

DATA ON THE COSTS OF CONSUMER ADR SCHEMES

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THE COST OF MAJOR CADR SCHEMES

How much do consumer ADR (CADR) schemes cost overall? Do they represent value for money? Total costs are not always published by schemes. Summarised below are some data for selected major schemes: the residual Swedish scheme and the Patient Insurance, the two Dutch systems, and large individual sectoral schemes from Germany, France and the UK, plus WIPO.

Sweden

The national CADR body, the ARN, which is fully funded by the state, had a 2010 budget of just over €3 million, and received 10,000 claims covering all sectors (but others were made to some sectoral boards).

The Patient Insurance scheme, which covers residual expenses not covered by social security arising out of personal injury claims, which are usually more expensive to process, costs around €900 per claim, and receives 12,000 claims a year of which about half receive compensation.

Netherlands

Across 50 sectoral Boards (excluding financial services), 7,826 claims were initiated in 2010, 5,799 of which were processed. The operational cost of the administrative coordinating organisation, De Geschillencommissie Stichting (DGS), was only €5.5 million. Companies usually pay fees as agreed with their individual trade associations, but can register with DGS individually and pay a fee on registration, subsequent annual fees, and a fee per case. A 2007 survey found that the range of overall costs contributed by individual companies varied from under €100 to over €20,000.

The financial CADR system (KiFiD) had a budget of €9 million in 2010 and received 6,719 cases. Traders' minimum yearly contribution was €170 for banks and insurers and the lowest contribution for other members was €63. The registration fee per case was €25 for traders and €50 for consumers.¹

¹ But if the Ombudsman himself transfers the case to the Geschillencommissie the consumer pays no fee. If the Ombudsman declares the claim clearly inadmissible the fee is €100.

Germany

In 2010 the Insurance Ombudsman received 18,357 claims, 12,720 of which were admitted. The budget was €3.6 million, for a staff of 45.

The principal transport scheme (Söp) is funded by members' annual fees (€1,000 for a single company but groups of companies like *Deutsche Bahn* pay €5,000 max.) and a case fee (€25 for unjustified claims and €150, €200, €300, €400, €600 or €800² per case, depending on the time and expenditure involved).³ The scheme is too new for the level of claims to have stabilized. The cost per case in 2010 was between €25 and €350. In 2012 a new fee structure has been implemented since case handling efficiency has increased and this has enabled Söp to reduce the cost per case by 20 per cent.

France

The national Energy *Médiateur* had a 2011 budget of €6.6 million for 40 staff, and in 2010 received 17,467 complaints, 68 per cent of which were accepted for investigation.

The Electronic Communications *Médiateur*'s budget was €1.3 million for 12 staff, and he received 18,672 complaints, and investigated 3,554 of them.

UK

The largest CADR system in Europe, the Financial Ombudsman Service, received 1,012,371 initial enquiries and complaints in 2009/10, which yielded 206,121 formal disputes, of which 17,465 required the involvement of an ombudsman. The annual budget for 2009/2010 was £92 million for a staff averaging 1,015 people. Actual income was £98.4 million, 20 per cent of which was funded by a charge levied from financial institutions (adjusted every year to reflect the volume of work undertaken per sector each year: the number of accounts held by banks, and volume of investment income for insurance), and 80 per cent from case fees. A defendant currently pays £500 per case, but no case fees were charged to businesses for their first three disputes, which resulted in only 5.5 per cent of firms paying case fees. The FOS had a unit cost (i.e. cost per case) of £555.

The Pensions Ombudsman, fully funded by the government, received £2,810,000 in 2010/11 and accepted 950 complaints for investigation. The subject-matter is often complex, and average duration of investigations is 10.9 months.

The Legal Ombudsman had a budget of £9.9 million in 2011, obtained from a levy on all regulated firms and from a case fee of £400, which was not payable for the first two potentially chargeable complaints in a year. He received 38,155 contacts and accepted 3,768 cases for investigation.

The UK private Ombudsman Services had a turnover of £5,739,894 in the year to 31 March 2010 and £6,385,718 in the year to 31 March 2011. The allocation of costs between sectors is shown in Table 1.

