UNIVERSAL STANDARDS FOR THE CONCEPTS OF FAIRNESS, TRUST AND SECURITY IN ONLINE DISPUTE RESOLUTION IN B2C E-DISPUTES

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ABSTRACT

The Internet has created a global marketplace, where consumers can purchase goods and services. For online purchases, disputes can occur and are called electronic commerce disputes (e-disputes). The need for an appropriate jurisdiction for e-disputes has resulted in the development of Online Dispute Resolution (ODR), a mechanism for resolving these disputes through the internet. Currently, there is no universal agreement about the concepts of procedural fairness, trust and security in ODR systems, although these issues have been widely discussed in the field of Alternative Dispute Resolution (ADR). This research aimed to develop a set of standards, so that e-commerce users have faith in the fairness, security, and trust of ODR systems.
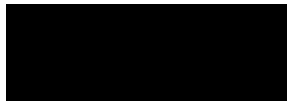
This research has adopted a new approach in the ODR field and no similar research has been conducted. This study used a quantitative and mainly qualitative approach for gathering data. The research was conducted over three phases: in the first phase, which was phenomenological qualitative data collection, face-to-face interviews with six ODR providers and experts were conducted. After analysing interview data, identified themes guided the researcher for the next phase. In the second phase of collecting quantitative data, online surveys were designed to investigate consumers' experiences with online purchasing disputes. One hundred and eight responses were collected and statistical descriptive analysis was used.

In the third phase an interpretation of the interview and survey data was conducted. Overall, this thesis identified several elements as standards in ODR systems for measuring procedural fairness, trust, and security. To measure procedural fairness this research identified equal treatment, respect, neutrality, trustworthiness, consistency, and the ethicality rule. To measure trust: knowledge, expectations of fairness, and code of ethics were significant. To measure security: information security, privacy, and authentication were identified. Finally, these results led to several implications and recommendations for future research.

STUDENT DECLARATION

I, Fahimeh Abedi, declare that the PhD thesis entitled *Universal Standards for the Concepts of Fairness, Trust and Security in Online Dispute Resolution in B2C E-disputes* is no more than 100,000 words in length including quotes and exclusive of tables, figures, appendices, bibliography, references, and footnotes. This thesis contains no material that has been submitted previously, in whole or in part, for the award of any other academic degree or diploma. Except where otherwise indicated, this thesis is my own work.

Signature   Date

Fahimeh Abedi   February 2017

DEDICATION

To

My Beloved Parents

Heidarali, Nahid

&

My Family

Who are My Inspirations

ACKNOWLEDGEMENTS

My gratitude first goes to the Allah 'God all mighty'. I would like to express my deepest gratitude to my principal supervisor, Professor John Zeleznikow, for his immense knowledge, support, guidance, and encouragement. Thank you for having faith in me. I would also like to express my warm thanks to my co-supervisor, Dr Christopher Brien, who has provided continuous support, guidance, and comments from the beginning to the end of this research. Your sincerity has always inspired me.

I extend my sincere thanks and gratitude to my parents, for their love and support; words cannot describe how grateful I am to you both. Also, I extend my thanks to my sister and brothers for their encouragement and support. I am indebted to you all. Your belief and confidence in me has meant more than you will ever know, and makes all the hard work worthwhile.

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PUBLICATIONS

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Fahimeh Abedi, John Zeleznikow, Christopher Brien. The Role of Government's Approach Toward Developing a Regulatory Framework for Online Dispute Resolution. Contemporary Challenges & Solutions in Governance Conference, Victoria University, Melbourne, Australia April 2015

Fahimeh Abedi, John Zeleznikow. The Provision of Trustworthy Online Dispute Resolution for Business to Consumer Electronic Disputes. 7th Asia-Pacific Business Research Conference, Singapore August 2014

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LIST OF ABBREVIATIONS

ADR	Alternative Dispute Resolution
NADRAC	Australian National Alternative Dispute Resolution Advisory Council
B2C	Business to Consumer
E-COMMERCE	Electronic Commerce
EC	European Commission
E-DISPUTES	Electronic Commerce Disputes
EU	European Union
ODR	Online Dispute Resolution
UNCITRAL	United Nations Commission on International Trade Law
QUAN	Quantitative
QUAL	Qualitative

CHAPTER ONE
INTRODUCTION TO THE RESEARCH

1.1   INTRODUCTION

E-commerce is now pervasive. There are no boundaries of time and space in such an environment. Relationships in online space are easily made which has created a significant amount of transactions and interactions between businesses and consumers. However, relationships are easily damaged and this has generated online disputes. In these types of online disputes, parties are likely to be at a distance from each other without face-to-face interaction. This requires a different dispute resolution mechanism from traditional ones such as courts, non-governmental organizations and Alternative Dispute Resolution (ADR) systems. Such a system applies digital communication and information processing through use of computers. This has led to well-established Online Dispute Resolution mechanisms known as ODR systems (Katsh & Rule 2015).

While there is as yet no generally agreed definition for ODR, ODR developed from the synergy between ADR and Information and Communication Technology (ICT) as a method of resolving disputes that were rapidly arising online, and for which traditional means of dispute resolution were inefficient or unavailable (Negi 2015). Negotiation, mediation and arbitration are the most commonly applied approaches within the different processes of ODR (Pearlstein, Ebner & Hanson 2012). The number of e-commerce disputes (e-disputes) is growing rapidly. Different reasons such as language barriers and cultural differences, delivery and payment problems, and also fraud, have led to e-disputes between consumers and businesses (Abedi & Yusoff 2011). ODR in comparison to ADR prevails in terms of being a more flexible, less formal process, with more procedures that are confidential and lead to fast settlements. Moreover, ODR is less costly than traditional methods, which leads to its use for low value disputes and easy access to justice (Cortes 2010).

In 2010 eBay/PayPal handled more than 80 million disputes in e-commerce between buyers and sellers, up from 20 million in 2008 (Rogers 2012). There is an increasing need for an effective dispute resolution system for online disputes. With the absence of recognized global practices; ODR systems appear to be complex, problematic and unable to engender trust (Vilalta 2010). Establishment of a well-designed and global ODR system will benefit disputants (Rule, Del Duca & Nagel 2010). In recent years ODR has become the most prominent and suitable mechanism for resolving online disputes. However, there are some issues related to ODR systems that need to be resolved to maximize the high level of ODR effectiveness and enhance consumer protection in e-commerce. This research will examine three issues 1) fairness, 2) trust and 3) security in ODR.

1) Fairness: John Rawls the Harvard philosopher in his classic work *A theory of Justice* developed the concept of justice as fairness (Rawls 2009). Usually the word justice is exchangeable with the word fairness (Konovsky 2000). There are many different terms and definitions for justice, depending on the context. Some examples of justice are: distributive, procedural, organizational, corrective, substantive, restorative, social, interactional, communicative, communitarian interpersonal and transitional (Bingham 2008). Based on social norms Maxwell (2007) divides fairness into two types - distributive fairness and procedural fairness - while most of the justice scholars add another aspect of justice - interactional justice - as a third type of fairness. This research focuses on procedural justice. According to Van den Bos et al. (1997) procedural fairness is more significant than outcome fairness for several reasons: 1) the process gives more information about the character of the authority compared to the outcome; 2) these character judgments are helpful as a heuristic for judging future events; and 3) fairness of a distributive outcome is hard to measure (Van den Bos et al. 1997). Fairness extends to all forms of dispute resolution, whether or not the third party is facilitative, evaluative or adjudicative, or whether or not there is no third party (Kohler & Schultz 2004).

Justice or fairness is a necessary principle for ODR systems, agreed by all actors involved in ODR regulation, while their interpretations and concepts differ widely. In procedural fairness of the adjudicative process, each party should be able to comment on the case of its disputant adversary, so that an arbitrator does not have ex-parte meetings. Moreover under procedural fairness, parties have the right to participate or withdraw from proceedings at any stage and take their case to the legal system or any out of court redress mechanisms (Kohler & Schultz 2004). Another issue is the importance of neutrality and relationship with the notion of procedural fairness. In court processes disputants should be able to explain their side of the case and the judge has to assess the discussions in an unbiased manner. The same lack of bias is the reason for the significance of neutrality in ODR and ADR (Lodder & Zeleznikow 2010). Moreover, both the Organization for Economic Cooperation and Development (OECD) and European Commission (EC) recommendations underscore the importance of the principle of fairness for International Commercial Online Dispute Resolution (ICODR) proceedings, incorporating the notions of transparency and impartiality (Cho 2009).

2) Trust: Trust building is an important concern in ADR, but trust related issues could pose greater challenges for potential users in ODR systems. In ODR because of the lack of face-to-face interaction, users cannot benefit from different forms of incoming non-verbal information such as face-to-face communication, handshakes, and eye contact (Ostrom & Walker 2003). Indeed, trust plays a very significant role in ODR systems, and if there is not any level of trust for the ODR process, consumers and businesses would not submit their dispute. So, companies should create a level of trust for consumers to resolve their dispute through ODR and providers of this process need to gain trust through being honest, forthright and reliable (Schmitz 2013).

3) Security: The relationship between technology, security and dispute resolution is a challenge in ODR systems. Security is an important issue for users in ODR and is related to information protection. In ODR as with ADR, there is a trend towards transparency. Certainly some information needs to be disclosed (Pecnard 2004). There is no precise definition of security in ODR systems but it includes: confidentiality, transparency, secrecy, authentication, signature, integrity, privacy and control of

information (Kohler & Schultz 2004). For example, under confidentiality, the aim is to develop trust by restricting publication of certain data (Wahab, Katsh & Rainey 2011). In addition, security leads to trust and confidence in the online space (Kohler & Schultz 2004).

Currently, there are no identified elements to measure fairness, trust and security in ODR systems and each ODR systems has its own guidelines. This research investigates the factors that contribute to measuring and defining these legal issues in ODR systems that can be applied universally to enhance fair practice and maximize consistency of ODR systems.

Therefore, this chapter presents the background to this research and the aims of the research. It outlines the contribution to knowledge, the theoretical framework, statement of significance, research method, and conclusion. Figure 1.1 below presents the organisation of the topics for discussion in the chapter.
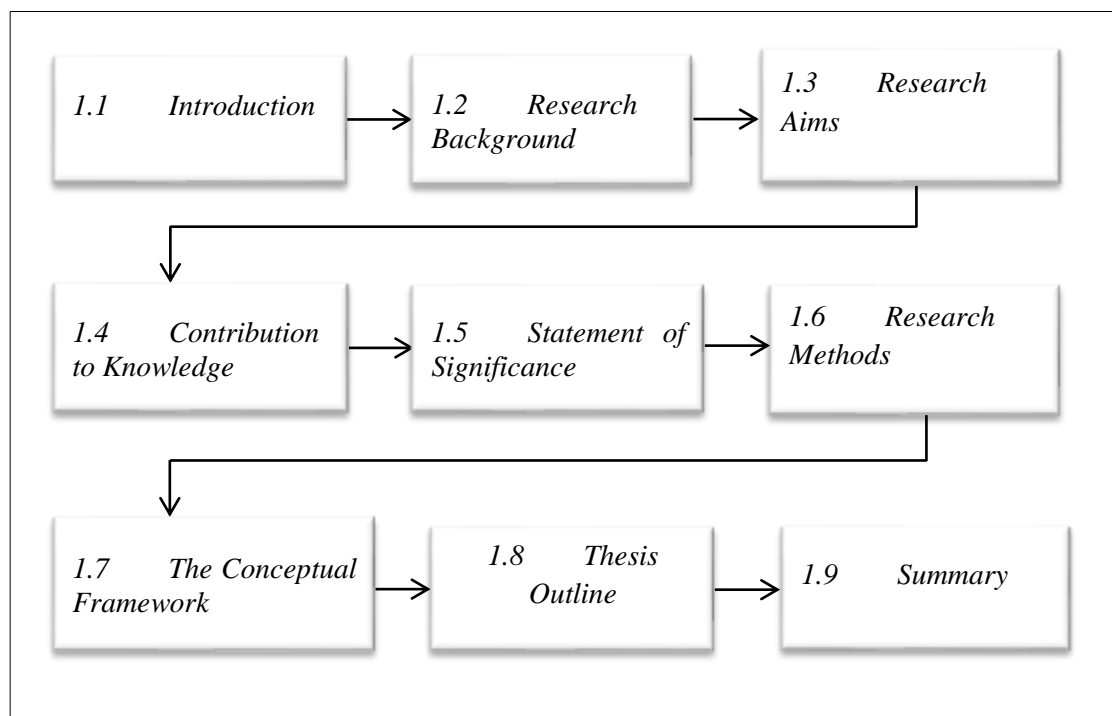
Figure 1.1   Chapter's Organisational Structure

1.2 RESEARCH BACKGROUND: WHAT ARE ADR AND ODR?

Dissatisfaction with the current legal systems and the need for an appropriate mechanism for resolving conflicts has led many people to turn to alternative dispute resolution (Brown & Marriott 1999). ADR includes procedures that serve as an alternative to litigation, generally involving the intercession and assistance of a neutral and impartial third party. There are three main categories for alternative dispute resolution including negotiation, mediation and adjudication (Sourdin 2016).

In e-commerce, as in offline commerce, disputes arise. For resolving e-disputes traditional mechanisms, such as courts and ADR, are time consuming and expensive and have the complicated issue of enforcement of foreign judgments (Del Duca, Rule & Loebl 2011). This has led to the development of appropriate dispute resolution systems for online environments, known as Online Dispute Resolution (ODR). Compared with the traditional ADR, ODR has several advantages such as time and cost resources savings, the flexibility of the process, more speed, transparency and traceability. It also includes the existence of two additional Parties (Wang 2009).

ODR and using technology enhances the value of ADR in several respects including:

- Developing the access and meaningfulness of ADR;

- Making direct negotiation a self-service dispute resolution that resolves disputes faster with less cost or no cost for consumers;

- Allowing the use of technology and computer screens that help disputants with better communication and achieving good outcomes based on similar transactions of a given type, such as the late delivery items or items delivered incorrectly;

- Providing access to ADR as a mean of building trust in commercial or consumer transactions; and

- Confirming that ODR works so it can be used by a new generation for traditional settings (Abernethy 2003).

ODR providers can be divided into private and public groups. Business companies, as private ODR providers, provide dispute resolution as a business endeavour. Examples are: Amazon (*Amazon n.d.*), e-Bay (*E-Bay n.d.*) and PayPal (*PayPal n.d.*) Modria (*Modria n.d.*) (Shackelford & Raymond 2014). Public ODR providers are those which are connected with, sometimes supported by and usually funded by the public. As these online platforms are similar to virtual court houses, there are regulated, monitored and required to comply with regulations which are applied to traditional court systems. An example of a public ODR platform is Concilianet which is located in Mexico (Shackelford & Raymond 2014).

Based on our rigorous examination of the legal systems of many countries, most countries lack legislation covering ODR systems. In the EU, to handle consumer disputes with regard to goods and services purchased on the EU's internal market, the EU passed two innovative legislative initiatives on consumer dispute resolution. The first is the EU Directive on consumer ADR (Boehme 2015) and the second is the Regulation on consumer ODR (*Regulation on consumer ODR, EC 2013*). The aim of the ADR Directive is to tackle three important weaknesses in the provision of extra-judicial redress in the EU: (i) the lack of quality standards, (ii) the low level of consumer awareness of ADR schemes; and (iii) the availability of ADR providers for handling consumer disputes. The ODR Regulation related to consumer ODR established an online platform that provides a single entry point for consumer e-commerce disputes. The ODR platform works as a link between ADR registered entities and disputing parties, which was implemented from 8 January 2016 (Cortes 2015b).

In the USA policy towards e-commerce and consumer protection is pro-business, self-regulatory and minimalist. Contrary to the EU, the US develops incentive programs for online businesses to offer dispute resolution procedures, rather than promoting and protecting consumer rights (Stylianou 2008). Indeed, the U.S has left ODR in the hands of the private sector, while EU has been proactive in prescribing ODR from a central authority.

The best practice would be to use approaches of both private and public intervention in ODR that would benefit both consumers and businesses (Schmitz, A 2015). To do so, the best approach is to first identify the areas of consensus regarding the issues of fairness, trust and security in ODR, and then develop principles for coherent universal ODR systems. ODR is primarily facilitative rather than determinative. Hence, this research will not focus upon online arbitration.

1.3   RESEARCH AIMS

This research aims to make a significant and original contribution to understanding the three concepts of fairness, trust and security in ODR systems. Moreover, with the absence of a universal guideline for ODR systems, this research will recommend universal standards to ensure consistency of ODR systems related to issues of fairness, trust and security. As the emergence and discovery of ODR is based on many years of work in the field of Alternative Dispute Resolution, the researcher will apply relevant theoretical understandings from ADR literature to develop recommendations for ODR systems. In addition, this research will explore the relationship between fairness, trust and security in ODR systems. Therefore, to achieve the aims of the research, the objectives of this research are:

i. To identify the elements that contribute to the definition and measurement of fairness in ODR systems and to determine how these differ from the relevant notions in traditional ADR;

ii. To understand the elements that contribute to the definition and measurement of trust in ODR systems and to determine how these differ from the relevant notions in traditional ADR;

iii. To define, the elements that contribute to the definition and measurement of security in ODR systems and to determine how these differ from the relevant notions in traditional ADR and

iv. To recommend universal standards to measure the above concepts in online dispute resolution mechanisms. These standards should be able to be incorporated into the development of new ODR systems.

1.4   CONTRIBUTION TO KNOWLEDGE

Most researchers in the ODR field have performed descriptive work, such as Stylianou (2008), Boehme (2015), Bonnet, Boudaoud, Gagnebin, Harms and Schultz (2002), Chang, Hussain and Dillon (2006), Fung (2007), Cho (2009), Cortes (2008), Del Duca, Rule and Loebl (2011), Ebner (2012) Goldacre (2002), Hörnle (2012), Katsh and Rifkin (2001), Pecnard (2004), Ong (2015), Wing (2015),   . Although researchers have noted that there is a need to resolve current issues of ODR to increase the quality of ODR systems, their work focuses more on explaining what ODR is, and its advantages and disadvantages, rather than on how to define or measure issues of fairness, trust and security. Hence, the original contribution of this research is:

i.   Demonstrating how ODR is different from ADR by examining the concepts fairness, security and trust.

ii.   To explore a universal standards for the concepts of fairness, trust and security in online dispute resolution in B2C e-disputes.

Consequently, the findings from this research have both practical and methodological implications and contribute to the broad literature in the ODR field.

1.5   STATEMENT OF SIGNIFICANCE

Although ODR has many benefits and has contributed to the growth of e-commerce, the absence of uniform laws has created legal issues for ODR users, identifiable as fairness, trust and security. To enable further development of ODR, these intertwined issues need to be dealt with.

Fairness is an important concept for any dispute resolution mechanism to be effective. Although there is no general concept of fairness, there are different views and practices about procedural fairness which include fairness of the process and independence of the process. ODR providers, like other justice providers, should ensure that they have taken all the necessary steps to provide fair and impartial processes. There are many factors

contributing to the concept of trust in e-commerce and in online dispute resolution systems. Trust comes from fairness and fairness requires transparency. In ODR there is limited face-to-face communication. Instead, there is online communication. Therefore users face difficulty in trusting the other party and the process. Moreover, each ODR provider has recognized different elements and ethical guidelines for their systems. These ethical guidelines vary and consumers find it hard to trust them because there are no universal standards or independent organisations to certify these ethical guidelines. Consequently, as Ebner and Zeleznikow (2015) assert, the absence of trust hampers the resolution of disputes in ODR systems.

Security is another important issue for consumers in ODR. In general there is no precise definition of security as it relates to information protection. The relationship between technology, security and dispute resolution is a challenge in ODR. Security creates trust and confidence in the online space but is difficult to achieve. It is easy to keep information secure in offline dispute resolution, yet to ensure the valuable performance of ODR, confidentiality of information is extremely important. Security in ODR relates to reliability of the system for technology users.

ODR services with a high degree of fairness are able to build stronger trust with users. Moreover, the neutrality of a third party creates trust for disputants and is an important factor of procedural fairness in ODR. The confidentiality of proceedings promotes trust.

The significance of this study is to ensure that consumers are protected in online transactions with proper dispute resolution mechanisms. Once the suggested principles for ODR providers developed in this thesis are implemented, ODR could be enhanced not only for solving online disputes, but also for offline disputes between consumers and businesses.

In addition, an international framework for ODR could create more certainty and growth for industries and businesses in the context of electronic commerce. Furthermore, purchasers would know how their dispute could be solved. It would moderate the inequality of bargaining power between consumers and businesses in

online transactions and create more confidence and trust for online practitioners in international trade. Moreover, the international protocols of ODR would support worldwide growth for markets and industry worldwide.

1.6   THE CONCEPTUAL FRAMEWORK

The conceptual framework draws on several questions in the literature review regarding ADR and ODR. There are three main issues that need to be addressed for any dispute resolution mechanisms to be effective and efficient. While there are different notions of how to define the fairness of the process and the outcome, and some rule-based guidelines and ethical guideline principles, there is still not any universal agreement about this concept. Another issue is trust and how users can trust ODR systems. For the disputants and the users of the ODR there are concerns about whether or not technology is impartial, whether technology will be successful, and if it can support the dispute and can perform competently.

Also, it is important that the technology does not involve time or cost beyond the consumer's expectation. Another legal issue is the security of these dispute resolution mechanisms such as information security, data security, personal security and system security. As discussed previously, the European Union has new regulations on Alternative Dispute Resolution (*Directive on Consumer ADR, EC 2013)* and Online Dispute Resolution (*Regulation on consumer ODR, EC 2013)* that have addressed some of above issues. However, there is not any clear definition of these concepts.

This research believes there is no any uniform definition and practice of the concepts of fairness, security and trust for online dispute resolution for consumer e-disputes. There is a great need for the development of such standards. This research investigates the prospect of a universal framework drawing upon ODR and ADR as a means of enhancing consumer confidence in e-commerce.

It follows ADR principles such as fairness, transparency, cost and effectiveness. However, ODR's main goal is different from that of ADR and it looks to increase consumer activity and e-commerce with traders and companies supporting ODR. This research will propose an analysis of these issues and the development of applicable appropriate standards to ensure fairness, trust, and security in ODR.

1.7   RESEARCH METHODS

The main research question in this research is *"What is the definition and measurement of concepts of fairness, trust and security in ODR systems?"*. Three subsidiary questions arise from this main question:

Research Q.1:   What is fairness in ODR and how can it be measured? How is it different from relevant notions in traditional ADR?

Research Q.2:   What is trust in ODR and how can it be measured? How is it different from relevant notions in traditional ADR?

Research Q.3:   What is security in ODR and how can it be measured? How is it different from relevant notions in traditional ADR?

This study adopts an exploratory sequential mixed methods approach, using quantitative and mainly qualitative research to answer the research questions. This approach will allow for data to be collected from different sources. In order to answer these research questions, this study has reviewed available international literature, and conducted interviews with ODR providers and surveys of consumers with online purchasing experience. Adopting a combination of methods will lead to a deeper understanding and analysis of the research topic (Creswell & Clark 2007). Researchers can begin with qualitative data to explore an in-depth phenomenon before proceeding to the quantitative phase (Gelo, Braakmann & Benetka 2008). The last step will be interpretation of the findings (Creswell 2009). This research has adopted this third phase as interpretation of qualitative and quantitative findings. These three phases are now described in more detail.

1) *Qualitative phase:* the qualitative method will be a phenomenological study. This study is concerned with the experiences of online dispute resolution providers (Maypole & Davies 2001). In phenomenological research the main method for data collection is interviews (Kvale & Brinkmann 2009). In this study, semi-structured in-depth interviewees with six ODR providers will be conducted. The sample size is appropriate for this research; according to Creswell (2013) in phenomenological research the number of participants can range from three to ten. Moreover, These ODR providers will be purposefully selected (purposive sampling) (See chapter 7: qualitative data collection).

2) *Quantitative phase:* the objective of this phase is to further explain the qualitative findings. In this phase an online survey will be used based on qualitative results. The online survey will be distributed to consumers who will be asked if they have experienced disputes from online shopping (See chapter 8: quantitative data collection).

3) *Interpretation of qualitative and quantitative findings*: In this stage, data from qualitative findings are reported and then quantitative findings are examined to help determine the answer to the research questions of this thesis (See chapter 9: findings and discussion).

This study also compares legislation, rules, principles and doctrines related to the US and the EU. Some authors have used comparative legal research in their study, for example, Kierkegaard (2007) in *E- Contract Formation: U.S. and EU Perspective,* which examines the rules needed to create electronic contracts in the United States and the European Union.

1.8   THESIS OUTLINE

This thesis has ten chapters. The structure is briefly illustrated in Figure 1.2.
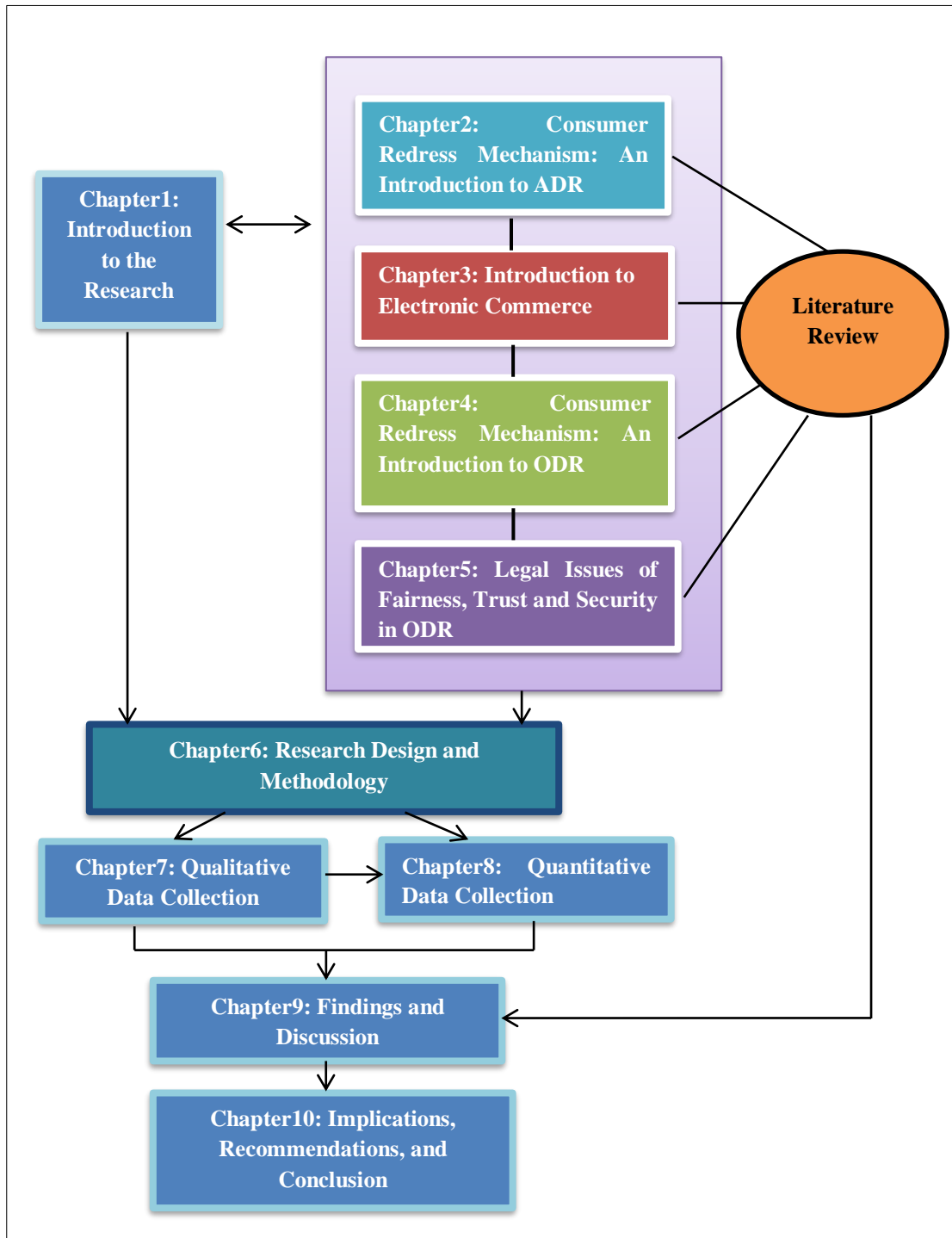
Figure1.2   Thesis Outline

Chapter 1

Introduction to the Research

This first chapter outlines the background and the aim of the thesis, and discussed the contribution to knowledge of the thesis. It also explores the significance of this research, the rationale for the conceptual framework and the research methods that guide investigation of the research questions. It then introduces the key concepts of this research that will be provided by the literature review in chapters 2, 3, 4 and 5.

Chapter 2

Consumer Redress Mechanism: An Introduction to Alternative Dispute Resolution

This chapter outlines what is ADR, who provides ADR, what are different categories of ADR and consumer disputes, and clearly identifies how ODR is different form ADR.

Chapter 3

Introduction to Electronic Commerce

This chapter describes e-commerce and divergent types of e-commerce. Consumers purchasing goods or services may encounter several problems that could result in electronic commerce disputes (e-disputes). E-disputes and the redress mechanism to protect consumers in e-commerce is elaborated in this chapter.

Chapter 4

Consumer Redress Mechanisms: An Introduction to Online Dispute Resolution

The review of literature related to ODR, from its origins to more recent developments, is covered in this chapter. It also examines different forms and examples of ODR and provides case studies on how ODR resolves disputes.

Chapter 5

Legal Issues of Fairness, Trust and Security in Online Dispute Resolution

The fifth chapter contains important concepts of this study. It examines historically and theoretically procedural fairness, trust and security, and all of the different definitions of these three concepts. It explores how procedural fairness, trust and security measured in different contexts and compares the EU and US approach to ODR systems.

Chapter 6

Research Design and Methodology

This chapter discusses the mixed methodology of the research, instruments that are used during data collection and the reasons for their use. It describes the justification for the research paradigm and choosing mixed method design, and data collection and data analysis. In addition, it explains ethical considerations for the research.

Chapter 7

Qualitative Data Collection

This chapter examines data gained from interviewing six ODR providers. The codes and themes identified from analysing interview data are presented in this chapter.

Chapter 8

Quantitative Data Collection

This chapter presents data in tables and figures gained from 108 consumer respondents to an online survey.

Chapter 9

Findings and Discussion

This chapter discusses and interprets the extensive data gained from all different sources of information including interviews, the online survey, and literature review to examine the answers to the research questions. It identifies elements for measuring procedural fairness, trust and security in ODR systems and proposes a universal framework for these concepts.

Chapter 10

Implications, Recommendations and Conclusion

This chapter sums up the thesis by discussing the main findings of this research and its practical and methodological implications. It then lists recommendations and acknowledges limitations of this study, and provides a conclusion.

1.9   SUMMARY

This chapter provided an introduction of this research, laying the foundation for this thesis. It described the background, its contribution and the significance of the research. This chapter has also provided an overview of the research methodology, and overview of the chapters of the thesis. The next four chapters focus on reviewing the relevant literature review for this research.

CHAPTER TWO

CONSUMER REDRESS MECHANISM: AN INTRODUCTION TO ALTERNATIVE DISPUTE RESOLUTION

2.1   INTRODUCTION

The previous chapter introduced the aims of and rationale for this thesis. To better understand the mechanism of ODR systems, this chapter evaluates the development of ADR and analyses the literature to answer one of the research questions - how ODR is different from ADR. It begins with a discussion of ADR growth and then looks at differences between ADR and litigation, examining some cases and examples of ADR in Australia and other jurisdictions, drawing on secondary sources such as books, journals, official statistics, relevant documents and internet websites. The chapter outline is presented in Figure 2.1 below.
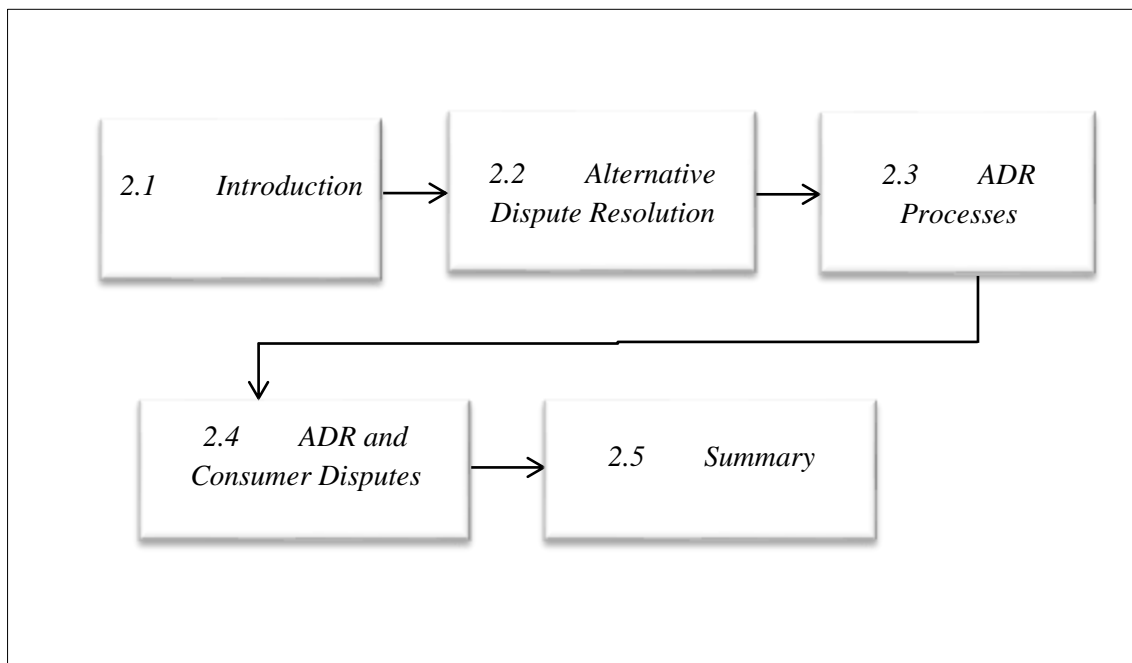
Figure 2.1   Chapter's Organisational Structure

2.2   ALTERNATIVE DISPUTE RESOLUTION

Alternative Dispute Resolution (ADR) is one of the oldest kinds of non-adversarial justice. An American litigation lawyer Eric Green used the term alternative dispute resolution for the first time in his article "Settling large case litigation: an alternative approach" (Green, Marks & Olson 1977). In 1976 a conference on the "Causes of Popular Dissatisfaction with the Administration of Justice" examined different kinds of dispute resolution such as mediation, arbitration, ombudsman, and conciliation within the legal system (Sander 1976). Due to the complexity of the current legal system and demand for a proper dispute resolution mechanism, many have turned to alternative dispute resolution (Brown & Marriott 1999). ADR includes both formal and informal procedures which are developed to settle cases in a more flexible and effective way, and provide more satisfaction compared to litigation (Radford 2000). Generally, ADR procedures that serve as an alternative to litigation commonly include the intervention and assistance of a neutral third party. There are three main categories of alternative dispute resolution - negotiation, mediation and adjudication (Sourdin 2016).

The "Australian National Alternative Dispute Resolution Advisory Council" (NADRAC) has described ADR as an "umbrella term for process, other than judicial determination, in which an impartial person assists those in a dispute to resolve the issues between them" (*Dispute Resolution Term* 2003). Although there is a philosophical debate between ADR practitioners regarding the definition of ADR, some consider that the definition of ADR should be as broad as possible based on the characteristics of the dispute and disputants, while others argue that a clear definition of ADR is essential as this leads to greater consumer certainty (Sourdin 2016). There is an argument about using the word 'alternative' in 'alternative dispute resolution'; while litigators believe it is proper and correct, others such as lawyers, non-lawyers, some litigators and non-litigators disagree. For many years, the letter 'A' in ADR, referred to appropriate or assisted or additional dispute resolution, as some have suggested (Spencer 2002).

The word 'alternative' today means that ADR processes are not central to resolving many disputes but are supplementary to traditional adversarial mechanisms (Wexler 1990). Indeed, using the term 'appropriate dispute resolution' is more apposite (King et al. 2014). Moreover, Spencer (2002) considered that the use of word alternative is a misnomer because disputants have many options to resolve their dispute from assisted to unassisted forms of dispute resolution. None of these ways of solving disputes acts as an alternative to the other party (Spencer 2002). Some commentators such as Chief Justice Robert French (2009) have criticised the description of ADR as an alternative to litigation, because they argue that a dispute can only be resolved by adjudicative or determinative processes.

There are many potential advantages of ADR over traditional litigation such as lower cost, speed, confidentiality, more control over the process, and flexibility. The use of ADR has dramatically increased (Blake, Browne & Sime 2014). ADR has developed in many areas, especially to assist decision making and resource management between stakeholders in global businesses and as a tool for resolving cross border conflicts. ADR is one of the primary tools for conflict resolution; for example, in areas such commercial contract complaints between consumers and businesses, notably in the public sector, international trade, consumer affairs, interstate commerce, work place disputes and family issues (divorce) (Miller 2006).

2.2.1   Advantages of ADR over Litigation

ADR is more confidential and provides flexible solutions where litigation is unavailable, which could explain why almost 54% of businesses prefer to use ADR instead of going to court (Juskys & Ulbaite 2012). In general ADR in comparison to litigation is speedier, private, confidential, flexible, expeditious, convenient, and the choice of arbitrator or arbitral tribunal is less expensive, adversarial, confrontational and intimidating (Nabawanuka 2014).

However, there are some potential disadvantages of ADR. These are additional cost, less satisfactory outcomes compared to a court decision, a high likelihood of delay, and the absence of public funding (Blake, Browne & Sime 2014).

2.2.2 ADR Providers: Court Directed ADR and Private ADR

Disputants might benefit from both court-directed and private ADR. In the court directed ADR process the main role is either requiring or offering litigants the opportunity to resolve their dispute before going to trial (Stienstra 2011). For any dispute resolution process, it is essential to follow a series of constitutional requirements such as fairness of the process and equal treatment for all disputants (Galanter 2005). In private ADR, parties have agreed pre-dispute (in their contract) or after the dispute has arisen to resolve the dispute by using ADR. If there is a court case pending, parties can still choose private ADR. An example of a private ADR provider is the American Arbitration Association (AAA) which is the largest in the United States (Stienstra 2011).

2.2.3 ADR Categories

According to the Australian National Alternative Dispute Resolution Advisory Council (NADRAC), there are three categories of dispute resolution - facilitative, advisory and determinative (*Dispute Resolution Term* 2003). Facilitative ADR is a dispute resolution process where the assistance of a third party is provided and has the least intervention, determinative or advisory role (*dispute resolution terms* 2003). An example of a dispute resolution method with a high degree of intervention is conciliation (evaluative mediation) (Sourdin 2016). A third party in a conciliation role induces the disputants by using various techniques to settle a dispute. These techniques are: developing communication and giving technical assistance such as providing examples of cases handled in the past and making suggestions (Stone 2005). The second category is advisory ADR, where the third party has an active role compared to facilitative ADR, and advises parties about possible outcomes and conditions to gain them (*Dispute Resolution Term* 2003). Early neutral, mini-trial evaluation and fact-finding are

examples of such a process. Determinative is the third category of dispute resolution, which includes advisory arbitration, private arbitration, med-arb and co-med-arb. In these formal processes the third party conducts a hearing and makes a binding decision (Van Gramberg 2006).

