

Challenges and Opportunities in Implementing ODR

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Challenges

Scope

The first challenge is one of definition. What exactly is ODR? Unless we are talking about the same subject it will be difficult to achieve a consensus. ODR, as a term, has been used to offer a wide embrace that covers, at the one end of the scale, consumer complaints negotiated directly between the parties and, at the other end, to mediation and arbitration of commercial disputes, frequently with lawyer representation, that otherwise might be expected, cost permitting, to end up in a court of law.

Definition is important to ensure that in discussions and debates all participants are addressing the same issues. In any discussion on ODR, however, its scope can vary according to context. To what does the word 'online' refer? Does it refer to the nature of the dispute, so that ODR refers to a facility for disputes formed online, or does it refer to the medium employed in the resolution of the dispute? Is it an online version of ADR (Alternative Dispute Resolution – with 'alternative' universally understood to be an alternative to court based resolution) or can it embrace the courts and cyber court technology? Does its validity rest solely with disputes in which the parties are at a distance or can the technological aspects, and the capacity to archive and manipulate outcomes, add value to attendance based mediation?

ADR at its most generic level is any system of resolving disputes outside of the Courts. There have always been disputes since time immemorial. The Court system itself provided a way of resolving disputes that was alternative to physical conflict and competition, whether being fed to the lions or taking one's chance with 'pistols at dawn'. Arbitration has developed as an important form of ADR, albeit it can be seen as similar to the Court (decision reached by a neutral) but with the main difference being that, unlike the Court, the authority for arbitration decisions is primarily contractual. However, many arbitration schemes have gained some level of judicial authority. For example, in the UK certain forms of disputes in the construction industry must proceed to adjudication on certain issues. The primary distinction lies in the fact that arbitration decisions largely cannot be appealed or reviewed so that the main benefit for the parties, quite apart from speed, is finality of decision. All methods of resolving, whether between the parties themselves in an unassisted way (direct negotiation), between the parties themselves assisted by a neutral (mediation, expert neutral evaluation and similar conciliation etc) or as dictated by a third party (arbitration) can come within the definition of ODR. With the move to bring technology into the courtroom and to develop cybercourt facilities technology developed to provide ADR will ultimately encompass facilities and solutions for the Court system itself.

There are also issues not just as to what the term 'online' is applied to but as to definition of the technology itself. Many US mediators claim on their websites to offer online mediation, while closer examination indicates they merely communicate at a distance via e-mail. Does mediation become 'online mediation' simply because the method of distance communication employed is email rather than a dedicated internet accessed central database? It could be argued that the former is no more 'online mediation' than the exchanging of chess moves with a distant playing opponent by email, rather than by surface mail, amounts to 'online chess'. Surely, just as true online chess requires a virtual playing board with intelligence that enforces the rules of the game and provides facilities such as storage of moves, results, playing hints etc, true ODR must provide a reasonably advanced database application and not just pure electronic communication.

Disputes that are created from online transactions are clearly those with most to gain from the development of ODR, but there is no reason to limit the application of ODR services to such disputes or to close one's eyes to the value benefits ODR can bring generally to other disputes, or indeed, to assist in the development of dispute resolution generally outside of the court system.

With the above in mind it is of help that in all discussions on ODR a reasonably wide definition is employed. In addition, the scope of coverage should apply from low value consumer disputes, for which ODR offers increased consumer confidence leading to increased business being transacted cross-border, to mediated high value business to business disputes leading to more secure supply chains, taking in, along the way, government to consumer disputes creating a more accessible public service provider.

Protection and Caution

With the exception of direct consumer complaints, any method of resolving disputes outside of the court system needs to avoid, for its success, any discouragement to those operating in the first line of advice and representation, being the lawyers. Unfortunately, this is not yet universally the case.

In the United States, where ODR systems of blind bidding have met with success, lawyers fees are generally taken as a percentage of the amount recovered by way of compensation. It follows from such arrangement that the sooner a dispute is settled, and the less time and overhead expended by the lawyer, the greater the "profit" in that case. Any system that speeds up settlement, therefore, has benefits for lawyers operating on such a system. This factor probably helps explain why mediation itself, and the near certainty for a claimant that it will involve some gain in its outcome, is more common in the United States.

However, in the UK and elsewhere, lawyers' fees are often primarily based on time spent. This is the case even under the developing practice of conditional fees ("no win – no fee"). Notwithstanding the fact that good marketing policy within solicitors firms recognises that "turning cases over quickly" attracts clients, there remains a reluctance with most claimant lawyers to engage in any form of dispute resolution outside of the Court system, which often by their nature speeds up the time it takes for resolution of the dispute, out of fear of its negative impact on fees.

