



Department  
for Business  
Innovation & Skills

**ALTERNATIVE DISPUTE  
RESOLUTION FOR CONSUMERS**

Implementing the Alternative  
Dispute Resolution Directive and  
Online Dispute Resolution  
Regulation – Impact  
Assessment

MARCH 2014

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<b>Title:</b> Alternative Dispute Resolution  <b>IA No:</b> BIS CCP004  <b>Lead department or agency:</b> BIS  <b>Other departments or agencies:</b> N/A	<b>Impact Assessment (IA)</b>					
	<b>Date:</b> 29/11/2013					
	<b>Stage:</b> Consultation					
	<b>Source of intervention:</b> EU					
	<b>Type of measure:</b> Secondary legislation					
<b>Contact for enquiries:</b> James Ravenscroft - 0207 215 2171						
<b>Summary: Intervention and Options</b>					<b>RPC Opinion: Green</b>	

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
-£87.2m	-£90.2m	£8.1m	No
			NA

**What is the problem under consideration? Why is government intervention necessary?**

Consumers considering cross-border purchases within the European Union can be put off by concerns about resolving disputes with traders based abroad, with the result that consumers are not participating fully in the Internal Market. One reason for this is that coverage of Alternative Dispute Resolution (ADR) schemes is not universal across the Internal Market. Even where sectors are covered by ADR, consumer awareness of ADR as a means of redress is limited and therefore it is rarely used. These issues impact consumers' participation in domestic as well as cross-border markets.

Without access to ADR, consumers may have to resort to costly court action to resolve complaints. Intervention is needed to improve access to quick, easily accessible and low-cost ADR mechanisms so EU consumers are able to solve problems quickly and without going through the courts. Consumers will have greater confidence that problems will be resolved, meaning they are more likely to shop with unfamiliar traders, driving competition and economic growth both within and across Member States.

**What are the policy objectives and the intended effects?**

The main objective of the ADR Directive is to improve the functioning of the retail internal market by enhancing redress for consumers. The legislation will achieve this by requiring Member States to ensure quality ADR is available for all contractual disputes between consumers and business, to address existing gaps. It will promote awareness of ADR by ensuring businesses provide information to consumers about ADR schemes. The Online Dispute Resolution (ODR) Regulation will enhance the Digital Single Market by establishing an EU-wide portal, that will signpost consumers to ADR providers able to resolve online, cross-border and domestic disputes.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 1 - Do nothing: the current landscape does not provide sufficient ADR coverage to fulfil EU obligations so this risks infraction proceedings. This is discounted as it does not represent a viable option.

Option 2a – Minimal option: Establish a residual ADR body to capture consumer disputes not already covered by existing ADR schemes. This body will operate alongside existing providers.

Option 2b (preferred) – Minimal option plus creation of consumer facing complaints “helpdesk”.

Option 3 - Simplification of ADR landscape: Merge existing bodies to form a consumer ombudsman body which operates alongside existing statutory bodies.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 01/2020					
Does implementation go beyond minimum EU requirements?				No	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)				<b>Traded:</b> N/A	<b>Non-traded:</b> N/A

**I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.**

Signed by the responsible SELECT SIGNATORY: \_\_\_\_\_ Date: \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Do nothing: the current landscape does not provide sufficient ADR coverage to fulfil EU obligations so this risks infraction proceedings. This is discounted as it does not represent a viable option.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A

### Description and scale of key monetised costs by 'main affected groups'

N/A – baseline option

### Other key non-monetised costs by 'main affected groups'

#### Government

- cost of infraction fines – 'do nothing' option does not meet the requirements of the ADR Directive / ODR Regulation

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A

### Description and scale of key monetised benefits by 'main affected groups'

N/A – baseline option

### Other key non-monetised benefits by 'main affected groups'

N/A – baseline option

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

- non-compliance with Directive / Regulation carries strong risk of incurring infraction fines

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	NA

# Summary: Analysis & Evidence

# Policy Option 2a

**Description:** Minimal option: Establish a residual ADR body to capture consumer disputes not already covered by existing ADR schemes. This body will operate alongside existing providers.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: <b>-156.2</b>	High: <b>-18.3</b>	Best Estimate: <b>-87.2</b>

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	29.5	2.3	49.5
High	44.2	13.9	162.4
Best Estimate	36.8	8.1	106.0

### Description and scale of key monetised costs by 'main affected groups'

#### Business

- cost of providing ADR/ODR information to consumers: **£25.3m-£38.0m (one-off cost), £0.5m-£0.7m p.a.**
- creation of a competent authority to monitor compliance with the Directive: **£0.1m p.a.**
- fees to residual ADR body as a result of additional ADR cases (from year 1): **£0.9m-£9.6m p.a.**
- cost of preparing additional ADR cases: **£0.4m-£2.0m p.a.**
- redress from additional ADR cases in consumers' favour (transfer to consumers): **£0.4m-£2.0m p.a.**

#### Government

- creation of an ODR contact point: **£0.1m p.a.**
- creation of a competent authority to monitor compliance with the Directive: **£0.2m (one-off cost)**
- cost of establishing and funding residual ADR body (year 0): **£4.0m-£6.0m (one-off cost)**

#### Consumers

- cost of preparing additional ADR cases: **£0.1m-£0.3m p.a.**

### Other key non-monetised costs by 'main affected groups'

- none

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0.0	0.7	6.2
High	0.0	3.6	31.2
Best Estimate	0.0	2.2	18.7

### Description and scale of key monetised benefits by 'main affected groups'

#### Business

- reduced costs of preparing for court cases as more cases dealt with through ADR: **£0.3m-£1.6m p.a.**

#### Government

- reduced costs of court system as more cases dealt with through ADR: **TBD**

#### Consumers

- reduced costs of court cases as more cases dealt with through ADR: **TBD**
- redress from ADR cases in consumers' favour (transfer from business): **£0.4m-£2.0m p.a.**

### Other key non-monetised benefits by 'main affected groups'

#### Consumers / society

- improved competition in markets supporting lower prices and growth. Arises through:
  - increased redress for consumers means that spending can be re-allocated to businesses with a better record for quality (in provision of goods / services)
  - increased consumer confidence in markets from wider coverage of ADR

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

- number of additional ADR cases created as a result of universal coverage through residual ADR. Note: this depends upon number of businesses that sign-up but also any 'halo effect' through increasing consumer awareness of ADR
- reduction in number of small claims court hearings as a result of creation of residual ADR

## BUSINESS ASSESSMENT (Option 2a)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 8.8	Benefits: 0.7	Net: <b>-8.1</b>	No	NA

# Summary: Analysis & Evidence

# Policy Option 2b

**Description:** Minimal option (2a) plus creation of consumer facing complaints “helpdesk”

## FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: <b>-157.0</b>	High: <b>-19.1</b>	Best Estimate: <b>-88.1</b>

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	29.5	2.4	50.4
High	44.2	14.0	163.3
Best Estimate	36.8	8.2	106.8

### Description and scale of key monetised costs by ‘main affected groups’

#### Business

- cost of providing ADR/ODR information to consumers: **£25.3m-£38.0m (one-off cost)**, **£0.5m-£0.7m p.a.**
- creation of a competent authority to monitor compliance with the Directive: **£0.1m p.a.**
- fees to residual ADR body as a result of additional ADR cases (from year 1): **£0.9m-£9.6m p.a.**
- cost of preparing additional ADR cases: **£0.4m-£2.0m p.a.**
- redress from additional ADR cases in consumers’ favour (transfer to consumers): **£0.4m-£2.0m p.a.**

#### Government

- creation of an ODR contact point: **£0.1m p.a.**
- creation of a competent authority to monitor compliance with the Directive: **£0.2m (one-off cost)**
- cost of establishing and funding residual ADR body (year 0): **£4.0m-£6.0m (one-off cost)**
- cost of operating consumer facing complaints helpdesk: **£0.1m p.a.** (one-off cost of creating helpdesk **TBD**).

