

National Conciliation Service Annual Activity Report 2020 – 2021

The National Conciliation Service (NCS) are Chartered Trading Standards Institute (CTSI) certified providers of Alternative Dispute Resolution (ADR) for consumers. All as defined under the *Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015*

Schedule 5 of the regulations require ADR entities to publish an annual activity report. The following information is the NCS's sixth year activity report in accordance with these requirements and covers the period 1st October 2020 to 30th September 2021.

The NCS deals with consumer disputes within the retail motor sector concerning contractual obligations in sales and service contracts, when one party is a *consumer* resident in the UK (or the EU) and the other party is a *trader* established in the UK, (although the vast majority of disputes we deal with are entirely UK based). During the period 1st October 2020 to 30th September 2021, the NCS assisted consumers with approximately 1220 disputes and provided ADR for 331 domestic disputes (a)

The disputes dealt with during this period covered a wide range of complaints. The 2 main areas of consumer complaints related to *Vehicle Repair* at 36.9%, closely followed by the *Sale of Second-Hand Vehicles* at 36.5%. Data also showed complaints relating to *Vehicle Servicing* 2.7%, *Rejection of a Vehicle* 11.5%, and complaints relating to *Charges* (price charged) 3% (b). The number of complaints discontinued by a consumer after being assigned were fewer than 1% (f)

Compared to last year's figures. The number of complaints relating to the *Sale of Second-Hand Vehicles* showed the biggest increase up from 27.5% in 2019/20 to 36.5% 2020/21. This was followed by *Vehicle Repair* which showed a smaller increase from 32.8% in 2019/20 to 36.9% in 2020/21.

Other categories appeared much the same. And although there was a slight reduction in complaints relating to the *Rejection of a Vehicle* which was down from 14.7% to 11.5%. We believe that this indicates that dealers of second-hand vehicles in general have become more aware that in some circumstances consumers have a right to reject a vehicle (under CRA 2015). And while our data shows an increase in complaints relating to *Second-Hand Vehicle Sales* which were up 17% compared to 2019/20. We believe this can be partly explained by the fact that vehicle showrooms that were closed for long periods during the Covid-19 pandemic opened again (b)

The NCS has not refused to deal with any dispute that met with our operational criteria and authorisation. The number of disputes over the period that were referred or refused totalled 20. Of these 2 (10%) were referred to the appropriate providers of AD. 6 (30%) on the grounds they were too complex or needed legal opinion. 4 (20%) were referred to the FOS. 4 (20%) because they were outside the 12-month time limit. And 3 (15%) because the trader did not subscribe to the NCS for ADR (e) And no dispute resolution procedures were discontinued due to operational reasons (f)

The rate of compliance with disputes that we have negotiated a mutually agreed settlement to and disputes that are *binding* is 100% (h). And we believe the rate of compliance in relation to *non-binding* disputes to be very high, although we have no specific data. Despite the continuing disruptions caused by Covid-19 restrictions, the average time the NCS took to resolve a dispute is within 31 days from receiving a 'complete' case file (g)

The number of disputes we assisted consumers with totalled 1220. Of these 331 cases were assigned to an NCS Independent Case-handler for ADR. This figure was slightly lower than 2019/20 when we dealt with 375 cases. The disputes we have dealt with via ADR over the last 2 years is over 50% fewer than in 2018/19. We believe this is mainly due to the frequent disruption both businesses and consumers have suffered over the last two years caused by the restrictions imposed by government due to the Covid-19 pandemic. The pandemic caused many businesses to stop or reduce trading for long periods, and uncertainty for consumers. Consequently, the disruptions during this period has made it difficult to accurately comment on how the data reflects to previous years, and on the industry as a whole.

During this period the work normally undertaken by the NCS and the *Retail Motor Industry Federation (RMIF)* to improve standards in the sector by way of seminars etc., was to some extent put on hold,

although virtual conferencing did to some extent fill the gap. However, things are now beginning to get back to a more normal footing, and the NCS and RMI are both working hard via advertising and seminars conferences etc., promoting the benefits of ADR to both business and consumers. The NCS believe that both parties are becoming increasingly aware of ADR in general, and the benefits of free or low cost independent dispute resolution (d) This includes explaining the right of 'consumer redress' which has been clarified and/or enhanced by the relatively recent changes in consumer legislation, most notably the *Consumer Rights Act 2015* (d)

The NCS continue to cooperate with other ADR entity's including the *Financial Ombudsman Service* and consumer organisations such as *Citizens Advice* who we are currently in discussion with. Alongside many other businesses and trade organisations that are involved in improving ADR services and resolving consumer to business disputes

The NCS continues to look at ways of improving the service we offer to consumers and traders alike and hold regular meetings and training sessions to ensure our case handlers are fully aware and conversant with consumer to trader rules and regulations. All are NCS case handlers are highly experienced in this sector, and some of our conciliators and managers have undertaken a course of study for a *Professional Certificate in Ombudsman & Complaint Handling Practice* run by Queen Margaret University Edinburgh. We also arrange regular training sessions for our case handlers including training sessions by a Trading Standards approved specialists who provides training on Consumer law and ADR legislation. This is to help ensure that all case-handlers are up to date and fully conversant with *Consumer Legislation* and ADR best practice. The NCS is a Corporate Members of the *Chartered Trading Standards Institute*, and all case-handlers are members of the *Institute of Consumer Affairs (ICA)*, and all abide by the *European Code of Conduct for Mediators* (d)