2.3   ADR PROCESSES

ADR is usually well known as a voluntary, flexible, confidential, non-judgemental way to resolve an issue. As the parties are part of the settlement of their case, there is normally a trend to see them offering fool-proof settlements compared to the vicissitudes of the court system. ADR mechanisms are designed for disputants to creatively and effectively resolve disputes without the intervention of a formal judicial procedure. This resolution system is beneficial for settling many disputes that do not go to court and can be applied to resolving 90 to 95 percent of the cases which normally go to court (Ogaji 2013).

There are several kinds of ADR including negotiation, conciliation, neutral fact finding, early neutral evaluation, mediation, arbitration, summary jury trial, small claims courts, mini trial, Med-Arb, court-ordered arbitration and rent a judge (Stone 2004). ADR itself has many facets depending on whether the procedure is evaluative or facilitative and whether it is binding or non-binding. In the facilitative process, the neutral third party helps disputants to reach a solution that is agreed by all parties. However, in the evaluation process, the neutral third party has the role of evaluating and presenting the evaluation to the disputants. Moreover, some processes may include both aspects of facilitation and evaluation (Atlas, Huber & Trachte-Huber 2000).

Arbitration has become more popular in the last few years especially in the areas of maritime contracts, international trade, and labour disputes. After arbitration, mediation is probably the second best-known ADR method (Bercovitch & Jackson 2009). Below is a brief description of these processes.

2.3.1 Negotiation

Negotiation is focused on the parties' interests. Parties are involved in a direct discussion with each other until they reach an agreement. The only requirement in this process is that both parties should be willing and consent to negotiation as it is a consensual process; otherwise if the relationship of the two parties breaks down negotiation will fail. Negotiation can be a solution in itself or it can be one step in a larger process that may involve mediation (Ogaji 2013).

2.3.2 Mediation

In mediation, a neutral third party called a mediator facilitates settlement among the parties. It is a process of discussion where the mediator's duty is to facilitate a negotiated consensual agreement between parties and seek to bring them together without imposing a settlement (Hornle 2009). The process of mediation is non-binding; parties might leave the mediation at any time. Parties could make the mediation agreement binding by signing a contract which is enforceable in a court of law (Menkel-Meadow 2015).

2.3.3 Conciliation

In conciliation participants with the assistance of a conciliator who is an independent person undertake the following steps (*Your Guide to Dispute Resolution* 2012):
- listen to and are heard by each other;
- work out what the disputed issues are;
- work out what everyone agrees on;
- identify areas of common ground;
- aim to reach a workable agreement;
- develop options to resolve each issue; and
- receive expert advice and legal information in some cases (*Your Guide to Dispute Resolution* 2012).

This process is similar to mediation. However, the neutral third party has more power to offer terms of resolution that are related to the case (Hodges, Benohr & Creutzfeldt-Banda 2012).

2.3.4 Arbitration

In arbitration, there is a third party as an arbitrator or a panel of arbitrators normally selected by disputants who make a decision. Outcomes in arbitration are less formal than in a court and this is normally called an arbitration award. An arbitrator could render binding or non-binding decisions, for example based on some contractual and statutory schemes, and decisions made by private arbitrators would be binding (such as the American Federal Arbitration Act). In non-binding procedures, a decision is not binding and parties could appeal through other methods of dispute resolution, such as mediation or the court (Menkel-Meadow 2015).

2.3.5 Mini-Trial/Executive Tribunal

This process of dispute resolution is non-binding with an enlarged forum of executives and senior managers, which helps disputants to better understand their conflict and have more information about possible solutions. The process begins with exchanging information before a panel compromising representatives of the disputants (corporate bodies or institutions) who have permission from the disputants to gain a settlement. This helps parties to be receptive to listening to presentations and consider possible options at the negotiation table (Brown & Marriott 1999).

2.3.6 Med-Arb/Arb-Med

Med-Arb includes a mix of mediation and arbitration where parties agree to resolve their conflict first through mediation, and if this is unsuccessful, they can take their case into a binding arbitration process (Edmonds 2006).

In Arb-Med disputants submit their case to an arbitrator who gives an award but does not send it to parties until they fail to solve their dispute in the mediation process. When the mediation fails disputants should then follow the binding arbitration award (Edmonds 2006).

2.4   ADR AND CONSUMER DISPUTES

Mostly, consumer disputes are about contracts between merchants and their customers. For example, for financial services schemes they tend to be insurance contracts, contracts for investment advice and loan contracts. There are contracts for utilities such as water and gas supply as well as telecommunication services such as telephone and internet access. Disputes arise when there is a disagreement between parties about the existence, meaning, and effect of contracts (O'Shea & Rickett 2006). According to Sourdin (2016), usually consumer complaints occur when they are not satisfied with one area of content (such as the service or item is not the same as what was promised in the contract or the content is below standard), psychological (such as consumers feel the behaviour of the seller is not respectful), and process (such as a long transaction or unfair process). There are different ways to resolve these disputes, either by self-help, ADR or recourse to formal litigation through the courts. In self-help, one party without the agreement of the other party takes direct action to resolve the dispute (O'Shea & Rickett 2006).

An effective dispute resolution system should be speedy, enforceable, user friendly and reasonably priced. While consumer organizations, regulators, and national enforcement bodies have a significant role in ensuring compliance with consumer law, the two important bodies through which consumers can resolve their disputes are courts and extra-judicial redress mechanisms. The low value of consumer cases mostly means courts are not a proper forum to obtain individual redress. Therefore, courts are considered as the last resort and, when available, consumers are more willing to select informal ADR methods such as mediation and arbitration. However, these ADR methods are not the same as traditional ADR for commercial and civil disputes. Traditional ADR is defined as an alternative to the court system, in which disputants

may compare the outcome they could obtain in a court with that offered in a settlement. Usually, consumer ADR is presented as the only realistic choice for consumers who are seeking low cost and effective redress in cross border disputes (Cortes 2015a).

Although ADR stakeholders consider that both businesses and consumers should be able to access legal systems at any time, these are not suitable for most electronic commerce (e-commerce) disputes. The reasons are firstly the long process of the court procedure, and secondly legal costs which can be higher than the value of the items involved in the dispute. Furthermore, it is hard to determine the applicable law for e-commerce disputes, which authority has jurisdiction over a dispute, and if the decision could be enforceable across border jurisdictions (Carblanc 2000). Patton and Josang (2004) consider that ADR is a good solution. The process of ADR usually begins when a party makes a complaint with an ADR provider who then notifies the other party or parties that a complaint has been made. After that, there is interaction between the parties with the intervention of a neutral third party to resolve the dispute.

In the European Union, the use of ADR is less than its potential. The European Commission has claimed that a well-structured and simple ADR for consumers can have a significant effect in the internal market. These results have encouraged the EU to pass two innovative legislative tools: Directive 2013/11/EU on Alternative Dispute Resolution for Consumers (*Directive on Consumer ADR* 2013) and Regulation 524/2013 (EC) on Online Dispute Resolution for Consumers (*Regulation on Consumer ODR 2013*).

The new legislation aims to improve the accessibility of high quality ADR schemes as well as to encourage their use. From July 2015 EU members were obligated to comply with the ADR Directive that members states should ensure the provision and availability of certified ADR providers to fulfil minimum legal principles and standards in settling business and consumer disputes (Cortes 2015) (See Chapter 5: legal issues of fairness, trust, and security in Online Dispute Resolution).

The ADR institutions with the most consumer cases are industry association based or 'ombudsman' schemes that are a new response to consumer complaints (Nottage 2009). The next section will elaborate on ombudsman schemes.

2.4.1 Ombudsman

There are two kinds of ombudsman: 1) the Public/Government Ombudsman, and 2) the Private/Industry Ombudsman. The public ombudsman is established by the legislative branch of government to impartially investigate disputes from the public sector about government administration (Reif 2004).

The international ombudsman's association defines ombudsmen as follows:

> These Ombudsmen receive and investigate complaints and concerns regarding governmental policies and processes. The authority and mandate of Classical Ombudsmen are typically provided by statutory language. These Ombudsmen may be elected by constituents or appointed by a legislature or organization to monitor citizens' treatment under the law. Classical Ombudsmen generally have authority to conduct investigations and make recommendations for appropriate redress or policy change (*International Ombudsman Association* n.d).

The Ombudsman has the authority to investigate complaints that government administration has behaved in an unfair or illegal way. The general objectives of the ombudsman are to increase efficiency of public administration and enhance public confidence in the government sector (Reif 2004). For example, in Australia, there are two kinds of ombudsman: the first are the public 'ombudsman', mostly related to complaints and disputes about government activities, with a less formal process compared to the court system or administrative tribunals (Nottage 2009).

The second are the informal 'ombudsman' schemes developed by private industry organizations to settle consumer disputes. Significantly, the most important ombudsman schemes maintain some government control (Nottage 2009). For example, the Telecommunication Industry Ombudsman (TIO) is one the largest schemes that is

regulated by government. In order to obtain a telecommunication carrier licence, since 1993 federal legislation has required licence holders to participate in the TIO scheme. This was extended to mobile phone service providers and ISPs (internet services providers), that involve almost 1000 members under the Telecommunications Consumer Protection and Standards Act 1999 (Cth) (*Telecommunications Consumer Protection And Service Standards 1999*).

The Australian Banking Industry Ombudsman established in 1989 is the first 'private' ombudsman scheme, inspired by the UK's banking ombudsman scheme (1987). In 2003 the Australian scheme was renamed the Banking and Financial Services Ombudsman (BFSO) to indicate the growth of its bank membership and association of broader financial services markets (Nottage 2009).

Other examples of private schemes established in Australia are General Insurance Enquiries and Complaints Ltd (1991) and the Financial Industry Complaints Service (1991). Smaller schemes include insurance brokers and credit unions for specific financial services as well as schemes which are linked to government such as the TIO and the one related to water and energy services (Nottage 2009).

2.5   SUMMARY

The need for appropriate dispute resolution systems, and dissatisfaction with traditional legal systems have led to the development of ADR (appropriate dispute resolution). This dispute resolution system includes both formal and informal procedures that resolve disputes in a more flexible and effective way than litigation. ADR mechanisms are designed to resolve disputes without the intervention of a formal judicial procedure.

There are different kinds of ADR such as negotiation, conciliation, facilitation, and evaluation. As mentioned in chapter 1, the main focus of this research is consumer protection. The low value of consumer cases makes consumers keen to select informal ADR methods instead of traditional court systems. They see the advantages of ADR as speed, enforcement, accessibility and affordability. Currently in many countries there

are private ADR providers such as the ombudsman. In addition, the long process and complexity of court systems have led to the use of ADR for cross border e-commerce disputes.

CHAPTER THREE
INTRODUCTION TO ELECTRONIC COMMERCE

3.1   INTRODUCTION

Purchasing goods and services online is becoming more popular with consumers because e-commerce is quicker and less costly than traditional commerce. E-commerce is now a world-wide trend and is one of the indexes for every country in formulation of their economic policy.

This chapter uses content analysis to examine the history, structure and legal aspects of e-commerce, and how it differs from traditional commerce. It also examines the online buying process, several types of B2C e-commerce, consumer e-disputes and consumer protection in e-commerce. The structure of the chapter is outlined in Figure 3.1 below.
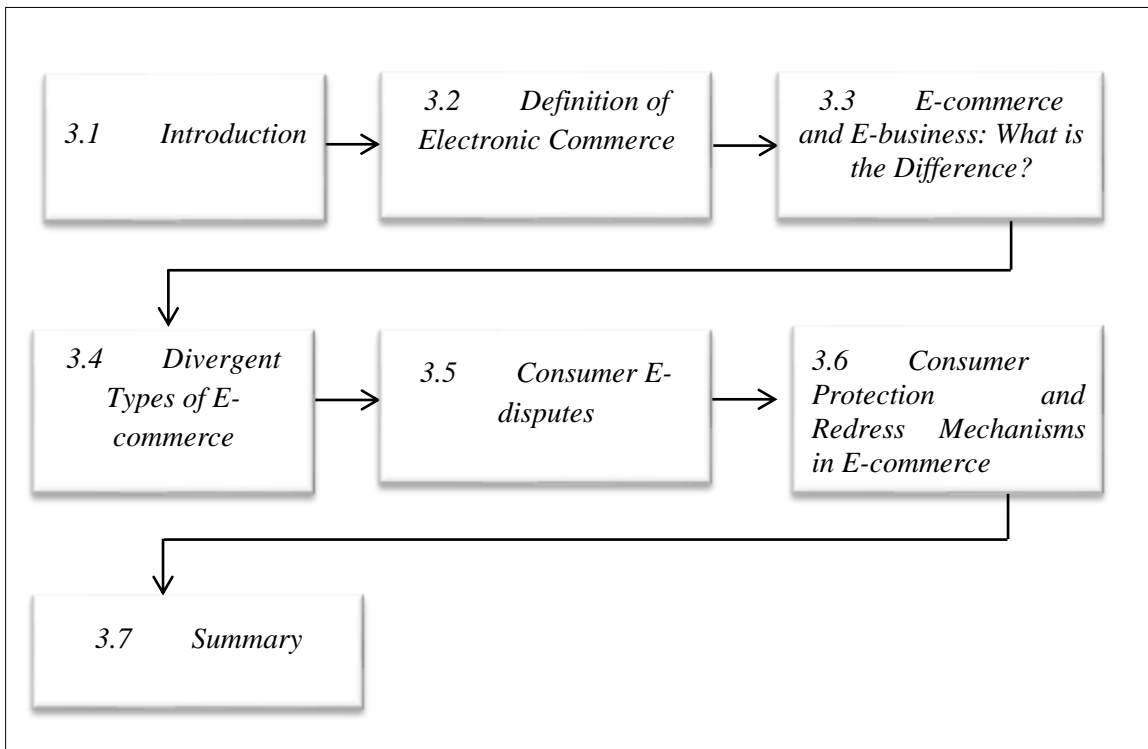
Figure 3.1   Chapter's Organisational Structure

3.2   DEFINITION OF ELECTRONIC COMMERCE

The emergence of Electronic Data Interchange (EDI) (Deshmukh 2006) and Electronic Fund Transfer (EFT) in the late 1960s (Panurach 1996) (Wang, Head & Archers 2000) affected meaningful electronic commerce. However, electronic commerce which is commonly known as e-commerce has had a significant impact on the internet (Graham 2008). There are various definitions of e-commerce. For example, the World Trade Organization (WTO) defines e-commerce as "the production, distribution, marketing, sale or delivery of goods and services by electronic means" (Singh et al. 2005, p. 625). According to Vladimir (1996, p. 3), e-commerce is "the sharing of business information, maintaining business relationships and conducting business transactions by means of telecommunication networks" and Stare (2003, p. 29) defines it as "any transaction over any electronic medium in a computer mediated network". A further definition of ecommerce includes practical commercial actions, the buying and selling of goods, services and data through electronic communication like the internet, and requires a financial transaction (Kartiwi & MacGregor 2007).

E-commerce involves electronic data interchange (EDI), electronic banking, EFTPOS, digital cash and other types of electronic payment system (Rashid 2001). Commercial business activities via electronic tools are referred to as e-commerce. Electronic means include electronic technology, tools, equipment and systems, such as telegrams, telephone, computer, e-mail, facsimile, television, electronic data interchange, the communication network, electronic money, credit cards and the internet. Commercial activities involve offer of, negotiation, bargaining, signing the contract, contract fulfilment, and paying for goods or services. In a narrower view, e-commerce could be defined as any online business activities conducted through a computer-mediated network (Qin 2010).

Although there is no commonly agreed definition of e-commerce (Singh et al. 2005), a simple definition is buying and selling goods and services between two or more people via the internet (Abedi & Yusoff 2011). E-commerce has provided an opportunity not only for high value but also for low-value transactions which were previously rare and

complicated (Ha & McGregor 2013). There are countless advantages of e-commerce such as no geographical boundaries which lead to market expansion, less administrative and operational cost, consumer's loyalty and businesses efficiency (Al-hassan 2012). Indeed, the transaction costs for business have been dramatically reduced by e-commerce which leads to the use of markets instead of internal hierarchies in structuring businesses activities (Graham 2008).

3.3 E-COMMERCE AND E-BUSINESS: WHAT IS THE DIFFERENCE?

E-commerce and e-business are often used in a similar context and interchangeably but their scope is different. Grefen (2010, p. 3) considers that e-commerce is a subset of electronic business and defines it as: "conducting inter-organisational core business activities in dynamic collaborations; such that these are enabled by the integrated use of information technology for both communication and processing of information".

Chaffey, Smith and Smith (2012, p. 477) note that e-commerce is broader than buying and selling products via the internet and includes "all electronically mediated transactions between an organization and any third party it deals with". Therefore, non-financial transactions such as customer requests for further information using this definition are part of e-commerce; that is, e-commerce is a subset of e-business. E-business supports all business activities with the assistance of information communication technologies (ICT). These tools include information flow, such as information security; capital flow, such as types of payments; logistics, such as timely and safe delivery; and business flow, such as quality and price (Rabinovich, Knemeyer & Mayer 2007).

3.4 DIVERGENT TYPES OF E-COMMERCE

There are different classifications for e-commerce types, according to either the relationship between commerce or the nature of the transaction; e-commerce is classified as follows:

- Business to Business (B2B) e-commerce focuses on selling to other business organisations and has the highest volume of transactions. Two fundamental business models are used in the B2B field: the first is Net marketplaces that involve e-distributors, e-procurement companies, transfers and industry consortia. The second model is private industrial networks which involve industry-wide and single firm networks (Al-Taie & Kadry 2014). An example is car manufacturing which includes supplying metal for bodies, tyres and paint (Feng 2007).

- Business to Consumer (B2C) refers to business operations serving consumers with services and/or goods. In fact, B2C e-commerce is an online transaction that involves any businesses or companies selling products and services to consumers for their own use through the internet. Examples of B2C ecommerce include: Amazon which is an online bookseller launched in 1995, online banking, travel services, real state websites and online auctions (Nemat 2011).

- Consumer to Business (C2B) is a type of e-commerce where goods and services are bought by businesses and companies from consumers. This kind of transaction is a reversal of the traditional model of business where companies sell products and services to consumers (B2C). The low cost and great access to technology for individuals have led to B2C, which previously only large companies could access (Nemat 2011). An example of this e-commerce model is expedia.co.uk (Feng 2007).

- Consumer to Consumer (C2C) e-commerce, also known as peer to peer e-commerce, is a model that enables consumers to sell goods and services to each other through the use of an online market like the auction site eBay, where they can bid for goods offered by various sellers (Al-Taie & Kadry 2014). In 2012 eBay had over 100 million users globally with the value of goods traded more than US$68 billion (Elfenbein, Fisman & McManus 2015). Another example is Taobao.com the largest C2C marketplace in China (Yao, Xu & Shen 2014) with 94.5% of the market, while Paip and ToM-eBay have a market share of 5.3% and 0.2% respectively (Yao, Xu & Shen 2014).

- Business to Government (B2G) is a business model where a public sector organisation is the contractor and has commercial transactions with companies. B2G e-commerce includes the use of the internet for government transactions such as public procurement and licensing procedures (Gupta 2014).

- Government to Citizen (G2C), in contrast to G2B networks, are transactions between public administration and private individuals which aim to facilitate government services to citizens (Feng 2007). This communication is mostly done via Information Communication Technologies (ICTs); however, it could involve direct email and media campaigns. The United States official web portal (USA.gov) as a federal G2C network is one of thousands of examples of government web portals worldwide (Nemat 2011).

- Government to Business (G2B) refers to online non-commercial interaction between government and business companies rather than private individuals (G2C). The UK government website (http://www.dti.gov.uk) is an example of this model and provides information and advice related to e-business for businesses (Nemat 2011).

- Government to Government (G2G) is a non-commercial transaction between government agencies, authorities, sectors, and other government departments which is online. The G2G model is common in the UK and generally has two types - internal facing such as the UK NHS Connecting for Health Data SPINE and external facing such as integration of the Schengen Information System (SIS) which was built specifically for the Schengen Agreement (Nemat 2011).

This research mainly focuses on B2C e-commerce. In recent years there have been many issues arising from this type of transaction.

3.4.1 Business to Consumers (B2C) E-Commerce

Business-to-consumer (B2C, sometimes also called Business-to-Customer) is defined as "activities of businesses serving end consumers with products and/or services" (Nemat

2011, p. 101). For example, when a consumer purchases a pair of shoes from a retailer it is called B2C transaction. While all online transactions come under the label of e-commerce, B2C refers to business to consumer transactions and includes businesses or organizations selling goods and services over the internet to consumers for their own use (Nemat 2011).

In B2C e-commerce consumers and traders benefit from lower costs, convenience and faster transactions compared to traditional commerce. Consumers have access to a powerful tool to discover information about goods and services. They communicate online and purchase from businesses without any need for face-to-face communication. The electronic contract is formed via online communication such as email exchange and the consumer by clicking "I agree" or "I accept" is legally obligated to the contract. B2C e-commerce encompasses mainly sale of intangible goods including: software, electronic books and newspapers and online bookings (travel) (Yuthayotin 2015). The most popular example of B2C e-commerce according to Grothe and Park (2000) is the online retail website Amazon (www.amazon.com), an online bookseller launched by Jeff Bezos in 1995. Amazon.com has now become a superstore selling more than books. There are several steps in a B2C transaction. A form of web presence is required on the part of businesses to accept online orders. There should also be internet access to enable users to review products and make orders. Clarification of the payment method such as credit card, e-money, bank transfer or cash on delivery is required. The next step is delivery. It can be online for digital products, or sent to the customer's home or delivered to a pick-up point (*UNCTAD B2C E-commerce Index 2016*).

There are some e-commerce companies that are only online and have a significant role in the e-commerce market. Table 3.1 presents data from the Information Economy Report published in 2015 and organized by the United Nation's Conference on Trade and Development. This report shows that the top B2C e-commerce companies in 2012-2013 were from four regions: the US, Europe, Asia and Latin America (*UNCTAD Information Economy Report 2015*). The largest e-commerce company in the US and EU is Amazon (*Amazon n.d.*) In Latin America and Asia, the top e-commerce companies are B2W Digital and the Alibaba Group respectively.

Table 3.1   Largest Internet Companies in the United States, Europe, Asia, and Latin America
Source: Adapted from UNCTAD Information Economy Report (2015)

	United States 2013	Europe 2013	Asia 2012	Latin America 2013
1	Amazon.com (United States)	Amazon.com (United States)	Alibaba Group (China)	B2W Digital (Brazil)
2	Apple (United States)	Otto (Germany)	Rakuten (Japan)	Nova Pontocom (Brazil)
3	Staples (United States)	Staples (United States)	360Buy.com (China)	SACI Falabella (Chile)
4	Wal-Mart (United States)	Home Retail Group (United Kingdom)	Amazon.com (United States)	Wal-Mart Latin America (United States)
5	Sears Holdings (United States)	Tesco (United Kingdom)	Suning Commerce (China)	Netshoes (Brazil)
6	Liberty Interactive (United States)	Apple (United States)	Jia.com (China)	Máquina de Vendas (Brazil)
7	Netflix (United States)	CDiscount.com (France)	eBay (United States)	Dell (United States)
8	Macy's (United States)	Tengelmann (Germany)	51Buy.com (China)	Amazon.com (United States)
9	Office Depot (United States)	Shop Direct Group (United Kingdom)	HappiGo (China)	Magazine Luiza (Brazil)
10	Dell (United States)	Sainsburys (United Kingdom)	Vamcl (China)	Saraiva e Siciliano (Brazil)
Share (%) of top 500 sales	52%	37%	86%	51%

This report indicates that the most popular items purchased online by consumers in the United States, Europe, Asia, and Latin America were travel related (such as flight tickets, tours and hotel reservations) (*UNCTAD Information Economy Report 2015*). Consumers in e-commerce use different devices for online shopping. Computers are the most popular online purchase, followed by mobiles and tablet devices (*UNCTAD Information Economy Report 2015*).

There has been much research about cross-border B2C e-commerce. The European B2C E-commerce Report shows that in 2014, from the global population of 7,360 million, 1,200 million did online shopping (goods/services) at least once (see Figure 3.2). The strongest region for B2C e-commerce in 2014 was Asia Pacific (€581bn), which was ranked ahead of Europe (€424bn) and North America (€394bn). The smallest B2C e-commerce markets in 2014 were Latin America, the Middle East and North Africa (MENA) and Africa which achieved B2C e-commerce sales of €29bn, €16bn and €3bn

35

respectively. The strongest countries for B2C e-commerce were China, the US and the UK which represented 62% of global B2C e-commerce (*European B2C E-commerce Report 2015*).
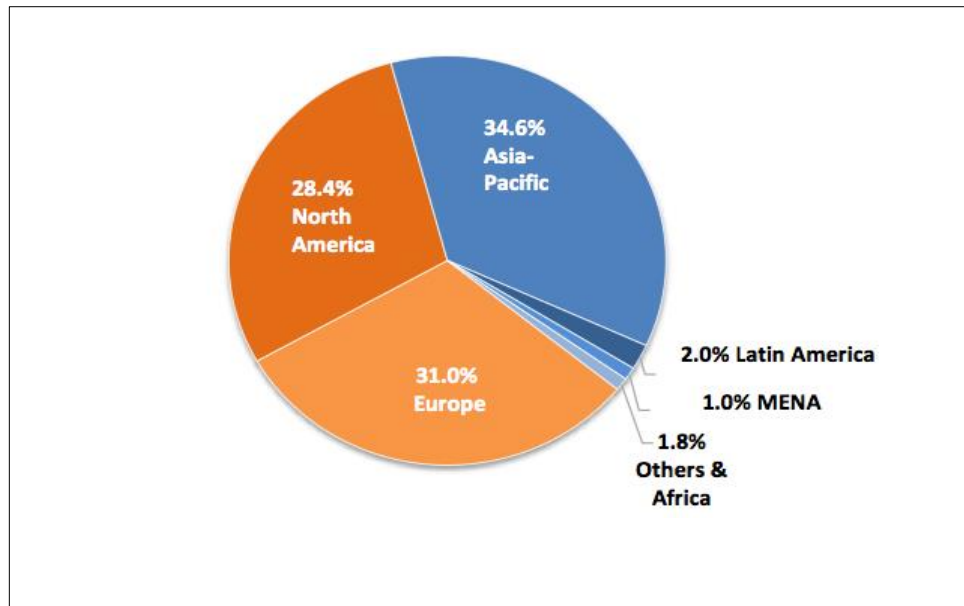
Figure 3.2   The High Ranked Regions for Business to Consumer E-commerce
Source: Adapted from European B2C E-commerce Report (2015)

3.5   CONSUMER E-DISPUTES

In both offline and online commerce, consumers have the same needs and requirements (Svantesson & Clarke 2010). Businesses by providing goods and services for consumers can earn money in the marketplace and in return consumers pay for products and services received (Morrison 2014). However, sometimes businesses do not act as they have promised which can create difficulties for consumers (Xu & Yuan 2009).

In e-commerce, consumers are more vulnerable than offline consumers because they are unable to examine the product until they receive it (Svantesson & Clarke 2010). In e-commerce, there is no way of visiting businesses premises; on the internet businesses do not have 'bricks and mortar' operations. The internet space describes a variety of products and provides their images; this reduces the search costs and advances consumer's information about the products (Scott 2004). But online consumers have a disadvantage in respect of information about quality and reliability. E-commerce

transactions in some cases can lead to e-disputes. Because of the nature of e-commerce, interactions can be at a distance (or even cross-border) and so disputants can be located far away from each other (Hornle 2002). It is important to resolve e-disputes adequately to protect all parties in e-commerce as a well-established legal framework will encourage consumers to purchase goods and services online and motivate businesses to enter the online market place (Petrauskas & Kybartiene 2011).

The main features of the internet are its borderless, ubiquitous nature; it is hard to find the location of users and it provides direct, multi-media communication and transactions between parties globally (Hornle 2009). Cross-border disputes are now arising over the internet; these can be small value disputes and/or include disputes where there is a great power imbalance between the parties. Three significant features of the internet that create obstacles for dispute resolution are: a) parties being located in different jurisdictions, b) the small value of the disputes, and c) power imbalances between the parties (Hornle 2009).

Michael Jenkin, Chairman of the OECD Committee on Consumer Policy (CCP), noted: "Recent studies have shown that consumers may be reluctant to take full advantage of shopping on-line because of concerns about dispute resolution if they are unsatisfied with their purchase. The recommendation provides a practical approach to address these concerns in a systematic and comprehensive way" (*OECD Recommendation On Consumer Dispute Resolution And Redress 2007*).

In many instances when businesses fail to deliver what they have promised, the consumer seeks to resolve the problem by contacting the business's consumer service member or by complaining through the warranty program. If the dispute cannot be resolved, an unsatisfied consumer may take their case to third party consumer protection organisations such as the Consumer Centres Network (ECC-Net), Consumer International (CI) and the Council of Better Business Bureaus (BBB) (Xu & Yuan 2009).

The European Consumer Centres Network (ECC-Net), established in 2005 now operates across thirty countries (all EU countries plus Norway and Iceland). ECC-Net aims to enhance consumer confidence by helping to resolve cross border disputes between traders and consumers who are located in different EU countries. ECC-Net operates several joint projects to learn about consumer's difficulties while shopping online. In 2013, the ECC-Net report showed that the number of cross-border consumer complaints of fraud while purchasing online was dramatically increasing. The EU Commissioner for Consumer Policy, Neven Mimica, declared that: "Online shopping is booming as consumers take advantage of the digital single market. But the risk of fraud is rising too. The ECC report is a timely reminder to consumers that they need to 'shop smart' and avoid the fraudsters' traps" (*Fraud In Cross-border E-commerce Report 2013*). In Europe 12% of internet users have experienced online fraud and 8% have been victims to identity theft. The largest number of internet users experiencing online fraud was in Poland (18%), and then Hungary (17%), the UK and Malta both with 16%, while users in Greece (3%), Slovenia (6%) and Spain (7%) were least likely to face online fraud (*Fraud In Cross-border E-commerce Reoprt 2013*). An example of a consumer dispute is a consumer from Chile looking for a cruise holiday who creates a contract with a large company in the US through an e-commerce website by paying a $2000 deposit. At the last minute, the cruise was cancelled but the deposit of $2000 was not refunded and the consumer asked for a refund of the money (Hornle 2009).

In 2015 European consumer centres dealt with over 38,048 cross-border complaints. Buying online was the major source of consumer complaints (68%) (*European Consumer Centers Networks Fifth Anniversary Report 2015*). These concerns need to be addressed in order to increase consumer confidence in the global electronic marketplace. Language barriers and cultural differences can cause problems for consumers in the electronic market place, based on the potential for textual disharmony which could cause different interpretations of a single word or phrase. This might arise in contracts that employ 'evasive' terms including reasonability or fairness. Another cause of textual disharmony may be translational, as some legal terms are not easily translated and as a result the revised contract might contain less or possibly more protection than is available in its original language (Alboukrek 2003).

Another concern for consumers in e-commerce is security, including using technical improvements such as digital signatures, cryptography and certificates to protect users from the risk of hacking and fraud (Lian & Lin 2008). According to Grabner-Kräuter and Kaluscha (2003), what is important for acceptance of e-commerce is not the objective security of the electronic channel as a transaction medium, but the subjective perception of risk of the consumer. By using security mechanisms online businesses will reassure consumers that e-commerce is safe and reliable. Laforet and Li (2005) consider that the most important element motivating Chinese consumers to use mobile banking is the issue of security. Consumers' awareness of security and privacy policies increases their trust in purchasing online (Carlos Roca, José García & José de la Vega 2009).

According to the Better Business Bureau (*Better Business Bureau n.d.*) the major reasons why consumers prefer to shop offline rather than online are security concerns with online payment, the reliability of vendor companies and the lack of privacy policies in e-commerce transactions (Kariyawasam 2009). Other concerns are the identity and location of the vendor, the description of the goods that are being sold and the inability of the consumer to touch or inspect the goods before purchasing. A further issue is the actual delivery of the ordered goods; this includes the failure to deliver as well as defective or damaged goods (Kariyawasam 2009).

Information privacy concerns are a significant barrier in B2C e-commerce (Sullivan 2005), but research about privacy issues has been equivocal. Privacy concerns in e-commerce prevent consumers entering into a contract (Marsoof 2008). The risk to privacy is related to personal data. This information is saved in the computer and can be exploited by anyone using the same computer because the cookies authenticate the process (Cranor 2004). Moreover, a company might sell the consumer's details to another company, leading to the consumer being inundated with unwanted advertising (Kaleli & Polat 2010). Therefore, the consumer may refuse to provide personal details (Cranor 2004).

Aljaber (2012) has noted that businesses cannot complete a transaction without the consumer's personal information. Evidence suggests a strong relationship between trust and privacy concerns regarding the disclosure of personal data online. E-commerce could benefit from reducing consumer concerns about privacy. Consumers will provide personal information on the basis that merchants keep such material confidential (Wu et al. 2012).

According to a survey conducted by the European consumer voice in standardisation (ANEC) in 2015, consumer's gain trust in different ways including: shopping with an online retailer based in their home country; familiarity and experience with the online retailer; making payments through a safe system which has chargeback when something goes wrong such using as a credit card or PayPal; online reviews; and using websites with a trust mark (*Cross-Border One Shopping Within :The EU Learning From Consumer Experiences 2015*).

Consumers face various issues when contemplating buying online. According to Hill (2008) one or more of the following matters may arise:

- The consumer places an order but nothing is delivered;
- The consumer places an order, the supplier collects payment (normally from the consumer's credit card) without delivering anything;
- The wrong goods are delivered;
- The ordered goods are delivered but when the consumer exercises his/her right of withdrawal, the supplier refuses to provide a refund; and
- The right goods are delivered but are found defective in some ways after the 'cooling off' period has elapsed.

The problems consumers may experience in shopping online can be categorized in the following eight groups: 1. delivery related problems, 2. product/Service issues, 3. unfair or complicated contract terms, 4. price and payment issues, 5. redress problems, 6. selling techniques/unfair commercial practices (UCP), 7. deceit, and 8. others (*The European Online Marketplace: Consumer Complaints 2009*). As consumers may

experience a range of problems in relation to online shopping, it is important for them to seek redress (Ha & Coghill 2008). Therefore, the next section will focus on consumer redress in e-commerce.

3.6 CONSUMER PROTECTIONS AND REDRESS MECHANISMS IN E-COMMERCE

In common law systems the basic principle underlying the law of contracts is freedom of contract. This principle says a contract is a bargain made freely between equal parties (Barry 2007). To reduce the power imbalance between businesses and consumers the legislature intervenes by enacting laws for consumer protection in relation to their purchases with businesses (Cortes 2010). Consumer protection as a concept was developed in the 1960s with an initial emphasis on equalizing the imbalance in the powers of bargaining (Yuthayotin 2015).

These consumer protection laws challenged the freedom of contract doctrine. At this stage, the doctrine was not absolute and began to be seen as a doctrine with some limitations. The traditional justification for consumer protection is founded on the notion of restraining the monopoly power of huge companies and the potential that they possess to influence consumers via advertising that limits consumers' ability to verify what is in their own best interest. This theory includes both situations where the consumer is in a strong position or an economically weaker position compared to traders. Therefore, based on consumer protection the state should support consumers as the weaker market participants in this power imbalance (Haupt 2003). This power imbalance not only exists in traditional face-to-face transactions but also in the virtual world and creates a greater risk of breach of contract for consumers because businesses and consumers are usually located at a distance from each other and often in different countries (Yuthayotin 2015).

Although consumers can access good information about the products they want to purchase online, they may have less information about the transaction and who they are dealing with. This can lead to issues of fraud, non-delivery, and defective products. Even a consumer with full knowledge about online businesses is unlikely to have adequate information about which laws govern the transaction as businesses are located in different jurisdictions (Scott 2004).

According to Svantesson and Clarke (2010), there are four areas that need to be addressed to enhance consumer confidence in B2C e-commerce. Firstly, appropriate information for consumers should be provided to enable them to identify the advantages and disadvantages of conducting a particular transaction (information should be relevant, true and detailed). Secondly, the contract terms should be fair which means that terms need to be appropriate, clearly expressed, and easy to understand. Thirdly, clear and appropriate safeguards need to be in place to protect consumer information. Fourthly, to reduce disputes arising there needs to an effective dispute resolution process. Fifthly, e-commerce has advantages for consumers by providing an opportunity to access a greater range of products and providers. Therefore, healthy regulation of anti-competitive conduct needs to be considered (Svantesson & Clarke 2010).

Another issue in e-commerce is how to protect consumers when they face 'unfair' contracts terms (Sims 2012). In these kinds of contracts usually consumers accept or conclude a transaction without being aware of the contact terms and conditions. Unfair contract terms mean that consumers are unable to seek redress for damaged merchandise, while businesses are not restricted and limited to the terms of the contract (Ben-Shahar 2010).

An example of unfair contract terms is the Shrink-Wrap licence. Shrink-wrap agreements are usually placed inside the box with the software disk or CD by the manufacturer and shrink-wrapped in plastic. The contract is attached to the packaging products. The consumer can only see a few terms from the plastic or on the outside of the envelope. The consumer is advised that he or she will be bound by the terms after paying for and opening the package or plastic wrap regardless of whether or not they

were able to read them (Xue 2009). The consumer has two options: to agree to the terms of contract which is inside the box or return the unopened product; these are called "take-it-or-leave-it" options. Indeed, in these agreements computer software owners impose terms and conditions without consumers having a chance to read these terms before they purchase software (Xue 2009). However, long, detailed standard terms could also lead to difficulties for consumers in e-commerce as they might have limited time to read the document at the time they accept a transaction or they might only have one choice, which is to accept the terms provided (Mwenegoha 2015).

While consumers need to be protected, jurisdiction is always a significant issue as e-commerce is borderless. The issue of jurisdiction is about which country's laws should be engaged when disputes occur between businesses and consumers from different countries. Without certainty about the legal risks and disputes in business to consumer e-commerce, cross border e-commerce cannot reach its potential (Ong 2005). Consumer confidence in B2C e-commerce is significant, but there is lack of consumer protection in many developing countries. Online consumers need to be protected in both national and international cross border transactions. Countries have adopted different provisions, such as the rights and obligations of consumers and businesses, and this has prevented the growth of e-commerce (*UNCTAD Cyberlaws And Regulations For Enhancing E-commerce 2015*). Indeed, the existence of regulations in different countries and the difficulties of national law enforcement have challenged consumer protection in e-commerce (Jawahitha 2005).

There are a number of international organizations that aim to increase consumer confidence and consumer protection in e-commerce, such as the International Consumer Protection and Enforcement Network (ICPEN), a semi-formal cooperation mechanism which has a dispute resolution system and encourages participation between law enforcement agencies to resolve commerce disputes related to international borders (*International Consumer Protection and Enforcement Network n.d.*). The Guidelines for Consumer Protection in the Context of Electronic Commerce (OECD Guidelines) provide recommendations to Member Countries about consumer protection online (OECD, 2000).

The key elements in these guidelines are about: "fair and transparent business and advertising practices, information about businesses, goods and services, transactions, as well as adequate dispute resolution and redress mechanisms, payment protection, privacy, and education". The OECD revised these guidelines in 2014 to reflect relevant policy principles related to B2C e-commerce in several OECD Acts since its adoption in 1999 (*Consumer Protection in E-commerce: OECD Recommendation, OECD 2016*, p. 3).

The US Federal Trade Commission was created in 1914 to protect consumers and promote competition in commerce with law enforcement partners across the country and internationally. The FTC also collaborates with the OECD and ICPEN in relation to consumer protection (*Federal Trade Commission n.d.*). As a global practice, the United Nations is also undertaking consultations on and revisions of the United Nations Guidelines for Consumer Protection created in 2001. The objective of these consultations is to capture the needs of developing countries in e-commerce (*UNCTAD Cyberlaws And Regulations For Enhancing E-commerce 2015*).

