

19 February 2018

Utilities ADR's application for certification as an alternative dispute resolution provider in the energy sector

I am writing regarding your call for views on whether to certify an additional redress provider, under the ADR Directive, to deal with energy sector complaints, alongside an already approved Ombudsman.

Summary

1. The Ombudsman Association welcomes Ofgem's position that there should only be one Ombudsman operating in the energy sector and agrees that this is in the interests of consumers, and in line with current consumer policy.
2. The Association believes that the approval of an additional ADR provider in the energy sector would undermine the benefits of having a single Ombudsman and cause confusion for consumers.

Background

3. The Ombudsman Association was established in 1993 and includes as members all major public and private sector Ombudsman schemes and complaint handling bodies in the United Kingdom, the Republic of Ireland, the British Crown Dependencies and the British Overseas Territories.
4. The Vision of the Association 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.
5. The Association's objectives are to:
 - a) Support and promote an effective system of complaint handling and redress in the United Kingdom, Ireland, Britain's Crown Dependencies and Britain's Overseas Territories.
 - b) Encourage, develop and protect the role of ombudsmen in both the public and private sectors as the 'best practice' model for resolving complaints, according recognition through membership.

- c) Provide an authoritative voice and promote best practice and policy for those involved in complaint handling and redress to ensure an effective service for the public. Support open and transparent accountability and endorse principles of good complaint handling.
6. An Ombudsman helps to underpin public confidence in the institutions that they cover; by providing 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.
7. The Association's membership criteria are recognised by the UK Government as representing best practice. This is reflected in the Cabinet Office's *Guidance for government departments on setting up Ombudsman schemes*¹, 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'².

Question 1: Do you have views on Utilities ADR operating a redress scheme in the energy sector?

8. As Ofgem will be aware, Utilities ADR is run by the same organisation that previously ran The Retail Ombudsman (TRO), a former member of the Ombudsman Association. During re-validation of its membership in 2017, TRO resigned from the Ombudsman Association before the final stage of their re-validation process was completed, having been found not to meet our membership criteria of: Independence; Fairness; Effectiveness; Openness & Transparency; and Accountability³.
9. However, our comments relate to the principle of any additional certified ADR provider operating in addition to, and in competition with, a single Ombudsman in the energy sector, not just to Utilities ADR.

Question 2: What are your views on the a) benefits, and b) risks to consumers should an additional ADR provider be certified to operate in the energy sector?

10. The Ombudsman Association's long-standing position is that people should have access to an Ombudsman in all areas of consumer and public services, and that there should be a single Ombudsman within an industry.
11. This principle of non-proliferation, which we are pleased to see Ofgem support, is based on the presumption that it is in the interests of consumers for access to redress to be simple and straightforward, and that the establishment of more than one Ombudsman scheme (or ADR provider) within an industry creates consumer confusion and uncertainty.
12. The position that there should only be one redress provider within a sector, and preferably an ombudsman, has been reinforced by a number of recent reports into the ADR sector, including the 2017 Citizens Advice report *Confusion, gaps and overlaps*⁴ and the report by MoneySavingExpert⁵ Both reports are clear that it is in the interests of consumers for access to redress to be simple and straightforward and that confusion is caused by having multiple providers, without any clear evidence of the benefits. Furthermore, the Gambling Commission (a fellow ADR Competent Authority) also reported in 2017⁶ that the multiple redress schemes operating in their sector caused confusion for the public and did not result in additional benefits. The Gambling Commission have since reiterated their proposal

to move towards a single redress provider, in the form of an ombudsman. The recently announced consultation⁷ by the Ministry of Housing, Communities & Local Government to strengthen consumer redress in the housing market by reducing the number of ombudsman and ADR approved redress bodies, from four to one, further reinforces this position as best practice.

13. Many of the criticisms of having multiple redress providers within a sector is that the company chooses which one to work with. This means that no single Ombudsman scheme / redress provider has a holistic overview of the issues in the sector and the regulator / competent authority does not have a single partner to work with to drive improvements. The lack of clarity often puts consumers off complaining, and as identified above makes it confusing when they try to.
14. The clarification that Utilities ADR are not seeking to operate as an ombudsman, and that it would remain mandatory for energy companies to be members of, and to signpost to, a single Energy Ombudsman would potentially make the situation even worse for consumers if an additional ADR provider was approved for the energy sector. At the very least consumers would need to be informed that they have the right to go to the Energy Ombudsman, but can also use the additionally approved ADR provider, instead of, or as well as, the Energy Ombudsman. A similarly unclear situation currently exists in the legal sector⁸ and has been roundly condemned by providers and consumer groups as confusing and unsatisfactory.
15. Consumers are unlikely to know whether approaching the ADR provider or the Ombudsman would provide them with the best outcome and in many cases would likely do both, effectively inserting an additional stage into the complaints process and increasing the time of resolution by several weeks, perhaps months.
16. It is unclear how or why an additional ADR provider would provide a more timely or effective form of redress than an Ombudsman if they received the original complaint at the same time. If there is any evidence that they would, it is unclear why Ofgem would not adopt a policy of seeking to appoint several different ombudsman schemes. It is difficult therefore to see why Ofgem would wish to approve an additional ADR provider, as it would contradict, in spirit if not in letter, its own stated position that it is in the interests of consumers for there to be a single Ombudsman.

¹ www.gov.uk/government/publications/new-ombudsman-schemes-guidance

² www.gov.uk/government/publications/incorporation-and-names/annex-a-sensitive-words-and-expressions-or-words-that-could-imply-a-connection-with-government

³ www.ombudsmanassociation.org/docs/OA-Rules-Schedule-1.pdf

⁴ www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Gaps%20overlaps%20consumer%20confusion%20201704.pdf

⁵ https://images6.moneysavingexpert.com/images/documents/MSE-Sharper_teeth_interactive.pdf

⁶ www.gamblingcommission.gov.uk/PDF/Complaints-processes-in-the-gambling-industry.pdf

⁷ www.gov.uk/government/uploads/system/uploads/attachment_data/file/682203/Strengthening_Consumer_Redress_in_the_Housing_Market_Consultation.pdf

Question 3: If you identified any risks, how do you think they could they be overcome?

17. It is possible that through strong oversight and enforcement activity from Ofgem, with regards to communication from energy companies to consumers, from Ofgem to the public, and between the multiple redress providers, that some of the issues identified above could be mitigated. However, experience from other sectors where multiple redress providers operate shows that the detriment to consumers cannot be overcome entirely. In fact, as the various reports highlighted above clearly show, the most effective action to overcome the detrimental impact of having multiple redress providers in a sector is to instead have a single provider, in the form of an Ombudsman.

The Association would be happy to provide any further information or meet to discuss if you would find that helpful.

Yours sincerely

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⁸ www.lawsociety.org.uk/support-services/advice/articles/changes-to-client-care-information-and-leo-time-limit/