



**EUROPEAN CONSUMER CENTRE
IRELAND**

**The development of Alternative
Dispute Resolution (ADR) in Ireland**

An analysis of complaints,
best practice and future
recommendations

2008

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1. Introduction

The European Consumer Centre (ECC) Network comprises centres in 29 European countries. The Network is co-financed by the Health and Consumer Protection Directorate General of the European Commission and by each of the national governments. The ECC-Net's objective is to create consumer confidence in the Internal Market. This is achieved by providing information to consumers on their rights, and by assisting them with cross-border disputes. A key element of this role is the use, promotion and development of Alternative Dispute Resolution (ADR) bodies within the European Union. The development of ADR is critical in order to provide fair and efficient dispute-resolution mechanisms at EU level.

In Ireland, the ECC has campaigned for many years to have structures in this country reviewed with a view to altering the way consumer complaints are handled in order to allow inexpensive and efficient solutions for consumers. It is submitted that legal action through the courts should be a last resort for consumers with an unresolved dispute; as such a course is both hugely time-consuming and expensive for the consumer, as well as an additional pressure on an already burdened judicial system.

In April 2004, ECC Ireland published a report, entitled "*The need to develop ADR in Ireland*". This report highlighted the lack of adequate ADR Bodies in Ireland. The report also addressed problem areas where ADR was needed and put forward proposals for its development in Ireland. Since then Ireland has seen positive changes within the consumer policy area, in particular with the establishment of the National Consumer Agency under the *Consumer Protection Act 2007* with effect from the 1st May 2007.

However in terms of ADR development there is still some way to go, as shown in this follow-up report. This purpose of this 2008 report is to aid discussion in order to facilitate the development of ADR structures in Ireland. Specifically, it will:

- review the current framework in Ireland
- highlight areas of particular concern where gaps remain, as reported to ECC Ireland
- explore ADR best practice, as experienced by consumers in Norway
- offer recommendations for change

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May 2008

2. Alternative Dispute Resolution (ADR)

2.1 What is ADR?

Alternative Dispute Resolution (ADR) refers to any means of settling disputes outside of the courtroom and typically includes mediation, arbitration, early neutral evaluation and conciliation. ADR should not be seen as the 'first-step' in litigation; it is a real alternative providing an invaluable tool for the swift and cost-effective closure of a case.

The two most commonly used types of ADR procedures are mediation and arbitration.

Mediation:

Both parties involved in the dispute agree to use a neutral third party to help solve the dispute. The terms of the agreement are decided between the parties with the help of the mediator. Generally, decisions made in mediation are not legally binding but they can be made so if both parties agree to it.

Arbitration:

Both parties involved in the dispute agree to go to an arbitrator to resolve their issues. When reaching a decision the arbitrator will consider all evidence presented by the parties, and make a decision on behalf of the parties. This is legally binding and this process is governed by laws (*Arbitration Acts 1954-1998*).

2.2. Cross-Border Cooperation and the ADR Database

The European Commission has set out principles under which competent out-of-court settlement bodies for consumer disputes can become 'notified' as recognised ADR bodies. The ADR bodies, which are considered to be in conformity with the Commission's *Recommendations 98/257/EC or 2001/310/EC*¹, are placed onto a central database on the Health and Consumer Protection Directorate General web site, http://ec.europa.eu/consumers/redress_cons/adr_en.htm.

This notification process seeks to ensure common minimum requirements from bodies across the EU which creates a consistent standard of quality. The notification process also means that consumers can have similar expectations from ADR bodies across the Member States. In Ireland, the Department of Enterprise, Trade and Employment (DETE) is responsible for the notification procedure.

¹ Recommendation 98/257/EC; ADR Bodies notified under this Recommendation are bodies that make decisions/recommendations on behalf of both parties. Recommendation 2001/310/EC identifies a set of principles which out-of-court bodies involved in the consensual resolution of consumer disputes should follow. Both parties involved in the consumer dispute come together and a decision is reached and agreed by them alone, the body allows the parties to discuss the problem in a constructive manner and at no time influences their decision

2.3. Application Procedure

In 2005, the DETE developed an application process for any ADR body who wished to become notified. Any ADR body which considers it could qualify for notification is invited to complete the application form which can be downloaded on the website,

http://www.entemp.ie/commerce/consumer/nomination.htm#ADR_Ireland.

Criteria for a successful application include the principles of independence of the organisation, and transparency of the proposed resolution procedure.

Both ECC Ireland and the DETE review the application and once it is agreed that an ADR body satisfies all the requirements, the DETE forwards the details to the Health and Consumer Protection Directorate General of the European Commission for inclusion on the database.

2.4 Notified ADR Bodies in Ireland

There are currently five Irish ADR Bodies listed on the EC Database (see below table). When the 2004 ADR report was published, six ADR bodies were listed, but over the years four of these bodies were removed as they were no longer in existence. Just two of the original bodies, now remain, the *Advertising Standards Authority of Ireland* and *Scheme for Tour Operators*. Since the 2004 report, three new Irish ADR Bodies have been added to the list; the Financial Services Ombudsman's Bureau, the Office of the Pensions Ombudsman, and the Direct Selling Association Ireland.

Notified	Sector	Name
2001	Advertising	Advertising Standards Authority of Ireland (ASAI)
2001	Package Holidays	Scheme for Tour Operators, Chartered Institute of Arbitrator
2006	Financial Services	Financial Services Ombudsman's Bureau
2006	Pensions	Office of the Pensions Ombudsman
2007	Direct Selling	Direct Selling Association Ireland

All the notified ADR bodies listed provide an invaluable service to consumers when resolving disputes in their respective industries. However, they represent only a tiny section of Irish industry, and huge gaps remain as seen below (Section 4.3).

