



ADR, Consumer ADR, ODR

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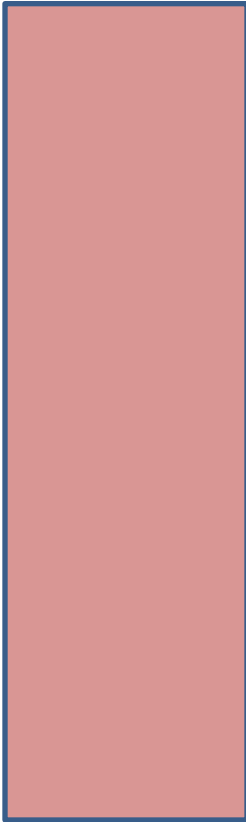
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Three Pillar Model of Enforcement



Public
Regulation



ADR



Private
Litigation

Types of ADR

- **Alternative Dispute Resolution:** Alternative to courts ... but
 - Part of, prior to, or adjacent to civil litigation procedure (ADR)
 - Consumer ADR (CDR) – own architecture
 - Online Dispute resolution (ODR)
- **Techniques**
 - Mediation: Conciliation
 - Early neutral evaluation
 - Recommendation
 - Binding decision: statute or arbitration

No fault Compensation Schemes

- New Zealand Accident Compensation Scheme
- Nordic No Fault Injury Compensation Schemes
 - Road Traffic
 - Medical
 - Drug
- France: ONIAM
- Ireland: Injuries Board
- Very limited use of the courts, or lawyers!

C Hodges, I Benöhr, N Creutzfeldt-Banda, *Consumer ADR in Europe* (Hart Publishing, 2012)

C Hodges, 'Nordic Compensation Schemes for Drug Injuries' *J Consumer Policy* (2006) 29: 143-175

Classic ADR

1. The context is usually civil procedure
2. Typically mediation
 1. Before the procedure, eg English pre-action protocols
 2. During the procedure
3. Advantages: informal; parties own the process, the negotiation and the solution; confidential so can make admissions; flexible outcomes; can restore trust or relations
4. Disadvantages: transparent justice? Contribution to clarification of law? Independence of third party?

C Menkel-Meadow, *Dispute Resolution: Beyond the Adversarial Model* (2005; 2nd ed. 2011); C Menkel-Meadow, 'Dispute Resolution' in Cane & Kritzer, *The Oxford Handbook of Empirical Legal Research* (Oxford, 2010); and many others

ADR - EU Mechanisms

- Council Resolution of 25 May 2000 on a Community-wide network of national bodies for the extra-judicial settlement of consumer disputes, [2000] O.J. C 155/1
- Commission Recommendation 98/257/EC on the Principles Applicable to the Bodies Responsible for Out-of-Court Settlement of Consumer Disputes, [1998] OJ L 155/31
- Commission Recommendation 2001/310/EC on the Principles for Out-of-Court Bodies involved in the Consensual Resolution of Consumer Disputes, [2001] OJ L 109, 56-61
- Financial Services Complaints Network, FIN-NET, 2001
- European Code of Conduct for Mediators, 2004
- **Commission Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters**, [2008] O.J. L 136/3

- Consultation paper on the use of Alternative Dispute Resolution as a means to resolve disputes related to commercial transactions and practices in the European Union (European Commission, January 2011)
- **Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)**, 2013
- **Regulation of the European Parliament and of the Council on online dispute resolution for consumer disputes (Regulation on consumer ODR)**, 2013

ADR/CDR/ODR

- A silent growth and transformative revolutionary impact
- EU-driven expansion and institutionalisation at national and supra-national levels
- Satisfies users' criteria: fast, cheap, user-friendly
- Free to consumer: often funded by business (some state funded), rarely a fee

Proposition

1. The central pathways for C2B dispute resolution in Europe will be new CADR/CDR/ODR
2. Regulatory oversight of compensation as part of enforcement of compliance
3. Courts (and lawyers) will have a residual and more restricted role

Why?

- DR is holistic, not just a particular state-provided procedure
- We now have more *options* than just civil litigation, so ability to select (and prioritise) the appropriate pathways for particular disputes, and there is competition between pathways
- Users' values relate to performance: speed, cost, user-friendliness, effective outcomes, additional benefits like behaviour control

Measures that *encourage* Member States to establish ADR schemes

- Distance Marketing of Financial Services Directive 2002/65/EC
- Timeshare Directive 2008/122/EC
- E-commerce Directive (EC) 2000/31
- Postal Services Directive (EC) 2008/6 amending 97/67/EC
- Insurance Mediation Directive 2002/92/EC
- Markets in Financial Instruments Directive (MiFID) (EC) 2004/39 on markets in financial instruments amending 85/611/EEC, 93/6/EEC and 2000/12/EC and repealing 93/22/EEC

