

SCHEDULE 3

Regulation 9(4)

Requirements that a competent authority must be satisfied that the body meets

Alternative dispute resolution services offered by the body

1. The body—
 - (a) offers alternative dispute resolution services in relation to a domestic dispute or cross-border dispute brought by a consumer against a trader;
 - (b) is not formed for the purpose of dealing only with one particular domestic dispute or cross-border dispute;
 - (c) does not offer alternative dispute resolution services in relation to a domestic or cross-border dispute in circumstances where an ADR official responsible for the dispute is either employed or remunerated directly by a trader who is a party to the dispute.

Access to the ADR entity

2. The body—
 - (a) maintains an up-to-date website which provides the parties to a domestic dispute or cross-border dispute with information regarding the alternative dispute resolution procedure operated by the body;
 - (b) provides the information referred to in sub-paragraph (a) to a party on a durable medium, if a party requests it;
 - (c) ensures that its website enables a consumer to file an initial complaint submission and any necessary supporting documents online;
 - (d) permits the consumer to file an initial complaint submission by post, if the consumer wishes;
 - (e) enables the exchange of information between the parties via electronic means or, if a party wishes, by post;
 - (f) accepts disputes covered by Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes⁽¹⁾.

Expertise, Independence and Impartiality

3. The body—
 - (a) ensures that an ADR official possesses a general understanding of the law and the necessary knowledge and skills relating to the out-of-court or judicial resolution of consumer disputes, to be able to carry out his or her functions competently;
 - (b) appoints each ADR official for a term of office of sufficient duration to ensure the independence of that person's actions and provides that no ADR official can be relieved of his or her duties without just cause;
 - (c) ensures that no ADR official discharges his or her duties in a way that is biased as regards a party to a dispute, or the representative of a party;
 - (d) remunerates an ADR official in a way that is not linked to the outcome of the alternative dispute resolution procedure;
 - (e) where it appoints more than one ADR official, ensures that an ADR official, without undue delay, discloses to the body a circumstance that may, or may be seen to—

(1) OJ No L 165 18.6.2013 p1.

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- (i) affect the ADR official's independence or impartiality; or
- (ii) give rise to a conflict of interest with a party to the dispute which the ADR official is asked to resolve;
- (f) ensures that the obligation to disclose a conflict of interest is a continuing obligation throughout the alternative dispute resolution procedure;
- (g) ensures that in circumstances where its ADR officials are employed or remunerated exclusively by a professional organisation or business association, the body has a ring-fenced budget at its disposal which is sufficient to enable it to carry out its functions as an ADR entity;
- (h) ensures that where the operating model of its alternative dispute resolution procedure is to have a collegial body of representatives of both professional organisations or business associations, and consumer organisations, its ADR officials comprise an equal number of representatives of consumer interests and trader interests.

Conflict of interests procedure

4. The body has in place the following procedure in the event that an ADR official declares or is discovered to have a conflict of interest in relation to a domestic dispute or cross-border dispute—

- (a) where possible, the ADR official is replaced by another ADR official to handle the particular dispute;
- (b) if the ADR official cannot be replaced by another ADR official—
 - (i) the ADR official must refrain from conducting the alternative dispute resolution procedure, and
 - (ii) the body must, where possible, propose to the parties that they submit the dispute to another ADR entity which is competent to deal with it;
- (c) if the dispute cannot be transferred to another ADR entity, the body—
 - (i) must inform the parties to the dispute of the circumstances of the conflict of interest,
 - (ii) must inform the parties to the dispute that they have the right to object to the conflicted person continuing to handle the dispute, and
 - (iii) can only continue to deal with the dispute if no party to the dispute objects.

Transparency

5. The body makes the following information publicly available on its website in a clear and easily understandable manner, and provides, on request, this information to any person on a durable medium—

- (a) its contact details, including postal address and e-mail address;
- (b) a statement that it has been approved as an ADR entity by the relevant competent authority once this approval has been granted;
- (c) its ADR officials, the method of their appointment and the duration of their appointment;
- (d) the name of any network of bodies which facilitates cross-border alternative dispute resolution of which it is a member;
- (e) the type of domestic disputes and cross-border disputes which it is competent to deal with, including any financial thresholds which apply;
- (f) the procedural rules of the alternative dispute resolution procedure operated by it and the grounds on which it can refuse to deal with a given dispute in accordance with paragraph 13;

- (g) the language in which it is prepared to receive an initial complaint submission;
- (h) the language in which its alternative dispute resolution procedure can be conducted;
- (i) the principles the body applies, and the main considerations the body takes into account, when seeking to resolve a dispute;
- (j) the preliminary requirements, if any, that a party to a dispute needs to have met before the alternative dispute resolution procedure can commence;
- (k) a statement as to whether or not a party to the dispute can withdraw from the alternative dispute resolution procedure once it has commenced;
- (l) the costs, if any, to be borne by a party, including the rules, if any, on costs awarded by the body at the end of the alternative dispute resolution procedure;
- (m) the average length of each alternative dispute resolution procedure handled by the body;
- (n) the legal effect of the outcome of the dispute resolution process, including whether the outcome is enforceable and the penalties for non-compliance with the outcome, if any;
- (o) a statement as to whether or not alternative dispute resolution procedures operated by it can be conducted by oral or written means (or both);
- (p) the annual activity report required to be prepared under regulation 11(2).

