

**Council on Tribunals**

**Consultation on the Use and Value of Oral Hearings  
in the Administrative Justice System**

**Summary of Responses**

**January 2006**

## Introduction

This document is a post-consultation summary of responses to the consultation paper "The Use and Value of Oral Hearings in the Administrative Justice System" (May 2005).

It covers:

- ◆ The background to the consultation;
- ◆ A statement on common themes and looking ahead;
- ◆ The breakdown of responses;

(a full list of respondents and copies of many of the responses themselves, where permission has been obtained, can be found on the Council's website at [www.council-on-tribunals.gov.uk](http://www.council-on-tribunals.gov.uk))

- ◆ Information on how to interpret the summary of responses; and
- ◆ The summary of responses.

## **Background**

The wider context within which this consultation process is being held is largely set out in a Department for Constitutional Affairs White Paper called “Transforming Public Services; Complaints, Redress and Tribunals” (July 2004). This White Paper encourages the adoption of proportionate dispute resolution across the whole field of administrative justice and emphasises the need to reduce reliance on formal oral hearings. The Council on Tribunals considers that the pursuit of this agenda will require careful consideration of the respective merits and demerits of all the various forms of dispute resolution currently employed within administrative justice, and that the Council as it evolves into an Administrative Justice and Tribunals Council, will need to be in a position to contribute to that debate. With this object in mind the Council wished to elicit views on the role of traditional oral hearings as currently employed and to enhance its own understanding of the alternative forms of oral exchange available in administrative justice.

The consultation paper “The Use and Value of Oral Hearings in the Administrative Justice System” was published in May 2005. The consultation made no proposals but sought views on the complex and sensitive issues around the value of oral hearings in the administrative justice system. Two events were held alongside the consultation. The first was an Oral Hearings Seminar held at the Council in July 2005, and the second was an Oral Hearings Workshop held during the afternoon of the Council’s annual conference in November 2005. Full written reports of both these events can be found on the Council's website at [www.council-on-tribunals.gov.uk](http://www.council-on-tribunals.gov.uk).

The consultation period closed in late 2005 and this report summarises the content of the responses. The Council would like to thank all those who contributed to the consultation process.

## Common Themes and Looking Ahead

The considerable degree of interest shown in the consultation exercise, and the volume and quality of responses it generated, has reinforced the Council's view about the significance of this topic for the future. Certain common themes can be identified as emerging from the responses. These include:

- Oral hearings can play a valuable role in the dispute resolution process within administrative justice in terms of both effectiveness and the perception of fairness
- There is a range of steps available to assist in the resolution of disputes without resort to an oral hearing, but in some situations ultimate access to an oral hearing is essential to the pursuit of justice
- The form and style adopted by an oral hearing can significantly affect the user's experience
- Within certain groups of respondents there was relatively little knowledge and experience of the forms of ADR, beyond adjudication, which might be available within administrative justice
- The need for advice and assistance remains significant whichever form of dispute resolution is adopted

In the short term, the Council will consider the implications arising from these themes and where necessary encourage the conduct of further work, possibly in partnership with other interested parties. Areas of particular interest to the Council are the form and style adopted when an oral hearing is used, and, more generally, mechanisms for the sorting and distribution of cases ("triage" as some commentators describe it) in systems of redress.

In the longer term the Council hopes to build on the success of this consultation exercise as its role evolves, and to continue to engage stakeholders in the debate about the way forward so that the AJTC is able to take full account of the views of others in formulating its advice to Government.

## **Breakdown of responses**

The Council received a total of 110 responses to this consultation.

However, in some respects this figure underrates the true degree of response to this consultation. Many respondents consulted on our consultation paper within their own networks. In some cases, these internal consultations were detailed and extensive. For example, the single response of Citizens Advice Scotland was in fact not only based on responses from thirteen Scottish bureaux, but also represented feedback from the CAB clients themselves, made possible through the Service's social policy feedback mechanism. This is not an isolated example.

