

Are Alternative Dispute Resolution schemes working for consumers?

Contents

Executive summary	3
Introduction	10
An assessment of ADR schemes across nine sectors	13
Conclusion and recommendations	26
Endnotes	31

Which? is the UK's consumer champion, here to make life simpler, fairer and safer for everyone. Our research gets to the heart of consumer issues, our advice is impartial, and our rigorous product tests lead to expert recommendations. We're the independent consumer voice that influences politicians and lawmakers, investigates, holds businesses to account and makes change happen. As an organisation we're not for profit and all for making consumers more powerful.

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Executive summary

Consumer protection is a critical part of the modern economy, supporting consumer confidence in dynamic markets. The UK already has world beating consumer protection regulations but for consumers to realise the benefits, regulations have to be effectively enforced.

With consumer markets becoming increasingly complex, including more digital transactions and multiple national and international players, there is a need for the enforcement framework to be strengthened. The COVID pandemic has both accelerated many of these changes and highlighted existing weaknesses in our system. With the UK's departure from the EU, there is now both the opportunity and the need to develop a framework that can respond to the challenges facing consumers.

An effective system will require public enforcement by national agencies, and structures to support private enforcement by consumers. Whilst national agencies will rightly prioritise issues affecting large numbers of people or high levels of detriment; private enforcement enables consumers themselves to defend their consumer rights in individual disputes. These two systems should work together, supporting consumers and responsible businesses, and acting as an effective deterrent against non compliance.

Alternative Dispute Resolution (ADR) is an important part of this system and should provide consumers and businesses with an accessible and affordable alternative to court proceedings. It is typically used when the consumer and business have failed to resolve a dispute themselves through a complaints process and need the input of an independent third party. Ideally the process is free for the consumer and, in the case of arbitration, the business agrees to abide by the decision. In addition to resolving individual disputes, ADR schemes also have an important role in improving consumer markets by collecting data on consumer issues and engaging businesses, consumer groups and regulators to drive improvements in business practices that benefit all consumers.

All approved ADR providers in the UK have to meet the provisions of the ADR regulations, which were adopted from an EU directive in 2015. Ombudsman schemes are an enhanced form of ADR, where the ombudsman can take a more proactive role in investigating the dispute. Ombudsman schemes also tend to play a more active role in working with businesses to improve practices.

Consumers should always have the option of taking a case to court however ADR should be a practical alternative, particularly at a time when the small claims courts are facing unprecedented delays with cases taking almost a year to come to trial.¹ These delays are partly the result of the COVID pandemic but the system was already suffering from long delays before the pandemic struck.

The intervention of a third party to help resolve a dispute between a business and a consumer is particularly important given the asymmetry in information and resources in some transactions. It may also become increasingly important in helping consumers address some of the complexity in modern transactions.

It is estimated that approximately 35% of consumers experience a problem with a product or service each year, but only half of consumers who then pursue a complaint resolve their problem satisfactorily. This suggests there is a clear need for improved ADR provision.²

Where consumers are able to access ADR, most will receive significantly more compensation compared to what they were offered before the ADR process.³ This is money that was owed to them and they would not have received without ADR. However, ADR is all too often a confusing and chaotic experience for consumers. As a result many consumers don't know how to seek redress or are put off by the complexity, leaving them exposed to harm and unable to confidently resolve their complaints.

Weaknesses of the ADR system

To assess the effectiveness of ADR provision across nine different sectors, Which? used a set of criteria based on requirements and principles from the Ombudsman Association, the ADR regulations and Which?'s previous work in this area. We found that there are some examples of good ADR practices in the UK, particularly in the regulated sectors such as energy, communications and financial services, but too often the provision of ADR is not working for consumers.

In many cases ADR is simply not available as the business refuses to participate. In other cases consumers are not made aware of ADR when they need it, and when they do find out about it, they have to negotiate an often chaotic patchwork of schemes before they can file a dispute.

“Every complaint we have made just seems to go into a blackhole.” Mel Y.

In 2020 Which? received more than 1,700 complaints about Currys PC World and hosted an online conversation with some of the many consumers involved.⁴ Currys PC World does not belong to an ADR scheme and only provides a link to the EU Online Dispute Resolution platform, a service that is no longer available to UK consumers.⁵

For those that do file a case, levels of trust are often low and there is frustration over delays. Furthermore many ADR schemes are failing to use the rich data they could be collecting about consumer disputes to inform businesses and regulators about recurring issues and help prevent complaints arising in the first place.

Large gaps in ADR Provision

Despite there being more than 50 approved ADR schemes in the UK⁶ there are still significant gaps in ADR provision in many sectors including key sectors such as aviation, some parts of the property sector, retail, motor and home improvements. This is because the schemes in these sectors are voluntary and many businesses have chosen not to join.⁷ As a result consumers often do not have access to justice as they are reluctant or unable to incur the cost of taking their dispute to court. This is particularly important in sectors where transactions are complex or of high value, or where there is evidence of high levels of consumer harm.

The aviation sector stands out among regulated sectors for not having mandated membership of an ADR scheme. The impact of this was starkly illustrated when Ryanair withdrew from AviationADR after the scheme made decisions the airline did not like. Other airlines have also decided not to be members of an ADR scheme, leaving millions without access to ADR.⁸

There is also a particular gap in ADR provision for cross border purchases, where following the UK's departure from the EU consumers no longer have access to the EU online dispute resolution platform that covered purchases from the EU. This is an increasingly important area with more than a quarter of online purchases made by UK consumers involving other countries.⁹

ADR in the aviation industry: the impact of voluntary membership schemes.

The aviation sector has two voluntary ADR schemes and as a result airlines have the option of changing to a different scheme or leaving an ADR scheme when they disagree with decisions made by the scheme.

Voluntary membership also puts pressure on the regulator, the Civil Aviation Authority (CAA), to introduce reforms to encourage airlines to join, or stay with, an ADR scheme that may undermine consumers' rights within the scheme.¹⁰ For example, Which? was critical of two new processes that the CAA will allow ADR schemes to adopt on a voluntary basis following amendments made in 2021. The first gives airlines and airports the ability to request a review of an ADR decision. This review is conducted between the airline or airport and the ADR scheme and does not involve consumer representation. While the review is not aimed at changing a decision on an existing case, which is binding on the airline, it may affect future outcomes for consumers.

The second enables airlines and airports to refer ADR cases they feel raise 'novel and complex issues' to the CAA and, if they don't agree with the CAA decision, challenge it in court. This gives companies the opportunity to frustrate and delay cases they have identified as problematic, potentially delaying consumer compensation for years.

Low Consumer Awareness and Substantial Confusion

There are low levels of awareness amongst consumers about the availability of ADR¹¹ as well as substantial confusion about the overlapping and partial coverage of ADR in the UK.

Which? research found that only 20% of UK consumers had a good understanding of how dispute resolution schemes work.

Under the ADR Regulations, all companies are required to inform consumers about an ADR scheme if they can't resolve their complaint with the company, however the information is often provided too late and bizarrely there is no requirement for the company to actually belong to the scheme. As a result, we found several companies that provide a link to the European Online Dispute Resolution Platform, a service that can only connect a consumer to an ADR scheme if the company belongs to one and, following the UK's departure from the EU, is also no longer available to UK consumers. One company, Sainsbury's, provides a link to a specific ADR scheme despite the fact they are not members of that scheme and do not use it to resolve disputes.

In regulated markets, including key services such as energy, communications, transport and financial services, regulators have improved the provision of information about ADR by companies, but in the non-regulated sectors there is little evidence of effective signposting. In addition there

is a lack of consumer friendly information about the availability of ADR schemes on websites and platforms and no central, trusted source of information on consumer ADR schemes.

The patchwork nature of ADR provision also leads to considerable confusion about ADR.

The home improvements sector receives a large number of complaints, but with more than 20 approved and non approved ADR schemes operating in the sector it is difficult for consumers to identify the right scheme and as ADR membership is voluntary in this sector there is no guarantee the company will agree to take part.

Inconsistent and limited oversight

The ADR Regulations created a legal framework for the oversight of all ADR schemes by ‘competent authorities’ that would be responsible for approving and monitoring approved schemes. However, despite this guidance, the bodies that have this role take very different approaches.

In the regulated sectors, the competent authority is often the relevant regulatory agency, for example Ofcom in the case of the communications sector and the Financial Conduct Authority (FCA) for financial services. The Civil Aviation Authority (CAA) also performs this role for the aviation industry. In non-regulated sectors the competent authorities are the Chartered Trading Standards Institute (CTSI) and the National Trading Standards Estate Agency Team (Powys County Council).

CTSI, the competent authority for all but one of the schemes in the non regulated sectors, has significantly fewer resources and powers to oversee a much larger number of schemes and in a context where membership of the schemes is voluntary. Although CTSI has increased its auditing requirements compared to what is stipulated in the ADR regulations, it is still limited in what it can require of the ADR schemes that it oversees. This explains some of the differences seen between ADR in regulated sectors and non regulated sectors and is a major constraint in efforts to maintain and improve standards.

Effective oversight is particularly critical in sectors with multiple providers where companies have the ability to choose between schemes based on cost, convenience and other factors. For example, following easyJet’s move from the Aviation Adjudication Scheme to AviationADR, the number of cases involving easyJet that were upheld fell from an average of 79% in the last six quarters it was a member of the Aviation Adjudication Scheme to 51% in the first six quarters it was a member of Aviation ADR.¹² Decisions should depend on the individual cases being considered, but a consistent change over a period of time should warrant an investigation by the competent authority.

