

Mapping UK consumer redress

A summary guide to dispute resolution systems

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EXECUTIVE SUMMARY

Background

The purpose of this research project is to analyse the strengths and weaknesses of the current UK consumer redress landscape and highlight policy issues to be considered further. The project focuses on consumer redress mechanisms in the business-to-consumer context only.

We have suggested definitions for consumer redress and redress mechanisms and used these throughout this paper:

- **Consumer Redress:** a remedy for a wrong arising from a contract or other relationship between a consumer and trader.
- **Consumer Redress Mechanism:** a means and process by which a consumer can seek redress from a trader arising from a contract or other relationship for a perceived or actual wrong.

Consumers wishing to obtain redress have a number of options which they can follow, depending on the availability of mechanisms. Generally the first step is to use the trader's in-house complaints procedure where it exists. The next step may be to move on to an Alternative Dispute Resolution (ADR) mechanism or to court proceedings.

The consumer redress mechanisms considered within this project are:

- **In-house complaints procedures:** many ADR schemes stipulate that individuals must have exhausted the company's in-house complaints procedures before using the ADR mechanism.
- **Mediation:** mediation is conducted confidentially and consists of an independent third party actively assisting the parties in working towards a negotiated agreement of a dispute.
- **Conciliation:** this is a process similar to mediation but in which the neutral third party takes a more active role in putting forward terms of

settlement or an opinion on the case.

- **Arbitration:** in arbitration an independent third party considers both sides in a dispute, and makes a decision that resolves the dispute. In most cases the arbitrator's decision is legally binding on both sides.
- **Adjudication:** like arbitration, adjudication involves an independent third party considering the claims of both sides and making a decision. This usually produces a decision that is binding on the company but not on the consumer.
- **Ombudsman schemes:** ombudsmen are independent, impartial intermediaries who consider complaints. The particular mechanisms of ombudsman schemes vary but they often combine neutral fact-finding, mediation and adjudication in various tiers.
- **Legal mechanisms:** formal legal action is usually the last resort employed by consumers to obtain redress. Consumers can, however, take legal action without going through other mechanisms if they wish.

Findings

A map of ADR schemes found during our research is included as a separate Excel spreadsheet and discussed at Chapter 3. In total 95 discrete schemes across 35 sectors are included in the map. At the most basic level it appears that consumers are better covered in relation to services than goods, with far more schemes available in this category (87 in comparison to 17).¹

The distribution of ADR mechanisms shows that more than half of the schemes offer conciliation/mediation. Many schemes will offer this as the first stage of a two or three stage process, though it may be the only option available for a number of smaller schemes. Just under half of the identified schemes provide arbitration as an option. This is more complex

¹ A few schemes are mentioned more than once in the map as they cover more than one sector. Nine schemes are included in both the services and consumer goods sections of the map.

than conciliation/mediation and is usually binding on both sides of the dispute. It is often, though not always, offered where conciliation/mediation fails to resolve the dispute.

	Consumer Goods	Services	Goods and Services	Total
Adjudication	1	16	2	19
Arbitration	3	35	5	43
Conciliation/Mediation	5	41	7	53
Ombudsmen	0	14	1	15
Unspecified	1	3	0	4
Total	10	109	15	134 ²

When considering the ADR map against Consumer Direct's classification sectors there are a number of sectors that either have no or limited ADR coverage, including half of Consumer Direct's ten most complained about sectors in 2009. It appears that a number of typical consumer goods (such as mobile phones, televisions and clothing) are not subject to specific dispute resolution mechanisms.

We considered whether there are any significant overlaps presented in the ADR map. Where there are a number of sectors with several dispute resolution mechanisms, this is usually due to the number of trade associations in the sector or where there is a legal obligation for traders to belong to an independent redress scheme and there are a number of approved schemes in operation. Without an assessment of how the schemes operate in practice, it is not possible to assess the impact of such overlaps on the sectors concerned.

By comparing our own research to previous studies in this area, we can see that the provision of ADR in some sectors has improved over recent years. This has often been a direct result of the introduction of statutory redress mechanisms, for example, in relation to estate agents and consumer credit.

² Total is more than the number of ADR schemes (95) as some schemes offer more than one type of redress mechanism.

Policy issues

We have considered the economics of consumer redress and why obtaining redress is a positive thing not only for consumers but also for its positive impact on markets.

A number of policy issues have also emerged from this study:

- How effective are in-house complaints procedures?
- Gaps in ADR coverage
- Is there a case for compulsory membership of ADR schemes in some sectors?
- Should there be agreed criteria for benchmarking of ADR?
- How important is redress in comparison with other interventions?
- Would better knowledge by consumers of their rights reduce the need for third party intervention?
- Is there a need for a consumer ombudsman to cover all sectors?

Conclusion

As a result of the mapping exercise, we now have a clearer picture of the distribution of ADR mechanisms across the UK. In addition we have identified further issues to consider.

1. INTRODUCTION

Project aim

- 1.1 The major driver for this project is the need to have a better understanding of the consumer redress landscape. The purpose of this research project is to analyse the strengths and weaknesses of the current UK consumer redress landscape and highlight policy issues to be considered further.

Scope

- 1.2 The project focuses on consumer redress mechanisms in the business-to-consumer context only. It concentrates on dispute resolution mechanisms rather than procedures in professional bodies that only result in disciplinary action against a professional and no other redress for consumers. An ADR map has been compiled of out-of-court redress mechanisms and in-court mechanisms have also been outlined. Individual in-house company complaints procedures are not included within the ADR map as they are generally used at the stage prior to ADR.

Methodology

- 1.3 All of the research was web-based and relied upon information on redress providers' websites being accurate and up to date. In line with the agreed scope of the project, no analysis was made of the effectiveness, visibility, usage or accessibility of individual schemes.

2. THE REDRESS LANDSCAPE

2.1 In this chapter we start by considering what we mean by consumer redress, before looking at the pathways to redress and the types of redress mechanism available to consumers.

Defining redress

2.2 In order to define redress, we first need to have a clear understanding of what we mean by a complaint. Most definitions of what constitutes a complaint suggest that the key defining factor is an expression of **dissatisfaction** in a purchase or service. For example, the British Standards Institute (BSI)'s complaint handling standard³ defines a complaint as:

'A complaint is an expression of dissatisfaction made to an organisation, related to its products, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected'.

2.3 It follows that redress is the means by which this dissatisfaction is addressed. Early on in our deliberations it became clear that definitions of 'redress' vary and it can be unclear whether the term is being used to refer to the procedure (mechanism) used to address this dissatisfaction or to the outcome. An agreed definition for use within the project was regarded as essential, distinguishing between these two elements. We have suggested definitions for both elements and these are the definitions used throughout this paper:

Consumer Redress: A remedy for a wrong arising from a contract or other relationship between a consumer and trader. The remedy may be:

- an apology
- financial compensation

³ ISO 10002 Customer Satisfaction, Complaints (2004).

- restoration for the consumer to their position prior to the wrongdoing
- an acknowledgement of wrongdoing by the trader
- commitment to future changes in practice.

This is not an exhaustive list. Any or all of the above remedies may be appropriate in an individual case.

Consumer Redress Mechanism: A means and process by which a consumer can seek redress from a trader arising from a contract or other relationship for a perceived or actual wrong.

Types of consumer redress mechanisms include, but are not restricted to:

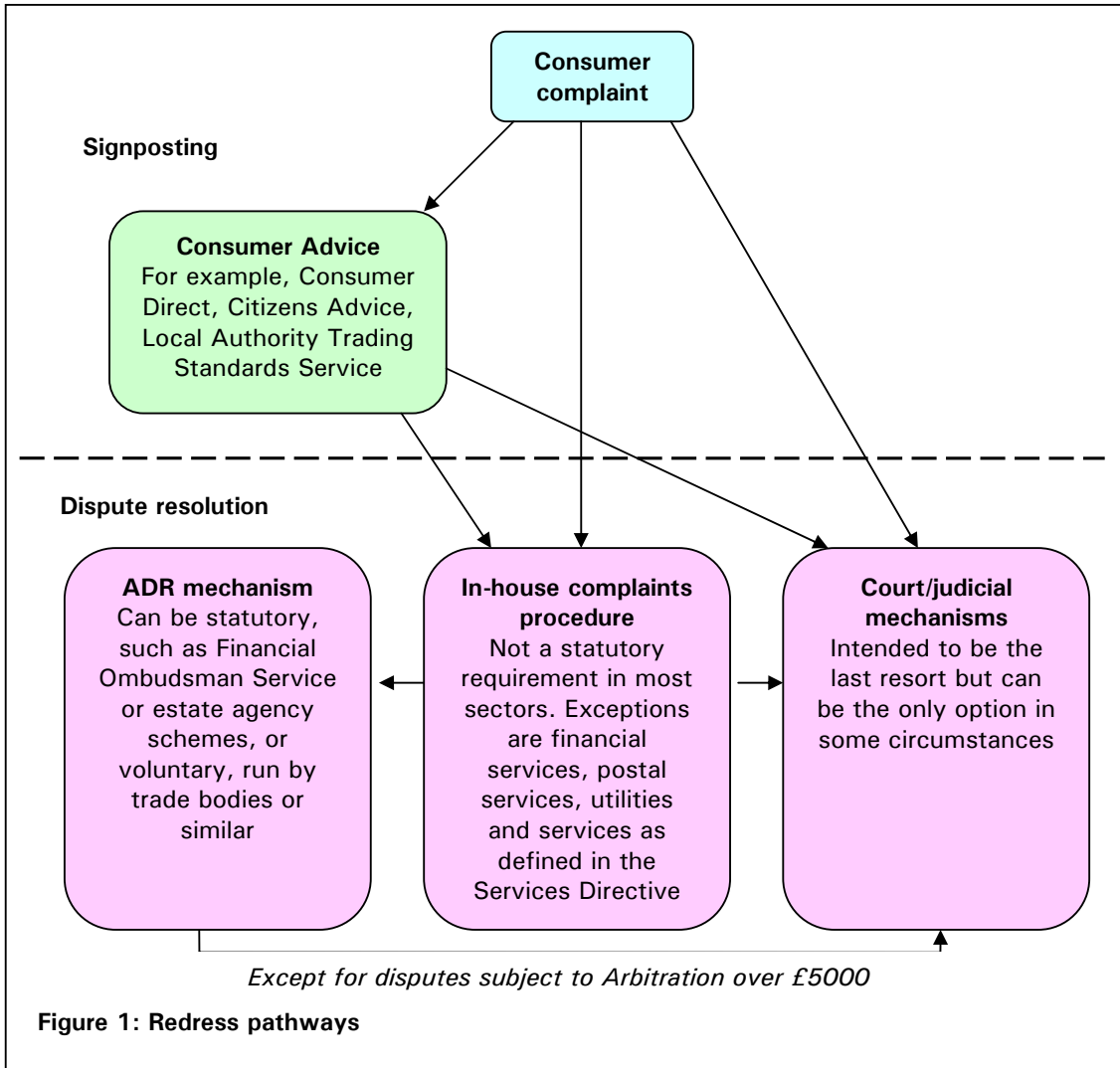
- in-house complaints procedures
- mediation
- conciliation
- adjudication
- arbitration
- ombudsmen schemes
- court-based/judicial redress mechanisms.

2.4 Before examining the characteristics of these mechanisms, we first consider the pathways to obtaining redress.

Redress pathways

2.5 Consumers wishing to obtain redress have a number of options which they can follow, depending on the availability of mechanisms. Generally the first step is to use the trader's in-house complaints procedure where it exists. In some sectors, such as financial services, businesses are required by regulation to operate an in-house complaints mechanism. Businesses from any sector that sign up to an OFT approved code of practice are also required to have a complaints handling system in place (see paragraph 2.11/Box 1 for further details).

