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By email to: RCCPconsultation@beis.gov.uk

Consumer and Competition Policy Directorate
Department for Business, Energy, and Industrial Strategy
1 Victoria Street, London,
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1 October 2021

Dear Sir / Madam,

Reforming Competition and Consumer Policy
I am writing in response to the consultation on Reforming Competition and Consumer Policy. We have restricted our comments to the Ombudsman Association's area of expertise; consumer redress.

Summary

1. The Ombudsman Association welcomes the opportunity to strengthen the current system of consumer redress.

2. Adopting a 'pay-as-you-go' model and charging a nominal fee to access redress is incompatible with best practice, as represented by the Ombudsman model, and would prevent existing ombudsman schemes from expanding their coverage.

3. There is a significant risk that the introduction of mandatory ADR via a 'pay-as-you-go' approach, with a nominal fee and a 'lower limit' on the monetary value of claims, will cause the financial pain for businesses outlined in the Impact Assessment, without delivering the benefit of strengthening access to redress or increasing consumer confidence, or enabling the sector to benefit from feedback to drive improvements.

4. The most effective way to achieve benefits for both consumers and businesses is to have a single mandatory ombudsman in each sector, to provide comprehensive and effective redress for all consumers and to enable holistic feedback to both the sector and policy makers.

Background

5. The Ombudsman Association (OA) was established in 1993 and includes as members all public and private sector Ombudsman schemes and major complaint handling bodies in the UK, Ireland, the British Crown Dependencies and the British Overseas Territories.

6. The Vision of the OA is that throughout the public and private sectors:
   - It is straightforward and simple for people to complain.
   - People making a complaint are listened to and treated fairly.
   - A complaint is dealt with quickly, fairly and effectively at the earliest stage by suitably trained staff.
   - People have access to an ombudsman in all areas of consumer and public services.
   - The learning from a complaint is used to improve services.

7. An Ombudsman helps to underpin public confidence in the sectors that they cover; by providing free, accessible and effective redress, and by feeding back the lessons from their work in order to help improve service delivery and complaints management for the future.

8. The OA's membership criteria[1] are recognised as representing best practice. This is reflected in the Cabinet Office's *Guidance for government departments on setting up Ombudsman schemes,*[2] which addresses the point of when it is appropriate to use the title 'ombudsman', and in the criteria used by Companies House on when a company can use the protected term 'ombudsman'.[3]

Supporting consumers enforcing their rights independently

Q65. What more can be done to help vulnerable consumers access and benefit from Alternative Dispute Resolution?

9. The current problems with redress in the consumer sector flow from the combination of having multiple redress schemes whilst at the same time having gaps in coverage. The result is that for consumers it is not clear how, or who, to raise a complaint with, there are gaps in who can access redress, access to redress is sometimes restricted even where it does exist via 'nominal fees' or 'lower limits' on the value of a claim, and the proliferation of schemes means there are inconsistencies in how complaints are handled. These issues are multiplied for anyone experiencing vulnerability.

10. As anyone can experience vulnerability at different times, due to a change in circumstances (e.g. a bereavement, financial issues, or a deterioration in mental health), many of the actions that can be taken to help vulnerable consumers are actions that can be applied universally.

11. Clearer explanation of people's rights and how to access redress can only be effectively achieved if the redress system itself is reformed. As the Department's ADR Impact Assessment[4] sets out, *"Consumers can also find it confusing to navigate the landscape, because sectors differ in the type of service offered and number of ADR providers offering services…we have identified 20 for the wider home improvement sector and six for the wider motoring sector."* Whilst additional resources for advice providers such as Citizens Advice will no doubt be welcomed, the complexity of the existing system and the gaps within it is the root cause that needs to be addressed.

12. In terms of redress bodies themselves, it is important that they take into account the needs of those who are vulnerable, specifically in their processes and accessibility. Any barriers that are put in place, whether it be having to pay a fee to access redress or inserting a 'lower limit' on the monetary value of claims, will make it more difficult for vulnerable people to access and benefit from ADR. An ombudsman scheme operates to a higher standard than the existing ADR Regulations in terms of making their services accessible, making reasonable adjustments, and publishing their procedures around that, as set out in the OA's Criteria and the OA's Service Standards Framework[5].

Q66. How can regulators and government balance the need to ensure timely redress for the consumer whilst allowing businesses the time to investigate complex complaints?

