



HM Revenue
& Customs

Alternative Dispute Resolution in Large or Complex cases

Pilot Evaluation Summary

Some examples of feedback received from external participants in mediation or facilitated discussion

- “ I have always been a sceptic of mediation, but I think I am converted after today. ”
- “ Next time I get a call from you I will definitely tell my client to give it a try. ”
- “ Facilitated discussion may actually be of value in many apparently intractable cases and should be considered more often. ”
- “ Overall, the ADR process had a very positive effect on this case. The facilitator was very effective and is to be commended for his efforts. ”

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Summary

Background

This pilot has tested the effectiveness of using Alternative Dispute Resolution (ADR) techniques in Large and/or Complex tax and related disputes to either resolve the issue(s) outright by achieving a mutually acceptable outcome or by bringing clarity to the factual landscape or arguments to make litigation more efficient. It is run by HMRC's Dispute Resolution Unit (DRU).

Cases considered for pilot

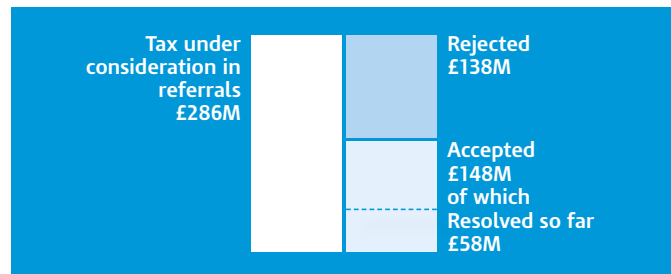
	Internal	External
Referral	49	49
Not accepted	22	10
Accepted into pilot	27	39

It tested both mediation and the techniques used in mediation to understand whether they could be used as a new tool to assist in resolving disputes in a manner consistent with HMRC's Litigation and Settlement Strategy, whilst adding value either in cost savings or time savings (or both) for HMRC and the customer.

About the DRU

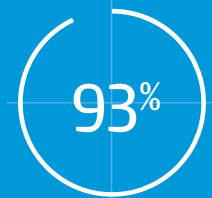
This is a small unit which is part of the Tax Professionalism and Assurance Directorate. It consists of the Head of the Dispute Resolution Unit, two externally accredited mediators and business support. The Unit has benefitted from people on inward secondment from customer representative firms. This added to the experience and depth of knowledge of the Unit and allowed the Unit to directly access the customer perspective, helping HMRC case teams to understand the customer drivers in disputes, assisting in resolving them and developing the Business Model for ADR.

The Unit also works with the SMEi pilot and other dispute resolution initiatives across HMRC, including training and guidance.



Highlights

Facilitators are able to facilitate disputes in tax regimes different to their training and experience



Approval rating

Summary

The ADR Pilot

The pilot was in two Phases and has developed over time. We had initially expected that mediation using an external mediator, un-connected with either HMRC or the customer, would need to be used in all cases within the pilot. However, we found that, in most cases, using mediation trained HMRC people who had had no previous involvement in the case to facilitate structured discussions led to resolution. As a result, within this pilot, the blanket term ADR means either:

- mediation or
- facilitated discussions.

Mediation involves the use of a trained mediator acceptable to both parties and who is totally independent of either of them.

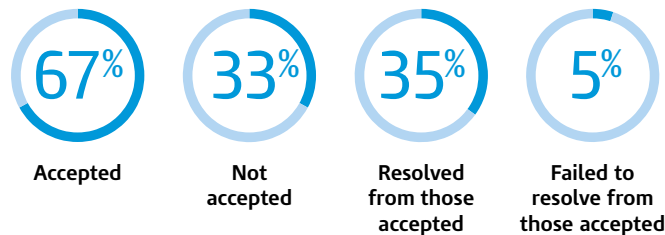
Facilitated discussion involves a similar set-up to mediation but with discussion facilitated by either:

- an externally trained HMRC person who is accredited by the Centre for Effective Dispute Resolution to use mediation techniques; or
- an HMRC person as above but working in tandem with a similarly trained person supplied by the customer.

