



Business in Focus



Alternative Dispute Resolution (ADR)

Guidance for traders

Make sure your business complies with The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015



Introduction

Is this legislation relevant to me as a trader?

The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (ADR Regulations) affect all traders who sell goods and services to consumers, with the exception of a very small section of health sector contracts.

Applicable sectors include finance, insurance, energy, retail, leisure services and transport services, to name just a few. The regulations are relevant to sole traders and limited companies, whether working from a business premises or at home. From gardening companies, cafés, pubs and large retail outlets, through to corner shops, petrol stations and even ice cream vans, they are all subject to these regulations if their internal complaints handling process has not been able to resolve the dispute. Businesses are required by law to inform consumers about the process and their engagement in Alternative Dispute Resolution.

What is Alternative Dispute Resolution?

Alternative Dispute Resolution (ADR) describes a process for resolving disputes between consumers and traders that doesn't involve going to court. This is done by means of putting the consumer and the trader in contact with a neutral third party, with the aim of assisting a speedy, mutual agreement.

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The ADR landscape

ADR has been part of the consumer protection environment for many years. Schemes that consumers are commonly aware of include those offered by the Association of British Travel Agents (ABTA), the Financial Ombudsman Service (FOS) and the Civil Aviation Authority (CAA).

Many traders are members of – and make good use of – various and numerous trade association bodies, such as the Federation of Master Builders, or membership schemes such as the Furniture and Home Improvement Ombudsman. These provide traders with access to ADR schemes where they can escalate a complaint that they are unable to resolve through their own internal complaints procedures.

For consumers and traders, access to ADR schemes was previously largely dependent on the trader being a member of a trade body, without guidelines addressing the consistency of the process to be followed. Nor was any reassurance provided to either party to indicate that the process would be handled fairly.

The ADR Regulations were introduced to widen the opportunity for traders and consumers to have more access to a simpler, less costly way for both parties to resolve a dispute, that in turn will ensure

consumer confidence remains high and encourages strong consumer/trader relationships.

ADR is becoming common across so many areas of law that some courts now insist that the parties involved use an ADR process in the first instance, before a case can be taken through the court process. There is an expectation that all parties will try everything reasonable to resolve their dispute before going to court.

Consumers are generally encouraged to try ADR even where the trader's use of such mechanisms is voluntary. An agreement by both parties to use ADR to solve a dispute can help maintain the business relationship, as well as show the consumer that the trader is willing to find a resolution.

“The ADR Regulations were introduced to widen the opportunity for traders and consumers to have more access to a simpler, less costly way for both parties to resolve a dispute.”

What are the benefits of ADR?



ADR procedures are often quicker than court proceedings, which is of benefit to both businesses and consumers. The cost of ADR is often free to the consumer or at least considerably less expensive than using the courts. Procedures are often completed in private and conducted confidentially, avoiding the risk of adverse publicity and reputational damage that could arise from a court case.



In some types of ADR (such as mediation) the parties to the dispute decide the outcome themselves rather than having it imposed on them.



ADR can be more flexible in terms of outcome and how it applies to strict rules of law. It may therefore be possible to achieve outcomes that a court could not order, or to get a result that both parties think is fairer than that dictated by law.



ADR procedures can be less confrontational or adversarial than court proceedings. Not only can this reduce stress, it can also be an important consideration for a fruitful ongoing relationship.



If the dispute ends up going through the courts, a failure to have considered the use of ADR prior to court proceedings may lead to additional costs.



Traders who do not provide information required by the ADR Regulations leave themselves open to having action taken against them by the local trading standards services under the Enterprise Act 2002.

