

Research Briefing

By Lorraine Conway

12 May 2022

# Consumer disputes: Alternative Dispute Resolution (ADR)



ALTERNATIVE  
DISPUTE RESOLUTION

## Summary

- 1 Landscape for ADR
- 2 Consumer access to ADR
- 3 Comparison of the various ADR methods
- 4 Impact of Brexit on consumer contracts & dispute resolution

### Image Credits

ADR by Vitalii Vodolazskyi. Adobe Stock #195193624 / image cropped.

### Disclaimer

The Commons Library does not intend the information in our research publications and briefings to address the specific circumstances of any particular individual. We have published it to support the work of MPs. You should not rely upon it as legal or professional advice, or as a substitute for it. We do not accept any liability whatsoever for any errors, omissions or misstatements contained herein. You should consult a suitably qualified professional if you require specific advice or information. Read our briefing [‘Legal help: where to go and how to pay’](#) for further information about sources of legal advice and help. This information is provided subject to the conditions of the Open Parliament Licence.

### Feedback

Every effort is made to ensure that the information contained in these publicly available briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated to reflect subsequent changes.

If you have any comments on our briefings please email [papers@parliament.uk](mailto:papers@parliament.uk). Please note that authors are not always able to engage in discussions with members of the public who express opinions about the content of our research, although we will carefully consider and correct any factual errors.

You can read our feedback and complaints policy and our editorial policy at [commonslibrary.parliament.uk](https://commonslibrary.parliament.uk). If you have general questions about the work of the House of Commons email [hcenquiries@parliament.uk](mailto:hcenquiries@parliament.uk).

# Contents

<b>Summary</b>	<b>4</b>
<b>1 Landscape for ADR</b>	<b>6</b>
1.1 Key legislation	6
1.2 Definition of ADR	6
1.3 Binding and non-binding forms of ADR	7
1.4 Mandatory and voluntary ADR schemes	7
1.5 Competent authorities	8
<b>2 Consumer access to ADR</b>	<b>10</b>
<b>3 Comparison of the various ADR methods</b>	<b>11</b>
3.1 Direct negotiation	11
3.2 Mediation	11
3.3 Arbitration	12
3.4 Ombudsman services	13
3.5 Pros and cons of ADR in consumer disputes	13
Pros	14
Cons	15
<b>4 Impact of Brexit on consumer contracts &amp; dispute resolution</b>	<b>17</b>
4.1 Choice of governing law	17
4.2 No automatic recognition in EU of UK judgment	18
4.3 Use of ADR in cross-border disputes	19
Mediation Directive	19
Online Dispute Resolution (ODR) platform	19
Changes to ADR Regulations 2015	20
4.4 Cooperation between national enforcement authorities	21

## Summary

Consumer redress is a remedy for a wrong arising from a contract or other relationship between a consumer and trader. Consumers who have a complaint and wish to obtain redress must, as a first step, use the trader's own internal complaints procedure. If, having exhausted this complaints procedure, the consumer remains dissatisfied, they may be able to refer the matter to an appropriate Alternative Dispute Resolution (ADR) scheme. ADR is usually a cheaper and quicker route for resolving a dispute than the alternative of beginning legal proceedings in court.

ADR is mandatory in certain regulated sectors where there is a high risk of consumer detriment (e.g., financial services, energy, aviation). In some sectors, the law requires traders to belong to an ADR scheme, but it gives them some choice about which scheme to join. This is the case, for example, for estate agents and telecommunication businesses.

In non-regulatory sectors, ADR is usually voluntary. However, membership of a trade association or a 'trusted trader' scheme may be dependent on the trader agreeing to use ADR in respect of genuine consumer complaints. Trade associations often provide or arrange the ADR scheme for their members. Alternatively, a trader's written contract may state that in the event of a dispute, the parties must use a specified form of ADR, either before resorting to legal proceedings (i.e., non-binding ADR) or as an alternative to pursuing a legal claim (i.e., binding ADR).

ADR processes can include direct negotiation, mediation, arbitration, ombudsman schemes, conciliation, or adjudication. For consumer disputes, ADR usually means settling a complaint with the assistance of an impartial dispute resolution body. It is an option whether the goods or services were bought online or in a shop, provided the trader is based in the UK and is willing to engage in ADR. Traders do not have to agree to use ADR for a consumer complaint (unless it is compulsory for them by law, by trade association membership or by contract). However, they are required to provide certain information about ADR to consumers.

