



Department
for Business
Innovation & Skills

**ALTERNATIVE DISPUTE
RESOLUTION FOR CONSUMERS**

Government response to the
consultation on implementing
the Alternative Dispute
Resolution Directive and the
Online Dispute Resolution
Regulation

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Foreword from Jo Swinson MP, Minister for Employment Relations and Consumer Affairs



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. We want to give consumers more confidence when dealing with bad service or shoddy goods.

Our Consumer Rights Bill currently going through Parliament is the greatest reform of consumer rights for a generation. It will create a clear set of rights for consumers, develop a more effective and flexible enforcement regime and ensure consumer law keeps pace with changes in technology. In addition, our reforms of the consumer landscape have improved protection for consumers, giving greater clarity about where they can turn for help and advice.

Even with these enhanced rights and protections for consumers, there will still be instances where problems arise. When consumers find that goods or services that they have purchased are not up to scratch, businesses are often keen to rectify any problems to preserve their reputation. But sometimes this is not possible – perhaps the circumstances surrounding the problem are disputed, or perhaps there is a reluctance to resolve the matter. In these instances, access to an effective alternative dispute resolution (ADR) mechanism can prove invaluable.

ADR offers a quicker and cheaper alternative to the court system, when disputes cannot be resolved between the consumer and the business directly. The greater availability of ADR will strengthen consumer protection and improve consumer confidence.

In the UK, there are already several large and well established ADR schemes in regulated sectors, such as financial services, energy and telecoms. In other sectors, some businesses are members of voluntary ADR schemes, but access to ADR is patchy. The ADR Directive means that we have to fulfil certain requirements, including ensuring that ADR is widely available for consumer disputes, and that ADR providers meet certain quality standards. This Directive gives us the opportunity to examine the UK ADR landscape and ensure we have a system which works for both consumers and business.

The consultation on implementing the ADR Directive considered the options where we have discretion about how the ADR Directive can be implemented. It also took the opportunity to look beyond the requirements of the Directive and consider whether further reforms were necessary to ensure we have the best possible system.

This document is the Government's response to that consultation. It outlines our proposals for ensuring that ADR is available to all, how consumers can be signposted to an appropriate provider, and how ADR providers will be certified and monitored. It also outlines our emerging thinking on the future direction of ADR in the UK. Better ADR and easier access to it will be good for all businesses which are committed to giving their customers the best possible service. It is also a vital step on our journey to bringing more protection and power to consumers.



Jo Swinson
Minister for Employment Relations and Consumer Affairs

Executive Summary

Alternative Dispute Resolution (ADR) can offer a cheaper and quicker alternative to the courts for disputes where a consumer is not able to resolve their complaint directly with the business from whom they made their purchase.

At present there is a diverse approach to ADR in the UK, with several different models in operation in different markets. ADR is mandatory in certain sectors where there is a high potential for consumer detriment. In other sectors, voluntary schemes operate which businesses can choose to join and these are often linked to trade associations.

A Directive on consumer Alternative Dispute Resolution¹ and a Regulation on consumer Online Dispute Resolution² were published in July 2013. The UK has to transpose the requirements of the ADR Directive into national law by 9 July 2015. The Online Dispute Resolution (ODR) Regulation will come into force automatically six months later on 9 January 2016, although the requirements relating to the creation of an ODR contact point will apply in advance, also on 9 July 2015.

The principal obligation on the UK Government under the Directive is to ensure that ADR, provided by a certified ADR body, is available for any dispute concerning contractual obligations between a consumer and a business, although the use of ADR is not mandatory under the Directive. ADR providers must fulfil certain requirements under the Directive, and will be certified and monitored by competent authorities. There are also requirements on business to provide information about certified ADR providers on their websites or sales contracts in certain circumstances, and in the event of an unresolved dispute, all businesses must provide information about certified ADR providers.

For online cross-border disputes, the ODR Regulation obliges the Commission to establish an online platform to facilitate communication between parties and a certified ADR provider. The UK has to designate an ODR contact point to assist with disputes submitted via this platform.

The consultation document “Alternative Dispute Resolution for Consumers: Implementing the Alternative Dispute Resolution Directive and Online Dispute Resolution Regulation”³, published in March 2014, sought views on a number of issues that the Government needs to address when implementing the ADR and ODR legislation.

How we ensure that ADR is widely available

The Government has to ensure that ADR is available for all disputes concerning contractual obligations between a consumer and a business. The current provision of ADR is patchy, with the use of ADR mandatory in a handful of sectors, and ADR available in several other sectors if

¹ Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>

² Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0001:0012:EN:PDF>

³ “Alternative Dispute Resolution for Consumers: Implementing the Alternative Dispute Resolution Directive and the Online Dispute Resolution Regulation” available at : https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/288199/bis-14-575-implementing-alternative-dispute-resolution-directive-and-online-dispute-resolution-regulation-consultation.pdf

businesses choose to use it. To plug existing gaps and ensure ADR is widely available across all sectors, the Government will assist with the set-up of a residual ADR scheme, which will be available to businesses that are not obliged or committed to using another ADR scheme.

The current UK ADR landscape can also be complex and confusing for consumers. In order to make the system easier for consumers to navigate, to increase awareness of ADR and the process for accessing it and to ensure as seamless a consumer journey as possible, the Government is intending to work with Citizens Advice to create a consumer complaints helpdesk to provide assistance and advice to consumers attempting to resolve a dispute with a trader.

How a competent authority scheme will operate

The EU Directive states that in order to ensure that ADR entities function properly and provide quality services for consumers and businesses, they should be closely monitored by a competent authority or authorities. The Government will appoint the Trading Standards Institute (TSI) to act as the UK's competent authority covering ADR schemes in the non-regulated sectors. The Government will fund the start-up costs of the new competent authority, with on-going operational costs to be covered by fees charged to the certified ADR providers so that the process becomes self-funding.

Operating alongside TSI, the Government will appoint the sector regulators as competent authorities for their sectors where appropriate.

Setting up an ODR contact point to assist with online disputes

The Government will establish an ODR contact point to help consumers with cross-border disputes submitted via the Commission's ODR platform. The Government will meet our obligations under the ODR Regulation but will not extend the ODR requirements beyond these.

Helping businesses comply with the information requirements

In order to help traders meet the statutory information requirements concerning the provision of ADR, Government will work with the Trading Standards Institute (TSI) to produce appropriate guidance for business.

Where the UK has the choice in how to implement the Directive

The ADR Directive contains several provisions where the UK has a choice as to how to implement the Directive. Following the support for the Government's position in the consultation, the Government will: allow certified ADR providers to use the full set of criteria in Article 5(4) of the ADR Directive as grounds on which they can refuse to deal with inappropriate disputes; allow certified ADR providers to make decisions that are binding; and apply an eight-week extension to the six-year window an individual has to initiate litigation, should an ADR process be on-going at the time the six year window expires. The Government will not categorise in-house mediation as an appropriate ADR process when implementing the ADR Directive.

Whether a rationalisation of the ADR landscape is necessary

The consultation included a call for evidence on the simplification of ADR provision in the UK. The responses to the consultation identified support for some degree of simplification from both

consumer and industry representatives. There was little support for a single consumer ombudsman, but most respondents who expressed a particular view on the future ADR landscape supported the idea of an umbrella body sitting above a number of sector specific schemes. The Government will continue to consult stakeholders on the detail and merit of further simplification, and assess the costs and benefits of making structural changes.

Alternative Dispute Resolution in the UK

Alternative Dispute Resolution

1. Alternative Dispute Resolution (ADR) can offer a low-cost and fast alternative to resolving disputes which the parties involved in the dispute cannot resolve themselves. While ADR can be used in a number of different types of disputes, the ADR Directive, the consultation on implementing the Directive⁴, and this consultation response are concerned with disputes that a consumer has with a business, following the purchase of goods, services or digital content.

Benefits of ADR

2. ADR can offer a cheaper and quicker alternative to the courts for disputes where a consumer is not able to resolve their complaint directly with the business from whom they made their purchase. It is estimated that ADR costs are between 1/8th and 1/3rd of the cost of going to court⁵ and the European Commission have estimated that it only takes up to 90 days for most disputes referred to ADR to be resolved. ADR in the UK tends to be free for the consumer, as it is often funded through businesses paying membership fees, levies or case fees to the ADR provider.
3. A large number of consumer complaints do not get resolved. Consumer Focus estimated that in 2012 out of 6.4 million consumer complaints made to business, two million were unresolved⁶. The court system can be a daunting and expensive prospect and so only a small fraction of these complaints actually reach the courts.
4. Feedback from consumers who have used ADR tends to be positive, and a European Commission survey indicates that 82% of businesses who have used ADR would use it again⁷.

