



UKCP Alternative Dispute Resolution (ADR)

Consultation report



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Introduction

As a talking profession, we believe that it is always preferable to resolve concerns or complaints in an informal and collaborative way where possible. Alternative Dispute Resolution is a term that encompasses any way that a dispute can be resolved without the need to go through a formal and legalistic complaints process. When people think of ADR, most people think of formal mediation; however, it can also include things such as meeting informally with the therapist or someone from their training organisation, meeting with the help of a third party, or even speaking to an external agency or organisation.

The Complaints and Conduct Process (CCP) is used for complaints that where there is a potential risk to public safety if the therapist continues to practice. In these instances, it is important that a formal investigation takes place. ADR is designed to complement the CCP and handle other grievances or concerns that may not meet the criteria for the CCP, and can help to resolve things in a fair and transparent way with less stress and anxiety compared with a formal complaints process. UKCP is committed to expanding and improving our current ADR process to provide greater flexibility to be able to resolve as many different kinds of disputes as possible. As part of this commitment, we launched a public consultation process to hear your thoughts on ADR.

The consultation

ADR is a voluntary process and one that only works if both parties have faith in the system. Therefore, we thought it only right that we speak directly to those who are going to be using the process on a day-to-day basis.

To do this, we put a series of questions out for public consultation. The survey was formally launched at the Learning from Complaints' workshop in Manchester on 14 October 2016 and closed on 10 December 2016. To determine the scope of the survey questions, we conducted interviews with more than 50 of our Organisational Members and Colleges, undertook detailed research regarding the use of ADR in the healthcare profession, and reviewed many different ADR and mediation policies. The consultation was designed to cover a broad array of topics that you, our members and service users, have told us are important to you. This includes (but is not limited to): what sort of tools and types of resolution you would like available; whether mediation belongs at a local or more centralised level; the confidentiality of mediation sessions; independence and transparency of mediation; cost of mediation; and mediation training.

The response to the consultation survey was overwhelming, with a total of 264 responses received. This report details the responses to the survey and outlines the information on which we will be basing our ADR process.

Section 1: Complaints

In the first section of the consultation survey, we asked you about your experiences with formal complaints processes in the healthcare profession. We wanted to know what went well in your experience, and which aspects of the process could have been improved.

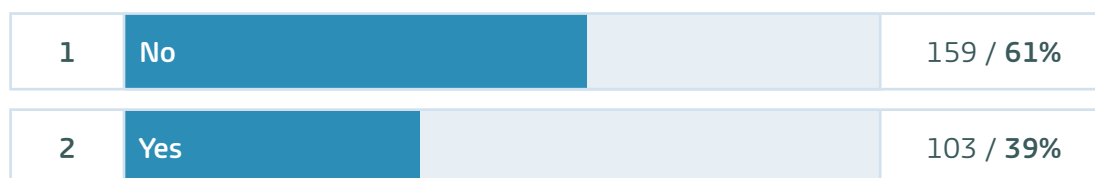
40 per cent of people who responded to the survey told us that they had been involved in a formal complaint process. This included people who had made a complaint against a professional; people who had had a complaint made against them; people who had acted on panels or committees hearing complaints; and people who had supported others through the process.

Although this question was not directly related to ADR, we felt it was important to give context to your experiences and feelings about ADR. It also offered us a unique opportunity to obtain feedback not only on our complaints process, but to also learn what did and did not work for other organisations. These results will help us continue to strive to improve the experience for everyone involved in a complaint under the CCP.

What you told us

First lets talk about complaints. Have you ever been involved in a complaint against a healthcare professional?

262 out of 264 people answered this question



When it came to things that could have been improved, there were three key areas that stood out:

- lengthy and complicated procedures
- adversarial processes lacking support, and
- insufficient communication and lack of boundaries

You told us that you often felt excluded from the complaints process, with poor communication being the primary cause of this. You told us how a lack of clarity around the remit of the process created confusion and stress for those involved, with the adversarial and rigid nature of the process often making matters worse and failing to deliver a positive outcome. You also told us that the lengthy delays and lack of support left both parties feeling vulnerable and unheard.

Examples include:

"I felt excluded from the process. I was not able to speak to the patient again to see if I could explain my actions more clearly."

"The worst thing was I had no support. No one seemed to care about me in it at all."

"Relatively minor complaints went through an entire formal procedure. This was misleading to the public (something might be seen as much more serious than it was) and very stressful for counsellors and psychotherapists."

