



Ministry of Justice

Dispute Resolution in England & Wales

Call for Evidence

31 October 2021

This response is submitted on behalf of Dispute Resolution Ombudsman Limited (DROL). We read the Call for Evidence with interest and welcome the opportunity for open debate regarding the current provision of Alternative Dispute Resolution (ADR), plans for improvement, promotion and mandating and/or encouraging greater uptake for the benefit of both businesses and consumers.

We have focused our response on the areas most relevant to our expertise where we feel we can add real value to assist Government in forming its thinking based upon our experience in the consumer sector. Similarly, where ADR is mentioned within this document, we are referring to pre-court alternative dispute resolution such as the services provided by the Ombudsman. If we have been unable to provide evidence or answer a question directly, we have provided anecdotal information which we consider important in the wider context.

Thank you for enabling our participation in this very important debate. We welcome further engagement and are more than willing to provide additional information or amplification if required.

Dispute Resolution Ombudsman Limited

(Operating the Furniture & Home Improvement Ombudsman (FHIO), Dispute Resolution Ombudsman (DRO) and Rail Ombudsman cumulatively referenced in this document as “the Ombudsman”).



1. Drivers of Engagement & Settlement

1. Do you have evidence of how the characteristics of parties and the type of dispute affect motivation and engagement to participate in dispute resolution processes?

An important factor in engagement in dispute resolution is the means available by which to do so, for example contact channels. Ombudsman and those accredited under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015ⁱ (the “ADR Regulations”) have to ensure their services are accessible and therefore a combination of technological and other contact channels is vital to ensure equal access to all.

The following data highlights the various contact channels via which consumers raised applications to the schemes operated by the Ombudsman in 2019 and 2020 (percentages are rounded*)

2019

Channel raised %	Rail	DRO/FHIO
Email	1%	1%
Letter	8%	26%
Telephone	2%	Less than 1%
Web	89%	73%

2020

Channel raised %	Rail	DRO/FHIO
Email	3%	2%
Letter	5%	16%
Telephone	1%	Less than 1%
Web	90%	82%

The data above confirms that whilst it is vital that technological solutions are in place to facilitate access for the majority of applicants, it is equally important that other channels exist for applicants to raise their disputes. It is perhaps surprising to note the proportion of consumers who still use postal applications to access FHIO and DRO, even during the pandemic lockdowns of 2020. Web-based portals which deal with most of the applications, therefore, enable schemes to adequately resource contact channels for those who, for example, are digitally excluded or who require some form of reasonable adjustment. This,

therefore, continues to be an important consideration during the process in addition to the means of application.

That said, there is also a recognition that we are currently poised on a tipping point, balancing the needs of those who only want to be engaged digitally and therefore dispute resolution providers need to remain agile to new technologies, harnessing these to ensure a progressive approach to contact and case reviews. Ombudsman schemes are typically at the forefront of technological solutions and are able to flex and make change to keep abreast with developments. Ombudsman schemes are also better geared to use their own complaints data to spot trends and be responsive to them.

In our experience of both voluntary Ombudsman schemes and one mandated by licence condition, the drivers of motivation and engagement to participate can also be dependent upon the availability of ADR. In a survey of consumers who used the Rail Ombudsman scheme in 2019ⁱⁱ, the overall satisfaction level of consumers who approached the scheme with claims that were out of scope was 20%. This figure was 27% in 2020ⁱⁱⁱ, similarly low. One passenger quoted said: *"I was expecting the Ombudsman service to be able to action my complaint against the Rail Company and act as independent adjudicator. But it seems that the nature of my complaint falls outside their remit. There was no other organisation/process to act on my behalf."*

Further, motivations can be driven by confidence in the process. Perceptions that Ombudsman schemes are "consumer champions", lead to potential frustration when outcomes are not in favour of the consumer. It is therefore vital that the ADR schemes themselves take steps to ensure they are demonstrably independent, and external accreditations and accountability assist with this (as to which see below). Government also needs to do more, working in conjunction with advice agencies and bodies that refer people to dispute resolution schemes, to ensure that consumer education is accurate and timely.

2. Do you have any experience or evidence of the types of incentives that help motivate parties to participate in dispute resolution processes? Do you have evidence of what does not work?

In the consumer dispute resolution landscape, ADR is voluntary for consumers, although binding on the traders where they have signed up to an Ombudsman scheme or otherwise via trade association codes of practice etc. If Government takes a proactive role in promoting the extra-judicial routes that exist to facilitate settlement even before the parties consider legal routes, this will have a knock-on effect of driving complaints to the earliest possible point of resolution outside of the court system. Ombudsman have feedback mechanisms in place to ensure that outcomes are learned from, preventing future detriment. For businesses, therefore, participation should be viewed through a broad lens; it can inspire consumer confidence, it can provide helpful management information and it can save businesses costs. Educating both businesses and consumers will be the key and both businesses and ADR providers will require the support of Government working in a joined-up way, to ensure the messages are received and understood.