⁴ "Alternative Dispute Resolution for Consumers: Implementing the Alternative Dispute Resolution Directive and the Online Dispute Resolution Regulation" available at :
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/288199/bis-14-575-implementing-alternative-dispute-resolution-directive-and-online-dispute-resolution-regulation-consultation.pdf

⁵ Responses to "Call for Evidence on EU proposals on Alternative Dispute Resolution" published by BIS, December 2011, available at
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/190192/12-674-government-response-eu-proposals-alternative-dispute-resolution_1_.pdf

⁶ "Consumer Detriment 2012" available at <http://www.consumerfocus.org.uk/publications/consumer-detriment-2012>

⁷ "European Business Test Panel Survey – Alternative Dispute Resolution" available at
http://ec.europa.eu/yourvoice/ebtp/consultations/2010/adr/report_en.pdf

UK ADR Landscape

5. At present there is a diverse approach to ADR in the UK, with several different models in operation. ADR is mandatory in certain sectors where there is a high potential for consumer detriment or complex disputes, with a single public body operating as an ombudsman in some of these sectors (e.g. financial services, legal services), and several private ADR bodies operating in others (e.g. telecommunications and estate agents). In this latter category, businesses have to refer unresolved complaints to an ADR provider, but they have a choice of which ADR provider they sign up to use.
6. Voluntary schemes operate in some sectors which businesses can choose to join and these are often linked to trade associations. Sometimes there are several voluntary ADR schemes which operate in the same sector – for example, glazing installers can choose to join either the Glazing Ombudsman, the Double Glazing and Conservatory Ombudsman Scheme or become a member of the Glazing and Glass Federation, who will refer disputes involving their members to an independent ADR scheme. Of course, some glazing installers may choose not to belong to any of these available schemes, indicating only partial provision of ADR in these non-mandatory sectors.
7. In addition, there are several small independent bodies who offer mediation services, often at a local level. However, although these services are available to consumers they mainly focus on commercial or family disputes.

ADR Directive and ODR Regulation

8. A Directive on consumer Alternative Dispute Resolution⁸ and a Regulation on consumer Online Dispute Resolution⁹ were published in July 2013. The UK has to transpose the requirements of the ADR Directive into national law by 9 July 2015. The Online Dispute Resolution (ODR) Regulation will come into force automatically six months later on 9 January 2016, although the requirements relating to the creation of an ODR contact point will apply in advance, also on 9 July 2015.
9. The ADR Directive imposes requirements on the Government, competent authorities, certified ADR providers and business. This section provides a brief summary of those requirements.

Making ADR available

10. The principal obligation on the UK Government under the Directive is to ensure that ADR provided by a certified ADR body is available for any dispute concerning contractual obligations between a consumer and a business. The Directive does not make the use of ADR mandatory – it does not require the UK to force businesses or consumers to use ADR, but the Government must ensure ADR is available if both parties agree to use it.

⁸ Available at <http://eur-lex.europa.eu/LesUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>

⁹ Available at <http://eur-lex.europa.eu/LesUriServ/LexUriServ.do?uri=OJ:L:2013:165:0001:0012:EN:PDF>

11. Business to business disputes are not covered by the Directive, nor are disputes initiated by a business against a consumer. Further exclusions apply to health services and public providers of education.
12. The Directive does not require the Government to force existing ADR providers to become certified ADR providers which comply with the requirements of the Directive. However, the Government has only discharged its obligation of ensuring comprehensive ADR coverage if ADR provided by a certified ADR provider or providers is available in all sectors. So if an ADR provider decides not to become certified, they will find that an alternative certified ADR provider will be available for disputes in that sector, and businesses and consumers will be signposted towards the certified ADR provider.
13. The Directive does not give a consumer the right to force a business to use ADR, or to use a particular ADR provider. In sectors where the use of ADR is not compulsory it is for the business to decide whether to use ADR for a particular dispute. There are however some sectors in the UK where the use of ADR is already mandatory (e.g. financial service providers must allow the Financial Ombudsman Service to handle any unresolved complaints). This will remain the case.

Requirements for ADR providers

14. The Government has to ensure that certified UK ADR providers follow specific operational rules. Some of the main operational rules are:
 - The ADR procedure must be free of charge or available at a nominal fee to consumers.
 - ADR providers have three weeks from receiving a complaint file in which to inform the parties concerned if they are refusing to deal with a case.
 - Disputes must be concluded within 90 days of receiving the complete complaint file. This timeframe can be extended in the case of highly complex disputes.
 - Individuals who oversee disputes must have the necessary expertise and be independent and impartial.
 - ADR providers must make available specific information about their organisation, methods and cases they deal with, and provide annual activity reports.
 - Consumers must have the option to submit a complaint (and supporting documentation) and to exchange information either online or offline.
15. The UK may permit certified ADR providers to follow certain procedural rules which will allow them to refuse to deal with unsuitable disputes. Examples of this may be instances where the consumer has not attempted to resolve the complaint with the business first or where the complaint is frivolous or vexatious.
16. The Directive covers only disputes concerning contractual obligations between a consumer and a business. Disputes such as discrimination claims and disputes between businesses fall outside the scope of the Directive. An ADR provider remains free to consider disputes that are outside the scope of the Directive as well. In such cases the ADR provider does

not need to follow the Directive's rules, although the Government would encourage providers to do so for reasons of consistency.

The ODR Platform

17. The ODR Regulation obliges the Commission to establish an online platform (the ODR platform) to facilitate communication between the parties and a certified ADR provider, in the event of a contractual dispute arising from an online transaction. A translation service will be available on the platform to assist with disputes involving parties based in different EU member states.
18. The ODR platform will not seek to resolve the dispute itself; rather it will (if both parties agree) channel such disputes to a relevant ADR scheme. An electronic case management tool will be made available to ADR providers, should they choose to use it.
19. The UK has to designate an ODR contact point to assist with disputes submitted via the ODR platform. This contact point must host at least two ODR advisors who can provide information or help with documentation.

Information requirements for business

20. Any business that is obliged by law or through membership of a particular trade association to use a particular ADR provider, or which has voluntarily committed to use a certified ADR provider to resolve disputes, must provide information about that certified ADR provider on their website and, if applicable, in the terms and conditions of any sales or service contracts.
21. In the event of an unresolved dispute, all businesses (whether or not they are obliged by law or have voluntarily committed to use ADR) must provide information about an appropriate certified ADR provider or providers to the consumer, and advise whether or not they will use ADR in an attempt to settle the dispute. This means that businesses which belong to sectors with mandatory ADR schemes will have to advise consumers that their dispute can be referred to the relevant ADR body. Businesses operating in sectors where the use of ADR is voluntary will have to advise consumers whether or not they are willing to refer the complaint to an appropriate ADR body. These ADR information requirements will come into force in July 2015.
22. All businesses who sell their goods or services online must provide a link to the ODR platform on their website. Further information must be provided about the ODR platform if the online business is obliged or committed to using ADR. All websites which act as a platform for businesses to sell their goods and/or services must also provide a link to the ODR platform. These ODR information requirements will come into force in January 2016.

Competent Authorities

23. The UK must designate one or more competent authorities to maintain and monitor a list of certified ADR providers (i.e. those which meet the required standards of the ADR Directive). If a certified ADR provider is found no longer to comply with the requirements of the Directive, then the competent authority must give warning before removing that provider from the list and notifying the European Commission.

Devolution

24. The Government's aim when implementing the ADR Directive is to ensure consistency of consumer rights across the UK whilst respecting the devolution settlements.
25. Consumer protection policy is devolved in Northern Ireland and the Northern Ireland Executive is still considering whether to adopt our proposals to implement the Directive. If it does so, this will mean that the residual ADR scheme will also consider complaints generated in Northern Ireland. Consumer protection policy is not devolved to Scotland or Wales, although the ADR Directive does have an impact on wider policy areas which have been devolved, and there are a few ADR bodies which will continue to solely operate in Scotland.

The consultation

26. The consultation document "Alternative Dispute Resolution for Consumers: Implementing the Alternative Dispute Resolution Directive and Online Dispute Resolution Regulation", published in March 2014¹⁰, covered a number of issues that the Government needs to address when implementing the ADR and ODR legislation. The Government also held a number of stakeholder meetings and attended various external events during the consultation period to discuss our proposals. The consultation sought views on:

- How we ensure ADR is widely available;
- How a competent authority scheme will operate;
- Setting up an ODR contact point to assist with online disputes;
- Helping businesses comply with information requirements;
- How we ensure ADR providers meet their requirements under the Directive;
- Provisions where the UK has the choice in how to implement the Directive (e.g. whether we should account for "in-house mediation"); and

¹⁰ "Alternative Dispute Resolution for Consumers: Implementing the Alternative Dispute Resolution Directive and the Online Dispute Resolution Regulation" available at : https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/288199/bis-14-575-implementing-alternative-dispute-resolution-directive-and-online-dispute-resolution-regulation-consultation.pdf

- Whether a rationalisation of the ADR landscape is necessary.

This response document summarises the findings of the consultation process and outlines the Government's decisions and next steps.

The proposals

Alternative Dispute Resolution for Every Consumer Dispute

Summary

27. The Government has to ensure that ADR is available for all disputes concerning contractual obligations between a consumer and a business. The current provision of ADR is patchy, with the use of ADR mandatory in a handful of sectors, and ADR available in several other sectors if businesses choose to use it. To plug existing gaps and ensure ADR is widely available across all sectors, the Government will assist with the set-up of a residual ADR scheme, which will be available to businesses that are not obliged or committed to using another ADR scheme.