- 2.6 The next step may be to move on to an ADR mechanism where it exists, or to court proceedings. Access to an ADR mechanism is generally dependent on the exhaustion of an in-house complaints procedure, although this is not the case for court proceedings where a consumer can take their case directly to the court. If the consumer has completed the ADR process, it is still possible for the complaint to be taken to the court, except in the case of arbitration for claims over the small claims limit (currently £5,000 in England and Wales).
- 2.7 As these processes can intertwine, the experience of obtaining redress may not always follow a single path (Figure 1). Different options can present themselves depending on the type of complaint, the sector and availability of ADR mechanisms.
- 2.8 It should be noted that prior to seeking redress, or during the procedure, consumers may obtain advice from consumer organisations. For example, this may be related to understanding their consumer rights.



2.9 We now move on to consider specific redress mechanisms, starting with out-of-court mechanisms and moving on to legal mechanisms.

Consumer redress mechanisms

In-house complaints procedures

2.10 Many ADR mechanisms stipulate that individuals must have exhausted the company's own in-house complaints procedures before using the ADR mechanism in order to give the trader the opportunity to resolve the dispute before it is escalated. Providers in some regulated sectors, such as utilities and postal services,

have prescribed standards for the handling of consumer complaints.⁴ In the case of providers of services,⁵ there are minimum requirements under the Provision of Services Regulations 2009 which specify that a service provider must:

- a) respond to complaints from recipients of the services as quickly as possible, and
- b) make their best efforts to find a satisfactory solution to complaints from such recipients.

Paragraph (b) does not apply to complaints that are vexatious.

2.11 Under the OFT's Consumer Codes Approval Scheme (see Box 1 for further details) the OFT requires approved codes of practice to include provisions that require code members to have in place 'speedy, responsive, accessible and user friendly procedures for dealing with consumer complaints. A specific reasonable time limit for responding to complaints shall be prescribed'.

Box 1: Consumer Codes Approval Scheme

The OFT's Consumer Codes Approval Scheme (CCAS) is an example of how the OFT has been working with industry bodies to improve service standards and redress mechanisms in a number of sectors, including some of those that consistently receive large numbers of consumer complaints. CCAS aims to approve and promote business-to-consumer codes of practice which provide benefits to consumers that go beyond those provided by law. Codes that have been approved under CCAS have met strict criteria laid down by the OFT, including requirements to have a three stage process for handling complaints.

As with all consumer complaints, the consumer should first seek to resolve their complaint with the trader in question. If the trader and the complainant cannot come to an agreement, the opportunity should be given under the code for the complaint to be resolved through mediation/conciliation. This is usually provided by the code sponsor. If this fails then the consumer should be given access to an independent redress scheme.

⁴ Consumers, Estate Agents and Redress Act 2007.

⁵ Services excluded under the Services Directive: financial services, electronic communications, transport, temporary work agencies, healthcare services, audiovisual services, gambling services, social services, private security services, notaries and bailiffs.

2.12 The British Standards Institute (BSI) complaints handling standard,⁶ provides guidance on in-house systems including complaints-handling frameworks, operating procedures, monitoring and auditing.

2.13 However, even where procedures such as these are in place, their effectiveness might be called into question as set out in a recent Ofcom consultation:⁷

'Complaint levels to Ofcom also demonstrate that consumers often find it difficult to pursue complaints with their providers.

Complaints about 'customer service' are typically the top call-driver to Ofcom's Advisory Team, prompting nearly 1,000 complaints per month. Such complaints are not about the original reason a consumer may have complained to their provider about, but are complaints from consumers about an inability to get their provider to address the issue in dispute (and include where consumers are ignored while trying to make a complaint, communications providers refuse requests to be escalated to someone who has authority to resolve the complaint, refuse to address the point in dispute, and 'pass' the consumer around the organisation). Such high levels of complaints about process issues rather than matters of substance indicate that many consumers find it very difficult to engage with their provider when trying to make a complaint'.

2.14 To address these concerns, Ofcom is establishing minimum standards for complaints handling procedures which will apply to all communications providers (from July 2011). These standards will establish a regulatory requirement for complaints to be handled in a 'fair and timely manner' and will also outline minimum standards for accessibility, transparency and effectiveness of providers' complaints handling procedures.

2.15 While this is only an indicator that in-house complaints procedures appear to be less than effective in one particular sector, it does seem to confirm that even where established procedures exist there

⁶ ISO 10002: 2004.

⁷ Ofcom: A review of consumer complaints procedures (18 December 2009).

may need to be further options for consumers in order to have their complaints satisfactorily resolved. However, further research would need to be undertaken to assess the effectiveness of such procedures across a wider range of sectors before drawing any firm conclusions regarding how well in-house procedures work.

Alternative Dispute Resolution (ADR) Mechanisms

- 2.16 If, having exhausted the in-house complaints procedure, a consumer still has an unresolved dispute, they may be able to move on to ADR. There are a number of different types of ADR mechanism, with a variety of definitions of each type. The types of mechanism noted during our research have included: arbitration, adjudication, early neutral evaluation, expert determination, mediation and conciliation. These mechanisms for resolving disputes may vary from binding decisions to recommendations or agreements between the parties. In addition the organisation and the management of different ADR procedures may vary. They may be publicly or privately organised, or a combination of both, and take the form of, for example, an ombudsman scheme, consumer complaint board, private mediator or trade association scheme.
- 2.17 A useful distinction can be drawn between procedures in which a neutral third party proposes or makes a decision (ombudsmen, adjudicators, arbitrators) and those where the neutral party seeks to bring the parties together and assist them in finding an agreement by common consent (conciliation, mediation). Which of the above procedures is most appropriate will depend on the nature of the dispute to be resolved.
- 2.18 The following definitions have been compiled from various sources and it is noticeable that such definitions vary depending on the source.

Mediation

- 2.19 Mediation is conducted confidentially and consists of an independent third party (the mediator) actively assisting the parties

in working towards a negotiated agreement of a dispute. In mediation the parties to the dispute, not the mediator, decide whether they can resolve things, and what the outcome should be.

- 2.20 Mediation can be used in cases involving only two parties and also those involving a large number of parties or entire communities. It is a non-binding process, although if both parties agree, it can be made binding by way of a court order.

Conciliation

- 2.21 Conciliation refers to a process similar to mediation but in which the neutral third party takes a more active role in putting forward terms of settlement or an opinion on the case. Like mediation, the agreement is non-binding. There is inconsistency in the use of these two terms and mediation is increasingly being adopted as the generic term for third-party facilitation in commercial disputes.

Arbitration

- 2.22 In arbitration an independent third party considers both sides in a dispute, and makes a decision that resolves the dispute. In most cases the arbitrator's decision is legally binding on both sides, so it is not possible to go to court if a party is unhappy with the decision. The only exception is in a consumer contract where the amount in dispute is less than the small claims limit (usually £5,000 in England and Wales) when an arbitration decision is not binding on the consumer.
- 2.23 Arbitration is used widely for disputes between major corporations, employment rights disputes, and consumer disputes. Arbitration is defined and the rules set out in the Arbitration Act 1996, which applies to disputes in England, Wales and Northern Ireland. Only the parts of the Act relating to consumer disputes currently apply in Scotland.
- 2.24 The Arbitration Act 1996 lays down rules for how arbitration should work. Arbitration is intended to be less expensive, less

formal, and more flexible than court procedures, so the rules of evidence are not as strict, and parties can usually have a say in how they want the hearing to be conducted. When arbitration is used in lower value consumer disputes, the arbitrator often makes a decision based on the written evidence which the parties provide, and does not hold a hearing. Many arbitration schemes are run within a market sector, such as the travel industry, and the organisation that runs the scheme will appoint an independent arbitrator.

- 2.25 After considering the parties' submissions, the arbitrator issues a final and binding 'award' which can be based on good practice and reasonableness as well as on the law. The award usually includes reasons for the decision. Under the 1996 Act there is very limited scope for appeal against an arbitrator's award. Usually appeals can only be based on a claim that the arbitrator behaved unfairly. Arbitration awards can be enforced in court if necessary.

Adjudication

- 2.26 Like arbitration, adjudication involves an independent third party – the adjudicator – considering the claims of both sides and making a decision. This is usually done on paper. Both sides send in written details of their argument, with copies of any letters, reports or other evidence. The adjudicator then makes a decision based on this information, and on what is generally considered to be good practice in the business concerned. The adjudicator is usually an expert in the subject matter in dispute and adjudication is usually less formal than arbitration.
- 2.27 Most consumer adjudication schemes - such as the Communications and Internet Services Adjudication Scheme (CISAS), the Furniture Ombudsman and the Postal Redress System - produce decisions that are binding on the company but not on the consumer. Adjudication is more frequently used in dispute resolution schemes run by trade associations to deal with consumer complaints about their members, or in schemes set up to deal with

common disputes about service providers, but which are not about large sums of money.

2.28 'Adjudication' is used to describe any process where an independent third party makes a decision about the best way to resolve a dispute. In this sense, ombudsmen, arbitrators and judges are all types of adjudicators.

Ombudsman schemes

2.29 Ombudsmen are independent, impartial intermediaries who consider complaints about maladministration in government departments and particular services in the public and private sectors. The particular mechanisms of ombudsman schemes vary but they often combine neutral fact-finding, mediation and adjudication in various tiers through which consumers may pursue their complaints.

2.30 There are two main types of ombudsmen:

- public sector ombudsmen, who consider complaints about local councils, government departments and the NHS, and
- private sector ombudsmen, who consider complaints about a range of businesses such as banks, insurers, telecommunication providers and estate agents.

2.31 Some 'private sector' ombudsmen have a statutory basis, and are approved by the regulator for their sector, or by the relevant government department. For example, the estate agents redress schemes are approved by the OFT under the Consumers, Estate Agents and Redress Act 2007 (CEARA, see paragraph 2.38 for further details) and all energy providers are required to be members of the Energy Ombudsman which is approved by Ofgem.

2.32 Ombudsmen use an inquisitorial method of dispute resolution which means that the ombudsman is responsible for asking questions of both sides in order to establish the truth of the situation. This is unlike the adversarial procedure in arbitration and litigation, where

each side is responsible for presenting their own case and the judge or arbitrator has to decide between them.

- 2.33 Awards made by private sector ombudsmen are binding through membership of the ombudsman scheme and a company could lose its membership if it does not comply. The decision is not usually binding on the consumer.

Legal redress mechanisms

- 2.34 Formal legal action is usually the last resort employed by consumers to obtain redress. It is intended to sit above ADR mechanisms such as those mentioned above although consumers can take legal action without going through those mechanisms if they wish.
- 2.35 Most consumer redress actions will take place in the County Court, being the lower tier court. For completeness we consider at Annexe A the full County and High Court systems but in practice, the majority of consumer redress claims will follow the small claims track in the County Court because of the amount of money involved and the nature of the dispute.⁸

⁸ Her Majesty's Courts Service.

3. THE ADR MAP

3.1 In this chapter we present the current position in relation to the availability of consumer ADR, considering any gaps and overlaps.

Compilation of the map

3.2 An ADR map has been compiled of all the ADR schemes that we found in our research (available as a separate Excel spreadsheet). The starting point for this compendium was the use of lists available from generic ADR providers, such as those outlined at Annexe B, as well as the (internal) OFT Redress and Advice Directory, to obtain an overview of available schemes. Web-based research was used to complete the map and check the details of different schemes.