Effectiveness

6. The body—

- (a) ensures that its alternative dispute resolution procedure is available and easily accessible to both parties irrespective of where they are located including by electronic means and non-electronic means;
- (b) ensures that—
 - (i) the parties to a dispute are not obliged to obtain independent advice or be represented or assisted by a third party although they may choose to do so;
 - (ii) the alternative dispute resolution is available free of charge or at a nominal fee for consumers;
- (c) notifies the parties to a dispute as soon as it has received all the documents containing the relevant information relating to the dispute constituting the complete complaint file;
- (d) notifies the parties of the outcome of the alternative dispute resolution procedure within a period of 90 days from the date on which the body has received the complete complaint file except that, in the case of a highly complex dispute, the body may extend this period but must inform the parties of this extension and the expected length of time that it will need to conclude the alternative dispute resolution procedure.

Fairness

7. The body—

- (a) ensures that during the alternative dispute resolution procedure the parties may, within a reasonable period of time, express their points of view;
- (b) provides a party to a dispute within a reasonable period of time, upon request, with the arguments, evidence, documents and facts put forward by the other party to the dispute, including a statement made, or opinion given, by an expert;
- (c) ensures that the parties may, within a reasonable period of time, comment on the information and documents provided under paragraph (b);

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- (d) informs the parties that they are not obliged to retain a legal advisor, but that they may seek independent advice or be represented or assisted by a third party at any stage of the alternative dispute resolution procedure;
 - (e) notifies the parties of the outcome of the alternative dispute resolution procedure on a durable medium and gives the parties a statement of the grounds on which the outcome is based.
- 8.** Subject to paragraphs 9 and 10, in relation to an alternative dispute resolution procedure which aims at resolving a dispute by proposing a solution, the body ensures that the parties—
- (a) have the possibility of withdrawing from the alternative dispute resolution procedure at any stage if they are dissatisfied with the performance or operation of the alternative dispute resolution procedure;
 - (b) before the alternative dispute resolution procedure commences, are informed of their right to withdraw from the alternative dispute resolution procedure at any stage;
 - (c) are informed, before agreeing to or following the proposed solution—
 - (i) that they have a choice as to whether or not to agree to, or follow, the proposed solution;
 - (ii) that their participation in the alternative dispute resolution procedure does not preclude the possibility of them seeking redress through court proceedings;
 - (iii) that the proposed solution may be different from an outcome determined by a court applying legal rules; and
 - (iv) of the legal effect of agreeing to, or following the proposed solution;
 - (d) before expressing their consent to a proposed solution or amicable agreement, are allowed a reasonable period of time to reflect.
- 9.** Paragraphs 8(a) and 8(b) do not apply to the body in respect of a party who is—
- (a) a trader; and
 - (b) obliged, under an enactment or under the rules of a trade association to which the trader may belong, to participate in an alternative dispute resolution procedure.
- 10.** Paragraph 8 does not apply to the body in respect of a party who is—
- (a) a trader; and
 - (b) obliged, under an enactment or under the rules of a trade association to which the trader may belong, to accept the solution proposed by the body if the consumer accepts the solution.

Legality

- 11.** In relation to an alternative dispute resolution procedure which aims at resolving a dispute by imposing a solution on the consumer, the body ensures that—
- (a) in a situation where there is no conflict of laws, the solution imposed by the body does not result in the consumer being deprived of the protection afforded to the consumer by the provisions that cannot be derogated from by agreement by virtue of any enactment;
 - (b) in a situation involving a conflict of laws—
 - (i) where the law applicable to the sales contract or service contract is determined in accordance with Article 6(1) and (2) of Regulation (EC) No 593/2008 on the law applicable to contractual obligations⁽²⁾ the solution imposed by the body does not

(2) OJ No L 177 4.7.2008 p6.

result in the consumer being deprived of the protection afforded to the consumer by the provisions that cannot be derogated from by virtue of the law of the member State in which the consumer is habitually resident;

- (ii) where the law applicable to the sales contract or service contract is determined in accordance with Article 5(1) to (3) of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations⁽³⁾ the solution imposed by the body does not result in the consumer being deprived of the protection afforded to the consumer by the provisions that cannot be derogated from by virtue of the mandatory rules of the law of the member State in which the consumer is habitually resident.

12. For the purposes of paragraph 11 “habitual residence” is determined in accordance with Regulation (EC) No 593/2008⁽⁴⁾.

Grounds to refuse to deal with a dispute

13. The body may only refuse to deal with a domestic dispute or a cross-border dispute which it is competent to deal with on one of the following grounds—

- (a) prior to submitting the complaint to the body, the consumer has not attempted to contact the trader concerned in order to discuss the consumer’s complaint and sought, as a first step, to resolve the matter directly with the trader;
- (b) the dispute is frivolous or vexatious;
- (c) the dispute is being, or has been previously, considered by another ADR entity or by a court;
- (d) the value of the claim falls below or above the monetary thresholds set by the body;
- (e) the consumer has not submitted the complaint to the body within the time period specified by the body, provided that such time period is not less than 12 months from the date upon which the trader has given notice to the consumer that the trader is unable to resolve the complaint with the consumer;
- (f) dealing with such a type of dispute would seriously impair the effective operation of the body.

14. The body ensures that its policy regarding when it will refuse to deal with a dispute, including in relation to the level of any monetary threshold it sets, does not significantly impair consumers’ access to its alternative dispute resolution procedures.

15. Subject to paragraph 16, where a body refuses to deal with a dispute, it must, within three weeks of the date upon which it received the complaint file, inform both parties and provide a reasoned explanation of the grounds for not considering the dispute.

16. Where following the expiry of the period referred to in paragraph 15, it appears to the body that one of the parties has sought to mislead the body as regards the existence or non-existence of one of the grounds for it to decline to deal with a dispute, the body may immediately decline to deal further with the dispute.

⁽³⁾ OJ No L 266 9.10.1980 p1.

⁽⁴⁾ OJ No L 177 4.7.2008 p6.