The law seeks to promote the use of ADR by ensuring that suitable options are available in all consumer disputes. Under the [Alternative Dispute Resolution for Consumer Disputes \(Competent Authorities and Information\) Regulations 2015](#), as amended by the [Consumer Protection \(Amendment etc.\) \(EU Exit\) Regulations 2018](#), the provider of an ADR scheme must show that they meet certain minimum standards and must be approved by a 'competent authority'.

Consumers are increasingly active online, particularly since the coronavirus pandemic, including making purchases across national boundaries. However,

since leaving the EU, UK businesses and consumers are no longer able to use the [Online Dispute Resolution \(ODR\) Platform](#). However, UK consumers can still access ADR entities in EU countries, just not through the ODR.

This Paper examines in detail the ADR landscape and the different types of ADR methods available to help resolve a consumer dispute. It also considers the impact of the UK having left the EU on consumer contracts and dispute resolution.

# 1 Landscape for ADR

## 1.1 Key legislation

- [Alternative Dispute Resolution for Consumer Disputes \(Competent Authorities and Information\) Regulations 2015](#)
- [Alternative Dispute Resolution for Consumer Disputes \(Amendment\) Regulations 2015](#)
- [Consumer Protection \(Amendment etc\) \(EU Exit\) Regulations 2018](#)

## 1.2 Definition of ADR

ADR is any process for the resolution of a dispute out of court. Several bodies across the UK and the EU provide some form of ADR, which is usually a cheaper, quicker and less formal way of resolving a dispute than court proceedings.

**Direct negotiation** is the simplest and most common form of ADR, and often leads to a solution. Where direct negotiation does not resolve the dispute, a range of other options may be available including:

- **Mediation**, a confidential process where an independent third party helps the parties in dispute to reach an agreement by consent. The mediator cannot impose a solution.
- **Arbitration**, a process where an independent third party evaluates the dispute (i.e., considers all relevant facts) and decides how it should be resolved. The arbitrator's decision is often (but not always) binding on one or both parties.
- **An Ombudsman** is an independent service that can help a consumer deal with an unresolved complaint they might have with a company. Ombudsman services, also called ADR schemes, usually combine fact-finding, mediation, and adjudication.

These are the most common types of ADR for consumer disputes. Other types of ADR include:

- **Conciliation** is similar to mediation but the independent third party has a more active role in suggesting what agreement should be reached. The

conciliator may meet with the parties separately and together to help resolve the dispute.

- **Adjudication** is similar to arbitration, but it usually produces a decision that is only binding on the business – not the consumer.

In some types of ADR, the process allows the parties to the dispute to decide their own outcome often with the help of a neutral third party. This is typically the case for direct negotiation and mediation. In other types of ADR, the outcome is decided by someone who is not a party to the dispute. This is what happens in arbitration, adjudication and ombudsman schemes.

## 1.3 Binding and non-binding forms of ADR

The distinction between non-binding and binding ADR is crucial. With binding ADR processes the outcome is final and can be enforced. For example, an arbitration decision can be enforceable in the same way as a court judgment. There are only limited grounds in which either the consumer or the trader could appeal the final decision (e.g., if the consumer found the arbitrator had an undisclosed interest in the business they were in dispute with).

With non-binding ADR processes, unless the parties reach a legal settlement, the ADR process will not give rise to any binding judgment or award. This means that a party can proceed with litigation to resolve the dispute if they are not satisfied with the outcome of the process. Mediation is an example of a non-binding ADR process. The mediator has no decision-making power, which means the dispute will be resolved on the terms the consumer and the trader decide. The agreement isn't legally binding unless and until all parties sign a legal agreement documenting the terms of their agreement.

There are pros and cons with using a binding ADR process. The fact that it leads to a final enforceable outcome can be a cost-effective way of resolving a dispute. A binding ADR process can also be useful in cases where reaching a resolution is time-critical (e.g., in a building or home improvement dispute). However, on the 'cons' side, a binding ADR process effectively denies a party the opportunity to test their case in court.