3.3 The map presents information in nine different areas:

- **Sector:** the broad sector to which the scheme belongs - the classification used in our research is broadly based on Consumer Direct classifications
- **Organisation:** the name of the specific scheme – this links to the scheme's website
- **Jurisdiction:** whether the scheme applies across the UK
- **Interest:** narrows down the sector to the specific market interest of the scheme
- **Type:** what type of ADR mechanism the scheme offers
- **Details:** brief description of the scheme's purpose
- **Access:** how the consumer can make use of the scheme
- **Cost:** whether the scheme carries a charge to the consumer
- **Scheme basis:** status of the scheme and how it is funded.

3.4 The map can be interrogated by using the A-Z sort function or using the search option to find a particular scheme. Sorting the data by 'organisation' or 'interest' is likely to be the most useful mechanism for finding a particular scheme or schemes attached to a particular market.

3.5 In total 95 discrete schemes are included in the map across 35 sectors.⁹ As previously mentioned, the focus of this project is on consumer goods and services and as such the map is split according to the following classification:

- Services (87 distinct schemes)
- Consumer goods (17 distinct schemes).

3.6 Schemes relating to public services have been excluded from the map and those relating to professional services have only been listed where there is a facility for consumers to obtain redress. Those with purely disciplinary outcomes involving the professionals, including many of the schemes relating to medical services, have therefore been excluded.

Distribution of ADR mechanisms

3.7 The distribution of ADR mechanisms shows that more than half of the 95 schemes offer conciliation/mediation. Many schemes will offer this as the first stage of a two or three stage process, though it may be the only option available for a number of smaller schemes.

	Consumer Goods	Services	Goods and Services	Total
Adjudication	1	16	2	19
Arbitration	3	35	5	43
Conciliation/Mediation	5	41	7	53
Ombudsmen	0	14	1	15
Unspecified	1	3	0	4
Total	10	109	15	134 ¹⁰

⁹ A few schemes are mentioned more than once in the map as they cover more than one sector. Nine schemes are included in both the services and consumer goods sections of the map.

¹⁰ Total is more than the number of ADR schemes (95) as some schemes offer more than one type of redress mechanism.

3.8 Just under half of the identified schemes provide arbitration as an option. This is more complex than conciliation/mediation and is usually binding on both sides of the dispute. It is often, though not always, offered where conciliation/mediation fails to resolve the dispute.

Coverage

3.9 At the most basic level it appears that consumers are better covered in relation to services than goods, with far more schemes available in this category (87 in comparison to 17). By considering the ADR map alongside Consumer Direct's classification sectors it appears that there are no redress schemes available in the following sectors:

- Food and drink
- DIY materials/cleaning products
- Clothing and footwear
- Toiletries and beauty services
- Jewellery, silverware and clocks
- Tobacco
- Nursery goods
- Sports and hobby equipment
- Toys and games
- CDs, DVDs and computer games
- Photography.

3.10 As well as the sectors with no coverage, there are a number of other sectors that only have limited coverage, including various household goods, furnishings and electrical products. It appears that a number of typical consumer goods are not subject to specific dispute resolution mechanisms.

3.11 It could therefore be the case that consumers with unresolved complaints in these sectors are limited to legal redress mechanisms for resolution. However, there are a number of non sector-specific options available, including schemes specific to certain selling

methods, for example, Safeway (smaller internet retailers), IMRG (larger internet retailers), the Direct Selling Association (doorstep sales) and the Direct Marketing Commission, as well as advisory schemes, such as those mentioned in Annexe B.

Consumer complaints analysis

3.12 Understanding where consumers are experiencing the most problems gives us a starting point to analyse the ADR map. However, using complaints data as an indicator of the desire for consumers to obtain redress may be misleading, as not all reported complaints fall into the category of consumers seeking redress. Such complaints may also include consumers making an enquiry, seeking to obtain information to decide if they wish to make a complaint. There is another limiting factor in that consumer complaints databases may not record the validity of the grievance or the outcome of any discussions with the trader. This lack of clarity over what is being recorded may distort the true picture of dissatisfaction/detriment and should be borne in mind when using such data.

Consumer Direct

3.13 Table 1 analyses the ADR available in relation to the Top 10 Consumer Direct complaints for 2009.¹¹ From this it is clear that half of these sectors have either no or very limited ADR coverage. As mentioned above, consumers with unresolved complaints in these sectors could therefore be limited to legal redress mechanisms for resolution.

3.14 It should be noted that the sectors identified in the table are generally very large markets with substantial numbers of transactions, so although they make the Top 10 Consumer Direct complaints list, this does not show that they have proportionally more problems than other sectors.

¹¹ Consumer Direct is the government-funded telephone and online service offering information and advice on consumer issues. It received over 1.6m contacts and recorded 1,171,794 cases in 2008-09.

Table 1: ADR available in the Top 10 most complained about sectors, Consumer Direct 2009

	Sector	Consumer Direct data	Availability of ADR	Market share
1	Second hand cars purchased from independent dealers	Topped the complaints list for the past four years. Complaints mainly relate to defective goods. 2009 – 50,790 complaints	Two specific ADR schemes available: <ul style="list-style-type: none"> • Retail Motor Industry Federation (RMI) • Scottish Motor Trade Association (SMTA) 	<ul style="list-style-type: none"> • RMI covers England, Wales and Northern Ireland and SMTA covers Scotland, so in effect there is only one scheme available in each part of the UK. • RMI represents about 20 per cent of independent dealers in the second hand car market in England, Wales and Northern Ireland.¹² Unfortunately SMTA do not have details of their market share but have approximately 510 members selling used cars in Scotland (this covers both independent and franchised dealers).¹³ • Approximately half of the 525 complaints handled by the RMI's National Conciliation Service in 2009 were related to used cars.
2	TVs	Complaints mainly relate to defective goods and mis-selling. 2009 – 22,184 complaints	One specific ADR scheme available: <ul style="list-style-type: none"> • Radio, Electrical and Television Retailers' Association (Retra) 	<ul style="list-style-type: none"> • Retra is a trade association for independent electrical retailers and servicing organisations and as such the big players in this market are unable to join. • No figures available for the market share of Retra in relation to televisions but the independent electrical sector is estimated to account for 27-30 per cent of total electrical retail sales in the UK.¹⁴
3	Mobile phones (service agreements)	Complaints mainly relate to substandard service.	Mobile phone providers obliged to belong to an Ofcom-approved ADR	<ul style="list-style-type: none"> • Legal obligation so whole market should be covered. • Ofcom has recently reviewed its consumer complaints procedures in recognition that a significant proportion of

¹² RMI, February 2010

¹³ SMTA, February 2010

¹⁴ Retra, February 2010

	Sector	Consumer Direct data	Availability of ADR	Market share
		2009 – 22,172 complaints	scheme. Two schemes currently available: <ul style="list-style-type: none"> Office of the Telecommunications Ombudsman (Otelo) Communications and Internet Services Adjudication Scheme (CISAS) 	<p>consumers have a poor experience when pursuing a complaint with their provider.¹⁵</p> <ul style="list-style-type: none"> Awareness of ADR in the telecommunications sector is considerably lower than comparable schemes in other sectors. Although there is a regulatory requirement for mobile phone providers to belong to an ADR scheme, there is no correlating obligation on them to notify individual consumers about their right to go to ADR. From July 2011, Ofcom will require providers to include relevant information about ADR on all consumer bills and to write to consumers whose complaints have not been resolved within eight weeks to inform them of their right to go to ADR.
4	Mobile phones (hardware)	Complaints mainly relate to defective goods. 2009 – 18,470 complaints	No ADR schemes available	None
5	Laptops, notebooks and tablet PCs	Complaints mainly relate to defective goods. 2009 – 17,611 complaints	One specific ADR scheme available: <ul style="list-style-type: none"> Professional Computing Association 	<ul style="list-style-type: none"> PCA is a trade body of companies involved in the computing business. While it deals with trade-only manufacturers and distributors, the majority of members also sell direct to users. Unable to obtain data relating to the market share of the PCA but it appears that none of the 'big players' in terms of sales of laptops and similar products are members.
6	Car repairs and	Complaints mainly relate to substandard	Five ADR schemes	<ul style="list-style-type: none"> The number of schemes available suggests that consumers

¹⁵ www.ofcom.org.uk

	Sector	Consumer Direct data	Availability of ADR	Market share
	servicing from independent garages	service. 2009 – 16,387 complaints	available: <ul style="list-style-type: none"> • Motor Codes • RMI • Robert Bosch Ltd • SMTA • Vehicle Builders and Repairers Association Ltd (VBRA) 	<p>should be fairly well protected in this market as long as they are directed to ADR by the trader should they have an unresolved dispute.</p> <ul style="list-style-type: none"> • These five associations appear to cover the majority of the market with the following splits: RMI (70 per cent in England, Wales and Northern Ireland¹⁶), VBRA (30 per cent¹⁷), Motor Codes (15 per cent²²) and Bosch Car Services (3 per cent²²). As before, SMTA do not have data available on market share but have 755 members registered as carrying out repairs or providing repair services.¹⁸
7	Second hand cars purchased from franchise dealers	Complaints mainly relate to defective goods. 2009 – 14,693 complaints	As with second hand cars bought from independent dealers, the RMI and the SMTA are the only providers of ADR in this market	<ul style="list-style-type: none"> • RMI represents about 80 per cent of the franchised used car market in England, Wales and Northern Ireland.¹⁹ • SMTA does not have data relating to market share but have approximately 510 members selling used cars in Scotland (this covers both independent and franchised dealers).
8	Upholstered furniture	Complaints mainly relate to defective goods. 2009 – 14,457 complaints	One specific ADR scheme available: <ul style="list-style-type: none"> • Furniture Ombudsman 	<ul style="list-style-type: none"> • Most of the larger retailers of upholstered furniture, as well as some small sole traders, are registered with the Furniture Ombudsman. • Unfortunately there is no data available on the share of this market covered by the Ombudsman.
9	Women's clothing	Complaints mainly	No ADR scheme available	None

¹⁶ RMI, February 2010

¹⁷ Information provided by the Consumer Codes Approval Scheme, 2008.

¹⁸ SMTA, February 2010

¹⁹ RMI, February 2010

	Sector	Consumer Direct data	Availability of ADR	Market share
		relate to defective goods. 2009 – 14,201 complaints		
10	Telephone services (land line)	Complaints mainly relate to substandard service. 2009 – 11,631 complaints	Telephone service providers obliged to belong to an Ofcom-approved ADR scheme. Two schemes currently available: <ul style="list-style-type: none"> • Otelo • CISAS 	<ul style="list-style-type: none"> • Legal obligation so whole market should be covered. • As mentioned above, Ofcom has recently reviewed its consumer complaints procedures. Their requirement that providers should include relevant information about ADR on all consumer bills and write to consumers whose complaints have not been resolved within eight weeks to inform them of their right to go to ADR extends to telephone service providers as well as mobile service providers.

3.15 Although Consumer Direct data offers the most comprehensive overview of consumer complaints, a number of other recent surveys and reports have also considered consumer complaints data.

Consumer Conditions Survey

3.16 Over the last two years a Consumer Conditions Survey has been undertaken by BIS/Consumer Focus to examine consumer conditions and consumer perceptions of a range of different markets.²⁰ The survey rates 45 different markets in respect of a number of considerations²¹ and concludes with an overall Consumer Confidence Index (CCI) for each market. The survey also considers consumer complaints across markets, though these do not have any influence on the CCI.