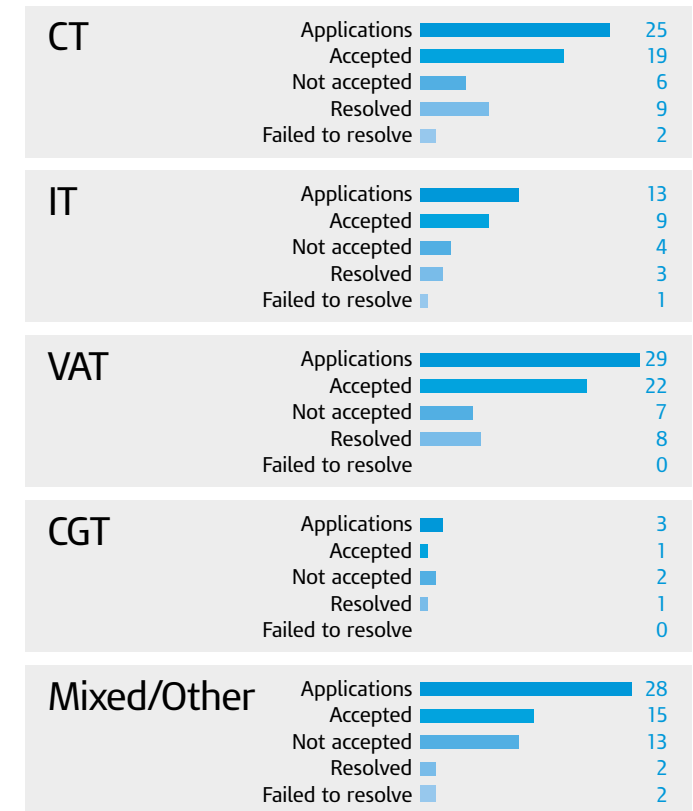
The ultimate aims are to:

- resolve tax disputes as efficiently as possible within the ambit of HMRC's Litigation and Settlement Strategy;
- improve customer experience;
- increase HMRC's reputation for professionalism;
- reduce costs for both parties when disputes occur;
- reduce the need to take disputes to Tribunal.

Applications



Applications - Head of tax/duty



Pilot Objectives

Original Objectives

The pilot’s objective was to test the benefits of ADR in the resolution of Large and/or Complex tax disputes.

Most Large and/or Complex cases are led by either a Customer Relationship Manager or a Customer Co-ordinator and are worked collaboratively. Consequently, it was not expected that there would be a large number of cases of this type which would benefit from ADR. Phase I of the pilot (July 2011 to March 2012) took on 14 cases and resolved 11 of these. Phase II was scaled up with a target acceptance number of 50 cases by the end of March 2013.

In terms of scope, the pilot was open to disputes arising in any regime: it considered disputes including Corporation Tax, Income Tax, Capital Gains Tax, Value Added Tax, Pay As You Earn, Customs Duty, Construction Industry Scheme and penalties.

The initial objective in Phase II was to resolve 35 cases using ADR but, due to a slow start with the pilot receiving cases, this was reduced to 25. 98 applications were made by 31 March 2013. The main sources of applications were:

- advisers suggesting ADR to clients who then authorise the adviser to make the application to HMRC;
- HMRC stakeholders reviewing cases and getting agreement that ADR should be formally offered to the customer.

Acceptance rate

ADR applications are subject to a governance process with oversight from the ADR Panel, consisting of the General Counsel and Solicitor for HMRC, the Directors of the Large Business Service and Tax Professionalism and Assurance and the Head of the Dispute Resolution Unit.

In Phase I of the pilot (to 31 March 2012) around 65% of applications were rejected.

In Phase II, the acceptance criteria were changed and applications also accepted from internal referrals. It was agreed that the DRU could accept external applications for ADR where there was consensus within the HMRC case team that ADR should be attempted. Referrals to the ADR Panel for a decision were reserved for those external applications where consensus within the HMRC team could not be reached and for all internal requests to offer ADR.