#### Consumers

- cost of preparing additional ADR cases: **£0.1m-£0.3m p.a.**

### Other key non-monetised costs by ‘main affected groups’

- none

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0.0	0.7	6.2
High	0.0	3.6	31.2
Best Estimate	0.0	2.2	18.7

### Description and scale of key monetised benefits by ‘main affected groups’

#### Business

- reduced costs of preparing for court cases as more cases dealt with through ADR: **£0.3m-£1.6m p.a.**

#### Government

- reduced costs of court system as more cases dealt with through ADR: **TBD**

#### Consumers

- reduced costs of court cases as more cases dealt with through ADR: **TBD**
- redress from ADR cases in consumers’ favour (transfer from business): **£0.4m-£2.0m p.a.**

### Other key non-monetised benefits by ‘main affected groups’

#### Consumers / society

- improved clarity for consumers in navigating the ADR landscape as a result of complaints helpdesk supporting improved confidence in markets (see below)
- improved competition in markets supporting lower prices and growth. Arises through:
  - increased redress for consumers means that spending can be re-allocated to businesses with a better record for quality (in provision of goods / services)
  - increased consumer confidence in markets from wider coverage of ADR

### Key assumptions/sensitivities/risks

- number of additional ADR cases created as a result of universal coverage through residual ADR. Note: this depends upon number of businesses that sign-up but also any ‘halo effect’ through increasing consumer awareness of ADR
- reduction in number of small claims court hearings as a result of creation of residual ADR

Discount rate (%)

3.5%

**BUSINESS ASSESSMENT (Option2b)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>	
<b>Costs:</b>	<b>8.8</b>	<b>Benefits: 0.7</b>	<b>Net: -8.1</b>	No	NA

# Summary: Analysis & Evidence

# Policy Option 3

**Description:** Simplification of ADR landscape: Retain Financial Services and Legal Ombudsmen merge remaining ADR providers to form a third body that covers all other sectors

## FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: <b>-156.2</b>	High: <b>-18.3</b>	Best Estimate: <b>-87.2</b>

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	29.5	2.3	<b>49.5</b>
High	44.2	13.9	<b>162.4</b>
Best Estimate	36.8	8.1	<b>106.0</b>

### Description and scale of key monetised costs by 'main affected groups'

#### Business

- cost of providing ADR/ODR information to consumers: **£25.3m-£38.0m (one-off cost), £0.5m-£0.7m p.a.**
- creation of a competent authority to monitor compliance with the Directive: **£0.1m p.a.**
- transitional costs of merging ADR bodies to form third ombudsman: **TBD (one-off cost)**
- fees to simplified ADR body as a result of additional ADR cases (from year 1): **£0.9m-£9.6m p.a.**
- cost of preparing additional ADR cases: **£0.4m-£2.0m p.a.**
- redress from additional ADR cases in consumers' favour (transfer to consumers): **£0.4m-£2.0m p.a.**

#### Government

- creation of an ODR contact point: **£0.1m p.a.**
- creation of a competent authority to monitor compliance with the Directive: **£0.2m (one-off cost)**
- cost of establishing simplified ADR body (year 0): **£4.0m-£6.0m (one-off cost)**

#### Consumers

- cost of preparing additional ADR cases: **£0.1m-£0.3m p.a.**

### Other key non-monetised costs by 'main affected groups'

#### Business

- one-time transitional costs to existing ADR providers as a result of simplification of landscape

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0.0	0.7	<b>6.2</b>
High	0.0	3.6	<b>31.2</b>
Best Estimate	0.0	2.2	<b>18.7</b>

### Description and scale of key monetised benefits by 'main affected groups'

#### Business

- reduced costs of preparing for court cases as more cases dealt with through ADR: **£0.3m-£1.5m p.a.**

#### Government

- reduced costs of court system as more cases dealt with through ADR: **TBD**

#### Consumers

- reduced costs of court cases as more cases dealt with through ADR: **TBD**
- redress from ADR cases in consumers' favour (transfer from business): **£0.5m-£2.6m p.a.**

### Other key non-monetised benefits by 'main affected groups'

#### Consumers / society

- improved clarity for consumers in navigating the ADR landscape as a result of simplification
- improved competition in markets supporting lower prices and growth. Arises through:
  - increased redress for consumers means that spending can be re-allocated to businesses with a better record for quality (in provision of goods / services)
  - increased consumer confidence in markets from wider coverage of ADR
  - simplification approach may have a particular advantage in realising these benefits to the extent that bringing all ADR under a small number of bodies increases exposure on quality for sectors where current participation in ADR is low

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>	3.5%
<ul style="list-style-type: none"> <li>number of additional ADR cases created as a result of universal coverage through simplified ADR. Note: this depends upon number of businesses that sign-up but also any 'halo effect' through increasing consumer awareness of ADR</li> <li>reduction in number of small claims court hearings as a result of creation of residual ADR</li> </ul>		

**BUSINESS ASSESSMENT (Option 3)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>		
<b>Costs:</b>	8.8	<b>Benefits: 0.7</b>	<b>Net:</b>	-8.1	Yes	IN

# Evidence Base

## Background

1. This Impact Assessment relates to a European Directive on Alternative Dispute Resolution (ADR) for consumer disputes and a Regulation on Online Dispute Resolution (ODR) which were adopted by the Member States of the European Union on 21 May 2013. All Member States have an obligation to implement the Directive by 9 July 2015. The ODR Regulation will come into force automatically on 9 January 2016.
2. Alternative dispute resolution refers to schemes that are available to help complainants resolve their disputes out of court. The most common forms are mediation, where an independent third party helps the disputing parties to come to a mutually acceptable outcome, and arbitration where an independent third party considers the facts and takes a decision, often binding on one or other of the parties. Ombudsman schemes are an example of ADR. ADR can offer a low-cost and fast alternative for consumers and businesses seeking to resolve disputes, which they cannot resolve between themselves.

## Problem under consideration

3. Many consumers encounter problems after buying goods and services. In many cases these problems can be resolved through discussion with the business concerned but in a significant minority of cases the consumer fails to get a resolution. Seeking redress via the courts is often an expensive and a lengthy process which can deter consumers. This is especially the case for low value or minor problems; at least a fifth<sup>1</sup> of consumers have stated this as a reason for not taking businesses to court to settle their problem.
4. ADR is a low cost and faster means of resolving disputes between consumers and businesses and is used as a means of seeking redress in many sectors. Currently, the ADR landscape in the UK consists of around 70 schemes, which are operated under a number of different models. Statutory schemes typically cover regulated sectors (financial services, energy, telecommunications etc.) with ADR provided by public (e.g. Financial Ombudsman Service, Legal Ombudsman) and private (e.g. Ombudsman Services<sup>2</sup>) bodies. ADR provision in non-statutory sectors is typically provided by trade associations that either offer in-house resolution or refer disputes to external ADR bodies (e.g. Association of British Travel Agents) or by private ADR providers (e.g. the Furniture Ombudsman). The particular dispute resolution methods employed (conciliation, mediation, arbitration etc.) and the cost to the parties involved varies by provider and sector.
5. ADR coverage is not universal though, with some sectors having no or only partial ADR provision. Previous research<sup>3</sup> and preliminary evidence gathered through a survey of known UK ADR providers indicates that there are gaps in the UK ADR landscape in key sectors. The 2010 study by the Office of Fair Trading identified gaps in ADR in the UK in the following sectors: food and drink; DIY materials/cleaning products; clothing and footwear; toiletries and beauty services; jewellery, silverware and clocks; tobacco; nursery goods; sports and hobby equipment; toys and games; CDs, DVDs and computer games; and photography. It also identified several sectors with only limited coverage: (certain) household goods, furnishings and electrical products. More recently, work by BIS has identified gaps in the retail and passenger transport sectors<sup>4</sup>.
6. In addition, the majority of providers of voluntary ADR only provide the service for their members meaning that where a dispute occurs with a business that is not signed up to an ADR provider then technically there is a gap in ADR provision.

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<sup>1</sup> Special Eurobarometer 342 Consumer Empowerment report 2011, page 204. Available at [http://ec.europa.eu/consumers/consumer\\_empowerment/docs/report\\_eurobarometer\\_342\\_en.pdf](http://ec.europa.eu/consumers/consumer_empowerment/docs/report_eurobarometer_342_en.pdf)

<sup>2</sup> Ombudsman Services provides ADR for the energy, telecommunications, property and copyright licensing sectors

<sup>3</sup> <http://www.oft.gov.uk/OFTwork/policy/mapping-uk-consumer-redress/>

<sup>4</sup> BIS survey of ADR coverage (unpublished)

7. Lack of ADR coverage was stated as a reason by two-fifths of ADR providers<sup>5</sup> as to why businesses and consumers did not use ADR. Problems with purchased goods or services therefore often go unresolved, meaning that consumers are not obtaining adequate redress.

## Economic Rationale for intervention

8. The key motivation for simplifying and reforming consumer law is to make markets work more effectively and to drive economic growth. Well-functioning, competitive markets encourage growth by creating incentives for firms to become more efficient and innovative<sup>6</sup>. Markets can only be fully competitive if consumers are active and confident, meaning that they are willing to challenge firms to provide a better deal, switch between suppliers, and take up new products<sup>7</sup>. Consumer law and landscape reform can play a central role in empowering consumers and hence supporting more effective competition

9. There is strong academic support for the position that some minimum degree of consumer protection is required in order for markets to function effectively<sup>9</sup>. When making purchases, consumers typically face a problem of not having full information about competing firms' quality in providing goods and services or how they will respond if something goes wrong. Having to find out this information and potentially negotiate insurance agreements with firms for all purchases would be extremely costly, inhibiting consumers' willingness to shop around for the best deals and, in some cases, to make a purchase at all.

