

25th July 2014

**Consultation response by CEDR Ireland on
Alternative Dispute Resolution for
Consumers
for**



**An Roinn Post, Fiontar agus Nuálaíochta
Department of Jobs, Enterprise and Innovation**

Our details

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CEDR is a social enterprise which both campaigns for better management of conflict and provides dispute resolution services and training which supports this goal. We are Europe's largest independent commercial mediation service and one of the leading consumer redress, independent complaints review and ombudsman bodies in the UK.

In the consumer dispute resolution and complaints markets in particular CEDR provides conciliation, mediation, adjudication and arbitration services in more than 100 schemes for over 25 different stakeholders.

These include:

- National Association of Funeral Directors
- ABTA, The Travel Association
- European Timeshare Organisation
- BIOA
- British Association of Removers
- Chartered Institute of Architectural Technologists
- Tenancy Deposit Solutions (my|deposits and Deposit Protection Service)
- National House Building Council
- Consumer Code for Home Builders
- Motor Codes
- Renewable Energy Association (including solar power)
- Family Mosaic
- Ofcom
- Internet Services' Providers Association
- CISAS (The Communications & Internet Services Adjudication Scheme)
- POSTRS (The Postal Redress Service)

The latter two of these are both schemes and trading brands of the CEDR Disputes Group. We can confirm this response covers all relevant schemes operated by CEDR.

For a full list of consumer schemes provided by CEDR see the relevant links below:

- CEDR Schemes - <http://www.cedr.com/solve/schemes/>
- IDRS Ltd Schemes - <http://www.idrs.ltd.uk/?p=33&lang=e>

Q.1 Do you think significant gaps exist in the provision of ADR in the State to deal with any contractual dispute arising from the sale of goods or provision of services between a consumer and a trader, if so, where do think they exist?

We consider that there are still significant gaps in the provision of ADR in Ireland, particularly in the parcel delivery sector, private parking, transport sector and the hospitality sector. Furthermore, we feel that there is very little awareness and availability for ADR amongst Irish SME's.

Q.3 In your view, is there an existing body which could fill the lacuna in ADR coverage?

As an ADR Provider ourselves, CEDR currently provides a full range of ADR services across a wide variety of sectors and we feel confident that we are able to offer the most suitable service to fit the needs of any sector on any scale. Provided we are given advanced notice on the estimated increase in volume of disputes, we believe it is possible to complete all cases within the 90 days deadline prescribed by the Directive. We currently work towards a 6 week timeframe on most of our consumer schemes.

Q.4 Can you propose a specific model that the State may use to implement the Directive?

No. CEDR feels strongly that no particular model should be adopted for all sectors. In our experience, different models have worked well for different sectors for various reasons.

As a service provider we offer:

- Mediation: a neutral helps negotiate a settlement between parties
- Conciliation: a neutral helps negotiate a settlement between parties making a recommendation if needed
- Adjudication: a neutral weighs the evidence between parties and makes a decision which can be binding
- Arbitration: as with adjudication but with the protection in law of a binding arbitrator's decision
- Schemes where combinations of the above processes are layered to give the best outcomes

For example, in the UK, funeral sector conciliation is used for all cases that have not been resolved through the member firm's own complaints procedure. Due to the emotive nature of these types of disputes, we find that telephone conciliation is a very effective method of ADR which gives the parties an opportunity to discuss all issues that are important to them.

Approximately 80% of all cases that are sent to conciliation are settled at this stage. If conciliation is unsuccessful, the claimant may either choose to proceed to take the matter to court or to arbitration.

Trade associations favour the conciliation to arbitration model, as a very low number of disputes are referred to arbitration but it brings the matter to a definite close. The proceedings are private and confidential and completed in fair and expedient manner. As the outcome is also final and binding and enforceable in court, no concerns are raised about the compliance of an arbitration award.

Q.5 How would the model proposed under Q.4 be funded (public funds, business, business organisations, case fees or a mixture)?

We could recommend that the model would be mainly funded by case fees but with annual fees charged. Bearing in mind the fact that the case numbers are unpredictable the most appropriate solution would be a scalable panel. A scalable panel is typically a core of neutrals working permanently with a wider number of external freelancers (who typically have a portfolio career including neutral work amongst other roles) who are engaged as the demand for the service dictates. The option of a scalable panel still requires the retention of a minimum level of administration to respond when the scheme is used or triggered and for ongoing training and maintenance of the panel. This would be the safest and most sustainable way in which an ADR provider could function.

There are a lot of variables which contribute towards the actual cost of running an ADR service. The cost must be an accurate representation of the cost of running a high quality ADR service that is reasonably proportionate to the value of the dispute whilst taking into account the cost to the users of the service. We feel that this can be achieved at a cost up to €500 but anything above and beyond that would be disproportionate to the value of the dispute, bearing in mind the fact that we are talking about consumer disputes.

Q.6 What are your views on relying on an ADR entity/entities established in another Member State or regional, transnational or pan-European dispute resolution entities?