## 1.4 Mandatory and voluntary ADR schemes

---

### compulsory ADR

In the UK, ADR is mandatory in certain regulated sectors where there is a high risk of consumer detriment arising from complex disputes. For example, the [Financial Ombudsman service](#) (FOC) deals with financial services providers, [Ombudsman Services: Energy or RECC](#) deals with energy supplies, [Ombudsman Services: Communications](#) deals with communication providers.

In some other regulated sectors, private ADR bodies operate (e.g., estate agents). In effect, businesses have a choice of which ADR provider they sign up to use.

---

## Voluntary ADR

In non-regulated sectors, businesses may be members of voluntary ADR schemes. Such schemes are often linked to membership of trade associations which businesses can choose to join. Sometimes there are several voluntary ADR schemes which operate in the same sector. For example, glazing installers can choose to join either [The Glazing Arbitration Scheme](#) (TGAS), the [Double Glazing and Conservatory Ombudsman Scheme](#) or become a member of the [Glazing and Glass Federation](#), each will refer disputes involving their members to an independent ADR scheme. However, some glazing installers may choose not to belong to any of these voluntary schemes, resulting in only partial provision of ADR in this sector.

In addition, several small independent ADR bodies provide mediation services at a local level. These services may be available to consumers but mainly focus on commercial or family disputes.

## 1.5 Competent authorities

Under the [Alternative Dispute Resolution for Consumer Disputes \(Competent Authorities and Information\) Regulations 2015](#), as amended by the [Consumer Protection \(Amendment etc.\) \(EU Exit\) Regulations 2018](#), the provider of an ADR scheme must show that they meet certain minimum standards and must be approved by a ‘competent authority’.

In **regulated sectors**, the competent authority will be the statutory regulator. For example, the following statutory regulatory bodies are also competent authorities:

- The [Financial Conduct Authority](#) (FCA) in relation to the ADR scheme operated by the Financial Ombudsman Service.
- [Gas and Electricity Markets Authority](#) (Ofgem).
- [Office of Communications](#) (Ofcom).
- [Civil Aviation Authority](#) (CAA).

In **non-regulated sectors**, an ADR body/scheme can apply for approval by the [Chartered Trading Standards Institute](#) (CTSI). The CTSI operates as the Competent Authority across all **non-regulated sectors** (this arrangement applies to England and Wales, Scotland and Northern Ireland).

Where the dispute falls outside the remit of these Competent Authorities, then the Secretary of State at the Department of Business, Energy and Industrial Strategy (BEIS) is the relevant Competent Authority (e.g., the Secretary of State is the competent authority for the services of the [Pensions](#)

[Ombudsman](#)). However, the Secretary of State has delegated responsibilities for dealing with applications and approval in its role as Competent Authority to the [CTSI](#). In addition, the CTSI acts for the Secretary of State as the single point of contact for all the UK Competent Authorities.

A list of [approved ADR bodies](#) is maintained on the CTSI website. It is apparent from this list that while some approved schemes cover specific sectors or specific types of dispute, others have broad coverage. A trader should be able to find an approved scheme, whatever the nature of their business.

There is nothing to stop more than one approved ADR body operating in a specified sector. Guidelines on how to become an approved consumer ADR provider is provided on the [CTSI website](#).<sup>1</sup>

Even if a body carries out informal ADR, then it should be approved by a competent authority. However, some organisations may assist consumers by providing legal advice or by signposting another appropriate body that might help them resolve a dispute. According to CTSI guidance, this is not ADR provided there is no element of being 'actively' involved in trying to resolve the dispute between the consumer and the trader.

---

<sup>1</sup> The CTSI, as competent authority, charges annually for approving bodies and will agree charging bands depending on the size and complexity of the body's case load

---

## 2

## Consumer access to ADR

---

### Information requirements

Typically, a consumer can seek redress with the help of an ADR scheme only after they have tried to resolve their complaint directly with the trader. In other words, the consumer must have reached a ‘deadlock’ with the trader after going through its own customer services and internal complaints procedure.

Traders do **not** have to agree to use ADR for a consumer complaint (unless it is compulsory for them by law, by scheme membership or by contract). However, under the [Alternative Dispute Resolution for Consumer Disputes \(Competent Authorities and Information\) Regulations 2015](#) (as amended by the [Consumer Protection \(Amendment etc.\) \(EU Exit\) Regulations 2018](#)) traders are required to provide certain information about ADR to consumers.

