# Communications Consumer Panel response to BIS' consultation on Implementing the Alternative Dispute Resolution Directive and Online Dispute Resolution Regulation

## Introduction

The Communications Consumer Panel welcomes the opportunity to respond to BIS' consultation on Implementing the Alternative Dispute Resolution (ADR) Directive and Online Dispute Resolution Regulation.

The Panel works to protect and promote people's interests in the communications sector. We are an independent body, established by the Communications Act 2003. The Panel carries out research, provides advice and encourages Ofcom, Government, the EU, industry and others to look at issues through the eyes of consumers, citizens and micro businesses. The Panel pays particular attention to the needs of older people and people with disabilities, the needs of people in rural areas and people on low incomes, and the needs of micro businesses, which face many of the same problems as individual consumers. Individual members of the Panel represent the interests of consumers in England, Northern Ireland, Scotland and Wales respectively.

Following the alignment of the Advisory Committee for Older and Disabled People with the Panel, the Panel is more alert than ever to the interests of older and disabled consumers and citizens.

## Context

As the consultation notes, consumers need to have confidence that when something goes wrong with a purchase the problem will be resolved quickly and easily. The Panel therefore strongly supports the overall objective that there should be greater access to redress, with consumers' rights being clear and well understood by all stakeholders. These are basic expectations that should be met without hassle or inconvenience to consumers. We recognise that there has to be a balance struck between the consumer benefit and costs to businesses - however, confident consumers are more likely to shop around for better quality, or decide to use a business with a good reputation for service, thus driving competition and improvement which will ultimately help build a stronger economy.

The European Commission has identified several barriers to the use of ADR: current coverage is incomplete across sectors; the quality of services is not always guaranteed; and consumers lack awareness of ADR as a means to resolve problems.

If problems with purchased goods or services go unresolved, consumers are not always obtaining adequate redress. This is particularly the case with low value goods where, although the individual loss may be small, the cumulative consumer detriment is significant. Moreover the relevant traders have no incentive to improve their offers, potentially leading to customer detriment, a loss in consumer confidence and lower participation in the wider market.

Without easy access to ADR, consumers end up simply putting up with a problem rather than pursuing it or they may have to resort to costly court action to resolve complaints. Consumers are often deterred from seeking redress by the prospect of navigating the legal system, and ADR provides a faster, cheaper and more straightforward means of obtaining redress.

## Going Round in Circles?

Last year, the Panel urged the communications industry to raise the level of customer service it offers, based on the findings of research we commissioned into the consumer experience of dealing with problems with communications services. Following a review of both existing quantitative studies and new independent qualitative research, we published our report '***Going round in circles? The consumer experience of dealing with problems with communications services***'. The findings may be helpful in the context of this consultation.

The Panel commissioned independent qualitative research from Ipsos MORI with participants across the UK who had experienced a problem with their communications service. We wanted to understand why some people who had cause to contact their suppliers about an issue did not do so, as well as explore the experiences of those who had contacted their supplier to try and resolve a problem.

Ofcom's Consumer Experience Report 2012[1] (CER) highlighted the number of people who said that they had 'cause to complain' about their communications services in the last 12 months. We were concerned that it found that 10% of UK adults said that they had cause to complain about broadband services, 6% about their fixed landline services and 5% about mobile phone services. When extrapolating these percentages into approximate numbers of UK households[2], the numbers estimated to have had cause to complain range from 1.2 to 2 million, depending on the sector - with broadband receiving the highest levels of

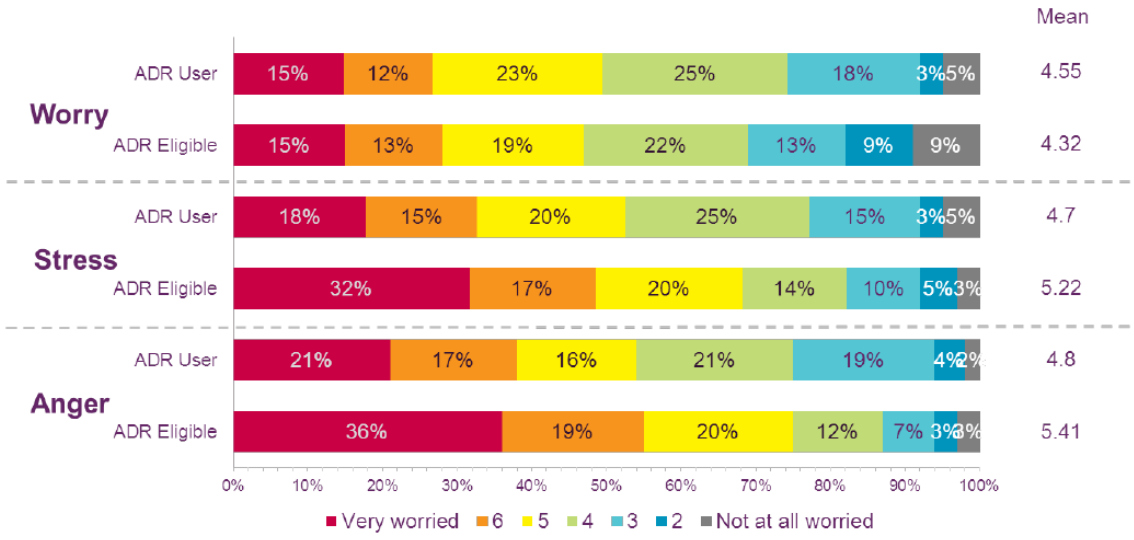
[1] http://stakeholders.ofcom.org.uk/market-data-research/market-data/consumer-experience-reports/consumer-experience/

