

# businesscompanion

## trading standards law explained

### Introduction

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In this guide, the words 'must' or 'must not' are used where there is a legal requirement to do (or not do) something. The word 'should' is used where there is established legal guidance or best practice that is likely to help you avoid breaking the law.

### What is alternative dispute resolution?

Alternative dispute resolution (ADR) means any method of securing or facilitating an out-of-court resolution of a dispute that is carried out by an independent third party, who acts in relation to both parties to the dispute.

The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (the ADR Regulations) affect all traders that sell goods and services to consumers, with the exception of a very small section of health sector contracts.

A 'consumer' is an individual acting for purposes that are wholly or mainly outside of that individual's trade, business, craft or profession. The ADR Regulations are not applicable to business-to-business contracts. For example, where a consumer buys a TV from a trader, the legislation would apply; if, however, a garage bought a TV to use in a waiting area, it would not be applicable.

The Regulations are relevant to all business legal structures, whether working from business premises or at home. Businesses are subject to the dispute resolution requirements if their internal complaints-handling process has not been able to resolve a dispute. At that stage, they are required by law to inform the complainant about the process, and their obligation or willingness to engage in ADR. In some sectors, ADR information may be required on the trader's websites and business documents, such as order forms.

### The ADR landscape

ADR has been part of the consumer protection environment for many years. Consumers may be aware of schemes such as those offered by the Association of British Travel Agents (ABTA), the Financial

Ombudsman Service (FOS), and the Civil Aviation Authority (CAA).

Prior to 2015, access to ADR schemes was largely dependent on the trader being a member of a trade body, without guidelines addressing the consistency or fairness of the process to be followed.

The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (ADR Regulations) were introduced to widen the opportunities for traders and consumers to have access to a simpler, more consistent and less costly way for both parties to resolve a dispute.

Many traders are members of, and make good use of, trade association bodies and 'trusted trader' schemes. These bodies provide traders with access to ADR schemes where they can escalate a complaint that they are unable to resolve through their own internal complaints procedures. 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.

Consumers are generally encouraged to try ADR, even where the trader's use of such mechanisms is voluntary. An agreement by both parties to use ADR to solve a dispute can help maintain the business relationship, as well as show the consumer that the trader is willing to find a resolution. However, a trader cannot compel a consumer to use ADR.

Court protocols require parties to consider whether ADR will enable them to settle their dispute without resorting to legal action. There is an expectation that all parties will try everything reasonable to resolve matters before issuing a court claim. Traders and consumers may be required to give evidence to the court that they have considered using ADR.

## **Changes to the law**

The Digital Markets, Competition and Consumers Act 2024 will be making changes to how ADR works. However, at the time of publishing, it is not known when these changes will come into force.

### **> The ADR process**

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