3.7   SUMMARY

E-commerce benefits consumers by eliminating distance and time boundaries for purchasing goods and services. However, in e-commerce consumers are not able to examine products until they purchase them and are unable to visit the business premises. This has led to some contentious issues and disputes between businesses and consumers in online transactions. Consumers must be protected in e-commerce and be able to obtain redress for their losses. Proper redress mechanisms could increase consumer confidence in online shopping. Some international organizations are working on B2C e-commerce disputes. These organizations are accepted by national authorities that have enforcement powers.

CHAPTER FOUR

CONSUMER REDRESS MECHANISMS: AN INTRODUCTION TO ONLINE DISPUTE RESOLUTON

4.1   INTRODUCTION

Businesses and consumers from different parts of the world communicate with each other via the internet and easily buy or sell products and services. E-commerce, like traditional commerce, produces online disputes. Taking these kinds of complaints to courts is impractical because it is costly and time consuming and because of the complexity of jurisdictional regulations in cross border disputes. The internet is unique; parties can interact with each other from different parts of the world without the need to travel. These characteristics make its norms and rules different from the real world and should be considered in creating a suitable dispute resolution system for online complaints, mainly e-commerce complaints.

This chapter uses content analysis and adopts historical and jurisprudential approaches. Its objective is to analyze different ODR definitions and methods, describe ODR technology and analyze its approach. It also examines different forms of ODR and offers some examples of ODR providers. The organization of this chapter is presented in Figure 4.1 below.
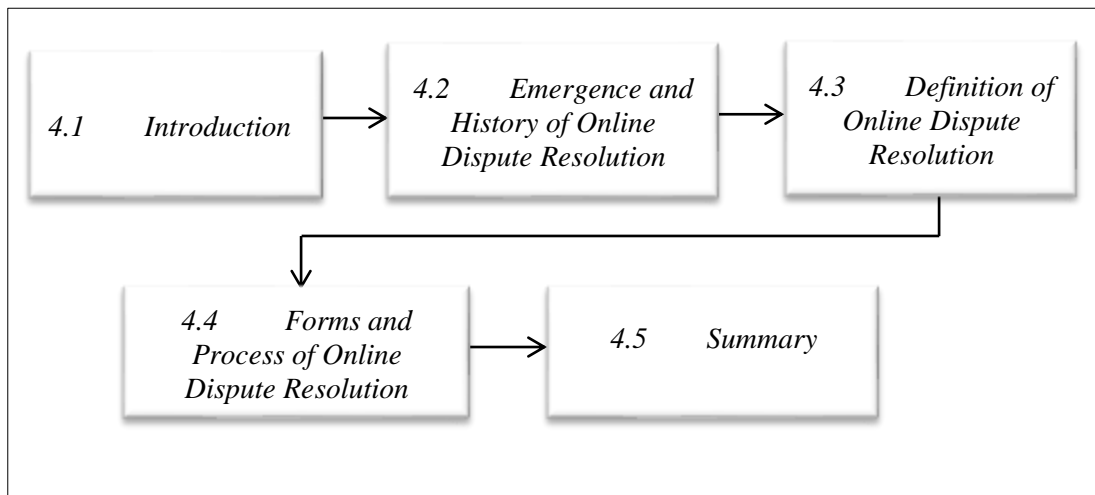
Figure 4.1   Chapter's Organisational Structure

4.2   EMERGENCE AND HISTORY OF ONLINE DISPUTE RESOLUTION

ODR has gone through five different stages of development. The first stage was prior to 1995 when there were only a few specialised dispute resolution procedures that were informally applied in a few specific contexts (Moffitt & Bordone 2012). The World Wide Web was invented in 1989 and led to the emergence of Internet Service Providers (ISPs) and a range of graphical web browsers (Wahab, Katsh & Rainey 2011) and email accounts, and it was then that online disputes began to arise (Sidiropoulou & Moustakas 2010). In 1992 there were no internet service providers and disputes were   resolved through the informal mechanism of online services such as America Online (*AOL n.d.*) and CompuServe (CIS) (*CompuServe n.d.*) (Sidiropoulou & Moustakas2010). These informal online mechanisms were not organized and terms like Specific Dispute Resolution had not yet been created (Morek 2005). Scholars such as Poblet et al. (2011), Nabawanuka (2014) and Tyler (2004) describe this as the "hobbyist" phase as individuals became interested in working on ODR, usually without formal backing.

The second stage was from 1995 to 1998 when the number of online disputes increased (Cortes 2010). The first publications about ODR emerged in 1996 when the National Center for Automated Information Research (NCAIR) organized the first conference on online dispute resolution. The NCAIR conference led to funding for three experimental ODR projects including the Virtual Magistrate, the Online Ombuds Office at the University of Massachusetts and a family dispute ODR project at the University of Maryland (Wahab, Katsh & Rainey 2011).

According to Sidiropoulou and Moustakas (2010), the original concept of ODR emerged in 1998 from the presentation of these three projects. This stage is also known as the "experimental" phase where foundations and international bodies funded academics and non-profit organisations to run pilot programs (Nabawanuka 2014; Poblet et al. 2011; Tyler 2004).

The Virtual Magistrate project aimed to resolve disputes between internet users and internet service providers. The University of Massachusetts Online Ombuds Office hoped to facilitate dispute resolution on the internet, and the University of Maryland proposed to examine if ODR could be employed in family disputes where the parents were at a distance (Rabinovich-Einy & Katsh 2012). This period had a significant effect on the achievement of ODR (Moffitt & Bordone 2012).

The third stage was from 1998 to 2002 with the emergence of an ODR industry and commercial enterprises that had successful initiatives such as Cyber Settle and Square Trade (Cortes 2010). With the accelerated expansion of the web this is known as the "entrepreneurial" phase (Poblet et al. 2011) when ODR became a useful tool for solving online disputes for those engaged in government agencies and corporate activities (Sidiropoulou & Moustakas 2010). The fourth stage often referred to as the 'institutional phase' (Poblet et al. 2011), which began from 2002 onwards which ODR techniques were introduced into institutions such as the courts and administration authorities (Cortes 2010).

Wahab, Katsh and Rainey (2011) note that during 1999-2000 there was rapid growth in ODR start-ups but except for a few such as Smartsetlle and Cybersettle, The Mediation Room and SquareTrade, eBay's original ODR provider, the rest disappeared. In this fifth stage from 2011 until the present ODR began to reappear and attract interest from government; for example, the Office of Government Information Services (OGIS) in the US is promoting the use of ODR for resolving disputes with citizens (Wahab, Katsh & Rainey 2011).

Moreover, the European Union (European Commission) adopted a new Regulation on online dispute resolution for consumer disputes in 2013 which was implemented in 2016, as discussed further in chapter five (*Alternative And Online Dispute Resolution (ADR/ODR) n.d.*).

Therefore, based on Wahab, Katsh and Rainey's (2011) description, this study identifies a fifth stage for ODR development after 2011. Table 4.1 briefly presents these five stages of ODR development.

Table 4.1   Development of Online Dispute Resolution

Different Stages	History of ODR
1) *First Stage*: (before 1995)	Invention of World Wide Web: there were no internet service providers, disputes were being resolved through informal mechanisms, hobbyist phase.
2) *Second Stage:* (1995 to 1998)	A number of online disputes arose, first articles about ODR, the most important conference on development of ODR(NCAIR), three experimental ODR projects (Virtual Magistrate Online, University of Massachusetts and University of Maryland), original concept of ODR scheme officially derived, experimental phase.
3) *Third Stage:* (from 1998 to 2002)	Emergence of ODR industry, such as Cyber Settle and Square Trade, ODR known as a useful means of solving online disputes, entrepreneurial phase.
4) *Fourth Stage:* (2002-2010)	Important role of neutrals and information technology in creating trust, ODR is launched and adopted by several official bodies and courts, "institutional" phase, ODR up-and-down.
5) *Fifth Stage:* (after 2011)	ODR reappears, attracts interest of governments such as European Commission regulation on ODR and use of ODR for disputes with citizens in the USA.

In conclusion, the history of ODR demonstrates that it is connected with the growth of the internet and e-commerce. In addition, ODR has recently become accepted for resolving online as well as offline disputes.

4.3   DEFINITION OF ONLINE DISPUTE RESOLUTION

While ODR could be used in different fields, it has been argued that it is the most appropriate mechanism for resolving e-commerce disputes (Martic 2014). Where users create content, this will inevitably cause a growing number of online disputes (Wahab,

Katsh & Rainey 2011). Disputes arising from e-commerce are challenging court systems for several reasons. These include the high volume of complaints, the gap between the low value of the transactions and the high cost of litigation, the issue of appropriate applicable law (in the context of e-commerce and consumer protection), and barriers to the enforcement of foreign judgments (Del Duca, Rule & Loebl 2011). Furthermore, it has been established that ADR techniques such as arbitration are less useful in resolving online transaction disputes (Del Duca, Rule & Loebl 2011).

While there is as yet no generally agreed definition for ODR, it developed from the synergy between ADR and Information and Communication Technology (ICT) as a method of resolving disputes arising online, for which traditional means of dispute resolution were inefficient or unavailable (Negi 2015). These dispute resolution methods may take place online, complemented by information communication technology tools. Examples are: the initial filing, the neutral appointment, evidentiary processes, oral hearings if needed, online discussion, and even t rendering binding settlements (Cortes 2014). A flexible notion of ODR sees it as any ADR mechanism in which technology plays a considerable part. The "considerable part" element may be fulfilled when there is something more than an electronic application form or email communication. However, this does not imply that all communication must be done online (Suquet et al. 2011).

Commentators such as Hornle (2003, p. 27) have defined ODR as the use of online ADR "information technology via the internet, together referred to as online technology applied to alternative dispute resolution". Zondag and Lodder (2007) consider that alternative dispute resolution (ADR) and the internet are the foundations of online dispute resolution (ODR). The United Nations Commission on International Trade Law (2014) defined ODR as "online dispute resolution which is a mechanism for resolving disputes facilitated through the use of electronic communications and other information and communication technology" (*Online Dispute Resolution For Cross-border Electronic Commerce Transactions 2014*, p. 6). ODR facilitates the dispute resolution process with the use of information communication technology. According to Rule (2016, p. 11) "ODR offers the strongest opportunity for ADR to expand and deliver on its fullest potential". However, other definitions of ODR take a broader approach and

describe ODR as online litigation and other *sui generis* methods of dispute resolution which settle disputes largely with the assistance of ICT tools. According to Cortes (2014) this definition is more acceptable and appropriate as it includes all forms of resolving disputes which are conducted on the internet via a tailored online platform. Moreover, Rabinovich-Einy and Katsh (2017), believe ODR features such as the absence of face to face communication, that all case information is recorded automatically and the existence of the information technology has differentiated ADR from ODR. Therefore, for the purpose of this research the recent ODR definition from Cortes (2014) and Rabinovich-Einy and Katsh (2017), has been adopted as this thesis believes ODR is different from ADR and it aims to examine how fairness, trust and security concepts in ODR are different from those in ADR. Even since the submission of this thesis there has been a series of related publications on ODR in non e-commerce related areas. These include Rabinovich-Einy and Katsh (2017), Rainy (2015), Rule (2016) and Wing (2016).

Information management in ODR can be either by physical persons or computers and software. The assistance of ICT is named as the "fourth party" because ODR is regarded as an independent input in the management of the dispute. Naming "technology" as the fourth party is a metaphor that emphasises the influence of technology in changing the traditional three-side model, which has the two disputants and the neutral third party (Katsh & Rifkin 2001). The fourth party has a diverse range of abilities, similar to the capabilities of the third party. Sometimes the fourth party might take the place of the third party, such as in automated negotiation, but mostly it is used as a tool to assist the third party in the resolution process (Katsh & Wing 2006).

ODR is known by several terms and acronyms such as: Virtual ADR, Electronic Dispute Resolution (eDR), Internet Dispute Resolution (iDR), Online ADR (oADR), and Electronic ADR (e-ADR) (Sidiropoulou & Moustakas 2010). ODR is a diverse field that might be applied to a range of disputes from interpersonal consumer to consumer disputes (C2C) and marital separation, to court disputes and interstate conflicts. While ODR can be used for most disputes, it seems to be particularly apt for on-line disputes, as it is logical to apply the same medium (the internet) to the resolution of e-commerce

disputes when parties are frequently located at a geographical distance from one another (Petrauskas & Kybartiene 2011). Compared with traditional ADR, Wang (2009) has identified several benefits of ODR including:

- Time and cost resource savings: ODR makes those parties from different locations and times zones converge at a single meeting point, without the need to travel or spend too much money;

- Flexibility: ODR enables parties to select neutral third parties from any countries in the world;

- Speed: ODR is speedier than ADR in providing a resolution because physical convergence is not required;

- Transparency and traceability: ODR is cheaper than other types of dispute resolution; therefore, it involves different types of disputes. It tends to be more transparent than some ADR processes. ODR unlike ADR uses e-communication and so it leaves a digital trial. As the information is transmitted online, it is kept in digital form and even after being deleted can often be retrieved. This availability of ODR records enhances the element of traceability;

- Emotional control: There is a lack of personal interaction; and

- Two additional parties: there are more parties involved in ODR such as the fourth party (technology) and the fifth party (providers of technology) (Wang 2009).

ODR by using technology communication tools enhances the value of ADR in several aspects, including:

- Developing the access and meaningfulness of ADR by making it available and affordable for a wide range of disputes, and providing access to mediation and a mediator anywhere in the world;

- Making direct negotiation a self-service dispute resolution that resolves disputes fast with less or no cost for consumers;

- Allowing the use of precedence in technology and that helps disputants better communicate and achieve outcomes based on similar transactions of a given type,

- Making easy access to ADR by the asynchronous nature of participation and enabling parties to participate from any part of the world and any time zone;

- Providing access to ADR as a tool for building trust in commercial or consumer transactions; and

- Confirming that ODR works so it can be used by a new generation for traditional settings (Abernethy 2003)

Therefore, ODR not only enhances e-commerce but also has advantages over ADR in several ways.

4.4   FORMS AND PROCESSES OF ONLINE DISPUTE RESOLUTION

There are various kinds of dispute avoidance mechanisms such as internal complaint procedures (or in-house customer satisfaction systems, call centers, complaint services), escrow services, online shopping assistants, feedback systems, and Trustmark. In general, ODR could be divided into avoidance and dispute resolution. In avoidance resolution, ICT is applied to prevent a dispute occurring at an early stage between the disputants and resolution of disputes without requiring disputants to become fully engaged in a dispute resolution process. In dispute resolution, ICT is used in the settlement of disputes (Cortes 2010). This research focusses on ODR as a dispute resolution mechanism for use in e-commerce disputes that arise between businesses and consumers. Online Dispute Resolution includes various processes that have two features in common: 'DR' (dispute Resolution word) and 'O' (online word), they are used to resolve disputes electronically. All methods of 'conventional' ADR are represented on the internet, as well as other forms of dispute resolution based on novel communication capabilities. For example, Automated/Blind-Bidding Negotiation is an online mechanism not in existence in traditional ADR which, nonetheless, offers familiar and useful categories when using the internet for dispute resolution (Kohler & Schultz 2004). Another example is negotiation support (Bellucci & Zeleznikow 2005) which takes advantage of new technology in the dispute resolution mechanism.

While there are a number of different ODR classifications, there is no empirical evidence about which is more important. Examples of ODR classifications are: Hornle's (2002) classification, the World Intellectual Property Organization (*WIPO ADR*

Procedures n.d.) classification, and Cortes' (2010) classification. Cortes (2010) identifies the following methods of ODR in his classification: automated negation, online mediation, online conciliation, assisted negation, online arbitration, *sui generis* arbitration, online small courts, med-arb, neutral evaluation, an ombudsman, and mock juries. Hornle's (2002) categories include: online evaluation, mock trials, online mediation, document only arbitration, automated settlements systems, complaints assistance and online evaluation (Hornle 2002). The World Intellectual Property Organization's (WIPO) categories have four methods of ODR: mediation, expedited mediation, arbitration, and expert determination (*WIPO ADR Procedures n.d.*). According to Kohler and Schultz (2004) and Pearlstein, Ebner and Hanson (2012), negotiation, mediation and arbitration are the most commonly applied approaches within the different processes of ODR. Tyler (2004) analyzed 150 ODR sites and liaised with ODR experts and found that mediation and arbitration were the most prevalent forms of ODR, as shown in Figure 4.2.
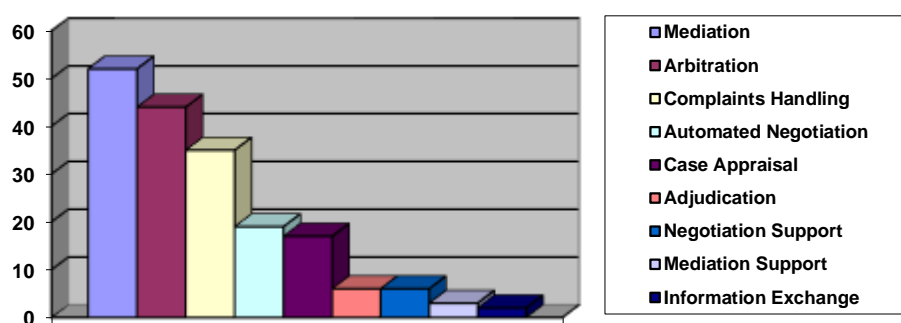
Figure 4.2   Different Types of ODR
Source: Adapted from Tyler (2004)

4.4.1   Online Negotiation

Negotiation is a universal means of communication with the aim of reaching agreement between two or more people (Betancourt & Crook 2014). Roberts and Palmer (2005, p. 113) noted that: "the span of negotiation is becoming more interactive and complicated, involving stressful exchanges confronting the context of conflicts and disagreements". With the advent of the internet, this type of dispute resolution has moved into the online

world as online negotiation enables parties to communicate together by using electronic tools such as email, instant messaging, and video or audio conferencing instead of communicating through the telephone or a face-to-face meeting. Online negotiation is divided into two main types, assisted negotiation and automated negotiation (blind bidding) (Kao 2009).

4.4.1.1 Automated negotiation

In this process, each party types an offer into the web (blind bids which is not disclosed to other party. The computer then averages the offers to settle the dispute for that amount until the bids are within 30% of one another (sometimes less). Thus, resolution happens as "a function [of] the mean of the numbers" (Mann 2009, p. 95). Throughout the process there is no human intervention; it is called automated negotiation and blind bidding because all the bids are confidential to other party until they come within range (Kohler & Schultz 2004).

4.4.1.2 Assisted negotiation

In assisted negotiation, parties negotiate to resolve their conflict without intervention or help of a third party. In this process, there is negotiation software in conjunction with online mediation, similar to the mediator role, which assists the negotiation process and helps the parties refine their interest without direct involvement (Petrauskas & Kybartiene 2011). The negotiation software is neutral and capable of considering all issues. Then with the assistance of the mediator, the parties will identify their interests, matters of priority and other important issues such as outcomes they would expect from litigation (Hornle 2009). Another name for this process is enhanced/mediated negotiation or technologically facilitated negotiation (Katsh & Rifkin 2001). The main benefits of this process are that it is simple, informal and user friendly (Petrauskas & Kybartiene 2011).

4.4.2 Online Mediation

Mediation has been used traditionally as a means of dispute resolution in arguments, conflicts, struggles and disagreements. If parties have been unsuccessful in the

negotiation process, they may need to use a dispute resolution process such as mediation where a neutral third party as a mediator with no authority in making binding decisions for the parties assists them to reach a settlement by recommending some solutions (Moore 2014). The potential advantages of the internet are that mediation can be conducted in an online environment using online communication programs (Turel, Yuan & Rose 2007).

There are two styles of mediation: 1) facilitative mediation: where the mediator facilitates the mediation between the parties by identifying their interests and needs. In this type of mediation, the mediator does not express an opinion or recommend a solution until the parties reach a mutual agreement (Sandu 2014); 2) evaluative mediation: the mediator provides direction for the grounds of settlement and offers opinions on law, facts, evidence or technology. This requires the mediator to be experienced and trained in order to give direction (Badenhorst 2014). Sometimes a facilitative meditator is called 'interest based' because they concentrate on goals and interests, while the mediator in evaluative mediation is called 'rights- based' as they tend to focus on the actual rights of the disputants (Stitt 2004).

According Fernandez and Masson (2014), online mediation can be divided into computer assisted mediation and computer based mediation. Computer assisted mediation is conducted using computer communication to facilitate the administration of traditional mediation. The initial process will require the use of computers to exchange preliminary information between the parties and the mediator. Clearly, using this type of ODR, technology is meant to be a supplementary tool to the traditional mediation process. On the other hand, computer-based mediation is conducted through applications that are especially designed to analyse the data entered by each participant and to suggest a compromise solution to the parties' dispute. Access to and knowledge of computer technology is necessary to engage in the online mediation process. One such method of computer-based mediation is blind-bidding, which has been dubbed the "software-as-mediator" and is most frequency used in e-commerce disputes between buyers and sellers (Fernandez & Masson 2014).

The benefits of online mediation for parties are: avoiding complex jurisdiction issues, cost savings and convenience (Goodman 2003). Flexible means redress is not limited to monetary award (Alfuraih & Snow 2005). However, it has been argued that online mediation is limited to a range of disputes, is impersonal, and is potentially inaccessible (Goodman 2003).

An example of online mediation is a private Canadian ODR company called Smartsettle that resolves disputes through online negotiations based on algorithm analyses (*Smartsettle n.d.*). Smartsettle includes both face-to-face mediation and online mediation sessions. It helps parties to resolve their dispute by acting as a mediator. The first step requires the parties to identify the issues under dispute and to rank them in terms of priority by giving a notional value. The algorithm analysis offers several proposals to help parties gain optimal solutions. Smartsettle uses techniques from game theory to provide the best outcome (Cortes 2008). There are six steps in the process illustrated in Figure 4.2 which with the assistance of an independent facilitator express the value of their preferences (*Smartsettle n.d.*).
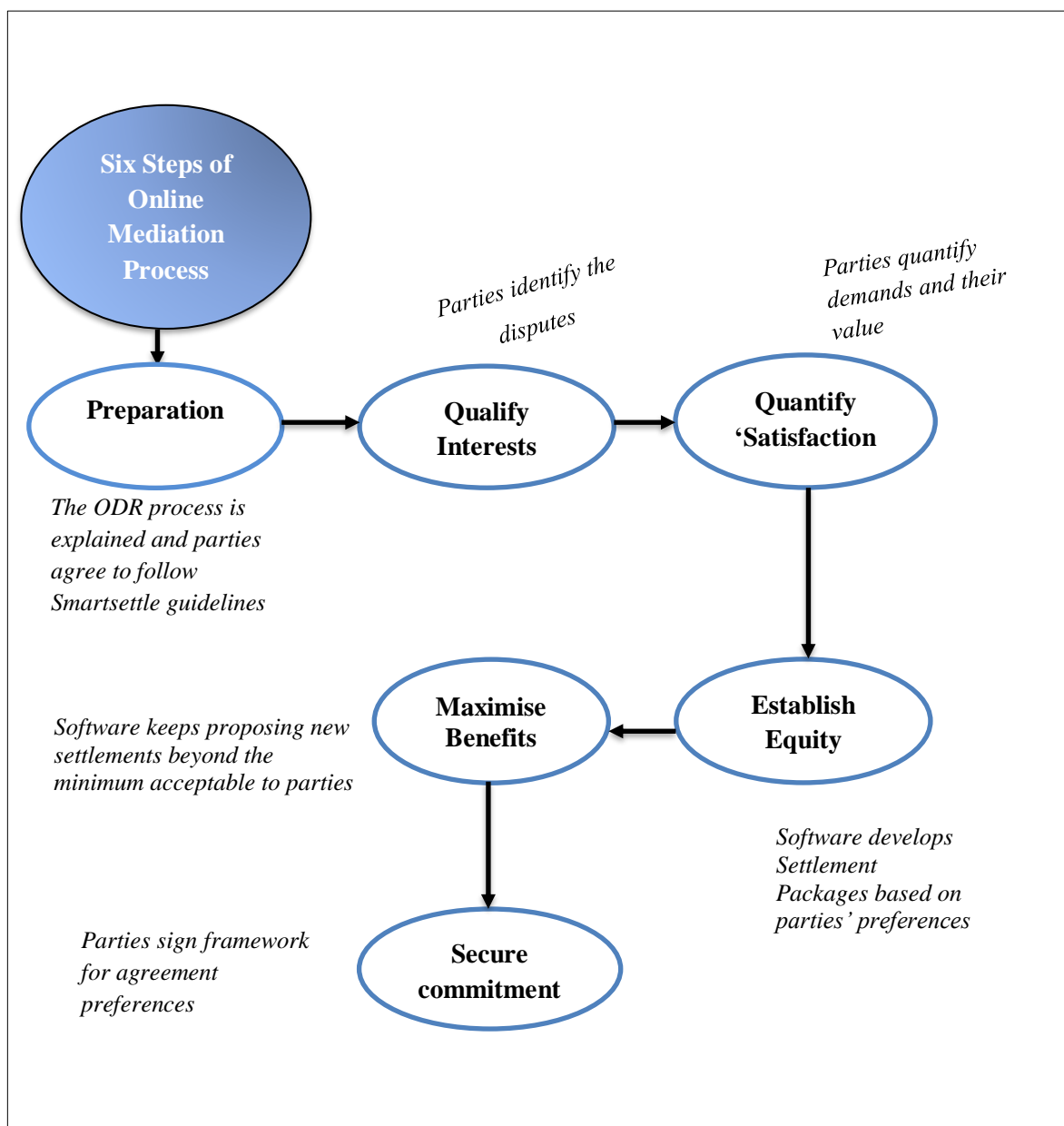
Figure 4.3   Smartsettle Process

Source: Adapted from Smartsettle Homepage (n.d)

Smartsettle resolves both B2C and B2B disputes and has been referred to as assistance because it has the ability to facilitate multi-party negotiations to support multiple issues. Smartsettle works as a mediator between the disputants, helping them to resolve their dispute. In first steps, the disputants should identify the issues about which they have a dispute and then rank them in terms of priority by giving each a nominal value. The

algorithm analysis recommends several solutions to the disputants in order to reach the most efficient resolution. Smartsettle has a great advantage as it delivers mathematically optimal solutions to the dispute. However, the ODR platform in Smartsettle might be technically difficult to use (Cortes 2008).

Another example of an ODR provider with an online mediation service is RisolviOnline offered by the Milan Mediation Chamber that allows commercial disputes to be resolved, and could be used both by individual consumers/users and by enterprises. RisolviOnline (*RisolviOnline n.d.*) resolves B2C online disputes. Parties can choose mediation or evaluation. Parties might ask for: 1) a mediator who assists them to find a mutually acceptable solution; 2) an expert for a non-binding solution of the dispute based on the evidence of the case. In both situations, when parties agree to a solution, it is then signed and becomes a contract.

4.4.3   Online Arbitration

Arbitration has a long history. It has been extensively used for resolving disputes between states, state entities, and private parties. Since World War Two and particularly since the New York Convention of 1958, the growth of domestic arbitration in certain countries (for example in the United Kingdom and the United States), and of international commercial arbitration has been quite dramatic (Brown & Marriott 1999).

Generally, arbitration has been defined as a process which is broadly similar to a trial procedure. In arbitration both sides present their case to a third party who is arbitrator and has authority to makes a decision (Blake, Browne & Sime 2014). A final decision is imposed on the contending parties, which is called an 'award' based on the merits of the case, and this award usually is binding and cannot be appealed except under certain circumstances (Alam 2014). Arbitration compared to a litigation process is simpler, and more flexible and efficient (Devey 2008).

The definition of online arbitration is not different from offline arbitration expect for the use of electronic means in online arbitration (Al Ateyat & Al Dhahir 2013). The online arbitration process begins typically when a claimant registers with an online arbitration provider which offers electronic arbitration. If the parties cannot reach a settlement, the ODR provider selects an arbitrator for them. Then, the arbitrator contacts the defendant from information provided by the claimant and invites the defendant to participate in the ODR process. Then the online hearing begins and parties try to clarify the issue in the case and present their evidence. After the hearing is closed, the online arbitrator will make an award within certain time limits. The award will be imposed by the third party as the final result of the online arbitration process (Haloush & Malkawi 2008).

There are four criteria that differentiate online from offline arbitration. These are:

1) In the arbitral process, the arbitrator and all parties are involved in the arbitration conducted entirely online using technological means. This is called online arbitration (importantly, the disputes themselves are also online and dispute resolution is online, which includes B2C scenarios);

2) Where some primary parts of the arbitral proceedings are carried out using online technology, procedural parts of the process can be done offline such as one or several face-to-face meetings. This is still called online arbitration (the disputes are online, but limited parts of the arbitral process have offline or physical elements);

3) Using online techniques for the resolution of offline disputes through arbitration. It seems that ODR is broad enough to include this type of arbitration as online arbitration; and

4) Using technology for the purpose of facilitating or expediting the arbitral process. While the primary parts of the arbitral procedure and the issuing of an award are in physical forms, it is still called offline arbitration (Liyanage, C 2010).

Online arbitration is different from other types of ODR methods. For example, the difference between online mediation and online arbitration is the authority of the third party. In online arbitration, the arbitrator is able make awards and decisions which are usually binding on both disputants, while the mediator instead suggests solutions to the parties but does not make decisions. In online mediation, parties are entitled to withdraw from mediation at any stage, but in online arbitration this is not permitted. Arbitration therefore has a compulsory nature which makes is different from the non-compulsory nature of mediation (Al Ateyat & Al Dhahir 2013).

Some well-known examples of arbitration bodies which also have arbitration procedures online are the World Intellectual Property Organization (WIPO) (*WIPO ADR Procedures n.d.*), the International Chamber of Commerce (ICC) *(International Chamber of Commerce n.d.)* and the American Arbitration Association (AAA) (*American Arbitration Association n.d.*). Many others that explore the potential of the internet for dispute resolution by arbitration are relatively unknown, for example internet's courthouse (I-courthouse), Virtual Magistrate Court, and Cyber Court (Schellekens 2002).The parties use arbitration because they want their case to be confidential and not be published in public. This is the reason why ODR providers do not publish their arbitration outcomes. Moreover, parties do not agree to have their case published even anonymously as often the parties involved are easily recognizable. An exception is the decisions made under the Uniform Dispute Resolution Policy (UDRP) (*Uniform Domain-Name Dispute-Resolution Policy (ICANN) n.d.*). ODR providers working under the UDRP (*Uniform Domain-Name Dispute-Resolution Policy (ICANN) n.d.*), such as the WIPO Arbitration Centre (*WIPO ADR Procedures n.d.*), publish full information about cases as well as the decisions made by the arbitrator (Vreeswijk & Lodder 2005).

There are numerous benefits and drawbacks of online arbitration for B2C e-disputes, some of which are obvious while others are more subtle. One major advantage of online arbitration is that the parties may choose the law that governs the arbitral proceedings. While not every country recognizes the validity of pre-dispute arbitration clauses in consumer contracts, most countries do, including both the United States and China

(Johnson 2013). In the context of small consumer claims, online arbitration makes it possible for all parties to present their case wherever they are located at virtually no cost because all the relevant evidence -receipts, emails, pictures, and live testimony can be presented instantaneously via email or online platforms. Indeed, millions of disputes are resolved each year entirely through automated ODR technology, often with little or no human interaction. Moreover, due to the simple nature of small value business-to-consumer transactions, parties should have no difficulty in being able to present their cases. Given these aspects of online arbitration, it is reasonable to conclude that any due process defense against online arbitration will fail under American law (Johnson 2013). An example of an online arbitration provider is the Arbitration Resolution Services (ARS) (*ARS Arbitration Resolution Services n.d.*) According to their website' "this ODR provider resolves a variety of disputes involving vehicle and/or property damage; disputes involving businesses and consumers such as B2C e-disputes, and disputes between businesses". ARS is mainly based on online arbitration (binding) but it also offers online mediation. ARS provides a way for parties in an agreement to resolve disputes through either mediation or arbitration via telephone or videoconferencing. Figure 4.4 below shows the ARS homepage.
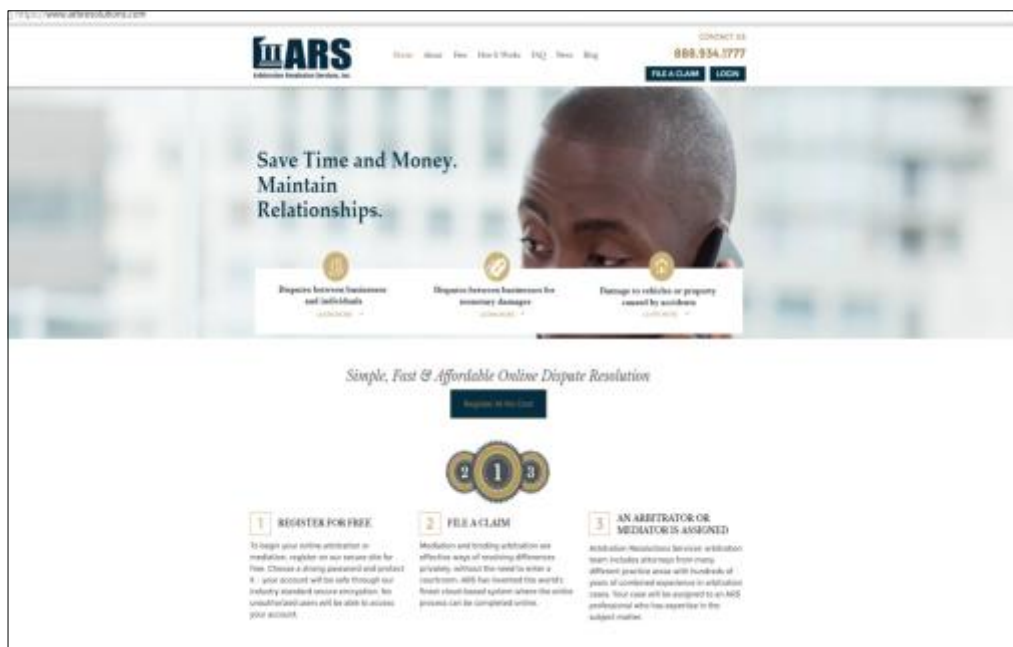
Figure 4.4   Arbitration Resolution Services (ARS) Homepage

Source: Adapted from ARS Arbitration Resolution Services (n.d)

In any business contract, parties can agree that if any disagreement related to the contract arises they will handle it through binding arbitration (instead of litigation) with Arbitration Resolution Services (*ARS Arbitration Resolution Services n.d.*). There are four steps in ARS until the settlement is rendered: 1) Sign Up: Signing up is as simple as providing your name and e-mail address; 2) File a Claim: Gather your documents, photographs and other evidence. Simply upload the files to our secure server, describe your claim, and identify the responding party. 3) An Arbitrator or Mediator is assigned: Before a matter is assigned to an experienced arbitrator or mediator, ARS conducts a conflict check to ensure the arbitrator or mediator has no connection to the parties. 4) Resolve the Dispute: The arbitrator or mediator reviews feedback from the Applicant and Respondent(s). After all the evidence is gathered and reviewed, a binding decision is rendered by the arbitrator. If using mediation, the mediator will attempt a resolution. Parties in the process may request for the appeal of the award or they can have a clerical request. Figure 4.5 below is a sample that shows what a clerical request looks like.

Figure 4.5   Sample Form of Clerical Request: Business to Consumer Dispute

Source: Adapted from ARS Arbitration Resolution Services (n.d)

Another example of online arbitration (non-binding) is the Uniform Domain Name Resolution Policy (UDRP) of the Internet Corporation for Assigned Names and Numbers (ICANN) (*Uniform Domain-Name Dispute-Resolution Policy (ICANN) n.d.*), which is a private and non-profit body that manages disputes arising from the internet Domain Name System (DNS). ICANN's purpose, governed by the US Department of Commerce, is to provide a rapid and affordable resolution mechanism for disputes arising about rights to domain names (Kao 2009). A party can resolve the entire dispute online by filing a complaint to an ICANN approved dispute resolution provider, instead of forcing a party engaged in trademark infringement to file suit in a court. The determinations usually made by ICANN are cancellation of or changing a registered name (Del Duca, Rule & Loebl 2011). For example, if a domain name has been registered in bad faith, the arbitrator could render a decision that the domain name can be transferred to the trademark owner. If the trade name holder can prove the fair use of the domain name then the domain name holder could keep it, even if it seems to be similar to the trademark. Arbitrators in ICANN could publish their decisions. Complainants can select the provider organization. While there are a number of providers, most of the cases are resolved by arbitrators from either the World Intellectual Property Organization (WIPO) or the National Arbitration Forum (NAF) (Katsh & Rule 2015).

The list of the disputes that can be resolved by ICANN's ODR system are: "A Domain Name Transfer; An Unsolicited Renewal or Transfer Solicitation; Accreditation; An Unauthorized Transfer of Your Domain Name; A Trademark Infringement; A Uniform Domain Name Dispute Resolution (UDRP) Decision; A Registrar Service; Inaccurate Who is Data; Spam or Viruses; and Content on a Website" (*Have a Problem? Dispute Resolution Options, ICANN n.d.*).

The complaint starts with the complainant sending a notice about the dispute to the respondent, who must respond within twenty days of receiving the notice. All the fees must be paid by the complainant. The selected panel will initiate and conduct the proceedings. The panel will decide the remedies and publish all its decisions on the internet. Providers will receive the decision from panels within fourteen days, and then

providers must send the decision to the opposing parties within three days (Del Duca, Rule & Loebl 2011). As UDRP makes a non-binding arbitration award, anyone who is unhappy with the outcome can take the case to court (Katsh & Rule 2015).

4.4.4   EXAMPLES OF ODR PROVIDERS

As mentioned in section 4.3 (definition of online dispute resolution), there are different definitions of ODR, just as there are different categories of ODR providers. In the simple classification ODR providers can be divided into private and public groups. With private ODR providers, business companies provide dispute resolution as part of their business. For both groups there is a relationship between trust in the system, such as the opportunity to provide feedback, and willingness to sell and buy products online. Examples are: Amazon (Grothe & Park 2000), e-Bay (*E-Bay n.d.*) and PayPal (*PayPal n.d.*) which all have ODR systems and are highly established in maximising trust in the online purchasing, buying and payment environment (Shackelford & Raymond 2014). The private sector ODR providers follow their own regulatory framework (Liyanage, KC 2012). One example is the Uniform Dispute Resolution Policy's (UDRP) ICAAN Rules which have been adopted by UDRP providers for resolving domain name disputes (*Uniform Domain-Name Dispute-Resolution Policy (ICANN) n.d.*). The other example of an ODR provider that has built and developed its own rules and guidelines is the NetNeutrals.com (*NetNeutrals n.d.*).

Public ODR providers are those which are connected, supported, and usually funded by the public sector. As these online platforms are similar to virtual courthouses, their principles are regulated in a way that makes them compatible with traditional court system principles. Public ODR systems are limited to solving a few issues. An example is Concilianet, which is located in Mexico and resolves disputes between registered traders and their consumers (*Concilianet n.d.*). In most of the models, individuals and court-associated personnel design, organize, and support public ODR systems. Indeed, these platforms have an equal place with more traditional bricks and mortar courthouses. Concilianet is supported by local judiciary in making a final decision as a judicial determination (Shackelford & Raymond 2014).

Table 4.2 below lists the online dispute resolution providers such as the American Arbitration Association (AAA), Modria, and others collected in 2016 by the researcher.

