

European Civil
Justice Systems

Policy Brief

Designing Consumer Redress: Making Redress Accessible for Consumer-Citizens

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The Foundation for Law, Justice and Society

in association with **the Centre for Socio-Legal Studies**
and **Wolfson College, University of Oxford**



Queen Margaret University
CONSUMER INSIGHT CENTRE



The Foundation for Law, Justice and Society

European Civil Justice Systems

The European Civil Justice Systems programme aims to evaluate all options for dispute resolution in a European state, and to propose new frameworks and solutions. It encompasses a comparative examination of civil justice systems, including alternative dispute resolution and regulatory redress systems, aspects of system design, procedure funding and outputs. It aims to analyse the principles and procedures that should, or do apply, and to evaluate effectiveness, in terms of cost, duration, and outcomes in redress and achieving desired behaviour.

The programme also involves research into substantive EU liability law, notably consumer and product liability law, harmonization of laws in the European Union, and in particular the changes taking place in the new Member States of central and Eastern Europe.

Support for this public engagement workshop was provided in part by a grant from Carnegie Corporation of New York. Carnegie Corporation of New York is a philanthropic foundation created by Andrew Carnegie in 1911 to do "real and permanent good in this world."

The workshop organizers would like to thank all those who presented papers and all the attendees who contributed to the excellent and stimulating discussions during the event. We also thank Dr Nick O'Brien for chairing the workshop and contributing to this policy brief.



Executive Summary

- To improve access to justice for consumers in the European single market, an EU Directive on consumer Alternative Dispute Resolution (ADR) (2013/11/EU) was introduced in May 2013, and came into force in every EU member state on 9 July 2015. The Online Dispute Resolution (ODR) Regulation (2013/524/EU) will be implemented in January 2016.
- The implementation of the EU ADR Directive and ODR Regulation, together with the Public Administration Select Committee (PASC) reports in 2014 (“More Complaints Please!” and “Time for a People’s Ombudsman Service”), the Gordon Report, and Public Services Ombudsman Bill provide an opportunity for reassessment of ombuds and other redress institutions.
- Models of institutional design throughout Europe are diverse, and, within the UK, confusing and fragmented. Models of informal resolution within UK ombuds schemes are also diverse.
- User needs and wants are not homogeneous, nor are they necessarily compatible with the priorities of other stakeholders. There is scope to take greater account of users’ needs and wants.
- Despite differences of emphasis, both public and private dispute resolution are, in principle, susceptible to common design. However, ADR may be of limited value in the public sector, where the prospect of people ‘bargaining away’ their rights is not attractive (although ‘rights-based conciliation’ has been practised with some success). One possible common model would seek a bipartite approach between regulation and consumer redress and take as its four pillars of consumer redress: advocacy; advice; enforcement; redress.
- A new Consumer Dispute Resolution (CDR) model provides a five-step process for the systematic design of consumer redress mechanisms: (1) a research phase; (2) a goal-setting phase; (3) a system design phase; (4) a process design phase; and (5) an evaluation phase.
- Administrative justice itself is under threat, from austerity measures, court closure, court and tribunal fees, denial of rights of appeal, etc. The demise of the AJTC is a disappointing retreat from a holistic approach to design across ‘the system’. There is also a danger of loss of institutional memory in respect of dispute resolution and redress.
- The name ‘ombudsman’ may itself be problematic, on gender-specific, definitional, and public recognition grounds.
- Technological advances are already engendering new ways of doing things, including automated and online decision-making.

Designing Consumer Redress: Making Redress Accessible for Consumer-Citizens

The use of early resolution in ombudsman and ADR schemes

To improve access to justice for consumers in the European single market, an EU Directive on consumer Alternative Dispute Resolution (ADR) (2013/11/EU) was introduced in May 2013, and came into force in every EU member state on 9 July 2015. With the implementation of the ADR directive, systems and processes will now be in the public spotlight, bringing to the fore some of the existing issues and presenting new challenges that face policymakers, practitioners, and academics working in this field. One crucial question in these developments is how to ensure, through good redress design, that the provision of redress is more accessible for more people.

Access to consumer redress is an area undergoing significant change, particularly in light of the implementation of the EU's Alternative Dispute Resolution Directive and the forthcoming Online Dispute Resolution Regulation. In the public sector, the scene is similarly shifting, with a number of upcoming changes proposed to the redress landscape for public service complaints. Various commentators appear to have an appetite to simplify the landscape. One of the challenges is how best to focus on the consumer or citizen in redress design, and how to adapt to the evolving policy environment while meeting consumer needs and wants.

