-busters. The three leaflets are:

- What is mediation?
- We're splitting up
- How mediation works

ASA felt it was important that independent material about family mediation should be widely available, so that people going through painful family break-ups should have clear, impartial information on which they could base an informed decision about what would work best for them.

The leaflets can all be downloaded from the www.advicenow.org.uk website. The most popular download has been "We're splitting up", which gives an overview of all the things you need to know when faced with a family break-up, including what a solicitor does, how courts work, and where mediation fits in. Printed leaflets can be ordered by local advice agencies for use with clients.

Advicenow family mediation leaflets, quizzes and podcasts:

www.advicenow.org.uk/familymediation

Family mediation helpline 0845 60 26 627 and website:

www.familymediationhelpline.co.uk

New ADR schemes

Tenancy deposit disputes

On 6th April this year it became compulsory for all landlords and letting agents for Assured Shorthold Tenancies to be a member of one of the three approved deposit protection schemes. Each scheme operates slightly differently, but all of them offer an independent ADR process for resolving disputes about deposits at the end of a tenancy. In each case, the ADR offered is a form of adjudication, where an independent adjudicator makes a decision about the case based on written evidence from each party. Note that the schemes only apply to new deposits after April 6th 2007.

Landlords and letting agents are required to inform their tenants which scheme they are using to protect their deposit, and how to contact the scheme if there is a dispute at the end of the tenancy. You can find an overview of the new rules on the DirectGov website:

www.direct.gov.uk/en/TenancyDeposit/index.htm

There are two types of scheme – custodial and insurance-based.

- There is one custodial scheme (DPS) which is funded by the interest from the tenancy deposits. These are held by the scheme rather than by the landlord. This means that there are no fees for landlords or letting agents.
- There are also two insurance-based schemes (TDSL and TDS). These do not hold the tenancy deposits themselves, but charge a fee to landlords and letting agents. The fee pays for an insurance policy, which will guarantee to pay out deposits once a dispute is resolved.

The Deposit Protection Service

The only custodial scheme is run by the Deposit Protection Service (DPS), set up by a company which has run a similar scheme in Australia for 8 years. The adjudication service is provided by the Chartered Institute of Arbitrators (CI Arb), through their IDRS dispute resolution service.

If there is a dispute about the return of the deposit at the end of the tenancy, the scheme will continue to hold the money until the ADR scheme or a court makes a decision. The DPS has an optional free ADR scheme run by the CI Arb. This offers an independent adjudicator to decide on the merits of the argument. Both landlord and tenant have to agree to use the scheme, as the adjudicator's decision is binding. If one or both of the parties does not agree, then a dispute can be taken to court. There is also a 'single claim process' which can be used where the contact details of either the landlord or the tenant are unknown, or where one party refuses to co-operate with resolving the dispute.

Either the tenant or the landlord can refer a dispute to the scheme, and the CI Arb will appoint an independent adjudicator to look at any written evidence; s/he may also contact either party to get further information. A decision should be made within 28 days, and the DPS will then take responsibility for repaying the deposit according to the decision.

More information on:

www.depositprotection.com

Tenancy Deposit Solutions

Tenancy Deposit Solutions (TDSL) is a partnership between the National Landlords Association and Hamilton Fraser Insurance. The adjudication service is provided by the Chartered Institute of Arbitrators (CI Arb), though their IDRS dispute resolution service.

If there is a dispute about the return of the deposit at the end of the tenancy, either the tenant or the landlord can choose to use the free arbitration scheme. The disputed amount is lodged with TDSL while the dispute is resolved by an independent adjudicator. The adjudicator will look at the evidence from both sides and make a ruling within 28 days. The scheme will distribute the deposit in accordance with the adjudicator's decision, which is binding on both parties.

However, both landlord and tenant need to agree to use the adjudication scheme. If the landlord refuses to lodge the disputed deposit with TDS, then the tenant can't use the free ADR scheme, and will have to go to court to get an order. The tenant can also choose to go to court if they prefer. However, the scheme guarantees to pay the amount ordered by the court, and will take responsibility for recovering this amount from the landlord.

