

An analysis of ADR in the consumer/trader sector

ADR Roadshow Project

ProMediate (UK) Limited
Part Funded by the EU





PROMEDIATE ADR ROADSHOW

Resolving disputes through mediation

The Project

1. AIMS AND OBJECTIVES

The ADR Roadshow, which began in April 2020 involved a series of webinars (owing to the pandemic the seminars were held remotely) to publicise the benefits of ADR in business versus consumer situations, with the measured objective of expanding the use of ADR by businesses in the UK and demonstrating its effectiveness. Businesses signing up to attend the roadshow were offered a free trial of the ADR scheme operated by ProMediate and a free mediation. ProMediate also offered this opportunity to businesses and consumers during the period of the roadshow and businesses were signed up as members of the ADR scheme for a 6 month free trial period. It was funded by the EU, who continued to support the project despite the UK's departure from the EU in January 2021.

The aim of the seminars was to raise awareness of ADR and the ADR Regulations 2015 and how businesses can comply as well as highlighting how ADR can benefit businesses.

2. Executive Summary

We ran the ADR Roadshow and free trial for 18 months during the coronavirus pandemic and completed 24 free mediations, collating data about attitudes towards ADR./

We found that there is a great desire for resolution amongst consumers but that there is resistance from traders.

Of those who used our service for free during this period the majority resolved their disputes and would use ADR again. However consumers were unwilling to pay for the service.

3. Benefits of ADR

It has long been reported that consumers have more confidence satisfaction and loyalty towards businesses with effective complaints handling. Ombudsman Services carries out annual surveys and has reported that in 2018:

“a culture of complaining became firmly embedded among people who decided to complain about their poor treatment.”

In 2019 they reported that consumers showed more confidence in vocalising their complaints; whether it was criticising a company on social media, directing the complaint back to their supplier, or escalating it to a third party for a more formal resolution.

They reported that “if businesses manage the complaints process well, customers are likely to remain committed.”¹

Their 2020 report indicated that:

“Complaints fell significantly during the UK-wide lockdown in spring 2020 and remained at low levels through to the autumn

Four in 10 (41%) consumers said they became more tolerant of poor service during lockdown, with only one in ten (10%) saying the opposite

¹ <https://s3.amazonaws.com/document.issuu.com/210225102212-0524733ae396ffc431fcc41274970903/original.file?AWSAccessKeyId=AKIATDDRE5J7XBQGASHD&Expires=1629377760&Signature=7KntuBC1deBlgxO%2F0GF147aP6U%3D>

https://assets.ctfassets.net/46t2drav2f3e/6Pk6Vf2selQsZLKUWIombw/adf61eb540fc26c3161cd33b07e75d82/OMB_CAM_Report_2019.pdf

Nearly a quarter (24%) of consumers who were unhappy with a product/service during lockdown, but chose not to complain to their energy or telecoms provider, did so because they were more willing to be lenient during a uniquely challenging time”

The proportion of consumers that reported feelings of anger, stress, exasperation and anxiety about a complaint also fell significantly during lockdown.”

“The message that came back is clear. In the eyes of the consumer, an effectively handled complaint doesn’t just mean fixing the issue. It also means showing empathy, acting fairly and taking the time to understand the consumer’s situation.”

There are clear benefits to business in using ADR in consumer cases. Despite this, many businesses in the UK have not embraced ADR. The roadshow provided an opportunity to educate businesses as to the benefits of using ADR and give them the chance to trial membership of an ADR scheme. As Ombudsman Services pointed out there were in fact fewer complaints during the coronavirus restriction period of lockdown and therefore this was a difficult environment for us to offer our roadshow to businesses and consumers. Businesses were distracted by coronavirus and Brexit and dispute resolution was not their priority.

The aim was to have signed up businesses by the conclusion of the seminar programme and then to collate feedback from the businesses within the following 6 months as to their satisfaction with the ADR process and how it has helped to retain and attract customers by improving the customer service experience.

The seminars were to be recorded, live streamed and released as a webinar available free online. Details of the Roadshow can be found at www.promediate.co.uk/adr-roadshow/ together with a recording of the webinar.

Unfortunately, at the beginning of the project in April 2020 we were hit by the coronavirus pandemic and had to adapt the project. Brexit also affected us as we were no longer able to access the EU online platform. We were unable to hold physical roadshow seminars and there was a move towards home working and online meetings. Peter Causton is an online mediator trained by ADR group and was well placed to deliver the roadshows online. Whereas mediation had largely been in person and by telephone pre pandemic, we were also able to expand the delivery of mediation by Zoom which was very effective.

4. ProMediate

ProMediate is an ADR provider authorised by CTSI as competent authority under the ADR Regulations 2015 to provide ADR to traders and consumers. We provide mediation services and are also a mediation provider registered with the Civil Mediation Council.

We also run the Manchester court mediation pilot.² We also provide mediation in civil and commercial litigation. Sometimes the two overlap, when consumers bring small claims for under £10,000 in the small claims Court.

5. ProMediate's Consumer ADR service

We first set up our ADR service in 2015 when the Regulations were introduced, obtaining authorisation from CTSI from the start.

We are only permitted to charge a nominal fee to the consumer which starts at £5. Details of our fees can be found following this link:

We find that there is a contradiction between the ADR Regulations and the Civil Mediation Council's fixed fee system. Despite us pointing this out nothing has been done to correct this anomaly but we point out again that if BEIS introduces tighter regulations for ADR providers we do not see how this fits with mediators who carry out mediation in consumer cases who are not ADR providers.

We find that generally consumers are not prepared to pay for ADR, particularly with retailers over low value items. Therefore this area of work is completely uneconomic and we only continue because of the profile raising opportunities and training experience. If BEIS increases regulation and makes it uneconomic we will simply cease to offer our services as an ADR Provider. Our research during the roadshow demonstrates that consumers appreciate ADR but do not want to pay more than £250 for it and some considered it should be free or cost £25/£50. They expect businesses to pay. The problem is that businesses also do not want to pay a great deal, perhaps because they have experience of the free Small Claims Mediation Service or they cannot afford to do so.

6. The ADR Process

To summarise, the consumer goes through the internal complaints process and can then complain further to us. The procedure is set out on our website

<https://www.promediate.co.uk/click-2-resolve-mediation-services-for-consumer-disputes/click2resolve-charges/> and can be found at Appendix 1.

² Manchester mediation pilot www.promediate.co.uk/mediation-pilot/

Essentially we provide 1-2 hours mediation over the telephone and by Zoom. We find that following the pandemic many people are used to using remote technology. We do not impose a decision on the consumer like an Ombudsman, but rather try to negotiate between the parties and see whether they can reach an understanding and accommodation of one another.

7. UK Developments

The ADR Roadshow coincided with the coronavirus pandemic when many businesses were distracted and some were unable to trade. Brexit also had an impact on trade with EU states and the UK decided not to stay part of the EU ADR family or the EU platform. This was a setback for UK ADR providers as we were no longer part of an EU wide network of ADR providers. The pandemic hit retailers and the hospitality and travel industry particularly badly. There were many disputes regarding holidays and events which were cancelled, with many travel companies offering refunds or vouchers and rearranging holidays. This did not necessarily translate into more complaints. There was also a dispute between businesses and insurers about business interruption cover. The UK government recommended using ADR to resolve disputes arising because of the pandemic and there was a backlog in the Court system. ³ Lord Neuberger, a retired judge also suggested parties have a “breathing space” ⁴and use ADR before litigating. Many parties turned to online mediation to resolve disputes and found it to be beneficial in terms of cost, time and speed of resolution.

The Civil Justice Council also published a report on compulsion in ADR⁵, concluding that it was arguable that parties could be compelled to use ADR and this would not deprive them of a right to a fair trial.

³ Cabinet office

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/883737/Covid-19_and_Responsible_Contractual_Behaviour_web_final_7_May.pdf

⁴ Breathing space report

<https://www.biicl.org/projects/breathing-space-concept-notes-on-the-effect-of-the-pandemic-on-commercial-contracts>

⁵ Civil Justice Council report

<https://www.judiciary.uk/wp-content/uploads/2021/07/Civil-Justice-Council-Compulsory-ADR-report-1.pdf>

These reports followed an earlier report by Lord Briggs in 2016 which recommended integrating ADR into the Court system and reinstating the national mediation helpline and bringing in an online Court system ⁶. The Court mediation pilots in Manchester, Exeter and London were set up following this report. This was also followed by a report on ADR produced by the Civil Justice Council on ADR which recommended encouraging the use of ADR and proposed a Notice to Mediate procedure. ⁷ A judicial liaison committee of the Civil Justice Council was then set up to take matters further. Peter Causton, director of ProMediate is a member of that committee. ⁸

This was followed by a call for evidence by the UK Ministry of Justice into ADR. ⁹ BEIS in the UK has also issued a paper and consultation regarding consumer ADR¹⁰

This report explains the results of the ADR Roadshow and will be provided to BEIS and the MOJ in response to their consultations and calls for evidence.

⁶ CCR report Briggs

<https://www.judiciary.uk/wp-content/uploads/2016/07/civil-courts-structure-review-final-report-jul-16-final-1.pdf>

⁷ CJC report

<https://www.judiciary.uk/wp-content/uploads/2018/12/CJC-ADR-Report-FINAL-Dec-2018-2.pdf>

⁸ Details of committee

<https://www.judiciary.uk/related-offices-and-bodies/advisory-bodies/cjc/working-parties/alternative-dispute-resolution/>

⁹ MOJ consultation

<https://www.gov.uk/government/consultations/dispute-resolution-in-england-and-wales-call-for-evidence>

¹⁰ BEIS consultation.

<https://www.gov.uk/government/consultations/reforming-competition-and-consumer-policy>

7. Key Challenges

One of the key principles of mediation is that it is voluntary. We do not impose an outcome on the parties, unlike a Court, arbitrator or ombudsman. We do not compel parties to mediate. However, under the ADR Regulations traders are obliged to provide details of an ADR provider registered with a competent authority when a complaint cannot be resolved. The business is not obliged to use an ADR Provider. They just have to provide the customer with information and contact details. To complicate matters, under the EU ODR Directive businesses were also obliged to provide a link on their websites to the EU ODR platform. When the UK left the EU, this requirement was abolished but many companies including retailers like Aldi still have a link to the platform. In our experience many retailers and businesses go no further than providing the information about an ADR provider to customers but otherwise refuse to use ADR. They often prefer to defend a case in the small claims court and to take part in the free mediation service provided. They do not want to pay for ADR if it can be avoided and they see no reason to compromise further from their final response.

The following message is typical from consumers:

“Joseph called to discuss a dispute with Xyz, he said they sent a letter advising him to contact you but also said they are not obliged to go with ADR? Please call, thanks.”

Likewise, consumers often find that traders will not use ADR. We receive messages like the following:

“Dear Mr Causton

I sent you an email on 19/8 to thank you for your response to my request for ADR mediation.