A full list of respondents and copies of many of the responses themselves can be found on the Council's website at [www.council-on-tribunals.gov.uk](http://www.council-on-tribunals.gov.uk) (responses have only been published where specific permission from the author was obtained). The breakdown is as follows:

Advice Sector (46)

Tribunals (27)

Professional bodies / Practitioners / Departmental Lawyers (13)

Regulators / Complaint-handling Bodies (6)

Ombudsmen (5)

Academics (4)

Other (9)

In addition to the responses themselves, the Council has drawn on opinions that were expressed at an Oral Hearings Seminar held in July 2005, and an Oral Hearings Workshop held at the Council's Annual Conference in November 2005.

## Interpretation

### Terminology

It may assist readers if a working definition of terms used in the summary of responses is given. “Most respondents” is used to refer to a majority of respondents overall, but when it is qualified with “who answered this question” that indicates that a view was shared by a majority of respondents who answered a particular question. “Large minority” is used to refer to instances where 20-40 respondents shared a view, and the term “small minority” is used where about 10-20 respondents shared a view. “Other views” or “another view” indicates that a group of less than 10 respondents shared a view. “Prevailing views” is used generally to indicate views shared by more than 10 respondents. Where a list of views has been presented, the list will begin with the most commonly held view and end with the least commonly held view.

### Anomalies

Certain anomalies have emerged in the summary of responses, some more obvious than others. To give an example, in response to question 1 most respondents who answered the question thought that oral hearings are more user-friendly than other dispute resolution processes, but in response to question 7 most respondents who answered the question thought that oral hearings are more legalistic and daunting than other dispute resolution processes. In some cases, such apparent anomalies can be made clearer by referring to the actual text of the responses themselves. In this case, for example, in answering question 7 respondents may simply be acknowledging one negative aspect of oral hearings, while retaining a positive overall view in answer to question 1.

### General Considerations

- The consultation process was not designed as a piece of formal quantitative research. It was intended rather to elicit views about oral hearings across a range of interested parties within the administrative justice system in order to assist the Council in the performance of its advisory role
- Some respondents made efforts to consult those individuals who use the dispute resolution mechanisms under consideration. Generally, however, end-users themselves were not directly consulted

- Responses tended, understandably, to focus on the respondent's own immediate area of experience. There was a clear tendency for respondents to advocate the status quo within their own system
- Throughout most of the consultation paper, consultees were invited to compare oral hearings with other undefined dispute resolution processes. This gave consultees the freedom to comment upon the other processes with which they were familiar. It is worth noting that many respondents, especially from the Advice Sector and Tribunals categories, chose to compare oral hearings with paper hearings and Departmental (mostly paper-based) review processes. Many respondents did not answer questions 18-20, with some commenting that this was because they had no direct experience of other oral elements, such as for example, face to face negotiations in mediation. The summary of responses should be read with this in mind
- The degree of detail given to supplement responses varied between respondents and some questions, in particular questions 18-20, attracted few answers

## Summary of responses

### **Q1/ Are oral hearings more or less user-friendly than other dispute resolution processes?**

Most respondents who answered this question thought that oral hearings are more user-friendly than other dispute resolution processes. This view was particularly prevalent amongst respondents from the Advice Sector and Tribunals. A large minority of respondents thought that oral hearings are less or neither more nor less user-friendly than other dispute resolution processes. This view was particularly prevalent amongst Ombudsmen and Regulators and Complaint-handling Bodies

The prevailing views amongst respondents when discussing the user-friendly aspects of an oral hearing were:

- Oral hearings are more user-friendly because it is easier for most people to communicate orally, and they are able to ask questions
- They are more user-friendly because the process is highly transparent, users are made to feel part of the process, and there is an opportunity to meet and gain understanding of participants and judge the fairness of the system
- Advice, support and representation help to make oral hearings more user-friendly
- A skilful sensitive Chairperson can enhance the user-friendliness of a tribunal

The prevailing views amongst respondents when discussing the less user-friendly aspects of an oral hearing were:

- They are less user-friendly because they are too formal and rigid, and complex procedures give opportunity for delay

Other views included:

- It is difficult to generalise. Oral hearings are both more and less user-friendly because it is dependent on the individual participants or tribunal

