Alternative Dispute Resolution - United Kingdom

England and Wales

Other specific situations (eg relations with public authorities, health services, solicitors, notaries etc)
A number of schemes exist to help resolve disputes between individuals and authorities and professionals. A List of organisations, including their functions, follows but the list is not comprehensive.

Where no established scheme exists, parties who decide to use ADR to settle their dispute can select a method and a provider of their own choosing, depending on the source of the dispute. While ADR is not usually compulsory, clauses providing for ADR in contracts are binding as long as they are specific. The Civil Procedure Rules (the Court Rules in England and Wales) provide for the judiciary to encourage the use of Alternative Dispute Resolution in appropriate cases. However the extra-judicial procedures are not themselves governed by statute except for a number of Ombudsman Schemes and arbitration schemes which have been established by Act of Parliament.

Before using ADR
It is not obligatory to seek legal advice when using alternative dispute resolution, but it is advisable. It is also advisable to ensure that any ADR provider used has accreditation and carries indemnity insurance. Any particular terms required, such as confidentiality clauses, should be agreed between the parties and the ADR provider at the outset before undertaking ADR. While Ombudsman services and Regulators have internet sites, only mediation services are available on-line as yet.

Funding
The services provided by Ombudsman Schemes and Regulators are funded either by the state or by the service sector concerned. Trade Arbitration Schemes are partially funded by membership fees of the businesses concerned and a fee from the users of the scheme. Otherwise the actual resolution process is paid for by the parties in dispute, either shared equally between them or on any other basis which they choose to agree. For procedures where ADR could be regarded as part of court proceedings – e.g. mediation and early neutral evaluation, representation can be funded. However, ADR processes which take place entirely independently of judicial proceedings are not funded.

Interaction with the Courts
Forms of ADR, such as Early Neutral Evaluation and neutral fact finding do not preclude the same issues from being resolved in court, unless a contractual agreement is subsequently signed. If the dispute is justiciable, it is advisable to arrange the ADR at the same time as taking the necessary steps to comply with the court timetable. If
the dispute is already in the court process, the court can suspend the court process to allow time to resolve the dispute through ADR.

**Types of Resolution**

The resolution achieved through ADR can take the form of a decision or agreement by the parties, depending on the form of ADR used. Generally, methods such as mediation, conciliation and neutral evaluation are designed as aids to agreement. Expert determination, adjudication and arbitration schemes produce decisions though these may or may not be binding according to the circumstances and methods used. Some Ombudsmen make binding decisions, others make recommendations.

Arbitration is a binding process and parties who opt for it cannot subsequently go to court, except on very limited appeal grounds. For most ADR settlements (other than an arbitrator's decision) the parties retain the right to go to court if the other side fails to implement the agreed settlement. If the settlement is drawn up as a contractual agreement, the remedy would be to sue for breach of contract. Parties who reach a mediated agreement would not normally be able to rerun the same issues before a court. The way a decision can be enforced will vary according to the ADR method. Ombudsman Schemes have various methods of enforcing settlements. Some Ombudsman Schemes can enforce their decisions, most have some method of applying sanctions to organisations failing to comply with a decision.

In other ADR methods it is open to parties to have any agreed settlement drawn up as a legally binding contract. There are no statutory rights of appeal against ADR procedures that are designed to facilitate agreement. Some Ombudsman Schemes are open to judicial review.

**List of Schemes**

This list is not exhaustive.

- **Estate Agents Ombudsman** - The scheme covers most of the large chains owned by banks, building societies and insurance companies, and operates under the management of members of the National Association of Estate Agents (NAEA), and the Royal Institution of Chartered Surveyors (RICS). The Ombudsman can deal with most complaints from private individuals as actual or potential buyers or sellers of residential property in the United Kingdom, made within 12 months of the event. Disputes over surveys and the letting of properties are excluded.

- **The Financial Ombudsman Service** - This was set up by law as a single port of call for consumers with complaints against financial firms. It covers most areas of personal finance, from insurance and pension complaints to bank accounts and investments.

- **Health Service Ombudsman** - considers complaints from members of the public about the National Health Service (NHS) which have not been dealt with to the satisfaction of the complainant by the body concerned. The Ombudsman is completely independent of the NHS and Government. Complaints may be about hospitals, family health services, ancillary services such as physiotherapy, and actions arising from the clinical judgement of practitioners. The Ombudsman also considers complaints about failures to provide information.
- **Independent Housing Ombudsman** - deals with complaints from people who receive a direct service from registered social landlords in England, and certain other landlords who are members of the scheme including bodies who take over the management of homes transferred from local authorities. Some private landlords are members of the scheme. The Ombudsman can also consider other disputes involving a member landlord whether or not there is evidence of maladministration, provided they are about the management of the complainant's home.