2.5 Voluntary ADR Bodies Ireland (non-notified).

Section 2.4 lists the five ADR Bodies that are currently notified on the European Commission database. However, over the years Ireland has seen the development of a number of other ADR schemes in many different areas. The table below lists sectors covered by ADR that are not notified with the European Commission. These bodies may not wish to be notified because they lack total independence, or because they feel extra resources would be required. However, it is submitted that these ADR bodies should be encouraged by DETE to become notified where possible, as this ensures a uniform assurance of quality of service for the consumer.

Sector	Name
Car Rental	Car Rental Council of Ireland
Car purchases & services	SIMI Scheme, Chartered Institute of Arbitrators, Irish Branch
Tenant & Landlord disputes	Private Residential Tenancy Board
Taxi complaints	Commission for Taxi Regulation
Energy Complaints, Electricity & Gas	Commission for Energy Regulation
Postal Services	<i>Complaints and Dispute Resolution Code of Practice Regulation 15 (1) of S.I. No. 616 of 2002, applies to all postal providers in Ireland.</i>
Mediation	Mediation Forum Ireland (MFI)
Arbitration	Chartered Institute of Arbitrators Irish Branch
Online Dispute Resolution (ODR)	The Internet Ombudsman
Online Dispute Resolution	ECODIR

3. European Consumer Centre Ireland; complaints analysis

ECC Ireland aims to resolve cross border consumer complaints amicably, by liaising with the business where there has been a communication breakdown or where the business needs to be reminded of their obligations under consumer protection legislation. Irish consumers are helped resolve their disputes with European businesses and European consumers are helped resolve their disputes with Irish businesses.

Regrettably it is not always possible to come to an amicable resolution in a consumer complaint. This may be because the business is unwilling to co-operate with the ECC Net. In other cases it is not possible to reach an agreement regarding a reasonable level of redress. At this stage the ECC will try to find an ADR Body suitable to handle the complaint. Once a complaint cannot be resolved it is then classified as a dispute.

Although ADR Bodies do exist in Ireland, the areas which are most problematic for EU consumers do not have ADR. This means that many cross-border complaints remain unresolved. By analysing ECC Ireland's unresolved disputes, the areas which are in need of ADR can be identified.

3.1 Breakdown of ECC Ireland unresolved disputes.

Figure 1

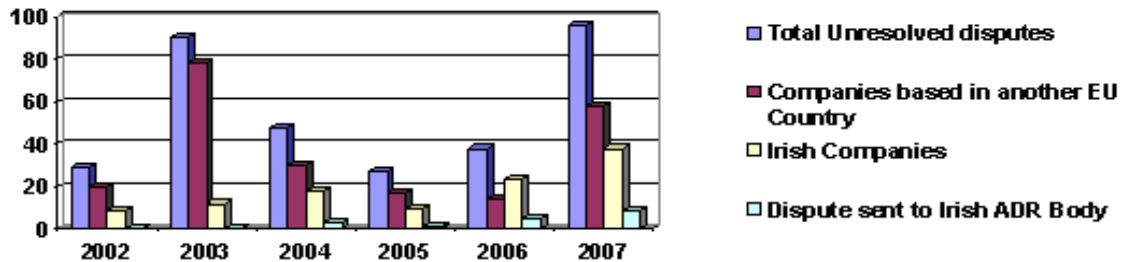


Figure 1: Annual breakdown of ECC Ireland unresolved disputes 2002-2007

Since 2002, ECC Ireland has handled a total of 328 disputes involving Irish and non-Irish companies. 34 % of the overall disputes (111) received were against Irish retailers while 17% (55) of these were forwarded to an ADR Body in Ireland. Of these 55 disputes, with one exception, only those that related to car rental could be sent to a relevant ADR body. ECC Ireland had to inform the remaining EU consumers who had a dispute against an Irish retailer that nothing further could be done to resolve their disputes. This is a cause of grave concern as all of these disputes were valid in terms of the consumer's legal entitlement to redress.

Figure 2

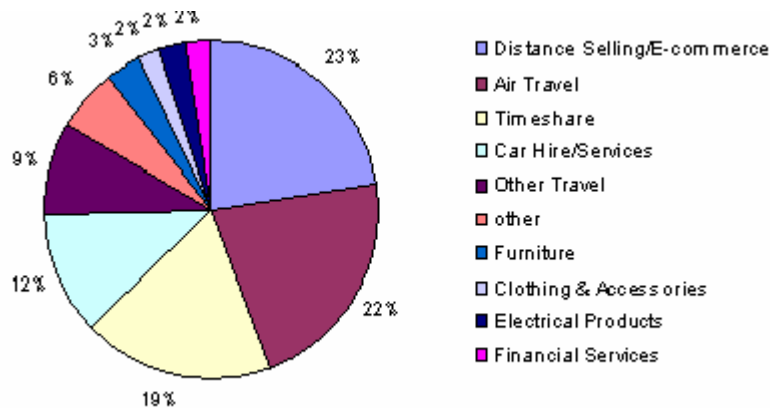


Figure 2: ECC Ireland unresolved disputes (areas of complaint) 2002- 2007

The above chart shows the most problematic complaint areas for consumers, as reported to the ECC Network.

The 4 main categories were:

- 1) Distance selling or e-commerce contracts.
- 2) Airline disputes
- 3) Timeshare²
- 4) Car Hire/Services (*third largest category of disputes, since 2004*).

In 2007, the total number of disputes increased by 72% from 2006. We can expect this figure will increase over the coming years as more cross-border trade within the Internal Market continues to grow. The lack of ADR Bodies for the airline industry has proved to be main reason for the closure of unresolved disputes against Irish airlines. The 2004 report also found that this particular gap existed, but, regrettably, no progress has been made in this area in Ireland.

3.2 Case Study

Two Spanish consumers travelled with an Irish Airline and when they collected their luggage they discovered that it was damaged. They made a complaint to the airline and requested compensation of €223 to replace the luggage. The airline refused to compensate unless they produced a receipt for the luggage showing the purchase price. The consumer did not have this. The consumers contacted ECC Spain for assistance and the case was shared with ECC Ireland. Despite many attempts to resolve the issue the airline refused to offer compensation to the consumer without the proof of purchase.

