



# **Department for Business, Energy & Industrial Strategy**

## **Reforming Competition and Consumer Policy**

**Driving growth and delivering competitive markets that work for  
consumers**

**Response from**

# **The Property Ombudsman**

**(1 October 2021)**

## 1. About the Property Ombudsman

- 1.1** The Property Ombudsman (TPO) has been resolving consumer disputes against property businesses since 1990. TPO's skilled workforce provide an ombudsman service to consumers for property sales, lettings, residential leasehold management, search organisations, chattels auctions, buying agents, buying companies, landlords, surveyors, international and commercial property.
- 1.2** TPO is an independently governed 'not for profit' organisation. There is no cost to the consumer or the taxpayer and any surplus income is invested back into providing the additional functions required of an Ombudsman service and service improvement. Our credentials and information on our Membership is set out in Appendix 1.
- 1.3** In 2020, TPO:
- Helped 39,285 people (a 29% increase from 2019) – providing advice, guidance and signposting relevant to their issue
  - Resolved 5,707 complaint cases, 1,526 through facilitated early resolution
  - Made 2,473 financial awards totalling £1.9 million
  - Ensured a 99% business compliance rate with awards
- 1.4** As at December 2020, there were 40,097 TPO member businesses offering agency and property related services to landlords, tenants, buyers, sellers, leaseholders and freeholders. 99% of TPO agency members have voluntarily chosen to follow TPO's Estate and Letting Agent Codes approved by the Chartered Trading Standards Institute.

## 2. About our response

[REDACTED]

[REDACTED]

**Organisation:** The Property Ombudsman (TPO)

**Are you happy for your response to be published?** Yes

**Would you like to be contacted when the consultation response is published?** Yes

## 3. Summary of key points

- TPO is supportive of BEIS objective of creating the “...*the right conditions for healthy competition between traders in markets.*”
- TPO agrees that ADR schemes can make a significant contribution to improving trust and confidence in the business sectors within which they operate. However, encouraging competition between ADR schemes is detrimental to improving trust and confidence in the wider sector because:
  - ADR schemes services are used by consumers yet are predominantly paid for by businesses. This encourages ADR schemes see businesses as their customers, not consumers, and may also reduce services to consumers to enable them to compete for business on price.
  - For the same reason, where ADR scheme approval criteria is not robust and/or mandatory, omissions and loopholes can be exploited.
  - Ombudsmen, redress schemes and ADR schemes are subject to differing approval requirements, this creates inconsistencies for consumers (in both services provided and outcomes) and an uneven playing field unsuitable for fair competition between those providers.
  - Consumers’ trust and confidence is reduced by the perception of the ADR provider working for and on behalf of the business, as a result of the business choosing the provider. Even with Ombudsman schemes, where independence is externally validated, this perception remains an issue.
- TPO agrees that ADR scheme approval should be mandatory in all business sectors and the approval criteria should be strengthened to ensure consumers can have trust and confidence that their dispute will be looked at in a consistently fair, reasonable and independent manner.

- TPO agrees that the requirement for businesses to register with an ADR scheme in the home improvement and motor vehicle sectors should be mandatory.
- Online reviews of Ombudsmen, redress schemes and ADR schemes negatively impact consumer access to redress and undermine trust and confidence in the dispute resolution sector and the wider justice sector in which they operate.

## 4. TPO Response

### 4.1 Competition between Ombudsmen, redress and ADR schemes

#### **The ‘competition’ principle, ADR schemes and consumer outcomes**

In TPO’s experience, while competition may produce positive outcomes where businesses are providing products and services direct to consumers, this principle does not translate into good consumer outcomes where competition is promoted between ombudsmen, redress and ADR schemes.

These schemes operate in a different environment to businesses selling services or products direct to customers. While ombudsmen, redress and ADR schemes exist to provide a service (a perceived form of justice) to consumers, the vital difference here is that those services are predominantly paid for by the businesses. As such, competition between dispute resolution schemes focusses on driving the price down to attract businesses at the expense of the quality and consistency of service being provided to the consumer. This fact is noted in point 4 of the ADR Impact Assessment.

Furthermore, page 8 of the ADR Impact Assessment notes that “...*our stakeholder engagement suggested that voluntary sign-up to an ADR scheme is a relatively minor competitive advantage for businesses*” underlining that, if mandatory sign-up is required, businesses will look for the cheapest option rather than consistency and quality of the outcomes of the service.

Finally, placing the dispute resolution services provided by ADR schemes within the same competitive framework as businesses providing products and services direct to consumers, does not take into account consumers and business’ perception of the role of ADR schemes. These schemes are purveyors of justice and are perceived by their users

as part of the justice system. This is also the view of the Ministry of Justice<sup>1</sup>, yet competition between courts is not a consideration and would be seen by the judiciary as inappropriate and detrimental to those that use their services – undermining the principle of natural justice.