In England and Wales, a system of fixed lawyers' fees have been agreed upon and are about to be introduced in road traffic accident claims (about 80% of all personal injury claims) of under £10,000 in value and which settle prior to the issue of court proceedings. This development might bring about a lowering of the hurdle of fee preservation. The amount of time spent on a case will, by and large, be irrelevant so that the faster a case is settled the less overhead covered by the fees and, therefore, the more value in the fees. Negotiations are currently taking place for the extension of fixed fees to cases of value over

£10,000, to all personal injury claims and for cases issued in Court. However, the resistance amongst claimant lawyers to such extension of the fixed fee system is likely to delay such further changes for at least two to three years. These cases, of course, by and large concern domestic claims, but the relevance to cross border commercial/consumer disputes is that any increase in usage of ODR, albeit domestically, must help increase usage in all areas.

The other side of the coin is that, although there remains the hurdle of lawyers fees being time based, the growth in “no win – no fee” in the UK means that in cases which there is a significant risk of losing on liability, increasing the prospect of a compromise through the use of ADR/ODR, and, therefore, a ‘success’ outcome triggering recovery of fees, may be attractive in difficult cases notwithstanding the reduced fees recovered.

The answer to this particular challenge lie in court systems giving encouragement to ADR through the medium of costs incentives. In the UK, the legal system has developed to include some encouragement to parties to attempt to resolve matters outside of the Court system. By way of example, the Civil Procedure Rules require consideration of mediation and judges managing cases through the Court require parties to explain what steps if any have been taken to attempt to resolve matters outside of the Court. The UK courts have begun, albeit slowly, to lay down some warning markers to those who unreasonably refuse invitations to ADR but this only, to date, involves, in a handful of cases, denying such parties who nevertheless succeed in court an order that their opponents pay all of their costs.¹ The encouragement envisaged within the Civil Procedure Rules is not yet operating fully beyond the perfunctory. It is for Government to introduce positive costs incentives to ‘reward’ pursuing methods of ADR by enabling fees to be earned for the time saved thereby and not just for the time spent.

The UK encouragement towards ADR however, has its down side. It is pursued hand in hand with a speeding up of the whole court process. Although the courts now have these greater management powers to speed up litigation, this does not necessarily lead to an increased prospect of settlement since, by removing, to a degree, the element of pressure on claimants to settle that results directly from the lengthy time it previously took to advance a claim through the courts, the case is often more likely, for this reason, to go to full trial than would otherwise have been the case.

Beyond concerns for fees, there is a natural reluctance for any professional to readily adopt techniques that are radically different to those in which he has developed a lifetime of expertise. ADR, and especially the ‘blind bidding’ element of some ODR systems, may appear as a ‘dumbing down’ of the skills of a lawyer and negotiator.

Many mediators express disapproval of the absence in ODR of the skills they have developed for handling face to face mediation. Whilst some projects, such as e-arbitration-T² seek to incorporate live video it is expected that it will be some time in the future before video streaming technology begins to provide the same opportunities for personality persuasion that is often utilised in face to face mediation.

The answer to this challenge is not only to identify and develop the new special skills of ODR but also to ensure that the message of benefit is clear to all including the client and

¹ Royal Bank of Canada v Secretary of State for Defence [2003] EWHC 1841 (Ch) Dunnett -v- Railtrack PLC (2002) [2002] EWCA Civ 302 (Court of Appeal) 22/02/02

² <http://www.e-arbitration-t.com>

also, when it comes to widening the potential scope of their work to distance and low value disputes, to the mediators themselves.

Awareness:

Facilities of which those who have most to gain from them are unaware will clearly be slow to develop. There is indeed a significant lack of awareness amongst the public at large of alternative dispute resolution systems themselves, quite apart from ODR systems, due largely to the fact that the marketing of ADR by ADR service providers is largely, albeit not exclusively, focused on the professionals rather than on the client public. Marketing alternative dispute resolution systems, both off and online, directly to the public would result in clients instructing solicitors specifically to try to avoid the courts and thus help increase use of ADR/ODR.

The court systems themselves can play a role in increasing awareness. However, despite requirements within the UK's Civil Procedure Rules for judges to require litigants to address alternative methods of resolution, by and large the judiciary has yet, in the eyes of many, to give a strong enough 'push' towards mediation.³

There is a need to set up programs to inform the judiciary in all countries of the available systems for ODR and the benefits to gain court encouragement.