Built-in Delays

For consumers who are pursuing a complaint with a business and wish to escalate it to an ADR body the process has in-built delays from the start. The accepted ‘rule’ that is applied by most ADR schemes is that unless the business has issued a deadlock letter, consumers need to wait eight weeks before being able to take their case further. In some cases it can be more. The Furniture and Home Improvement Ombudsman allows its members three months before the case should come to ADR. These are historical timescales that may have been practical in a pre-digital age but are now outdated and unjustifiable for most types of claim.

After that most ADR schemes commit to resolving the dispute within 90 days however it will only start the clock after the case file is complete – a process for which there doesn’t appear to be a

deadline. Many consumers who have contacted Which? have waited considerably longer than 90 days for a decision, in some cases more than a year. This only serves to reduce the effectiveness of ADR, damage consumer trust in the process and in some cases can contribute to the level of harm consumers have already suffered.

Poor Compliance

In 2015, Which? member Christine took a case to the Consumer Ombudsman when a company failed to resolve a complaint relating to work on her house. The Ombudsman ruled in her favour however the company failed to comply, leaving Christine no choice but to take the company to court. Christine was finally awarded £7,133.75 in damages, plus £810 in court fees, but it took three years and eight months to reach a resolution.¹³

Although reliable data on compliance levels is difficult to come by, there is some evidence that compliance with ADR decisions in both regulated and non-regulated sectors is patchy. A study for BEIS reported 84% of consumers who used a range of approved and non approved ADR schemes said that the decision was either fully or partially implemented.¹⁴ In non-regulated sectors the ultimate sanction available for non-compliance is to suspend the business from membership of the scheme. As an enforcement tool against businesses in sectors where ADR is not mandatory, or where there are multiple schemes, this allows a non-compliant business to move to another ADR provider (whether approved or not) or to simply withdraw from offering any ADR at all. Neither outcome results in the consumer receiving the compensation they are due.

A lack of accountability and assurance about independence

A consistent complaint from both businesses and consumers is that ADR bodies are in some way biased. Although there is little evidence of this, ADR bodies could do much more to demonstrate their independence by publishing more information about how their values and processes protect their independence. Independent boards or committees can also play a critical role. For example the Motor Ombudsman has recently established an Independent Compliance Assessment Panel with clear rules on the duties and composition of the panel. Detailed reports and biographies of panel members are easily available on their website.

However, several ADR providers fail to publish information about their processes leaving outsiders unclear as to how they ensure their independence. For example, the Home Improvement Consumer Protection Scheme and the Double Glazing and Conservatory Ombudsman Service do not appear to publish any information about mechanisms to ensure they are independent from, and seen to be independent from, industry.

Limited use of data to drive improvements

ADR schemes have a large amount of rich data about performance and complaints that should be shared widely with businesses, enforcement bodies and consumer advocacy groups as a tool to drive improvements in business practice, raising standards for all consumers.

The ADR Regulations do set out the data and information that approved ADR bodies should collect, publish and share with their relevant Competent Authority,¹⁵ however this is very basic and not clearly defined so it is open to interpretation. The ADR Regulations also lack any criteria that explicitly require bodies to proactively 'promote improvements' or focus on 'prevention and culture change'.

Some schemes, such as the Energy Ombudsman, have gone beyond the requirements, and demonstrated what can be achieved in this area, by establishing a formal tripartite agreement

between the Ombudsman, Citizens Advice and Ofgem which shares data and identifies market trends. However, such examples are the exception. Particularly in non-regulated sectors, ADR providers generally fail to use their reports to identify systemic or significant problems, and fail to demonstrate any engagement with businesses or consumer groups.¹⁶

Our recommendations

ADR should provide an accessible, affordable and convenient means for consumers and businesses to resolve disputes, but beyond this it should also be a fundamental tool in the regulatory and enforcement environment. This must be spelled out in law by strengthening the ADR regulations as part of wider consumer landscape reforms, creating clear and consistent rules for all ADR bodies, strengthened powers for competent authorities and a single authoritative oversight body across the entire ADR landscape covering all sectors.

The case for change is clear. If ADR works well it not only saves consumers from financial loss and the stress and anxiety of a protracted dispute, it also has the potential to improve businesses' own complaint handling and raise standards.

The government now has an opportunity to overhaul and rationalise a fragmented and ineffective ADR system, and make life fairer and simpler for consumers.

The following actions are needed to support consumers and responsible businesses.

Consumers should have access to a single mandated Ombudsman service in key sectors.

The government should require a single mandatory Ombudsman service in key sectors where transactions are commonly complex or high value and there are a large number of complaints. Ombudsman typically provide additional support to resolve complex cases, support vulnerable consumers and find appropriate solutions. A single mandatory Ombudsman service is already available for some regulated services such as financial services, energy and rail, but one should also be established in sectors that meet the above criteria such as the aviation, motor, home improvements and property sectors. A mandatory ombudsman scheme should also be established for retail purchases that are complex or over an agreed value. All other sectors should have a single approved ADR scheme, particularly for high value or complex transactions. Membership can be voluntary, but businesses should be encouraged to join.

The government should work with international colleagues to increase access to ADR for cross border purchases.

All ADR schemes should be overseen by an effective Competent Authority.

In regulated sectors the approval and oversight of ADR providers should sit with the sector regulator as now. Competent authorities for unregulated sectors should have the resources and powers to effectively oversee their schemes. In addition the government should mandate a single authoritative body with real teeth to agree performance standards for ADR schemes in each sector and support competent authorities.

The organisation should be adequately resourced, have consumer redress expertise, a clear consumer protection duty, and sufficient legal powers.

Competent authorities should have the ability to introduce requirements that go beyond the standards set out in the regulations and where necessary, respond to emerging issues such as technological developments or market changes. Any additional requirements should be agreed with a single authority that oversees all competent authorities.

Improve consumer information and awareness of ADR.

The above authority should oversee the development of a single, accessible online platform with consumer information on ADR and clear links to approved ADR schemes across all sectors. Businesses should be required to clearly signpost the availability of an ADR scheme that they are a member of on their websites and in all communications with consumers using wording agreed with the competent authority.

ADR schemes should provide an effective and efficient service.

Revised ADR regulations should enable competent authorities to set maximum time periods for each step in the ADR process and guarantee compliance with ADR decisions by requiring businesses to sign contracts with the provider that can be enforced in court, or by allowing ADR decisions to have the effect of a court order. All approved ADR schemes must commission annual independent surveys of consumer trust and satisfaction to monitor their effectiveness in meeting consumers' needs.

ADR schemes must improve accountability and demonstrate independence. All ADR schemes must appoint an independent board or assessor and publish biographies and information about their processes and decisions. ADR regulations should clearly specify the data that should be collected and published and competent authorities should be responsible for monitoring and enforcement.

Data and intelligence must be used to drive improvements in the sector.

Regulations should require data from disputes to be collected, analysed and published in a consistent or usable way with meaningful recommendations for how services can be improved and complaints reduced. Providers should work with businesses, regulators and consumer groups to prevent poor practices, promote culture change and drive improvement.

Introduction

What is Alternative Dispute Resolution (ADR)?

Alternative Dispute Resolution aims to offer consumers and businesses an accessible and affordable means of resolving disputes. It is typically used when a consumer and a business have failed to resolve a dispute themselves through a complaints process and need the input of a third party. ADR can take the form of adjudication, arbitration or conciliation. Ideally the process is free for the consumer and in the case of arbitration the business agrees to abide by the decision. In addition to simply resolving individual disputes ADR also has an important role in improving consumer markets by collecting and analysing data on consumer experiences and using these to inform businesses and the regulator.

Ombudsman schemes offer an enhanced ADR service where the ombudsman can take a more proactive role in investigating the dispute and can ask for additional information when needed. For this reason Ombudsman schemes are particularly well suited to resolving disputes involving consumers who are vulnerable (either due to their circumstances or the nature of the dispute) and may not be able to present all the relevant evidence themselves. Ombudsman schemes also have a more explicit role in driving improvements where these are needed, for example by providing advice and training.

Alternative Dispute Resolution (ADR) is an integral part of an effective consumer rights framework, that works alongside public enforcement agencies to protect consumer rights and promote high standards in consumer markets.

There are currently more than 50 approved ADR schemes in the UK overseen by eight ‘competent authorities.’ Schemes in the regulated sectors (financial services, energy, water, telecoms and rail) tend to have a single mandated ADR scheme overseen by the regulator, however unregulated sectors have a confusing and fragmented patchwork of voluntary, and in some cases overlapping schemes.

In 2015 the UK government introduced new ADR regulations¹⁷ in line with the EU ADR directive, which was intended as a first step in strengthening ADR provision across the EU. Following the UK’s departure from the EU, there is now both the need and the opportunity for the UK to develop its own strategy to build on the lessons of the last five years and strengthen the operation of ADR across the UK. Better ADR provision could also be a critical building block in the package of reforms that will be needed to modernise the UK enforcement framework, support consumer confidence and ensure the UK builds back stronger from the COVID pandemic.