10. Firms and consumers have some methods of addressing this problem themselves. For example, firms may signal (higher) quality by building brands (reputation) or by providing guarantees and warranties. Consumers can reduce the "search costs" of gathering information on different firms' quality by sharing information with each other about purchases through word of mouth e.g. review websites. However, these solutions do not cover all markets and all possible contingencies in goods and service provision. Having a minimum level of consumer protection in place across all markets with recourse to resolving all types of problem addresses this, reducing search and transaction costs for consumers and providing them with confidence that avenues of redress are available in the event of problems.

11. Consumer law, enforced through the court system, is the obvious means of providing universal protection and an avenue for redress. As indicated though, the court system can be a time-consuming and costly process, deterring consumers from using this option. ADR offers a cheaper and faster process for resolving problems prior to involving the courts. Businesses find ADR to be beneficial, with a European Commission survey indicating that 82% of businesses who have used ADR would use it again<sup>10</sup>. The European Commission has identified several barriers to the use of ADR; current coverage is incomplete across sectors, the quality of services is not always guaranteed and consumers lack awareness of ADR as a means to resolve problems.

12. The European Directive on Alternative Dispute Resolution requires that Member States address gaps by ensuring quality ADR is available across all sectors<sup>11</sup> and implement measures to ensure businesses notify consumers of ADR provision available to them. This impact assessment is intended to assess the costs and benefits of providing universal ADR coverage, along with the other provisions of the Directive and the ODR Regulation.

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<sup>5</sup> A study of ADR in the European Union. Available at [http://ec.europa.eu/consumers/redress\\_cons/adr\\_study.pdf](http://ec.europa.eu/consumers/redress_cons/adr_study.pdf)

<sup>6</sup> For references to literature on the links between competition and growth, see OFT (2011), 'Competition and growth'

<sup>7</sup> For references to literature on the links between competition and growth, see OFT (2011), 'Competition and growth'

<sup>8</sup> Mark Armstrong (2008), 'Interactions between competition and consumer policy'

<sup>9</sup> Armstrong (2008)

<sup>10</sup> European Business Test Panel Survey – Alternative Dispute Resolution. (297 respondents) Available at [http://ec.europa.eu/yourvoice/ebtp/consultations/2010/adr/report\\_en.pdf](http://ec.europa.eu/yourvoice/ebtp/consultations/2010/adr/report_en.pdf)

<sup>11</sup> Though the decision of ADR membership is left as voluntary to business aside from existing statutory obligations

## UK Policy Objectives

13. The UK policy objectives are to meet the requirements of the European ADR Directive and ODR Regulation by:

- ensuring quality ADR is available across all sectors
- ensuring that costs and burdens on businesses are kept to a minimum while maintaining a high level of consumer protection
- ensuring the consumer landscape is structured in a way that avoids confusion for consumers

The intended outcome is to enhance the redress process to increase consumer confidence in participating in markets (including across borders), supporting competition and economic growth across the EU.

## Prescribed Policies

14. One of the key obligations of the Directive is to ensure the availability of quality ADR for all consumer disputes. The options for meeting this particular obligation are considered in the 'Summary of Options' section below. In addition, the Directive and the ODR Regulation contain a number of core requirements where there is little or no flexibility in how they should be implemented. These are that:

- a) business provides certain ADR/ODR information to consumers;
- b) Member States create a competent authority to monitor compliance with the Directive; and
- c) Member States create an ODR contact point to the ODR platform to assist consumers in resolving cross-border disputes

The costs of each of these requirements for different groups (business, consumers, government) are considered in turn.

### **a) Cost of providing ADR and ODR information to consumers**

15. Businesses that are obliged to or voluntarily commit to using an ADR entity (or entities) will have to provide information to consumers on that ADR entity, including their website address. This information will have to be available on the business's website, and if applicable, in the general terms and conditions of sales or service contracts.

16. In addition to this, in the event of an unresolved dispute, all businesses will have to provide information about an ADR entity (or entities) that could take on that dispute, and specify whether they will make use of that ADR entity to settle the dispute.

17. Finally the ODR Regulations will oblige all EU online traders to provide a link to the ODR platform on their website. Traders who are obliged to use specific ADR entities to resolve disputes will have to provide further information about the platform in any applicable offers or terms and conditions. Furthermore, online intermediaries which traders use to sell goods or services will also have to provide a link to the ODR platform on their websites.

### **Cost to business**

18. The majority of businesses that sell goods and services are within scope of at least some of the information requirements of the Directive.

19. The total number of businesses selling either goods or services to consumers has previously been defined as all retail, accommodation, automotive and personal service enterprises<sup>12</sup>. Using this definition and the 2012 Business Population Estimates for the UK, this was estimated to be approximately 742,000 businesses<sup>13</sup>. We anticipate that each of these businesses will incur some small familiarisation and training costs from having to inform customers that ADR facilities are available to them if they fail to settle disputes with the business.

### *Familiarisation Costs*

20. We estimate familiarisation will take approximately 1 hour of a staff member's time with consumer service staff receiving a short explanation of the additional information that they have to provide consumers. Views on this estimate will be sought in the consultation. Most (93%) goods and services firms are micro businesses with 9 or fewer staff members. For these, we assume that consumer complaints are typically handled by a senior staff member (often the owner or proprietor). Therefore we have based our familiarisation cost on the wages costs for Customer Service Managers and Supervisors, at £16.15 per hour<sup>14</sup>. We estimate a **one time cost to microbusinesses of £11.1m**.

21. For larger firms with 10 or more employees, we have assumed that a staff member at management level would be familiarised with the reforms (included above at the same wage cost noted above for customer service managers and supervisors). We estimate that in addition, there would also be familiarisation costs in training 20 frontline staff members on the reforms for half an hour at an hourly cost of £10.16<sup>15</sup>. We estimate a **one time cost for SME and Large firms of £5.8m**.

**22. Total familiarisation costs to business are therefore estimated to be approximately £17.0m (one-time cost). We allow for uncertainty in this estimate of +/- 20% giving a range of £13.6m-£20.4m.**

23. These costs are likely to be an over estimate as many businesses such as those in financial services are already part of statutory ADR schemes and as such may already be compliant with the requirements of the Directive. In addition the European Services Directive already imposes similar requirements on service providers.

### *Website Costs*

24. Businesses that sell goods and services online will also incur a one off cost of changing websites to include a link to the ODR platform and provide information about an ADR body available for consumers to use. It has been estimated that 40% of SMEs are online<sup>16</sup> and will incur a one off cost. We apply this assumption to micro businesses as well. It is assumed that all large businesses will have an online presence and so will have to make the changes.

25. The changes needed are relatively minor and so it is estimated that they should not take more than an hour for an IT programmer to complete the changes. Using the 2012 Annual Survey of Hours and Earnings the hourly rate of an IT programmer has been estimated to be £22.80<sup>17</sup>. Combining this with our estimates of the sizes of the consumer facing business populations we estimate the **total cost to business to be around £6.6m (one-time cost). Again, we allow for uncertainty around this figure of +/-20% giving a range of £5.4m-£8.1m.**

### *Terms and Conditions Costs*

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<sup>12</sup> Department for Business, Enterprise and Regulatory Reform: Impact Assessment: The Consumer Protection from Unfair Trading Regulations (2008)

<sup>13</sup> This breaks down to: 690k microbusinesses (9 or fewer employees), 44k small businesses (10-49 employees), 5k medium businesses (50-249 employees) and just over 1k large businesses (250+ employees). Using data from: <https://www.gov.uk/government/organisations/department-for-business-innovation-skills/series/business-population-estimates>

<sup>14</sup> This is based on ASHE 2012 hourly wage of £13.58 for Customer Service Managers and Supervisors, with non-wage labour costs at 16.5%, giving an hourly cost of £15.82. This has been converted to 2013 prices using the GDP deflator at market prices to give £16.15 per hour.

<sup>15</sup> Based on ASHE 2012 hourly wage for frontline customer service occupations of £8.54 plus 16.5% non-wage labour costs. This has been converted to 2013 prices using the GDP deflator at market prices to give £10.16 per hour.

<sup>16</sup> <http://www.basekit.com/digital-dinosaurs>

<sup>17</sup> ASHE 2012: £19.00 an hour plus 16.5% non-wage labour costs gives an hourly rate of £22.33. This has been converted to 2013 prices using the GDP deflator at market prices to give £22.80 per hour.

26. All businesses will incur a one off cost of changing terms and conditions to provide a link to the ODR platform and provide information about an ADR body available for consumers to use. An IFF survey commissioned by BIS<sup>18</sup> surveyed businesses about their use of terms and conditions, frequency of updating them and the costs of doing so.

