

## Alternative dispute resolution

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### **This guidance is for England, Scotland and Wales**

When there is a dispute between a consumer and a trader, there is a range of options for resolving the dispute without going to court. These options can often be quicker and cheaper, and lead to a more satisfactory solution, than taking legal action.

The law seeks to promote the use of 'alternative dispute resolution' (ADR) by ensuring that suitable options are available in all consumer disputes and requiring traders to inform consumers whether they are willing to use ADR.

### **What is ADR?**

ADR is any process for the resolution of a dispute out of court. The simplest and most common form of ADR is direct negotiation, and this often leads to a solution.

Where direct negotiation does not resolve the dispute, a range of other options may be available. In broad terms ADR can take two forms:

- in some types of ADR, the process allows the parties to the dispute to decide their own outcome, often with the help of a neutral third party. This is typically the case for direct negotiation, conciliation and mediation
- in other types of ADR, the outcome is decided by someone who is not a party to the dispute. This is what happens in adjudication, arbitration and ombudsman schemes

## Is ADR compulsory?

There is no general rule in law that says that ADR must be used to resolve a dispute. However, there are cases where ADR is compulsory on at least one of the parties (in consumer disputes this is the trader). Even where ADR is voluntary, there are often strong incentives to use it.

In consumer disputes ADR is compulsory in a number of business sectors. For example, for most financial services consumers can insist that their complaint be decided by the Financial Ombudsman Service.

In some sectors, the law requires traders to belong to an ADR scheme but it gives them some choice about which scheme to join. This is the case, for example, for estate agents and telecommunications businesses.

In sectors where ADR is not compulsory by law, traders may nevertheless be members of a trade association or a 'trusted trader' scheme that requires its members to use ADR. Such schemes often provide or arrange the ADR scheme for their members.

A trader can also use their own contract terms to require themselves to use ADR, although they cannot insist that a consumer does so.

Even where there is no rule of law, no rule of a membership scheme and no contract term requiring the use of ADR, parties to a dispute must consider whether they should use ADR. If they fail to do so, without good reason, then a court may ultimately penalise them (even the party who 'wins' the court case) when deciding who is to pay the legal costs of the case.

## Why should traders use ADR?

Where it is not compulsory for a trader to submit to ADR, it will still be worth considering. Some of the advantages include:

- ADR procedures are often completed more quickly than court proceedings and can be completed very quickly indeed, allowing you to get on with running your business
- costs are often lower. Remember that you cannot normally recover lawyers' fees as part of a 'small claim' (which is any claim valued below £10,000)
- ADR procedures are often completed in private and conducted confidentially, avoiding the risk of adverse publicity and reputational damage that could arise from a court case
- in some types of ADR (such as mediation) the parties to the dispute decide the outcome themselves rather than having it imposed on them
- ADR procedures can be more flexible in terms of their outcome and in terms of whether and how they apply strict rules of law. It may therefore be possible to achieve outcomes that a court could not order, or to get a result that the parties think is fairer than that dictated by law
- ADR procedures can be less confrontational or adversarial than court proceedings. Not only can this reduce stress, it can also be an important consideration when the parties know that they want to have, or must have, an ongoing relationship
- failing to consider ADR can be penalised by the court

## How can a trader join an ADR scheme?

A trader does not have to join a scheme in order to offer ADR. Sometimes, and particularly for larger traders or trade associations who may handle significant numbers of disputes or claims, it is worth joining or even setting up an ADR scheme. For smaller traders, the expense and complexity of setting up their own scheme may not be justified.

The law requires that all consumer disputes (with only a few exceptions) can be dealt with under an ADR procedure meeting certain minimum standards. For an ADR provider to show that they meet these standards, they must be approved by a 'competent authority' (which is either the economic regulator for the particular sector they are working in or the Chartered Trading Standards Institute (CTSI)).

Some approved schemes cover specific sectors or specific types of dispute, but others have broad coverage. This means that businesses should be able to identify an approved scheme, whatever the nature of their business and their dispute.

