









- a. at any time, it appears to the Adjudicator that it is more appropriate for the Complaint to be dealt with by a Court or under another independent Complaints, conciliation or arbitration procedure;
- b. at any time that the Adjudicator finds out the Complaint is already being or has been considered by a Court, or under another independent Complaints, conciliation or arbitration procedure, he should discontinue his investigation. If that other body is not considering all aspects of the Complaint or if that body is not designed to offer financial compensation to the Complainant, the Adjudicator may then resume his consideration of the Complaint; or
- c. in the Adjudicator's opinion he considers the matter to be frivolous or vexatious.

### **Rejected Complaints:**

3.7 In relation to Rejected Complaints the Adjudicator will follow a procedure whereby he will i) inform the parties in writing, within three weeks from the date the Complaint was brought to the office for consideration; and ii) provide a reasoned explanation detailing the grounds for declining the consideration of the Complaint.

3.8 In the reviewing of any Complaint, should it become evident that either of the parties have misled the Adjudicator or his office in regard to the acceptance of a Complaint based on the grounds for redress, he withholds the right to terminate the case with immediate effect. Should this situation arise, the Adjudicator will notify both parties in writing as to the reasoning behind the termination of a Complaint.

### **Charges and fees**

3.9 Our service is **FREE** to complainants.

### **GENERAL PROCEDURE**

3.10 The Adjudicator shall first decide whether a Complaint falls within the Scheme Rules ("Jurisdiction").

3.11 The Adjudicator shall have the right to investigate all Complaints within his Jurisdiction. He may give advice to a Complainant on the procedure for making a Complaint to him and/or on the procedure for making a Complaint to any other relevant independent scheme for the conciliation, arbitration or adjudication of Complaints where such other scheme appears to him to be more appropriate for the investigation of any Complaint or part thereof.

### **Consideration of a Complaint**

3.12 Subject to the other provisions of these Scheme Rules, the Adjudicator shall, at his own discretion, decide the procedure to be adopted by him in considering Complaints,

provided that he may not exercise his discretion to remove any rights given to the Complainant by law. Such consideration could include conciliation, mediation or a full case review. The Adjudicator shall have the right to delegate the following matters:

- a. Initial review of the Complaint and the collating of a complete Complaint file. This will be to a Complaint handler employed or engaged by CommsADR;
- c. The decision to make an early resolution or recommendation to the parties. This will be to a Complaint handler employed or engaged by CommsADR; and/or
- d. The final written Final Decision/decision. This may be to a sub-adjudicator with the relevant qualifications and experience to reach such a decision, employed or engaged by CommsADR.

In all cases, the Adjudicator will be responsible for the supervision of such parties to whom tasks have been delegated.

3.13 In his consideration, the Adjudicator shall act impartially and fairly in all circumstances and must give reasons for his Decisions in writing.

3.14 The Adjudicator will provide details of the conclusion reached or decision made;

(a) within 90 days of receiving a complete complaint file, unless the complaint is deemed, by the Adjudicator, to be a highly complex dispute;

(b) if the complaint is deemed, by the Adjudicator, to be a highly complex dispute, an extended period of time may be granted. In such circumstances the Adjudicator will inform both the Complainant and Trader of;

(i) the fact that an extension has been allowed; and

(ii) the expected length of time that the Adjudicator will need.

### **Transferring complaints**

3.15 Should it be determined that;

a) the complaint should be held against another Trader; or

b) the complaint should be held against a company that is a member of an alternative redress scheme,

the Adjudicator reserves the right to terminate the complaint against the original member company and transfer the relevant case, including case fee, decision, Final Decision and appropriate compensation where applicable to the appropriate member or signpost the consumer to the appropriate scheme to enable them to seek redress.

## **Confidentiality**

3.16 Following the receipt of a Complaint, the Adjudicator shall promptly:

- a. require the Complainant to give his written consent to give up his right to any duty of confidence owed to the Complainant by the Trader in terms which permit the disclosure by the Trader to the Adjudicator of information and documents requested by the Adjudicator; and
- b. send (or allow the Adjudicator to send) such written notice of consent to the Trader.