Table 4.2   List of the Online Dispute Resolution Providers

Online Dispute Resolution Provider	
Name :	**Website Address:**
American Arbitration Association (AAA)	https://adr.org
ADNDRC	http://www.adndrc.org/mten/index.php
ARyME	http://aryme.com/
Better Business Bureau Online	https://www.bbb.org/council/about/contact/
Camera Arbitrale di Milano	http://www.camera-arbitrale.it/it/index.php
CaseloadManager.com	http://www.caseloadmanager.com/
Chartered Institute of Arbitrators	http://www.arbitrators.org/index.htm
Conflict Resolution Software	http://www.conflictresolutionsoftware.com/
Consensus Mediation	http://www.consensusmediation.ie/
Consumers Association of Iceland	http://www.ns.is/
Conflict Resolution.com	http://www.conflictresolutionsoftware.com/
Convirgente.com	http://www.convirgente.com/
CPR Institute for Dispute Resolution	http://www.cpradr.org/
Cyberlaws.Net	http://www.cyberarbitration.com/
Ebay Resolution Center	http://resolutioncentre.ebay.com/
eadronline	http://eadrline.com/
econfianza.org	http://www.econfianza.org/
EmissaryMediation.com	http://www.onlinemediators.com/
Contractslawandmore	https://www.contractslawandmore.com/collections/all/
Eurochambres	http://www.eurochambres.be/Content/Default.asp
FSM	http://www.fsm.de/en
GWMK	http://www.gwmk.org/
Hong Kong International Arbitration Centre	http://www.hkiac.org/en/
iCan Systems Inc. (Smartsettle)	http://www.smartsettle.com/
ICANN Ombudsman Office	http://www.icann.org/en/help/ombudsman
iCourthouse	http://www.i-courthouse.com/tour/f_set.html
International Chamber of Commerce	http://www.iccwbo.org/

The Internet Ombudsman	http://internetombudsman.biz/
Iris Mediation	http://www.iris.sgdg.org/mediation/
IVentures	http://adrchambers.com/ca/
The Mediation Room	http://www.themediationroom.com/
MESUTRAIN	http://www.european-mediation-net.eu/system-mesutrain.html
Modria.com	http://www.modria.com/
PayPal	http://www.paypal.com/
PeopleClaim	http://www.peopleclaim.com/Default_V5.aspx
Private Judge	http://www.privatejudge.com/
SettleToday	http://www.settletoday.com/
Smartsettle Family Resolutions	http://smartsettlefamily.com/
The Claim Room	http://www.theclaimroom.com/
TRUSTe	http://www.truste.com/
Ujuj	http://www.ujuj.org/
VirtualCourthouse	http://www.virtualcourthouse.com/

Around 60 million disputes on eBay each year are resolved by using ODR (*Online Dispute Resolution For Low Value Civil Claims 2015*). Until 2008, Square Trade was the ODR provider for consumer mediation and resolving eBay feedback disputes. eBay still resolves the feedback disputes with the assistance of private ODR providers such as Net Neutrals for motor vehicle claims. Currently ODR services are mostly conducted by eBay's and PayPal's dispute resolution services centre which resolves an impressive number of disputes every year. Buyers are able to report 'fraud alerts' that are investigated by eBay's enforcement department. Other types of disputes are categorized as 'items not received' by the buyer, 'item not as described', and 'unpaid item'. Moreover, in jurisdictions such as US, eBay has a separate ODR scheme for purchasing some kind of goods such as vehicles and business equipment (Cortes 2014).

There are two kinds of processes involved. In those disputes that are about non-payment by buyers or claims by buyers that an item was not same as the description, parties are asked to resolve the problem themselves through online negotiation, supported by clearly structured, practical advice on how to prevent any misunderstanding and achieve a resolution. If the parties are unsuccessful in settling their dispute through negotiation, then eBay offers another resolution service where parties engage in a discussion and

present their arguments with the assistance of eBay's staff. The binding outcomes are rendered under eBay's Money Back Guarantee (*Online Dispute Resolution For Low Value Civil Claims 2015*).

The researcher of this study can provide an example of a case resolved by PayPal on 16th November 2015. Using a PayPal account as a secure way of paying for her purchases, she receive an email from PayPal about each purchase and its payment. On this occasion she received an email about a purchase from a company named Boingo Wireless, but she knew nothing about the company. She suspected that someone had stolen her credit card information and emailed PayPal to report that she had not made any transaction with Boingo Wireless Company and did not recognise this payment.

The PayPal resolution centre responded within a few days confirming:

> We placed the disputed funds in your PayPal account while we investigate this claim. When our investigation is complete, we will refund any part of the payment that was funded by your credit or debit card. Please note that it might take up to 30 days for the refund to be credited to your card. During our investigation, you will have access to the disputed funds in your PayPal account. However, if you spend or withdraw the disputed funds, we will not credit your card when your claim is resolved. If you spend or withdraw a part of the disputed funds, the remaining amount will be credited to your card.

A day later she received an email from PayPal that they had processed her claim and someone had used her account without her permission for this transaction. PayPal decided the case in her favour and returned the amount deducted from her credit card within three business days. In this case, the PayPal resolution centre resolved the dispute quickly via online negotiation i.e. email, with no cost to the consumer.

Colin Rule, the former ODR director for eBay and PayPal dispute resolution, found that these kinds of settlements increase loyalty of consumers using e-commerce transactions. Rule (2012, p. 776) noted that:

> Trust in your fellow users to do the right thing in good faith is more powerful than the belief that a marketplace administrator will intervene and use their power to decide disputes between users who disagree. Having a transaction partner hear your complaint and resolve the issue is a much more effective trust building outcome than relying upon a site administrator to mete out justice in each case.

This study showed that trust is the main factor in customers using online services. This trust is gained by successful online purchases, but rather by how the buyer is treated when a problem occurs.

4.5   SUMMARY

Online Dispute Resolution is rapidly developing and is now offered by many private and public dispute resolution providers around the world. ODR can be defined as a type of dispute resolution mechanism, which assisted by information and telecommunication technology tools facilities the resolution of disputes. ODR techniques offer many advantages for dispute resolution by enhancing convenience for users. ODR encompasses various methods of dispute resolution such as online negotiation, online mediation, online arbitration and med-arb. The two main types of ODR, based on who provides it, are private and public ODR. An example of a private ODR provider is eBay and a public ODR platform is Concilianet (located in Mexico).

CHAPTER FIVE

LEGAL ISSUES OF FAIRNESS, TRUST AND SECURITY IN ONLINE DISPUTE RESOLUTION

5.1   INTRODUCTION

ODR has benefits for both consumers and business and has helped the growth of e-commerce. However, the absence of ODR principles has led to legal issues of fairness, trust, and security for consumers. While various standards and practices exist in relation to the legal issues, these standards can cause problems. This chapter explains the concepts of fairness, trust and security in ADR and ODR, and the relationship between them, and compares European and US regulation of ODR. The Figure 5.1 below outlines the organisation of the topics for discussion in the chapter.
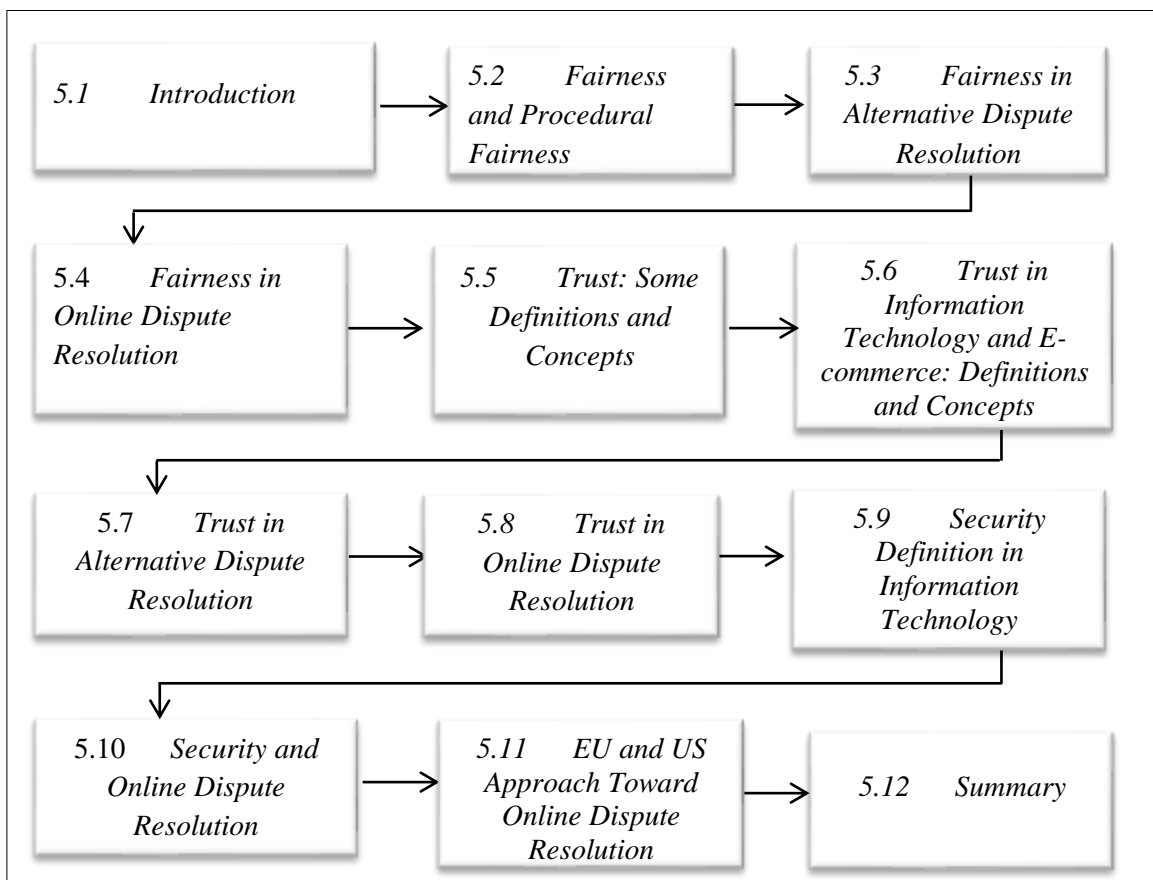
Figure 5.1   Chapter's Organisational Structure

5.2   FAIRNESS AND PROCEDURAL FAIRNESS

The concept of justice which is used interchangeably with fairness has its roots in various areas such as philosophy, religion, political science (Konovsky 2000). It differs according to the nature of the dispute, cultural values and institutions involved and has a great impact on the attitudes and behaviour of individuals (Greenberg 1990; Konovsky 2000). Justice is a subjective concept, a belief which is intangible and has been formulated by an individual as a perception or experience (Lind & Tyler 1988). Generally, justice or fairness is a universal concept embedded in individuals and, because of its subjective nature, what is fair or unfair is interpreted differently from one individual to another (Wilson 1993).

Justice or fairness plays an important role in our daily lives. Ambrose (2002, p. 803) argues that "Justice matters" and Jeong (2009) emphasizes the key role of justice as a protection of rights. Generally, there are three reasons for individuals to be concerned about justice: first, justice has instrumental value; second, it has relational properties (Lind & Tyler 1988); and third, individuals see justice as a moral virtue and ethical conduct that has a human worth (Folger 1998). Justice researchers often define justice or fairness as a part of the dispute resolution process, but their definitions vary. For example, Smith and Martinez (2009, p. 128) define justice sense as it "convey a sense of fairness, rightfulness and validity or more narrowly, an outcome pursuant to the authority or administration of law". According to Bingham (2008), there are different types of justice: distributive, procedural, substantive, organizational, restorative, corrective, social, interactional, communicative, communitarian, interpersonal and transitional.

Based on social norms, Maxwell (2007) believes there are two kinds of justice - distributive fairness and procedural fairness. Distributive justice refers to the perceived fairness of one's outcomes which has its roots in equity theory (Adams 1965) and the traditional theory of social exchange (Homans & Behavior 1961). Procedural fairness refers to the fairness of the processes used in making decisions (Folger & Greenberg 1985) which takes into account the interests of all parties involved (Brockner & Wiesenfeld 1996).

Interactional justice is defined by sociologists as the degree to which people affected by decisions are treated with dignity and respect (Schermerhorn, Hunt & Osborn 2003) and is concerned with the fairness of interpersonal interactions or communication (Bies & Moag 1986). Other types of justice include distributive justice, egalitarian justice and several other terms that are defined in table 5.1 below.

Table 5.1   Different Types of Justice

Name	Source	Definition
Distributive Justice	Posner citing Aristotle	The state distributes money, honours, and things of value
Distributive Justice	Thibaut and Walker	Equity theory: an allocation is equitable justice when outcomes are proportional to the contributions of group members
Egalitarian justice	Rawls Posner citing Ackerman s	Distributive justice to allow for compensating undeserved inequalities of
Justice as Fairness	Rawls	Inequality justified by improving the situation of the least advantaged person in an ordinal ranking
Justice as Fairness	Thibaut and Walker	Equality or needs based allocation
Social Science	Posner	Purely public non-compensatory remedy that views harm as a social and not individual entitlement
Macrojustice	Lipsky et al.	Pattern of outcomes from the DSD
Restitutionary Justice	Posner	Strict liability; justice as restitution for harm that one causes, regardless of wrong; a form of distributive justice
Perfect Procedural Justice	Rawls	Procedure designed to render perfect distributive justice, e.g. person who cuts the cake must take the last piece
Pure Procedural Justice	Rawls	Distributing goods based on random procedure, as in odds, dice, gambling

Source: Adapted from Smith and Martinez (2009)

For several reasons, procedural fairness compared to distributive fairness is more significant; these are: 1) the process gives more information about the character of the authority compared to the outcome; 2) these character judgments are helpful as a heuristic for judging future events; and 3) fairness of the outcome is hard to measure

(Van den Bos et al. 1997). It is clear that studies support the notion that procedural fairness "matters" when measuring overall fairness or justice (Blancrro, DelCampo & Marron 2010). Moreover, several authors have argued that while distributive justice and procedural justice have independent influence on fairness perception or evaluation, procedural fairness is more likely to affect overall fairness judgments (Greenberg 2002).

A study by Lind et al. (1980) examining the relationship between outcomes and procedural justice with effects of procedural justice on distributive justice, concluded that the verdict does not affect procedural justice. Even if the verdict was considered as unfair by the parties and the procedure allowed them to have control of the process, procedurally it is viewed as just. But, this procedural fairness does not change the perception about the outcome and distributive justice (Lind et al. 1980).

Three theories have been developed regarding the importance of procedural justice for individuals. The first theory suggests that individuals look at the fair process as a way of gaining a fair outcome (Thibaut & Walker 1978). The second theory argues that social status is important to individuals, and this means care about their status in society, and the level of procedural justice afforded to them offers important cues about this status (Tyler & Lind 1992). The third theory argues that the importance of procedural justice judgments is because they convey important information relevant to uncertainty reduction (Lind 2002).

As discussed earlier, the first study about procedural justice conducted by Thibaut and Walker (1975) indicated that procedural justice had its origins in the legal field. When people bring their case into the legal system they are more concerned about the fairness of the process, which is separate from their interest or what they expect to achieve. Therefore, parties feel more comfortable and consent to attend; a disposition that is achieved by fair procedure (Hollander-Blumoff & Tyler 2008). However, the legal system is not the only field on which procedural justice has an effect. For example, procedural justice has an impact on assessments of decision making in other fields such as managerial and political settings (Tyler & Blader 2000; Tyler & Huo 2002; Tyler & Lind 1992).

5.3   FAIRNESS IN ALTERNATIVE DISPUTE RESOLUTION

Alternative dispute resolution (ADR) is not a new mechanism. It has a long tradition in societies (the oldest experienced person in the tribe was respected and had the role of a mediator). According to Tyler (1997) there are four criteria for measuring procedural justice: neutrality, interpersonal respect, voice/participation, and trustworthiness. Leventhal's (1980) theory of procedural justice judgments focuses on six criteria: voice, consistency, accuracy rule, bias suppression, correctability, and ethicality rule. Furthermore, Hancock and d'Estree (2011) have discussed what these rules are related to ADR and its non-adversarial nature. These procedural fairness rules are described below:

- **Respect rule:** means being polite, behaving with respect and dignity, and respecting one another's rights, which will all increase feelings of fairness (Lind et al. 1990)

- **Voice/ Representativeness rule:** as mentioned by Thibaut and Walker (1975), voice is the most tested criteria among other justice rules that determines to which the degree procedure provides an opportunity for individuals to express and communicate their evidence, arguments and views. Generally, voice has two parts: process control which means individuals have the opportunity to present their evidence or views of their situation (position), and decision control that means the individual participates in the act of making the decision (Thibaut & Walker 1975). The other variation of the voice concept is termed the representativeness rule (Leventhal 1980).

- **Consistency Rule:** this criterion for procedural fairness according to Leventhal (1980) has implications across person and time. Consistency across person means that individuals should feel they have been treated equally and have the same rights during the procedure. Consistency across time means that each time the procedure follows the same rules. The importance of consistency rules has been emphasised by other scholars. Based on heuristic theory, the information provided for people before the procedure highly influences procedural fairness in expectations about the procedure (Lind 1992). Therefore, it is the individual's expectations which influence the procedural fairness, not what they receive (Greenberg 1986) or what they

experience in the process (Bos, Vermunt & Wilke 1996). Moreover, Greenberg (1982) findings indicated that consistency is more important than voice.

- **Neutrality rule:** means that the decision maker and the process should be neutral in order to safeguard and protect individuals (Leventhal 1980).

- **Bias Suppression Rule:** there are two sources of bias related to procedural fairness: firstly, the procedure would be unfair if the decision maker has vested interest in any specific decision; secondly, if the decision maker has made his or her decision based on doctrinaire grounds means the decision maker is so influenced by his or her prior beliefs that all points of view do not receive adequate and equal consideration (Leventhal 1980).

- **Accuracy Rule:** means appropriateness and accuracy of the information that the decision maker uses during the decision-making process (Leventhal 1980).

- **Correctability Rule:** This rule means that the procedure should include some provision for correcting bad decisions or outcomes (Leventhal 1980).

- **Ethicality Rule:** means the procedure should conform to standards of ethics and morality and age, gender, nationality and other extraneous factors have no bearing on the decision that is made (Leventhal 1980).

Therefore, it is important to consider which elements and rules contribute to procedural fairness of justice systems. The significance of procedural fairness from the psychological literature is that individuals will follow the rules because they believe in the legitimacy of the authority that promulgated them and by experiencing procedural fairness they believe that authorities act legitimately (Levi, Sacks & Tyler 2009). Individuals regard the process of decision making as procedurally just because they consider the decision maker is trustworthy, neutral, behaves with respect and courtesy, and they have an opportunity for voice and that the decision in turn is reasonable (Tyler 2006). Studies show that disputants care about the fairness of the procedure in each process, and therefore prefer to use ADR processes and will highly rate them when they feel they have received fair treatment. Procedural justice is an important factor for people when choosing dispute resolution mechanisms (Hollander-Blumoff & Tyler 2011).

5.4   FAIRNESS IN ONLINE DISPUTE RESOLUTION

In ODR services, there should be clear principles that are the structure of any dispute resolution mechanism for settling disputes. Normally, this will shape the parties' expectations and their strategies for dispute resolution (Katsh & Rifkin 2001). According to Ramsay (1981), parties should resolve their dispute based on fair and justified social norms or agreed norms that could be more generous than laws and rules. While there are various measures of effectiveness, parties would not use a system if they perceived it as unfair (Blancrro, DelCampo & Marron 2010). It is easier to measure the fairness of the process separate from the outcome. Firstly, this research aims to discover the main factors for maximizing procedural fairness. Individuals feel more comfortable and prepared to engage in processes that they feel it has a fair procedure (Turel & Yuan 2010).

A measurement of procedural fairness will help to understand whether parties are at risk of an unfair decision via a particular procedural mechanism (Crowe 2014), such as ODR systems. Considering procedural fairness in each of the ODR methods (arbitration, mediation and direct negotiation between parties) will enhance fairness of an ODR system. As arbitration has a similar structure to litigation, the same factors that disputants use to evaluate procedural justice in judicial proceedings could also be used for evaluating procedural fairness in arbitration. Therefore, the four elements of neutrality, voice, courtesy and respect are key factors to determine whether disputants have experienced procedural justice in an arbitration process. Negotiation is a process which is informal and parties by negotiating with each other can reach an agreement. While there is no particular procedural form in negotiation, parties still evaluate the fairness of the process comporting it with rule of law values (Hollander-Blumoff & Tyler 2011). The parties when undertaking mediation have more control over the process compared to arbitration and this increases their satisfaction. If one of the parties, based on their prior experience or assumption about the mediation process, enters into mediation they might be dissatisfied because this mediation process is against their antecedent elements about procedural fairness (Kahneman & Tversky 1979).

In any dispute resolution mechanism, neutrality is a significant value and it is related to the notion of fairness. In a court process disputants should be able to explain their side of the case and the judge has to assess the discussions is an unbiased manner. This lack of bias is the reason for the importance of neutrality in ODR and ADR (Lodder & Zeleznikow 2010). Therefore, there is a need for equal treatment for all parties in an online mediation process as well as in online arbitration (Hornle 2009). In mediation, the mediator should provide an equal opportunity for both parties to present their case and understand the opposite party's arguments. In addition, the mediator should assist both parties in a neutral manner. Therefore, it is necessary to provide consumers of any social and economic status with equitable treatment and equal access to remedies. It is necessary to create policy for ODR providers which aims to follow equitable treatment, while preparing efficient and transparent avenues to gain enforceable remedies (Schmitz 2016). ODR systems, decision makers and neutrals should be separate from the disputing parties, and if there is any conflict of interest this needs to be made transparent (Wing 2016).

One of the ODR principles mentioned by Kohler and Schultz (2004) is trustworthiness within the discretion of the neutral and depends on integrity and authenticity, which are appreciated taking all circumstances into account. According to Rabinovich-Einy (2008) one of the concerns for ODR users is fairness and consistency of outcomes in any ODR approach.

Procedural fairness helps parties, especially the weaker party, to make an informed choice before a solution is achieved. There are three conditions for providing procedural fairness: 1) parties should have an equal opportunity to be heard; 2) the proceedings should not be delayed without a reasonable cause; and 3) the decision maker should be impartial and independent (Parlade 2006). ODR might transfer power from a party which is at ease with face-to-face communication to one that is comfortable with technology or from a party that is articulate to one that writes well. Turel and Yuan (2010) developed a principle based dispute resolution in which only data and claims are submitted to the system. This minimizes any differences that exist between parties using technology and eliminates power imbalances, thus promoting fairness.

Moreover, Cho (2009, p. 64) recognizes some standards for procedural fairness in International Competition for Online Dispute Resolution (ICODR) including:

- The parties shall have equal and reasonable opportunity to present their case their view and all relevant documents;
- The rights of the parties shall be protected under international public policy;
- The proceeding shall be affordable and accessible;
- The proceeding shall not be delayed beyond reasonable expectation;
- The parties shall give legitimate notice sufficient to prepare their response;
- Evidence and case related documents;
- The parties shall be provided communication and documents in proceedings; and
- The parties' autonomy shall be respected.

Therefore, according to the importance of procedural fairness in ODR systems, regulators have to regulate minimum fairness principles with respect to allowing flexibility and honoring choice. Moreover, parties should have the opportunity to select any type of ODR method based on the type of dispute. The processes could be started by online negotiation and then online mediation and potentially a binding evaluative process if the disputant cannot resolve their dispute prior to that point. This would allow consumers to have more control over the process and their own solutions (Schmitz 2016).

5.5   TRUST: SOME DEFINITIONS AND CONCEPTS

The significance of trust in interpersonal relationships has been stressed by (Golembiewski & McConkie 1975, p. 131) who pointed out that "perhaps there is no single variable which so thoroughly influences interpersonal and group behaviour as does trust...". Trust has been extensively studied. Definitions differ widely, as scholars may not accept or understand the definition of trust in other disciplines (McKnight, Choudhury & Kacmar 2002).

Mayer, Davis and Schoorman (1995, p. 709) suggest there are several reasons for such disagreements in definitions of trust: "problems with the definition of trust itself; lack of clarity to find the relationship between trust and risk; confusion between trust and it is an- tecedents and outcomes; and failing to consider both the trusting party and the party to be trusted". Trust has been studied in sociology and psychology literature. From a sociological point of view, trust should be accepted as a social concept, not something isolated within individuals (Lewis & Weigert 1985). Trust is defined in psychology literature as one person having faith in another person (Chang, Hussain & Dillon 2006). Trust is a psychological state or position of an individual (the truster) in regard to a particular partner (the trustee), meaning the truster needs to attract the trustee's cooperation to obtain valued results or resources (Simpson 2007). However, this view of trust has been rejected by Lewis and Weigert (1985) who argue that trust cannot be defined as a personal characteristic.

Regardless of the discipline of authors, the most common definition of trust is "the willingness of a party to be vulnerable to the actions of another party based on the expectation that the other will perform a particular action important to the trustors, irrespective of the trustors' ability to monitor or control that other party" (Mayer, Davis & Schoorman 1995). This definition includes the real relationship with another identifiable party who is perceived to act and react with volition towards the trustor (Mayer, Davis & Schoorman 1995). According to Landau (1977) the most important factors behind trust are: 1) "a confident reliance on the integrity, honesty, or justice of another; faith"; 2) "a confidence in the reliability of persons or things without careful investigation"; and 3) "confident expectation; belief; hope" (Landau 1977).

Rousseau et al.'s (1998, p. 395) widely held definition of trust, after considering contemporary and cross-disciplinary scholarly literature, is: "Trust is a psychological state comprising the intention to accept vulnerability based upon positive expectations of the intentions or behaviour of another" (Rousseau et al. 1998, p. 395). By comparing these different ideas about the concept of trust, a consensus definition will emerge and help practitioners and researchers eliminate confusion and have a shared meaning of trust.

5.6 TRUST IN INFORMATION TECHNOLOGY AND E-COMMERCE: DEFINITIONS AND CONCEPTS

It is important to understand the notion of trust and its implications in information technology. The first implication is in the use or adoption of a technology. The second implication of trust in IT is its influence on other IT perceptions such as efficiency of the technology (McKnight 2005). For example, if you have sent a package by express mail, by relying on IT you are able to see its location and arrival time. The reliance on IT has increased with the emergence of the internet as millions of internet users can download or purchase anything online. But as the internet has an open and non-secure structure, trust in the web has always been a major issue (McKnight 2005).

The absence of quality control and standard procedures and behavioural and environmental cues, affects the establishment and growth of trust and results in difficulties in building trust in an online environment (Rocco 1998). Trust in IT relies on infrastructure systems such as the web or on specific information systems like Microsoft Excel (McKnight 2005). Formally, the concept of trust is "a secure willingness to depend on a trustee because of that trustee's perceived characteristics (Rousseau et al. 1998).

It is clear that trust has a significant role in personal and business interactions. In the e-commerce area, the two elements of physical distance and some level of uncertainty are imposed on business to consumer transactions, providing a challenging space to engender trust (Chang & Cheung 2005). The lack of trust continues to be an obstacle to adopting different kinds of e-commerce (Holsapple & Sasidharan 2005). For example, online banking is an online business activity and includes private and sensitive personal data. So there is need for a high level of trust. Some researchers have noted that there is no basic difference between trust in a person (conceptualized as trust in the person's benevolence, integrity, and competence) and trust in technology in e-commerce. Komiak, Wang, and Benbasat's (2005) research shows that even people who are comfortable and familiar with technology view artificial technology systems (computers and computer systems) as if they are other humans, rather than tools.

One of the main factors for the success of e-commerce is the high level of service quality, which means the judgments and evaluations of the quality of online delivery by customers (Santos 2003). The three dimensions of service quality - responsiveness, trust and empathy - are critical to the achievements of e-commerce (Delone & McLean 2003). Therefore, in the online environment trust is defined as a customer's readiness and consent to face vulnerability in online transactions in their positive assumptions according to future online retailer manners and actions (Kimery & McCord 2002), since customers depend on trust as an initial mechanism to reduce transaction uncertainty (Gronroos et al. 2000).

Jarvenpaa, Tractinsky and Saarinen (1999) claim that trust in e-commerce is affected by the customer's attitude to an online store's size and reputation of the business. Reputation means the degree to which a consumer believes a trader is professionally competent or benevolent or honest (Jarvenpaa, Tractinsky & Saarinen 1999). Also, reputation is a worthy intangible asset; it is harder to establish it than to lose it, and it is created by a long-term investment of resources and attention to customer needs. The subject's level of knowledge influences trust in online shopping. This means knowledge or familiarity decreases social uncertainty and promoting awareness about what is likely to happen lessens uncertainty and leads to increasing trust (Doney, Cannon & Mullen 1998).

There are several elements that affect consumer's trust in e-commerce including: knowledge, trust propensity, perceived integrity, online payment security concerns, and online shopping activities. The strongest factor that affects trust in online shopping is knowledge. Indeed, consumer's knowledge indicates their degree of trust towards an online business and their aim to buy online. Moreover, a consumer's perceived integrity of an e-commerce website is positively related to trust in online shopping. As a result, integrity of the online business is a significant moderator which influences the individual's motivation to buy online. But trust propensity is not associated with trust in e-commerce; that is, when a consumer has an online shopping experience the propensity to trust is not as significant a factor as before (Jiang, Chen & Wang 2008).

According to a 2014 Nielsen Global Survey of e-commerce (Macnee & McCabe 2008) of consumers in 60 countries, 71 percent of online consumers read online reviews before purchasing products. A significant way of building trust for online shoppers is through reading and posting product reviews and review forums (Macnee & McCabe 2008). In addition, the 2015 Certificate Authority Security Council's (CASC) Consumer Trust Survey in the USA indicated that e-companies should always remember that without protecting private information consumers will not trust them. Moreover, consumers seek the highest degree of protection available and identified the padlock and green bar as providing a trusted connection. E-commerce and regulated industries need to have high validation to provide greater trust and assurance to consumers and to safeguard against fraud. Using certificates creates the most reliable indicator of the trustworthiness of the site and provides a high degree of accountability to consumers (Merriam & Tisdell 2015).

Therefore, the absence of trust in e-commerce has been identified as a significant barrier for successful business transitions (Salam et al. 2005). In e-commerce, this obstacle is more challenging compared to face-to-face interaction and causes less consumer trust because of lack of contiguity in time and space, issues of privacy and confidentiality of personal and credit card information (Grabner-Kraeuter 2002), and absence of physical interaction (Naquin & Paulson 2003).

Trust has a central role in overcoming consumer's perceptions of insecurity and risk (McKnight, Choudhury & Kacmar 2002) and as trust is a key element in preserving a long term B2C relationship (Ganesan 1994) it has been recognized that building trust in e-commerce is essential (Hong & Cho 2011).

5.7   TRUST IN ALTERNATIVE DISPUTE RESOLUTION

Trust is important in dispute resolution systems as it enhances the chance that individuals will resolve their conflict (Rule & Friedberg 2005). In designing legal systems, it is important to gain the trust of the society; otherwise violence and crime can ensue (Sternlight 2002). A legal system resolves disputes and maintains confidence

in the system of government. Dispute resolution is hindered by failure in communication between the parties because of the lack of trust. ADR is built upon the hypothesis that if parties can trust each other, they can resolve the dispute and reach an agreement which is similar to the result that a court might impose, while the adjudicatory system is based on the theory of fundamental distrust and "means never put faith in the adversary" (Lieberman & Henry 1986, p. 427). Therefore, litigation is formal, time consuming, divisive, tricky and distorting. So, in designing ADR processes, building trust is fundamental (Lieberman & Henry 1986).

In addition, public trust in ADR requires neutrals to be trustworthy. There needs to be a sensitive and special relationship between the disputants and neutrals, similar to a relationship between a lawyer and a client or a patient and a doctor. To establish trust in ADR there needs to be a Code of Ethics or private ADR professional standards (Gislason 1998). While these are not very enforceable, they can create public trust and lead to universal standards and rules for ADR (Gislason 1998). For example, in mediation one of the most noticeable roles of a mediator is to create trust between the disputants (Deason 2005). In litigation and attorney negotiation, most communication between the disputants is prevented. Many mediators make the effort to engage in communication so that the disputants will understand each other (Cochran 1999). For example, in mediation distrust can stop disputants and the mediator achieving a resolution. Therefore, usually mediators apply various trust-building strategies to create some level of trust in the procedure and themselves (Yiu & Lai 2009).

There are several ways that mediators create trust among disputants including building situations in which the disputants do a joint task, illustrating the other parties' needs and perceptions, and recognizing common interests (Moore 2014). The most significant attributes of mediators are integrity, reliability and competence. These affect the trust that disputants have in them (Boulle, Colatrella & Picchioni 2008).

In mediation, the level of a mediator's trust depends on the degree to which disputants trust the mediator (Kolb 1985). Mediators need to learn about using trust-building strategies in the mediation process in considering any long-held and deep-seated issues between the disputants (Blackstock 2001).

Mediators manage the parties and encourage behaviour that creates trust in the other party, such as understanding the other side's issues (Moore 2014). Another dimension of trust in mediation is the parties' trust in the mediator and in the mediation process. If a mediator is to help parties overcome the risks of loss they face in negotiation, they need some degree of trust in the mediator's skill (Deason 2005). Mediator neutrality is central to western conceptions of mediation, in order to maintain a degree of trust that encourages a party to confide his or her preferences and accept trade-offs suggested by a mediator (Stulberg 1981). Therefore, when the parties trust the mediator they will continue negotiation in the mediation processes in a cooperative manner (Cheung & Yiu 2007). But mistrust in achieving a successful mediation outcome (Boulle 2001) hinders the mediation success. As with mediation, some level of trust is necessary in negotiation. According to Chiles and McMackin (1996) trust is important because "if we are vulnerable to another or are considering an option that makes us vulnerable to another, then if we can trust the other, we do not need to worry about exploitation by the other".

Trust between negotiators could be described as a personality trail (how trusting a negotiator is of others) or a state of temporary (Winick 2000). A lesson from ADR is that ADR procedures are designed to create and restore trust and can overcome the suspicion and mutual hostility fostered by the adversary system and can lead the parties to resolve their differences. Comparing the outcomes and costs of both litigation and ADR, parties benefit more from ADR (Lieberman & Henry 1986).

5.8   TRUST IN ONLINE DISPUTE RESOLUTION

ODR creates an environment of trust in e-commerce to deal with any potentially catastrophic impact and thereby enhances consumer perception of, and belief in, the

trustworthiness of a given service or site (Pecnard 2004). Trust building is an important concern in ADR, but trust related issues could create major challenges for potential users in ODR systems as mostly they have online communication rather than face-to-face interaction (Ostrom & Walker 2003). In ODR, disputants can be unsure of how to reach an agreement as they have little faith that the other party would follow the mediated agreement or accept the arbitration result. The absence of trust could hinder resolution, even when it is obvious that disputants would be better off resolving their dispute by ODR (Raines 2006).

ODR service providers rely on disputants and third parties to respect confidentiality, refrain from being partial or judgmental, and not to design rules that disadvantage one side. Online opponents negotiate often without knowing each other, a potential obstacle to building informed trust (Rule & Friedberg 2005).

While ODR may contribute to an overall sense of enhancing trust, it also relies on a comprehensive kind of confidence, making the relationship between ODR and trust symbiotic (Rule & Friedberg 2005). For ODR systems to be efficient it is imperative to build some trust and confidence in them (Raines 2006). Ebner (2012) acknowledges three aspects of trust in ODR:

1) *ODR as a facilitator*: growing consumer confidence in e-commerce systems may be demonstrated by the degree of incorporating ODR into their financial dealings. Ongoing use of the internet depends on successful e-commerce, which in turn relies on trust more than on anything else (Ebner 2012).

2) *Users' faith in ODR as a functional way of solving disputes*: technology should be marketed and constructed to create public trust that ODR is an effective way of solving their dispute. In fact, with a low level of trust in ADR, what ODR providers have not heard claims that the public would not buy into ODR in general as it is a foreign concept. Dispute resolution needs warmth and human interaction while the internet is cold and distant (Ebner 2012).

3) *Interpersonal trust*: Users of ODR not only have inherent distrust in conflict situations they are also challenged by the online environment. While these two aspects may have much in common, there are also conceptual differences and each includes fundamentally different players (Ebner 2012).

Table 5.2   Different Types of Trust in Online Dispute Resolution

Trust in ODR	1) *ODR as a facilitator*
	2) *Users' faith in ODR as a functional way of solving disputes*
	3) *Interpersonal trust*

Source: Adapted from Ebner (2012)

People contemplating use of ODR need structured information to make informed choices about whether or not to institute the process and which provider to choose. Tack of knowledge is considered a major issue with ODR, and is essentially one of trust. Without understanding a process that may affect one's rights, there is likely to be little confidence, not least in online neutral mediators, with distrust impacting on dispute resolution. Mediators need to build positive relationships between parties, because those involved in the dispute may need to continue to interact (Raines 2006).

The three important components for growth of ODR are trust, control, and government. Trust is a perennial problem in virtually all online activities. ODR service providers can enhance confidence in different ways, such as reputable institution furnishing which has reliable information and people are more likely to choose recommended organisations in which users will have more confidence and be prepared to rely on them. If the ODR provider does not comply with the indicated standard of delivery, the institution would stop using it (Kohler & Schultz 2004). By issuing press releases and information such as telephone numbers, email and physical addresses and data protection rules and by

explaining the process and their use of third party neutrals, trustmarks and feedback mechanisms, ODR providers can create a climate of confidence. They can also provide instant feedback which is a considerable advantage over ADR. Parties ought to be allowed to provide feedback regardless of their success or otherwise (Cortes 2010).

Government is most likely to be trusted by consumers to provide information about online dispute resolution. Accreditation is a typical form of structured information. Relevant certification may be displayed through Trustmarks (Kohler & Schultz 2004). With the two basic types of trust - identification-based trust (IBT) and calculus-based trust (CBT) - the former depends on the degree to which parties care about each other. ODR practitioners may encourage parties to investigate each other's reputation, such as the feedback rating of an eBay seller (Shneiderman 2000).

Online disputes often increase scepticism about opposing parties and the mediator. If relationships are neither feasible nor desired, the mediator may want to focus on Calculus-Based Trust (CBT) (Raines 2006), which can be described as the reception of a certain level of exposure based on the calculated costs of upholding or dissolving a relationship (Abedi & Zeleznikow 2014). With CBT, which features self-enforcing, binding agreements, individuals deliver what is expected of them in order to avoid penalties (Lewicki & Wiethoff 2006). Settlements reached through ODR are generallylegally enforceable (under contract law) as are private mediation agreements (Raines 2006).

According to empirical studies, a well-designed ODR platform creates a sense of justice and fairness in the marketplace for users which in turn improves the trust and loyalty of those who seek advantage from redress systems (Rogers et al. 2013). Research on trust in ODR confirms that the most active buyers on eBay are those with experience of resolving their dispute via eBay's ODR software. These users increased their commercial activity more than users who had not encountered any disputes (Cortes 2014).

Rule (2012) noted that: "The explanation for this phenomenon is that trust in your fellow users to do the right thing in good faith is more powerful than the belief that a marketplace administrator will intervene and use their power to decide disputes between users who disagree". This suggests that successful use of ODR as an effective redress mechanism in e-commerce (Ong & Chan 2014) installs confidence in trusted users (Cortes 2015b). Moreover, consumers accept the fact that mistakes could occur online but this would not prevent them from purchasing online if the trader responds and make this an opportunity for development. Ong and Chan's (2014, p. 26) research on understanding redress procedures in B2C ecommerce found that consumers claimed:

> If you have shown your attitude and responsiveness to fix this problem, it doesn't only gain my trust and confidence, but this is a very trustworthy company. It makes mistakes but it can also improve them and do better and why couldn't I trust them and use their services more … as long as you have shown your attitude, especially the way you deal with people and cope with the situation.

