

To all interested parties.

Date: 22 January 2018

## **Open letter: Utilities ADR's application for certification as an alternative dispute resolution provider in the energy sector**

We have received an application from Utilities ADR<sup>1</sup> for certification as an alternative dispute resolution (ADR) provider under the EU Directive on Consumer ADR (ADR Directive)<sup>2</sup>.

We have a formal role in receiving and approving applications from organisations wishing to become ADR providers in the GB energy sector.

We are currently assessing the application in line with criteria and are keen to gather your views on certifying Utilities ADR as an ADR service provider.

## **Background**

### **Dispute resolution schemes in the energy sector**

Two pieces of legislation cover alternative dispute resolution in the energy sector.

### **The Consumers, Estate Agents and Redress Act 2007 (CEARA)**

CEARA requires that an independent Ombudsman operates in the energy sector, to resolve complaints made by domestic and microbusiness consumers if they have not been resolved to their satisfaction by the energy company. The Act also gives us the formal role of deciding to approve providers of this service.

All energy suppliers and network businesses are required to:

- be a member of this redress scheme;
- make consumers aware of this;
- give them the option of referring a complaint to the scheme if it is not resolved to their satisfaction by the company.

Utilities ADR is **not** seeking to become an Ombudsman under CEARA in its application.

Ofgem considers that it is only necessary to have one CEARA-approved Ombudsman operating as being in interests of consumers. Ombudsman Services: Energy (OSE)<sup>3</sup> is the

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<sup>1</sup> <https://www.utilitiesadr.co.uk/>

<sup>2</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>.

<sup>3</sup> <https://www.ombudsman-services.org/sectors/energy>

approved provider. The status of the Ombudsman will not be affected by the application referred to in this letter. Further information on redress schemes under CEARA and Ofgem's policy is on our website.<sup>4</sup>

### **The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015<sup>5</sup> (ADR Regulations)**

Under the EU Directive on Consumer ADR (ADR Directive),<sup>6</sup> which seeks to ensure a 'high level of consumer protection', third parties can apply for certification that they meet criteria for alternative dispute resolution services to consumers.

We set out what we expect an energy redress scheme and/or ADR service provider to fulfil in redress scheme criteria (published in July 2015)<sup>7</sup>. These criteria are based on the provisions of ADR Directive. In September 2015, we also certified OSE as an ADR provider under the Directive.

A consumer and energy company can mutually agree to use a non-Ombudsman ADR provider to resolve disputes and allocate redress. Energy companies must still signpost consumers to the Ombudsman approved under CEARA and it remains the case that consumers have the right to go to the Ombudsman.

ADR schemes:

- apply to domestic consumers only;
- cover contractual disputes about goods and services only;
- do not require suppliers to be members nor to signpost consumers to it.

The criteria seek to ensure that, when using a certified ADR provider of this type, consumers have access to "independent, impartial, transparent, effective, fast and fair alternative dispute resolution procedures"<sup>8</sup>. Certification by Ofgem means that we are satisfied that a provider meets the requirements of the ADR Directive to operate this type of scheme in the energy sector. If a consumer and energy company agree to use an ADR provider which is not certified they are also able to do so.

Utilities ADR **is** seeking certification as a provider of ADR services.

### **The applicant**

Utilities ADR is owned by Consumer Dispute Resolution Limited (CDRL), a limited by guarantee company, managed by a board comprising executive and non-executive directors and advisors. CDRL is overseen by a standards board. Its role is to ensure the independence and impartiality of rules and procedures, and of the determinations made.

CDRL currently provides redress schemes in the telecoms, aviation and retail sectors. It also offers to provide ADR in non-regulated energy home services, eg boiler repairs.

As part of its application for certification in the energy sector, Utilities ADR has cited and drawn on the approaches it operates in other sectors. As with OSE, the cost of operating the scheme in the energy sector would be funded on a fee-per-case basis charge levied on the companies and would be free for consumers at the point of use. Utilities ADR also

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<sup>4</sup><http://webarchive.nationalarchives.gov.uk/20080610190820/http://www.ofgem.gov.uk/MARKETS/RETMKTS/COMPL/CONSREP/Documents1/Redress%20Schemes%20Decision.pdf> and

<sup>5</sup> <http://www.legislation.gov.uk/ukxi/2015/542/contents/made> and [http://www.legislation.gov.uk/ukxi/2015/1392/pdfs/ukxi\\_20151392\\_en.pdf](http://www.legislation.gov.uk/ukxi/2015/1392/pdfs/ukxi_20151392_en.pdf).

<sup>6</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>.

<sup>7</sup>[https://www.ofgem.gov.uk/sites/default/files/docs/2015/08/approval\\_criteria\\_for\\_redress\\_schemes\\_in\\_the\\_energy\\_sector.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2015/08/approval_criteria_for_redress_schemes_in_the_energy_sector.pdf)

<sup>8</sup> Article 1 of the Directive.

provided information on key aspects of its proposed operation, including how it would efficiently manage caseload.

## Your views

### An additional certified ADR provider under the Directive

Certification by Ofgem means that there would be an additional body operating in the energy sector that meets the requirements of the ADR Directive. If a consumer and energy company mutually agree to use an ADR provider they are able to do so. However, under CEARA, regulated energy companies must be a member of the scheme provided by OSE and refer customers to it. The availability of ADR services cannot prevent or limit consumers' ability to use the separate redress scheme approved by Ofgem under CEARA and operated by OSE.

An additional certified ADR provider may therefore create choice for consumers in terms of another route for third party redress, but could also potentially confuse consumers who are not clear about the status of the provider. Clear customer messages and signposting by relevant organisations could help mitigate this.

Additionally, to help with our compliance work, we currently work closely with OSE and Citizens Advice to share data on complaints to identify and act on consumer detriment. To ensure we have access to the fullest set of evidence, we expect all such organisations to provide us with good quality data about the complaints they have dealt with.

**Question 1:** Do you have views on Utilities ADR operating a redress scheme in the energy sector?

**Question 2:** What are your views on the a) benefits, and b) risks to consumers should an additional ADR provider be certified to operate in the energy sector?

**Question 3:** If you identified any risks, how do you think they could they be overcome?

## Next steps

We are keen to hear your views. Your responses will inform our final decision on whether to certify Utilities ADR as a redress provider under the Directive.

Please respond to [phil.sumner@ofgem.gov.uk](mailto:phil.sumner@ofgem.gov.uk) by 19 February 2018.

Unless you mark your response confidential, we will publish it on our website ([www.ofgem.gov.uk](http://www.ofgem.gov.uk)). You can ask us to keep your response confidential, and we will respect this, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. If you want your response to remain confidential, please should clearly mark your document/s to that effect and include the reasons for confidentiality.

Yours faithfully

**Anthony Pygram**  
**Partner, Consumers and Competition**