

Summary of differences between different forms of ADR: Civil Mediation, Private FDR, IFLA Arbitration

Type of ADR	Key feature	Which option?	How to set up?	what happens before?	What docs required
<p>Civil Mediation</p>	<p><i>Facilitative</i></p> <ul style="list-style-type: none"> - Mediator chairs/facilitates a meeting and assists the parties to find their own resolution. - Plenary and separate private sessions. - Mediator talks to each side privately maintaining confidentiality with and between the parties - Mediator does not adjudicate on legal merits (but may ask 'probing' questions – "reality testing"). - Typically, one day The parties are responsible for converting any resolution into a binding settlement agreement. 	<ul style="list-style-type: none"> - Parties may mediate at any time - from pre-issue, after exchange of pre-action correspondence or at appropriate time in the proceedings. Often best sooner before costs escalate. - The process focusses parties genuinely on seeking resolution rather than as a box-ticking exercise - Parties resolve necessary/relevant disclosure issues between themselves (with assistance of mediator if required) and without direction of court if happens pre-issue, or even post-issue before formal case management takes over. 	<ul style="list-style-type: none"> - Parties agree on a mediator by mutual agreement or suggest possible mediators to each other. Once mediator chosen, the parties and mediator find a mutually convenient date for mediation. - Mediator will require all involved to sign a mediation agreement which will include standard terms and conditions and ensure confidentiality of the whole process (confidentiality shared by mediator and parties) 	<ul style="list-style-type: none"> - Once bundle and short position statements/case summaries are prepared, exchanged by the parties and delivered to the mediator, the mediator will usually arrange to speak with the lawyers and/or parties in advance of the mediation. This operates as an ice breaker, builds trust and ensures that the mediator understands the extent of the true issues between the parties and allows the mediation to 'hit the ground running.' - Written offers may be exchanged in advance (but not compulsory or even necessary) - If remote, platform and back up mode of communication to be agreed, and ground rules established and agreed in addition to those set out in the mediation agreement 	<ul style="list-style-type: none"> - Bundle "lite" - only key/essential documents/agreements - Pre-action correspondence - statements of case - experts' reports - witness statements if exchanged - chronology - offers, if made - costs incurred/yet to be incurred - case law if crucial
<p>Private FDR/ENE</p>	<p><i>Evaluative</i></p> <ul style="list-style-type: none"> - Non-binding view on merits after hearing short submissions on each side - As view given on merits tribunal is impartial and so no separate meetings - Reality tester - Allows parties opportunity "to be heard" - Tribunal also entreats compromise -Typically, one day 	<ul style="list-style-type: none"> - Very successful compulsory hearing in financial remedies cases since 2000 - Only recently incorporated into CPR. - Move to private hearings with blessing of judiciary to ease lists - Parties have differing views on merits - Often used after proceedings have commenced and court has case managed disclosure (but parties also free to try pre-proceedings) 	<ul style="list-style-type: none"> - As above - But note that many private FDR tribunals do not require an agreement to be signed on basis that terms of court-based FDR will be implied into agreement. Unwise 	<ul style="list-style-type: none"> - Private tribunal will not have individual contact with parties or lawyers in advance of the hearing but may email both lawyers on housekeeping matters. - Lawyers will prepare summary of note/skeleton argument. - Without prejudice offers should be exchanged in advance. - If remote, platform and back up mode of communication to be agreed. 	<ul style="list-style-type: none"> - As above
<p>IFLA Arbitration</p>	<p><i>Determinative</i></p> <ul style="list-style-type: none"> -Binding determination after agreed mode of adjudication (usually hearing but sometimes paper only) - Financial scheme covers financial remedies, tolata and I(PFD)A 75 Claims. - Children scheme covers certain private law disputes. - Tribunal impartial so no separate communications with parties - Hearing length may vary from one to several days. 	<ul style="list-style-type: none"> - Parties unable to resolve dispute without an adjudication. - Parties may be 'bounced' into arbitration due to waiting times or last- minute judicial unavailability. -Or parties may choose, for reasons of privacy and choice of specialist tribunal. 	<ul style="list-style-type: none"> - Parties invite arbitrator to arbitrate by signing ARB1 (ARB1FS for financial scheme, ABR1CS for children scheme). - ARB1 briefly scopes out dispute and parties sign they wish to be bound by arbitration, subject to final court approval. - Arbitrator sends parties agreement to arbitrate which they return signed. - Upon arbitrator counter-signing agreement the arbitration is constituted, and the IFLA default rules apply unless parties agree otherwise. - There may be a case management hearing for directions or if late ejection from court, hearing may simply be listed. 	<ul style="list-style-type: none"> - There may be a case management hearing which will provide directions which will differ according to the stage the parties dispute (or litigation) may have reached. - If arbitration due to late judicial unavailability, then there may simply be informal exchange between arbitrator and lawyer as to housekeeping matters to further to efficient management of forthcoming hearing. - Arbitrator has no individual contact in advance. - If remote, platform and back up mode of communication to be agreed. 	<ul style="list-style-type: none"> - Full bundle which may comply with court format such as PD27A or Chancery Guide or may be bespoke as required by arbitrator.