The NCS continues to look at ways to improve standards in the retail motor sector and we participate in ADR seminars emanating from the UK and Europe where best practice is shared by the participating ADR entities and stake holders. And whilst we understand the many difficulties businesses have endured over the past two years and the improvements that have been made by many. We would suggest that still more could be done by some trade associations in this sector to promote not just the legal requirement for their members to comply with ADR legislation, but also the benefits ADR can bring to their business by way of better consumer relations and reduced dispute costs. Unfortunately, this aspect of ADR is still not promoted enough if at all by a few associations who continue to look at ADR in general as a hinderance to the sector rather than an asset (d)

The NCS continue to improve our website to make it easier for consumers to both access information and submit complaints to the NCS. These changes which are always ongoing have streamlined our process significantly and has already resulted in a more efficient procedure that has reduced the number of claims that were inappropriate for our services. This has been achieved by making sure consumers are more aware of the complaints we can deal with from the onset, and by signposting them to the correct channel of redress

Response times by traders have improved now that the Covid restrictions have been lifted. But it is clear that many businesses are still suffering by way of loss of staff and a reduction in sales over the last two years. However. Although we have had some further success during the last 12 months convincing businesses to the contrary. Some traders are still reluctant to engage in the NCS process of 'legally binding Arbitration' when the NCS ADR process of Conciliation/Mediation has been unsuccessful. As Arbitration is often offered to both parties by the NCS as a legally binding and cost-effective alternative to litigation via the civil courts) (c)

This 'reluctance' to comply with binding Arbitration by a some businesses appears to coincide with a dispute/claim that is in excess of £10,000 which is commonly known in England & Wales as the 'small claims limit', and as such is subject to 'fixed costs'. But all claims over £10,000 exceed this 'fixed costs' limit. Therefore, it can be extremely expensive for a consumer to take a business to court due to the fact that legal costs could be substantial.

This can be avoided by the NCS process of legally binding Arbitration, as the fees to both parties are less than the civil courts and legal costs are not allowed. Furthermore, and unlike the courts. The *NCS Independent Panel of Arbitrators* specialise in dealing with disputes that affect the retail motor sector. And although there could be several valid reasons for a business to refuse Arbitration. We

believe that on occasion and usually after taking advice from a solicitor or one of the companies offering 'legal advice' to the sector. The trader will refuse Arbitration on the advice that the consumer will not pursue the matter via the civil courts due to the potential legal costs to the consumer should they be unsuccessful. Unfortunately, and as reported last year. This action is often instigated by a number of 'legal advisory' businesses who often describe themselves as 'Lawyers' and advise traders to ignore or refuse the CTSI certified process of ADR and await civil action by the consumer (which in cases involving disputes of over £10,000 is extremely rare) (c)

On a positive note, and despite the problems traders have experienced over the last two years. The NCS believes that knowledge of ADR is improving within the sector. As there has been a clear drop in the number of complaints that have been referred to the NCS relating to many of the trade organisations we represent for ADR. Particularly with regards to business organisations that are associated with the RMIF. We believe this is due to improvements in the business associations internal complaint handling procedures, which in turn has reduced the number of consumers who need to be referred to the NCS. We believe this to be a clear indication that ADR legislation is improving complaint handling standards within the retail motor sector as a whole

To help ensure these improvements in the sector continue. The NCS continues to attend industry trade seminars, training events conferences etc., and the *Retail Motor Industry Federation* (RMIF) continue to issue regular bulletins and reminders regarding the NCS and ADR to all their subscribers and the retail motoring sector in general. Covering not only the legal requirement to comply with ADR legislation, but also the benefits that CTSI certified ADR can bring to both parties. However, we believe more still needs to be done. (d)

As both consumers and businesses become more aware of the option and/or requirement for both parties to consider ADR before resorting to legal action. And although there has been a reduction in the complaints received from many of the traders we represent. We believe that as awareness of ADR alongside relatively new consumer legislation such as CRA 2015 increases. It is inevitable that there will be an increase in complaints in this sector for a number of years to come. This increase may be used by some media outlets to show a decline in standards within the sector, but we believe the opposite to be true

We also believe it relevant that 'prior' to ADR legislations and the introduction of CTSI certified ADR in 2015. Once a dispute with a trader had reached a deadlock consumers had little alternative but to pursue the matter via the civil courts. And although many a 'letter before action' were sent to traders as a final resort by the consumer. Very few resulted in court action due to consumers general reluctance to resort to litigation via the civil courts. However, now as consumers become more aware of the option of free or low-cost ADR. Many complaints that previously would not have been pursued further will be referred for ADR. Although this is an excellent change for consumers. It should also be noted that it also makes it easier for complaints of little or no merit along with complaints of a vexatious nature to proceed to ADR

It should also be acknowledged that the majority of traders within the associations we represent settle all disputes without the need for ADR. Although the fact that a dispute has been referred by a consumer to the NCS does not automatically imply that the trader in question has been at fault of course

Finally, and unrelated to UK ADR or CTSI compliance regulations. The NCS are also subject to an Annual Audit and regular inspection by an *Independent Compliance Panel* (ICP) that is chaired by ex-Senior Trading Standards Officer Mr Jim Appleton. Unfortunately, due to recent unforeseen events Mr Appleton has been unable to conduct the Audit to date, and it has now been rescheduled to take place in January 2022

In previous years Mr Appleton and the panel has found that the NCS operate to the highest standards of ADR available to consumers in this sector, and we are confident that Mr Appleton findings will be similar to previous years. Either way, a copy of Mr Appleton's report will be duly published on our website and available upon request as soon as it is available