I now realise that the email to you landed in my drafts box.

I contacted the builder to obtain his confirmation that he is willing to engage in the ADR with you.

In the first instance he agreed to engage with ADR and asked me to make the arrangements.

After I informed him to confirm his willingness to engage with you he said he didnt want to pay. After informing him about your offer of a free trial his final response now is that he will not engage and would like me to put the case before the court.

I wanted to avoid a court case.

Thank you for your time”

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This approach can be seen in respect of retailers like Carpetright which was a member of ProMediate's ADR service and used it but then decided not to use it and to provide information about ADR only. The difficulty for ADR providers is that this approach is confusing for consumers who often contact the names ADR provider and express a wish to use ADR but the business refuses. Time and cost is then wasted. ProMediate receives hundreds of such enquiries per annum. It is very frustrating to have customers eager to use ADR being forced to go to Court because a trader refuses to use ADR.

8. BEIS Proposals for ADR

The Government has indicated that it intends to examine radical new ways to mainstream ADR for all types of disputes including consumer disputes, so it is no longer viewed as an "alternative" to court but operates as an integrated part of the justice system.

BEIS published a **BEIS command paper** on consumer ADR. This suggests mandating ADR in certain high detriment consumer areas. It also comes with some strings attached for ADR providers like ProMediate.

BEIS **Consultation** is open until 30 October. They say that:

"Government is seeking views of those with knowledge and expertise in competition and consumer law and policy. This includes consumer organisations, those in the legal profession, charitable organisations particularly where there is expertise in how to help vulnerable consumers, those in the public sphere such as public enforcers and sector regulators, and advice and resolution services like ombudsman and mediation providers. Government is also seeking views of those with a specific interest in businesses, such as trade associations and membership bodies, both relating to general business interests and specific to those markets particular to the proposals below. Government is also seeking the direct views of consumers and businesses."

The proposals include:

- Providing more support to consumers in individual disputes with traders by improving consumers' access to arbitration and mediation services, thus avoiding the need to go to court. This includes a proposal to make arbitration/mediation compulsory in the used car and home improvement sectors where consumer detriment is relatively high.
- Improving the quality and oversight of alternative dispute resolution services.
- Improving consumer awareness and signposting.
- Seeking views on making it easier for consumers to band together to seek redress collectively from traders.

The proposals include

Improving Alternative Dispute Resolution

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“... most complaints are individual in nature and consumers need knowledge and support to pursue them for themselves. If competition is working well, most consumers who make an unsatisfactory purchase can expect to fix any problems quickly with the trader: seven in ten UK consumers resolve their problem directly with the business.

However, when consumers cannot reach agreement with the trader, they need to understand their redress options, which may include Alternative Dispute Resolution (ADR) processes.

Government has already indicated that it intends to examine radical new ways to mainstream ADR for all types of disputes including consumer disputes, so it is no longer viewed as an “alternative” to court but operates as an integrated part of the justice system.

In the meantime, as proposals for this wide-ranging and fundamental reform are developed, government wants to examine more immediate plans to increase the rate of individual consumer disputes being satisfactorily resolved by strengthening and expanding the scope of ADR.

Many consumer disputes could benefit from ADR because it can be less confrontational in nature than a court process and more easily allows for mediated settlements. It is also generally lower in cost to traders than the courts and free for consumers. Over 2.5 million disputes were resolved through ADR and 80% of consumers who used ADR thought their problem would not have been resolved without it.

www.gov.uk/government/speeches/lord-chancellors-speech-london-international-disputes-week

Many trade associations or similar bodies offer simple and effective ADR by taking complaints about their members and, with a view to resolving any dispute, contacting those members on behalf of the consumer. Generally, such bodies will not deal with complaints about non-members.

John Penrose’s report highlighted the importance of consumers having easier, cheaper, and more digital ways to enforce their rights, whether through ADR or the courts. He saw it as important so that poorly performing firms face more pressure, and consumers know they can trust the system to be on their side if they need it. ADR is an important avenue to redress for consumers outside of the civil courts process, which is often more costly and time intensive. It can also help reduce the burden on the civil courts, which is facing an increasing caseload and resourcing pressures following the COVID-19 pandemic

Government believes a well-functioning ADR system can make markets work more effectively and drive economic growth, as it increases consumers’ confidence in

spending and generates higher trader compliance with the law. However, responses to the Consumer Green Paper suggest that a number of improvements need to be made to improve the quality and scope of ADR so that it delivers for more consumers and businesses in all markets. In this chapter, government is seeking views on three specific improvements that were highlighted by respondents:

- Improving consumer awareness and signposting – the current landscape for accessing redress is confusing and the process varies across markets. This is dissuading consumers from seeking private redress and enforcing their consumer rights.
- Increasing the quality and oversight of ADR – the quality of ADR services, including the time to access ADR, and oversight of ADR bodies varies across both regulated and non-regulated markets.
- Improving the take-up of ADR by businesses in non-regulated markets – Business participation in ADR is particularly low in non-regulated sectors with a high number of SMEs and microbusinesses. This is concerning if those sectors are also ones where consumers are experiencing high levels of harm.”

We would agree that more needs to be done to increase the use of ADR in the consumer arena, and we show below that consumers appreciate being able to resolve disputes with traders more efficiently and effectively than having to go to the Small Claims Court.

We set out our response to the consultation in Appendix 2.

The purpose of the ADR Roadshow was to demonstrate to businesses (and consumers) that ADR is beneficial and worthwhile by offering a free trial and seeking feedback from the parties as to their experience.

9. The Mediations



We mediated disputes regarding the following goods/services:

Holidays/travel operators
Weddings
Postal service
flooring
car hire
Roofing

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Decking
Landscapes
car mechanic
plumbers
Bathroom
Surgeon
music instrument shop
online courses
Football season ticket
DBA checks service
Solicitors
Handyman



10. The following is a list of the 24 mediations we carried out free of charge under the free trial, redacted for confidentiality purposes. All participants did agree to use of material from the mediations for the roadshow.

In the year 2020-21 the only consumer mediations ProMediate carried out were as listed below other than for businesses signed up to use our ADR service, including Whirlpool, Auxillis and Clarks.

ADR Roadshow Consumer - Summary of cases

1. Date 7/20

Parties: X v Y travel Co)

Outcome: Settled

Telephone/online/email Telephone

Mediation Time 2 hours

Prep time 1 hour

X v Travelco

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The Claimants alleged their flights were delayed and they were unhappy with the accommodation. The travel agency agreed to mediate by Zoom. After a long mediation online, the matter was resolved with the Claimants accepting a sum in compensation for the accommodation but not the flights. The travel co said: "I have just spoken with our MD. I have also recommended that we use your service in the future."

2.9/2020

Parties: X v Decking co

Outcome: Settled

Telephone/online/email Telephone

Mediation Time 1.5 hours

Prep time 1 hour

Dispute concerning decking installation. Resolved.

3. Date 1/21

Parties: X v Y building co

Outcome: Settled

Telephone/online/email Telephone

Mediation Time 1.5 hours

Prep time 1 hour

X and Y managed to come to an agreement.

The issue was that building co (Y) was hired for a construction job (pull existing structure, small lean to with a plastic roof, down and extend and rebuild a new extension, hacking off the exterior rear of the Claimant's home and re-rendering it)

4. Date 8/20

Parties: X v Y wedding venue

Outcome: Settled

Telephone/online/email Telephone

Mediation Time 1.5 hours

Prep time 1 hour

- Issue with wedding deposit and getting a refund due to corona virus
- Underlying dispute was about the confusion/miscommunication whether the contract was frustrated. On a phone call that took place on 13 August, Y had

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informed X that the contract was frustrated. Under that assumption X wanted the deposit back. Turned out the contract was not frustrated. X mentioned to the mediator, had Y not said the contract was frustrated, then they (Y etc) would've gone ahead with a celebration party at the venue. As soon as the mediator informed X on this (per Y's instructions) he fully understood and accepted Y's offer (to get 60% of the deposit back).

- Settled by giving 60% of the deposit back
- Took approx. 50 minutes

5. Date 21/11/20

Parties: X v Y Roofing

Outcome: Settled

Telephone/online/email Telephone

Mediation Time 1.5 hours

Prep time 1 hour

- Issue with the roofing co
- Underlying dispute was who caused what damage/was responsible, the previous contractor or X. The invoice, which stated the works done, left a lot to interpretation. X was certain that Y had worked on a part of the roof that was now leaking, Y claims he did not. This discussion went on for a while and then an agreement was made (for Y to pay X GBP850 under warranty repairs). The agreement was nearly signed when X brought up the warranty and whether this would go on. Eventually, this was resolved and there was a settlement agreement. I believe Y had some issues with wiring the money (and I have not heard from whether this has been resolved).
- Settled by giving back GBP850
- Took over an hour, few phone calls took place after the date of mediation because of the disagreement on warranty

6. Date: 12/20

Parties: Y wood flooring co and Client X (Claimant)

Outcome: Settled

Telephone/online/email Telephone

Mediation Time 1.5 hours

Prep time 1 hour

Summary

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EK ordered a wood floor from wood flooring company. When the fitters came he went out and returned to find that the quality and colour of some of the flooring was not as described.

The company had reimbursed the client but he had incurred costs getting the flooring taken up and relaid.

The company agreed to pay £400 towards the requested £500

7.Date: 12/20

Parties: Car hire co (Claimant) and Client X (initiated ADR)

Outcome: Settled

Telephone/online/email On line

Mediation Time 1.5 hours

Prep time 1 hour

Summary

X had hired a car from Car hire co. He was given documents to sign including a sheet which showed any bodywork damage present at the point of hiring. He was not walked around the vehicle to point out any blemishes before driving away.

Car hire co later sent him a bill for additional damage on the car which X claimed had happened before he hired it.

They settled on splitting the cost of the additional charge.

8.Date: 02/21

Parties: Academy and client X (claimant)

Outcome: Settled

Telephone/online/email email

Mediation Time 20 minutes across 2 weeks

Prep time zero

Summary

X signed up for a free trial with Academy, not intending to continue with a paid subscription.

At the end of trial X believed she had cancelled subscription and deleted payment methods. There was a telephone conversation from Academy talking about benefits

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after which the sub money was taken from account. When disputed HB was offered a 25% refund and lifelong membership but refused full refund.

Introductory e mail to both parties, information requested. After a week, Academy response was to ask for bank details for refund. Mediator asked if this was to provide full refund or partial.

A week later, Academy responded to confirm full refund on the day the full refund was credited back to X

9.Date: 03//21

Parties: Musical and Client X (Claimant)

Outcome: Settled

Telephone/online/email Telephone

Mediation Time 2 hours

Prep time 1 hour

Summary

The Claimant paid the Musical £4,964 to bring a broken 40 year old music synthesizer back to full functionality.