It is TPO's view that competition within this context results in inconsistent and sometimes unsatisfactory consumer outcomes that reduce trust and confidence in the dispute resolution sector, the sector in which they operate and the wider justice system – undermining the Government's objective of creating healthier and fairer markets.

From a business perspective, a reduced number of ADR providers is likely to be perceived as having the potential to increase ADR costs to them. This issue can be mitigated if ADR schemes were required to be 'not for profit' organisations, meaning the cost to business would reflect the actual costs of the ADR services.

#### **Recommendation 1:**

Limiting the number of ADR providers in a sector (preferably to one provider) in conjunction with strengthening the ADR approval criteria to specify 'not for profit' providers, will bring additional benefits to consumers and businesses through clearer pathways to redress and better quality ADR services.

To give consumers further confidence, schemes should be, as a minimum, appointed by the relevant regulatory department, with a consistent published fee structure and set of standards that they use to business assess behaviour against.

## **4.2 ADR scheme approval mechanisms**

All accredited ADR providers must meet the same minimum criteria as prescribed by their Competent Authority. For example, the Property Ombudsman (TPO) is approved by CTSI (Chartered Trading Standards Institute) and National Trading Standards Estate and Letting Agency Team (NTSELAT) to provide ADR under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015.

TPO is also approved by NTSELAT and the Department of Levelling Up, Housing and Communities (DLUHC) to provide redress schemes for consumers of estate, letting and

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<sup>1</sup> [Dispute resolution in England and Wales: Call for Evidence - Ministry of Justice - Citizen Space](#)

managing agents. Both of these approval criteria differ to that for ADR providers and are more robust in their requirement for demonstrable independence from industry and service user complaint procedures.

As an ADR and Redress Scheme, there is no requirement for TPO to handle enquiries, provide signposting and advice, feedback lessons from casework to the sector or take an inquisitorial approach when investigating cases. However, as an Ombudsman approved by the Ombudsman Association, we must also meet additional criteria that include these responsibilities which are specifically designed to improve business standards and, ultimately, improve consumer trust and confidence in the wider sector.

In TPO's experience competition between ADR schemes, especially where individual schemes are subject to differing approval criteria, places an unnecessary obstacle to those schemes delivering a positive impact to the sector in which they operate. The additional services, governance arrangements and compliance criteria designed to underpin independence and improve business standards comes at an additional cost. This means that where ADR schemes are competing for business based on price, unless they are required to offer these services under different approval criteria, there is no incentive to do so. This inconsistency creates a complex, opaque and uneven landscape for consumers and businesses alike, which does not help businesses learn from their mistakes and therefore undermines the objective of raising service/product standards and quality. Furthermore, the costs of these additional services means that where there are sectors that include ombudsmen, redress and ADR schemes, competition between those organisations is not conducted on a level playing field.

Figure 2 of the 'Logic flow model of policy intent and benefits' of the ADR impact assessment also omits the requirement for feeding back to businesses to help them raise quality standards and to provide consumers with an enquiry, advice, signposting service designed to help consumers understand their rights and prevent disputes from arising in the first instance. These omissions will undermine the outcomes that the logic flow proposes.

### **Recommendation 2:**

TPO would recommend that the ADR approval criteria is strengthened to include requirements for:

- The scheme operation to be demonstrably be and be seen to be impartial and free from bias

- The scheme to operate on a 'not for profit' basis to ensure that the cost to business reflects the actual cost of the ADR services.
- Those tasked with resolving complaints cannot be appointed by those subject to investigation.
- Those appointed are required to report to a body independent of those subject to investigation – with any conflicts of interest of the members of that body being declared.
- A procedure to allow consumers and businesses to make representations against an ADR scheme's decision. The time for this should have a mandatory minimum consistent with judicial review recommendations and the principles of natural justice and procedural fairness.
- A procedure for dealing with complaints about the scheme's service and operation (not decisions), including the requirement to report on complaints about their own service, or legal challenges against them, and what improvements they have made as a result in their annual report.
- Consumer satisfaction surveys, the results of which should be published in an annual report.
- The scheme to demonstrate it is adequately staffed with appropriately qualified/experienced personnel and adequately funded to be able to provide a consistent, quality service with reasoned and balanced outcomes.
- Data, insight and recommendations to be feedback to the sector by the ADR scheme to help promote improvements in standards.
- A front-end enquiry service to provide consumers with advice, guidance and signposting where a complaint cannot be considered by the ADR scheme.
- Unfettered access – consumers should have direct and free access to an ADR scheme and not have their complaints evaluated for ADR acceptance/suitability through a third party or be charged a fee for accessing ADR.