In terms of consumer access, the availability of ADR can be an important filter to enable the parties to negotiate an outcome or to assist them in narrowing the issues. FHIO and DRO processes include a final adjudication based on expert evidence which is compliant with Part 35 of the Civil Procedure Rules. This is an important mechanism as it ensures that the parties have a final, written decision, based on expert evidence which is binding on the trader and our (anecdotal) experience is that very few cases are then escalated via the court system.

Other motivations include factors such as ease of access, the opportunity to negotiate in a confidential forum and also the availability of non-legal remedies. For example, in the Rail Ombudsman scheme, the prevalence of non-legal remedies is a very important driver of resolution and, as can be seen from the table below, gestures and gifts, apologies and explanations represent a significant proportion of outcomes:

Award type	%
A gesture or gift	20.3%
Apology	8.6%
Compensation	11.4%
Complimentary service	8.5%
Delay repay	6.1%
Explanation	8.5%
No award made	21.4%
Refund	14.9%
Ticket reissue	0.2%

Data from Rail Ombudsman closed complaints in 2019

In addition, FHIO and DRO sees a very high proportion of cases that settle at conciliation (as to which see Annual Reviews: [Annual Reviews - The Furniture & Home Improvement Ombudsman \(fhio.org\)](http://www.fhio.org)). This is another indicator that early resolution is an important factor in the parties' motivations when considering dispute resolution.

As indicated in our response to question 1 above, Government should consider enhanced and earlier signposting for vulnerable consumers and the need for better education for businesses to enable them to understand and comply with their obligations.

The current availability of multiple ADR providers, particularly in the home improvement sector, has the potential to be confusing for consumers and, probably, more so for vulnerable consumers. This could mean consumers may not be aware of its availability and how they can access it.

The use of online technology has the potential to improve access to ADR for consumers and businesses alike, but there is a trade-off between this and ensuring proper access for those who may be digitally excluded or who require assistance to use technological solutions, as the data above shows. Technological solutions should be geared to ensure that the majority of applicants can access ADR via this means, ensuring that providers can adequately resource assistance for those who are digitally excluded or who need other reasonable adjustments and/or routes of access.

Businesses need to be aware of the needs of consumers, with reference to those who might be vulnerable, recognising that ADR and a proper complaints policy is for their benefit as well as for their customers. Enhanced signposting obligations, for example signposting vulnerable consumers sooner, could offer a solution to businesses without the resource and infrastructure to meaningfully deal with vulnerable people effectively; ADR providers may be better equipped to do so.

In addition, clear, consistent information available to signposting bodies, particularly those who also provide referrals, is crucial in getting people to the right place at the right time.

The Ombudsman model provides both support to vulnerable consumers to access their schemes, along with additional insight to businesses within jurisdiction by way of training, feedback via case-led intelligence and initiatives to improve access.

3. Some evidence suggests that mandatory dispute resolution gateways, such as the Mediation Information & Assessment Meeting (MIAM), work well when they are part of the court process. Do you agree? Please provide evidence to support your response.

4. Anecdotal evidence suggests that some mediators or those providing related services feel unable to refer parties to sources of support/information – such as the separated parents' information programme in the family jurisdiction – and this is a barrier to effective dispute resolution process. Do you agree? If so, should mediators be able to refer parties onto other sources of support or interventions? Please provide evidence to support your response.

No response

5. Do you have evidence regarding the types of cases where uptake of dispute resolution is low, and the courts have turned out to be the most appropriate avenue for resolution in these cases?

In our experience, it is rare for an otherwise in scope case to be deemed inappropriate for consideration by the Ombudsman and to be referred straight to the courts. Since our processes include conciliation, there is always the opportunity to reach a negotiated settlement notwithstanding any technical complexities. The grounds for refusal of a dispute under the ADR Regulations include claims that would seriously impair the effectiveness of the ADR entity and it can be seen from the Schedule 5 Report accounted to CTSI^{iv} annually, that this number is typically very low.

6. In your experience, at what points in the development of a dispute could extra support and information be targeted to incentivise a resolution outside of court? What type of dispute does your experience relate to?

Our experience in the Rail Industry offers an interesting case study in relation to signposting which has been inconsistent amongst rail service providers since the inception of the scheme in November 2018. Our customer survey in 2020 highlighted that only 7% of consumers were told of the existence of the Rail Ombudsman when the complaint was first made to the rail

service provider, with 21% at some point through the complaints process and 72% at the point the complaint required further escalation^v.

Signposting to the Ombudsman and clear information about the process and consumer journey, at the earliest possible time, is crucial in increasing consumer confidence in the process. Promoting the importance of good complaint handling will also assist; keeping the consumer informed and empowering them to make an informed choice as to when the businesses internal complaints process is genuinely exhausted, minimising early approaches to the Ombudsman (as to which see below). This approach ensures a level-playing field for service providers and a consistent approach for consumers and is at work successfully in other sectors.