In Which?’s 2019 report, *“Creating a successful enforcement system for UK consumers”*¹⁸ we highlighted weaknesses in the current system of consumer enforcement and put forward seven overarching proposals to *‘create a regime that will protect consumers effectively’*. One of those proposals calls on the Government to *‘Deliver an effective alternative dispute resolution (ADR) system to sit alongside a robust public enforcement regime for consumers.’*

‘The system should be preventative, promoting and supporting business compliance, while also ensuring an effective response and consumer redress when something does go wrong.’

This paper builds on the proposals made in that report by assessing how ADR schemes are delivering across different sectors and setting out the reforms that are now needed to ensure the system works much more effectively.

The need for ADR

When Paul’s flight to Chicago was cancelled with 3 days notice, British Airways initially refused to pay compensation, arguing the cancellation was due to ‘extraordinary circumstances’. Paul took his case to the Centre for Effective Dispute Resolution and BA was instructed to pay €2,400 in compensation. Paul is sure others were affected by industrial action at that time and contacted Which? Conversation as he was ‘keen to spread the message (about ADR) far and wide.’¹⁹

ADR has an important role in supporting consumers and the UK economy. Figures given for the number of consumers experiencing problems with their purchases vary, but it is clearly significant. The European Commission’s Consumer Scoreboard suggests that 35% of UK consumers experienced at least one consumer problem in 2018. Another large-scale study in 2018 estimated that in a 12-month period UK consumers experienced 173 million problems with products and services and that more than half of UK consumers were affected.²⁰

However it is estimated that only half of the consumers who pursue a complaint resolve their problem satisfactorily and in a reasonable manner.’²¹

As a result there are worrying signs that consumers are becoming resigned to poor service and unwilling to complain. One recent study found that around one in five consumers (22%) who had encountered problems in the past year did not complain (despite feeling it would have been legitimate to do so) with 43% believing it would take too long and 37% believing that a complaint would not have produced a satisfactory solution. 69% of consumers say they are now resigned to poor service in one or more sectors.²²

With household consumption accounting for 62% of expenditure across the UK in 2019 this is a critical sector for the economy. This means that well functioning ADR is not only important to individual consumers, who risk losing money, wasting precious time and suffering stress and anxiety when things go wrong, but is also critical to building consumer trust and a successful, competitive economy. The rapid fall in consumer trust in the travel sector as a result of the problems consumers have had with refunds during the pandemic demonstrates the wider impact that unresolved issues can have on consumer confidence.

ADR schemes that work well help consumers receive redress that they would not otherwise receive. ADR can also reduce the burden on the small claims court. This is particularly important at a time when small claims can take over a year to come to trial. These delays are partly the result of restrictions introduced in response to the COVID pandemic, however there were already serious delays in the process before the pandemic hit.

However, despite the advantages that ADR can deliver, provision in the UK is currently failing consumers. There are significant gaps in availability, awareness and service.

In 2018 a government survey²³ found that 46% of consumers using ADR had problems including concerns over the time the process took, customer service or a perception that the process favoured the business.

Crucially ADR schemes are also failing to provide insight that could improve business practices and prevent disputes arising in the future.

An assessment of ADR schemes across nine sectors

The UK has a well-established network of ADR schemes and a long-standing and positive understanding of the important role ADR plays in giving consumers access to relatively fast and affordable justice. However ADR processes are currently undermined in some sectors by poor availability, a weak regulatory regime and a lack of effective oversight.

To assess the effectiveness of ADR provision across nine different sectors, Which? used a set of criteria based on requirements and principles from the Ombudsman Association, the ADR regulations and Which?'s previous work in this area. The following chapter highlights examples from different schemes and a summary table provides an assessment of the schemes against some of the criteria.

Availability

An ADR scheme should be available to consider a consumer's complaint. This is particularly important when transactions are complex or high value.

- Is ADR mandatory for businesses in the sector?
- Are ADR schemes able to give acceptable reasons for the cases they refuse?
- Is ADR available for cross border purchases?

Accessibility

Consumers need to be aware of ADR and able to easily understand the ADR process. Schemes should be free to the consumer.

- Do companies provide information about an ADR scheme that they belong to on their website and in communication with consumers?
- Is ADR free to the consumer?

Effectiveness

To be effective an ADR scheme should deliver against all the criteria set out in this framework. The focus of this sub-category is on the need to quickly resolve disputes and enforce decisions.

- Does the time taken to resolve a dispute meet consumers' expectations?
- Is there an effective means to ensure business compliance with ADR decisions?
- Do schemes monitor their performance through customer surveys?

Transparency

ADR schemes should have high levels of transparency to build consumer and business trust.

- Is data reporting regular and consistent with regulations?
- Does the ADR scheme publish additional data and analysis?

Independence

Every ADR scheme should be able to take a neutral, objective and balanced view of each complaint and deliver fair outcomes to customers and companies.

- Does the ADR scheme have an independent board or assessor?
- Are the biographies and actions/ decisions of the board made public?

Accountability

ADR schemes should be overseen by a robust, proactive, well-resourced and consumer-focused Competent Authority.

- Is there an effective competent authority that provides oversight of the ADR scheme?

Promoting improvement

Every approved ADR provider, in regulated and unregulated sectors, should have prevention of complaints as part of a published strategy and as a clear business priority.

- Does the ADR scheme have meaningful engagement with business, consumer groups and regulators?

The sectors were chosen on the basis that transactions are often high value or complex in these sectors, or there are relatively high levels of consumer complaints and included aviation, energy, financial services, home improvements, motoring (sales, warranties, serving and repair), rail, retail, telecoms and property.

Availability

Is ADR mandatory for businesses in the sector?

Irene contacted Which? when her son's wedding was cancelled due to Covid 19 restrictions. Another date was agreed but that was also unable to go ahead due to restrictions. The venue agreed to make a refund but retained £6,000, which Irene feels is unjustified given the costs they have incurred. Irene has suggested Alternative Dispute Resolution but because the venue won't agree, her only option is to take the venue to court.²⁴

Whether an ADR scheme is available to resolve a consumer dispute is currently something of a lottery in the UK. One indication of the gaps in ADR coverage is in the number of consumers that are forced to rely on more expensive and complicated court processes. Research conducted by BEIS in 2018 found that the most common reason given by consumers who took their dispute to court rather than using ADR was that the trader refused to participate (70% of consumers who didn't use ADR beforehand).²⁵ Many more consumers will have simply dropped their case, rather than taking a business to court.

- Most regulated sectors, including financial services, energy and telecoms have a single Ombudsman scheme with membership mandatory for businesses in that sector. This ensures consumers have access to a scheme that can deal with most disputes.
- In the rail sector, the industry regulator the Office of Rail and Road (ORR) introduced a licence condition in 2019 for train and station operators mandating membership of the ombudsman. Network Rail is also required to be a member.
- The aviation sector stands out among regulated sectors for not having mandated membership of an Ombudsman scheme. The impact of this was starkly illustrated when Ryanair withdrew from AviationADR after the scheme made decisions the airline did not like. Other airlines have

also decided not to be members of an ADR scheme, leaving millions without access to ADR.²⁶ The CAA has recognised '*participation in ADR is still well short of the CAA's ultimate goal, which is for full coverage across the sector, and as a result a significant proportion of consumers are still not covered by ADR*'.²⁷

- In the property and lettings sector it is only mandatory for some providers such as estate agents, letting agents and property managers to belong to an approved ADR scheme. The requirement is enforced by local authorities who can impose a fine of up to £5,000.²⁸ However this is a large, complex sector where there are many businesses trading, and their activities are not always easily defined creating confusion for local authorities and consumers.

*It is notable that Ombudsman Services withdrew from this market stating 'Redress in the housing sector is a really confusing picture for all involved... We are ceasing what we're currently doing in the housing sector ... Rather than continue to offer a broken solution to a broken market.'*²⁹

- In other non-regulated sectors, there are often a number of different ADR providers but membership is not mandatory, resulting in a confusing and potentially frustrating experience for consumers. Voluntary membership often means that ADR is not available to consumers. This is a particular concern in key sectors where transactions are often high value and complex including home improvements, retail, and car sales and repairs.

*The Consumer Ombudsman is one of the ADR providers offering services in sectors where participation is voluntary. They received 5,600 complaints in 2017, but businesses agreed to participate in only 6% of cases.*³⁰

Are ADR schemes able to give acceptable reasons for the cases they refuse?

ADR schemes should be able to deal with a range of disputes and not reject applications unfairly. Our review of the annual reports submitted by approved ADR schemes highlights some dramatic differences in the proportion of applications that providers are rejecting, from single digit percentages to 50% and 55% in the property sector and 71% from Retail ADR.

All providers are required to explain why cases have been rejected and the most common reasons given are that consumers had either not approached the trader first or had exceeded the time period for a case to be considered. Explanations such as these are legitimate however such large differences between schemes does raise questions as to whether there are differences in the processes or the information consumers are receiving that results in such large numbers being rejected.

Is ADR available for cross border purchases?

As consumption in the UK changes and develops, it is important that ADR evolves to meet consumers' needs. This is particularly important in relation to cross border purchases where consumers have very limited consumer rights. In 2018 27% of the goods that UK consumers purchased online were ordered from outside of the UK, with 16% of the goods purchased outside the EU and 11% from EU countries.³¹

Cross border dispute resolution is still relatively new, and faces a number of obstacles including different standards and regulations in the sending and receiving country as well as practical obstacles such as language. However there are some positive examples that the UK government can build on including the EU Online Dispute Resolution platform, which provides a channel through which

consumers and traders in the EU can discuss complaints and if necessary identify an ADR provider. However following the UK's departure from the EU, consumers no longer have access to this platform and the UK will need to develop new arrangements with EU countries and internationally.

