



The Law Society
of England and Wales

**Consultation on the use of Alternative Dispute
Resolution as a means to resolve disputes
related to commercial transactions and
practices in the European Union**

Response by the Law Society of England and
Wales

March 2011

supporting
solicitors

INTRODUCTION

The Law Society (the Society) is the representative body for over 140,000 solicitors in England and Wales. It negotiates on behalf of the solicitors' profession, lobbies regulators, Government and others. It also works closely with stakeholders to improve access to justice for consumers.

The Society welcomes this consultation on the issue of consumer ADR. In our response to the European Commission consultation on policy options relating to European contract law¹ we highlighted that practical and procedural issues were at the heart of the barriers hindering consumers purchasing more products and services cross-border. Research² has shown the barriers that consumers believe hold them back from more cross-border online shopping, include (among others³):

- Cultural barriers e.g. language;
- The higher costs involved in cross-border purchasing;
- Preferences for known brands;
- Fear of goods not arriving and standards of after sale care; and
- Payment security, fraud and personal data.

Underlying some of these issues is uncertainty as to how consumers can obtain redress if problems arise. There already exists a European Small Claims Procedure, a European Payments Order system⁴ and a European Enforcement Order measure⁵. These already provide some of the key elements of a cross-border redress framework. In addition, cross-border online shopping is no more likely to lead to problems than domestic online shopping⁶. Indeed, most retailers are likely to handle complaints in a helpful and realistic manner. Despite this, it is understandable that consumers feel wary that when things go wrong (in relation to a purchase from another member state) the chances of satisfactory resolution are lower than would apply for domestic purchases.

The Society therefore welcomes the Commission's examination of these practical and procedural barriers which inhibit cross-border commerce⁷. ADR which is tailored

¹ Law Society of England and Wales (2010). *'Response to the Ministry of Justice Call for Evidence: European Contract Law Green Paper'*, pub: LSEW Brussels Office: Brussels and Law Society of England and Wales (2011).

² *'Response to the Commission Green Paper on policy options for progress towards a European Contract Law for consumers and businesses'*, pub: LSEW Brussels Office: Brussels. <http://international.lawsociety.org.uk/node/10660>

³ Some of the key data is highlighted by Consumer Focus in their response to the Ministry of Justice call for evidence on the Commission proposals for an EU contract law. Source: Johnstone, J. (2010). *'The European Commission's green paper on policy options for progress towards a European Contract Law for consumers and businesses'* pub: Consumer Focus: London, accessed at: <http://www.consumerfocus.org.uk/files/2009/06/Consumer-Focus-response-to-MoJ-consultation-on-EC-green-paper.pdf>

⁴ Some are not related to perceived problems online but are to do with basic access to the internet or methods of payment or a lack of need or desire to shop online. Source: Johnstone, J. (2010). *'The European Commission's green paper on policy options for progress towards a European Contract Law for consumers and businesses'* pub: Consumer Focus: London, accessed at: <http://www.consumerfocus.org.uk/files/2009/06/Consumer-Focus-response-to-MoJ-consultation-on-EC-green-paper.pdf>

⁵ Europa (No date given). *'European order for payment procedure'*, pub: EU institutions: Brussels, accessed at: http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_civil_matters/l16023_en.htm

⁶ Europa (No date given). *'European enforcement order for uncontested claims'*, pub: EU institutions: Brussels, accessed at: http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_civil_matters/l33190_en.htm

⁷ An OFT market study found that *'...businesses and consumers are no more likely to experience problems with foreign than domestic internet transactions'*. Source: Office of Fair Trading (2007). *'Internet Shopping'*, pub: OFT: London.

⁸ As described in the Law Society response to the Commission on contract law. Source: Law Society of England and Wales (2010). *'Response to the Ministry of Justice Call for Evidence: European Contract Law Green Paper'*, pub:

to the needs of cross-border consumers and sellers could provide an opportunity to achieve greater access to justice than through using courts in a foreign jurisdiction. This could increase the number of problems which are resolved and in which consumers achieve the redress they deserve. In addition the existence of good systems of ADR has the potential to drive better practice by cross-border retailers and deliver a better functioning market overall, including greater consumer satisfaction.

