

## Response summary

### **Open Letter: Utilities ADR's application for certification as an alternative dispute resolution provider in the energy sector, 22 January 2018**

#### **Background**

We received an application from Utilities ADR (the applicant) for certification as an alternative dispute resolution (ADR) provider under the EU Directive on Consumer ADR (ADR Regulations).

We have a formal role in receiving and approving applications from organisations wishing to become ADR providers in the GB energy sector in line with criteria published on our website.

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 operate 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. Ombudsman Services: Energy is the sole appointed Ombudsman in the energy sector (we also certified them as a provider under the ADR regulations).

[The Alternative Dispute Resolution for Consumer Disputes \(Competent Authorities and Information\) Regulations 2015 \(ADR Regulations\)](#)

Under the EU Directive on Consumer ADR (ADR Directive), 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.

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 (Ombudsman Services: Energy) and consumers still have the right to go to the Ombudsman.

The applicant sought certification under the ADR Regulations and we published an Open Letter on 22 January 2018 seeking stakeholder views on the application.

We received 24 responses to the Open Letter including one confidential response. Responses were from energy companies (suppliers and distribution network companies), trade bodies, redress providers, consumer groups, an academic and individuals.

#### **Summary of responses**

The main points raised in response to the questions in the Open Letter are summarised as follows:

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

The majority of responses did not have views on the applicant operating a redress scheme. The main reason was they had no direct experience of their service.

In its response, the applicant clarified the status of its application under the ADR Directive. In particular, it stated that it was looking for certification for non-regulated energy products and services, and acknowledged that it is already certified by Trading Standards for this purpose. The applicant acknowledged that an additional provider covering the regulated energy sector would add an extra layer to the resolution process and would not ultimately be in the interests of consumers or energy companies.

Several respondents commented that if the applicant operated to provide redress in a position between the energy companies and the current Ombudsman, this might be difficult to work in practice. In this case, energy companies would need to clearly signpost to the statutory Ombudsman scheme.

Several responses opposed Ofgem certifying the applicant under the ADR Directive. In particular, they highlighted that the criteria for appointment does not include a 'fit and proper person test' and that this should be part of Ofgem's assessment process. Some noted that the applicant is not member of the Ombudsman Association and considered that, if they were to be approved by Ofgem as a provider in the energy sector, they need to be members to help provide assurance on the quality of the service. The reasons for non-membership should be further explored by Ofgem.

**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?*

Some respondents considered that there may be some benefit if there was more than one provider because this may mean some competition on quality and choice.

A majority of respondents highlighted the potential for consumer confusion if more than one redress provider existed in the regulated energy sector. Some energy companies felt that consumers would not welcome further complexity or additional signposting at a point in their complaint journey where it could provide an additional grievance.

Some responses considered that more than one provider could lead to inconsistent decisions and outcomes. Some respondents, principally energy companies, highlighted a potential risk that consumers could use another provider to try to overturn a previous decision from the original provider it had sought redress from.

Several responses highlighted the potential difficulty in getting consistent complaint data reported by the redress providers if an additional provider is approved to operate under the ADR Directive only.

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

Some respondents said that a clear description of the provider and the type of redress given would need to be described across the industry (eg on websites). Respondents raised the need for clear communication and signposting by energy companies to the redress provider it is using so that consumers would be clear which one to go to with their complaint.

Some respondents considered close working between providers and some standardisation where appropriate could address the potential risks around inconsistency of service level and outcomes.