More information on:

www.mydeposits.co.uk

The Tenancy Deposit Scheme

The Tenancy Deposit Scheme (TDS) is run by The Dispute Service, and builds on a voluntary scheme established in 2003 to provide dispute resolution and complaints handling for letting agents. Disputes are dealt with by the scheme's own Independent Complaints Examiner (ICE). He has a team of adjudicators who handle the disputes.

If there is a dispute about the deposit at the end of the tenancy, the landlord or agent has ten working days to try to resolve it. If this is not possible, then the tenant, the landlord or the agent can refer the dispute to the TDS. The landlord or the agent, whichever is holding the deposit, will transfer it to the TDS, and the TDS will take responsibility for paying it out, as decided by the ICE. If the deposit is not transferred, then the TDS will pay the tenant whatever is decided, and pursue the landlord or agent for the money.

The adjudication process is based on written evidence, which can include photos and videos. A decision should be reached within 15 working days of receiving the completed paperwork.

More information on:

www.thedisputeservice.co.uk

ADR consultations

Employment disputes revisited

The Department for Trade and Industry (DTI) is consulting on how to improve the way employment disputes are resolved. Currently, workplace disputes are dealt with under the Employment Act 2002, and regulations on dispute resolution were introduced in 2004. These statutory dismissal and grievance procedures were intended to streamline and simplify the process for dealing with employment disputes. However, a recent review by Michael Gibbons, commissioned by the DTI, has suggested that the procedures can encourage people to get legal advice too early, and can trap employers and employees in complex, expensive and time-consuming formal processes when other approaches might be more helpful.

In 2005-6, some 160,000 employment tribunal claims were dealt with, and tribunals sat on nearly 30,000 occasions. Around 75% of employment disputes are resolved before they get to the employment tribunal; in many cases, this is due to the Acas conciliation process. But the Gibbons review suggests that too many of these disputes are resolved at a rather late stage, and that a significant proportion of those that do eventually end up at a tribunal hearing could have been resolved earlier. As in so many other areas of dispute resolution, the government is looking for a more 'proportionate' way to resolve disputes.

The DTI is proposing to:

- Encourage early dispute resolution through:
 - New, simpler, non-prescriptive guidelines on grievances, discipline and dismissal in the workplace
 - Incentives to comply with the guidelines by allowing employment tribunals to take into account reasonableness of behaviour when making awards and costs orders
- Provide simpler, easier dispute resolution options, including:
 - A new, simple process to resolve monetary disputes over wages, redundancy and holiday pay, without the need for a tribunal hearing
 - A new telephone and internet advice system for claimants and defendants, through which they will access the tribunal system. The 'impartial' advice will alert them to the 'realities of tribunal claims' and the 'potential benefits of ADR to achieve more satisfactory and speedier outcomes'
 - Greater flexibility for Acas to get involved with conciliation at any stage of a dispute, both before and during a tribunal claim
- Make the employment tribunal system simpler and cheaper to use through a number of reforms, including:
 - Simplifying employment law
 - Simplifying the employment tribunal forms and procedures, and encouraging more active, early case management

So will any of this work? The devil, as always, will be in the detail. Mediation is an ADR option which clearly has a role to play in some workplace disputes, especially where the complainant is still employed, and there is a working relationship to restore or maintain. But ASA has particular concerns about the proposals for a new helpline and

internet advice service as a gateway to employment tribunals. Who will staff these helplines? Will they be advisers who know their employment law, or call centre staff with a script? It is important that people get good, independent advice at an early stage, so they can make an informed decision about what will work best for them. Advice which is pre-determined to scare you about tribunals and sing the praises of ADR is hardly 'impartial'.

Mediation is intended to be voluntary, but increasingly people are being hustled into it, either through fear of cost penalties, or through government advice with an agenda. Does this offer people a benefit which they would otherwise never discover, or divert them from access to a rights-based remedy? Read the consultation and make up your own mind.

You can find it on the DTI website on: www.dti.gov.uk/consultations/page38508.html
The deadline for responses is June 20th.

