businesscompanion
trading standards law explained

The ADR process

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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 usually free to the consumer; if there is a cost, it will be considerably less than when using the courts. Procedures are often completed in private and conducted confidentially, avoiding the risk of adverse publicity and the 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 than strict rules of law, both in terms of outcomes and how it applies. 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.

Court protocols require parties to consider whether ADR will enable them to settle their dispute without resorting to legal action. There is an expectation that all parties will try everything reasonable to resolve matters before issuing a court claim. Traders and consumers may be required to give evidence to the court that they have considered using ADR. Solicitor's costs cannot normally be recovered for cases taken through the courts, even for the successful party. (In England and Wales, cases would go through the 'small claims track' of the County Court; in Scotland, the 'simple procedure' in the Sheriff Court would be used.)

Types of ADR

There are a variety of ADR mechanisms that businesses and consumers can access. Common forms include:

- Mediation (a third party facilitating a resolution)
- Arbitration and adjudication (a third party deciding a dispute)
- Early neutral evaluation (a third party giving an informed opinion on the dispute)
- Ombudsmen schemes

Criteria for ADR providers

The DMCCA sets out the criteria for ADR providers to become accredited for the purposes of the legislation.

To ensure that parties have confidence in the ADR process, all accredited providers must prove that they meet a strict set of criteria covering the following:

- Providing consumers with accessible information about the kinds of ADR it carries out, the types of disputes it deals with, the procedures and costs
- Readiness to carry out ADR
- Expertise
- The facilities for consumers and traders to participate must be accessible
- Fair ADR procedures. These must be easy to use, transparent, non-discriminatory and effective. Each party should have reasonable opportunity to express its point of view, and to consider the views, arguments and evidence put forward by the other party. Procedures should allow the parties to be represented or assisted by another person
- Independence and impartiality. Action should be taken to identify and avoid any conflict of interest
- Information for parties. The provider should keep those involved informed about the conduct and progress of any ADR being carried out. The parties should be notified of the outcome in writing and, where applicable, the grounds on which the decision has been reached

Information disclosed when applying for accreditation

When a new provider is applying for accreditation, it must disclose information to CTSI, including:

- The name, contact details and website address of the ADR provider
- The kinds of ADR carried out, and types of disputes it deals with
- The procedures, including:
    - Time limits for referring disputes
    - Whether ADR can be conducted orally or in writing
- The fees or costs payable by either party
- Whether the outcome of ADR is binding
- The process for handling complaints

Within a month of the anniversary of accreditation, the provider must give further information to CTSI and place it on their business website (if they have one). This must be followed by annual updates. The required information includes:

- The number of requests for ADR received
- The percentage resolved in favour of the consumer, and the percentage in favour of the trader
- The number and percentage of requests for ADR categorised by type of complaint and the legislation alleged to have been breached
- The average time taken to resolve the dispute
- Where the provider has made special arrangements, there should be information about the type of ADR conducted under those arrangements and the number of providers engaged
- The training given to persons carrying out the ADR

In the event of breaches of the requirements, CTSI has the power to revoke, suspend or place conditions

on accreditations.

Exempt ADR providers and redress schemes

The DMCCA has two types of exemptions. The first is for statutory bodies or persons performing statutory functions. These are:

- Commission for Local Administration in England (also known as the Local Government and Social Care Ombudsman) and each Local Commissioner
- Consumer Council for Water
- Health Service Commissioner for England (also known as the Health Service Ombudsman)
- Legal Ombudsman
- Northern Ireland Public Services Ombudsman
- Office of the Independent Adjudicator for Higher Education (in relation to some of its functions)
- Parliamentary Commissioner for Administration
- Pensions Ombudsman
- Public Services Ombudsman for Wales / Ombwdsmon Gwasanaethau Cyhoeddus Cymru
- Scottish Legal Complaints Commission
- Scottish Public Services Ombudsman
- Civil Aviation Authority (currently being overseen by CTSI as the competent authority but will become exempt)

The second type of exemption is for redress schemes already regulated under other legislation. These are:

- An approved:
    - Estate agents redress scheme
    - Postal operators redress scheme
    - Social housing ombudsman scheme
- Approved public communications provider dispute procedures
- The Financial Ombudsman
- A qualifying:
    - Letting agency work redress scheme
    - Property management work redress scheme
    - Redress scheme for the gas or electricity sector

Trader requirements

All traders are legally obligated to provide a consumer with certain information when communicating the outcome of their consideration of a complaint. They must inform the consumer about any ADR or other arrangement that is available if the consumer is dissatisfied with the outcome of their complaint. Traders do not have to tell consumers about ADR if the trader does not wish to go through an ADR process (in other words, if there is no ADR or other arrangement available to consumers, businesses do not have to mention it). However, ADR is mandatory for some business sectors.

Alternative arrangements are those available by virtue of an obligation on the trader imposed by legislation, the terms of the contract, or other contractual arrangements to which the trader is party. Neither the trader nor the consumer is obligated by the DMCCA to use the ADR procedure, but both should consider the implications of not doing so before issuing court proceedings. Traders should give the required information in a durable form, such as by letter or email.

