

# **ALTERNATIVE DISPUTE RESOLUTION REGULATIONS 2015**

DEPARTMENT FOR BUSINESS, INNOVATION AND SKILLS

GUIDANCE FOR BUSINESS

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# 1. Introduction

1. Confident consumers are vital to building a stronger economy. High levels of consumer confidence encourage consumers to experiment and shop around which supports new businesses, boosts competition and creates growth.
2. When consumers find that goods or services they have purchased are not up to scratch, most businesses are keen to rectify any problems as part of their commitment to good service and to preserve their reputation. But misunderstandings happen and parties cannot always agree. Perhaps the circumstances surrounding the problem are disputed, or perhaps there is a misunderstanding about rights and responsibilities of each party. Whatever the dispute, access to an effective 'alternative dispute resolution' (ADR) mechanism can prove invaluable.

## What is ADR?

3. ADR stands for 'alternative dispute resolution'. This is a process where an independent and impartial third party considers the evidence in a dispute and makes a decision, offers a view or helps the parties to come to an agreement. ADR is so called because it offers an *alternative* to pursuing a case through the courts, a process which is likely to be more protracted and costly.

## The ADR Regulations 2015 - What key changes will these new Regulations introduce for business?

- *Access to ADR for all traders*
4. From 9 July 2015, all traders selling to consumers will have access to a certified provider of ADR services in their sector. Certification of ADR providers ensures quality and consistency of standards across ADR services. For some traders, especially those in regulated sectors, this will mean little change as they are obliged by existing legislation to use ADR for their consumer disputes. For other traders, availability of ADR will be more noticeable. ADR will often be free to consumers though under the Regulations ADR providers retain the flexibility to charge consumers a 'nominal fee'.
    - *Information requirements on all traders*
  5. The Regulations **do not** make use of ADR mandatory for traders although where sector specific requirements already exist for traders to use ADR (such as financial services, energy and communications) these requirements will remain. However,

**from 01 October 2015 all traders selling to consumers, whether or not they intend to use ADR, will need to:**

- a. Give the consumer details of a certified ADR provider AND
  - b. Inform the consumer about whether they intend to use that provider
6. This document sets out the aim of the ADR Regulations 2015 and what actions businesses will need to take when the Regulations come into force. Links to the Regulations and further contact details, including a link to a list of certified ADR providers, can be found at the end of this guidance.

## 2. Scope

7. The requirements of the Regulations apply to all businesses in the UK which sell goods, services or digital content to consumers, with the exception of those businesses classified as 'health professionals' under the EU Directive 2011/24/EU, which are providing health services. Public sector providers of services are outside the scope of the Regulations unless the consumer is paying the public sector provider directly for those services. Contracts for the sale of property, and tenancy agreements are outside the scope of the Regulations as property is not legally viewed as being a good or a service. The Regulations do not apply to business to business or to consumer to consumer transactions.

## 3. Using ADR In Your Business

### Types of ADR

8. ADR is a process that enables disputes between a consumer and business to be settled via an independent and impartial mechanism outside the court system. There are different forms of ADR.

#### **Adjudication and arbitration**

9. Adjudication and arbitration use an impartial outsider to decide between two claims. The adjudicator or arbitrator acts like a judge, making a firm decision on a case. The two sides of the dispute will normally agree in advance whether the adjudicator/ arbitrator's decision will be legally binding (so they have to go along with the decision) or not (so they can still decide to go to a court or tribunal).

## Conciliation and mediation

10. With conciliation and mediation, the ADR provider will facilitate an agreement, encouraging the parties involved to come to a mutually acceptable compromise. If both parties agree to observe the outcome, their signature to the agreement makes it legally binding and can be enforced in the same way as adjudicated/arbitrated decisions.
11. The Regulations do not mandate the form of ADR which the trader must use and certified ADR providers can offer any form of ADR scheme. In the UK, there are already several large and well established ADR providers in regulated sectors, such as financial services, energy and communications. In other sectors, some businesses voluntarily participate in ADR schemes as part of their commitment to customer care, and some trade associations offer ADR schemes as part of their membership benefits.

## Are all ADR providers certified?

12. No. Our Regulations do not oblige ADR providers to become certified. However we expect ADR providers in regulated sectors will be certified and that many other ADR providers would also seek certification. Traders will, in all cases, need to signpost to a certified ADR provider and certification therefore brings marketing opportunities for ADR providers as well as clarity for their customers.
13. Certified ADR providers will have been certified by their relevant Competent Authority. The Competent Authority for sectors such as energy, financial services and communications will be the statutory regulator for that sector. For all other sectors the Competent Authority is the Secretary of State for Business, Innovation & Skills who has delegated Competent Authority powers to CTSI (Chartered Trading Standards Institute). Any ADR provider which covers consumer to business contractual disputes regarding the sale of goods or provision of services may apply for certification. In order to become certified the ADR provider must demonstrate to its Competent Authority that it meets the standards of expertise and impartiality as set out in the Regulations. A list of certified ADR providers, and the sectors they cover, can be found at: <http://www.tradingstandards.uk/ADRbodies>.

## Why use ADR?

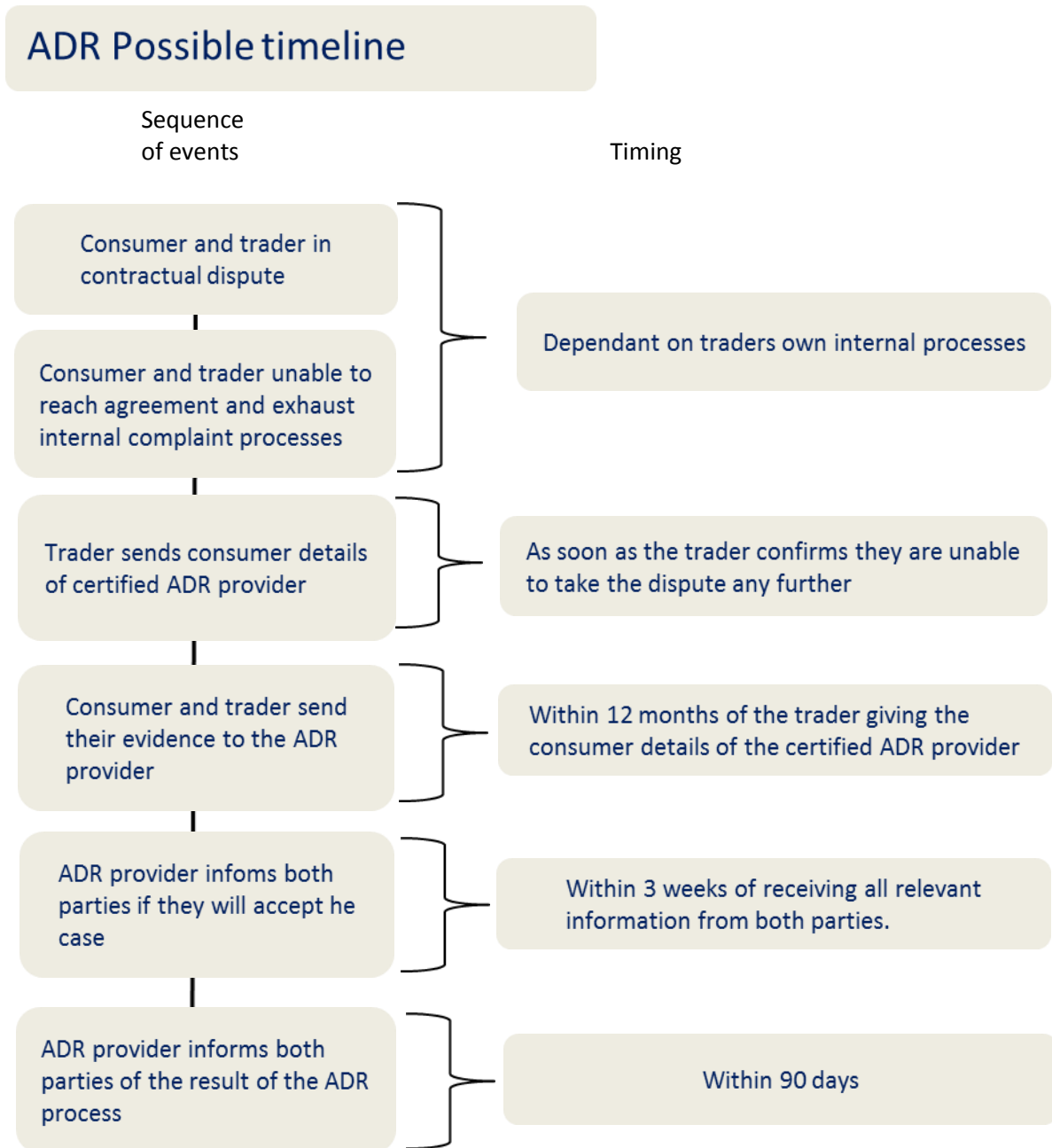
14. There are clear benefits for businesses which use ADR:
  - Consumers with complaints must allow the trader the chance to resolve the issue directly with the consumer before approaching an ADR body. Only once the trader has explored all avenues and reached an impasse with the consumer can the ADR