A full list of approved ADR bodies is maintained on the CTSI website.

There will also continue to be ADR schemes that are not approved by a competent authority, as the legal requirement is only that there be at least one approved ADR procedure for any type of consumer complaint. If a trader is considering using a non-approved scheme they should make their own enquiries and checks as to its suitability.

## **Information requirements**

Although traders do not have to agree to use ADR for a consumer dispute (unless it is compulsory for them by law, by scheme membership or by contract) they are required to provide certain information about ADR to consumers.

Where a trader is considering a consumer complaint, then at the point where the trader's internal complaint-handling procedure is exhausted they must provide the consumer with the following information:

- a statement that the trader cannot settle the complaint with the consumer
- the name and website address of an ADR provider that could deal with the complaint, if the consumer wishes to use ADR
- whether the trader is obliged or prepared to submit to an ADR procedure operated by that provider

(In other words, the trader has to give the consumer details of an ADR provider but does not have to agree to use ADR.)

The information must be provided in a 'durable medium' - for example, a letter or an email - and it will normally form part of the final 'deadlock' letter in response to a consumer complaint.

In addition, where a trader is subject to compulsory ADR, either by law or through the membership of a trade association, they must provide the name and website address of the ADR provider or scheme on their own website (if they have one) and as part of their general contract terms.

## **Online dispute resolution**

Alternative dispute resolution can take place in various ways, including face-to-face, by telephone, in writing or online. To encourage the use of online dispute resolution (ODR) there is the European ODR platform, which allows consumers, traders and ADR providers to file, respond to, and handle disputes (including disputes where the trader and consumer are in different countries within the EU) online. The UK European Consumer Centre has more information about ODR on its website.

Where a trader does business online, whether through a website or other electronic means, they must provide a link to the ODR platform website. In addition, all online traders must state their email address on

their website (an online contact form that does not show the email address is not sufficient to meet this requirement).

Where a trader is required to use an approved ADR provider (whether by law, by scheme membership or by contract) they must give additional information to consumers. Not only must they link to the ODR platform on their website, they must also inform consumers of the existence of the ODR platform and the possibility of using the platform to resolve disputes; they must include this information in any standard terms and conditions of business. If an offer is made to a consumer by email, the email must contain a link to the ODR platform.

Online marketplaces - which may not sell products direct to consumers but instead facilitate transactions between traders and consumers (for example, online auction websites, and online retailers that also allow third-party sellers to trade through their website) - must provide a link to the ODR platform on their website.

All approved ADR providers are capable of handling disputes filed through the ODR platform. When a consumer files a dispute, the platform sends a notification to the trader, and the trader then either deals with the dispute directly or selects an ADR provider to deal with it. If an ADR provider is selected they then consider the dispute. The ADR provider can only refuse to handle a dispute on certain, limited grounds (for example, a frivolous or vexatious claim, or a claim that falls outside the minimum and maximum values of claim that the provider handles).

For the trader, ADR will often be the best way to deal with a dispute but it is not compulsory.

## **Further information**

The Department for Business, Energy and Industrial Strategy (BEIS, which was known as the Department for Business, Innovation and Skills at the time) has produced more detailed guidance for this area: *Alternative Dispute Resolution Regulations 2015: Guidance for Business*. This includes an annex with guidance on online dispute resolution.

## **Penalties**

Failure to comply with trading standards law can lead to enforcement action and to sanctions, which may include a fine and/or imprisonment. For more information please see 'Trading standards: powers, enforcement and penalties'.

## **Key legislation**

Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015

Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015

Last reviewed / updated: July 2020

## In this update

No major changes

## Please note

This information is intended for guidance; only the courts can give an authoritative interpretation of the law.

The guide's 'Key legislation' links may only show the original version of the legislation, although some amending legislation is linked to separately where it is directly related to the content of a guide. Information on amendments to legislation can be found on each link's 'More Resources' tab.

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