"I was not told anything about the process that had been undertaken."

"The process felt so rigid and escalated the severity of the original incident."

"At the end of the hearing I received no counselling or support and no sense that either myself or my former therapist had the opportunity to resolve anything."

Many of you also shared some positive experiences that you had had during complaints processes. Clear and transparent communication was something that you felt helped alleviate the stress of the process, as did having a clear structure and procedure to follow. Allowing both sides to voice their concerns in a non-adversarial manner meant that both parties felt heard, and often allowed the matter to be resolved in a way that benefited everyone involved. You also told us that having the opportunity to apologise and acknowledge mistakes early on in the process often prevented matters from escalating, as did having the flexibility to reach tailored resolutions.

Examples include:

"Giving the complainant an opportunity to voice their concerns and to know they were being listened to and taken seriously"

"Clarifying the key issues before the meeting helped – as did having a clear structure."

"Clear and sincere apologies can also be meaningful and helpful, as can a clear (and realistic) assessment of lessons learned and what needs to be changed to avoid future problems."

"Normalising the process for the therapist and the complainant to reduce shame and appointing people to support each person."

"A sympathetic response that acknowledges the hurt/disappointment."

"Fairness and transparency."

Section 2: Your experience with Alternative Dispute Resolution

We then asked you to tell us about any experiences you had had with mediation or Alternative Dispute Resolution. In particular, we wanted to know the sorts of things that worked well or helped to deliver a positive outcome for those involved, and those things that did not work as well, or could have been improved.

30 per cent of people who responded to the survey told us about their experiences with mediation. This included people who had participated in mediation as part of a complaints or court process; people who had trained as a mediator or worked in the field of mediation and ADR; and people who had worked to develop a mediation or ADR process for a company or organisation.

As part of our research process, we explored the way that other organisations conducted mediation. However, it was extremely useful for us to hear directly from people who had participated in the process. By understanding the sorts of things that help to deliver positive outcomes (and equally being aware of the things that do not work as well), we are confident that we can deliver a policy that is as useful and supportive as possible.

What you told us

Most people who responded to this question were glad that they had been offered the opportunity to try to resolve their dispute or concern via mediation. It was clear from your comments that the best way to ensure that mediation is successful is to ensure that the process is:

- non-confrontational, supportive, open, and a place where difficult conversations can be held safely
- easy to understand and access, and is not legalistic, and
- quick and informal, with the flexibility to tailor a solution to the specific issues.

Although the majority of experiences with mediation were positive, there were some people for whom mediation had not worked as well as they had hoped. It seems that the most common reasons that mediation was not able to deliver a successful outcome were:

- when parties did not feel as though they had been heard, or that the other party was willing to listen to their side of events,
- when the mediator was unable to contain the conversation or provide a safe environment, and
- when it was not made clear from the outset what the roles and responsibilities were of the people involved, or clear boundaries and expectations were not properly set.

Example comments include:

“When being the ‘target’ of a person’s anger or unmet demands, it has been important to recognise when attempts have not succeeded to resolve an issue and dare to trust to invite a third party in. It’s easy to let a sense of failure or fear or being judged cause you to close up, when actually what is needed most is openness.”

“Having a senior person deal informally, but seriously, with a complaint has resulted in a more satisfactory outcome for the complainant and offered better protection to the professional involved.”

“I think the protocol of offering time to both parties to speak and be listened to with a facilitator present fosters great understanding and healing.”

“What I found helpful was having a clear process that gave timeframes for completion and a structure that ensured both parties were aware of who was doing what with who. Meeting each participant separately to ascertain their experience, intent, and goals also helped me from a practitioner position.”

“I liked the fact that it gave the other person a gentler call for right action, as opposed to the coldness and finality of an immediate sanction.”

“My experience was unsatisfactory because the facilitator was not skilful enough to manage the tricky communication between the two of us.”

“Fairness both actual and perceived is vital and those facilitating having an awareness of this and being able to mediate with this in mind.”

