

Alternative Dispute Resolution For **HM Revenue & Customs** The Mass Market

Pilot Evaluation Report

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1 Summary

1.1 Background

1.1.1 This pilot tested the effectiveness of Alternative Dispute Resolution (ADR) techniques within the Small & Medium Enterprises (SME) compliance check process. This involved using an HM Revenue & Customs (HMRC) third party facilitator to help resolve disputes between HMRC and its customers. The aims of the process were to:

- Improve the customer experience;
- Reduce costs for both parties, customer and HMRC, when disputes occur;
- Reduce the number of cases that reach statutory review and/or Tribunal and, by doing so:
 - o Accelerate the flow of tax receipts and releasing HMRC resource for frontline compliance activities to help close the Tax Gap; and.
 - o Reduce delays in working and closing cases
 - o Increase HMRC's reputation for greater professionalism

1.1.2 ADR does not replace statutory internal review. Instead ADR is suitable for disputes where there might be more than one tenable (legal) outcome.

1.1.3 Two key objectives of the ADR SME pilot were to test the introduction of an HMRC third party facilitator to resolve disputes, and to understand why tax disputes had reached an impasse. Any learning points from the pilots will be used to inform HMRC as they review and develop their intervention processes.

1.1.4 The disputes used in the pilot came from cases which had reached the statutory review stage of the intervention process and offered those seeking review an alternative process. In total, ADR techniques were tested in 144 SME disputes.

1.1.5 The disputes considered within the pilot were selected from a range of Direct Taxes and VAT disputes within HMRC SME Customer Group.

1.1.6 We recruited two teams of facilitators. One team was from Appeals and Reviews based in Bristol, and the other team was from SME in the North West. In total, across the two locations, there were nine facilitators, six from VAT backgrounds and three from Direct Taxes backgrounds.

Between October 2010 and January 2011, processes and products, eg case selection criteria, the process framework and a comprehensive facilitator training document, were developed. During this time the Project Board also agreed to discussions with external stakeholders. This was achieved by holding events in London and Manchester in December 2010.

1.1.7 The ADR Working Group was also created in December 2010 and chosen by expressions of interest. A broad cross section of external stakeholders has worked collaboratively with the pilot team on a regular basis. External stakeholders represented on the ADR Working Group are:

Ian Browne	TaxAid
Dawn Elliott (to 31 May)	KPMG
Peter Honeywell (from 1 June)	KPMG
Andrew Gotch	Chartered Institute of Taxation
John Kimmer	Association of Taxation Technicians
Hui Ling McCarthy	Barrister, Gray's Inn Tax Chambers
Jane Moore	Institute of Chartered Accountants in England and Wales/Low Incomes Tax Reform Group

1.1.8 External stakeholder contributions have been substantial, especially with the creation of pilot products such as the FAQs, Introduction Note and evaluation templates.

1.1.9 All external stakeholders have made excellent contributions to the pilot and their representations have been included in this report. Pilot relations with external stakeholders can be summarised as friendly, professional and highly productive.

1.1.10 On 7 February 2011, the pilot went live.

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

London/SE	40 per cent
Yorks/NW/NE	18 per cent
Wales/Scot/NI	15 per cent
Midlands	15 per cent
SW	8 per cent
East Anglia	4 per cent
<u>Total</u>	<u>100 per cent</u>

1.1.12 Before and during the pilot facilitators were consulted on their training needs. They had buddy arrangements and held weekly teleconferences or meetings with the pilot team. Feedback confirms that they felt well supported by the pilot team.

1.1.13 There is sufficient evidence to confirm that pilot objectives were met. This conclusion has been drawn from:

- Direct feedback (qualitative and quantitative) of those involved, facilitators, decision makers, customers and agents;
- Statistical data including average elapsed time, time investment, accelerated yield and success rate;

1.1.14 External stakeholders such as representative bodies, customers and agents have been very supportive towards the pilot and its objectives. The quotes below are typical of the strong support for the pilot and for ADR in SME:

- 'This has been a very well-run pilot with excellent engagement and genuine constructive dialogue – a breath of fresh air.' – Andrew Gotch, Chartered Institute of Taxation

- 'A very useful service and my advice to anyone who has a dispute is to use this free service as you would find it valuable to talk to someone who is both very knowledgeable and impartial to either party' – Mr B, self employed and an unrepresented customer
- 'Excellent idea with potential to save the public purse considerable sums in the future'. – Mr T, agent.

1.2 High level achievements

1.2.1 External stakeholders such as representative bodies, customers and agents, have been very supportive towards the pilot and its objectives. Evidence shows that decision makers can work with customers and agents to resolve disputes collaboratively rather than adversarially.

1.2.2 Conclusive evidence demonstrates that HMRC facilitators are capable of an even-handed and objective approach to the disputes.

1.2.3 Many common findings with the Large Business pilot included time and cost savings - helping parties to understand each other's position and focus on key issues as well as resolving the disputes relatively quickly.