Infrastructure

In any one country ODR success may depend, to some degree, on technical issues which may create barriers such as the degree of sophistication of the general mass of IT equipment available in business and in the community. Exclusion from IT and the Internet for certain elements of the community would currently rule out the benefits of availability of an ODR system for that community.

Consumer Disincentives

Certain laws have the unintended effect of discouraging consumers involved in distance purchases from agreeing to participate in ODR. The Brussels Regulation on Jurisdiction⁴ gives jurisdiction in consumer disputes in which the supplier, located in a different country to that of the consumer, has taken steps to seek out export orders, with the courts of the consumer's residence. This applies notwithstanding that the supplier's conditions of sale claim jurisdiction elsewhere, usually in the supplier's country. For low value disputes, such as with many transactions conducted on the Internet, it is simply not economic for the supplier to contest the claim. Whilst to date it is likely that only a very small proportion of consumers buying on the Internet are aware of the regulations and of their rights in that regard, that is bound to change in the future and, for those who do have such knowledge, offers of ODR may not be attractive.

A similar influence applies as a result of the charge-back system employed by most credit card providers. Almost all transactions on the Internet involve payment by credit card. If the consumer has a complaint, all he or she has to do so to write to the card company whereupon, in most cases, they will re-credit the card and then put the onus on the supplier

³ See transcript of The ADR Group Annual Debate 2001 with the Lord Chief Justice, Lord Woolf at http://www.adrgroup.co.uk/transcript_of_debate_2001.html

⁴ (EC) No 44/2001 of the 22nd December 2000

to persuade them that the complaint is not justified. The onus is on the supplier. In such circumstances the consumer aware of his rights in that regard may again not be attracted by an offer of ODR from the supplier when the charge-back system gives him an initial advantage.

Whilst the fact seems to be that most consumers are simply not aware of their rights in this regard, wider knowledge is bound to develop in the future.

In certain countries where the court system is particularly overburdened, the delays inherent in the court system itself may be a strong disincentive to some parties to not participate in systems of ODR. A retailer facing a complaint as to the quality of goods sold may prefer to leave a case against him in the court system if he knows, as in ~~XXXXXXXX~~ that several years will elapse before the case comes to trial. The very benefits of speed can be seen as a disadvantage by certain potential defendants to disputes

Availability/Training of Neutrals

For that aspect of ODR that involves neutrals, there is clearly a challenge to ensure a ready supply of neutrals sufficient to meet the need generated by the system. This is more relevant in mediation since mediators need to be trained in the different techniques to be employed when not involved in "whites of the eye" techniques inherent in face to face mediation.

The problem is not solved by the standard training of neutrals since ODR produces issues different from those in traditional mediation. If ODR is to be fully appreciated, those new techniques need to be identified and specialised training developed.

Co-ordination

Given the encouragement from Governments and commercial and trading organisations worldwide for ODR, one of the challenges lies in the co-ordination in some loose way of the various initiatives taking place. By way of example on the 11th June 2003 two unconnected events took place in Brussels. Firstly there was the second day of a two day conference held by the European Extra Judicial Network⁵ (set up by the European Commission) to examine ODR and its role in helping to resolve cross border consumer disputes. This event was attended by a large number of European consumer organisations, industry related arbitration and complaint schemes. The second event was a workshop of the CC Form group⁶ which is an EU funded project to develop a procedure for online registration of consumer complaints related to distance trading (primarily via the Internet). It is inevitable that events can unfortunately clash but clearly there was an inconvenience to a number of delegates to both events, your writer included. Clearly the concern is not that events unfortunately clash, as they will from time to time, but that there is a lack of link-up.

The Betamax Factor

The divergence in development between ODR systems operating under 'thin client' technology and those under 'fat client' technology needs to be addressed. A fat client is a service that requires the parties who participate to have certain technology resident on their client PC in order to use the service. Thin client is at the opposite end of the scale and requires very little other than a low to moderate level of technology. The benefit of the

⁵ www.eejnet.org

⁶ www.ccform.org

former is that greater power and security can be applied in the process at the client (local) end and also greater control over the commitments, contractual or otherwise, undertaken by the parties to the process. The benefit of the latter is that access is readily available to the process with no preliminary hurdle. It is the writer's view, although presumably not universally shared amongst those developing systems of ODR, that the thin client approach is the one that will best achieve widespread access to facilities. The fat client approach risks developing exclusion particularly of consumers in countries whose technological infrastructure is less developed than in others. It has to be said that the wider picture of technology networking is very much focused at the thin client approach with 'Grid' technology offering a much thinner client than currently available with the availability of extra powerful facilities to the most minimal terminal facility.