² Although this is the third highest category of dispute, it should be noted that a dispute of this type has not been recorded as an unresolved dispute since 2004. It appears that with increased consumer awareness, problems relating to timeshare have been almost eliminated.

Case Study Analysis

The consumer's entitlement to compensation is set out under the *Montreal Convention 1999* implemented in Ireland by the *Air Navigation and Transport Act 2004*.

The maximum claim for compensation under this convention is 1,000 SDRs (approx €1,050) for checked baggage whether the baggage it is lost, delayed or damaged. The value of an SDR is based on a basket of international currencies. The request for proof of purchase for any luggage is not a requirement under the *Montreal Convention*. This requirement is set out within the airlines terms and conditions.

If an ADR body had been available, the consumers would most certainly have had their right to compensation enforced. Unfortunately the lack of ADR for this area means that consumers were denied access to their entitlements in this instance.

4. ECC Ireland's work with existing Irish ADR Bodies.

From analysing ECC Ireland's complaints the three main areas of disputes are:

- Distance selling or E-commerce contracts.
- Airline disputes
- Car Hire/Services

ECC Ireland has therefore focused development action in these areas:

4.1 Distance selling/Ecommerce contracts

In 2007, ECC Ireland was approached by The Internet Ombudsman (TIO), an online dispute resolution organisation, seeking our involvement in their Online Dispute Resolution (ODR) scheme. www.TheInternetOmbudsman.com is a new service offered by www.TheMediationRoom.com that applies technology to resolve consumer complaints and claims online.

As e-commerce and distance selling disputes account for our highest category of unresolved cases, the ECC agreed to participate in a pilot project involving the referral of unresolved online shopping disputes to the TIO service, starting in February 2008 and lasting for six months. For the duration of the pilot only Irish / UK online shopping disputes are to be referred.

How does it work?

Consumers can register their complaint about a product or service that they have purchased on the Internet and have it resolved by neutral conciliators and adjudicators.

This is a two stage process. Firstly the dispute is dealt with through mediation and if this does not succeed, then another neutral, the Internet Ombudsman, will consider the joint discussions that have taken place, as well as responses to further questions he or she may raise and then rule on an appropriate and fair outcome.

The service has been used by a variety of organisations including:-

- 1) Her Majesty's Court Service in England for an online mediation pilot of court cases awaiting final hearing. - see the project at www.MediateOnline.co.uk
- 2) eBay and PayPal for online consumer disputes see the project at www.adronline.co.uk

At the conclusion of the pilot phase a short report will be drafted and made available on the ECC web site for any person interested in the results of the project.

4.2 ECODIR - Electronic Consumer Dispute Resolution

The ECODIR (Electronic Consumer Dispute Resolution) project stems from a university initiative supported by the European Commission and the Irish

Department of Enterprise, Trade and Employment. The aim of the ECODIR project is to handle disputes between businesses and consumers which took place over the Internet. The ECODIR pilot project ended June 2003, although when public funding was withdrawn from this project, the organisers decided to keep the service active.

The system is designed to resolve disputes in an easy, swift and inexpensive manner. ECODIR involves a 3-step process of negotiation, mediation, and recommendation. The process is confidential and voluntary.

Although this is a very impressive service and one that is more than suitable for notification under the ECC recommendations, unfortunately ECODIR is reluctant to become notified due to financial restraints. However, ECC Ireland believes that this is a worthwhile project that could yet be developed.

Developing such cooperation shows how linking with ADR bodies can offer new means for consumers to access redress and such action should be encouraged from all actors at national level.

4.3 Airline Disputes

In 2005 ECC Dublin published a report entitled *Airline Complaints in Ireland 2003-2004*. The report analysed complaints received against the airline industry in order to highlight the problems cross-border consumers experienced with airlines and to put forward recommendations for the development of an ADR Body for the industry.

Following its publication the ECC Ireland sent letters to all Irish airlines inviting them to discuss issues raised within the report and to discuss the possible development of ADR.³

Two airlines responded and meetings took place with Ryanair and Aer Arann. Although Ryanair did not wish to discuss the concept of developing an ADR scheme, it was agreed to develop a working relationship and a case handling procedure for the referral of complaints received by ECC Ireland.

The second airline, Aer Arann, was very interested in the development of an ADR scheme for the airline industry. Unfortunately, as no other Irish Airline expressed an interest, no further discussions have taken place.

Car Hire services

From analysing ECC disputes it was discovered that the majority of disputes referred to ADR in Ireland were sent to the Car Rental Council for Ireland. This is an industry association which handles complaints concerning member car hire companies in Ireland.

³ It is interesting to note that in the last two years both Norway and the Netherlands, with the cooperation of the airline industry, have created ADR bodies to deal specifically with air passenger disputes.

Although the Council is not an officially notified ADR body as it does not meet some of the principles set out under the EU Recommendations (total independence for example), the European Consumer Centre has learned through experience that the Car Rental Council of Ireland is a reliable and efficient partner in resolving consumer disputes.

So then, while efforts have been made in some areas, notably by ECODIR for example, the lack of a consistent approach to notification and to the encouragement of ADR development remains problematic. In other areas, notably with regard to the airline industry, the lack of any ADR body whatsoever can be said to constitute a severe lack in consumer redress mechanisms.

5. Consumer redress; best practice. The Norwegian model

Norway and Ireland have roughly similar populations⁴, and Norway, like Ireland, has a Small Claims Court. However, the two countries have experienced development of ADR structures very differently. Consumer redress structures in both countries are examined below, with the Norwegian model cited as an example of the benefits of a best practice system for consumers.