27. According to the IFF responses, 54% of businesses have pre-drafted T&Cs which will have to be revised to comply with the proposed changes<sup>19</sup> - this implies approximately 390,000 businesses.

28. We also have evidence from the IFF survey of how often businesses change their T&Cs. Combining this with an assumption that businesses will have six months notice of the changes required, this allows us to estimate the number of businesses affected by the change:

- 12% of businesses with T&Cs change them every 1-6 months. We assume there will be no additional costs for these businesses as the notice period will allow them to incorporate these changes into their regular T&C update
- 15% of businesses change their T&Cs every 7-12 months<sup>20</sup>. As an approximation, we assume half of these businesses would not otherwise plan to change their T&Cs within the 6 months notice period and would need to bring forward the date of the next revision<sup>21</sup>.
- 30% of businesses change their T&Cs every 1-2 years. As an approximation, we assume three quarters of these businesses would not otherwise plan to change their T&Cs within the 6 months notice period and would need to bring forward the date of the next revision<sup>22</sup>.
- 30% businesses only change T&Cs less often or on an 'ad hoc' basis. For this group we assume they change their T&Cs every 2-10 years. As an approximation, we assume 95 per cent of these businesses would not otherwise plan to change their T&Cs within the 6 months notice period<sup>23</sup>.
- 14% of firms responded that they do not change their T&Cs at all.

29. We estimated the cost to business of changing a set of T&Cs by firm size using the IFF costs sheet responses; these were £85 for microbusinesses, £263 for small businesses, £494 for medium sized businesses and £2,578 for large businesses<sup>24</sup>.

30. For the businesses that change their T&Cs between 7 months and 10 years, we do not assume they incur this full cost of change but an amount that reflects the fact that they must make the change in advance of their 'preferred' revision date<sup>25</sup>. We assume businesses that do not change their T&Cs at all will incur the full cost of changing their T&Cs.

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<sup>18</sup> IFF: Consumer Rights and Business Practices (March 2013)

<sup>19</sup> This varies by business size: 52% for microbusinesses, 63% for small businesses, 76% for medium sized businesses and 81% for large businesses.

<sup>20</sup> We assume a uniform distribution of businesses in this range and in terms of when within a calendar year they update.

<sup>21</sup> We assume the affected businesses would need to bring forward the date of the next revision by 3 months on average; this is the average 'distance' in months of this group between their 'planned' revision date and the 6 month notice period

<sup>22</sup> We assume the affected businesses would need to bring forward the date of the next revision by 9 months on average; this is the average 'distance' in months of this group between their 'planned' revision date and the 6 month notice period

<sup>23</sup> We assume the affected businesses would need to bring forward the date of the next revision by 57 months on average; this is the average 'distance' in months of this group between their 'planned' revision date and the 6 month notice period

<sup>24</sup> The estimates were £83 for microbusinesses, £257 for small businesses, £484 for medium sized businesses and £2,525 for large businesses. All have been converted to 2013 prices using the GDP deflator at market prices to give the figures shown.

<sup>25</sup> This involves discounting the one-off T&Cs costs to take into account the realistic impact of making businesses revise T&C before their preferred date. The discount factor used is  $= 1/((1+r)^t)$ , where  $r$  is the social discount rate assumed at 3.5% and  $t$  is the number of periods (in years). For example, an affected microbusiness that updates its T&Cs every 7-12 months will, on average, need to bring forward its T&C revision by 3 months. This means incurring a cost of £83 to revise the T&Cs as opposed to the present value of the cost in three months time which would be £82.38.

31. By combining the costs accruing across the categories of business, we have estimated a **one-off cost of changing T&Cs at £7.9m. Again, we allow for uncertainty around this figure of +/-20% giving a range of £6.3m-£9.4m.**

#### *Costs of Notifying Consumers in Event of Non-Resolution of Dispute*

32. In the event that a dispute between a consumer and a business cannot be resolved between them, the business is obliged to provide information about an ADR entity (or entities) that could take on that dispute, and specify whether it will make use of that ADR entity to settle the dispute. This information must be provided on paper (or another durable medium). To estimate the cost to business, we estimate the volume of unresolved complaints per year and multiply by the cost of sending a letter. For statutory ADR sectors there is no additional cost as they already have to inform consumers of available ADR in the event of an unresolved dispute.

33. A survey for Consumer Focus in 2012 estimated there were 15.7m consumer problems in the 12 months to February/March 2012<sup>26</sup>. Removing sectors with statutory ADR schemes (financial services, legal services, energy, telecommunications and property sales) leaves an estimate of 11.1m problems. The same survey indicates that in 31% of (overall) cases, consumers complain to business, whilst a separate survey conducted by IFF Research for BIS indicates that 41% of consumer complaints are unresolved by businesses. This implies approximately 1.4m unresolved complaints for non-statutory sectors<sup>27</sup>. Assuming a cost of 35p+VAT<sup>28</sup> to send a business letter in each case, gives a **total cost of £0.6m per year to business. A +/-20% uncertainty range for this figure is £0.5m-£0.7m.**

#### **b) The creation of a competent authority to monitor compliance**

34. The ADR Directive requires Member States to designate one or more competent authorities to maintain and monitor a list of ADR providers who meet the required standards of the ADR Directive. For example, if an ADR provider is found to no longer comply with the requirements of the Directive then the competent authority must give warning before removing that provider from the list and notifying the Commission.

35. It is likely that some public funding will be needed to support the competent authority although it may be able to recover some of these costs by charging fees to ADR schemes who wish to be recognised as such under the Directive. An informal survey of ADR providers indicated that stakeholders suggest there should be as few competent authorities as possible to avoid duplication.

#### **Cost to government**

36. Government funding of the competent authority is not likely to be significant. Following an informal survey of ADR providers, providers professed a preference for a limited number of bodies to be authorised as the competent authority. It is proposed that the authority will be self financing over the long term but government funding may be required for a transitional period. A similar funding model is being used for the Consumer Codes Approval Scheme (CCAS) which provides a similar oversight role for consumer codes. The CCAS had an operating budget in 2013/14 of £0.25m of which government funding was £0.16m. **At this stage we assume the same cost to government for the ADR compliance authority: start-up costs of £0.16m.** However, views on the number, size and funding model of the competent authorities will be sought during the consultation.

#### **Cost to business**

37. Businesses that belong to ADR schemes that would be approved by the competent authority may see an increase in the membership fees to help fund the authority. Fee increases are likely to be small but may increase as more of the authority becomes self financing (i.e. if government support diminished over time). As a guide, the CCAS 2013/14 operating budget was £0.25m with an income from fees of

<sup>26</sup> Consumer Detriment 2012 – Prepared for Consumer Focus by TNS BMRB

<sup>27</sup> We acknowledge the 41% and 31% figures may be biased as they are not specific to the UK non-statutory ADR sectors.

<sup>28</sup> <http://www.fsb.org.uk/business-mail>

£0.09m. **At this stage we assume the same cost to business for the ADR compliance authority: £0.09m per year.**

38. The possibility of increases fees may alter the propensity to belong to ADR schemes, with some businesses no longer believing it to be a cost effective. Views on this will as well as the potential fee levels will be sought during the consultation.

### c) Creation of an ODR contact point

39. The ODR Regulation will come into force automatically in all EU Member States on 9 January 2016. It will establish an EU-wide portal “the ODR Platform” that will signpost consumers to ADR providers able to resolve online, cross-border and domestic disputes.

40. Each Member State must host an ODR contact point with at least two ODR advisors and staffing costs of these would have to be met. When requested, the ODR advisors will be able to assist with disputes submitted via the ODR platform, by providing information or helping with documentation.

41. Although the scope of the ODR platform applies to domestic disputes as well as cross border disputes, it is left to the discretion of each Member State as to whether ODR advisors are required to help with domestic disputes.

### Cost to government

42. The cost to government finances of running the ODR portal is likely to be low. The European Commission will be funding set up costs. UK running costs are likely to be similar to the consumer services and advice portal that was created under the European Services Directive and provided by the European Consumer Centre hosted by the Trading Standard Institute. **On this basis we assume the cost to government of the ODR portal will be around £0.1m per year** but views on this will be sought during the consultation. It is not proposed that the cost of the portal should be recouped via fees on business.

43. The remaining requirements of the ADR Directive allow Member States some flexibility over implementation and it is these elements where a number of options are explored.

## Summary of Options for Ensuring Universal ADR Coverage

44. One of the obligations of the ADR Directive is for Member states to ensure the availability of quality ADR for *all* consumer disputes. Discussions between BIS and stakeholders suggest there is some academic and industry support for Government to use the adoption of the new ADR Directive as an opportunity to make a significant change to the ADR landscape in the UK.

