Prof. Dr. Günter Hirsch Oxford  
Präsident des Bundesgerichtshofs a. D. 19./20. April 2016  
Versicherungsombudsmann

***What makes people trust an ombudsman?***

*… from the view oft the German insurance ombudsman.*

1. **Why is it so important that consumers trust ombudsmen?**
2. The development of a comprehensive coverage of ADR for consumer-matters is an important consumer-political effort. In addition to the constitutional guarantee of judicial protection, a legal guarantee for extrajudicial redress is now in place for the consumer. With this, a law enforcement tool supplements the substantive consumer protection law. The courts, as the classical legal guarantors are not getting competitors, rather additional legal protection is offered in disputes assisting from uneven contractual relationships.
3. The state courts, as independent and competent bodies, enjoy a high level of trust. Many ADR bodies are, in contrast, organized through private law and are overseen by management boards (associations), financed through business. These bodies are not afforded trust per se; rather they have to earn it through their day-to-day work.
4. ADR can only reach its intended potential if consumers accept it as an alternative to the courts and make use of it. This will only occur if the consumers trust the ombudsman. With the topic of this morning – what makes people trust an ombudsman – the central question about the conditions for the success of ADR is posed.
5. The answer to this question can be found in the recital (32) of the consumer ADR directive: ‘The independence and integrity of ADR entities is crucial in order to gain Union citizens’ trust that ADR mech­anisms will offer them a fair and independent outcome.’
6. **Which normative regulations are aimed directly or indirectly at building trust?**

Trust depends on a variety of factors. In essence, trust in ADR and ombudsmen is made up of the following:

1. The use of an ombudsman is the consumers choice. The consumer will only accept ADR as an alternative to the courts if they can rely on the

* independence,
* neutrality and
* competence

of the person undertaking the ADR procedure.

1. The consumer ADR directive and the German law (Verbraucherstreitbeilegungsgesetz) have various regulations that directly or indirectly cover these requirements:
2. The dispute mediator must be independent from those who have a stake in the outcome.
3. They are not allowed to be subject to a conflict of interest.
4. They are not allowed to be put under pressure; should be appointed for a sufficiently long period and not be bound by instructions of a party.
5. They have to reveal all circumstances, which are likely to affect their independence, and impartiality that might give rise to conflicts of interests.
6. Safeguards have to be created if ADR procedures are runby persons who are paid by the profession or business association.
7. ADR bodies that are supported through an association must have independent budgets.
8. Persons in charge of a dispute procedure have to, according to the ADR directive, have a general understanding of the law. In Germany they need to have a particular knowledge of consumer law as well as be fully trained lawyers (‘qualified to be a judge’) or certified mediators (§ 6 Abs. 2 VSBG).
9. ADR bodies have to meet the specific procedural quality requirements (ease of access, transparency, provision of information, online and offline accessibility, timeliness, fair procedures, notification obligations, and low in cost).
10. The proposed **state** **recognition** (?) and the legal protection of the term ‘Verbraucherschlichtungsstelle’ (consumer conciliation body) signal and promise trustworthiness; the ombudsman is obliged to keep this promise.
11. Trust can only develop if the activity of the ADR provider is transparent therefore, the obligation to publish an annual activity report is very important. In the ‘Verbraucherstreitbeilegungs-Informationspflichtenverordnung’ the individual points that must be reported on are listed.
12. The biennial evaluation report should enable the supervisory authority to check whether the ADR body is organized and acting according to the law. The supervision by the competent authority shall ensure that the consumer can rely (trust in) the proper functioning of the ADR body and its ombudsman.

**III. The insurance ombudsman**

1. Competence to make bindings decisions

The insurance ombudsman can issue a binding decision on a complaint up to 10,000 Euro against the insurer. About 90 % of complaints lie within this value margin. The insurance policyholder can always go to the courts. In matters that are worth between 10,000 – 100,000 Euros, the insurance ombudsman can make a non-binding recommendation. For claims over 100,000 Euro he is not responsible.

If the Ombudsman has the competence to issue binding decisions, this is a big leap of faith, because with this power he moves closer to a court procedure. Which means, in turn, that his independence has an even greater meaning.

1. Strong connection to rights and the law

It is crucial for the competence of the ombudsman to issue binding decisions that are based on rights and the law, to have the same standards judges apply.

1. Transparency

A substantial aspect, that creates trust and makes the independence of the ombudsman visible to the outside, is the transparency of his work and his results. Therefore he should publish representative decisions and results. Unfortunately neither the ADR directive, nor the VSBG sets out these obligations. The insurance ombudsman publishes his decisions that are of public or professional interest, relating to questions of the law and interesting facts, on the Internet.

1. Information for the press

The insurance ombudsman presents his activities to the public in an annual press conference and answers journalists questions. Because trust that need to be justified, requires information.

1. **Conclusion**

What makes the people trust an ombudsman?

The ombudsman!