What's the issue?

28. Existing arrangements for accessing ADR are insufficient. Although there are over 70 ADR schemes in operation across the UK, in some sectors access to ADR remains limited. Although there are signs that the ADR market will continue to evolve and, over time, schemes could emerge to plug gaps in ADR provision, we are some way off a landscape whereby all businesses and consumers have immediate access to an ADR scheme. In order to improve consumer protection and boost consumer confidence, and to fulfil our obligations under the ADR Directive, we must improve access to redress. Although the ADR Directive does not require us to make the use of ADR compulsory, we must ensure it is available should both parties choose to use it.
29. The information requirements we are required to implement, along with other efforts to increase the awareness of ADR, should lead to the greater use of ADR. We have to ensure the provision of ADR is increased so that all businesses can easily identify an appropriate scheme when fulfilling their obligations to inform consumers about ADR, and so that there is sufficient capacity to deal with the expected increase in escalated disputes across a broad range of sectors.

Detail of the proposals

30. The response to our consultation has reinforced our view that the creation of a residual ADR scheme would improve access to redress and fulfil our obligations under the ADR Directive, at the least cost. An invitation to bid to provide this residual ADR service will be published this autumn. A competitive procurement process will be undertaken in order to choose a supplier, with an announcement made early in 2015.
31. We intend to appoint a single body to provide the residual ADR service. Although responses to this question in our consultation were mixed, we believe a single provider would be the simplest model to operate, particularly as responses to other sections of our consultation pointed out the confusion that can be caused by having a multitude of

bodies operating in the same space, and an overall desire to simplify the landscape as far as possible.

32. Use of the residual scheme will not be compulsory – it will be available should businesses choose to use it. We believe a blanket obligation on businesses to use ADR is not appropriate at this time. The fees that businesses are charged to use ADR would impose a high annual cost to business. We do not believe that there is currently sufficient evidence that the benefits of making ADR mandatory justify this cost.
33. However, making the residual scheme voluntary makes it very difficult to estimate the volume of cases it can expect, particularly given the broad range of sectors it will cover. To help counter this, we will request that the residual ADR scheme targets a small number of sectors which experience a high volume of consumer complaints. Based on consumer detriment surveys and complaints information¹¹, we have identified home maintenance, improvements or installation services, retail, second hand cars and car repair and servicing as the sectors that should be targeted in the first year.
34. Efforts to publicise the residual ADR scheme will be targeted at these sectors, and we would like the residual supplier to work with trade associations in these sectors to obtain agreement from members to use it. Suppliers will be free to suggest alternative sectors to target when bidding to supply the residual scheme, and this arrangement will be reviewed after a year. The residual scheme will still have to retain capacity to deal with disputes from businesses not obliged or committed to using another ADR scheme in all other sectors, and will need the flexibility to deal with spikes in case volume.
35. Rather than attempt to set claim and settlement values we believe it is appropriate to ask suppliers with experience in providing ADR to explain what limits they would impose when applying to provide the residual ADR service. We would expect the fees charged to businesses to use the residual ADR scheme to be consistent with existing market rates and we will work with the supplier of the residual scheme to ensure fees are set at an appropriate level.
36. In line with the model commonly used across existing ADR schemes at present, we expect that the residual scheme will become self-financing through fees charged to businesses that use the service. However, we recognise that some Government funding will be needed to help cover start-up costs of the residual scheme, particularly due to the uncertainty over the number of cases it can be expected to receive. After a year of operation it will be easier to assess the volume of work for the residual ADR scheme and for the provider to budget accordingly.

¹¹ *Consumer Detriment 2012* – prepared for Consumer Focus by TNS BNRB; *Consumer Engagement and Detriment Survey 2014* – prepared for BIS by TNS; Citizens Advice – Advice trends

Better Signposting – a complaints “helpdesk”

Summary

37. The current UK ADR landscape is very complex and confusing for consumers. In order to make the system easier for consumers to navigate, to increase awareness of ADR and the process for accessing it and to ensure as seamless a consumer journey as possible, the Government is intending to work with Citizens Advice to create a consumer complaints helpdesk to provide assistance and advice to consumers attempting to resolve a dispute with a trader. The majority of the responses to the consultation that support the helpdesk agreed it should be centrally funded and accessible both online and via telephone.

What’s the issue?

38. Although the Government will be making ADR available across the board, the mixed approach of having mandatory ADR in certain sectors and in others allowing businesses a choice of whether to use ADR will remain the same. In sectors where ADR take-up is voluntary, it will be necessary to encourage businesses to use ADR and ensure consumers are aware of the benefits of buying from a trader who does. A single point of contact will help consumers understand the responsibilities of traders, their rights to redress in particular circumstances and provide assistance in accessing ADR and contacting a relevant ADR provider.

39. The majority of the responses to our consultation supported our intention to establish a consumer complaints helpdesk as a means to helping consumers navigate the ADR system, minimise confusion and also increase access to and awareness of ADR among businesses.

40. In order to ensure as seamless a consumer journey as possible, the helpdesk must add sufficient value to the complaints process for consumers. The service must therefore take into account the information requirements on businesses, which should mean consumers are sign-posted to an appropriate ADR provider to handle their case if a business is unable to resolve a dispute through their own internal complaints process.

41. We also want to ensure that case handling and the actual assessment of the circumstances around a dispute is left to the expert case-handlers within the ADR providers themselves, rather than delegating some of this responsibility to a helpdesk.

Detail of the proposals

42. The Government intends to provide some additional funding to Citizens Advice to extend their existing consumer advice service to provide specific advice and assistance on ADR.

43. The aim of this will be to help consumers understand the ADR landscape and the law on ADR and to provide them with practical assistance in making complaints. The intention is that Citizens Advice will also develop a system to allow disputes to be referred directly through to ADR providers where appropriate, reducing the need for consumers to keep explaining their circumstances to different bodies. Citizens Advice will also facilitate communication between the consumer and the trader, and will inform traders of their information and sign-posting obligations.

Online Dispute Resolution

Summary

44. The Government will establish an ODR contact point to help consumers with cross-border disputes submitted via the Commission's ODR platform. The Government will meet our obligations under the ODR Regulation but will not extend the ODR requirements beyond these.

What's the issue?

45. The Commission is developing and setting up an ODR platform to allow for disputes relating to goods and services bought online. Currently there is limited access to redress for consumers buying online from traders outside the UK but within the EU. The ODR platform should help to facilitate access to ADR across Europe.

46. The Government must establish an ODR Contact Point to help consumers with disputes submitted via the Commission's ODR platform. The contact point must host at least two ODR advisors to assist and help with documentation.

47. The ODR Regulation allows the Government to decide whether the ODR contact point handles the following:

- Disputes relating to a domestic complaint involving a UK consumer or business;
- Disputes initiated by business (potentially allowing complaints made by a business against a consumer) to be submitted to an ADR provider via the ODR platform.

48. The Government's view is that requiring that the ODR contact point extend to assisting consumers with disputes about domestic as well as cross-border online purchases would dramatically increase its workload and risk duplicating the activity of the proposed helpdesk. Several responses to the consultation supported this view. The Government believes, however, that the contact point should have the flexibility to handle domestic complaints as it sees fit and would not want to restrict it from doing so, on the basis that it is not always clear to an online consumer whether a purchase is cross-border or domestic.

49. The Government also believes that extending the ODR Regulation to apply to disputes initiated by businesses against consumers would be confusing for consumers, and that it would be better to have the whole system solely geared towards resolving consumer disputes. This approach was strongly supported by responses to our consultation

Detail of the proposals

50. The Government will not make it a requirement that the ODR contact point must assist with domestic online purchases. However, the ODR contact point will have discretion to help with domestic complaints where it sees fit on a case by case basis.

51. The Government will not permit disputes initiated by businesses to be submitted via the ODR contact point.

52. An ODR contact point procurement exercise will be conducted to ensure the most appropriate supplier is appointed.

Appointing a Competent Authority

Summary

53. The EU Directive states that in order to ensure that ADR entities function properly and provide quality services for consumers and traders, they should be closely monitored by a competent authority or authorities. Member States may appoint more than one competent authority, but one must act as a single point of contact for the European Commission. The Government envisages funding the start-up costs of the new competent authority, but that operational costs would have to be covered by fees charged to the certified ADR providers so that the process becomes self-funding. The Government sought views on the nature of those fees.
54. The responses to the consultation were in favour of the Government's proposed approach to appoint a new competent authority covering ADR schemes in the non-regulated sectors, but also to appoint the sector regulators as competent authorities for their sectors where appropriate. Most respondents favoured a model whereby fees payable to a competent authority were based on the size of an ADR provider.

What's the issue?