Measures that *require* Member States to establish ADR schemes

- Directive (EC) 2009/136 amending Directive 2002/22/EC on universal service and users' rights relating to **electronic communications** networks and services
- Directive (EC) 2009/72 concerning common rules for the internal market in **electricity** and repealing Directive 2003/54/EC, [2009] OJ L211/55; and Directive (EC) 2009/73 concerning common rules for the internal market in natural **gas** and repealing Directive 2003/55/EC
- Directive (EC) 2008/48 on **credit agreements for consumers**
- Directive (EC) 2007/64 on **payment services** in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC
- Regulation (EU) No 181/2011 on **bus and coach passenger rights** [complaints function either in house or external; also complaints and enforcement authority]

CIVIL JUSTICE SYSTEMS

Consumer ADR in Europe

Civil Justice Systems

Christopher Hodges
Iris Benöhr and
Naomi Creutzfeldt-Banda

C.H. Beck - Hart - Nomos

Cross-Border DR and ADR

- Council Resolution (EC) 2000/C on a Community-wide network of national bodies for the extra-judicial settlement of consumer disputes, OJ C 155/1:
ECC-Net
- FIN-Net 2001
- Energy-Net 2012

The added value of CDR

- Privately financed
- Capture of complaint data:
 - Aggregation
 - Identification of issues and trends
- Hence ability to affect market behaviour: i.e. Regulatory impact

Collective Redress by CDR and Regulators

- CDR: identifies systemic issues from trends in individual complaints
- CDR: applies a standard response
- CDR notifies Regulator and trader, and publishes trend data
- Regulator has power to seek/impose systemic redress solution, eg a consumer redress scheme, reparation/restoration

Expansion of CDR

- Ombudsman model: Financial Services, Telecoms, Energy, Property, Legal Services, Environmental (UK Green Deal), Education ...
- Business codes of conduct model: travel (ABTA), motor vehicles, dentists
- Standard CDR matrix imposed by regulator: OFT, OFCOM

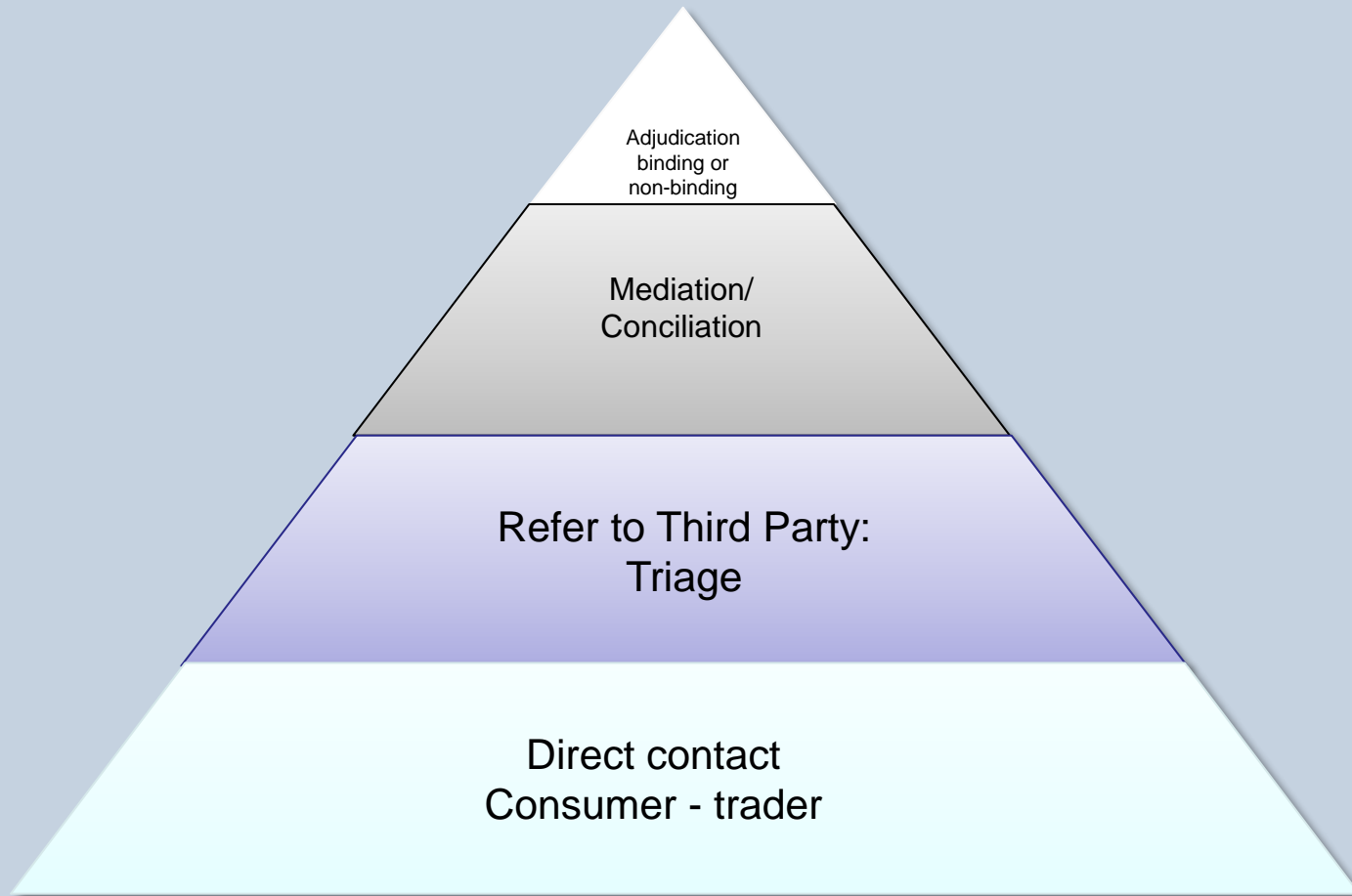
- Online trading: ODR
- Close link between ADR body and public regulatory authority
- Transparency of complaints
- Constant improvement of standards