Types of ADR

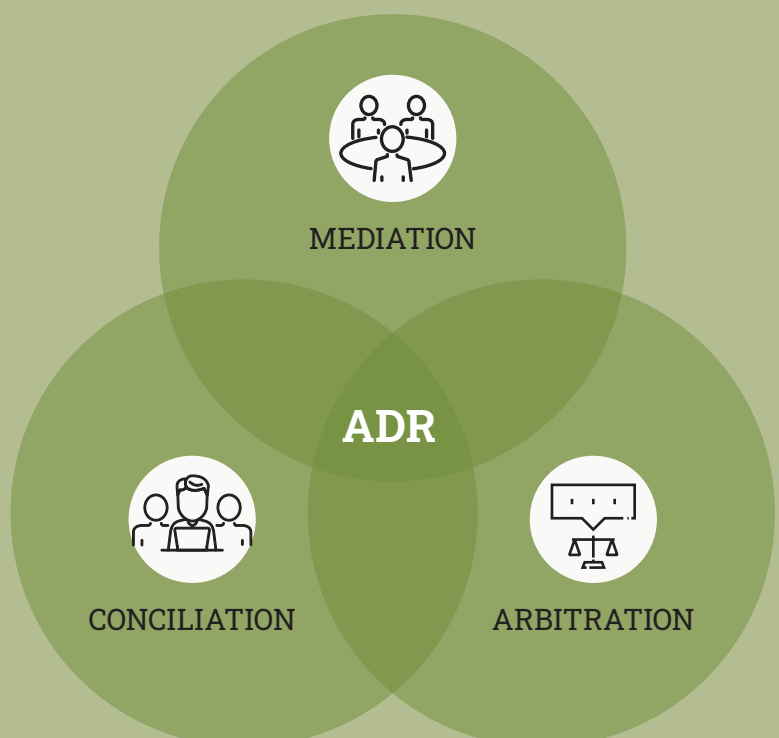
There is a variety of ADR mechanisms that businesses and consumers can access. More common forms include:

- Mediation, where an independent third party helps the disputing parties come to a mutually acceptable outcome.
- Conciliation, a process whereby the parties use a conciliator who meets with the parties both separately and together, in an attempt to resolve their differences.
- Arbitration, where the outcome is decided upon by a third party. Parties agreeing to arbitration usually agree to the decision being binding and therefore enforceable through the courts.

The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 only apply to consumer contracts where a trader is in contract with a consumer and are not applicable for business-to-business contracts. For instance, where a consumer buys a TV from a trader, the regulations would apply. If, however, a garage bought a TV from a trader to use in a waiting area, the regulations would not be applicable.

ADR MECHANISMS

There is a variety of ADR mechanisms that businesses and consumers can access. More common forms include:



List of criteria

There is a list of criteria that ADR bodies must comply with if they are to become 'approved' ADR bodies for the purposes of the legislation.

A large part of the regulations contains detailed criteria laying down how an approved ADR body is to operate. All approved ADR bodies have to prove that they meet a strict set of criteria covering:

- how the ADR body can be accessed
- expertise, independence and impartiality
- conflict of interest, ensuring that the ADR body acts impartially
- transparency
- effectiveness
- fairness
- legality
- reasons the ADR body can refuse to deal with a case

The criteria are detailed to ensure that the parties have confidence in the ADR process.

“A large part of the regulations contains detailed criteria laying down how an approved ADR body is to operate.”

The creation of Competent Authorities

Competent Authorities are bodies that approve against the criteria in the regulations and monitor the continued compliance of approved ADR bodies. Currently the Competent Authorities approving ADR bodies in the UK are:



Financial Conduct Authority



Legal Services Board



Civil Aviation Authority



Gambling Commission



The Office of Gas and Electricity
Markets (OfGem)



Office of Communications
(OfCom)



Lead Enforcement Authority
for the purposes of the Estate
Agents Act 1979 (1)



The Chartered Trading Standards
Institute (on behalf of the
Secretary of State for Business,
Energy & Industrial Strategy)

“Any warranty or guarantee you sell or provide is in addition to the consumer’s legal rights under the Consumer Rights Act 2015.”

CASE STUDY

Beam Building Services operates as a general builder and is a member of a trade body. To be a member of the trade body Beam Building Services has to adhere to the code of conduct or it could lose its membership benefits. Part of the ‘code of conduct’ is that if it has a dispute with a consumer and is unable to resolve it satisfactorily, it must be willing to use ADR. Mrs Williams has had some work carried out in her bedroom and has contacted Beam Building Services to say that some of the plaster has cracked. Beam Building Services does not feel that this has any link to the work that it carried out for Mrs Williams. Beam Building Services tells Mrs Williams that there is information on its website and in the terms and conditions provided to her at the time when the work was agreed about who she needs to contact for ADR. The company also sent her a letter with the name and web address of the ADR body that can deal with this dispute and says that it is happy to co-operate with the process.

The trader requirements

The regulations define a trader as ‘a person acting for purposes relating to that person’s trade, business, craft or profession, whether acting personally or through another person acting in the trader’s name or on the trader’s behalf’.

All traders except those operating in a small section of healthcare provision are now legally obligated to provide a consumer with certain information once a consumer dispute reaches deadlock.

Deadlock happens when both the consumer and trader have worked through the trader’s own internal complaints procedure and an agreeable resolution has not been found.