55. The ADR Directive requires the UK to appoint a competent authority or authorities. The function of the competent authority is to assess whether bodies wishing to qualify as a certified ADR provider meet the requirements of the Directive, and monitor their performance.
56. The Directive permits a Member State to appoint more than one competent authority, in which case, the Government must designate one of the competent authorities as a single point of contact for the Commission. The competent authority acting as the single point of contact must maintain a list of certified ADR providers and notify any changes to the list to the European Commission. It will have to provide a report to the European Commission every four years, outlining the activities of the certified ADR providers they monitor.
57. The consultation sought views on whether there should be a single competent authority or more than one, overseeing the different regulated sectors. It also sought views on the nature of fees paid by ADR providers to the competent authorities. The Government's view is that it would be preferable for the UK to have more than one competent authority, because of the number of sector specific regulators who already oversee regulated sectors with an ADR scheme. Unpicking existing statutory relationships between regulators and ADR schemes would not be helpful, and requiring ADR bodies to provide similar information to a regulator and a separate ADR competent authority would be duplicative and an unnecessary and costly burden.

Detail of the proposals

58. The Government intends to appoint the following regulators as competent authorities in their relevant sectors:

- Aviation – Civil Aviation Authority
- Energy – Ofgem
- Estate agents – Powys Council
- Financial services¹² – Financial Conduct Authority
- Gambling – the Gambling Commission
- Pensions – Department for Work and Pensions
- Post – Ofcom
- Telecoms – Ofcom
- Regulated legal services (England and Wales) – Legal Services Board

59. The Government is still considering how the ADR Directive will apply to transport sectors where passengers already have access to independent complaint handling bodies to help them resolve their disputes with transport providers. This work needs to be concluded before deciding on who should act as competent authority for these sectors. In addition, it may be necessary to introduce a separate competent authority to monitor Scottish ADR bodies at some point in the future.

60. It is the Government's intention to appoint the Trading Standards Institute (TSI) as the "generic" competent authority in charge of monitoring the functioning of the remaining ADR entities in the UK, and to act as single liaison point with the Commission. TSI were one of the bodies identified as being well placed to fulfil this role in response to our 2012 ADR Directive Call for Evidence, and already undertake a similar certification role for their Consumer Codes Approval Scheme (CCAS).

61. TSI will assess, on the basis of information notified to them by ADR entities, whether a given ADR entity respects the quality requirements laid down by the present proposal. In addition, TSI will publish regular reports on the development and functioning of ADR entities. Following a similar model that TSI use for CCAS, ADR bodies will undergo an initial approval process. ADR bodies will be divided into bands and will pay annual fees based on the size of the organisation (determined by the volume of cases they handle). TSI will be opening discussions with ADR providers on the appropriate level of fees and the procedures involved in the approval process, and BIS will retain oversight of these fees.

¹² The activities covered by the Financial Ombudsman Service are set out in rules made by the Financial Conduct Authority in the Dispute Resolution: Complaints (DISP) section of the handbook:
<http://fshandbook.info/FS/html/handbook/DISP>

Information Requirements

Summary

62. There are a number of information requirements on traders set out in the ADR Directive and the ODR Regulation. The Government's consultation stage impact assessment¹³ estimated the costs of these information requirements (including familiarisation costs) to be a one-off cost of £25.3m - £38m and then £0.5-£0.7m per year. The consultation sought views on whether guidance or standard wording for businesses to use would help to minimise these costs.

63. The responses to this consultation were in favour of guidance from Government, but cautioned against the introduction of any statutory wording, which would lose the flexibility for individual businesses to respond appropriately in their circumstances. The TSI has a statutory responsibility to produce guidance for business on consumer law, and Government will work with TSI to produce appropriate guidance on ADR information requirements.

What's the issue?

64. There are a number of information requirements on traders set out under the ADR Directive:

- Any business that is obliged by law or through membership of a particular trade association to use a particular ADR provider, or which has voluntarily committed to use a certified ADR provider to resolve disputes, must provide information about that certified ADR provider on their website and, if applicable, in the terms and conditions of sales or service contracts;
- All businesses who sell their goods or services online must provide a link to the ODR platform on their website. Further information must be provided about the ODR platform if the online business is obliged or committed to using ADR. All websites which act as a platform for businesses to sell their goods and/or services must also provide a link to the ODR platform;
- In the event of an unresolved dispute, all businesses (whether or not they are obliged by law or have voluntarily committed to use ADR) must provide information about an appropriate certified ADR provider or providers to the consumer, and advise whether or not they will use ADR in an attempt to settle the dispute. This means that businesses which belong to sectors with mandatory ADR schemes will have to advise consumers that their dispute can be referred to the relevant ADR body. Businesses operating in sectors where the use of ADR is voluntary will have to advise consumers whether or not they are willing to refer the complaint to an appropriate ADR body.

¹³ Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/288200/bis-14-594-implementing-alternative-dispute-resolution-directive-and-online-dispute-resolution-regulation-impact.pdf

Detail of the proposals

65. The Government intends to set out the information obligations and related sanctions on business through secondary legislation. Government will work with TSI to produce appropriate guidance on the ADR and ODR information.

Procedural Rules and Scope of ADR

Summary

66. The ADR Directive contains several provisions where the UK has a choice as to how to implement the Directive. In our consultation we stated our preference for implementing each of these provisions, and the majority of respondents agreed with our suggestion in each instance.

What's the issue?

67. The Directive allows us to choose:

- Whether to apply the full list of reasons which certified ADR providers can use to refuse to deal with a dispute
- Whether to include “in-house mediation” (where ADR is provided by the business against whom the complaint has been raised) as a certified ADR process in the UK
- Whether to allow certified ADR providers to make binding decisions

68. In addition, our consultation also asked for views on how best to extend limitation periods for initiating litigation when an ADR process is on-going.

Detail of the proposals

69. For all of these issues, a large majority of respondents favoured the approach suggested in the consultation, and the Government will implement these provisions as follows:

70. Certified ADR providers will be allowed to use the full set of criteria in Article 5(4) of the ADR Directive as grounds on which they can refuse to deal with inappropriate disputes. There will always be some instances when ADR providers receive enquiries that they cannot or should not deal with, and it is important for them to have the capacity to refuse some cases if they are to function effectively. The full criteria provided in the Directive (e.g. if the dispute is frivolous or vexatious) should give certified ADR providers enough scope to reject complaints when appropriate.

71. The Government will not categorise in-house mediation as an appropriate ADR process when implementing the ADR Directive. Although it is important for businesses to do what they can to resolve customer complaints, their in-house complaints handling processes should not be confused with independent and impartial ADR processes.

72. The Government will allow certified ADR providers to make decisions that are binding. Although this may not be appropriate for all ADR schemes, it is a common and effective approach in several existing schemes, and it is important to maintain this flexibility.

73. The Government will apply an eight-week extension to the six-year window an individual has to initiate litigation, should an ADR process be on-going at the time the six year window expires. This approach mirrors the provisions of the Cross-Border Mediation (EU Directive) Regulations 2011, used to implement a similar provision found in the Mediation Directive.

Simplifying the Provision of ADR

Summary

74. The landscape for ADR provision in the UK is currently very complex, resulting in inconsistent consumer experiences. A simplified landscape could address these inconsistencies and potentially also increase awareness and uptake of ADR. There would be several significant issues to consider before reform could begin, so any simplification of ADR provision would occur over the longer term.
75. The consultation included a call for evidence on the simplification of ADR provision in the UK. The responses to the consultation suggested that there was considerable support for some degree of simplification from both consumer and industry representatives. There was little support for a single consumer ombudsman, but most respondents who expressed a particular view on the future ADR landscape supported the idea of an umbrella body acting as a single point of entry and sitting above a number of sector specific schemes.
76. The Government will continue to consult stakeholders on the issue of further simplification, and assess the costs and benefits of making any structural changes.

What's the issue?

77. The current ADR landscape in the UK is complex with over 70 different ADR schemes operated by a range of providers. Some consumers find that their dispute may be covered by multiple ADR providers and it is not always clear to consumers who to go to for help. Consumer experience of ADR may also be very varied across different sectors depending on the nature of the ADR adopted (or required) in that sector. These issues are partly being addressed through the implementation of the ADR Directive, through the setting of minimum standards for ADR provision and the requirement for businesses to direct consumers to a certified ADR provider.
78. A simplified ADR system may be even easier for consumers and businesses to navigate and would prevent problems where it is difficult to determine who the most appropriate ADR provider is. Simplification could come in the form of a single consumer ombudsman, a rationalisation of schemes, or an umbrella ADR body. The aim would be to help increase awareness and overall uptake of ADR.
79. However there are some significant issues to consider when determining the best approach to the simplification of ADR. For example, in some sectors ADR is compulsory but in others it is not. A compulsory system would be the clearest system to operate but would come at significant cost to business. Retaining a mixed approach, however, would risk losing some of the benefits of simplifying the structure of ADR provision.