1.2.4 There is sufficient evidence to merit regular feedback to Quality and Professionalism. A key benefit of ADR is that it helps identify dispute trends for senior managers and highlights learning needs for the business eg the pilot found scope for improving the quality of decision making and, occasionally, a lack of management intervention which subsequently prolonged and exacerbated disputes.

1.2.5 Disputes taken to litigation take nearly 100 working hours for an HMRC litigator and their support as well as the decision maker and manager (excluding the time and financial costs to HM Courts and Tribunal Service). For ADR, the average number of days from selection for ADR to resolution was 56 days and HMRC working time investment of 14 hours.

1.2.6 Potential resource savings identified for the business.

1.2.7 Financial and time saving for the customer with a potential increase in HMRC's reputation.

1.2.8 60 per cent of disputes fully or partially resolved (57), releasing HMRC decision makers to progress other cases.

1.2.9 Many disputes, particularly single issue, have been successfully resolved using teleconferencing facilities which have kept T&S costs to an average of less than £9 per dispute.

1.2.10 Facilitators have had the opportunity to view disputes objectively, and in doing so they have increased their awareness of the Tribunal and the Litigation and Settlement Strategy. Consequently, they have taken back this experience to the business.

1.2.11 Evidence shows that facilitation is a transferable skill eg facilitators are, in certain circumstances, able to facilitate disputes from a different background to their training and experience. There is also the opportunity to share these skills wider within Local Compliance. This will help to minimise dispute situations or handle them better in the future.

1.2.12 Potential identified for facilitation rotation i.e. decision makers and facilitators in Local Compliance could swap roles.

1.3 The ADR interim phase - overview

1.3.1 To develop and create a model for Local Compliance SME to be rolled out incrementally.

1.3.2 To avoid the pilot team being overwhelmed by demand, agent/customer expectations would need to be managed accordingly. We would, therefore, prioritise those disputes that, based on past experience, have the greatest chance of a successful outcome for the customer and HMRC.

1.3.3 The selection of cases for the interim phase would be by the customer/agent, subject to the publication about the type of disputes that fit pilot criteria. This would replace sourcing ADR disputes from the statutory review pool and therefore be available much earlier in the life cycle of the dispute. This process would be known as 'selection by election'.

1.3.4 To share information with LC SME and LC I&PB on why disputes occur and how they can be resolved.

1.3.5 To test 'selection by election' and introducing ADR before the statutory review stage from November 2011, the pilot team have recruited nine LC SME facilitators for the Interim Phase.

2 Achievement of pilot's objectives

2.1 Performance against objectives

2.1.1 Acceptance rate into the pilot by customers

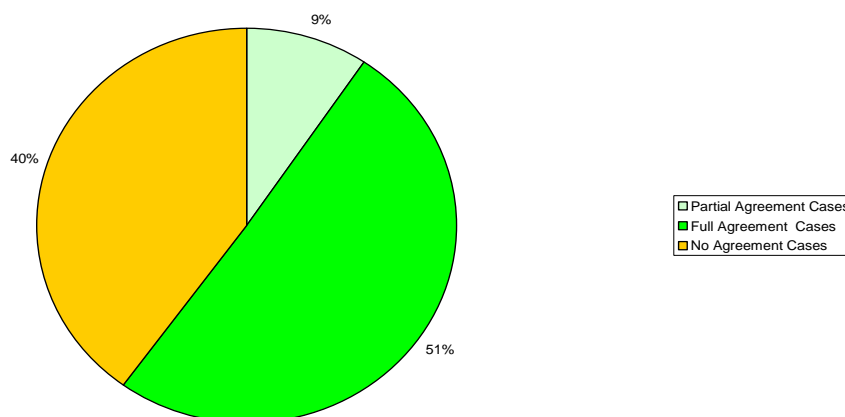
- 96.7 per cent of customers invited to participate in the pilot did so
- The 3.3 per cent who declined did so because the customer felt that litigation was the most appropriate solution or the pilot had no statutory basis.
- To summarise:

Invitations to enter 149, accepted 144.

- Start 144
- Withdrawn 33 (24 because of agent/customer delay, nine for policy reasons)
- In progress 16
- Completed 95
- Resolved 57 (48 fully, nine partially)
- Unresolved 38 and returned to review team for them to give a view

2.1.2 The success rate of the pilot

Proportion of Cases Agreed in Full, Partially or No agreement



- The definition of successful facilitations in the pilot is as follows – disputes that entered the pilot, as a potentially upheld or varied review, that as a result of facilitation have been fully or partially resolved. A partial resolution is where one or more issues in dispute that were present at the outset have been resolved through facilitation. A full resolution is where all issues that were present at the outset have been resolved through facilitation.
- 57 facilitations that entered the pilot were successfully resolved. Broadly, there was no difference between the success rates of the different heads of tax or between unrepresented and represented customers.

Fully resolved facilitations

- 48 of the successful facilitations were fully resolved. Of these, 34 were VAT disputes and 14 were Direct Tax disputes.