We welcome that this approach is being adopted in the Rail Sector where the Regulator has acknowledged that “there is more to do to support good signposting to ADR across the Rail Industry”. Currently the data shows a very inconsistent approach to issuing deadlock letters by rail service providers which causes confusion in consumers and in some instances will be a barrier to them raising a dispute with the Ombudsman.

In our response to the Office of Rail and Road's recent consultation on changes to its approach to complaints handling and the introduction of a new code of practice^{vi}, the Rail Ombudsman welcomed an approach that sees basic information about the Rail Ombudsman and its role included in the written complaint acknowledgement and further particulars included in the “ADR letter” at the appropriate time. Consideration also needs to be given to other channels of communication such as telephone or face to face to ensure that all passengers have equal access to the relevant information.

7. Do you have any evidence about common misconceptions by parties involved in dispute resolution processes? Are there examples of how these can be mitigated?

Our process includes several touchpoints where the processes and remits can be explained thereby managing expectations. That said, in the ombudsman landscape generally, perceptions can be linked to outcomes^{vii}. There is therefore much to be done in terms of clear messaging from Government and advice agencies about the various routes to dispute resolution to enable people to make an informed decision as to which is the right route for their individual dispute.

2. Quality & Outcomes

8. Do you have evidence about whether dispute resolution processes can achieve better outcomes or not in comparison to those achieved through the courts?

9. Do you have evidence of where settlements reached in dispute resolution processes were more or less likely to fully resolve the problem and help avoid further problems in future?

In 2019, of the claims brought to FHIO/DRO, 98% were closed at conciliation and of these 57% of consumers received a remedy^{viii}. In the same year, the Rail Ombudsman recorded 43% early resolution, with 32% closed at mediation and 25% at adjudication^{ix}. In that scheme the consumer must agree to a mediated outcome and therefore this indicates a high degree of agreement between the parties.

In a survey carried out in 2012, the Ombudsman found that although consumers did not always receive an outcome which was in accordance with their original expectations, 7 out of 10 said that they were more likely to shop with one of the Ombudsman's members in the future. In addition, numbers of repeat claimants bringing cases to FHIO/DRO are low (3% in 2019 and 4% in 2020* based on cases logged from the same email address as this is unique). In the home improvement sector, where issues can be cumulative, this is an important indicator that issues are resolved without the need for further recourse to the Ombudsman. The Rail Scheme is more likely to see repeat applicants with different issues due to the nature of rail travel (10% in 2019 and 15% in 2020*).

The rate of compliance with the Ombudsman's decisions is very high across all schemes as is reported in the Schedule 5 Reports submitted to CTSI annually (see above) and we have very few examples of cases proceeding to court indicating either a lack of appetite to do so once the Ombudsman process is complete or satisfaction with the end result. Where membership of the Ombudsman is voluntary, we note a steady increase in membership (even during the 2020 Covid pandemic) also indicating business satisfaction with process and outcomes. In addition, successive Annual Reviews provide examples of how businesses leverage their membership of the Ombudsman^x.

10. How can we assess the quality of case outcomes across different jurisdictions using dispute resolution mechanisms, by case types for example, and for the individuals and organisations involved?

Robust oversight is key in the extra-judicial landscape. Membership of the Ombudsman Association, whose preference is for one Ombudsman per sector, ensures that consumers and those in their jurisdiction alike, have access to schemes with consistent and validated processes. Members of the Ombudsman Association demonstrate best practice by adhering to the Service Standards Framework^{xi} and Caseworker Competency Framework^{xii}. These are in addition to the validation criteria and are minimum standards but ones to which many of its members subscribe.

In addition, the Ombudsman has robust and transparent internal quality monitoring and decisions are checked for consistency and outcomes which are within a range of reasonable outcomes both as part of this internal check and also by its Standards Board, which provides external, independent oversight and is governed by a set of byelaws^{xiii}.

11. What would increase the take up of dispute resolution processes? What impact would a greater degree of compulsion to resolve disputes outside court have? Please provide evidence to support your view.

In its response to the recent BEIS consultation ([Reforming Competition and Consumer Policy \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)), the Ombudsman advised that Government should consider carefully how best to achieve its aims in this regard to avoid proliferation of ADR provision which may undermine the system and cause greater consumer confusion.

Compliance: In the furniture and home improvement sector currently, members sign up to FHIO's Code of Practice and decisions made by FHIO are therefore enforceable via the Consumer Protection from Unfair Trading Regulations 2008. That said, given the voluntary nature of the scheme currently, compliance issues are very minimal^{xiv}. Therefore, in mandating

ADR in this sector, more consideration needs to be given to enforcement and compliance in order to maintain trust and confidence in ADR.

Cost: Any attempts to mandate ADR, should not lead to further fragmentation of ADR provision and a *race to the bottom* as was seen when the ADR Regulations were implemented in 2015. This, in our opinion, would be the case were a pay as you go model to be implemented. The Government should promote businesses who offer this additional assurance to consumers. Government should therefore promote ADR to businesses as a *unique selling point* to customers, inspiring consumers to spend with that trader. Consumers should feel empowered when purchasing goods and services from a business that is registered with an Ombudsman, and those businesses should be encouraged to promote their registration at point of sale.