For some business sectors, the trader must publish information about the dispute resolution scheme on their website and in their general contract terms. This is where it is required by a regulator, such as the Financial Conduct Authority, or by membership of a trade association. The schemes may also require the

trader to agree to use ADR if the consumer wishes to, although the trader may have a choice of which scheme to join. This is the case, for example, for estate agents and telecommunications businesses.

Traders that do not provide the information required by the DMCCA leave themselves open to having action taken against them by local Trading Standards Services under Part 3 or Part 4 of the DMCCA. For more information on Trading Standards' powers, see 'Trading Standards: powers, enforcement and penalties'. In addition, CTSI, as a competent authority, holds enforcement powers as delegated by the Secretary of State.

A full list of approved / accredited ADR providers is maintained on the CTSI website. Some of the schemes cover specific sectors or specific types of dispute, while others have broad coverage. This means that businesses should be able to identify an accredited provider, whatever the nature of their business and their dispute.

The following are some examples of how ADR can work in practice. Please note that the company names given below are fictional.

Example 1
Mrs White bought a lawn mower from Oak Garden Centre two years ago, and wrote to complain that it wouldn't start. The company tried to reach agreement with Mrs White, but she felt that they were not resolving her complaint fairly. Oak Garden Centre felt that they could not get any further with the complaint.

The business wrote to Mrs White, telling her that the complaint could not be resolved, and gave Mrs White the name and web address of an accredited ADR provider that would be suitable to deal with a complaint of this nature. Oak Garden Centre is not a member of any trade body. They value their customers and want to retain Mrs White as a customer if they can. Therefore, they advised Mrs White that they will be happy to go through the ADR process.

Example 2
Mr Black had a new boiler installed and noticed that the wall next to where the boiler was fitted had plaster knocked out. Oasis Builders had carried out the work; they felt that the wall had been damaged after the boiler was fitted and, therefore, it was not their responsibility to repair it. Mr Black and Oasis Builders were unable to come to an agreement.

Oasis Builders are a member of a trade body, and a condition of their membership is that they must offer to enter into ADR with a consumer when a dispute reaches deadlock. Mr Black was already aware of this before he agreed that Oasis Builders could carry out the boiler work; he had seen this detail on their website, and there had been mention of it in the terms and conditions provided before the boiler was fitted. Oasis Builders displayed the name and web address of the ADR provider on their website. The ADR provider is accredited to provide ADR in consumer disputes. Oasis Builders also supplied the details of the name and web address of the provider in a letter to Mr Black. If Mr Black wishes to use the ADR process, Oasis Builders are obliged to engage due to the trade body's requirements.

Example 3
Ms Green bought new designer shoes from Regency Shoes. After two weeks, the sole was coming away, so 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; therefore, they refused to refund or replace the shoes for her.

Regency Shoes provided Ms Green with a letter, stating that they did not agree that the shoes were faulty. Ms Green wanted to use an accredited ADR provider, but Regency Shoes told her that they would not enter into this process with her. This meant that the only course of action for Ms Green was to take the matter to court. The court may penalise Regency Shoes for not agreeing to participate in ADR. Possible penalties include imposing costs or sanctions.

Example 4
Edge to Edge Gardening Design is a landscape garden business, which completed some work for Mr Brown. Their team had laid some turf and planted two borders. The turf began to die, and Mr Brown felt that Edge to Edge Gardening Design had laid poor quality turf. Edge to Edge Gardening Design did not agree. They are not a member of a trade body, and there is no law to say that they must agree to ADR with Mr Brown.

However, Edge to Edge Gardening Design know that they need to supply information on ADR or other procedures that the consumer could use if dissatisfied with the outcome of the complaints process. They want to maintain their business reputation. When they sent a letter to Mr Brown, setting out the outcome, they gave the name and web address of an accredited ADR provider, and told Mr Brown that they are happy to use the process to see if they can reach an agreement.

Example 5
Beam Building Services operates as a general builder, and they are a member of a trade body. To be a member of the trade body, Beam Building Services must adhere to the code of conduct or they could lose their membership benefits. Part of the code of conduct states that if members have a dispute with a consumer and are unable to resolve it satisfactorily, they must be willing to use ADR.

Mrs Grey had work carried out in her bedroom and contacted Beam Building Services to say that some of the plaster had cracked. Beam Building Services did not feel that this had any link to the work that they had carried out for Mrs Grey. Beam Building Services then told Mrs Grey that there is information on their 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 provider that can deal with this dispute, and said that they are happy to engage in the ADR process.

Summary

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

All traders that make contracts with consumers must, when communicating the outcome of their consideration of a complaint, inform the consumer about any ADR or other arrangement that is available if the consumer is dissatisfied with the outcome.

While it is not always mandatory, many trade bodies require their members to join ADR schemes. Traders that are obligated to use ADR by a code of conduct (whether through membership of a trade body or by a regulator) must also 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.

ADR schemes are audited to ensure compliance with a list of criteria.

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