



Alternative Dispute Resolution Service – Which? Trusted Traders Consumer Guide

Dispute Resolution Ombudsman works with Which? Trusted Traders to raise industry standards and ensure that their customers have an additional layer of protection in case something goes wrong.

Dispute Resolution Ombudsman Limited (“the Ombudsman”) is a not-for-profit Alternative Dispute Resolution (“ADR”) organisation specialising in the resolution of disputes between a consumer and a business. Our primary role is to investigate complaints and disputes in order to come to a resolution. Our service helps everyone to get a fair deal and reduces the stress and expense that is associated with drawn out complaints and the potential for Court action.

Our independent status is at the heart of everything that we do, as is our commitment to openness, honesty and integrity. We recognise the importance of these values to everyone that relies on our service. The work that we do is impartial; we are neither a consumer champion nor a trade body. We will work with you and the trader to resolve your complaint and we will provide information arising out of this to Which? as part of their ongoing rigorous assessment process.

When administering disputes, we have regard to all of the relevant consumer legislation. However, to remain effective, we may also consider other non-legal factors that might reasonably be taken into account when deciding the outcome of a case.

Our overall aim is to raise standards and inspire consumer confidence and we work to uphold the following key principles whilst delivering our ADR service:

- Independence
- Fairness
- Effectiveness
- Openness and Transparency
- Accountability

We are a government approved provider of Alternative Dispute Resolution in the United Kingdom and are referenced on the Chartered Trading Standards Institute’s website as such. We also work with a wide range of stakeholders including the Citizens Advice service, the Department for Business Innovation and Skills and regional trading standards offices. Many of our staff are legally qualified and are Associates of the Chartered Institute of Arbitrators (CI Arb).

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If you are in dispute with a Which? Trusted trader, and you have not been able to resolve your complaint directly with them, you can refer your case to us. Where it is not possible to resolve an issue informally through conciliation, we can investigate and if necessary formally adjudicate. This involves assessing the facts and reaching a decision, including where appropriate, outlining action to resolve the matter.

Can we actually deal with YOUR complaint?

The Ombudsman is able to deal with your complaint if:

Your contract is with a Which? Trusted trader during their endorsement as a Which? Trusted trader.

Please check if a trader is endorsed with the Which? Trusted Traders scheme here: www.whichtraders.co.uk or call 0117 456 6031.

And

- You have been through the trader's in-house complaints handling procedure. Please note that we cannot start to investigate your complaint until you and the trader have had a proper chance to try and resolve the issues yourselves. This means that you must have exhausted the trader's in-house complaints handling procedure, or 28 days have elapsed since the date you raised your complaint with them (whichever is the sooner).

And

- You have referred your complaint within 12 months of receiving the trader's final offer of settlement or response to your complaint.

Where your complaint is about a trader who is not endorsed as a Which? Trusted trader at the time of your complaint, we cannot investigate the complaint.

[In some circumstances, if the trader is not registered, we may be able to help you with an independent inspection].

[It may also be necessary to check that the work which the Which? Trusted trader has carried out forms part of their endorsement under the Which? Trusted Traders scheme. For example, if a Which? Trusted trader expands the scope of their service and has not notified the Which? Trusted Trader scheme who have not endorsed this, the works may not be covered by the scheme and its ADR provision].

We cannot normally investigate your complaint if you are a business purchaser (for example a consumer purchasing a fitted kitchen for business premises or where it has been purchased by a business or firm). In these cases the complaint will more usually be suited to the County Court.

We are unable to investigate your complaint in the following circumstances:

- Your complaint is not about a Which? Trusted trader.

- Your complaint is against a trader who has entered administration, liquidation or who has ceased trading.
- You are neither a party to the contract with the trader nor acting on behalf of a party to the contract with the trader.
- Your complaint is not made as a consumer.
- Your complaint is being, or has been, dealt with by a Court or another tribunal/Ombudsman scheme.
- You refer your complaint to the Ombudsman more than 12 months after you receive the trader's final offer of settlement or answer.

The Ombudsman process can make awards of up to £10,000 in compensation in any single dispute (in addition to the purchase price of the goods/services that were bought). Claims for amounts in excess of that sum may be more complex and thus better suited to a claim in the County Court.

When can I complain to the Ombudsman?

When the trader is an endorsed Which? Trusted trader at the time the service was delivered.

