

1(b) *Identify and comment on the advantages and disadvantages of these alternatives compared to a claim through the civil courts.*

Many have argued that the Civil Courts of the U.K. are not an efficient means of implementing justice, therefore, there are Alternative Dispute Resolutions. Mediation, Conciliation, Arbitration and Tribunals are all options that can be chosen instead of Civil Courts, and they are chosen for a number of reasons.

The Civil Courts are avoided by some people because of the delays involved with cases in the County Court averaging 20 months whereas, cases in the High Court average up to 3-4 years. This is a big difference compared to the matter of months needed to finalise a well-run arbitration and also to the swift completion of the Mediation, Conciliation and Tribunals. The fast-track scheme has been developed to tackle this problem, it allows for claims of under £15000 to have a hearing within 30 weeks making it noticeably quicker.

Perhaps the biggest flaw of the Civil Courts is the cost involved, whereby sometimes the costs may actually exceed that of the damages/claim amount awarded and the total cost for both sides' averages at around 75% of the total compensation in the High Court. Part of this problem is that the courts only give Legal Aid to people under very poor circumstances, which means a lot of people are expected to pay for their defence even though they cannot afford decent defence. Arbitration is also to some extent expensive, as the arbitrator and the venue both have to be paid for, however, this still works out as less than litigating in a Civil Court. Also, Mediation and Tribunals have relatively low costs while Conciliation should have no cost whatsoever.

Confidentiality is something that can be offered in Mediation, Conciliation and Arbitration cases and in certain circumstances, Tribunals also follow the same programme. Civil Courts however, are free for the public to witness; this may make a lot of people unwilling to take their problems to court.

Another problem with the Civil Courts is that if the action is unsuccessful the problem is unlikely to be resolved and there are no further avenues for you to explore. Whereas, a Mediation or Consolidation meeting that is not successful can be taken to the courts. In some cases of Industrial Tribunals, the matter is discussed beforehand in a Mediation or Consolidation meeting and then it is taken to the Tribunal, this often results in a solution without the need for a full hearing, therefore saving time and money.

An important advantage about Arbitration is the fact that many Arbitrators do have good technical knowledge of the area at hand. This can be compared to the majority of the Judiciary who would struggle with technical issues in a complex Arbitration and who are often deciding cases with little experience in that area of law. The same applies to Tribunal members when it comes to having special expertise in the relevant subject area. Furthermore, the Arbitrators are allowed to get advice from the Courts on any point of law which they are not certain about, however, the QB divisional court has the power to intervene if the arbitrator acts *ultra vires* (beyond their power).

Many independent Mediators and Mediation services report that in more than four out of five cases, the parties are able to settle all issues in dispute to their mutual satisfaction. As compared to court, where the losing party is almost always angry, this can be considered a success. Unlike the courts, it is very informal, this could be

seen as part of the reason why it is so successful. People feel more comfortable in the environment as they have less pressure on them, which makes it easier for the two in dispute to discuss matters properly. In Court, they are pushed into a win-lose situation and for normal people, the procedures may seem quite complex, making Courts, on the whole, a very daunting place to speak in.

However, there are several reasons why the Court system is still needed, not least because the Courts are seen as a sign of authority and to abandon them would give people the wrong idea. One of the main reasons why the Civil Courts are used is because, in the Courts, a definite conclusion is reached and legal precedent for future cases may be established. Also, in the Courts, procedures for enforcing decisions are made to exist in the future and hence the situation may be prevented from happening again.

Although the ADR's (Alternative Dispute Resolutions) are seen as successful substitutes to the Court system, there are disadvantages that hold them back. A procedure such as Conciliation, has no chance of being successful unless both parties are looking to resolve their disputes, otherwise it is pointless. Not only this, but unlike the Courts, no legal precedent can be set for similar cases of the future and also there is no guarantee that the case will be resolved. It is quite possible that the issue would have to be resolved in a Civil Court even *after* Conciliation.

Mediation also falters in areas. It has become apparent that some people are caught up in the idea that something has to be 'settled' by the end of the process, and therefore, they end up accepting an inappropriate agreement in order to appear cooperative. Also, to mediate effectively the parties would generally need to reveal enough about the strengths of their positions to persuade the other side to compromise and settle. But, if the case does not settle and there is, later, a need to litigate, in some circumstances, the information one party revealed in mediation may help the other side plan a more effective defence. Another problem with Mediation is that there can be a great imbalance of power where one party can be stronger, be it, financially, intellectually or even emotionally. For example, a person dissatisfied with the purchase of a home computer may find himself seated across the table from the computer store's district manager, who not only knows more about computers, but has also been trained extensively in negotiating techniques. This makes it hard for the weaker party to put across their argument, leaving them vulnerable, whereas in Court a Barrister or Solicitor could represent them.

When it comes to Tribunals, there is an unfair imbalance between parties that are represented and those that are not. It is unfair to people who are not represented and cannot get legal aid to come up against a rich corporation. Since richer parties are allowed to employ skilled representation they are consequently more likely to win.

Clearly, there are advantages and disadvantages to all of the dispute resolutions including the Civil Courts and so it would be impractical to have some without the others. The ADR's provide cheap and fast options to the Civil Courts, however, it could be argued that disputes are not always fully resolved and that many of the disputes that are resolved are not done so fairly. Hence, it shows that the Court provides a more stable and rewarding sense of justice that cannot be exploited as much as the ADR's can be.