

Assignment Part B -

Briefly describe the other main forms of Alternative Dispute Resolutions and discuss the advantages and disadvantages of ADR as a form of dispute resolutions.

For some people, it might not be best for them that their cases are held as a court hearing. This is when Alternative Dispute Resolutions comes into play. Its more suitable for some problems to use an alternative method such as tribunals but this is not the only form of Alternative Dispute Resolutions, other forms are different arbitration schemes or possibly mediation. Alternative Dispute Resolutions is generally used in situations such as construction, consumer, family, commercial and employment cases.

Arbitration, like tribunals, tries to get the two parties to come to a resolution without going through the courts. Both parties must agree that the arbitrator, a third party, who may be a lawyer or a person with specialist knowledge who is there to decide the solution, which will be made according to the law, can make the decision. The final decision is put into writing so there is no confusion, and everything has to be under the Arbitration Act 1996. There are 3 different types of Arbitration, Industrial, Consumer and Commercial, each one focusing on different types of dispute s.

Industrial arbitration helps settle disputes between employers and trade unions. It is used in such cases as unfair dismissal, its outcome is meant to reinstate the employee in their original position. This rarely happens and normally losses of employer are normally paid. The best known organisation in this area is ACAS (Arbitration and Conciliation Service).

Consumer arbitration is settlements between the consumer and the business. There are more than 20 different codes within consumer arbitration and the Office of Fair Trading has approved each one. Federation of Master Buildings is a scheme that helps settle disagreements between consumers and builders and also Association of British Travel is for consumers and travel tour operators. This helps settle and come to a compensation fee at times of any holidays that may not have been to the consumer's expectations.

Commercial arbitration usually requires a lawyer as the arbitrator. Companies put an agreement into their contracts that must be signed by the consumer, this involves people having to go through arbitration before the courts. This helps the company keep a low profile of the case and keep the cost to a minimum. This method is used in such cases as when there is a disagreement over the quality of the goods, interpretations of the trade law or points of law. Commercial arbitration was signalled over the Scott v Avery 1855 case, and the clause signed by the consumer is called the Scott Avery Clause.

Another method other than arbitration is Mediation. This is normally used with disputes within the family and property. This helps in divorces and settlements over children, as it helps to keep more peace between the two parties and doesn't involve as much bad feeling as the court. It is generally favourable for people claiming benefits or funding towards the divorce to try to solve the dispute through mediation rather than the court. Conciliation is also

very similar to this, a neutral third party tries to come to an agreement between the two parties.

Arbitration is now considered a very favourable option before going to court, it shows a lot of benefits but along with this there are also some disadvantages. One of the main advantages of using Arbitration, is that the arbitrator may have heard hundreds of similar cases, therefore meaning there decisions are more accurate. Rather than in court where they would be being heard by a magistrate, who although legally qualified may not have as much experience in the same area as the arbitrator.

Although in some cases there are times, when the matters that are in discussion require technical legal points. Therefore this may be out of the arbitrator's capabilities and meaning, the case will have to be heard in court.

As I said earlier, companies favour the option of arbitration as it means that the issues of the case aren't public information and are kept to themselves. This means that companies do not have bad publicity from people suing them, thus meaning they do not have loss of earning whereas if the case would have been publicised then a damage to there reputation may have been caused. But for the consumer this may be considered a disadvantage, as they do not make any money out of newspapers and other media forms, whereas if the case would have been heard in court they may have been paid by the media for there experience.

Arbitration is often favoured due to the fact that it is quicker and easier for the two parties to use this method. It also enables them to choose when and where they would like to meet, thus making it better for people with a busy schedule. As court proceedings can be very expensive, making the cheapness of arbitration a very strong advantage. The reason for arbitration being so much cheaper than court, is that you don't need legal representation thus making it quicker and cheaper.

The difference in cost may, in some peoples, opinion has an effect on the quality of the outcome. For instance, if an individual is claiming against a business, It may be that the business may be a stronger side if they have seeked profession advice before hand. Thus making it an unfair case and giving the business a better chance of having there preferred outcome. In this case it would be better for the two parties to have gone through the court process as then both the defendant would and the claimant would have professional legal advice.

Also another disadvantage of using arbitration rather than the court process, is that the final decision can be challenged when there is a belief in place that there has been serious irregularities. This meaning that the final awards that have been settled through arbitration can easily be challenged.

My final conclusion is that I think Alternative Dispute Resolutions are a very good way of solving disputes without court action but I feel they are more successful in certain circumstances. For instance I think that family disputes are better to be solved with Alternative Dispute Resolutions. Family dispute's are better with Alternative Dispute Resolutions as then it means that the family can keep a better relationship and the whole process isn't as hostile. Individual vs Companies I would say is better to be solved in court. This is because in these cases, businesses may have prior legal connections making it unfair for the individual to get a just result.