45. Taking this into account, the Government intends to consult on the following options for implementation of the ADR Directive:

- Option 1 - **Do nothing**: the current landscape does not provide sufficient ADR coverage to fulfil EU obligations so this risks infraction proceedings. This is discounted as it does not represent a viable option;
- Option 2a - **Minimal option**: Establish a residual ADR body to capture consumer disputes not already covered by existing ADR schemes to operate alongside existing providers;
- Option 2b – **Minimal option plus** creation of a consumer facing complaints “helpdesk”
- Option 3 - **Simplification of ADR landscape**: Merge existing bodies to form a consumer ombudsman which operates alongside a couple of existing statutory bodies

**Taking into account our obligations to implement the ADR Directive and the complex nature of the current UK ADR landscape, Option 2b is our preferred option at this stage. However, we will use the consultation to obtain views on using this approach as a step towards further**

**simplification and larger reforms (more in line with Option 3), which would take us beyond the requirements of the Directive and would have to be implemented at a later date.**

## Option 1: Do Nothing/Baseline

46. This option would not implement any of the requirements of the ADR Directive or ODR Regulation (including the 'Prescribed Policies' above).

47. Due to the identified gaps in ADR coverage in certain sectors (see 'Problem Under Consideration') this option would not address the problem for consumers of not having ADR in all sectors. Court action would remain the only means to redress for some consumers if their particular dispute was not covered by an ADR scheme.

48. Although this would be a zero-cost option for business and Government, we would not be complying fully with the Directive and the UK Government would risk infraction proceedings.

49. We are making an implicit assumption about this 'Do Nothing/Baseline' scenario that it would leave the current UK ADR landscape unchanged i.e. without government intervention, it is unlikely that private ADR provision will expand significantly to address existing gaps in coverage whilst firms are unlikely to take further steps to improve information provision to consumers on ADR. In principle, there is some rationale for this assumption; for example, high quality providers in sectors characterised by variable quality would already have an incentive to initiate ADR schemes. However, we will seek views in the consultation as to how realistic this assumption is.

## Option 2a: Minimal option

50. This option proposes to meet the requirements of the Directive by establishing a residual ADR body to deal with all those disputes not already captured by existing ADR schemes. This residual ADR body would operate alongside existing ADR providers. A full procurement exercise would be needed to ensure a fair and open competition to become the new residual ADR provider (or providers). This option would minimise impact on existing ADR providers and consumers would benefit from increased availability of ADR.

51. The following sections consider the monetised and non-monetised costs and benefits of this option to government, business and consumers.

### Cost to government

52. There will be a **one-off cost to government** in establishing the residual provider. The residual provider may be an entirely new body or an expansion of an existing ADR body. Previous experience of establishing similar bodies suggests a cost of **around £5.0m** to set up and fund the residual provider **for the first year**<sup>29</sup>. We allow uncertainty of +/-20% around this i.e. **£4.0m-£6.0m**, acknowledging this requires further assessment; we will seek views through the consultation.

53. The provider will then require ongoing funding, with the funding likely shifting towards costs levied on business through membership fees and/or case fees. At this stage there is uncertainty over the size of funding required and the level of (any) continued public support. As such, we assume the residual ADR would be funded entirely through membership/case fees from year 2, to illustrate the *potential* impact upon business.

### Cost to business

*Cost of additional ADR cases: membership and/or case fees*

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<sup>29</sup> This figure also falls roughly within the middle of the estimated range of the cost of the residual ADR provider to business in year 2 (see 'Cost to business' section that follows).

54. The cost of the ADR residual provider to business (assumed to be incurred from the second year onwards) will depend upon the volume of enquiries and disputes it has to handle each year. This is uncertain as although under this option ADR **provision** is made universal, **membership** of the residual ADR is left as voluntary for business. As such, the case volume for the residual provider will depend upon how many businesses opt to become members. A range of possible case volumes and costs for the voluntary arrangement is considered here (table 1).

55. As a benchmark we consider an estimate assuming that membership of the residual ADR scheme is made compulsory. This enables us to form a view of the potential volume of additional cases under a voluntary arrangement. Note, the compulsory option was considered in its own right but was discounted on the basis that it would “gold-plate” the implementation of universal ADR coverage.

**Table 1:** Estimated cost of residual ADR provider

	Voluntary Membership			Statutory Membership
# ADR enquiries per year	50,000	150,000	250,000	1,000,000
# ADR cases per year (10% enquiries)	5,000	15,000	25,000	100,000
<b>ADR provider cost per year (lower)</b>	<b>£0.9m</b>	<b>£2.7m</b>	<b>£4.5m</b>	<b>£18.0m</b>
<b>ADR provider cost per year (higher)</b>	<b>£1.9m</b>	<b>£5.8m</b>	<b>£9.6m</b>	<b>£38.5m</b>

56. The estimate of a 1,000,000 ADR enquiries per year to be handled under a universal statutory membership arrangement has been derived by considering the estimated volume of consumer problems and number of ADR enquiries for the statutory ADR sectors of telecommunications and energy<sup>30</sup> and then applying this to the non-statutory sector. In 2011/12, the total ADR enquiries volume across these sectors was 9% of estimated total consumer problems in these sectors<sup>31</sup>. Applying this to the estimated volume of problems in the non-statutory ADR sectors of the economy (11.1m in the year to February/March 2012<sup>32</sup>) gives the estimate of approximately 1,000,000 enquiries per year.

57. There is clearly some uncertainty/risk of bias around this estimate. Firstly, applying the same ratio of enquiries to problems as observed in the telecommunications and energy sectors may not be appropriate if consumers have a lesser or greater tendency to pursue problems in these sectors. Secondly, and importantly, the figure is potentially an overestimate of incremental enquiries since the ‘rest of the economy’ already has partial ADR coverage generating enquiries and cases. At the same time, measures to ensure universal ADR coverage could heighten its awareness and use, resulting in a general uplift in the proportion of problems where consumers pursue ADR i.e. a ‘halo effect’.

58. Using the statutory membership case as a benchmark, the assumed number of ADR enquiries per year under the voluntary membership arrangement can then be viewed crudely as the proportion of businesses that voluntarily participate in the residual ADR scheme. Since membership will be voluntary, we anticipate that initially at least, this proportion will be relatively low – a range of 5-25% participation (50k-250k enquiries) is used. The choice of this range is a significant area of uncertainty in this preliminary analysis though and we aim to use the consultation process to improve our evidence base on the perceived costs and benefits of ADR scheme membership to business and likely participation levels. Government would take steps to encourage use of ADR and we would hope that participation would increase over time.

59. The volume of ADR cases (enquiries that merit a fuller investigation, potentially with mediation or arbitration) has then been estimated for each scenario by observing that for the telecommunications and energy sectors, about 10% of enquiries become complaints. A similar ratio is observed for the Legal Ombudsman and Ombudsman Services (Property)<sup>33</sup>.

<sup>30</sup> The financial services sector was excluded from this calculation since figures there would be distorted by the high volume of problems related to Payment Protection Insurance (PPI)

<sup>31</sup> The Consumer Focus Consumer Detriment Survey (2012) estimates 2.2m problems in the telecommunications (1.25m) and energy (0.95m) sectors in the year to February/March 2012. The Ombudsman Services annual report and accounts 2011/12 and CISAS annual report 2012 indicate approximately 125k and 75k enquiries respectively for the telecommunications and energy sectors.

<sup>32</sup> Inferred from Consumer Focus Consumer Detriment Survey (2012) data

<sup>33</sup> See Ombudsman Services Annual Report 2011/12 at: <http://www.ombudsman-services.org/annual-reports-os.html>

60. Cost of ADR provision is then derived using actual cost estimates per case. Based on existing schemes we estimate the cost per case can range from £180 to £385 depending upon the nature of the investigation. We will use the consultation process to seek additional estimates of ADR case costs.

61. Recognising there is reasonable uncertainty at this stage, **the cost to business (via membership and/or case fees) of the residual ADR provider under a voluntary arrangement is estimated to be £0.9m-£9.6m per year from year two<sup>34</sup> with a central (average) estimate of £5.3m per year.** As stated above, some of this impact on business may be reduced to the extent that the residual ADR provider continues to receive public support.

62. Note that these costs are based upon voluntary action by businesses i.e. to become a member of the residual ADR scheme. As such, businesses that become members are doing so on an expectation that membership will provide at least equivalent benefits to the costs. These benefits would include avoided court cases and associated costs, estimated below, but potentially also an enhanced reputation and increased trade, if consumers perceive ADR membership as a signal of quality. These latter benefits have not been quantified in this impact assessment.