Specifically, when considering a consumer complaint, at the point where the trader’s own internal complaint-handling procedure is exhausted, they must provide the consumer with the following information:

- A statement that the trader cannot settle the complaint with the consumer (sometimes referred to as the final “deadlock” letter).
- The name and website address of an ADR provider that could deal with the complaint, if the consumer wishes to use ADR.<sup>2</sup>
- Whether the trader is obliged or prepared to submit to an ADR procedure operated by the provider.

In other words, **the trader must give the consumer details of an ADR provider but does not have to agree to use ADR.**

Where a trader is subject to **compulsory ADR** (either by law or through the membership of a trade association), they must provide the name and website address of the ADR provider or scheme on their own website and as part of their general contract terms.

---

<sup>2</sup> This information must be provided in a durable medium, for example, an email or letter (often it forms part of the trader’s final ‘deadlock’ letter in response to a consumer complaint)

## 3 Comparison of the various ADR methods

This section sets out the key features of each of the different types of ADR. It also evaluates their benefits and drawbacks.

### 3.1 Direct negotiation

Negotiation involves the parties attempting to reach agreement on matters in dispute without the assistance of a third party. To encourage parties to settle their dispute out of court, negotiations usually proceed on a “without prejudice”. The without prejudice rule generally prevents statements made in a genuine attempt to settle an existing dispute (whether made in writing or orally), from being put before the court as evidence of admissions against the interest of the party which made them.

Direct negotiation is the most flexible and informal of the ADR methods. Since the parties retain control of the discussions, direct negotiation can save the costs and time associated with other ADR processes. Another benefit is that it can be undertaken at any stage of a dispute, even close to trial. If the negotiations fail, the parties can still have their day in court.

An obvious disadvantage is that without an independent third party, direct negotiations can stall. The risk of deadlock is particularly high in complex disputes, although experts are sometimes appointed by the parties to determine technical issues.

### 3.2 Mediation

Mediation is the process whereby parties, with the help of a neutral third party (known as a mediator) identify the issues in dispute, explore the options for resolution and attempt to reach an agreement. There are different forms of mediation. For example, the most common form is **facilitative mediation** where the mediator will not decide the case on its merits but will work to facilitate agreement between the parties. Sometimes a mediator may be asked to evaluate a claim or issue or identify the strengths and weaknesses of a case. This is known as **evaluative mediation**.

There are also disadvantages with mediation. One criticism is that unlike the court, mediators cannot compel the production of evidence or documents to ascertain the full facts. In cases where there has been a total breakdown in the consumer-trader relationship, mediation may not be possible. A

mediation settlement is also unlikely in cases where a party believes the other party is not acting in good faith or there is an important point of principle at stake. Consumers who are seeking the certainty of a court order, may also be unwilling to engage in mediation.

## 3.3 Arbitration

Arbitration is a private forum in which an independent arbitrator makes an award to finalise the dispute. All parties to a dispute must consent to the arbitration process - an agreement to arbitrate is usually contractual.

It is the role of the arbitrator to remain neutral and to focus on the issues (whether fact or law) presented by the parties; the arbitrator cannot meet with either party in private. The outcome of the arbitration (the award) is final and binding on the parties; options for challenging the award are very limited.

Arbitration proceedings are regulated by the [Arbitration Act 1996](#) in respect of England and Wales and Northern Ireland.<sup>3</sup> The usual steps involved in arbitration include:

- An agreement to arbitrate.
- The selection of an arbitrator.
- Preparation for the hearing.
- Presentation of the case by each party.
- An award.
- Enforcement.

A main advantage of arbitration is that it is a flexible procedure; the parties can choose an arbitrator with relevant expertise and the arbitrator can tailor the process to the dispute. Unlike court proceedings, the parties are subject to duties of confidentiality with proceedings normally held in private.

As with other ADR processes, there are disadvantages. Arbitration may not be appropriate if the claim involved is simple and involves just one claimant and defendant, in such cases a party may prefer to issue court proceedings and apply for summary judgment. Arbitration is not always cheaper, there may be tribunal costs and administrative fees. For simple claims, the small claims court may be much cheaper. Another disadvantage is that if the arbitrator incorrectly determines a dispute, the opportunities for challenging or appealing the award are limited. Finally, an arbitration award does not automatically give rise to any binding precedent. Therefore, where a final and

---

<sup>3</sup> In Scotland, arbitration proceedings are governed by the [Arbitration \(Scotland\) Act 2010](#)

generally binding ruling is required (e.g., on the meaning of a standard form contract or possible unfair term), court proceedings may be preferred.