Accessibility

Consumer confusion and lack of awareness about where to go when a dispute arises significantly reduces accessibility. This has been identified as a significant concern.³² Cost is also a potential barrier to access.

Consumer awareness of ADR remains low. In some sectors it is better than others, usually because the existence of ADR is clearly flagged at key touch points during the relationship between the consumer and the business (such as at point of sale or on utility bills) or is required as part of a sector regulator's rules (as is the case in financial services).³³ But even with these types of requirements in place awareness remains poor. The age, income and educational profile of people using ADR suggests more should also be done to reach younger, low income groups with lower educational qualifications and ensure that ADR schemes are offering their service in a way that meets their needs.³⁴

A 2018 report from Citizens Advice found,

*'...72% of consumers aren't aware of free ADR services in regulated markets like energy and financial services. In non-regulated sectors, this lack of awareness stands at 84%. It's therefore unsurprising that even fewer consumers end up using ADR services. In regulated and non-regulated sectors respectively, just 8% and 5% of surveyed complainants say that they have taken advantage of ADR services.'*³⁵

Do all companies provide information about an ADR scheme they belong to on their website, and in communication with consumers?

One of the most effective ways to raise awareness about ADR is through companies providing information to consumers. This is likely to be particularly effective as the information is being provided to consumers at a time and place that is most relevant to them. However poor signposting by companies is a significant problem across both regulated and non-regulated sectors.

- Regulated sectors usually have clear and enforceable obligations on signposting. For example signposting in the energy sector is clear and unambiguous due to a requirement for information on complaints to be included in all bills. However, even in regulated sectors, practices require close monitoring and enforcement. In 2017 the FCA undertook a review of how consumer credit firms approach and deal with customer complaints and found that almost half of firms' websites failed to include the required references to the Financial Ombudsman Service. This prompted the FCA to write to the CEOs of all firms regulated for consumer credit business with the actions they expected businesses to take.³⁶
- Despite rail being a regulated sector, currently there are no additional requirements for signposting. The Rail Ombudsman's Consumer Experience survey found 45% of customers disagreed that the Ombudsman was well signposted by the train company. Only 7% of consumers were told about the Ombudsman when they first complained to the company.³⁷
- Signposting is generally poor in non regulated sectors due to weak requirements in the ADR regulations. Key issues include:
 - the ADR regulations only require businesses to refer customers to ADR when *'it has exhausted its internal complaints handling procedure'*.³⁸ This is often too late as consumers may have already given up on their complaint by this point.

- the ADR Regulations only require businesses to say what the approved ADR scheme is in their sector, even if they have not signed up to it. This requirement can lead to considerable confusion.

Under the heading ADR provider, Sainsbury's website says, 'we're required to let you know about ADR. Sainsbury's does not subscribe to any ADR provider, however, one such providers is: Centre for Effective Dispute Resolution'³⁹ CEDR confirmed that they do not have any relationship with Sainsbury's and have to 'constantly turn away consumers who contact them with disputes about the supermarket.'

Several other retailers also appear to be following the letter, rather than the spirit, of the ADR regulations. Retailers such as Amazon and Tesco do not appear to belong to an ADR scheme however they provide a link to the EU ODR platform which can only connect a consumer to an ADR scheme if the company belongs to one. Following the UK's departure from the EU, the platform is also no longer available to UK consumers. Argos provides a link to the CTSI list of ADR providers, even though Argos does not belong to any of the ADR schemes on that list.

If the company does not proactively provide information about an ADR provider that can handle a dispute, it can be very difficult for a consumer to find this information. Some sectors have a bewildering array of different providers and these providers don't always make it easy for consumers to work out which companies are members.

- Currently the only available source of information on approved ADR schemes across all sectors is the CTSI website, which lists all approved schemes and some basic information about each scheme including contact details.⁴⁰ However the CTSI website is unlikely to be found by consumers if they are not familiar with the terminology of ADR, it is also not particularly consumer-focused and contains some information that is out-of-date or inaccurate.
- The home improvements sector receives a large number of complaints but it is also one where the number and variety of ADR providers can lead to considerable confusion. In a report commissioned by Citizens Advice 21 schemes were identified as operating in this area and this was not a complete picture of the landscape.⁴¹ Only four of the schemes listed in the report are approved by a Competent Authority.
- The information that schemes provide about their membership varies considerably. Several schemes do provide a full list of members and a search facility including The Motor Ombudsman (TMO),⁴² Communication & Internet Services Adjudication Scheme⁴³ (in the regulated telecoms sector), Aviation Adjudication⁴⁴ and the Furniture and Home Improvement Ombudsman. However there are many examples where it is much harder to find out if a business is a member of a scheme. In the property sector, neither of the approved schemes, TPO and PRS, provide a list of members, although they do have a geographical search function. Neither Double Glazing and Conservatory Ombudsman Scheme or the Home Improvement Complaints Scheme provide a simple list of members on their sites.

Is ADR free to the consumer?

Currently the vast majority of ADR schemes do not charge consumers for their services and do not require consumers to use legal representation. However there are exceptions including:

- Consumer Arbitration⁴⁵ run by CDRL which charges £10 for claims up to £750 and £25 for claims over £750, plus a registration fee.

- Some schemes that are run by CEDR, also charge a fee depending on the service used.⁴⁶ For example the Glazing Arbitration Scheme run by CEDR charges £120 which is a significant sum.⁴⁷

Fees are refunded if a case is upheld however charging a fee could dissuade consumers from using ADR services.

Effectiveness

The effectiveness of an ADR scheme should be judged by how it performs against all the criteria in this framework. This section specifically considers the time ADR schemes take to resolve a dispute and levels of compliance.

Does the time taken to resolve a dispute meet consumers' expectations?

The current requirement for most ADR schemes is that unless a consumer has received a deadlock letter from the company, they must wait 8 weeks before they can escalate a complaint to the ADR scheme. However in some sectors the timescales are even longer. The Furniture and Home Improvement Ombudsman says it will only deal with complaints once the internal complaints process has been used, or three months has passed (whichever is sooner). In the digital age this period is simply too long, and for most types of claim is unjustifiable. It damages the effectiveness and consumer trust in ADR, and can contribute to the level of harm consumers may have already suffered.

Evidence shows that even when a complaint reaches the ADR scheme, consumers feel their complaints are dealt with too slowly.⁴⁸ Research by MoneySavingExpert found that,

*'On average, 61% of consumers in our survey said that their complaint was dealt with slower than expected; 29% said it was reasonable; and only 10% felt it was dealt with quicker than they had expected.'*⁴⁹

Figures given by ADR providers for the length of time it takes to resolve a dispute vary from 20 days to 90 days, with 90 days being the most common response. Bearing in mind these are average timescales it suggests that some cases are taking a disproportionate amount of time to resolve. But more importantly, this is the time taken from when the ADR provider has received a complete complaint file to when a first opinion is given. Collating the necessary information to create a case file can add significantly to the amount of time, and there may be some time from when the first opinion is given and the consumer receives compensation or the case is closed, but this information is not routinely reported.

- Figures from AviationADR suggest they take an average of 76 days to complete a case, however information provided in a review conducted on behalf of the Civil Aviation Authority show that in 2019 it took an average of 50 days from a complaint being made to the full file being received. So from the point of view of the consumer the average time cases took was more like 126 days, not 76.⁵⁰

Some ADR providers are taking measures to increase the efficiency of their operations and resolve cases quicker.

- Most ADR providers provide consumers with information in advance to make sure the case can be handled by the ADR scheme, for example by asking if the consumer has already tried to resolve their complaint with the company. In the case of the Property Ombudsman, they are trialing an online form to encourage consumers to engage with these questions before

submitting a complaint. This prevents schemes from rejecting cases further into the process which is not only frustrating for the consumer but also adds costs for the provider who has to handle these enquiries.

- Schemes have established processes for the company and consumer to find a resolution prior to mediation, for example the Energy Ombudsman has a Facilitated Complaint Resolution process⁵¹ which enables the supplier to make an offer following the initial exchange of information. If the consumer agrees this negates the need for a full investigation.
- Some companies hold trust accounts with ADR schemes so that when a decision is agreed, any payments can be quickly dispersed saving the scheme and the company time.

Is there an effective means to ensure business compliance with ADR decisions?

Levels of compliance with ADR decisions and the availability of follow-up enforcement mechanisms are key indicators of the effectiveness of any ADR scheme.

- Ombudsman schemes generally have better systems for enforcement. For example, for a small fee consumers can ask the court to allow a decision by the Financial Ombudsman Service to have the effect of a court order. Decisions by ‘Ombudsman Services: Communications’ and ‘The Energy Ombudsman’ are enforceable as member firms sign a deed poll with Ombudsman Services, which gives consumers the right to benefit from that contract and enforce the contract in the English courts.⁵²
- In non regulated sectors, ADR schemes generally rely on suspension or expulsion from the scheme or trading body in order to enforce compliance. However in sectors where membership is not compulsory, or where there are multiple ADR schemes, this may not be effective. For example the Property Redress Scheme reported low levels of compliance with awards in lettings complaints (66%). The reason it gives is that there were ‘*several members who have had multiple disputes and failed to comply with the decisions we have issued*’. It states that two members were expelled from the scheme as a result, however this does not mean that the consumers who brought the complaints received any redress.
- The Independent Complaints Assessment Panel report produced by the Motor Ombudsman explains the ‘penalty points’ system it operates for non-compliance with details of any members expelled from the scheme.
- Our review of the responses ADR schemes provide under ADR regulations found that schemes generally record high levels of compliance, however some schemes did not give figures and only referred to the mechanism for taking action against non-compliant businesses. A survey of 200 consumers that had used approved and non approved ADR schemes found that in 84% of cases the decision was either fully or partially implemented.⁵³

Do schemes monitor their performance through customer surveys?

