

Could alternative dispute resolution help HR manage absence better?

By Jo Faragher, 7 November 2025

One of the recommendations in the Keep Britain Working review is the use of alternative dispute resolution (ADR) as a way to mitigate difficult issues when an employee returns to work. How will this work in practice and could it deliver on this promise? Jo Faragher reports

The publication of the final report of Keep Britain Working review this week, led by former John Lewis boss Sir Charlie Mayfield, attracted broad support from employers.

Sixty major brands have already signed up to be “vanguard” employers in demonstrating the key role HR and management teams play in supporting people back into work if they have a health issue. Mayfield’s review highlighted the fact there are 800,000 more people out of work now than in 2019 due to health conditions, costing employers £85bn a year.

Without intervention, another 600,000 could leave work due to health issues by 2030, it said, so it is in employers’ commercial interests to take a proactive approach.

One of the concerns raised by businesses in the review was around potential employment disputes arising from how health issues are managed.

“This fear often leads to distance, adversarial processes, and reliance on tribunal outcomes that rarely benefit either side,” it said.

The report recommends that managers move to alternative dispute resolution (ADR) to reduce the “adversarial nature” of some situations that come about, for example, if someone cannot return to work or feels like the workplace has caused or contributed to their illness.

Sarah Fraser Butlin KC and Professor Catherine Barnard have shared draft recommendations on this with the Mayfield review, suggesting that ADR is embedded into how the proposed workplace health provision (WHP) model is delivered and ultimately certified.

Sensitive conversations

Anna Shields, a director at mediation specialist Consensio, says it’s no surprise that employers fear disputes when managing health issues.

“Many leaders, people professionals, and line managers aren’t trained in conflict management skills, so they don’t feel confident in having sensitive conversations, which, if not handled well, can lead to disputes,” she says.

“It can also be very stressful for employees returning to work. They are trying to protect their health, but also worrying about job security and working relationships. So, all parties can approach the return to work with anxiety and uncertainty, which can make effective communication difficult for everyone.”

Many employers who work with Consensio use mediation as part of the return-to-work process. Shields adds: “There’s often a lot of nervousness, and more support is needed than in mediations where the parties are both working. It needs to be handled carefully, which is why the support of a trained mediator can be really valuable.

“Although the prospect of mediation can be daunting for those who haven’t experienced it before, mediation offers a safe, supported and neutral environment for people to communicate effectively. “It can be a lot less daunting for the returnee than going straight back into a workplace where they haven’t been for some time.”

Perfect storm

Maria-Teresa Daher-Cusak, an organisational psychologist at Wisdom Wellbeing, believes ADR is a “compelling recommendation”.

“This method offers a structured, psychologically safe platform for employers and employees to engage early, transparently and constructively, before tensions turn into formal grievances or tribunals,” she explains.

“Absence and ill health are embedded within interpersonal, cultural and organisational dynamics. Employees who feel misunderstood, judged or isolated during periods of ill health are at greater risk of disengagement, longer absence and deteriorating mental wellbeing.

“Concurrently, line managers who lack confidence or training to hold sensitive conversations about phased return, reasonable adjustments or ongoing performance may inadvertently provoke conflict.”

She recommends embedding ADR through trained mediators or appointing an HR specialist with psychological insights who can map expectations or identify trigger points where mediation might be useful.

Employee assistance programmes could also sit alongside ADR, she adds.

“Embedding ADR within absence-management frameworks provides organisations with a mechanism to protect performance, nurture wellbeing and build trust,” says Daher-Cusak.

“EAPs amplify this effect by enabling early psychological support, enhancing readiness for ADR and increasing the likelihood of successful outcomes.”

Working together

A dispute may not always manifest itself as such when managing absence, but could be heading there, says Anne-Marie Boyle, partner at law firm Doyle Clayton.

“Perhaps the work itself has made someone ill, or has exacerbated a physical symptom. Or someone is unwell and cannot come to work. The first two are definitely trickier,” she explains.

“The entrenchment can build quickly if someone blames work for the problem. Where this is not the case, it’s easier to take a more collaborative approach, such as reducing working hours or offering a phased return.”

The longer someone is away from work, the more difficult the situation can become. A cycle of fit notes and managers worrying about contacting someone while they’re ill means it can drift.

Boyle adds: “Having ADR built into your policies, so employees know that they will be offered a facilitated conversation at some point, can help them return to work in a positive way. People would use that and understand its role.”

How an employer handles ill health and the return to work is often a “cultural signifier”, adds Boyle, and Lesley Cooper, founder and CEO of WorkingWell, agrees.

“Generating open conversation about the sources of work-related pressure, stress and ill-health, as well as leadership development in the behaviours needed to create a psychologically safe and inclusive culture, will go a long way to enable the right conversations to take place,” she says.

“If we are to have meaningful and mutually beneficial conversations about what that employee will need to help them, and the company, benefit from the good work available, they have to feel safe enough to explore it, preferably while they are still at work. The time to start creating that culture is now.”

Growing fears

The recommendation of ADR in the Keep Britain Working report is a welcome acknowledgement that employers find managing employees who are absent for prolonged periods daunting. And with the Employment Rights Bill proposing the introduction of day-one rights for employees, it’s natural that these fears will grow.

Nicole Whittaker, associate director of HR consultancy at Peninsula, says: “With ill health and absence lending itself to numerous employee rights, nobody wants to get it wrong and end up facing costly and time-consuming tribunal proceedings.

“However, there is no escaping the fact that managing sickness absence can be a formal process. In fact, it’s the formality that ensures employers remain compliant with the law with the aim of preventing disputes later down the line.”

Policies support managers to work through the appropriate processes, she adds, but they must not forget that sickness is a “very personal experience”.

“Alongside the formalities, it’s crucial that empathy is shown to the affected employee.

“In many cases, the employee doesn’t want to be in the situation just as much as the employer doesn’t want them to be, so working together to find the best solutions can be the most productive approach. This is where ADR can really come into play.”

“Out of fear, employers may choose to ignore the issue, leaving employees absent from work left in the dark and hoping the issue just goes away by itself.

“Intervening early with quality two-way conversations can help a resolution be found quickly, mitigating the need to carry out lengthy formal processes later.”

Behind the dramatic statistics showing that one in five people is unable to work due to ill health lie these personal stories and the emotional toll that returning to work can have.

By handling issues early and effectively, employers should be able to navigate the personal and logistical aspects of welcoming employees back, building a healthy working culture in the process.