*Cost of additional ADR cases: administrative costs*

63. In addition to membership/case fees, business will face additional administrative costs in order to provide information to the residual ADR body as they investigate cases. The European Commission's Impact Assessment for the ADR Directive and ODR Regulation estimated these costs at 93 euros per case for non-financial services cases in 2011. Assuming an exchange rate of 1.2 euros / £ this equates to £78 per case (£80 per case in 2013 prices). We will use the consultation to seek views on these costs from UK businesses specifically.

64. Table 2 shows the **total ADR administrative cost to business estimates** under each of the enquiry volume scenarios considered giving a **range of £0.4m-£1.9m per year.**

**Table 2:** Estimated administrative costs to business of ADR cases

	Voluntary Membership			Statutory Membership
# ADR enquiries per year	50,000	150,000	250,000	1,000,000
# ADR cases per year (10% enquiries)	5,000	15,000	25,000	100,000
<b>ADR administration costs per year</b>	<b>£0.4m</b>	<b>£1.2m</b>	<b>£2.0m</b>	<b>£8.0m</b>

*Cost of additional ADR cases: costs of redress (transfer to consumers)*

65. The additional ADR cases that are resolved in the consumer's favour will involve redress from businesses to consumers. Strictly, these represent transfer payments from businesses to consumers rather than an economic cost/benefit; an estimate of the magnitude of redress is included in order to consider the full impact of this option on businesses and consumers specifically.

66. First, we recognise that some of the additional ADR cases would (in the absence of ADR) have proceeded to court and potentially resulted in redress for consumers in any case. We assume 25% of the incremental ADR cases would have done so, though this figure is speculative and we intend to seek evidence on the likelihood of ADR to mitigate the need for court hearings through the consultation.

67. Ombudsman Services data for energy and telecommunications ADR indicates that approximately 75%<sup>35</sup> of complaints are settled in the consumer's favour and involve financial redress. Applying this figure<sup>36</sup> and the fact that the Consumer Focus survey (2012) suggests an average financial detriment to consumers of £144 per problem (2013 prices, excluding financial and professional service

<sup>34</sup> Government is assumed to fund the costs of the residual ADR provider in year 1

<sup>35</sup> Ibid.

<sup>36</sup> Acknowledging it may be biased in forming an expectation of ADR case outcomes considered by the residual ADR provider

sectors<sup>37</sup>) yields a range of redress estimates from £0.4m to £2.0m per year (table 3). This could potentially underestimate the magnitude of this transfer in that consumers are less likely to pursue lower value detriment cases through ADR (or the courts) i.e. the £144 detriment per problem could be an underestimate.

**Table 3:** Estimated redress from business to consumers

	Voluntary Membership			Statutory Membership
# ADR enquiries per year	50,000	150,000	250,000	1,000,000
# ADR cases per year (10% enquiries)	5,000	15,000	25,000	100,000
# ADR cases with incremental redress <sup>38</sup>	3,750	11,250	18,750	75,000
<b>ADR redress per year</b>	<b>£0.4m</b>	<b>£1.2m</b>	<b>£2.0m</b>	<b>£8.1m</b>

### Cost to consumers

68. There will also be a cost to consumers in terms of time and effort required to submit additional ADR cases. We estimate it would take consumers approximately one hour to provide a written complaint with supporting information to an ADR scheme. On this basis and assuming median gross hourly earnings of £11.21 per hour<sup>39</sup>, **this implies costs in the range of £0.1m-£0.3m per year**. In some cases there may be a small fee to the consumers for the ADR service, though this can be waived if the consumer is successful. We will seek information on the typical incremental time and effort and any fees involved for consumers in submitting a complaint to an ADR scheme.

69. As with the ADR costs faced by business, these costs will be incurred on a voluntary basis i.e. consumers are only likely to pursue ADR in expectation that they will obtain redress (estimated above) and in some cases avoid the time and expense of going to court.

**Table 4:** Estimated administrative costs to consumers of ADR cases

	Voluntary Membership			Statutory Membership
# ADR enquiries per year	50,000	150,000	250,000	1,000,000
# ADR cases per year (10% enquiries)	5,000	15,000	25,000	100,000
<b>Cost to consumers per year</b>	<b>£0.1m</b>	<b>£0.2m</b>	<b>£0.3m</b>	<b>£1.1m</b>

### Benefit to government

70. Extending coverage of ADR to all sectors should lead to consumers and businesses settling some disputes through ADR rather than through hearings in the County Courts, reducing court system costs. The Ministry of Justice indicates that 82% of the cost of running the civil and family courts is funded through court fees (imposed upon the losing party) and 18% through general taxation<sup>40</sup>. The benefit to government will be in reducing the contribution from general taxation to the court system.

71. Ministry of Justice statistics indicate there were approximately 1.6m civil (non-family) claims submitted in 2011 of which approximately 1.2m (75%) were money claims. Of the total claims, approximately 275k were defended, yielding an estimate of 210k defended money claims<sup>41</sup>. Research has indicated that around 16%<sup>42</sup> of defended money claims are brought by consumers against business suggesting approximately 33k such cases in 2011<sup>43</sup>. This represents an estimate of the upper limit of the number of cases that could be mitigated through additional ADR coverage.

<sup>37</sup> Excluded as financial and some professional services are covered by statutory ADR. It isn't possible to easily exclude the other statutory sectors from this metric using the data presented in the Consumer Focus report.

<sup>38</sup> Assuming 25% of the figure in the above line would have proceeded to court anyway

<sup>39</sup> [http://www.ons.gov.uk/ons/dcp171778\\_286243.pdf](http://www.ons.gov.uk/ons/dcp171778_286243.pdf)

<sup>40</sup> <http://www.justice.gov.uk/courts/fees/why-we-charge>

<sup>41</sup> <https://www.justice.gov.uk/statistics/courts-and-sentencing/judicial-annual-2011>

<sup>42</sup> J Baldwin. Small Claims in the County Courts in England and Wales (1997)

<sup>43</sup> This is backed up by the findings of an IFF survey for BIS which found that approximately a half of all businesses reported having some unsatisfied consumers and 3% of those businesses reported that issues with unsatisfied consumers had led to legal proceedings. Using our baseline of 740,000 businesses this suggests ~14,000 such businesses. Most such businesses reported having '5 or fewer' legal disputes

72. It is uncertain how many of the ~33k cases could be mitigated through the creation of a residual ADR provider; estimates will be sought during consultation. Further work is also needed to assess the average cost to government of a defended money claim hearing.

### Benefit to business

73. Complete coverage of ADR in the UK means some businesses will have access to a cheaper facility for settling some consumer disputes. Pursuing a dispute via the court system is an expensive and time consuming option for many consumers and businesses and the availability of ADR should lead to a cost saving where it mitigates the need for the case to proceed to a court hearing. There is evidence that businesses see the benefit in using ADR. Some businesses will promote their membership of voluntary ADR schemes in order to gain credence with consumers, and a survey indicates that businesses who have used ADR would choose to do so again<sup>44</sup>.

74. We lack evidence that would inform an estimate of the number of court hearings that would be mitigated by universal ADR coverage. For now, we assume 25% of the incremental ADR cases would mitigate the need for a court case. This implies a volume of 1.3k-6.3k cases given the range of additional ADR case volumes considered here. As stated, this proportion is speculative though and we intend to seek evidence on this through the consultation.

75. We also require evidence on the cost to business of defending a money claim in court. Here we assume a cost of approximately £256 per case (compared to £80 per ADR case). This assumes that in 50% of cases a business requires two hours of a Customer Service Manager's time<sup>45</sup> at £16.15 per hour to manage administration and two to three hours of a junior solicitor's time at £138 per hour to advise the business<sup>46</sup>. In the other 50% of cases we assume the business owner chooses to defend the case without external input and four hours of a Customer Service Manager's time are required. This estimate excludes the cost of court fees that may be imposed upon businesses in the event they lose the case. Evidence on the full costs to UK businesses of defended money claim cases will be sought during consultation.

76. Taken together, these figures imply **an overall benefit to business of £0.3m-£1.6m per year.**

**Table 5:** Estimated savings to business in court costs due to additional ADR cases

	Voluntary Membership			Statutory Membership
# ADR enquiries per year	50,000	150,000	250,000	1,000,000
# ADR cases per year (10% enquiries)	5,000	15,000	25,000	100,000
# Court cases mitigates (25% ADR cases)	1,250	3,750	6,250	25,000*
<b>Court costs mitigated</b>	<b>£0.3m</b>	<b>£1.0m</b>	<b>£1.6m</b>	<b>£6.4m*</b>

\* Note this may overstate costs mitigated as there will be an upper limit (less than 100%) on the proportion of court cases that ADR can reasonably be expected to mitigate. For some court cases, ADR is unlikely to provide adequate substitute owing to (legal) complexity of the dispute or where the value of the claim is particularly high.