Introduction to consumer redress design

Consumer detriment in the UK has been estimated by the Department of Business, Innovation and Skills to be £4.15 billion in 2014, up by over £1 billion since 2012. This is largely concerned with poor goods and services. Consumers therefore need access to effective systems and processes to resolve their complaints. However, the redress landscape can appear to be very complex and

confusing for consumers. Developments in ADR may further fragment the landscape in the future as new schemes develop. Consumers are often not concerned with whether it is a private or public complaint or worried about which door they go through. But they do want good standards and clarity in relation to access.

Researchers from Queen Margaret University, Edinburgh and the Centre for Socio-Legal Studies, Oxford convened a workshop at the Consumer Insight Centre at Queen Margaret University, Edinburgh on 11–12 June 2015, to better understand the implications of the new directive and consider the design of the new system of consumer redress. The workshop brought together key players in the field of ADR and ODR from the UK, Europe, Canada, and New Zealand, with the aim of exploring new ways to encourage and enable greater numbers of people to access good quality consumer redress.

Participants discussed the viability of a 'one size fits all' design for consumer redress, whilst considering alternative access mechanisms to resolve grievances. Consumer and citizen redress schemes were compared in order to assess what aspects can be applied to both and what is unique to each. The accessibility of current redress systems was examined, including the gaps and challenges, and focus was placed on 'what works' in practice. Good design may enhance accessibility, but what else might be needed? Good design may be useful in informing the work of the new 'Competent Authorities'.

The question of whether there should be a preferred model for ombudsman institutions within consumer dispute resolution (CDR) was explored. The importance of advice, assistance, support, and signposting to consumer redress design were discussed. The workshop also provided the opportunity to explore developments in Scotland, the distinct model in operation and the role of the

complaints standards authority at the Scottish Public Services Ombudsman (SPSO) and new opportunities to streamline consumer redress.

Chris Gill (Senior Lecturer in Administrative Justice, Queen Margaret University) provided an introduction to dispute system design (DSD). He argued that both individual consumer dispute resolution (CDR) mechanisms, and the resultant landscape for consumer-to-business disputes, have tended to be developed in an ad hoc and unprincipled fashion. The presentation proposed a new DSD model for CDR mechanisms, the purpose

of which is to assist those tasked with designing new, or reviewing existing, dispute resolution mechanisms.

In addition to offering a practical tool for legislators, policymakers, and practitioners, the model makes three contributions to the scholarly literature on DSD: it synthesises existing models, it focuses on design choices rather than design prescriptions, and it is designed for the particular context of consumer-to-business disputes. Figure 1 shows the new CDR model.

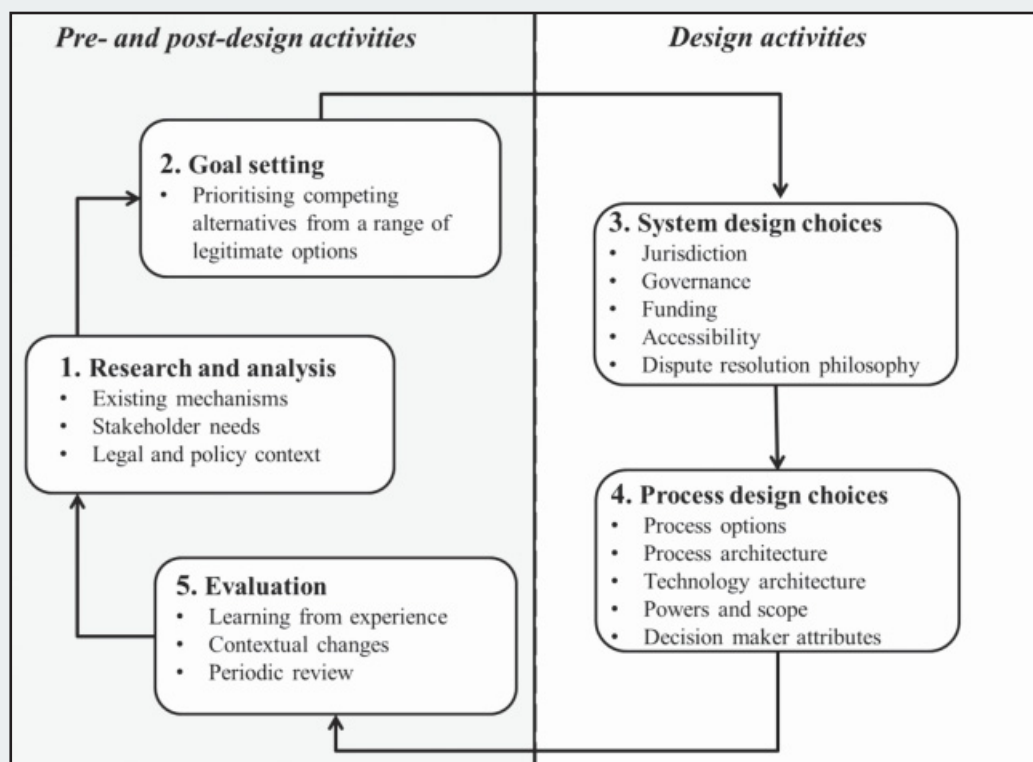


Figure 1. Dispute System Design Model for Consumer Dispute Resolution Mechanisms (CDR Model)