Section 3: The importance of informal resolution

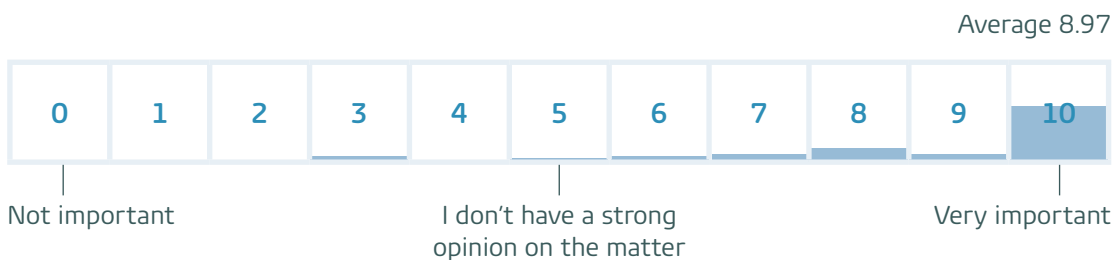
In this section, we were interested to understand how important you felt it was to have an avenue for informal resolution of concerns or complaints (by way of mediation or ADR). Although it is something that is becoming more prevalent, mediation and ADR is still relatively new in healthcare and therapy complaints, and we wanted to know how strongly you felt about it, and how likely you would be to use mediation or ADR if it was available to you.

What you told us

Almost all of you responded to this question – 252 people. Rating ADR on a scale from 'not important', 'I don't have a strong opinion on the matter', to 'very important', on average you told us that it was very important to have the option of ADR or informal resolution.

How important is it to try to resolve disputes or disagreements formally?

252 out of 264 people answered this question



We then asked you to think back to a time when you had had a dispute or grievance with a therapist, health or social care professional, or were unhappy with a service. We asked you which process you think would have been the most likely to deliver your desired outcome: a formal complaints process, or an Alternative Dispute Resolution Process.

Think back to a time in the past when you were unhappy with a service. Which process do you think would have been most likely to deliver your desired outcome?

250 out of 264 people answered this question

1	Alternative Dispute Resolution	213 / 85%
2	Formal Complaints Process	37 / 15%

The results showed that whilst there are occasions that require a formal complaints process to be fully addressed and resolved, the majority of situations you had experienced would have benefitted from a more informal process.

We also asked you why you felt that the process chosen above was best placed to deliver your desired outcome. For those that preferred ADR, you told us:

“Most things are not deliberate, and when they are mistakes or misattunements it seems sensible to try this way first.”

“More clarity and less miscommunication and misinterpretation. The mediator clarifies points throughout the process and looks for opportunities for resolution and mediates empowerment.”

“It is not legalistic; it is more pastoral and therapeutic and much less persecutory and anxiety provoking.”

“In the majority of instances I think those that are dissatisfied want to be heard and have their experience acknowledged and validated more than anything else, and ADR offers a better hope for this.”

“I wanted to be heard and taken seriously and to believe that things might be different in the future. A formal complaints process would have severed the contact.”

“Because of the flexibility and range of options available to achieve resolution. Because it is more accessible for the complainant and involves less time and expense for everyone concerned.”

“ADR offers both parties the chance to speak honestly, openly, with an equal voice about what has happened in their relationship breakdown, and to actually process their grief and move forward.”

“The two parties are in control of a collaborative outcome.”

“The patient is in a vulnerable position and the relationship is not an equal one – making a complaint takes courage. If the therapeutic relationship has broken down then both parties need to help in order to be able to move on.”

“It’s hard making a formal complaint because it can feel personal and you don’t really want it to be a personal attack.”

However, it was clear from the responses that it was crucial that we not implement an ADR process at the expense of a formal complaints process. Although many disputes and grievances were suitable to be resolved through a more informal means, there are situations that are of such a serious nature that call into question a therapist’s ability to practice safely. These situations require a formal, legal, and structured process for these issues to be investigated. You told us that you preferred a formal complaints process for certain situations for the following reasons:

“I think many organisations take formal complaints more seriously and they are more likely to result in some formal action being taken to improve matters, rather than it being a more empathetic or emotional response.”

“In my perception, a formal complaint would be taken more seriously.”

“When something is serious it can take a formal process for all concerned to really listen. Otherwise some participants only pay lip service to the process.”

“The service I was complaining about was a large corporation in which I had no informal or local relationships. In this instance, to get an individual voice heard, I needed to use a formal complaints process.”

“I think that for most people a formal process is where a record is kept of the complaint. Informal processes in my experience ‘lose’ the potential learning from complaints and discourage often genuinely aggrieved people from lodging a complaint or pursuing a significant issue.”

“It’s important that ADR is not seen as an avoidance technique.”

“Because when I get to the point of a complaint I have usually exhausted all other options and sometimes a formal process is necessary to ensure that people get heard, taken seriously, and responded to.”