3.17 Although four of the Top 10 Consumer Direct complaints for 2009 were the subject of complaint for more than 10 per cent of consumers under the 2009 survey,²² the survey highlights a number of other markets that are subject to a high proportion of consumer complaints. On average, the following markets received complaints from one in five consumers:

- renting a property or management services from a private landlord
- gas/electricity
- internet service providers
- TV service providers.

²⁰ This was completed by BERR in 2008 and Consumer Focus in 2009.

²¹ The Key Performance Indicators are: the ease or difficulty of comparing the quality of goods and services; the ease or difficulty of comparing prices; the range of goods and services and the degree of choice available; how well, or poorly, what was bought or experienced lived up to expectations; the degree of confidence that consumers' rights are protected; and the degree of confidence that advertising and marketing is trustworthy.

²² Telephone services (land line), Mobile phone (service agreements), Personal computers (different terminology than that used by Consumer Direct but would include 'Laptops, notebooks and tablet PCs'), Car repair and servicing.

- 3.18 ADR schemes are available in the first three of these markets but TV service providers are not regulated and there are no ADR mechanisms for this market.²³
- 3.19 **Landlords/letting agents:** there is a legal obligation for all deposits taken by landlords and letting agents to be protected. There are three different tenancy deposit schemes in operation (Deposit Protection Scheme, Tenancy Deposit Scheme and mydeposits). The landlord is required to inform the tenant of the scheme they belong to and it should be straightforward for the consumer to seek redress regarding disputes about deposits.
- 3.20 In addition to these tenancy deposit schemes, both the Association of Residential Letting Agents and the Housing Ombudsman Service consider disputes not relating to deposits. Both schemes are only accessible to consumers dealing with scheme members.
- 3.21 **Gas/electricity:** all energy companies are legally required to join an approved dispute resolution scheme. At present the only approved scheme is the Energy Ombudsman and consumers should be able to take any dispute relating to their energy supplier to the Ombudsman.
- 3.22 Four companies (Atlantic Electric and Gas, Scottish Hydro Electric, Southern Electric and Swalec) also belong to the Energy Adjudication Service operated by the Chartered Institute of Arbitrators. From the information available on the two schemes' websites it is unclear how they differ.
- 3.23 **Internet service providers:** although there is no legal requirement for internet service providers to belong to a dispute resolution scheme, the vast majority (over 95 per cent of the Broadband market) belong to the Internet Service Providers' Association (ISPA). ISPA provides help to consumers in resolving complaints against members before they can be passed to an ISPA-approved ADR

²³ This distinction seems strange as a consumer with a bundled telecommunications package, covering for example, telephone, broadband and television would have access to ADR for complaints relating to the first two products but not the television element.

scheme. At present there are two such schemes available, those offered by CISAS and Otelo, and consumers should be able to approach the relevant scheme in relation to unresolved disputes. One of the benefits of ISPA membership is free membership of CISAS and as a result the majority of members belong to this scheme.

- 3.24 While the Top 10 Consumer Direct complaints focus primarily on goods, the results of this survey are skewed more towards services. It is evident from both that the telecommunications sector is subject to a high number of consumer complaints. As mentioned above awareness of the ADR schemes offered by CISAS and Otelo is relatively low but work is being undertaken to improve this.

Consumer detriment

- 3.25 OFT consumer detriment research assessed consumer complaints behaviour to measure the overall value of detriment in the economy.²⁴ The report found that smaller value problems are much more commonly experienced but the consumer is more likely to complain or take action in relation to high detriment problems. When taking action most consumers choose to complain direct to the company providing the goods/service rather than any other organisation. Consumers who complained only reported complaining through Consumer Direct in three per cent of cases.
- 3.26 Complaint incidence analysis found that consumers were more likely than average to complain to Consumer Direct in relation to home maintenance and improvements, furniture and second hand cars and less likely than average to complain about postal services, domestic fuel, personal banking, insurance and internet facilities. This is partially reflected in the Top 10 Consumer Direct complaints and is perhaps to be expected as there are regulatory agencies involved in many of the latter markets, and so consumers may deal direct with the regulators to solve their problems.

²⁴ Consumer detriment: Assessing the frequency and impact of consumer problems with goods and services (April 2008, OFT992).

3.27 Overall, consumers are more likely to complain about insurance and personal banking problems than any other category. These categories are also those with the highest average financial detriment levels. They do not, however, feature in the Top 10 Consumer Direct complaints.

3.28 There were just over 5,400 complaints to Consumer Direct in 2009 related to personal banking and in excess of 14,000 related to insurance. Although the number of complaints related to insurance is greater than the number of complaints related to telephone services (number ten in the Top 10 – see Table 1) Consumer Direct sub-divides the category therefore no one insurance category features in the Top 10. Additionally, there are well known regulatory agencies involved in financial services and consumers may go direct to these with their complaints (see Box 2).

Box 2: Financial services

The financial services industry is regulated by the Financial Services Authority (FSA) with the Financial Ombudsman Service (FOS) providing independent expertise to settle complaints in this area. Financial services providers are required to advertise FOS to their clients and therefore awareness of the scheme is high.²⁵

FOS is the largest ADR mechanism in Europe in terms of complaint numbers, receiving more than 100,000 cases per year. It is a public sector body, established and governed by legislation, but operating with industry contributions. Typically, adjudicators of the FOS perform an initial investigation of a case and try to mediate between the parties. In an early stage of the procedure the FOS can also issue recommendations, which at this stage are not binding. It is estimated that 90 per cent of cases are solved through mediation. If the parties cannot reach an agreement at this stage, the case is submitted to an ombudsman, who issues a decision. Decisions are binding on the firm and if accepted by the consumer the decision becomes binding on both parties. If the consumer does not accept the decision, he or she is free to take the dispute to court. The limit of the ombudsman's award is £100,000, but it can however recommend the firm to pay the consumer sums above this amount.

Overlaps

3.29 We have considered whether there are any significant overlaps presented in the ADR map. While there are a number of sectors

²⁵ According to research, 74 per cent of people said they were aware of the Financial Ombudsman Service (Financial Ombudsman Service annual review 2008/09).

where there are several dispute resolution mechanisms,²⁶ this is usually due to the number of trade associations in the sector or where there is a legal obligation for traders to belong to an independent redress scheme and there are a number of approved schemes in operation. Without an assessment of how the schemes operate in practice, it is not possible to assess the impact of such overlaps on the sectors concerned.

3.30 Although a particular sector may include several dispute resolution mechanisms, the individual consumer usually only has access to one particular scheme. For example, the OFT has a role to approve redress schemes in the estate agency sector and although there are currently two such schemes, it is the estate agent's choice as to which scheme they join.

3.31 Having considered current ADR provision we now briefly outline previous studies in this area, reflecting on how our own research compares.

Past research

UK studies

3.32 A joint Department for Trade and Industry/National Consumer Council report in 2004²⁷ looked at the provision and usage of ADR for specific sectors and concluded that:

'Our research revealed that provision of ADR for consumer problems is ad hoc and presents a lottery for consumers. The nature of the lottery depends either on the type of problem faced or where the problem arises, and sometimes on the ability of the consumer to afford the fees. Aside from a few active schemes, consumers with an unresolved complaint over goods and services face very little in the way of a choice between using ADR and going to court'.

²⁶ Including car servicing and repair, estate agents, landlords/letting agents and removals.

²⁷ Seeking resolution: the availability and usage of consumer to business alternative dispute resolution in the United Kingdom (January 2004).

3.33 The report made the following observations in terms of sectoral coverage:

Adequate coverage	Limited coverage
<ul style="list-style-type: none"> • Travel agents • Upholstered Furniture • Glass and Glazing • Carpets • Telecommunications 	<ul style="list-style-type: none"> • Estate agents • Funerals • Consumer credit • Internet issues • Direct selling

3.34 Furthermore, little or no ADR provision was found in relation to home maintenance and repairs, electrical appliances, and second hand cars.

3.35 The provision of ADR in some of these sectors has improved, such as the introduction of statutory redress mechanisms in relation to estate agents and consumer credit (CEARA and FOS). However, some sectors still appear to be inadequately covered, as outlined in paragraph 3.9.

3.36 A report for the Department for Business, Enterprise and Regulatory Reform undertaken by the University of East Anglia in August 2008²⁸ also concluded that 'the coverage of ADR schemes in the UK is patchy, and some markets do not have an ADR scheme at all (and this is true of some markets which display low levels of customer satisfaction)...the UK's provision of ADR schemes is an area where further progress could be made if the UK is to be on a par with the best'. Again, this conclusion is supported by our own study as reflected in the identified gaps in provision.

²⁸ University of East Anglia: Benchmarking the performance of the UK framework supporting consumer empowerment through comparison against relevant international comparator countries (August 2008).

EU studies

- 3.37 Research was commissioned by DG Sanco in 2009 to undertake a review of ADR mechanisms in the EU.²⁹ This study found a total of 750 business-to-consumer ADR schemes in operation across the EU, of which 43 are in the UK. The number of ADR cases is increasing across the EU with 410,000 cases recorded in 2006, 473,000 in 2007 and 530,000 during 2008. This research also reported that the Financial Ombudsman Scheme is by far the largest ADR scheme in Europe in terms of complaint numbers (receiving 100,000 per annum, compared to 5,000-20,000 per annum for the next largest schemes). Annex C outlines the redress mechanisms available in a selection of other countries for comparative purposes.
- 3.38 Across the EU, ADR schemes have been more widely set up to solve disputes in financial services, package travel/tourism and telecommunications. Gaps for the UK were identified as occurring in transport, food, non-food goods, construction, games of chance, scams and pyramid schemes.
- 3.39 Other qualitative EU-wide research³⁰ considered consumers' experiences of using redress mechanisms and found that awareness of specific redress mechanisms is extremely limited, and that even where consumers had used such a scheme their knowledge was limited to that scheme only. However, the UK was cited as a notable exception with consumers saying they feel well informed about what to do if a supplier's response to a complaint is unsatisfactory. Key sources of awareness across the EU are given as mass media such as TV shows, and the internet.
- 3.40 The study also considered consumers' experiences with in-house complaints handling and concluded that the 'majority of those who had been through the process of complaining to a supplier were left feeling negative about the complaining process. The majority of

²⁹ Civic Consulting: Study on the use of Alternative Dispute Resolution in the European Union (16 October 2009).

consumers describe their experiences in endeavouring to obtain an outcome from suppliers as difficult and many who continued into a consumer redress process note their dissatisfaction with the results of this initial stage of the process. In most instances, seeking redress was a time-consuming and arduous exercise'. However, consumers in the UK and Nordic member states did report more positive experiences with help lines than in others.

- 3.41 Regarding consumers' awareness of redress mechanisms, court action is the most commonly known mechanism for redress amongst consumers from all member states. In the study, consumers who had used this mechanism spoke positively about the enforceability of the judgment (in comparison to mediation or arbitration processes) and the fact that the process was managed by legal expertise, removing responsibility from the consumer to make their case against the supplier.
- 3.42 The most commonly cited benefit of using ADR was that it involves an independent third party in the process which is therefore expected to lead to a fair and equitable outcome. The fact that the entire process is handled out of court was seen as a positive benefit as was the simple and fast process as compared to formal legal proceedings. A notable exception to this view came from consumers in the UK who felt that ADR was not as 'quick or as simple as they would have liked'.

³⁰ Eurobarometer: Consumer Redress in the European Union: Consumer Experiences, Perceptions and Choices (August 2009).