Table 1. Allocation of Ombudsman Service costs between service sectors

Expenditure	2009-2010 (£'000)	Number of contacts received	Cases opened
Communications	2,210	102,025 ⁴	8,936
Energy	2,189	78,528	7,192
Property	19	5,843	428

The private travel sector arbitration scheme operated by ABTA involved 12,702 requests in 2010, a further 19,169 telephone inquiries, and made 255 awards. The average award was £630, for which the consumer paid a fee of £90 and the trader £350. The total administrative cost of the scheme is unknown, since the administration is largely assumed by the trade association.

The cost of sectoral conciliation-plus-arbitration schemes established in various sectors varies: a 2006 review of OFT-approved schemes found that the cost to members ranged from ‘minimal’ sums to £50,000 pa. The costs of the Motor Codes’ were, for manufacturers, an annual subscription to the new car scheme of £1,250 and case conciliation fee of £75, and for garages a subscription to the service and repair code of £75, annual garage inspection fee of £175 and case conciliation fee of £75 (all sums plus VAT).

WIPO

The cost of a single arbitrator involving up to 5 domain names is U.S.\$1,500, and for a panel of three arbitrators is U.S.\$4,000.

COST PER INQUIRY OR CASE

In comparing processing costs of different schemes, it must be remembered that the annual budget is expended in responding to initial inquiries and a smaller number of formal investigations. Figures are not available that would accurately enable the cost of those two functions to be differentiated. The cost of responding to many inquiries might be modest, but the volume received might be large—and in some countries is clearly relatively limited, for reasons discussed above. It is striking that the number of disputes referred to the Swedish ARN and the Netherlands system are so low.

In contrast, the cost per case of handling formal disputes might be higher than that of responding to individual inquiries, but much might depend on the nature of the case. The UK Pensions Ombudsman has a high cost per case (roughly £3,000) but his cases are

⁴ The regulator, OFCOM, also received 194,500 complaints in 2009/10.

clearly more complex than many simple consumer disputes, as indicated by the longer average duration.

The above figures indicate that some recent CADR systems are capable of processing cases for under £400 each, and sometimes lower than that: the private UK schemes typically deliver under £400 per case across a range of claims from different sectors. The cost per case seems curiously higher in Sweden and (€300) and the Netherlands (perhaps €900) but it must be remembered that these are very general figures, averaged across many different types of cases. Cost data is not available from Spain, but cost per case is not less than €400 (compared with an average value of awards was €366) in 2010.

The lowest costs of CADR schemes are lower, or at least compare favourably, with the cost of court procedures in almost all countries, even small claims procedures.

All the major schemes raise funds by charging an annual fee to traders that are members or imposed by law, and a separate case fee. In some cases, the case fee is not charged for the first or second case. The reason for this is to encourage traders to resolve cases themselves before they become complaints, and to recognize that some cases have poor merits for which individual traders should not be penalised. Some case fees can rise as the number of claims received rises. Similarly, the UK's ABTA scheme incentivises both sides to resolve their case between them by deferring the fee until after the consumer is sent the company's comments on the cases, shortly before the arbitrator sees the papers.

In some CADR schemes, the cost paid by traders covers more than a dispute handling facility. Firstly, it may cover the administration of a self-regulatory Code of Practice, which has extra value for traders and involves advice to them from the trade association (and might be an insurance against the imposition of more costly regulation). Secondly, the system may provide information and advice services to actual or potential customers, that would otherwise have to be funded separately.

FACTORS AFFECTING COSTS, EFFICIENCY AND INCIDENCE

What lessons can be learned about how to reduce the cost of disputes resolution, and of CADR schemes in particular? The costs of a CADR scheme depend on a number of variables, notably:

1. The scope (range) of the scheme, i.e. whether it is national or sectoral. The lesson here is that economies of scale can be effected.
2. The number of cases that a scheme has to process. The lesson here points towards use of individual case fees, to reduce the incidence of unnecessary cases, which could be resolved at earlier stages.
3. The number of cases that fall outside the scheme's jurisdiction, notably those that should have been directed to some other scheme (if it exists) and especially the

number that are merely requests for information, or that are premature since they should first have been directed to the relevant trader before being sent to the CADR scheme. Redirection has been found to be a significant problem for many existing schemes. The cost of processing large number of 'invalid' cases is considerable for many schemes. The lesson is that attempts to reduce the number of invalid cases will cut case costs.