“Sweeping matters under the carpet must always be avoided; further, informal resolution may circumnavigate the opportunity to learn and join up other incidents which if not captured formally can disappear and reappear without the concomitant learning.”

Section 4: Making ADR work for you

In this section, we wanted to explore what our ADR process might look like. To start with, we asked you what sort of options you would find helpful if you were considering ways to resolve a dispute or grievance.

Although Alternative Dispute Resolution is often prompted by the client, it can only be successful if both parties agree to participate. Imagine you are a client. What sort of things do you think could help resolve a dispute between you and your therapist?
263 out of 264 people answered this question

1	Formal mediation with a trained facilitator	183 / 70%
2	Talking to the therapist	179 / 68%
3	Having a meeting with a third-party observer	173 / 66%
4	Talking to the UKCP	98 / 37%
5	Talking to someone at the therapist's training organisation	93 / 35%
6	Other	24 / 9%

It is clear from these results that the most popular options were: formal mediation with a trained facilitator; talking directly to the therapist; and having a meeting with a third-party observer. However, many of you also felt that talking to UKCP, or talking to someone at the therapist's training organisation would also be beneficial, and it is therefore important that we find a way to incorporate all of these options in to our ADR process.

Some of your suggestions about this include:

"This may have been implied, but a three-way meeting that is facilitated by someone that I felt was sufficiently senior to have a voice that counted. Therefore in addition to the facilitation/mediation there is witnessing by a trusted 'Parent figure'."

"Employer – I would hope that as a therapist or a client I would be able to work it out in the session. However a skilled other may be really valuable in facilitating resolution if not."

"I am thinking that talking to someone at the therapist's training organisation or the UKCP could be daunting as the client might feel that they are on the Therapist's side. Talking to the therapist is probably unrealistic as the relationship has broken down. I think it is important that the client feels that there is someone impartial they can speak to."

“Talking to the therapist in the presence of the therapist’s supervisor could be helpful. The supervisor knows the situation yet can be neutral.”

“Having a meeting with more than one third party. Maybe client and therapist bringing their support alongside.”

“Depends on the complaint but would need to feel heard – someone from the same school might not feel independent enough.”

“Formal mediation with a trained mediator; that is, someone trained in conflict resolution and mediation with a reputable training organisation.”

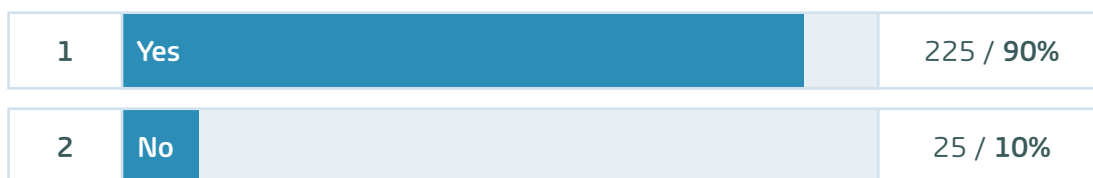
Confidentiality

Next, we asked you about confidentiality. One of the biggest factors that prevents people from trusting an informal mediation process is the worry that what they say might be ‘used against them’ at a later date. We wanted to know how important it was to you that the ADR process was confidential – what we mean by this is that ‘what is said in the room stays in the room’.

One of the benefits of confidential discussions is that it allows matters to be explored and discussed in a very open way, without either party worrying about what they are or are not saying. One of the negatives of confidential discussions is a perceived lack of transparency, or the worry that participating in an ADR process would prohibit a party from seeking recourse at a later date.

Should discussions that take place during an alternative dispute resolution process be confidential?

250 out of 264 people answered this question



Of the 250 people that responded to this question, 90% of you agreed that conversations during the ADR process should be confidential. This is a topic that we will continue to explore and seek advice on while drafting the ADR policy.

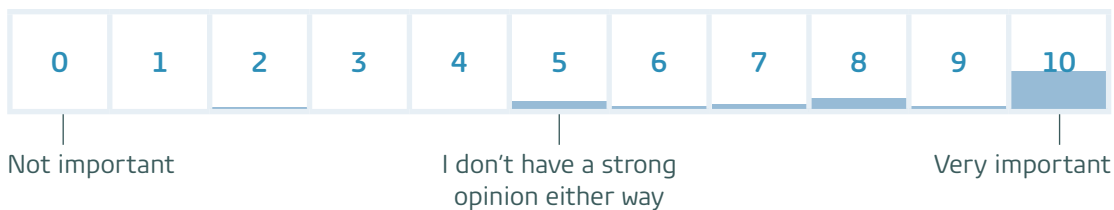
Local Resolution

We also wanted to know how important local resolution was to you. By 'local resolution', we mean the ability for people who you may have a local relationship with – for example, the therapist's local training school, the organisation or local clinic that employs the therapist, or another professional in your local area.