4. POLICY ISSUES

- 4.1 A number of policy issues have emerged from this study, including the effectiveness of complaints procedures, whether there is a case for compulsory membership of ADR schemes in some sectors and whether better knowledge by consumers of their rights would reduce the need for third party intervention. Before considering these, we first look at the economics of consumer redress and why obtaining redress is not only a positive thing for consumers but its potentially positive impact on markets.

Why consumer redress is good for markets

In well functioning markets the need for redress should in theory be minimal...

- 4.2 Generally in well functioning markets the need for consumer redress should be minimal. Firms which provide goods or services that fail to meet described standards will risk losing sales because consumers will switch to alternative brands. Moreover, risk of losing sales means that firms will have incentives to fix any problems that do arise as quickly and efficiently as possible.

...because loss of sales via reputation disciplines the market

- 4.3 When quality is lower than described, and this can be observed prior to purchase, sales are lost because consumers will simply not purchase in the first place. It is perhaps more usual however, that some aspect of quality cannot be observed upfront. In these circumstances, reduced sales are driven by reputation effects. Consumers who discover quality is lower than stated can punish firms by not returning to them in future. They can also punish them via word of mouth (circulating bad reviews) reducing future sales still further.

But sometimes the reputation mechanism can break down...

4.4 It is therefore the fear of losing reputation which disciplines firms to provide goods and services as described. It is also this reputation mechanism which gives consumers confidence to purchase products. The reputation mechanism, however, can sometimes be weakened. In particular if:

- a) goods or services are infrequently purchased or if the scope for generating reputation via word of mouth is low. For example, word of mouth might be lower if there is a stigma to the product (for example, medicines for embarrassing illnesses or debt consolidation products), or for products where people will be embarrassed to admit they fell for poor quality (for example, sent off coupons for a 'prize' good). Infrequent purchases (typically large) might include houses, financial products, wedding dresses or once in a life time holidays
- b) there are small firms in the market, since smaller firms can find reputation harder to build and more costly to signal. For example, where there are lots of small local traders (often individuals), such as painting and decorating, plumbing or removal firms
- c) there are 'sharks' in the market who don't care about longevity, since such firms are happy to lose future sales. For example, markets that attract sharks could be ones which take advantage of customer unfamiliarity, for example carbon offsetting, or ones where money is collected before payout, such as pension schemes or insurance (if unregulated), or perhaps online sales or
- d) consumers cannot identify whether problems with quality were the result of the specific firm or are market wide. This creates a free rider problem. Collectively firms will be better off if reputation and confidence in the market is high but unilaterally firms have lower incentives to provide the quality promised. Free riding occurs because the negative reputation

effect will be shared across all players. Examples of markets with collective reputation might include those where products are similar, for example, food products or chemicals. In the BSE scare in the 1990s all beef sales fell (not just those of beef in the affected countries) and when there is a chemical accident, reputation across all chemical plants falls.³¹ More generally collective reputation arises in markets where consumers perceive they 'are all the same' – perhaps utilities.³²

- 4.5 When the reputation mechanism is weakened there are two problems. First, firms will have increased incentives to reduce quality from that stated³³ because they will no longer lose as many future sales when they do so. Second, it is difficult for consumers to have confidence in the market (when they cannot ascertain quality pre-purchase) because they understand that firms might have an incentive to promise high quality but deliver low.

When the reputation mechanism does break down consumer access to redress can help...

- 4.6 Redress mechanisms and redress can help to address these problems. On the consumer side redress helps to restore consumer trust in markets as consumers know if quality is lower than promised they can seek compensation. For firms, incentives to renege on quality promises are reduced since consumer access to redress forces firms to compensate consumers if they do cheat.³⁴

³¹ For example, King and Lenox cite polls conducted by US chemical companies which find that people do not distinguish between individual companies and the chemical industry as a whole. In particular, a few well-publicised chemical accidents have reduced the reputation of the whole industry. ('Industry self-regulation without sanctions: the chemical industry responsible care program': King and Lenox, *Academy of management journal*, 2000, Vol.43, No 4, 698-716.

³² Although similar products (with weak brands) are more likely to have this collective reputation arguably to a lesser extent it might also appear in many more markets.

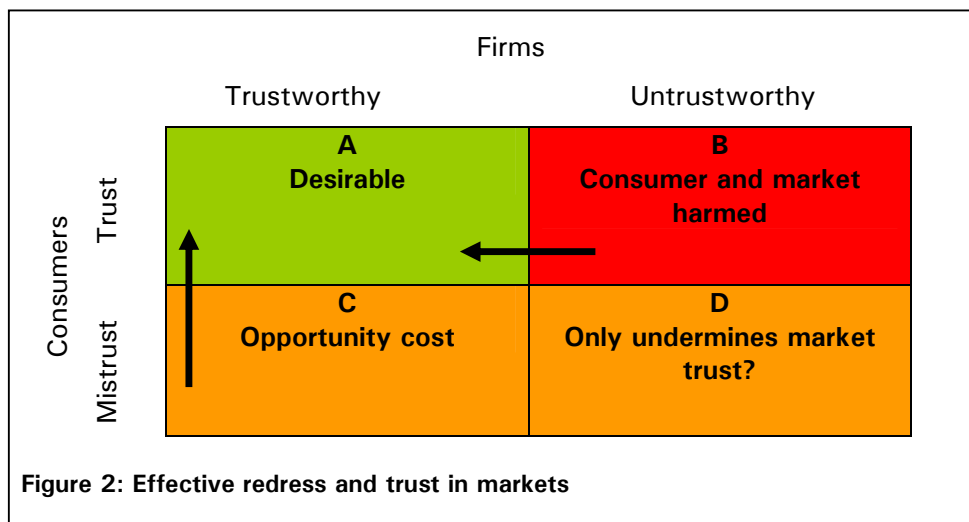
³³ We assume here the incentive they have to cheat is driven by the fact it is cheaper to provide low quality than it is to provide high.

³⁴ If there are credence goods, that is, if consumers are unable to determine the quality the firm provided, then redress schemes are not likely to be effective in disciplining firms to provide high quality and generating consumer confidence.

4.7 Figure 2 shows that access to redress can help to increase both the number of firms that can be trusted and the level of trust that consumers have.³⁵

Redress can restore consumer confidence (demand side)...

4.8 Figure 2 presents two dichotomies. First firms can either be trustworthy (provide what they say they will provide) or untrustworthy (fail to provide quality stated – at the extreme, deliberately lie about quality). Second, consumers can either trust or mistrust firms.



4.9 Box A is thus desirable, firms are trustworthy and consumers trust those firms. In box B consumers mistakenly trust firms which cannot be trusted. Harm arises to the consumer who is stung, but also to the market in general, as the consumer may be cautious about buying from the market in future.³⁶ In box C, there is a missed opportunity. The consumer does not trust a truthful firm; a mutually beneficial trade could occur but does not. In box D the

³⁵ This idea of trust related to trustworthiness was inspired by and borrowed from a presentation given by O'Hara to the OFT. The approach taken here is tailored to apply to redress and so is not identical. However, for more information see: O'Hara, K. (2009) A General Definition of Trust. Technical Report , School of Electronics and Computer Science, University of Southampton' This can be found at www.ecs.soton.ac.uk/people/kmo/publications

³⁶ Assuming some reputation is collective/shared.

consumer rightly chooses not to trust an untrustworthy firm, and although this is the right decision, the market is undermined as the existence of the untrustworthy firm makes consumers less trusting in general.

- 4.10 Redress mechanisms (depicted by the arrows) can move a consumer from box C to desirable box A by helping to restore consumer trust. Redress helps restore confidence directly, because consumers who have their problems resolved (or at least have complaints heard) will gain in confidence and be more likely to trust to buy from the firm (and in the market) in the future. It also has indirect impacts because awareness that a redress mechanism exists will reassure consumers about purchasing (even if they do not directly experience a problem).

Redress can reduce firms incentives to renege on quality (supply side)...

- 4.11 Redress mechanisms also act to improve the supply side of the market by improving the incentives for firms. Redress schemes increase the number of trustworthy firms, moving firms from box B to box A. Redress mechanisms reduce incentives for firms to renege on quality by committing firms to providing their stated quality. With redress mechanisms in place if firms do fail to provide the quality stated they will risk incurring 'redress costs', for example, having to compensate the consumer. Moreover, firms will have incentives to gain a reputation for providing high quality redress. Consumers, aware they cannot observe all quality aspects, will want to choose a firm which can provide the most convincing guarantee that any issues which arise will be resolved.
- 4.12 To the extent that access to redress enables firms to differentiate themselves the free rider problem outlined in paragraph 4.4 can be mitigated. Reputation is no longer shared across the market if some firms can signal their own reputation via good redress schemes.
- 4.13 However, the free rider problem can only be partly mitigated and not solved. This is because access to redress itself may also generate a free rider problem. In providing redress firms will

generate benefits not only to themselves but also to the wider market (a redress free rider problem).

- 4.14 Although unilateral redress schemes suffer from this redress free rider problem, redress mechanisms under self regulation schemes may not.³⁷ Under self regulation schemes groups of firms sign up to common redress mechanisms. Since all firms provide redress to the same level the free rider problem can disappear.³⁸

But redress might also have some negative consequences...

- 4.15 Although overall access to redress is likely to be beneficial there are some theoretical reasons why redress, especially when ineffective, might be damaging. Ineffective redress might be that which is very costly or time consuming for the consumer to pursue or which in reality rarely addresses consumer concerns. Ineffective redress could have several consequences.

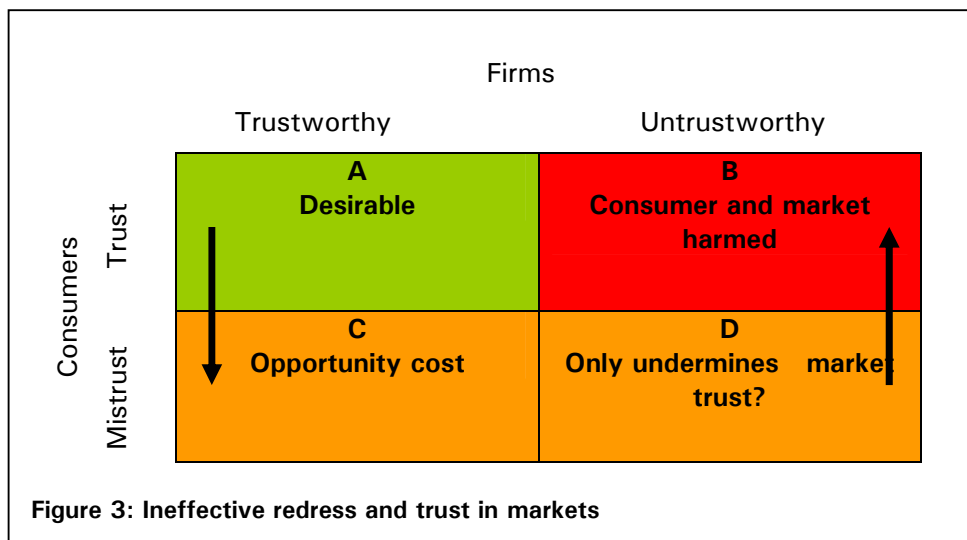
- 4.16 Figure 3 illustrates the above. Ineffective redress not only fails to have the beneficial effects outlined in Figure 2, but it also might actually worsen market outcomes. First, ineffective redress will deter consumers from pursuing it and thus will exert less pressure on firms to provide the stated quality (no longer get the positive box C to box A move). Second, ineffective redress means firms are less likely to face 'redress costs' for cheating on quality (no longer get the positive box B to box A move). Third, the existence of a redress mechanism increases consumer confidence but if this

³⁷ Free riding will probably remain to some extent unless self regulation schemes cover the whole market. However, even without full coverage of a self regulation scheme, free riding could be significantly reduced if those within a scheme can give a strong enough signal that they represent better redress than those outside of it.