In Phase II, the overall rejection rate dropped to 32% and is as low as 21% for external requests.

Outcome of cases

External mediation has been used in 2 cases and facilitated discussion in 26.

For those cases which have resolved in ADR, the average elapsed time was 24 weeks from application to resolution.

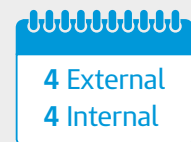
For those cases which did not resolve in ADR, the average elapsed time was 34 weeks from application to the ADR attempt.

The average time elapsed from making an appeal to the Tribunal Service and having that appeal heard was around 70 weeks.

With one exception, the ADR event took place and concluded within one day. The vast majority of the elapsed time from request to event was spent in preparing for the ADR event and finding a date when all necessary people for the event were available.

The exception referred to above involved interpretation of a contract where it was agreed to obtain expert advice as to the meaning of the contract and then resume the ADR attempt once the advice had been received.

Average referrals per month



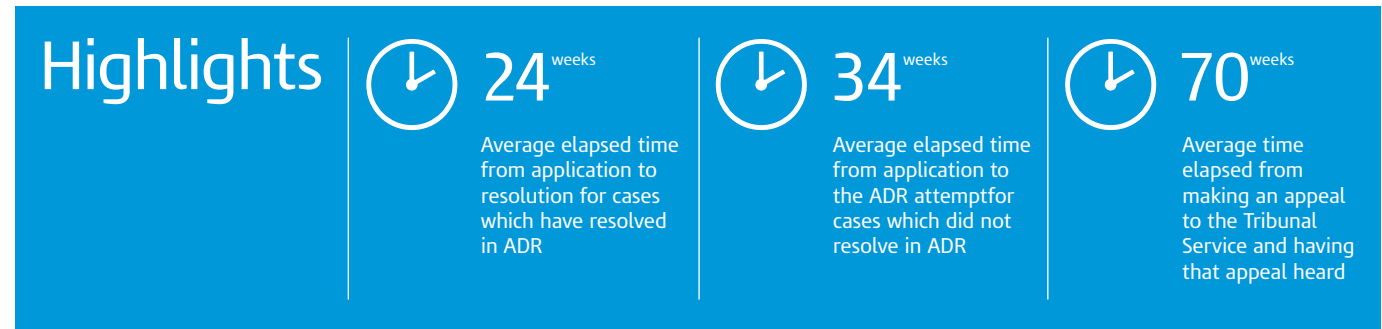
Progress towards Pilot Objectives

A number of disputes within the pilot had appeals lodged with the Tribunal Service and, similarly, a number hadn't progressed to appeal. Appeals lodged with the Tribunal Service go through various stages on the way to being heard before a Tribunal and applications were initially accepted involving disputes at all stages of the appeals process as well as disputes pre-appeal.

Quantifying cost and time savings for disputes in which an appeal has not been lodged with the Tribunal Service was difficult as there were a large number of variables (including the possibility that an appeal may not be pursued). Similarly, whilst there were fewer variables where an appeal had been lodged with the Tribunal Service, there were still a significant number, which made quantification difficult.

Qualitatively, HMRC are confident that they have made significant savings in both cost and time in resolving disputes through the ADR process for both HMRC and the customer. Anecdotally, HMRC consider that taking a case to First Tier Tribunal using Leading and Junior Counsel would cost in the region of £90,000 for HMRC with significant additional costs for the customer if they use Counsel.

One finding that has emerged is that a dispute is more likely to resolve through ADR where a hearing before the Tribunal is some way off. Additionally, where formal



routes are well advanced, irrespective of whether the dispute resolves through ADR, entering into the ADR process increases the time a dispute takes to resolve. This is because, when a case is close to a Tribunal hearing date, to allow the ADR process to proceed, a stay of the Tribunal hearing is usually required. This makes the benefits of attempting ADR in cases which are well advanced towards a hearing before the Tribunal less obvious and the case for accepting such applications less compelling.