## 3.4 Ombudsman services

In the context of consumer contracts, an ombudsman is a person or body appointed to investigate complaints about traders. Ombudsman services are independent, free and impartial. However, the consumer must first try and resolve their complaint with the trader before they complain to an ombudsman.

A consumer can complain to an ombudsman if they have an unresolved complaint about a business that is a member of the ombudsman scheme. There are different ombudsmen for different industries. The Ombudsman Association provides an [online search tool](#) to help consumers find the right ombudsman for their complaint. The consumer might need a “letter of deadlock” from the trader saying that the dispute cannot be resolved (see above). However, a consumer may not need this letter if the trader is taking too long to deal with their complaint (i.e., 8 weeks or more, although this can vary). An ombudsman will not investigate a complaint if the consumer has already started a court action.

The ombudsman will consider the evidence from both sides and will decide how the matter should be resolved. If the ombudsman decides that the consumer’s complaint is justified, they will recommend what the trader should do to put things right. The decision of a private sector ombudsman (such as the [Motor Ombudsman](#), the [Furniture Ombudsman](#), or [Ombudsman Services: Energy](#)) can be legally binding (but not always)).

For consumers, one advantage of using an ombudsman is that the decisions they make may be very different to that of a court. For example, the ombudsman might ask the trader to apologise or pay compensation to the consumer. If a consumer is unhappy with the ombudsman’s decision, they might still be able to take court action (depending on the terms of the ADR scheme), but the court may take into consideration the ombudsman’s decision.

## 3.5 Pros and cons of ADR in consumer disputes

There are pros and cons with each ADR method. When deciding which ADR method to use, it is important that the pros and cons are assessed in the light of the unique circumstances of the case.

## Pros

In general, the use of ADR to settle a consumer dispute can have the following advantages:

- **ADR increases the likelihood of reaching a settlement by consent.** The Centre for Effective Dispute Resolution (CEDR), in its [9th Mediation Audit](#) (May 2021), gives an aggregate settlement rate of 93% for mediation. Without ADR, many consumer complaints may not get resolved, since taking a complaint to court can be both a daunting and expensive prospect.

Even when ADR fails, it may still have been beneficial in terms of identifying areas of agreement. ADR may re-open lines of negotiation between the parties, making an out-of-court settlement more likely.

- **Resolving a dispute through ADR is likely to be cheaper than doing so through the courts.** According to the Government, ADR costs are between 1/8th and 1/3rd of the cost of going to court.<sup>4</sup> ADR can be free for the consumer, as it is often funded through businesses paying membership fees, levies or case fees to the ADR provider.
- **ADR procedures are often completed more quickly than court proceedings.** Reaching a resolution through litigation can take months (in some cases, years), whereas the time involved in arranging and undertaking an ADR process (such as mediation) tends to be much shorter.
- **ADR procedures can be more flexible in terms of their outcome.** With some types of ADR, such as mediation, the parties to the dispute can adapt the process to best suit the facts of the case and decide the outcome themselves. They are encouraged to find a practical and fair solution rather than have a strictly 'legal' solution imposed on them.
- **ADR decisions are generally not legally binding**, although a trader might agree to be bound by an ADR decision as a condition of their membership of a particular scheme. If the consumer is unhappy about the decision reached, they retain the right to take the trader to court.
- **ADR procedures are confidential and can help maintain business relationships.** ADR procedures are usually completed in private and conducted confidentially, avoiding the risk of adverse publicity. The parties can freely discuss issues, enabling full and open negotiations. Unlike litigation, which is confrontational or adversarial in nature, ADR encourages the parties to a dispute to reach a settlement by consent.

---

<sup>4</sup> Department for Business, Innovation & Skills, [Government response to the consultation on implementing the Alternative Dispute and the Online Dispute Resolution Regulation](#), November 2014, (accessed 10 May 2022)

This is an important consideration when the parties know that they want to have, or must have, an ongoing business relationship.