In addition to the dispute, however, an ombudsman has a role to improve standards in the sector under its jurisdiction by providing feedback, training and to identify themes. Ultimately, therefore the Ombudsman model works with businesses to prevent harms before they arise making the dispute resolution function ideally redundant.

Another key difference is the inquisitorial approach that an ombudsman takes. Not just considering the evidence before it, an ombudsman will seek that which is missing and assist the parties to gather the evidence they need to support their claim. In the case of vulnerable consumers, this can place an Ombudsman in a uniquely valuable space in the eyes of stakeholders.

When considering a case, an Ombudsman will have regard to the relevant law. However, to remain effective, it may also consider other non-legal factors that might reasonably be taken into account when deciding the outcome of a case. This means that Ombudsman decisions can have regard to what is fair and reasonable; practical and proportionate, going above what the law may prescribe to resolve a claim to the satisfaction of the parties. This leads to a number of non-legal remedies that are effective in the resolution of disputes, as referenced above.

Another example in the furniture industry, is that reselections or store credits are often used as a tool to resolve a consumer's dissatisfaction with the particular product, offering a more convenient and pragmatic resolution for the consumer which also enables the business to retain its customer's confidence in it.

In a voluntary sector such as the furniture and home improvement industry currently, membership of an ombudsman scheme enables a business to differentiate. Not only can it resolve disputes in a cheaper, quicker more flexible way which is advantageous to both the business and the consumer, but it can also take advantage of complaints data, feedback and thematic recognition of issues across the sector to raise its standards, enhancing reputation and trust.

The work that an ombudsman does in each individual sector gives it a unique perspective and thereby a voice with policy makers and legislative consultations.

Other Advantages of the Ombudsman Model

- **Advice** on ad hoc issues, aiming to prevent a complaint becoming a dispute at the earliest point;
- **Training** in respect of business's obligations and developments in relevant law;
- **Consultation**, for example on the consumer journey, business practices and drafting compliant and fair terms and conditions.
- **Data**: a single body per sector would enhance data collection and drive improvements across the individual sector as a whole which would benefit from learnings, and also across the Civil Justice System where evidence such as that being sought in this *Call for Evidence* may be more readily available. There are examples of Case Management Systems currently that enable an individual business to self-serve its own complaints data, which can also be used industry-wide. This means that the individual consumer receives redress via the ADR mechanism, and society is served by helping the sector prevent issues arising for other consumers.

Algorithms that take into consideration size and complexity of business would add context to data and not distort the appearance of complaint volumes. This could not be achieved were the ADR market to become further fragmented.

There are, therefore, many advantages to a business joining an Ombudsman scheme and, in our experience, a proportion of members who join may have no or minimal numbers of cases but take advantage of these other elements to the benefit of their consumers.

12. Do you have evidence of how unrepresented parties are affected in dispute resolution processes such as mediation and conciliation?

Given the emphasis on the climate of ADR, the measures set out in the Practice Direction- Pre-Action Conduct and Protocols on the use of ADR in pre-action settlements, and the existence of accredited ADR Schemes particularly for lower value claims, the Ombudsman considers that more onus should be placed on regulated legal service providers to proactively encourage consumers and SMEs to explore these alternative channels. We have seen examples of where consumers are being signposted to our service utilising this in conjunction with chargeable legal representation. Given that access to dispute resolution is free to consumers who use an Ombudsman, it would appear to be contrary to the intentions of the Pre-Action Protocol and the ADR Regulations for consumers to be charged a fee by their legal representative to access an otherwise free service.

It therefore follows that the Ombudsman processes are designed to facilitate ease of access to justice and by their nature should not require legal representation. This is important as it enables both parties to narrow issues and test arguments outside of the court system facilitated by a suitably qualified Ombudsman.

The tables below show the low proportion of consumers who have third party representation to assist them through the Ombudsman process. It is important that this mechanism exists, for example for the most vulnerable users of our services, however, the low numbers indicate

that consumers do not need third party representation to navigate the Ombudsman process and, crucially, to receive a satisfactory outcome.

Tables show Proportion of consumers who have some form of third-party representation to assist them through the Ombudsman process

2019

Scheme	Percentage
FHIO/DRO	1%
Rail	3%

2020

Scheme	Percentage
FHIO/DRO	1%
Rail	3%

Ombudsman staff awareness of the issues affecting unrepresented parties is vital and training is provided on a continuing basis, in addition to experience in the civil justice system more broadly, as the case study from one of the Ombudsman team highlights:

"Before working for the Ombudsman, I spent time volunteering in the Family Court supporting unrepresented parties through their cases. The Ombudsman offers vulnerable people free access to justice and is vital to ensure their consumer rights are met where they may feel they have nowhere to turn. My experience working with vulnerable people means I am able to guide consumers through our process, adapting my approach to meet the needs of the person involved. Bringing a claim to the Ombudsman can be a daunting process for those who have never done anything like this before. We work hard to make our process clear and ensure that vulnerable people feel that they access our service easily."

