

ALTERNATIVE CONSUMER DISPUTE RESOLUTION IN NORWAY

1. Summary/introduction

Norway has a long tradition for handling of consumer complaints. Over the years, a dual system has developed with two main features: The publicly run Consumer Disputes Commission, and a number of sector specific complaint boards, the latter usually established in cooperation between the Consumer Council and branches/sectors of trade and industry.

In 2009, the Norwegian Government appointed a committee to review the Norwegian system for consumer complaint handling. The Committee was mandated to assess the complaint handling system in general, and propose possible amendments for improvements. A specific task was to assess priority categories of goods and services that should be comprised by the system for out-of-court dispute settlement, and suggest how possible loop-holes should be filled. The Committee presented its report in November 2010, and the report is at present object to a national consultation with a dead-end for comments 1 June this year.

2. Background and overview

2.1 Assistance of the Consumer Council and development of consumer law

Public assistance to consumers in disputes over a purchase has a long tradition in Norway. After the Consumer Council was established in 1953, with state funding, the public started to call on the Council to ask for help and advice. Interestingly, assistance to individual consumers had not been foreseen in the mandate for the Council, but it soon came to constitute one of its major activities. With the reorganisation and strengthening of the Consumer Council in the mid 70's, local consumer council offices were established on a nation-wide basis. This meant that a low-threshold offer for assistance, as concerns information and advice in addition to complaint handling, was brought closer to the consumers, with a sharp rise in requests from consumers as a result.

The complaint handling consisted of gathering information and views from the parties, where after the Council could give an opinion on the matter. The policy was to give a neutral opinion based on the facts as presented by the parties and existing law. This approach proved successful in gaining confidence both with business and consumers and having the parties respect the opinions. In most cases, the parties would respect and comply with the opinions. If not, the only option for the party which was not satisfied with status quo would be to pursue the case through ordinary courts, as no options for simplified out-of-court mechanisms for consumer complaint handling existed until the late 70's.

Besides providing consumers with assistance the experience of the Consumer Council with the high number and broad types of cases had two important side effects. For one thing, a number of gaps and loopholes in the existing – and often out-dated - legislation were revealed. This paved the way for the strengthening and updating of the consumer protection legislation in the 70s and 80s, which includes inter alia the Marketing Control Act and the first version of the Act relating to sales outside ordinary sales outlets, and revision and updating of the Purchase Act.

For another, the need for a simplified procedure for handling complaints outside the ordinary court system was clearly documented. This led to the establishment of the Consumer Disputes Commission.

2.2 The Consumer Disputes Commission, complaint boards, European Consumer Centre and civil procedure/collective redress

There are two main features of complaint handling in Norway: The publicly run Consumer Disputes Commission and the sector specific complaint boards.

The Consumer Disputes Commission was established in 1978 through the Act relating to consumer disputes. Initially its competence was limited to complaints on goods, but was later extended to include complaints concerning skilled craftsmen's services and the right of withdrawal. There is a two-step procedure for the handling of complaints. The first step consists of an obligatory effort to solve the dispute by voluntary agreement through the mediation of the Consumer Council (as described above under 1.1). The case may be brought before the Commission only if such an effort has been made without success. The Commission's decisions are enforceable if not appealed to ordinary courts.

There are also a number of voluntary complaint boards, usually negotiated and established by agreement between the Consumer Council and trade and business organisations, in conformity with the pertinent Commission recommendations. The decisions of these boards are of a voluntary nature, however, some branch organizations require of their members to comply with the decisions. The boards are listed below. Two of these, the boards for electronic communication and for air passengers' rights, respectively, are based on requirements in EEA legislative acts.

There are also some examples of other types of complaint boards, including public boards e.g. for disputes on rent for dwellings and medical patients' damages. Some boards have also been established by business without involvement of consumer interests, e.g. for dentist services and certain types of insurance arrangements.

For cross-border complaints Forbruker Europa is the focal point. It is the Norwegian branch of the European Consumer Centre Network (ECC Norway), which is made up of 20 centres (one in each country plus Iceland and Norway). ECC-Norway offers consumers advice on their consumer rights, assists local consumers with legal matters if they experience problems as a result of cross-border shopping as well as help other EU/EEA citizens who have complaints about goods and services ordered from Norwegian traders or purchased while visiting Norway. ECC Norway is co-funded by the European Commission and the Norwegian Consumer Council (the latter is publically funded).