process commence. ADR therefore helps maintain good customer relations and avoids deadlocks and potential reputational damage.

- Use of ADR demonstrates clear commitment to high quality customer service, and signals to the consumer that the trader places a high value on customer satisfaction.
- Disputes can take up valuable time and resources, in particular where a customer remains unhappy or does not understand their rights and responsibilities. Referring such issues to an ADR provider can free up customer care services and other resources to focus on more productive areas.
- Responding to a court driven process is likely to be slower and more costly than resolving through ADR. The outcome of ADR procedures are often confidential, whereas court outcomes are always public
- Consumer complaints which are not upheld or are rejected as spurious do not affect the reputation of the trader since the result is the outcome of an impartial third party
- Certified ADR processes help ensure fair and impartial outcomes. Although not a requirement of certification, ADR providers often offer feedback as part of the service they provide to their business customers. So, for example, where an ADR outcome supports a customer complaint, the process and decision can offer valuable insights and information to the trader on customer behaviours and expectations, on how to improve on its services in the future, spot trends and enhance its offer in a competitive market.
- As ADR becomes more widespread, trader participation in ADR will become an increasingly important factor for consumers when considering their buying choices.



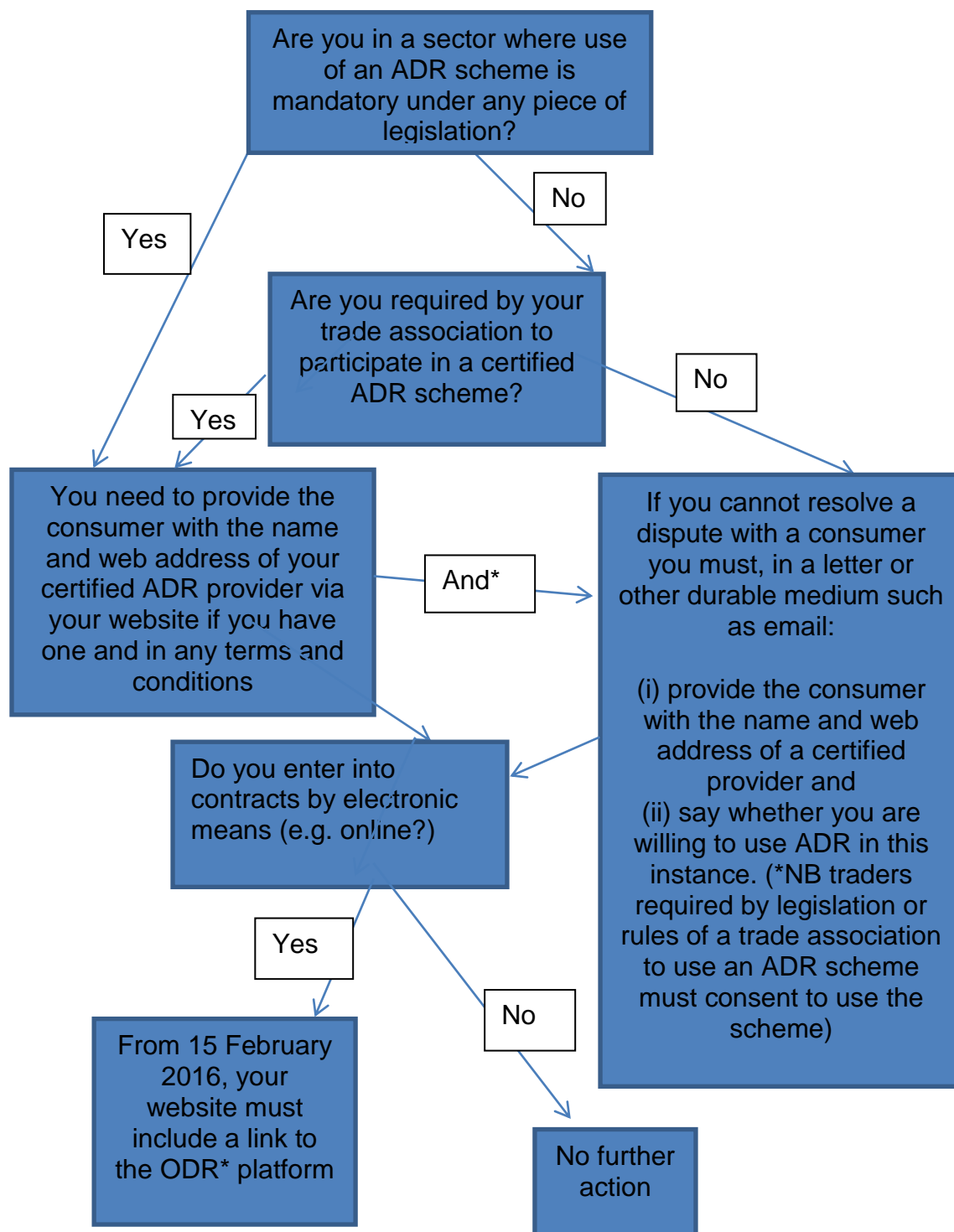
## Possible ADR timeline



## Obligation on all traders: providing information to your customers on dispute resolution

15. Unless your sector specific regulator requires you to use ADR, or even to use a particular ADR provider you have a choice about whether you **use** ADR where you cannot resolve a complaint internally. However, all traders, irrespective of whether you are already obliged to use ADR, or intend to use ADR or do not intend to use ADR, must signpost your customer to an appropriate certified ADR provider, and tell them whether or not you intend to use that provider. *When* you provide that information will depend on whether you are part of a mandatory scheme (i.e. are obliged by existing legislation, or by membership of a trade or professional association to use ADR). The following flowchart sets out when and how you will need to provide the information.

