

DISPUTE RESOLUTION COURSES

These two programmes were developed and are used to train trading standards officers on complaints handling and dispute resolution. The first focuses on building up a Trader Approved Scheme and obtaining OFT approval for its dispute resolution procedure. The second is more general. Both can be adapted easily to other types of organization.

COURSE PROGRAMME 1 – DISPUTE RESOLUTION AND BUILDING A TRADER APPROVED SCHEME TO MEET OFT APPROVAL CRITERIA

This can best be described as the original format of this course. It is designed for people working on trader approved schemes or trying to develop one, particularly with a view to seeking OFT approval.

The approach is interactive and some case study material is used. However, the course would benefit hugely from participants bringing along their own “war stories” for us to apply the material to and see how we would tackle the cases ourselves.

One I have collected from a previous course went like this.

Derek Thompson bought from AT Motors Ltd run by Paul Phillips a second hand Mercedes sports car. He wanted the prestige of driving a top sports car. The price was a very significant £30,000. AT Motors as part of the contract agreed to have the car re-sprayed at a cost to AT of £3000. AT Motors gave the car to a well-known competent re-spraying firm Respray Ltd. Mr Thompson was dissatisfied with the respraying. So, AT Motors sent it back to Respray Ltd again who did the work without charging. Mr Thompson is still dissatisfied with the work and has asked AT to send the car to Mercedes for re-spraying. This will cost £9000.

INTRODUCTION

Course objectives
Ground rules for the day
Introduction to the programme

FORMS OF DISPUTE RESOLUTION

Arbitration

Define it
Party autonomy
Problems with using it in the consumer context
Arbitration Act
Challenges on jurisdiction, error of law and natural justice

Mediation

Evaluative and non-evaluative
Problems with evaluative mediation with consumers

Role of differences in bargaining power
Variations on mediation – mini-trials
Outcome – binding contract

Expertise

Binding and non-binding versions
Role in trading standards of experts
Effect is a contract

Ombudsman schemes

Firm does original investigation
Pro-active institutional evaluative mediation
Binding decisions agreed by subscribers
Possible judicial review

Litigation

Trading standards context
Non-binding evaluative mediation
Parties or TSO take legal action
Problems with this approach

BUILDING A TRADER APPROVED SCHEME

Define the scope of the scheme

Subject-matter
Firms
Complainants

The Firms' complaints procedures

BSO ISO 10002:2004
Identification
Acknowledgement
Investigation
Final response
Referral to dispute resolution mechanism
Dealing with delay – a right to go directly to the dispute resolution scheme

Building the Scheme itself

Identification
Acknowledgement

“Conciliation” phase

Investigation
Hearings, site investigations and experts
Use of mediation techniques
Writing the final opinion letter
Binding or non-binding

OFT requirements for independent decision-making

Independence of panel members

European Convention on Human Rights – right to a hearing
Enforceability of decisions
Grounds to challenge them

Follow-up and after the decision

Considering disciplinary action

Legal action

Feedback to firms and scheme members as a whole

COURSE PROGRAMME 2 – DISPUTE RESOLUTION IN THE TRADING STANDARDS CONTEXT

This is an alternative approach to the course involving demonstrating the different dispute resolution techniques in relation to a set problem that originally came from South Yorkshire Trading Standards.

The strength of this approach is that you spend more time seeing how a dispute can be handled. However, we will need to use some role-play for which people will need to volunteer. We will also find ourselves without enough time to explore ways to build a Trader Approved Scheme.

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Trader Approved Schemes

OFT approach

Firm complaints procedure

Evaluative mediation

Non-binding

Decision-making phase

Handling a real trading standards dispute using different techniques

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1. Arbitration
2. Non-evaluative mediation
3. Evaluative mediation
4. Ombudsman

Follow-up and after the decision

Considering disciplinary action

Legal action

Feedback to firms and scheme members as a whole