³⁸ Self regulation might also have other advantages over the redress provided in consumer law. For example, redress through consumer courts can be costly and timely (or can mean bearing risk) and can only consider the letter of the law. Redress in self regulation schemes (and indeed from individual firms) could help enhance the protection offered by consumer law. For example, since they might be cheaper and quicker for consumers, and might allow protection outside of the letter of the law. Further self regulation schemes allows firms to shares costs and risks and thus offers an additional benefit to smaller firms who might otherwise find provision too expensive. This paper does not go into self-regulation in detail. See the economics of self-regulation for more.

redress is ineffective this can be problematic because it creates trust in something that can't be trusted (move from box D to box B in Figure 3). Fourth, when consumers directly experience ineffective redress they might rightly be put off from trusting the problem firm in the future. However, they might also unnecessarily lose some trust in the market more generally (move from box A to box C in Figure 3).

4.17 Moreover, the existence of a redress mechanism, even an effective one, might have other detrimental consequences. First, when redress mechanisms are in place consumers might be tempted to over rely on them and might fail to perform adequate pre-purchase checks.³⁹ Second, some firms might use the redress mechanism to exploit consumers who do not complain. It may be profitable for firms to provide lower quality but only compensate the sub-set of consumers who complain. A firm employing this strategy will make higher profit from those consumers who do not seek redress. As a result firms may prefer to offer low quality and then simply compensate the subset of complainers. Although in markets where there is at least some scope for generating a reputation for bad service or low quality, this threat is mitigated.



³⁹ This problem is known in economics as moral hazard. The problem is of course exacerbated when the eventual redress is ineffective (or fails to compensate the consumer in the way they expect) because the failure to be cautious costs the consumer more.

- 4.18 Although there are potentially downsides to redress, especially when it is ineffective, these risks should not be inflated, not least because they can be mitigated by the existence of consumer protection legislation, co-regulation and self regulation. All of which can help to ensure redress schemes deliver for consumers.
- 4.19 **Overall, as long as redress mechanisms are effective it seems likely that they will provide consumers with the confidence to trust the market and firms with incentives to be more trustable. Nonetheless truly measuring the impacts of redress mechanisms and redress is an empirical question not covered here.**
- 4.20 Having considered why it is important for consumers to have access to redress and redress mechanisms we now look at the broader policy implications emerging from this project, relating to the effectiveness of redress options, the potential need for benchmarking criteria and the option of a consumer ombudsman.

Wider policy issues emerging from our research

How effective are in-house complaints procedures? Should they be made compulsory and to a defined standard?

- 4.23 In-house complaints procedures are generally the first option for consumers and should ideally provide resolution without the need to escalate the complaint. Further research would need to be undertaken to assess the comprehensiveness and effectiveness of such procedures, particularly in the purchase of goods where there are no existing statutory requirements to deal with consumer complaints.
- 4.24 For services, the Provision of Services Regulations (PSRs) require businesses to make available contact details to which all recipients of the service can send a complaint or a request for information about the service. Businesses must respond to complaints as quickly as possible and except for vexatious complaints, make their best efforts to find a satisfactory solution.

4.25 It is noticeable that timescales are not specified as to what would be regarded as 'as quickly as possible' or 'a satisfactory solution'. In its guidance to business on the PSRs, BIS advises that:

'You are also required to respond to complaints as quickly as possible. Because the nature of complaints and circumstances vary so much, these Regulations do not define this further or set a time limit, but factors to consider include:

- the means and ease by which the recipient can be contacted
- the nature and complexity of a specific case
- the availability of the complainant
- whether information is needed from a third party
- language issues.

You must also make your best efforts to find a satisfactory solution to complaints. However, you are not expected to do so in the case of vexatious complaints which may include a complaint which is clearly unsubstantiated or malicious. You should not use this provision to avoid replying to complaints which are merely annoying or inconvenient'.

4.36 As the PSRs came into force in December 2009 it is not yet possible to assess the effectiveness of these new requirements, however, it does lead to a discrepancy between goods and services which at present is not being addressed. Whether there is a need for more than a voluntary standard such as the BSI standard for in-house complaints handling mechanisms would also be a factor to consider. The findings from the previously mentioned Ofcom consultation will also be useful in contributing to our knowledge on in-house complaints procedures.

4.37 Similarly, a recent FSA/FOS/OFT redress discussion paper⁴⁰ highlights that within the financial services sector 'consumer detriment from inadequate complaint handling and systemic problems remains a major issue'. A consultation paper will be published in late 2010 on the complaint handling rules in the FSA handbook.

Gaps in ADR coverage

4.38 From the analysis of the ADR map against Consumer Direct data it is clear that there are gaps in a number of sectors where there are high levels of complaint. In some sectors, therefore, reliance on legal processes is the only escalation option available.

Is there a case for compulsory membership of ADR schemes in some sectors?

4.39 The OFT has supported compulsory membership of ADR schemes when they have been proposed for utilities and estate agents, on the grounds that consumers are guaranteed access to a redress mechanism and businesses benefit by having a mechanism which enables them to resolve complaints. Consumer agencies can also monitor problems within sectors more effectively and the redress mechanisms can provide evidence for taking enforcement action.

4.40 However, an approval agency is necessary to set criteria and proactively monitor in order to ensure the quality of the ADR mechanism.

⁴⁰ FSA/FOS/OFT: Consumer complaints (emerging risks and mass claims). Discussion paper 10/1 (March 2010).

Should there be agreed criteria for benchmarking of ADR?

4.41 Standards and best practice for ADR schemes have been recommended by both the European Commission⁴¹ and the Organisation for Economic Co-operation and Development⁴² and within the UK the CCAS provides criteria for voluntary schemes. Other regulators including Ofcom, Ofgem, Postcomm and FOS provide criteria and approval mechanisms. However, there are no UK agreed criteria for benchmarking of voluntary ADR schemes. Membership of the British Irish Ombudsman Association is voluntary (see Annexe B). Given the wide variety of schemes, their histories and their potential effectiveness a benchmarking standard may provide consumers and businesses with reassurance that the scheme at least meets minimum criteria.

How important is redress in comparison with other interventions?

4.42 So far the assumption has been that access to effective redress would improve customer satisfaction and encourage traders to provide good quality goods and services. But where should redress be placed within the spectrum of mechanisms to address consumer detriment in a sector? Should this always be the key consideration or is the need for redress only a symptom of market failure?

Would better knowledge by consumers of their rights reduce the need for third party intervention?

4.43 If consumers have a good awareness of their consumer rights and are able to use them effectively, does this reduce the need for third party redress mechanisms such as ADR? Or are there other reasons why consumers are unable to assert their rights with businesses? Traders' lack of knowledge of the Sale of Goods Act 1979 (SOGA) has been highlighted by the OFT's SOGA campaign but what about non-retail sectors, such as car repairs/sales? Are there other factors

⁴¹ Commission Recommendation on the principles applicable to the bodies responsible for out of court settlement of consumer disputes (98/257/EC) and Commission *Recommendation on the principles for out of court bodies involved in the consensual resolution of consumer disputes* (2001/310/EC).

⁴² OECD Recommendation on Consumer Dispute Resolution and Redress 2007.

at work here which prevent consumers from asserting their rights successfully?

Is there a need for a consumer ombudsman to cover all sectors?

- 4.44 There has previously been initial consideration given by a cross government group to the idea of rationalising some ADR provision. For example, in the estate agency sector where there are a number of different elements to a transaction which can be interlinked (estate agent, surveyor, mortgage provider) the idea of a 'one stop shop' property ombudsman to either consider all complaints in the sector or to act as the portal for consumers to use to access the different ADR mechanisms has been considered. Consolidation of a number of ADR mechanisms/ombudsmen in this way is not a new concept as the current Financial Services Ombudsman is a consolidation of six former complaints schemes: the Banking Ombudsman, the Building Societies Ombudsman, the Insurance Ombudsman, the Investment Ombudsman, the Personal Investment Authority Ombudsman and the Securities and Futures Authority's Complaints Bureau.
- 4.45 Given the proposals regarding the introduction of a Consumer Advocate, there may be more interest in expanding this role to an ombudsman type role in the future, although this is likely to depend on how successfully this model is viewed in practice.
- 4.46 There are a number of examples in other member states, particularly the Nordic countries, where a single ombudsman exists to cover many sectors (see Annexe C). There are a great number of issues related to such a system which would need to be considered should this idea be proposed for the UK.

Annexe A: Legal redress mechanisms

County Court Action

A.1 If a consumer opts to pursue legal action their case will most likely be considered in the County Court (see Figure 4 for an illustration of the County Court structure). Due to the complexity of cases, the majority will be handled by the Money Claims Online system or in the small claims track but each track is considered below.