## Flowchart on signposting consumers to ADR schemes



A list of certified providers, by sector, can be found at: <http://www.tradingstandards.uk/ADRbodies>

\*See section 4. for more details

## Stages in ADR process

16. If you are unable to resolve a complaint in-house, have advised the consumer of this and have agreed to use the ADR services of the certified provider:

- The consumer will raise the dispute with the certified ADR provider. Consumers will have at least a year from when they are advised that the trader cannot resolve the dispute internally to go to ADR. Beyond a year acceptance of the complaint is at the discretion of the ADR provider.
- The certified ADR provider will contact you and ask for any further evidence and details to be supplied. All ADR schemes have their own administrative processes for handling disputes and will advise you of their particular processes.
- The certified ADR provider has up to 3 weeks from when it receives full submissions from both trader and consumer in which to decide whether to accept the case based on the evidence submitted and advise you and the consumer accordingly. (There are a limited set of grounds under which an ADR provider may refuse to handle a case. See FAQs below)
- The provider will have 90 days from receiving the completed case file to produce a decision or recommendation. In the case of mediation, they will have 90 days in which to facilitate agreement between the parties. Only in the case of more complex disputes can completion extend beyond 90 days.
- Whether the decision is binding on one or both parties will depend on the terms of the ADR which will have been made clear to both parties at the beginning of the process.
- Sometimes, if a consumer is not happy with the outcome of the ADR process, the consumer may wish to pursue the matter through the courts (although the consumer's ability to do this may be limited if the chosen ADR procedure is through arbitration). In order to ensure that the consumer is not timed out of the right to go to court, the current law, which states that a consumer must have initiated court proceedings within 6 years of becoming aware of the relevant breach of contract, will be amended to provide that where an ADR process is ongoing when the 6 year court deadline is reached, that court deadline is extended by 2 months after the ADR proceedings have concluded.

## 4. The ODR Platform

### What is the ODR platform?

17. ODR stands for 'online dispute resolution'. It is commonly used to refer to the facilitation of dispute resolution using online technology.
18. From 15 February 2016, the European Commission will set up an online platform (the ODR platform). This will allow consumers who have a complaint about a product or service *bought online* to submit the complaint via an online complaint form to a trader based in another European country. In cross-border disputes, consumers needing assistance in filling out the form and traders receiving a complaint will be able to get information and assistance from advisers based in their own country, who will work with their European counterparts to facilitate communication between the parties involved in the dispute.
19. From 15 February 2016 all online traders and online marketplaces, must include a link on their website to the ODR platform, irrespective of whether you currently market your products or services to consumers in other member states. For those committed to an ADR scheme, this will be in addition to giving details, on your website, of the certified ADR provider serving your sector.
20. The ODR platform will be of especial benefit in cross-border cases, as it [offers a translation function](#). We expect to receive further details on how the ODR platform will work nearer the time and this guidance will be updated to reflect any additional developments.
21. For more detailed guidance on the ODR platform, please refer to the [Annex](#) at the back of this document.

## 5. Definitions

### What does ADR mean?

22. ADR stands for 'alternative dispute resolution'. This is a process whereby a third party who is independent and impartial considers the evidence in a dispute and makes a decision, offers a view or, alternatively, helps the parties to come to an agreement. ADR is so called because it offers an alternative to pursuing a case through the courts, a process which is likely to be more protracted and costly.

### What is certified ADR?

23. Certified ADR is ADR practised by an ADR provider who has been certified by a relevant Competent Authority under the Regulations to meet criteria with regard to skills, independence and impartiality. Traders can be confident that certified providers of ADR services are free of bias and will look at each case on its merits. A list of certified providers can be found on the CTSI website: <http://www.tradingstandards.uk/ADRbodies>

### What is meant by a ‘trade association’?

24. Trade associations are representative bodies of groups of traders. They are not prohibited from offering ADR services. However, should they wish to be a certified provider then, like all applicants for certification, they will need to show that they meet the standards of impartiality, expertise and independence set out in the Regulations. They could also, of course, engage the services of a certified ADR provider, to provide ADR services as a benefit of membership.

### What is a ‘durable medium’?

25. ‘Durable medium’ means paper or email, or any other medium that allows information to be addressed personally to the recipient, enables the recipient to store the information in a way accessible for future reference for a period that is long enough for the purposes of the information and allows the unchanged reproduction for the information stored.

### How do I know when the ADR process has started and finished?

26. The ADR provider will contact all parties to confirm when the 90 day process has started and when it has finished.

## 5. Case Studies

### Case Study 1

A trader, Islandsinthekitchen Ltd, supplies and installs fitted kitchens. The trader is part of an ADR scheme through its trade association membership. Therefore, the trader’s terms and conditions carry the name and contact details of the ADR provider.

Islandsinthekitchen supplies and fits a kitchen for Mr Benn. Three months later Mr Benn complains that the doors have fallen off some of the units and that the work was therefore substandard. The trader inspects the kitchen and feels that doors have fallen off through mishandling and not because of the quality of fitting. Mr Benn wants a part refund. Islandsinthekitchen does not agree. Unable to reach a resolution, Islandsinthekitchen writes to Mr Benn, saying they are not willing to offer a refund but are obliged (due to their membership of the trade association) to use ADR, if Mr Benn so wishes, and give Mr Benn details of the certified ADR provider who serves their trade association. The consumer can then approach the certified ADR provider with details of their grievance. (Generally they must do so within year of Islandsinthekitchen having told the consumer that it is willing to use ADR). The certified ADR provider will then seek evidence from Islandsinthekitchen and the consumer and will facilitate agreement, offer a view or make a decision, generally within 90 days of receiving all relevant information.

Depending on the nature of ADR, the decision may be enforceable in court.

## Case Study 2

'Luxcards' is an online seller of handmade cards for all occasions. It has not chosen to be a member of any ADR scheme.

Luxcards sells Ms Fortune 100 wedding invitations – handmade to the customer's specification.

Ms Fortune complains that the wedding invitations showed the wrong address for the wedding venue and that, although she had sent Luxcards the wrong address originally, she had called them the following week to correct the address.

Luxcards and Ms Fortune were not able to come to agreement and Luxcards, as a small retailer, was concerned about both the loss of income and reputational damage.

Luxcards wrote to Ms Fortune stating they were not prepared to agree to the full refund demanded by Ms Fortune. They consulted the list of certified ADR providers in their sector and contacted them to ascertain the process, possible outcomes and the cost of case handling. In the letter to Ms Fortune, Luxcards gave the name of the certified provider, and, having decided to use the ADR services, advised Ms Fortune of the fact.

If Ms Fortune proceeds to submit her complaint to the certified ADR provider, the certified provider will contact Luxcards to establish a contract for ADR services (on a single case/ad hoc basis or alternatively for a defined period depending on the preference of the trader and the terms generally offered by that ADR provider).

The ADR provider, having gathered evidence from both parties, facilitated an agreement, offered a view or made a decision within 90 days of receipt of all relevant information.

Depending on the nature of ADR, the decision may be enforceable in court.

## Case Study 2a – From 15 February 2016

In addition to the steps outlined above, from 15 February 2016, Luxcards' website will need to carry a link to the ODR platform. Ms Fortune will not need this as she will have details to go direct to the certified ADR provider supplied by Luxcards in its letter to her. However, for buyers elsewhere in the European Union, the platform can provide an easier conduit to the trader and ultimately to a certified ADR provider should Luxcards want to use ADR.

## Case Study 3

Mr Fish buys a high quality scanner/printer from Future Electricals Ltd. After 13 months the scanner function stops working. Mr Fish approaches Future Electricals who say there is nothing they can do. In accordance with the Regulations they inform Mr Fish of a certified provider of ADR services in the consumer retail sector but state that they are not willing to engage in ADR.

Mr Fish will not, therefore, be entitled to ADR services but can take the small claims court

route.

## 6. Frequently Asked Questions

### The new requirements

#### **I am a business. What do I have to do?**

The Regulations **do not** oblige traders to use ADR. However, even if you do not intend to use ADR:

- If you sell goods, services or digital content to consumers you must:
  - provide the consumer with the name and contact details of a certified ADR provider offering services in your sector if you find you are unable to resolve the consumer's complaint directly with the consumer AND
  - inform the consumer whether or not you intend to use ADR (although, if you are required by your regulatory regime or trade association to use ADR, then you must agree to use ADR).

#### **Both these requirements apply even if you do not intend to use the ADR service.**

- If you are in a regulated sector where ADR use is mandatory, or if you are committed to using ADR because of the terms of your trade association or professional membership, you will also need to put these details on your website if you have one, and in your terms and conditions.