Tell the trader concerned that you have a complaint and that you want them to look at it under their internal complaints procedure. The Ombudsman will not normally consider your complaint unless you have tried this first. If the trader has not dealt with your complaint within 28 days of receiving it in writing, then you may take it direct to the Ombudsman.

If the trader has finished considering your complaint before 28 days have expired and have issued you with a 'deadlock' letter, you can contact the Ombudsman with details of your complaint.

What will the Ombudsman do?

You will be required to fill out an application form that will help you put your complaint to us. You will also be asked to agree to us contacting the trader about your complaint and getting information from them.

When we receive your application form and the trader's response, we will pass your file to one of our Ombudsmen who will undertake an initial case review – largely based on the documents and information sent to us by both parties, but we may make other enquiries.

Our Ombudsmen will look at the history of the problem and all evidence presented. We will contact you and the trader to enable the complaint to be resolved quickly and informally. Where this is not possible we will decide whether we need further information from you or the trader, or if we require further evidence before we can make an adjudication decision. If we do, we will contact you and explain this to you.

In the majority of cases that we deal with, an inspection report is not necessary. Where we do consider that an inspection is necessary, an independent expert will contact you to arrange a convenient time to visit you.

If you do not wish to have an inspection carried out, we can attempt to make a decision based on the evidence that has been presented so far. However, please note that we will often recommend that an inspection be carried out so that the Ombudsman has sufficient evidence to make a fair and reasoned decision. Once the Ombudsman has made a decision, we will send a written copy of this to you and the trader. This includes our view on the validity of the complaint and any action that should be taken to resolve it.

Any award that we may make in your favour is to compensate you for any loss you may have suffered and which we feel is appropriate in your particular case. The decisions that we make are in relation to the dispute between you and the trader. We do not intervene where finance or credit agreements are concerned and our awards do not include these.

Neither can we intervene in cases where, for example, you have paid the trader's sub-contractor to do additional work for you, for example where a sub-contractor engaged to carry out electrical work in an extension is separately asked to install outside lights and the consumer pays the sub-contractor direct for this additional work.

This decision is binding on the Which? Trusted trader and legally enforceable against them. The decision will also be notified to Which? as part of their ongoing endorsement process. The consumer has the right to pursue the matter further through alternative channels if they choose to do so.

Where can I get an application form?

You should only submit an application with us after you have spoken both to the trader and Which? Trusted Traders you will need a reference number from Which? Trusted Traders in order to submit your complaint. Once you have the reference number you can raise a dispute with us on the following page of our website , alternatively, you can download and print a form, or call us on 0333 2413209 and the Ombudsman will post or e-mail one out to you. If you decide to submit a complaint by post, please mail it to: Dispute Resolution Ombudsman, Premier House, First Floor, 1-5 Argyle Way, Stevenage, Hertfordshire. SG1 2AD. Alternatively, you can e-mail us your application to info@disputeresolutionombudsman.org.

How long will the Ombudsman process take?

It is difficult to give any firm estimates as the time taken to consider each case will depend on the complexity of that case and how much the parties disagree. If we need

to inspect works to reach a decision, or where the case is particularly complex or serious our process could take in the region of three months.

Due to the high volume of cases we receive it is necessary for us to deal with each case in the order in which it is received. If your situation changes, or if there is any new information that you wish to be considered please contact us with this, ensuring that you quote your case reference number and we will update your case file. Because of the high volume of correspondence sent to us, and number of telephone calls and emails received, we do not routinely acknowledge or respond to all of these at the time that they are received. You can expect to receive a response from us at the following stages:

- When we receive your application
- When we have conducted our initial case review, if we decide we need further information from you, or need to get the works and/or products tested or inspected
- When we have made our adjudication decision To review our most recent set of statistics relating to case outcomes and average case times please visit the Case Statistics page on our website or refer to our latest Annual Review.

Will I need legal representation?

Neither party is obliged to appoint a lawyer or legal advisor in order to access our dispute resolution service. However, if either party is unsure as to their rights or obligations we recommend that they seek the appropriate advice.

What level of proof do I have to provide?

Please note that, even though we have accepted a complaint, this does not mean that we will necessarily find in the consumer's favour. Each case is decided based on the evidence available and the relevant legal position.

We will need to be convinced that any issue – in whole or in part – is the responsibility of the trader. It will not be sufficient for the consumer to make unsupported allegations or statements. Any evidence provided will be evaluated by the Ombudsman.

