



**European Consumer Centre Ireland
and the Bar Council of Ireland**



**Small Claims Arbitration Scheme for
Business to Business Cross-Border Disputes
B2B ADR Pilot Project 2010**



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Foreword

The European Consumer Centre (ECC) Ireland is part of an EU-wide network co-funded by the European Commission and the Member States. It is made up of 29 centres, one in each of the 27 EU Member States and also in Iceland and Norway.

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 May 2008 ECC Ireland published a report titled *"The development of Alternative Dispute Resolution, an analysis of complaints, best practices and future recommendations."* The purpose of this report was to aid discussion in order to facilitate the development of ADR structures in Ireland and offered recommendations for change in many areas.

One recommendation suggested by this report was the need to promote the benefits of ADR to the business community and raise awareness of the advantages of using such schemes not only for consumer to business (C2B) disputes but also for business to business (B2B) disputes.

Following on from this report ECC Ireland held a meeting in December 2008 with existing Irish ADR bodies. The purpose of this meeting was to obtain suggestions on how the recommendations within the report could be implemented. During this meeting Turlough O'Donnell SC, of The Bar Council of Ireland, suggested that we could use the Small Claims Arbitration Scheme (SCAS) for business to carry out the "B2B ADR Pilot Project". The pilot began in July 2010 for a period of 4 months.

This report is a summary of this Pilot Project. All observations and conclusions are based on the information and statistics gathered during this project.

Susan Dowling
Dispute Resolution Adviser
December 2010

Introduction to the Small Claims Arbitration System (SCAS)

The Bar Council of Ireland (the representative body for barristers in Ireland) originally launched the SCAS for small businesses on 19th October 2005. This scheme is envisioned to be a cost-efficient way for small businesses to resolve their disputes, by providing access to the legal system at a very low cost. It allows parties to put forward their respective cases on paper and receive a ruling within a short period of time. Often such claims have been written off by businesses as it has been seen as too costly and time consuming to go to court.

This system is an innovation means of allowing parties to process disputes with a value of up to €10,000. It also reduces administration costs for all involved. The cost of the arbitrator is limited to no more than 10% of the value of the amount claimed. An arbitrator is available from a trained pool of barristers and agreed by both sides. The arbitrator's decision is binding.

The scheme is explained in plain English in a pack laying out the rules and containing all the necessary documents to pursue a claim. The pack has received the 'Plain English, Approved by NALA' mark from the National Adult Literacy Agency. It can be downloaded from the Bar Council of Irelands web site <http://www.lawlibrary.ie/viewdoc.asp?DocID=2594&UserLang=EN&m=>

Participation in this ECC Pilot Scheme allowed the Bar Council of Ireland to generate renewed interest in SCAS with many barristers expressing an interest in being on the panel of arbitrators.

It is hoped that the SCAS can be promoted and developed further to raise awareness of its potential benefits for businesses both here in Ireland and in other Member States. The Bar Council is fully supportive of this user friendly, and inexpensive, means of resolving disputes.

Peter Shanley BL
December 2010

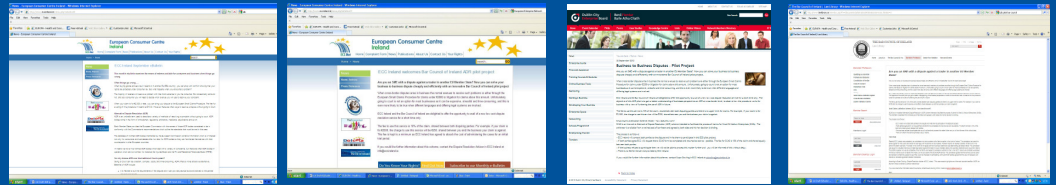
Objective

The objective of this B2B pilot scheme is to gain an insight into the benefits of ADR for business. At present many small and medium enterprises (SMEs) are reluctant to participate in ADR schemes for B2C complaints. Before ADR can be promoted, ECC Ireland would like to ensure that we can fully understand how the procedure works for businesses.

At the beginning of this pilot it was anticipated that we would gather views and opinions of all parties involved and hoped this report would provide us with greater understanding of business perspectives on ADR and how we might promote the use of such mechanisms in the future.

For the duration of the pilot phase it was agreed that ECC Ireland and SCAS would accept approximately five businesses with a cross-border dispute to participate in this pilot. It was hoped that the pilot would demonstrate that SCAS can be used for disputes not just at a national level but also on a cross-border basis, provided that both disputing parties have a sufficient grasp of the English language.