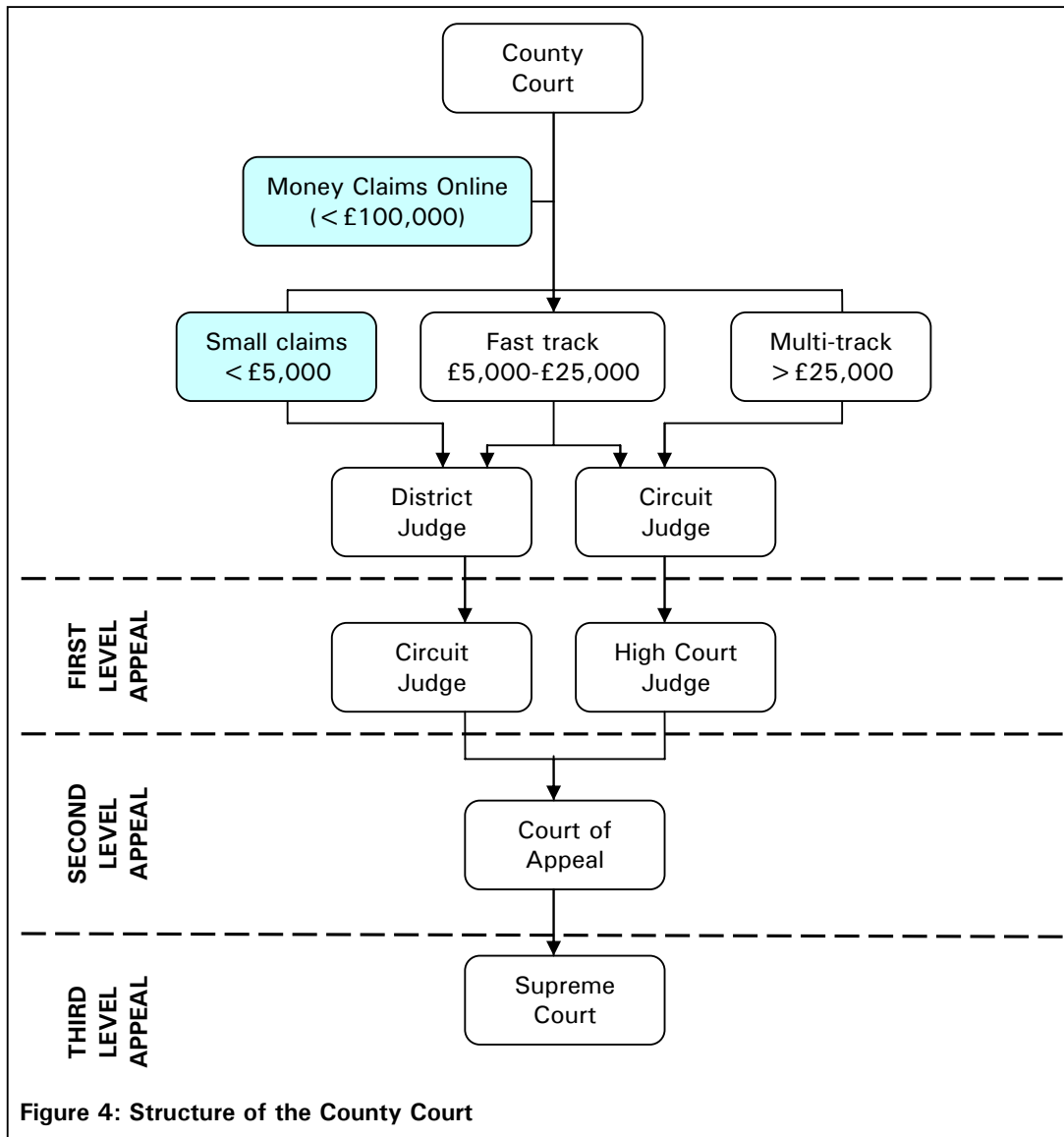


Figure 4: Structure of the County Court

Money Claims Online

- A.2 The simplest method of pursuing legal action is by using the Money Claims Online system (MCOL). However, this is only available in limited circumstances and only for money claims of a fixed sum less than £100,000 (and so does not include damages). The claim must not be against more than two people and both the claimant and defendant(s) must have a UK address. The Northampton County Court centrally administers the system issuing and serving the claim. A guide to MCOL is available.⁴³
- A.3 As the name suggests the whole process takes place online. When registering, the claimant supplies information in relation to the claim, as well as paying the associated court fee. The fee is payable by debit or credit card and depends upon the amount claimed. No remissions or exemptions can be claimed.
- A.4 Judgment by default or as a result of admissions can be entered online, as can a request for the execution of a warrant of execution. Extra fees are payable at both points. No other form of enforcement can be used on MCOL. If the claim is defended, that is if the defendant completes a defence, the matter will be transferred to the claimant's local County Court and proceed in the normal way depending on the amount and complexity of the claim.

Types of procedure in the County Court

- A.5 The types of claims pursued by consumers for redress (claims for refunds or damages as a result of faulty goods or workmanship) are dealt with using one of three types of procedure in the County Court. These are the small claims track, fast track and multi-track. Claims for less than £5,000 are usually allocated to the small claims track, claims of £5,000 up to £25,000 are usually allocated to fast track and all others to multi-track.
- A.6 All claims are started in the same way using a claim form which is served on the defendant(s). If a defence is filed an allocation

questionnaire is sent to the parties. The judge uses the information on this form, such as the amount of the claim and its complexity, to decide which track to allocate the case to. This will affect how the case is dealt with, including how it is prepared, types of hearing, length of the hearing and the type of judge who will deal with it. The parties are notified what track the claim has been allocated to by way of a notice of allocation.

Small Claims Track

- A.7 The allocation questionnaire asks parties if they would like to use the Small Claims Mediation Service, a free service offered by HM Courts Service. As mediation is a voluntary process, it will only take place if all parties agree. If this is the case, a Small Claims Mediator will contact the parties. Mediation can be by telephone or by a face to face meeting. If agreement is reached the matter is settled on this basis and the claim withdrawn.
- A.8 In the absence of successful mediation the case continues. The notice of allocation will tell the parties what they need to do to prepare for trial and whether they may use an expert. It will also usually give the time, date and place of the hearing and how much time is allowed for it. Alternatively the judge may decide that a preliminary hearing is needed, either to give judgment or dismiss a claim or defence, or that no hearing is needed and the matter should be dealt with on paper. Any hearing will be informal and strict rules of evidence will not apply.
- A.9 Court fees will be payable by the claimant on issuing the claim, on submitting the allocation questionnaire and in advance of the hearing. The fees can be claimed if the claimant wins. In addition the claimant may be able to recover up to £200 for an expert, £50 per day for loss of earnings in attending court (for them and witnesses) and reasonable travelling and overnight expenses.

⁴³ www.hmcourts-service.gov.uk/onlineservices/mcol/userguide

Fast Track

- A.10 Allocation of a case to the fast track may be made on the basis of the completed allocation questionnaire or a prior hearing. On receiving such notification, parties will be told what to do next, including when to disclose documents, exchange witness statements and expert reports, and complete pre-trial checklists. The trial date will be sent no less than 21 days before the trial.
- A.11 If the parties have indicated a desire to settle, the judge will put the case on hold to allow the parties to try to reach agreement. If required the court will arrange a mediation appointment. The cost of mediation depends upon the value of the claim.
- A.12 The trial will be heard in the court or judge's room by a circuit or district judge. Judgment may be given at the end of the trial or reserved and given later. Court fees will be payable by the claimant on issuing the claim, on submitting the allocation questionnaire and when the pre-trial checklist is filed.

Multi-track

- A.13 If a case is allocated to the multi-track, basic directions are given at the time of notification concerning the future conduct of the matter but as this track usually deals with more complex cases there is no standard procedure to follow. It is likely that there will need to be hearings to decide how the case is to proceed and to review what is happening. Following a pre-trial review a date will be set for the trial, which will usually be heard in a court room by a circuit judge. Fees will be payable for the different hearings.

Appeals

- A.14 Many cases are settled before trial and very few result in an appeal. Appeals can only be made if permission is given either by the judge at the end of the hearing in which judgment is given or by the court to which an appeal can be made. In this case the application for

leave to appeal must be made within 21 days of the decision unless more time has been given by the original judge.

A.15 The appeals procedure varies according to the track which the case has gone through. Appeal in the

- Small claims track is to a circuit judge and then to the Court of Appeal (but only with permission of the Court of Appeal).
- Fast track is to a circuit judge and then to the Court of Appeal (but only with permission of the Court of Appeal) if the order is made by a district judge. If the order is made by a circuit judge appeal is to a High Court judge and then to the Court of Appeal (but only with permission of the Court of Appeal).
- Multi-track is to a High Court judge and then to the Court of Appeal (but only with permission of the Court of Appeal).

A.16 Appeal from the Court of Appeal to the Supreme Court is the final right of appeal. This is only granted in exceptional cases.

Enforcement

A.17 Any judgment obtained in a consumer redress case is likely to be in the form of an order that the defendant pays a sum of money to the claimant. The judgment usually states the time by which the defendant should pay the claimant. Sometimes the defendant will pay the money back straight away without the claimant having to take any further action. If the defendant does not pay, however, the claimant can take steps to obtain the money owed by applying to the court and paying a fee for them to intervene by way of:

- A warrant of execution – court bailiffs will visit the defendant and try to either collect the money or take goods to sell at auction.
- An attachment of earnings – if the defendant is employed money can be taken from his wages.

- A third party debt order – usually sent to the defendants bank or building society and the money owed is paid from the defendants accounts. Or
- A charging order – if the defendant owns goods or property a charge can be created over the property which means if the defendant sells the goods the amount owed will be paid from the proceeds but he does not have to sell the goods unless an order for sale is also made.

A.18 In addition if the amount owed is more than £750 an individual defendant can be made bankrupt or a corporate defendant put into liquidation (see paragraphs A.26-A.28).

A.19 In some cases the court may order the defendant to do something practical, such as cut down a hedge or erect a fence. This is not common in disputes between consumers and traders as it is more likely that the trader will be ordered to pay damages to cover the costs of rectifying his mistakes rather than being ordered to correct them.

A.20 As previously mentioned, the majority of legal cases are settled in the County Court but more complex matters of law and larger claims could be dealt with in the High Court.

High Court Actions

A.21 The High Court (including district registries across England and Wales) normally deals with more complex matters of law and larger claims. There are three divisions of the High Court: the Queens Bench Division (QBD), Chancery and Family. The most likely division to deal with claims of damages for negligence or arising from contractual disputes and for non-payment of debt is the QBD. This division, like the others, has a judge appointed President, The Lord Chief Justice, and various judges and masters allocated to deal with

its work. The procedure for dealing with cases in the QBD is set out in the Civil Procedure Rules and is summarised in the QBD Guide.⁴⁴

A.22 Cases dealt with in the High Court are multi-track cases. When a case is commenced by the issue of a claim form it is allocated to a master (or district judge in the district registries) who will deal with the pre-trial applications and case management. The trial itself will be heard by a High Court judge or deputy in open court. The case is likely to proceed in much the same way as a multi-track case in the County Court but the detailed procedural rules set out in the Civil Procedure Rules must be followed.⁴⁵

A.23 The fees for different types of application vary and are set out in the QBD Guide. Appeals from all final decisions in multi-track cases in the High Court/District Registry are to the Court of Appeal regardless of who made the final Order. However, appeals on other decisions made by masters or district judges are to High Court judges and from High Court judges to the Court of Appeal. Permission must always be given and can be obtained either from the judge making the order or from the appellate court.

A.24 A judgment or order to pay a sum of money can be enforced by the High Court Enforcement Officer and may involve the physical seizure and sale of goods.

Insolvency Proceedings

A.25 There are various types of corporate insolvency proceedings that may affect consumers with claims. Only liquidation in the case of companies and bankruptcy in the case of individuals are routes that a consumer could take to try to recover debts. However, other forms of insolvency proceeding, such as administration, voluntary agreement, receivership or a debt relief order could affect the ability of consumers to enforce judgments/recover debts owed to them.

⁴⁴ www.hmcourts-service.gov.uk/cms/11538.htm

⁴⁵ www.justice.gov.uk/civil/procrules-fin/menus/rules.htm

Companies – liquidation/winding up

- A.26 There are different types of liquidation: members voluntary where the company is solvent, creditors voluntary when the company is insolvent and the directors tell the shareholders that the company should be liquidated because it cannot pay its debts, and compulsory liquidation which is a court procedure.
- A.27 Any creditor, including a consumer, can present a petition to the High Court (or district registry) in the geographic area of the companies registered office, or a County Court with insolvency jurisdiction, if a company fails to pay them money which it owes provided that the debt exceeds £750. This does not apply to disputed debts but would apply, for example, if the consumer had a judgment or a very straightforward debt claim. It is not necessary to serve a statutory demand on the company first if the debt of £750 or more is undisputed and the company has failed to pay it. The threat of a winding up petition often encourages a company which is avoiding paying a debt to pay up. However, winding up proceedings are expensive, it currently costs £880 to issue a petition and if the company is wound up the available assets are distributed among creditors according to a fixed hierarchy, that is unsecured creditors will be paid last.

Individuals – bankruptcy

- A.28 If a consumer is owed more than £750 then it is possible to make the debtor bankrupt. Normally the first step is to serve a statutory demand which is a special form demanding that the debt be paid. No fee is paid to issue this form and it often results in the debt being paid. If the debt is not paid within 21 days then a bankruptcy petition can be presented to either the High Court or the County Court in the area the debtor lives. The cost of a petition is £565. If the debtor is made bankrupt all the creditors share the assets available and therefore there may be little or no recovery of the debt.