- Personal Injuries: medical, medicines and devices, road traffic
- Family, Employment
- Small Claims
- Public Sector

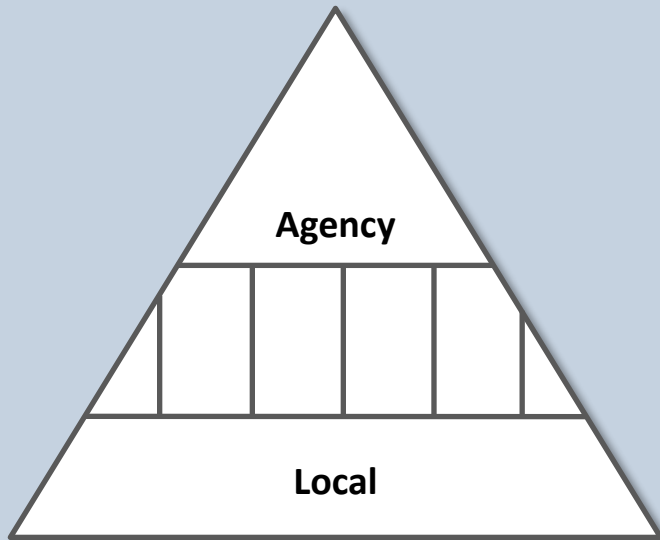
Modes: Historical Evolution of Models

- ▶ Courts: Procedural Justice
- ▶ Arbitration: panels of 3
 - ▶ Spain
 - ▶ Nordic Consumer Complaint Boards
 - ▶ Netherlands Geschillencommissie
 - ▶ UK Self-regulatory systems (Codes) and hybrids
- ▶ Mediation: French médiateurs: in ministries/regulators and companies
- ▶ Public Ombudsmen (privatised, regulated industry sectors) and/or private sector Ombudsmen: single case handlers and ombudsmen