4. The type of case. Some cases require more work than others. For example, personal injury cases (not the focus of this book, but examples of some relevant schemes are given from Sweden, Germany and France) typically involve the need for examination of detailed records and/or of the patient, and may require complex expert opinions. In contrast, some CADR schemes attempt to build sectoral expertise into the case handler, conciliator or adjudicator, notably for example in financial services or communications cases. The lesson here is that certain types of case have inherent features that make them more or less costly. However, some schemes can build in economies in their processes, as noted next.
5. The efficiency of the scheme's processing process. A major factor, for example, is whether the scheme is based on placing papers before a panel of three decision-makers, who need to be assembled together (such as in the Nordic or Netherlands models), or whether a case officer may handle cases, referring where necessary to a single ombudsman (as with many schemes in UK, Germany and France). Another factor is the ability to cut costs by relying on information technology for lodging and processing claims, which can significantly speed up cases and cut costs. A striking example is the French telecom scheme's refusal to accept complaints by telephone since that mode costs too much to process. Economies may be made in lodging allegations, collecting documents or obtaining expert opinions more quickly and cheaply than if they were done as distinct and sequential operations as in a court procedure.
6. The number of cases that are received by a CADR scheme is heavily influenced by the number of inquiries and complaints that have to be dealt with, and therefore filtered out, at 'lower' levels, by consumer advice systems, in-house CADR systems, or other arrangements. For example, a national 'residual' CADR scheme might not have to handle many disputes if they have been resolved by information systems, by earlier independent advice to consumers, by traders themselves, by earlier independent conciliation facilities, and so on. The Nordic model appears to be exceptionally effective in achieving both avoidance and early resolution of disputes through accessible advice systems on the demand side. The Dutch system of negotiating sectoral terms and conditions as a preliminary stage in establishing a dispute resolution Board also appears to encourage self-regulatory awareness by traders and controls by trade associations on the supply side, which tend to reduce the incidence of non-compliance and hence disputes. The power and effects of these features on the demand and supply sides may be very powerful in reducing the need for dispute resolution mechanisms, and hence their costs.

It is clear that significant economies of scale can be achieved in the supply of dispute resolution facilities. Leading examples of where economies of scale have been achieved are the Swedish national CADR system (the ARN), which handles all types of disputes that are not resolved by sectoral CADR schemes; the UK FOS, which was formed by a merger of a range of voluntary sectoral CADR schemes in 2001; the Dutch Geschillencommissie system, where around 50 sectoral schemes are administered on the same model by a single foundation; and the UK's two leading private sector CADR bodies (CEDR Disputes Group and Ombudsman Services), which administer a range of schemes on similar models.

COVERAGE

Broadly, the Nordic, Spanish and Central and Eastern European (CEE) states have systems that have full coverage of all types of disputes. They are all (broadly) state-funded. The structural difference is that the Nordic bodies are separate from the enforcement agencies, whereas the CEE CADR functions tend to be located within the enforcement agencies, as a historical hangover from Soviet systems. However, in our view, it would be preferable for CADR systems to be independent of regulatory bodies, as discussed at

In contrast, CADR schemes have grown piece-meal, on a sector-by-sector basis, in the Netherlands, UK, Germany and France. Many sectors are now covered in the Netherlands and the UK, the difference between those two countries being that the Netherlands broadly has a single, unified system for all CADR bodies apart from the separate structure for financial services, whereas in the UK there is no unifying structure and the sectoral systems are a somewhat confusing mixture of models. Those two countries have more sectors covered by sectoral CADR bodies than in Germany (a major reason for this is the comparative efficiency of the German court system and people's reliance on it until comparatively recently) and in France (where CADR has been concentrated until recently on schemes at *Département* level, which seem to have failed since their funding has dried up) and on in-house systems).

Thus, the Commission's CADR proposals that Member States should provide full coverage of all types of consumer disputes present no problem for Nordic and CEE states, but do present a problem for the large states. The issue is not whether ADR is a good idea for consumer disputes (almost every country thinks it is), nor how a central, residual body could be established (a structure that would fit into the national architecture is reasonably obvious in most countries), but how it could be paid for in a time of economic stringency. Governments that are now completely focused on cutting public expenditure will be reluctant to make public funds available to establish a residual CADR scheme: they do not know how much it might cost, since they do not know how many complaints it might attract. They also do not want to impose the cost on businesses, since the overriding economic strategy is to encourage private sector recovery as swiftly as possible. Could these issues be overcome? We believe they can.