All Nordic countries, i.e. Denmark, Finland, Iceland, Norway and Sweden, have systems for the out-of-court dispute resolution for consumer disputes, many known as Consumer Complaints Boards. These boards have a long and successful history of dispute resolution. In Norway, a hybrid system is in place. This means that a statutory Consumer Dispute Commission with the authority to make legally binding decisions (Forbrukertvistutvalget – the FTU) exists side by side with voluntary, industry specific complaints boards. Also, since January 2008, a Small Claims Court system became operational.

5.1. The Consumer Council of Norway

The Consumer Council of Norway is the main organisation representing consumer interests. It comprises a secretariat and 10 regional offices. Its objectives are to work to increase consumer influence in society, to contribute to consumer-friendly developments, and to promote measures that strengthen the position of consumers.

The Consumer Council gives advice and information to consumers but also mediates on their behalf with the business. If the matter cannot be resolved, it refers the case to either the Consumer Dispute Commission or to a Voluntary Complaint Board (ADR).

5.2. The Consumer Dispute Commission - (Forbrukertvistutvalget FTU)

Established in 1979, the Consumer Dispute Commission is an independent organisation representing the interests of consumers.

The Consumer Dispute Commission handles complaints by deciding on the dispute once the parties have had the opportunity to state their cases. Both during mediation and during the remainder of the complaints procedure, the Consumer Dispute Commission takes an impartial and unbiased approach within the framework of the relevant legislation.

Types of cases dealt with by the Consumer Dispute Commission include:

- Disputes relating to consumer sales or services of goods.
- Disputes relating to services provided by tradesmen.
- Disputes relating to cooling-off agreements

⁴ Population Ireland, CSO, 2007; 4.2 million. Population Norway, 2006; 4.6 million

The Commission is made up of one Chairman, three Vice Chairmen and 10 ordinary members (5 consumer representatives & 5 business representatives). It is their responsibility to reach decisions in the cases.

The Commission's decisions are enforceable. However, both the consumer and the trader have a period of 4 weeks after the decision to appeal the decision through the Norwegian court system.

The Commission handles approximately 900 cases a year. Meetings are organised and presided over by the Chairman or the Vice Chairman and at least 3 ordinary members. A total of 36 meetings were held in 2007 and during each meeting 25/26 cases were heard. The aim of the Commission is to handle a complaint within 6 months to its completion; the real case handling time is lower than this at 5 months to completion.

Decisions of the Dispute Commission:

- 40% cases are found fully in favour of the claimant,
- 30% found partially in favour of the claimant.
- 30% complaints in favour of the defendant.

In 2007 only 3% of cases were appealed and brought to the District Court.

5.3 Voluntary Complaint Boards (ADRs).

Further to advising the consumer and intervening with the trader, if the complaint is still not resolved the Consumer Council may forward the case to an voluntary complaint board (ADR) rather than the Consumer Dispute Commission.

The voluntary complaint boards (ADRs) are industry-specific and offer consumers efficient, neutral and free services. The boards are set up by agreement between the trade organisations and the Consumer Council or by Directives/laws and are financed by the businesses.

Each complaint board is made up of representatives for both the consumer and business and a neutral chairman (typically a judge). Decisions reached by the Boards are advisory.

The following is a list of some of the industries that are covered by the complaint boards:

- | | |
|------------------|--------------------|
| ✓ Insurance | ✓ Banking services |
| ✓ Power supplies | ✓ Package Travel |
| ✓ Air Travel | ✓ Estate agencies |
| ✓ Parking | ✓ Debt collection |

- ✓ Telecoms
- ✓ House construction
- ✓ Laundering/dry cleaning
- ✓ Lawyers
- ✓ House valuation/assessment
- ✓ Car rental

When a decision is reached by a voluntary complaint board and the company in question fails to comply with the recommendations, the information is given to the Consumer Council, which uploads this information onto their web site making it available to the public. This does not happen with all voluntary complaint boards (ADRs) but is increasingly used. This method of “naming and shaming” has proved to be an effective incentive for the compliance of companies to the decisions reached by the voluntary complaint boards (ADRs). Although it is not compulsory to be a member of a Board, it is of great advantage for a business when attracting new clients, due to the transparent system of dispute resolution in place.

In the past when a company was not happy with the obligation to adhere to the decisions of a voluntary board, they exercised their right to cease membership with the association. However, when this happened, a notice was placed on the Consumer Council web site to inform consumers of the decision of company. Within a very short period of time the company realised that this was not a good business decision and rejoined the association.

5.4 The Norwegian Small Claims Procedure.

Although both the Consumer Dispute Commission and the voluntary complaint boards (ADRs) are of great benefit to consumers in Norway, it was still acknowledged that there was a need for a Small Claims procedure to exist.

The Norwegian *Civil Procedure Act* contains provisions for individual and collective consumer redress. It also introduces a Small Claims procedure. It establishes that the small claims procedure shall be the normal procedure for dealing with small claims in cases (before the District Court).

The small claims procedure became operational in January 2008, so as of yet there are no statistics to demonstrate its use. However, from the details of the system it seems that it will be a very practical and beneficial tool for the resolution of consumer disputes.

Claims through this procedure can be heard up to the value of NOK 125,000 (€15,741.44). If the amount of the claim is greater, a case can still be heard upon the agreement by both parties involved. The cost to take a case through the Small Claims system is 20% of the claim and never more than NOK 25,000 (€3,146.50).

Generally the parties are summoned to attend an oral hearing, but in order to reduce litigation cost both parties can agree to a written procedure or distance meeting instead. The hearing is not permitted to exceed more than one day.

Compensation for costs can be granted for the following expenses:

- a) Cost of travel to the court hearing
- b) Court fees
- c) Presentation of evidence which is not deemed necessary
- d) Legal assistance and expert lay judges

If a party to the complaint resisted an action for no good reason, he/she may be ordered to pay the other parties cost.