#### **When will the Regulations' requirements come into force?**

- The information requirements apply from 01 October 2015. This means that for disputes you are unable to sort out after this date – even where the contract was entered into and the dispute arose before 01 October – you will need to provide the consumer with the name and details of a certified ADR provider in your final response letter.
- The obligation to include a link to the ODR platform for online sellers and platforms for sellers will take effect on 15 February 2016 and we will update guidance nearer the time.

#### **Does the information requirement affect sales made before October 2015?**

- The information requirements apply to sales contracted before 01 October 2015, if you are writing to the consumer telling them you are unable to resolve their dispute after 01 October 2015.



**I sell online. I've heard that I have to have a link to an ODR platform on my website. Is that right?**

- Yes, from 15 February 2016, online traders and online marketplaces (e.g. eBay and Amazon marketplace), as well as traders entering into contracts by other electronic means, must have a link to the 'ODR platform' which will allow consumers to submit complaints to the ODR platform, which will then forward the complaint to the relevant ADR entity.
- This is **in addition to** the requirement, in effect from October 2015, on traders who are obliged to use ADR, to provide the name and website address of the ADR entity on the trader's website and in its general terms and conditions.

**I don't currently use ADR. Will these Regulations affect me?**

- Yes. The Regulations do not make the use of ADR mandatory, but they do oblige you tell a consumer about a certified ADR provider who serves your sector and whether you will use them. If you operate in a regulated sector, or are a member of a trade association, you may be obliged under your regulatory regime or trade association rules to use ADR.
- As ADR becomes more commonly used, consumers will increasingly search out ADR avenues where disputes remain unresolved. It is possible that, even if you have told the consumer that you are not interested in using ADR, the consumer contacts the certified provider with details of the dispute. In this event you are not under any obligation to respond or participate although of course you are free to do so.

**What happens if I ignore the information requirements?**

- If you ignore the requirements you could be liable to Trading Standards civil enforcement action.
- This could result in an order from the court for you to comply with the requirements of the Regulations.
- Failure to comply with a court order could result in an unlimited fine, or up to a maximum of 2 years imprisonment.

**Do certified ADR schemes represent the consumer?**

- No. ADR schemes are not advocates for consumers, or indeed for business. ADR schemes are independent and do not represent the interests of any party. Indeed ADR schemes cannot achieve certification unless they meet strict criteria for impartiality and independence. The ADR provider will use their skill and expertise in mediating a case or, for those who are arbitrators/adjudicators, in judging each case on its merits, assessing the evidence presented.

## Scope

### **What kind of disputes do these ADR requirements cover?**

- They cover disputes in relation to terms in contracts for goods and services (including digital content) bought by consumers from traders. Problems with delivery, faulty goods, poor service, hidden costs, unclear contract terms leading to misunderstandings over what or how a product is supplied would all be examples of the kind of disputes covered.
- Business-to-business and consumer-to-consumer contracts are not covered by these Regulations, nor are disputes which do not relate to terms in a contract (e.g. abusive behaviour or discrimination).

### **I run a small business will this apply to me?**

- Yes, the requirements apply to all businesses selling to consumers.

### **I trade in Scotland/NI/Wales, does this affect me?**

- Yes. The Regulations cover the whole of the UK.

### **I only sell to other businesses, does this affect me?**

- No. The ADR Regulations only cover contractual disputes between consumers and business. Business-to-business contracts are not covered.

### **I'm a landlord. Does this affect me?**

- Lease and tenancy agreements are not within the scope of the Regulations as they only apply to contracts between a trader and a consumer for the sale or supply of goods or services. Legally, a lease/tenancy agreement is a contract regarding the right to use land, and is therefore not a contract for the sale or supply of goods or services.
- However, if there is a contract to provide maintenance services (other than a service to repair the structure or exterior of the property), then that contract is within scope (as it is to do with a service). Similarly if the lease/tenancy agreement provides for any additional services to be provided by a landlord (other than a service to repair the structure or exterior of the property) then these disputes regarding these additional services would fall within the scope of the Directive.
- Disputes regarding deposits and use of the tenancy deposit scheme are also not within scope.

## ADR schemes

### **I am an ADR provider. Do I have to become certified to continue offering ADR services?**

- No. ADR providers are not obliged to obtain certification in order to continue offering their services. However, since businesses will be obliged to give details of a **certified** ADR provider to the consumer, even where they intend to use you, you may, as a scheme provider, wish to consider applying for certification both to reassure the consumer of the quality of the scheme and to simplify messaging.

### **I use an ADR scheme but it's not certified. Can I still use it?**

- Yes. There is no obligation to use ADR or, if you do use ADR, to use a certified scheme. You can, therefore, continue to use your existing scheme. However, as you will still be obliged to give details of a **certified** ADR provider to the consumer, even where you do not intend to use that certified scheme, your scheme provider may wish to consider the benefits of obtaining certification both to reassure the consumer of the quality of the scheme and to simplify messaging.

### **Where can I find certified providers in my sector?**

- Details of certified ADR providers can be obtained from your trade association, from the Chartered Trading Standards Institute (CTSI) website [<http://www.tradingstandards.uk/ADRbodies>].

### **What if I can't see a certified provider in my sector?**

- The CTSI website [<http://www.tradingstandards.uk/ADRbodies>] will list all certified ADR providers. ADR providers are in the process of being certified for all sectors and we would encourage all business and trade associations to carry a link to the list on the CTSI site.

### **Can I choose which ADR provider to use?**

- In sectors where ADR use is mandatory under statute (e.g. financial and energy sectors), or by virtue of your membership of a Trade or Professional Association, the statute or membership rules may stipulate which certified provider you will use. For traders outside those sectors, you will be able to use any ADR scheme of your choosing.
- However, even if you use a non-certified ADR provider, you must give the consumer details of a certified ADR provider. Whether you have a choice of certified providers will

depend on the number of certified providers serving your sector.

### **Can an ADR provider consider a complaint even if I have not agreed to use it?**

- Yes, there is nothing to stop a consumer approaching an ADR provider with a complaint even if you have not agreed to use it. However, if you do not wish to participate in the ADR proceedings, the ADR provider cannot require you to do so.

### **My trade association deals with any complaints I get. Do I have to do anything?**

- Your trade association can carry on dealing with any complaints that you receive from consumers but if you wish to refer consumers solely to them for ADR they will need to seek certification from a competent authority. If they do not gain certification you will need to provide the details of a certified ADR body – but you are free to tell the consumer that you do not intend to use the certified ADR body but instead will use your trade association scheme.

### **The certified ADR provider I want to use won't take my case. What happens now?**

- Should a dispute be brought before an ADR provider in an area it does not normally deal with, the ADR provider is entitled to refuse to deal with it. You should, therefore, ensure that the provider you wish to use offers ADR services for your sector.
- Other grounds for an ADR body to decline to deal with a complaint are that:
  1. The consumer did not attempt to resolve the complaint with the trader first;
  2. The dispute is frivolous or vexatious;
  3. The dispute is being or has previously been considered by another ADR entity or by a court;
  4. The value of the claim is above or below a pre-specified amount;
  5. The consumer has not submitted the complaint to the ADR provider within a pre-specified time limit (which should be not less than 1 year from when you notified the consumer that you could not settle the dispute); or
  6. Dealing with such a type of dispute would interfere with the effective operation of the ADR provider.
- The certified ADR provider must let the parties know, at the latest, within 3 weeks of receiving the complete submissions from the consumer and trader if it intends to reject dealing with the dispute.

### **How do I know if the ADR provider has the skills to deal with my consumer complaints?**

- The Competent Authority responsible for certifying the ADR provider will have to ensure that the ADR provider has the skills and experience required to offer ADR.

