



Department  
for Business  
Innovation & Skills

## Consultation Document

### Implementing the Alternative Dispute Resolution Directive and Online Dispute Resolution Regulation

**Response from:**

***British Vehicle Rental and Leasing Association***

River Lodge

Badminton Court

Amersham

BUCKS HP7 0DD

Tel: +44 1494 434747

Fax: +44 1494 434499

E-mail: [info@bvrla.co.uk](mailto:info@bvrla.co.uk)

Web: [www.bvrla.co.uk](http://www.bvrla.co.uk)



## Response to Department for Business Innovation and Skills

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### ***Bona-fides***                      **BVRLA, the industry and its members**

- Established in 1967, the British Vehicle Rental and Leasing Association is the UK trade body for companies engaged in the rental and leasing of cars and commercial vehicles. Its members operate a combined fleet of 3.3 million cars, vans and trucks.
- BVRLA members buy nearly half of all new vehicles sold in the UK, supporting around 184,000 jobs and contributing more than £14bn to the economy each year.
- By consulting with government and maintaining industry standards, the BVRLA helps its members deliver safe, sustainable and affordable road transport to millions of consumers and businesses. For more information, visit [www.bvrla.co.uk](http://www.bvrla.co.uk).

### **Executive Summary**

The BVRLA welcomes the opportunity to comment on the Department for Business Innovation and Skills (“BIS”) consultation on implementing the Alternative Dispute Resolution (“ADR”) Directive and Online Dispute Resolution Regulation (“ODR”).

We support the implementation of the directive and believe that wider availability and access to approved ADR schemes will, over the longer term, help to reduce legal costs associated with court proceedings and enhance access to justice in a fair manner.

Having reviewed the guidance and checklist issued by BIS, we remain confident that the BVRLA’s conciliation service will meet the requirements outlined by the proposed directive. There are, however, a number of specific areas which we believe require further clarification which we raise in our reply.

**Use of BVRLA conciliation for non-member disputes** – we believe it would be in the consumers interest for the BVRLA to investigate complaints raised against vehicle rental or leasing firms that are non BVRLA members. The BVRLA would not only be able to use its industry knowledge and expertise to ensure the matter is thoroughly investigated, but in doing so we can utilise our experience to ensure a fair and reasonable outcome is delivered.



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**Guidance on consequential losses** – As part of our complaint investigation, the BVRLA aims to assess and evaluate whether any disputed charges are valid and lawfully raised. The BVRLA does not however currently award compensatory payments or consequential losses, and would welcome BIS's clarification as to whether or not the proposed ADR schemes will be required to consider awarding such payments.

**Allow businesses to refer complaints to an ADR scheme** – We believe that businesses, especially SMEs, should also be eligible to refer complaints to an approved ADR scheme. This would not only ensure that business customers can benefit from such schemes, but in doing so then not incur costs associated with court proceedings and be afforded greater access to justice.

### **BVRLA Conciliation Service**

The BVRLA's conciliation service is well-established, and has over 15 years of experience in handling and resolving disputes between our members and their customers. This has not only helped to strengthen our mandatory Code of Conduct, but has offered dissatisfied customers access to a cost effective and efficient dispute resolution service.

Our conciliation service is available to our members' customers who remain dissatisfied with the firm's final decision regarding a contractual dispute. Our service is available *free* of charge to our members' customers. Either party to the dispute is eligible to refer the matter to our conciliation service.

Customers are normally made aware of our conciliation service by either a direct referral being made by our members, the BVRLA website or by consumer bodies, such as the Citizen Advice Bureau. In addition, the European Consumer Centre and the European Commission are also aware of our conciliation service, with their website providing details of our service.

Our [Code of Conduct](#) is mandatory on our members and adherence to it is a strict condition of membership of the BVRLA. As part of our Code of Conduct, our members are required to ensure that they have in place an effective complaints procedure which must include access to the BVRLA's conciliation service to their customers.