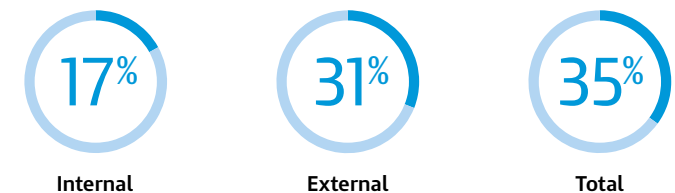
Size of cases

Those cases which have been through ADR represented tax at stake of just more than £57 Million. Cases currently still working within the pilot have tax at stake of around £93 Million.

Issues covered

Examples of issues in dispute in pilot cases include – partial exemption; qualification for relief; valuation; double taxation relief; share awards; employee benefit trusts; sideways loss relief; determination of profits; penalty for non-deduction of CIS tax.

Cases resolved from accepted requests



Progress towards Pilot Objectives

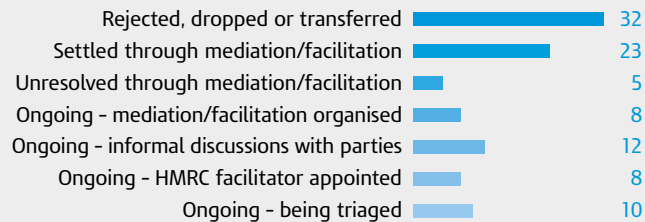
Factors which enable ADR to help resolve disputes

- By engaging in the process, both parties look afresh at the facts and arguments in the dispute;
- the mediator/facilitator is accepted as a neutral party and can robustly challenge each side's position;
- the relevant HMRC policy or technical specialists are present or available
- as are the relevant decision makers for the customer which allows better interaction between the two sides;
- issues can be 'unpacked' to understand whether they are a single or multiple, with a view to dealing with issues singly, if that helps; conversely, it may be that dealing with separate issues as a whole may uncover a solution which isn't available to each issue separately;
- the process can allow for an issue to remain unresolved but the possible outcomes to be explored. This may identify an acceptable method to resolve the case as a whole.

Factors which indicate ADR may not be useful

- one or the other side fails to properly engage in the process
- unrealistic expectations of compromise by the customer outside the terms of HMRC's Litigation and Settlement strategy;
- issues are uncovered which are 'red-line' policy issues for HMRC.

Applications



Reasons for rejection of the application

There are three main reasons for ADR applications being rejected by the ADR Panel. These are:

- a date for a Tribunal hearing has already been set and the Panel consider ADR would be unlikely to add value to the Tribunal process due to time constraints;
- the case is dealt with by a Customer Relationship Manager and the Panel consider that the issue can still be resolved through the CRM relationship;
- HMRC consider that the issue involves a policy or legislative 'red-line' which can only be resolved before the Tribunal.

Project Evaluation and Recommendations

Project objectives have been met

HMRC facilitators have proven to be objective and even handed for all types of customer

External stakeholders supported the project

Successful mediations and facilitations have ensured that the right amount of tax has been identified and secured with less delay and cost for both parties

A better understanding of disputes has been gained

Resource savings have been identified

Experience in the pilot shows that resolution in Large and/or Complex disputes can be facilitated by trained HMRC people or by external mediators.

However, to get the best out of a facilitation or mediation day the right people have to be present with the seniority to make decisions for the customer and HMRC. They may be empowered to reach a binding decision on the day or to agree a proposal which they will recommend to their appropriate governance bodies.

There should be clarity about the extent of authority each side has to reach a binding decision and about any further governance steps. The timescale within which a non-binding agreement should be ratified by any governance or oversight authority should be known before the facilitation or mediation.

Where an external mediator is engaged, they should be made aware of the terms and requirements of the Litigation and Settlement Strategy which defines the parameters within which HMRC can find an acceptable solution.

Way Forward

The pilot has shown that ADR and structured, facilitated discussion is a useful tool in resolving entrenched disputes. Central co-ordination adds value by providing oversight and governance to ensure consistency of approach and deployment of scarce facilitator resource to the right cases. It also is a useful focus for sharing best practice and managing the relationship with external stakeholders.