

A response to the Department for Business Innovation & Skills' consultation on Alternative Dispute Resolution for Consumers

Introduction

1. This response represents the views of ILEX Professional Standards (IPS), the regulatory body for Chartered Legal Executives. Chartered Legal Executives (Fellows) are members of the Chartered Institute of Legal Executives (CILEx). CILEx is the professional body representing 22,000 qualified and trainee Fellows and is an Applicable Approved Regulator under the Legal Services Act 2007 (LSA). Fellows are authorised persons under the LSA.
2. We understand that from July 2015 it will be a requirement for the Government, under the European Directive on Alternative Dispute Resolution (ADR), to provide all businesses with details of a certified ADR provider that they may use. IPS recognises that it will be the decision of each individual business whether they would like to take a matter to ADR (if they are not already required to do so).

Current IPS complaint handling procedures

3. IPS regulates all grades of CILEx member. These include student members, affiliate members, associate members, graduate members and Fellows: some 22,000 in all. Where an individual works in a regulated practice, we encourage the resolution of service complaints against Fellows at First Tier Complaints Handling (FTCH) stage wherever possible. If a complaint cannot be resolved in that way, the complainant may decide to submit the complaint to the Legal Ombudsman (LeO) or to IPS itself. CILEx, in common with other Approved Regulators under the LSA, may not deal with service complaints in respect of authorised persons.

4. For complaints against any other grade of CILEx member, if an issue cannot be resolved at first tier stage then the client may bring the matter to IPS. However LeO has implied in its response to the consultation that all legal complaints should be directed to them under the residual ADR provision as this would provide a simpler framework for consumers to understand. Although IPS does not disagree with this viewpoint, we question the Ombudsman's capacity to take on the extra work and meet its key performance indicators (KPIs) on dealing with cases within the prescribed timeframe. The key issue is what the extra cost is going to be and how is it going to be met. The legal services regulators already pay a levy towards LeO's costs and it makes sense for LeO to be the ADR provider, but the question is how well the role will mesh with the existing complaints role. There is a risk that ADR could become a second, competing dispute resolution service for the same disputes, thereby increasing overall regulatory costs.

Complaints handling for entities

5. IPS expects to regulate entities from early 2015 and has already developed guidance for entities on complaints handling. One of the requirements for entities regulated by IPS is to inform clients fully and honestly about complaints procedures including the client's right to refer a complaint to the Legal Ombudsman or IPS where appropriate. IPS has in place effective measures for clients to have conduct complaints resolved.
6. The Government has indicated that for legal complaints the ADR provider would most likely be the Legal Ombudsman as they believe that existing ADR bodies should be appointed to fulfil this role. IPS has no issues with this as to date LeO have been performing their role relatively well. We would however question whether LeO would be able to meet the criteria for ADR providers. Can the existing arrangements meet the requirements for ADR without significant change to LeO's business model?

7. IPS would like more information on how the Government would encourage businesses to use a voluntary residual ADR scheme. Will any incentives be provided? We believe that developing an operational fee structure for voluntary ADR would be effective as this would provide businesses with an indication of whether they can afford to join the voluntary ADR scheme. It would be critical to establish, for businesses and complainants, whether the decision resulting from use of the voluntary ADR scheme would be binding or not. It is our view that in order to be effective, any decision needs to be binding upon the business concerned.
8. Careful thought also needs to be given as to how any new arrangements would fit in with online dispute resolution.

Better signposting for consumers – a complaints helpdesk

9. IPS believes that establishing a consumer helpdesk would be beneficial as it would provide consumers with the opportunity to contact a help point and be provided with details of a relevant ADR provider. Our concern is how the cost of establishing and operating the helpdesk will be met. At a time when the Government is trying to deregulate, this appears to be imposing a significant new regulatory cost on businesses. The setting up of overarching referral schemes and new monitoring arrangements for ADR service providers has the potential to impose significant new regulatory costs on the sector. Alternatively could websites such as *Legal Choices*, operated by Regulators, provide signposting to consumers?
10. It is also crucial that businesses which decide to join the voluntary ADR scheme provide clear signposting and details of the ADR provider they will be using. The details can be provided in their terms and conditions, website and literature etc.

Conclusion

11. IPS recognises that the voluntary residual ADR will become a part of the UK ADR landscape by July 2015. However there are a number of questions which need to be answered, including how the use of ADR will be encouraged and where the funding will come from. We believe that there is no requirement to make ADR compulsory, as it would be a significant cost and upheaval for businesses and would inevitably increase the price consumers pay for services.

ILEX Professional Standards

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