Dr Naomi Creutzfeldt (ESRC Research Fellow, University of Oxford) presented selected findings from her ombudsman project (<http://www.law.ox.ac.uk/projects/Ombudsmen>). She discussed ‘consumer redress: what people expect from an ombudsman’, based on her UK dataset of seven public and consumer ombudsmen bodies. Despite finding that the empirical data supports distinct expectations of ombudsmen-users for public sector ombudsmen to deliver accountability and consumer ombudsmen to provide individual redress, there is a dominant and shared narrative amongst all

of the 1310 surveyed people. *An ombudsman is expected to be a professional middle-man to clarify, influence, protect, and enforce for the citizen/consumer.* This translates into four roles that users expect from the ombudsmen: 1) Interpreter — “to help me understand what it’s all about”; 2) Advocate — “to hand over my problem”; 3) Ally — “to share the responsibility”; and 4) Instrument — “they have the right tools to help me”. These roles are expected of both public and consumer ombudsmen in the UK. The data also reveals that people’s expectations of the CDR bodies exceed their actual responsibilities.

Further, people's expectations change throughout the complaint process. Therefore, it is essential to manage expectations from the first contact a complainant has with the ombudsman. This, among other measures, will help build trust in the ombudsman institution.

Carolyn Hirst (Lecturer in Ombudsman and Complaint Handling Practice, Queen Margaret University) discussed the use of informal resolution approaches as alternatives to investigation and determination/decision by ombudsmen in the UK and Ireland. This mapping study found that some terms used by ombuds to describe their informal resolution processes meant different things in practice, and conversely, similar terms are used to describe quite different processes. This can confuse consumers and made attempts to compare ombuds and complaints handlers unduly difficult. The study also found that only a few schemes adopted transparent guidelines for using informal resolution and that complainants and those complained about had little choice in which process to use. It was hard to understand what actually happened in practice, which led to a concern that informal resolution was being used for reasons of expediency (being faster and cheaper than investigation). There was also little information in the public domain about the outcome of informally resolved complaints.

The research concluded that, since many ombuds have an administrative justice or civil justice function, an emphasis on informal resolution could deprive wider society of knowledge about complaint outcomes. Individual and informal resolution, particularly when confidential, can result in a lack of transparency and accountability, and can adversely affect precedent-setting and mitigate the benefits of learning from complaints so as to improve services. In addition to the descriptive value it has in its own right, this study provides a solid foundation for future research on the ways by which ombuds resolve disputes. The Report of this mapping study can be found at:

<http://ombudsresearch.org.uk/2014/10/>

Developments in consumer redress design in Scotland

Following the introduction, **Jim Martin** (Scottish Public Services Ombudsman) provided the first keynote presentation on *Redress in Scotland and the future of Ombudsman schemes*. He perceived a clear shift in thinking about Ombudsman models in the UK. The models which emerged post-Devolution in Scotland and Wales embraced the concept of a one-stop-shop. In Scotland there was a move towards a standards approach. Each Ombudsman is similar but different in the range of their jurisdiction and approach, but each has been moulded by the identified needs in the nation and their own legislature's view of what is the best Ombudsman model to serve the needs of their community. They are built on the basis of what needs to be done rather than what a traditional, 'real' Ombudsman should be doing. Their significance as change agents has gone largely unnoticed and been given insufficient weight and recognition in the UK as a whole.

Now these models provide a blueprint for the future. For Scotland, the evolution will continue over the next decade. When making decisions recently on the Scottish Welfare fund and other initiatives, the government has sought to compare the Ombudsman with tribunals and other routes to redress. This is likely to continue to challenge existing concepts of the delivery of administrative justice. The Scottish Public Services Ombudsman advanced his perspective that the correct viewpoint is the needs and interests of the citizen and how the system can meet her/his aspirations, and not how to best fit the citizen into the system.

Sheena Brown (Head of Consumer and Competition Policy Unit, Scottish Government), gave the second keynote presentation setting out the direction of consumer and competition policy proposals for Scotland, specifically looking at future developments in consumer redress, following the devolution of consumer protection to the Scottish Parliament.

The Scottish government identified the need for a more unified approach to consumer policy. Recommendations for the creation of a unified consumer and competition body responsible for

strategy, competition regulation, advocacy, advice, education, information, and enforcement were made in *Consumer Protection and Representation in an Independent Scotland: Options*, which was published in August 2013. This model would have been underpinned by a separate overarching Consumer Ombudsman delivering Alternative Dispute Resolution (ADR).