- Oral hearings are more user-friendly because participants are able to focus on the relevant issues, and clarify misunderstandings instantly
- They are less user-friendly because they are generally less accessible
- They are less user-friendly because oral testimony can place witnesses under considerable strain
- They are more user-friendly where users are unrepresented because it is more difficult for inexperienced users to identify the real issues in dispute without a hearing (from, for example, the papers)
- They are more user-friendly than paper-based processes, but less user-friendly than other ADR processes
- They are less user-friendly because users have only one opportunity to present their case. Other processes, like, for example, ombudsman processes, provide users more than one opportunity to make their case

**Q2/ Do some users find it easier or harder to express themselves through speaking?**

Most respondents who answered this question thought that users generally found it easier to express themselves through speaking. A small minority of respondents pointed out that there was a significant portion of users who find it harder to express themselves through speaking. This latter view was particularly prevalent amongst Academics, the Advice Sector, Professional Bodies and Practitioners, and Tribunals.

The prevailing views amongst respondents were:

- Most users find it easier to express themselves through speaking, because many users have difficulty in reading and writing. In many cases the difficulty with reading and writing is due to illiteracy, but it also extends to many people who are perfectly literate, but simply struggle with tribunal forms and with presenting their case effectively in writing
- A skilled Chairperson can make it easier for users to express themselves through speaking at an oral hearing

- Advice, support and representation can make it easier for users to express themselves through speaking
- Many users find it hard to express themselves through speaking, or specifically through speaking in the circumstances of an oral hearing
- An inquisitorial or informal style makes it easier for users to express themselves through speaking at an oral hearing

**Q3/ Do oral hearings increase or decrease the cost of determining a dispute, and if so please explain by how much?**

Most respondents who answered this question felt that oral hearings increase the cost of determining a dispute. This view was particularly prevalent amongst Departmental Lawyers, Ombudsmen, Regulators and Complaint-handling Bodies, and Tribunals. A large minority of respondents said that oral hearings would neither increase nor decrease the cost of determining a dispute. A small minority of respondents thought that oral hearings decrease the cost of determining a dispute.

The prevailing views amongst respondents when discussing an increase in costs due to oral hearings were that they increase costs because of:

- The costs of setting up and holding a hearing
- The costs to the users themselves

The prevailing views amongst respondents when making the point that oral hearings neither increase nor decrease the cost of determining a dispute were:

- Oral hearings may increase the immediate cost of determining a dispute, but this is offset by the overall savings and benefits they bring to the administrative justice system and society at large. Or, “a price cannot be put on justice”
- It should not be assumed that alternatives to oral hearings are less costly. For example, the costs associated with written procedures in an adversarial system are not insignificant, and may even potentially increase the cost of resolving a dispute

Other views included:

- The question of whether oral hearings increase or decrease the cost of determining a dispute is very difficult to quantify without comprehensive research
- Effective case management can reduce costs

**Q4/ Are oral hearings more or less effective than other processes in dealing with complex matters? Please explain.**

Most respondents thought that oral hearings are more effective than other processes in dealing with complex matters. This view was prevalent across the range of respondents, except that it was not prevalent amongst Departmental Lawyers or Ombudsmen. Another view was that oral hearings are less or neither more nor less effective than other processes in dealing with complex matters.

The prevailing views amongst respondents when discussing the effectiveness of oral hearings in dealing with complex matters were that they are more effective where:

- The facts are complex or in dispute, and where there is a higher number of participants
- The tribunal is dealing with very technical issues and the law is complex
- There is potential for missing information, conflicting information, errors or misconceptions
- Users are advised, supported or represented

Other views included:

- They are more effective where users do not have advice, support and representation
- They are less effective than other processes in dealing with complex legal issues only
- They are less effective because they provide an opportunity for bias

- They are less effective because they provide an opportunity to deviate from the point
- They are less effective because they provide only a single opportunity to present case

**Q5/ Are oral hearings more or less effective than other processes where evidence and credibility are in question, and if so in what way?**

Most respondents thought that oral hearings are more effective than other processes where evidence and credibility are in question. This view was prevalent across the range of respondents, except that it was not prevalent amongst Ombudsmen. Another view was that oral hearings are neither more nor less effective than other processes where evidence and credibility are in question.

