

Alternative Dispute Resolution

What is arbitration?

Arbitration is probably the best-known form of alternative dispute resolution, and is a formal, binding process where the dispute is resolved by the decision of a nominated third party, the arbitrator.

In arbitration, the award is enforceable across international boundaries. Being a private process, confidentiality is one of the features that attracts many parties to use it. Arbitration is often much faster than litigation, and can be less expensive. In addition, the parties can choose their arbitrator; therefore in a particular type of dispute, an arbitrator may be chosen for their special skill and expertise.

Becoming an arbitrator

Becoming a Chartered Arbitrator is a rigorous process, involving a number of stages. In the UK, the Chartered Institute of Arbitrators trains and accredits practitioners.

Skills/knowledge needed

Arbitrators need to:

- have knowledge of the laws of contract, tort and evidence
- understand and be able to use the applicable procedural law
- be able to evaluate the arguments and evidence which seemingly supports conflicting points of view
- determine the award.

Where disputes revolve around issues of law, lawyers often make the best arbitrators. However, where the dispute revolves around issues of fact, the parties may prefer to have an arbitrator who is skilled in the particular sector involved.

What is mediation?

The Law Society describes mediation as 'an attempt to bring about a peaceful settlement or compromise between disputants through the objective intervention of a neutral party'. Mediation is a voluntary, non-binding method of resolving disputes using an impartial third party. It is the most widely recognised form of Alternative Dispute Resolution (ADR).

A mediator is a trained, neutral third party who uses their skills to bring two sides in a dispute to a resolution, without resorting to litigation.

The mediator has no power to impose a settlement on either party; he or she helps the parties to reach a settlement through negotiations. The mediator:

- assists the parties to identify the key issues
- helps to explore alternative solutions
- guides them to areas of common ground.

The process is not binding unless or until the parties reach agreement, after which the final agreement can be enforced as a contract.

Becoming a mediator

Since mediation is still a relatively new field, there are no statutory qualifications required to mediate at present. There is no national professional society of mediators to train, accredit or regulate mediators.

However, in order to gain work as a mediator, it would be necessary to have some form of accreditation from a body such as the Centre for Effective Dispute Resolution (CEDR) or the Chartered Institute of Arbitrators (which provides training in both arbitration and mediation).

Mediators are sometimes qualified solicitors or barristers but also come from a variety of backgrounds other than law such as architecture, human resources, counselling, social work, banking and accountancy. Some mediation is undertaken as voluntary work.

Parties involved in a dispute requiring expertise in a specific area (such as construction) may decide that it is preferable to have a mediator with expert knowledge of that area, rather than a mediator with a legal background.

Main source: BPP Law School

Useful links:

<http://www.ciarb.org/education-and-training/>

www.collegeofmediators.co.uk

www.cedr.com

<http://www.lawcareers.net/Solicitors/Specialisations/arbitration.aspx>

<http://careersadvice.direct.gov.uk/helpwithyourcareer/jobprofiles/JobProfile?code=-1550001231&jobprofileid=1487&jobprofilename=Family%20Mediator>

<http://www.connexions-direct.com/jobs4u/index.cfm?pid=63&catalogueContentID=3093&render=detailedArticle>

<http://www.acas.org.uk>

<http://l2b.thelawyer.com/practice-areas/litigation/-/dispute-resolution/>

<http://www.thelawyer.com/influx-of-retired-judges-threatens-to-flood-arbitration-and-adr-markets/131851.article>

Companies/Qualifications:

<http://www.arbitrationonline.org/about/>

www.adrgroup.co.uk

<http://www.mediationandarbitration.co.uk/>

<http://www4.rgu.ac.uk/abs/postgraduate/page.cfm?pge=29129> (Construction industry specific)

Sample Profile:

<http://www.alway-associates.co.uk/personnel.asp?id=35&o=cardiff>