There may be a place for the 'fat client' in specific, complex and high value areas of dispute resolution but I believe the challenge to the wider community is to develop systems that readily carry with them the support of all parties, particularly consumers. This requires a significant level of ease of understanding and operation. There are clear dangers in developing complex albeit worthy facilities that attract support of the professionals but present technological dissent and barriers to the less technologically or legally aware consumer.

Conflict of laws.

The laws of certain countries may deal with some categories of disputes in a manner different from that of other countries. Thought needs to be given as to how an ODR system copes with such different expectations of 'right and wrong'. Within B2B the problem is less important since most disputes are contractually based with an agreement by the parties to an applicable law. For consumers this does not apply. Indeed, for EU based B2C distance disputes, the Brussels Regulation on Jurisdiction dictates, in most cases, the jurisdiction local to the consumer whatever is stated in the conditions of sale. With a mediated outcome, the problem is minimal since the objective is to assist the parties to come to an agreed solution, often irrespective of the law. With an arbitrated solution that has not been pre-agreed by the parties by contract, the arbitrator's decision needs to reflect "rights and wrongs".

Conflict of Interests

Quite apart from the management issues in relation to co-ordination between various projects there is the from time to time the influence from certain factors to discourage co-ordination. For example, worthwhile initiatives may be developed and pursued by organisations or groups of organisations targeted on a system of ODR within which there are certain financial influences such as the need to be accountable to a funder to provide a solution in such a context that co-ordination with other projects may clash with the interests of the funder or those accountable to it. These clashes of interest may result from personal objectives or the objectives of various bodies, trade associations, industries to somehow control and influence if the outcome and format the systems of ODR.

There are also natural commercial conflicts between companies developing and promoting privately owned methodologies and intellectual property rights in relation to systems of ODR. Private enterprise and initiative has to be encouraged in order that the availability of facilities and techniques are as broad as possible but at the same time public monies were directed at these ODR objectives in general should not be prejudiced by the impact of commercial conflicts and initiatives. Co-ordinating the potential conflicting commercial and financial interest as well as simply co-ordinating work of all contributing to the development of ODR in general is a significant challenge.

Opportunities:-

Commercial Growth

Significant opportunities for the benefit society and business as a whole rather than the more narrow opportunities for particular companies and organisations are addressed herein. Clearly there are tremendous commercial opportunities for companies developing ODR but, at the same time, great dangers in developing technology that is flawed. Concentrating on the wider benefits, the essential opportunity is to assist groups of commercial organisations, such as the businesses within particular countries, to be able to engage in business on a geographically wider basis. The internet provides the opportunity for every provider of product or service to be accessible within the home or office of every individual.

It is now possible for any provider and any supplier to make available to any potential purchaser extensive information about the products or services and a facility to engage in transactions. This can take place at a very informal level using independent trading portals or in a more structured way as a supplier providing a web site. As the facilities and techniques for internet marketing grow and develop the barriers to linking purchasers with suppliers becomes minimal. So far as access for individuals and consumers is concerned, there is already a fast momentum developing to overcome barriers of exclusion in probably the majority of countries around the world.

In the UK there has been over the past year a proliferation of internet accessed kiosk terminals in public places together with the development of mobile phones with full internet access in addition to WAP access. Further there are various publicly funded schemes to provide client terminals in those groups in society less financially capable of purchasing their own equipment. In Liverpool, for example secondhand PC's have been provided free of charge to various inner-city suburbs specifically to provide access to information resources. Cybercafes proliferate throughout the developed world. Despite the accessibility to these "windows on the world" the overwhelming majority of transactions that take place through the internet are with suppliers previously known to the customer such as well known high street retailers. We can fairly confidently speculate that this results from issues of confidence. The customer needs to know that the product or service will be supplied and that, if it is not supplied, or not supplied to the standard anticipated, that the supplier can readily be made accountable.

One of the specific areas of growth in B2B online trading has been with the development of trading portals. These help generate supply chains operating and communicating via a central database. Disputes within a supply chain can have a damaging impact on trading links beyond the one involving the dispute. Further, when a supplier and customer within a supply chain has a dispute that is terminated only at court, it is less likely that those businesses will trade further with each other. After all, why sell to business customers who sue? However, when disputes are settled by a mediation, the fact the outcome involves a voluntary agreement means that it is much more likely that the two businesses will be willing to continue to trade with each other in the future. Mediation within the supply chain can be seen, therefore, to help preserve business continuity for the benefit of the whole business supply chain.