## Participation in ADR

### I deal with all complaints in-house. Will this affect me?

- If you are committed to using ADR (either through your sector Regulations or as a condition of your trade association or professional membership) you will need to include details of a certified ADR provider on any website and in any terms and conditions, even if you resolve all complaints in-house.
- If you are not committed to using ADR then, in the event that you successfully resolve every consumer complaint in-house, you will not need to signpost a consumer to a certified ADR provider. However, if there is a complaint that you cannot resolve in-house, in such a case you would need to give the consumer details of a certified ADR provider.

### Why should I use a certified ADR provider?

- Although you must give details of a certified ADR provider (and whether you intend to use that provider) use of the certified provider, or indeed any provider, is not mandatory under the Regulations (but you may be obliged by your particular sector's regulatory regime or trade association rules to use ADR). However, your customers may prefer the reassurance of both parties using a certified provider and your business reputation may also be enhanced by doing so.

### I'd like to sort the disputes myself. How do I stop the consumer going to ADR?

- You cannot stop a consumer from contacting a certified ADR provider. However, if you are not obliged by any regulatory regime or trade association to use ADR, you can refuse to use ADR in the case of that particular consumer. Furthermore, many certified ADR providers will have a rule saying that they will refuse to deal with any consumer complaint where the consumer has not first contacted the trader with a view of settling the matter directly with the trader.

### How can ADR benefit my business?

- Consumers will be less likely to bring court actions if they are in dispute with your business.
- The ADR process may be less time intensive than a court process.
- A commitment to ADR shows a commitment to strong customer service.
- The availability of ADR could mean that a customer is more likely to trust your business and may distinguish you from competitors who do not use ADR.
- Some ADR providers provide additional services e.g. data on complaint trends which can be highly valuable for future business planning.

**How long does the ADR process take?**

- ADR should be completed within 90 calendar days of the ADR provider receiving all the documentation relating to the case, including any expert reports. Your ADR provider will confirm when the complaint has reached this stage.
- However, if the complaint is complex then this could take longer. Your ADR provider will let you know if this is the case.

**I sell solar panels which, depending on the complaint, could be covered by different ADR providers. Do I need to signpost to all of them?**

- Yes. If you sell financial services (e.g. offer a payment plan) then, under financial services legislation you are obliged to engage in ADR for such services. As such you will need to place details of the Financial Ombudsman Service (FOS) on your website and in your terms and conditions.
- If then, having installed the panels, a complaint arises that, for example, the installers damaged property, and you cannot come to an agreement with the consumer regarding liability, your final letter will need to inform them of a relevant certified ADR provider who deals with such complaints.

**ADR rulings and recommendations****Am I obliged to accept the ADR provider's decision – i.e. is the outcome binding?**

- This would depend on the scheme rules of the ADR provider. Most statutory schemes bind the trader to the ADR outcome. However, consumers are not bound unless they agree to be so at the start of the ADR process. Whether an outcome is binding should be made clear to you by the ADR provider before you agree to participate in the process.

**I'm worried about confidentiality. Will details about my business and the outcome of any decisions be made public as a result of engaging in an ADR procedure?**

- The ADR process is carried out in private, unlike with court proceedings. ADR providers are not prevented from publishing their judgements, including the names of businesses, but many do not. You may, therefore, want to look at the practice that a particular ADR provider adopts, before you sign up, if this is a particular concern for you. All ADR providers and competent authorities are required to share information about trends in complaints and their outcomes, in relevant sectors, with national enforcement bodies and competent authority. However, details regarding your business and specific cases are not part of that obligation.

## Consumer obligations

### **A customer owes me money. Can I use the certified ADR provider to pursue the claim?**

- The Regulations relate to complaints raised by consumers. If you are in dispute over the money owed, and provided you both agree to the use of ADR, an ADR provider could look at such a claim.

### **Does the consumer have to use ADR?**

- No. Neither the consumer nor the trader is required to use ADR unless the trader operates in a regulated sector such as financial services or telecoms, or is committed to use ADR as a condition of membership of a trader or professional body.

### **Will using ADR stop the consumer taking me to court?**

- The ADR process is intended to be more cost effective and quicker than legal proceedings. And the impartial process should reassure consumers that their case has been assessed fairly, greatly reducing the likelihood of further action. However, consumers will generally still have recourse to legal action at the end of the ADR process.
- The Limitation Act will be amended to provide that where an ADR process is ongoing when the 6 year statutory period for bringing a contractual claim to court passes, the statutory period is extended by a further two months after the ADR process is completed.

### **Can the consumer choose which ADR provider to use?**

- Unless mandated by sector specific legislation, choice of the ADR provider rests with the trader. A consumer can of course approach another provider but you will be under no obligation to respond or engage with that provider should they take up the consumer's complaint.

### **Does the consumer have to pay for ADR?**

- In most cases ADR will be free to the consumer although ADR providers are permitted to charge the consumer a nominal fee.

**Apart from the information I give, how else can consumers get information on ADR?**

- Citizens Advice will be extending their existing consumer advice service to provide specific advice and assistance on accessing ADR.
- They will help consumers understand the UK ADR landscape and the law on ADR and provide them with practical assistance in making complaints. Citizens Advice will facilitate communication between UK consumers and UK traders, about domestic (including online) complaints and will inform traders of their information and sign-posting obligations.

**Costs and fees****What will it cost my business?**

- ADR can be cheaper and quicker than going to court and both business and the consumer should usually seek to settle disputes via ADR.
- Businesses may have to pay a fee to the ADR provider but this will depend on the provider of the ADR scheme. It may be charged on a case-by-case basis or through annual membership or be part of your trade association subscription. Some may offer case handling for the first few cases for free, others may band charges according to turnover. In the vast majority of cases ADR will be free for the consumer although ADR providers are permitted to charge consumers a nominal fee.
- The Government expects businesses to incur a small cost through the requirement that they signpost consumers to a certified ADR provider.  
As explained elsewhere in this guidance, ADR also brings direct and indirect benefits which can often outweigh the costs of participation.

**Do I get my fee back if I win my dispute under ADR?**

- That depends on the rules of the relevant ADR scheme although the fee is likely to be for running the ADR process rather be based on the nature of the decision itself. Each scheme will have its own rules on fees.

**How long does the ADR process take?**

- ADR should be completed within 90 calendar days of the ADR provider receiving the information relating to the dispute, including expert reports. Your ADR provider will confirm when the complaint has reached this stage.
- However, if the complaint is complex then this could take longer. Your ADR provider will let you know if this is the case.



## Contacts and further information

### Who should I contact if, having read this guidance, I still need more information?

- For further guidance for business please visit the CTSI Business Companion website <http://www.businesscompanion.info/ADR>.
- Alternatively you may wish to contact the Business Support helpline. Contact details can be found at <https://www.gov.uk/business-support-helpline>
- Your own trade association may also be providing guidance and information.
- The Regulations relating to ADR - the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 and the Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015) - can be found at: [http://www.legislation.gov.uk/uksi/2015/542/pdfs/uksi\\_20150542\\_en.pdf](http://www.legislation.gov.uk/uksi/2015/542/pdfs/uksi_20150542_en.pdf) and [http://www.legislation.gov.uk/uksi/2015/1392/pdfs/uksi\\_20151392\\_en.pdf](http://www.legislation.gov.uk/uksi/2015/1392/pdfs/uksi_20151392_en.pdf)
- A list of certified providers can be found at: <http://www.tradingstandards.uk/ADRbodies>

## Annex - ODR Guidance

### What is ODR?

ODR stands for 'online dispute resolution'. It is commonly used to refer to the facilitation of dispute resolution using online technology.

Consumers increasingly make purchases online and an increasing number of traders sell online. Consumers and traders should feel confident in carrying out transactions online and the availability of reliable and efficient online dispute resolution (ODR) can help achieve this goal.

### What is the ODR platform?

From 15 February 2016<sup>1</sup>, the European Commission will set up an online platform called the ODR platform as part of their ODR Regulation<sup>2</sup>. This will allow consumers who have a complaint about a product or service bought online to submit the complaint via the platform to a trader based in another member state.