Case example:

A consumer purchased a shower unit which developed a fault. As the company was based in a different region of Norway the consumer had to pay for a plumber to come and repair the product. The company refused to pay the cost of the repair as they believed that it was more expensive than what they could have paid to have it repaired. As the consumer lived in a remote area of Norway the service provider charged for the cost of travel.

The case was heard by the Consumer Dispute Commission who ruled in favour of the consumer but the company refused to comply with their decision. With the assistance of a Lawyer from the Consumer Council an application was made on behalf of the consumer to the Small Claims Court.

Analysis

From examining the Norwegian model we can see that the first point of contact for the consumer is the Consumer Council who advise and intervene if necessary. If that is unsuccessful, they will signpost the consumer to either the Disputes Commission, a voluntary complaint board (ADR) or the small claims procedure. Information about the resolution or lack thereof of cases flows in both directions and can be used to further inform consumers on compliant businesses and of their choices in terms of access to redress.

6. Consumer landscape in Ireland

6.1. National Consumer Agency

The National Consumer Agency (NCA) is a statutory body established by the Irish Government in May 2007 under the *Consumer Protection Act 2007*. The NCA defends and promotes consumer rights through the provision of consumer information, enforcing consumer legislation and advocating on behalf of consumers. The NCA does not intervene on behalf of individual consumer with business, but they do provide consumer information and advice through their web site www.consumerconnect.ie and their consumer helpline.

As a consumer advocate and a defender of consumer rights, the NCA has an important role in working with businesses, to support them to comply with regulatory obligations and to encourage best practice with regard to facilitating consumer rights and redress mechanisms.

The functions of the NCA are listed in the *Consumer Protection Act 2007*, PT.2 S.8. The most relevant functions which relate to ADR development are that the NCA:

- (f) Shall promote the development of alternative dispute resolution procedures as a means of resolving disputes arising out of consumer transactions,*
- (k) Shall review and approve codes of practice in accordance with section 88,*
- (l) Shall prepare and publish guidelines to traders in accordance with section 90,*
- (m) Shall promote and encourage the establishment by a trader or traders, whether generally or in respect of a particular service or services, of quality assurance schemes, that is to say schemes the purpose of which is*
 - (ii) To maintain and improve the quality and reliability of the service or services provided to consumers, and*
 - (ii) To enable consumers to identify traders who meet the requirements of the scheme concerned*

6.2. The Small Claims Procedure

The main scheme currently available for the resolution of consumer disputes in Ireland is the small claims procedure. This procedure is provided for under the *District Court (Small Claims Procedure) Rules, 1997 & 1999*. It is designed to handle consumer claims inexpensively without involving a solicitor. The cost to a consumer to submit a claim is €9. However claim amounts cannot exceed €2,000.

To be eligible to use the procedure, the consumer must have bought the goods or services for private use from someone selling them in the course of business. The procedure is not available for use by one business against another.

The District Court Clerk, called the Small Claims Registrar, processes small claims. Where possible, the registrar will negotiate a settlement without the need for a court hearing. If the matter cannot be settled the registrar will bring a claim before the District Court.

Type of claims dealt with:

- a) a claim for goods or services bought for private use from someone selling them in the course of a business (consumer claims)
- b) a claim for minor damage to property (but excluding personal injuries)
- c) a claim for the non-return of a rent deposit for certain kinds of rented properties. For example, a holiday home or a room / flat in premises where the owner also lives provided that a claim does not exceed €2,000.

Excluded from the small claims procedure are claims arising from:

- a hire-purchase agreement
- a breach of a leasing agreement
- debts

Applications to the small claim procedure can be made either manually or online which is a pilot project involving 22 District Court offices located throughout Ireland.

The rules of the small claims procedure require that the case must be taken in the Court closest to where the contract concluded or where the Respondent is based. If a Court hearing is held then the claimant must appear in person at the Court hearing. The claimant may (but is not obliged to) engage a Solicitor to represent them in Court, but they must also be present.

Although there is nothing within the rules of the Court that prevents claimants who are not resident within Ireland taking actions, the small claims procedure was not established with cross border cases in mind. The reality is that very few cross-border cases arise.

This is the biggest single barrier to EU residents taking actions through the Court. The claimant living outside the jurisdiction must travel to the Court, and incur the transport and accommodation costs of doing so. These costs cannot be claimed against the Respondent.