13. All complaints should be dealt with in a timely manner. Some relatively simple transactions may be capable of being resolved in a matter of days, or even hours, others may require weeks or months if remedial work or scarce replacement parts are required.

14. For consumers to have confidence in the market they need to have free, direct and immediate access to an ombudsman if the business does not resolve the complaint promptly. In Scotland, the Scottish Public Services Ombudsman sets a two-stage standard for all

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[1] www.ombudsmanassociation.org/about-us/join-ombudsman-association
[2] www.gov.uk/government/publications/new-ombudsman-schemes-guidance
[3] www.gov.uk/government/publications/incorporation-and-names/annex-a-sensitive-words-and-expressions-or-words-that-could-imply-a-connection-with-government
[4] Alternative Dispute Resolution impact assessment (publishing.service.gov.uk)
[5] www.ombudsmanassociation.org/best-practice-and-publications/oa-service-standard-framework

complaints about public services, recognising that some issues are more complex than others: 'simple' complaints should be addressed by the public body within one week; more complex issues that require an investigation should be addressed within four weeks.

15. There will be occasions when an issue cannot be addressed within four weeks but the standard helps ensure that the body engages with the complainant, and the ombudsman if necessary, to explain why the deadline will be missed and when the final decision will be delivered.

16. A similar two-stage process could be introduced for consumer complaints but performance against it would need to be monitored to ensure that simple complaints that could have been addressed more swiftly were not delayed without good reason.

Q67. What changes could be made to the role of the 'Competent Authority' to improve overall ADR standards and provide sufficient oversight of ADR bodies?

Q68. What further changes could government make to the ADR Regulations to raise consumer and business confidence in ADR providers?

17. We fully support the proposal to improve the quality and consistency of ADR services and the move to make it mandatory for all ADR providers to meet best practice standards. As the Impact Assessment for this consultation sets out, *"ADR is currently used only in few cases, because of inconsistent standards, a confusing landscape, and insufficient incentives for businesses to participate."*

18. The Impact Assessment goes further to state clearly that *"We believe that voluntary actions are unlikely to increase ADR take-up by much in sectors in which business participation in ADR is not mandatory."*

19. The ADR Regulations failed in their aim 'to promote high-quality consumer ADR schemes' because the standards were set too low, the 'competition' between providers resulted in a race to the bottom as businesses opted for low cost 'business-friendly' providers, rather than independence and quality of decision making, and deliberate 'complaint suppression' tactics were permitted, such as fees to access redress.

20. The OA's Criteria represents best practice for independent redress. In order to achieve the Government's aim of increasing consumer confidence, by increasing access to redress, the ADR Regulations should be amended to raise them to the level of that recognised best practice.

21. Consumers should receive a similarly high standard of service when they use ADR regardless of which company or sector they are complaining about. The OA's Service Standards Framework[6] sets out the public commitments and service standards that can be expected when using an ombudsman. As stipulated in the OA's criteria and the Framework, all ombudsman schemes should publish how they perform against their stated service standards to enable policy makers, politicians, academics, and the general public to hold them to account. In clarifying what service users can expect, the Framework acts as a tool with which to manage expectations and build trust and confidence in the services that members provide.

22. The OA's Caseworker Competency Framework[7] (CCF) sets out a best practice model for those who investigate complaints. The CCF identifies the key capabilities that a caseworker needs to be successful, supports the development of the caseworker profession, and guides the way that caseworkers approach their role, including the way they make decisions and interact with others.

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[6] www.ombudsmanassociation.org/best-practice-and-publications/oa-service-standard-framework
[7] www.ombudsmanassociation.org/best-practice-and-publications/oa-caseworker-competency-framework

23. Government should also ensure there are no financial incentives for Competent Authorities to approve multiple ADR schemes to mitigate the risk that the higher standards that should be adopted are not applied rigorously.

Q69. Do you agree that government should make business participation in ADR mandatory in the motor vehicles and home improvements sectors? If so, is the default position of requiring businesses to use ADR on a 'per case' basis rather than pay an ADR provider on a subscription basis the best way to manage the cost on business?

Q70. How would a 'nominal fee' to access ADR and a lower limit on the value of claims in these sectors affect consumer take-up of ADR and trader attitudes to the mandatory requirement?