The ODR platform is one form of ODR, and it is not intended to replace existing online systems that already exist (such as online complaint forms run by individual schemes). It is being set up to help fill any gaps in coverage, and increase consumer confidence in cross-border purchases. Unlike other forms of ODR, the platform will facilitate resolution of the dispute rather than actually resolve it. Complaints submitted to the platform will be dealt with by approved alternative dispute resolution (ADR) providers. The ODR platform will also offer a translation function to help facilitate cross-border disputes.

The European Commission is devoting particular care to ensure that the ODR platform is user-friendly. Online support (including manuals and FAQs) is being built in to the platform to help achieve this.

Although the ODR platform is being set up to increase consumer confidence in cross-border purchases, it can also be used to facilitate ADR between consumers and businesses in the same member state. Traders may prefer to signpost consumers in the same member state directly to their approved ADR provider in the first instance (if they already have one) if they believe it would be a simpler route to attempt to settle the dispute.

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<sup>1</sup> The platform was originally due to be launched on 9 January 2016 but the European Commission made a decision to delay the launch by 6 weeks as a number of Member States would not be ready for the original launch date.

<sup>2</sup> Transposed into UK law as part of the following ADR Regulations. The ODR Regulations start on pg.4.

[http://www.legislation.gov.uk/ukxi/2015/1392/pdfs/ukxi\\_20151392\\_en.pdf](http://www.legislation.gov.uk/ukxi/2015/1392/pdfs/ukxi_20151392_en.pdf)

## What are traders required to do?

From 15 February 2016 all online traders who provide goods or services to consumers, including online marketplaces, must provide consumers with the following information:

- a link on their website to the ODR platform, irrespective of whether they currently market their products or services to consumers in other member states.
- an email addresses on their website so that consumers have a first contact point. This could be the email address of an individual or a shared mailbox that has been set up to deal with complaints

The link to the ODR platform is as follows: <http://ec.europa.eu/odr>.

The ODR Regulations state that the link to the ODR platform should be easily accessible for consumers. A logical place would be alongside existing complaints procedure information on a trader's website.

Traders who are required to use an approved ADR provider either by legislation or through membership of a trade association, must provide the information above in addition to giving details, on their website, of the approved ADR provider that they are obliged to use.

Traders who are required to use an approved ADR provider will also have to provide some additional information to consumers:

- a link to the ODR platform in any emails sent to consumers offering goods or services<sup>3</sup> as well as making consumers aware of the possibility of using the ODR platform for resolving their disputes. It might be helpful for this information to follow contact information for your obligatory approved ADR provider if you would prefer the consumer to send the complaint directly to the scheme.
- this information must also be provided in the general terms and conditions applicable to online sales and service contracts – again in addition to direct contact information for your obligatory approved ADR provider.

The information requirements above should not replace any information traders already have on their website about ADR providers they already use (through choice or obligation), but rather sit alongside it.

Please also refer to the flowchart at the back of this guidance:

- ODR Signposting Flowchart for Traders – pg. 37

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<sup>3</sup> Offers made using other digital means such as social media marketing do not require inclusion of a link to the ODR platform.

## Scope of the ODR Regulations

The requirements of the ODR Regulations apply to all online traders in the UK which sell goods, services or digital content to consumers. This includes omnichannel businesses who operate offline as well as online.

An online trader is defined as a trader who intends to enter into online sales contracts or online service contracts with consumers. This is where the trader has offered goods or services on a website or by other electronic means, and the consumer has ordered them on that website or by other electronic means.

Electronic means includes mediums such as social media, email, telephone, text messages and faxes. Therefore if a trader were to, for example, make a consumer an offer via email and the consumer was to accept this offer via email, the trader would be considered an online trader. This trader would therefore have to carry a link on their website even if they were not trading on their website.<sup>4</sup>

## How will the ODR platform work?

Consumers will submit complaints using an electronic complaint form. Once all the necessary sections of the complaint form have been completed the ODR platform will process the submission and transmit a message to the trader that the complaint is being made against.

This message will include details of approved ADR providers that are competent to deal with the complaint. The trader then has 10 days to state whether they are either obliged to use a particular approved ADR provider, or if they are not obliged, if they are willing to use one of the approved ADR providers detailed in the message. If the trader is unwilling to use an approved ADR provider then the ODR platform will not be able to process the complaint any further. Once the trader has responded to this message the ODR platform will then send a similar message to the consumer.

The message to the consumer will inform them either of the details of the approved ADR provider that the trader is obliged to use, or if they are not obliged to use a particular provider, details of an approved ADR provider that they are willing to use. The consumer will then have 10 days to agree an approved ADR provider with the trader using the ODR platform.

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<sup>4</sup> If a trader was trading using 'other electronic means' but did not have a website, they would not be required to create a website so as to comply with the Regulations.

Details of the approved ADR provider will include contact details, fees (if applicable), languages used, average length of time that the ADR procedure takes, whether the ADR decision will be binding or non-binding, and the grounds on which the approved ADR provider may refuse to accept a complaint.

Both the trader and the consumer will have to agree on an approved ADR provider through the ODR platform before the complaint will be forwarded to that provider. This will be made clear in the messages from the ODR platform.

ODR contact point details will also be provided in the messages from the ODR platform to the trader and consumer. ODR contact points are designated in each member state to provide support to consumer and traders that are using the ODR platform (see section 5 for more information on ODR contact points).

If the consumer and trader agree to use an approved ADR provider the ODR platform will transmit the complaint to that approved ADR provider who will then inform the parties whether or not they will deal with the dispute. If the approved ADR provider agrees to deal with the dispute then they must also inform the parties of their procedural rules and fees (if applicable).

If the approved ADR provider decides to reject the case, that case will be closed in the platform. The consumer would need to submit a new complaint form to the system if they want to try to agree on another approved ADR provider with the trader.

If after 30 days of submission of the complaint form to the ODR platform the consumer and the trader fail to agree on an approved ADR provider the complaint will not be processed further.

In the instance that a trader refuses to engage or an approved ADR provider cannot be agreed upon, the consumer will be directed by the ODR platform to their ODR contact point who can provide them with general information on other means of redress.

Please also refer to the following flowcharts at the back of this guidance:

- ODR process flowchart for traders – pg. 38
- Possible ODR timeline for traders – pg. 39

## ODR contact points

Each member state will have an ODR contact point which will host at least two ODR advisors. The Chartered Trading Standards Institute, who run the European Consumer Centre on behalf of the UK, has been designated as the UK's ODR contact point.<sup>5</sup>

ODR contact points will provide support to consumers and traders who have submitted complaints to the ODR platform, and can help facilitate communication between the parties involved, for example, they will:

- assist with the submission of complaints and relevant documentation;
- provide general information on consumer rights in their country;
- provide guidance on the functioning of the ODR platform;
- provide consumers and traders with explanations on procedures of ADR providers that have been identified as competent to deal with the complaint; and
- inform consumers or traders of other means of redress if a complaint is not successfully processed using the ODR platform.

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<sup>5</sup> UK European Consumer Centre contact details: Tel – 01268 886 690, email – [ecc@tsi.org.uk](mailto:ecc@tsi.org.uk)

## FAQs

### Requirements for traders

#### When will the ODR regulation come into effect?

- The ODR platform will go live on 15 February 2016. The requirements on businesses will come into effect on the same date.
- The ODR regulations outline a coming into force date of 9 January 2016 which was the original launch date. Due to a number of Member States not being ready for the original launch date the platform was delayed by six weeks to 15 February 2016. The requirements will not be enforced until the ODR platform has gone live on this revised date.