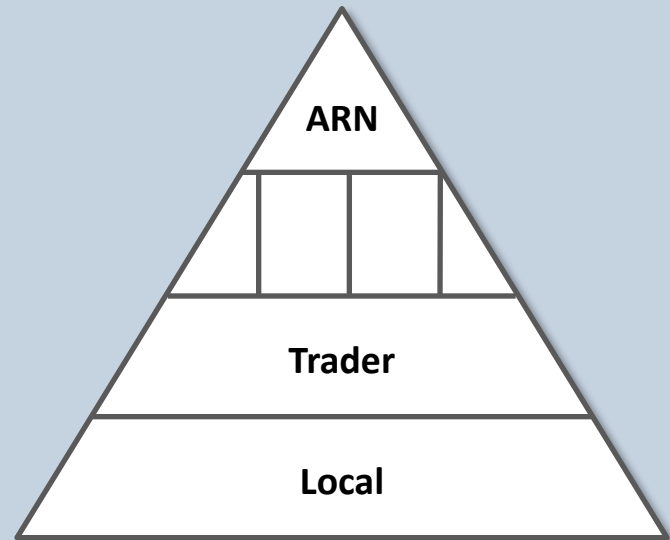
Techniques: an escalating pyramid



Sweden

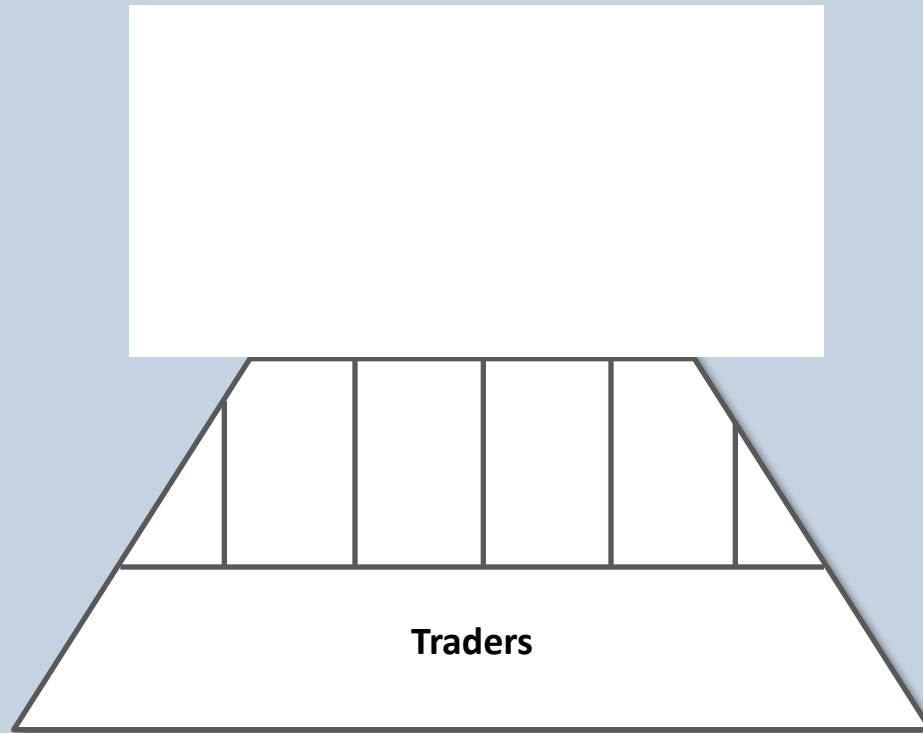


Information

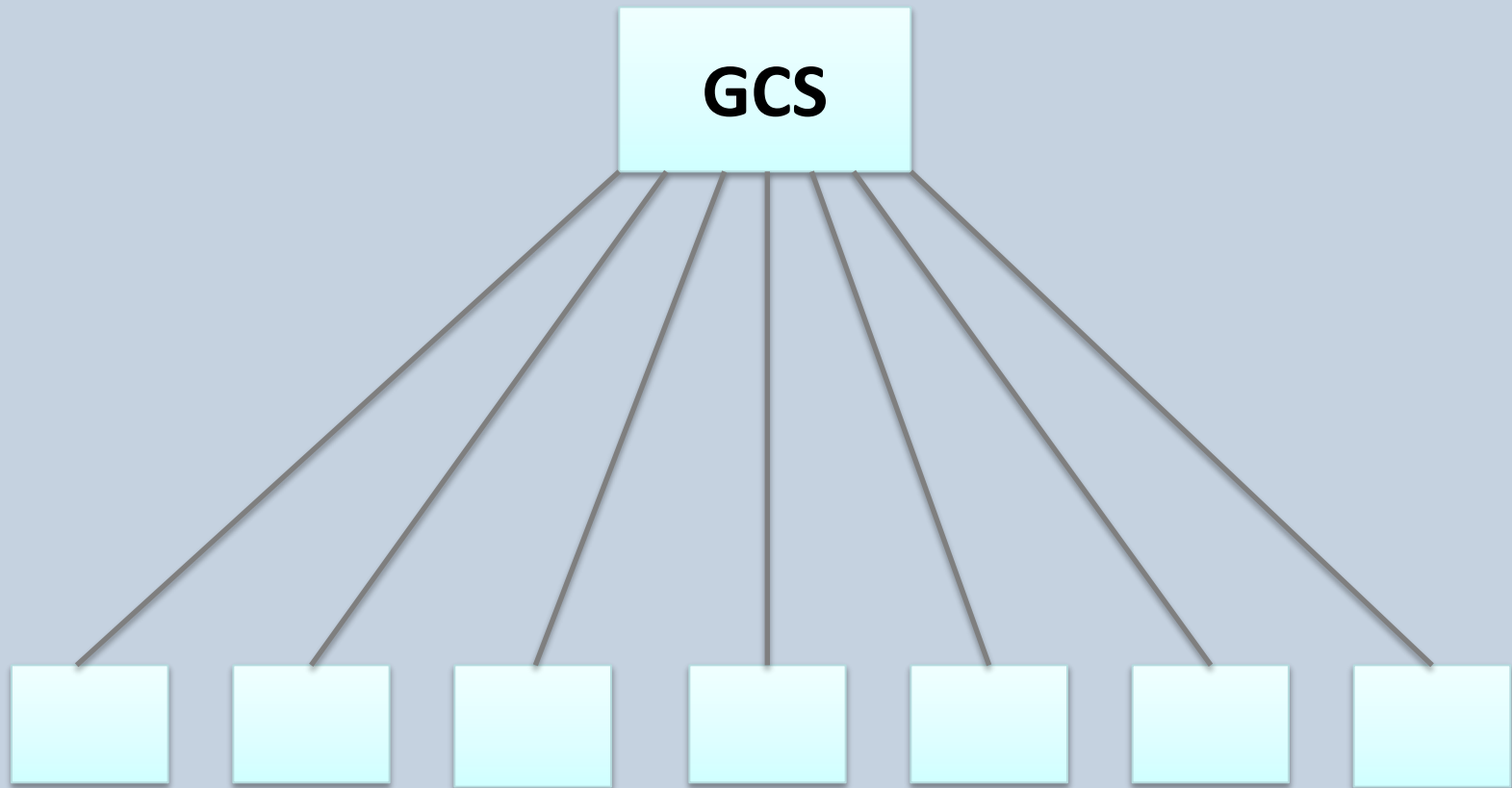


Dispute

UK, GERMANY

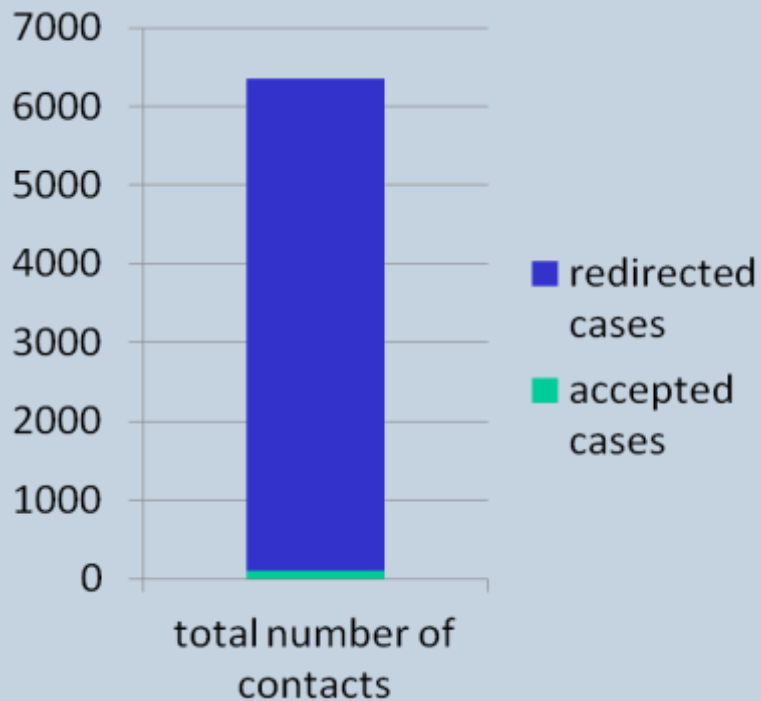


Netherlands Model



France

2010 complaints data GDF SUEZ
In-house mediation

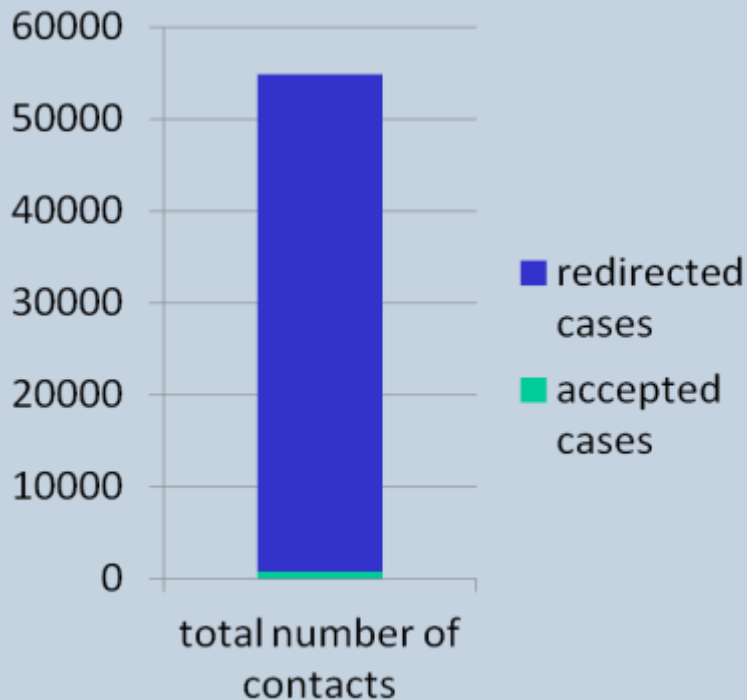


2010 complaints data Médiateur
national de l'énergie

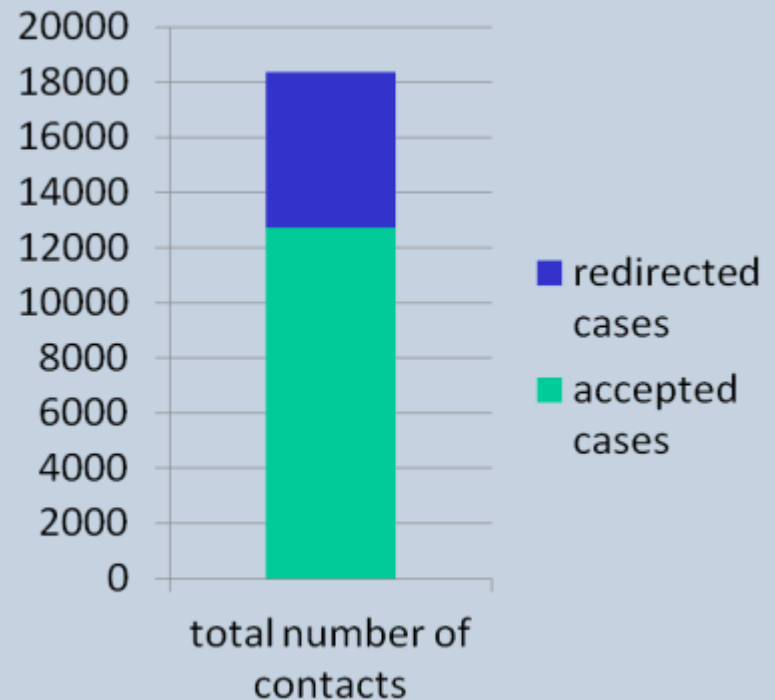


Germany

2010 complaints data Bundesnetzagentur
Telecom conciliation scheme

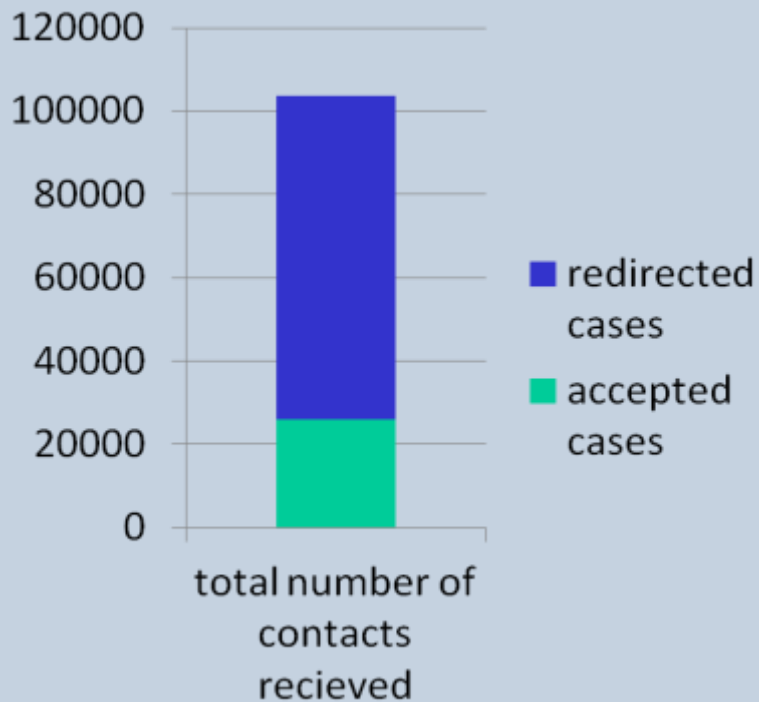


2010 complaints data Insurance
Ombudsman

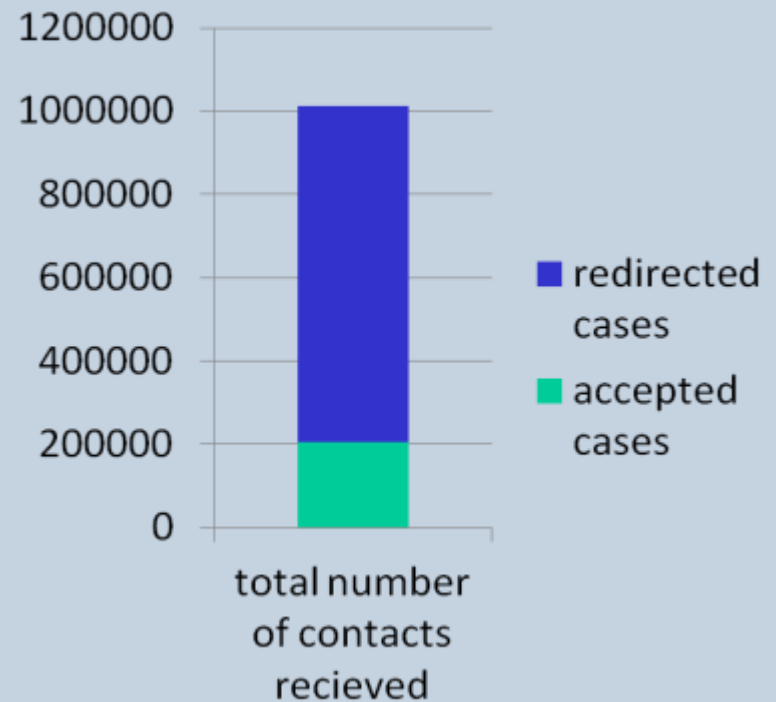


United Kingdom

2010 data Ombudsman Services:
Communications

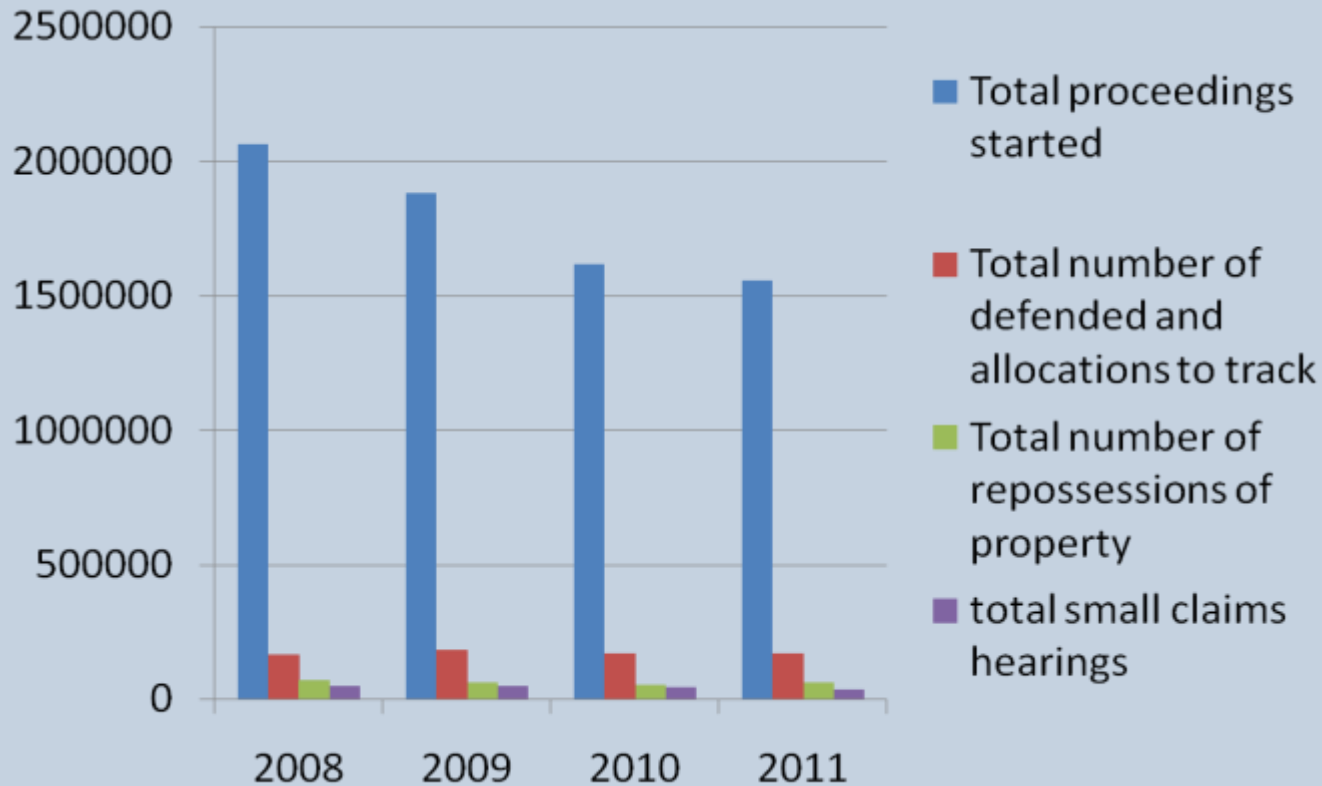


2010 complaints data FOS

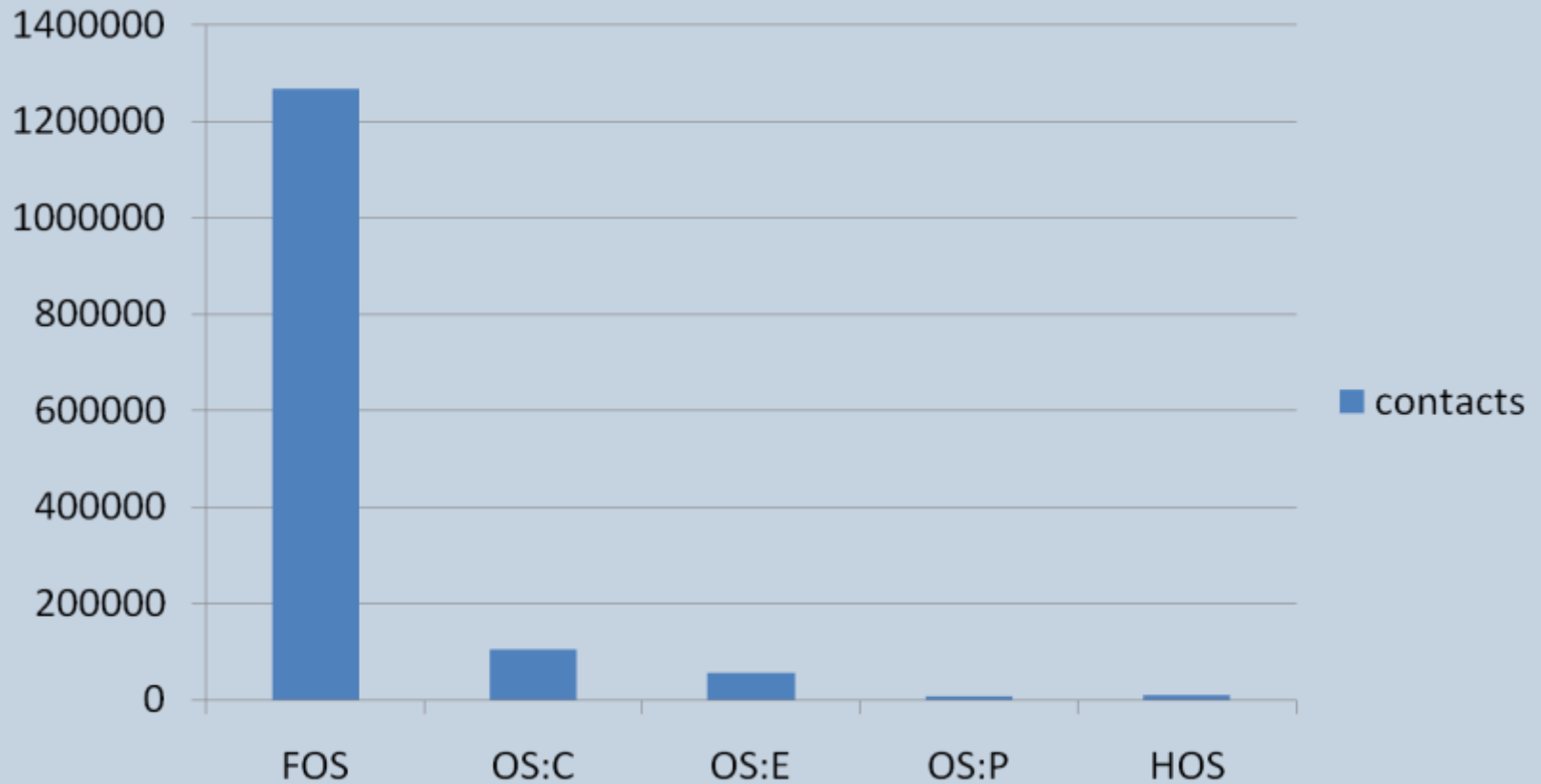


England and Wales

Court statistics 2011 (non-family)



UK ADR bodies' contacts 2011



Comprehensive EU coverage for Consumer ADR

- Directive 2013/xx on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)'.