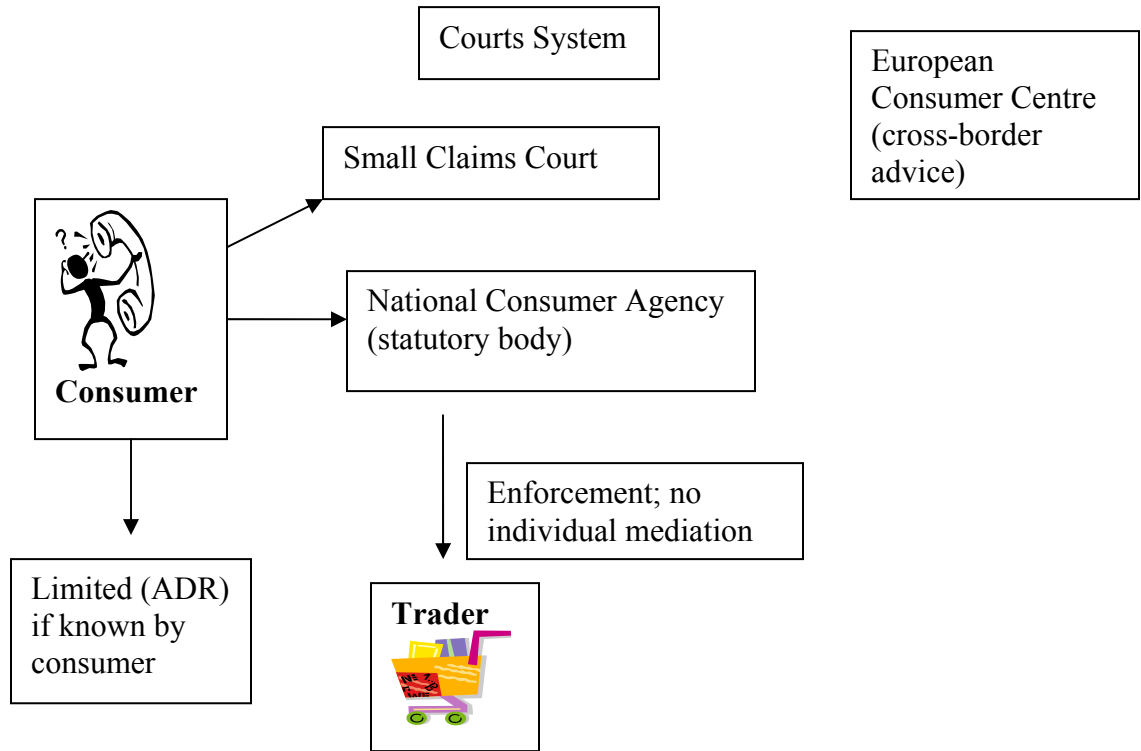
Currently the Registrars mediate between the claimant and respondent. In 2006, of all claims submitted to the small claims procedure, 64% were either settled by Registrar or the respondent failed to respond (they were resolved without the consumer actually going to the court). A further 15% of cases were either not covered by the procedure or not proceeded with. What this means is that of all applications received just 25% of cases were referred to court, of which 51% were settled in the consumers' favour.

The limit of the amount claimable in the small claims procedure in Ireland is very low and does not always cover modern consumer transactions, for example, the purchase of a car or a package holiday may cost more than

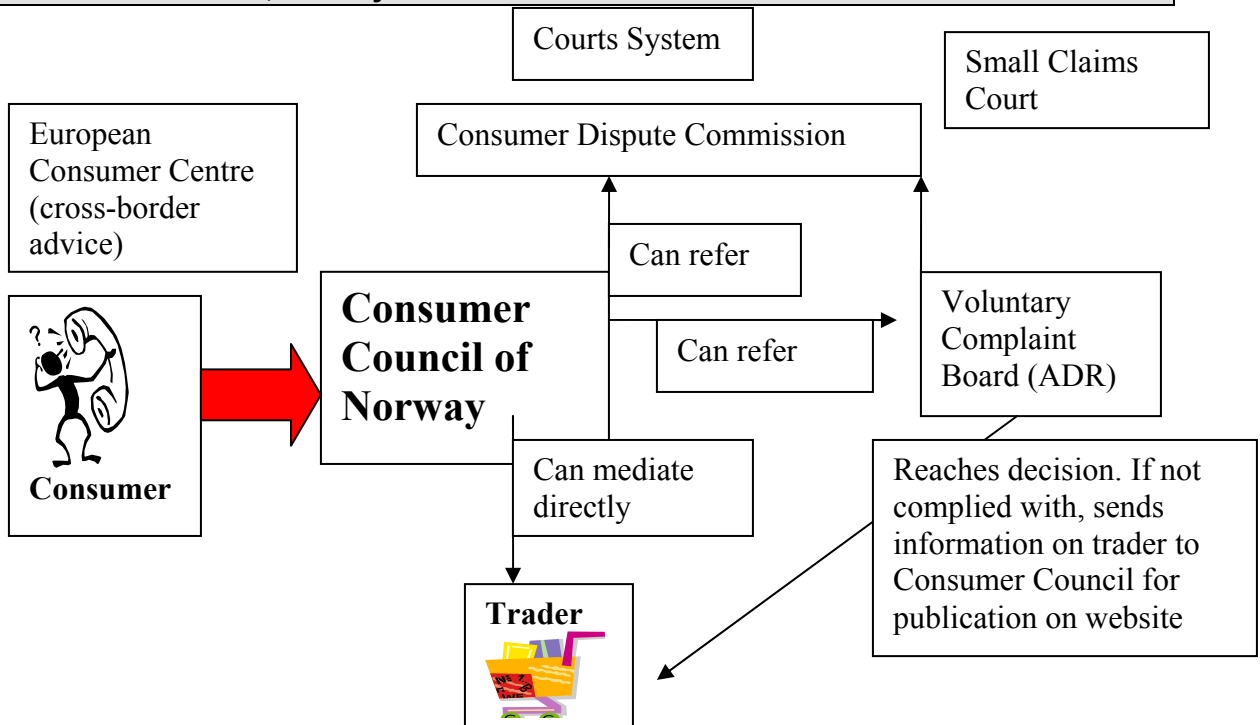
€2,000. If the limit of the Small Claims Court is not to be increased, then it is even more important that consumers be made aware of the ADR Bodies available to handle their dispute.

7. Summary and comparison of the Irish and Norwegian landscape.

Consumer redress, Ireland



Consumer redress, Norway



The table below offers an ‘easy to read’ comparison of the consumer information and redress systems available in Norway, our ‘best practice’ model and in Ireland.