Promotional Activities



At the beginning of the pilot phase it was agreed that promotional activities relating to this B2B pilot would be kept to a minimum. The reason for this was to allow ECC Ireland to handle each dispute received without being overwhelmed by a large volume of cases. Also, it is not normal practice for ECC Net to offer advice or assistance to businesses on cross-border complaints and it was decided not to issue any press releases announcing the B2B Pilot, as we did not want to give the public the perception that we could now deal with complaints of this type.

Co-operation with the Enterprise Europe Network in Ireland

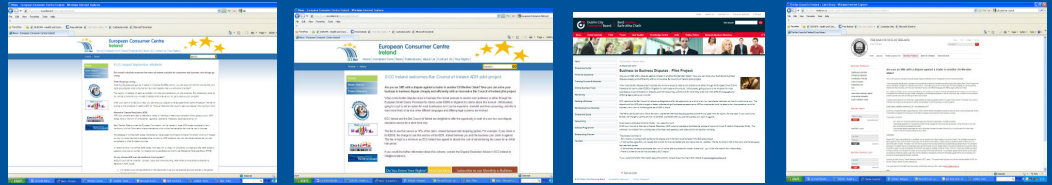
To provide cases for this pilot the ECC Ireland contacted the European Enterprise Network seeking referral of B2B disputes. The Enterprise Europe Network in Ireland is a partnership between the Technology Transfer Department within Enterprise Ireland and five regional Chambers of Commerce - Cork Chamber, Dublin Chamber, Galway Chamber, Sligo Chamber and Waterford Chamber. They are part of a wider Enterprise Europe Network which is dedicated to stimulating, assisting and increasing business and research activity between Member States of the European Union and internationally. This Network was in a position to refer complaints to our office for the duration of this pilot phase and ECC Ireland would like to thank them for their assistance.

ECC Website & ECC Ireland's e-Bulletin

On average ECC Ireland's website receives over 3,000 visits a month, and an announcement was placed on this site to raise awareness of the services.

The ECC's e-bulletin is issued on a monthly basis highlighting different topics of consumer interest. In September 2010 it was decided to publish an article on the B2B pilot to generate awareness of this scheme among our subscribers.

Promotional Activities



Article in Dublin City Enterprise Board Newsletter

Dublin City Enterprise Board is a state-funded agency that helps individuals and micro businesses in Dublin city with enterprise information, advice, training courses, mentoring, networking, and in some cases grants and financial assistance. ECC Ireland would like to thank Mr. Greg Swift, CEO of Dublin City Enterprise Board, for agreeing to include an article on the B2B pilot project in the DCEB monthly e-zine.

Bar Council of Ireland's website.

Information on the B2B pilot was also placed on the Bar Council of Ireland's website. Participation in this ECC Pilot Scheme allowed the Bar Council of Ireland to generate renewed interest in SCAS with many barristers expressing an interest in being on the panel of arbitrators.

Complaint Handling Procedures

For the purpose of the pilot phase, it was agreed that ECC Ireland would administer all disputes received. This agreement would allow ECC Ireland to refer disputes without overwhelming the SCAS service.

For the duration of the pilot phase the following case handling protocol was agreed:

- Once a trader contacts ECC Ireland from Ireland or another European Member State with a dispute, the claimant will be invited to participate in the B2B ADR pilot. If they are interested in this procedure ECC Ireland would then invite the respondent to participate.
- If both parties are willing to participate in the ADR pilot, ECC Ireland will inform the SCAS' Administrator and forward a submission form, including the rules of the arbitration scheme to each party.
- Once SCAS receives the submission forms, an arbitrator would be appointed and the process could commence. Given the cross-border nature of the complaint every effort would be made to maintain a written approach to this procedure.
- In the event that neither the claimant nor the respondent express an interest in the ADR pilot, this must be noted by ECC Ireland for reporting purposes.
- Likewise, if one party agrees to participate but the other does not, ECC Ireland must note this for reporting purposes
- The fee to use the SCAS scheme is 10% of the claim, shared between both parties.

Overview of Complaints

The total number of cases coming through the pilot from ECC Ireland was nine. This figure is far too small to draw any meaningful conclusions arising from the outcomes of the cases. The outcome of the pilot, in terms of results for the complainants, has been disappointing.

