

## The ADR process

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### Benefits of ADR

ADR procedures are often quicker than court proceedings, which is of benefit to both businesses and consumers. The cost of ADR is often free to the consumer, or at the very least the cost is considerably less than when using the courts. 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 can be more flexible than strict rules of law, in terms of outcomes and how it applies. It may, therefore, be possible to achieve outcomes that a court could not order, or to get a result that both 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 for a fruitful ongoing relationship.

If either party takes the dispute to court, showing a willingness to use ADR prior to, and during, court proceedings may avoid the application of additional costs by the court. Solicitor's costs cannot normally be recovered for cases taken through the Small Claims Track of the County Court (or, in Scotland, the Simple Procedure in the Sheriff Court), even for the successful party.

Traders that do not provide the information required by the ADR Regulations leave themselves open to having action taken against them by local Trading Standards services under Part 3, Chapter 3 of the Digital Markets, Competition and Consumers Act 2024.

### Types of ADR

There are a variety of ADR mechanisms that businesses and consumers can access. Common forms include:

- mediation (a third party facilitating a resolution)
- arbitration and adjudication (a third party deciding a dispute)
- early neutral evaluation (a third party giving an informed opinion on the dispute)
- ombudsmen schemes

## Criteria for ADR bodies

ADR bodies must comply with a list of criteria if they are to become approved for the purposes of the legislation. These include detailed rules on how an approved ADR body is to operate; this is to ensure that the parties have confidence in the ADR process. The criteria list covers:

- how the ADR body can be accessed
- expertise, independence and impartiality
- conflict of interest, ensuring that the ADR body acts impartially
- transparency
- effectiveness
- fairness
- legality
- reasons why the ADR body can refuse to deal with a case

## Competent authorities

Competent authorities are bodies that approve against the criteria in the Regulations, and monitor the continued compliance of approved ADR bodies. Currently the competent authorities are:

- Financial Conduct Authority
- Legal Services Board
- Civil Aviation Authority
- Gambling Commission
- Office of Gas and Electricity Markets (Ofgem)
- Office of Communications (Ofcom)
- the lead enforcement authority for the purposes of the Estate Agents Act 1979
- Chartered Trading Standards Institute (on behalf of the Secretary of State for Business and Trade)

## Trader requirements

The Regulations define a trader as "a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf".

All traders, except for those operating in a small section of healthcare provision, are legally obligated to provide a consumer with certain information once a consumer dispute reaches deadlock.

Deadlock happens when both the consumer and the trader have worked through the trader's own internal complaints procedure, and an agreeable resolution has not been found.

The trader must provide the consumer with the following information:

- a statement that the trader cannot settle the complaint with the consumer
- the name and web address of an approved ADR provider that could deal with the complaint
- whether the trader is obliged or prepared to submit to an ADR procedure operated by the ADR body they have named

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.

Neither the trader nor the consumer are obligated by the Regulations to use the ADR procedure, but both should consider the implications of not doing so before issuing court proceedings.

For some business sectors, the trader must publish information about the dispute resolution scheme on their website and in their general contract terms. This is where it is required by a regulator, such as the Financial Conduct Authority, or by membership of a trade association. The schemes may also require the trader to agree to use ADR if the consumer wishes to. The trader may have a choice of which scheme to join. This is the case, for example, for estate agents and telecommunications businesses.

A full [list of approved ADR bodies](#) is maintained on the CTSI website. Some of the approved schemes cover specific sectors or specific types of dispute, while 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.

There will also be ADR schemes that are not approved by a competent authority. If a trader is considering using a non-approved scheme, they should make their own enquiries and checks as to its suitability.

The following are some examples of how ADR can work in practice. Please note that the company names given below are fictional.

### **Example 1**

Mrs White bought a lawn mower from Oak Garden Centre two years ago, and wrote to complain that it wouldn't start. The company tried to reach agreement with Mrs White, but she felt that they were not resolving her complaint fairly. Oak Garden Centre felt that they could not get any further with the complaint.