The prevailing views were that they are more effective because:

- They provide an opportunity to probe areas of doubt through questioning by the tribunal and the use of cross-examination and other specific techniques
- Users can be observed directly, and credibility can be assessed in person
- Relevant evidence can be identified and exchanged more efficiently

Other views included:

- Oral hearings are neither more or less effective than other processes because a tribunal's ability to determine credibility by demeanour is questionable

**Q6/ Are oral hearings more or less effective at uncovering evidence not otherwise disclosed, and if so how?**

Most respondents who answered this question thought that oral hearings are more effective at uncovering evidence not otherwise disclosed. This view was prevalent across the range of respondents, except that it was not prevalent amongst Ombudsmen. Another view was that oral hearings are neither more nor less effective at uncovering evidence not otherwise disclosed.

The prevailing views were:

- Oral hearings are more effective at uncovering evidence not otherwise disclosed because an oral exchange is the most efficient way for all participants to understand what information is relevant
- Preliminary procedures such as the gathering of written evidence can provide a useful starting point which can enable a tribunal to elicit further relevant information at an oral hearing

Other views included:

- A skilled Chairperson can effectively “tease out” evidence and information not otherwise disclosed

**Q7/ Are oral hearings more or less legalistic and daunting than other dispute resolution processes? Please explain.**

Most respondents who answered this question thought that oral hearings are more legalistic and daunting than other dispute resolution processes. This view was prevalent amongst all respondents. A large minority of respondents thought that they are neither more nor less legalistic and daunting. Another view was that oral hearings are less legalistic and daunting than other dispute resolution processes.

The prevailing views were:

- A skilful sensitive Chairperson can make oral hearings less legalistic and daunting
- Advice, support and representation can make oral hearings less daunting
- The formality and strict procedure (including any preliminary procedures prior to a hearing) associated with oral hearings make them more legalistic and daunting
- A less formal or enabling or inquisitorial approach makes oral hearings less legalistic and daunting

Other views included:

- A paper-based alternative is not necessarily less legalistic or daunting. This was thought to be particularly so in certain contexts, for example where there is a mental health issue
- A competitive and adversarial style makes oral hearings more legalistic and daunting
- It is difficult to generalise. Oral hearings are sometimes more and sometimes less legalistic and daunting because it depends on the subjective characteristics of the user
- The need to prepare and make representations makes oral hearings more legalistic and daunting
- Mediations are less legalistic and daunting on account of their being freer in form

**Q8/ Is the opportunity to have a “day in court” important to users and can it be satisfied only through an oral hearing? Please explain.**

A large minority of respondents thought that the opportunity to have a “day in court” was important to users, or that it was important to a small minority of users. Many respondents thought that a “day in court” was less important to users.

A lesser but nonetheless large minority of respondents directly addressed the second aspect of this question. Those that did were equally divided between thinking that the opportunity to have a "day in court" can only be satisfied by an oral hearing and thinking that it can be satisfied by other processes.

The prevailing views when discussing the importance of a “day in court” to users were that:

- It is important to many users because it gives users a date to prepare for, and makes them feel more involved in the process and in control of getting their case across
- It is important to many users because it represents a transparent process: the participants can be “seen” by the decision-maker, and the participants can see the tribunal at work

The prevailing view of those who thought a “day in court” was less important to users was that:

- Most users are simply concerned that their case is considered objectively and fairly, and that a timely decision is given

Other views included:

- The amount of advice, support and representation being given to users will have an impact on the degree to which they want a "day in court". For example, users who are advised they won't succeed are very much less likely to want a "day in court"
- The opportunity to have a day in court can be satisfied by other means as long as the users feel their evidence has been heard

**Q9/ Are oral hearings more or less time consuming for participants than other dispute resolution processes? Please explain.**

This question was intended to address the amount of time expended in preparing for and attending an oral hearing. It was not intended to address the overall length of an oral hearing process from the initiation of a dispute resolution process to the receipt of a decision.

A large minority of respondents thought that oral hearings are more or neither more nor less time consuming for participants than other dispute resolution processes. Another view was that oral hearings are less time consuming for participants.