Detail of the proposals

80. Most respondents to the consultation supported the idea of the simplification of ADR; however, there was very little evidence of support for a single consumer ombudsman model. Most favoured an umbrella model, providing clear access to consumers and helping to raise levels of awareness and uptake. Sector specific bodies with their particular expertise could continue to co-exist under the umbrella system, but there are still significant questions to be considered, such as whether ADR should be compulsory

for all sectors, whether the number of ADR bodies operating in each sector should be limited and how far to harmonise the type of ADR on offer to consumers.

81. Consideration will also be needed on how to fund the costs of setting up an umbrella body and other structural change, and whether the benefits outweigh these costs, as well as any legislation that might be necessary.
82. The Government therefore proposes to continue to consult with stakeholders and to carry out further work to assess the costs, benefits and impacts to inform our decision on any future simplification.

Next Steps

83. A set of regulations to set up the generic competent authority and to confirm those regulators acting as competent authorities will be laid by the beginning of 2015, and come into force soon after. This will allow these authorities time to certify ADR bodies prior to the implementation of the Directive in July 2015, at which point a list of certified ADR bodies has to be available. Further details on the timings and arrangements for certifying ADR bodies will be provided early next year, but the expectation is that the certification process will begin in spring 2015.
84. A second set of regulations to implement all of the other relevant requirements of the ADR Directive will follow in spring 2015, and come into force in July 2015.
85. A procurement exercise to contract a supplier to provide the residual ADR scheme will be launched shortly after publication of this consultation response document. A contract will be awarded to the successful supplier early in 2015.
86. TSI will be opening discussions with ADR providers on fees and procedures.
87. The Government will continue to consult with stakeholders and to carry out further work to assess the costs, benefits and impacts of any future simplification of ADR provision in the UK.
88. Further guidance on interpreting some of the requirements of the ADR Directive will be issued to ADR bodies by the end of 2014. Government will use the opportunity provided by the implementation of the Consumer Rights Bill to provide comprehensive information to businesses on the requirements placed on them by recent changes in consumer legislation, including on ADR, and is developing a communications strategy to reach out to businesses with this information.

Annex A: Detailed Summary of Responses

Q1. Do you think there are any significant gaps in the provision of ADR in the UK? Please identify any sectors where you think the provision of ADR is insufficient.

Almost all respondents agreed there were significant gaps in the provision of ADR in the UK. Most of those that disagreed or were unsure were from the sectors where ADR was mandatory.

Respondents perceived the availability of ADR to be both patchy and of varying quality. One cause they identified was the uneven take-up of ADR through membership of a trade association or professional body. Furthermore, ADR may only be available in part of a given market. For example, ADR exists for a new computer purchase but not computer repairs; for telecoms service contracts but not mobile hardware; and car repairs and services made by an independent garage but not for second-hand cars. Numerous respondents felt this inconsistency just added to the lack of clarity for consumers.

Specific gaps identified by respondents in addition to those already mentioned in the consultation included; accountancy services, email systems, parcel delivery, insurance and unregulated legal services. One respondent highlighted gaps due to geographic reasons and emphasised the need to ensure services in rural areas would be considered as part of the development of any general ADR scheme.

Many respondents highlighted a gap in the basic, low-value retail market. Retail groups agreed but emphasised that ADR was available for high-value consumer goods such as furniture and fitted kitchens and bathrooms and argued that a general ADR body may be superfluous in an industry such as retail, where high levels of customer satisfaction are essential to retailers' success. They added that the cost of a retail ADR scheme may not be proportionate to the benefit.

<p>Government's position: The Government agrees that there are gaps in the provision of ADR which need to be addressed.</p>
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Q2. Do you agree that the current provision of ADR in the UK is not enough to meet our obligation to have ADR available for all consumer disputes?

A significant majority (36 out of 52) of respondents agreed that the current provision of ADR in the UK is not sufficient.

If you disagree, can you advise which ADR schemes are suitable to handle all disputes, and whether there are limitations to the number of disputes or type of dispute that these schemes could handle? Would these schemes be able to process an increased volume of disputes within the 90 day deadline for concluding disputes set by the Directive?

However several respondents, mainly larger existing providers, did not support the creation of new schemes but called for existing schemes to be extended to cover the gaps in the market. They felt larger existing providers had the necessary expertise in a range of different sectors and the flexible, scalable and tried and tested models to cope with an increase in caseload. It was however accepted that appropriate resourcing and funding mechanisms would be needed. One respondent also pointed out that as the Directive required ADR to be free of charge or at a nominal fee for the consumer, many existing ADR providers may find it difficult to extend their activity to cover more cases without external funding.

Views on whether the 90 day deadline would be an issue were mixed, with some respondents saying providers could comply but others indicating some concerns, particularly around complex cases and sectoral differences.

Government's position: As existing provision is not enough to meet the requirements of the ADR Directive, further action is necessary to ensure full coverage of ADR.
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Q3. Can we expect businesses not currently obliged to use an ADR scheme, to refer complaints to a voluntary residual ADR scheme?

The majority of those who responded to this question agreed that businesses would sign up to a voluntary ADR scheme. Some suggested any reluctance would be due to a disproportionate cost in doing so. Other felt however that ADR was still more appealing to businesses than going through the courts.

Five respondents said that responsible traders would sign up and those who saw ADR as a marketing tool viewed not signing up as potentially damaging to their reputation. One respondent also emphasised that voluntary take-up should increase as many businesses simply did not have access to ADR at the moment and the Directive will ensure full coverage.

Several respondents were concerned about the general lack of awareness particularly among SMEs and even where ADR was compulsory. This was cited as a key reason why businesses do not take it up voluntarily. Another respondent suggested that allowing existing, recognised ADR providers to expand would promote take-up from businesses through increased brand recognition.

A couple of respondents commented that take-up would largely depend on what model the residual scheme takes. Three respondents agreed that businesses are generally more likely to sign up to use ADR if they can be confident that the ADR provider understands their industry.

What steps could Government and others take to encourage businesses to use a voluntary ADR scheme?

The steps respondents suggested the Government could take to encourage take up of voluntary ADR were varied and included tax or financial incentives for businesses, some form of trust mark for signing up, a means to change negative consumer reviews or only offering Government procurement contracts to businesses who use ADR. The majority (24) of respondents however suggested that information and education and a strong publicity campaign would be the most effective means of encouraging voluntary take up of ADR.

Respondents suggested the benefits of ADR to businesses should be promoted and eight respondents said this could be achieved through testimonials from traders and consumers. Three respondents felt that the only means to encourage take up would be to make it compulsory. One academic also said traders may be sufficiently encouraged to sign up by a threat of compulsory ADR in the future if traders did not make use of a system of self-regulation.

Government's position: The Government and partner bodies will publicise the benefits of ADR in preparation for the changes being implemented. The information requirements which all businesses have to fulfil will help raise awareness and encourage take up.

Q4. What volume of enquiries and/or disputes could we expect a voluntary residual ADR scheme to receive?

Nearly all those that responded to this question commented on the difficulty of determining the likely volume of contacts that the residual scheme would receive.

Most agreed there would be an increase in the number of complaints across the board resulting from the implementation of the Directive with three respondents suggesting this would however, not happen straight away. Seven respondents commented that the volume of contacts would depend on the quality of the publicity around ADR to raise awareness among consumers.

Many respondents said that the volumes would greatly depend on the scope of the residual body and which sectors it would end up covering; volumes could be significant if it covered transport (particularly aviation) or general retail. Several agreed that volumes would vary greatly by sector.

Where figures were provided, these ranged from 100,000 – 500,000 per year. One large ADR provider suggested that of the actual disputes it handled each year, they received four times that figure in initial enquiries. One academic said 25% would probably need to be added to any estimate.

One respondent suggested case volumes could be estimated by identifying sectors in scope of the residual scheme and comparing the complaint volumes recorded in similarly sized sectors already covered by existing ADR providers.

Government's position: It is difficult to estimate the case volume of a residual scheme. Our impact assessment provides a best estimate of 22,500 cases for the first year, but the residual scheme will need the flexibility to deal with a much broader range. It should be much easier to estimate the case volume after a year of operation.

Q5. Is there a specific operating model that a residual ADR scheme should adopt (e.g. mirror existing ombudsman models)?

Six respondents supported an ombudsman model for the residual body. Several respondents suggested that in the retail sector, a single approach would be difficult due to the broad range of products a residual scheme could cover. One larger ADR provider said this was a reason a single model should not apply to all sectors.

The majority of respondents believed the residual model should be flexible, nine said this was again due to the nature of the residual body dealing with a range of different products where a combination of different types of ADR would be needed.

Business groups favoured the mediation model such as that used through the Small Claims Courts, as this was the less expensive model for businesses. However, they also highlighted that this would not be in tune with the Directive in that proceedings must be initiated (and paid for) by the consumer.

The ombudsman model was supported as it is understood and widely recognised by both consumers and businesses. It also offers fairness and objectivity and a level of certainty around the decision that other models does not.

A couple of respondents also supported a two stage model with conciliation or mediation initially and more formal arbitration or adjudication if parties were unsatisfied with the resolution at the first stage.

Three respondents saw the model used by the Financial Ombudsman Service as particularly successful.