The conciliation service in the first instance, provides an informal conciliation procedure, where information is requested from the member and the complainant with regards to the unresolved dispute. The BVRLA then offers its comments and recommendations based on the information given by both parties.



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Should either party remains unhappy with the outcome of the initial findings then a formal conciliation procedure can be invoked. All relevant details will be promptly forwarded to a Conciliation Committee, a body whose members are appointed by the Committee of Management of the Association. Decisions made by the conciliation service are binding on our members but does not restrict a consumer's right to take formal legal proceedings through the courts.

On average the BVRLA considers approximately 550 UK complaints per annum.

The BVRLA is pleased to report that it has received positive feedback from the European Consumer Centre in Spain and Ireland in its published reports on car rental. The European Consumer Centre in Ireland recommended that the BVRLA conciliation service model was developed in the Republic of Ireland. The Spanish ECC report was complimentary about the BVRLA's development of a standard rental contract in conjunction with the UK's Office of Fair Trading.

### **European Car Rental Conciliation Service (ECRCS)**

The European Car Rental Conciliation Service was launched on 1 July 2010 to help rental customers with unresolved complaints relating to a cross border vehicle rentals within the European Economic Area.

The following pan-European vehicle rental firms, Avis, Budget, Europcar, Hertz, Sixt, Citer, Enterprise, Firefly and Alamo currently subscribe to this service and it is available to their customers who have exhausted the firm's own complaint procedure and the matter remains unresolved.

The above-mentioned rental firms have appointed the British Vehicle Rental and Leasing Association, in light of the experience in operating an effective conciliation service in the UK, to manage and operate the ECRCS.

The ECRCS aims to resolves disputes between the participating rental company and their customer in an efficient and cost effective manner.

The service is an alternative dispute resolution service to formal legal proceedings and there is no cost imposed on the customer for using this service.

The service investigates potential breaches of the agreed [Code of Best Practice](#), which sets out the standards it expects from the vehicle rental industry. These standards cover areas including advertising, customer information, vehicle condition, pre- and post-rental inspections and billing.

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The conciliation service is unable to investigate any matters which are criminal in nature or fall outside the scope of the code of best practice. The conciliation scheme does look at securing restorative justice, on a similar basis to the UK's conciliation service.

### Specific Comments

#### UK ADR landscape

**Q1. Do you think there are any significant gaps in the provision of ADR in the UK? Please identify any sectors where you think the provision of ADR is insufficient.**

From our industry's perspective, the only gap we are aware of is in relation to firms that are not members of the BVRLA. Customers of a non-BVRLA member that remain dissatisfied would either seek assistance from their local trading standards officer or consider taking legal action through the courts.

UK consumers who remain dissatisfied with a financial product or service may be able to refer their complaint to the Financial Ombudsman Service.

#### ADR for every consumer dispute: Do nothing

**Q2. Do you agree that the current provision of ADR in the UK is not enough to meet our obligation to have ADR available for all consumer disputes? If you disagree, can you advise which ADR schemes are suitable to handle all disputes, and whether there are limitations to the number of disputes or type of dispute that these schemes could handle? Would these schemes be able to process an increased volume of disputes within the 90 day deadline for concluding disputes set by the Directive?**

We agree that the current provision of ADR across the UK would be insufficient to meet the Government's obligations under the directive.

#### Residual ADR

**Q3. Can we expect businesses not currently obliged to use an ADR scheme, to refer complaints to a voluntary residual ADR scheme? What steps could Government and others take to encourage businesses to use a voluntary ADR scheme?**

We would suggest that the commercial benefits of using a voluntary ADR scheme would need to be presented to UK firms, namely that this would offer a simpler and cost effective alternative to legal proceedings, but would also help enhance their reputation.



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If all UK firms were required to pay an annual fee to access an ADR scheme, then we believe there would be a greater propensity to use the scheme.