The new Norwegian Civil Procedure Act (an English translation is on the website: <http://www.ub.uio.no/ujur/ulovdata/lov-20050617-090-eng.pdf>) contains provisions for individual and collective consumer redress. It also introduces a small claims procedure which shall be the preferred procedure for dealing with small claims in cases (before the district court).

3. Status on complaint handling bodies as per March 2011

At present, there are – supplementing the public Consumer Disputes Commission - voluntary complaint handling boards for the following goods and services:

- Services of Real Estates Agents:
- Financial Services
- Skilled craftsmen's services on real property
- Erection and purchase of new dwellings:
- Supply of electricity
- Photography Works
- Burial Services
- Package Tours
- Laundry and Cleaning Services
- Valuation of dwellings
- Scheduled air planes
- Electronic communication services
- Lawyers' services
- Car rental
- Car parking
- Debt collection

The number – and category - of bodies has developed and changed over the years. Some has been terminated, usually because of a decline in the number of cases and/or the fact that they dealt with matters that are also within the competence of the Consumer Disputes Commission. A main feature in the development is that services have become the dominating category.

The size of the secretariat, number of cases and the activities in general, show an extreme variation between the bodies. Some have just a part time secretary, while the Complaint Board for financial services (a joint secretariat for the complaint boards on banking and insurance services) has some 40 full-time employees.

In general, the handling in the complaint bodies is free of charge for the consumer¹. The costs for the operation of the boards are usually covered by the pertinent branch or line of business. Having business pay is a cornerstone in the philosophy. In addition to solving the matter of financing, this is considered vital to promote responsibility, and encourage business to introduce measures that prevent complaints, as well as to have an adequate complaint handling in the first place.

The Consumer Disputes Commission is publicly financed. The budget amounts to nearly 1 million Euro a year, and the secretariat has 8 employees. (In addition, considerable resources are used by the also publicly funded Consumer Council for their preparatory case handling for the Disputes Commission, but amounts in this respect are hard to estimate).

All the voluntary ADR bodies, as well as the Consumer Disputes Commission, comply with the EU recommendations on ADR bodies, inter alia in that they are composed of an equal number of consumer and business representatives, and led by a neutral chair.

¹ Except the boards for Erection and purchase of new dwellings and for Services of Real Estates Agents

4. 2009-2011 Review of the ADR system through a Government appointed committee

4.1. Background and mandate

In 2009 the Norwegian Government appointed a committee to review the Norwegian system for consumer complaint handling (hereafter referred to as the Committee). The backdrop is outlined in the mandate for the Committee:

- An efficient system for solution of disputes is in itself a matter of high priority. To bring small cases before the ordinary courts is expensive and resource demanding. Well-functioning systems have preventive effects, stimulate amicable settlements, and represent an incitement for business to improve their products as well as their complaint handling – and to avoid complaints.
- While the Norwegian system for out-of-court complaint handling has developed on a case-to-case basis over 30 years, no systematic and overall review of the system has been undertaken. A survey in 2007 concluded that the overall picture of bodies is – as could be expected - heterogeneous and complex. There are major discrepancies as to the size, organisation, procedures and efficiency.
- The Act relating to consumer disputes from 1978 did only relate to disputes concerning goods, which then dominated the households' purchases and consumption. Increasingly more complicated services now constitute a growing and larger part of the consumption.

On this background, the committee was commissioned to present a model covering those types of goods and services deemed vital to be part of an ADR system, and in this respect

- assess the categories of goods and services that should be comprised by a system for out-of-court dispute settlement
- assess to which degree this is fulfilled under the present system
- assess what type of bodies and complaint handling mechanisms that are most appropriate for different types of goods and services.
- assess whether cases where both parties are consumers (still) should be handled in the public dispute solution system, and possibly alternative systems for such cases
- assess the existing arrangements for advice to consumers and mediation between the parties, and possibly propose how this can be improved in order to prevent disputes or having them solved at an earlier stage.

In order to have more efficient and homogeneous complaint bodies, the committee was asked to consider

- introduction of standardised regulations for the ADR bodies
- introduction of a form for public approval of the ADR bodies
- other measures to make the case handling the ADR bodies more efficient
- which decisions made by ADR bodies should have legal effects under the Consumer Disputes Act, and advantages and disadvantages of making them legally binding and enforceable if not appealed to the ordinary court system.

The committee was furthermore mandated to consider the participation and role of business, in the ADR bodies. If needed, it should propose measures to strengthen the engagement of business in the establishment, development and running of the ADR bodies. Furthermore, the committee should map out possible problems of having business comply with the decisions of the ADR bodies, and how they – in case – could be solved.