Government's position: The residual scheme will have to cover a range of sectors, so parties bidding to provide the residual scheme will be required to outline the model they intend to use to provide this broad scope.

Q6. Can you suggest what an appropriate maximum and minimum settlement value for a residual ADR scheme should be? How have you arrived at these figures?

Fifteen respondents suggested there should be no minimum threshold. Other suggested minimum limits included anything from £50 to £500.

Fourteen suggested a maximum of £10,000 with nine proposing this on the basis it was aligned with the limits for disputes going through the Small Claims Court system. Four respondents said the maximum should be £25,000 and another four said £50,000 was a more appropriate maximum settlement limit.

Ten respondents felt both minimum and maximum settlement values should be flexible and would largely depend on the sector and therefore should be set on a sector-by-sector basis.

Respondents discussed the limits in their own sectors. In financial services the maximum is set at £150,000 whereas in energy and telecoms it is £10,000, in legal services £50,000, and there is no limit in pensions.

Several respondents, including two consumer groups, accepted that a small minimum to stop vexatious claims was not unreasonable but also agreed there was a need for proportionality. Those that disagreed and supported no minimum threshold reasoned that if redress was owed then justice should be upheld on that basis, no matter how small the detriment value.

One legal respondent commented that a higher maximum value would be likely to deter businesses from using ADR.

<p>Government's position: Government will not set settlement value levels. It will be up to the body who wins the contract to supply the residual ADR scheme to use their expertise to set levels they deem to be appropriate.</p>

Q7. What funding model would be appropriate for a residual ADR scheme?

Can an ADR provider operate effectively if it is reliant on case fees rather than annual fees?

A significant majority of those who responded to this question believed that income for the residual ADR scheme should come mainly from case fees charged to business in addition to some annual fees. Respondents also acknowledged it would be very difficult to predict the cost of running the residual scheme and there were a number of risks associated with financing it solely through one or the other. Several respondents suggested that financing the residual body through only annual fees would put it at risk of insufficient funds, and it may not be able to cope with a sudden unexpected increase in caseload.

Those that supported annual fees only did so on the basis that funding solely by case fees could result in a very high case fee which would disincentivise business from signing up to ADR in the first place. They also said that annual fees would allow signed up businesses to more accurately plan for ADR in their budgeting.

Government's position: It will be up to interested parties who bid to provide the residual scheme to outline the charging model they intend to use, but we will want to ensure fees are consistent with market rates.

Q8. Should a standard case fee be adopted? What would be an appropriate level? If not, how should the amount charged for each dispute be determined?

Several respondents that supported a fixed standard case fee felt the simplicity would be beneficial, particularly to businesses.

However, the majority of respondents that advocated a standard case fee felt that it should either be determined on a sector-by-sector basis, or on a sliding scale, and should be proportionate to the value of the dispute. Business groups emphasised the need to be proportionate and reflect comparatively low value disputes, for example in the retail sector. Respondents felt it was important that case fees were affordable for all size businesses and highlighted in particular that fixed fees could disproportionately impact smaller businesses.

Those that felt a standard case fee was inappropriate, or were unsure, suggested the level of case fee should take into account a number of factors in addition to the value of the dispute, such as the length of time taken for an ADR provider to resolve a dispute and the complexity of a particular case.

Several ADR providers referred to their own case fee structures including where models differed according to the type of ADR being used. For example, one provider charged a smaller case fee for conciliation, and this would then increase for a later adjudication stage if no resolution was reached initially.

One large ADR provider highlighted the complexity of cases in the financial services sector and the model for an annual levy on all businesses. This is in addition to a standard case fee from which smaller businesses are effectively exempt, as they are unlikely to meet the minimum threshold for the numbers of cases brought in a year required before this fee is applied.

Several respondents felt that if there was general uncertainty around case fees, or if they were not set at an appropriate level, businesses may be deterred from using ADR.

One respondent called for Government to set the case fees for the residual provider at a higher level than those set by existing providers in order to reflect or offset investment by business in a particular scheme.

One other respondent commented that a standard case fee would not be appropriate for the residual ADR provider given the range of disputes it would be dealing with.

From all those that suggested an appropriate standard case fee, all but one indicated a figure of up to £500, with one ADR provider suggesting anything higher would be disproportionate to the value of claims. One respondent also suggested a maximum of £500 and ideally no more than £300-£400. The alternative figure suggested by one respondent was up to £200.

Government's position: The residual ADR scheme supplier should be able to use their expertise to help determine appropriate rates and we would expect these to be consistent with current market rates. Government will work with the body who wins the contract to supply the residual ADR scheme to ensure fees are set at an appropriate level.

Q9. Would it be better to have a single ADR body or several ADR bodies operating a residual ADR scheme? What would be the ideal number and what are the reasons for this?

There was majority support among respondents to this question for a residual ADR scheme to plug the gaps in ADR not covered by existing schemes. Respondent views on whether the residual ADR scheme should be provided by one or more body were very evenly split.

The main argument for a single body was that it would avoid further complicating an already very complex landscape. One respondent said multiple bodies would not help strategic simplification further down the line. Others felt a single body would lessen the confusion among both consumers and businesses and improve consumer recognition.

Several respondents were concerned about a loss of expertise if there was only one body providing the residual scheme and that consumers may shy away if the proper sectoral expertise was not apparent.

Consumer groups highlighted that as the choice of ADR body would lie with the business, it was likely they may opt for the one they perceived to be more business-friendly or cheaper. However, these respondents also acknowledged that multiple residual schemes could have some advantages for consumers as competition may help to drive down prices and improve standards.

Those that favoured more than one residual ADR body saw this as the more competitive model.

Government's position: To ensure access to ADR is as straightforward as possible, the Government intends to appoint one body to provide the residual ADR scheme.

Q10. In light of the other requirements in the ADR Directive which are intended to assist consumers, would a consumer-facing complaints helpdesk be beneficial?

A significant majority of respondents (47 out of 58) agreed in principle that a helpdesk could be beneficial to consumers as long as it added value beyond existing services. Nine respondents felt it could help minimise confusion and assist consumers in navigating the complex ADR landscape and also go some way to improving access and building awareness of ADR in general. Two respondents emphasised that in their experience consumers see real value in having access to advice when they are having a problem with a trader.

Various respondents suggested the helpdesk could provide several further benefits such as the potential to save all ADR providers a significant amount of resources currently spent on signposting consumers and another said it could help filter out frivolous or vexatious complaints.

One respondent said the helpdesk could also be a step towards broader simplification.

Respondents that either did not support a helpdesk or were unsure were concerned that it would introduce an unnecessary additional stage to the complaints process. This concern was shared by some of those who did support the helpdesk.

Other concerns were around the cost of funding it (and particularly a fear that small businesses would end up with the burden) and whether it would be proportionate to the anticipated benefits. There were further concerns about duplication with existing contact centre services, for example those already managed by the Financial Ombudsman Service and Citizens Advice. One consumer group suggested the helpdesk could build on existing contact centres already operated by ADR schemes.

One large ADR provider saw limited benefits of the helpdesk as the information requirement on businesses means details of the relevant ADR provider should have been provided to the consumer.

One respondent called on the Government to consider the introduction of the helpdesk alongside the requirement to set up an ODR Contact Point.

Government's position: The Government agrees with respondents that a helpdesk would be beneficial to consumers in navigating the ADR system and improve access to, and awareness of, ADR for both consumers and business.

Q.11 Do you have any comments on the type of service it should provide and the extent to which it should examine the enquiries it receives?

A majority of respondents believed a helpdesk should be both a telephone and online contact centre service which as a minimum, would sign-post consumers to appropriate ADR providers. Half of those felt the helpdesk should offer consumers general advice, information and guidance on ADR.

It was the consensus among respondents that a helpdesk should not extend to complaints handling, giving an assessment of the merits of a complaint or making a decision as this should be left to experts in the ADR providers themselves.

Two respondents suggested the helpdesk could be a contact centre similar to that operated by the Financial Ombudsman Service. A further two supported an online service only so to avoid duplicating the work of general information and advice organisations such as Citizens Advice.

Government's position: The Government agrees a helpdesk should be both an online and telephone support service, providing general advice and assistance and ensuring a smooth consumer complaints journey.

Q12. Rather than attempt to create a new service, which existing service or body is best placed to provide this function?

Most respondents suggested Citizens Advice should provide the helpdesk service which was seen as a logical extension to its national consumer advice service. Seven respondents suggested the helpdesk could be provided either by Citizens Advice or the Trading Standards Institute and more specifically the UK European Consumer Centre. Other suggestions included Which?, the Financial Ombudsman Service, Ombudsman Services or the appointed generic competent authority.

Government's position: The Government will provide some additional funding to Citizens Advice to extend its consumer advice service to provide a consumer complaints helpdesk function.

Q13. How could a helpdesk be funded?

The majority of respondents favoured funding the helpdesk through Government funds, either wholly or in part, with the remaining funding taken from a percentage of the subscription or case fees paid by businesses that use ADR.