[2] The survey data has been extrapolated to represent UK households using data from Family and Households, ONS, November 2012. This extrapolation calculation is simple and no adjustment for different numbers of individuals within households applied. The figures reported are for indicative guidance only and have been rounded to the nearest '000.

cause for complaint. We also noted figures from Ofcom's ADR research[3], which asked complainants how much time they spent actively pursuing their complaint – i.e. writing emails, letters and making phone calls. The study found that ADR 'Eligible Complainants' spent an average of nearly six hours pursuing their complaint.

In terms of the impact of the complaint on a person's wellbeing, just under half of 'Eligible Complainants' reported being worried by the complaint (47% registered 5 or more on the scale of concern), whilst over half reported being stressed or angry. However the use of an ADR scheme appeared to lessen people's experience of stress and anger.

### Levels of worry, stress and anger in resolving a complaint




Q24/Q25/Q25 How worried/ stressful/ angry did you feel while trying to resolve the complaint?

Base: Eligible Complainants: (n=1524); ADR Users (n=111)

Source: ADR Online research, February-March 2013

In Ofcom's ADR research, of all complainants, 27% were eligible for ADR referral. However of those eligible, only 16% were referred to ADR – and even fewer (7%) actually went through the ADR process. The research found that a key issue is that overall awareness of ADR among 'Eligible Complainants' is low (30%). 'Eligible Complainants' therefore rely on their service provider to inform them about ADR, but in many cases this is not happening. Only 14% of 'Eligible Complainants' recall receiving written notification informing them of their right to a referral to an ADR scheme.

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http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/adr-august-2013/ADR_august2013.pdf?utm_source=updates&utm_medium=email&utm_campaign=adr-aug-2013

But not all consumers who feel they have cause to complain actually do so. Between 18% (in the mobile and broadband sector) and 25% (fixed line) of people did not pursue their complaints. When extrapolating these percentages into approximate numbers, this equates to approximately 223,000 households in the mobile sector, 332,000 households in the fixed line sector and 365,000 households in the fixed broadband sector who did not pursue their complaints[4].

Our qualitative research found that many participants had not considered escalating their issue, either with their service provider, or with a third party. With the third party escalation processes in particular, lack of knowledge was a significant barrier. In addition, some had low expectations of the efficacy of their supplier's formal complaints process following a negative customer service journey, which formed a strong barrier. Others simply did not want to expend any more energy on an issue that had already consumed much of their time. Another set of barriers to escalation concerned individuals' abilities to collect and present evidence of their problem and their subsequent interaction with their provider. Where escalation did occur, strong emotions were often a motivating factor. In many cases, a significant financial impact and the desire for compensation had driven the decision to escalate.

In line with point 8.6 (page 15) of the consultation document, we found that satisfaction with the final outcome of the complaint is higher among ADR Users. This suggests that when ADR is used the consumer experience, and confidence level, is improved. However, satisfaction with the ADR outcome should not in itself be taken to mean that the complainant had an *overall* positive experience: he or she is likely to have spent some time and effort pursuing the complaint after an initial unsatisfactory service which presumably led to them approaching ADR; and the ADR journey itself may not have been well signposted. However, it seems clear that there is a good case for better promotion of ADR.

**Panel Recommendations**

The Panel was disappointed to discover that many consumers who participated in the research were unaware of their options to escalate their case, either within the provider or by way of recourse to an ADR scheme. As well as a lack of awareness of this option, an additional barrier to escalation was that consumers felt the onus was on them to provide the relevant data, and without it they were left feeling that they could not pursue a formal complaint through ADR avenues. It is therefore imperative that consumers are made aware of their rights early in the process, particularly in respect of ADR. To this end all stakeholders and consumer-facing organisations can assist consumers by providing guidelines, signposting and information about the complaint process.