Finally, the committee should survey whether the preparatory case handling for the Consumer Disputes Commission should remain with the local offices of the Consumer Council, or be transferred to the secretariat of the Commission. (This is considered more a national matter with limited interest for other parties, which will not be pursued in this document)

4.2. The work and report of the committee

The Committee delivered its report (NOU 2010:11) in November 2010. A short summary:

The Committee endorses on the whole the evaluation of the advantages of the ADR system given in the mandate.

The Committee has endeavoured to identify fields not covered by the existing ADR system, and assessed which of these should be included, emphasizing the following criteria:

- number of consumers involved/affected
- effects on the consumers' economy and general welfare
- suitability for written handling procedure in an ADR body
- whether particular competence is required for handling and deciding on cases
- whether a cost-benefit evaluation favours an extension of the ADR system to the field in question

To this end, the Committee has gathered statistics on requests to the Consumer Council for various goods and services. Another important source has been the "Consumer Satisfaction Index", a survey from 2008 in which 15 000 consumers were interviewed on their attitude to and experience with 40 different types of goods and services.

5. Suggestions of the Committee for improving the ADR system

5.1. Extension of the competence of the Consumer Disputes Commission

Based on these criteria and data, CDC recommends an extension of competence of the Consumer Disputes Commission be extended to include sale of immovable property and construction of new dwellings. In this respect, CDC has evaluated the existing options for complaint handling, which are not deemed satisfactory. Purchase of dwellings form a high portion of requests to the Consumer Council. Disputes concerning such purchases affect a large number of the population, have a considerable effect on the economy and welfare of a household, and usually represent the most important and largest economic dispositions made by households. Furthermore, ordinary court handling of such cases can be tedious and expensive.

5.2 Recommendation for new voluntary complaint bodies

Otherwise, the Committee points to the fact that services only to a slight degree fall under the competence of the Consumer Disputes Commission. Disputes concerning services are mainly handled by the voluntary boards – to the degree that there is an appropriate body for the service in question.

For other areas of priority from the evaluation, the Committee recommends that it should be a responsibility of the line of business/trade organisation in question to assess the feasibility for establishing new ADR bodies. Priority areas listed by the Committee are

- passenger transport by bus, trains and taxi
- private education services
- television services (incl. “digital channel packages”)

Another area considered is rental of dwellings, which, however, is not included in the list since it is not deemed suitable for this kind of handling – as disputes concerning rental are not well fit for written procedure, because of the personal relationship that often will (continue to) exist between the parties, and as there are other and probably more suitable options for simplified settlement of such cases.

5.3 Measures to make the complaint handling system more streamlined and efficient

In this respect, the Committee proposes

- common standards to be introduced for all the complaint bodies as concerns the organising, preparation of cases, and decisions. This is deemed to ensure neutrality, independency and sound case handling.
- a requirement for public recognition and sanction of the regulations of each complaint board
- introduction of a legal authority for legal force and enforceability of decisions made by boards that have been recognised/sanction in this respect.

In order to facilitate the access to the boards, and make it easier for the consumer to find the right board, the Committee suggests that the Norwegian Consumer Council be established formally as a general entry point for requests concerning the complaint handling bodies and the Consumer Disputes Commission. (As the Consumer Council is the main supplier of consumer information in general, and is heavily involved in consumer complaint handling already, this will rather formalize a role that more or less is established in practice already.) Furthermore, the Consumer Council should have a duty to have complete overview over existing alternatives for solution of disputes, and thus be able in each case to give the consumer information of his or her options.

5.4 Fees, payment and cost limits

The Committee discusses possible regulation on fees, limits for the value/amount for the good or service in question, or on payment of costs incurred.

- The Committee finds no grounds for suggesting a fee for handling of complaints in the Consumer Disputes Commission or the complaint boards, for the latter, the principle

should still be that business cover the costs for the running of the board. The Committee underlines that the principle of no charges is an important benefit for the consumer and the system as such, but does not propose a ban on fees.

- The Committee advises against introduction of maximum/minimum limits for the object/service in question to be handled
- The Committee also advises against a general introduction of authority to impose legal costs on a consumer that loses a case.

6. Follow-up and further work

The Ministry for Children, Equal Opportunities has launched a public consultation on the report from the Committee, with dead-line 2 May 2011. Once this has passed and all responses have been received, the Ministry will give high priority to the follow-up and consideration on actions to be taken.