THE PROBLEM OF ACHIEVING RESIDUAL COVERAGE

A residual CADR scheme would involve two types of costs: the costs of establishment and the running costs in processing whatever volume of claims occurs. Various options arise for establishing a residual scheme, such as:

- Merge existing sectoral CADR schemes, so as to reduce gaps and introduce economies of scale into shared overheads, and reduce wasted costs through the need to reject.
- Encourage more sectors to introduce sectoral CADR schemes funded by the business sectors, which would reduce the number of residual disputes not covered by sectoral schemes.
- Introduce more advice schemes, to reduce the number of disputes that arise.
- Maximise the transparency of complaint data held by CADR schemes and regulatory agencies, so as to reduce the number of disputes by maximising the ability to identify problems and the speed of doing so.
- Reject the CADR approach entirely, and direct consumer complaints at the courts and/or at regulatory bodies. This is a highly unattractive option, which is really the proof of the pudding. The UK OFCOM receives around 200,000 complaints annually. Most of these should be directed at the CADR bodies, and represents a huge wastage of the regulator's resources. Equally, the cost of maintaining court systems is clearly far higher than that of CADR systems: the whole point is CADR systems is that they are far cheaper than courts. Furthermore, in most countries, courts involve significant public expenditure, whereas CADR systems are mainly privately funded. This option does not make economic sense. The rational economic solution is to transfer C2B disputes away from courts to CADR schemes.
- Persuade or require business to fund a residual CADR scheme.

How many disputes would a residual CADR scheme have to process? The scale of demand in countries may, in fact, be quite limited. This is particularly so in the Netherlands and the UK. The reason is that many sectoral CADR schemes already exist in those states. The demand, therefore, comes from, firstly, those sectors that have no CADR scheme *and* no effective ability to handle disputes through other ways, notably by in-house customer relations departments, and, secondly, traders who are not members of existing schemes, usually because they are not members of trade associations, and usually because they are small traders. There may be many small traders⁵ but how many disputes

⁵ The definition of an SME covers all enterprises with less than 250 employees and equal to or less than either €50 million turnover or €43 million balance sheet total. Micro-enterprises are the smallest category of SME, with less than ten employees and a turnover or balance sheet total equal to or less

are they likely to give rise to? How many consumers are they likely to affect through failure to deliver, failure to deliver appropriate quality or safety, unfair contract terms, and so on? How significant is likely to be their customers' wish for redress?

One of the strong advantages of a CADR approach is its ability to deliver feedback information that can be used to improve regulatory compliance at proportionate cost, and it is this feature that could be immensely useful for small and medium-sized enterprises (SMEs). SMEs account for 99 per cent of enterprises, of which 92 per cent are micro-enterprises, and provide more than two thirds of private sector employment.⁶ It is well recognised that 'businesses, in particular SMEs, often lack clarity about how to comply with regulation'.⁷ A 'Key Finding' of research by the UK's OFT in 2010 was:

'In general businesses seek to treat consumers fairly although they may have a limited understanding of the law. SMEs in particular are likely to have less awareness of the detail of consumer protection laws, and how they can access relevant information to assist compliance. Larger businesses are more likely to understand the detail of the laws but may have different drivers for not complying.'⁸

EU studies have found that 'the smallest firms face the greatest costs in complying with regulations',⁹ a view echoed in national studies.¹⁰ For example, UK government research into health and safety regulation found that, on a per employee basis, SMEs may be spending almost six times more than larger ones on risk assessment.¹¹

Noting SMEs' limited capacities and resource, and the crucial relevance of SMEs in stimulating economic growth, as part of the EU's core economic strategy,¹² the European Commission has proposed:

'There needs to be a special effort to promote the development of SMEs, a major source of economic growth and job creation in the Union, accounting for more

than € million: Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, OJ L 124, 20.5.2003, p 36.

⁶ *Report from the Commission to the Council and the European Parliament Minimizing regulatory burden for SMEs Adapting EU regulation to the needs of micro-enterprises*, COM(2011) 803, 23.11.2011, http://ec.europa.eu/governance/better_regulation/documents/minimizing_burden_sme_EN.pdf.

⁷ *Delivering regulatory reform. Report by the Comptroller and Auditor General* (National Audit Office, 2011), available at www.nao.org.uk/idoc.ashx?docId=89f6cf32-eeeb-4f0a-b862-d5a9feec4388&version=1.