- 35.41 per cent were resolved by the facilitator working with the decision maker to educate the customer / agent about the correct tax position.
- 31.25 per cent were resolved due to the facilitator getting further evidence.
- 22.91 per cent were resolved by educating the HMRC decision maker about the correct tax position. This was not originally planned to be a role of the facilitator. However, as explained above, from a customer service perspective and to save both parties the cost of preparing for unnecessary litigation, facilitators were permitted to perform this educative function.
- 10.43 per cent were resolved through facilitators restoring communication between both parties. There was evidence that these cases had not had been managed effectively by line managers over a long period of time. The process of ADR brought such cases to the fore and were resolved in a relatively short time scale.

Partially resolved facilitations

- Nine of the successful facilitations were partially resolved. Of these, seven were VAT disputes and two were Direct Tax disputes.
- 55.55 per cent were partially resolved by the facilitator working with the decision maker to educate the customer / agent about the correct tax position
- 33.33 per cent were partially resolved due to the facilitator getting further evidence
- 11.12 per cent were partially resolved by educating the HMRC decision maker about the correct tax position.

Unresolved facilitations

- 38 facilitations that entered the pilot were not resolved. Of these, 29 were VAT disputes and 9 were Direct Taxes disputes. The latter were overwhelmingly technical rather than fact based. At the time of writing, of the 38 unresolved facilitations, 33 are reviews where the decision has been upheld, including four appeals sent to the Tribunal, two are varied reviews, two remain open and one is where the review is not required.
- 31.58 per cent of the unresolved facilitations were due to the agent/customer believing that the Tribunal route would be appropriate in the circumstances or there were overriding issues such as a lack of means to meet liabilities.
- 10.53 per cent of the unresolved facilitations were due to HMRC believing that they had a strong argument and that litigation would be appropriate in the circumstances.
- 23.68 per cent of the unresolved facilitations found further information but this was not sufficient to satisfy the decision makers' concerns.
- 34.21 per cent of the unresolved facilitations did not find further information but in the main clarified the positions of the parties which will ultimately save time for both the litigator and Tribunal
- It became apparent from the interaction between the parties that some agents and customers, although not willing to reach an agreement at the time of facilitation, were considering their position in the light of the discussions that had taken place.

2.1.3 Number of customer interactions

The average number of interactions for each dispute that entered the pilot was:

- Average 13 phone calls/other correspondence per dispute
- Across all disputes there was a total of 16 face to face meetings and 75 items of correspondence.
- Of the six Direct Taxes cases that had face to face meetings all were fully resolved. Five out of the seven VAT cases that had face to face meetings were fully or partially resolved.

- Of the cases that were withdrawn by HMRC because of a lack of co-operation from the customer/agent, there were on average 11 attempted or actual interactions

2.1.4 Elapsed time - The average elapsed time for all disputes that entered the pilot was 56 days from the first contact by the pilot team to resolution or the papers being returned to the review team (average elapsed time for Direct Taxes was 63 days and for VAT it was 53 days). The longest elapsed time was 168 days, the shortest two days.

2.1.5 The average elapsed time for disputes that were withdrawn from the pilot for delay was 61 days from the first contact by the pilot team to withdrawal. The longest elapsed time was 112 days, the shortest 36 days.

2.1.6 The average elapsed age of Direct Taxes disputes entering the pilot was 516 days. The average age of VAT disputes entering the Pilot was 187 days. Clearly, facilitation rapidly accelerated dispute resolution, allowed decision makers to move on to new interventions and obtained the right amount of tax quicker.

2.1.7 As a comparison, the disputes that would have entered the review process would have taken up to 45 days for the issue of the review conclusion letter, possibly more to consider new information, up to another 30 days for the customer to accept or reject the review and if the appeal was moved to Tribunal there would be a 42 per cent* chance that if it was a Standard category appeal (the vast majority of disputes in the pilot) a decision would not be made for at least another 70 weeks.

2.1.8 HMRC time and resource investment - On average, HMRC's time investment was 14 hours per facilitation. This also includes decision maker and manager time. This figure was gathered by recording the time spent by facilitators and QA checks by the pilot team.

2.1.9 *The average tax at stake per dispute in the pilot was £11,690.*

2.1.10 As a result of the facilitations that took place during the pilot a total of £666,320 was agreed by the customer that was previously in dispute. This is, of course, yield secured earlier rather than additional yield that may have been obtained in the normal course of the assurance work or at review or Tribunal.

2.1.11 As a result of the facilitations that took place during the pilot, decision makers amended assessments to reduce tax due by £344,005.

3. Pilot evaluation summary

Pilot objectives have been met

- HMRC facilitators have proven to be objective and even handed for all types of customers.
- External stakeholders have strongly supported the pilot and successful facilitations have ensured that the right amount of tax has been secured quicker.
- A better understanding of disputes has been gained and an evidence base created to help Local Compliance.