Following the 'No' vote in the referendum on Scottish independence, the Scottish government submission to the Smith Commission requested complete devolution of consumer policy. The Smith Commission recommended devolution of consumer advocacy and advice to the Scottish Parliament, but the Scottish government believes that the devolution of all four pillars of consumer protection (advocacy; advice, education, and information; enforcement; and redress) is necessary to create a robust system of consumer protection. The fourth pillar, redress, is an integral part of creating a coherent approach to consumer protection in Scotland. Current UK mechanisms were considered to be disjointed and complex, so there is significant scope for a Scottish approach to redress building on the single organization approach taken by the Scottish Public Services Ombudsman (SPSO).

The Smith recommendations represent an opportunity for the Scottish government to reform the consumer landscape. For redress, there is a desire across Scotland for a Scottish Consumer Ombudsman. This would give consumers a single, easily accessible point of contact for all complaints, which would be handled in a consistent, uniform way. For this to be effective, ombudsman services would need to be easily accessed and understood by consumers. In progressing this further, the Scottish government will look to draw on best practice models including the Dutch De Geschillencommissie Stichting and the Swedish National Board for Consumer Disputes (ARN).

The Scottish government will now consider further how consumer redress should be delivered in Scotland following the devolution of consumer protection powers. This will be addressed in a Discussion Paper. A Working Group, set up by the Scottish government, had its inaugural meeting in June 2015 with Citizens Advice Scotland, SPSO,

Ombudsman Services, and other key stakeholders, to develop a comprehensive Scottish system of redress.

Professor Tom Mullen (University of Glasgow) presented the third keynote on administrative justice. The term 'administrative justice' covers both the decisions made by public bodies that affect citizens (and, more generally, the way they treat them) and the remedies citizens have when they want to challenge decisions or complain about their treatment. The main remedies now available to citizens are courts, tribunals, ombudsmen, and complaints procedures. However, it is essential to understand initial decision-making in order to design effective systems for redress. For example, it matters whether decisions are made by applying precise rules or by the exercise of broad discretion. Good decision-making requires that the correct view of the relevant law is adopted, facts are correctly established, rules correctly applied, and discretion is properly exercised, all through a fair decision-making process.

The remedies can be analysed according to whether they are independent of government, their decisions are binding on the administration, the criteria they use to make decisions, the type of methods and procedure they use, and the degree of formality. They can be evaluated according to whether they produce appropriate outcomes, are impartial and independent, follow fair procedures, their speed, their cost, and their accessibility. Each of the four main types of redress mechanism has characteristic strengths and weaknesses. Major changes to the remedies have taken place in recent years (rationalization of reserved tribunals) and more are planned, including the rationalization of devolved tribunals, reform of the Scottish civil courts, the rationalization of Ombudsmen in UK/England and Wales, further rationalization of complaints processes, and development of the role of the Scottish Public Services Ombudsman.

Unfortunately, recent adverse developments at UK level indicate the absence of a holistic vision of administrative justice, the loss of important rights of appeal (immigration control), and the creation of new obstacles to use of established remedies (e.g. in social security). Uncertainties and concerns for the future include (i) the possible effect of public

spending cuts on the quality of initial decision-making, the resources allocated to redress mechanisms, and future provision of legal aid; and (ii) the effects of further devolution, e.g. of responsibility for reserved tribunals.

Consumer perspectives on access to redress

The second theme of the workshop centred on consumer perspectives. **Carol Brennan** (Reader in Consumer Policy, Queen Margaret University) applied the new QMU model on consumer redress design to the areas of information, advice, education, support, and signposting to consider the choices available to organizations as they strive to make access to redress easier for more people. Examples from the area of legal services illustrated some of the challenges and useful tools for redress design. Given the complexity of the landscape, it can seem like a maze for complainants.

The new CDR model shown in Figure 1 and outlined in the introduction may be helpful in analysing the design choices. In applying the model to the provision of information, advice, education, support, and signposting, aspects of consumer-citizen empowerment were explored in the pre-design activities shown on the left side of the model in Step 1, *research and analysis*, where stakeholder research would be carried out to ascertain the needs and wants of service users, taking into account the legal and policy context, and using the opportunity to check if existing mechanisms are effective. This phase enables organizations to understand the context in which the CDR mechanism is being designed.

Step 2 focuses on *goal setting*, in which the organization will prioritise from competing alternative options. These goals may include advising on disputes and/or rights; consumer-citizen education; helping vulnerable consumers; easing burdens on the court system; reducing regulatory burdens; standard raising; consumer-citizen satisfaction; business/organization satisfaction; and cost-effectiveness. An organization may want to invest in advice to enable consumers to understand the strengths and weaknesses of their complaints, helping to manage expectations. However, this may

have an impact on the cost per complaint, and the additional cost will have to be met by the funder.