Such a system of ADR could have a number of benefits for business. With ADR in place there are greater incentives to handle complaints effectively. In turn this will encourage repeat business by consumers (driving up revenues). ADR can reduce the costs of complaints to firms in other ways too e.g. by reducing the length and complexity of disputes. ADR might also help to push poor performers out of the market, leaving more room for good businesses.

However, it is also important to recognise the limitations of ADR. While we accept that there are some outstanding Government or Industry-led schemes which provide fair and transparent redress which is enforceable, this is not the case over the whole spectrum. There are a number of schemes where the decision-making may be suspect and where the decision can easily be avoided by the individual firm either by leaving the scheme or ignoring the judgement. There are few common standards or agreed Codes of Practice and the community is young and diffuse.

In England and Wales, ADR is used for a number of different reasons depending on the situation:

- It can be easier, quicker and cheaper and an arbitrator may be perceived to have greater expertise on a specialist issue than a judge;
- It can deal with matters which a court would not (e.g. poor service questions or questions of professional conduct);
- It can provide a more appropriate solution to a case than a simple court judgement.

It is not suitable for every sort of dispute and it is absolutely crucial that those taking part have confidence in the procedure.

It also needs to be said that the word “alternative” suggests a choice. In many cases an industry-led scheme or Ombudsman service may well provide a swift, fair and effective way of resolving disputes. This may not always be the case and a consumer may well prefer to use a court rather than waste time on a mechanism which is perceived to be ineffective or unlikely to get the right result.

We believe that any form of pan-European attempt at ADR would be inappropriate – there are too many differences of law, culture and language to make this viable. Rather, we believe that the Commission should be encouraging a variety of schemes in different jurisdictions and identifying the key characteristics of such schemes.

We believe that the Commission could also undertake work to ensure that courts in the individual EU states are able to provide proper support to litigants with cross-border disputes so that they are able to access the system easily. We understand that Eire has a particularly successful and consumer-friendly system of dealing with

such disputes and the Commission could profitably examine this and encourage adoption of similar procedures in other member states.

Below the Society answers the questions posed in the consultation.

CONSULTATION QUESTIONS

1. What are the most efficient ways to raise the awareness of national consumers and consumers from other Member States about ADR?

2. What should be the role of the European Consumer Centres Network, national authorities (including regulators) and NGOs in raising consumer and business awareness?

3. Should businesses be required to inform consumers when they are part of an ADR scheme? If so, what would be the most efficient ways?

4. How should ADR schemes inform their users about their main features?

As these first four questions are interlinked the Society will provide one response.

If consumers are to use ADR (and derive the benefits outlined in the Introduction) then consumers need to be aware of them. Awareness is often one of the chief problems with ADR. There are a number of ways existing ADR schemes try to make consumers aware of their existence. These might be called the 'usual' methods. The Society considers that these 'usual methods' be employed by all ADR schemes and especially those concerned with cross-border e-commerce. These include:

- Direct publicity to the public. This might be through:
 - TV and radio advertising;
 - Online advertising; and/or
 - Requiring public bodies (e.g. local authorities, libraries), consumer representative organisations (e.g. Citizens Advice Bureaux in the UK) and enforcement bodies (in the UK this would be Trading Standards) to hold information on schemes, or be able to direct individuals to information on these schemes or even publicise them directly.
- Requiring sellers to make their customers aware of the scheme they are a member of. This could be done by requiring firms to:
 - Publicise its existence on their website/s;
 - Advertise it prominently on their bills of sale (receipts) and other publications; and/or
 - Tell complainants that they have the right to take the dispute to ADR if they have not received satisfactory resolution from the seller.
- Encourage trade bodies and business representative groups to signpost and advertise relevant ADR schemes. Their collective purchasing power could also be harnessed to reduce any cost associated in publicising a particular ADR scheme.