How important is it to be able to resolve disputes locally?

260 out of 264 people answered this question

Average 7.57



Half of you felt that local resolution was important; however for the other half, this was not something that seemed a priority. Read in conjunction with the rest of the results, it seems as though the particular person or organisation that does the mediation is less important than their training, qualifications, and the flexibility of the process itself. The divergence in these results show that it is important for us to allow the participants in the ADR process a degree of flexibility in who they choose to help resolve their concerns.

Formal mediation

With formal mediation by a trained mediator being one of the options we are exploring, we asked you who you thought the most appropriate person was to conduct this work.

Thinking about formal mediation which is usually more structured and run by a professional mediator, who do you think is the most appropriate person to mediate a dispute between a therapist and a client?

263 out of 264 people answered this question

1	A UKCP trained mediator	195 / 74%
2	An independently trained mediator	161 / 61%
3	A local mediator at the therapist's organisation or college	73 / 28%
4	The therapist's supervisor	30 / 11%
5	Other	10 / 4%

These results show that ensuring that the mediator has the appropriate training and skill set is crucial to the success of an ADR process. We will be exploring each of these options during the drafting process.

Encouraging participation in the ADR process

Finally, we asked you what sorts of things would help you feel confident to participate in an ADR process. You told us that it was important to:

- have the opportunity to speak openly and be heard
- have confidence in the confidentiality contract and boundary of the process
- know there is a clear structure and an outcome-focused, no-blame culture
- have confidence that the therapeutic relationship and modality of practice will be taken into account and explored, and
- have confidence in the skill, experience, and objectivity of the mediator.

Some of your comments include:

“Support from my organisation which should have a clear policy and access to knowledge skills and experience in handling complaints.”

“Trust in UKCP’s process which would be enhanced by UKCP employing/training appropriate staff and having the right balance between their input and informed clinicians’ input. Having a clear description of what to expect and what would be required from me.”

“If I knew my supervisor would be involved, as they know me and how I work.”

“A sense of fairness, support for both parties, suitably trained mediator who doesn’t know either party.”

“Full disclosure of the complaint and the complainant’s submitted material. The ability to have a representative with each party in the mediation – as silent spectators if necessary but there for support.”

“Receiving advice and support from UKCP, perhaps having someone appointed as facilitator who will be assigned to my case and will remain constant in the process.”

“Feeling confident that transference issues would be an open part of the process.”

“Assurances that the proceedings would be confidential with an accurate record being taken and made available to both parties.”

Section 5: The scope of the ADR process

In this section, we wanted to explore the scope of the ADR process. We asked you what sort of issues that you thought ADR might help to resolve. This question was intentionally left as free text so that you were not constrained by pre-selected choices.

228 people responded to this question, providing us with a wealth of valuable information that we will be taking into account as we draft our new process. You all agreed that ADR was most suitable for most situations, and gave examples of instances where there are:

- misunderstandings or misattunements
- mistakes made or things forgotten by the therapist
- hurt feelings or perceived breakdowns in the therapeutic relationship
- money or contractual issues
- minor boundary issues or technical breaches of the Code of Ethics
- dissatisfaction with the therapeutic process
- negative transference episodes, and
- communication breakdowns.

Recognising that there are a multitude of different issues that could arise in a therapeutic relationship, many of you also found it easier to define the things that were not suitable for ADR. Examples you gave were:

- criminal offences
- sexual misconduct
- competence or training issues
- persistent unprofessional behaviour
- gross misconduct
- behaviour that poses a risk to the public or to the therapist
- serious breaches of the therapist's ethical codes
- emotional, sexual, or financial exploitation of a client
- safeguarding issues
- allegations of abuse, and
- repeated or serious boundary breaches.

In order for our ADR process and the Complaints and Conduct Process to function effectively, it is important that we set a very clear scope for each of the processes. This is to ensure that everyone involved understands what they can expect from each process, which will hopefully allow them to make a judgement about what is most likely to deliver them a satisfactory outcome. This will be an important part of the final ADR policy.