While the UK has an established reputation for providing public funding for consumer empowerment, this may be more challenging in some of the privately funded ADR sectors.

Moving to the right side of the model, Step 3, system design choices addresses *accessibility* within the design activities. This includes how the complaint system will be advertised and how much support and signposting will be provided. Is there scope to be more creative in the way organizations communicate with consumer-citizens about accessing their complaints systems?

Two further design tools were discussed in relation to the consumer focus: consumer principles and consumer vulnerability. Consumer principles of access, information, choice, redress, fairness, representation, and safety/quality can be useful for organizations as a tool in helping to shape dispute resolution mechanisms. These principles can form part of the policy toolkit for organizations and provide a structured way of enabling a deeper analysis of the consumer interest. In relation to redress, it may be reasonable to expect that effective feedback loops are in place to learn from complaints and improve services for all. In relation to consumer vulnerability, building on the British Standard on Inclusive Service Provision (BS18477), the Legal Services Consumer Panel (LSCP) provided a useful guide for regulators in 2014 on recognizing and responding to consumer vulnerability. Consumers may be vulnerable due to, for example, a physical disability, mental health issue, bereavement, or relationship breakdown. Some consumers may be vulnerable because they face greater difficulties in obtaining redress. Consumers may be going through life-changing events such as a divorce or buying a house. A useful wheel diagram provides a focus on individual risk characteristics and market features, which may be helpful to inform an analysis of consumer vulnerability. The LSCP highlighted recent research which showed that 44 per cent of consumers who are dissatisfied with legal services in England and Wales do nothing, partly because the system is confusing, and this compares with 27 per cent in the services economy overall. Effectively designed access to good information, advice,

support, and signposting may provide one solution to make a positive improvement in the consumer journey of making a complaint.

One of the issues raised in the panel discussion concerned the need for consistency and good practice. In meeting consumer-citizen expectations, in the post-implementation phase of the ADR Directive, organizations may need to pay particular attention to designing systems and processes that are consistent enough to allow expectations to be met when approaching any ombudsman or other ADR scheme. The Ombudsman Association could play an influential role in setting appropriate standards.

Lauren Bruce (Access to Justice Policy Officer, Citizens Advice Scotland) outlined the role of Citizens Advice Scotland (CAS), which is the umbrella body of the Citizens Advice Service in Scotland. As well as sixty-one member Citizens Advice Bureaux (CAB) who operate from over 250 locations nationwide, the Citizens Advice Consumer Service and the Scottish pages of the UK advice website Advisernet also fall within remit. Last year, the Service provided advice to over 330,000 clients on over 1 million issues. In addition, the Scottish zone of

the self-help website received approximately 4.2 million unique page views. In most cases, individuals will approach Citizens Advice when something has gone wrong. Redress is therefore a large part of the work of the Service. CAS learns from that work and uses the knowledge to influence change which benefits consumers.

In relation to redress, administrative justice is the facet of justice which consumers are most likely to use to solve their problems. Wording here is chosen carefully: not 'engage with' or 'explore' but *use*. The processes and procedures of administrative justice must be tools which consumers can meaningfully utilize to solve their problems. This should be the primary aim and focus of redress — not simply that there is a process which exists, but that the process takes consumers easily from problem to solution. In reality, this is often far from reality. One of the top five enquiries to the Citizens Advice Consumer Service is 'I have a problem with my sofa'. An individual trying to navigate this process has been failed. It is not simple. It has the potential to involve multiple facets of the justice system with varying costs. It does not take that individual from their problem to a solution but instead presents a series of barriers, illustrated in Figure 2.