Trust is the main factor in the growing use of online services and relates to how a business behaves and treats a buyer when a dispute occurs. A dispute provides a good opportunity for that marketplace to resolve the dispute and to make a positive and lasting impression on the user (Rule 2012). In addition, consumers indicated that a simple and accessible redress procedure increased their confidence and trust in online shopping (Ong & Chan 2014). Practitioners in ODR reported that jointly creating ground rules, building positive relationships, inviting disputants to value other's reputation, or using a brief biography and photo to introduce themselves will maximise trust (Boehme 2015).

In conclusion, another important legal issue related to ODR is trust which has various meanings such as facilitating access to justice (fairness). Trust comes from fairness and fairness brings transparency. ODR is a facilitator for e-commerce; it enhances trust in the e-commerce space.

5.9   DEFINITION OF SECURITY IN INFORMATION TECHNOLOGY

There are various definitions of the concept of security. The origin of the word comes from Roman times, which is 'securus', and it has been used in the English and Romance languages. 'Se' means without and 'cura' means worry, and 'was introduced by Epicureans and Stoics in the 1st century BC' (Waver 2008). Security means 'the absence of distress upon which happy life depends', and is understood as the state or quality of being secure or freedom from danger (Scott et al. 2006).

However, the concept has changed over the centuries. It can be divided into three different meanings: 1) the "traditional meaning" where security as an attribute of state; 2)"military security", meaning security which is used in international relations or directly/indirectly caused by inter-state relations; and 3) "security in a universal sense" which means human security (Mesjasz 2008). These days insecurity is more related to concerns and worries about daily life than fear of a world event. Some of the emerging concerns about human security all over the world are health security, environmental security, job security, income security and security from crime (Liotta 2002).

While advances in internet and e-commerce security technology in the 1990s revealed the possibility of e-commerce security breaches, consumers usually do not know about security control (Suh & Han 2003). In e-commerce security includes information security and privacy which involves components that influence e-commerce such as computer security, data security and other issues of information security (Mundra, Zanzari & Mundra 2014). Moreover, in e-commerce there are consumer concerns such as access to and dissemination of consumer information by businesses which sell items online, and privacy of gathered consumer data. Such problems result from the vulnerability of the internet. The simple view is that when consumers purchase online, anyone from any part of the world might have access to the information being sent. This data is at risk of theft, theft of service, corruption and fraud (Miyazaki & Fernandez 2001). In addition, if security is compromised the consumer would lose his/her faith in e-commerce.

There are five requirements for security in e-commerce: a) confidentiality of the information which means preventing access by unauthorized persons and barriers to intercepting data during transmission and integrity which means information should not be changed during transmission over the network (Mundra, Zanzari & Mundra 2014); b) authentication ensures that the parties in an online transaction or communication are who they claim to be; c) non-reputability which includes protecting information against denial of order or denial of payment. Generally, when a sender sends a message, no-one should be able to deny the message, and the recipient should not be able to refuse and deny the receipt; d) privacy protection which ensures that personal information about customers collected from their online transactions is protected from disclosure without permission; and e) data integrity which means data in transmission is not changed, intercepted or deleted illicitly (Suh & Han 2003).

Telecommunication links are one of the main assets to be protected in e-commerce; however, their security should be followed by additional security concerns in computer and e-commerce. For example, if the telecommunications links were made secure but no security measures were implemented for either client computers or commerce and web-servers, this would destroy telecommunication security (Sengupta, Mazumdar & Barik 2005). In general, security includes issues related to data security and system security. Data security includes encrypting methods such as private or public key cryptography. In addition, popular technologies such as secure socket layers (SSL), secure electronic transactions (SET) and cookies are helpful in protecting privacy and security online. Passwords or digital signatures are used for individual security (Ngai & Wat 2002).

Ghosh and Swaminatha (2001) argue that the risks associated with online platforms could be reduced by using secure infrastructure for computing on the device. Advance authentication mechanisms such as fingerprint recognition systems are useful to authenticate the user of the device. In addition, software certificates need to be used to authenticate software to the user before installing and running the software.

5.10   SECURITY AND ONLINE DISPUTE RESOLUTION

ODR includes traditional ADR processes such as negotiation, mediation, and arbitration conducted online. The relationship between security, technology and dispute resolution is a challenge in ODR. Security creates trust and confidence in the online space but is impossible to achieve in an absolute sense. Even though the parties in the conventional arena usually exchange large amounts of information, it is easier to keep it secure in offline dispute resolution. But to ensure the effectiveness of ODR confidentiality of information is important. Security in ODR relates to the reliability of the system for technology users and has various aspects, including confidentiality, transparency, secrecy, authentication, signature, integrity, privacy and control of information (Kohler & Schultz 2004). Online application tools used in ODR such as Telephone and VOIP (Voice Over Internet Protocol) are created for a specific function in mind but not one related to dispute resolution (Rainey, 2015).

Security in ODR is about protecting information which has two aspects: "the transmission and the storage of information … which are exposed to identical risks: unauthorised third parties must not be capable of accessing the information and, a fortiori, altering this information" (Schultz et al. 2002). It is worth noting that the aim of confidentiality is to develop trust by restricting the publication of certain data (Wahab, Katsh & Rainey 2011). Security creates trust in the online space and enhances trust in the technology used in the ODR process. In ODR communication and exchanging information is between parties, the decision maker and the case administrator using online communication tools such as email, website, video conferencing which is less secure than telephone, mail and fax (Dumortier & Goemans 2004).

The most common procedure to encode information in an online space is using a Transport Layer Security Protocol (TLS) (Rights 2001), plus the Secure Socket Layer [SSL] (Cortés 2010). With Hyper Text Transfer Protocol "The protocol allows client/server applications to communicate in a way that is designed to prevent eavesdropping, tampering or message forgery" (McKinley 2003, p. 8). SSL is defined as "the secure communications protocol of choice for a large part of the Internet

community" (McKinley 2003, p. 3). Public Key Infrastructure (PKI) encryption which "enables users of a basically unsecure public network such as the internet to securely and privately exchange data and money through the use of a public and a private cryptographic key pair that is obtained and shared through a trusted authority" (Mundra, Zanzari & Mundra 2014, p. 61) is another secure method for transactions on ODR websites (Cortes 2010). Indeed, encryption is a way "to send a message or data to a single entity holding a secret key, and access to the encrypted data is all or nothing one can either decrypt and read the entire plaintext or one learns nothing at all about the plaintext other than its length" (Boneh, Sahai & Waters 2011, p. 253). Privacy concerns can also be solved by digital signature technology, using an agreed procedure like confirming the receipt of an e-mail (Sengupta, Mazumdar & Barik 2005) or digital identifiers using a secure passphrase protected program (Hornle 2003), although some security issues still remain. For example, in ADR the use of digital signatures which are codes embedded in a message can be employed to verify that the message was sent by someone, as encryption technology satisfies the authentication requirement (Lide 1996).

Usually parties in an ODR proceeding want to keep all aspects of the proceedings private. But with internet communication there is a risk of being intercepted by unauthorized persons and hackers (Hornle 2009). ODR websites also need to be protected by using firewalls, back-up policies and antivirus systems from the risk of infections, intrusions or computer or networking crashes (Cortes 2010; Schultz et al. 2001). The existence of a web-services framework for explaining the landscape of web-services will increase authentication and exchange of profile information between users of online platforms such as ODR (Bonnet et al. 2002).

Another concern is confidentiality. While confidentiality relies on norms and law, security relies on technology (Dumortier & Goemans 2004). In ODR, as in ADR, there is a trend towards transparency although some information needs to be kept confidential (Pecnard 2004). The current policies regarding publication and confidentiality based on different methods of ODR are varied. In automated negotiation, all providers except one operate on the basis of blind bidding; there is no publication of the offers and demands by one party to the other party or any other person. Some providers reserve the right to

publish the outcome in the future; others might reveal only general bidding statistics. In assisted negotiation, ODR providers have a privacy policy to keep all the information confidential. In the case of B2C, the information could be published if it is not resolved, or if in the result a Trustmark has been revoked because of infringements by the merchant (Schultz et al. 2002).

In traditional ADR, confidentiality in mediation is a necessary requirement which has three aspects: a) parties should be able to submit their arguments and evidence in confidence to the mediator; b) the mediator should be obligated to confidentiality of all the information obtained both during and after the mediation process; c) all parties involved in the mediation and the mediator should give evidence related to statements made by the parties, or evidence prepared only for the purposes of the mediation (Goldacre 2002).

Schulz (2004) has suggested that the same safeguards such as digital signatures which are used in e-commerce for authentication, integrity of a message, and non-repudiation of sending could also be created for ODR systems. Parties and attorneys should be able to communicate openly without fear of their statements being published and used against them outside of the mediation (Bevan 1992). In online mediation results are never published, but in some ODR cases the process could be published as aggregate data (Schultz et al. 2002) which means "to redact data related to an individual by removing names and all identifiers from a profile" (Determann 2015, p. 17). Even in arbitration, confidentiality is a binding requirement on all the participants including disputants, arbitrator and the arbitral institution. After the arbitration process, only some principles can be published with the consent of the parties (Goldacre 2002).

Many providers do not publish any part of the award. They may state that "decisions, complaints, and supporting materials will be posted publicly unless otherwise ordered by the arbitrator", while three providers publicize statistical, aggregate data or anonymous summaries of cases (Schultz et al. 2002, p. 8). However, in B2C disputes confidentiality loses weight because of the need for transparency (Cortes 2008) which helps individuals to have a fair expectation in relation to the proceeding and its possible

outcome (Schultz et al. 2002). The need for consumer protection in ODR leads to publication of outcomes in the interests of public satisfaction. Publication of mediation outcomes increases impartiality and fairness of the processes and reduces power imbalances between the parties (Cortes 2008). In addition, publishing outcomes can develop and increase trust in and awareness of ODR systems. The only example of an ODR provider that publishes all details of the results are those dispute resolution providers under ICANN Uniform Domain-Name Dispute Resolution Policy (*Uniform Domain-Name Dispute-Resolution Policy (ICANN) n.d.*), unless the case panel decides otherwise (Patrikios 2008).

5.11 EU AND US APPROACH TOWARD ONLINE DISPUTE RESOLUTION

In the area of consumer protection, the EU has achieved a higher level of legal codification and integration than the US. Consumer protection in the US focuses more on false advertising, especially that directed at minors, and deceptive business actions such as imposing unfair contact terms on consumers (Cortes 2010). In addition, the US has not enacted and adopted new consumer protection legislation for online purchases and its approach is 'favoring business efficiency, flexibility, and practicalities' (Colon-Fung 2007). In contrast, the EU's attitude is to develop effective redress mechanisms to boost competition and extend e-commerce which has a fundamental role in economic growth of the internal market. There is an emphasis on judicial protection to build extra judicial structures for providing consumers with effective redress (Cortes 2015b).

There is a need for an ODR scheme for resolving e-disputes between businesses and consumers that has enforcement power, so that shopping can be transacted in an online environment with generally low transaction costs (Mania 2015). O'Sullivan (2015) noted that cost and efficiency are the most important elements in creating a successful ODR platform and resolving low volume online disputes. Such an inexpensive and effective ODR platform would encourage early settlement by using automated negotiation tools prior to referring the dispute to a third party. According to Hornle (2012, p. 12) "an ADR/ODR system is only financially viable if the great majority of cases settle early through negotiation with little third party intervention", meaning that

if parties can reach a settlement in the first stages of the dispute there is no extra and external cost. Most ODR systems were created in the US, while in the EU these systems were only developed at the beginning of the 21st century (Gill et al. 2014). ODR is increasing in both public and private markets domestically and internationally (Shackelford & Raymond 2014).

Some private ODR representatives have failed due to technical issues, coverage limitations, and cost related concerns. But public ODR platforms are growing in Europe, Mexico, and British Columbia, Canada (Shackelford & Raymond 2014). In the EU examples are the online mediation systems in Italy and UK, and the ombudsmen in Austria and Germany (Gill et al. 2014). Generally, the aim of the EU ADR Directive and ODR Regulation is to improve the retail market by establishing a complex resolution system with alternative options and internet solutions for out of court settlements (Mania 2015). This will provide consumers with an alternative to the common judiciary and business with a mechanism to avoid multi-annual processes (Del Duca, Rule & Loebl 2011).

The ADR directive applies to procedures for out of court resolution of domestic and cross border disputes related to contractual obligations from sales or services between a trader established in the EU and a consumer resident in the region- setting the material scope for ODR Regulation (Mania 2015). EU member states need to ensure that consumers can access the ADR entity to submit their dispute, and the ADR entity should provide a website where the consumer can submit their dispute online (Pearlstein, Ebner & Hanson 2012). In addition, Article 8 of the Directive has several quality criteria requirements such as effectiveness, fairness, independence, and transparency that need to be followed by any ADR entities (Abedi & Yusoff 2011). Online businesses from each of the member states have to provide consumers with information about the existence of the ADR entities, and they have to provide details of the ADR entities on their website with their general terms and conditions (Bellucci & Zeleznikow 2005). Also, according to the Directive member states are obligated to make sure there is collaboration between ADR entities in cross border complaints (Cohen & Crabtree 2006).

Moreover, the platform is required to have the standard forms in all the official languages of the EU countries and disputes need to be submitted directly through a website to the relevant national ADR scheme. The platform is free for consumers under the financial support of the European Consumer Centres Network (Cameron 2011). The ODR Regulation is based on a user-friendly and consumer-oriented dispute resolution platform (Cortes 2014) that needs to use privacy protection, make case management simple and provide for easy use of the procedure and feedback processes (Cortes 2014).

The ODR platform works as an out of court dispute resolution; this is a single entry for online disputes arising between consumers and businesses (Creswell & Clark 2007). Consumers can lodge their complaints free of charge on the platform which is an interactive website and are then connected to a proper ADR entity in their home country (Ebner 2012). Online businesses are obligated to have an electronic link to the ODR platform on their website. Next, the platform contacts the businesses about the case against them and then submits it to the ADR entity that the parties have agreed to use (Gill et al. 2014). Then the selected ADR provider will receive details of the complaint through the ODR platform. The ADR provider should resolve the dispute within 90 days (Bird & Emery 2009). Moreover, the platform should build a feedback system in which the parties have a chance to provide feedback on their experience, on the efficiency of the ODR platform, and on the ADR provider that lodged their complaint (Ebner 2012). Therefore, twenty-eight different national states monitor ODR compliance within several member states. However, commentators are afraid that monitoring and compliance inconsistencies may hinder the success of the dispute resolution framework (Cortes 2015a).

The EU approach to consumer protection can be compared with the United Nations Commission on International Trade Law's (UNCITRAL) proposal that focuses on encouraging ODR. In 2010 the UNCITRAL Working Group III (ODR) was established to promote a global ODR framework for handling cross-border disputes from e-commerce transactions of any amount for both B2C and B2B transactions (Tanul & Stefanut 2013).

One of the differences between the EU ODR platform and the UNCITRAL ODR platform is that in the EU businesses are not forced to participate in the ODR process as they can refuse to accept the selected ADR providers (O'Sullivan 2015). The ODR platform established by UNCITRAL has developed a set of procedural rules. For example, the ODR administrator will appoint the neutral third party instead of that person being selected by the parties, and this has also been considered in EU proposal. The UNCITRAL rules apply only when the parties have mentioned this in the contract which is subject to dispute (O'Sullivan 2015). Although there is a similarity in procedural rules between both the EU and UNCITRAL, there is a negotiation stage in UNCITRAL where automated negotiation tools are used before referencing the neutral third party. In the EU, the ODR platform lacks a negotiation stage for disputants, such as assisted negotiated tools (O'Sullivan 2015). This lack of automated negotiation tools and the absence of EU force in making participation in the ODR process mandatory for business has reduced the effectiveness of the EU ODR platform (Hornle 2012).

Hornle (2012) argues that there is a need for a greater level of transparency related to the EU proposal in related to publishing cases resolved as early as possible in the procedure. Moreover, it has been claimed there is a need for cooperation with consumer protection law enforcement to ensure its effectiveness in the case of large-scale, low value consumer scams. This would require disclosure of complaints data to law enforcement authorities and, given the concerns about data protection, the proposals have refrained from providing consumer protection law enforcement authorities with access to the ODR platform (Hornle 2012).

In the United States e-commerce transactions are governed by various provisions of state statute or case law, depending on factors that include the subject matter of the transaction (Martin 2002). The US Federal Trade Commission (FTC) has issued recommendations about the need for procedural safeguards in several alternative dispute resolution mechanisms such as ADR and ODR. Although the FTC report is not mandatory and has not been implemented by the U.S federal government, it emphasizes the significant role of procedural safeguards in ODR systems (*Federal Trade Commission, Consumer Protection In The Global Electronic Marketplace* 2000).

At a quick glance, it seems that both the EU and the US are following same goal of protecting consumers but in different ways. A simple comparison shows these differences in regard to internet regulation, terms and principles of contract validity, and e-commerce policies (Stylianou 2008).

Generally, US e-commerce and consumer protection policy is pro-business, self-regulatory and minimalist. Contrary to the EU, the US develops incentive programs for online businesses to offer dispute resolution procedures, rather than promoting and protecting consumer rights (Stylianou 2008).

In the US ADR is referred to as 'non adjudicative' dispute resolution which does not include arbitration and other adversarial proceedings. The US approach is based on self-regulation for ODR services because of the rapid growth of technology. This approach argues that regulating ODR and promoting any law takes time. So by the time the ODR regulation comes into effect the technology and e-commerce space has changed so much that the law would be unbeneficial, unrelated, or even hinder the progress of e-commerce (Clayton & Emery 2009). There are examples of private ODR in the US such as eBay's Resolution Center that resolves complaints through its website and is free for parties (Rule 2008). Therefore, the US has left ODR in the hands of the private sector, while the EU has been proactive in prescribing ODR. The best approach according to Schmitz (2015) would be to use practices of private and public intervention in ODR that would advantage both online consumers and businesses.

5.12   SUMMARY

The absence of universal standards for the concepts of fairness, trust, and security has prevented ODR growth. ODR providers have developed their own regulations (self-regulation) toward these concepts, which have led to unfairness and distrust in ODR. Even the EU Regulation on Consumer ODR does not cover these issues. Fundamental and accessible information and polices about fairness of the process, impartiality, privacy, confidentiality, transparency and ethical standards for ODR providers need to be provided. There is a need to provide consumers with adequate technological

information with a clear ODR structure to eliminate the unequal power between business and consumers. As ODR systems are global their framework should be consistent with existing international rules. Hence, special regulations are required to make such systems trustworthy.

CHAPTER SIX
RESEARCH DESIGN AND METHODOLOGY

6.1   INTRODUCTION

The aim of this chapter is to present the mixed-methods approach used to answer the research questions presented in Chapter 1. It will begin with a discussion about research and research paradigms, explaining different kinds of paradigms and the rationale for the application of a mixed-methods research design.

This chapter elaborates the research design and how the methodology relates to theory development. In this research an exploratory sequential mixed methods design (Creswell & Clark 2007) was employed. Data was collected and analysed in three separate phrases. In the first phase, phenomenological qualitative data collection was employed through face-to-face interviews. In second phase, a survey was used in order to collect quantitative data. The third phase of this study involved the interpretation of qualitative and quantitative findings. The chapter then discusses ethical considerations and ends with a summary. The chapter structure is shown in Figure 6.1 below.
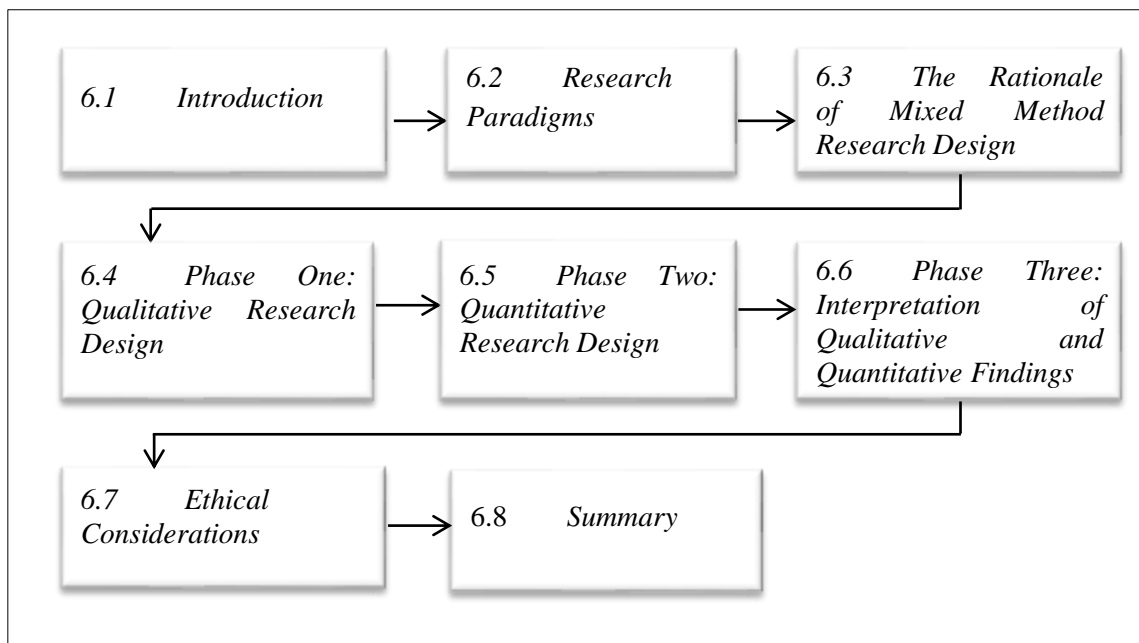
Figure 6.1   Chapter's Organisational Structure

6.2 RESEARCH PARADIGMS

The common meaning of research is the search for knowledge. Research is the art of investigation to find out answers to questions (Kothari 2004). A research paradigm is a "basic set of beliefs that guides action" (Guba 1990) for the researcher in order to develop his/her research (Denzin & Lincoln 2005). Put simply, a paradigm is a way to see the world and organise it coherently (Mac Naughton, Rolfe & Siraj-Blatchford 2010). Generally, any paradigm has three main elements (Scotland 2012) (See Figure 6.2):

1) *Ontology*: refers to a theory of existence about the nature of the world and what it constitutes;

2) *Epistemology*: refers to a theory of knowledge, how it is built and the possible ways of gaining knowledge; and

3) *Methodology*: refers to theory of the most appropriate methods and techniques to use to gather and justify knowledge, given the epistemology (Steffe & Gale 1995).
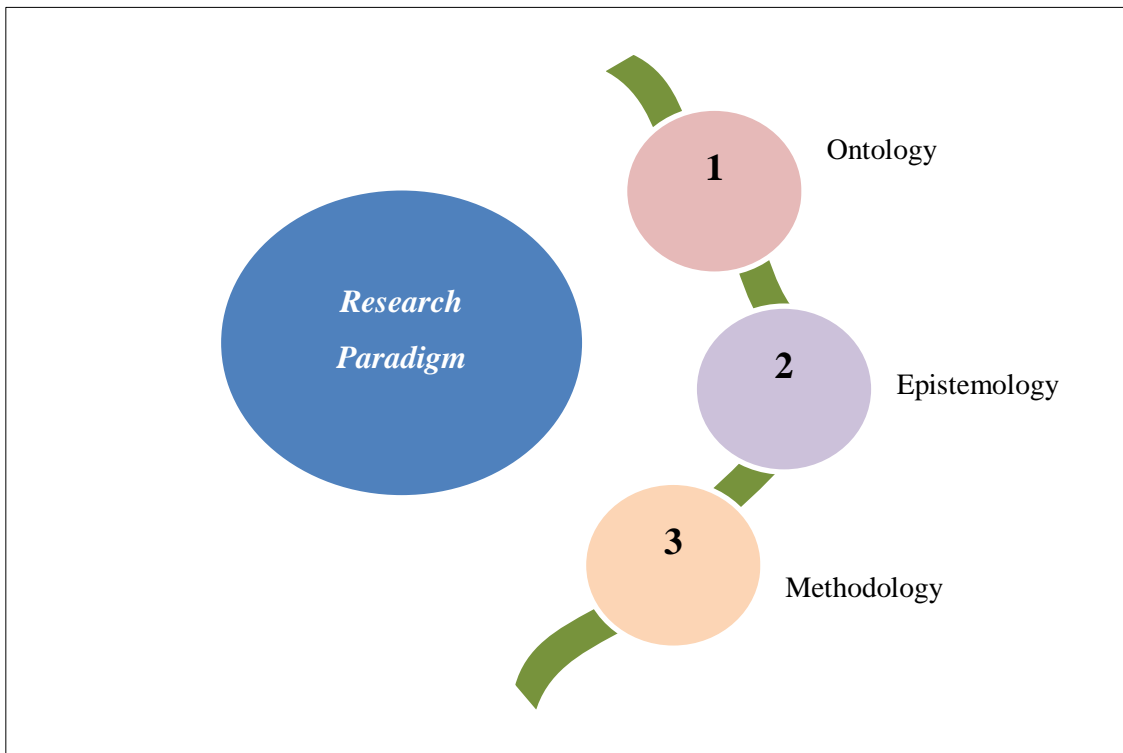
Figure 6.2   Research Paradigms

There are a number of theoretical paradigms which are discussed in the literature such as positivist (and post positivist), interpretivist, constructivist, emancipatory, transformative, pragmatism, and deconstructivist. In this section, the most common theoretical research paradigms (see Table 6.1) will be defined and described.

Table 6.1   Theoretical Research Paradigms

Theoretical Research Paradigms	Summary
Post positivist (and positivist) paradigm	- Definition is "scientific method" or doing "science" research through observation and measurement (Creswell 2009). - Various terms: quantitative research, positivist/post positivist research, empirical science and post-positivism (Steffe & Gale 1995). - Knowledge is based on what can be experienced or observed (Williamson 2006). - Findings are generally quantitative as numerical and statistical data (O'leary 2004).
Interpretivist/constructivist paradigm	- Definition: "the meanings and experiences of human beings" (Williamson 2006). - Based on open-ended questions (Creswell et al. 2003). - Qualitative data collection methods or mixed methods, using quantitative data to support or expand qualitative data (Mackenzie & Knipe 2006).
Transformative paradigm	- According to Mertens (2014) it includes "critical theorists, participatory action researchers, Marxists, feminists, racial and ethnic minorities" (Mertens 2014). - Using mixed methods will provide the researcher with a greater level of understanding of diversity of values, positions and stance (Mackenzie & Knipe 2006).
Pragmatic paradigm	- Is not looking for answers related to reality and the laws of nature; it is interested in changing the subject (Creswell et al. 2003). - Interpretation of each notion by tracing its respective practical consequences is undertaken in the pragmatic method (James 1995).

This research has adopted a constructivist paradigm. According to Williamson (2006) interpretivism is a broad term that embeds several paradigms all related to "the meanings and experiences of human beings" (Williamson 2006, p. 2). In the constructivist paradigm, the researcher aims to understand the complicated world of lived experience from the point of the view of those that live in it. Furthermore, the research is influenced by the researcher's values and cannot be independent of them (Mertens 2014). This type of research focuses mainly on the participant's views about the subject of the study. In addition, questions are broader and more general, which will allow participants to construct their own meaning from the subject of the research. This kind of research is based on open-ended questions that are more effective because the researcher will listen more carefully to what people say and how they act in their real life. Normally, subjective meanings are not simply imprinted on individuals; they are constructed by interaction with others and are based on historical and social norms which operate in individuals (Creswell 2013).

The difference between positivist and constructivist paradigms is that knowledge in positivist research is based on what can be experienced or observed. Tenets of positivist researcher are measurement and objectivity resulting is a focus on quantitative data. On the other hand, in the interpretivist paradigm researchers consider the view that the social world is made by people who are different form the world of nature (Williamson 2006). In constructivist research, qualitative data collection methods and analysis are used as the main method for collecting data. However, constructivist research could also include both qualitative and quantitative methods (mixed methods). The purpose of using quantitative data is to support or expand qualitative data (Mackenzie & Knipe 2006).

6.2.1 Ontology

Blaikie (1993, p. 7) defines ontology as "the claims or assumptions that a particular approach to social enquiry makes about the nature of social reality". Assumptions that the researcher creates about reality and how the research looks at it is called ontology (Morgan & Smircich 1980). Ontological assumptions are divided into two forms

according their reality: in the subjectivist perspective, reality is considered as "a projection of human imagination" and in the objectivist perspective reality is considered as a concrete structure (Morgan & Smircich 1980, p. 494). The ontological position of the researcher has a direct influence on the methodologies they will employ to do research. Researchers who view reality as objective will have an interest in using methodologies strongly related to scientific research methods while whose who take the subjective position consider the naturalistic methods of research the most suitable ones (Morgan & Smircich 1980). Therefore, identification of ontology is significant as it recognizes the choice of research design that needs to be employed.

6.2.2   Epistemology

Another fundamental philosophical concept in research is epistemology. Blaikie (1993, p. 6) defines epistemology as "a theory of knowledge" of "the claims or assumptions made about the ways in which it is possible to gain knowledge of this reality". Guba and Lincoln (1994) have noted that the epistemological question is "What is the nature of the relationship between the knower or would be knower and what can be known?" The answer to this question is constructed by the answer already given to the ontological question; "that is, not just any relationship can now be postulated" (Guba & Lincoln 1994, p. 108). Researchers with an objective reality perspective use research design to somehow measure reality. Researchers who view reality as subjective select a research design which explores and explains the social phenomena (Peixinho & Coelho 2005). As already mentioned, ontology is defined as reality. According to Carson et al. (2001, p. 4) "the relationship between the researcher and the reality" (ontology) is called epistemology. To discover the reality (ontology), the researcher uses several techniques, called the methodology. In positivistic epistemology, the object of the research is independent from the researcher and knowledge can be gained by direct observation of phenomena (Wellington 2015).

In constructivist paradigms meanings are constructed by human beings as they engage with the world they are interpreting, and from the point of the view of the researcher using this approach meaning cannot be described simply as objective (Crotty 1998).

This research aims to obtain a universal concept for security, fairness, and trust through a collective meaning or conception of knowledge. These conceptions are gained by understanding experiences of the research participants in relation to the phenomena of the study. Therefore, this research has selected a constructivist/interpretive approach.

6.2.3 Methodology

Methodology "investigates and evaluates methods of inquiry and thus sets the limits of knowledge" (Gaffikin 2008, p. 7). When researchers choose their methodology, they determine their philosophical assumptions about ontology, epistemology and human nature (Collis & Hussey 2013). Research methodologies have been classified into two broad categories - quantitative and qualitative research. Quantitative research begins with an objective view of reality and basically research questions are related to 'how much' and 'what' (Ryan, Scapens & Theobald 2002). In contrast, qualitative research focuses on the meaning of words by using methods such as interviews, observations, and documentary analysis (Flick 2009). The third paradigm of research methodology is a mixed method which involves both qualitative and quantitative methods in a single study (Tashakkori & Teddlie 1998).

This research has adopted mixed methods research including both a qualitative study followed by a quantitative study. This research method also fits the constructivism epistemology of the research. Conducting mixed methods research has several advantages. Use of both qualitative and quantitative research methods at different stages of this research allowed the researcher to access different sources of data about the research topic and research aims, which is analysing measurements for three concepts of fairness, trust, and security in ODR. Gathering various data enabled a greater depth of understanding about the research issue compared to using one single research method (Bonoma 1985). Moreover, to find answers to the research questions, the most appropriate approach is mixed methods. Broad research questions usually need several methods over a number of studies (Morse 2003).

Relying on one method could be problematic because of limitations for each method and the inability of one method to provide an in-depth study related with the research problem (Irwin 2008). Therefore, adopting mix methods of qualitative and quantitative approaches will provide greater and deeper insight in understanding and analysing the research topic (Creswell & Clark 2007).

6.3   THE RATIONALE OF MIXED METHOD RESEARCH DESIGN

The purpose of this study is to discover the differences between ADR and ODR in relation to the issues of fairness, trust and security, and find how these issues are related to each other. In research studies, the procedure of collecting, analysing, interpreting, and reporting data is called research design. The importance of the research design is that it guides the researcher to select appropriate methods during their research and establish the logic for making interpretations at the end of a study. When the researcher has decided to use a mixed methods approach, the next step is to select the particular design that best guides the research question (Creswell & Clark 2007). There are different mixed methods typologies developed by theorists such as Caracelli and Greene (1997), Tashakkori and Teddlie (2010) and Creswell and Clark (2007). The four major types of mixed methods designs are: triangulation design, embedded design, explanatory design, and exploratory design (Creswell & Clark 2007). In triangulation design, which is a one phase approach, qualitative and quantitative methods are employed simultaneously (called concurrent designs) and participants for both qualitative and quantitative methods of the research are from the same sample (Gelo, Braakmann & Benetka 2008).

Embedded design is when one data set creates a supportive, secondary role in research based primarily on other data type (Creswell & Clark 2007). Quantitative data can be embedded within a primarily qualitative methodology or qualitative data can be embedded within primarily quantitative data (Gelo, Braakmann & Benetka 2008). The third type of research design, explanatory design, includes a two-phase design. According to Creswell et al. (2003, p. 216) the aim of this approach is to "gain

quantitative results and explain or build on them using additional qualitative data". Therefore, in explanatory research design qualitative data supports quantitative data.

The exploratory sequential mixed methods design in this research included three phases. In phase one which was the qualitative method, data was collected from interviews. In phase two, the quantitative phase, based on findings from qualitative data surveys were designed to collect data. Finally, phase three included interpretation of both qualitative and quantitative data to obtain results and answer the research questions in this thesis. The research design of this research is illustrated in Figure 6.3 below.

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│  │  Phase 1     │ ──►  │  Phase 2     │ ──►  │  Phase 3     │         │
│  │              │      │              │      │              │         │
│  │ Qualitative  │      │ Quantitative │      │Interpretation│         │
│  │ Data         │      │ Data         │      │ of           │         │
│  │ Collection   │      │ Collection   │      │ Qualitative  │         │
│  │ and Analysis │      │ and Analysis │      │ Data and     │         │
│  │              │      │              │      │ Quantitative │         │
│  │              │      │              │      │ Findings     │         │
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│         │                     │                                        │
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│  │-Semi         │      │-Online Survey│                               │
│  │ Structured   │      │              │                               │
│  │ Interviews   │      │-Data Analysis│                               │
│  │              │      │ and Results  │                               │
│  │-Data Analysis│      │              │                               │
│  │ and Results  │      │-Descriptive  │                               │
│  │              │      │ Statistics   │                               │
│  │-Finding Codes│      │              │                               │
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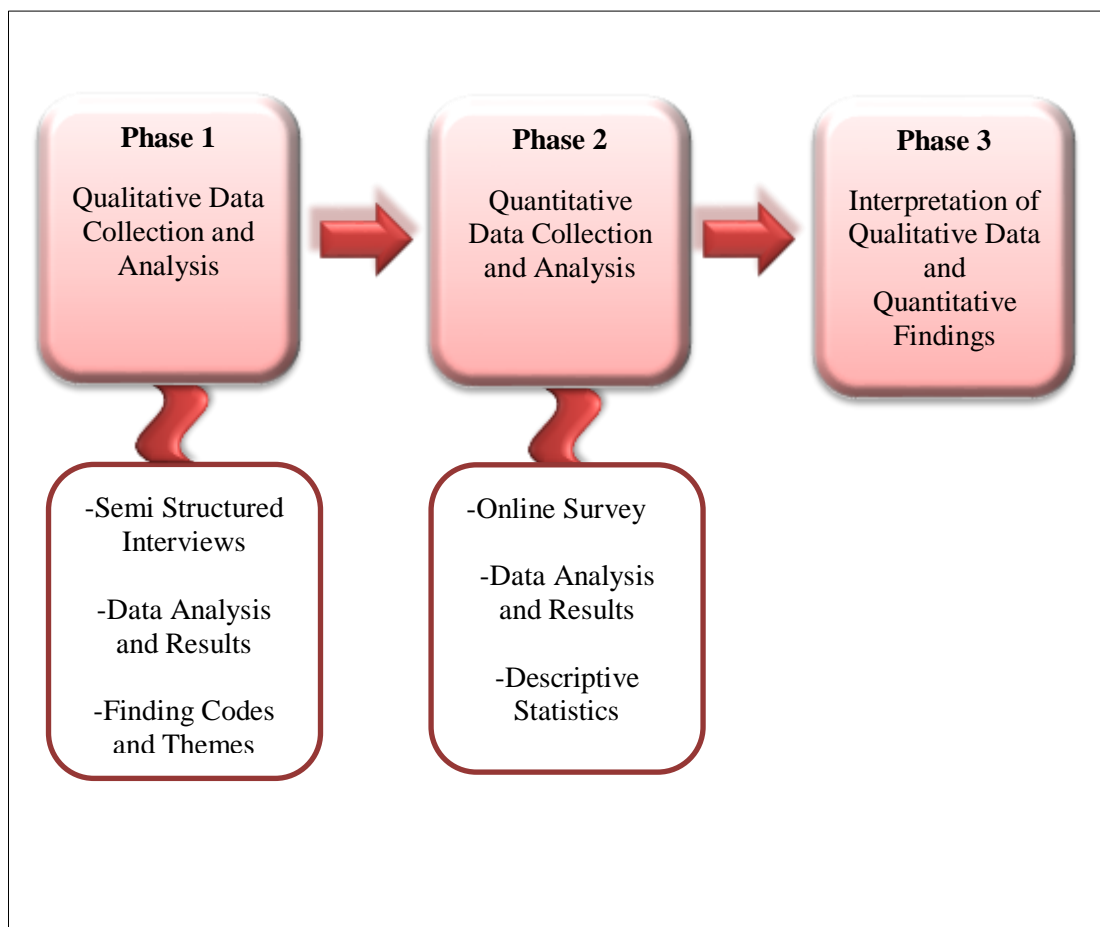
Figure 6.3   Exploratory Sequential Research Design

There are various reasons for selecting this research design such as when the variables are unknown and there is no guiding framework or theory. This design starts with a qualitative method that is best suited for exploring the phenomenon of the research

(Creswell & Clark 2007). In addition, this method is useful when a researcher needs to develop and test an instrument because one is not available or identifying significant variables to study quantitatively when the variables are unknown (Creswell & Clark 2007).

By adopting this research design, it is possible to generalize findings to different groups, "to test aspects of an emergent theory or classification" or in-depth exploration of a phenomenon and later measuring its prevalence (Creswell & Clark 2007, p.75). Figure 6.2 describes the exploratory sequential research design applied to this study to achieve the research objectives.

6.4   PHASE ONE: QUALITATIVE RESEARCH DESIGN

Beyond quantitative approaches, researchers use inquiry and qualitative science to engage in human subject research (Merriam & Tisdell 2015) to understand individual's experiences (Jackson, Drummond & Camara 2007). A qualitative approach is used when the topic of the research is limited or inadequate, research has complicated constructs and the desire is to build a theory based on the participant's life experience (Morse & Richards 2002). There are several advantages of using a qualitative method; these are "exploration, explanation, flexibility, and context to understand and interpret complex, human conditions" (Creswell & Clark 2007). There are different approaches to and types of qualitative methods. The five most common types of qualitative methods according to Creswell (2013) are: ethnographies, grounded theory, phenomenological research, case studies, and narrative research.