How will the Ombudsman assess my complaint?

The Ombudsman is a recognised alternative dispute resolution body. This means that we will decide cases along the same principles as those used by the courts. We will take account of relevant consumer legislation, together with the requirements of the Code of Practice and the Which? Trusted Trader's Code of Conduct. Like the courts we will award compensation where appropriate.

However, unlike in a court of law, we have no power to cross-examine witnesses under oath. As such, there are occasions where we may not be able to come to a formal



decision. We will always ensure we arrive at a decision based on what appears to be fair and reasonable in the circumstances.

Offers made to resolve complaints informally

We will always consider – and actively promote and support – any opportunities for reaching a settlement between both parties.

However, please note that if the trader has already made you any form of financial offer by way of settling your dispute – be it of compensation or goodwill – that offer may lapse on referral of your complaints to us. We will make our own decision based on the information and evidence submitted to us, and that decision may award more or less than any sum already offered by the trader.

If the Ombudsman rules in the consumer's favour, what is the likely outcome?

The Ombudsman may make an award of financial compensation or make the trader do certain things (such as repair or replace or re-fit faulty products or carry out repeat performance of their contracted services) in order to resolve your complaint.

Although we can make practical and financial awards, there are limits to what the Ombudsman can do. For example, we cannot insist that a trader delivers goods that they have not delivered, but we can advise you on whether you are entitled to any compensation for any delays, and let you know if you have the right to cancel a contract. We cannot compel a trader to provide explanations as to why something may have gone wrong, or make them apologise. [Act in conjunction with Which? Code of Conduct] Our obligation is to make a decision that will resolve the dispute. We will act as an alternative to the courts, and where necessary make a formal decision as to what should be done.

What if I do not agree with the Ombudsman's decision?

The decisions made by the Ombudsman are not binding on consumers; which means they remain free to pursue the complaint through other channels. Consumers can withdraw from the process at any time and the outcome will only be binding on them if they agree with our decision about what should be done to resolve the case.

We would advise that you seek professional legal advice before taking further action, for example by contacting Citizen's Advice on 03 454 04 05 06.

Does the trader have to do what the Ombudsman says?

Please note that the Ombudsman is not a regulator and they cannot penalise endorsed traders except where they breach the scheme's Code of Practice or Which? Trusted



Traders' Code of Conduct. If the award is accepted by the consumer, it becomes a full and final settlement and is binding upon the trader. You are therefore prevented from making any further claims for compensation against the trader in relation to this complaint.

If the Ombudsman makes an award, and you accept it, it is expected that the trader takes the action required to put the settlement in hand within 28 days.

What if I still don't accept the Ombudsman's decision? If you reject our decision, it will lapse. If the consumer wishes to take further action, this avenue remains open. No legal rights are affected by our decision, however, the Ombudsman's decision may be considered by a Court.

Can I see details of the awards you have made in other cases?

No. Our decisions remain strictly confidential between the parties involved and Which? Trusted Traders who will be notified of the outcome as part of their ongoing endorsement process. We will only disclose details of our decisions to the Ombudsman Standards Board and any other body that is relevant with regard to the administration of our work. We will not disclose any of the details to anyone else.

How many consumers win their case? To review our most recent set of statistics relating to case outcomes and average case times please visit the Case Statistics page on our website or refer to our latest Annual Review.

How is the Ombudsman independent?

- Board of Directors

Comprising a Chair and a majority of non-executive directors, the Board is responsible for appointing the Chief Ombudsman and providing governance. The Board also helps to safeguard the Ombudsman's interests so that it is free to operate effectively and independently.

- The Ombudsman Standards Board

To help preserve our independence and provide an invaluable set of checks and balances on our work, the Ombudsman Standards Board acts to regulate how we operate. All Board Members share our vision of inspiring consumer confidence and raising industry standards and do so on a voluntary basis. Governed by a set of bye-laws, the Standards Board regularly reviews a cross section of our adjudications, to ensure they are both fair and reasonable. It also oversees our rules, practices and procedures.

- Our Staff

Our team of Ombudsmen hold legal and professional qualifications in Alternative Dispute Resolution and have amassed several years of experience in the law and resolving



complex consumer disputes. All of our staff are expected to abide by our Values which represent how we approach all aspects of our work and demonstrate our commitment to everyone involved with our service.

