

Nick Mawhinney
Consumer and Competition Policy
Department for Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

4 June 2014

Dear Mr Mawhinney

**BIS CONSULTATION ON ALTERNATIVE DISPUTE RESOLUTION FOR CONSUMERS
Implementing the Alternative Dispute Resolution Directive and Online Dispute
Resolution Regulation**

Thank you for the opportunity to comment on the proposals set out in the above document.

The Parliamentary and Health Service Ombudsman (PHSO) investigates complaints by individuals that government departments, a range of other public bodies in the UK, and the NHS in England, have not acted properly or fairly or have provided a poor service. We are independent, impartial, and an integral part of the administrative justice system.

Our understanding is that much of our work is outside the scope of the directive and we will not, therefore, be responding directly on the questions posed in the consultation. However, we would like to comment on some of the issues the Directive raises for our organisation.

Competent Authority

We welcome the opportunity created by the competent authority to set and enforce high standards in ADR provision. We would point out that in line with other competent authorities, such as the Medicines and Healthcare Products Regulatory Agency, we would expect that body or bodies to fall within our jurisdiction and as such to have regard to the Ombudsman's Principles of Good Administration and Good Complaint Handling.

Public/private provision of services

You will be aware of the increasing complexity of public service delivery, including the commissioning of private and third sector providers. Our legislation allows us to follow the public pound and, whilst private companies are not directly within our jurisdiction, we often find ourselves investigating actions they have taken on behalf of the commissioning government department, agency or other public body.

It is therefore important to recognise that in certain situations the consumer will not only have rights under the directive but will also have rights as a citizen and access to redress through the administrative justice system.

For example, when a hospital trust receives a complaint about car parking at a hospital it will have to investigate the complaint under the NHS complaint regulations and then signpost the person complaining to this Office. Our understanding is that under the Directive the trust will also have to either refer the complaint to an approved ADR provider or give information about approved ADR providers to the person complaining, despite not intending to refer the complaint to the approved provider. We are unclear about how this process will work in practice and are concerned that it will create an unnecessary extra tier in the complaints process and that it will be confusing for the people making complaints.

Ombudsman schemes that cover the public/private sector

There are an increasing number of national Ombudsmen schemes that have a wide jurisdiction and are likely to receive a mix of complaints that do or do not fall under the Directive. This is becoming more of a possibility in England with the calls for the simplification of the ombudsman landscape and where we have already seen the extension of public service Ombudsmen schemes to privately funded services, such as the extension of the Local Government Ombudsman's jurisdiction to privately funded social care.

To help address the potential for confusion there needs to be clear guidance on the boundaries between public and private delivery of services and the extent of the directive. I would very much like my Office to be involved in any discussions about the development of such guidance and would ask that you liaise with my Head of Parliamentary Policy and Insight, Rebecca Milner, who can be contacted on 0300 061 1507 about this matter.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Julie Mellor', with a stylized flourish at the end.

Dame Julie Mellor, DBE

Parliamentary and Health Service Ombudsman