The publication of operational statistics and the results of customer satisfaction surveys conducted by the ADR scheme can help to identify areas of weakness in the scheme’s performance. It is important that customer surveys seek responses from customers who have had their case considered and those that weren’t. Collecting data on the age, income, educational qualifications and other relevant characteristics can also help to identify if a service is meeting different needs.

- Good examples include The Motor Ombudsman Scheme (TMO) that publishes the results of an annual survey of consumers and businesses measuring awareness and satisfaction of the services that the TMO provides.⁵⁴ The Property Ombudsman also publishes the results of a regular consumer survey.

- The Rail Ombudsman is a relatively new service and publishes annual ‘consumer experience’ reports⁵⁵ Although the results were poor in a number of key areas, it does demonstrate how monitoring effectiveness is an important way to identify where further work is urgently needed.
- In contrast, we could not find any results of recent consumer surveys from ADR schemes in the aviation sector. The Aviation Adjudication Scheme has not published the results of any surveys and AviationADR has only published very basic information in graph form from past surveys, but none recently.⁵⁶ There are also no surveys available from RetailADR.

Transparency

Levels of transparency vary considerably across ADR schemes. Currently, the ADR regulations require all approved ADR schemes to produce annual and biannual ‘Activity Reports’ for their Competent Authority containing basic data about their activities and recommendations.⁵⁷ In regulated sectors most ADR providers go beyond these requirements, however in non regulated sectors there are too many schemes that rely on publishing these reports as their only output of data or fail to publish any activity report at all. The lack of any meaningful insight into these schemes’ activities and the harms and systematic problems that consumers are facing, reduces accountability and is a lost opportunity to support improvements in those sectors.

Is data reporting regular and consistent with regulations and does the ADR scheme publish additional data and analysis?

- In the regulated sectors the Financial Ombudsman Service produces very detailed reports with data and analysis of the service and the cases they have handled⁵⁸ as does the Rail Ombudsman.⁵⁹
- The Ombudsman Service provides ADR schemes for a number of sectors in non regulated sectors. It produces a separate activity report for the energy and communications sectors in line with the reporting requirements under the ADR regulations.⁶⁰ It also publishes an annual ‘Consumer Action Monitor’⁶¹ which provides detailed analysis and case studies of consumer feedback, complaints, trends and causes across a range of sectors, and clear recommendations for what businesses can do to improve services and reduce complaints.
- CEDR and CDRL also provide ADR services for a number of sectors. CEDR provides ADR in non regulated sectors including funerals, jewelry and storage. CDRL provides schemes including RetailADR, Consumer Arbitration and UtilitiesADR.⁶² However, when compiling their activity reports, both of these providers combine data from their non regulated schemes making it difficult to draw conclusions about individual sectors. For example the activity report that is produced by CEDR covers ‘funeral and estate planning’, holidays and travel, and ‘home building and residential’.⁶³ There is also a lack of analysis or case studies that would help to inform companies or regulators in these sectors.
- Some schemes choose to produce annual reports which can provide an opportunity to share more detailed information about the schemes, however these reports should not be seen as an alternative to the activity reports which are an important transparency tool requiring the publication of specific data in a consistent and comparable format. For example, the Home Insulation and Energy Systems (HIES) scheme produces an annual report which focuses predominantly on its wider business operations, with some analysis of its redress scheme.⁶⁴

- In sectors where ADR is not mandatory and companies can choose which scheme to join, this can create pressure on providers to limit the information they publish for fear of losing members. The Disputes Resolution Ombudsman Ltd (DROL) runs a number of approved schemes including the Furniture and Home Improvement Ombudsman, and the Rail Ombudsman. It also provides the ADR service on behalf of other approved schemes including the Double Glazing and Conservatory Ombudsman Scheme (DGCOS) and the Home Improvement Consumer Protection Scheme (HICS). Yet DROL makes the following statement on its website:

*'We do not discuss or publish case figures about individual businesses because that could deter them from voluntarily being members in the first place, which in turn would mean that consumers would not be able to use our free services.... We are obliged under our government approval, the law, and the Ombudsman Association to report the data that we provide in our Annual Review and on our website, and we do this to the fullest extent required. Because not all businesses are members, if we were to only publish our members' data (and not offer a full industry view, including businesses that choose not to provide their consumers with ADR), it might unduly distort the picture of the industry.'*⁶⁵

Independence

Concerns are regularly raised by consumers and businesses about bias or a lack of independence in the way schemes make decisions. It is not possible to establish clear evidence of actual bias with little evidence to suggest systemic problems in ADR schemes arising from outcomes being influenced by the remuneration or charging structures they operate under. However, it is crucial that ADR schemes work hard and transparently to make sure that the risks of perceived or actual bias are removed or at least minimised.

The ADR Regulations do not specifically require approved bodies to have an oversight board with independent representation within its structure, and only require specific representation of consumer interests and trader interests when the ADR provider uses a particular operating model, which most do not have. As a result, most ADR schemes are not required to have any formal independent input.

Does the ADR scheme have an independent board or assessor and are the biographies and decisions of the board made public

- The Motor Ombudsman (TMO) has an Independent Compliance Assessment Panel (ICAP) which meets twice a year to discuss cases covering its four Codes of Practice. Only a quarter of individuals on the Panel may be employed within the automotive sector. Biographies of those on the panel are published. The Panel is designed to *'verify that the outcomes and final decisions reached by the adjudicators and ombudsman respectively are fair, reasonable and impartial.'* The ICAP reports annually and its reports are easy to find from the TMO website home page.⁶⁶ They include an overview of the cases that have been reviewed by the Panel, a performance summary, results of consumer satisfaction surveys, and comments from ICAP members. It also includes a list of areas identified for improvement.
- The Property Redress Scheme (PRS) has an 'Advisory Council' which it says can advise on all matters relating to the running of the scheme and refer matters to the Head of Redress and the PRS Board. The Council members are listed in the PRS Annual Report. This contains biographies which ensures transparency about whether they have a consumer advocacy

background and whether they are independent of the sector. While the Annual Report does include a number of case studies it does not give any detail about specific activities or decisions made by the Council.⁶⁷

- CDRL is responsible for several schemes in non-regulated sectors including RetailADR, UtilitiesADR and Consumer Arbitration. The competent authority for these schemes is the CTSI. A link to the constitution of an Independent Standards Board is available on each of these scheme's websites but this was not working when we tried to access it. The Scheme Rules for Utilities ADR states that "The Board regularly reviews a cross section of our adjudications, to ensure they are both fair and reasonable. It also oversees our rules, practices and procedures."⁶⁸ No further information about the board was available.
- CDRL also runs AviationADR, where the competent authority is the Civil Aviation Authority. The constitution for the Independent Standards Board was available on the AviationADR website and states that no more than 20% of board members should be from the airline or airport industry, and that the board reviews a random selection of decisions on a monthly basis, but gives no further information about membership, their meetings or decisions. There is also an independent assessor that can assess disputed decisions. The Terms of Reference state that the Independent Assessor is engaged by CDRL on an independent basis... [and they] must not hold shares or have any other form of interest in any airline or airport that subscribes to the AviationADR scheme.⁶⁹
- The Aviation Adjudication Scheme has an Independent Reviewer appointed by the CEDR Board. The reviewer publishes a report each year which is included in CEDR's Annual Report. However, the role of the Independent Reviewer is very limited and the Terms of Reference do not allow any scrutiny of the independence of the ADR Scheme or consideration of any allegations of bias.
- The Furniture and Home Improvement Ombudsman refers to its Standards Board on its website and in its Annual Report, however no reports from the Standards Board appear to have been published and there are no details provided about who is on the Board, nor are reports of its activities or outcomes publicly available.
- The Home Improvement Consumer Protection Scheme and the Double Glazing and Conservatory Ombudsman Service do not appear to publish any information about mechanisms to ensure they are independent from, and seen to be independent from, industry.

Accountability

Under the ADR regulations, all approved ADR schemes should be overseen by a Competent Authority. In the UK there are currently eight competent authorities with responsibility for more than 50 approved ADR providers in regulated and non-regulated sectors. In regulated sectors the statutory authority is usually the regulator, in non regulated sectors the Chartered Trading Standards Institute (CTSI) is responsible for most schemes, with the exception of the property sector where Powys County Council is the designated Competent Authority.⁷⁰

Accountability is important in all sectors however it is particularly important in sectors with multiple ADR schemes where there is a need to ensure high standards and prevent competition for members between the schemes resulting in lower standards or even accusations that schemes are more likely to find in companies favour. For example following easyJet's move from the Aviation Adjudication Scheme to AviationADR, the number of cases involving easyJet that were upheld fell from an average of 79% in the last six quarters it was a member of the Aviation Adjudication Scheme to 51% in the first six quarters it was a member of AviationADR.⁷¹

Is there an effective competent authority that provides oversight of the ADR scheme?