⁸ *Consumer Law and Business Practice. Drivers of compliance and non-compliance* (Office of Fair Trading, 2010), OFT1225, available at www.oft.gov.uk/shared_oftrpports/Evaluating-OFTs-work/OFT1225.pdf

⁹ *Report from the Commission to the Council and the European Parliament Minimizing regulatory burden for SMEs Adapting EU regulation to the needs of micro-enterprises*, COM(2011) 803, 23.11.2011, http://ec.europa.eu/governance/better_regulation/documents/minimizing_burden_sme_EN.pdf.

¹⁰ 'micro businesses ... can find the cost of regulatory compliance to be disproportionately high, placing additional calls on scarce resources': *Lightening the Load: The Regulatory Impact on UK's Smallest Businesses* (Department for Business Innovation and Skills, 2010), available at www.bis.gov.uk/assets/biscore/better-regulation/docs/l/10-1251-lightening-the-load-regulatory-impact-smallest-businesses.pdf

¹¹ *Improving Outcomes from Health and Safety* (Better Regulation Executive, 2008).

¹² Communication from the Commission 'Europe 2020 - A strategy for smart, sustainable and inclusive growth' COM(2010) 2020.

than 67 % of private sector jobs and providing more than 58 % of total turnover in the EU.’¹³

In implementing this policy, the Commission has stated that the regulatory burden needs to be minimized.¹⁴ Further, providing information and advice to economic operators (especially SMEs) is a legitimate function of Member States that needs to be given a greater priority.¹⁵ The approach here exactly mirrors that identified in this book in relation to empowering consumers: finding and effective and efficient means of providing information on appropriate market behaviour and trends to SMEs (as for consumers and traders generally) will assist with regulatory compliance, reduce the need for (and hence cost of) enforcement, and increase customer satisfaction.

In the Netherlands and the UK, private CADR bodies already exist that could provide the infrastructure on which a residual scheme could be built. CEDR already has a residual scheme, its Independent Consumer Redress Service, whose rules are set by CEDR, so do not need to be negotiated with members, although fees are payable by members for caseload. It would appear, therefore, that the establishment and basic infrastructure costs would be limited, and case fees could cover the expanding capacity. There may be a need for some additional initial establishment funding, but it might not be much, given existing structures.

How could case fees be collected? The two options are for fees to be imposed on traders by law, or accepted by agreement. Since the traders involved would probably not belong to trade associations and may be small, they would not be expected to join a residual scheme by agreement. But, in any event, the cost of administering a membership scheme for all traders would be significant and the compliance rate would be questionable. The preferable option seems to be that a residual scheme could be authorised by law to charge case fees to traders who have been given an opportunity to respond to cases brought within clear and fair procedures of the scheme. The determinations would either be binding or would be enforceable in court on a subsequent but fast track procedure, and subject to extra cost penalties unless the trader had good reason for not joining in the CADR procedure, or was able with justification to bring forward further evidence that could not have been brought forward earlier. The cost could be made a debt claimable by the consumer or the CADR scheme. The latter may be preferable.

Thus, a residual CADR scheme could be created with standing procedures by adding it on to an existing, substantial and well-funded scheme. The architecture could also be designed to *encourage* trade associations and traders to establish (a) information facilities and (b) sectoral CADR schemes, thereby reducing the number of claims that would be coverable under the residual scheme. Various incentives could be envisaged. Firstly, there could be cost advantages through lower case fees. Secondly, adherence to an

¹³ Proposal for a Regulation of the European Parliament and of the Council establishing a Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (2014-2020), COM(2011) 834 final, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0834:FIN:EN:PDF>

¹⁴ *ibid.*

¹⁵ *The future of market surveillance in the area of non-food consumer product safety under the General Product Safety Directive*, (BSI, 2011), http://ec.europa.eu/consumers/safety/projects/docs/final_report_the_future_of_market_surveillance.pdf

official sectoral CADR scheme could be marketed as having commercial and brand advantage. It might have an officially recognised status, such as the UK's CCAS badge. Thirdly, sectoral schemes might apply higher trading standards than 'normal' CADR or court bodies, through being linked to sectoral Codes of Practice that established higher standards than those required under general consumer protection law. The Netherlands' system is a clear example of such an approach, as is the widely used self-regulatory Code approach adopted in UK. Fourthly, sectoral schemes might be swifter than general residual schemes (and certainly than the courts) since they could take advantage of specialist expertise and innovative information technology processes. The object would not be to undermine existing CADR schemes, but to make them more attractive for traders.