### **Q4. What volume of enquiries and/or disputes could we expect a voluntary residual ADR scheme to receive?**

We do not have sufficient knowledge on the volume of enquiries and/or disputes that a voluntary residual ADR scheme would receive. We would suggest that BIS could more accurately assess this aspect by looking at the enquiries made by consumers to Citizens Advice Bureau.

It may be helpful to advise that we currently reject around 260 enquiries/complaints each year from consumers with regards to complaints against rental or leasing firms that are not members of the BVRLA.

### **Q5. Is there a specific operating model that a residual ADR scheme should adopt (e.g. mirror existing ombudsman models)?**

We would suggest the model currently provided by Financial Ombudsman Service is considered as a basis for a residual ADR scheme. Such an approach would of course require all businesses using the residual ADR scheme to sign up and contribute to annual fees. Such an approach would also offer an incentive to subscribing firms to promote the ADR scheme.

### **Q6. Can you suggest what an appropriate maximum and minimum settlement value for a residual ADR scheme should be? How have you arrived at these figures?**

As the BVRLA conciliation service does not award compensation we do not impose maximum and minimum settlement values. Our scheme also does not consider personal injury claims.

### **Q7. What funding model would be appropriate for a residual ADR scheme? Can an ADR provider operate effectively if it is reliant on case fees rather than annual fees?**

No, as previously indicated, we believe an annual fee payable by subscribing firms would create an incentive to use a residual ADR scheme. We do not believe a case fee charging structure would be on its own sufficient. Such an approach would not help fund the fixed overheads or standing costs associated with the scheme.

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**Q8. Should a standard case fee be adopted? What would be an appropriate level? If not, how should the amount charged for each dispute be determined?**

No, we believe a standard case fee would not be appropriate given the diverse and complex nature of the business sectors eligible to use the scheme. A possible approach would be to determine an hourly rate for reviewing each case – this would enable simple straightforward cases to be charged at a lower rate compared to cases that are more complex in nature.

**Q9. Would it be better to have a single ADR body or several ADR bodies operating a residual ADR scheme? What would be the ideal number and what are the reasons for this?**

Our view is that a single ADR body would find it difficult to adjudicate on all the various business sectors and as such would be unlikely to deliver a fair and equitable outcome. The expertise that would be required would make a single body very resource intensive with a panel of specialists being required. This could make the scheme very costly to operate.

We would therefore suggest that trade bodies, such as ourselves, would be better positioned to provide residual ADR to non-members in the business sectors that they represent. For example we would be happy to look at providing an ADR service to non BVRLA members provided they agreed for the complaint to be judged against industry best practice and trading principles. We would also ensure such firms abide by the decision reached by our ADR service.

### **Better signposting for consumers – a complaints “helpdesk”**

**Q10. In light of the other requirements in the ADR Directive which are intended to assist consumers, would a consumer-facing complaints helpdesk be beneficial?**

Yes we believe a helpdesk would be beneficial as it could help consumers to be better informed and advised as to the most appropriate approved ADR scheme which can look at their complaint.

**Q.11 Do you have any comments on the type of service it should provide and the extent to which it should examine the enquiries it receives?**

We would suggest a helpdesk should offer a signposting service to point consumers in the direction of the most appropriate ADR service for their needs. This could be done via a centralised database accessible to all users on the helpdesk.

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**Q12. Rather than attempt to create a new service, which existing service or body is best placed to provide this function?**

We would suggest that Citizens Advice Bureau would be ideally suited to offer this helpdesk service.

**Q13. How could a helpdesk be funded?**

An element of the fees from the ADR scheme could be used to fund the helpdesk.

### **Appointing a competent authority**

**Q14. Do you agree that regulators should act as competent authorities for the ADR schemes that operate in their sectors?**

Yes, we would support this approach as regulators are best placed in terms of their knowledge to act as competent authorities

**Q15. How should the fees paid by ADR providers to a competent authority be determined? Should the size of the fee depend on the size of the ADR provider (for example turnover or number of cases dealt with) or based on other factors?**

The fees paid should be based on the volume of cases dealt with; this seems to be a fair way to determine what a provider should pay to a competent authority.

