

National Conciliation Service Annual Activity Report 2019 – 2020

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 fifth year activity report in accordance with these requirements and covers the period 1st October 2019 to 1st October 2020.

The NCS can deal 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 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 2019 to 1st October 2020, the NCS dealt with 375 (a) domestic disputes

The disputes dealt with during this period covered a wide range of complaints. The main area of consumer complaints during this period related to the *Vehicle Repair* 32.8% followed by the *Sale of Second-Hand Vehicles* 27.5% Data also showed complaints relating to *Vehicle Servicing* 5.9%, *Warranty Issues* 2.4% and *Rejection of a Vehicle* 14.7% (b). The number of complaints discontinued by a consumer after being assigned were fewer than 1% (f)

Compared to last year's figures, data showed a reverse in order of complaints with *Vehicle Repair* being the greatest at 32.8% (22.5% last year) exceeding the *Sale of Second-Hand Vehicles* at 27.5% (41.7% last year). And although other categories appeared much the same. *Rejection of a Vehicle* increased significantly to 14.7% (from 4.3%), which we believe is a clear indication that consumers are becoming more aware of their rights under CRA 2015 (c). As to the reverse in order of the two main complaints. We believe this might be explained by the fact that many vehicle showrooms closed (as explained further below) and the sale of vehicles declined. Whilst many service & repair outlets remained open (although less busy) (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 27. 15 (55.5%) were referred to more appropriate providers of ADR, 8 (29.6%) on the grounds they were too complex or needed legal opinion, and 3 (11.1%) because the trader did not subscribe to the NCS for ADR (e) And no dispute resolution procedures were discontinued due to operational reasons (f)

We believe the rate of compliance in relation to *non-binding* disputes to be very high although we have no specific data. The rate of compliance on cases that are *binding* we believe to be 100% (h). And the average time to resolve a dispute is approximately within 35 days from receiving a 'complete' case file despite the disruption caused by Covid-19 restrictions. (g)

The number of cases we actually dealt with declined significantly during this period by 58% compared to 2018 - 2019. In the main we believe this to be due to the enforced lockdown and ongoing government restrictions caused by the Covid-19 pandemic, when many retailers in this sector closed completely or reduced trading. It is also apparent that consumers used their vehicles far less during these periods, MOT renewals were given an extension by government, and both the purchase and service & repair of vehicles suffered a decline. Consequently, the disruptions during this period has made it difficult to accurately comment on how the data reflects to previous years, or on the industry as a whole.

During this period the work usually undertaken by the NCS and the *Retail Motor Industry Federation (RMI)* to improve standards in the sector by way of seminars etc., has to some extent been put on hold. Although virtual conferencing has to some extent filled this gap and is now fast becoming the norm with indications of some early success. (d). Nevertheless, we believe that complaints in general will continue to increase in the long term due to consumers ongoing and increasing awareness of the availability of free or low-cost ADR and their enhanced rights of redress made clearer by recent changes in consumer legislation, most notably the *Consumer Rights Act 2015*

The NCS continue to cooperate with other ADR entity's including the *Financial Ombudsman Service*, and consumer agencies such as *Citizens Advice* and other ADR entities involved in resolving consumer to trader disputes

We are continually looking 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. Some of our conciliators and managers have previously undertaken a course of study for a *Professional Certificate in Ombudsman & Complaint Handling Practice* run by Queen Margaret University Edinburgh. And we arranged regular training sessions for our case handlers including training sessions by a Trading Standards approved specialist who provides training on Consumer law and 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* and all abide by the *European Code of Conduct for Mediators* (d)

Although the UK is no longer a member of the EU. The NCS will continue to look at ways to improve standards in this sector and look to participate in online ADR seminars emanating from the UK and Europe where best practice is shared by the participating ADR entities and stake holders. We would also suggest that 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, but also the benefits ADR can bring to their business by way of better consumer relations and reduced legal costs. Unfortunately, this aspect of ADR is not promoted enough if at all by a few associations, who appear to look at ADR in general as a hinderance to the sector rather than an asset (d)

The NCS continue to improve our website making it much easier for consumers to both access information and submit complaints to the NCS. These changes which are 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 most appropriate channel of redress

Unfortunately, of late we have noticed an increasing (but understandable) delay in response time from some traders. Again, this can be easily explained by the continuing fallout from Covid-19, and the salient fact that 'dispute resolution' may not be high on the agenda of businesses in this sector who have been forced to make staff redundant or are struggling just to survive. However. We have also noticed a marked reluctance by some traders to engage in the NCS process of legally binding Arbitration which is often offered to both partis as legal and cost-effective alternative to litigation via the civil courts. (c)

This 'reluctance' to comply with Arbitration. Appears to coincide with a dispute/claim in excess £10,000 which is commonly known as the 'small claims limit' and as such is subject to 'fixed costs' in the civil courts. However, claims over £10,000 exceed this 'fixed costs' limit. Consequently, it can be extremely expensive for a consumer to take a business to court due to the possibility that the legal costs could be substantial. This can be avoided by the NCS process of Arbitration as the fees are less than the courts, and 'legal costs' are not allowed. Furthermore (and unlike the courts), the NCS Arbitrators specialise in dealing with disputes within this sector. And although there could be several valid reasons for a business to refuse Arbitration. On occasion, we believe that a trader may refuse Arbitration on the assumption that the consumer will not pursue the matter via the civil courts due to the potential costs to the consumer. (c)

Although we believe that standards are definitely improving. Data continues to show a lack of knowledge by many traders regarding their legal obligation to comply with UK ADR legislation. However, it must be acknowledged that this is a problem with all sectors and not just the retail motor industry who appear to have welcomed this new legislation far better than many others. Nevertheless, this is still not helped by many 'legal advisory' businesses advising traders to ignore 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)

To help address these problems the NCS have regularly attend Industry Trade Seminars training events etc., and the *Retail Motor Industry* (RMI) on behalf of the NCS, issue regular bulletins and reminders to all their subscribers and the retail motor sector in general. 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 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. We believe that 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 to show a decline in standards within the sector but we believe the opposite to be true

One of the main reasons for this appears to be that prior to ADR legislations and the introduction of CTSI certified ADR. Once a dispute with a trader had reached a deadlock a consumer had no other alternative but to pursue the matter via the civil courts. And although many a 'letter before action' may have been sent to a trader, few resulted in court action due to consumers general reluctance to resort to litigation. Now, or as consumers become more aware of the option of free or low-cost ADR. Many complaints that previously may not have been registered and would not have been pursued further will increasingly be referred for ADR. Although this is an excellent move for consumers in general, it also makes it easier for complaints of little or no merit to be pursued by some consumers when they may not have done so previously

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-Trading Standards Officer Mr Jim Appleton. Due to the Covid-19 virus the audit has been delayed slightly and is now scheduled to take place in March 2021.

In previous years 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's 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

National Conciliation Service - October 2020

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