In short, it is arguable that the number of claims of a national residual scheme in the UK and the Netherlands might be relatively limited, firstly because of the wide coverage of existing schemes, secondly because incentives could be designed to encourage traders to handle claims in-house, and to create more or join more sectoral CADR schemes.

In Germany, the situation may be different because of the existing culture that claims can be brought in courts, and are backed by insurance, so the demand for CADR systems may currently be limited, even though it might grow.

A further economic point is that the cost of CADR schemes saves money elsewhere. Firstly, it saves money on courts. CADR schemes replace private enforcement through courts, by functioning as what might be described as 'surrogate private enforcement'. Both the infrastructure and case costs of courts can be reduced if (lower cost) CADR pathways operate effectively. Secondly, CADR schemes that have adequate transparency provide data that can reduce the number of disputes and encourage trading standards to rise. These points are discussed elsewhere. But the cost savings overall of these aspects could be significant, as is shown by the data on the low level of disputes handled in Sweden and the Netherlands. Thirdly, the best CADR systems have strong regulatory components, and hence affect business behaviour and raise trading standards whilst reducing the need for enforcement by public authorities. The nature of public authorities' activities can be altered by the presence of an effective CADR scheme, enabling the authority to alter both its monitoring and enforcement activities, especially by concentrating more on 'rogue' traders whilst relying more on CADR's more self-regulatory effects to police responsible businesses.

COVERAGE THRESHOLDS AND LIMITS

Many CADR schemes are subject to high and/or low financial thresholds, or time limits for making claims. Financial limits can often be found in financial services sectors, both to limit exposure from what might be large individual claims and to ensure that large cases are deflected to the courts, since they may be more complex and involve points of legal principle. Examples that we have found are as follows.

In Germany, the Insurance Ombudsman can make a legally-binding decision up to €10,000, and a non-binding recommendation up to €100,000. The transport ombudsman (Söp) has an upper limit of €30,000. The Ombudsman of Private Commercial Banks can make a binding decision up to €5,000, and a non-binding recommendation above that sum. The Legal Arbitration Board can make a recommendation only up to €15,000.

In financial services cases in KiFiD in the Netherlands, the second Geschillencommissie stage (after the Ombudsman first stage) has a minimum claim value of €100 and a time limit of three months, and the third Arbitration Appeal Board stage has a threshold case value of at least €25,000. At the second stage, all banks and most intermediaries have agreed to accept all decisions up to €5 million.

The value of a case in Polish Tribunals of the Trade Inspection cannot exceed 10,000 PLN, unless it is brought before the Tribunal in Warsaw, which does not have monetary limits. The jurisdiction of the National Banking Ombudsman cannot exceed 8,000 PLN (around €2,000). A claim must exceed 1,000 PLN to be brought before the Arbitration Tribunal of the Insurance Ombudsman.

Different types of claims brought to the Swedish ARN must exceed certain thresholds: 500 SEK for shoes, textiles or general types; 1000 SEK for electronics, motor vehicles, travel, textiles (furniture), or cleaning services; and 2000 SEK for banking, housing, boating or insurance. There is a series of types of claims that are excluded.¹⁶

In UK, the Financial Ombudsman Service cannot award over £150,000.

It would follow that if there were to be an obligation on Member States to provide full coverage for all C2B disputes, this could not be satisfied unless there were either some leeway to justify the seemingly quite widespread existing variations in coverage provided by thresholds and other limitations, or their complete removal.

CASE FEES FOR CONSUMERS

The vast majority of CADR schemes are free to consumers. This is a general principle in France, Spain and Sweden, and applies in almost all of the schemes in Germany and the UK (save for the post-conciliation arbitration stages of private schemes).¹⁷ An exception applies in the Netherlands, where consumers pay a registration fee to De Geschillencommissie Stichting that varies depending on the sectoral Board, and generally ranges between €25 and €125, with only a few being over €500.

The principle of no cost to consumers has not been established in Poland. The Polish Consumer Arbitration Tribunals are free of charge for consumers, although the Consumer Arbitration Tribunal operated by the Chairman of the Electronic Communications Office has a 100 PLN charge to lodge a case. The cost of lodging a case in the Consumer

¹⁶ See p xxx above.

¹⁷ See p xxx above.