▪ Regulation (EC) No 2013/xx on online dispute resolution for consumer disputes (Regulation on consumer ODR)

Commission CDR 2013 Legislation

1. Gaps in coverage

- Sectors
- Member States

Fill gaps by mandatory horizontal cover
Lessons from Netherlands/Nordic unified model
ODR platform

2. Lack of awareness

How increase usage?

visibility and adherence: National, EU and global umbrellas

3. Variation in quality

Quality principles (the 2 recommendations) and
regulatory scheme with national competent authorities

4. ODR Platform



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SPF Economie, P.M.E., Classes moyennes et Energie

Au service des entreprises et des consommateurs



[» Continuez en français](#)

FPS Economy, SMEs, self-employed and Energy

Serving business and consumer



[» To continue in English](#)

FÖD Wirtschaft, K.M.B., Mittelstand und Energie

Im Dienst der Unternehmen und der Verbraucher



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	Consumer protection	Enterprises & Self-employed	Statistics & Analyses	About the FPS Economy
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- » Consumer disputes
 - » Belmed
 - » What is it?
 - » Frequently asked questions
 - » Legislation
 - » Tips
 - » Complaints

[Home](#) > [Disputes and complaints](#) > [Consumer disputes](#) > [Belmed](#)

Belmed

What is it?

- » Follow the guide
 - » Who can help you in the sector in which you encounter a problem?
 - » (Extrajudicial) alternative settlement options
- Frequently asked questions**

Legislation

Tips

You are a private individual and you have a problem with a tradesman...
 You are a tradesman and you have a problem with a consumer...
 And you want to solve your problem quickly and at a lower cost.
 You have come to the right place! Belmed will help you find a solution to your dispute.

Belmed: sectors concerned

If your problem is connected to energy, to travel, to financial services, to second-hand cars, to furniture, to the building sector or if you are confronted with a cross-border dispute.

Then you can [make a request for mediation](#).