### **Procedural rules for refusing disputes**

**Q16. Do you agree that the Government should allow UK ADR providers to use all of the procedural rules listed in Article 5(4) of the ADR Directive to reject inappropriate disputes? If not, please explain your reasons.**

Yes - we agree all these reasons should be used by UK ADR providers.

### **Information requirements**

**Q17. Would some suggested wording and guidance be useful in helping businesses meet these requirements? What kind of wording would be helpful?**

We would like to see some detailed guidance published by BIS which includes helpful practical examples. We believe that this would be particularly helpful with regards to some of the more subjective reasons for rejecting a complaint such as “the complaint is frivolous or vexatious “.

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We believe this is open to interpretation and could be the subject of further disputes if an ADR provider refused to look at the complaint on grounds, which are disputed or challenged by the consumer.

### **Online Dispute Resolution Contact Point**

**Q18. Do you agree that the ODR contact point should only be required to assist with cross border disputes involving a UK consumer or UK business?**

The ODR contact point should be applicable to cross-border complaints.

**Q19. Should the ODR contact point be allowed to assist with domestic complaints on a case-by-case basis?**

We believe that it would be better for the ODR contact point to refer complaints to Citizens Advice Bureau who would be best placed to offer advice on UK domestic issues

### **Impact on limitation and prescription periods**

**Q20. Do you agree that, where applicable, we should extend the six year time limit for bringing disputes to court by eight weeks, and mirror the amendment made to implement the Mediation Directive? If not, please explain why a different extension period is preferable.**

We agree - for consistency the time limits should also be the same.

**Q21. Are you aware of any sector specific legislation which contains time limits for bringing cases to court which we may also have to amend?**

Not as far as we are aware.

### **Scope of ADR: in-house mediation**

**Q22. Do you agree that in-house ADR should not form part of the UK's implementation of the ADR Directive? If you disagree can you please explain why?**

We believe that in-house ADR should not form part of the UK's implementation of the ADR Directive as this may not be seen by consumers to have the appropriate level of independence and objectivity.

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### **Binding decisions**

**Q23. Do you agree that the UK should allow certified ADR providers to make decisions that are binding? If you disagree can you please explain why?**

Yes we support this view, especially as it allows the ADR to have teeth and hold businesses to account.

### **Applying the ODR Regulation to disputes initiated by business**

**Q24. Do you agree that the ODR Regulation should only apply to disputes initiated by a consumer, and should not apply to disputes initiated by a business? If not, can you please explain why?**

We believe that both businesses and consumers should be able to refer complaints to an ADR provider. If businesses are not able to refer complaints to an ADR provider then their only recourse is to take a consumer to court, which would devalue the benefits of having an ADR provision in place. We would recommend that the regulation is amended to allow businesses or consumers to refer disputes to an ADR provider.

### **Closing Comments**

We welcome the opportunity to continue our constructive dialogue and look forward to working with the department as it implements the Directive.

### **Leasing Members**

In general, vehicle leasing is an arrangement where the user simply hires the use of the vehicle and assumes operational responsibility for a predetermined period and mileage at fixed monthly rental from the owner (the leasing company). Legal ownership is, in the majority of cases, retained by the leasing company.

### **Short Term Rental Members**

Rental Members offer hourly, daily, weekly and monthly rental of vehicles to corporate customers and consumers. As explained above, rental members are the owners of the vehicle.



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**Response from:** British Vehicle Rental and Leasing Association  
**Address:** River Lodge  
Badminton Court  
AMERSHAM  
Bucks HP7 0DD

**Contact:** Mr Jay Parmar, legal and policy director

**Phone:** +44 1494 545706

**Fax:** +44 1494 434499

**Email:** [jay@bvrla.co.uk](mailto:jay@bvrla.co.uk)