Three respondents said if there was to be a business subsidy then this could be on a sliding scale and proportionate to the number of complaints sent (or forecasted) via the helpdesk to each scheme.

Several respondents also suggested funding could come from the fees collected by the competent authority or the fees raised through a residual ADR body.

Two respondents believed the cost to be minimal and further commented that if the new service was successful then this could come through the savings resulting from fewer calls being misdirected to ADR providers.

One respondent commented that funding would not be necessary if the changes merely extended an existing, centrally funded service. One respondent pointed out the need to take into account the fees already being paid in statutory sectors such as financial services and for existing contact centres to work closely with any new one to avoid duplication of the cost to business.

One trade association was wary of further costs falling on businesses and suggested funding for the helpdesk should come initially from Government and, once volumes were better understood, different funding models could be investigated.

Government's position: The Government intends to provide some additional funding to Citizens Advice to extend their existing consumer advice service to advice and assistance on ADR.

Q14 - Do you agree that regulators should act as competent authorities for the ADR schemes that operate in their sectors?

Thirty-one respondents were in favour of appointing the sector regulators as sector specific competent authorities where this was appropriate, in addition to a new generic competent authority for ADR schemes in non-regulated sectors. The arguments in favour were that the sector regulators already have the knowledge, expertise and relationships to act effectively in their sectors, and that a single competent authority covering all sectors would not have the sector knowledge needed to effectively interpret and challenge the data from the ADR providers.

Of the nineteen respondents who disagreed with the proposal, many favoured a single competent authority appointed to cover all consumer ADR providers, to avoid adding another layer of bureaucracy and confusion within the ADR structure and ensuring consistency of application of the ADR Directive.

There was also a general concern that the potential impact of making existing regulators competent authorities could be negative, where existing relationships between various regulators and relevant bodies are currently good and a change of this type could fundamentally alter the nature of these relationships.

Of the eleven respondents who said they were unsure of this proposal while many were not directly against the use of existing regulators as competent authorities, there was a concern about confusion being created through the existence of a number of authorities and a lack of effective communication between them all.

A general point which relates to the issue of simplification was, if there is a general desire to create a broader simplification of the ADR landscape, this would not be achieved with the potential added complexity of numerous competent authorities.

Government's position: The Government considers that given the existing ADR landscape in the UK, sector regulators should be appointed as competent authorities for their sectors where appropriate, building on their existing relationships with ADR providers. The Government will also appoint Trading Standards Institute (TSI) as the new "generic" competent authority to cover ADR providers in the non-regulated sectors and the residual ADR scheme. TSI will also act as the single contact point for the Commission.

Q15 - How should the fees paid by ADR providers to a competent authority be determined? Should the size of the fee depend on the size of the ADR provider (for example turnover or number of cases dealt with) or based on other factors?

There were a number of responses to this, varying from fees based on: turnover; number of cases; the cost of the product/claim; the size of provider; percentage of income/revenue funded by government; a cost-recovery basis; and leaving this unregulated and down to the agreement of the ADR provider and the competent authority.

Some more specific responses suggested, for example, fees which reflected the size of the ADR provider, a fee proportionate to the level of oversight provided by the competent authority, a fixed daily rate for auditing larger companies (as they would have more to audit) and a lower fee for a smaller company.

Overall, the ADR providers were more in favour of fees based on size of the provider, turnover and number of cases.

The trade associations had a much more varied preference.

Government's position: TSI will act as the "generic" competent authority and will categorise ADR bodies based on their case volume. Larger ADR bodies will be expected to pay a larger certification fee. TSI will open discussions with ADR providers on the appropriate level of fees and BIS will retain oversight of these fees.

Q 16 - Do you agree that the Government should allow UK ADR providers to use all of the procedural rules listed in Article 5(4) of the ADR Directive to reject inappropriate disputes? If not, please explain your reasons.

The majority of respondents who answered this question favoured the use of all of the procedural rules listed in Article 5(4).

Government's position: The Government will allow UK ADR providers to use all of the procedural rules listed in Article 5(4) of the ADR Directive to reject inappropriate disputes.

Q 17 - Would some suggested wording and guidance be useful in helping businesses meet these requirements? What kind of wording would be helpful?

The majority of respondents to this question favoured the option of having suggested wording and guidance. However, some caveated this response with the requirement that the wording used should be for guidance only and not compulsory.

Government's position: The Government will work with TSI to ensure that appropriate guidance is produced.

Q18. Do you agree that the ODR contact point should only be required to assist with cross border disputes involving a UK consumer or UK business?

The majority of respondents agreed the ODR contact point should only assist cross-border disputes. Two respondents agreed on costs grounds as the workload for the ODR contact point would be greatly increased if it had to deal with domestic cases.

Five respondents saw a clear overlap between the ODR contact point and the helpdesk and the risk of duplication of services. One respondent also described the clear fit with the role of the UK European Consumer Centre service (which assists and advises consumers about cross-border purchasing issues) and supported the suggestion of the Directive that they provide the ODR contact point. The same respondent also went on to suggest it was not always clear to consumers whether they were buying cross-border or from a domestic trader so having a single point of contact for all types of dispute would make sense. This view was also shared by two other respondents, who added that having one place for all online purchasing disputes could potentially ease the burden on the proposed helpdesk and ensure greater consistency for consumers and businesses.

Another respondent highlighted the growth in online shopping within the UK and said that the ODR contact point must be extended to cover domestic online disputes if the helpdesk was not going to do so.

Q19. Should the ODR contact point be allowed to assist with domestic complaints on a case-by-case basis?

Views on this question were very mixed with a fairly even split in support and against generally for similar reasons as Q18.

For respondents who were opposed this was largely due to the increased confusion this would create and potential duplication of the work being done by other advisory bodies. One respondent reiterated the risk of confusing consumers as to what the ODR contact point can and cannot deal with, also pointing out that experienced and probably better resourced ADR schemes would seem better placed to handle a domestic complaint.

One respondent recommended that any decision on whether the UK ODR contact point provides such assistance should, to try and ensure consistency, be informed by what other Member States will do in equivalent circumstances.

Government's position: The Government will allow, but not require, the ODR contact point to assist with domestic complaints on a case-by-case basis.

Q 20 - Do you agree that, where applicable, we should extend the six year time limit for bringing disputes to court by eight weeks, and mirror the amendment made to implement the Mediation Directive? If not, please explain why a different extension period is preferable.

The majority of respondents to this question were in favour of extending the statutory six year time limit by an additional eight weeks. Those who responded no felt that the six year limit was already too long and it was unfair that a business could potentially have to respond after such a long time.

Those who were unsure felt that the additional eight weeks will make no appreciable difference and that proving a case within the current time frame can already be difficult without extending this further.

Government's position: Whilst the six year limitation period will usually leave plenty of time to complete the ADR process, this may not always be the case, and when it is not, Government does not want to prevent parties from bringing a court claim if the limitation period passed whilst ADR was on-going. We therefore intend to amend the six year limitation period set out in the Limitation Act by eight weeks in cases where an ADR process is still on-going.

Q 21 - Are you aware of any sector specific legislation which contains time limits for bringing cases to court which we may also have to amend?

The majority of respondents to this question were not aware of any sector specific legislation which contains time limits for bringing cases to court which may need amending. Some examples were given of both cross-cutting and sector specific legislation which may need amending.

For example, in aviation passenger claims, a respondent highlighted that the relevant time limits for bringing claims to court is the six years of the Limitation Act 1980 for contractual claims. However, there is currently a case before the Court of Appeal on whether a two year limit applies to certain aviation cases under international law.

Government's position: Some amendments to sector specific legislation are likely to be necessary to ensure compliance with the Directive. We are in the process of identifying what changes are needed and any necessary provisions will be included in our regulations to implement the ADR Directive.

Q 22 - Do you agree that in-house ADR should not form part of the UK's implementation of the ADR Directive? If you disagree can you please explain why?

The majority of respondents agreed with the Government proposal that in-house ADR should not be included as part of the UK's implementation of the ADR Directive, with a number of respondents making clear that inclusion of in-house services would undermine the independence of the service.

However, some of the unsure respondents considered the inclusion of in-house services could be included if independence and impartiality could be demonstrated.

Government's position: In-house ADR will not form part of the UK's implementation of the ADR Directive in view of the responses to the consultation.

Q 23 - Do you agree that the UK should allow certified ADR providers to make decisions that are binding? If you disagree can you please explain why?

The majority of respondents agreed with the proposal to have ADR providers make binding decisions, with this being viewed as a way to instil confidence in the consumer that the decisions made will be adhered to by the trader. The majority were content with this being binding on the trader and not the consumer, leaving the option open for the consumer to pursue a further legal challenge through the court if they are unhappy with the outcome through ADR.

The point was also made that while a binding decision on the business/ trader can bring an end to a dispute, there needs to be an effective enforcement mechanism that does not involve recourse to the courts as this would undermine the ADR system.

