Alternative Dispute Resolution
For SME’s and individuals

Project Evaluation Summary

“ADR has shown that many disputes, where an impasse has been reached, can be resolved quickly without having to go to tribunal.”

“ADR is a fair and even-handed way of resolving tax disputes between HMRC and its customers and helps save time and costs for everyone.”

“We have had good feedback from both SMEs and individual customers and are grateful to the professional bodies and the wider agent community for their assistance and support during the pilot stages. It allows us to work together with our customers and resolve disputes much earlier than at present.”

Richard Summersgill,
HMRC Director of Local Compliance
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HMRC’s ADR pilot studies have produced extremely encouraging and positive results - owing in large part to HMRC’s willingness to engage with taxpayers, advisers and the professional bodies and vice versa. Taxpayers involved in a dispute with HMRC would be well-advised to take advantage of ADR wherever appropriate.

Hui Ling McCarthy
Barrister and CEDR accredited mediator,
Gray’s Inn Tax Chambers.
Management Summary

Background

For two years this project has tested the effectiveness of Alternative Dispute Resolution (ADR) techniques – essentially the involvement of a third party to help resolve disputes between HMRC and its customers in the ‘mass market’, or the SME and Individuals* population, with the ultimate aims of:-

• Improving the customer experience;
• Increasing HMRC’s reputation for greater professionalism;
• Reducing costs for both parties, customer and HMRC, when disputes occur;
• Reducing the number of cases that reach statutory review and/or Tribunal.

*For the purposes of this project the Individuals population was limited to cover disputes arising from compliance checks into personal tax (Income Tax and Capital Gains Tax).

Working closely with the Central Policy Dispute Resolution Unit (DRU), who have over-arching responsibility for dispute resolution in HMRC, the project has demonstrated that ADR in Local Compliance does work. ADR provides an excellent opportunity for Local Compliance to handle disputes in a modern and collaborative way.

Highlights

‘Facilitation is a transferable skill e.g. facilitators are, in certain circumstances, able to facilitate disputes from a different background to their training and experience.’

93% positive and 4% neutral approval rating in external media coverage.

93%
4%

ADR is not intended to replace statutory internal review which is an already established process aimed at resolving disputes without a tribunal hearing. Review looks at legal challenges to decisions whereas ADR is more suitable for disputes where there might be more than one tenable (legal) outcome.

ADR should be viewed as the final piece in a dispute resolution jigsaw that also contains statutory reviews and appeals. Although the first stage of the project used the review stage as a source of cases, we would normally expect ADR to be considered either at the earlier decision making stage or once an appeal has moved to the Tribunal.

High Level Achievements

A 93% positive and 4% neutral approval rating in external media coverage.

The leading reason (33%) in Stage 2 as to what prompted an application for ADR was recommendation from the HMRC caseworker.

Project experience has demonstrated that facilitation is a transferable skill e.g. facilitators are, in certain circumstances, able to facilitate disputes from a different background to their training and experience.
Achievement of Project's Objectives

Original Objectives
The project objectives were to test the benefits of introducing an HMRC third party facilitator into the resolution of certain SME tax disputes.

At the same time, the project was expected to give valuable insights in the following areas:
- To understand more generally why SME cases reach impasse.
- To take the lessons learned about when ADR techniques are the most efficient way of resolving a dispute and to use them before an impasse is reached.

In terms of scope, the project considered disputes from SME customers and included a range of Direct Taxes and VAT disputes. The Individuals customer base draws from a wide population of 8.6 million individuals who receive Self Assessment returns and a further 23 million employees covered by PAYE but who don’t receive tax returns – the non SA population.

Performance Against Objectives
366 applications were made with 151 facilitations being completed.