Service offered	Ireland	Comment	Norway	Comment
Enforces consumer legislation	Yes		Yes	
Provision of information to consumers	Yes		Yes	
Level of assistance to consumers	low	The NCA has no involvement in individual consumer complaints.	High	Mediates on behalf of consumers and assists with the referral of disputes to either the Consumer Dispute Commission or voluntary ADR bodies
State funded Consumer Dispute Commission	No		Yes	
Voluntary ADR bodies	Yes	5 Notified ADR bodies 10 Non-notified ADR bodies	Yes	18 Notified ADR bodies
Level of co-operation between Consumer Agency and ADR bodies	Low	ECC Ireland is not aware of any informal or formal co-operation NCA and Irish ADR Schemes.	High	Voluntary Complaint Boards are set up by agreement between trade organisations and the Consumer Council.
Level of co-operation between DETE and ADR bodies	Low	The NCA is not responsible for the Notification of ADR bodies in Ireland. This is the responsibility of the DETE.		The Consumer Council also filters many of the cases sent to the Boards. The Council feeds back information on the decisions of the boards through their web site in particular non compliance with

				orders made in respect of the consumers.
Reports time specific issues effecting consumers through their web site	Yes		Yes	
Small Claims Court	Yes		Yes	
Costs	Yes	€9.00	Yes	20% of claim never more than €3,146.50
Limits	Yes	€2,000.00	Yes	€15,741.44
Accessible to cross-border consumers	No		Yes	
Legal representation required	No		No	
Claim for Costs	No		Yes	

Having compared an example of best practice in access to redress (the Norwegian system) with the existing system in Ireland, it is clear that while the Norwegian system offers more choice to consumers, some of the components of a potentially good system already exist in Ireland.

The National Consumer Agency, the consumer policy section of the Department of Enterprise, Trade & Employment, ADR bodies and the small claims procedure are in place. While new structures and organisations would be required to give Irish consumers the same level of access to redress as Norwegian consumers, a lot could be achieved in Ireland simply by developing cooperation and effective signposting systems between these organisations.

In the Norwegian system, because voluntary complaint boards have been established that facilitate co-operation and referrals of cases between the Consumer Council and ADR bodies, the Council, who are the first port of call for consumers, gives advice on a range of redress options and is able to filter cases to either the Consumer Dispute Commission, an ADR body or eventually

to the small claims procedure. The Consumer Council also publishes the decisions of ADR bodies in consumer cases on their website and publishes information on non-compliance with orders made in favour of consumers (see diagram page 20).

The consequence of this co-operative system is that the Norwegian Consumer Council is the central mechanism for informing consumers and referring their complaints to resolution procedures. The consumer only needs to know to contact one organisation and through them has access to the information and services of many others.

Regular publication of the outcome of disputes and of compliance by businesses also has the impact of ensuring that consumers build awareness of the importance of buying from a business that offers a dispute resolution procedure and this in turn leads businesses to ensure they are part of such a service.

In Ireland, while consumer awareness of the National Consumer Agency has grown hugely in the past six months, it is submitted that the consumer's options are still severely limited. Firstly, consumers are not aware of ADR bodies that *do* exist and how these bodies can help them. Secondly, there persists a feeling of 'what's the point' as consumers do not feel that their dispute can be resolved other than by recourse to court action. Thirdly, the amount limit for the small claims procedure, assuming that this is an appropriate channel, is very low.

8. Future developments

The European Union has actively encouraged the evolution of ADR for the settlement of cross-border disputes. However to facilitate this it is understood that more is needed. The EU has, therefore, established the *European Small Claims Procedure* and has recently adopted the *Directive on Mediation in Civil and Commercial Matters*. It can be expected that the introduction of the Procedure and the Directive will have a positive impact for the resolution of cross-border disputes in the future and so must be taken into account when examining the consumer landscape and access to redress provisions available to Irish residents.

8.1 European Small Claims Procedure.

On 11 July 2007, the European Parliament and the Council adopted a *Regulation (EC) No 861/2007, establishing a European Small Claims Procedure*. The procedure will apply from 1 January 2009.

The aim of the Regulation is to simplify, speed up and reduce costs of litigation concerning small claims in cross-border cases by establishing a European Small Claims Procedure. This procedure will apply in civil and commercial matters where the value of a claim does not exceed €2,000.

Procedure:

The Claimant will begin the procedure by completing a European Small Claims Application form and lodging it with the District Court office where the company is located. The application can be sent by post, email or fax; which ever means will be acceptable by the particular Member State.

The European Small Claims procedure will be a written one but the Court can decide to hold an oral hearing if it considers it necessary or if the party request it. If one of the parties to the dispute requests an oral hearing this can also be refused by the Court if they feel it is not necessary.

The claim form plus supporting documents must be submitted to the court in the language/s acceptable to that particular Member State.

Timeframe:

Once received, a copy of the claim form including all supporting documents will be served on the defendant within 14 days of its receipt. The defendant will have a further 30 days to submit their response to the claim.

Once the Court receives the defendant's response, it must be then forwarded onto the claimant within 14 days. If the defendant has issued any counter claim the claimant must respond to this within 30 days.

Once the Court has received all responses and supporting documents they will then issue a judgement within 30 days or:

- a) Request further information from either party not exceeding 30 days
- b) Take evidence in accordance with article 9; or
- c) Summons both parties to an Oral hearing to be held within 30 days.

An oral hearing may be conducted through video conferencing or other communication technology if available.

A judgement is enforceable in the Member State where it was made.

Costs

The unsuccessful party will bear the cost of the proceedings, as determined by the court. The decision of the court can be appealed and information on appealing a decision will be made public by the Commission once available.

There is no information currently available on the establishment of this system in Ireland so how the Irish courts will handle this procedure is, as yet, uncertain.

8.2 Mediation in civil and commercial matters

On 23 April 2008, the European Parliament formally approved the Council's common position on Mediation. The purpose of the Directive is to facilitate access to dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a sound relationship between mediation and judicial proceedings.

The Directive applies to processes where two or more parties to a cross-border dispute of a civil or commercial nature attempt by themselves, on a voluntary basis, to reach an amicable settlement to their dispute with the assistance of a mediator. The Directive only applies to cross-border disputes, although it does not prevent Member States from applying the provisions of the Directive to internal mediation processes.

The new Directive contains five key rules.