The competent authorities in regulated sectors (the FCA, Ofgem, Ofcom, CAA) have increased the requirements on companies in those sectors to provide information to consumers about the ADR scheme they belong to, provide detailed reporting on the disputes they handle and they are more active in monitoring the schemes they are responsible for.

Regulated sectors

- Although there has been some criticism of ADR schemes including financial services (FOS), energy (the Energy Ombudsman), telecoms (OS: Communications; CISAS) these are generally well run schemes with good communication between the regulator and the scheme.
- Unusually the competent authority for the Rail Ombudsman is CTSI rather than the regulator which is the Office for Road and Rail (ORR), however it is the ORR that is driving a programme of significant reform within the Rail Ombudsman including making membership a condition of the licence for all rail companies.
- The CAA is the competent authority in the Aviation sector, however membership of an ADR scheme is not mandatory and ADR providers in the sector have come in for sustained criticism. CAA does provide its own Passenger Advice and Complaints Team to fill gaps in ADR provision however it cannot make binding decisions about disputes.

Unregulated sectors

As can be seen in other sections of this report, ADR provision in non-regulated sectors is generally significantly weaker than in regulated sectors. This reflects the weakness of the ADR regulations and the inability of the competent authorities, the CTSI or Powys County Council to make additional requirements. In their defence CTSI and Powys County Council have limited powers under the ADR regulations, lack resources, and are responsible for a range of other non-consumer focused issues.

CTSI has been able to increase the information that it requires from ADR schemes to conduct its audits, however it can only audit schemes against the ADR regulations. Its enforcement powers are also limited with the only option being to remove the scheme's approval. With a more graduated set of powers, CTSI might be able to encourage improvements.

Where an ADR provider is responsible for schemes in both a regulated sector and a non-regulated sector there are clear differences in the reporting that they provide for the regulator and for CTSI. For example:

- CDRL that provides multiple ADR schemes, only provides sector specific data on compliance for the sector that is regulated by the CAA (AviationADR⁷²), compliance data for the schemes where CTSI is the Competent Authority are combined (RetailADR, UtilitiesADR and Consumer Arbitration).⁷³ Similarly CDRL provides the CAA with reasons why ADR claims are discontinued, but just provides raw data for the schemes overseen by CTSI.

It is encouraging that where CTSI has engaged with ADR schemes in its role as the competent authority this appears to have led to significantly improved provision and reporting, however this relies on there being sufficient willing and co-operative companies within that industry, and only relates to companies that have joined the scheme.

- In the motor sector, there has been a drive to improve standards of ADR and both of the approved schemes The Motor Ombudsman and The National Conciliation Service (NCS) provide good examples of transparency, independence processes and driving improvement.

Under the ADR Regulations, CTSI used to have an additional overarching role as the UK's 'single point of contact' and was responsible for submitting a report to the European Commission every four years.⁷⁴ However, the report is a simple collation of the data received from the competent authorities and provides no additional insight into how ADR could be improved or how ADR can contribute to improvements in business practices.

Promoting improvement

ADR schemes have an important role in collecting and publishing data about consumer complaints and making recommendations to help businesses and regulators identify and address systemic issues. Working together, the ADR provider, businesses, the competent authorities and consumer advocacy groups can use data to proactively address issues and improve practices across the sector and reduce the number of complaints.

Does the ADR scheme have meaningful engagement with business, consumer groups and regulators?

The ADR Regulations⁷⁵ require schemes to publish specific information and recommendations to help companies in that sector identify and address problems in their industry. However, as has been seen in the transparency section above, several ADR providers are failing to meet this basic requirement.

This demonstrates that the ADR regulations are neither detailed enough nor consistently enforced to deliver the sort of reporting that could be used to drive improvements. This leaves it to individual regulators and competent authorities to mandate or agree enhanced reporting requirements that go beyond these minimum requirements.

In addition to the publishing of data, some sectors have developed forums through which the ADR scheme, the regulator, consumer groups and businesses can analyse the data and discuss remedies.

- The Financial Ombudsman Service has a statutory duty to disclose information to the FCA that in the opinion of FOS 'would or might be of assistance to the FCA in advancing one or more of the FCA's operational objectives'.⁷⁶ It's important to note that this statutory tie-in to the regulator's operational objective is key as one of the FCA's objectives to 'protect consumers'.
- In the energy sector, a tripartite agreement between the Ombudsman, CitA and Ofgem has created a process of sharing data to identify market trends.⁷⁷ While this arrangement is part of a formal agreement between the players involved, and seems to work well because the Energy Ombudsman (Ombudsman Services) is the single ADR provider in the sector, there is no reason why this could not be adopted for other sectors.
- The Motor Ombudsman publishes detailed case studies on its website covering new cars, sales, service and repair and vehicle warranty disputes. This helps deliver transparency and learning for consumers and businesses. Its independent Complaints Assessment Panel, includes Citizens Advice and other independent consumer representatives and produces a 56-page annual report with detailed data analysis and a list of areas identified for improvement in the sector.
- The National Conciliation Service provides some of the most detailed and helpful annual activity reports of all approved schemes in the non-regulated sectors with not only details of complaints data but also of work to raise public and industry awareness of ADR, areas of improvement and areas where complaints indicate systematic and serious problems for consumers.
- In contrast CEDR combines reporting on several of its schemes in non regulated sectors into one report. Neither the annual report or the biannual report offer meaningful recommendations as to how the sector can reduce complaints in the future.

- Similarly CDRL's 'Annual Activity Report'⁷⁸ covers three of its approved schemes in one single report, making it difficult to identify specific issues about the schemes or the disputes they are handling. In its bi-annual report it sets out some common issues affecting consumers, but makes no 'recommendations' about how these could be '*avoided or resolved in future*' as required in the ADR Regulations.
- In contrast and despite reporting against the same basic requirements under the ADR Regulations, the report that CDRL provides to the CAA⁷⁹ is much more focused on identifying systematic and significant problems for consumers and makes some clear recommendations for improvement.
- There is a particular issue in sectors where there are multiple ADR schemes, as without action from the competent authority, there isn't an organisation responsible for consolidating the data that is available and bringing stakeholders together to discuss the implications for industry practice.

Conclusions and recommendations

ADR plays a crucial role in the consumer protection landscape. In sectors where ADR is functioning well, it is providing consumers with an accessible and affordable way for consumers and businesses to resolve disputes. ADR schemes are also supporting improvements in those sectors by sharing data on consumers' experiences and working with consumer groups, businesses and regulators to identify trends and develop effective responses.

However, aside from these examples of good practice, the current ADR landscape is not working for consumers. In too many cases, ADR is simply not available, there is a lack of consumer awareness and trust and many schemes are failing in the important task of supporting improvements in their sector. Some sectors stand out as in need of urgent attention including aviation, home improvements, retail and property and the government has already made proposals relating to some of these. In other sectors such as the motor industry progress is being made but these changes could be strengthened through mandatory membership, stronger regulations and oversight.

Availability

ADR is often not available to resolve consumers' complaints in the sectors where it is most needed. Even when a sector has an ADR scheme, membership is often voluntary and businesses can choose not to join a scheme. This report has highlighted issues in ADR provision across several sectors where transactions are often complex and high value and there are high volumes of complaints, but this is not an exhaustive list. For example package holidays are an expensive purchase for most people, and the involvement of different providers can lead to complex disputes, however the sector is only partially covered by an ADR scheme run by ABTA.

Some sectors have more than one provider, but there is little evidence to support the case for allowing more than one approved ADR provider in any single sector. In sectors where there is competition for ADR it has not been shown to promote greater engagement by traders, improve consumer awareness or outcomes. Evidence suggests that it only serves to increase consumer confusion, and potentially puts pressure on ADR schemes to find in favour of companies rather than consumers.

A single scheme also enables the scheme to have a more comprehensive picture of the sector, which supports their role in providing insightful data and constructive engagement with companies.

Where there is demand for competition to encourage innovation and improve efficiency this could be achieved through a regular tendering process that uses clear standards of delivery to ensure providers compete around innovation and efficiency that genuinely improves the service.

Establishing an ADR scheme for each sector is also preferable to the creation of a residual ADR scheme which was considered by the government in 2014.⁸⁰ ADR schemes which accept complaints from a range of sectors do not appear to be popular with consumers or businesses,

and the lack of sector specific knowledge can make it difficult to handle cases or support improvements in any particular sector.

While the Ombudsman model is seen as a 'gold standard' for ADR, it may not be appropriate for most non-regulated sectors. Ombudsman schemes should have a place in any sector if businesses want one and are prepared to meet the higher cost, but should not be mandated as the norm for all ADR schemes. Ombudsman schemes already exist in most regulated sectors and there are strong arguments to support the Ombudsman model being mandated in those non-regulated sectors where transactions are commonly complex, high value and where there's a high risk of consumer harm (such as in the motor, home improvement and property sectors).

Aside from the key sectors where a single mandatory ombudsman scheme would be appropriate, the government should encourage sectors to establish an ADR scheme and encourage businesses to join. Trade associations could have a key role to play as they are already known and trusted by businesses. Some associations are also already handling complaints however without oversight there is no transparency as to how these complaints are handled and how fair the decision making process is. In order to earn the trust of consumers, all schemes would require robust independence mechanisms and oversight.