The prevailing views were:

- Oral hearings are in themselves less time consuming than other processes because it takes less time to make points orally than it does to make them in writing
- It is difficult to generalise. Oral hearings are both more and less time consuming for users because the time taken is dependent on the tribunal, the participants and the complexity of the issues

Other views included:

- Travelling long distances to the hearing venue can significantly increase the time participants have to commit to an oral hearing
- Oral hearings where users are advised, supported or represented will be less time consuming

**Q10/ From the date a dispute resolution process is started to the date an agreement, recommendation, or decision is made, what impact does the oral component of the process have on the overall length of the process? For example, do traditional oral hearings lengthen a dispute resolution, and if so, why?**

This question was intended to address the overall length of an oral hearing process from the initiation of a dispute resolution process to the receipt of a decision.

Most respondents who answered this question thought that oral hearings lengthen or at best have no impact on a dispute resolution. This view was prevalent amongst all respondents. Another view was that oral hearings shorten a dispute resolution.

The prevailing views were:

- Oral hearings lengthen the overall process because of the number of preparatory stages that have to be completed before the hearing itself. These stages include such things as processing the appeal, identifying and gathering evidence, adjournments, and fixing a date for the hearing
- Other processes are not necessarily quicker, for example, paper hearings can involve lengthy preparation and correspondence. This is especially so in contexts where a strong duty to act fairly exists

Other views included:

- More complexity, participants, and special requirements will lengthen the oral hearings process
- Oral hearings lengthen the overall process because of the delay between the hearing and receipt of the decision

- Oral hearings both lengthen and shorten the overall length of the process because it is dependent on the resources and efficiency of individual tribunals
- Advice, support and representation can lengthen the overall process

**Q11/ Are oral hearings the best or only way in which to ensure that justice is perceived to be done both by the participants themselves and the public at large? Please explain.**

Most respondents who answered this question thought that oral hearings are the best way in which to ensure that justice is perceived to be done by the participants themselves and the public at large. This view was particularly prevalent amongst respondents from the Advice Sector and Professional Bodies and Practitioners. A large minority of respondents thought that oral hearings are not the only way in which to ensure that justice is perceived to be done. Another view was that they are not the best or that they do not make a material difference in the perception of justice being done.

The prevailing views of those who thought that oral hearings are the best way were:

- They are the best way to ensure that justice is perceived to be done because oral hearings are transparent to users, they are able to see the tribunal operating first hand
- They are the best way to ensure that justice is perceived to be done because participants and the public at large can attend the hearing and any subsequent decision is made public

Other views included:

- Oral hearings are not the only way in which to ensure that justice is perceived to be done because any such perception is intrinsically linked to the quality of the final decision. It is very important that a full explanation and full reasons are given for any decision that is made
- They are not the only way in which to ensure that justice is perceived to be done. The publication of an Annual Report, and the publication of details about

specific cases, are important ways in themselves of ensuring that justice is perceived to be done

- The argument that oral hearings are the best way to ensure that justice is seen to be done is specious because in reality the public at large never, or very rarely, make use of the public gallery
- They are not the only way to ensure that justice is perceived to be done. The nature of the issues in any one context will be the main influence on the type of process that is required to satisfy perceptions that justice is done in that context
- An oral exchange between users and the tribunal is the best method of creating a fuller understanding of both the original decision and the decision of the tribunal. This understanding can in itself lead to greater confidence in the system and in the decisions that come out of it

**Q12/ Do oral hearings inhibit some potential users? Please explain.**

Most respondents who answered this question thought that oral hearings inhibit at least some users. This view was prevalent amongst all respondents. A large minority of respondents thought that they do not inhibit users.

