

Technical Factsheet 192

Alternative dispute resolution (ADR)

Contents

1. Introduction	2
2. The role of ACCA	2
3. Requirements of ACCA practitioners	3
4. Support available from ACCA	4
5. Conclusion	4

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1. Introduction

The purpose of this factsheet is to provide guidance in respect of alternative dispute resolution (ADR) and the changes currently taking place in the UK, which will affect consumers, providers of goods and services to consumers, and providers of ADR services. Therefore, the guidance will be most relevant to providers of professional accountancy services to consumers.

While ACCA already provides ADR services, in the form of conciliation in respect of suitable cases, this factsheet will explain the impact of recent legislation on ACCA's policies and procedures, and how ACCA delivers conciliation. The factsheet will then explain the obligations placed upon members by the legislation. It will also highlight the resources available to members in order to assist them with compliance.

The legislation

The ADR Directive¹ and the ODR Regulation² entered into force on 8 July 2013, and the UK (as with other Member States) is required to transpose the requirements of the Directive into national law by 9 July 2015. (Most of the Regulation is to take effect automatically from 9 January 2016.) The UK Government is required to ensure that ADR is available for all contractual disputes arising out of complaints by consumers. (However, there is no obligation on businesses to use the available ADR services.)

In March 2015, The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 ('the ADR Regulations') were laid before Parliament. These are available at www.legislation.gov.uk/uksi/2015/542/schedule/8/made. Parts 1 to 3 of the ADR Regulations (carrying the provisions in respect of competent authorities and 'ADR entities') came into force on 7 April 2015; Parts 4 and 5 (including the trader information requirements) come into force on 9 July 2015.

Consumer disputes

The scope of the Directive (as with the ADR Regulations) is restricted to the resolution of complaints arising out of the provision of goods or services to EU consumers. In other words, the legislation does not apply to business-to-business disputes or to complaints by a business against a consumer (eg in respect of the recovery of debts).

Definitions

For clarity, we set out here some of the definitions that apply throughout the ADR Regulations and this factsheet:

ADR entity means a body whose name appears on a list maintained in accordance with regulation 10 of the ADR Regulations, ie a list maintained by the competent authority which has approved the ADR entity as such;

Consumer means an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession;

Trader means a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf.

In the case of ACCA, the competent authority is the Secretary of State for Business, Innovation and Skills. However, the functions of the Secretary of State in this respect have been delegated to the Trading Standards Institute (TSI).

2. The role of ACCA

At the time of publishing this guidance, the TSI has recently requested applications to become ADR entities under the ADR Regulations. ACCA already conducts ADR, and has made such an application to the TSI.

Conciliation at ACCA

Since 2007, ACCA has offered an ADR service – the Conciliation Service – to help resolve complaints received that are unlikely to lead to disciplinary action. Prior to contacting ACCA, a complainant must have lodged a formal complaint with the firm in question. (ACCA firms are required to have in place internal complaints-handling procedures, in accordance with ACCA's Code of Ethics and Conduct.) Once the firm's own procedures have been exhausted, if the complaint in question has not been resolved to the complainant's satisfaction, referral to the Conciliation Service may be appropriate, whereby a Senior Investigations Officer will seek to reach an agreement to the dispute, ie one that is acceptable to both parties.

If the parties are unable to reach a satisfactory conclusion, the Senior Investigations Officer will inform the parties of such, and make a determination in accordance with The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014. Both parties would have the right to request a review of the decision.

Further information is available at www.accaglobal.com/gb/en/discover/complain/conciliation.html, or by contacting ACCA's Assessment Department on +44 (0)20 7059 5993.

ACCA's compliance with the ADR Regulations

The requirements with which ACCA must comply are set out in Part 2 and Schedule 3 of the ADR Regulations. In addition to the usual obligations that ACCA has to any of its lead regulators (to supply relevant information and cooperate with the lead regulator's oversight), ACCA is required to satisfy the TSI that it complies with the following in respect of the operation of ACCA's ADR function:

1 Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>

2 Regulation 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0001:0012:EN:PDF>

- ACCA offers ADR services in respect of disputes brought by consumers against practising firms;
- a consumer is able to submit a complaint, together with any supporting documents, online (via the ACCA website) or by post;
- the parties are able to exchange information with ACCA either electronically or by post;
- parties to a dispute are not obliged to be represented or assisted by a third party;
- ACCA's Conciliation Service is available free of charge to consumers (or at a nominal fee);
- ACCA ensures that the Senior Investigations Officer responsible for a particular dispute is neither employed nor remunerated directly by a party to the dispute, and that the Senior Investigations Officer does not discharge their duties in a way that is biased to either party to the dispute;
- an ACCA Senior Investigations Officer has an obligation to disclose to ACCA relevant conflicts of interest, and that obligation continues throughout the ADR process;
- ACCA ensures that Senior Investigations Officers possess the necessary knowledge and skills to be able to perform their functions competently, and that the Conciliation Service is adequately funded.

In addition, ACCA is required to communicate effectively and fairly with the parties, and allow the parties to communicate with ACCA concerning information and documents provided to ACCA. Any solution proposed during the course of the conciliation is not binding on the parties, and the parties must be made aware that they may withdraw from the conciliation process at any stage, and that their participation in the process will not preclude them from seeking redress through court proceedings.

Members who wish to withdraw from the conciliation process should note that they are still subject to a duty to cooperate with ACCA. Therefore, withdrawal from the conciliation process could result in the complaint being investigated.