Court fees – more encouragement to mediate

The DCA is consulting on a new structure for court fees. One of the proposals is that fees should be split into two or three stages, so that cases which settle before a hearing, through negotiation or mediation, will not have to pay the costs of a hearing. Currently, for example, there is a single fee payable for a small claims case, which includes the hearing, so there is no financial incentive for cases to settle early. The consultation also suggests that part or all of the allocation fee in fast track and multi-track cases might be refunded if a case is successfully mediated.

The consultation was launched on April 2nd, and responses should be made to the DCA by June 25th 2007. The full consultation can be found on:

www.dca.gov.uk/consult/civilcourt-fees/cp0507.htm

Ombudsman news

Public ombudsmen reform

Back in 2005, the Cabinet Office consulted on some proposals to reform the ways in which the public sector ombudsmen work. The proposals would affect the Local Government Ombudsman, and the Parliamentary and Health Service Ombudsman. The paper proposed three key reforms:

- That the three public sector ombudsman schemes should be able to work collaboratively on cases which involve more than one public authority.
- That the Parliamentary and Health Service Ombudsman should be able to issue guidance to encourage best practice (the Local Government Ombudsman can already do this).
- That the public sector ombudsmen can use informal or alternative means of dispute resolution, such as mediation.

These changes would be effected through a regulatory reform order, which meant that a Bill would not need to go through Parliament in order to make this happen.

ASA responded to the consultation, and raised some concerns about the proposal that early complaint resolution could, in effect, be imposed on complainants without their consent. The proposals would mean that the decision whether or not to complete a full investigation and report was entirely at the discretion of the ombudsman. A tendency to agree to private settlements, and not to publish full reports naming and shaming public authorities found to be at fault, could undermine the transparency and accountability of ombudsmen. We also suggested that this would not be compatible with the voluntariness of ADR processes such as mediation.

In March 2007 the Regulatory Reform Committee published its report on the proposals. The report recommends that Parliament should approve the first two reforms. It also proposed that, where appropriate, the ombudsmen can start an investigation without necessarily waiting for the internal complaints procedure to be completed. However, since a number of individuals and bodies responding to the consultation (including ASA) had expressed concerns about the intention to formalise the use of early dispute resolution, the third proposal has been left out. The ombudsmen will, however, be able to pay an external mediator to work on a case, where appropriate.

The Regulatory Reform Committee also recommends that primary legislation should be introduced as soon as possible to remove the MP filter for making a complaint to the Parliamentary Ombudsman.

There is an overview of the original consultation in ADR Update number 17, which can be found in the '2006' archive of the policy section of ASA's website at www.asauk.org.uk

The March 2007 Regulatory Reform Committee report can be found at: www.publications.parliament.uk/pa/cm200607/cmselect/cmdereg/383/38302.htm

What is good administration?

Providing effective services? Acting proportionately? Putting mistakes right quickly? The Office of the Parliamentary and Health Service Ombudsman (OPHSO) has a double duty; both to investigate complaints of maladministration or service failure in public bodies, and to promote good practice in government departments, and improve the way public services are provided.

As part of these responsibilities, the ombudsman, Ann Abraham, has just published six principles of good administration. They form a picture of how public bodies should operate when they are getting it right. She makes it clear that these principles are not an inflexible checklist: they provide a framework which is intended to encourage good practice. When things go wrong, and a complaint is made to the ombudsman, these are the standards against which public bodies will be judged. The six principles are:

Getting it right

- Acting correctly, in accordance with the law and with due regard to people's rights
- Providing effective services through trained, competent staff

Being customer focussed

- Ensuring easy access to services
- Dealing with people helpfully, promptly, sensitively and flexibly

Being open and accountable

- Being open and clear about policies
- Ensuring that information and advice is clear, accurate and complete

Acting fairly and proportionately

- Treating people impartially, with respect and courtesy
- Ensuring that decisions and actions are proportionate, appropriate and fair

Putting things right

- Acknowledging mistakes and apologising where appropriate
- Putting mistakes right quickly and effectively
- Making sure people know how to complain

Seeking continuous improvement

- Reviewing policies and procedures regularly
- Asking for feedback and using it to improve services and performance

Further details, and supporting text explaining the principles and how they should work, can be found on the OPHSO website:

www.ombudsman.org.uk/improving_services/good_administration/index.html