The prevailing views were:

- Users who are advised, supported or represented are less likely to be inhibited by an oral hearings
- Oral hearings can inhibit users with health or mobility problems
- They inhibit those who are less confident or articulate
- The written aspects of oral hearing processes can inhibit those with low levels of literacy
- They inhibit some users but no more or less so than other processes.  
No system is perfect
- They can be inhibitive for users who have access difficulties like those who travel long distances or take time off work

- They are more inhibitive in certain jurisdictions where users may not be familiar or experienced with the processes, and this is particularly so if the subject matter and rules are technical and legalistic

Other views included:

- Oral hearings can be made less inhibitive with the right use of technology, such as video links
- They inhibit users who would prefer to deal with a dispute privately
- The presence of other participants at oral hearings, particularly witnesses, can inhibit users

**Q13/ They create difficulties in securing attendance and appropriate venue, have resource implications and increase the potential for delay / adjournment. Are these valid concerns? Please explain.**

Most respondents who answered this question thought that oral hearings create difficulties in securing attendance and appropriate venue, have resource implications and increase the potential for delay / adjournment. This view was prevalent amongst all respondents. Another view was that the concerns are not valid, or at least that oral hearings are capable of improvement.

Views included:

- The difficulties mentioned are unavoidable because there is no substitute for oral hearings. Adjournments, for example, often occur for a necessary reason such as evidence gathering activities by the parties
- Advice, support and representation throughout oral hearing processes reduce the difficulties mentioned
- Greater use of technology to facilitate oral hearings would reduce the difficulties mentioned. For example, video-conferencing

**Q14/ In your experience, what are the particular advantages of adversarial procedures? Please explain.**

The prevailing views in response to this question were:

- Adversarial procedures provide an opportunity for evidence to be tested and credibility to be evaluated
- They ensure that users are in control of putting their own case, and hearing and responding to the other side
- All the relevant factual and legal issues can be thoroughly examined, meaning that any preliminary or final decisions will be fully considered
- Any relevant issues that might have been overlooked can be drawn out
- They enable the tribunal to quickly identify the salient points
- They limit the risk of judicial abuse of power
- Adversarial procedures are particularly advantageous in complex cases
- They give structure to the process

**Q15/ What are their disadvantages?**

The prevailing views in response to this question were:

- Parties without experience, skilful advice or representation can be at a significant disadvantage, often regardless of the merits of the case
- Adversarial procedures can polarise and escalate conflict between parties, lead to point scoring, focus on argument rather than truth
- They take up more time and are more expensive than other processes
- Certain types of citizen and state disputes are not particularly suited to adversarial style resolution
- The decision-maker is restricted to the facts that are put by the parties, which may not be relevant, or may not include relevant facts

- They cause anxiety for users, particularly those with mental or other health problems
- There is a risk that new issues will arise that parties do not have a chance to fully consider

**Q16/ How can a tribunal maintain its independence in an inquisitorial situation?**

The prevailing views in response to this question were:

- In an inquisitorial context it is even more important for tribunals to be fair, and be seen to be fair. They must hear and question both sides, give each side an opportunity to comment, be visibly unbiased, even-handed, and open to persuasion right up until the end of the process
- A tribunal's role must be clearly explained during preliminary procedures and the Chairperson must clearly explain the tribunal's role again at the hearing itself
- Tribunals should use inquisitorial techniques to gather evidence, but to preserve independence tribunals should "probe" participants with caution. The tribunal should be particularly careful when asking open questions and leading people, and it should be particularly careful when doing so with an unrepresented user
- A tribunal should avoid explaining the reasons for the original decision that is being appealed
- There must be a clear set of sound procedural rules that everyone is aware of
- Full and clear reasons must be given for decisions made after any oral hearing
- It is difficult to maintain impartiality, as set out in the ECHR, in an inquisitorial situation
- A tribunal can maintain its independence in an inquisitorial situation by using a panel of members as opposed to a judge sitting alone
- Tribunals must encourage diversity to prevent perceptions of bias

**Q17/ What effect would an increasingly inquisitorial style have on the participants?**

The prevailing views in response to this question were that an increasingly inquisitorial style would:

- Mean relevant evidence would be more likely to come to light and as a result of that any final decision would be based on relevant evidence
- Reduce the need for advice, support and representation, the onus to present their case as best as possible would diminish, and the participants would find the process less daunting. There would be less "point scoring"
- Risk leading participants to believe that the tribunal is less independent because the tribunal and original decision-maker could be perceived to be "ganging up"
- Surprise and unsettle participants , though it was generally felt that this could be overcome with sensitive handling
- Enable participants to be more relaxed and less belligerent
- Lead to greater participation by users
- Risk creating a perception of bias, particularly amongst those who lose their case
- Lengthen the process