Highlights

| 61 days | Average elapsed time for all closed ADR cases |
| 23 months | Average age of Direct Taxes disputes entering the project |
| 8 months | Average age of VAT disputes entering the project |

An analysis for the reasons for making the online applications in Stage 2 are:-

How customers heard about ADR

<table>
<thead>
<tr>
<th>How customers heard about ADR</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>HMRC caseworkers</td>
<td>35%</td>
</tr>
<tr>
<td>Professional press</td>
<td>24%</td>
</tr>
<tr>
<td>Working Together/Outreach</td>
<td>13%</td>
</tr>
<tr>
<td>HMRC web site</td>
<td>9%</td>
</tr>
<tr>
<td>Fee protection providers</td>
<td>8%</td>
</tr>
<tr>
<td>Other</td>
<td>11%</td>
</tr>
</tbody>
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In Stage 1 a significant minority of technically oriented cases were taken on because it was hoped that dialogue on the technical points might lead to resolution. This was tested and largely proven not to be the case.

Stage 2 has had a much keener emphasis on fact rich disputes where ‘there is a range of possible tax figures due’. More disputes have been selected for ADR in Stage 2 where a clarification of facts or new evidence, oral or documentary, is required.

Outcome of cases

- Successfully resolved: 58%
- Partial resolution: 8%
- Unresolved: 34%
Achievement of Project's Objectives

Fully Resolved Facilitations
- 33% were resolved by educating the customer/agent about the correct tax position.
- 24% were resolved due to the facilitator obtaining further evidence.
- 23% were resolved by educating the HMRC decision maker about the correct tax position.
- 20% were resolved through facilitators restoring communication between both parties.

Well planned, constructive meetings, with the intervention of an HMRC facilitator, do increase the chances of dispute resolution.

Partially Resolved Facilitations
- 50% were partially resolved by educating the customer/agent about the correct tax position.
- 40% were partially resolved due to the facilitator obtaining further evidence.
- 10% were partially resolved by educating the HMRC decision maker about the correct tax position.

Unresolved Facilitations
- 36% of the unresolved facilitations did not find further information but this was not sufficient to satisfy the decision makers' concerns.
- 21% of the unresolved facilitations found further information but this was not sufficient to satisfy the decision makers' concerns.
- 14% of the unresolved facilitations were due to HMRC believing that litigation would be appropriate in the circumstances.

Switch Cases
In Stages 1 and 2, facilitators have successfully handled disputes outside of their 'normal' sphere of expertise confirming that successful facilitation is not wholly reliant on the technical background or knowledge of the facilitator.

External mediators
The project team have seen no evidence of any demand from Local Compliance SME or Individuals customers or their agents for access to external mediators. There is also conclusive evidence from customers and agents that HMRC facilitators have acted in a fair and even-handed manner.

However, the project team have of their own volition, and in consultation with the DRU, moved four cases into the Large & Complex ADR project where there is a procedure in place to engage external mediators if the DRU thinks it appropriate.
Achievement of Project’s Objectives

Without prejudice discussions
The project team have followed the DRU advice for Large & Complex ADR cases i.e. ‘anything said or documents produced during the ADR process cannot be used in future proceedings without the express consent of both parties subject to the obligations placed on the parties by the operation of English law.’ However, the project team is aware of ongoing concerns surrounding this issue from the ADR Working Group. Further clarification or guidance is likely in due course.

Elapsed time
The average elapsed time for all closed ADR cases is 61 days. This figure is from application to resolution or the papers being returned to either the caseworker or, as in Stage 1, the review team (average elapsed time for Direct Taxes is 71 days and for VAT it is 53 days).

The average age of Direct Taxes disputes entering the project was 23 months. The average age of VAT disputes entering the project was 8 months.

Appropriate place for ADR in the lifecycle of a compliance check
Evidence is that ADR can work for both VAT and Direct Taxes disputes both before and after an appealable decision or assessment has been made. However, for operational and procedural reasons ADR for VAT disputes is more suited to post appealable decision and assessments.

Memorandum of Understanding (MOU) and a Code of Conduct
After consultation with the ADR Working Group, the main HMRC-external stakeholder forum, it was agreed that for Stage 2 an MOU should be created to commit customers/agents to the requirements of the ADR process. The project team are also interested in exploring the introduction of a Code of Conduct for HMRC staff.