#### I am a business that sells goods or services online. What do I have to do?

- If you sell goods or services online you must:
  - Provide a link to the ODR platform on your website; and
  - Provide an email address on your website so that consumers have a first point of contact for resolving disputes. This could be the email address of an individual or a shared mailbox that has been set up to deal with complaints.
- If you are in a regulated sector where the use of ADR is mandatory, or if you are committed to using ADR because of the terms of your trade association or professional membership, then you must also:
  - Include a link to the ODR platform in any emails sent to the consumer offering goods or services; and
  - Include information about the ODR platform in the general terms and conditions applicable to online sales and service contracts.
- The information requirements above should not replace any information you have on your website about ADR providers you already use (through choice or obligation), but rather sit alongside it.

#### What will happen if I refuse to comply with the requirements of the ODR Regulations?

- If you ignore the requirements you could be liable to Trading Standards civil enforcement action. This could result in an order from the court for you to comply with the requirements of the Regulations. Failure to comply with a court order could result in an unlimited fine, or up to a maximum of 2 years imprisonment. However, in the first instance trading standards would seek to work with you to ensure you understood the ODR requirements.

## Scope of the requirements

**I have a website for my business but do not sell my good or service on my website or by other electronic means. Will the ODR Regulations affect me?**

- No. The ODR Regulations only apply to traders who sell their products or services online. If you are unable to resolve a complaint with a consumer you will still have to comply with the requirements of the ADR Regulations.

**I do not trade good or services on my website, however I do sell goods or services by other electronic means (e.g. I exchange contracts via emails). Do the ODR Regulations affect me?**

- Yes. You will have to comply with the requirements that have been explained in section 4 of this guidance.

**I do not have a website however I do sell goods or services by other electronic means (e.g. I exchange contracts via emails). Do the ODR Regulations affect me?**

- If you are in a regulated sector where the use of ADR is mandatory, or if you are committed to using ADR because of the terms of your trade association or professional membership:
  - Yes. You will have to include a link to the ODR platform in any emails sent to consumers offering goods or services; and
  - Include information about the ODR platform in the general terms and conditions applicable to online sales and service contracts.
  - You will not however have to create a website so as to carry a link to the ODR platform and provide an email address.
- If you are not obliged to use ADR as above:
  - No. You will not have to create a website so as to carry a link to the ODR platform and provide an email address.



## ODR platform processes

### I have used ODR services before, how does the ODR platform differ?

- The principal difference is that unlike many other forms of ODR, the platform will facilitate resolution of the dispute rather than resolve them. In addition, complaints submitted to the ODR platform will be dealt with by approved ADR providers. The facilitation service that is provided is user friendly, and free to traders, consumers and ADR providers. It also provides a translate function to aid with cross-border disputes.

### I sell goods and services online to consumers outside of the EU. Do they have access to the ODR platform?

- No. The ODR platform can only be used by consumers who buy goods or services in an EU Member State.

### Can the ODR platform be used by consumers to deal with complaints against business in the same member state as them?

- Yes. As well as facilitating cross-border disputes, the platform can also be used to facilitate dispute resolution between consumers and traders in the same member state. Trader may prefer to signpost consumers in the same member state directly to their approved ADR provider if they believe it would be a simpler route for the consumer.

### I sell my goods and services online but I am already signed up to an ADR scheme and provide details of this scheme on my website. Do I also have to provide information about the ODR platform?

- Yes. Information about the ODR platform has to be provided in addition to information you already communicate about any ADR scheme you are already signed up to.

### I am obliged to use an ADR provider that has not been approved by a competent authority. How will I be affected by the ODR Regulation?

- Only ADR providers that have been approved by a competent authority will be registered with the ODR platform. This means that if you are obliged to use an ADR provider that has not been approved, then they will not be suggested as a competent ADR provider by the ODR platform if a complaint is submitted against you. You will not be able to resolve the dispute through the ODR platform and you will have to signpost the consumer to the ADR provider that you are obliged to use in addition to your requirement to provide details of an approved ADR provider.

**I want to use an ADR provider that has not been approved.**

- Only ADR providers that have been approved by a competent authority will be registered with the ODR platform. Any ADR providers that have not been approved will not be suggested as a competent ADR provider by the ODR platform if a complaint is submitted against you. In general, it is recommended to use approved ADR providers as they will have been through an audit process that ensures they adhere to the criteria that is set out in the ADR Regulations. If you are not willing to use an approved ADR provider you should inform the consumer of this.

**What happens when a consumer or a trader fails to respond to a message within the 10 days outlined by the platform?**

- The ODR platform will send reminders to the parties. If the consumer and the trader fail to agree on an ADR entity within 30 days, the case will be closed on the ODR platform.

**What happens if I agree on an approved ADR provider with a consumer but the provider decides to reject the case?**

- The case would be closed on the system. If the consumer wanted to try and agree on another approved ADR provider they would have to submit a new complaint to the ODR platform.

## Case studies

### Case study 1

A clothing trader based in the UK, Duraclotches Ltd., sells outdoor activity clothing to countries across Europe online. They are not a member of any ADR scheme.

Duraclotches sells a rain jacket to a consumer in France, Ms. Rousseau. After having the rain jacket for 3 months, Ms Rousseau informs Duraclotches (via the email address listed on their website) that it has begun to split at the seam under the arm, and she wishes to send the jacket back and be provided with a replacement. Duraclotches believe that the deterioration of Ms. Rousseau's jacket is down to natural wear and tear and reply to her email saying that they will not provide her with a replacement.

Unhappy with this outcome, Ms. Rousseau decides to submit a complaint through the ODR platform using the link provided on Duraclotches website. After Ms Rousseau successfully completes all the necessary fields on the electronic complaint form, the ODR platform sends the complaint to Duraclotches along with details of ADR providers that are competent to resolve the dispute. The message also informs Duraclotches that they have 10 days to state whether they are willing to use any of the ADR providers that the ODR platform has suggested.

#### Case study 1 – outcome A

After reviewing the message from the ODR platform, Duraclotches decides that they are willing to use 3 out of the 5 ADR providers that have been suggested. They send a response to the message, after which Ms. Rousseau is informed by the ODR platform that Duraclotches are willing to use ADR services to settle the dispute, and informs her of the 3 ADR providers that Duraclotches have indicated that they are willing to use. The ODR platform also informs Ms. Rousseau that she has 10 days to decide which, if any, of these 3 ADR providers she would like to use. After consideration, Ms. Rousseau responds to the message specifying which one of the ADR providers she has decided to use. The ODR platform promptly forwards the complaint to the chosen ADR provider who, after reviewing the case, inform Duraclotches and Ms. Rousseau that they will deal with the dispute.

#### Case study 1 – outcome B

After reviewing the message from the ODR platform, Duraclotches decides that they are not willing to use ADR to settle the dispute. They respond to the message to say so, and Ms. Rousseau is subsequently informed of the possibility of contacting the ODR contact point to seek information on other possible means of redress.