3.17 The Adjudicator may use any information freely provided to him by a Complainant or a Trader in his consideration of a Complaint provided it is for the express purpose of dealing with that Complaint.

3.18 The Adjudicator may refuse to disclose information to either the Complainant or the Trader if:

- a. in his reasonable opinion, it is not relevant to the consideration of the Complaint;
- b. in his reasonable opinion and in all the circumstances of the Complaint, it is inappropriate, or unlawful;
- c. it concerns issues of national security or the personal security of the Complainant, or Trader or third party; or
- d. it is protected by legal or professional privilege (and such privilege has not been waived)

provided that the Adjudicator shall always consider any specific requests for disclosure received from either party.

3.19 The Adjudicator will act in accordance with Data Protection legislation and shall take all reasonable steps to ensure that he and all CDRL Office staff keep confidential any information provided as part of the investigation of a Complaint, whether or not it is disclosed to the other party.

## **Requests for Information**

3.20 For the purpose of his investigation into a Complaint, the Adjudicator may require the Complainant or Trader to provide to him:

- a. such information and/or documents which are within their knowledge or reasonably ascertainable by them; and
- b. such information and/or documents in their possession or under their possession or control as is or are relevant to the Complaint.

3.21 The Adjudicator will be entitled to proceed with his consideration of the Complaint and to draw his own conclusions if, in his opinion, such requested information is not provided within a reasonable timescale previously notified to the relevant party.

3.22 Neither party shall be required to disclose documents to the Adjudicator which he is satisfied are protected by legal or professional privilege (where such privilege has not been waived by the Complainant or the Trader, as appropriate).

3.23 The Adjudicator may also request information from third parties if he believes it may be relevant to his investigation.

3.24 The Adjudicator shall not be bound by any legal rule of evidence. He is not permitted to take evidence on oath or cross-examine witnesses. He shall reach his Decision based on the evidence as he sees it, the guidelines given in Paragraph 3.25 below, on common sense, and on what appears to him to be fair and reasonable under the circumstances.

### **Guidelines**

3.25 In making any Decisions under these Scheme Rules and in determining what is fair and reasonable, the Adjudicator shall have regard to:

- a. the law and any applicable regulations or conditions;
- b. any relevant Code of Practice and any internal rules, procedures or rules, procedures or statements of practice issued by a trade association of the Trader;
- c. the provisions of any contract binding the Trader and the Complainant; and
- d. any other matter the Adjudicator considers relevant to the act or omission by the Trader and which is the subject matter of the Complaint.

### **Changes to General Procedure**

3.26 The Adjudicator shall operate in accordance with these Scheme Rules and shall consult and obtain the approval of the Board in respect of any proposed changes to the procedure for making a Complaint to him.

## **RECOMMENDATIONS, FINAL DECISIONS AND SETTLEMENTS**

### **Recommendations**

3.27 Having come to a Proposed Recommendation on the complaint received, the Complaint Handler will send the case review containing the Recommendation to both parties. Both parties then have 14 days in which to accept, reject and withdraw or provide any additional evidence to demonstrate that there has been an error in fact or make a material difference that may persuade the Adjudicator to change the Recommendation.

If the Complainant does not reply within that time, the case will be progressed to Final Decision for a final chance to accept or reject the remedies afforded in the Recommendation. The Recommendation will not change.

If the either party do challenge the Recommendation, with new significant evidence that is likely to persuade the Adjudicator to change the Recommendation, it may be



necessary to go back to the other party and ask for comment on the new evidence.

3.28 Where the Final Decision provides for an Award which exceeds the limit of £25,000, the Adjudicator will attempt to reach an appropriate settlement with the Trader before issuing a decision which explains the limits of his jurisdiction.

3.29 When sending the Final Decision to the Complainant, the Adjudicator may include a copy of the Trader's submission and copies of those documents relevant to the Adjudicator's Final Decision if appropriate and not previously seen by the Complainant which the Adjudicator considers necessary to allow the Complainant to understand the reason for the decision.

### **Representations**

3.30 Following the procedure in Paragraphs 3.31 to 3.35, the Adjudicator or sub-adjudicator shall consider any Representations made by either party before making his Final Decision.