Success stories

Have a look at [some agreements](#) already got in some sectors.

Online services

- » [Belmed – Online Mediation](#)

Contact Center

FPS Economy, S.M.E.s, Self-employed and Energy Contact Center
 Rue du Progrès, 50
 1210 Brussels
 Phone (free number): 0800 120 33
 Fax (free number): 0800 120 57
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Models of CADR

- Rules applied: law; fairness; equity; codes
- Binding Options:
 - not binding on either
 - voluntary acceptance by trader
 - trade association guarantee: NL
 - binding on trader by law: UK FOS
 - binding on both: arbitration
 - binding on both: by law?
 - An Evolution

Binding v Non-Binding

1. Process

2. Outcome

OPTIONS:

- ▶ Statute: only way to get complete coverage
- ▶ prior agreement of both: offends right of access to court (art 6 ECHR):
unfair consumer term
- ▶ prior agreement of one: voluntary adherence re outcomes + name and shame

But access to court can be optional or deferred, and CADR prioritised:

- ▶ Penalty: court costs
- ▶ Incentive: legal aid, speed, no cost, business accept result
- ▶ Make CADR more attractive

Fast track court enforcement?

CADRs should refer issues of law to courts

Courts should refer application of law in simple cases to CADR

Criteria for democratic acceptance of Dispute Resolution Procedures

- The right to access to justice and to a fair trial: Art 6 ECHR
- The right to an effective remedy and to a fair trial: Art 47 EUCFR
- Commission Recommendation (EC) 98/257/EC on the principles applicable to the bodies responsible for the out-of-court settlement of consumer disputes, [1998] OJ L 115
- Commission Recommendation (EC) 2001/310 on the principles for out-of-court bodies involved in the consensual resolution of consumer ADR, OJ L 109 56

Criteria for democratic acceptance of Dispute Resolution Procedures

1998 Recommendation

1. independence
2. transparency
3. adversarial principle
4. effectiveness
5. legality
6. liberty
7. representation

2001 Recommendation

1. impartiality
2. transparency
3. effectiveness
4. fairness