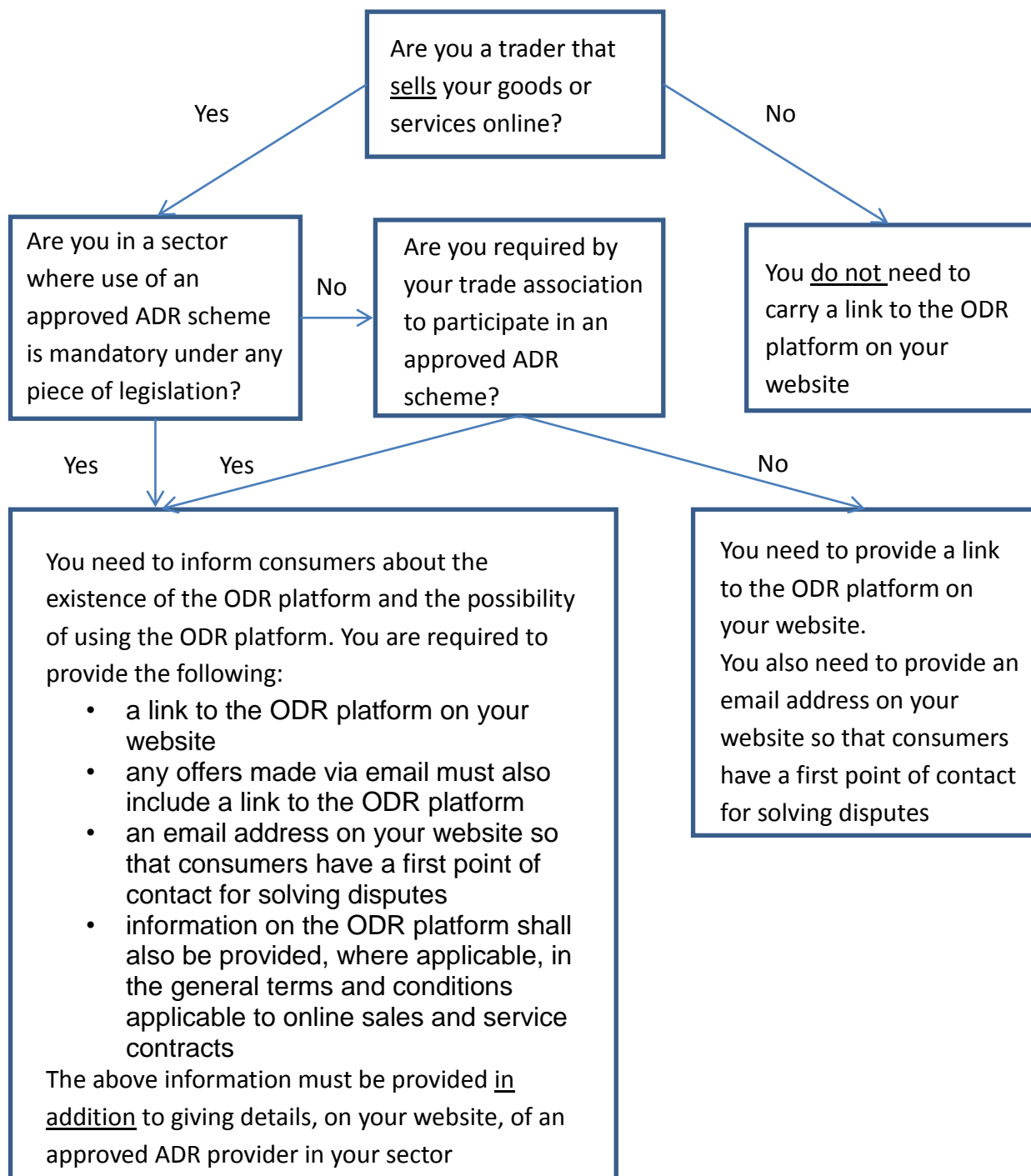
**Case study 2**

A boutique furniture manufacturer, FancyFurniture, based in the UK sells its products online to countries across Europe. They are a member of a trade association that requires them to participate in ADR.

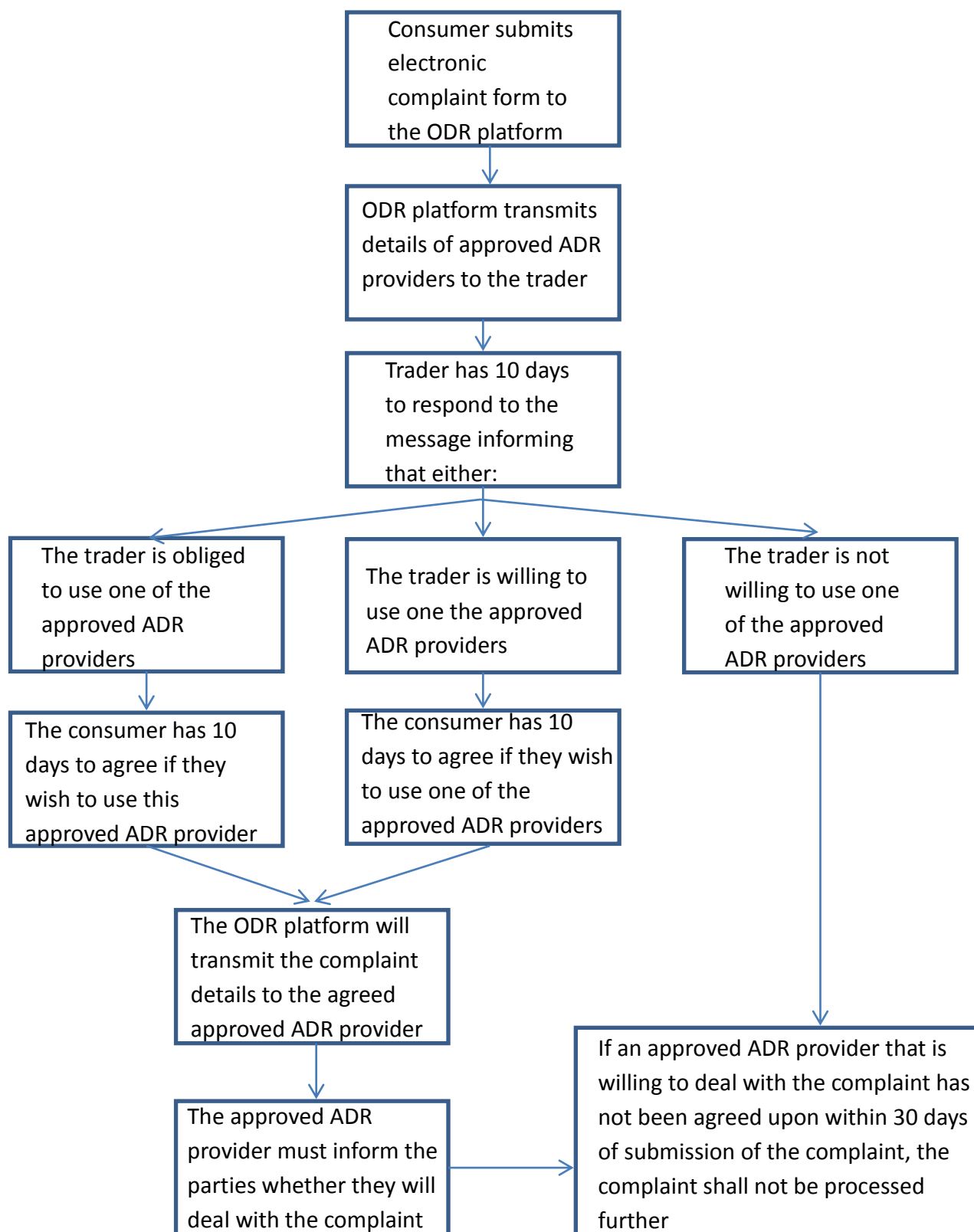
FancyFurniture sells a chest of drawers to a consumer living in Ireland, Mr. Locke. Five months after receiving the chest of drawers from FancyFurniture, Mr. Locke complains that one of the drawers is jammed. FancyFurniture refuses to offer him any compensation so Mr. Locke submits a complaint using the ODR platform.

Upon receipt of the complaint, the ODR platform forwards it to FancyFurniture and informs them of ADR providers that are competent to deal with the complaint. One of these ADR providers is the provider that FancyFurniture is obliged to use due to membership of their trade association. After responding to the ODR platform to say that they are obliged to use one of the ADR providers, the platform forwards this message to Mr. Locke. Mr. Locke is informed that he must decide within 10 days whether he wishes to use this ADR provider, or pursue other means of redress. Mr Locke decides that he would like to use the ADR provider, and the ODR platform relays the details of the complaint to them. After reviewing the case, the ADR provider informs both parties that they will deal with the dispute.

## ODR signposting flowchart for traders



## ODR process flowchart for traders



## Possible ODR timeline for traders