Annexe B: Role of generic providers in ADR

B.1 Within the UK consumer redress landscape there are a number of key organisations who either operate generic consumer redress mechanisms or who provide professionals to operate within such schemes. The key operators include:

Chartered Institute of Arbitrators

B.2 The Chartered Institute of Arbitrators (CIArb) is a professional body whose objective is to 'promote and facilitate worldwide the determination of disputes by arbitration and alternative means of private dispute resolution other than resolution by the court'. It has 12,000 members and provides professional education and training programmes, qualifications, professional guidelines and codes of conduct together with information and support for members. Membership is open to practitioners of private dispute resolution, professional advisers and users as well as those interested in the process of ADR. Through its subsidiary, IDRS Ltd, it also offers nominating and appointing services for arbitrations, adjudications and mediations as well as administering rapid-resolution schemes for many types of business and consumer disputes.

IDRS Limited

B.3 IDRS is a dispute resolution service provider which provides bespoke ADR services for a number of businesses, trade and professional bodies covering 125 services over more than 20 sectors. Among the business-to-consumer services are those for BAR (British Association of Removers) ABTA (Arbitration Scheme for the Travel Industry) and CISAS (Communications and Internet Services Adjudication Scheme).

College of Mediators

B.4 The College of Mediators aims to promote best practice in mediation and public awareness of the value of good mediation. It

sets standards for mediation and maintains a register of mediator members.

National Mediation Helpline

B.5 The National Mediation Helpline has been set up by the Ministry of Justice in conjunction with the Civil Mediation Council to provide information to the public on mediation. It explains the basic principles of mediation, answers general enquiries relating to mediation and puts parties in contact with a mediation organisation which assigns a mediator if required.

British and Irish Ombudsmen Association (BIOA)

B.6 Most ombudsmen in Britain and Ireland are members of the British and Irish Ombudsman Association (BIOA).

B.7 Full voting members of BIOA must meet the following criteria:

- They are independent of the bodies they investigate.
- They are free to complainants.
- They are well publicised by the organisations they investigate.
- Their procedures should be easy and straightforward to understand and to use.

B.8 Either the organisations should be legally bound to follow their decisions, or there should be a 'reasonable expectation' that they will do so. The word 'ombudsman' does not have to appear in the title of the scheme.

B.9 Associate membership is open to organisations such as complaint-handling bodies, consumer bodies and trade associations, and to individuals who are interested in and support the objects of the Association and have significant relevant expertise.

B.10 BIOA's objectives include providing information for the public about ombudsman and complaint handling schemes on the internet and

providing advice to organisations considering the establishment of ombudsman services.

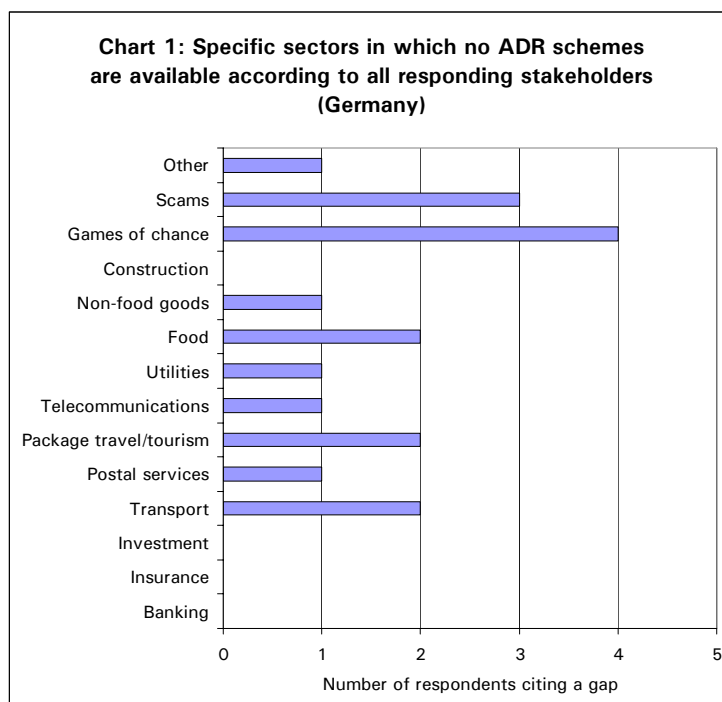
Annexe C: Redress arrangements in other countries

C.1 It is evident from our research that there is a range of out-of-court redress mechanisms available in the UK together with legal mechanisms. This is also the case across the EU and at a global scale. Having considered the position in the UK, we now examine the options available in a selection of other countries.

Germany⁴⁶

C.2 The number and diversity of ADR schemes in Germany is very high and includes arbitration, mediation and ombudsmen. Germany, as a federal state, operates a decentralised ADR system and many schemes provide their services at local or regional, rather than national, scale. Many schemes are organised by professional bodies or belong to a Guild or Chamber and so are sector-specific. Ombudsmen exist for a number of service sectors, particularly financial services.

C.3 Chart 1 illustrates the sectoral gaps perceived by respondents to the Commission's survey⁴⁷ in relation to ADR provision in Germany. It is clear from this that other than in select categories, particularly those relating to financial products,



⁴⁶ Civic Consulting: Study on the use of Alternative Dispute Resolution in the European Union (October 2009).

⁴⁷ Respondents included a selection of ADR schemes, notifying authorities, consumer and business associations.

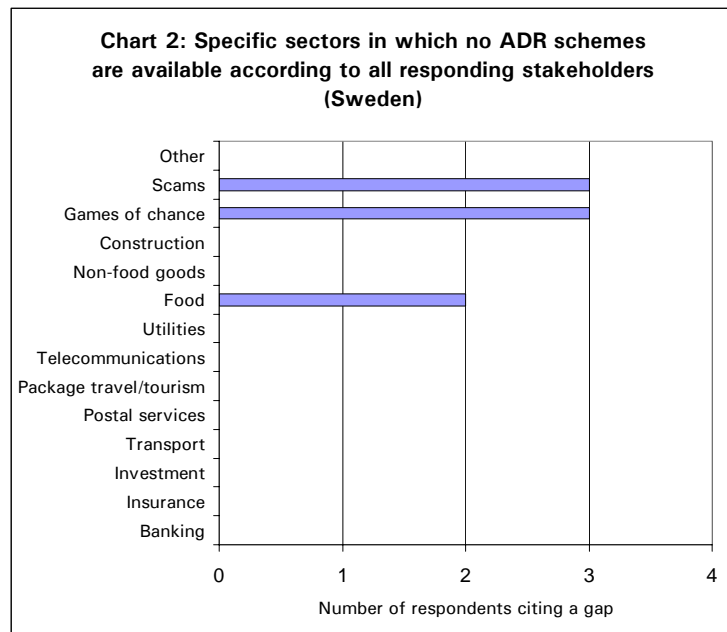
survey respondents were unclear whether ADR provision was available. Consumer associations also highlighted postal services and utilities as uncovered sectors.

- C.4 There is no individual in-court mechanism specifically designed for consumer redress but ordinary court procedures can be utilised and are often successful. According to research carried out by Civic Consulting there were 324,402 court cases in the field of consumer protection in 2007, compared to just 40,705 ADR cases.

Sweden⁴⁸

- C.5 The main ADR scheme for the settlement of business-to-consumer disputes in Sweden is managed by the Swedish National Board for Consumer Complaints. In addition, there are a number of private out-of-court schemes organised on the basis of self-regulation. Some of these are offered by individual companies while others are offered on a sector-specific basis.

- C.6 Chart 2 illustrates the sectoral gaps perceived by respondents to the Commission's survey in relation to ADR provision in Sweden. It is clear from this that perceptions of ADR provision are fairly high, probably due to Sweden operating an overarching board for consumer complaints rather than relying solely on sector-specific mechanisms.



⁴⁸ Civic Consulting: Study on the use of Alternative Dispute Resolution in the European Union (October 2009).

C.7 The Small Claims Court procedure is not specifically designed for consumer disputes in Sweden but may still be used. In 2008, 17,486 cases were handled under small claims procedures in Sweden. Although there is no breakdown of cases according to subject matter it is likely that a high proportion of these would be related to consumer disputes. Comparatively, 10,882 cases were settled by ADR in the same period. Although the Swedish National Board for Consumer Complaints primarily deals with ADR, it may also act as a representative of individual consumers before the courts in proceedings between a consumer and business.

Australia⁴⁹

C.8 Like Germany, Australia operates a decentralised ADR system. Most out-of-court schemes are not designed specifically for consumer-to-business dispute resolution, though arbitration and mediation can be used for such purposes. Mediation via Community Justice Centres (CJCs), Ombudsmen and industry or profession-based schemes are the main options available. CJCs aim to provide an easily accessible, cost-efficient, prompt dispute resolution procedure. They are generic service providers and deal with consumer disputes involving any goods or services. CJCs do not appear to be widely accepted as an alternative to the courts in Australia, but when they are used they have a high success rate. As in the UK the Ombudsmen primarily deal with disputes relating to services rather than goods.

C.9 Courts at all levels have increasingly experimented with ADR to try and reduce growing caseloads. Disputes between consumers and businesses tend to be handled in the lower courts due to accessibility and monetary value. Unfortunately there is a lack of information or assessment of how court-referred ADR has worked. Other in-court schemes, such as Small Claims Tribunals, are also being increasingly used in Australia, though only about ten percent of cases are general consumer claims. Small Claims Tribunals have

⁴⁹ University of Leuven: An analysis and evaluation of alternative means of consumer redress other than redress through ordinary judicial proceedings (January 2007).

powers to facilitate conciliation and, where unsuccessful, to make binding judgements. Approximately three quarters of cases are resolved at the conciliation stage.

Canada⁵⁰

- C.10 The majority of consumer protection in Canada is within provincial rather than federal jurisdiction. There are variations between provinces in the redress mechanisms available. The Canadian Better Business Bureau is funded by members and operates local bureaux throughout Canada to handle consumer complaints. It aims to resolve complaints by conciliation but if this is not possible, most bureaux offer mediation or arbitration services. There are also a number of industry-specific schemes providing dispute settlement functions, as well as three ombudsmen in the financial services industry.
- C.11 Canada also has a variety of provincial Small Claims Courts that provide a simplified form of court procedure for consumers. The experience of small claims courts as a consumer redress mechanism is that they provide a relatively low cost method for a consumer to bring an action against a business, though the consumer may have difficulty in enforcing any judgement received.

USA⁵¹

- C.12 The United States is another example of a state based system. State government offices and County District Attorney offices offer mediation or conciliation services for consumer disputes involving products or services. For example, the Complaint Mediation Department of the Californian Department of Consumer Affairs processes complaints for several of the state's licensing and

⁵⁰ University of Leuven: An analysis and evaluation of alternative means of consumer redress other than redress through ordinary judicial proceedings (January 2007).

⁵¹ University of Leuven: An analysis and evaluation of alternative means of consumer redress other than redress through ordinary judicial proceedings (January 2007).

regulatory bureaus, some of which are related to consumer goods and services.

- C.13 Consumer credit and sale agreements increasingly contain binding arbitration clauses, whereby the consumer must pursue any dispute with the business in a designated arbitral forum,⁵² rather than through the public civil justice system. Where this is not a contractual requirement, other businesses may still be open to arbitration or mediation as a means of ADR. The Better Business Bureau (also mentioned under the Canadian system) offers conciliation and mediation, as well as arbitration, as means of resolving consumer disputes relating to a marketplace issue. Additionally, Online Dispute Resolution services are available and licensed professional services may also offer dispute resolution programmes.
- C.14 In addition to these out-of-court mechanisms, any type of dispute may be heard in state small claims courts, provided that it is less than or equal to the jurisdictional limit for that court. Such courts are a popular choice due to a high level of awareness and accessibility.

⁵² The most regularly used provider of arbitration services in consumer disputes is the American Arbitration Association. The National Arbitration Forum and Judicial Arbitration and Mediation Services are other regular providers of arbitration.