- **Legal Services Ombudsman** - oversees the handling of complaints about solicitors, barristers, licensed conveyancers, legal executives and patent agents by the professional bodies responsible for setting and maintaining standards within the legal profession in England and Wales. Complainants must first refer their complaint to the relevant professional body before approaching the Ombudsman.

- **Local Government Ombudsman** - There are three for England, one for Wales and one for Scotland. They investigate complaints against principal councils (not town, parish or community councils) and certain other bodies, in England and Wales and Scotland. By law, some kinds of complaint cannot be considered. Examples are personnel complaints and complaints about the internal running of schools.

- **Parliamentary Ombudsman** - investigates complaints (which must be referred by a Member of Parliament) from members of the public about maladministration by Government Departments and many other public sector bodies in England and Wales and Scotland; and about the refusal of access to information by those departments or bodies under the Code of Practice on Government information.

- **Welsh Administration Ombudsman** - Investigates complaints about injustice resulting from maladministration by the National Assembly for Wales and certain public bodies concerned with devolved Welsh affairs. The Ombudsman can also look at complaints that individuals have been refused information to which they are entitled under the Code of Practice on public access to information adopted by the National Assembly.

- **Pensions Ombudsman** - considers complaints of maladministration by, and disputes of fact or law with, trustees, managers, employers and administrators in relation to pension schemes. Schemes can be "occupational" (i.e. established by an employer), or "personal" (set up by an individual for themselves), and the Ombudsman’s jurisdiction includes "stakeholder" pensions. In some circumstances the Ombudsman can investigate complaints made by trustees, managers or employers against similar bodies.

- **Police Complaints Authority** - supervises the investigation of the most serious complaints about the conduct of police officers in England and Wales and of non-complaint issues voluntarily referred by police forces because of their gravity and exceptional circumstances. The Authority also determines the disciplinary outcome of all completed complaints and voluntarily referred investigations into the conduct of police officers.

- **Prison and Probation Ombudsman** - The Prisons and Probation Ombudsman can consider complaints about most aspects of a prisoner’s
treatment in prison, including disciplinary hearings. The Ombudsman can consider whether a decision taken by the Prison Service was correct and whether the proper procedures were followed in making the decision. This includes action taken by prison staff employed by private companies and by people such as prison probation officers or members of the Board of Visitors.

- **Telecommunications Ombudsman (Otelo)** – This has been set up by the telecommunications industry as an independent body to consider unresolved complaints by residential and small business customers against member companies.

- **Office of Communications (Ofcom)** – Ofcom is the statutory regulator for the communications industry dealing with consumer complaints about telephone companies and standards and fairness in the broadcasting of all UK television and radio organisations. It helps telephone consumers settle problems with their telephone companies but cannot impose solutions on disputes that involve compensation or on individual contractual problems. On broadcasting issues it can consider and adjudicate on complaints and monitors, researches and reports on standards and fairness in broadcasting.

- **The Adjudicator for Inland Revenue, Customs and Excise and Contributions Agency** - The adjudicator does not normally investigate complaints in which the complainant had recourse to the courts. However, there is no specific barrier to dissatisfied complainants taking a matter to court.

- **The Director of the Office of Water Services (Ofwat)** - Ofwat is the regulator for water services in England and Wales. Although it can investigate complaints about water companies it cannot deal with matters which can be dealt with between the individual and a water company, such as questions of law and the assessment of damages. You can find more information at

- **The Office of Gas and Electricity Markets (Ofgem)** - Ofgem has a primary duty to protect the interests of gas and electricity consumers. One important part of this is ensuring that companies comply with the terms of their licence, competition law and other relevant legislation. Where there is evidence of non-compliance Ofgem can launch a formal investigation. Where matters fall within the jurisdiction of the courts complainants retain their right to go to court.

- **Office for the Supervision of Solicitors** - is responsible for investigating complaints about the conduct and service of solicitors in England and Wales and for regulating solicitors' practices. It also administers the Law Society's Remuneration Certificates department, which carries out free of charge reviews of solicitors' charges, and the Compensation Fund.