- Finally, **consumers and businesses like ADR**. Feedback from consumers who have used ADR tends to be positive. A European Commission survey (2010) indicated that 82% of businesses who had used ADR would use it again.<sup>5</sup>

## Cons

Conversely, the use of ADR to settle a consumer dispute can have the following disadvantages:

- **Limitation issues.** The law on limitation periods is set out in the [Limitation Act 1980](#), which makes provisions in respect of different causes of action (the action must be commenced within the relevant limitation period). Regarding simple contracts, the Act provides for a limitation period of 6 years, the period starts to run from the date on which the cause of action accrued.<sup>6</sup> Most forms of ADR (unlike legal proceedings) do not “stop the clock” for the purposes of limitation. This means that if the dispute has been ongoing for some time, a party may need to issue protective legal proceedings whilst undertaking ADR.
- **Delay and increased costs.** If ADR fails, leaving no option but to pursue litigation, the ADR process will have wasted time and costs for the parties. However, as outlined above, there can still be potential benefits from ADR even where it fails to achieve a settlement. There may also be adverse cost consequences if a party unreasonably refuses to undertake ADR.
- **Unenforceable outcomes.** Some ADR processes can lead to a legally binding agreement with limited rights of appeal. However, where a settlement is reached through a non-binding ADR process, its terms may not be enforceable. To create certainty, the parties must formalise the settlement terms in a contract or court order.
- **ADR may not be suitable for all consumer disputes.** In some cases, the costs of ADR may be excessive or disproportionate compared to the cost of bringing a legal claim in the Small Claims Court. For example, although the costs involved in mediation are often significantly lower than litigation, this is not always the case in lower-value disputes and there is no guarantee that settlement will be achieved.
- **Risk of delay to trial.** It is possible to conduct ADR in parallel with litigation. However, where legal proceedings have already been issued, there is a risk that diverting the parties’ attention to ADR will get in the

---

<sup>5</sup> Department for Business, Innovation & Skills, [Government response to the consultation on implementing the Alternative Dispute and the Online Dispute Resolution Regulation](#), November 2014, (accessed 10 May 2022)

<sup>6</sup> [Sections 5](#) of the Limitation Act 1980

way of the court process - but that risk should be balanced against the advantages of ADR.

- **Revealing your case.** Consumers might worry that ADR runs the risk of exposing the strengths and weaknesses of their case, which might be used against them if the case does not settle and goes to court. However, for most forms of ADR, anything said by either party will be subject to privilege in any future court proceedings.
- **Showing weakness.** Some consumers might worry that a willingness to engage in an ADR process could be perceived as weakness or a lack of confidence in their case. However, given that the courts actively encourage the use of ADR, this concern is unfounded.

## 4 Impact of Brexit on consumer contracts & dispute resolution

The UK leaving the EU has impacted significantly on aspects of consumer contract law and dispute resolution. With effect from 1 January 2021, key changes include:

- Choice of governing law – introduction of [UK Rome I](#).
- No automatic recognition in EU member states of any UK judgment.
- The EU [Online Dispute Resolution \(ODR\) Platform](#) is no longer available to UK consumers and businesses to use.
- There are no reciprocal obligations on the EU and the UK to investigate breaches of consumer law or pursue enforcement action under the [Consumer Protection Cooperation Regulation](#).

Each development is considered in detail below.

### 4.1 Choice of governing law

Many consumers purchase goods and services online from traders based outside the UK. In the event of a dispute, it is necessary to ascertain if UK or foreign laws apply to the consumer contract. This was the case before Brexit – there has been no change in practice.

Article 6(1) of Regulation (EC) 593/2008 on the law applicable to contractual obligations (known as [Rome I](#)) contains rules for determining the law governing contracts concluded from 17 December 2009 and applies to all EU member states except Denmark. Businesses are allowed to elect the governing law of their business-to-consumer contracts, but that choice of law is “subject to the application of mandatory local law of the consumer where the business directs activities to the country where the consumer has their habitual residence”. In effect, this means that businesses will specify the governing law of their business-to-consumer contracts but usually seek local law advice when directing their activities to a particular country to ensure the contractual terms are enforceable.