After 18 months the repairs were complete, but on return an overheating problem was apparent along with some minor faults. It was returned to the defendant who had it for a year due to the pandemic, repaired it but again, the problem remained. The defendant has refused to continue repairs without further payment and unwilling to cover newly arising problems under the warranty. The claimant is seeking a refund of £2445 to enable him to send to another company who have said the problem can be fixed.

The parties agreed that the 2 currently identified problems would be repaired at a cost of £200 labour plus costs capped at another £200. The repair would be completed within 3 months and the 3 month warranty would cover the cost of those 2 repairs and no subsequent problems. To test for overheating the machine would be run for a minimum of 3 hours at 20 degrees C with the option of a video call for remote monitoring of the test.

10.Date: 17/03/21

Parties: Y (plumber, trading name unknown) and Client X (Claimant)

(Claimant) Outcome: Settled

Telephone/online/email Telephone

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Mediation Time 1 hour

Prep time 1 hour

Summary

The claimant had carried out plumbing and drainage work at the property of his customer as per an agreed quote. At the time of completion the customer was happy with the work done. Shortly afterwards the customer became aware that there were unresolved and additional problems.

Whilst some of the issues were not the fault of the claimant, he returned to repair them. The customer was not happy with the end result and felt the work was substandard and that the costs of the materials had been highly inflated which was not clear on the original quote. The claimant was awaiting a final payment of £580 and was willing to take it to the small claims court as he had been advised he would have an outright win.

Outcome

After one hour of mediation, the parties agreed that the customer would pay £420 providing she accepted return of the waste and rubble, disposing of it herself as the defendant would have to pay to dispose of the 'trade waste'.

11.Date: 03/21

Parties: Property Services Y and Client X (Claimant)

Outcome: No Settlement

Telephone/online/email Telephone

Mediation Time 3 hours

Prep time 1.5 hours

Summary

The Claimant had used Y to install a boiler and carry out plumbing work at his home from July to September at a cost of £5396.98

He claimed that the work was substandard and wanted to claim

£414 for remedial work carried out by another plumber

£550 for a new boiler flue

£539.70 ie 10% of original invoice for stress related to the additional works required

Total £1683.70

Y had offered to go round and address the issues as they arose but X did not want him on the premises. During the mediation it transpired that there had been a number of tradesmen working on the house at the same time. One of the tradesmen had accidentally put a screw through the pipe which Y repaired, but when asked to invoice

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the builder directly he refused as he was asked by X to do the repair. Y refuted many of the issues X had raised and when challenged by the mediator he decided to exclude them from his list of complaints.

Dh was willing to have an independent gas safe engineer to check the flue but X wanted someone unknown to Y. When trying to agree on an independent gas safe plumber to come to do the remedial work X admitted that he not only wanted the work carried out but he wanted it to cost Y. Therefore he did not want it to be someone known to Y as he may get a favourable rate.

Of the above costs, Y was only willing to pay for a plumber of his choosing to address the flue and £550 was not a reasonable quote. He had gone back to the property numerous times and felt he could not have done more to help the customer.

Outcome

The dispute did not get resolved as the plumber, who had never been in such a situation felt he had provided excellent customer service and the claimant was being punitive.

Mediator Comments: Over the course of the mediation the claimant became increasingly petulant. At the end of the mediation, he said he intent was to leave bad reviews on all the review websites and believed he had a solid case if he was to litigate.

12.Date: 03/21

Parties: Garage and Client C (Claimant)

Outcome:No Settlement

Telephone/online/emailTelephone

Mediation Time2.5 hours

Prep time1.5 hours

Summary

The claimant had bought a 13 year old Land Rover Defender from a dealer. He had seen it unused and asked to buy it. The Defender had been unused for 5 years and needed recommissioning. Whilst this was work was being carried out there were some issues that still needed sorting but the claimant bought it anyway with a 12 month verbal warranty.

When he complained to the dealer that he was not satisfied with their repairs he was offered a full refund and the return of his part exchanged vehicle. He did not want this because he had already spent money on it elsewhere and on the business signage.

He wanted £2194.60 to buy a new warranty, new tyres and to cover the monies spent. The garage kept offering the refund and offered to pay £500 towards a new warranty.

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The relationship had deteriorated and mediation was sought. There was extensive e mail correspondence prior to the mediation, at no point was the dealer willing to offer more than a 'reversal' of the original transaction. The mediation was free of charge and the dealer would not have agreed to mediate if there was any fees to be paid.

Outcome

An agreement was not reached. The dealer maintained his stance of agreeing to repairs or a refund with no additional money returned to the consumer. He was angry with the claimant who he felt was unreasonable and was willing to be taken to court as he had offered all he was obliged to offer.

13.Date: 04/21

Parties: cars and Client X (claimant)

Outcome:No Settlement

Telephone/online/emailTelephone

Mediation Time2.5 hours

Prep time1.5 hours

Summary

Dispute - Purchase of Land Rover Freelander 2 BT57 HCX2 on 16th February 2020 at a cost of £4200 was not sold as described.

Outcome

On April 21st 2021 the participants entered into mediation to try and resolve the dispute. Outcome No settlement was reached.

Mediator comments: This was probably not a suitable case for mediation as the dealer never had any intention of offering more than a refund.

14.Date: 27/04/21

Parties: Y Landscapes and Garden Design Co

And Client X (Claimant)

Outcome:Settled

Telephone/online/emailTelephone

Mediation Time1.5 hours

Prep time1 hour

Summary

Mr and Mrs X had a front drive landscaped to allow for multiple cars to be parked at front of house.

The product was resin based and was laid on to of asphalt sub base.

After a couple of months it started to lift.

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Y repaired it but fault recurred.

Both contacted the supplier. Y was not returning messages so X had the product supplier redo the work and were claiming the costs.

Initial claim by the Mr and Mrs X £4350

Initial offered by Y £2700

Outcome

Agreed on £3300. £800 within 7 days then 5 x £500 monthly

15.Date: 05//21

Parties: Y Kitchen co and Client X (Claimant)

Outcome: Settled

Telephone/online/email Telephone

Mediation Time 1,5 hours

Prep time 1.5 hours

Summary

X had purchased a kitchen from the Y Kitchen Co which was completed December 2020.

The worktops were being purchased from another company at a cost of £2950 to be paid directly to the supplier.

Fitting was being done by another company.

The contract/invoice stated that the total to pay was £10653

The invoice was paid in full, the kitchen was being fitted and then he was asked for the £2950 by the worktop supplier.

Both parties realised there was a misunderstanding and that it was not made clear on the invoice as the costs were not itemised. The retailer said it was fully discussed when Mrs X and his colleague chose the kitchen and signed the contract.

Outcome

The case settled with X getting £800 paid back to him in full and final settlement.

16.Date: 06/21

Parties: roofing services Co Y and Client X (Claimant)

Outcome: Settled

Telephone/online/email Telephone

Mediation Time 1 HR 10 minutes

Prep time 1 hour

Summary

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The client paid £1700 to have a fibreglass roof on his house replaced by a tiled roof. After the job was completed it became apparent that the soffit boards came down too low preventing the windows and French doors to the conservatory from opening. A ridge tile also fell off which could have seriously hurt anyone standing underneath. The director of the roofing company never came to view the problems and had offered £350 to cover remedial repairs. The client had been told the whole roof needed replacing and wanted a refund and was willing to go to court.

The Director claimed to be winding up the company due to the lack of business during the pandemic and as a limited company he would not be at risk in court.

Outcome

A settlement was reached with the Roofing company agreeing to pay £500.

17.Date: 06/21

Parties: Y Domestic and Commercial Cleaning Specialist co and Client X (Claimant)

Outcome:No Settlement

Telephone/online/emailTelephone

Mediation Time1.5 hours

Prep time30 mins

Summary

The client was claiming for damage to a headboard which he claimed was damaged during cleaning. The cleaning company been asked to clean a suite and as an extra they asked for the headboard to be cleaned. They charged £150 for the suite and they said they would do FOC. Both items were 12-15 years old. The cleaning company felt there had been a previous repair to the headboard which was not apparent until they started cleaning. The client wanted £274 pounds to recover the cost of reupholstering the headboard. The Company were only willing to offer £50

Outcome

They failed to settle.

18.Date: 06//21

Parties: co v Academy (claimant)

Outcome:Not settled negotiations remain in progress

Telephone/online/emailtelephone

Mediation Time1 hr 32 mins

Prep time1 hour

21

Summary

Co provide DBS checks. Academy had paid for a bulk number of DBS checks, 2 of which were in progress when lockdown occurred. The director of Academy was furloughed along with the staff and did not return to the office again until September 2020 prior to reopening in October.

When the DBS checks were chased up she was told that the account had been closed and monies non-refundable. Co claim to have complied with Ts&Cs.

Outcome

A Settlement was not reached within the time available by negotiations continuing with specific information requested of the other by each party.

Claimant confirmed later confirmed they had settled at one further DBS check being provided.

19.Date: 06/21

Parties: Mr Y, Company Solicitor for Y FC and Mr X (claimant)

Outcome:Not settled negotiations remain in progress

Telephone/online/emailtelephone

Mediation Time2 hr 40 mins

Prep time1 hour

Summary

Mr X was seeking a refund of £724 for an adult and child season ticket purchased in March 2020 that included stadium entry to 21 home matches for the 20/21 season. In June 2020 the club contacted its season ticket holders with revised T&Cs allowing ticket holders access to live streaming of matches as pandemic restrictions prevented stadium access. The claimant did not receive this email as his e mail address had been suppressed by the football club. This was known to the club and the email was sent to an his 10yr old daughters email which was set up as a second address was required at booking. Mr X understood from talking to Consumer Advice that the contract had become 'frustrated' but that he should still be entitled to a refund as there were no variation clauses in the original contract.

Mr Y offered a FOC child season ticket as recompense which was refused.

Having implied he had sufficient authority to settle, Mr Y then stated he could not offer more without speaking to his superiors.

Outcome

A settlement was not reached but it was agreed that negotiations would continue after Mr Y had discussed with the management.

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Settlement reached 4 days later. Claimant received £575.

20.Date: 07/21

Parties: Mr Y of marine and Mr X (claimant)

Outcome: Settled

Telephone/online/email On line

Mediation Time 2 hr 30 mins

Prep time 1 hour

Summary

The claimant had purchased a boat last summer and wanted the electrics upgraded.

The work was given to Marine in September 2020.

X had paid over £14,700 to Y. After 6 months what little work had been done was done badly and remediations had been required so wanted some level of refund.

During this time, Y had lost both parents and become so depressed and could no longer run a business. However, he had been offered a salaried post which was helping him to get back on track.

Outcome

A settlement of £4000 was reached payable by instalments over 16 months.

21.Date: 18/08/21

Parties: Miss Y of Property co/ Mr X (Claimant)

Outcome: Pending decision from property co senior management

Telephone/online/email Online

Mediation Time 3 hours

Prep time 1.5 hours

Summary

The Claimant had booked a business training course with Property co. It included 3 seminar days followed by 12 monthly sessions with a mentor. The company gave a money back guarantee if he failed to make £100,000 in the year starting with the first mentoring session. Mr X wanted the full refund of £10,800

The Claimant felt he had been mis-sold the course as the person he had signed up with left the company and the replacement mentors were poor. At the time of the claim he had completed 5/12 of the sessions over a one year period. The money back guarantee was not valid until the 12 sessions were completed.