3.31 The opportunity to make a Representation is a fundamental part of RetailADR's procedures but will normally only be considered:

- a. if it can be shown that there has been a significant error in fact that would have had a material effect on the Decision; or
- b. if significant new evidence is produced that will have a material effect on the Decision.

3.32 The Adjudicator can decline to consider a Representation if he considers it does not fall within Paragraph 3.32 above or is, after due consideration, a reiteration of the original dispute.

### **Oral Hearings**

3.33 Any request for an oral hearing must be considered by the Adjudicator (or his appointed deputy) by reference to the nature of the issues to be determined and in particular the extent to which the Complaint raises issues of credibility or contested facts that cannot be fairly determined by reference to documentary evidence and written submissions. In deciding whether there should be a hearing and, if so, whether it should be in public or private, the Adjudicator will have regard to the provisions of the European Convention on Human Rights.

## **Final Decision**

3.34 Having considered any Representations, the Adjudicator shall come to a Final Decision, in which he may direct:

- a. that the Trader takes, or desists from taking, such steps as he may specify including the issuing of a formal apology to the Complainant; and/or
- b. that the Trader pays the Complainant an Award (not exceeding £25,000) by way of compensation for actual proven financial loss and/or aggravation, distress and/or inconvenience caused by the act or omission of the subject matter of the Complaint.

3.35 Final Decisions shall be in writing and shall:

- a. give a summary of the reasoning for making the Decision;
- b. state the amount, if any, of the Award of compensation to be paid and the conditions for acceptance;
- c. specify any other direction that the Adjudicator has made;
- d. not be subject to further Representation; and
- e. not be subject to appeal.

3.36 Although such decisions are not subject to Appeal or further Representation, this does not preclude the Complainant or Trader raising a Complaint in relation to processes and procedures which will be dealt with in accordance with the CommsADR internal Complaints handling procedure.

## **Awards**

3.37 The Awards made by the Adjudicator are compensatory and not punitive. They are to compensate a Complainant for a) any actual, proven financial losses and/or for undue and avoidable aggravation, distress and/or inconvenience that have been occasioned by the act or omission of the Trader; and/or b) any reasonable and proven costs incurred by the Complainant in bringing the Complaint.

3.38 Any Award shall be for the payment by the Trader to the Complainant of a sum not exceeding £25,000.

3.39 The Award shall state that if, within 14 days after its issue, the Complainant agrees to accept it in writing in full and final settlement of the subject matter of the Complaint, it shall be binding on both the Complainant and the Trader.

3.40 If the Complainant fails to accept the Award within 14 days of receipt thereof, the Award shall lapse.

3.41 If the Complainant accepts the Award in writing in full and final settlement of the subject matter of the Complaint within 14 days, the Adjudicator shall notify the Trader of that fact within 14 days of his receipt of the Complainant's acceptance. The Trader shall then pay the amount of the Award to the Complainant:

- a. within 28 days of the Adjudicator's notification; or
- b. if the Award states that any monies are due to be paid by the Complainant to the Trader, within 14 days of the Complainant making such payment.

### **Full and Final Settlement**

3.42 Any Award made and accepted is in full and final settlement of all the Complaints made against the Trader.

3.43 The Complaint Handler or Adjudicator must inform the Complainant that acceptance of an Award and/or a Decision might compromise his ability to pursue that Complaint through the Courts. By his acceptance of the Complaint Handler or Adjudicator's Award, the Complainant is agreeing to the full and final settlement of that dispute. However, if he rejects the Adjudicator's findings in their entirety, he is perfectly entitled to pursue his case through the Courts, as he is with any Complaint on which the Adjudicator has been unable or has declined to make a formal Decision.

### **Closure and Discontinuance**

3.44 On any settlement, withdrawal or lapse of a Complaint, the Adjudicator shall discontinue his consideration of that Complaint.

3.45 Once the Adjudicator has made a Final Decision and an Award has been accepted and paid in full and final settlement, the case is closed. That is the end of the matter. The case cannot be re-opened by either party, even with the production of new evidence, unless all parties agree.