### Benefit to consumers

77. Consumers will also save time, effort and money to the extent that ADR mitigates the need for court action. To submit a claim to the County Courts, consumers have to pay a fee and also prepare documentation to support their claim. Consumers don't typically make use of solicitors for small claims concerning consumer disputes given the cost relative to claim amounts and the fact that legal costs are not usually recoverable in small claims hearings. The cost of submitting a small claims

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which, assuming 2.5 cases per business, gives an estimate of approximately 35,000 legal disputes. IFF Consumer Rights and Business Practices (prepared for BIS), March 2013.

<sup>44</sup> European Business Test Panel Survey – Alternative Dispute Resolution. Available at [http://ec.europa.eu/yourvoice/ebtp/consultations/2010/adr/report\\_en.pdf](http://ec.europa.eu/yourvoice/ebtp/consultations/2010/adr/report_en.pdf)

<sup>45</sup> This would likely be the owner in the case of microbusinesses and small businesses.

<sup>46</sup> Based upon business using either a paralegal or newly qualified solicitor i.e. between costing grades C and D in: <http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/guideline-hourly-rates-2010-v2.pdf>. Hourly rates converted to 2013 prices using GDP deflator at market prices.

(including consumers' time) is likely to be more than that for an ADR case and we will seek information on the typical levels for each process through the consultation.

78. As indicated above, consumers will benefit from additional redress **estimated in the range £0.4m to £2.0m per year** (table 3).
79. The additional redress to consumers is, in a narrow sense, a transfer from business i.e. it does not represent a net benefit in itself. However, the fact that redress occurs enables those consumers to re-direct their spending toward firms with a better track record for quality. It is also likely to enhance consumer confidence in participating in markets, both when making domestic and EU cross-border transactions (see Economic Rationale section). As such, society overall benefits from a better allocation of resources, improved competition and growth. Increased competition may arise through the supply side as well if improved ADR coverage across European markets increases certainty over dispute resolution and makes it more likely that businesses opt to supply markets in other Member States (increased cross-border trade and competition).
80. Improved competition and allocation of resources are the key benefits from these changes; the savings in mitigation of court cases are likely to be comparatively smaller. Owing to the difficulty of estimating the overall value of these benefits (attributable to these specific changes), they are recognised here as non-monetised benefits.

## Option 2b: Minimal option plus consumer complaints helpdesk

81. This option is identical to Option 2a but with the creation of a consumer facing complaints helpdesk. The primary aim of this would be to help consumers navigate the ADR landscape and thereby to encourage them to make more use of ADR. Another aim would be to help consumers understand how to use ADR appropriately – i.e. after the business's internal complaints processes had been pursued. It could also be of assistance to businesses considering joining an ADR scheme.

82. The helpdesk could be an online and telephone access point for consumers to seek information about how to pursue a complaint with a business and, if appropriate, provide assistance with registering a dispute. The way the helpdesk worked would need to take into account the fact that under the Directive, the choice of ADR provider lies with the business, unless it is mandated by the Member State. In the UK, the ADR provider is currently mandated by Government in a limited number of regulated industries.

83. The following sections present the *additional* costs and benefits of this option over and above those for option 2a.

### Cost to government

84. There would be an additional cost to government under this option from the creation of a helpdesk to direct consumers to appropriate ADR providers. An online helpdesk would require a web design team to create a user friendly interface that consumers could use. As well as this a telephone contact centre would be created, involving either an unmanned automated service or a fully staffed customer contact point. The consultation will seek views on the most appropriate format which will determine the likely one-time start-up costs.

85. The one off costs and the ongoing costs of providing this service would be a lot lower if the helpdesk was provided by an existing consumer service contact point. We will consult on potential providers of the helpdesk service. We will also consult on whether the provider of the helpdesk should be the same as the residual ADR provider.

86. The ongoing cost of the helpdesk will depend upon the level of demand for the services. A number of help lines and contact points are represented by the Helpline Association. A recent survey of their members estimated that the median number of contacts by telephone was 3,000 with a cost per contact

of £19<sup>47</sup>. Using these figures **we estimate the ongoing cost of the contact centre to be £0.1m per year.**

### **Cost to business**

87. We plan to consult on how the ongoing cost of a contact centre could be funded.

### **Benefits to consumers**

88. The primary aim of the helpdesk would be to help consumers navigate the ADR landscape.

89. There could still be a risk of confusion for consumers if it was still unclear to them whether the business was actually going to make use of ADR. There may be occasions where a consumer may take their dispute to the helpdesk but the business in question is not signed up to an ADR provider. We will explore the feasibility of designing the helpdesk in such a way that mitigates this risk.

90. The creation of a complaints helpdesk would need to take into account other requirements of the ADR and ODR legislation. The information requirements of the ADR Directive will oblige all businesses committed to ADR to provide information about the ADR provider they use, and in the event of an unresolved complaint, all businesses will be obliged to inform consumers of an appropriate ADR provider and whether they intend to use that body to settle the dispute. So a consumer should be informed whether or not the dispute will be referred to ADR and will be directed to an appropriate provider who will be considering their dispute. In addition, the ODR platform will direct all *online* consumers to an appropriate ADR provider.

91. We will consult on what actions we could take to improve access to ADR and navigation of the ADR landscape, taking into account the other requirements of the ADR and ODR legislation which aim to direct consumers to an appropriate ADR body.

## **Option 3: Simplification of ADR Landscape**

92. Initial conversations with stakeholders indicated some academic and industry support for the Government to use the adoption of the new ADR Directive as an opportunity to simplify the UK ADR landscape by reducing the number of schemes and providers. We have identified up to around 70 ADR schemes operating in the UK.

93. This option proposes to simplify the ADR landscape by reducing the number of ADR providers. Simplification could take several different models. For the purposes of this IA, we have used a model where the Financial Services Ombudsman and the Legal Ombudsman would remain, but all other ADR schemes would be merged to form a third ombudsman scheme to cover all remaining sectors. There would be no requirement for a helpdesk to direct consumers to different ADR providers under this option as the landscape would be sufficiently simplified. We will use the consultation to ask whether other approaches which might involve more or fewer than three ombudsman schemes would be preferable. For example, one large single ombudsman scheme might bring further benefits but is likely to come at even greater cost to business and the public purse.

94. The benefits of consolidating the ADR landscape would be to make the process much easier for consumers to navigate which would support consumer confidence in participating in markets. Secondly, bringing a significant number of sectors under a single ADR provider could yield benefits in terms of business ADR membership. Businesses would potentially face greater pressure from consumers to be part of the 'third ombudsman' if their sector was 'under-represented'. Thirdly there may be some economies of scale in ADR provision and/or economies of scope from providing ADR in different sectors.

95. At the same time, there are some issues to consider in a large merger of ADR providers. Whereas some ADR schemes are statutory and could be merged into a third Ombudsman scheme by statute, several schemes are operated by private providers, and currently the Government has no

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<sup>47</sup> Survey available at [http://www.helplines.org/uploads/1/1/2/5/11258169/state\\_of\\_the\\_helplines\\_sector.pdf](http://www.helplines.org/uploads/1/1/2/5/11258169/state_of_the_helplines_sector.pdf)

legislative powers to merge or abolish these private schemes. There may be scope for some of these schemes to continue to operate under the umbrella of a third ombudsman scheme.

96. Furthermore, the use of ADR is compulsory in the statutory schemes such as those in the telecoms, energy and estate agency markets. If these were merged into a single body which also covered areas where ADR was voluntary, this could add confusion for consumers which could undermine the benefits of simplifying the ADR landscape in the first place.

97. To avoid this, one option could be to merge these bodies so that they all became compulsory ADR schemes. This would increase cost to business as they would be required to use ADR. It would also go beyond the minimum requirements of the Directive. Alternatively, ADR bodies could be merged so that they all became voluntary schemes. This would however reduce the level of consumer protection significantly in those areas and would not be feasible in certain sectors. We intend to use the consultation to better understand the pros and cons of alternative approaches to simplifying the ADR landscape.

98. A further issue to consider would be the potential loss of competition between ADR providers. Some sectors currently have multiple ADR providers and businesses benefit from being able to choose between competing providers on the basis of cost (membership and case fees) and quality.

99. Although the Government's view is that a residual ADR scheme is the most appropriate option for implementing the ADR Directive, we do see the merit in attempting to simplify the landscape so that there are fewer ombudsman schemes or possibly only a single consumer ombudsman. This would be a longer term and more costly project, probably requiring primary legislation (depending on how extensive any reforms are). Any attempt to rationalise existing schemes would require a lengthy preparation period. The Government will use our consultation to take views on using the implementation of the ADR Directive as a step towards larger reforms of the ADR landscape and will have to develop further proposals should the evidence suggest that this is an appropriate ambition.