Many of these publicity methods are used effectively by ombudsmen in the UK, although they could be used more widely.

We also consider that there may be scope for the EU in establishing standards by which consumers can recognize whether ADR is appropriate for their dispute and whether the particular scheme on offer is fair and likely to provide adequate

enforcement. It could also develop good practice for individual ADR schemes when dealing with cross-border complaints.

The European Consumer Centres Network (ECC-Net)⁸ in particular has a vital role to play (along with public enforcement bodies). This response will address the work of the ECC-Net in greater detail in subsequent answers. However, it is crucial that the ECC-Net makes itself much more widely known to consumers. It also needs to make itself more widely known to the key public bodies and NGOs who operate in the consumer area. Beyond that the ECC-Net must evangelise to the public the existence of ADR for cross-border e-commerce complaints.

Only through this multi-pronged approach to awareness raising can consumers be reasonably expected to become aware of the existence of ADR schemes. The use of a range of methods offers the strongest prospect of generating the familiarity needed for consumers to use such schemes for their cross-border complaints.

5. What means could be effective in persuading consumers and traders to use ADR for individual or multiple claims and to comply with ADR decisions?

6. Should adherence by the industry to an ADR scheme be made mandatory? If so, under what conditions? In what sectors?

7. Should an attempt to resolve a dispute via individual or collective ADR be a mandatory first step before going to court? If so, under what conditions? In which sectors?

8. Should ADR decisions be binding on the trader? Or both parties? If so, under what conditions? In which sectors?

Questions 5 to 8 also contain significant overlap. Therefore the Society intends to group our response to them too.

The first step in persuading consumers and traders to use ADR for redress is by making them aware of its existence. Methods for doing this are set out in response to the previous questions. Awareness is only one part of the jigsaw. It might be hoped that firms selling cross-border would see the benefits to them of ADR. These could include avoiding costly alternative action (which the consumer would be able to take in their home courts, under the Rome I Regulation (Regulation 593/2008)) and the positive reputational impact of participating in such a scheme.

EU survey results back up this view. Recent research found that 85% of firms using ADR managed to reach a settlement with a customer using ADR⁹. 55% of firms rated the main advantage of ADR as the ability to settle disputes quickly¹⁰, with 25% saying it allowed a firm to maintain their reputation¹¹. The same research found 73% of

⁸ The ECC-Net was launched in 2005. It was the result of the merger of 2 previous networks. Source: The European Consumer Centres Network (2008). '*ECC-Net: Information and support to consumers across Europe*', pub: Office for Official Publications of the European Communities: Luxembourg, accessed at: http://ec.europa.eu/consumers/publications/factsheet-ECC-Net_en.pdf

⁹ European Business Test Panel (2011). '*Alternative Dispute Resolution*', pub: European Commission: Brussels, accessed at: http://ec.europa.eu/yourvoice/ebtp/consultations/2010/adr/report_en.pdf

¹⁰ 70% of disputes reported by the companies in the survey were settled within three months. Source: ¹⁰ European Business Test Panel (2011). '*Alternative Dispute Resolution*', pub: European Commission: Brussels, accessed at: http://ec.europa.eu/yourvoice/ebtp/consultations/2010/adr/report_en.pdf

¹¹ European Business Test Panel (2011). '*Alternative Dispute Resolution*', pub: European Commission: Brussels, accessed at: http://ec.europa.eu/yourvoice/ebtp/consultations/2010/adr/report_en.pdf

businesses who had used ADR were satisfied with their experience¹². 82% said they would use it again and 70% preferred it to going to court¹³, with 83% believing it was cheaper than court¹⁴. There seem to be considerable incentives for businesses to submit to ADR.

However, as we have suggested, there are a number of difficulties associated with ADR, one of the most important of which is the lack of any standards or regulation of ADR providers. We believe that the ADR market is too young and too varied for common standards to be provided at this stage. We believe that this will cause difficulties in making any ADR process mandatory for any industry.