Arbitration Tribunal of the Office of Electronic Communications is 100 PLN, and may involve further costs. The fee for lodging a complaint with the National Banking Ombudsman is 20 PLN if the value of the case is lower than 50 PLN, and 50 PLN in higher value cases. Fees for lodging cases with the Arbitration Tribunal of the Polish Banks Association are far higher, on a tariff basis, which for a claim over 10 million PLN will be 115,300 PLN plus 0.5 per cent of the amount of the claim over 10 million PLN. Costs are also high in the Arbitration Tribunal of the Insurance Ombudsman.

LEVELS OF LOSS AND DETRIMENT

Consumer disputes typically involve very small sums, but this varies from sector to sector. Data reported above in this book for 2010 includes:

In France, the FFSA *médiateur* reports handling many cases around €100 and some as low as €. The average award of the national energy *médiateur* was €373, the average amount in dispute in the cases of the *médiateur* of EDF was €1,120 (with 23 per cent of cases over €2,000).

In Germany, 86 per cent of claims made to the Insurance Ombudsman involved under €,000, and over 90 per cent were under €10,000. A normal claim made to the transport ombudsman (Söp) is between €10 and €200.

In the Netherlands, the average claim value for Geschillencommissie cases varies between sectors, from €206 for taxis and an average of €,980 for housing guarantees. In 2009, 9 per cent of the Geschillencommissie claims were less than €250, there was no claim involving a value of more than €10,000, and the largest segment of claims (24 per cent) were for €1,001 – 2,000.

The average value of an award in the arbitration system in Spain was €366.

The average amount claimed in cases before the UK's Ombudsman Service: Communications was £587 and the average award was £198.

The Leuven Report concluded that small claims procedures would only be used by European consumers if the amount involved exceeds around €500.¹⁸ However, it is clear from the data in our study that many existing CADR claims are under that level. Discussions in Brussels have considered whether a lower threshold might be introduced that would exclude very small claims. The evidence, however, is that many C2B claims involve very low sums, and CADR schemes can process them at relatively proportionate cost, if an inherent purpose of a scheme is to collect aggregated data on generic market effects and act as a means of raising standards in a sector.

It is precisely because the sums involved are small that there is a need to design a process that involves proportionate cost, and does not merely try to adapt previously existing formalistic processes (like the introduction of mediation into court procedures).

¹⁸ J Stuyck et al, *Study on alternative means of consumer redress other than redress through ordinary judicial proceedings* (Catholic University of Leuven, January 17, 2007), published April 2007.

INCIDENCE

[This section will be accompanied in the book by tables and bar charts of the data from all the schemes.]

It is clear that the incidence of claims directed at CADR schemes differs from country to country, and that national rates depend on a number of factors. It is almost impossible to state any accurate data on this, since only a minority of CADR schemes have full national coverage (the data indicate that there is one ARN claim for every 938 people in Sweden). In some states, a proportion of claims may instead be directed at courts. In Germany and similar states, the efficiency and comparatively low cost of courts, taken with the availability of cheap insurance and predictable costs, is a reason for this, together with cultural preferences. Cultural approaches towards direct negotiation and settlement clearly apply in the Nordic states and the Netherlands. The Central and Eastern European states tend to mistrust officials, courts and judges, but paradoxically also look towards state institutions to provide solutions.

A national policy of ensuring that consumers and traders have access to accurate information both before and after transactions does seem to reduce the incidence of problems that arise after purchase. This is strongly indicated by the Nordic experience and architecture (see the chapter on Sweden), but similar approaches can be seen in many states (such as the UK's planned reorganisation of a maze of consumer advice bodies into a simpler structure focused on a network of Citizens Advice bureaux).

The split of disputes between courts and CADR systems, or any other pathways, clearly differs from country to country. It also appears to be changing, towards CADR systems and away from courts. Although there are currently strong attempts to introduce or re-invigorate mediation and similar techniques into court procedures, notably as a result of the EU Mediation Directive, such procedures remain to overcome the user-friendliness, cost and duration barriers for small C2B claims. It is unclear whether the number of C2B court claims has fallen in most states, but this has occurred in England and Wales (to 80,000 small claims in 2010). In contrast, numbers of CADR inquiries and claims have been rising significantly in many states.

In some countries, one may suspect that CADR systems have not yet achieved sufficient visibility, effectiveness or efficiency to attract the level of consumer disputes that exist. But in some countries, the low number can more confidently be attributed to efficient prevention (through advice) and weeding out (through in-company and sectoral mediation arrangements).