- **Royal Institute of Chartered Surveyors, Professional Conduct Section** - investigates complaints about service and conduct standards of chartered surveyors. It does not look at issues of surveyors' professional competence and is not able to give financial compensation. In such cases complainants should take their complaints to the Surveyors Arbitration Scheme, via their surveyor's own mandatory complaints procedure, or to the small claims court.

- **Subsidence Adviser** - considers complaints of maladministration made against The Coal Authority and private mine operators regarding claims for
coal mining subsidence damage. Complaints include: causing undue inconvenience and delay, and abuse of discretionary powers in the administration of claims. The Subsidence Adviser deals with complaints from both individual members of the public or their professional representatives, and also subsidence community action groups. All services provided by the Subsidence Adviser are free of charge.

- **Waterways ‘Ombudsman’** - considers complaints of maladministration against British Waterways, once its internal complaints procedure has been completed. He cannot investigate complaints about personnel matters, or matters which have been, or are being, considered by a court or otherwise involve legal interpretation. There is a time limit for bringing complaints. You can find out more information by writing to:

  PO Box 406,
  Haywards Heath,
  West Sussex,
  UK - RH17 5GF

- **Commissioner for Public Appointments** - monitors, regulates, reports and advises on Ministerial appointments to public bodies. The Commissioner's code of practice lays down seven principles for scrutiny and equal opportunity in public appointments. The Commissioner can investigate complaints about the way in which a public appointment was made or an applicant was treated.

- **Complaints Commissioners to the Bar Council** - investigate complaints about barristers. Complainants should first seek advice from their solicitor. You can find more information at GeneralOffice@BarCouncil.org.uk.

- **Immigration Services Commissioner** - is responsible for setting standards and regulating immigration advisers as well as investigating complaints made about anyone giving immigration advice, including solicitors, barristers and legal executives.

- **Independent Adjudicator to the Audit Commission** - provides a final independent adjudication of complaints about the work of the Audit Commission.

- **Independent Review Service** - reviews discretionary Social Fund decisions made by the Department of Work and Pensions. You can apply for a review, if your case has already been reviewed by the Department for Work and Pensions. Routine cases are reviewed within twelve days.

- **Information Commissioner** - enforces and oversees the Data Protection Act 1998 and the Freedom of Information Act 2000. The Commissioner is a UK independent supervisory authority reporting direct to the UK Parliament and has an international role as well as a national one. In the UK the Commissioner has a range of duties including the promotion of good information handling and the encouragement of codes of practice for data controllers, that is anyone who decides how and why personal data (information about identifiable, living individuals) is processed.

- **Advertising Standards Authority** - is responsible for ensuring the highest standards in non-broadcast advertising. It administers the British Codes of Advertising and Sales Promotion, which require all advertising to be "legal,
decent, honest and truthful”. The Codes are written by the Committee of Advertising Practice, part of the industry wing of the self-regulatory system. The Authority responds to written complaints (from the public and business competitors), and its website has an online complaints form. It also deals with complaints referred by other agencies, including Trading Standards.

- **Independent Adjudicator** - investigates complaints from people and businesses about how the Inland Revenue (including the Valuation Office Agency), Customs and Excise and the Public Guardianship Office have handled their affairs. The Adjudicator does not look at issues of law or of tax liability or appeals against property valuations, because there are tribunals who resolve these problems. She looks into excessive delays, mistakes, discourtesy of staff, the use of discretion and poor or misleading advice.

- **Independent Case Reviewer** - investigates complaints about the Land Registry, the Public Record Office, the Charity Commission and the Housing Corporation. Her role is to establish whether there has been maladministration on the part of the agency in the conduct of matters giving rise to complaints. These include failure to meet standards of service, quality, speed and performance. Where appropriate she makes recommendations aimed at putting matters right for an individual complainant and improving services in the future.

- **Independent Case Examiner** - investigates complaints about maladministration by the Child Support Agency and the Northern Ireland Social Security Agency, when clients are dissatisfied with the outcome of the Agency's internal complaints service.

**Further information**

Further information about how to deal with problems without going to court can be found in a leaflet “Alternatives to Court” (pdf file).

Copies of the leaflet can also be obtained from the Legal Services Commission leaflet line at:

**LSC Leaflet Line**

St Ives Direct,
Enterprises Way
Edenbridge
Kent TN8 6HF

telephone: 0845 3000 343 (available in the UK only)
fax: + 44 1732 860270
e-mail: lscleafletline@direct.st-ives.co.uk