We also believe that it is important to remember that ADR is intended to be an alternative to conventional ways of dispute resolution. The word “alternative” suggests a choice. A business may choose to be part of a scheme to make itself attractive to purchasers but we do not believe at this stage that it is appropriate for businesses to be required to join such schemes or suggest ADR.

In addition, the Directive on Unfair Terms in Consumer Contracts ‘...places stringent restrictions on the ability of consumers to waive their right to go to court’¹⁵. The Brussels I Regulation (Regulation 44/2001) similarly places restrictions on a consumer derogating their rights e.g. to go to court¹⁶. In the UK arbitration agreements are automatically void for consumers if the dispute is over a small amount¹⁷.

Therefore the Society does not support the mandatory use of ADR. Rather, the EU should be concentrating on outlining good practice and standards for suitable ADR schemes. If consumers do choose to use ADR we believe that there is scope for decisions to be binding on the business but not the consumer. This works successfully in England and Wales in the case of the Financial Ombudsman Scheme.

In any event, we consider that before ADR is activated the consumer must be required to use the complaints procedure of the firm. Only after that has been exhausted i.e. a number of weeks have passed without satisfactory solution, should the consumer be able to go to ADR. Best practice in this area appears to be to allow a period of 8 weeks to pass before ADR procedures can be initiated¹⁸.

The consultation seems to be aimed in particular at encouraging e-commerce. It is considered good practice to have a clear remit and objective for an ADR scheme¹⁹. In light of this, two approaches can be discerned as the way to define the scope of the operation of ADR schemes in member states:

¹² European Business Test Panel (2011). ‘Alternative Dispute Resolution’, pub: European Commission: Brussels, accessed at: http://ec.europa.eu/yourvoice/ebtp/consultations/2010/adr/report_en.pdf

¹³ European Business Test Panel (2011). ‘Alternative Dispute Resolution’, pub: European Commission: Brussels, accessed at: http://ec.europa.eu/yourvoice/ebtp/consultations/2010/adr/report_en.pdf

¹⁴ European Business Test Panel (2011). ‘Alternative Dispute Resolution’, pub: European Commission: Brussels, accessed at: http://ec.europa.eu/yourvoice/ebtp/consultations/2010/adr/report_en.pdf

¹⁵ Kuner, C. (2000). ‘Legal Obstacles to ADR in European Business-to-Consumer Electronic Commerce’, pub: Morrison & Foerster LLP: Brussels.

¹⁶ Kuner, C. (2000). ‘Legal Obstacles to ADR in European Business-to-Consumer Electronic Commerce’, pub: Morrison & Foerster LLP: Brussels.

¹⁷ Organisation for Economic Co-operation and Development (2005). ‘OECD Workshop on Consumer Dispute Resolution and Redress in the Global Marketplace: Background Report’, pub: OECD: Paris.

¹⁸ In the UK the Financial Ombudsman Service and the energy ombudsman and the telecoms ombudsman service all have 8 weeks as their standard period.

¹⁹ The World Bank (2000). ‘Alternative Dispute Resolution Workshop: Workshop Report’, pub: World Bank: Washington DC, accessed at: <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/ADRWorkshop.pdf>

- E-commerce retailers who trade cross-border; or
- The consumer sector generally and primarily within a member state.

Both types have their problems and advantages.

- The former is very focused on the main issue behind this consultation. An ADR scheme that looked to resolve complaints coming in from consumers in other member states would not be 'clogged up' and distracted by domestic cases. It could also develop a real expertise in dealing with complaints from other member states.
- The second type would be easier to define. There would be less complexity as firms who no longer trade across borders, or had decided to begin to, would not move in and out of the scheme's jurisdiction. They would be covered at all times. In addition domestic shoppers would benefit from the existence of a retail ADR scheme. There is a risk such a broad ADR scheme would be distracted by domestic issues, as these would inevitably take up most of its time. Complaints coming in from other member states would potentially receive less attention. In addition there would be less opportunity to develop a real expertise in dealing with cross-border issues.

