

BIS consultation on implementing the Alternative Dispute Resolution Directive and Online Dispute Resolution Directive

Response from the Ombudsman Association

Introduction

1. Many Ombudsman Association members will be submitting their own responses to the consultation. This response from the Association is not an attempt to distil, aggregate or emphasise those views, even where broad consensus exists on issues of concern to individual organisations. Instead, this response only addresses those issues of interest to the Ombudsman Association itself or to ombudsmen in general. On issues which aren't directly relevant to those two areas, the Association would prefer to remain silent - even where individual members are likely to have strong views.

Competent authority/authorities (Question 14)

2. The Ombudsman Association welcomes the opportunity created by the competent authority concept to define and enforce high standards in ADR provision, and to provide a dedicated, stable, well-informed contact point and advocate for ADR within the public sector.
3. However, the Association is concerned about the proposition of having multiple authorities, with regulators acting as the authority in sectors where regulators exist. This is primarily for two reasons, these being matters of principle.
 - First, the Association has long promoted well-defined, consistent and consistently applied standards in ombudsmen and complaint handling; the existence of multiple bodies setting and enforcing standards could risk a divergence in standards that the Association would find troubling.
 - Second, the Association believes in the independence of ombudsmen and complaint handlers. While the primary imperative is to be independent from the complained-about body, there are also advantages to remaining independent from the respective sector regulator where they exist, as required by the CEAR Act 2007 48(2)(b).
4. Therefore, the Association would prefer to see a single, central competent authority responsible for all ADR bodies. A less desirable - but probably acceptable - alternative could be to have one central body responsible for setting standards and generally enforcing the terms of the Directive (essentially working on those issues of direct interest to the Association), but leaving the appointment of individual ADR providers to sector regulators where they exist.

Public sector ombudsman schemes are accountable directly to their respective parliaments or, in the case of Wales and Northern Ireland, assemblies. Where the competent authority is overseeing a public sector Ombudsman in relation to part of its jurisdiction that falls under the Directive then careful consideration needs to be given to the governance so that the substantive relationship is not undermined.

5. The Association is proud of its record in defining and promoting high standards in ombudsmen and wider complaint handling. In any scenario, the Association would from the outset hope to build a close collaborative partnership with the competent

authority or authorities on matters of shared interest, including the definition and promotion of high standards and the protection of the 'Ombudsman' brand.

Helpdesk (Questions 10-13)

6. The Ombudsman Association welcomes any initiative which improves access to, and awareness of, ombudsman and other complaint handling services. An efficiently run, well-publicised helpdesk could be a real benefit for the sector, provided it adds value beyond existing internet search and directory inquiry services and doesn't put unnecessary people or processes between consumers and the service they need.
7. In designing and operating any helpdesk system, the Association would be keen to ensure that all its members would be included on the register of schemes to which the helpdesk was able to refer consumers; this should apply even to those very small schemes which might find it hard to contribute to the running costs of the helpdesk.
8. The Association is open-minded about the potential scope of a complaints helpdesk – i.e. whether it would be a simple signposter for ADR services, or whether it would also aim to offer advice on a wider range of issues (e.g. to consumers who had not yet approached the complained-about business). But from the Association's perspective, effective, comprehensive and consumer-friendly signposting to ADR services would be an absolute minimum requirement.
9. The Association has no particular preferred funding model for the helpdesk. However, in a scenario where a levy on ADR providers is to be a source of some or all of the funding for the helpdesk service, and where that helpdesk is providing services other than signposting to ADR services, the levy on ADR providers should not pay for the broader range of services.
10. In any scenario, the Association would be keen to work closely with the body providing the helpdesk, not least to ensure that it has accurate up-to-date information about the full range of UK ADR providers.

Simplifying the landscape and 'Residual ADR' (Questions 3-9 and 25-28)

11. The Ombudsman Association does not have an opinion on whether and to what extent the creation of a Residual ADR body (in the immediate term) or the simplification of the ADR sector (over the longer term) is desirable or achievable.
12. However, if a new body is to be created or other changes are to be made to the overall landscape, there is one issue on which the Association does have a view: while we accept that multiple schemes exist within individual sectors at the moment, and that this will likely remain the case, we nevertheless oppose in principle the fragmentation of redress schemes within a single private sector industry. The more schemes operate in any given sector, the more the Association believes there is a risk of creating confusion for consumers and businesses and of creating uneven standards of investigation and redress. In some cases there can also be a risk of a 'race to the bottom' where schemes compete for contracts with individual businesses by prioritising cost over quality, and possibly jeopardising the independence of their decisions. The Association therefore prefers there to be a single scheme within an industry. For its own part, where more than one scheme is established within an industry, the Association will normally only afford recognition to the scheme or schemes to which a substantial number of firms in the industry belong. These principles are set out in the Schedules to the Association's

rules, which are attached for reference and available for download on the Association's website at <http://www.ombudsmanassociation.org/association-rules.php>.

13. The Association has no opinion on what the volume or value of residual complaints is likely to be (questions 4 and 6); indeed, it will be very hard for anyone to assess this with any confidence or accuracy given the variety of areas covered by this category. However, the Association does believe that some kind of minimum threshold value – a kind of de minimis threshold – should be established for individual complaints, below which it would be unreasonable to expect businesses and ADR schemes to provide for a complaint to be referred to an ADR provider.
14. The Association is proud of its record in defining and upholding standards in complaint handling, and in particular in protecting the 'ombudsman' brand. However, the Association accepts – in considering which operating model might be best for any residual ADR work (question 5) – that the ombudsman model may not be necessary or appropriate in some sectors.

In-house mediation (Question 22)

15. The Association does not believe that in-house mediation is independent, nor is likely to be seen as independent. Further, a consumer whose complaint is 'resolved' in this way would not have a clear route to using an external ADR service if they remained unhappy. We therefore agree that in-house mediation should not be within the scope of implementing the Directive.

Binding decisions (Question 23)

16. The Ombudsman Association certainly believes that ADR schemes operating in the private sector (and therefore within the scope of the Directive) should have the option of issuing decisions that are binding on traders, where the decision is accepted by the consumer. This should, however, leave consumers free to pursue other options – including the courts – if they do not accept the ADR scheme's decision.

Applying the ODR Regulation to disputes initiated by business (Question 24)

17. The Ombudsman Association agrees that the ODR Regulation should only apply to disputes initiated by a consumer, and not to disputes initiated by a business.

Public Sector and Private Sector boundaries

18. Although not specifically mentioned in the consultation document, the Association feels that clear guidance needs to be made in the final implementation of the Directive on the boundaries between public and private delivery of services and the extent of the Directive. Given the increasing complexity of public service delivery and the position of 'paid-for' public services, it is not clear what the Directive covers in that respect, which in any case may be subject to change as delivery models change in the future.

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