

TSI Requirements and Guidance on seeking approval as a Consumer ADR Body operating in non regulated sectors.

(For the purpose of Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015)

FAQS

GENERAL

1. What is ADR?

ADR or Alternative Dispute Resolution describes a range of methodology designed to avoid the need to go to court to enforce legal rights. Usually these methodologies are designed to be cheaper, quicker and less formal than using the alternative court process.

2. Does the trader have to follow the decision of the ADR body?

Often decisions by the ADR body are not legally binding on the trader but the trader might have agreed to be bound by the decision as part of an membership agreement of a particular scheme. In most instances where they have agreed to use ADR traders will voluntarily follow the decision of the ADR body. Generally, where the decision is not binding, the consumer, if unhappy with the ADR bodies decision, will retain the right to take the trader to court

3. What does the law require of the UK government?

The EU Directive on consumer ADR, requires that the UK government ensures that all consumer sectors have access to ADR bodies that have been audited against it's (the directives) quality criteria. The requirements of the directive were implemented into UK law by The Alternative Dispute Resolution for Consumer disputes (Competent Authorities and information) Regulations 2015

4. What does the law require of me as a trader?

Once a trader and consumer fail to resolve an initial complaint, the trader will be required to give the consumer the details of the relevant approved body and indicate whether he/she intends to use it. Nothing requires the trader to actually use the approved body or any other body.

5. What does the law require I do as a trade association?

The directive requires that BIS ensures that all trade associations who are approved ADR bodies present this information on their website in a clear and concise manner. Essential information to be given also includes the name of any network of bodies which facilitates cross-border alternative dispute resolution of which it is a member. The type of domestic disputes and cross-border disputes which it is competent to deal with, including any financial thresholds which apply. It should also provide the procedural rules of the alternative dispute resolution procedure operated by it and the grounds on which it can refuse to deal with a given dispute

6. What is TSI's role?

TSI has been appointed as competent authority in non regulated sectors. Broadly, the role covers auditing ADR bodies, creating and hosting a website publishing details of all approved ADR bodies, and fulfilment of a number of reporting requirements to the EU Commission. Sectors that are monitored by a regulator will have their own specific competent authority and TSI will act as competent authority across the remaining consumer sectors.

IMPLEMENTATION

7. When does the implementation process start?

TSI started work on this implementation in mid December 2014 and, in order to better understand the current environment, has focused on stakeholder engagement with potential approved ADR bodies.

8. When is the implementation date?

The regulations come into effect on 9th July 2015

9. Can I still apply for approval as an ADR body after the implementation date?

The approval process will be ongoing and bodies can apply at any point

APPLICATION

10. What is the application process and where can I get help in preparing my application for approval?

The guidelines on application to be an approved consumer ADR provider are published on the TSI website. The audit process is designed to be very flexible and applicants are advised to apply at whatever stage they feel they need assistance and TSI auditors can then assist them in completing their application and meeting the requirements of the audit.

11. What happens if my application is rejected?

The audit process is designed so that where the audited process doesn't immediately meet the requirements of the regulations, the auditor will assist the applicant body in modifying processes to eventually comply. Where an application is rejected, the competent authority must, as soon as is reasonably practicable, give written notice of this fact to the ADR applicant, which must include the grounds on which it has rejected the application.

12. My business activities are targeted mainly at consumers based abroad, do I need to apply?

The Regulations provides for bodies to provide ADR services for both domestic and cross-border disputes.

13. Do all my activities need to be approved / audited?

The term ADR and, more importantly in this context, the processes that the directive need to be approved by the competent authority (CA), include all processes that are aimed at resolving the consumers complaints. It is definitely not limited to formal mediation, conciliation, adjudication processes etc. Nor is it limited to ombudsman services. It is possible that an applicant body carries out several activities some of which may be capable of approval under the regulations. For example a body who wants to be audited for its processes in dealing with consumer complaints might also deal with disputes between traders. In this case the first process can be approved and the second, for the purposes of the competent authority, can be ignored.

14. I only provide informal advice and assistance, I send those disputes I can't resolve to a provider of formal ADR services; do I need approval?

The scope of the regulation covers any activity carried out with an aim of resolving the consumers dispute. This is wider than just formal ADR activities such as Arbitration or conciliation. If you carry out informal ADR, and wish the trader to be able to signpost towards your scheme, then you will need to be approved by a competent authority. Otherwise the trader will be required to indicate another, approved ADR body, even if their intention is to use your unapproved scheme. If you do seek approval then both parts of the scheme, your informal process and the external formal process, will need to be approved.

COSTS OF APPROVAL AS AN ADR BODY

15. Is this a free service?

TSI as competent authority will be charging annually for approving bodies and has agreed charging bands depending on the size and complexity of the bodies' case load.

16. How much will this cost?

The lowest charge which will be chargeable in most cases is £5,000-£5,750(+vat) in year one for full approval and £2,750 (+vat) in years two and three for a more targeted audit. In year four it is likely that the cycle will resume again but TSI will need to go through an annual process of justifying its charges to the Department for Business, Innovation and Skills. The work in auditing an applicant body will vary and the actual charge is made up of a fixed fee to cover TSI administration costs plus a fee of £750 per day for the actual audit. For a more detailed idea of what this might mean for your organisation, please have a look at the application guidance and then contact TSI at adrenquiries@tsi.org.uk

MISCELLANEOUS

17. I already use an ADR provider must I switch to an approved body?

There is nothing to stop a trader indicating that the approved body in a sector is whoever it is, then indicate he won't be using that body but will use another non approved body. Ultimately it is hoped that customer pressure and the opportunities for growth that approval bring will see most bodies decide to be approved and most traders seeing the benefits of using such bodies.

18. Is there a limit on number of approved bodies allowed to operate in a certain sector?

There is nothing to stop more than one approved body operating in a specified sector.

19. I operate in a regulated sector; do I need to apply to the TSI for approval?

In regulated sectors the regulators are likely to operate as competent authority. TSI will operate as the competent authority across all non regulated sectors and this is the arrangement for Scotland, Wales and Northern Ireland as well.

20. Who monitors the activities of the approved bodies?

The directive has a heavy reporting requirement where approved bodies supply performance information to the relevant competent authority that then pass it to TSI as the single point of contact for collating and passing to the EU Commission.

21. I offer services which fall under different sectors, who do I apply to?

There is the potential for crossover where some bodies may operate in both regulated and non regulated sectors. If you feel this might be the case for your application please contact us at adrenquiries@tsi.org.uk