

Information Note

Alternative dispute resolution requirements

16 September 2015

From 1 October 2015, new regulations¹ established in UK law dealing with alternative dispute resolution (ADR) requirements take effect. These will have an impact on Level 2 providers involved in business to consumer transactions. These new requirements are designed to improve access to low cost services available for the resolution of consumer disputes.

In summary, the key requirement for Level 2 providers is to inform consumers of the existence of ADR options available to them if a dispute cannot be resolved by the provider. In practice, this information needs to be shared with consumers where a complaint has been raised and the Level 2 provider has set out its final position on the matter.

Where the dispute cannot be taken further between the parties, ADR may offer a different route to an agreed resolution without referral to the courts. Two entities have been approved by Ofcom to offer ADR services to the premium rate services industry. Level 2 providers must inform consumers about at least one of these entities:

- ‘Ombudsman Services: Communications’
<http://www.ombudsman-services.org/communications.html>
- ‘Communications and Internet Services Adjudication Scheme’ (CISAS).
<http://www.cisas.org.uk/>

The regulations require the following information be given to the consumer by the Level 2 provider in a durable medium, such as a letter or email:

1. That they cannot settle the dispute;
2. The name and website address of a suitably competent, certified ADR provider (if the consumer wants to use it);
3. Whether they are required to, or are prepared to, take part in the ADR procedure of the competent certified ADR provider of which they have given details.

This note provides further information about ADR services and the new regulations in a series of Frequently Asked Questions – see below. If you have any further enquiries about the new regulations or the ADR schemes available for Level 2 providers please refer to one of the ADR entities listed above, who will be able to explain the service they offer in greater detail.

¹ Two pieces of legislation introduced by the UK Parliament are entitled:

- The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015
- The Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015

Frequently Asked Questions

What is alternative dispute resolution (ADR)?

ADR refers to a range of methods for achieving solutions to disputes between consumers and 'traders', or in the premium rate services sector 'Level 2 providers'. These solutions are alternatives to going to court to settle the matter.

The Department for Business Innovation and Skills (BIS) stated in its policy paper on 'Alternative dispute resolution for consumers' published on 23 June 2015:

"Better ADR and easier access to it should also be good for all businesses committed to giving their customers the best possible service."

ADR can take a number of forms usually split into mediation and arbitration:

- Mediation is where the parties commit to resolving the matter themselves, perhaps with help in facilitating fair and healthy discussions of the issues to reach an agreed resolution;
- Arbitration is where a third party, such as an ombudsman, is invited to consider the matter and sets out a finding of facts and a solution. Usually parties will agree to be bound by the decision reached. However, schemes vary and where parties are not bound to adhere to a decision there remains the opportunity to rely on the courts to settle the matter.

Why should traders use ADR?

There are a range of perceived benefits to signing up and using ADR schemes:

- ADR procedures can be much quicker than court proceedings;
- Costs are often lower – there are fees associated with the ADR schemes, but these are not equivalent to legal costs associated with responding to a dispute in the courts;
- ADR procedures are often completed in private with the outcome made being confidential;
- The solution achieved can be more flexible taking into account all the different circumstances facing both the consumer and the Level 2 provider;
- ADR can be less confrontational or adversarial than court proceedings, with some evidence indicating consumers may remain loyal to the service itself once the dispute is resolved.

Why now?

On **9 July 2015**, new regulations came into force following implementation by the UK Parliament in order that the European Union (EU) ADR Directive takes effect in this country. These regulations are called:

- The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015;
- The Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015.

These regulations set out approval procedures and requirements for ADR entities, and require the government to make sure all consumers of services (excluding health services) have some form of access to ADR schemes in the UK. The regulations also introduce business information requirements which take effect on **1 October 2015**.

Given the business information requirements that come in to force on 1 October 2015, consumers are going to be more aware of their rights and may make transactional decisions based on a Level 2 provider's willingness to use an ADR scheme or otherwise.

How do the new requirements impact Level 2 providers?

The business information requirements come in two parts.

1. Where a company forms part of a regulated sector and is subject to mandatory ADR requirements, or is part of a trade association which requires mandatory use of ADR schemes to hold membership, the business must inform consumers of a name and website address of a competent and certified ADR provider. This information must be presented to the consumer in both the general terms and conditions, and on the relevant trader's website (if they have one).

Unless a Level 2 provider is a communications provider (CP) as defined in the Communications Act 2003, or is operating financial services that are covered by the Financial Ombudsman Services, then this first part does not apply. It is important to understand Level 2 providers generally do not have to sign up to any ADR scheme, but they do have to supply information about ADR services to consumers.