Similar considerations apply to major industrial projects involving large numbers of service and product suppliers. Many disputes between parties within such projects have a consequential and damaging effect on other links within the project often causing delay for the whole project. A scheme to assist in industry tailored mediation is 'Project Neutral'⁷ run

⁷ www.intermediation.co.uk

by Intermediation Ltd and for which The Claim Room.com is adapting its multi-party collaboration technology to provide the service's online platform. Project Neutral operates by providing for each project a fully trained neutral person who becomes part of the project management team with the task of trying to sort out grievances at an early stage.

In many countries, the court system does not provide a practical and readily accessible forum for civil disputes or for an element of civil disputes such as low value consumer complaints. This is less of a problem within the more developed jurisdictions where often small claims courts have developed, but in some jurisdictions access is severely limited by either costs, or the time it takes to process litigation or, more usually a combination of both factors.

Providing an alternative system to resolve disputes that is online will boost not only the opportunity for cross border trade for companies within such countries, both as supplier and customer, but also improve and boost internal trade. A healthy internal trade can only help the development of cross border trade.

Potential Beneficiaries of an ODR system are trade organisations (in respect of benefits to commerce), consumer organisations (in respect of benefits to consumers of products and services), human resource organisations (in respect of employment and health and safety disputes and accidents), local and state Government (in respect of disputes with Government by the public), family support organisations (in respect of family, matrimonial and children disputes) and other interest areas.

ADR Growth

ODR widens applicability of ADR skills to disputes between parties at distance and for disputes in which the value is too low to justify the expense of face to face ADR.

It is felt by both TheClaimRoom and The ADR Group that, whilst an online system would always lack the benefit for a mediator of being able to look a party in the eye, the overall benefits meant that ODR makes a substantial contribution to the practice of mediation itself as well as to its growth and development.

Three online mock mediations⁸ were undertaken by The ADR Group, using technology provided by The Claim Room.com. The benefits of ODR shown from the use of the trial mediations included:-

(i) The ease of access by any party at any time (including on one occasion the mediator being able to advance the case from a kiosk at Bristol Airport) so that all key statements and discussions are always available within the same file for view at any time helped the parties to maintain focus far better than had the discussions taken place simply by email.

(ii) The fact that all statements were on record helped ensure that all statements were thought through beforehand thus reducing the opportunity for damaging remarks unhelpful to the mediation process.

(iii) The process can be helpful for disputes in which there are sensitive personal issues that may make frank discussions difficult if the parties are in the same location.

⁸ All negotiations in the mock mediations can be read at <http://adr.TheMediationRoom.com>

(iv) ODR enables mediation service providers to widen their market considerably to disputes where the parties are in different locations.

(v) ODR enables mediation service providers to widen their market to disputes where the amount claimed is not sufficiently high to justify the expense of face to face mediation.

(vi) The fact that all past mediations can remain on the system for those authorised to view them e.g. mediators, ensures an automatically developing resource of value for performance review, mentoring, studies and training.

(vii) Importantly, in cross border trade, pre-agreement to ODR removes fears of being caught up in a foreign court system.,

(viii) The archiving of communications enables mediators to propose further attempts at mediation at a later stage, based on the history of discussions whenever attempts to encourage compromise initially fail. In this way it increases the prospects overall of success.

The online mediations produced some valuable lessons in the different protocols to be adopted to be fed back into online mediation training:-

a. The need to impose time limits on online mediation to ensure that the focus of the parties is not diluted by the asynchronous nature of the process.

b. In some cases, operating fully in real time, say over a whole day with no distractions from other work, might avoid completely the challenges to focus through the asynchronous nature of the system.

c. The process can be helped by occasional use of the telephone which at least enables the mediator to gain a better insight into the personalities behind the electronic messages. Speech can often be nearly as good an indicator as the whites of the eyes.

d. The pre-mediation process is recognised as extremely important to mediation. Online systems like that provided by TheClaimRoom have the ability within the basic structure to provide a store of pre-mediation discussions so that the most appropriate use may involve a loose timetable for pre-mediation followed by a time limited mediation.

Development of training in ODR is important to ensure best use is made of the facilities. Experience in due course will generate skills, tactics and approaches to adopt that are specific to the online process.