Refusal to deal with a complaint through conciliation

There are a number of grounds, within the ADR Regulations, on which an ADR entity may refuse to deal with a complaint. Among those relevant to ACCA's Conciliation Service are the following:

- the consumer has not sought to resolve the matter directly with the accountancy practice prior to submitting the complaint to ACCA;
- the dispute is frivolous or the complaint vexatious;
- the dispute has already been considered by another ADR entity or by a court;

- the consumer submitted the complaint to ACCA more than twelve months after the consumer became aware that the complaint could not be resolved directly with the accountancy practice.

3. Requirements of ACCA practitioners

It is important that practitioners understand their obligations under the ADR Regulations, as they will be required to be compliant from 9 July 2015. These obligations are set out in Part 4 of the ADR Regulations. The requirements relate to traders (defined earlier), and so all accountancy practices are included within the scope of the ADR Regulations.

ACCA will be the ADR entity for a practice in which one or more principals are ACCA members. ACCA does not charge a fee for using the Conciliation Service, and disputes will only be considered for conciliation after they have been assessed and considered suitable for conciliation. ACCA currently cannot consider cases in respect of firms that (although within the scope of the ADR Regulations) fall outside the scope of ACCA regulation.

Although a member of ACCA (and his or her firm) would be required to cooperate in the investigation of a complaint, a member is not obliged to submit to the conciliation process. This does not conflict with the requirements of the ADR Regulations. However, where an accountancy practice has exhausted its complaints-handling procedure (see below), the ADR Regulations require the practice to disclose to the consumer (on a durable medium) the following:

- that the practice has been unable to resolve the complaint;
- that ACCA is competent to deal with the complaint, should the consumer wish to further the complaint;
- ACCA's website address;
- that the practice is not obliged to submit to ACCA's conciliation process should ACCA consider that the complaint is suitable for conciliation;
- whether the practice would be prepared to submit to ACCA's conciliation process should ACCA consider that the complaint is suitable for conciliation.

In accordance with paragraph 13 of section B9 of ACCA's Code of Ethics and Conduct, 'a professional accountant in the UK and Ireland shall implement adequate procedures to handle client complaints in respect of fee, service and contractual disputes'. A guidance note to assist members is available on ACCA's website at www.accaglobal.com/en/member/professional-standards/rules-standards/other-standards.html. It includes proposed wording for a firm's engagement letter in respect of the firm's internal complaints-handling procedures. The engagement letter may also include information in respect of ACCA's Conciliation Service. Although this would not remove the need to inform the client following the internal handling of a particular complaint,

members may find it useful to set out their obligations in advance of any complaint arising. Therefore, the following additional wording may be considered appropriate:

'Should ACCA consider a complaint appropriate for conciliation, it is competent to offer alternative dispute resolution through its Conciliation Service. ACCA's website address is www.accaglobal.com. Please note that, under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015, we are not obliged to submit to ACCA's conciliation process.'

4. Support available from ACCA

Further information concerning ACCA's Conciliation Service is available on the ACCA website at <http://www.accaglobal.com/uk/en/discover/complain/conciliation.html>, and up to date information concerning the regulatory framework for ADR in the UK is available from ACCA's Technical Advisory service on 020 7059 5920.

As mentioned above, there is a guidance note, available on the ACCA website, which may assist members in implementing internal complaints-handling procedures. The guidance note expands upon the requirements of ACCA's Code of Ethics and Conduct, in which section B9, Professional liability of accountants and auditors, includes provisions in respect of firms' complaints-handling procedures and engagement letters.

As already noted, members should be aware that ACCA's Complaints and Disciplinary Regulations (also to be found with the ACCA *Rulebook*) include a requirement that a member must cooperate with any investigation, which might ensue should a complaint be unsuitable for conciliation, or should the conciliation process prove unsuccessful. In any event, professional accountants are required to safeguard the fundamental ethical principles set out within the Code of Ethics and Conduct. In the context of addressing complaints and resolving disputes, the principles of integrity and professional behaviour are particularly relevant.

Members may find it helpful to include information about ADR and conciliation in their engagement letters. ACCA produces a set of standard engagement letters on CD ROM, and further information about this resource is available from ACCA's Technical Advisory service and on the ACCA website at <http://www.accaglobal.com/uk/en/technical-activities/technical-resources-search/2014/january/engagement-letters-updates.html>.

5. Conclusion

ACCA provides ADR in the form of its Conciliation Service. The Department for Business, Innovation and Skills published the outcome of its consultation on the implementation of the ADR Directive and the ODR Regulation on 18 November 2014. The ADR Regulations were then laid before Parliament on 17 March 2015, with most of the requirements of the regulatory framework coming into force on 7 April 2015. ADR entities are now required to gain approval from the appropriate competent authority and, at the time of issuing this technical factsheet, ACCA is in the process of seeking approval from the TSI (on behalf of the Secretary of State). This process will require only slight modification of existing policy and processes in order to gain that approval.

In the meantime, ACCA members and firms should seek to put in place procedures to ensure they are compliant. Apart from reviewing their current internal complaints-handling procedures, firms will be required to supply clients with certain information relating to ADR and specifically ACCA's Conciliation Service. Various sources of guidance are set out in section 4 of this technical factsheet. In addition, further information may be sought from ACCA's Assessment department by email (professionalconduct@accaglobal.com) or telephone (020 7059 5993).