All complaints received were from Irish retailers, with complaints against traders in another Member State. In just one case the complainant and the respondent resolved their complaint but this was by mutual agreement rather than participation in the B2B ADR Pilot scheme.

Case Study



Claimant Country: Ireland
Respondent Country: UK
Value of Claim: Unknown

ECC Ireland was contacted by an Irish upholsterer who had a problem with his fabric supplier in the North of Ireland. The upholsterer had taken delivery of fabric which he believed contained flaws. When he contacted the supplier in Northern Ireland, he disagreed with the claimant and maintained that the fabric was in perfect condition.

The upholsterer contacted ECC Ireland and explained that although he was unhappy with this current situation generally he was happy with the business relationship he had with the trader in Northern Ireland. The upholsterer wanted to resolve this matter without damaging his business relationship with the supplier. ECC Ireland explained that the SCAS B2B ADR procedure would be appropriate to handle this complaint and it was suggested that the upholsterer contact the supplier to see if they would also be willing to participate. The upholsterer did as

we suggested and then contacted ECC Ireland to inform us that he did not require the service of the SCAS as they had resolved the matter themselves.

Of the remaining 8 complaints received only one claimant agreed to participate in this Pilot.

Case Study



Claimant Country: Ireland
Respondent Country: UK
Value of Claim: €9004.61

Nature of Complaint:

An Irish trader entered into a contract with a UK company to purchase a DVD rental kiosk. Installation of the machine took place in September 2010. Once installed the Irish trader discovered a problem with the machine. It was not equipped to read essential information from some consumers' credit/laser cards. The claimant also had concerns as to the quality of the machine provided by the UK Company, and suspected that it was not newly manufactured but a reconditioned model. The UK trader did take steps to resolve the issue with the laser/credit card reader and later changed this facility to allow for cash purchases. However the claimant was still unhappy as the machine was not operational for some weeks, resulting in the loss of profits.

The claimant contacted ECC Ireland and agreed to participate in the B2B Pilot. All forms and supporting documentation were sent to the UK trader, inviting them to participate in this procedure. This offer was declined as the respondent claimed that the allegations made by the claimant were untrue. The claimant decided to pursue this matter further and was advised by the Bar Council of Ireland to contact a solicitor's firm in Dublin for further assistance which the claimant did.

The remaining 7 Irish retailers all expressed an interest in the B2B ADR pilot and requested additional information and SCAS applications. Unfortunately ECC Ireland did not hear from these businesses again. We are not aware of their reasons for not participating in the ADR pilot project.

Conclusion/Recommendations

The purpose of this pilot project was to allow ECC Ireland to gain an insight into how ADR works for businesses. It had been suggested in ECC Ireland's 2008 ADR report that there was a need to promote the benefits of ADR to the business community and raise awareness of the advantages of using such schemes not only for consumer to business (C2B) disputes but also for business to business (B2B) disputes.

This report allowed ECC Ireland to understand that the problem relating to lack of business participation to resolve disputes was not just limited to consumer transactions alone but also involved business to business transactions.

More time is necessary to truly understand the perspective of business in relation to ADR. ECC Ireland's objective is the creation of consumer confidence in the Internal Market. We achieve this by providing both advice and assistance to consumers regarding cross-border complaints and disputes. As our resources are limited, we are unable to commit to a further participation in this project or to extend its time-frame beyond the 4-month pilot phase and therefore we would like to put forward the following recommendations:

1. The Small Claims Arbitration Scheme (SCAS) and the European Enterprise Network work together on a follow-up B2B ADR pilot project.
2. If agreed a period of no less than 1 year could be dedicated to the B2B ADR pilot project to allow for better analysis of disputes and conclusions to be drawn from the pilot phase.
3. ECC Ireland believes that the service offered by the Small Claims Arbitration Scheme is an invaluable resource for businesses, and participation in future projects could be of

great benefit to Increase awareness of this service. We suggest that promotional materials on the SCAS service be distributed to Trade Associations and organisations such as The Irish Business and Employers Confederation (IBEC), Forfás, IDA and Enterprise Ireland.

4. For many years the European Union has actively encouraged the evolution of ADR for the settlement of cross-border disputes. Therefore it may be possible for both services to apply for a joint grant from the European Commission to finance the ADR pilot as part of a pan-European project, as the results arising from such a project would be of interest in terms of a greater understanding of business participation in ADR.

ECC Ireland hopes that this report will be a starting point for ADR development within the business community and we hope that we will continue to work together with SCAS for many years come.



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