

Legal Services Market Study: Interim Report

Chartered Institute of Arbitrators Response

1. The Chartered Institute of Arbitrators (CIArb) is a leading professional membership organisation representing the interests of alternative dispute resolution (ADR) practitioners worldwide. With 14,000 members located in 133 countries CIArb supports the global promotion, facilitation, and development of all forms of private dispute resolution.
2. CIArb has under its Royal Charter a duty in the public interest to promote and facilitate worldwide the determination of disputes by arbitration and alternative means of private dispute resolution other than resolution by the court (collectively called “private dispute resolution”).
3. ADR mechanisms are a range of procedures that serve to resolve disputes generally involving the intercessions and assistance of a neutral third party to promote a binding settlement or decision. ADR mechanisms include:
 - a. arbitration,
 - b. mediation,
 - c. adjudication,
 - d. expert determination,
 - e. Dispute Boards (DBs) also known as Conflict Avoidance Boards and
 - f. online dispute resolution (ODR).
4. Whilst the Competition & Markets Authority (CMA) study is focused primarily on legal services in of themselves and Alternative Business Structures (ABS), our members frequently settle civil and commercial disputes as an alternative to litigation.
5. This does not fit within the scope of the study as per the statement of scope but nevertheless ADR providers, including arbitrators, ombudsman, adjudicators and mediators, do perform an increasingly important role at the periphery of the legal services market.
6. The recent Civil Courts Structure Review (CCSR) conducted by the Judiciary of England and Wales highlighted that increasingly disputes within the civil justice system are directed to ADR for resolution. Indeed, it is hoped that the ongoing programme of courts reform proposed will make ADR – referenced as conciliation in the report – culturally normal in the courts and wider legal services market.¹
7. It should be noted there are several large and well established ADR schemes in regulated sectors, such as financial services, energy and telecoms for consumer disputes. Under the terms of the EU Consumer ADR Directive (2013/11/EU) which has been implemented by the UK as an EU Member State, ADR must be widely available for consumer disputes, and approved ADR bodies must meet certain quality standards by competent authorities within their regulated sector.²

8. The Chartered Training Standards Institute (CTSI) ensures each ADR body meets the quality criteria provided by the Regulations as the Competent Authority for all those consumer sectors other than those regulated by The Financial Conduct Authority (In relation to the Financial Ombudsman Service in particular); Legal Services Board (In relation to the Office for legal Complaints in particular); Civil Aviation Authority; Gambling Commission; Gas and Electricity Markets Authority; Office of Communications and the lead enforcement authority for the purposes of the Estate Agents Act 1979.³
9. With regards to point 5.62 of the interim report, there is a general reluctance to use ADR as an alternative means for handling complaints because of a lack of awareness of the processes involved and concerns about a muddled implementation of the EU ADR Directive. A recent hearing of the All-Party Parliamentary Group on ADR – for which CI Arb provides the secretariat – found reluctance across a range of sectors due to confusion about the ADR provision currently available, creating a sense that there would be additional risks and operational changes that could arise from proceeding with ADR to deal with complaints. It is worth repeating that this was not restricted to the legal services market but across a range of sectors.⁴
10. As well as businesses, anecdotal evidence suggests that current requirements confuse consumers over their options on redress, with arrangements for ADR in legal services unclear and not readily understandable, and that standard guidance across regulated providers should be issued. CI Arb recommends that a detailed study of the use of ADR by legal service providers, including the scope for greater use of ADR, should be undertaken as part of an evaluation of the implementation of the EU ADR Directive as a whole across a full spectrum of economic sectors.
11. In exploring the legal services market, it is important to note the development of ADR and the full range of options available to consumers for cost effective, efficient redress beyond traditional legal services.

Further information

12. If you would like further information on any of the points made above, please contact:

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W: <http://www.ciarb.org>

References

- 1 <https://www.judiciary.gov.uk/publications/civil-courts-structure-review-final-report/>
- 2 <http://eur-lex.europa.eu/legal-content/HR/ALL/?uri=CELEX:32013L0011>
- 3 <http://www.tradingstandards.uk/advice/AlternativeDisputeResolution.cfm>
- 4 <http://www.ciarb.org/policy/uk-appg-on-adr/news-detail/news/2016/06/13/appg-on-adr-third-session-civil-consumer-commercial-costs-adr>