

## **The EU Directive on Consumer ADR**

### **1) What is the EU Directive on Consumer Alternative Dispute Resolution (ADR)?**

The directive is a piece of legislation intended to improve consumer access to ADR within the EU. It places new obligations upon national governments to make ADR available which must be implemented by summer 2015.

### **2) What is the purpose of the directive?**

The three main purposes of the directive are:

- to ensure all consumers within the EU can seek redress from an ADR scheme if they have experienced problems with goods and services that they have purchased;
- to set consistent standards for all ADR providers; and
- to simplify ADR and reduce consumer confusion.

### **3) What does this mean for traders in the United Kingdom?**

All national governments must implement the directive but they have some discretion to choose how they do it.

The United Kingdom government has introduced new legislation, the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015, as its main means of bringing about compliance.

These regulations place obligations upon traders to inform consumers;

- whether they are willing to use an ADR scheme, and,
- if so, which one they will use.

### **4) When will these changes be implemented?**

The part of the regulations that place obligations upon traders comes into force in the United Kingdom from 1 October 2015.

ADR providers are required be fully compliant within a reasonable of period of time. For consistency and clarity, the changes we are making will take effect from 1 October 2015.

### **5) When and how must traders inform consumers about ADR?**

If you belong to a trade association or your business is overseen by a regulator, they might have their own rules about how and when you must notify consumers about ADR. It is important that you continue to comply with these rules.

In addition to any rules you are already subject to, the new regulations require **all** traders to provide information about ADR in any circumstances where a customer has made a complaint about a sales or service contract that the trader has been unable to settle to the consumer's satisfaction.

In these circumstances, you must;

- confirm to the consumer you are unable to settle the complaint;
- provide them with the name and website address of an ADR provider, such as Ombudsman Services;
- confirm whether you are willing to allow the ADR provider to look into the complaint.

You must provide this information in a “durable medium”.

## **6) What does “durable medium” mean?**

In practice, this means a letter or email that the consumer is able to retain for their records.

## **7) Do the new regulations mean that traders must subscribe to ADR?**

If you are required to subscribe to ADR by your regulator (e.g. Ofcom, Ofgem, RICS, etc) or because you are a member of a trade association, the new regulations will not alter this obligation.

It might be that, in the past, your regulator or trade association did not require you to use ADR in relation to some of the goods and services you offer to your customers.

Going forwards, however, you will be required to inform consumers whether you are willing to voluntarily take part in ADR in relation to complaints about these goods and services. You must also provide contact details for a suitable ADR provider regardless of whether you are willing to take part in the process. We call this “voluntary jurisdiction” (see questions 12 to 14, below).

## **8) What will happen if I do not comply with the new regulations?**

If you do not provide information to your customers this would be a breach of the regulations. Trading Standards could apply to the Courts for an Order that would require you to provide the information. If you failed to comply, you could;

- incur an unlimited fine; and
- be imprisoned for a period of up to two years.

Additionally, if you do not provide information about ADR to a consumer they may still contact an ADR provider, such as Ombudsman Services, directly. The ADR provider will then likely contact you about the complaint and invite you to participate in the ADR process.

## **9) What do the new regulations mean for Ombudsman Services?**

The regulations place new obligations upon ADR provider, too.

They must seek accreditation from, and subsequently be audited by, a “competent authority” (such as Trading Standards), which will monitor their performance.

Ombudsman Services has secured accreditation from the Chartered Trading Standards Institute and other relevant competent authorities.

## **10) How have the regulations required Ombudsman Services to alter the way it works?**

The main changes that the regulations require us to implement:

- extend the timescales within which Ombudsman Services will accept a complaint;
- allow each party to a complaint to review the other party’s evidence, if they want to;
- reject complaints only in very limited circumstances; and
- ensure parties are afforded opportunity to reflect upon a proposed remedy before being invited to accept or reject it.

## **11) Will you continue to offer Early Resolution (ER) and Mutually Acceptable Settlement (MAS) to resolve complaints?**

Yes. We continue to believe ADR should be proportionate to the complaint at hand.

We will strive to resolve complaints in the most straightforward way feasible, bringing resolution to consumers as quickly as possible and minimising the burden upon traders as much as we can.

We will continue to offer ER but have modified the process slightly to reflect the new regulations. We will now afford consumers up to seven days to reflect upon any proposed remedy.

We have modified our MAS process meaning that, if a consumer indicates they would like to accept our proposal but asks for time to think about it, we will ask them to reply within seven days. If a consumer rejects a MAS proposal then they will have 14 days in which to provide additional evidence to us.

## **12) Will Ombudsman Services provide “voluntary jurisdiction” ADR?**

Yes. Ombudsman Services has secured accreditation to provide ADR procedures in relation to all types of consumer dispute.

This means that, if you’re a member of one of our existing schemes, you will now be able to signpost your customers to us in relation to complaints that previously might not have been covered by ADR.

## **13) What are the benefits to traders of agreeing to voluntary jurisdiction?**

Under the new regulations traders must tell consumers about the availability of ADR even if the trader refuses to use it. Clearly, by voluntarily agreeing to ADR, traders will send a much more positive message to about their customer service standards.

#### **14) What are the benefits of agreeing to voluntary jurisdiction from Ombudsman Services?**

It might be that you already have ADR in place because your regulator requires you to. If Ombudsman Services provides mandatory ADR to you there are benefits to utilising us for voluntary ADR.

We likely already know a lot about your business and the sector you work in. This expertise will be reflected in our work. Further, utilising us to provide both mandatory and voluntary ADR will be less confusing to your staff and to your customers.

#### **15) I would like to discuss voluntary jurisdiction with you, who should I contact?**

Please contact your Relationship Manager to discuss our voluntary jurisdiction provisions either directly or at [relationshipmanagers@ombudsman-services.org](mailto:relationshipmanagers@ombudsman-services.org).

#### **16) Where can I find more information?**

The directive itself can be viewed [here](#).

The domestic regulations that transpose it into UK law can be viewed [here](#) and [here](#).

The Department for Business, Innovation and Skills and the Chartered Trading Standards Institute have created guidance for business and this can be viewed [here](#).

If you have any further questions, please contact your Relationship Manager directly or at [relationshipmanagers@ombudsman-services.org](mailto:relationshipmanagers@ombudsman-services.org).