

GUIDANCE NOTES: ALTERNATIVE DISPUTE RESOLUTION

Regulator: Costs Lawyer Standards Board

Effective date: 21 October 2015

Why has this guidance been introduced?

This guidance note seeks to assist Costs Lawyers, in understanding the impact of The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (the "Regulations") made on 17 March 2015. The majority of the Regulations came into force on 1 October 2015, and the remaining provisions will come into force on 9 January 2016.

In the UK, there are already several large and well-established ADR schemes in regulated sectors including financial services, energy and telecoms. Outside regulated sectors, many businesses are members of voluntary ADR schemes.

Who will certify an ADR provider(s) for the regulated legal sector?

ADR providers, referred to as "ADR entities" in the Regulations, are certified and regulated by competent authorities. Competent authorities are responsible for ensuring that ADR providers comply with the requirements of the Regulations. The CLSB cannot certify an ADR provider under the regulations. In many regulated sectors, the regulator will act as the competent authority. In the legal sector, the Legal Services Board is the competent authority.

Who are certified ADR provider(s) for the legal sector?

The CLSB is not a certified ADR provider. The Legal Ombudsman is currently undergoing a public consultation on its proposal to apply to the Legal Services Board to be certified as an ADR provider. If successful, the Legal Ombudsman will be able to offer ADR services in the event of a dispute between a Costs Lawyer and their client.

Does ADR under the Regulations apply to legal proceedings?

No. The Regulations apply to sales and service contracts between a "trader" and "consumer". A trader is a person (including a company) acting as part of their trade, business or profession, including acting through another person or on the trader's behalf. A consumer is an individual (a natural person) who is acting for purposes wholly or mainly outside their trade, business or profession. Guidance from the Department for Business, Innovation and Skills indicates that the Regulations do not apply to "business to business" or "consumer to consumer" transactions.

The Costs Lawyers contract is with a Solicitor, do the Regulations apply?

No. The Regulations only apply to disputes about contracts between a trader and a consumer. If a Costs Lawyer is instructed by a Solicitor, the Costs Lawyer will not have any

obligations under the Regulations as the Costs Lawyer's contract is with the Solicitor (who would not be a consumer) and not the Solicitor's client (who may be a consumer, but has not entered into an agreement with the Costs Lawyer directly).

The Costs Lawyers contract is with an unrepresented client, do the Regulations apply?

Yes. However, in the event of a dispute over the Costs Lawyers services, there is no obligation on either party to use ADR under the Regulations. The Regulations only require a Costs Lawyer to provide information on the options for ADR in the event they cannot resolve a complaint under their complaints handling procedure. The Costs Lawyer must then inform their client by letter or email:

- that they cannot settle the dispute; and
- of the contact details of an ADR provider for legal services disputes (likely to be the Legal Ombudsman, see above); and
- whether they are prepared to participate in that ADR process.

Are there any implications of my not agreeing to ADR under the Regulations?

If parties to a dispute fail to use ADR without good reason, and the matter results in legal proceedings then a court may penalise (even the party who “wins” the court case) when deciding who is to pay the legal costs of the case.

How do the Regulations affect professional conduct complaints to the CLSB?

Both parties choosing ADR will not affect a complainant's right to refer a professional conduct complaint to the CLSB.