13. Do you have evidence of negative impacts or unintended consequences associated with dispute resolution schemes? Do you have evidence of how they were mitigated and how?

The Ombudsman is funded by industry, as with many other such schemes operating in the private sector, and this can bring with it a perception of bias. This is mitigated by the configuration of the Board (which includes executive and non-executive directors), external oversight by a Standards Board (referenced above), along with the qualifications of the Registered ADR Officials (Ombudsman) and the external accreditations and validations that add transparent layers of scrutiny and oversight thus increasing confidence not only in the actual independence, but also and equally as importantly the perception of it.

Further, as has recently been highlighted in the BEIS consultation, other mechanisms seeking to bring balance in respect of the cost to business, bring with them their own challenges. We provide some additional examples below.

Fees for Consumers to Access ADR:

Government should carefully consider the impact of any fee on access to justice pre-court, and the effect of essentially disenfranchising a large section of society. Ombudsman schemes are the most established and well-known forum for ADR globally where standards are high and access is free. This is a model that the Government should view as hard to resist.

There is an argument that what is nominal has a relationship with the contract or remedy value. The inclusion of nominal fees for complainants is an unnecessary complication - and critically has the potential to exclude vulnerable consumers on no and low incomes from asserting their rights. It could also have the undesired effect of incentivising new or existing ADR Companies to enter a *race to the bottom* on fees which could have a seriously detrimental effect on quality. This is a serious issue, especially as litigants are now compelled to consider ADR prior to formal court action - a failing ADR provider could have a detrimental impact on justice and mean that the consumer effectively pays twice if they then proceed via the courts as well.

Although there is an argument that a nominal fee would deter vexatious claimants, it is our experience these consumers would not be deterred by a nominal fee and would continue with their dispute, potentially even more invested in it having paid to make access the process. The cost to business, particularly SMEs, in terms of time and resource in dealing with low-value complaints cannot be understated and businesses need to be educated as to the benefits of good complaint handling with an independent route via which to signpost complaints.

There is also a distinction to be drawn between fees and evidential costs. However, the risk and burden associated with evidential costs is mitigated by the inquisitorial approach taken by the Ombudsman. This makes the principle that access to the Ombudsman is free in the first place all the more important.

In conclusion on this important point, a fee of any kind could deter consumers, particularly those on lower incomes, from taking their case to an ADR provider, particularly in light of the current level of fees to make a claim in the small claims jurisdiction. This could also drive increased numbers of unrepresented parties. We see the proposal of a nominal fee as a disincentive for consumers to use an ADR Scheme. Further, the Ombudsman Association rules state that those complaining to the Ombudsman should be entitled to do so free of charge. We believe that this is a vital corner-stone for access to justice, and the Government should consider carefully if it is desirable to introduce measures that will exclude Ombudsman schemes from providing their services to consumers (because they are prevented from charging a nominal fee under both the rules that they prescribe to and by global convention).

In summary, Ombudsman schemes exist to redress the balance of power between a business and the consumer. It would be disproportionate and an unnecessary measure to prevent an individual from enforcing their rights for free.

Pay-Per Use Models

A pay as you go model shifts all of the power into the hands of the business, immediately distorting the perception of fairness and independence - where only one party has the choice of the ADR provider. A pay as you go model will encourage businesses to flip-flop between ADR providers - dissolving the Government's ability to obtain consistent data from a single ADR provider and creating more unnecessary confusion for consumers at the point of entry. A single appointed Ombudsman places both the business and the complainant on the same footing from the start of the case. As referenced above, there is already a perception that Ombudsman schemes are biased because businesses bear the cost; giving only businesses the choice over the ADR provider will do nothing to change this perception and creates the unhelpful situation where, following a complaint about its goods or services, the business then has the power to select where the consumer must go to complain. A single Ombudsman removes this unnecessary obstruction.

14. Do you have evidence of how frequently dispute resolution settlements are complied with, or not? In situations where the agreement was not complied with, how was that resolved?

The rate of compliance with the Ombudsman's decisions is very high across all schemes as is reported in the Schedule 5 Reports submitted to CTSI annually (see above). Instances of non-compliance are rare and that is important since the mechanism to enforce an Ombudsman's decision is ultimately via the courts under the Consumer Protection from Unfair Trading Regulations 2008. Where it does occur, this usually coincides with a business becoming insolvent. For example, in 2020 the Ombudsman reported: *During 2020, there were two reported instances of non-compliance; both instances resulted in memberships termination and support was offered to the consumer. Within this period, 20 members exited the scheme of which 8 had ceased trading. Of those that chose to leave the scheme, as far as we are aware, all resolutions were performed, however the extent to which resolutions were performed for the members who ceased trading is not now verifiable.*

15. Do you have any summary of management information or other (anonymised) data you would be willing to share about your dispute resolution processes and outcomes? This could cover volumes of appointments and settlements, client groups, types of dispute, and outcomes. If yes, please provide details of what you have available and we may follow up with you.