#### **4.3 Why Review/Rating platforms are eroding consumer trust and confidence in ADR schemes**

##### **The purpose of ADR**

An ADR scheme should be an independent service that investigates and resolves complaints. They should be free for consumers to use and form part of a trusted justice system.

ADR schemes should be impartial in their investigations and similar to a Court, provide a service equally to two parties to reach a balanced decision to settle a dispute – the result of which one party is likely to have the perception that they have ‘lost’ and the other that they have ‘won’.

ADR schemes should not be businesses which rely on utilising reviews and ratings from consumers to market and sell their services to businesses.

### **Rating/Reviews platforms**

Rating/review platforms provide a useful research tool for consumers when choosing where to buy products and services. However, for the reasons previously explained, it is businesses that choose the ADR service. As such, ratings and reviews of ADR schemes provide consumers with little benefit as they have no ability to choose an alternative scheme. Moreover, these platforms encourage consumers to form preconceptions of how they will be dealt with by an ADR scheme before they have made any direct contact with that scheme.

A transparent rating/review system for this quasi-judicial service should give an outlet for both ‘winners’ and ‘losers’ to express their views over the ADR scheme’s decision or service. However, most review platforms do not allow the businesses who have used ADR services to leave reviews. The result is that review platforms display a one-sided view of a service that has been provided to two parties.

Furthermore, it is clear that review platforms are more likely to attract reviews from consumers who perceive themselves as the ‘losers’ who also often question the independence of the ADR scheme. For example, despite TPO finding in the consumers’ favour more than the businesses being complained about (69% of complaints in 2020 were supported)<sup>2</sup>, those that perceive themselves to have ‘lost’ are more likely to leave a review. This is a situation that all ombudsmen are experiencing (see Appendix 2).

While rating/review platforms are useful tools for reviewing services and products sold by businesses directly to consumers, they are not designed for reviewing a service which is provided equally to a consumer and a business. For example, platforms do not have functionality whereby the other ‘winner’ or ‘loser’ who experienced the same service is contacted to leave their experience – this means that reviews and ratings of ADR schemes

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<sup>2</sup> <https://www.tpos.co.uk/news-media-and-press-releases/reports>



are not a balanced, one sided and do not provide fair representation of the service provided.

### **The impact of negative reviews**

The reviews and ratings that are posted influence those that are considering purchasing a product or service. These reviews are incredibly useful for consumers when deciding which business they wish to purchase products or services from. However, for ADR schemes, negative reviews result in some consumers being influenced not to seek redress to which they may be entitled. TPO has experienced numerous consumers citing the small number of reviews left on sites such as TrustPilot by those dissatisfied with the decision on their case or TPO's remit, as a reason to re-think approaching TPO to claim redress.

We are therefore extremely concerned that there are a significant number of unidentified consumers with genuine claims who are being put off from accessing ADR schemes due to the nature of the unbalanced and one-sided reviews being posted on review platforms.

### **Fake reviews**

On a number of occasions reviews about TPO have appeared on TrustPilot where there has been no record of the consumer using our service. Given the proliferation of ADR schemes it is reasonable to assume that some of these reviews concerned another ADR scheme. It is also not unreasonable to suggest that some could be fake reviews. However, where these were reported, the platform performed no checks on the validity of the review other than issuing an email to the reviewer asking them to confirm if they had used our service. Clearly, this approach offers little protection from fake reviews and, moreover, provides an opportunity unscrupulous consumers and businesses to generate positive/negative reviews to further their own ends.

It is TPO's view that the culmination of one-sided and fake reviews that are never deleted gives rise to the real and growing concern that ratings and reviews of ADR schemes on platforms such as Trustpilot have the potential to cause consumer detriment by deterring consumers from using ADR services to which they are entitled.

### **When ADR schemes get it wrong**

There are occasions where ADR schemes make mistakes or do not handle things as well as they should. Consumers and businesses have a right to challenge these shortcomings and for ADR schemes to learn from mistakes made. However, for the reasons previously stated, review platforms are inappropriate mechanisms for these concerns to be raised

and addressed. As such, we would suggest that the alternative is for ADR schemes to be required to provide two accessible and transparent services, as follows:

### **Representations against decisions**

There is a difference between dissatisfaction with ADR service and with the ADR outcome. ADR schemes should have a part of their process that allows representation from both parties to the decision. There should be a mandatory minimum time for this process which is consistent with judicial review recommendations and the principles of natural justice and procedural fairness.