The business wrote to Mrs White, telling her that the complaint could not be resolved, and gave Mrs White the name and web address of an approved ADR body that would be suitable to deal with a complaint of this nature. Oak Garden Centre is not a member of any trade body. They value their customers and want to retain Mrs White as a customer if they can. Therefore, they advised Mrs White that they will be happy to go through the ADR process.

### **Example 2**

Mr Black had a new boiler installed and noticed that the wall next to where the boiler was fitted had plaster knocked out. Oasis Builders had carried out the work; they felt that the wall had been damaged after the boiler was fitted and, therefore, it was not their responsibility to repair it. Mr Black and Oasis Builders were unable to come to an agreement.

Oasis Builders are a member of a trade body, and a condition of their membership is that they must offer to enter into ADR with a consumer when a dispute reaches deadlock. Mr Black was already aware of this before he agreed that Oasis Builders could carry out the boiler work; he had seen this detail on their website, and there had been mention of it in the terms and conditions provided before the boiler was fitted. Oasis Builders displayed the name and web address of the ADR body on their website. The ADR body is approved to provide ADR in consumer disputes. Oasis Builders also supplied the details of the name and web address of the provider in a letter to Mr Black. If Mr Black wishes to use the ADR process, Oasis Builders are obliged to engage due to the trade body's requirements.

### **Example 3**

Ms Green bought new designer shoes from Regency Shoes. After two weeks, the sole was coming away and she took them back to the shop. Regency Shoes felt that the shoes looked as though they had been chewed by an animal, which had caused the damage; therefore, they refused to refund or replace the shoes for her.

Regency Shoes provided Ms Green with a letter, stating that they did not agree that the shoes were faulty. They gave Ms Green the name and web address of an approved ADR body, but went on to state that they would not enter into this process with her. This meant that the only course of action for Ms Green was to take the matter to court. The court may penalise Regency Shoes for not agreeing to participate in ADR. Possible penalties include imposing costs or sanctions.

#### **Example 4**

Edge to Edge Gardening Design is a landscape garden business, which completed some work for Mr Brown. Its team had laid some turf and planted two borders. The turf began to die, and Mr Brown felt that Edge to Edge Gardening Design had laid poor quality turf. Edge to Edge Gardening Design did not agree. They are not a member of a trade body, and there is no law to say that they must agree to ADR with Mr Brown.

However, Edge to Edge Gardening Design know that they need to maintain their reputation. When they sent a letter to Mr Brown, setting out the outcome of the internal complaints process, they gave the name and web address of an accredited ADR body, and told Mr Brown that they are happy to use the process to see if they can reach an agreement.

#### **Example 5**

Beam Building Services operates as a general builder and they are a member of a trade body. To be a member of the trade body, Beam Building Services must adhere to the code of conduct, or they could lose their membership benefits. Part of the 'code of conduct' states that if members have a dispute with a consumer and are unable to resolve it satisfactorily, they must be willing to use ADR.

Mrs Grey had work carried out in her bedroom and contacted Beam Building Services to say that some of the plaster had cracked. Beam Building Services did not feel that this had any link to the work that they had carried out for Mrs Grey. Beam Building Services then told Mrs Grey that there is information on their website, and in the terms and conditions provided to her at the time when the work was agreed, about who she needs to contact for ADR. The company also sent her a letter with the name and web address of the ADR body that can deal with this dispute, and said that they are happy to engage in the ADR process.

## **Summary**

In summary:

- ADR can be a powerful way of resolving disputes quickly and without recourse to the courts
- while it is not always mandatory, many trade bodies require their members to join ADR schemes
- ADR schemes are audited for approval by competent authorities in their relevant fields

All traders (except those in a very small sector providing health services) must, at the point that a dispute with a consumer cannot be resolved internally, supply the name and web address of an approved ADR provider in the appropriate sector. The trader must indicate whether they will engage in the ADR process. The information must be provided to the consumer in a durable form.

Traders that are obligated to use ADR by a code of conduct through membership of a trade body or by a regulator must also provide the name and web address of the ADR provider or scheme on their own website (if they have one) and as part of their general contract terms.

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