The nature of this study lends itself to qualitative research, using a transcendental phenomenological design to discover participant's lived experience of using ODR processes and the meaning they make of lived experience. It has been noted by Husserl (1977) that phenomenology is "an attempt to establish the structure and meaning of experience, which in turn can lead to a clearer understanding of the phenomena in question" (Husserl 1977). Creswell (2013, p. 15) argues that: "Understanding the lived experiences marks phenomenology as a philosophy as well as a method, and the

procedure involves studying a small number of subjects through extensive and prolonged engagement to develop patterns and relationships of meaning" This qualitative phenomenological research explored the lived experiences of six ODR providers and experts. There are two different kinds of approach towards phenomenological study: 1) hermeneutical phenomenology: where research is oriented toward lived experience (phenomenology) and interpreting the texts of phenomenology with set rules of methods (Van Manen 1990); and 2) transcendental or psychological or empirical phenomenology which has less focus on the interpretations of the researcher and more focus 'on a description of the experiences of participants' (Moustakas 1994).

The phenomenon in this study was participant's lived experience of ODR systems and the meaning they ascribed to the lived experience. A transcendental phenomenology approach provided a solid foundational framework for two reasons. First, "transcendental phenomenology addresses the social and psychological perspectives of those who have experienced the phenomenon" (Groenewald 2004). Second, "the model gives researchers the opportunity to describe in narratives the lived experience of people" (Maypole & Davies 2001). By using transcendental phenomenology, researchers will be able to fully understand and investigate the meaning of lived experiences and to learn about the meanings individuals make of these lived experiences.

6.4.1   Sampling and Sample Size

In qualitative research, there is a purposeful selection of participations and sites in order to best help the researcher to better explore and understand the research problems and research questions (Creswell & Clark 2007). In qualitative research, non-probability sampling or purposive sampling is used because it is not the same as quantitative research where the aim is to provide a statistically representative sample or draw statistical inference (Wilmot 2005). In this study, the participants in the phenomenological qualitative research phase were experts and providers of ODR. They were chosen based on purposive sampling (Padilla-Díaz 2015). Mostly, purposive sampling does not have a fixed number of participants as it intends to interview until

redundant themes appear instead of applying a definitive sample size formula used in quantitative studies (Merriam 2009). In qualitative study, there is a need for in-depth interviews; analysing data from large numbers of participants would be difficult to manage (Ritchie et al. 2013). Therefore, the number of participants and sample size are small compared to a quantitative method. In phenomenological research a small number of participants is acceptable, while a larger number of participants better illuminates the multiple facets of the phenomenon (Englander 2012). In this research, the number of participants in the sample was six; and Creswell (2013) asserts that in phenomenology research between three and ten participants is adequate. In addition, according to Guest, Bunce and Johnson (2006) redundant themes may appear (this means no new data, no new themes, no new coding) in qualitative research by as little as six interviews depending on the sample size of the population and it is best to think of data in terms of richness and thickness (Dibley, 2011) rather than the size of the sample (Burmeister, & Aitken, 2012).

6.4.2   Data Collection

Data in qualitative research can be collected from different sources such interviews, observations, audio and visual materials (Creswell 2013). In phenomenological research the most appropriate method for collecting data is by conducting interviews (Padilla-Díaz 2015). Interview questions can be either unstructured or semi-structured (Creswell 2013).

As Marshall and Rossman (2014) advise that semi-structured interviews should be used in phenomenological research for in-depth understanding, this research also conducted semi-structured in-depth face-to-face interviews with six ODR experts as the main approach to collecting qualitative data. The length of each interview was between one and two hours and was tested in a brief pilot study (See chapter 7: Qualitative Data Collection). In semi-structured interviews, the interviewer attempts to receive information from interviewees by asking questions. While a list of questions is used in a semi structured interview, participants also have the chance to explore issues they consider to be significant (Clifford et al. 2016).

The questions asked in the semi-structured interview were the same for all participants (See Appendix A: semi-structured interview questions). Prior to the interview participants signed an informed consent from (See Appendix B: consent form for participants involved in research; interview) as required by the ethics approval granted by the university. Participants were asked about their experiences and perceptions of the three concepts of fairness, trust and security in ODR systems. They described the meaning of these concepts and the processes of their resolution systems in online B2C disputes. The questions were mainly open-ended and the researcher allowed the participants to answer questions freely in their own words; as Cohen and Crabtree (2006) note, this is a great advantage of using semi-structured interviews. All interviews were audio recorded with the consent of participants and backup notes were made of their answers. After finishing the interview, each interview was transcribed and analysed thoroughly.

6.4.3 Data Analysis

There are various kinds of data analysis in qualitative research. It is the researcher's responsibility to choose the most appropriate data analysis method that will best provide objective findings for the research. In qualitative research, data analysis begins with an inductive function with a large amount of information and progressively reducing the information into smaller, more distinct bracketed sets of key data and themes (Phillips-Pula, Strunk & Pickler 2011). Moustakas (1994) explains that in phenomenological research data are analysed into significant statements which "clusters these statements into meaning units and themes". The data analysis method for this phenomenological research study used Moustakas' (1994) adaptation of the Stevick-Colaizzi-Keen method (See Chapter 7: Qualitative Data Collection). Therefore, the seven-step method was applied in this research to analysis interview data, as follow:

1) The first step involved transcribing all audio recorded interviews immediately after interview. Each transcript was read several times to understand the whole sense of the content;

2) Significant statements were manually extracted from each transcript;

3) The researcher formulated meanings from the significant statements. Each statement was coded;

4) Arranging formulated meanings into clusters of themes. This means each code was grouped into similar types;

5) Developing exhaustive description through analysing all emergent themes. In this stage, the whole structure of the phenomenon had been extracted by merging all study themes;

6) Formulate the fundamental structure of the phenomenon. In this stage findings were reduced by eliminating and removing misused, redundant and overestimated descriptions; and

7) Returning the descriptive result to participants for validation. This stage was conducted to make sure analysis accurately reflected participant's experiences.

The identified codes and themes are explained in next chapter (Chapter 7: qualitative data collection). The researcher did not use qualitative software programing such as NVivo for analysing and coding data; all the data were analysed manually.

6.4.4 Trustworthiness of Qualitative Data

In the qualitative research method, a number of strategies or tactics have been employed by researchers to enhance the truthfulness or validity of results (Brink 1993). Most qualitative researchers avoid using the term validity and instead use other terms to address validity such as trustworthiness, authenticity, and credibility (Creswell 2013). Trustworthiness is defined by as "a methodological (research design, data gathering, data analysis) accuracy (soundness) and adequacy of the research inquiry" (Anney 2014, p. 1). To establish the trustworthiness of research, Lincoln and Guba (1985) suggest the use of the terms credibility, transferability, dependability, confirmability, and authenticity as the equivalent for internal validity, external validity, reliability, and objectivity (Lincoln & Guba 1985). It is important to establish how the transferability, dependability, and authenticity of the qualitative study lead to credibility of the research.

i) Credibility

Credibility of qualitative research is defined as "the confidence that the researcher and user of the research can have in the truth of the findings of the study" (Macnee & McCabe 2008, p. 172). Credibility is more about richness of the information gathered. According to Lincoln and Guba (1985) the techniques to establish the credibility of qualitative data are observation, triangulation, peer review, and member checking. Other examples of credibility noted by Shenton (2004) are: explaining in-depth the adoption of a research method, random sampling of individuals to serve as informants and negative case analysis. Moreover, credibility is enhanced by describing the richness of the method by which data is gathered and a fit between the data and the emerging analysis by thick description (Morrow 2005).

Explaining in-depth the adoption of a research method and peer review were used in this research. The process of adopting a phenomenological qualitative method and the specific procedures employed are explained in detail in this chapter. In peer review colleagues, peers and academics were invited to provide feedback about the interpretation and conclusions of the study. The peer review in this research also involved two experts in the field of law and dispute resolution providing feedback on the qualitative research design and reviewing the interview questions.

ii) Transferability

Transferability "is concerned with the extent to which the findings of one study can be applied to other situations" (Merriam & Tisdell 2015, p. 256) and relies on whether or not the findings of the research can be applied to a wider population (Merriam 1998). According to Pearson, Parkin and Coomber (2011, p. 62) "the small sample size and context-based conclusions of qualitative research are regarded as important aspects that limit its transferability in locations other than those in which the research was initially conducted". In transferability, the researcher should provide enough data and context to empower the reader to judge if the findings can be applied to other situations and contexts (Cameron 2011). The transferability of this research which is a limitation of qualitative research was discussed in chapter one of the thesis.

iii)   Dependability

Dependability deals with the way the research is conducted and needs to be consistent across data collection and analysis (Morrow 2005). Dependability is employed by carefully adopting research design and having an audit trial which is a "detailed chronology of research activities and processes; influences on the data collection and analysis; emerging themes, categories, or models; and analytic memos" (Morrow 2005, p. 252). To establish the dependability of this research, the researcher has adopted three main tactics from Shenton (2004) which will be discussed in chapter seven (Qualitative Data Collection). These strategies were addressed in more detail in the qualitative research design and its implementation, in how data was gathered and what had been previously done in this field, and in reflective appraisal of the project and evaluation of effectiveness of the research process.

iv)   Confirmability

Confirmability refers to "establishing that data and interpretations of the findings are not figments of the inquirer's imagination, but are clearly derived from the data" (Anney 2014, p. 15). Shenton (2004, p. 72) argues that "the concept of confirmability is the qualitative investigator's comparable concern to objectivity". In this part, the researcher should take steps to ensure that the findings of the research do not reflect their biased preferences (Shenton 2004). The techniques for establishing confirmability are an audit trial, reflexive journal and triangulation (Anney 2014). An audit trail allows any reader to follow the course of the research step-by-step to ascertain whether the results can be trusted as a proposal for further study (Carcary 2009). Confirmability in this research is established through applying audit trail techniques; for this reason, the researcher adopted a guideline for interviews which was an open-ended semi-structures interview (see Appendix A: semi-structured interview questions). Moreover, to make sure the interviews were not biased other questions to clarify this issue were used during the interview.

6.5   PHASE TWO: QUANTITATIVE RESEARCH DESIGN

In this mixed methods research, after the researcher analysed the data from the qualitative phase, these findings guided the second phase which was quantitative data

collection. Researchers in mixed method research use quantitative data to discover empirical truths from collected data about the construct of interest (Black 1999).

In quantitative research numbers and statistics are presented. The quantitative method in this research was used to collect and present the descriptive data. There are three kinds of quantitative research: descriptive, experimental and causal comparative (Leedy & Ormrod 2005). According to Gay, Mills and Airasian (2006) descriptive research includes collecting data to find answers to questions about the subjects or participants of the research. In this research, convenience sampling was used to solicit participants that were representative of the total population of the phenomenon to be studied. In this phase, an online survey with 108 respondents was conducted to investigate how online consumers feel about dispute resolution of e-commerce transactions (See Appendix C: consumer respondents' online survey; Qualtrics).

6.5.1 Sampling

In the quantitative study, Qualtrics which is an online survey questionnaire was used for data collection (Hill 2008). Quantitative research uses two tools for gathering data - probability and non-probability sampling. In probability sampling, which is long-term, in depth research, data gained are representative of an entire population. In non-probability sampling, usually "there is limited access to the sample population or the full parameters of the population are unknown" (Babbie 2015, p. 186). In this research, it was decided that non-probability sampling was appropriate because it was not possible to provide an equal opportunity for an entire population to participate in the survey.

Nonprobability sampling has four types of design: purposive sampling, convenience sampling, quota sampling and snowball sampling (Tansey 2007). The sampling method used for this study is non-probability convenience sampling with a sampling frame to strengthen the statistical analysis. In convenience sampling, which is also known as availability or accidental sampling, the researcher selects the most readily available respondents until the required sample size has been gained. The advantage of this

sampling form is that it is easy to carry out because there are no strict selection rules (Tansey 2007).

The aim of collecting data from this group was to examine how consumers have experienced online disputes and the online dispute resolution process. A minimum of 200 individuals were invited to participate in this survey. The researcher was successful in obtaining 108 responses. This number was considered acceptable for generalizing statistics to the target population.

6.5.2   Data Collection

The goal of this section is to present the methods employed in gathering data from the quantitative research design. In the quantitative method, the two typical data collection methods are survey and experimental (Creswell 2013). To collect quantitative data this research has adopted a survey which provides "a quantitative or numeric description of trends, attitudes, or opinions" (Creswell 2013, p. 12). For this reason, close ended questions were prepared through Qualtrics (Hill 2008) which is an online software platform which helped the researcher to build the survey and report responses. Moreover, using Qualtrics helped the researcher to reach the target population in a clear and fast manner. The qualitative data gained from interviewing ODR providers was used to design and develop the questionnaire for quantitative data collection. Five steps adopted from Brancato et al. (2006) were used to design the questionnaire for this research; namely: determining the domain of the construct; developing a draft questionnaire; asking an expert to give advice; testing the questionnaire by using a pilot study; and analysis and finalising of the questionnaire (Brancato et al. 2006). Figure 6.4 below illustrates the five steps adopted for designing the questionnaire.

Determine domain of construct

Preparation of questionnaire draft

Expert advice and Feedback

Pilot Study

Analysis and finalising the questionnaire
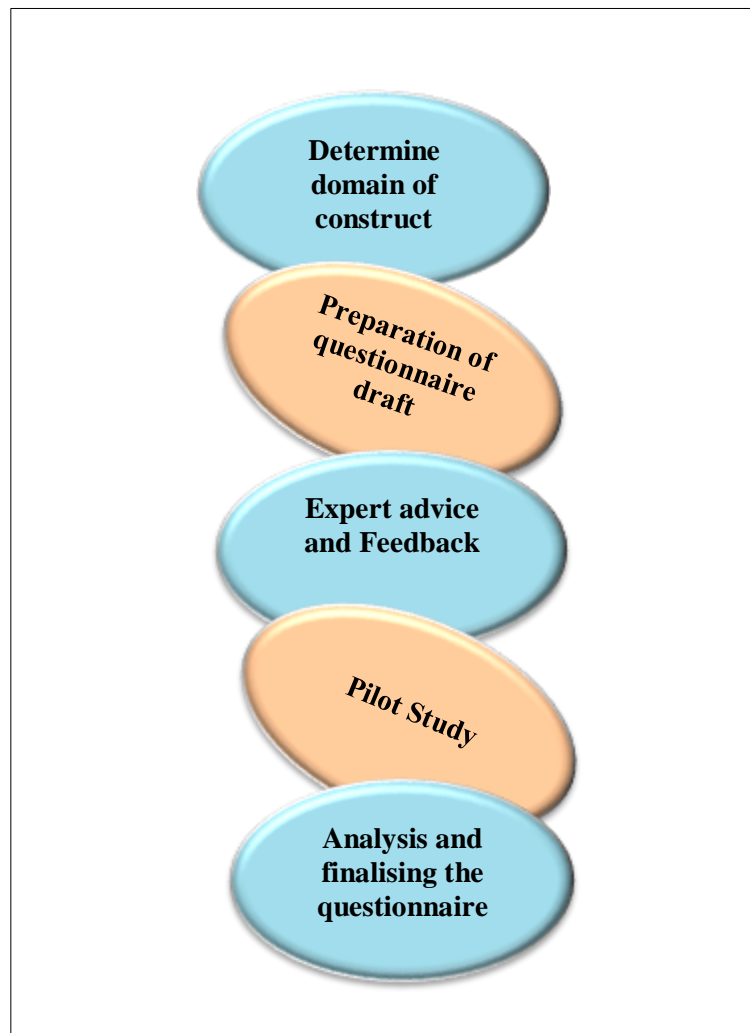
Figure 6.4   Five Steps of Questionnaire Design

Source: Adapted from Brancato et al. (2006)

6.5.3   Data Analysis: Descriptive Statistics

After collecting data, the researcher analysed the raw data using the Statistical Package for Social Sciences (SPSS) software. The scientific methodology of collecting, measuring, classifying, computing, describing, and analysing survey data is called statistics (Suhr 2003). One of the major components of statistics is descriptive statistics, used mainly to summarize the data and describe variables (Jaggi 2003). In descriptive analysis one variable at a time (univariate analysis) is analysed. The purpose of using descriptive data analysis in this study was to describe participants involved, and

determine independent and dependant variables and the relationship between these variables. Independent variables were the participant's demographic data which included gender, age and educational background. These demographic variables were nominal data and were analyzed using descriptive statistics. Dependent variables in the descriptive quantitative study of 108 online purchasing consumers were to find out how they have experienced online shopping disputes.

6.5.4 Validity and Reliability

The aim of the reliability and validity of the measure is to decrease measurement errors (Hair 2010). Thorndike and Angoff (1971, p. 447) define validity as an "interpretation of data arising from a specified procedure". Reliability is the extent to which research findings would be the same if the research were to be repeated at a later date or with a different sample subjects. (Ticehurst & Veal 2000). Generally, reliability refers to "the degree to which measurements are 'free from error and therefore yield consistent yields" (Zikmund 2003, p. 300). Measuring reliability makes an estimation of confirmatory factor analysis (CFA) results or those produced by a path model with latent variables (Holmes-Smith, Coote & Cunningham 2006). There are various types of reliability and for this research internal consistency was adopted. Internal consistency provides "an estimate of the reliability of measurement and is based on the assumption that items measuring the same construct should correlate" (Kimberlin & Winterstein 2008, p. 2277). To estimate internal consistency, Cronbach's alpha is used frequently as a measure in constructing "the average intercorrelations of items and the number of items in the scale" for Likert type questions or opinions (Kimberlin & Winterstein 2008, p. 2277). Construct reliability in this research using Cronbach's alpha is discussed in Chapter 8 (Quantitative data collection).

Validity means to what extent the data collected truly reflect the phenomenon of the study in the research. There are several validity tests that can be employed to assess the usefulness and goodness of a measure including content validity, criterion-related validity, and construct validity (Sekaran 2006).

For validity of the instrument, the researcher adopted content validity which is the most significant validity tool. To gain content validity in research, the data and research instruments can be reviewed by experts. Upon receiving the reviewer's comments and feedback, the unclear and vague questions can be changed and the complicated items reworded (Zohrabi 2013). For the purpose of content validity (face validity), the researcher asked two academic professionals and two experts in online purchasing at Victoria University to proofread all the survey questions and provide their opinion in order to validate the survey question's (instrument's) content, layout and wording.

Moreover, for content validity, a pilot study can be used for pre-testing of the survey (Rubio et al. 2003). In this research, conducting a pilot was a means of collecting feedback on the ways of improving the survey and data collection process. The survey was tested by a small number of consumers who were drawn from the same population as the main study participants, but were not included in the actual study.

6.6 PHASE THREE: INTERPRETATION OF QUALITATIVE AND QUANTITATIVE FINDINGS

As mentioned previously, this research is a sequential exploratory mixed methods study. Data was collected in two phases: In the first phase, qualitative data was collected by interviewing ODR providers. In the second phase, quantitative data was collected by sending questionnaires to consumers. In the third phase of this research reported in the discussion chapter, the researcher interpreted data from both these qualitative and quantitative methods. Firstly, qualitative results measuring the three concepts of fairness, trust and security in ODR systems are discussed. Later, quantitative findings about consumers' perceptions of and attitudes toward the three concepts of fairness, trust and security are reported. In this stage, there will be no comparison between the two databases as they are typically from different samples (Creswell 2013).

After discussing the results, the researcher made recommendations about how ODR providers should provide fairness, trust and security in their systems to increase their efficiency and maximise consumer satisfaction and protection within their processes.

6.7   ETHICAL CONSIDERATIONS

As a researcher, it is necessary to maximize the benefits of research and minimize the risks to the subjects of the research. For this reason, ethics approval was obtained from the Human Research Ethics Committee, Victoria University Melbourne, in June 2014 (See Appendix D). In addressing the ethical issues relevant to this study, the consent form and information for participants involved in this research were distributed (See Appendices B and D). In addition, the participants of both the interviews and survey were assured that there were no foreseeable risks in participating in this research. This material included information that the participants had the opportunity to withdraw from the study at any time. The confidentiality of the interview and questionnaire participants was guaranteed by protecting their anonymity in any data used in the thesis, and all related data was held in locked storage.

6.8   SUMMARY

This chapter provided a discussion of the methodology and procedures used in conducting this study using a mixed-methods approach. It discussed the reasons for collecting qualitative data through interviews and quantitative data by using a survey and described data analysis and validity in both approaches. The next chapter will present the qualitative data collection procedure and findings from the interviews.

CHAPTER SEVEN
QUALITATIVE DATA COLLECTION

7.1   INTRODUCTION

In the previous chapter, the sequential exploratory method of research involving both qualitative and quantitative approaches was discussed. In this chapter the first phase of data collection, which uses a qualitative phenomenological method, is presented. The phenomenological study through semi-structured interviews with ODR providers was conducted to explore how they define, measure and apply procedural fairness, trust and security in their ODR systems. Therefore, this chapter includes a detailed description of the data collect process, the pilot study, the method used for data collection, the interview process and data organization. It also explains the steps undertaken to analyse data from interviews and describes the twelve major themes identified. The outline of this chapter is presented in the Figure 7.1 below.
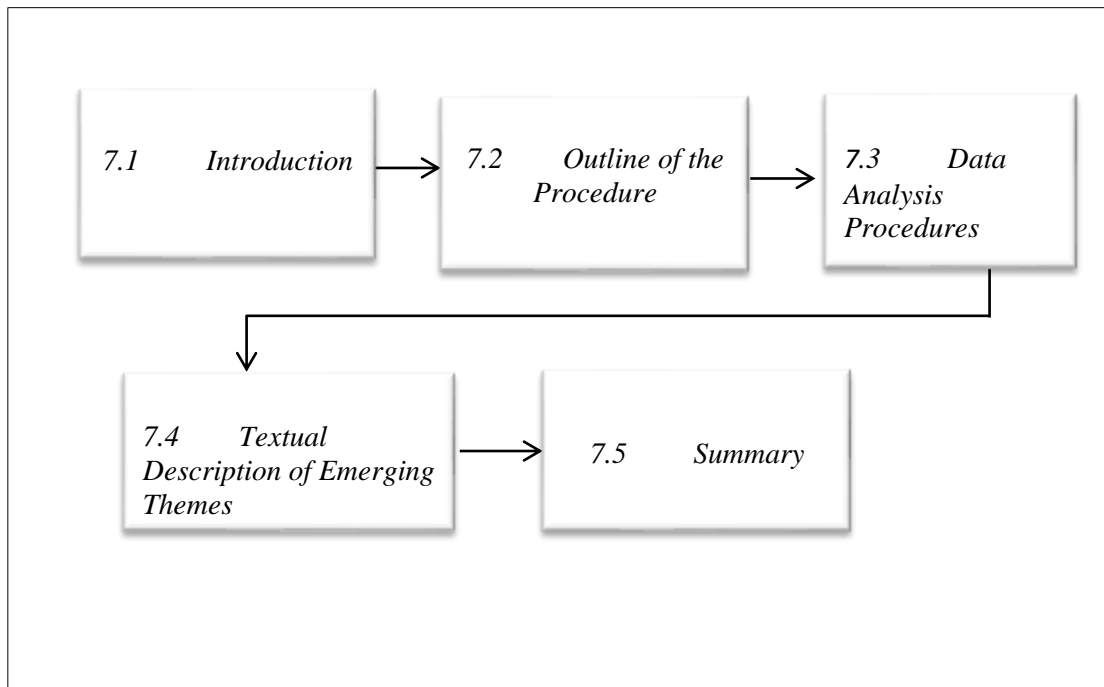
Figure 7.1   Chapter's Organisational Structure

7.2   OUTLINE OF THE PROCEDURE

In qualitative research, data are collected by the researcher from different sources such as documents, observation, or interviews (Creswell 2013). In this research, to fill gaps in the literature review and find answers to the research questions, qualitative and quantitative mixed methods research was conducted. In the first phase of collecting qualitative data, face-to-face semi-structured interviews with ODR providers were undertaken. This data will then be complemented by quantitative data, including an online survey. Qualitative interviews assist the researcher by providing an opportunity gain an in-depth understanding of the world of others with a rich set of data (Qu & Dumay 2011). This is a very useful method of collecting data as qualitative research is interpretative; the inquirer is typically involved in a sustained and intensive experience with participants (Locke, Spirduso & Silverman 2013). So, in this study the researcher is looking for rich and detailed data about legal concepts of ODR systems from the interviewees' viewpoint.

As it was difficult for the researcher to travel to different countries and interview ODR providers, it was decided to select individuals for interview purposefully (purposive sampling) from the potential participants in an ODR Conference which is held each year. This helped the researcher to gain a detailed perspective of ODR providers and to better understand the problem and the research questions. The sample size was six participants for interview, as this is a phenomenological qualitative design and the number of interviewees is adequate. Typically, in phenomenology studies the number of individuals range from three to ten (Creswell 2013). As interviewees were from different regions of the world it was difficult for the researchers to travel to each country and interview them. Therefore, interviews were conducted in June 2015 at an international conference about ODR systems in New York City (USA) with participation of ODR providers, experts and academics (Conference Website: http://law.pace.edu/odr-2015-agenda). The researcher confirmed the participation of all the interviewees in the conference and conducted the interviews during the conference.

7.2.1 Interview Questions

The open-ended questions were designed to explore the lived experiences of ODR providers within their ODR systems. Using a phenomenological interview method allowed interviewees to express their attitudes freely, and provide a deeper understanding of their personal experiences (Leedy & Ormrod 2005). The purpose of designing open-ended interview questions was to answer the research questions in-depth. Each interview included a set of open-ended questions (see Appendix B) that included one central question and nine sub-questions designed for semi-structured face-to-face interviews.

Central Research Question*: What are your lived experiences and perceptions about procedural fairness, trust and security in ODR systems?*

The nine interview sub-questions were:

Sub-Question 1. *What do you think about the concept of fairness and procedural fairness from an ODR provider perspective?*

Sub-Question 2. *How does procedural fairness apply to a decision maker?*

Sub-Question 3. *What do you think about the concept of Trust in ODR systems?*

Sub-Question 4. *From your experience, how do you provide information about your system to the users (public) that they can trust your system is an effective dispute resolution system?*

Sub-Question 5. *From your experience, how do you define security and how important do you think it is in ODR systems?*

Sub-Question 6. *In your experience as ODR providers, how do you make your system secure?*

Sub-Question 7: *In your experience, do you think that ODR is the same as ADR or it's different?*

Sub-Question 8. *Do you think these three issues of fairness, security, and trust are related? Do they all have the same impact?*

Sub-Question 9. *What do you think about government regulation for ODR providers?*

The aim of these sub-questions was to narrow the focus of the central question into specific issues. Also, these smaller and specific sub-questions helped the researcher gain an in-depth and clear answer to the main research question.

7.2.2   Pilot Study

Prior to conducting the first interview, an interview protocol with questions was prepared. For content validity, an interview protocol pilot study was needed. A pilot study is a method of improving the quality of interviews by clarifying an interviewer's role, refining research questions, and organizing interview schedules (Marshall & Rossman 2014). It was also used to establish the trustworthiness (credibility) of the potential results. Therefore, before submitting questions for the interview, the researcher sent an email to two experts who met similar criteria to those required for the study participants inviting, them to participate in the pilot study.

The pilot study participants reviewed the questions in order to establish if the interview structure was comprehensive and clear, and the questions were relevant. One question was removed as a result of this feedback. The question was "Have you had any complaints that your ODR system process is biased? Have you received any complaints against your neutrals or ODR staff in ODR processes?" The pilot study participants indicated this question was too confidential to ask. The rest of the comments of the pilot study participants were positive, such as the interview questions were clear and related to the objective of the study, so no more changes were made.

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7.2.3　Data Collection Method

The data collection phase consisted of initial email contact with each of the six research participants. A purposeful sampling approach was used to select a panel of ODR experts. In March 2015, each prospective participant received an introductory email (See Appendix F), with a brief summary of the research project, including the purpose of the study, and a reminder about participant confidentiality and optional participation (See Appendix G).

Six potential interviewees responded, they confirmed their participation at the ODR conference and their consent to be interviewed. The sample size was within the boundaries argued by Leedy and Ormrod (2005) for phenomenological study. The time, date and location of the interview was scheduled with the consent of each participant.

7.2.4　Interview Process

The interviews took place at the Pace Law School Campus, the location of the ODR Conference in Manhattan New York City. The participants were all men and they were from four different continents - North America (USA), South America (Argentina), Europe (Czech Republic and the Netherlands) and Asia (China and Japan). The interviews took place over three days of the conference from 3rd June to 5th June 2015. Participants' demographics are presented in Table 7.1. To protect their confidentiality, the researcher decided to use the identifiers 1, 2, 3, 4, 5, and 6 instead of their names.

Table 7.1   Description of Respondents

Participant Code	Gender	Started Business	Company Location
1	Male	2011	USA
2	Male	2004	Argentina
3	Male	2009	China
4	Male	April / 2008	Japan
5	Male	2005	The Netherlands
6	Male	2014	Czech Republic

All interviews took place in a comfortable environment in an empty room at the conference. Prior to the interview an informed consent form was signed by each of the six participants. They had about 10 minutes to read the informed consent form and confidentiality statement that described the process of data collection and the protection of the rights and well-being of the participant. The forms also indicated the time needed for the interview and mentioned the right of withdrawal from the interview at any time during the process (See Appendix B: consent form for participants involved in research; interview). Consent forms were handed to the interviewer and placed in an envelope.

Each interview lasted for approximately one hour, through a face-to-face, semi-structured in-depth interview process and interviewees answered nine open-ended questions. At the beginning of each interview, a rapport based on honesty and trust was established. Initially the conversation was about the purpose of the interview and whether participants had any questions about the research before starting the interview. None of the participants had any questions All questions or topics listed in the interview guide were addressed. Then, the researcher began asking the open-ended interview questions (See Appendix A: semi-structured interview questions). Participants explained their roles, how they use ODR in their systems, their understating of procedural fairness, trust and security and its implication in ODR systems.

A voice recorder (iPhone 5 smartphone and Olympus digital voice recorder) was used supplemented by written hand notes as back up during the interview with permission from the participant. Follow-up questions such as "Could you say something more about that" or "Could you give more examples", probing and prompting participants such as repeating significant words in an answer, were made during the interview to elaborate their responses about the research topic. None of the participants asked for a copy of the interview.

After finishing the questions in the interview schedule, participants were asked if they wanted to add any additional information related to the research which had not been covered in the interview questions. At the end of the interview participants were thanked for their participation and offered a small handcrafted gift.

After the interviews were completed, transcriptions of the recordings were prepared. To ensure the accuracy of the interview transcriptions, they were returned to each participant for review and revision. After approval was received from each participant, the researcher started the data analysis process. These transcripts will be held secure by the researcher for a minimum of five years and then destroyed.

7.3   DATA ANALYSIS PROCEDURES

As mentioned in chapter six, this study has adopted a qualitative phenomenological study of ODR provider's lived experiences with ODR systems in order to gain an in-depth understanding of the central phenomenon. Data analysis involves collecting open-ended data, based on asking general questions and developing an analysis from the information supplied by the participants.

To analyse the interview data, this research used the Stevick-Colaizzi-Keen seven-step method of data analysis (Colaizzi 1978; Moustakas 1994). All seven steps were conducted manually by the researcher as follows:

1) *In the first step*, all the audio recording was transcribed into Microsoft Word files. Each transcript was read several times to understand their description of the personal experiences about the phenomena of the study and the whole sense of content.

For example, Participant 1 stated:

> I think online practitioners need to have offline dispute resolution experience; (trained, forty-hour face-to-face mediation training or resolve at least 20-30 cases face-to-face, before they get online cases). From my experience, the best way to teach ODR ethics is to teach ADR ethics. The other thing we did is we tested all the neutrals to make sure they never had transactions with the buyer and the seller in the case, so that they gave them a better independence. Independence is very important and organisations give lots of attention to it. I think which is a matter of regular testing that makes sure that neutrals do a good job. Also, we ask disputants to give feedback about the neutrals in the processes such as whether neutrals responded quickly, whether they did listen well. So, we integrate this kind of information into as a neutral quality mater and then we will be able to identify good and bad neutrals so quickly which means we will be able provide good dispute resolution services.

2) *In the second step*, significant statements in each transcript which were directly related to the phenomenon of the study were identified. These statements were manually underlined and listed from each transcript.

For example, Participant 1:

> I think <u>online practitioners need to have offline dispute resolution experience</u>; (trained, forty-hour face-to-face mediation training or resolve at least 20-30 cases face to face (f 2 f), before they get online cases). From my experience the

best way to teach ODR ethics is to teach ADR ethics. The other thing we did is we <u>tested all the neutrals to make sure they never had transactions with the</u> buyer and the seller in the case, so that they gave them a better independence. <u>Independence is very important</u> and organisations give lots of attention to it. I think which is a matter of <u>regular testing that</u> <u>make sure that neutrals do good job.</u> Also we ask disputants to give feedback about the neutrals in the processes such as <u>whether neutrals responded quickly, whether they did listen</u> well. So we <u>integrate this kind of information into as a neutral quality matter</u> and then we <u>will be able to identify good and bad neutrals</u> so quickly which <u>means we will be able provide good dispute resolution services.</u>

3) *In the third step*, which was an inductive process, meaning and concepts - called primary codes - were formulated for each important statement.

For example, for the responses of Participant <u>1</u> the researcher identified the following primary codes:

- Offline experience for online neutrals
- ODR ethics maintains ADR ethics
- Independence of neutrals
- Regular testing of neutrals
- Feedback system for neutral's performance
- Neutral-specific skills
- Quality of neutrals affects dispute resolution services.

The same procedure was applied for other transcripts. For example, Participant <u>3</u> responded:

We are <u>innovating those ethical standards</u> a bit. For example, <u>all the communication is transparent for everyone</u>, for the parties, the mediator, and if the adjudicator joins, he/she can see all the communication between the parties and mediator; <u>we have ethical standards</u>.

These primary codes were identified:

- Transparency of the procedure
- Self-ethical standards for neutrals.

Another example is Participant 5 who stated:

> They <u>know that neutrals have been carefully certified</u> and <u>selected</u> under the responsibility of <u>the legal aid board</u> and <u>the ministry</u> and we have a <u>complaint procedure, where parties can complain about neutrals</u>.

These primary codes were identified:

- Certification of neutrals by government agencies
- Complaint system for neutrals act.

In a further example, Participant 2asserted:

> I think the people trust those procedures especially if you <u>facilitate access to justice</u> because in fact in this regard is they don't mean the same for me. <u>ODR is a way of access to justice and access to fairness</u>. In fact, <u>you get justice because you have a fairness procedure and the parties trust</u> what they are doing. I <u>build my structure of trust I build upon by the reputation</u>. Today if you speak about ODR in X region, you talk about me.

These primary codes were identified:

- ODR facilitates access to justice
- Facilitating access to justice builds trust
- Informing users about their rights
- Reputation creates trust.

In another example, Participant 4 stated that:

> <u>One big point is our enforcement is 100 percent endorsed by the X government,</u> so this is kind of trust. So, the X government has a contract memorandum of understanding (MOU) with a counterpart of each country so this keeps trust

under this MOU, so <u>only those contracts keep our trust to the consumers. X</u> <u>government using our ODR system (company) means X government is a user of</u> <u>our system</u>.

These primary codes were identified:

- Government enforcement builds trust in ODR
- Reputation by government bodies builds trust in ODR.

In addition, Participant <u>6 </u>stated that:

> We do basically go to the <u>recognized law firm, law firm makes the legal </u>opinion that we provide justice. For example, in X country, we create some <u>ethics</u> <u>committee with formal judges and once a year</u> they select randomly a few cases of our company and compare it with the usual decisions in the court system, so <u>this is also a way of comparing efficiency of the ODR system with the court</u> <u>system.</u>

These primary codes were identified:

- Endorsed by the recognized law firms
- Annual reports for ODR practice by experienced ethics committee.

At this stage, the researcher extracted and identified 130 meanings and codes from the significant statements of the six interview transcripts. These codes are shown in the following Table (Table 7.2).

Table 7.2   Primary Codes

Numbers	Primary codes
1.	Offline experience for online neutrals
2.	ODR ethics maintains ADR ethics
3.	Independency of neutrals
4.	Regular testing of neutrals
5.	Feedback system for neutral's performance
6.	Neutral specific skills
7.	Quality of neutrals affects dispute resolution services
8.	In-depth neutral selection process

9.	Neutrality of neutrals makes trustable outcomes
10.	Parties' confidence in selecting neutrals
11.	Significance of neutral selection guidelines
12.	Trust in online website
13.	Rebuilding trust needs more effort
14.	Relationship between trust and reputation
15.	Trust in e–commerce requires fraud investigation
16.	Trust in e–commerce requires resolution
17.	Trust in e–commerce requires reputation
18.	Consistency of ODR outcomes builds trust
19.	Negotiation theory
20.	Transparency of ODR process
21.	Healthy marketplace through trust
22.	Flexibility of ODR outcomes
23.	Reflection of disputants' expectations
24.	Regularly re–evaluating neutral's performance
25.	Providing information to users of ODR process
26.	Guideline for ODR procedure
27.	Problem diagnosis
28.	ODR resolves health related cases
29.	ODR ethical standards create trustable process
30.	Security as an aspect of trust
31.	International certificate for ODR platforms
32.	Security is confidentiality
33.	Security is privacy
34.	Ethical requirement for security
35.	Ethical security standards build trustable process
36.	Anonymous cases for confidentiality of data
37.	Anonymous cases for transparency of process
38.	Mixing cases and creating data sets for transparency
39.	Security is protection of information
40.	Recording key pressing speed for security
41.	Tracking ip address
42.	Serial number of user's processor
43.	Two-factor identification
44.	Confidentiality preserves reputation
45.	Fairness is dependent on security and trust
46.	ODR is born from ADR
47.	ODR has a fourth party
48.	ODR is a justice provider
49.	Procedural fairness creates trust
50.	Web design affects online trust
51.	Procedural fairness is good faith for all cases
52.	Parties propose their own solutions

53.	Online and offline fairness are the same
54.	Reputation of ODR system builds trust
55.	Feedback system and review forums affect reputation
56.	ADR guidelines for ODR
57.	ODR facilitates access to justice
58.	Facilitating access to justice builds trust
59.	Informing users about their rights
60.	Reputation creates trust
61.	Free platform is insecure
62.	Security of personal data
63.	Finger print
64.	Facial capture
65.	Security of credit card information
66.	High cost of building secure system
67.	Controlling a system brings security
68.	Hacking
69.	Security and trust are dependent on fairness
70.	Reducing unequal power
71.	Parties have fair chance to present their case
72.	Parties with the same computer literacy
73.	Affording access to the internet
74.	Disputants with reasonable time for case preparation
75.	Equal participation in ODR process
76.	Parties have similar internet skills
77.	Building ODR system upon specific target
78.	Collaboration of the users in ODR
79.	Security is not absolute
80.	Equal benefits of ODR for both parties
81.	Providing templates makes transparency
82.	Identification tools for security
83.	Confidentially of personal information
84.	Security is privacy
85.	Fairness affects security and trust
86.	Providing ODR system for ODR management
87.	Different perceptions about procedural fairness
88.	Parties with the same language or providing them a translator
89.	Importance of procedural fairness guideline
90.	Transparency of the procedure
91.	Self-ethical standards for neutrals
92.	Certification of neutrals by government agencies
93.	Complaint system for neutrals act
94.	Equal behaviour regardless of the value of items purchased
95.	Government enforcement builds trust in ODR
96.	Reputation by government bodies builds trust in ODR

97.	Login id requirement for security
98.	Enforcement is an element of ODR
99.	Fairness, trust and security are equal
100.	Procedural fairness is about voice
101.	Procedural fairness is about respect
102.	Procedural fairness guideline from academic research
103.	Self-ethical standard for neutrals
104.	Impartiality of decision makers
105.	Endorsed by the recognized law firms
106.	Annual reports for ODR practice by experienced ethics committee
107.	Privacy of data builds trust
108.	User's confidence in ODR's resolution system helps trust
109.	Maintaining disputants' relationship in ODR
110.	ODR information is trustable
111.	Presenting official logo on ODR website
112.	Security guideline by professional data protection agency
113.	National identification number as secure login id
114.	Data protection creates trust
115.	Online skills for online mediators
116.	Fairness needs individual standards
117.	Security needs individual standards
118.	Trust needs individual standards
119.	International independent quality control for ODR providers
120.	ODR service provider interconnects with ODR providers
121.	ODR information is correct
122.	Independency of neutrals is procedural fairness
123.	ODR is funded by e-commerce companies
124.	ODR procedural fairness guideline from offline guidelines
125.	Fairness builds trust
126.	Fairness builds transparency
127.	Fairness is about predictable outcomes
128.	Quality control quality for procedural fairness
129.	External and internal security testing by official data protection agencies
130.	Dependency of trust and security to fairness

After identifying these primary codes from the interview transcripts, the researcher started the next step.