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The 'contract' was ambiguous with both Parties interpreting it differently. Mr X had a recording with a substitute mentor agreeing with him that the course was not fulfilling his needs.

Outcome

The outcome at the end of the mediation was that Miss Y did not have authority to offer more than half the course cost and needed to consult with senior management to authorise a refund of £8000. Decision to be conveyed to Mr X within 2 weeks.

Final outcome due 01/09/21

22.Date 09/21

Parties Mr Y of Y Locksmith and Property Maintenance Mr and Mrs X (claimants)

Outcome Settled

Telephone / online/email Telephone and online

Mediation time 3 hours

Prep time 1.5 hours

Summary:

The claimants had a bathroom fitted by Y at a cost of nearly £8000. The house was old and the walls were not square. Once complete they were aware that the fitters had not squared up the walls ready for tiling preventing the bath and toilet being fixed properly to the walls. Kinked pipes caused poor water flow and when the fittings were removed there were loose bricks and unfixed plaster boarding. There were photographs a video clips evidencing the complaints. The claimants were asking for a partial refund to cover the remediation work carried out by an independent firm. Outcome The Parties agreed on a figure of £4700 paid with immediate effect.

23.Date 10/21

Parties: Mr X claimant

Mr Y of Wastewater Co

Outcome: Settled

Telephone/online/email Telephone/online

Mediation Time 2.5 hours

Prep time 1 hour

Summary

Mr X needed a new septic tank. The insurance company would only replace like for like and the tank was under a building. Y said they could do it if Mr X exposed the underground pipe which needed to be connected.

After the work was done, it became apparent that the wrong pipe had been connected. They offered a solution to give functionality which necessitated a pump. This was

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unacceptable as the property was a boarding kennels and animal hair would clog a pump. Mr X had another company to correct the problem and wanted an 8k refund. Y felt that as they had offered a solution they were not obliged to refund.

Outcome

A settlement was reached with Y paying £980 for the cost of a new tank.

24.Date: 10/21

Parties: Mr X claimant Mr Y of Y Product Design Co

Outcome:No settlement

Telephone/online/emailOnline

Mediation Time1.5 hours

Prep time1.5 hours

Summary

Mr X approached Y to design a bespoke amplifier. During the design process there were delays due to sourcing parts during the pandemic. Mr X was not happy with the prototype as there were numerous faults and was not fully and safely functional. There was a conflict in what the two parties considered to be a prototype with regards to functionality. The relationship between the two parties had deteriorated considerably. Mr X wanted a complete refund of 7k. Y had offered to refund the cost of the final stage of works at £2200.

Outcome

No settlement was reached.

25. Date 10/21

Parties: Mr X claimant Mr Y of Y Solicitors

Outcome: settlement

Telephone/online/email Online

Mediation Time 2 hours

Prep time1.5 hours

Summary

Mr. X had a claim against his solicitors regarding litigation which had not gone well resulting in a costs order of £17000 regarding a debt of £4000 his business had

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incurred. After a mediation via Zoom Mr X appreciated he would not recover the whole £17,000 and accordingly accepted £7000 payment in full and final settlement.

26. Date 10/21

Parties: Mr X claimant v Mr Y Handyman

Outcome: No settlement

Telephone/online/email Online

Mediation Time 3 hrs

Prep time 1.5 hour

Summary

Mr X paid Mr Y to replace and tile his bathroom and ensuite shower room. When the shower was first switched on it leaked behind the wall and flooded downstairs. Mr Y gave his insurance details but they would only pay to repair and rectify the damage so X was claiming through his own insurance. He wanted a full refund and for Y to pay for the bathroom to be redone as he felt that the tiling and fitting was of poor quality. Y had been in consultation with X throughout the fitting. There were problems but X had accepted them. X would not let Y back to make any reparation from the moment the shower leaked. Y was in no position to pay and felt that he was not liable for anything other than reparation.

Outcome

No settlement was reached.

11. Feedback from consumers and businesses

We found it difficult to elicit feedback from the parties, even though we made it a condition of the free mediation. Interested parties may apply to us to view the recordings of some of the mediations subject to signing strict non disclosure agreements.

We asked the following questions:

1. Did you resolve your case or narrow any of the issues?
2. Had you used Alternative Dispute Resolution before?
3. Would you use ADR again?
4. If not, why not?
5. What were the benefits to you of the process?

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6. If you are a business are you interested in signing up to offer ADR to consumers who have a dispute with you?
7. What would be a reasonable charge for the mediation?
8. How do you rate the performance of the mediator?

Adr responses

1. Did you resolve your case or narrow any of the issues?

- No.
- Not on the day but further discussions are taking place.
- Yes
- Yes
- No, unfortunately I didn't resolve my issue and the issue remains as before.
- Yes - came to agreement that I would settle for £8,000 and the other part is going to confirm by Sep 1st.
- No, Dr Jackie Kenny was very helpful and professional throughout the process but the other party I was dealing with clearly did not want to go through mediation after having asked me undertake this process.
- Yes
- Yes
- No
- Yes
- No

2. Had you used Alternative Dispute Resolution before?

Only one respondent had used ADR previously:

- No
- Yes

- No

3. Would you use ADR again?

- Yes
- Yes
- Yes
- Yes definitely
- Yes if required
- The mediation provided was excellent and I would return to ProMediate in future if their assistance was needed again.
- Yes
- No It didn't resolve any of my issues at all, despite the professionalism and helpfulness of Dr Kenny.
- Yes
- Yes
- Very unlikely-didn't work out
- Yes
- Yes
- Yes
- Yes
- Yes
- Yes only if circumstances warranted it
- Yes but hopefully not necessary
- Yes

4. If not, why not?

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5. What were the benefits to you of the process?

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- Discussing the case with a third unbiased person.
 - It was good to have an independent question both sides and get across both points of view.
 - Managed to get the other party to engage in finding a resolution and were able to recoup some of our losses.
 - From a position where the defendant would not communicate verbally, the mediation service was able to speak direct to present an opportunity to reach an amicable agreement in this case. This allowed the claimant to elaborate on their position, communicated impartially by the mediator which brought both parties together to settle through mediation and bring closure in 2 hours to a situation that had evolved over several months with no progress.
 - Could do mediation from home. Easy communication with the mediator. A quick process to resolve the issues.
 - It was easy to arrange via email and phone calls
-
- Moving the process forward and either coming to an agreement or being able to go to court.
 - None it didn't resolve my issues
 - Despite much discussion my customer was entrenched in his way of thinking and was threatening court action which can be expensive, time consuming and unpredictable. The mediation convinced him to change his mind and we reached a compromise.
 - Good communication with the other party without the stress of it blowing up into an argument.
 - The trader was unwilling to enter into negotiations and would rather be taken to Court. Mediation seems like a good option but relies on both parties being open to negotiations.
 - Overall I am satisfied. It might have been helpful if the mediator had knowledge of what proceeding to court might consist of.
 - CBA recommended I use this service as part of the proceedings before legal action.
 - Having a third party look at the issue and sit in between the two parties
 - Made you think about the strengths and weaknesses of your case. Unfortunately we were unable to get an agreeable resolution.
-
6. If you are a business are you interested in signing up to offer ADR to consumers who have a dispute with you?
- Luckily, disputes are quite rare in my business, but I would suggest it again if need be.
 - Yes

- Not at this stage as we generally avoid any disputes this is personally my first in 7 years with the company

7. What would be a reasonable charge for the mediation?

- £25
- I'm not too sure as I believe this is a cost that should be funded by a business rather than a consumer. I believe if consumers are made to pay it would be more likely for them just to go to court to get a definitive outcome.
- Don't know
- £200-£250
- For the consumer I expect this to be covered by the business. I would expect this to be a charge which is similar to the cost needed to bring the case in court.
- £200
- Free – the mediation did not resolve any of my issues, despite the mediator agreeing with most of what I was saying and that what I was asking for was reasonable.
- £50 from each party would be reasonable
- £50
- No idea
- £75
- N/A
- Not sure how to quantify that
- £200

8. How do you rate the performance of the mediator?

- Excellent.
- Very good, she came across as fair and completely impartial.
- Jackie understood the dispute and was able to encourage the other party to engage in discussion which had been becoming increasingly difficult. She made it clear that taking the claim further would not be successful due to the lengths the other party were prepared to go to avoid taking full financial responsibility. As such she was able to help us obtain a higher settlement than the other party had initially offered. While disappointed with the overall outcome, we are pleased with the help Jackie provided in negotiating the settlement under the circumstances.
- The mediator handled the situation extremely well and the performance was excellent.
- Excellent. The mediator was very helpful and informative both beforehand and during the mediation call. She helped us achieve what we had hoped for.

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- Good
- Absolutely amazing. I think Peter understood that communication was going to be very difficult and that if there was any chance of reaching an agreement, he would have to mediate quite 'physically' as in bringing the messages backwards and forwards to the parties. Because of this, the negotiation was not adversarial (at least not as much as it could have been). Peter remained 'neutral' through the process and adopted a very pragmatic approach: this was not going to be a discussion about who was right or wrong but about finding a solution. He managed to keep us focused on that objective throughout. Despite this, when asked he would help me to understand the legal issues better or gave me his views on particular points, which was very important as I also felt that I could ask questions, consider other viewpoints – in other words, the process was neutral and non judgemental but neither impersonal nor dry. In addition Peter was always prompt in answering emails; this has been very helpful.
- Our mediator was very professional and correct.
- My mediator was polite, sympathetic and understanding, all the while remaining impartial and giving reasonable advice throughout the discussions.
- Excellent
- Superb – Dr Kenny did all she could to help bring a resolution to the matter.
- Very good
- 10/10 – perfect
- 100% for trying
- Very good, a good listener, took a balanced approach, understanding and informative and really tried to help
- Jackie was good
- Very good
- Once we were underway the process went well.
- I feel the mediator was calm and helpful
- Very good, a good listener, took a balanced approach, understanding and informative and really tried to help
- I think this was a very successful mediation. The company provided me with a full refund before we'd even scheduled the mediation session. Perhaps they realised that the man-hours involved in disputing my claim would cost them more than the refund I'd requested. Whatever their thought process, I'm glad I requested mediation, and would do so again in similar circumstances. Thank you for your help!
- Excellent, thoughtful, caring and was aware of my medical problems. She took into account the stress that this has caused me and although it wasn't the outcome that I wanted, we both agreed to accept this offer and end the stress.
- Very good in a difficult situation
- Mediator was very good and listened to my side of the story, asked some thought provoking questions

The majority had not used ADR before but were impressed by the service and would use ADR again. The majority of cases were successfully resolved, saving the parties many hours and costs. In terms of value the parties' views about the cost ranged from free to £250.