- 1) The Directive obliges Member States to encourage the training of Mediators and the development of, and adherence to, voluntary codes of conducts and other effective quality control mechanisms concerning the provision of mediation services.
- 2) The Directive gives every judge in the Community, at any stage of the procedure, the right to invite the parties to have recourse to mediation if he/she considers it appropriate in the case in question. The judge can also suggest that the parties attend an information meeting on mediation.
- 3) The Directive obliges Member States to set up a mechanism by which agreements resulting from mediation can be rendered enforceable if both parties request it. This can be achieved, for example, by way of approval by a court or certification by a public notary. The choice of mechanism is left to the Member States. This provision will enable parties to give an agreement resulting from mediation a status similar to that of a judgment without having to commence

judicial proceedings. This possibility, which currently does not exist in all Member States, can provide an incentive for parties to resort to mediation rather than go to court. Although parties will in most cases voluntarily comply with the terms of an agreement reached in mediation, the possibility of obtaining an enforceable title can be desirable for obligations, such as child maintenance, which require regular payments over a fairly long period, in the course of which the willingness of the debtor to fulfil his obligations voluntarily may deteriorate.

- 4) The Directive also ensures that mediation takes place in an atmosphere of confidentiality and that information given or submissions made by any party during mediation cannot be used against that party in subsequent judicial proceedings if the mediation fails. This provision is essential to give parties confidence in, and to encourage them to make use of, mediation.
- 5) Finally, the Directive contains a rule on limitation and prescription periods which ensures that, when the parties engage in mediation, any such period will be suspended or interrupted in order to guarantee that they will not be prevented from going to court as a result of the time spent on mediation. Like the rule on confidentiality, this provision also indirectly promotes the use of mediation by ensuring that parties' access to justice is preserved should mediation not succeed.

Once the Directive has entered into force, it will have to be transposed into the national laws of the Member States. The transposition period for the Directive is 36 months after the date of adoption, with the exception of the provision concerning information on competent courts and authorities, where Member States will have to comply within 30 months of adoption of the Directive. (An opt-out means that the legislation will not apply to Denmark.)

9. Recommendations for the development of ADR in Ireland.

One year on from the establishment of the National Consumer Agency (NCA), these recommendations are designed to pinpoint practical developments that can be made by the DETE and by the NCA in fulfilling their statutory remit.

1. Increase consumer awareness of available redress options

- Develop consumerconnect.ie to include information on existing ADR bodies, and their function in resolving complaints, in addition to the small claims procedure
- Develop tips on 'what to look out for before you buy' and include information on checking whether a business has a complaints procedure or is part of a dispute resolution scheme. i.e. if someone is buying a car they should check that the garage is a member of the Society of the Irish Motor Industry as this gives them access to a dispute resolution service if something goes wrong.
- Develop and publicise specific codes of practice for industry and urge consumers to seek adherence to these codes when choosing a trader.

2. Involve business in the development and use of ADR

- Promote the benefits of participation in ADR to businesses and business organisations by demonstrating the costs involved in current lack of systemic redress. Show the financial cost of dissatisfied consumers who bring their business elsewhere as well as the cost of acquiring new customers. The value of ADR in real terms must be clear to business for it to engage with any scheme.
- Take on board the *Recommendation on Consumer Dispute Resolution and Redress* adopted by the OECD Council on 12 July 2007. This Recommendation was developed by the OECD Committee on Consumer Policy (CCP). The Recommendation sets out common principles for member countries on mechanisms for consumers to resolve disputes and obtain redress for economic harm resulting from transactions with businesses involving goods or services, including transactions across borders.
- Publish an action plan for further development of ADR in Ireland with specific targets and milestones indicated.
- Target development in key problem sectors – ecommerce and the airline industry by engaging in discussion with those industries regarding dispute resolution choices.
- Consider creation of logo/symbol as a visual stamp of approval for business Codes of Practice in order to encourage best business practice and publicise same. An example of where this has been done successfully is the UK's Office of Fair Trading and the Direct Selling Association UK. This logo was taken from www.dsa.org.uk.



3. Cooperation with ADR bodies

- Engage in close cooperation in terms of information provision to consumers and signposting to ADR bodies i.e. training of helpline staff to re-direct queries where appropriate, designation on websites etc.
- Explore possibility of publishing case results of ADR cases on NCA website in order to educate consumers about ADR and how it works.
- Encourage notification of ADR bodies in order to ensure uniformity of standards and build customer assurance.
- A logo should be designed and awarded to notified ADR bodies so that consumers of their member companies can be more aware that they offer dispute resolution if something goes wrong. Under EU Recommendations 98/257/EC & 2001/301/EC relating to arbitration and mediation, a code of practice for an ADR logo / symbol already exists which can be employed.
- ECC and DETE and NCA set up a joint meeting/public forum for all ADR Bodies operating in Ireland. Following this, create an agreed action plan with time limits and goals for the development of ADR.

Conclusion

The purpose of the report is to act as an aid for the Irish government in implementing an action plan on the development of ADR in Ireland.

From experience ECC Ireland has found that the development of ADR is a slow process. Nevertheless it is one that is growing within EU Member States, thanks to the encouragement of the European Commission and their insistence that all EU citizens should have access to justice and redress.

By comparing a model of best practice, Norway, with the provisions in Ireland, it was discovered that Norwegian consumers benefit from more assistance and options when dealing with their consumer disputes. However, it also became apparent that in fact many positive changes could be made to the Irish system simply with the development or cooperation and interaction between consumer agencies, the relevant government department, businesses and ADR bodies. Thus, no legislative change or financial outlay would be required.

The report also noted that of the ADR bodies currently available in Ireland just five are notified, even though many more exist. Given that a consistent and transparent system would be better for all concerned, the ECC calls on the Department of Enterprise, Trade and Employment to ensure an action plan is set in place to resolve this issue.

The Report makes specific recommendations in relation to the provision of information to consumers; co-operation with businesses and co-operation with ADR bodies

ECC Ireland hopes that this report will bring discussions on ADR development to the forefront and encourage the establishment of co-operation and procedures that allow consumers to have full access to redress. Irish consumers' statutory right to alternatives to court action must be enabled.

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