Given the speed of modern communications and consumers' reliance on their communications services, we consider that a wait of eight weeks before a case can be sent to the ADR scheme (in the absence of a deadlock letter) seems too long to wait, especially if a complaint has already taken some effort to pursue. We would therefore encourage the

[4] The survey data has been extrapolated to represent UK households using data from Family and Households, ONS, November 2012. This extrapolation calculation is simple and no adjustment for different numbers of individuals within households applied. The figures reported are for indicative guidance only and have been rounded to the nearest '000.

serious consideration of a shorter complaint duration time before a complaint becomes eligible for the ADR schemes.

Communications providers should also review their training plans to ensure that staff have a clear understanding of the end to end complaints procedure, including ADR.

We formally recommended that:

a) Communications providers should:

- review and strengthen their escalation processes and staff awareness of them to make them more effective; and
- ensure that consumers are aware of their rights, particularly with regard to the use of ADR, early in the process.

b) Ofcom should independently review the efficacy of, and access to, escalation procedures across the industry.

c) Ofcom, the ADR schemes, industry and consumer advocates should undertake serious consideration of a shorter complaint duration time than eight weeks before consumers can approach the ADR schemes.

## Consultation Response

In the telecommunications sector, where two Schemes have been operating for just over 10 years, ADR is an important way to redress the power imbalance between consumers and communications providers - who have greater resources, knowledge and control over the products and services which are in dispute. It is vital that the ADR Schemes are swift, fair, free and effective – and that they inspire confidence.

The Panel has previously emphasised that a crucial step in the resolution of complaints is for providers to inform consumers of their right to take a complaint to the relevant ADR service. From July 2011, Ofcom required communications providers to provide additional information to consumers about their right to take unresolved complaints to ADR. Since then, providers have been required to include relevant information about ADR on consumers' bills and to write to consumers whose complaints have not been resolved within eight weeks to inform them of their right to go to ADR. However we remain of the opinion that more work should be undertaken to raise the profile of ADR schemes and that information about them should be provided via online billing platforms as well as by paper means. We also believe that, depending on the progress of a complaint, there should be more dialogue about ADR so that when speaking to complainants, customer service staff can explain the options to customers.

We have encouraged ADR providers to consider the holistic consumer journey through their processes and to examine the clarity of the language they use. We also strongly encourage the open publication of data on how providers perform in terms of information about numbers of complaints referred to ADR and numbers upheld. We believe that this can be achieved fairly by taking into account the size of the provider and its overall customer

base – so that the information is consistent and useful to consumers. This may also serve as an incentive to companies to improve their complaint handling so that fewer consumers feel the need to go to ADR.

We are pleased that the Government accepts that it appears strange that a business is obliged to inform a consumer of an appropriate certified ADR provider, even if the business has no intention of using that ADR provider to resolve the dispute in question. We, too, from a consumer perspective find this to be somewhat of a nonsense. It could weaken, rather than strengthen, consumer confidence. Furthermore, while the aim behind this requirement in the Directive is to encourage more businesses to refer unresolved disputes to certified ADR providers by forcing them to consider in every case whether ADR is appropriate, we are very concerned that this will lead to further consumer confusion and potential disillusionment. We do understand the cost related issues – but in the long term the cost to consumers, in respect of time, effort and potential denial of access to redress, may be great. We would urge reconsideration of this position and at the very least we suggest that traders should be directed to state up front if they do or do not participate in a scheme, along with explaining why. This may cause some traders to think twice about non participation and it would give consumers a greater degree of knowledge and confidence before they purchase, rather than having to wait until a complaint occurs to find out if the trader intends to allow access to an ADR scheme.

The consultation raises the question of what assistance government can give businesses to help familiarise them with the information requirements, and notes that one possibility would be to publish some standard wording and guidance which businesses could use. While it may not seem appropriate to require businesses to use a set form of words - as each business is different - a similar approach would aid consumer awareness and understanding of the ADR route in general. We support a framework of standard information, clearly and consistently stated. We would also like to see Government clearly articulate the benefits to businesses of using ADR – for example, ADR can help businesses conclude long running complaints and therefore reduce costs; and it has a high reputational value.

We acknowledge that the introduction of a residual ADR scheme will add to a landscape in which there are already numerous schemes and that this may increase consumer difficulty navigating the system and potentially limit the use of ADR. However, one single residual scheme may fill the gaps that exist across the whole consumer landscape and ultimately be most beneficial - providing that signposting, information, and support is clear and accessible. In these circumstances, the creation of a consumer facing online and telephone complaints helpdesk would appear to be a helpful aid to assist consumers to navigate the ADR landscape, identifying the ADR schemes available to the business with which they have a complaint, determining whether ADR is a compulsory requirement in that sector and helping consumers understand how to use ADR appropriately – i.e. after the business's internal complaints processes had been pursued. We therefore support the creation of such a helpdesk and we would urge that full account be taken of accessibility issues so that disabled, older or vulnerable consumers are not in any way at a disadvantage.