9. What are the most efficient ways of improving consumer ADR coverage? Would it be feasible to run an ADR scheme which is open for consumer disputes as well as for disputes of SMEs?

The Society considers that, at this stage, the most feasible type of ADR scheme is one that is mainly aimed at business to consumer (B2C) disputes. However, it is standard practice in the UK for ombudsmen for example to cover micro firms²⁰. There is no reason why an ADR scheme that deals with cross-border complaints should not cover micro firms too. There appears to be little evidence that this has caused any damage to the focus of those schemes in the UK. Indeed sometimes the difference between a consumer and a micro enterprise, for practical reasons, is very blurred.

A scheme that attempted to cover more than one field (i.e. wider than a B2C focus) would create additional problems. An ADR scheme trying to cover such an extensive range of issues (which would come with dealing with SME disputes as well as consumer) could potentially lead to a slightly directionless and unfocused ADR scheme²¹. Indeed, one where the opportunity to develop the specialist knowledge of a particular field was diluted might mean that the judgments in the various cases were less good than would otherwise have been the case.

10. How could ADR coverage for e-commerce transactions be improved? Do you think that a centralized ADR scheme for cross-border e-commerce transactions would help consumers to resolve disputes and obtain compensation?

The Society considers that ADR can play a useful role in facilitating e-commerce, by acting as a credible backstop when problems arise for consumers. The structure of any ADR scheme, aimed at encouraging e-commerce, requires careful consideration.

²⁰ Firms with less than 10 employees. The Financial Services Ombudsman and the Energy Ombudsman are two examples from the UK.

²¹ As stated earlier in this response, a focused ADR scheme is vital in order for it to be effective. Source: The World Bank (2000). 'Alternative Dispute Resolution Workshop: Workshop Report', pub: World Bank: Washington DC, accessed at: <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/ADRWorkshop.pdf>

The Society considers that a proposal for a centralised scheme to deal with unresolved e-commerce based complaints is not the right way forward. A centralised solution seems counter to the de-centralised, bottom-up nature of the internet, imposing an old model of regulation on a system that is moving away from such concepts.

The case against a centralised mechanism is even stronger when considering that it will impose one overarching model that will have to take into account the different legal systems of the member states and the difficulty in finding something that will meet the expectations of a diverse range of consumers. Further, the Society considers that a centralised model ignores the principles of subsidiarity and proportionality (to the problem). When a problem can be tackled sufficiently well at a lower level of governance (than the EU level) the subsidiarity principle is in place to ensure that is what happens.

In light of this the Society believes that a network based ADR solution is best; a model that builds on the elements already in place for facilitating consumer redress in cross-border situations. This is what we tentatively suggested as one way forward in our response to the Commission consultation on a European contract law instrument²². A solution that links ADR schemes in each member state to access points or portals in the other member states. Crucially however access points/ portals that will deliver step by step support and expertise.

Action at European Union level is key and the role of the Commission would be central. It would:

- Strongly encourage each Member State to establish a single and robust ADR body to deal with retail/ online e-commerce complaints;
- Develop and encourage high standards and good ADR practices;
- Disseminate these among ADR schemes in the Member States;
- Set out model agreements (memorandums of understanding) between Member State ADR schemes on co-operation and also between the 'portal' organisations in the other member states; and
- Ensure other elements of the assistive framework are in place e.g. the EU Regulation on Consumer Protection co-operation²³ and examine their efficacy and where other gaps may exist.

The portal organisation would be considered the way most consumers from a member state would access an ADR scheme. Obviously if a consumer chose not to use this 'portal' then the consumer would be free to access the ADR scheme of their own initiative. The Society considers that the obvious candidate for this 'portal' is the ECC-Net. The existing arrangements mean that the ECC-Net already carries out this role to a large extent and has a deposit of expertise in place. However it should become a much expanded service. It should evolve an even greater degree of knowledge and expertise in helping consumers with cross-border complaints. It should essentially be able to 'walk' a consumer through taking a complaint to an ADR scheme and 'hold their hand' through the whole process, giving a consumer all the support necessary to enforce their rights.