4) *In the fourth step of the Colaizzi (1978) method of analysing data;* the researcher used the inductive approach to identify key ideas from the primary codes and then categorized and collapsed them into clusters. As a result of stage four, a total of 19 clusters were identified from the primary codes, presented in Tables 7.3 to 7.21below.

Cluster 1. "*Equal Opportunity to be Heard and Present the Case*" identified from primary codes as shown in Table 7.3.

Table 7.3   Cluster 1: Equal Opportunity to be Heard and Present the Case

Number	Primary code	Cluster 1
75	Equal participation in ODR process	
71	Parties have fair chance to present their case	*Equal Opportunity to be Heard and Present the Case*
100	Procedural fairness is about voice	
51	Procedural fairness is good faith for all cases	
88	Parties with the same language or providing them a translator	

Cluster 2. "*Predictable outcomes*" identified from primary codes as shown in Table 7.4.

Table 7.4   Cluster 2: Predictable outcomes

Number	Primary code	Cluster 2
18	Consistency of ODR outcomes builds trust	*Predictable outcomes*
127	Fairness is about predictable outcomes	

Cluster 3. "*Panel of Neutrals*" identified from primary codes as shown in Table 7.5.

Table 7.5   Cluster 3: Panel of Neutrals

Number	Primary Code	Cluster 3
10	Parties' confidence in selecting neutrals	*Panel of Neutrals and Decision makers*

Cluster 4. *"Reputation"* identified from primary codes as shown in Table 7.6.

Table 7.6 **Cluster 4: Reputation**

Number	Primary Code	Cluster 4
60	Reputation creates trust	
14	Relationship between trust and reputation	
55	Feedback system and review forums affect reputation	*Reputation*
96	Reputation by government bodies builds trust in ODR	
105	Endorsed by the recognized law firms	
111	Presenting official logo on ODR website	

Cluster 5. *"Transparency"* identified from primary codes as shown in Table 7.7.

Table 7.7 **Cluster 5: Transparency**

Number	Primary Code	Cluster 5
90	Transparency of the procedure	
25	Providing information to users of ODR process	
81	Providing templates makes transparency	*Transparency*
37	Anonymous cases for transparency of process	
38	Mixing cases and creating data set for transparency	

Cluster 6. *"Treated Equitably, Purchase or Transaction Values Notwithstanding"* identified from primary codes as shown in Table 7.8.

Table 7.8 **Cluster 6: Treated Equitably, Purchase or Transaction Values Notwithstanding**

Number	Primary codes	Cluster 6
94	Equal behaviour regardless of the value of items purchased	*Treated equitably, purchase or transaction values notwithstanding*

Cluster 7. *"Minimizing Disputant's Power Imbalance due to Different Technology Skills"* identified from primary codes as shown in Table 7.9.

Tale 7.9   **Cluster 7: Minimizing Disputant's Power Imbalance due to Different Technology Skills**

Number	Primary code	Cluster 7
70	Reducing unequal power	
73	Affording access to the internet	
76	Parties have similar internet skills	*Minimizing Disputant's Power Imbalance due to Different Technology Skills*
72	Parties with the same computer literacy	
74	Disputants with reasonable time for case preparation	

Cluster 8. "*Parties' Control over the Process and Outcomes*" identified from primary codes as shown in Table 7.10.

Table 7.10   **Cluster 8: Parties' Control over the Process and Outcomes**

Number	Primary code	Cluster 8
101	Procedural fairness is about respect	
52	Parties propose their own solutions	*Parties' Control Over the Process and Outcomes*
22	Flexibility of ODR outcomes	

Cluster 9. *"Impartiality and Independency of the Neutrals and the Decision Makers"* identified from primary codes as shown in Table 7.11.

Table 7.11   **Cluster 9: Impartiality and Independency of the Neutrals and the Decision Makers**

Number	Primary Code	Cluster 9
3	Independency of neutrals	*Impartiality and Independency of the Neutrals and the Decision makers*
104	Impartiality of decision makers	

Cluster 10. "*Qualifications and Training of Neutrals*" identified from primary codes as shown in Table 7.12.

Table 7.12   Cluster 10: Qualifications and Training of Neutrals

Number	Primary Code	Cluster 10
1	Offline experience for online neutrals	
6	Neutral specific skills	
7	Quality of neutrals affects dispute resolution services	*Qualifications and Training of Neutrals and Decision makers*
8	Indepth neutral selection process	
11	Significance of neutral selection guidelines	
92	Certification of neutrals by government agencies	
115	Online skills for online mediators	

Cluster 11. "*Evaluator Systems for Neutrals' Practice*" identified from primary codes as shown in Table 7.13.

7.13   Cluster 11: Evaluator Systems for Neutral's Practice

Number	Primary Code	Cluster 11
5	Feedback system for neutral's performance	
93	Complaint system for neutral's act	*Evaluator Systems for Neutral's and Decision makers Practice*
4	Regular testing of neutrals	
24	Regularly re–evaluating neutral's performance	

Cluster 12. "*Procedure Guideline*" identified from primary codes as shown in Table 7.14.

Table 7.14   Cluster 12: Procedure Guideline

Number	Primary Code	Cluster 12
26	Guidelines for ODR procedure	
56	ADR guidelines for ODR	
89	Importance of procedural fairness guidelines	*Procedure Guideline*
124	ODR procedural fairness guideline from offline guidelines	
102	Procedural fairness guideline from academic research	

Cluster 13. "*Ethical Standards*" identified from primary codes as shown in Table 7.15.

Table 7.15   Cluster 13: Ethical Standards

Number	Primary code	Cluster 13
119	International independent quality control for ODR providers	*Ethical Standards*
106	Annual reports for ODR practice by experienced ethics committee	
91	Self-ethical standards for neutrals	
29	ODR ethical standards create trustable process	
128	Control quality for procedural fairness	
1	ODR ethics maintains ADR ethics	

Cluster 14. *"Expectation of Fairness"* identified from primary codes as shown in Table 7.16.

Table 7.16   Cluster 14: Expectation of Fairness

Number	Primary Code	Cluster 14
23	Reflection of disputant's expectations	
59	Informing users about their rights	*Expectation of Fairness*
110	ODR information is trustable	

Cluster 15. *"Code of Ethics"* identified from primary codes as shown in Table 7.17.

Table 7.17   Cluster 15: Code of Ethics

Number	Primary Code	Cluster 15
92	Certification of neutrals by government agencies	*Code of Ethics*
9	Neutrality of neutrals makes trustable outcome	

Cluster 16. *"Information Security"* identified from primary codes as shown in Table 7.18.

Table 7.18   Cluster 16: Information Security

Number	Primary Code	Cluster 16
39	Security is protection of information	
112	Security guidelines by professional data protection agency	*Information Security*
31	International certificate for ODR platform	

Cluster 17. *"Privacy"* identified from primary codes as shown in Table 7.19.

Table 7.19   Cluster 17: Privacy

Number	Primary Code	Cluster 17
34	Ethical requirement for security	
84	Security is privacy	
65	Security of credit card information	*Privacy*
83	Confidentially of personal information	
36	Anonymous cases for confidentiality of data	
44	Confidentiality preserves reputation	
40	Data protection creates trust	

Cluster 18. *"Identity Actions"* identified from primary codes as shown in Table 7.20.

Table 7.20   Cluster 18: Identity Actions

Number	Primary Code	Cluster 18
82	Identification tools for security	
40	Recording key pressing speed for security	
41	Tracking ip address	*Identity Actions*
42	Serial number of user's processor	
43	Two-factor identification	
63	Finger print	
64	Facial capture	
113	National identification number as secure logging id	

Cluster 19. *"Platform Administrator"* identified from primary codes as shown in Table 7.21.

Table 7.21   Cluster 19: Platform Administrator

Number	Primary Code	Cluster 19
129	External and internal security testing by official data protection agencies	
61	Free platform is insecure	*Platform Administrator*
67	Controlling a system brings security	

5) *In the fifth stage of the Colaizzi (1978) method of analysing data*, clusters were sorted into a further, rich, thick, exhaustive description of the phenomenon as emergent themes which were the overarching goal of this qualitative data analysis. Twelve Emergent Themes were created from clusters in this research as a thick, rich textual description of ODR providers' experience of resolving online disputes. The twelve emergent themes are shown in Table 7.22.

Table 7.22   Emergent Themes for the Lived Experience of the ODR Providers

(Based on the fifth stage of Colaizzi's method of analysis)

Number	Cluster	Emergent Theme
1	-Equal opportunity to be heard and present the case -Minimizing disputant's power imbalance due to different technology skills	*Equal Treatment*
2	-Treated equitably, purchase or transaction values notwithstanding -Parties control over the process and outcomes	*Respect*
3	-Impartiality and independence of the neutrals and the decision makers Qualifications and training of neutrals and decision makers	*Neutrality*
4	-Panel of neutrals and decision makers -Evaluator systems for Neutrals' and decision makers' practice	*Trustworthiness*
5	-Predictable outcomes -Procedural guidelines	*Consistency*
6	-Ethical standards	*Ethicality Rule*
7	-Reputation -Transparency	*Knowledge*
8	-Expectations of fairness	*Expectations of Fairness*
9	-Code of ethics	*Code of Ethics*
10	-Information Security	*Information Security*
11	-Privacy	*Privacy*
12	-Identity actions -Platform administrator	*Authentication*

6) *In the sixth stage of the Colaizzi method of analysing data*, the researcher after identifying: "formulated the exhaustive description of the investigated phenomenon as unequivocal a statement of identification of its fundamental structure as possible" (Colaizzi 1978). Therefore, in this stage the explanation of the emergent themes and their relationship with clusters was applied.

7) *The final stage of the Colaizzi method of analysing data* aimed to validate the descriptive findings by returning them to the participants to confirm that the findings described their experiences. Emails were sent to the participants who confirmed that these findings entirely reflected their feelings and experiences.

7.4   TEXTUAL DESCRIPTION OF EMERGING THEMES

In this section the emerging themes from analysing participant's responses to the interview questions are explained. These themes are as follows: Theme 1: Equal Treatment, Theme 2: Respect, Theme 3: Neutrality, Theme 4: Trustworthiness, Theme 5: Consistency, Theme 6: Ethicality Rule, Theme 7: Knowledge, Theme 8: Expectations of Fairness, Theme 9: Code of Ethics, Theme 10: Information Security, Theme 11: Privacy, Theme 12: Authentication. The analysis and final definition of these themes will be presented in chapter nine, the discussion chapter.

Theme 1: Equal Treatment

Equal treatment emerged as a predominant theme in several areas of the interviews. Participants were asked about their lived experiences and understanding of the procedural fairness concept in their ODR systems. Analysis of participant's answers indicated that equal behaviour and treatment with both disputants in dispute resolution systems is a necessary and inseparable element of procedural fairness for any justice system.

For example, Participant 3 stated:

> Procedural justice is defined as reducing unequal power and give equal opportunity for all the parties and for ODR: 1) Easy access to internet for all; 2) giving enough time to look through all the documents (might be many audios, videos); 3) in the processes, being familiar with the computer skills (typing faster or slower); 4) Also the evidence, collecting the evidence, people who know how to use Google, have advantages over the people who don't know how to use it.

According to this participant, in order to provide equal opportunity for both parties in ODR justice systems steps should be taken to minimize disputant's power imbalance due to different technology skills.

Another example is Participant 3's response: "it is important to design ODR process in which everybody has their fair chance to present themselves, their case and propose a solution". Parties should have equal participation in an ODR process and have a fair chance to present their case. Further examples of this theme are Respondent 2 who indicated: "There is no difference for fairness in face-to-face or internet, as there is no difference between the internets of face-to-face as good faith should be applied for all of the case". In this example, having faith toward all the cases emerged.

Participant 5 stated: "…I have done much research in procedural justice before starting ODR, I have learned from Tyler (2006) and Leventhal (1980) and designed my platform such that way, people will have voice, equal opportunity". He mentioned that procedural fairness is about voice and equal opportunity and added that parties should have the same language to express their points of view. After considering these codes and clusters, the researcher identified the equal treatment theme as an element for providing procedural justice in dispute resolution systems.

The diagram 7.2 below illustrates this theme and the various primary codes and cluster themes that emerged from it during analysis.
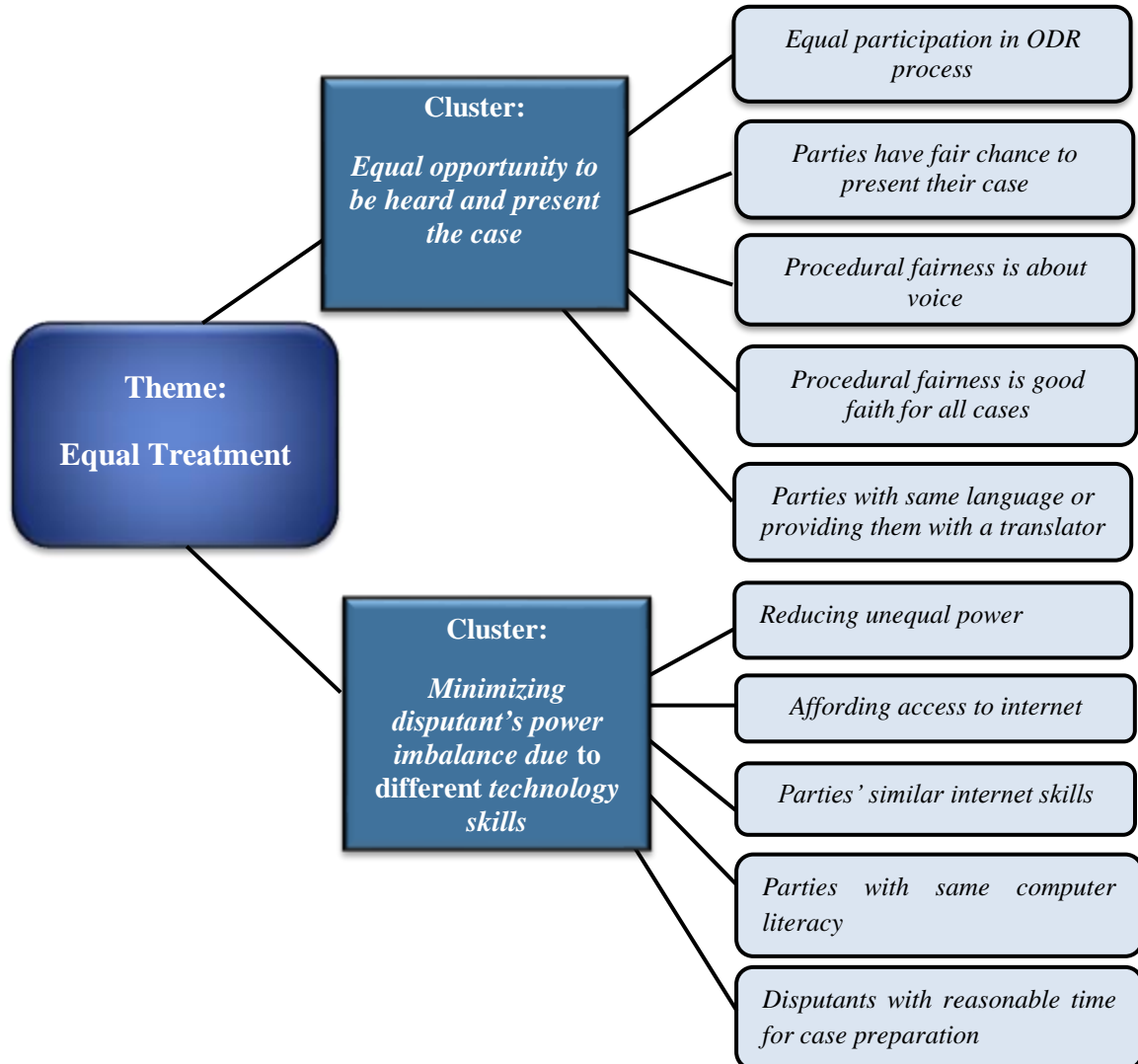
**Figure 7.2   Theme 1: Equal Treatment**

THEME 2: RESPECT

The second theme identified in the analysis of interview transcripts was respect. When a dispute arises between parties they expect respectful treatment from dispute resolution providers. This means parties will have control over the process; they can propose a solution where their rights are protected.

For example, Participant 1 stated:

Users they really want to feel they are controlling the process, control of outcomes, so you need to give them that if you want them to feel trust. So this tool for you, you are a driver of this process, you can decide how you want this to go, that's very important for trust.

Participant 3 added: "It is important to design an ODR process in which everybody has their fair chance to present themselves, their case and propose a solution". Participant 4 focused more on equal behaviour in regard to disputants regardless of the value of items purchased. The diagram below describes these various primary codes and cluster themes from which the respect theme was identified.
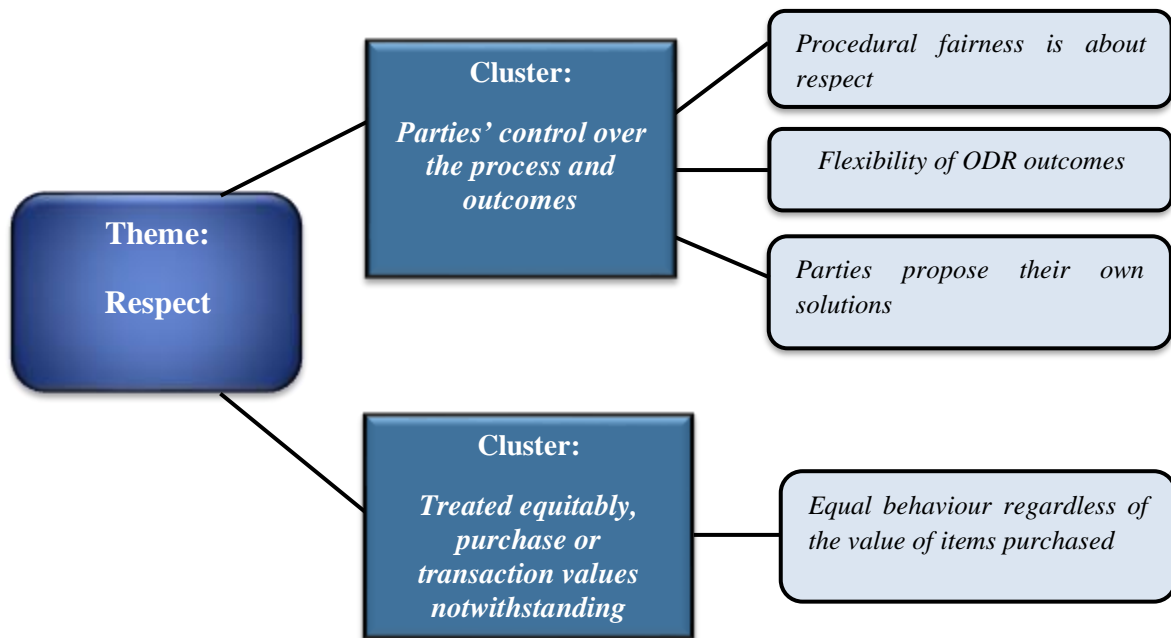

Figure 7.3   **Theme 2: Respect**

THEME 3: NEUTRALITY

The third theme that emerged was neutrality, as demonstrated by participant's responses. Participants indicated that mediators and arbitrators should be highly skilled. The independence and impartiality of neutrals has a great impact on dispute resolution services and therefore there is a need to train neutrals and to be very selective in choosing them in any ODR systems. For example, Participant 1 responded:

I think online practitioners need to have offline dispute resolution experience; (trained, forty-hour face-to-face mediation training or resolve at least 20-30 cases face-to-face, before they get online cases). From my experience, the best way to teach ODR ethics is to teach ADR ethics. The other thing we did is we tested all the neutrals to make sure they never had transactions with the buyer and the seller in the case, so that they gave them a better independence. Independence is very important and organisations give lots of attention to it.

All the participants agreed that the neutrality and independence of decision makers is a compulsory rule in their ODR systems. Participant 2 and Participant 6 both emphasised the need to train high quality neutrals for ODR systems. Figure 7.4 illustrates the various primary codes and cluster themes that guided this theme.
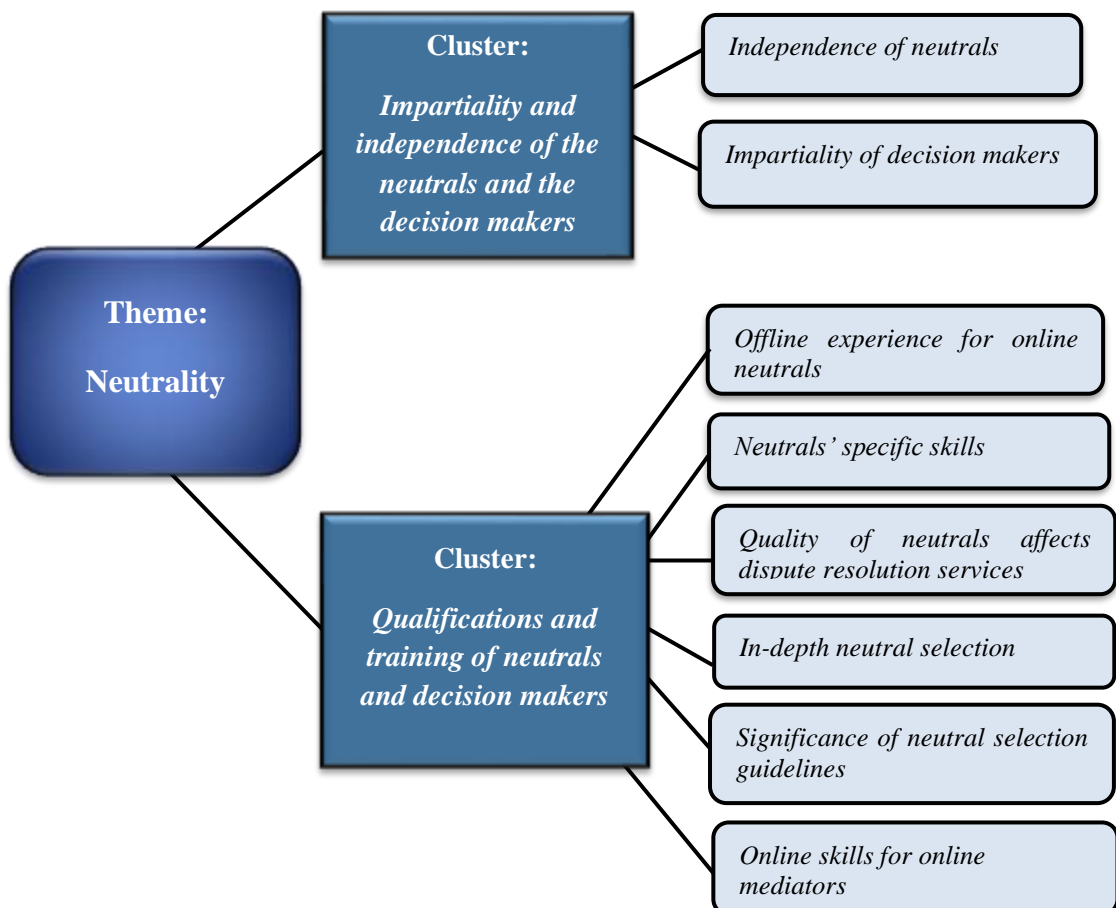
Figure 7.4   Theme 3: Neutrality
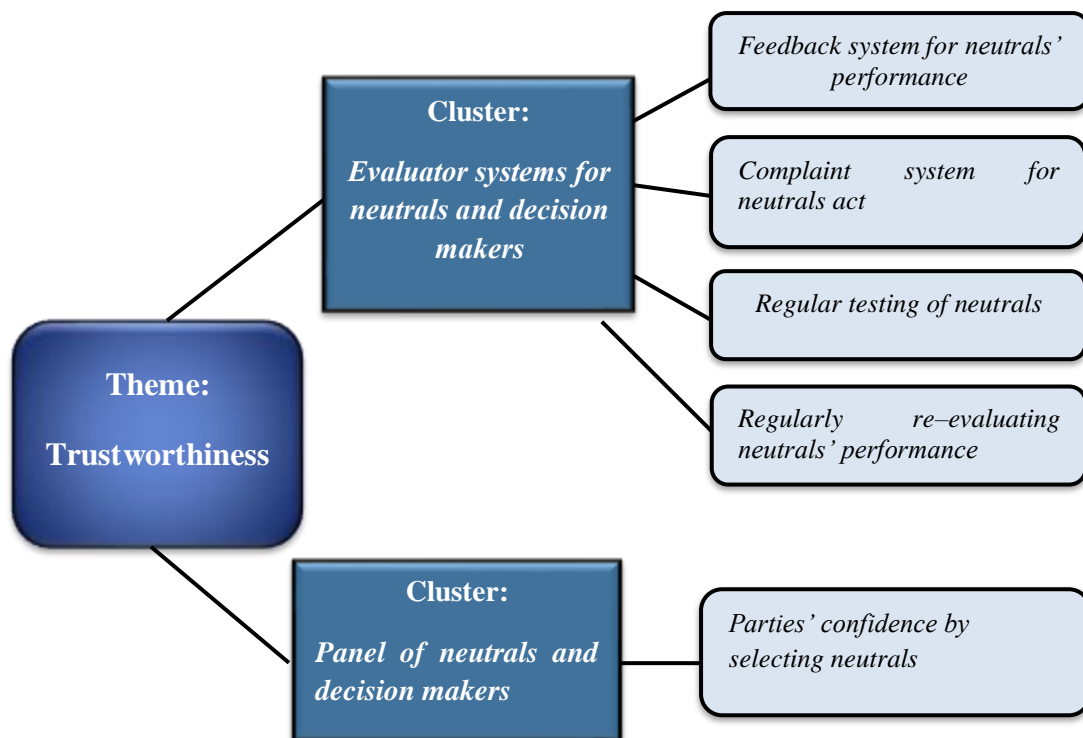
THEME 4: TRUSTWORTHINESS

The fourth theme was trustworthiness. Responses from participants suggested that in ODR systems neutrals and decision makers should be benevolent and there should be a brief bio of mediators or arbitrators from which parties can select. Participant 1 mentioned: "…it is important to build processes where parties feel they have total confidence in their neutrals, if they feel the neutrals have an agenda then they can't trust the outcome".

Moreover, to create trustworthiness within ODR systems, participants emphasised that they use complaint and feedback systems to re-evaluate the practice of their neutrals. Participant 5 stated: "…we have a complaint procedure, if they see neutrals are not performing, parties can complain about them". Participant 1 replied:

> ODR mechanism here is based on these guidelines, these neutrals deliver service in the processes; they are the part of this guideline. And every month, year we re-evaluate neutrals and make sure they are continuing to operate within these guidelines. Also, we ask disputants to give feedback about the neutrals in the processes such as whether neutrals responded quickly, whether they did listen well. So, we integrate this kind of information into as a neutral quality matter and then we will be able to identify good and bad neutrals so quickly which means we will be able to provide good dispute resolution services.

The diagram 7.5 below explains the primary codes and cluster themes that resulted in the trustworthiness theme.

**Figure 7.5   Theme 4: Trustworthiness**

THEME 5: CONSISTENCY

The consistency theme was mentioned by all respondents who have an ODR guideline for their process which makes their systems consistent. For example, Participant 6 stated: "We have minimum standards for ODR providers and this is the EU's official document published by UNICTRAL". Participant 5 replied: "for providing procedural fairness into my ODR system I see there have been by research, so it is more guided by those researchers. Academic background, I have conducted much research in procedural justice before stating ODR". Furthermore, providing guidelines for ODR systems ensures consistent outcomes as Participant 1 highlighted:

> I think it is consistency, people want to know if a problem arises it's going to be resolved, and if the same problem arises twice, it's going to be resolved in the same way both times. In X e-commerce company we had a situation that people had a dispute and they were very high value customers, they can make lot of money for X E-commerce company. So, someone has a dispute and X E-

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commerce company will go "oh so sorry you had a dispute, here is your money", customer will say "well thank you for paying", then what about that guy, what will happens to him, and this is something we are talking in negotiation theory. You get the money back but you are not creating trust, it's not a creating procedurally satisfying process, this could also undermine the trust. Users can get that money very quickly and they say this system is not consistent, they are just buying people off, they are just writing cheques. And that guy will continue to do crimes because they are not resolving the problem. So, trust is not only about the impartiality or fairness, it also about are you designing a system that is going to overtime make the market place healthy and provide consistent outcomes.

This statement underlines the significance of a consistent procedure of resolving disputes which make outcomes predictable. Figure 7.6 below illustrates the consistency theme and its cluster themes with primary codes.
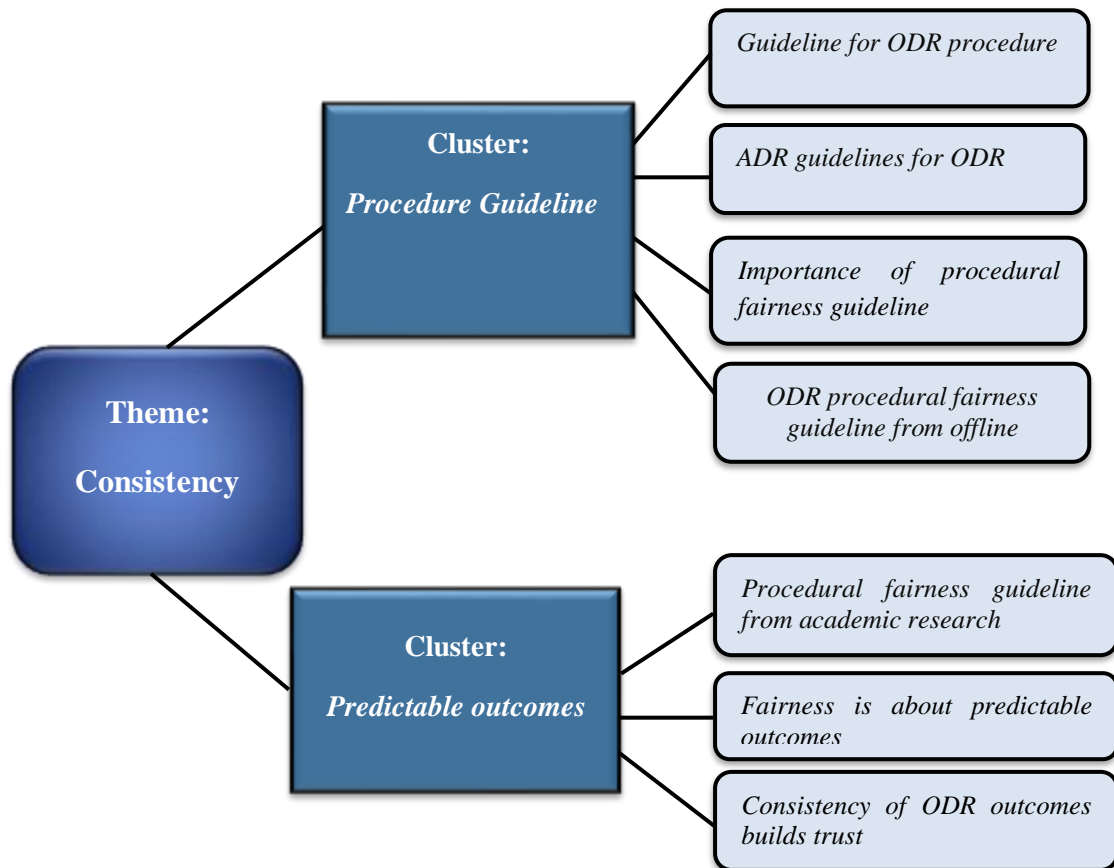
Figure 7.6   Theme 5: Consistency
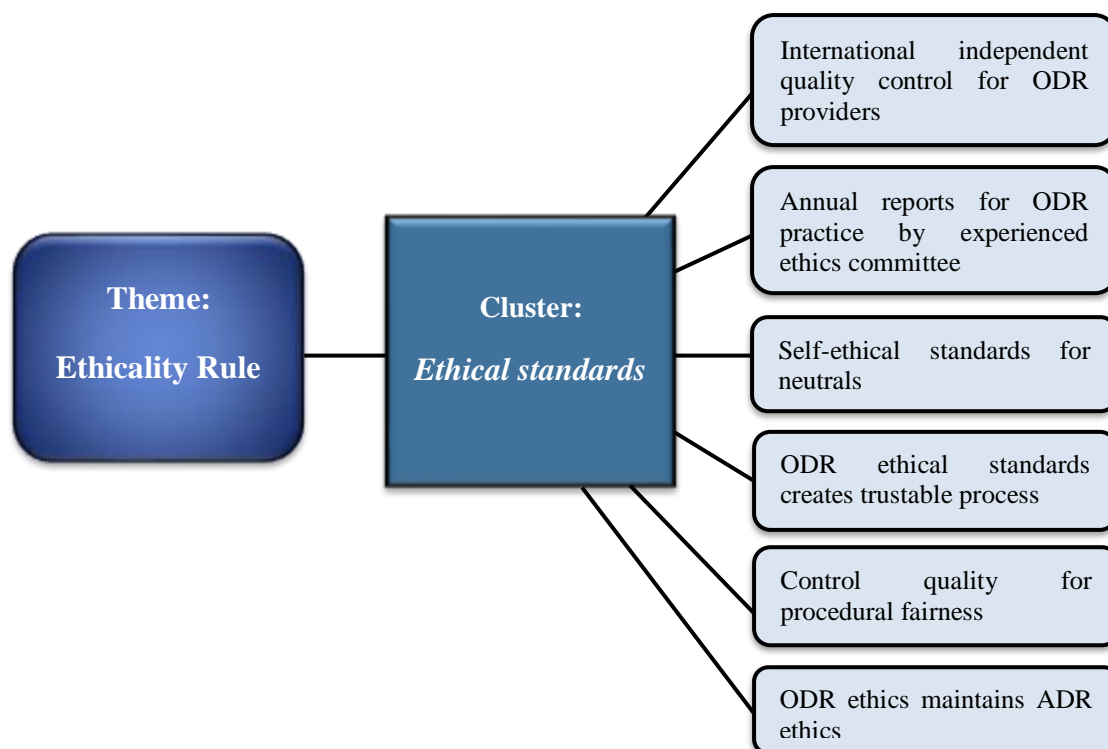
THEME 6: ETHICALITY RULE

The sixth theme that emerged from the interviews was the ethicality rule. Most of the participants highlighted that their ODR system procedures are compatible with ethical standards. To do this, they evaluated their systems' performance by using an experienced ethics committee. Participant <u>1</u> mentioned the existence of ethical standards in their ODR systems several times; for example, Participant 1 highlighted:

> Yes, I think ethical guidelines are very important. For the users to be able to say "look this organisation that ODR mechanism here is based on these ethical guidelines", these neutrals deliver services in the processes that are part of this guideline … From my experience they best way to teach ODR ethics is to teach ADR ethics.

Participant <u>6</u> also mentioned ethical standards:

> We basically go to a recognized law firm, the law firm provides the legal opinion that we provide justice. For example, in X country we create some ethics committee with formal judges and once a year they randomly select a few cases of our company and compare it with the usual decisions in the court system, so this is also a way of comparing efficiency of the ODR system with the court system.

Figure 7.7 below illustrates the consistency theme and its cluster themes with primary codes.

Figure 7.7   Theme 6: Ethicality Rule

THEME 7: KNOWLEDGE

Knowledge was the seventh theme identified from analysing interview transcripts. Users should have knowledge about ODR systems; this knowledge can be gained through reputation as participant 2 explained: "I build my structure of trust I build upon by the reputation. Today in X region if you speak about ODR, you talk about me".

Participant 5 also mentioned the importance of knowledge gained through reputation:

> One of the very strong assets I am going to use for the platform is the X legal aid board which is a public body; it is an official provider to the general public. It also has the support of the ministry of justice. So, there is a logo of the ministry as well. These are obviously two websites very important for the trust of people.

Participant 1 added: "Reputation is a big part of the trust. Reputation is not necessarily dispute resolution, it relates. Because if you resolve a dispute then you will affect reputation and if you don't, you don't have that reputation".

Knowledge for users can also be provided by transparency of the procedure in ODR systems As Participant 3 explained:

> We use transparency very expansively like procedural transparency, the participant's transparency, information about how we resolve the dispute … Also the public should be able to access the information about the case if they want. There is no personal information of the participants. We don't care about parties' real name until they sign the resolution and they sign that in front of the notary, the notary knows their real name and personal details … in any case, dispute, evidence from parties should be fully transparent to everybody. We only ask about the dispute not the personal information such as age, marital status, etc.

Participant 1 also emphasised the importance of transparency:

> It's very important for the users to explain for them how it works, it should be totally transparent, if they get into the processes they don't understand then it's a black box. it's very important before they get in you give them whole of the map and you say this is how long it will be take, there are the different steps of the process, these are the possible outcomes and then the consumer will be aware.

while Participant 3argued similarly that: "Transparency is an important issue; the consumer has the right to know things. In ODR we use transparency very expansively like procedural transparency, the participant's transparency, information about how we resolve the dispute". One of the ODR providers, Participant 1, mentioned that they ensure transparency of their systems by guaranteeing the cases will be anonymous. He explained:

> Take fact patterns from the case, change all the information about the cases, so there is no way to track back to the original party. The other way is aggregate the cases, you can put 20, 50 cases together and create a data set, say we have

looked at one hundred cases and we learned these and other things, these are the facts, So there are ways to get the data from the cases.