The Ombudsman has access to and reports on a multiplicity of data in various ways: FHIO/DRO annual reviews available here: <https://www.fhio.org/publications/annual-review-2019>; Rail Ombudsman annual reviews, quarterly statistical publications and more available here: <https://www.railombudsman.org/about-us/documents/>

We are able to slice our data from all schemes across multiple different dimensions and metrics including members, regions, outcomes, complaint types, etc. This can be demonstrated using anonymised data and we invite further engagement to demonstrate this.

3. Dispute Resolution Service Providers

16. Do you have evidence which demonstrates whether the standards needed to provide effective dispute resolution services are well understood?

Whilst an Ombudsman is a key part of the dispute resolution landscape, there are certain features of an Ombudsman scheme that differentiates it from other models in terms of dispute resolution at the earliest possible time. This is particularly the case in private sector schemes which offer a genuine alternative to court action in terms of outcomes.

An Ombudsman's remit is wider than the dispute before it and whilst all ADR schemes offer dispute resolution, as noted above, an Ombudsman has been held out as a 'gold-plated service^{xv}'.

All accredited ADR providers must meet the same minimum criteria as prescribed by their Competent Authority. For example, our Ombudsman is approved by CTSI to provide ADR under the ADR Regulations. In addition, an Ombudsman must be validated by the Ombudsman Association and have permission from Companies House to use this protected name. As such, it must also meet additional criteria which are laid down by the Ombudsman Association, thus adding additional layers of external scrutiny that have been set out elsewhere in this document.

17. Do you have evidence of the impact of the standard of qualifications and training of dispute resolution service providers on settlement rates/outcomes?

The Ombudsman team are qualified to LL.B or equivalent and many have LL.M and other professional qualifications. The Ombudsman also places great emphasis on external accreditation such as City & Guilds, CIARB, BTEC and other continuing CPD. For all new starters a robust four-week induction, incorporating the Ombudsman Association Service Standards Framework and Caseworker Competency Framework, also entails training in all aspects of the role including City & Guilds accredited Consumer Law and Customer Service and Data Protection training which can be run in-house.

Ongoing learning and development is provided and monitored. This is reported biannually to CTSI: [CTSI-schedule-5-and-6-2020-DRO-and-FHIO.pdf](#)

Ombudsman Team Case Study: 4 years' Experience

I have worked at the Ombudsman for just over four years, where I started as a part-time ombudsman. I am now a full-time Acting Lead Ombudsman. I became an Associate Member of the Institute of Arbitrators in 2019.

During this time, I have undertaken the following training as part of my employment:

- City and Guilds Consumer Law & Customer Service (home improvement)
- City and Guilds GDPR training.
- City and Guilds Consumer Law & Customer Service (Rail)

- *Equality Act 2010*
- *BTEC Investigation & Complaint Handling*
- *Disability awareness training.*
- *External know-hows on sector-specific topics.*
- *Internal know-hows on sector specific topics.*

This ensures that the dispute is considered by a suitably qualified Ombudsman with access to technical advice and sector specific knowledge, leading to tangible and enforceable outcomes.

18. Do you have evidence of how complaints procedure frameworks for mediators and other dispute resolution service providers are applied? Do you have evidence of the effectiveness of the complaints' procedure frameworks?

By virtue of its accreditations, the Ombudsman is obliged to make public a complaints process. In addition to the internal processes, the Rail Ombudsman scheme also has an Independent Assessor who produces an annual report^{xvi}. All complainants who receive a response from stage 2 of the complaints process are signposted to the Independent Assessor in the event that they remain dissatisfied with the response. In 2019 (the first full year of operation), four complainants escalated to the Independent Assessor and in 2020, five referrals were made.

In addition, the Ombudsman operates robust quality monitoring of a cross-section of cases with individual feedback provided at 1-2-1s and other HR mechanisms, taking a continuous improvement approach to service limitations and opportunities for service enhancements. A sample of adjudications are provided to the Standards Board and these are scored in accordance with the Ombudsman Association Service Standards Framework which provides an additional, external feedback mechanism to drive improvements and identify any service limitations.

19. Do you think there are the necessary safeguards in place for parties (e.g. where there has been professional misconduct) in their engagement with dispute resolution services?

20. What role is there for continuing professional development for mediators or those providing related services and should this be standardised?

There are several watch-outs in the non-regulated ADR sectors where a *race to the bottom* has previously been experienced as the market opens up and proliferates. Government needs to take a joined-up approach to this to ensure that the various departments are aware of the issues and a consistent approach is taken to ensure that those operating all forms of dispute resolution are suitably qualified to do so. One safeguard, in addition to those identified elsewhere, is the application of a fit and proper persons test and there are, of course, existing mechanisms via, for example, adherence to Ombudsman Association best practice that are publicly measurable.

21. Do you have evidence to demonstrate whether the current system is transparent enough to enable parties to make informed choices about the type of service and provider that is right for them?