Another gap in dispute resolution is where consumers have made a cross border purchase. There is a need and an opportunity here to build on the limited schemes that are currently available and use technology to link consumers and schemes in other countries. This is an emerging area of consumer protection and there is potential for the government to engage with partners through trade agreements and networks at the United Nations, the International Consumer Protection Enforcement Network and the OECD as new schemes are developed.

In addition to improving the availability of ADR, the evidence in this report demonstrates the need for higher and more consistent standards across all approved ADR schemes. This highlights failings in both the regulation and oversight of ADR schemes.

Standards

ADR regulations need to be reviewed and strengthened to ensure consistently high standards. When the ADR regulations were introduced in 2015, the EU directive was seen as a first step in developing ADR provision. The UK now has an opportunity to build on the experience of the last five years to ensure the requirements placed on ADR schemes are updated to reflect best practice, and competent authorities have the powers they need to oversee ADR schemes.

The weakness of the current ADR regulations has led to problems in relation to signposting, the time it takes to resolve disputes and mechanisms to ensure compliance. This report demonstrates that there are good practices that could be incorporated into a revision of the regulations and these do have a beneficial impact on consumers and businesses. For example signposting in some of the regulated sectors makes it much easier for consumers to find information about ADR schemes when they need it. And some of the Ombudsman schemes have demonstrated that there are also means of enforcing ADR decisions through the courts.⁸¹

Oversight

There is a difference in standards between schemes where the competent authority is a regulator and schemes where the CTSI or Powys County Council is the competent authority. In sectors where the competent authority is a regulator they have generally been able to intervene to

require ADR schemes to go over and above the basic requirements set out in the ADR regulations. They have also been active in monitoring schemes and ensuring that the insight from ADR is used to drive improvements in the sector. However there are exceptions, ADR in the aviation sector is weaker than in other regulated sectors with the lack of mandatory membership of an ADR scheme a fundamental weakness.

The CTSI and Powys County Council have not been as effective in raising standards across the ADR schemes they are responsible for. This is the result of the limited powers granted to them in the ADR regulations, and their limited resources. It is noteworthy that in the rail sector where CTSI is the competent authority it required the intervention of the regulator (the Office for Road and Rail) to drive improvements in ADR provision.⁸²

The recommendations in this report are designed to build on the good practices and remedy the problems identified in this report. They seek to avoid imposing too much additional cost on businesses which inevitably is passed on to consumers. To make ADR effective it should not be necessary to impose complicated and expensive structures on sectors. What is needed is a stronger legal framework, improved availability and awareness, effective requirements for the speed of decision making and compliance, as well as transparency, independence and oversight.

Our recommendations

Consumers access to ADR should be strengthened, including access to a single mandated Ombudsman service in key sectors.

The government should mandate that key sectors where transactions are often complex or high value or where there are typically high levels of consumer detriment should have a single mandatory Ombudsman service available to cover all disputes. Financial services, telecoms, energy, rail and other services already have a single mandatory Ombudsman service. The government should review which other sectors would benefit from the same service and how they are defined, but it should include aviation, motor, home improvements and the property sector, and at least some parts of the retail sector. In all other sectors trade associations should be encouraged to establish a single approved ADR scheme. Membership can be voluntary but businesses should be encouraged to join. The government should work with international colleagues to increase access to ADR for cross border purchases.

All ADR schemes should be overseen by an effective Competent Authority.

In regulated sectors the approval and oversight of ADR providers should sit with the sectoral regulatory bodies as now. Competent authorities for unregulated sectors should have the resources and powers to effectively oversee their schemes. In addition the government should mandate a single authoritative body that will have responsibility for setting common performance standards for all ADR schemes and ensuring consistency across all sectors. The organization should be adequately resourced, have consumer redress expertise, a clear consumer protection duty, and sufficient legal powers.

Competent authorities should have the ability to introduce requirements that go beyond the standards set out in the regulations and where necessary, respond to emerging issues such as technological developments or market changes. Any additional requirements should be agreed with a single authority that oversees all competent authorities.

There should be a single accessible source of information on ADR and better signposting by companies to improve consumer awareness of ADR.

The above authority should be responsible for developing a single, accessible online platform with consumer information on ADR with clear links to approved ADR schemes across all sectors. Giving consumers clear information about the ADR process will also reduce the number of enquiries that ADR schemes have to handle, which will in turn reduce their costs. The ADR regulations should require businesses to clearly signpost the availability of an ADR scheme that they are a member of on their websites and in all communications with consumers. Steps should be taken to ensure ADR is accessible and meets the needs of all consumers regardless of age, income or education level.

ADR schemes must provide an effective service with appropriate timescales and enforceable decision making.

Maximum periods should be agreed for each step in the ADR process, including reducing the so-called 'eight week rule' and the time allowed for compiling a case file and reaching a decision. Compliance with ADR decisions must be guaranteed and a robust enforcement mechanism should be built into scheme rules. All approved ADR schemes must commission and publish annual independent surveys of consumer trust and satisfaction to monitor their effectiveness in meeting consumers' needs, including collecting data about the age, income and other relevant characteristics of users.

ADR schemes must improve accountability and demonstrate independence.

ADR regulations should require all ADR schemes to appoint an independent board and publish biographies and information about their processes and decisions. The collection and publishing of data relating to complaints about the service should be clearly specified and monitored by the competent authority.

Data and intelligence must be used to drive improvements in business practice and regulation.

ADR regulations should require data from disputes to be collected, analysed and published in a consistent way and for providers to work with businesses, regulators and consumer groups to prevent poor practices, promote culture change and drive improvements across the sector they are responsible for.

Key information and summary assessment of ADR schemes against our criteria

Overview of ADR schemes	Approved schemes	Competent authority	Mandatory	Additional signposting	Cases submitted (total)	Cases refused (%)	Time taken (days)	Free to use ^x	Member list available ^{xi}	Independence measures ^{xii}	Transparency ^{xiii}	Customer surveys ^{xiv}
Property	The Property Redress Scheme	Powys CC	Some parts of the sector	✗	1716	50%	33 ^x	✓	✗	✓	✓	✗
	The Property Ombudsman				19177	55%	59 ⁱⁱⁱ	✓	✗	✗	✓	✗
Telecoms	OS: Communications	Ofcom	Yes	✓	45,078	2%	35	✓	✓	✓	✓	✓
	CISAS				17,012	4%	38.7	✓	✓	✓	✗	✗
Retail	RetailADR	CTSI	No	✗	3005	71%	64	✓	✓	✗	✗	✗
	The Furniture and Home Improvement Ombudsman				6174	5.5%	75	✓	✓	✗	✗	✗
Rail	The Rail Ombudsman	CTSI	Yes	✗	3143	42%	23.5	✓	✓	✓	✓	✓
Motoring	National Conciliation Service	CTSI	No	✗	375	10%	35	✓	✗	✗	✗	✗
	The Motor Ombudsman				Not found ⁱⁱ	Not found ⁱ	Not found	✓	✓	✓	✓	✓
Home Improvements	Home Improvement Consumer Protection Scheme	CTSI	No	✗	Not found	Not found	3.6	✓	✗	✗	✗	✗
	Double Glazing & Conservatory Ombudsman Scheme				Not found	Not found	3.6 ⁱⁱⁱ	✓	✗	✗	✗	✗
	The Glazing Arbitration Scheme				Not found ⁱ	Not found ⁱⁱ	Not found ⁱⁱⁱ	✗	✗	✗	✗	✗
	The Furniture and Home Improvement Ombudsman				6174	5.5%	75	✓	✓	✗	✗	✗
Financial Services	Financial Ombudsman Services	FCA	Yes	✓	227,493	5.63%	43	✓	✓	✗	✓	✓
Energy	The Energy Ombudsman	Ofgem	Yes	✓	98,683	24%	36	✓	✓	✓	✓	✓
Aviation	Aviation Adjudication Scheme	CAA	No	✗	6793	8%	39	✗	✓	✗	✗	✗
	Aviation ADR				25690	29%	82	✓	✓	✗	✗	✗

- i Signposting: (No additional requirements, additional requirements).
- ii The report from the ADR provider (CEDR) combines data from several schemes.
- iii The Motor Ombudsman publishes an Annual Report, however this doesn't include some of the data that is required in the Activity reports.
- iv The report from the ADR provider (CEDR) combines data from several schemes.
- v The Motor Ombudsman publishes an Annual Report, however this doesn't include some of the data that is required in the Activity reports.
- vi The report from the ADR provider (CEDR) combines data from several schemes.
- vii Figures given for ADR decision only. Cases are then passed to an ombudsman if parties don't agree.
- viii Approximate figure based on data available.
- ix Approximate figure based on data available.
- x Some schemes charge consumers an upfront fee that is only refunded if the case is upheld.
- xi Member list: (✗ - nothing, ✗/- search facility only, ✓ - full list or mandated membership).
- xii Independence measures: (✗ - nothing, ✗/- reference to some independence measures, ✓ - details available such as biography of responsible person/people, reports of actions/decisions).
- xiii Transparency: (✗ - nothing, ✗/- provides reports according to ADR regulations online, ✓ - publishes additional information including case studies, awards etc.).
- xiv Customer satisfaction surveys.(✗ - none, ✗/- basic, ✓ - detailed).