We are struck by the disparity in compensation levels across existing ADR schemes - for example, financial service providers can be required to pay up to £150,000 by the Financial Ombudsman Service, whereas the maximum amount payable by telecommunications companies under the Communications and Internet Services Adjudication Scheme (CISAS) and Ombudsman Services: Communications is £10,000. The Panel supports micro-businesses receiving the same right to access ADR schemes as individual consumers. Whilst £10,000 may be appropriate for the majority of consumer complaints, it may not be a significant or appropriate limit for micro-businesses who may have suffered severe and lasting detriment to their businesses.

We agree that it is logical for Ofcom to act as the competent authority for the ADR providers which operate in the telecommunications sector to oversee the relevant ADR schemes.

It is vital that the ODR platform does not inadvertently act to complicate or confuse consumer use and understanding of national ADR schemes. Whilst we appreciate the cost implications of widening the ODR platform to domestic use we would urge this is given careful thought. For example, we would stress the need for the ODR portal to be fully accessible so that more vulnerable consumers are not excluded from pursuing their complaints. We would also support the Government giving the ODR Contact Point the discretion to assist with online domestic disputes on a case-by-case basis where appropriate. We were surprised to see that the staff for the ODR platform numbered only two people. Even without potential domestic enquiries, we are concerned that this may be insufficient to give a good level of service and advice to consumers.

We agree that in-house mediation should not be included in the scope of the Directive. As the consultation notes, if this were allowed to fall within the scope of UK legislation consumers who had complaints with businesses that offered only in-house mediation would potentially be denied access to other independent ADR schemes.

We support the intention to recognise ADR models that arrive at a binding decision for one or both of the parties as a valid model for the purposes of the ADR Directive. We do however believe that, as with the communications ADR services, there is value in the decision not being binding on the consumer so that he or she may retain the option of taking the matter to court. If a decision is not binding on the company though, it is irrelevant to all intents and purposes.

## Simplifying the landscape

As well as obtaining views on measures needed to implement the ADR Directive, the Government also wants to use this consultation to explore whether longer-term and broader reforms of the UK's ADR landscape are necessary and if so, when and how they would be achievable. It is therefore calling for evidence on a broader simplification of the ADR landscape.

We note that there are currently over 70 different ADR schemes operated in the UK by a range of ADR providers and that some consumers may find that their particular dispute is

covered by multiple ADR providers – therefore it is not always clear to the consumer who to go to for help. We would suggest that simplification of the landscape by the creation of a single ADR portal would have the advantage of enabling greater awareness of a single contact point for ADR advice, hopefully leading to greater use whilst avoiding the financial burden of creating a single umbrella/third ombudsman ADR body. This would also contribute to a more consistent user experience.

As the consultation notes, if simplification were undertaken, a key issue to consider would be whether to attempt to make the use of ADR compulsory for business. We agree that a compulsory system would be the clearest system to operate, as both consumers and business would know that all unresolved complaints should go to ADR. We agree that retaining a mixed approach whereby the requirement to use ADR remained compulsory in some sectors but not others, risks losing some of the benefits of simplification as it may confuse consumers as to their right to access ADR.

As noted above, we are concerned that although there are information requirements under the Directive for business to say which ADR is relevant to their undertaking, the Directive does not oblige the Government to compel businesses to use ADR. We acknowledge that any attempt to introduce compulsory ADR would go beyond minimum legal requirements to implement the Directive and that there would be an associated cost - estimated to be in the region of £18m - £38.5m. However, going forward, as we have alluded to earlier, we would support the examination of a compulsory scheme to inspire consumer confidence and increase competition in the market.

Given that the intention of implementing the Directive is to increase consumer confidence, driving competition which ultimately helps to build a stronger economy, we would hope that firms would consider being part of an ADR scheme and being seen to perform well, as a positive attribute rather than a negative cost. As noted in the impact assessment, consumers will also benefit from the non-monetised benefits of universal ADR coverage in terms of increased confidence in participating in markets. We would have significant concerns about ADR bodies being merged so that they all became voluntary schemes as this would reduce the level of consumer protection significantly in those areas and would not be feasible in certain sectors, such as telecommunications.

Finally, we have two points about the wider ADR landscape. Firstly, we would recommend further work be done to see how best to inform and help consumers whose complaints may straddle more than one sector. For example, a mobile phone consumer may be unclear about which ADR scheme applies if he or she has a complaint about a payment made by mobile phone.

Secondly, in some sectors there are more than one ADR scheme but the customer has no choice about which one to use. This is the case in the communications sector. We would therefore recommend that further work be done to examine the case for consolidating schemes within sectors. This may go some way to reducing the number of schemes and thereby reducing consumer confusion; it may bring cost benefits; and it may improve signposting and consistency of information.