One of the challenges in mapping the current landscape (with particular reference to consumer dispute resolution) was highlighted in the report *Confusion, Gaps and Overlaps*^{xvii}. In its approach to the sources of information and its overview of the ADR Providers that informed the report, it highlights that there is no central repository of information relating non-certified ADR schemes. This is something that should be the focus of Government, taking a joined-up approach. This was also highlighted in the CJC ADR Working Group report published in November 2018 on ADR and Civil Justice^{xviii} which called for a website ('Alternatives') where all such information could be located.

4. Financial & Economic Costs/Benefits of Dispute Resolution

22. What are the usual charges for parties seeking private dispute resolution approaches? How does this differ by case types?

23. Do you have evidence on the type of fee exemptions that different dispute resolution professionals apply?

24. Do you have evidence on the impact of the level of fees charged for the resolution process?

25. Do you have any data on evaluation of the cost-effectiveness or otherwise of dispute resolution processes demonstrating savings for parties versus litigation?

The Ombudsman model is based on a subscription and case fee model that was set out by the Office of Fair Trading. This has not changed to date as it prescribes a proportionate fee based on the turnover of the business. The case fee is relatively low to ensure that businesses do not consider this prohibitive and sign-post appropriately. As previously noted, access to an Ombudsman is free to a consumer.

5. Technology Infrastructure

26. Do you have evidence of how and to what extent technology has played an effective role in dispute resolution processes for citizens or businesses?

The Ombudsman has developed an innovative case management tool that is bespoke to our service and adapted to provide both accessible dispute resolution mechanisms for the parties involved in case handlers investigating a dispute, but which also captures data to provide feedback and insight for other stakeholders.

The consumer and business gain access via a portal into which they can log dispute details and upload documents. They are also provided with log-in to access and view updates and send secure messages as well as receiving automated responses at various points in the process. The business can self-serve case data in order to track outcomes and spot trends (see examples of Management Information above). In the Rail Ombudsman scheme, stakeholders such as Government, the Regulator and consumer watchdogs have super-user access to anonymised data.

The case management system interfaces with other users and, for example facilitates the single-front door for rail passenger complaints (out of scope cases being triaged elsewhere by the system).

We are very happy to engage by way of a demonstration of this and would, indeed, encourage Government to do so as this is an effective and accessible route into dispute resolution.

27. Do you have evidence on the relative effectiveness of different technologies to facilitate dispute resolution? What works well for different types of disputes?

As above; this system is in operation across many sectors and is used by consumers and service providers in the rail, home improvement sector, high street retailers, service providers and in music and tv licencing (including B2B and SME disputes).

28. Do you have evidence of how technology has caused barriers in resolving disputes?

Only insofar as consumers who are digitally excluded are unable to access directly. That said, it is important to understand that where technological solutions are used by the majority of consumers (as to which see our response to question 1 above), Ombudsman schemes are then geared to deal with those who need more support accessing dispute resolution and can allocate appropriate time and resource to ensure they are not disenfranchised.

29. Do you have evidence of how an online dispute resolution platform has been developed to continue to keep pace with technological advancement?

We have outlined some of the features of the case management system above and this is subject to ongoing enhancement. The advantage of a bespoke, as opposed to "off-the-shelf" system, is that it can be changed as required. For example, a recent development provides direct access to data subjects who have submitted a subject access request to ensure they can exercise their right of access with minimal resource and appropriate safeguards.

30. Do you have evidence of how automated dispute resolution interventions such as artificial intelligence-led have been successfully implemented? How have these been reviewed and evaluated?

There will always be a place for human intervention/contact in dispute resolution. For example, the Ombudsman's approach to dispute resolution is telephone led. That said, there are touchpoints within the process where an automated contact is appropriate to ensure engagement and to keep the parties informed. For that reason, auto texts and emails are sent at various points in the process and these interventions sent via the platform can be an important facet in ensuring engagement.

6. Public Sector Equality Duty

31. Do you have any evidence on how protected characteristics and socio-demographic differences impact upon interactions with dispute resolution processes?

32. Do you have any evidence on issues associated with population-level differences, experiences and inequalities that should be taken into consideration?

As per our response to question 1 (above), there are mechanisms in place for applicants requiring reasonable adjustments and many others state communication preferences. Some applicants bring their claims via third-party representatives which can be an indicator of vulnerability.

Our experience of setting up the Rail Ombudsman and engagement with passengers saw enhancements such as a website and portal that conform to WCAG 2.1AA standards, use of textphone, sign-language, braille and SMS. Justice must be accessible for all and we encourage engagement with stakeholders and representative bodies and user-groups to ensure appropriate signposting and referrals.

7. Other Evidence

The Ombudsman has been party to several discussions across various Government departments and regulators regarding efficient and timely access to pre-court dispute resolution and improving take-up amongst businesses thereby ensuring outcomes for consumers. The Ombudsman therefore strongly suggests that Government takes advantage of the current appetite to improve and simplify the landscape, providing one-Ombudsman per sector access in consumer disputes and otherwise improving signposting requirements by strengthening the ADR Regulations.