Is the Ombudsman approved by Government to provide Alternative Dispute Resolution services?

Yes. We are approved by the Chartered Trading Standards Institute (the Competent Authority) to provide our services under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015. You will see our services listed, here: www.tradingstandards.uk/advice/ADRApprovedBodies.cfm

How is the Ombudsman funded?

The Ombudsman is a not-for-profit organisation which, like many other schemes, is funded largely by the fees that we charge the businesses who are registered with us. This helps us to ensure that our dispute resolution service remains free for consumers to use. Our independent status is preserved by our Board of Directors, Standards Board and is also fundamental to our approved status under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015.

Compensation

Can I claim compensation?

Not everyone is entitled to compensation. The following is a general outline of the approach taken by the Ombudsman, but remember that each case is individual and the specific facts of any case may alter what can or cannot be claimed. A breach of contract alone does not necessarily entitle a consumer to claim compensation. You will need to show that there is something wrong with the goods or services provided, for example, they are faulty or not as described.

Remember, you have no legal remedy where:

1. There is fair wear and tear.
2. You have caused or contributed to accidental damage.
3. You have misused or caused a fault, perhaps through the use of incompatible accessories.
4. You have involved the services of a third party.
5. You have changed your mind.



6. There are circumstances that you knew about before you entered the contract, for example, availability of appointments.

The Ombudsman can award compensation of up to £10,000 in a particular case (this does not include the purchase price of the goods and/or services that you have bought). So for example a consumer might seek to claim a refund of the purchase price (which might exceed £10,000) and compensation (which must not exceed £10,000 if the Ombudsman is to deal with the case).

Remedies that may be awarded

1. Full refund if the complaint is serious enough and is made reasonably soon after the purchase. Please note, in order to establish that the breach was so serious in nature that a full refund is warranted, it is likely that expert evidence will need to be obtained.
2. Compensation (or “damages”) that is designed to compensate for actual losses and so normally amounts to the cost of repair or replacement
3. Repair or replacement.
4. Repeat Performance.
5. Partial refund.

The Ombudsman makes awards based on what we think you are entitled to. We do not automatically improve on any previous offers made and may award less in some cases. We do not negotiate a sum either, so if your claim is for £500, and the trader has offered nothing, do not ask for £1,000 believing that we will simply instruct the parties to meet in the middle. We will only make an award based on what you are entitled to, however we will seriously consider reasonable and supported claims.

Consequential losses

Compensation may be awarded where you have suffered loss as a direct consequence of a breach of contract. Claims for consequential loss do not normally

cover distress, inconvenience or disappointment. In claiming any consequential costs, you must have acted reasonably with regard to how they were accrued, for example, letting the trader know about the problem as soon as possible so they can put the fault right before costs escalate.

When assessing compensation claims we will use the following principles:

- Compensation will only be considered where it can be established that the loss claimed was the natural result of a default of the trader or, in some instances, the manufacturer of any product.
- A person claiming compensation must also show that they have taken action to keep any losses to a minimum. This means that you should report any problems as

soon as possible, abide by any service instructions and take all reasonable measures to mitigate your loss.

- The Ombudsman will generally only award compensation for claims that arise once performance of the contract has started, i.e. we will not consider claims for issues that may arise before the contract is entered into.
- It is common for the Ombudsman to ask for evidence to back up any claim, and the absence of evidence may reduce any compensation paid or in some circumstances mean that no compensation can be paid at all.

If you are claiming compensation you must send us evidence to support your case. Failure to do so may result in your claim being rejected.

To assist you, some of the typical compensation claims we receive, and the way we approach them, are set out below:

- Postage/ Telephone/ Travel Costs

Compensation will not normally be awarded for the cost of postage and telephone calls reasonably incurred in pursuing a claim. These costs are likely to be modest in the majority of cases.

- Loss of cooking facilities/cost of meals

Compensation for loss of cooking facilities will only be awarded in exceptional cases where a consumer is denied use of their cooking facilities for unreasonably longer than originally envisaged by the contract. This normally means being without a working oven and hob. We would need to establish that the consumer has been left without cooking facilities due to circumstances caused by the supplier and/or delays in product delivery.

Where a consumer is able to produce itemised bills of the actual cost incurred, this may be the amount awarded. However, the consumer would be expected to show

that they had kept any such expenses to a reasonable minimum and had endeavoured to reduce their loss.

