

THE PATH OF A SMALL CLAIM: ODR VS. THE CURRENT SYSTEM

RECOMMENDED ODR SYSTEM

ODR TIER ONE: Online Evaluations

A 'first port of call' facility provided at no cost to users which help them to:

- classify and categorise their problem;
- understand their rights and obligations;
- understand the options open to them.

This will include pointing users to the resources that already exist (see box to the right).

Online evaluation will help users to resolve their complaints and disputes before they become substantial legal problems.



ODR TIER TWO: Online Facilitation

Enable disputes to be brought to a speedy, fair conclusion without the involvement of judges.

Online facilitators will review papers and statements and guide parties to mediate and negotiate their disputes. They will communicate via the internet, and be supported, where necessary, by telephone conferencing facilities.

Additionally, there will be some automated negotiation (systems which help resolve disputes without the need for human intervention).



ODR TIER THREE: Online adjudication

HM Online Court would provide online judges – members of the judiciary who will decide cases (or parts of cases) on an online basis.

Judges will make decisions based on papers submitted to them electronically as part of a structured process of online pleading. Again, the process can be supported by telephone conferencing facilities.

Decisions of online judges will have the same status as those in traditional courtrooms.

CURRENT EQUIVALENT

Pre-action support and advice

Claimants can source free advice, but need to know where to look across multiple providers. Free pre-action advice is available from various sources, such as Citizens Advice, online consumer fora, etc. Legal aid may be available in very limited circumstances. Pro-bono advice may be available in some regions from providers such as Bar Pro Bono Unit, PSU, etc.

Claimants can additionally pay a lawyer for one-off advice (e.g. to help draft a Claim Form) or may have recourse to Claims Management Companies.



Mediation and ADR

Only mediation offered at present by the state is *after* claim has been issued: all small claims up to £10k (other than personal injury, road traffic accidents and housing disrepair cases) are automatically referred to mediation (subject to availability), if both parties are willing to do so.

Many online dispute resolution systems are available, although they generally relate to specific types of dispute or are offered by commercial firms seeking to resolve disputes between companies and consumers. They are not part of the formal (and independent/regulated) court process.



Going to Court

Certain claims can be commenced online via the Money Claims Online Service (or bulk user centre), but, if the claim is defended, it is then transferred to the Defendant's local court. Otherwise, claims are commenced via filing a paper based Claim Form.

The case follows certain prescribed stages (including filing of Defence, Directions Questionnaire, Notice of Allocation and evidence). Small claims can take more than six months to reach a hearing before a judge. The court hearing itself involves giving evidence and being questioned by the judge and opposing party (who may be legally represented).