Rome I continued to apply to the UK during the transition period. However, on 1 January 2021, Rome I stopped applying to the UK on a reciprocal basis.<sup>7</sup> The UK has enacted legislation<sup>8</sup> that incorporates (with amendments<sup>9</sup>) the rules in Rome I into UK law, as part of retained law. In the UK, this means that:

- [Rome I](#) will apply to contracts made on or after 17 December 2009 and before the end of the transition period.
- Contracts entered into from 1 January 2021 onwards will be governed by the new rules (i.e., UK courts will apply [UK Rome I](#), which currently includes the same rules and principles as Rome I).

The principle of businesses electing the governing law but being subject to mandatory local law in the countries in which goods and services are directed has continued.

## 4.2 No automatic recognition in EU of UK judgment

With regard to governing law (and despite any choice of non-UK law), where a trader pursues its activities in (or directs its activities to) the UK, a consumer (or an enforcement authority) will be able to take legal action against the trader in the UK. In addition, the UK courts will give consumers the benefits of any protections that parties cannot contract out of under UK consumer law. This would include, for example, rights and protections provided under the [Consumer Rights Act 2015](#) and under the [Consumer Contracts \(Information, Cancellation and Additional Charges\) Regulations 2013](#).<sup>10</sup>

However, there will be no automatic recognition in EU member states of any UK judgment. Similarly, if an EU business successfully takes legal action in its home jurisdiction against a UK consumer, the judgment will not be automatically recognised by the UK courts.<sup>11</sup>

---

<sup>7</sup> Except as provided for in Part 3 of the [UK-EU Withdrawal Agreement](#) in respect of contracts concluded before the end of the transition period

<sup>8</sup> [Law Applicable to Contractual Obligations and Non-Contractual Obligations \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (SI 2019 No.834) as amended by the [Jurisdiction, Judgments and Applicable Law \(Amendment\) \(EU Exit\) Regulations 2020](#)

<sup>9</sup> These amendments only seek to ensure that UK Rome I will operate effectively in domestic law from the end of the transition period - they do not change the substance of the rules.

<sup>10</sup> SI 2013/3134

<sup>11</sup> It should be noted that any contractual terms which prevent a consumer from taking legal action in their home jurisdiction are potentially unfair and unenforceable under UK law

## 4.3

## Use of ADR in cross-border disputes

**Mediation Directive**

The [EU Mediation Directive](#) (Directive 2008/52/EC), which came into force in 2008, applies to cross-border civil and commercial disputes involving parties from EU member states.<sup>12</sup> The purpose of the Directive is harmonisation through the imposition of minimum standards and rules across a range of matters.

The [Cross-Border Mediation \(EU Directive\) Regulations 2011](#) implemented the Mediation Directive in respect of England and Wales. The Regulations covered issues of confidentiality, enforceability and limitation. Issues concerned with court intervention and quality were dealt with through existing legislation. It is fair to say that only a few changes were made to UK legislation due to mediation law and culture being already well established in the UK.

The [Cross-Border Mediation \(EU Directive\) \(EU Exit\) Regulations 2019](#) came into effect on 1 January 2021, repealing the 2011 Regulations (and associated changes to the Civil Procedure Rules).<sup>13</sup> As a result, **the provisions of the EU Mediation Directive no longer apply to cross-border mediations taking place in the UK.**<sup>14</sup> In other words, lawyers involved in a cross-border mediation which takes place in an EU/EFTA country will be subject to the rules of that country.

**Online Dispute Resolution (ODR) platform**

The European Commission set up and maintains a free Online Dispute Resolution (ODR) platform by which traders and consumers in member states can try to resolve consumer disputes and access approved EU ADR providers. All traders within the EU that engage in online sales, service contracts and online marketplaces are required to provide a link on their website to the ODR platform. This ODR platform was established under [EU Regulation on Online Dispute Resolution](#) (Regulation (EU) 524/2013).

In the UK, the Online Dispute Resolution Regulation was revoked by the [Consumer Protection \(Amendment etc.\) \(EU Exit\) Regulations 2018](#). Since 1 January 2021, UK consumers can no longer use the ODR platform to link

<sup>12</sup> A [cross-border dispute](#) is a dispute where at least one party is domiciled in a member state (subject to some exceptions)

<sup>13</sup> [Article 69](#) of the [Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#) sets out the circumstances in which EU law applies in the case of ongoing procedures (mediation is covered within this)

<sup>14</sup> The only exceptions to this occurred where (before the end of the transition period) the court invited or ordered the parties to use mediation, or the parties agreed to mediation

them to EU ADR providers<sup>15</sup> and UK businesses can no longer access the [ODR dashboard](#). In addition, online traders selling in the UK are no longer obliged to signpost the ODR platform on their websites.