Some users left reviews on Google: <https://g.page/promediate/review>

Overall we received a star rating of over 4.7/5. One of the businesses which signed up to use the service was Holiday Gems. They stated in their review that “we used ProMediate for the first time and found their process and attention exceptional. Highly recommended.”

We also asked people to complete an online survey:

<https://www.smartsurvey.co.uk/s/5MA8C4/>

<https://www.smartsurvey.co.uk/s/O3WRGP/>

We had the following responses:

26 responded prior to the mediation and only 5 afterwards. Although not statistically significant, it is interesting that the majority of respondents (over 80%) had not used ADR before.

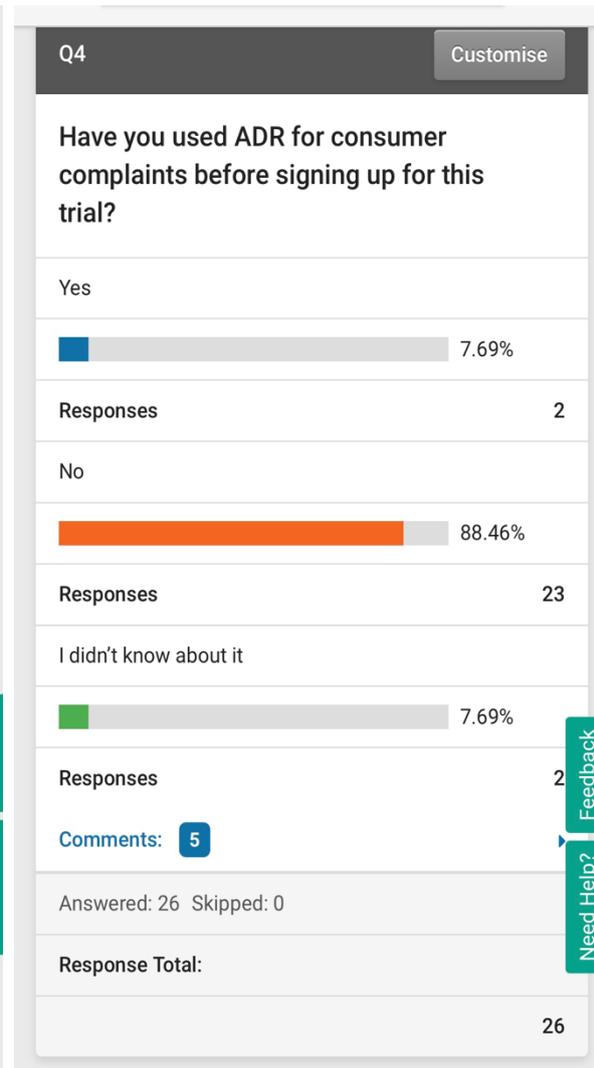
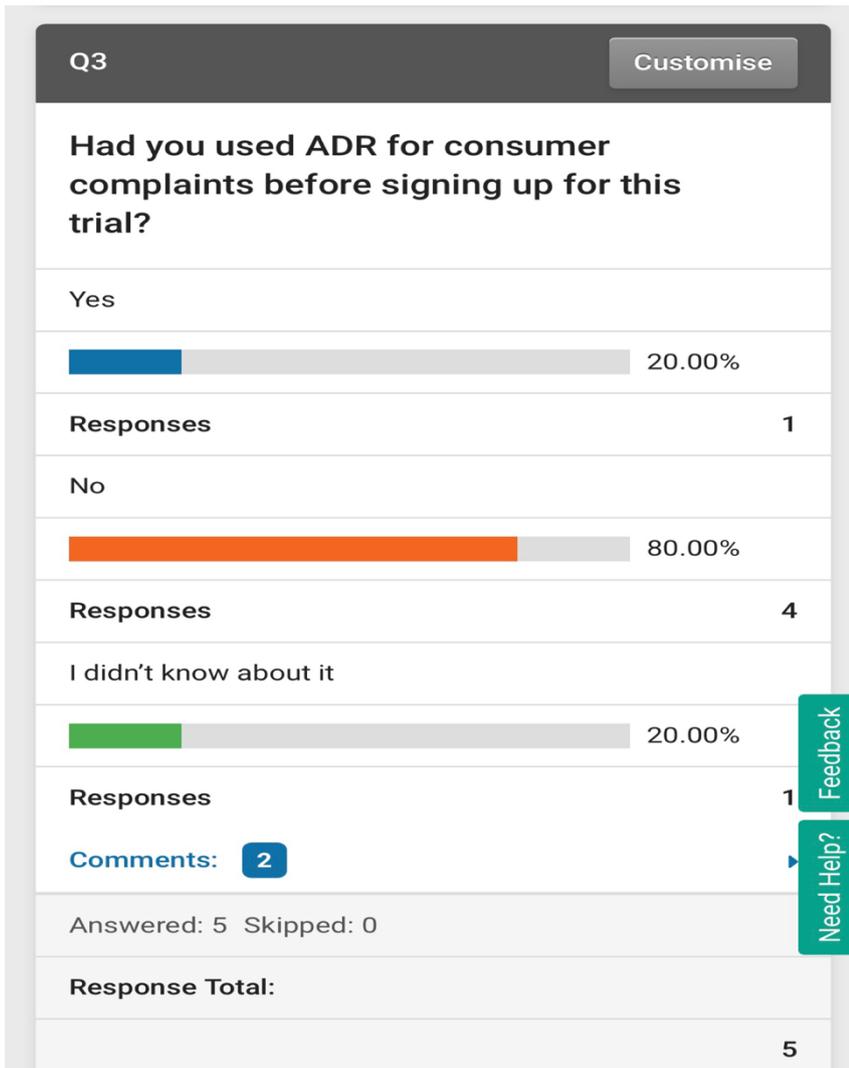
Of those that responded online after the mediation they indicated that they would be happy to use ADR again to resolve disputes:

5yes	01/09/2021 14:33 PM ID: 173743165
4 Yes, I would 100% recommend ProMediate in future. The service was outstanding and I will be recommending it to others.	25/04/2021 20:11 PM ID: 165155609
3n/a	07/01/2021 11:27 AM ID: 155846602
2 Most definitely. I will recommend the firm to family / friends as it was much quicker than a court resolution.	27/11/2020 15:47 PM ID: 153465319
1 We would use this service again	

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They also responded that they had resolved their disputes and were satisfied with the outcome:

5 n/a	01/09/2021 14:33 PM ID: 173743165
4 Yes, 1 dispute was resolved and I am very happy with the outcome.	25/04/2021 20:11 PM ID: 165155609
3 n/a	07/01/2021 11:27 AM ID: 155846602
2 My dispute was resolved, happy to comprise on the outcome as the alternative would be to allow the tradesman back into the property, which upon reflection I would not be happy with. So yes. Thank you.	27/11/2020 15:47 PM ID: 153465319
1 Yes and we were given great service and a good resolution	06/07/2020 14:17 PM ID: 144449887



Very few businesses who responded to the survey offered ADR to their customers:

23 No 22/09/2021
08:40 AM
ID: [175021673](#)

34



22 no	06/09/2021 15:31 PM ID: 173995328
21 No	03/09/2021 14:47 PM ID: 173879283
20 No	01/09/2021 14:32 PM ID: 173743053
19 N/A	09/06/2021 11:39 AM ID: 168353954
18 N.A.	08/06/2021 18:19 PM ID: 168308612
17 NO	26/05/2021 15:20 PM ID: 167479580
16 Na I am the innocent purchaser of an extremely dangerous product that I am seeking substantial damages as a direct result of such dangerous items	11/05/2021 18:12 PM ID: 166323227
15 NA	03/05/2021 21:56 PM ID: 165710581
14 Citizens Advice	29/04/2021 16:30 PM ID: 165501105
13 N/A	25/04/2021 20:10 PM ID: 165155542
12 Neil4Cars gave me your contact information.	09/04/2021 08:43 AM ID: 163957631
11 Never before.	07/04/2021 20:02 PM ID: 163837204
10 I had to suggest it to the tradesman	07/04/2021 12:31 PM ID: 163795120

9	No	17/03/2021 17:36 PM ID: 162314734
8	No	16/03/2021 12:26 PM ID: 162175127
7	no	08/03/2021 18:08 PM ID: 161524564
6	n/a	07/01/2021 11:27 AM ID: 155846535
5	No	05/01/2021 21:22 PM ID: 155741777
4	No	22/09/2020 14:49 PM ID: 148645884
3	no	14/09/2020 13:12 PM ID: 148187949
2	Yes we make information available to our customers on ADR.	05/08/2020 13:07 PM ID: 146107581
1	NO	29/06/2020 11:06 AM ID: 143984075

The majority were optimistic about the prospects of using ADR to resolve consumer complaints:

26	potentially	22/09/2021 08:40 AM ID: 175021673
25	maybe	06/09/2021 15:31 PM ID: 173995328
24	I have no idea	03/09/2021 14:47 PM ID: 173879283
23	Hopefully	01/09/2021 14:32 PM ID: 173743053

22 Yes, I remain optimistic	09/06/2021 11:39 AM ID: 168353954
21 I certainly hope so.	08/06/2021 18:19 PM ID: 168308612
20 Hopefully yes	03/06/2021 20:59 PM ID: 168011021
19 hopeful	26/05/2021 15:20 PM ID: 167479580
18 Yes	11/05/2021 18:12 PM ID: 166323227
17 I hope we will get a resolution from the business	03/05/2021 21:56 PM ID: 165710581
16 I hope we can get some resolution through this ADR scheme	29/04/2021 16:30 PM ID: 165501105
15 N/A	25/04/2021 20:10 PM ID: 165155542
14 unknown	09/04/2021 08:43 AM ID: 163957631
13 Yes.	07/04/2021 20:02 PM ID: 163837204
12 Undecided	07/04/2021 12:31 PM ID: 163795120
11 Yes	22/03/2021 09:50 AM ID: 162631989
10 not sure	17/03/2021 17:36 PM ID: 162314734
9 With no prior experience of ADR I am open-minded as to its likely success or otherwise.	16/03/2021 12:26 PM ID: 162175127

8	I'm hoping this will help resolve our issues.	10/03/2021 15:18 PM ID: 161720341
7	not sure	08/03/2021 18:08 PM ID: 161524564
6	n/a	07/01/2021 11:27 AM ID: 155846535
5	Yes	05/01/2021 21:22 PM ID: 155741777
4	It seems to be something that is being advised to customers who contact citizens advice as the procedure to follow. We're exploring it as an ongoing possibility	22/09/2020 14:49 PM ID: 148645884
3	dont know	14/09/2020 13:12 PM ID: 148187949
2	Yes if complaints arise that we cannot resolve ourselves	05/08/2020 13:07 PM ID: 146107581
1	YES	29/06/2020 11:06 AM ID: 143984075

Answered: 26
Skipped: 0

Response Total: 26

Prior to the mediations, the majority had not used ADR before:

20	N/A	22/09/2021 08:40 AM ID: 175021673
19	none	06/09/2021 15:31 PM ID: 173995328
18	N/A	03/09/2021 14:47 PM ID: 173879283

38



17 n/a	01/09/2021 14:32 PM ID: 173743053
16 N/A	09/06/2021 11:39 AM ID: 168353954
15 N.A.	08/06/2021 18:19 PM ID: 168308612
14 Na	11/05/2021 18:12 PM ID: 166323227
13 No	03/05/2021 21:56 PM ID: 165710581
12 No	25/04/2021 20:10 PM ID: 165155542
11 n/a	09/04/2021 08:43 AM ID: 163957631
10 N/A	07/04/2021 20:02 PM ID: 163837204
9 N/A	07/04/2021 12:31 PM ID: 163795120
8 Mediation Yes	22/03/2021 09:50 AM ID: 162631989
7 N/A	17/03/2021 17:36 PM ID: 162314734
6 not applicable	16/03/2021 12:26 PM ID: 162175127
5 Never used before.	10/03/2021 15:18 PM ID: 161720341
4 n/a	07/01/2021 11:27 AM ID: 155846535

3	This is the first time	22/09/2020 14:49 PM ID: 148645884
2	Not had to use, have been member with Ombudsman Services.	05/08/2020 13:07 PM ID: 146107581
1	THOSE FROM THE SMALL CLAIMS COURT AND MOSTLY SUCESSFUL	29/06/2020 11:06 AM ID: 143984075

We asked how many complaints the respondents received per annum. The majority of respondents received multiple company's per annum although for some this was the first time they had dealt with a complaint:

24	0	22/09/2021 08:40 AM ID: 175021673
23	none	06/09/2021 15:31 PM ID: 173995328
22	We only have this one unresolved dispute	03/09/2021 14:47 PM ID: 173879283
21	None	01/09/2021 14:32 PM ID: 173743053
20	N/A	09/06/2021 11:39 AM ID: 168353954
19	N.A.	08/06/2021 18:19 PM ID: 168308612
18	N/A	03/06/2021 20:59 PM ID: 168011021
17	0	26/05/2021 15:20 PM ID: 167479580
16	Na	11/05/2021 18:12 PM ID: 166323227

40

150	03/05/2021 21:56 PM ID: 165710581
140 - this is our first dispute	29/04/2021 16:30 PM ID: 165501105
13 N/A	25/04/2021 20:10 PM ID: 165155542
12 unknown	09/04/2021 08:43 AM ID: 163957631
11 None.	07/04/2021 20:02 PM ID: 163837204
10 N/A	07/04/2021 12:31 PM ID: 163795120
9 N/A	17/03/2021 17:36 PM ID: 162314734
8 In two years working for the company this is only the second complaint that we have received.	16/03/2021 12:26 PM ID: 162175127
7 nil	08/03/2021 18:08 PM ID: 161524564
6 n/a	07/01/2021 11:27 AM ID: 155846535
5 1	05/01/2021 21:22 PM ID: 155741777
4 1-5	22/09/2020 14:49 PM ID: 148645884
3 none	14/09/2020 13:12 PM ID: 148187949
2 0	05/08/2020 13:07 PM ID: 146107581

41

1 No 29/06/2020
11:06 AM
ID: [143984075](#)

We asked whether respondents had used the small claims system and how they had found it. Many had not used the Court system but those that had were complimentary about it:

26 No 22/09/2021
08:40 AM
ID: [175021673](#)

25 not yet 06/09/2021
15:31 PM
ID: [173995328](#)

24 Yes and it was fine 03/09/2021
14:47 PM
ID: [173879283](#)

23 Yes, very good. 01/09/2021
14:32 PM
ID: [173743053](#)

22 No 09/06/2021
11:39 AM
ID: [168353954](#)

21 No. 08/06/2021
18:19 PM
ID: [168308612](#)

20 Yes, easy to navigate 03/06/2021
20:59 PM
ID: [168011021](#)

19 Yes I was successful 26/05/2021
15:20 PM
ID: [167479580](#)

18 No 11/05/2021
18:12 PM
ID: [166323227](#)

17 No 03/05/2021
21:56 PM
ID: [165710581](#)

16 No 29/04/2021
16:30 PM
ID: [165501105](#)

15 No	25/04/2021 20:10 PM ID: 165155542
14 unknown	09/04/2021 08:43 AM ID: 163957631
13 Never.	07/04/2021 20:02 PM ID: 163837204
12 No	07/04/2021 12:31 PM ID: 163795120
11 Yes, Good to have an external authority deliberate on a dispute	22/03/2021 09:50 AM ID: 162631989
10 No	17/03/2021 17:36 PM ID: 162314734
9 We have never had recourse to the small claims court	16/03/2021 12:26 PM ID: 162175127
8 Not yet	10/03/2021 15:18 PM ID: 161720341
7 no	08/03/2021 18:08 PM ID: 161524564
6 n/a	07/01/2021 11:27 AM ID: 155846535
5 No	05/01/2021 21:22 PM ID: 155741777
4 N/A	22/09/2020 14:49 PM ID: 148645884
3 no	14/09/2020 13:12 PM ID: 148187949
2 N/A	05/08/2020 13:07 PM ID: 146107581

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1 YES - GREAT SYSTEM

29/06/2020
11:06 AM
ID: [143984075](#)

Answered: 26
Sk

12. Mediator Feedback



Dr Jacqueline Kenny, who carried out a lot of the mediations for us, Dr Jacqueline Kenny, summarises her experience of providing the mediations and the general barriers to settlement and participation as follows:

As part of the ADR Roadshow I carried out 16 free of charge mediations to Consumers and retailers/ service providers. The sectors included:

- Training Course Providers 2
- Home services including the Trades 6
- Retail
- Motor 3
- Equipment repair 2
- Car rental 1
- Sports events 1
- DBS checks 1

3/16 cases settled which amounts to a 81% success rate.

In all cases the consumer initiated the ADR process. Most but not all of the defendants would have been unwilling to engage if there was a fee. Most Claimants stated that their reason for using ADR was to expedite proceedings, knowing a claim in the Small

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Claims Court would take time or fear of the potential costs of court and/or legal representation.

It became apparent that trying to resolve a dispute within an hour was akin to speed dating and would have had a similar success rate if the decision to remove the time restraints was removed when there was a possibility of a settlement. This decision was made because this was an opportunity to promote the effectiveness of Mediation for dispute resolution.

There were a couple of notable problems with providing free of charge ADR:

- The defendant's refusal to engage or partake in the process which is an issue with all Mediation
- The defendants not being invested in the process and an unwillingness to resolve the dispute financially unless compelled
- Both Parties particularly claimants providing copious amounts of correspondence prior to the mediation which took significant time to read, happy in the knowledge that they were not being charged by the hour
- Claimants using the process to try and replicate court processes seen on American TV , on one occasion with the goal of imposing punitive damages*
- Low value being put on the mediators time and effort*

*One particular case involving a new boiler took 4.5 hours including prep time with the claimant feeling it would have been worth paying £50 to the mediator. This is less than minimum wage.

If ADR is to become compulsory for such cases the mediators need to be in house and salaried as part of customer services. However this would be ineffective for SMEs and sole traders.

One of the training provider cases settled before the mediation date was set. Unusual for ADR, less so when a solicitor's letter threatening litigation has been received.

In divorce settlement cases, Mediation is a prerequisite, with non-participation being viewed dimly by the courts. I have little experience of this as I am not a family mediator but anecdotally, the fees are in the region of £185 per party per session. If ADR is to be mandatory for consumer disputes the fees should be aligned with family mediation or at the very least, small claims courts costs. Perhaps there should be a fine imposed when Mediation is refused as an incentive.

Currently, there is no incentive for independent Mediation providers to undertake small claim cases.



Peter Causton also conducted some mediations and oversaw the project. He comments as follows:

The feedback from the roadshow was overwhelmingly positive but few businesses have signed up to use the service on an annual basis. They seem to prefer a case by case approach. Very few businesses and consumers value ADR sufficiently to commit to it financially. There is obviously a great thirst for alternative dispute resolution judging from the 10 enquiries¹¹ we receive per day mainly from consumers wishing to mediate. Most of those enquiries are about motor traders or construction companies. As a result of the trial businesses are willing to use ADR but are reluctant to sign up to use an ADR entity to resolve their disputes. We have had businesses sign up to use us as an ADR provider including Vivienne Westwood. The only way to increase ADR uptake is to make it compulsory for businesses to offer ADR, as with mobile phone contracts and energy suppliers. We would suggest making it free for the consumer.

13. Conclusion

Mediation/ADR is generally not a repeat business

Businesses do not want to signpost you ADR as it implies they lack confidence in their own internal complaints procedures and because they feel many complaints are unjustified and unreasonable.

Businesses and consumers value the ADR process but do not consider that they should have to pay anything other than a nominal fee for it.

Appendix 1

¹¹ Estimated average number of daily enquiries received by ProMediate alone.

ProMediate's process

Who makes the decision in relation to my dispute? Click2Resolve does not make a decision about your dispute but conciliates and mediates between you and the business in an attempt to help you to reach a settlement. The process is entirely voluntary and non-binding until any agreement is reached between you. The process begins with the customer submitting a Complaint Form and supporting documents, by email, uploading them to the website, (or by post)

Participation in the procedure does not prevent the possibility of seeking redress through court proceedings; and the proposed solution may be different from an outcome determined by a court applying legal rules.

The customer will also indicate their chosen method of communication for the process and make payment. After you have submitted your complaint form and any supporting documents, we will forward these to the Business within 7 calendar days.

The business will then submit its response form and supporting documents, within 7 calendar days and we will then contact the parties by telephone or email to try to resolve the case. Upon receipt of the Complaint Form, a mediator will be allocated to deal with the case, after checking that they do not have any conflict of interest and that the Refusals Policy does not apply (see below).

ADR Officials – The Mediator

Your claim will be dealt with by a professional, fully trained Click2Resolve mediator (ADR Official) who will be completely independent and impartial as well as being knowledgeable regarding the Consumer Rights Act 2015 and other consumer legislation. If the matter concerns a postal or communications business regulated by OfCom, the mediator will have a knowledge and understanding of the Postal Services Act and Communications Act as well as experience of postal and communications litigation.

A list of Click2Resolve's current mediators can be found on the website, with details of their experience and qualifications. The mediators possess a general understanding of the law and the necessary knowledge and skills in the field of out of court or judicial resolution of consumer disputes, to be able to carry out their functions competently.

Each mediator is a permanent appointment to the panel of mediators and an independent contractor, ensuring the independence of their actions and they cannot be relieved of their duties without just cause. Click2Resolve will replace a mediator who declares that they have a conflict of interest in relation to a dispute with another mediator. If a mediator who declares a conflict of interest cannot be replaced by another mediator, then the mediator will stop conducting the dispute resolution procedure.