They must provide the consumer with the following information:

- A statement that the trader cannot settle the complaint with the consumer;
- the name and web address of an approved ADR provider that could deal with the complaint;
- whether the trader is obliged or prepared to submit to an ADR procedure operated by the ADR body they have named.

The information must be provided in a ‘durable medium’ – for example, a letter or an email – and it will normally form part of the final ‘deadlock’ letter in response to a consumer complaint.

“Deadlock happens when both the consumer and trader have worked through the trader’s own internal complaints procedure and an agreeable resolution has not been found.”

FOR EXAMPLE:

Mrs Holly bought a lawn mower from the garden centre two years ago and has written to complain that it won’t start. Oak Garden Centre has tried to reach agreement with Mrs Holly but she feels that the garden centre is not resolving her complaint fairly. Oak Garden Centre feels that it cannot get any further with the complaint.

The garden centre does write to Mrs Holly telling her that the complaint can’t be resolved, and gives Mrs Holly the name and web address of an approved ADR body that would be suitable to deal with a complaint of this nature. Oak Garden Centre is not a member of any trade body. It does value its customers and wants to retain Mrs Holly as a customer if it can. Therefore, it does advise Mrs Holly that it will be happy to co-operate with ADR.

Some traders are obligated to agree to use ADR if a consumer wishes to go down that route. This is where a trader is subject to compulsory ADR, either by law or through the membership of a trade association. They must provide the name and web address of the ADR provider or scheme on their own website (if they have one) and as part of their general contract terms.

FOR EXAMPLE:

Mr Black had a new boiler fitted and noticed that the wall next to where the boiler was fitted had plaster knocked out. Oasis Builders, who did the work, felt that the wall had been damaged after the boiler was fitted and is therefore not its responsibility to repair. Mr Black and Oasis Builders have been unable to come to an agreement. Oasis Builders is a member of a trade body and a condition of its membership is that it must offer to enter into ADR with a consumer when a dispute reaches deadlock. Mr Black was already aware of this before he agreed for Oasis Builders to do the boiler work as he had seen this detail on Oasis Builders' website, and there had been mention of this in the terms and conditions provided before the boiler was fitted. Oasis Builders had the website address and name of the ADR body on its website. The ADR body is an approved ADR body. Oasis Builders also supplied the details of the name and website address of the ADR body in a letter to Mr Black.

The ADR regulations do not make it obligatory for all traders to use ADR, but as mentioned above, they do have to provide the information to a consumer.

FOR EXAMPLE:

Sally bought new designer shoes from Regency Shoes. After two weeks the sole was coming away and she took them back to the shop. Regency Shoes felt that the shoes looked as though they had been chewed by an animal which had caused the damage, and therefore refused to refund or replace them for her.

Regency Shoes provided Sally with a letter that stated that it did not agree that the shoes were faulty. It did give Sally the name and web address of an approved ADR body but went on to state that it would not enter into this process with her. This meant that the only course of action for Sally was to take the matter to court.

CASE STUDY

Edge to Edge Gardening Design is a landscape garden business and has completed some work for Mr Piper. Its team had laid some turf and planted two borders. The turf has begun to die and Mr Piper feels that Edge to Edge Gardening Design has laid poor quality turf. Edge to Edge Gardening Design does not agree. The company is not a member of a trade body and there is no law to say that it has to agree to ADR with Mr Piper. However, Edge to Edge Gardening Design knows it needs to maintain its reputation so sends a letter to Mr Piper giving the name and website address of an ADR body, and tells Mr Piper that it is happy to use the process to see if they can reach an agreement.

SUMMARY

1.

ADR can be a powerful way of resolving disputes quickly and without recourse to the courts.

2.

While it is not mandatory, many trade bodies require their members to join ADR schemes.

3.

ADR schemes are audited for approval by Competent Authorities in their relevant fields.

In summary: a trader's obligations under the ADR regulations

All traders except those in a very small sector providing health services must, at the point that a dispute with a consumer reaches deadlock, supply the name and website address of an approved ADR provider in the appropriate sector, and indicate if they will engage in the ADR process. This must be provided to the consumer in a durable form.

Traders who are obligated to use ADR by a code of conduct through membership of a trade body or a further law must also provide the name and website address of the ADR provider or scheme on their own website (if they have one) and as part of their general contract terms.

“Traders must, at the point a dispute reaches deadlock, supply the name and website address of an approved ADR provider.”



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