ADR Panel
At the beginning of Stage 2, it was decided to create an ADR Panel to accept or reject applications for ADR. This was in order to strengthen the governance procedures and reduce dependency on the project manager. It was loosely based on the Large and Complex model, although it screened all applications and not just those where ADR was thought to be inappropriate.

Customer / Agent Questionnaire Summary
Findings from over 80 customers and agents included:
- An appreciation of the personal interaction that the ADR process allowed.
- Facilitators were even handed and impartial in all cases and kept the customer/agent well informed
- ADR was particularly well suited to resolution of long standing disputes.

- Total number of applications in both stages: 334
- Excluding applications currently in process
- ADR Panel rejection of applications: Less than 30%
### Project Management Evaluation

#### Management Process

In Stage 1 of the project, potentially suitable disputes for ADR were sourced from the pool of review cases in LC Appeals and Reviews. Initially in Stage 2 customers were invited to apply for ADR before an appealable decision or assessment had been made. In August 2012, and responding to stakeholder feedback, ADR was extended to post appealable decisions.

The primary HMRC-external stakeholder forum has been the ADR Working Group created in December 2010. It has a broad constituency with representatives from the voluntary sector, the legal and accountancy professions and both large and smaller accountancy firms. It has been the primary consultation body on product/process design and communications issues. The project team is very thankful to all of the external members of the ADR Working Group for sparing their time and for providing much common sense and encouragement. ADR Working Group members are:-

- **Ian Browne**  
  Tax Aid  
- **Dawn Elliott (to 31 May 2011)**  
  KPMG  
- **Peter Honeywell**  
  KPMG  
- **Andrew Gotch**  
  Chartered Institute of Taxation  
- **Aleem Islan**  
  Association of Accounting Technicians  
- **John Kimmer**  
  Association of Taxation Technicians  
- **Hui Ling McCarthy**  
  Gray’s Inn Tax Chambers  
- **Jane Moore**  
  Institute of Chartered Accountants in England and Wales/Low Incomes Tax Reform Group  
- **Anne Redston**  
  Temple Tax Chambers  

For Stage 2, a KANA online application capability was developed by the project team in partnership with IMS and Customer Contact Online. After extensive planning and testing this was successfully rolled out in May 2012.

It has been working well and it only takes customers/agents 5-10 minutes to make an application. Customers without internet access are able to make telephone applications to the project administrator. Two telephone applications have been made since the online application facility was launched.

### Highlights

Geographically, the business addresses of the customers were located as follows:

- **London/SE**: 30%
- **Yorks/NW/NE**: 21%
- **SW**: 16%
- **Wales/Scot/NI**: 15%
- **Midlands**: 15%
- **East Anglia**: 3%

The primary skill set required for a facilitator is good interpersonal and listening skills. Technical knowledge is of course very useful but is secondary to facilitation skills.

Through consultation with the ADR Working Group, the project team does recognise that some of our most vulnerable customers require particular care and assistance in a dispute resolution setting. The project would, therefore, like to better understand these customers. ADR Working Group members have generously offered help in this regard to which we are especially grateful. Tax Aid and LITRG recognise that ADR can offer an invaluable personal service to our customers.
Project Evaluation and Recommendations

Project objectives have been met

- HMRC facilitators have proven to be objective and even handed for all types of customers.
- External stakeholders strongly support the project and its roll-out to business as usual.
- Successful facilitations have ensured that the right amount of tax has been identified and secured with less delay for both parties.
- A better understanding of disputes has been gained.
- Resource savings have been identified.

ADR in SME and Individuals should be rolled out in Local Compliance. To increase capacity the team should increase in size from the current model.

It should maintain a distinct and separate identity from the compliance teams located in the SME and I&PB businesses. This will persuade external stakeholders and HMRC caseworkers of the independence and objectivity of the facilitators.