Where possible, a proposal will be put to the parties that they submit their dispute to another ADR organisation competent to deal with it; where this is not possible, a declaration to the parties as to the circumstances of the conflict of interest declared by the mediator, that they have a right to object to that mediator continuing to handle their dispute and that the organisation can only continue to deal with the dispute if no party objects.

The Mediation Process

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The Click2Resolve mediator will act as a go-between between you and the business, discuss the details of the complaint and see whether there is any scope for agreement between you. All communications between you, the business and the mediator during the process will be “without prejudice” (that is, that they cannot be referred to elsewhere, for instance in court proceedings) and are non-binding. You are free at any stage to terminate the mediation process.

How will the mediator assist in resolving the case?

The mediator will negotiate between the parties to find an amicable solution and if the complaint settles, will help draw up an agreement. If, at the end of 28 calendar days from receipt of the Complaint Form and Response Form (or 90 day long stop), no solution has been agreed, the mediator will confirm that no settlement has been reached in durable format. During the process they will consider the evidence submitted by the parties and the Complaint and Response Forms, all relevant law, when considering what is most fair and reasonable in light of all of the circumstances before them. The process can be extended by consent of both parties, upon payment of a further fee. There is a long stop deadline of 90 days to complete the process.

Can I talk directly to the mediator?

Yes, after you have submitted your Complaint Form and supporting documents (online or by post), the mediator will forward these documents to the business within 7 days and the business will submit its Response Form and documents (or in some cases, the business may respond by telephone).

The mediator will then email or telephone you within a further 7 days after the business has submitted its Response Form and documents.

The mediator will send you a copy of the business’ response, or summarise this if provided by telephone.

During mediation the mediator is available to discuss the matter further by telephone (without the business hearing what you have to say) or will use the preferred means of communication. The Click2Resolve process is flexible and therefore communications between the parties and the mediator can take place by telephone, email, or post and documents can be uploaded onto the website. The mediator will adopt the means of communication with the customer indicated as preferred by the customer when submitting their Complaint Form.

Will there be a hearing for me to provide evidence?

No, there is no hearing as such where a decision is made. Instead, the mediator will communicate with you and the business separately in confidence to try to resolve the case, using your chosen means of communication.

When will the dispute be resolved?

Click2Resolve will deal with your dispute within 28 calendar days of receiving your completed Complaint Form and the Response Form. If the claim has not settled, to assist the parties, the mediator will issue confirmation that the matter has not been resolved. There is a long stop deadline of 90 days to complete the process from receipt of the Complaint Form.

Do I have to use Click2Resolve?

No, you are not obliged to make an application to Click2Resolve in order to resolve your dispute.

Do I have to pay to use the scheme?

Yes, consumers do pay a nominal fee to use Click2Resolve's services, per complaint, as set out in the schedule of charges, below (unless the complaint is about a lawyer or the business agrees to pay all the mediation charges). The Business also pays a fee to Click2Resolve.

Can I recover the costs of preparing my Click2Resolve case?

No, you must pay any costs you incur in preparing and submitting your case to Click2Resolve, which include any incidental or third party costs. If, for example, you decide to take legal advice about making an application you must pay for that yourself.

Do I need a lawyer?

No, you do not need a lawyer but you can choose to use one if you wish, but you will have to pay all of the legal (or other professional) costs you incur in making your application yourself.

Referring a Dispute to Click2Resolve

When can I make an application to Click2Resolve? An application to Click2Resolve can be made after:

1. you have exhausted the business' complaints procedure; and
2. you have been told by the business that that you are eligible to apply to Click2Resolve in an email or "deadlock" letter (where you have come to the end of the internal process and the dispute has not settled).

What should I consider before making my application?

You should read these guidance notes carefully before making an application to ensure your claim can be dealt with by Click2Resolve.

What kind of disputes can Click2Resolve deal with?

We can deal with disputes related to any consumer issues relating to the provision of goods and/or services which have been the subject of an internal business complaints procedure. Click2Resolve will assess your application against the Refusals Policy criteria (see below) and if your dispute does not fall within the scope of the scheme, you will be told by Click2Resolve and your application will not be referred to a mediator.

The business will also have the opportunity to object to the acceptance of your application if it considers that the dispute is outside the scope of the scheme. In such circumstances Click2Resolve will rule on the validity of the application and the decision of Click2Resolve will be final.

What kind of disputes cannot be dealt with by Click2Resolve?

Refusals Policy

If any of the following apply then Click2Resolve cannot deal with your complaint:

- if prior to submitting the complaint, the consumer has not attempted to contact the business concerned in order to discuss the customer's complaint and sought, as a first step, to resolve the matter directly with the business.
- any dispute or disputes that are and considered by Click2Resolve to be frivolous and/or vexatious.

- the dispute is being or has been previously considered by another ADR entity (such as a different mediator or Ombudsman) or by a Court
- the value of the claim is worth more than £10,000.
- the customer has not submitted the complaint within 12 months from the date upon which the business has given notice to the customer that the business is unable to resolve the complaint with the customer.

You should only apply if your dispute falls within the criteria of acceptable cases detailed above. If you are unsure, you can contact Click2Resolve.

What is the maximum amount I am able to claim under Click2Resolve scheme?

The maximum claim amount is £10,000 per purchase or per transaction (except in the case of complaints about lawyers where the maximum is £50,000). Claims with a higher value can be dealt with by ProMediate outside the scheme.

Refusals

Where, in accordance with the policy on refusals Click2Resolve is unable to consider a dispute submitted to it, we will provide both parties with a reasoned explanation of the grounds for not considering the dispute within 3 weeks of receiving the 'complaint file', unless we have been misled by one of the parties into considering a dispute.

What should I put in my application?

You will need to include the letter or email from the business telling you that you can apply to Click2Resolve. You should set out what your dispute is about and your application should include details of:

- the company's goods or services which the dispute is about;
- the events leading to the complaint;
- the precise issues in dispute;
- the steps already taken to attempt to reach a resolution with the business;
- the relevant dates for the service issues and prior steps taken to seek resolution;
- the reasons for requesting the remedy or remedies sought;
- the reasons and evidence in support of any compensation claimed;
- the remedy or remedies being sought;
- any relevant supporting documents – remember it will help your application if you can provide evidence to support your claim.

Finally you must let us have your authority to allow the company to release all information on their files relating to your claim. Click2Resolve has designed an application form that will take you through these requirements step by step.

Can Click2Resolve help me with my application?

Yes, the Click2Resolve team is available to offer guidance about how to make your application. Click2Resolve is committed to providing appropriate accessibility for

everyone it deals with. Click2Resolve will not, however, be able to tell you how to set out your claim or offer any advice about the claim you wish to make.

Settlements

The business made me an offer before I made my application, can I still accept it?

Yes, any offer or offers made by the business before you made your application are open and you can accept them after you have made your application, unless the business has withdrawn the offer.

What if the business makes me an offer after I have made my application?

You can accept any offer made by the business after you have made your application. This is called an agreed settlement.

Will Click2Resolve negotiate with the business for me?

Yes, Click2Resolve is an impartial, independent dispute resolution service; it will not act for either you or the company. However, negotiations will only take place during the mediation process and Click2Resolve cannot be asked to take extra steps outside the mediation process.

Mediation Settlement Agreements

What can Click2Resolve make the business do? Whilst it is anticipated that businesses will comply with settlement agreements, Click2Resolve cannot make the business comply with any settlement agreement reached, but a settlement agreement will be binding on the parties (and is enforceable using other agencies). During the process, we can, if appropriate, suggest that the business provide or do any or all of the following:

- provide an explanation and/or an apology;
- provide replacement goods or services;
- do something about your bill or bills;
- take some specified action ;
- provide financial compensation

Remember that in all cases the mediator cannot order the business to pay you or to take any action or provide any goods or service. If the business does not honor any agreement reached, you will need to take Court action or use other agencies to enforce the agreement.

It is important to note that participation in the procedure does not prevent the possibility of seeking redress through court proceedings; and the proposed solution may be different from an outcome determined by a court applying legal rules.

Can Click2Resolve fine the business and/or take any punitive action against it?

No, Click2Resolve is not a regulator and cannot impose fines on businesses. The role of Click2Resolve is to resolve individual disputes between customers and businesses in an impartial manner.

What should I do when I receive a settlement proposal?

You are free to take the matter further at any stage (before settlement). You have 5 calendar days to tell Click2Resolve whether you accept any proposal (unless we agree a longer acceptance period). If you accept a proposal, it will be binding on the business and the customer.

Service: What if I want to complain about Click2Resolve?

Click2Resolve has a set complaints procedure which can be found on the website. Click2Resolve is the trading name of ProMediate (UK) Limited which is registered with the Civil Mediation Council as an ADR Provider and complies with the EU Code of Conduct for Mediators.

Is Click2Resolve registered under the Data Protection Act 1998?

Click2Resolve is operated by ProMediate (UK) Limited, which is registered under the Data Protection Act 1998.

Appendix 2

Response to BEIS consultation

We agree that more needs to be done to improve consumer awareness and signposting.

BEIS report that despite a plethora of advice and support services, responses to the Consumer Green Paper said that consumers still find it difficult to understand their redress options, make the right choice for them and navigate the routes to resolving their problem, particularly if they are vulnerable. This includes finding out whether ADR is available, how it works and what other options are available.

We also agree about speeding up access to ADR
As the report says:

In regulated markets, the majority of disputes are resolved within four weeks, but most regulators have typically set an upper limit of eight weeks for businesses to resolve complaints before consumers are entitled to take a dispute to ADR.

Businesses should have sufficient time to resolve disputes informally before involving a third party, but many respondents to the Consumer Green Paper argued that this lengthy period was no longer justified in an era of e-mail and social media. Those respondents felt that it did not reflect consumers' changing expectations of engaging with business and led to consumers abandoning complaints. MoneySavingExpert's 'Sharper teeth: the consumer need for ombudsman reform' report highlighted that this rule was created in a non-digital age and should be shortened to a minimum of 4 weeks. The All-Party Parliamentary Group (APPG) on Consumer Protection's 2019 Ombudsman Report also concluded that the upper limit of eight weeks should be shortened

Maintaining an upper limit of eight weeks has the potential to harm both consumers and businesses if active steps are not being taken to resolve the complaint. Evidence from the Consumer Green Paper suggested that protracted disputes can cause consumers stress and financial hardship and may harm businesses too by eroding trust and reducing satisfaction with business complaint handling, affecting customer retention.

Government therefore considers there is a good case for halving the upper threshold of eight weeks in markets where ADR is mandatory so that businesses are incentivised to settle problems promptly and, if necessary, consumers can take complaints to ADR more quickly. Many regulators already support a significant reduction in this threshold and see the business and consumer benefits of doing so. The Office of Rail and Road (ORR) has set an upper limit of 40 days in the rail sector and intends to formally consult this year on reducing it. Similarly, some businesses in sectors such as energy have already reduced the time to access ADR voluntarily.