A reasonable sum may be payable where no receipts are produced and where all parties agree that the consumer was without cooking facilities. This sum would only cover those meals normally taken in the home; we will take into account the fact that food would have had to be purchased in any event.

Such awards are calculated on a per person per day basis. When completing your application form, please detail the number of people affected and the exact dates and reasons that there were no cooking facilities.

- Other facilities

Compensation may also be payable where a consumer is denied use of their essential facilities for longer than originally envisaged (for example shower/bath/toilet, washing machine, bedroom, lounge etc.) because of problems caused by the trader. When

making an award for such a claim, we will consider whether or not other facilities were available and what lengths a consumer was forced to go to in order to gain access to facilities. If part of your complaint involves a claim for loss of facilities, please detail the number of people affected, which facilities you were without, why you were without them, and between what dates.

- Accommodation Costs

A reasonable sum may be awarded where circumstances caused by the trader and/or delays in product delivery, have left the consumer's home in an uninhabitable state unreasonably beyond the envisaged contract period. However this will only generally be appropriate to cases concerning home improvement contracts or building projects, where the consumer's home has been rendered uninhabitable i.e. no running water or bathing facilities, no electricity supply etc. We would advise that the trader is notified in advance of your intention to vacate the property and that reasonable costs in respect of this are agreed in advance. Where a consumer is able to produce itemised bills of the actual cost incurred, this would be the relevant amount. However, the consumer would be expected to show that they had kept any such expenses to a reasonable minimum.

- Loss of Earnings/Holidays

Where consumers have had to take time off work, over and above that amount originally envisaged at the time the contract was made, they would normally be entitled to claim compensation for the loss incurred as a result. This would not apply to time spent in resolving the dispute once a case has entered the Ombudsman process. If you are an employed person, any award we may make will not be the same as your daily salary if your employer has paid you in any event.

In these cases any award made will be to reflect the time and inconvenience incurred. Awards made by the Ombudsman for this type of claim do not exceed the sum of £50 per person per day. We will also take into account whether any compensation is to be awarded for general delay and inconvenience (see below).

Where awards are made, we will want to see proof of your claim – for example a copy of your annual leave record from your employer or a letter from them confirming what time was taken, and confirmation of whether you were paid by them. Without this evidence, we cannot make an award.

If you are a self-employed person, we will want to see evidence that you have incurred a loss. This could include giving us evidence of your normal earnings over the six-month period preceding your claim, or letters from customers where you have had to cancel business.

In order to consider any claim of this nature fully we will require details of the actual dates claimed for, whether this was taken as annual leave (employed persons) or whether a loss of pay is claimed (employed persons). In all cases, please provide details of the number of people living in the household, their ages, occupations, and details of their normal times and places of work.



- Delay and inconvenience

As a general rule compensation for delay and inconvenience is not normally awarded save in exceptional cases. For instance, it would not normally be awarded for the type of cases where a project was delayed a week or two, or where there was a broken delivery appointment. On the other hand, if it was known that a bathroom installation had to be completed in time for a special event and this was agreed in advance e.g. a wedding, compensation may be payable.

Compensation may also be payable in cases where a consumer has had to endure substantive remedial works over a protracted period of time. Often the Courts will not make awards for delay and inconvenience. Where awards are made they are moderate, even in cases where many months of delay and associated inconvenience have been incurred. However, each case must be considered on its own merits.

- Property damage

Where a consumer has had damage caused to their property during the period of works, then it may be reasonable to claim compensation for the cost of making good. However consideration should be given to the actual loss suffered since this may not be the full cost of reinstatement on a new for old basis. We will only tend to consider such claims where the damage caused is directly linked to the product i.e. where a car has been repaired and damage has been caused to the body work whilst in the workshop. Where, for example, damage to a

floor had been caused during a kitchen installation we may not award compensation but we would offer a consumer general advice as to how such a claim might be pursued, e.g. through the trader's insurance.

What can the Ombudsman not award compensation for?

Compensation will not normally be allowed for legal fees, telephone and postage costs, storage charges, claims for loss of bank interest or loss of rental income.

We cannot consider any claim that may be commercial in nature, for example losses incurred by a business, company or firm. Claims of this nature should be pursued in the County Court. Please note, false fraudulent claims may result in your entire claim being rejected. Exaggerated or frivolous claims will not be considered.

Contact us:

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