### **Service issues**

As part of TPO's approval as an Ombudsman, we are also required to offer a service complaint process to both consumers and businesses. This provides service users with an independent route to raise their concerns about their experience of using TPO and to have those concerns addressed in a balanced and considered way. The process also helps TPO to improve its service and learn from mistakes.

We would encourage BEIS to consider requiring all ADR schemes to have in place a representation process for challenging decisions and an independent service complaint process to complain about the ADR service received. Both should be easily accessible by consumers and businesses. These services should be enshrined within a more robust ADR approval criteria.

### **Recommendation 3:**

ADR schemes are part of the wider justice system, but unlike the courts, they are subject to online reviews, the majority of which are posted by consumers who have not had their claim upheld. TPO is seeing growing evidence that the impact of these reviews is to dissuade consumers with genuine claims from accessing ADR services, a situation that could disproportionately impact vulnerable consumers.

Accordingly, alongside tackling the issue of fake reviews, TPO recommends that BEIS consider the case for removing all ADR schemes from online review sites and instead, strengthen the ADR approval criteria to include the requirements for:

- ADR schemes to offer both parties the opportunity to represent against the scheme's decision. The time for this should have a mandatory minimum consistent

with judicial review recommendations and the principles of natural justice and procedural fairness.

- Information on how to make service complaints to be made publicly available on the ADR scheme's website.
- ADR schemes to publicly report on complaints about their own service, or legal challenges against them, and what improvements they have made as a result, in their annual reports.
- ADR schemes to be compelled to run consumer satisfaction surveys, the results of which are also published in their annual report.

## **Appendix 1: TPO Credentials:**

- Validated by, and a full member of the Ombudsman Association
- Approved by the Department for Levelling Up, Housing and Communities (DLUHC) as a provider for letting and managing agent redress under the Enterprise and Regulatory Reform Act 2013
- Approved by the National Trading Standards Estate and Letting Agency Team (NTSELAT) under the Consumers, Estate Agents and Redress Act 2007
- Approved by NTSELAT and Chartered Institute of Trading Standard's (CTSI) as an ADR body under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015
- Codes of Practice approved by CTSI's Consumer Codes Approval Scheme (CCAS)

TPO has been successfully operating Codes of Practice for 20 years. TPO's Codes set out the professional and other standards expected of agents who have agreed to follow those obligations. TPO's Letting Agent and Estate Agent Codes are the largest codes approved by CTSI's CCAS.

## Appendix 2: TrustPilot Reviews (as at 29<sup>th</sup> September 2021)



### Here are your results for "ombudsman"

**Ombudsman Services [Energy and Communications]** | [www.ombudsman-services.org](http://www.ombudsman-services.org)

★ ★ ★ ★ ★ 1,406 reviews | TrustScore 3.1 | [Write a review](#)

**Parliamentary and Health Service Ombudsman** | [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

★ ★ ★ ★ ★ 167 reviews | TrustScore 1.2 | [Write a review](#)

**Housing Ombudsman** | [www.housing-ombudsman.org.uk](http://www.housing-ombudsman.org.uk)

★ ★ ★ ★ ★ 89 reviews | TrustScore 1.5 | [Write a review](#)

**Financial Ombudsman Service** | [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

★ ★ ★ ★ ★ 911 reviews | TrustScore 1.4 | [Write a review](#)

**Legal Ombudsman** | [www.legalombudsman.org.uk](http://www.legalombudsman.org.uk)

★ ★ ★ ★ ★ 158 reviews | TrustScore 1.2 | [Write a review](#)

**Rail Ombudsman** | [www.railombudsman.org](http://www.railombudsman.org)

★ ★ ★ ★ ★ 27 reviews | TrustScore 4.4 | [Write a review](#)

**The Motor Ombudsman** | [www.themotorombudsman.org](http://www.themotorombudsman.org)

★ ★ ★ ★ ★ 714 reviews | TrustScore 2.4 | [Write a review](#)

**The Property Ombudsman** | [tpos.co.uk](http://tpos.co.uk)

★ ★ ★ ★ ★ 113 reviews | TrustScore 1.8 | [Write a review](#)

**Scottish Public Services Ombudsman** | [www.spso.org.uk](http://www.spso.org.uk)

★ ★ ★ ★ ★ 39 reviews | TrustScore 1.6 | [Write a review](#)

**The Pensions Ombudsman** | [www.pensions-ombudsman.org.uk](http://www.pensions-ombudsman.org.uk)

★ ★ ★ ★ ★ 14 reviews | TrustScore 2.0 | [Write a review](#)

**The Furniture & Home Improvement Ombudsman** | [www.thefurnitureombudsman.org](http://www.thefurnitureombudsman.org)

★ ★ ★ ★ ★ 130 reviews | TrustScore 1.9 | [Write a review](#)