3.46 The Adjudicator shall not be bound or in any way limited by any previous Decision made by him or by any predecessor.

## **PART 4 – IMPROVEMENTS IN STANDARDS**

4.1 The Adjudicator is to put before the Board proposals for the improvement of practice within the industry.

4.2 Subject to guidance (as updated from time to time) from the Board as to the categories of cases that do not require routine reporting, the Adjudicator is to report to the Board when there appears to him to have been any single flagrant breach and/or any persistent breaches of the Code of Practice (where that applies) by any Trader.

## **PART 5 – OTHER POWERS AND DUTIES**

### **Promotion of the Scheme**

5.1 The Adjudicator shall publicise the scheme and explain to the media, general public, and Traders the scheme's processes and procedures.

### **CDRL Office**

5.2 The Adjudicator shall be responsible for the day to day administration and conduct of the business of CDRL Office and its staff. He shall have power to incur expenditure on behalf of the Company in accordance with the current financial budget approved by the Board.

5.3 Subject to the general oversight of the Chairman of the Board, the Adjudicator shall have power on behalf of the Company to appoint and dismiss employees, consultants, independent contractors and agents, and to determine their terms of employment or engagement.

### **Board Meetings**

5.4 The Adjudicator shall endeavour to attend each meeting of the Board and put before it such business that he deems fitting and give it any information and assistance (including any general information about any reference) which it reasonably requests. Nothing in this clause excludes the Board from meeting in the absence of the Adjudicator.

### **Annual Report**

5.5 At a time to be agreed with the Board, the Adjudicator shall send to the Board Traders a report containing, in relation to the preceding financial year of the Company, a general review of his activities during that year.

5.6 The Adjudicator's Report will be included in the Annual Report published by the Board for the interest of all stakeholders.

5.7 The Adjudicator shall be entitled to published anonymised reports of investigations in the Annual Report, on the website or elsewhere (as deemed appropriate by the Adjudicator).

### **Eligibility to join CommsADR**

5.8 A potential Trader shall be eligible to join CommsADR upon; (a) satisfying the criteria set out by the scheme from time to time; and (b) agreeing to adhere to the Scheme Rules.

## **PART 6 – INTERPRETATION**

6.1 In these Scheme Rules, the following expressions have the following meanings:

**‘Award’** means the compensatory element in money, or money’s worth, of a Decision or Final Decision.

**‘Board’** means the Standards Board

**‘Board Constitution’** means the constitution of the Board

**‘Board Trader’** means a member of the Standards Board.

**‘Company’** means Consumer Dispute Resolution Limited (trading as CommsADR”).

**‘Complainant’** means a domestic consumer or business who has purchased goods or services from a Trader and by whom or on whose behalf a Complaint is made to the Adjudicator and any other person who has become involved as a result of a Trader’s actions. It includes a personal representative or any person so entitled to stand in his place after his death.

**‘Day’** means a calendar day, not a working day.

**‘Decision’** is a direction and/or decision made by the Adjudicator within his powers under these Scheme Rules.

**‘Final Decision’** is the decision made by the Adjudicator following any Representations.

**‘Internal Complaints Procedure’** means a written procedure for the resolution of Complaints by complainants in relation to acts or omissions which could be the subject of an investigation by the Adjudicator, being a procedure under which the Complaint, if not previously settled or withdrawn, is to be considered by the senior management of the relevant Trader.

**‘Trader’** means any entity or individual who is directly a member of CDRL or who is subject to the Adjudicator’s jurisdiction and these Scheme Rules by virtue of i) agreeing to be a temporary member in relation a single Complaint or ii) a contractual agreement with a trade association of which they are a member and has agreed to abide by their rules.

**‘UK’** means England, Wales, Scotland and Northern Ireland.

## 6.2 In these Scheme Rules:

a. references to the provision of services include, where the context admits, references to their non-provision;



- b. references to the singular number (including without limitation references to 'individual', 'Complainant' and 'Trader') include, where the context admits, the plural and vice versa;
- c. references to the masculine include the feminine;
- d. references to Paragraphs are to Paragraphs of these Scheme Rules