²² Law Society of England and Wales (2011). *'Response to the Commission Green Paper on policy options for progress towards a European Contract Law for consumers and business'*, pub: LSEW Brussels Office: Brussels.

²³ Regulation (EC) 2006/2004.

A subsidiary 'portal' that would make sense in the UK context is the official consumer enforcement bodies in the UK i.e. the local Trading Standards Offices (TSO). Many consumers refer to their local Trading Standards when they face a problem. It would be illogical if they did not have the facility to carry out the same function at the ECC-Net in relation to helping a consumer access an ADR scheme. Indeed the fact that Trading Standards already have links with the UK office of ECC-Net is an important start.

The Society considers that this is the approach most consistent with the principles of subsidiarity and proportionality. There are a number of other benefits too, these include:

- Each member state organising their own ADR, which will enable the evolution of best practice;
- It allows the opportunity for all the ADR schemes to learn from the best ones achieving the best outcomes; and
- It gives the Commission a key role in facilitating and spreading that best practice.

In contrast a centralised scheme runs the risk of lacking flexibility and adaptability. Further, there is no reason to believe it will deliver better results for consumers or achieve the wider single market objectives any more effectively than a more network based solution.

11. Do you think that the existence of a 'single entry point' or 'umbrella organisations' could improve consumers' access to ADR? Should their role be limited to providing information or should they also deal with disputes when no specific ADR scheme exists?

The kind of networked approach set out above would require a 'single entry point'. A single entry point significantly simplifies things for consumers. By having one point consumers can go to and have that body offering as much or as little assistance as a particular consumer requires would make accessing ADR schemes immeasurably easier. In addition the marketing to the public would be much more straightforward.

An umbrella identity already exists for the ECC-Net but this could be strengthened through greater awareness among the public and even greater exchanges and sharing of people, practices and data. Thought might also be given to developing an umbrella identity for the ADR schemes dealing with unresolved retail/ online cross-border complaints. Achieving this could be more difficult but could deliver marketing benefits and aid consumer understanding. It might be called a quasi-franchising model of ADR.

12. Which particular features should ADR schemes include to deal with collective claims?

The Society in principle supports the use of ADR for collective claims. The Society considers that collective ADR can resolve issues of consumer detriment in a more consensual way without recourse to the courts. Recent research by the EU found that businesses were also supportive of the use of collective ADR mechanisms. 59% of respondents in the survey considered ADR a good way to solve disputes over the same issue with groups of consumers, with 30% saying it made dispute resolution quicker and easier²⁴. This will reduce the opportunities for over-litigious behaviour.

²⁴ European Business Test Panel (2011). '*Alternative Dispute Resolution*', pub: European Commission: Brussels,

Further, the Society sees no reason why ADR schemes cannot be used for high-value claims as well as low value ones.

In fact the Society suggests that certain forms of ADR are equally-well or even better suited to high-value claims than court proceedings. Therefore the Society would recommend updating existing recommendations to cover issues specific to the management of collective claims. In addition it is worth pointing out that it would also be useful to encourage member states to ensure that their small claims procedures are able to deal effectively with mass claims.

13. What are the most efficient ways to improve the resolution of cross-border disputes via ADR? Are there any particular forms of ADR that are more suitable for cross-border disputes?

In the Society response to the consultation on policy options for European contract law instrument²⁵ we argued that ADR schemes that involve independent adjudication on cases is a tried and tested system that appears to work well. A number of good examples operate in the UK such as the Financial Ombudsman Service. In addition there are a significant number of bodies who have tried to set out the principles that should underpin ADR schemes²⁶. Most are sensible. Indeed the EU has set out a number of useful principles suitable for ADR schemes in their 'Recommendation on the out-of-court settlement of consumer disputes'²⁷. The principles in the recommendation were:

- Independence of the decision-making body;
- Transparency of the process;
- Adversarial principle;
- Effectiveness principle;
- Legality principle;
- Liberty principle; and
- Principle of representation.