In its response to the BEIS Consultation, the Ombudsman expressed its views on some of the mechanisms that are currently under discussion and is aware of the need to balance costs to businesses (particularly SMEs) at this current time. However, pre-existing ADR solutions, such as Ombudsman schemes are geared to meet the challenges and would welcome a more joined-up approach from Government, perhaps inter-department or APPG discussions and suggests that the MOJ could play a central co-ordination role in respect of ADR provision in the extra-judicial landscape. This would ensure consumers have pre-defined routes outside of, and earlier than considerations of court process, using technology to interface with Ombudsman in the minority of cases for which ADR is either unsuccessful or unsuitable.

Conclusion

ADR represents a strong means by which a consumer can access redress which is fair and proportionate to the issue at hand. Ombudsman represent the *gold-standard* of ADR provision, are accessible to all consumers and businesses benefit from the wider remit with access to additional services enabling them to enhance their performance and comply with their obligations in the law, with the assistance of training and advice. This also benefits the law enforcers both at national and local level, who can signpost consumers to such schemes, confident that both parties are getting a fair deal.

In conclusion therefore, we believe that ADR should be free to consumers, mandatory in all instances and ultimately, a consumer should have a route of appeal to an Ombudsman, regardless of whether they have used an ADR provider earlier in the process.

About us

The Furniture & Home Improvement Ombudsman (FHIO) (formerly Qualitas and The Furniture Ombudsman) has provided Alternative Dispute Resolution (ADR) Services to consumers and retailers in the furniture and home improvement sectors since it was established by industry groups and the Office of Fair Trading (OFT) in 1992, making it the longest established scheme of its kind in the country. At the request of several of our members following the enactment of The Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015 (the ADR Regulations), we broadened the reach of our ADR services with the introduction of the more generic Dispute Resolution Ombudsman (DRO) scheme, which sits alongside FHIO. Both schemes are operated by Dispute Resolution Ombudsman Limited (DROL), a not-for-profit Company limited by guarantee.

In July 2018 DROL was successful in its tender submission to operate the first Rail Ombudsman in Great Britain, which provides dispute resolution services to Train Operating Companies and their passengers. The Rail Ombudsman has been operating since 26 November 2018.

DROL therefore has experience both of a scheme that has operated successfully in a voluntary sector for nearly three decades, along with setting up the newest Ombudsman scheme which, although originally voluntary, is now mandated by a regulatory license condition.



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- ⁱ [The Alternative Dispute Resolution for Consumer Disputes \(Competent Authorities and Information\) Regulations 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk)
- ⁱⁱ [Rail-Ombudsman-Experience-Survey-Report-FINAL-Nov-19.pdf \(railombudsman.org\)](https://www.railombudsman.org)
- ⁱⁱⁱ [Rail-Ombudsman-Experience-Survey-Report-PDF.pdf \(railombudsman.org\)](https://www.railombudsman.org)
- ^{iv} [CTSI-schedule-5-and-6-2020-DRO-and-FHIO.pdf](https://www.railombudsman.org)
- ^v [Rail-Ombudsman-Experience-Survey-Report-PDF.pdf \(railombudsman.org\)](https://www.railombudsman.org)
- ^{vi} [Consultation on a draft Complaints Code of Practice | Office of Rail and Road \(orr.gov.uk\)](https://www.orr.gov.uk)
- ^{vii} [Rail-Ombudsman-Experience-Survey-Report-PDF.pdf \(railombudsman.org\)](https://www.railombudsman.org)
- ^{viii} [Annual-Review-2019.pdf](https://www.railombudsman.org)
- ^{ix} [Rail Ombudsman Annual Review-FINAL3.pdf \(railombudsman.org\)](https://www.railombudsman.org)
- ^x [Annual Reviews - The Furniture & Home Improvement Ombudsman \(fhio.org\)](https://www.fhio.org)
- ^{xi} [Service Standards Framework.pdf \(ombudsmanassociation.org\)](https://www.ombudsmanassociation.org)
- ^{xii} [CaseworkerCompetencyFramework2019 \(1\).pdf \(ombudsmanassociation.org\)](https://www.ombudsmanassociation.org)
- ^{xiii} [The Furniture & Home Improvement Ombudsman \(fhio.org\); rules_of_full_membershoip_aug2020](https://www.fhio.org)
- ^{xiv} [CTSI-schedule-5-and-6-2020-DRO-and-FHIO.pdf](https://www.railombudsman.org)
- ^{xv} APPG on Consumer Protection Report from the Ombudsman Inquiry January 2019 Volume I: Report Author: John Ludlow Secretariat to the APPG on Consumer Protection
- ^{xvi} [Independent-Assessor-Annual-Report-2021-FINAL..pdf \(railombudsman.org\)](https://www.railombudsman.org)
- ^{xvii} [Gaps overlaps consumer confusion 201704.pdf \(citizensadvice.org.uk\)](https://www.citizensadvice.org.uk)
- ^{xviii} [CJC ADR Report FINAL Dec 2018 \(judiciary.uk\)](https://www.judiciary.uk)