Q71. How can government best encourage businesses to comply with these changes?

24. The OA strongly supports the position that ADR should be made mandatory in the motor vehicles and home improvement sectors. In order to reap the benefits from doing so, both for consumers and for businesses, that should be delivered through the recognised best practice model of having a single mandatory ombudsman (as is formal UK Government policy in the financial sector, the energy sector, the rail sector, and for new homes, to name just a few).

25. The suggested approach of adopting a 'pay-as-you-go' model and allowing a nominal fee to be charged would undermine what the Government is seeking to achieve. Neither approach meets established best practice principles.

26. ADR should not be seen purely through the lens of cost on a business. It is that mindset that leads to proposals to simply block consumers from raising complaints, via nominal fees and 'lower limits', rather than preventing the complaint from arising in the first place or resolving it quickly through good customer service.

27. Whilst the Impact Assessment identifies the potential cost savings for the motor vehicles and home improvement sectors of cases being addressed via ADR rather than through the Courts, it does not take into account the additional advantages of the ombudsman model. Simple adjudication does little more than pick a winner in a dispute. An ombudsman is more a doctor than a police officer, diagnosing what is wrong and making recommendations to improve. The benefit for businesses covered by an ombudsman is the feedback loop that it provides via training, setting standards for complaint handling, and providing data and insights on common issues industry-wide. An ombudsman can also provide validation for the complaint handling of a business, helping close down long running disputes and reinforcing a business' approach if they rule in their favour. A 'pay-as-you-go' model breaks that relationship and perpetuates the broken model that already exists of a fragmented race to the bottom on cost.

28. It is a fundamental principle that an ombudsman should be free for a consumer to access; there should never be a financial barrier put in place to discourage consumers from accessing their statutory rights.

29. The consultation paper references the aviation sector as a precedent for adopting a nominal fee; that is not company that anyone should wish to be associated with. Redress in the aviation sector, the only regulated sector that has put the barrier of a nominal fee in place to deter consumers accessing redress, is widely regarded as a basket case by consumer bodies, academics, and the very ADR bodies that operate within it. The high-profile decisions taken by Ryanair, Emirates, and Norwegian not to engage with the ADR process at all shows the scale of failure of the current approach to ADR in aviation.

30. More effective ways to manage the costs on businesses, without losing the benefits for consumers or businesses, can be found in other sectors. In the removals industry, membership of the relevant ombudsman is included as part of membership of either of the two main trade bodies, and membership of the Which? Trusted Traders scheme also automatically includes membership of the Furniture & Home Improvement Ombudsman. This

approach, whereby the subscription costs of membership of an ombudsman can be coordinated through and shared across the sector could be an effective way of communicating and implementing the changes as well as managing costs. Having a single mandatory ombudsman also enables the redress body itself to deliver efficiencies because of that mass coverage and therefore reduce their own costs and the corresponding costs that are borne by the sector.

31. Adopting either a 'pay-as-you-go' model or a nominal fee would explicitly prevent the existing ombudsman schemes already operating in those two sectors from expanding their coverage further, and as a result would likely fail to achieve the increased consumer confidence hoped for considering the 'gold standard' that the ombudsman model represents.

32. Introducing a 'lower limit' on the monetary value of claims is another symptom of seeing complaints as an irritant that should be blocked rather than as an opportunity to get insight to improve the service provided. That this would be, as described in the consultation paper, *'consistent with powers already available to ADR providers'* is not an endorsement; the consultation paper and the Impact Assessment both convincingly make the case that the current system is not working and needs to be reformed. Many complaints about poor service or delay would potentially become ineligible, and any potential systemic issues around card charges, over-charging, or refunds not being paid could also be excluded.

Q72. To what extent do you consider it necessary to open up further routes to collective consumer redress in the UK to help consumers resolve disputes?

33. It might be essential to open up further routes to collective redress if the suggested proposals above are adopted. Introducing a 'lower limit' on the monetary value of claims and nominal fees will suppress legitimate complaints and fail to deliver the Government's stated aim of strengthening consumer rights and consumer confidence. As repeated and systemic failings are unlikely to be addressed via a model that has erected those barriers, 'collective redress' through the Courts will be the only option for most consumers, as it is now.

We are very happy to engage further on the details of these proposals if that would be helpful.

Yours sincerely

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