2. The second part of the information requirement is placed on all Level 2 providers regardless of whether they are part of a mandatory scheme, a voluntary scheme or not linked to any such schemes. This information requirement is triggered where a dispute arises between a consumer and the Level 2 provider and the Level 2 provider has given its final position to the consumer.

At the point when the final position is notified to the consumer, or when the Level 2 provider has exhausted its internal complaints handling procedure and the dispute remains, it must provide the following information to the consumer in a durable medium – for example, by letter or email:

- That they cannot settle the dispute
- The name and website address of a suitably competent, certified ADR provider (if the consumer wants to use it)
- Whether they are required to, or are prepared to, take part in the ADR procedure of the competent certified ADR provider of which they have given details.

BIS recommends that it is good practice to indicate when sharing this information that it is provided under the relevant UK regulations.

Is it mandatory to sign up to an ADR scheme?

The regulations do not make participation in ADR schemes mandatory for traders. Therefore, where a Level 2 provider does not fall within the definition of a CP, the Level 2

provider may choose to join one of the certified schemes operated by Ombudsman Services: Communications or CISAS voluntarily.

If the Level 2 provider does not sign up to a scheme they still must provide the three pieces of information set out above when disputes cannot be resolved and the internal complaint handling process has been exhausted.

What impact do the new ADR regulations have on PhonepayPlus' regulation of premium rate services?

PhonepayPlus is the regulator of the PRS industry as the approved body under the Communications Act 2003. We remain focused on maintaining standards in the market. PhonepayPlus is not an ADR entity because we do not provide ADR services to either PRS providers or their consumers. By contrast, ADR entities offer individual consumers the opportunity to resolve personal disputes. In short, PhonepayPlus regulation of PRS remains the same.

Will PhonepayPlus now handle complaints differently?

No - when PhonepayPlus receives individual complaints from consumers we recommend the consumer contacts the relevant Level 2 provider. Should the consumer remain dissatisfied, they can return to PhonepayPlus. We will assess whether there is a potential breach of the Code, including complaint handling. If a Level 2 provider joins an ADR scheme and uses such services offered by an ADR entity to resolve individual disputes, this too will have no impact on an investigation or enforcement action undertaken by PhonepayPlus under the Code. PhonepayPlus has published guidance on '*Complaint handling*'² to assist PRS providers with compliance with these Code requirements.

Can a Level 2 provider approach an ADR entity to begin proceedings?

No – the ADR schemes are set up for consumers to use if they are not satisfied with the outcome of their complaint.

Will every dispute get addressed by one of the ADR schemes?

No – there are a number of grounds for refusing to deal with an alleged dispute when a consumer approaches an ADR entity. These include the following:

1. The consumer has not attempted to contact the Level 2 provider concerned in order to discuss the consumer's complaint and sought, as a first step, to resolve the matter directly with the provider;
2. The dispute is considered frivolous or vexatious by the ADR entity;
3. The dispute is being, or has previously been, considered by another certified ADR provider or by a court;
4. The value of the claim falls below or above the monetary thresholds set for any given scheme;
5. The consumer has not submitted a complaint to the Level 2 provider within the time period specified by the ADR entity, which must give at least 12 months from notification of the providers final position;

² Complaint handling guidance is published on the PhonepayPlus website here: <http://www.phonepayplus.org.uk/for-business/guidance-and-compliance-for-the-13th-code-of-practice>

6. The nature of the dispute is such that the ADR entity would seriously impair its effective operation of the scheme if it did deal with the dispute.

Websites for ADR schemes available to consumers of PRS in the UK?

Level 2 providers can seek more information about the schemes or gain advice relating to ongoing disputes from either one of two ADR entities:

- ‘Ombudsman Services: Communications’
<http://www.ombudsman-services.org/communications.html>
- ‘Communications and Internet Services Adjudication Scheme’ (CISAS).
<http://www.cisas.org.uk/>

The competent authority with oversight of ADR in the UK for the telecommunications sector is Ofcom, and you can find more information on Ofcom’s website³.

For more general information about ADR, BIS have a useful policy paper, available here:
<https://www.gov.uk/government/publications/alternative-dispute-resolution-for-consumers/alternative-dispute-resolution-for-consumers>

³ <http://consumers.ofcom.org.uk/complain/phone-and-broadband-complaints/adr/>