

25 July 2014

ADR commentary by the Ombudsman for Children's Office,

Millennium House, 52-56 Great Strand Street, Dublin 1

What we considered?

Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC, OJ L 165, 18.6.2013, p. 63-79. Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>

Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC, OJ L 165, 18.6.2013, p. 1-12. Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0001:0012:EN:PDF>

ECC Ireland (December 2012), the Implications if the proposed ADR Directive for the Resolution of Consumer Disputes in Ireland

As well as documents in footnotes

What we have done to date?

In July 2013, the Office wrote to Minister Richard Bruton outlining that the Office receives complaints about the interaction children have with private providers. While these complaints are usually outside our investigatory remit, the OCO recommended that the Department considers *'the engagement of young people – particularly teenagers – with traders and the relevant ADR/ODR entities in the context of transposing the legislation. Of particular importance in this regard are the need to ensure that age appropriateness is a criterion used by both ADR/ODR entities and traders in complying with their obligations to provide clear information, as well as the need to ensure that advocates can engage with ADR/ODR processes on behalf of young people. In practice, this will most likely be parents but other adults could also take on this role'*

What points to consider in the transposition of the Directive and Regulations

Our letter of July 2013 to Minister Bruton as above

As part of the consultation, it appears important to reiterate the points we made in July 2013 about the need to consider the engagement of young people with traders and relevant ADR/ODR entities. This should inform questions in the consultation document such as whether the ADR mechanisms are free or the type or level of information available to young people to access these mechanisms.

National and International literature on child-friendly complaints and ADR mechanisms

There is quite a lot of literature available nationally and internationally about child-friendly administration and complaint mechanisms. This could inform what that would mean for newly established ADR entities or the monitoring role of the Competent Authority.

This Office recommends that in transposing the directive, considerations should be given to **Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice and their Explanatory Memorandum**. According to the Council of Europe, the guidelines on child-friendly justice should apply to all ways in which children are likely to be, for whatever reason and in whatever capacity, brought into contact with all competent bodies and services involved in implementing criminal, civil or administrative law. It appears relevant to the transposition to the EU Directive on Consumer Alternative Dispute Resolution.

Points to consider from the UNCRC perspective

'Children's special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. So States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, and advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance.¹

According to the CRC Committee, privatized services for children must be consistent with international human rights and therefore non-discriminatory and within the reach of all sectors of society. Consideration and respect of international human rights should be implemented at all stages, including policy formulation, monitoring and accountability arrangements.²

¹ CRC Committee, *General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child* (2003) UN doc. CRC/GC/2003/5 at <www.ohchr.org> (date accessed: 21 October 2013) at p. 7.

² CRC Committee, *General Day of Discussion: The Private Sector as Service Provider and its Role in Implementing Child Rights* (2002) at <www.ohchr.org> (date accessed: 16 October 2013) at p. 5.

Privatised services for children must also be consistent with children's rights principles - "all service providers must incorporate and apply to their programmes and services all relevant provisions of the Convention, as well as each of the four general principles set out in the provisions concerning non-discrimination (art 2), the best interests of the child (art 3), the right to life, survival and development (art 6) and the right of the child to express his or her views freely, and to have those views be given due weight in accordance with the age and maturity of the child (art 12)."³

In order to achieve respect for children's rights, the CRC Committee requires policy, administrative acts and decision-making to be transparent, informed and to include a full and continuous consideration of the impact on the rights of the children.⁴

Why is this Directive relevant to children?

Children are a big consumer group, both in terms of having their own purchasing power (e.g. telecommunications, entertainment industry, transport, etc.) and in terms of being consumers of goods and services purchased by their parents/caring adults (e.g. childcare, sports clubs, etc.)

While the Directive excludes public education and health and services of general interest, it appears to include most other services used by children, including childcare.

In transposing the Directive, it is important that any redress mechanisms is child-sensitive.

³ CRC Committee, *General Day of Discussion: The Private Sector as Service Provider and its Role in Implementing Child Rights* (2002) at <www.ohchr.org> (date accessed: 16 October 2013) at p. 9.

⁴ CRC Committee, *General Comment No. 16 on State Obligations Regarding the Impact of the Business Sector on Children's Rights* (2013) UN Doc. CRC/C/GC/16 at <www.ohchr.org> (date accessed: 16 October 2013) at p. 8.