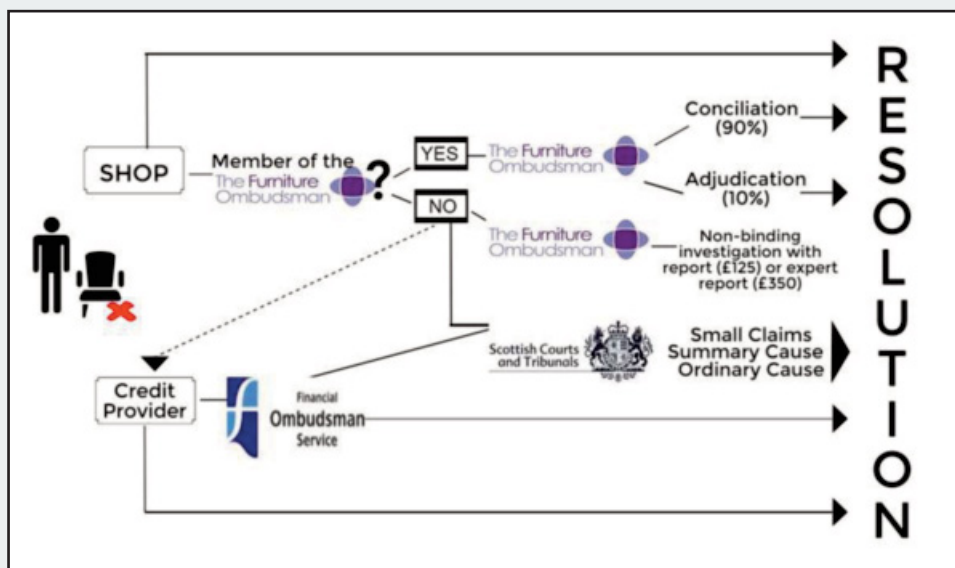


Figure 2. Pathways to consumer dispute resolution

Making 'redress' work is not an easy task. People are complicated and their problems are complex. Before considering the design of redress systems, it is also important to understand the journey consumers take to get into that process. The onus is on the consumer to:

- recognize they have a problem;
- recognize the way to solve the problem;
- choose to pursue resolution.

The task becomes daunting. But there are new developments in Scotland which give hope that the barriers faced by policymakers might be overcome. The Justice Digital Strategy is moving forward at pace and there is much to be learned from the data of ongoing research and consumer organizations like CAS. It is possible to understand what consumers need and together take a strategic approach to administrative justice in Scotland. The result may be that people think that it is 'worth it' to seek redress and find a solution to their problems.

Richard Simmons (Director of MSc Applied Social Research, University of Stirling) noted access to redress as a fundamental consumer principle; nowhere more so than in public services where citizen-consumers have a legitimate ownership stake as well as their user relationship. The discussion of access presumes there are potential issues and barriers to overcome in order to promote this principle. This presentation rehearsed some of these issues and barriers, before going on to examine the kind of redress that is being sought, and how some of the barriers might be considered in the light of these distinctions, and how this might lead to better design of consumer redress.

In terms of the kind of redress being sought, a distinction was drawn between 'material' and 'non-material' redress. Material redress concerns such issues as 'service recovery' and 'financial compensation'. These forms of redress are important and have a role in public services, although the extent to which consumers' perspectives vary was discussed. Non-material redress concerns such issues as 'emotional recovery' and 'relational recovery'. The difficulties in achieving these forms of redress in the current public service environment were discussed. The value of listening to 'alert' consumers early in the

process was presented as a win-win; providing 'proactive redress' for future consumers and saving on scarce resources. The reluctance to listen and learn is identified as a key, and highly resilient, failing in certain service environments. This may be particularly the case where consumers' motivations for seeking redress are collective as well as individual.

The implications for the design of accessible redress for public service users was considered. There are some aspects that depend on an understanding of the 'internal' barriers for consumers, such as a lack of resources, skills, and confidence. There are others that depend on understanding the 'external' barriers that consumers face in their interactions with service providers. These barriers include the nature of the available opportunities for redress, which leads on to discussion of providers' levels of competence and commitment to the provision of meaningful consumer redress, and the extent to which public service cultures are complementary to or incompatible with its achievement.

Finally, there was a suggestion that there is often a lack of congruence between the redress that public service providers are willing and able to provide, and that which is sought by consumers. Where this is the case, the task is not for service providers to simply do the same things they are currently doing, only better. There is a need to review, with consumer involvement, the way to close this gap. This requires an open and transparent discussion that is prepared to face up to the challenges that this agenda presents and find more effective ways to design consumer redress.

The role of ombudsmen and consumer ADR in improving access to redress

In the third theme of the workshop, **Caroline Mitchell** (Lead Ombudsman, Financial Ombudsman Service) said that as an informal alternative to the courts, ombudsmen provide an important service to consumers and citizens in ensuring there is somewhere free where they can go for help if something goes wrong. The Financial Ombudsman Service in the UK is the world's largest ombudsman service with 4000 employees and 300 ombudsmen. Last year the service resolved nearly half a million

complaints. Complaints about the whole range of regulated financial products are covered and the service has the power to make binding decisions, awarding up to £150,000.

The first stage in improving access to redress is making sure people know the organization is there and what it does. The service has worked to demystify the word ‘ombudsman’ and explain how it can help. The organization recognizes the need to adapt its process to suit customers rather than expecting them to fit in with the Service. Not all citizens have the same needs, so a number of different channels have been developed through which people can engage with the Financial Ombudsman Service. The usual first point of contact is by phone or through social media, at which point the Service will then make sure complaints are handled in the best way for consumers.