**Q18/ In other dispute resolution processes the oral element may be less central and designed to perform a different task; face to face negotiations in mediation, for example, or fact finding interviews conducted by an ombudsman. In your experience what form do these other elements take and what tasks do they perform? 19/ What are their particular advantages and disadvantages? 20/ Do they offer examples of good practice that could be adopted elsewhere?**

### ADR processes generally

The views of respondents on the advantages of ADR processes generally were:

- They are a more consensual experience (and therefore ultimately participants are more likely to respect the decision)
- They are quicker, cheaper and simpler than formal adjudication
- They place less pressure on parties to maintain their position. They can be more realistic
- They have evidence gathering in common

The view of respondents on the disadvantages of ADR processes generally was:

- They can be ad hoc, disparate and unregulated

### Mediation and Conciliation

The views of respondents on the advantages of mediation and conciliation were:

- They can take place in private. Participants are able to be franker. This gives rise to a clearer understanding between them
- They can allow participants to express what they feel and want
- They are quicker / cheaper than formal hearings
- They encourage participants to feel accountable, involved in reaching resolution

The views of respondents on the disadvantages of mediation and conciliation were:

- They occur in a private setting and therefore do not satisfy the notion of justice being done in public
- They give rise to “compromise” solutions, that may not be appropriate

Discussions with a view to settlement achieved around a table or by a telephone conference, or at the last minute before an adjudication (*not necessarily with an independent third person facilitating e.g. tax “settlements”*)

The views of respondents on the advantages of discussions with a view to settlement were:

- The intransigent attitudes that can be adopted in correspondence are not maintained at face-to-face meetings
- Arguments are exposed better in open discussion
- They can quickly lead to settlement
- Participants can bring new points to the table that can unlock the dispute

Ombudsman type contact (*including telephone conversations, face to face or video link meetings, visits, and interviews*)

The views of respondents on the advantages of Ombudsman type contact were that:

- It can be flexible according to users needs
- It can more efficiently focus the investigation, and clarify the complaint
- It enables key documents/evidence to come to light
- It can enable a dispute to be resolved early if possible
- It provides opportunities to manage expectations and explain processes
- It avoids confrontation

- It enables a series of opportunities for users to present their case, as compared to the once-and-for-all opportunity provided by an oral hearing

The views of respondents on the disadvantages of Ombudsman type contact were that:

- It means parties don't have direct communication which could perpetuate misunderstandings, lead to confusion over final decision
- There is a procedural necessity to ensure that a party who does not take part in any one-sided conversation is informed of the outcome
- It provides a platform for vexatious complainants
- There is no substitute for having things in writing if they are crucial
- It can raise expectations
- Face-to-face meetings are time intensive and costly
- It is concerned with reasonableness of actions not lawfulness of decision
- It is not "public"
- It can be protracted

**Q21/ In your view what features of a dispute should indicate the need for an oral component in general and an oral hearing in particular?**

The views in response to this question were:

- Where the relevant facts are not agreed (and where credibility is an issue)
- Where there are complex facts
- Where there are issues at stake that are of high importance to the participants e.g. issues of life and liberty, and also decisions of the state regarding rights, entitlements or obligations
- Where there are complex legal issues

- All appropriate ADR processes should have been attempted before a dispute is referred to an oral hearing
- Where medical issues indicate the need for an oral hearing
- Where it is necessary to expose the dispute to public gaze
- An oral hearing should not be held where all parties choose a paper hearing
- An oral hearing should not be held where the cost is disproportionate to the dispute
- An oral hearing should not be held to determine legal issues, which are better suited to a paper hearing

**22/ What features of the dispute should influence the form any oral component might take?**

The views in response to this question were:

- The degree of complexity of issues (the more complex, the more formal/adversarial the oral component ought to be)
- The degree of a user's abilities to present case / access to advice, support and representation
- The degree of special needs and vulnerability of participants