We believe that there are well established ADR entities, such as CEDR, that provides a pan-European scheme for resolution of consumer disputes. We are Europe's leading multi-sector and multi-discipline consumer dispute resolution service, offering bespoke schemes to resolve complaints and disputes between businesses and their consumers. In the UK alone, we manage over 100 sector specific consumer redress schemes. We believe that the schemes we have established in the UK could be easily transferrable to resolve consumer disputes in Ireland and we have currently established a telephone mediation and arbitration redress scheme for the Irish travel industry.

Q.7 In your view, should the implementing legislation provide for ADR procedures where the person(s) in charge of such procedures are employed or remunerated exclusively by the individual trader to be covered by the Directive provided they meet specific requirements?

We feel that those who are in charge of ADR procedures for the individual trader should not be an employee of the trader. The requirement of impartiality and independence would not be fulfilled if this was permitted.

Q.8 Can you identify any specific ADR procedures which may fall under this category?

No.

Q.9 Should the implementing legislation provide for ADR entities to use all, some or none of the exemptions in its procedural rules as provided for in the Directive? Please provide an explanation for your suggestions.

The ADR providers should be in a position to reject inappropriate disputes where:

- The claim is frivolous or vexatious
- The consumer has not made any contact with the trader in attempt to resolve the matter
- The dispute is being or has previously been considered by another ADR entity
- Dealing with the type of dispute would otherwise seriously impair the effective operation of the ADR entity.
- The consumer has not submitted the complaint to the ADR entity within a pre-specified time limit.

However, we take the view that the ground for rejection on the value of the claim falling below or above a pre-specified monetary threshold should be prescriptive and clear to ensure that it is consistently applied where appropriate.

Q.10 Should the State prescribe minimum and maximum claim thresholds, if so, how much and the reason for the stated amount.

Broadly, we would expect that a reasonable maximum settlement value would be €10 000, which falls in line with small claims court limit. It is important to note that there would be exceptions in both directions of this. For example: the cost of setting up a renewable energy product for a consumer may exceed this sum in dispute. Whereas if an ADR scheme for house builders, for example, has been custom-designed and is working well, the parties should not automatically be excluded from using it because a claim value is exceeded.

Whilst the proportionality of process must be borne in mind, it is very well possible that a claimant may wish for an apology to be issued in full and final settlement of the matter, which may not become apparent until they have applied to the ADR scheme. For this reason, we have noted the minimum settlement value as 'none'.

Q.11 Should ADR procedures be free of charge to the consumer or should a nominal fee be charges, if so, how much and why?

We believe that the consumer should pay a nominal fee so as to ensure that they are invested in the ADR procedure. We could recommend that a scalable nominal fee would be introduced based on the ADR procedure used. For example, the fee for telephone mediation would be less than the fee for an arbitration procedure.

Q.12 Should the implementing legislation provide that the decisions of notified ADR entities which aim at resolving a dispute by imposing a solution, are binding on traders?

Yes. However, it may be beneficial to introduce as part of the scheme an expedited appeals process.

Q.13 What are your views on the mandatory participation of traders in notified ADR procedures, which fulfil the requirements of the Directive, in other areas which are not already mandatorily required?

It is unlikely that small businesses, who are not obliged to use an ADR Scheme, would refer complaints to a voluntary residual ADR scheme. Our main concern in relation to this would be the issue of proportionality. The value of the dispute would need to be proportionate to the cost of sending the case to ADR in order for small businesses to engage in an ADR process for the resolution of the matter.

We also have concerns around the education of small businesses on their obligation to be signed up to an ADR scheme in the first instance. It is also often the case that smaller businesses that do not often have complaints referred to a scheme have little to no knowledge or understanding of the remit or the purpose of the ADR scheme altogether.

Through our ADR provision work we currently cover a wide range of sectors, including but not limited to: post, travel, coal mining subsidence, timeshare, funeral, home building, renewable energy, vehicle service and repairs etc. It is our view that many potential users of the schemes, on the business and consumer sides are unaware that these schemes are available to them for use, along with the benefits.

Q.14 Is the period beginning on the day on which the relevant dispute is referred to an ADR procedure and ending on the day which is 30 days after the ADR procedure has concluded sufficient time to extend the limitation period for taking judicial proceedings? If not, why?

Yes.

Q.15 Are you aware of any other Irish legislation where the limitation periods may require amendment in order to meet the requirements of the Directive?

No.

Q.16 Do you have any views, on the designation of competent authorities? Should the State designate one competent authority or more (sectoral regulators responsible for particular areas)?

It is important to give businesses a choice of processes and fees to suit their particular needs. We feel that healthy competition encourages quality of service. Bearing in mind our earlier sentiments expressed on the different ADR processes being most suitable in certain sectors, we feel that it is important to have a variety of ADR bodies operating a residual ADR scheme. Closing long standing existing ADR schemes would be counter-productive, costly and confusing to consumers. However, there would be complications having too many residual ADR schemes so a balance should be struck.

Q.17 In your view should disputes initiated by a trader against a consumer be included in the legislation giving effect to the Regulation. If so, why?

We believe that disputes initiated by a trader against a consumer should be included in the legislation giving effect to the Regulation. We feel that by including this it also offers protection to traders as well as consumers. Furthermore, it may encourage more traders to become members of an ADR scheme/entity when they can also avail of the scheme. We would recommend that a scheme for resolving trader disputes against consumers should be a separate scheme than the consumer redress scheme.