It is important to note, however, that **UK consumers can still access ADR entities in EU countries, just not through the ODR platform.**

## Changes to ADR Regulations 2015

The [Alternative Dispute Resolution for Consumer Disputes \(Competent Authorities and Information\) Regulations 2015](#) (“the 2015 Regulations”) implemented in the UK the provisions of EU [Directive 2013/11/EU](#) on alternative dispute resolution (ADR).

The 2015 Regulations were subsequently amended by the [Consumer Protection \(Amendment etc.\) \(EU Exit\) Regulations 2018](#).<sup>16</sup> From **1 January 2021**:

- There’s no longer a requirement for UK-based ADR entities to offer cross-border services to consumers residing in EU member states.
- Traders are no longer able to offer consumers EU alternatives to UK-based ADR entities.
- The Secretary of State has responsibility for the publication of the list of ADR entities and is no longer required to submit this list and report to the European Commission.

However, the following continues to apply to UK traders:

- If the trader is obliged (by law, contract or trade association membership) to use the services of an ADR entity it must include the name and address of this ADR entity on its website or sales terms.
- If the trader has exhausted its internal complaint handling procedure, it must inform the consumer making the complaint of the name and website address of an ADR entity that would be competent to deal with the complaint, although the trader does **not** need to engage with such ADR.

---

<sup>15</sup> There is little information on the full extent UK consumers/businesses used the ODR platform, see [Consumer ADR – Delivering Fairness and Justice for Consumers](#), Business and Markets Conference, Wolfson College, Oxford, 18 & 19 March 2019, (accessed 10 May 2022)

<sup>16</sup> Section 9(16)(h) of the [Consumer Protection \(Amendment etc.\) \(EU Exit\) Regulations 2018](#) omits Schedule 3, paragraph 18 from the [Alternative Dispute Resolution for Consumer Disputes \(Competent Authorities and Information\) Regulations 2015](#)

## 4.4

# Cooperation between national enforcement authorities

[EU Regulation 2017/2394](#) provides for cooperation between EU enforcement authorities in relation to consumer protection and gives consumers access to redress in their home courts when their rights are breached. The Regulation also enables the European Commission to co-ordinate common actions between national enforcement authorities.

In the UK, this EU Regulation has been revoked in its entirety, reflecting the end of the UK's role in the EU consumer enforcement cooperation regime.<sup>17</sup> For UK enforcement bodies, such as the [Competition and Markets Authority](#) (CMA), this means they are no longer part of the cooperative enforcement network across the EU. The reciprocal obligations to investigate consumer law breaches or to bring about cross-border enforcement has ended.<sup>18</sup> It is important to note, however, that the CMA continues to have the same enforcement powers in respect of domestic breaches of consumer protection.

In December 2020, the CMA published , [Guidance on the functions of the CMA after the end of the Transition Period](#). In this note, the CMA said it would look at ways to ensure continued cooperation with EU consumer enforcement bodies, while developing relationships with equivalent international bodies including the [International Consumer Protection Enforcement Network](#) (ICPEN).

---

<sup>17</sup> [Consumer Protection \(Enforcement\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (2019/203)

<sup>18</sup> It should be noted that Article 9 of the [EU-UK Trade and Cooperation Agreement](#) provides for continued cooperation on market surveillance and non-food product safety and compliance

The House of Commons Library is a research and information service based in the UK Parliament. Our impartial analysis, statistical research and resources help MPs and their staff scrutinise legislation, develop policy, and support constituents.

Our published material is available to everyone on [commonslibrary.parliament.uk](https://commonslibrary.parliament.uk).

Get our latest research delivered straight to your inbox. Subscribe at [commonslibrary.parliament.uk/subscribe](https://commonslibrary.parliament.uk/subscribe) or scan the code below:



 [commonslibrary.parliament.uk](https://commonslibrary.parliament.uk)

 [@commonslibrary](https://twitter.com/commonslibrary)