But businesses are the organization’s customers too. It is important that they know how the service works, what they have to do, and the usual approach to common complaints. The Financial Ombudsman Service holds conferences and seminars for small businesses. Sharing insight is an important part of the organization’s work, since it has a unique view across the whole industry, and can help prevent complaints in the future.

The Financial Ombudsman Service is encountering a number of challenges at the moment. The problems of Payment Protection Insurance (PPI) are well known, and while the number of complaints is declining, there are still 4000 or so new cases each week. New ways of working are being trialled to make sure that the service solves as many problems as possible as quickly as possible. The current business model has served the organization well, but today’s customer expects rapid responses. Lengthy delays are unacceptable in a world in which a financial product can be bought online within minutes.

In conclusion, the presentation considered what the future holds for financial services. Driverless cars have implications for motor insurance, biometric devices could impact on underwriting, and increasing ease of access to products will affect the service provided.

Brian Thompson (Senior Lecturer, University of Liverpool) delivered his presentation on *Public Services Ombudsmen and Access to Redress in Administrative Justice – Realisable Potential?* He defined access to redress in administrative justice as promoting awareness of information about, and supporting people through, the arrangements for resolving disputes with public and governmental bodies as well as dispensing redress and proposing advice to improve service. It was argued that an administrative justice system approach as embodied in the ombudsman could enhance access to redress in administrative justice, but this may be unlikely if the direction of travel is anti-state and austerity policies, and ‘cheap and cheerful’ consumer dispute resolution.

Mark McGinty (Chair, Chartered Trading Standards Institute) focused on consumer ADR in improving access to redress. He described Alternative Dispute Resolution (ADR) as a range of methodologies designed to avoid the need to go to court to enforce legal rights, designed to be cheaper, quicker, and less formal. Organizations across the UK and Europe provide ADR to resolve sales and service contractual disputes between traders and consumers. From 9 July 2015, with the implementation of the new EU Directive, the ‘Competent Authorities’ will be identified to oversee certain trade sectors, and traders will be required to provide consumers with information about an ADR organization that could assist their efforts to secure redress. This information requirement will be ‘triggered’ when the trader cannot resolve a dispute they have with a consumer using their internal processes. Where the dispute transaction falls outside the remit of these Competent Authorities, as delegated by the Secretary of State, the Chartered Trading Standards Institute (CTSI) will be the Competent Authority, with responsibilities for dealing with applications, approval of such ADR organizations, and overseeing their activities. CTSI will also act for the Secretary of State, as the single point of contact for all the UK Competent Authorities.

The changes reflect a moving consumer landscape and the implementation of qualitative controls on access, expertise, independence, impartiality, transparency, effectiveness, fairness, and legality.

The presentation also reflected on experiences of dispute resolution without the need for parties to go to court, and in doing so, illustrated the changing role of Trading Standards professionals over time.

Online dispute resolution (ODR) and access to redress

In the final theme of the workshop, **Peter Taylor** (Operations and Technology Director, Ombudsman Services) examined online dispute resolution (ODR) from different perspectives, including consumers, companies, and Ombudsman/ADR providers. The analysis considered how ODR and associated technological advances were affecting the complaints lifecycle and the methods in which consumers seek redress. The popularity of the online trader eBay has influenced the expectations that consumers have of the speed with which complaint handling organizations respond to requests (some consumers are dissatisfied if they have not received a response within hours), and although they do still want to speak to a person, webchat has been increasingly employed as a means to meet expectations and provide a convenient, timely response for some people. Some areas of complaint which are high volume/low value, such as parking tickets, can be resolved efficiently and effectively using ODR.

Dr Pablo Cortés (Senior Lecturer, University of Leicester) focused on *ODR and Access to Redress for Mandatory Consumer Dispute Resolution*. The implementation of the ADR Directive represents a catalyst for the institutionalization of consumer dispute resolution (CDR) entities that meet the criteria set out in domestic law, which includes processing consumer complaints online. Dr Cortés argued that, while the Directive creates an opportunity to increase the availability and awareness of quality CDR, it also poses the risk of undermining consumer trust in the whole CDR system if traders refuse to participate in CDR processes, greater competition amongst CDR entities leads to forum shopping, and if the procedural guarantees are not adequately monitored. He argued for a legal obligation mandating all traders to adhere to a certified CDR entity, and that these entities, and not the courts, should operate as the first redress option for practically all consumer

disputes, except perhaps for the most complex and high-value cases.