However, government recognises that there are some complaints that are complex and may take businesses longer to resolve and that referring a complex case into the ADR process prematurely before the facts are established could introduce delay later in the process. It is also important that cases are fully investigated by businesses before a third party intervenes, especially in markets where a single ADR body is investigating complaints in a large market or in markets in which disputes tend to be more complex. In these instances, there may be value in the business having more time to resolve the complaint, provided there is constructive engagement.

Government would welcome views on whether regulators should aim to set a significantly lower threshold for consumers to exercise their right to access ADR and if so whether exceptions could or should be made to allow more time to resolve complex cases.

The report asks for views as to how regulators and government can balance the need to ensure timely redress for the consumer whilst allowing businesses the time to investigate complex complaints?

We see no justification for an 8 week delay before deadlock is established except in complex cases, for example disputes between lawyers and clients which can take time to investigate and analyse. Straightforward consumer transactions should not take 8 weeks to deal with in our view. Many of the consumers who took part in the Roadshow trial felt frustrated at the delay leading up to the ADR process.

BEIS then looks at quality and oversight of ADR services

They say that:

Government also intends to improve the quality and consistency of ADR services in consumer markets, to further increase business and consumer confidence in ADR. The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (the regulations) were introduced to promote high- quality consumer ADR schemes through the creation of an accreditation and reporting framework and regular monitoring against this by a competent authority.

The regulations provide a basic set of approval processes and monitoring requirements to ensure these standards are maintained.

However, responses to the Consumer Green Paper identified consistency of quality standards, transparency of process, speed of case resolution, and enforceability of decisions as areas where improvements could be made to the ADR system in the UK. Any dispute resolution process or body that interprets and rules on issues relating to legal rights and obligations should have a clear set of standards that can be relied on by all parties involved and policed effectively by a neutral arbiter. Government therefore agrees with the APPG on Consumer Protection's 2019 Ombudsman Report. www.legislation.gov.uk/ukxi/2015/542/contents/madeM

that there should be a more demanding and consistent minimum set of standards for approval as an accredited ADR provider and adherence to a code of practice.

Firstly, government proposes to require that all providers of consumer ADR are assessed and approved for their ability to provide an ADR service. Currently there are numerous non-accredited and unsupervised providers that offer dispute resolution on an informal basis alongside accredited providers. Mandatory approval by the Competent Authority would mean that all providers operate to a common set of quality standards and oversight.

This would level the playing field and drive consistency across the sector through the application of a common legal framework around expertise, independence and impartiality, transparency, fairness, and annual reporting.

Secondly, government intends to strengthen the minimum service expectations of all ADR providers, focusing on four key principles to improve the quality of ADR – neutrality, efficiency, accessibility, and transparency. This would focus on the areas of key concern raised by respondents to the Consumer Green Paper such as setting clear expectations of the ADR process, improving communications on case progression, dealing with straightforward cases as promptly as possible and reporting publicly on outcomes.

Government proposes to do this by amending the ADR regulations, building on its existing framework to incorporate additional requirements for ADR providers, both as part of their initial accreditation and as part of their service provision to consumers and businesses. These would include strengthening the accreditation process through the introduction of a 'fit and proper persons' test for key personnel to ensure that businesses owners, officers and senior management are suitable people to undertake those roles. These amendments will also focus on the consumer and business experience of the ADR process by embedding in the regulations additional criteria around the neutrality, efficiency, accessibility, and transparency of service provision to ensure a common set of standards are applied and that providers can be monitored against and held accountable to these by the Competent Authority.

Government believes these changes will help deliver a trustworthy, timely, and fair service that consumers and businesses can trust to resolve disputes amicably with improved oversight to monitor service standards.

BEIS asks what changes could be made to the role of the 'Competent Authority' to improve overall ADR standards and provide sufficient oversight of ADR bodies?

In our view there is justification for increased regulation to ensure independence and quality standards but there is an absence of understanding as to funding of ADR providers. If costly licensing and regulatory requirements are imposed there is a risk that it may not be worthwhile many ADR providers continuing to provide a service. Currently we are providing a free trial funded by the EU and this is encouraging consumers and businesses to use ADR, but more regulation means higher costs and we are currently restricted in what we can charge consumers in low value cases. We find that consumers and traders are willing to use ADR if it is free or low cost, but they will not use it if it is uncommercial or disproportionate. Of course, if compulsion is introduced then ADR providers may be able to increase prices and could afford regulation but as things stand it is uneconomic.

BEIS deal with compulsion next and as I say, the Civil Justice Council recently published a report essentially giving the green light to compulsory ADR. It is already compulsory in some sectors.

In the regulated sectors, it is generally mandatory for traders to participate in ADR schemes. For sectors where participation is voluntary, there is little engagement, particularly amongst SMEs. Evidence suggests that participation rates could be as low as 3% in some sectors.²²⁸ The low participation rates are driven by a range of factors. These include businesses' confidence in their own dispute resolution processes and ability to maintain close relationships with their customers, their perception that there are few intractable disputes, and the cost of ADR participation.

Several responses to the Consumer Green Paper provided strong support for requiring business participation in sectors where the volume and value of consumer detriment is demonstrably high. Government has developed a set of criteria to assess where the level of consumer detriment is high and show where mandatory business participation in ADR could be beneficial.

Using these criteria, our analysis shows that most of the sectors with poor scores are regulated and already have mandatory ADR in place. Of those that do not, house and garden maintenance services, vehicle maintenance and repair services, and used cars are the highest detriment sectors.

Unresolved problems in these markets can have a significant impact given their cost and importance, particularly for vulnerable consumers. For example, faulty home renovations may have significant importance for a disabled person looking to increase the accessibility of their home. A reliable car is vital for someone who has to travel for work.

We have spoken to ADR providers in high-detriment sectors to obtain sign-up levels and have compared these to the estimated number of businesses operating in a sector

according to the Interdepartmental Business Register (IDBR). See Impact Assessment for further details.

www.gov.uk/government/publications/resolving-consumer-disputes-alternative-dispute-resolution-and-the-court-system

The low ranking of regulated sectors may reflect to an extent structural market features such as concentration

and choice – which in turn are driven by large minimum efficient scales and natural monopolies.

Government considers that a number of factors are relevant in assessing whether to extend mandatory business participation in ADR to new sectors. These include the volume or value of consumer problems, the overall consumer experience, and the structure of the market. In some markets mandatory participation might be justified because there is a high incidence of high value disputes combined with one off purchases, such as we see in the motor vehicles and home improvements sectors. In other markets, it might be justified even where transaction values are lower because of a high level of complaints affecting vulnerable consumers, as we see in the retail energy market.

We have built on work by Which? and used the following core set of criteria to aid in identifying sectors where extending mandatory ADR could benefit consumers:

- a. nature of consumers: vulnerability, importance (for example essential or high cost)
- b. nature of the purchase: complexity, value, incidence, competitiveness
- c. consumer experience: consumer confidence/trust, level of complaints
- d. alternative routes: availability and effectiveness of other types of consumer protection/enforcement

BEIS publish a diagram showing the result of ranking consumer sectors against the comparability of offers, trust in businesses to respect consumer protection rules, the extent to which markets live up to consumer expectations, choice of retailers/suppliers, and the degree to which problems experienced in the market cause detriment.

We would agree with the proposal to mandate the use of ADR in these sectors. There is clearly a problem with the ADR regulations in that businesses are not required to use ADR and yet consumers are signposted to it and rightly think that they should be able to use it. Yet many traders prefer to tough it out and not use ADR. We have found this when offering our free trial ADR roadshow funded by the EU.

Conclusion

It is positive that the Government has already indicated that it intends to examine radical new ways to mainstream ADR for all types of disputes including consumer disputes, so it is no longer viewed as an “alternative” to court but operates as an integrated part of the justice system. As pointed out, ADR is already compulsory in some sectors, for businesses at least. There should be easily accessible ways for consumers to avoid the costs and time of going through a Court process, which is just one form of ADR.

The government is right to examine more immediate plans to increase the rate of individual consumer disputes being satisfactorily resolved by strengthening and expanding the scope of ADR.

We would say that mediation should not be forgotten as a valuable ADR process. Mediators are already regulated by the Civil Mediation Council so we would resist any double regulation which might result in mediators who are unregulated and not ADR providers being unable to mediate consumer disputes.

We would argue that the government should bring in an online platform to replicate that which was operated through the EU or rejoin the EU platform much as Iceland uses it despite not being a member of the EU. This may be politically unpalatable but at the moment traders are still signposting to the EU platform on their websites.

Response to BEIS Consultation

65. What more can be done to help vulnerable consumers access and benefit from Alternative Dispute Resolution?
Please respond here.

In our view making the use of ADR compulsory for traders would assist vulnerable consumers.

66. How can regulators and government balance the need to ensure timely redress for the consumer whilst allowing businesses the time to investigate complex complaints?
Please respond here.

We consider that 8 weeks is too long and most businesses do not need that long to investigate and respond.

67. What changes could be made to the role of the 'Competent Authority' to improve overall ADR standards and provide sufficient oversight of ADR bodies?
Please respond here.

In our view ADR should be integrated into the justice system and overseen by the MOJ rather than BEIS. We do not see that there is an issue with standards. We are double regulated by the Civil Mediation Council and CTSI. Alternatively the Civil Mediation Council should be designated a competent authority. We do not consider that it is fair on ADR bodies to be charged by CTSI for annual audits. It is not economical.

68. What further changes could government make to the ADR Regulations to raise consumer and business confidence in ADR providers?
Please respond here.

Government should change the regulations to make it compulsory to use ADR in consumer cases. The "nominal fee" requirement should be removed to allow for a free

market to develop. We would suggest that ADR should be free to the consumer and the business bear the cost. Frivolous complaints would be discouraged as they would fall within the ADR body's refusal policy.

69. Do you agree that government should make business participation in ADR mandatory in the motor vehicles and home improvements sectors? If so, is the default position of requiring businesses to use ADR on a 'per case' basis rather than pay an ADR provider on a subscription basis the best way to manage the cost on business?

Yes but not on a case by case basis as this is not economic for providers. Also consumers will not know which ADR entity a business is willing to use. Businesses will simply opt for the cheapest possible provider on a case by case basis.

70. How would a 'nominal fee' to access ADR and a lower limit on the value of claims in these sectors affect consumer take-up of ADR and trader attitudes to the mandatory requirement?

We do not agree with the "nominal fee" for consumers and consider that businesses should pay the whole fee. With our subscribing businesses they mainly pay the whole fee, which is between £50-£150.

71. How can government best encourage businesses to comply with these changes?

By publicity and enforcement. There should be a penalty for refusing to engage in ADR or failing to provide the information about ADR to the consumer.

72. To what extent do you consider it necessary to open up further routes to collective consumer redress in the UK to help consumers resolve disputes?

We do not deal with collective redress. If there is an issue affecting many consumers, for example holiday cancellation because of coronavirus, it is difficult to see how a solution could be imposed on various different businesses.