The Society considers these to be sensible principles and there is little point in 're-inventing the wheel' by devising new ones when perfectly good ones already exist. However the Society suggests that they could be extended to ensure that any ADR scheme is as consumer friendly as possible. These additional principles might include:

- The scheme must be staffed by personnel trained in both basic legal concepts and mediation/ adjudication skills²⁸;
- The scheme must be convenient for consumers²⁹; and
- Any scheme must guarantee security, including of information (personal data)³⁰.

accessed at: http://ec.europa.eu/yourvoice/ebtp/consultations/2010/adr/report_en.pdf

²⁵ Law Society of England and Wales (2011). 'Response to the Commission Green Paper on policy options for progress towards a European Contract Law for consumers and business', pub: LSEW Brussels Office: Brussels. <http://international.lawsociety.org.uk/node/10660>

²⁶ E.g. the OECD and the American Bar Association among others.

²⁷ Described in a paper by Christopher Kuner. Source: Kuner, C. (2000). 'Legal Obstacles to ADR in European Business-to-Consumer Electronic Commerce', pub: Morrison & Foerster LLP: Brussels.

²⁸ Transatlantic Consumer Dialogue (2000). 'Alternative Dispute Resolution in the Context of Electronic Commerce', pub: TACD: London.

²⁹ Transatlantic Consumer Dialogue (2000). 'Alternative Dispute Resolution in the Context of Electronic Commerce', pub: TACD: London.

³⁰ Consumers International (2001). 'Disputes in Cyberspace 2001: Update of Online Dispute Resolution for Consumers in Cross Border Disputes', pub: CI: London.

14. What is the most efficient way to fund an ADR scheme?

A mixture of revenue sources is the best way to fund an ADR scheme. Some state funding is desirable to ensure independence and a steady source of funds. The Danish Consumer Ombudsman³¹ is funded in such a way. A levy on a sector is difficult to implement if the scheme is voluntary and operates a very broad and amorphous sector description on areas such as 'retail'. Therefore a second source of funding might be a levy on any refunds / redress paid by firms found to be imposing detriment on a consumer.

15. How best to maintain independence, when the ADR scheme is totally or partially funded by the industry?

Independence is best maintained in two ways. Firstly by enshrining the principle in the articles of association/ founding documents. Any ADR scheme must be a not-for-profit body. Secondly it must have formal procedures that ensure independence e.g. appointments to the organisation must adhere to best practice, there must be an independent budget, well understood and clear terms of reference, independent (lay) representation on the governing board and openness and transparency in the cases taken on by the ADR scheme e.g. the publication of annual reports and data on complaints dealt with and outcomes. Finally there has to be a way for the consumer or firm (parties to a case) to complain about the handling of the issue to someone who is not the person who handled the original case i.e. a facility for independent review. The Financial Ombudsman Scheme in the UK operates an independent assessor mechanism that will judge the merits of a complaint against the service provided and operation of the procedures.

16. What should be the cost of ADR for the consumer?

The consumer should be able to access the ADR for free. In order for consumers to obtain redress it has to be the case that the barriers to usage are as low as possible. If fees are high consumers will be deterred from using ADR. This would have two consequences:

- It would reduce access to justice for the individual consumer because fewer would use the mechanism. In these cases the generally more expensive court route is unlikely to be used as an alternative. Leaving in place a barrier that deters consumers from shopping online and cross-border, stunting the growth of cross-border online consumption.
- Secondly, with lower usage, ADR would be less effective at driving higher standards of service in the retail sector. In turn this would mean less well functioning retail markets and no significant change in consumer satisfaction rates.

For more information please contact:

³¹ Consumer Ombudsman (No date given). 'About us: About the Institution', pub: Danish Consumer Ombudsman, accessed at: <http://www.consumerombudsman.dk/About-us/introduction>

Julia Bateman
Head of Office
Joint Brussels Office of the Law Societies
Avenue des Nervies 85
1040
Brussels

Julia.Bateman@lawsociety.org.uk