100. The following sections consider the costs and benefits of simplification to government, business and consumers assuming the 'third ombudsman' model.

### **Cost to government**

101. Under Options 2a and 2b, the cost to government will be an initial cost in creating the residual ADR provider in the first instance and then any ongoing contribution to operating costs (at this stage assumed to fall on business).

102. Under Option 3, it is assumed the one-off cost of establishing and funding the new simplified provider for the first year will be at least the same as that of creating a residual provider **i.e. £4.0m-£6.0m with a central estimate of £5.0m**. As before, after the first year, government may partially fund the ongoing costs of the merged ADR provider though at this stage such costs are assumed to fall on business through fees.

### **Cost to business**

103. A number of ADR providers are private businesses that provide a service under statute, for trade association members or to individual businesses when a dispute arises. A rationalisation of the ADR landscape to only a few significant providers would impose transitional costs upon existing private ADR providers as a result of the need to merge them into a third ombudsman. We will seek views through the consultation on the likely transitional costs for ADR bodies as a result of simplification.

104. There would be additional cost to business as a result of the incremental ADR cases arising from extending coverage to all sectors. As stated, at this stage this is assumed to be in the same range as under options 2a/2b at this stage **i.e. incremental fees of £0.9m-£9.6m per year, ADR case administration costs of £0.4m-£2.0m per year and redress of £0.4m-£2.0m per year**. These are again assumed to apply from the second year onwards.

105. Clearly, the volume of incremental ADR cases could be influenced by the simplification approach chosen. If the simplification approach involved merging bodies in such a way that some compulsory bodies became voluntary, the incremental case volumes could be lower than assumed. At the same time, successful simplification of the landscape could in itself increase business membership of ADR and case volumes, if it brings into focus (and places pressure on) sectors where business membership of ADR schemes is currently low.

### **Cost to consumers**

106. As presented under Options 2a and 2b there would be an **additional administrative cost to consumers of submitting additional ADR cases in the range £0.1m-£0.3m per year.**

### **Benefits to government**

107. As indicated under Options 2a and 2b, the key benefit to government will be a reduction in the costs of the court system as more complaints are resolved through ADR. We expect the level of this benefit to be similar to Options 2a and 2b, unless simplification itself increases the volume of ADR cases (see previous section).

### **Benefits to business**

108. With similar caveats, the benefits to business should be similar to Options 2a and 2b. We will use the consultation to explore potential further benefits to business derived through efficiency savings brought about for example, by shared IT and resource costs resulting from mergers.

### **Benefits to consumers**

109. As under Options 2a and 2b we will seek information on the typical benefit to consumers from the avoided costs of pursuing disputes through the court system.

110. As under options 2a and 2b, consumers will benefit from additional redress **estimated in the range £0.4m to £2.0m per year** (table 3), assuming a similar range for incremental ADR cases.

111. Consumers will also benefit from the non-monetised benefits of universal ADR coverage in terms of increased confidence in participating in markets. Simplifying the ADR landscape could support this aim if it incentivises greater business membership in ADR versus the other policy options. Consumers may also have more confidence in and be more likely to make use of an ADR landscape that is easier to navigate.

## **Key assumptions and risks underpinning options**

112. The key assumptions and risks underpinning the cost-benefit assessments are:

- the volume of additional ADR cases generated. This will depend upon:
  - the number of businesses that sign up to become part of an ADR scheme as a result of the policy option pursued – this is a key source of uncertainty in our analysis
  - there is an associated risk that if very few additional businesses sign up, the ‘fixed’ costs of universal ADR provision (creating a residual provider / simplifying the landscape) will yield little actual benefit
- the volume of court hearings that universal ADR coverage mitigates i.e. cost savings
  - there is a potential risk that most of the current court hearings are ones that are not amenable to resolution through ADR owing to complexity. ADR could simply add an additional level of dispute resolution to the redress system (with associated cost) without mitigating costs elsewhere

## One-In-Two-Out status / gold plating

113. The EC Directive gives Member States some flexibility on the options for implementation. E.g. Chapter II Article 5 of the ADR Directive states that:
- “Member States should have the possibility to provide for the creation of a residual ADR entity that deals with disputes for the resolution of which no specific ADR entity is competent. Residual ADR entities are intended to be a safeguard for consumers and traders by ensuring that there are no gaps in access to an ADR entity.”
114. The Directive does not force Member States to make the use of ADR compulsory but Article 1 states that:
- “This Directive is without prejudice to national legislation making participation in such procedures mandatory”.
115. Nevertheless, any attempt to introduce new mandatory requirements to use ADR when implementing the ADR Directive would be going beyond our minimum legal requirements and would therefore gold-plate the Directive.
116. Option 2a of a residual ADR scheme which businesses can choose to use would be the minimum required by the ADR Directive and ODR Regulation and would not therefore involve ‘gold-plating’.
117. Our preferred option (Option 2b) which is Option 2a plus the creation of a consumer facing complaints helpdesk would involve ‘gold-plating’ as the creation of a helpdesk would go beyond the minimum requirements of the ADR Directive. If the helpdesk is funded wholly by Government, as such that option is *out* of scope of ‘One In Two Out’ (OITO). However, if ongoing costs to run the helpdesk are funded by business then that option is *in* scope of OITO.
118. Option 3 would add additional costs in implementing the Directive and the transitional costs in merging existing ADR providers into a third Ombudsman would likely be higher than both creating a residual ADR provider and establishing a consumer complaints helpdesk. As such this option would be *in* scope of OITO.

## Equalities impact

119. To evaluate the equalities impact of this policy we conducted an equality analysis which has considered two questions:
- Could the policy have an adverse impact on equality in relation to age, disability, gender reassignment, Marriage and civil partnership pregnancy/maternity, race, religion or belief, sex or sexual orientation?
  - Could the policy have a positive impact on equality by reducing inequalities that already exist?
- In relation to the first question, our analysis of this policy has not shown it will have an adverse impact on equality in relation to the protected characteristics detailed above
120. In relation to the second question, we are uncertain whether this policy will have a positive impact on equality. The policy aims to improve access to redress and so if groups with protected characteristics currently have particular difficulty in gaining access to redress, which they wouldn't have if ADR was more widely available, then they could be disproportionately benefited by ADR thus reducing inequality. As such, we would welcome any evidence on whether (and if so how much) the groups with the above protected characteristics currently have particular difficulty gaining access to redress and whether (and if so how much) this policy will particularly help these groups.

## **ANNEX - Summary of main requirements of the Directive**

Member States must ensure that ADR is available for any contractual dispute between a consumer and a business. Business to business disputes are not covered, nor are disputes initiated by a business against a consumer. Further exclusions apply to health services and public providers of education.

### *Requirements for ADR providers*

ADR procedures must be free of charge or available for a nominal fee for consumers.

ADR providers will have to meet several requirements. In summary, ADR providers:

- Must conclude disputes within 90 days of receiving the complete complaint file. This timeframe can be extended in the case of highly complex disputes
- Have three weeks from receiving an application in which to inform the parties concerned if they are rejecting a case (with the grounds allowed for rejecting a complaint set out in the Directive, see below).
- Must ensure the individuals who oversee disputes have the necessary expertise and are independent and impartial. ADR providers will have to take steps to avoid any potential conflicts of interest, such as passing disputes to alternative case handlers or alternative ADR providers.
- Must make available specific information about their organisation, methods and cases they deal with, and provide annual activity reports.

Member States may permit ADR providers to follow certain procedural rules which will allow them to reject unsuitable disputes. These include frivolous or vexatious claims, or claims which have not been submitted within a pre-specified time limited (although this time limit cannot be set at less than a year from the date when the consumer first submitted the complaint to the trader).

### *Information requirements for businesses*

Any business that is obliged to use an ADR provider to resolve disputes (e.g. solicitors are obliged to refer disputes to the Legal Ombudsman) must provide information about that ADR provider on their website and, if applicable, in the terms and conditions of any sales or service contracts.

In the event of an unresolved dispute, **all** businesses must provide information about an appropriate ADR provider (or providers) to the consumer, and advise whether they intend to refer the dispute to that ADR provider or not.

All businesses who sell their goods or services online must also provide a link to the ODR platform on their website. All websites which act as a platform for businesses to sell their goods and/or services must also provide a link to the ODR platform.

### *Competent Authorities*

Member States must designate one or more competent authorities to maintain and monitor a list of ADR providers who meet the required standards of the ADR Directive.

If an ADR provider is found to no longer comply with the requirements of the Directive then the competent authority must give warning before removing that provider from the list and notifying the Commission.

### *ODR contact points*

Each Member State must designate one Online Dispute Resolution (ODR) contact point which must host at least two ODR advisors. When requested, the ODR advisors will be able to assist with disputes submitted via the ODR platform, by providing information or helping with documentation.

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