Financial implications

We also asked you who should be responsible for the cost of mediation. From the results, it seems that a collaborative approach may be best, and we will continue to explore this in conjunction with our Colleges, Organisational Members, Registrants, and Professional Indemnity Insurers.

Who should pay for formal mediation?

251 out of 264 people answered this question

1	UKCP	191 / 76%
2	The therapist	100 / 40%
3	The client	90 / 36%
4	The therapist's training organisation	82 / 33%

General Comments about ADR and mediation

Finally, we asked you if you had any general comments about ADR and mediation. Some of the examples are below:

"I really like the idea of ADR and can see it could be helpful in resolving many situations of conflict."

"I am delighted to see this coming forward, having had such an unpleasant experience with a formal complaint against me."

"Worth the effort as informal resolution for therapy disputes is generally better, at least for cases that do not amount to gross misconduct."

"This is a vital step forward to make the system more accessible for clients and to provide speedier, less unnecessarily punitive processes for therapists."

"Think it's an excellent idea and one that heartens me after feeling that professional bodies are more geared to support clients than their members."

"Think it's a good idea as it's focused on resolution and ways forward more than raking over the rights and wrongs of what happened."

"I believe that such a process offers the best chance of an outcome which is satisfying to both parties and which leads to mutual understanding."

"UKCP should hold register of 'mediators and facilitators'. Training should be open to all meeting minimum criteria. Where payment is appropriate this should be subject to guidelines and not prohibitive."

“It’s important that ADR should not be used to cover up or collude with bad practices.”

“It is very helpful to have it available to triage, manage and resolve disputes that are subsequently found do not have to go to formal complaint. It is also important that disputes and especially complaints do proceed to formal complaint promptly where appropriate.”

“I think it’s a good idea and a healthy alternative in an often overly litigious society. I’d always want to try a low key, collaborative approach to conflicts or complaints and only to escalate things if entirely necessary. I see potential for cooperation and even growth and enhanced understanding in a mediation process, which I think is unlikely to occur in a more adversarial context.”

“I really welcome the effort going in to a different approach that is more open and less biased.”

“Formal complaints processes have the potential to damage vulnerable clients – even in relatively unambiguous contexts such as sexual boundary violations. ADR, while not appropriate for severe cases, can deliver positive outcomes and carry less risk to become damaging to a vulnerable client.”

“I think that the characteristics of differing modalities sometimes require nuanced models of resolution.”

“It’s a good idea. If UKCP really invested in this service it would justify the membership fees on its own. I have never had a complaint but from talking to my colleagues we all dread the day. Knowing there was a good, fast process for resolution would offer peace of mind. UKCP membership would partly be an insurance policy. If done well and properly resourced this service could be a real distinction between UKCP and BACP.”

“I think it a significant step forward in support of the therapeutic process; modelling and promoting our value system.”

“Attended the workshop in Manchester on the complaints process and am very impressed by the robust nature of the system. Well done, UKCP! Thank you.”

“Thought-provoking and important that members should be included in the discussion. None of us knows when/if a complaint might be made against us.”

“I am so pleased that you are researching this approach. I have always felt that therapy is a healing and educational process and at times it may be wise to consider bringing in the ‘parent’ or ‘teacher’ to smooth some of the very rough terrain that can be encountered.”

“This survey was a useful method to glean information from members, and helped me understand the kind of issues that are under discussion in this domain.”

Next Steps

- This report will be published on the UKCP website to allow our members and the public the opportunity to review the consultation results.
- A working group will be convened to review the feedback and agree a proposed ADR policy for submission to the Board of Trustees. This group will comprise Lay people, representatives from UKCP's Colleges and Organisational Members, professional mediators, and representatives from the Professional Conduct Committee.
- The proposal will be submitted to the Board of Trustees for approval on 14 July 2017.
- A training and launch programme will be rolled out during Autumn of 2017.

Breakdown of Responses

Are you a...

260 out of 264 people answered this question

1	UKCP psychotherapist or psychotherapeutic counsellor	220 / 85%
2	Trainee or student psychotherapist	13 / 5%
3	UKCP organisational member	13 / 5%
4	Other mental health professional	5 / 2%
5	UKCP college	5 / 2%
6	Member of a UKCP committee or panel	2 / 1%
7	Member of the public	1 / 0%
8	Other	1 / 0%

