



What is Alternative Dispute Resolution?

Alternative dispute resolution (ADR) involves processes that allow parties to resolve conflicts without going to court. The processes are confidential, less formal, and less stressful, making them particularly suitable for small business owners. Resolving some disputes may require more than one type of ADR.

Types of ADR:

Mediation	Conciliation
<p>Mediation is a popular choice for small business owners due to its flexibility and potential for preserving relationships.</p> <p>Mediation is voluntary and allows both parties to maintain control over the outcome.</p> <p>It involves a mediator who is an impartial third party.</p> <p>The mediator assists disputing parties to reach a mutually acceptable resolution by encouraging communication and negotiation.</p>	<p>Conciliation promotes open communication and can help parties maintain a cooperative relationship.</p> <p>It is an informal and flexible approach to resolving disputes and particularly useful for parties needing assistance in clarifying their positions or brainstorming solutions.</p> <p>A conciliator assists parties to find common ground and explore potential options.</p> <p>They may provide advice and guidance on issues, but their role is not to impose a decision.</p>
Arbitration	Conferencing
<p>Arbitration is a dispute resolution process where parties engage an arbitrator to make a binding determination to resolve their dispute.</p> <p>Unlike mediation, arbitration results in a decision that parties may agree is binding, like a court judgment. The arbitrator, who is typically an expert in a relevant field, listens to both parties' arguments, reviews evidence, and issues a decision.</p> <p>Arbitration can be less formal than court proceedings, providing a faster resolution and potentially reducing costs.</p>	<p>Conferencing is like a facilitated meeting. It a form of ADR that brings parties together to discuss and potentially resolve a dispute with the help of an independent facilitator (commonly an expert in the matter of dispute).</p> <p>The facilitator helps structure the conversation and ensures everyone can express their views. It is often used early in a dispute to help ensure that matters do not escalate, and the issues are well defined.</p> <p>It can also be used to identify what further evidence is needed and what other forms of ADR may be helpful.</p>



Neutral evaluation

As the name implies, neutral evaluation involves a neutral third party (usually a lawyer or expert in an area) evaluating a dispute based on materials from both parties.

The evaluator then provides a non-binding assessment of the case, including potential outcomes if the dispute progressed to a court or tribunal.

Neutral evaluation emphasises early, open and direct communication with a focus on the key issues in dispute. The process is often used early in a dispute to open engagement between the parties, help clarify the nature of the dispute and identify the best way forward.

It is particularly helpful if there are technical or scientific issues involved.

Case appraisal

Case appraisal is similar to neutral evaluation; however it focuses more on the merits of positions and the likely outcome if heard by a court or tribunal.

An independent case appraiser (usually a lawyer or expert in an area) assesses the facts and arguments in a dispute and provides a non-binding opinion on the likely outcome should the dispute be heard by a court or tribunal.

The aim of the process is to encourage early settlement of a dispute based on a realistic appraisal of the merits of a case.

How are case appraisal and neutral evaluation different?

Case appraisal and neutral evaluation are both non-binding, confidential and provide an objective assessment of a dispute. The key differences are set out in the table below.

Neutral evaluation

Neutral evaluation emphasises early, open and direct communication. Focuses on the key issues in dispute.

Neutral evaluation focuses on identifying and reducing issues in dispute (finding the facts within a broad legal context).

Neutral evaluation is more easily integrated with other ADR processes. The evaluator can also more easily adopt a dual role as a mediator/conciliator.

Case appraisal

Case appraisal focuses more on the merits of positions and the likely outcome if heard by a court or tribunal.

Case appraisal focuses on the likely outcome of a case (applying law to established facts).

It is harder for a case appraiser to also act in a dual role as mediator/conciliator.