Endnotes

- 1 *Small claims taking almost a year to come to trial*, The Law Society Gazette, 2020.
- 2 *Consumer Markets Scoreboard: Making markets work for consumers*, EC, 2019 *Consumer Detriment: counting the cost of consumer problems*, Citizens Advice, 2016
- 3 *Resolving consumer disputes: Alternative Dispute Resolution and the court system*, Department for Business, Energy and Industrial Strategy, 2018.
- 4 *Have you been let down by Currys PC World? Which? Conversation*, Dec 2020
- 5 *Currys PC World Terms and conditions*, Currys PC World website, accessed Feb 2021
- 6 More than 50 ADR schemes have been approved by their relevant Competent Authority (a sector regulator or the Chartered Trading Standards Institute). In addition there are approximately 100 ADR schemes that have not sought approval.
- 7 ADR is compulsory for some parts of the Property sector but not for others. The government has made proposals to fill the gaps in ADR provision including for buyers of new build homes and private rented sector tenants. *Strengthening Consumer Redress in the Housing Market*, Ministry of Housing, Communities and Local Government, 2019.
- 8 Airlines including Jet2 (over 14 million passengers in 2019), Aer Lingus (11.6 million passengers in 2019), Emirates and Ryanair (152 million passengers in 2019) have chosen not to be part of these ADR schemes.
- 9 *Global ecommerce markets: the United Kingdom*, B2C Europe website, 2020.
- 10 The CAA considered reforms which they believed “make ADR work better for consumers and which will further encourage airlines that do not currently participate in ADR to consider the merits of the schemes on offer.” *Alternative Dispute Resolution*, Civil Aviation Authority website, accessed Mar 2021.
- 11 *Modernising consumer markets Citizens Advice formal consultation response*, Citizens Advice, 2018.
- 12 *Airline Data*, Civil Aviation Authority website, accessed Mar 2021.
- 13 *Legal advice: shoddy building work*, Which? Conversation, Jan 2020.
- 14 *Resolving consumer disputes: Alternative Dispute Resolution and the courts system*. Department for Business, Energy and Industrial Strategy, 2018.
- 15 *The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations*, UK Government, 2015.
- 16 *Consumer detriment Counting the cost of consumer problems*, Citizens Advice, 2016.
- 17 *The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations*, UK Government, 2015.
- 18 *Creating a successful enforcement system for UK Consumers*, Which? 2019.
- 19 *UK Consumer Action Monitor*, Ombudsman Services, 2018.
- 20 *Consumer detriment: counting the cost of consumer problems*, Citizens Advice, 2016.
- 21 *Ending Consumer Detriment*, Ombudsman services, 2018. See also for instance, the most recent data on this suggests that nearly two thirds (62%) of Millennials say complaining fills them with dread and 38% choose instead to let off steam on social media, compared to only 8% of Baby Boomers.” *Consumer Action Monitor*, Ombudsman Services, 2019.
- 22 *Delays and cancellations – isn't it time for auto-comp? Which? conversation*, 2017.
- 23 *Resolving Consumer Disputes. Alternative Dispute Resolution and the Court System*, Department for Business, Energy and Industrial Strategy, 2018.
- 24 Which? helpline, 2020.
- 25 *Resolving Consumer Disputes. Alternative Dispute Resolution and the Court System*, Department for Business, Energy and Industrial Strategy, 2018.
- 26 Airlines including Jet2 (over 14 million passengers in 2019), Aer Lingus (11.6 million passengers in 2019), Emirates and Ryanair (152 million passengers in 2019) have chosen not to be part of these ADR schemes.
- 27 *Consumer complaints handling and ADR: CAA policy statement and notice of approval criteria for applicant ADR bodies*, Civil Aviation Authority, 2016.

32 ARE ALTERNATIVE DISPUTE RESOLUTIONS (ADR) SCHEMES WORKING FOR CONSUMERS?

- 28 *Lettings Agents and Property Managers, Which Government approved redress scheme do you belong to?* Ministry of Housing, Communities and Local Government, 2018.
- 29 *New dialogue launched into Ombudsman for housing*, Ombudsman Services, 2018.
- 30 *Resolving consumer disputes Alternative Dispute Resolution and the Court System*, Department for Business, Energy and Industrial Strategy, 2018.
- 31 *Global ecommerce markets: the United Kingdom*, B2C Europe, 2020.
- 32 *Confusion, gaps, and overlaps A consumer perspective on alternative dispute resolution between consumers and businesses*, Citizens Advice, 2018.
- 33 *FCA handbook*. Financial Conduct Authority, 2020.
- 34 *Resolving consumer disputes: alternative dispute resolution and the court system*. Department for Business, Energy and Industrial Strategy, 2018.
- 35 *Understanding Consumer Experiences of Complaint Handling*, Citizens Advice, 2016.
- 36 *Consumer credit firms handling of complaints*, Financial Conduct Authority, 2017.
- 37 *The Rail Ombudsman Consumer Experience Survey*, The Rail Ombudsman, 2020.
- 38 *The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015*, Regulation 19, UK Government, 2015.
- 39 *ADR providers*, Sainsburys website, accessed 10 Feb. 2021.
- 40 Based on a Google search of 'ADR Schemes in UK' 2020
- 41 *Confusion, Gaps and Overlap, A consumer perspective on alternative dispute resolution between consumers and businesses*, Citizens Advice, 2017.
- 42 *Garage Finder*, The Motor Ombudsman, accessed Feb. 2021.
- 43 *Companies covered*, Communication and Internet Services Adjudication Scheme, accessed Feb. 2021.
- 44 *Companies covered*, Aviation Adjudication Scheme, accessed Feb. 2021.
- 45 *Consumer Arbitration Scheme Rules*, Consumer Arbitration, 2019.
- 46 *ADR approved bodies: CEDR*. Chartered Trading Standards Institute, accessed Jan. 2020.
- 47 *CEDR Guidance Notes for Consumers and homepage*, CEDR, accessed Jan. 2020.
- 48 *Justice delayed the case for shortening the ombudsman 8 week rule*, Money Saving Expert, 2019.
- 49 *Sharper teeth: the consumer need for Ombudsman reform*, Money Saving Expert, 2017.
- 50 *Independent expert audit of ADR decision making for the Civil Aviation Authority*, Verita, 2019
- 51 *Energy Sector Report*, Ombudsman Services, 2019.
- 52 *Sharper teeth: the consumer need for Ombudsman reform*, Money Saving Expert, 2017.
- 53 *Resolving consumer disputes: Alternative Dispute Resolution and the courts system*. Department for Business, Energy, Industrial Strategy, 2018.
- 54 *Annual Report of the Motor Ombudsman Association*, The Motor Ombudsman, 2016.
- 55 *Consumer Experience Report*, The Rail Ombudsman, 2019. For example, of customers whose cases were dealt with by the Ombudsman 37% rated their experience as 'Fairly / Very Poor'. Only 53% rated the Ombudsman's understanding of the complaint as 'Good / Very Good'. And on key indicators only 49% found the Ombudsman 'Impartial', 46% 'Fair', and 43% 'Balanced in its decisions'. There was also significant dissatisfaction that too many complaints were outside the Ombudsman's remit
- 56 *Aviation ADR Passenger Feedback*, Aviation ADR, 2019.
- 57 *CTSI Requirements and Guidance on seeking approval as a Consumer ADR Body operating in non regulated sectors*. Chartered Trading Standards Institute, 2015.
- 58 *Annual Reports and Accounts*, Financial Ombudsman Service, 2020.
- 59 *Documents*, The Rail Ombudsman, accessed Jan. 2021.
- 60 *Annual Reports*, Ombudsman Services, accessed Jan. 2021.
- 61 *Consumer Action Monitor*, Ombudsman Services, 2018.
- 62 *Annual Report*, RetailADR, 2019.
- 63 *ADR Entity Reporting*, CEDR, 2019.
- 64 *Annual Report*, HIES, 2019.
- 65 *About us*, Dispute Resolution Ombudsman, accessed Jan. 2021.
- 66 *ICAP Reports*, The Motor Ombudsman, 2019.

33 ARE ALTERNATIVE DISPUTE RESOLUTIONS (ADR) SCHEMES WORKING FOR CONSUMERS?

- 67 *Annual Report*, The Property Redress Scheme, 2019.
- 68 *Non regulated Scheme Rules*, UtilitiesADR, 2018.
- 69 *Independent Assessor Terms of Reference*, Aviation ADR, 2018.
- 70 *The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations* Reg 8 (3b) and Reg 4 (4) UK Government, 2015.
- 71 *Airline Data*, Civil Aviation Authority website, accessed Mar 2021.
- 72 *Annual Report, Biennial Report*, AviationADR, 2020.
- 73 *Annual Report, Bi-Annual report*, AviationADR, 2019.
- 74 *The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations* Regulation 18, UK Government, 2015.
- 75 *The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015, Reg 11(2) and (3)*, UK Government, 2015.
- 76 *Financial Services and Markets Act s232A*, UK Government, 2000.
- 77 *How Citizens Advice monitors energy company performance*, Citizens Advice, 2018.
- 78 *Annual Report*, RetailADR, 2019.
- 79 *Bi-Annual Report*, AviationADR, 2020.
- 80 *Government response to the consultation on implementing the Alternative Dispute Resolution Directive and the Online Dispute Resolution*. Department of Business Innovation and Skills 2014.
- 81 *Sharper Teeth: the Consumer Need for Ombudsman Reform*. Money Saving Expert, 2017.
- 82 *Changes to complaints handling*, Office of Rail and Road, 2019.

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