Further lessons will be learned from the current project being undertaken by The ADR Group, once again using The Claim Room.com's technology, for the UK Law Society (Office for the Supervision of Solicitors) in handling conciliation of complaints against solicitors by their clients. A distance (and partly online) fast track process has been developed by both companies and is currently under trial in 20 cases. The outcome may have some considerable gain to the UK Legal profession in that, as a result of the extremely slow manner in which existing complaints are being handled, the Government has served notice

on the Society that it may, as a result, withdraw from the Society its long standing right to self-regulate its members.

Online mediation systems also provide a convenient platform on which distant training in face to face mediation can be provided through a full representation of the offline process with the additional benefit that, as all discussions are archived within the file, trainer and trainee can review/mark progress at any time. Indeed the archiving of online mediations can enable past mediations to be used in training and mentoring to continually help develop skill levels and outcome results.

The storage of values and data from the outcomes of online mediations opens up opportunities for knowledge management techniques such as discourse analysis to feed back into improving the quality of the process. For example, the words and phrases used by parties to a dispute can be analysed to better help identify the extent to which, when a party posts a message to the effect that 'this is my final offer' that is indeed the case. Further, values in settlements can feed back into a database to help better assist parties in a better understanding of likely settlement figures.

Family Conciliation

Online mediation has can bring additional benefit to family dispute conciliation. Firstly, the fact there the parties are not sitting together round the same table can help remove the risks that discussions and responses are affected by personal factors and sensitivities. Secondly, responses and proposals are made after careful thought rather than given as a response for the moment. Finally, and most importantly in this area, promises made and the manner in which conciliation is reached remain on the online file available not only for the parties to review at any time of early signs of future conflict within the relationship but also for the benefit of those assisting in any problems between the parties at any time in the future.

Knowledge Management

Within the Claim Room.com's technology, provision has been made to place values against each data and 'outcome' fields to enable the collation of anonymised data from which reports can be extracted for purposes that may be beneficial to the wider standards of consumer response. For example, reports could be configured to assist in early identification of a trend in complaints that may indicate a design fault or a problem in the way a product is marketed and the representations made within such marketing. In a case involving illness and injury being caused by a product, early detection may bring significant public value far beyond the narrow commercial benefit.

Such benefits particularly apply in the field of developing workplace illness. Full database ODR systems, such as that of The Claim Room.com can provide a valuable resource for lawyers and claims handlers running common law claims in that data relating to earlier claims involving the same employer or employee, or same health risk or industrial practice, may reveal relevant information to identify and generally improve the chance of early settlement. The system can generate a store of generic reports and expert evidence to avoid 'reinventing the wheel' in shared factual/medical scenarios.

Use of TCR will enable trends of workplace risk to be identified, whether as to a particular employer or to an industry wide risk, so that this knowledge can be fed back into the employer or the industry to help the risk to be better managed and thus reduce the extent of further manifestations of the same health risk.

Charge-Back Relief

Most online consumer transactions are paid for at the time of purchase by credit or debit card. Most of the major banking institutions funding such schemes operate the "charge back" system whereby as soon as a consumer complains to them about the product or service purchased the card is credited with the amount spent and the supplier is then given a period of time within which to satisfy the Bank that the complaint does not have merit.

This system has a great attraction to the consumer as it allows a for a speedy and free of cost facility to recover money spent. The onus is on the supplier. The system is, of course, open to abuse but it is believed that the system is under utilised because it is not given much publicity. However, in time, consumers will become more aware not only of their rights in general but of their ability to recover purchase costs other than through taking out legal action. Clearly if credit charge back claims were utilised to a significantly greater degree then this could give problems to suppliers.

These claims are not in theory limited to disputes about the quality of the goods since breaches of various European regulations such as the Distance Selling Directive⁹ would also justify implementation of the charge back system. In the United Kingdom the majority of business websites fail to comply with European regulations as to content and therefore would strictly qualify all consumers from the site for return of their monies.

Once again there are not many claims being presented under these Regulations because of a lack of public awareness. However in time this will change and, therefore, businesses selling on the Internet will need to plan for an increase in complaints generally. ODR clearly will provide an opportunity to control the risk of charge back claims at least for those relating to product/service quality rather than technical breaches of the Regulations.

Summary

The opportunities presented by ODR are highly significant. That is not a statement that can be called into question. Many advantages, particularly for the world of commerce, have been identified. Many more are yet to be identified. However, many challenges still stand in the way, from conflicting interests to the simple needs for greater co-ordination over scope and development. None of the issues identified challenge the validity of ODR, but, rather, how much attention is given to them will affect the extent of benefit and speed of uptake.