Of those who responded no, it was suggested that the binding element is something which should be agreed to by both parties involved and not arbitrarily put in place, as a mandated requirement could result in both parties requesting legal representation which would increase costs. A further point raised was that anyone should be able to access the existing dispute resolution scheme that all business help pay for i.e. the courts, and if a business owner feels they have a case relevant for the courts, this option should not be removed.

Government's position: The Government will continue to allow for binding decisions to be made by certified ADR bodies, in line with the consensus in response to the consultation.

Q 24 - Do you agree that the ODR Regulation should only apply to disputes initiated by a consumer, and should not apply to disputes initiated by a business? If not, can you please explain why?

The majority of respondents to this question agreed with the Government position and would like to see the ODR Regulation applied only to consumers bringing claims against firms rather than the other way round or firms against firms. However, of those that said no, the reasoning included a recognition that some sellers are actually individuals e.g. eBay sellers, and the argument that some micro firms may also need to be able to make claims against individuals as they would not have the same financial backing as larger sellers.

One respondent requested a separate consultation take place on this issue.

Government's position: The Government will maintain its intention not to extend the requirements of the ODR Regulation to apply to disputes initiated by business.

Q.25 Would the benefits of simplifying the ADR landscape over the longer-term outweigh the costs? Who would the costs and benefits fall to?

Nine respondents commented it was too early to say and many did not directly respond to the question.

Thirteen respondents said they thought ADR should be simplified in the longer term and that the benefits would outweigh the costs. Benefits would include increased cost-effectiveness, reduced costs on the court system and improved quality and availability of ADR. Larger ombudsmen can help to identify systematic problems in a sector. Few respondents commented on the specific form the simplification should take; one consumer representative argued elsewhere in their response for a more unified service model rather than a reduced number of ADR providers per se, and an ADR provider argued for consolidation into a few larger providers (following the Financial Ombudsman Service model). One respondent commented that consumers should bear some of the costs of ADR as well as businesses, and another commented that the Ministry of Justice could bear some of the costs as they are making savings on the court system.

Ten respondents favoured some level of simplification (which would be to the benefit of consumers), but indicated this should be in the form of signposting, a portal or an umbrella body in order to retain the benefits of sector expertise and competition.

Twelve respondents indicated that they were not in favour of longer term simplification (beyond possibly simplifying into a smaller number of bigger schemes). Some of these were from regulated sectors with ADR in place and felt that the costs to them would outweigh any benefits. Almost all commented on the loss of sector expertise and flexibility.

Government's position: The Government has noted the move away from the idea of a single consumer ombudsman towards that of an umbrella body sitting above sector-specific ADR providers. We will continue to consult stakeholders and consider the costs and benefits of simplification.

Q.26 What evidence is there that a simplified system would make a major difference to consumers? Are there other ways to achieve the aim of greater awareness and take-up of ADR?

Few respondents had specific evidence to give. Consumer groups felt consumers would benefit from a simpler system that was easier to navigate and that this would help consumer awareness and make it easier to promote awareness. Transparency would also be a benefit to consumers, especially if schemes were required to publish neutral information. ADR may raise consumer confidence. Good ADR providers can help to highlight systemic problems in an industry. It may reduce the number of cases going to court - currently this is easier for the consumer than navigating a complex ADR system.

One respondent said there was no evidence that a simpler system would help consumers.

Some respondents felt that simplification would lead to greater awareness. One large ADR provider said this had not happened with simplification in their sector, awareness was still a problem. There will be greater awareness in any case once businesses are required to inform consumers about ADR, especially if businesses highlight ADR as a competitive advantage. Some respondents argued for media campaigns and advertising, and/or continual promotion by trade and consumer bodies (and possibly the courts). It would be important not to overstate the benefits to consumers. ADR could be promoted by the use of a unified brand/logo and using technical solutions for signposting.

Government's position: Higher levels of consumer awareness and take-up of ADR could be a long term benefit of ADR simplification, if it is built into the simplification process.

Q.27 Would simplifying the landscape in the longer term be compatible with the introduction of a residual ADR scheme by July 2015? Are there specific ways in which the creation of a residual scheme would need to be undertaken to enable the possibility of later simplification?

Only one respondent said that a residual scheme would run contrary to the simplification aim (although some re-iterated their opposition to simplification).

Those that commented positively generally held the view that a residual scheme could be a starting point for future simplification.

One respondent commented that it would be important to consider the aim of simplification in setting up the residual scheme. Therefore the residual scheme would need to consider:

- Whether it would be temporary or permanent
- Whether it would be likely to expand
- The differences between voluntary and statutory schemes

Respondents commented that the residual scheme should be:

- Very simple so it would be simpler to redesign later
- Flexible and able to adapt to changing circumstances

Several participants thought that the residual scheme could be used to inform and build simplification through:

- Gathering data, profiling and preparatory work for a simplified scheme
- Increasing the public profile of ADR
- Minimising later costs as the set-up had already been done
- On-going evaluation of ADR

One suggestion was that a generic scheme should develop sector specialisations and then be split up into sector specific ADR schemes.

Government's position: We will continue to keep in mind the possibility of longer term simplification of ADR as the ADR Directive is implemented.

Q. 28 What are your views on making the use of ADR a compulsory or voluntary requirement if the landscape is simplified?

Twelve respondents favoured a voluntary scheme, sixteen a compulsory scheme, and eleven expressed no preference. A further two respondents commented that this was a separate issue to the question of simplification.

The arguments against a compulsory scheme were:

- High costs to business (ultimately passed on to consumers)
- More red tape
- That it would be pointless unless decisions were also binding
- Both parties need to be willing for mediation to work
- There are other ways to stimulate take-up for ADR e.g. transparency and taking mediation attempts into account at court

The arguments in favour of a compulsory scheme (which largely came from consumer groups, regulators and some businesses in sectors where it is already compulsory) were that:

- It would be better for consumers
- There would be less detriment in sectors where ADR is compulsory
- Overall costs would be lower with economies of scale

Points made by respondents who expressed no particular preference included:

- Only some forms of ADR should be compulsory: , arbitration should be compulsory, but mediation should not
- ADR should be compulsory in sectors where there is a need - particularly in sectors where there is information asymmetry between consumers and businesses
- The costs to business would balance out the benefits to consumers
- The costs to business could be minimised with robust procedures in place
- ADR will not be cost-effective if industry do not take it up, and they should therefore be incentivised to use it
- If ADR is compulsory, ADR providers should be able to decline cases that are not suitable for them
- If ADR is voluntary, courts should consider efforts towards mediation as part of their judgment

Government's position: Responses on the compulsory or voluntary nature of ADR under a simplified scheme were split. Government will keep the issue under consideration.

Annex B: List of Respondents

Association of British Insurers
 Association of British Travel Agents
 Association of Chartered Certified Accountants
 Association of Manufacturers of Domestic Electrical Appliances
 Association of Professional Financial Advisors
 Association of Regulatory and Disciplinary Lawyers
 Association of Train Operating Companies
 British Air Transport Association
 BACTA
 Bar Council
 British Bankers Association
 British Retail Consortium
 British Parking Association
 British Standards Institute
 British Motorist Protection Association
 Civil Aviation Authority
 Care Inspectorate
 Centre for Effective Dispute Resolution
 Certsure
 Chartered Institute of Arbitrators
 Citizens Advice
 Competition and Markets Authority
 Communications Consumer Panel
 Consumer Codes Approval Board
 Consumer Council for Northern Ireland
 Consumer Council for Water
 Financial Conduct Authority
 Financial Services Consumer Panel
 Finance and Leasing Association
 Financial Ombudsman Service
 Federation of Small Business
 Furniture Ombudsman
 Glass and Glazing Federation
 Home Retail Group
 Housing Ombudsman
 Independent Betting Adjudication Service
 Law Society
 Law Society of Scotland
 Legal Ombudsman
 Legal Services Board
 Legal Services Consumer Panel
 Local Government Ombudsman
 Mediation Room
 Motor Codes Ltd
 Mr Bruce Macmillan
 Mr Kevin Simmons
 Ms Nicola Lewis
 National Federation of Roofing Contractors
 National Landlords Association
 National Caravan Council
 National Casino Forum
 National Conciliation Service
 NHBC
 North East Trading Standards Association
 Ombudsman Association
 Ofcom
 Ofgem
 OFWAT
 Office of the Independent Adjudicator
 Office of Rail Regulation
 Ombudsman Services
 Passenger Focus
 Parliamentary and Health Service Ombudsman
 ProMediate
 Property Ombudsman
 Residential Landlords Association
 Resolute Systems (UK) Limited
 Robert Irvine Associates
 Royal Institute of Chartered Surveyors
 Royal College of Vets
 RSVP Introductions
 Russell Associates Dispute Solutions
 Scottish Mediation Network
 Scottish Legal Complaints Commission
 Society of Motor Manufacturers and Traders
 Scottish Public Services Ombudsman
 The Internet Services Providers' Association
 Tenancy Deposit Scheme
 Trading Standards Institute
 UK Cards
 University of Aberystwyth
 University of Leicester
 Queen Mary University
 Water UK
 Which?

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