CDR is now becoming an integral part of the civil justice system. The policy behind its promotion is underpinned by two functions: encouraging trade and increasing access to redress. Yet the current sectorial approach to mandatory CDR in many Member States hampers consumer awareness, and indeed it can confuse consumers, especially so under the new information obligations contained in the ADR Directive and ODR Regulation. Accordingly, Dr Cortés advocated that traders are forced to comply with nationally certified CDR entities, before addressing some of the main arguments against mandatory CDR — namely, floods of complaints driving costs up for traders; difficulties in the enforcement of outcomes with reluctant traders; and the parties' restriction to the court, and hence access to justice.

The traders' ability to select the CDR entity could also lead to forum shopping, and Dr Cortés outlined a number of safeguards that be put in place to minimize this risk, including a national single ODR platform, interoperable with the EU ODR platform. This model, already operating in some Member States, would ensure full coverage while providing parties with sector expertise. It is also simpler for consumers, providing a single point of entry and allowing for the signposting of complaints (and not complainants) to certified CDR entities.

Lastly, it was proposed that CDR and courts should enable pathways allowing for synergies that deliver a more holistic and efficient resolution of disputes. When statutory interpretation is at stake a pathway could be used to interconnect CDR entities with the courts and regulators. Courts may also incorporate ADR/ODR processes within their procedures, allowing for informal online resolution when possible. It was suggested that full mandatory CDR/ODR is on its way for the majority of consumer cases.

James Walker (Chief Executive Officer, Resolver) delivered his presentation on *Helping to create access to effective and efficient redress*. In order for consumers to access redress, they must identify the right organization to approach at the right time, an

undertaking that is complicated by the fact that the consumer support landscape is complex and assumes the consumer has access to a perfect set of knowledge at the right time to make the right decisions. Rather than supporting the consumer when an issue cannot be resolved, instead Resolver is designed to proactively help and support the consumer from the moment they raise their issue, ensuring they know their rights, what to do, and when. If an issue is not resolved, Resolver signposts consumers to sources of independent redress. Providing an effective case for independent assessment means more effective (and cost-effective) decisions can be delivered that are fair for the consumer and the business.

Conclusions

The organizers have drawn the following conclusions from the many views on designing consumer redress which were shared during the workshop. It is hoped that these will be of value to academics, practitioners, and policymakers as the ombudsman and ADR landscape continues to develop during the implementation of the ADR Directive and ODR Regulation.

Designing systems to enable more consumers and citizens to access redress presents a particular challenge for organizations. Presenters acknowledged the complexity of the redress landscape and recognized that, as the ADR Directive is implemented, new developments could further complicate the options available for consumers. The importance of focusing on the needs of the consumer or citizen for effective redress design was emphasized, including the provision of a range of access channels. There was a desire to simplify the landscape, the adoption of a 'can do' approach, and assistance to consumers to make it easier to reach the most appropriate organization to assist with their complaints. Solutions may include a single gateway for consumers. One example is the proposal to develop a Consumer Ombudsman for Scotland. Uncertainties and concerns for the future include the possible effect of public spending cuts on the resources allocated to redress mechanisms, and the effects of further devolution. Internal barriers for consumers such as a lack of resources, skills, and finance were highlighted, in addition to external

barriers including the nature of available opportunities for redress.

This workshop provided the opportunity to learn from effective policy and practice, empirical research, and new thinking around models which may facilitate a more structured approach for future developments. Models and policy toolkits may help to shape redress systems which are more consumer-citizen focused and based on a coherent set of principles, design choices, and approaches. Effectively designed access to good information, advice, support, and signposting may provide one solution to make a positive improvement in the consumer experience throughout the complaint process. Ultimately, people should think it is worth the effort to complain and seek redress.

Consideration needs to be given to the congruence between the redress sought by consumers and that which services are willing to provide.

The ADR Directive was perceived as a catalyst for the institutionalization of consumer dispute resolution. The Chartered Trading Standards Institute (CTSI) is overseeing the development of Competent Authorities in the UK, and the process for approval has commenced. It was argued that it should be mandatory for all traders to be members of a certified ADR entity. Innovative technological solutions are expected to play an increasingly important role in effective consumer redress design in future.

In addition to the points noted above, a number of areas with implications for policy were identified:

- Future institutional design should be informed by principle and not left to 'the market', technocratic solutions, or incremental tinkering.
- Values and vision should be scrutinized and a measure of consensus achieved (i.e. the aim should be a shared vision of civil, administrative, and social justice).
- Environmental analysis is an essential precursor to design.
- An holistic, not just single institution-specific, approach is needed.

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- Empirical research should be employed to identify consumer needs, as well as wants.
 - All ADR bodies should share the insights from complaints with organizations/sectors.
 - The distinctive characteristic of the 'ombuds' institution requires further elaboration and dissemination.
 - The title 'ombudsman' should itself be open to critique and, if necessary, refinement.
 - Ombuds schemes in the UK need to have a more significant impact as agents of change.



The Foundation

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