Another participant reported that they mix cases and create templates and data sets for users to provide information to them about how their systems work. Figure 7.8 explains the primary codes and cluster themes that resulted in the knowledge theme.
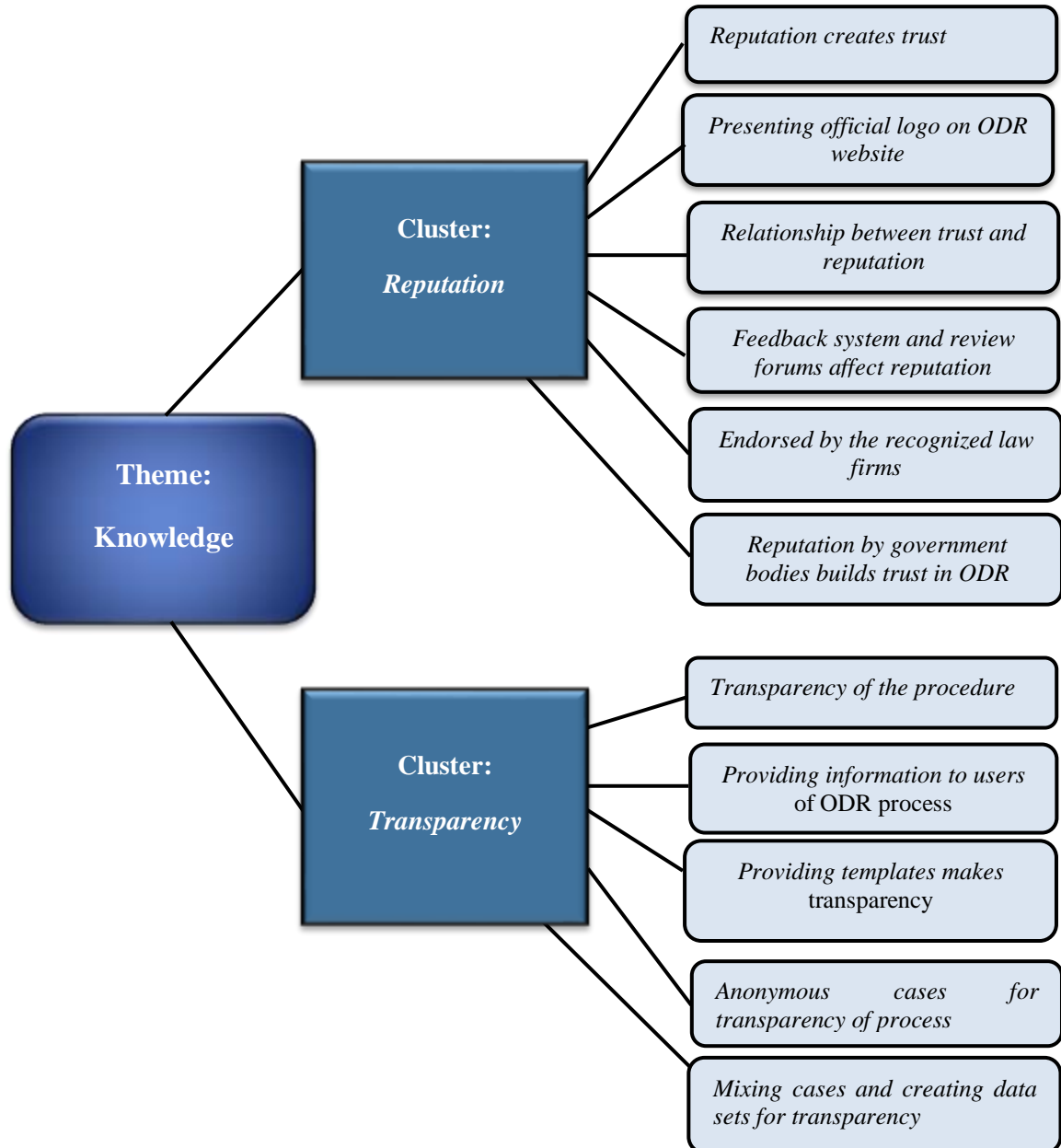

Figure 7.8   **Theme 7: Knowledge**

THEME 8: EXPECTATION OF FAIRNESS

The Expectation of Fairness was the eighth theme that emerged from the participant's responses. Parties in ODR systems expect some level of fairness, such as informing them about their rights and that the information provided by the ODR system is correct and trustable. Participant 1 how his ODR provider sets expectations for the parties:

> We do something called problem diagnoses and this is when people come before they have a dispute and are not communicating with the other side, you need to set expectations, you need to walk them through, you need to say "well these are your rights if you start this process.

Participant 4 added: "Trust has several elements; that people want to know whether the information they find is correct." It is important to consider parties' expectations in order to create efficient ODR systems. The diagram below describes the expectation of fairness theme with the cluster theme and primary codes that guided the researcher to identify this theme.
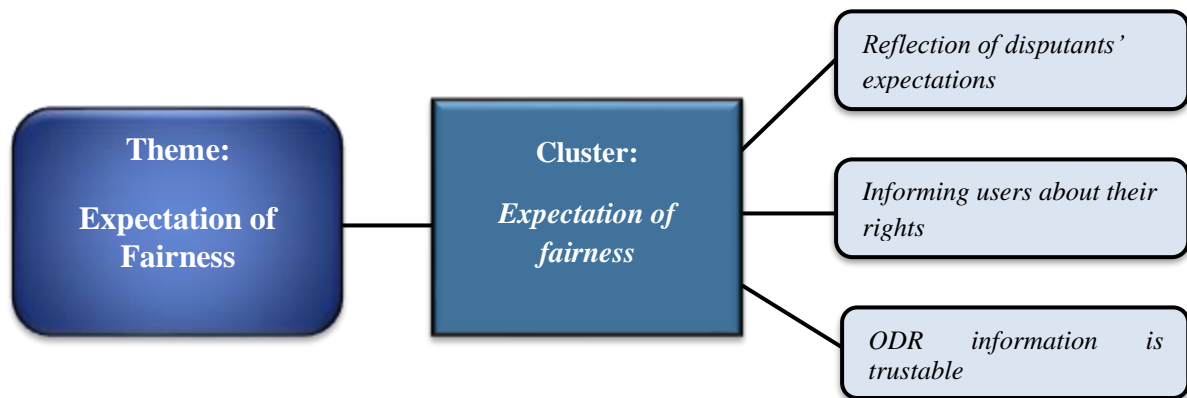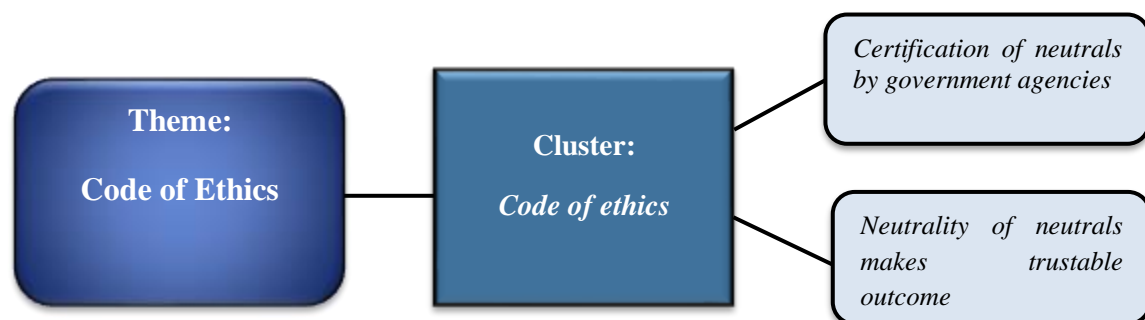
Figure 7.9   Theme 8: Expectations of Fairness

THEME 9: CODE OF ETHICS

The code of ethics theme was the ninth theme identified through analyzing the transcripts. In any ODR systems there is a need for a code of ethics for neutrals which brings trust and fairness into their systems. Only a few of the respondents mentioned

this issue. One example was Participant 5 who stated: "they know that neutrals have been carefully certified and selected under the responsibility of the legal aid board and the ministry and we have a complaint procedure where parties can complain about neutrals".

The diagram 7.10 below illustrates the code of ethics theme with its cluster theme and primary codes.

Theme:

Code of Ethics

Cluster:

Code of ethics

Certification of neutrals by government agencies

Neutrality of neutrals makes trustable outcome

Figure 7.10   Theme 9: Code of Ethics

THEME 10: INFORMATION SECURITY

The tenth theme that emerged through analysing participant's transcripts was information security. One of the security aspects is information security. Most of the interviewees admitted information security was a primary consideration in developments and financial investment in this area. For example, Participant 1 explained:

> Security is an important aspect of trust. It is about privacy, confidentiality, information security. I also feel in the ODR space they haven't done a good job, I feel many platforms we provide for the users are not secure. Now in our X ODR company we spend a lot of money to secure our platform. We have an international certificate, and they are international standard organizations who create secure platforms and we have gone through them. I don't think any of ODR providers aside from us have these certificates. But we deal with a lot of

financial information, health related information, and if neutrals or ODR processes, say "give us data we will protect", we have our ethical obligation to make sure we are really protecting data.

Participant 5 made a similar point about information security:

There are a bunch of regulatory guidelines, we just make sure we meet all those standards for the security, there is a special data protection agency in X country that issues guidelines, and we have the Europe regulation, X Regulation for government bodies stated that none of the data should go out of EU, so we just hired experts making assistance over those rules, and make sure what to comply.

Figure 7.11 describes several primary codes and the cluster theme from which the information security theme was identified.
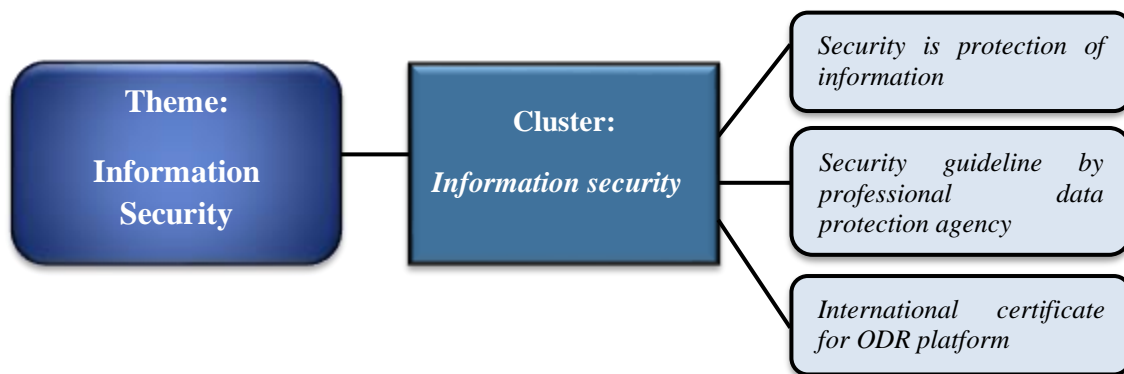
Figure 7.11   Theme 10: Information Security

THEME 11: PRIVACY

The significant privacy theme emerged in several interviews where participants mentioned that for any user of ODR systems it is important that personal data is not disclosed. Respondent 2 asserted:

I believe security and confidentiality is important. Control has a cost. And the cost of the control of something to be secure is high. In B2C security for example I want my data to be protected (personal data and information of credit card) but not the case. In mediation, confidentially should be about the case and

personal data. Also, if the FBI can be hacked of course ODR systems can be hacked as well. So, I am making my ODR system secure but making it 100 percent secure is impossible.

Participant 1also emphasised the importance of privacy:

So, X ODR Company takes care about all of that (confidentiality). So, I think when we are looking at the ethical requirements, you need to integrate privacy, confidentiality and information security. If the neutrals have not ensured that information is secure, they should make that representation about their clients, and then the client may not have trust in the processes. So, I want you to put in ethical standards.

Another participant mentioned that privacy of data creates trust in their ODR system, as users can give their information without fear of personal data ending up on Google or another online source. Figure 7.12 below lists several primary codes and the cluster theme that led to identification of the privacy theme.
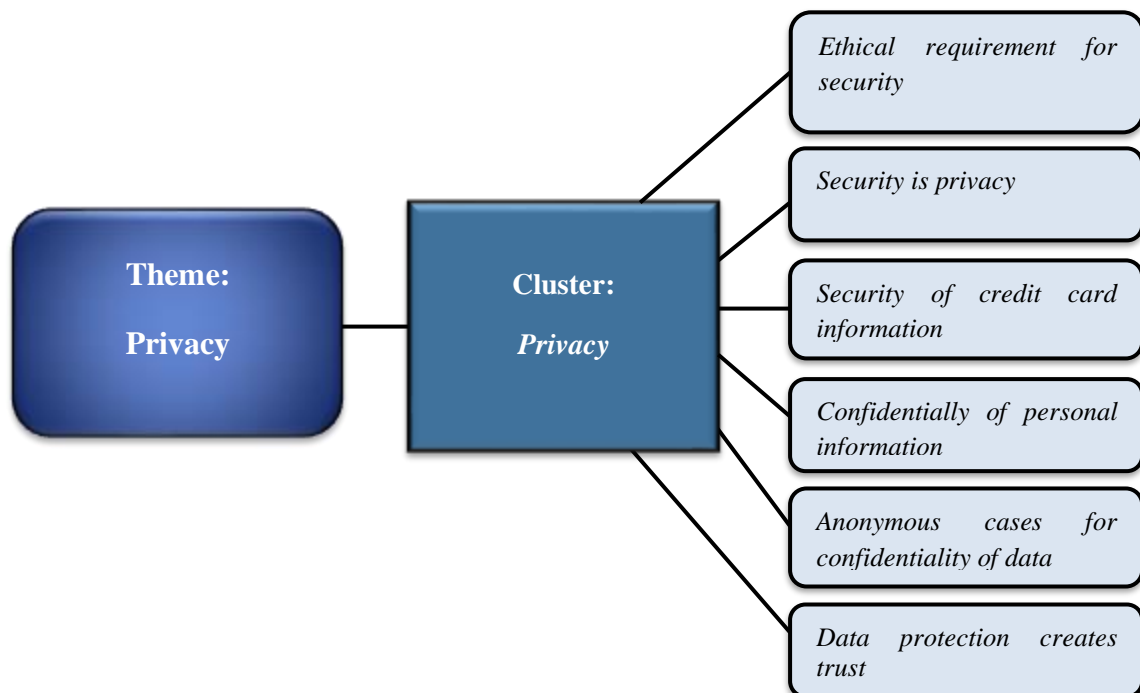
Figure 7.12   Theme 11: Privacy

THEME 12: AUTHENTICATION

The final and one of the most frequently mentioned themes in interviews is authentication. Most participants explained that they use identification tools extensively to ensure their systems are secure. For example, participant 5 explained the authentication provided in his country: "We have an online id mechanism in our country, all the citizens in the X country get this and issued by the government and people who want to login into my platform have to use that id".

Participant 1 discussed the challenges faced by e-commerce companies and types of authentication they use:

> This is a problem we had in X and X e-commerce companies, because bad guys don't have one or two accounts and they might have a hundred accounts and seventy percent of those may be fine, they are not doing anything wrong but 30 percent of them are doing things illegal so we have very good identity action, I mean when I was in X e-commerce company. There are a lot of different ways, from the technological perspective that you can make sure you are talking to who you are speaking, you can track their ip address, their serial number on their processor, you can see when they told the operating system and all those applications, actually when someone types, the delays between the key presses are unique, for every person, so if you give me the ability to record the typing for a minute and then I could look into another data set and someone typing, I can tell that they are not you. So, there are a lot of techniques you can use in information security to identify that detection, we do some of that on our site. So, identity is very important. So, it's a kind of platform administrator. There is something called two factor identification. For example, we will send a code on your cell phone and then it will take two seconds, and to be able to access into the platform you need to enter that code. So, there is little things you can do to establish identity and if you just make it very easy then people don't trust you.

Participant 3 also mentioned different types of authentication: "For the security aspect that makes sure that parties in the dispute are the exact person (identification of the disputants over the system), we use technology such as finger print, facial capture". Other participants mentioned that regular testing of their platform for authentication by recognized international protection security agencies provided security for their systems. For example, Participant 6 stated:

> We are registered in the data protection offices, we apply for a validation label of X data protection office, we have regular security testing, internal and external. So, basically each quarter we have an external security agency to test our system.

Figure 7.13 illustrates the various primary codes and cluster themes that guided to this theme.
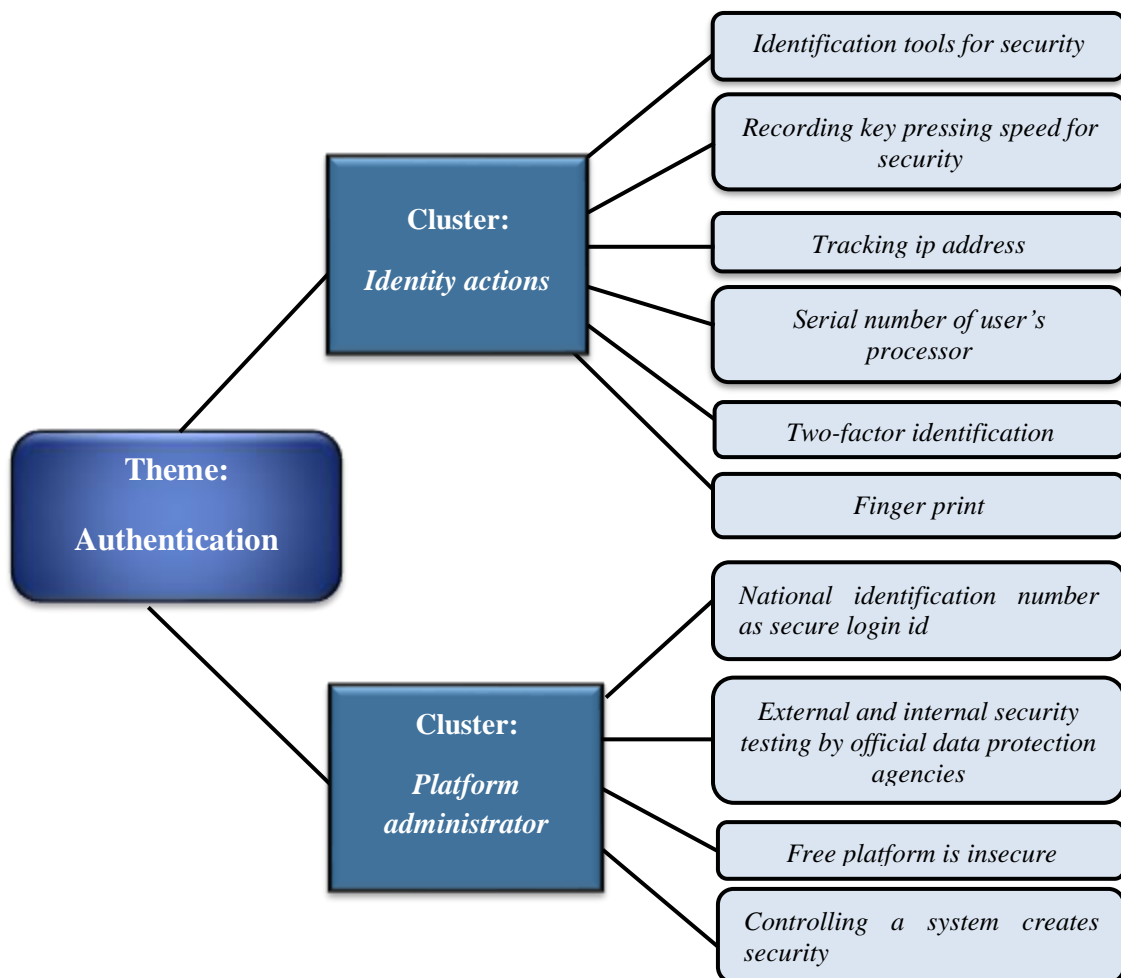
Figure 7.13   Theme 12: Authentication

7.5   SUMMARY

This chapter presented the qualitative data collection process which was the interview procedure and included descriptions of six ODR providers' experiences with ODR systems. It discussed the location and process of the interviews and described the seven steps of data analysis based on Colaizzi (1978). After analysing transcripts, twelve themes emerged and the chapter presented textual description of them. These themes will be further discussed in relation to the literature review and quantitative data (the survey) in Chapter Nine (findings and discussion).

CHAPTER EIGHT
QUANTITATIVE DATA COLLECTION

8.1   INTRODUCTION

After data in the qualitative phase was analysed (Chapter seven: qualitative data collection), the findings were used to develop the second, quantitative phase of the research. To collect quantitative data, an online survey based on the qualitative results was designed to answer the research questions. For analysing the survey data. the statistical software package Statistical Package for the Social Science (SPSS) software was used. In this chapter discusses the data collection procedures including sampling, expert advice and feedback, the pilot study questionnaire structure and missing data. It also discusses demographic information including gender, age and educational background using tables and graphs. Finally, the chapter presents , descriptive analysis of variables. The structure of the chapter is outlined in Figure 8.1 below.
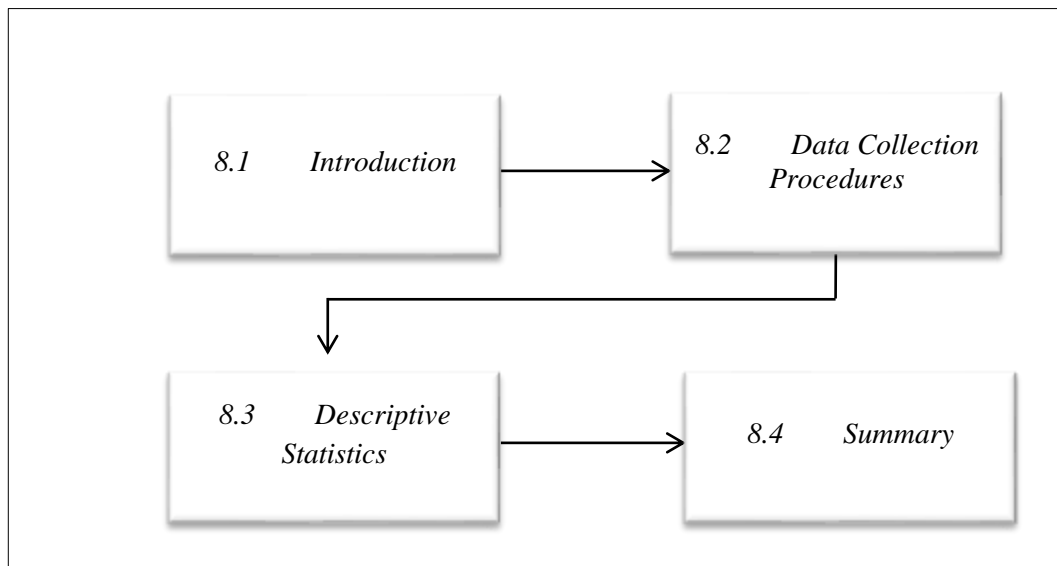
Figure 8.1   Chapter's Organisational Structure

8.2 DATA COLLECTION PROCEDURES

This quantitative phase of the study included collecting and analysing the survey built upon the results drawn from the qualitative data. The collection of such survey data in quantitative methods is called a descriptive research design (Leedy & Ormrod 2005). The survey data in this research was used to collect data about how consumers have experienced problems when shopping for goods and services online. Survey research according to Groves et al. (2004) is "a systematic method for gathering information from (a sample of) entities for the purpose of constructing quantitative descriptors of the attributes of a larger population of which the entities are members". The reason for using Qualtrics (Hill 2008), an online survey software system, was economy of the design and the rapid distribution of the surveys.

The purpose of data collection through conducting a survey is to better understand the qualitative data results, not the generalisability the results. Therefore, for ease of use the participants were selected from business and law students at Victoria University, Melbourne, Australia. Their names and email addresses were collected and surveys were sent to them by Qualtrics (Hill 2008).

The data collection started in July 2016 and continued for six weeks. The participants received the online survey through an email which included a brief summary about the research project and the importance of their participation. Participants were also informed that participation was voluntary and anonymous (See Appendix H). The security and privacy of the surveys were digitally encrypted. Participants in the responded to the questions with yes and no answers, multiple-choice responses and a six-point Likert scale (respondents expressed how much they agreed or disagreed by rating a particular statement).

After the survey was collected from respondents, the data was coded and statistically analysed through the Statistical Product and Service Solutions (SPSS) software program. The SPSS is one of the best known and most popular software packages for statistical analysis which is available in both professional and student license packages (Creswell 2002).

8.2.1   Population and Sampling

According to Groves et al. (2004) the target population is a "set of units to be studied". This research aimed to identify consumer's attitudes in regard to e-disputes and concepts of fairness, trust and security in online disputes resolution systems. The sampling frame and the target population consisted of consumers who had online shopping dispute experience. As it was not possible to provide an equal opportunity for the entire target population in the surrounding area to participate in the survey, this research adopted non-probability sampling. There are several types of non-probability sampling. As explained in chapter six (methodology chapter) this research conducted convenience sampling. Therefore, the researcher collected names and email addresses from respondents (Victoria University students, Melbourne) and then email addresses were used to distribute the surveys. A minimum of 200 individuals were invited to participate in this survey. The researcher obtained 108 responses.

8.2.2   Questionnaire Structure

The questionnaire was created on Qualtrics (Hill 2008) (See Appendix C). The questions were designed based on the findings from the initial qualitative phase in this mixed-methods research. An email that included a summary of the research project, survey request link, and a reminder that their participation was voluntary and they could withdraw at any time while completing the survey was sent to all participants (See Appendix H). Participants had 30 days to complete the survey, and one week after sending the first email, a second email was sent to them as a reminder to complete the survey. When participants opened the survey link the questionnaire began with a few sentences about the aim and the significance of this research (See Appendix C), and a

guarantee that all information provided would be confidential. Participant's privacy was protected as the survey was anonymous which means it excluded any identifying factors. In the Qualtrics program this is done through the "anonymize response" option. There was also a consent statement at the start of the questionnaire saying that they had freely consented to participate in this research, before continuing on to the rest of the survey.

The online survey had 15 questions, some with multiple parts, including general demographic questions - age, gender and educational background - and Likert scale questions. There were only two open-ended questions: 1) attributes for increasing Online Complaint Management System (OCMS) effectiveness, and 2) other comments about their online shopping experience. The main research questions which related to the research aim were close-ended (questions that could be simply answered by yes or no) and a mix of different scales such as cafeteria questions, dichotomous, multi-choice questions and Likert scale questions. The majority of the survey questions were six-point rating scales.

An example of a survey question is:

Q.10   *How quickly was the dispute resolved?*
o   *Within a day*
o   *Between 1-7 days*
o   *More than a week*
o   *More than a month*
o   *The problem still exists*

Using Qualtrics provided "survey flow" and "display logic" adjustments to minimize redundancy for survey participants. This enabled the researcher to obtain information only from consumers who had experienced online purchasing problems and used any online methods for resolving those problems.

For example, if any of the participants answered "No" to the question, "Have you ever shopped online and experienced a problem?" they would automatically skip to the end of the survey. Another example was if someone answered "I've never made a complaint" to the question "Who have you complained to after experiencing a problem when buying products and services from online retailers?" they automatically skipped to question nine "If you were unhappy with an online transaction, why did you not take action?" which was the last question from this group of respondents who were then sent to the end of the survey.

8.2.3 Expert Advice and Feedback

Prior to distributing the questionnaire, expert advice was obtained to ensure the accuracy and validity of the survey questions. Such "questionnaire design experts assess whether the questions meet the content, cognitive, and usability standards" (Groves et al. 2004). Therefore, to gain content validity, the researcher asked two academics from Victoria University who were experts in quantitative data collection to proofread the survey questions and provide feedback in order to validate the survey content and layout.

8.2.4 Pilot study

A pilot study was also conducted prior to collecting the survey data, with the aim of testing the data collection questionnaire and identifying any problems in the instructions or design. A pilot study can indicate whether or not the respondents understand the questions or whether or not there are ambiguous or biased (Sekaran 2003). For the pilot study, the procedures used for collecting data were similar to those used in the main survey. For example, as the survey was to be distributed by email, the pilot questionnaire was also sent to participants by email.

Ticehurst and Veal (2000) note that there are several reasons for conducting a pilot survey including:

1. Testing wording of the questionnaire;
2. Providing question sequencing;
3. Considering questionnaire layout;
4. Seeing how consumers respond;
5. Testing field work arrangements (if required);
6. Evaluating and training fieldworkers (if required);
7. Measuring response rate;
8. Calculating the time taken to complete the questionnaire; and
9. Evaluating and testing the data analysis process.

The pilot study was conducted to find out the time required by participants to complete the survey, whether or not the questions were clear, and if the data collection procedure was correct. The pilot questionnaire was sent to 20 participants by email and 15 were returned. SPSS was used for analysing the data. Based on results and feedback from the participants, the researcher made some minor amendments, such as changing the font size and correcting grammatical mistakes. This pilot study was necessary to improve the questionnaire and confirm its reliability and validity.

8.2.5 Missing Data

From the total 200 questionnaires that were distributed, 146 respondents completed the survey. However, reviewing the data showed that 108 survey responses were completed. The missing data was identified by the researcher and was excluded from the research. Neuman (2003) asserts that missing data can impact on the validity and reliability of the survey and skew the findings. The reason for excluding data from the survey was that participants did not meet the criteria for being considered in the research or their returned survey was incomplete, with no response to some of the main survey questions.

8.3   DESCRIPTIVE STATISTICS

Descriptive statistics, including frequencies and percentages, are used for the quantitative findings. Data are presented by using tables and figures to make it easier to understand and interpret. The aim is to facilitate simple description and effective communication of the meaning of the data. The statistical Package for Social Science or SPPS was used to analyse the data collected from surveys. First of all, data input was prepared and entered into Microsoft Excel software and then all the data were imported into SPSS. Prior to this part of the process, data screening and cleaning processes were applied to ensure accuracy of all the entered data, as they were manually coded into both Microsoft Excel and SPSS. The questionnaire used for the online survey included consumers' attitudes toward aspects of fairness, trust and security in ODR services and their demographic details. The first step of descriptive statistics in this research includes the demographic information of the respondents. The second step presents descriptive statistics of respondent's attitudes towards each different variable related to ODR systems. The descriptive analysis of the sample size, survey responses rate and demographic information of the participants, are discussed in the subsequent sections.

8.3.1   Demographic Data

This section focuses on demographic data about the survey participants.. Collecting demographic characteristics from the sample population aimed to describe their gender, age, educational background and analysis of the other characteristics of the sample for important relationships. Tables 8.1 to 8.3 represent the demographic information collected from analysing the survey data.

8.3.1.1   Gender

Table 8.1 details the gender of the respondents who participated in the online survey. One of the participants answered that they preferred not to say. The rest of the participants (107) identified their gender. Of the total of 107 respondents, 40 (37%) were male gender and 67 (62%) were female gender.

Table 8.1   Participants Gender

Gender

	Number	Percent
Male	40	37.0
Female	67	62.0
Prefer not to Say	1	0.9
Total	108	100.0

8.3.1.2.   Age range

Table 8.2 displays the age of the consumers who completed the online survey. Their age ranged from 18 to more than 65 years. None of the respondents were under 18 years. Most of the respondents, (48 or 44%) were in the age range of 18 to 24. The second largest age group were aged 25 to 34 (42 or 38.9%).

Table 8.2   Participants' Age Range

Age

	Number	Percent
18-24	48	44.4
25-34	42	38.9
35-44	12	11.1
45-54	3	2.8
55-64	1	0.9
65+	1	0.9
Prefer not to say	1	0.9
Total	108	100.0

8.3.1.3   Educational level

Table 8.3 depicts the educational level of consumers who participated in the online survey. Most of the participants who answered this question (37 or 34.4%) had completed an undergraduate degree. A further 18 (16.7%) identified themselves as students at university who had not completed their study. The total number of respondents who had started university education was 69 (64%).

Table 8.3   Participants' Educational Level

Highest Level of Education

	Number	Percent
High school	22	20.4
TAFE or Diploma	11	10.2
Started university student but did not completed	18	16.7
Undergraduate	37	34.3
Post graduate	14	13.0
Other	6	5.6
Total	108	100.0

8.3.2   Descriptive Statistics of the Variables

This part of the survey was critical in exploring consumer's attitudes as well as their experience and knowledge of ODR and its attributes. These data aimed to maximise consumer protection in e-commerce and increase the efficiency of ODR systems. Figures 8.2 (Online shopping problems) to 8.21 (Overall satisfaction with OCMS mechanism) and Tables 8.4 *(*Consumer complaint) to 8.6 (Dispute resolution provider) represents the descriptive data statistics of the variables collected from analysing the survey data.

8.3.2.1   Different kinds of online shopping problems

Figure 8.2 shows the data from respondents who had faced different problems when they purchased goods or services online. The highest percentage of online shopping problems (61 or 56.5%) related to receiving items later than the expected arrival time. Interestingly, the results indicate that the second major issue, 26.9 % of respondents, was that they wanted to buy something online but the website would not accept their order because they were based in another country.

The third and the fourth most common problems experienced by 28 (25.9%) and 27 (25%) respondents respectively, were that the item purchased online was faulty and the item they had received was not same as the one described on the website. Significantly, the lowest number of the respondents, (4 or 3.7%), were those that had their credit card information stolen. As the chart illustrates, apart from these problems respondents also faced issues of non-delivery of an item (21 or 19.4%), payment problems (10 or 9.3%), language problems (29 or 5.6%) and inadequate information about the total price of the item (5 or 4.6%).
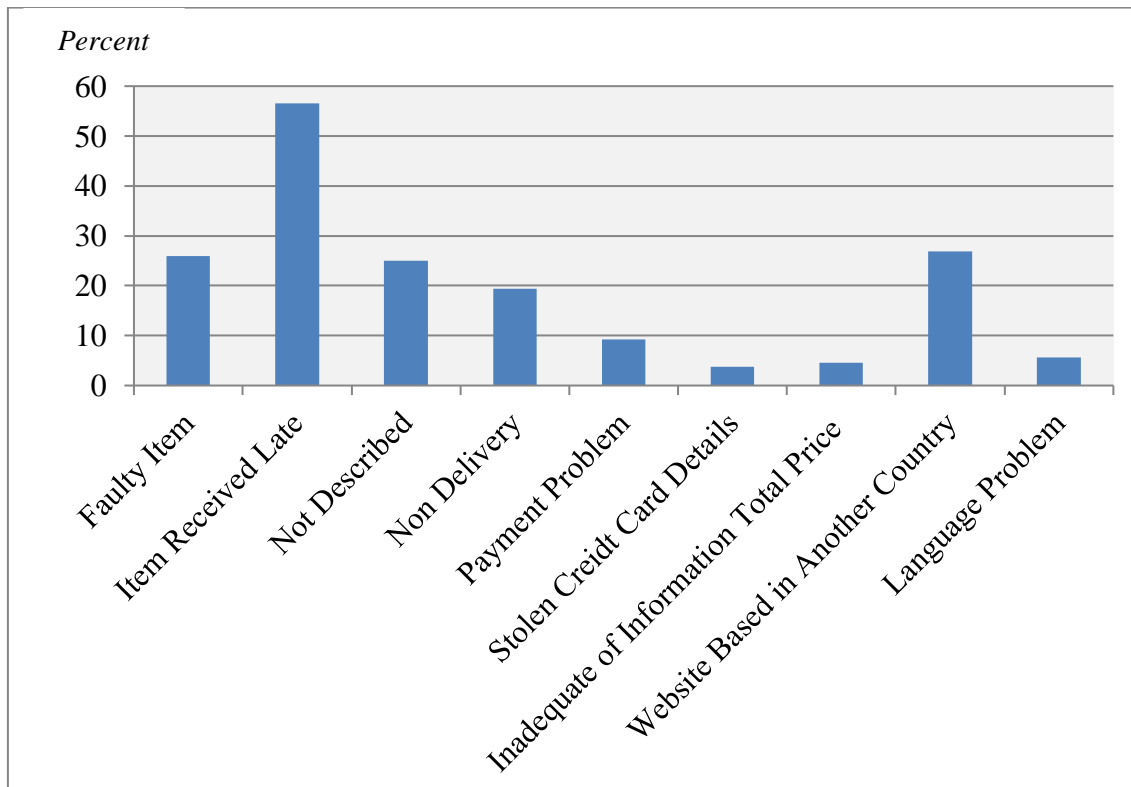

Figure 8.2   Online Shopping Problems

8.3.2.2   **Consumer protection by an independent consumer organization**

Figure 8.3 provides the respondent's views about whether or not they trust independent consumer organizations to protect their rights. Significantly, almost half (52 or 48.2%), admitted they trusted independent consumer organizations, and "Agree" or "Strongly agree" with the question. However, only 11 (10.2%) of respondents "Disagree" or "Strongly disagree". Interestingly, 45 (41.7%) of respondents "Neither agree nor disagree" with the statement.
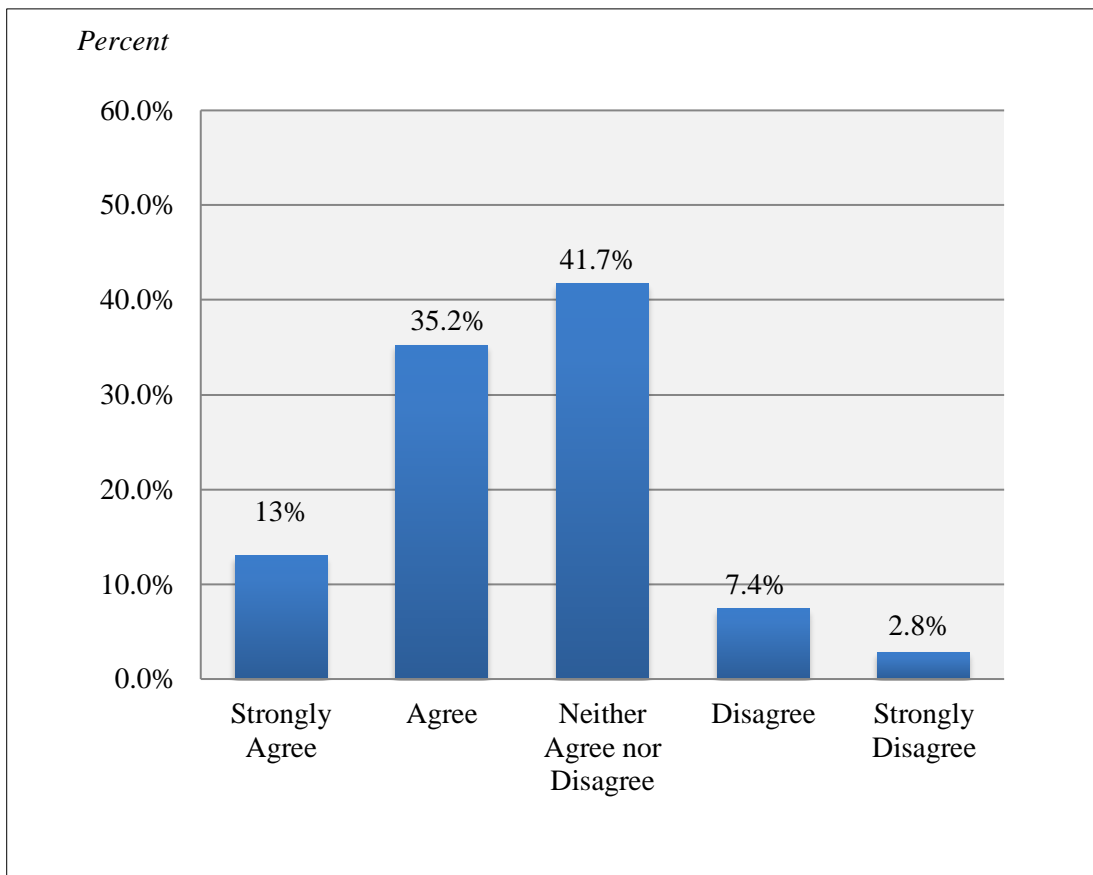
Figure 8.3   **Percentage of Answers to the Question,** *"Rate the following statement: You trust independent consumer organisations to protect your rights as a consumer".*

8.3.2.3   Consumer protection by public authorities

Figure 8.4 represents data gained from respondent's answers to the statement about trusting public authorities to protect consumer rights. More than half (65 or 60.2%) said that they trust public authorises and replied "Agree" or "Strongly agree". In contrast, only 11 respondents (10.2%), "Disagree" or "Strongly disagree" that public authorises protect their rights. But 33 (30.6%) were unwilling or unable to answer the question and stated they "Neither agree nor disagree".
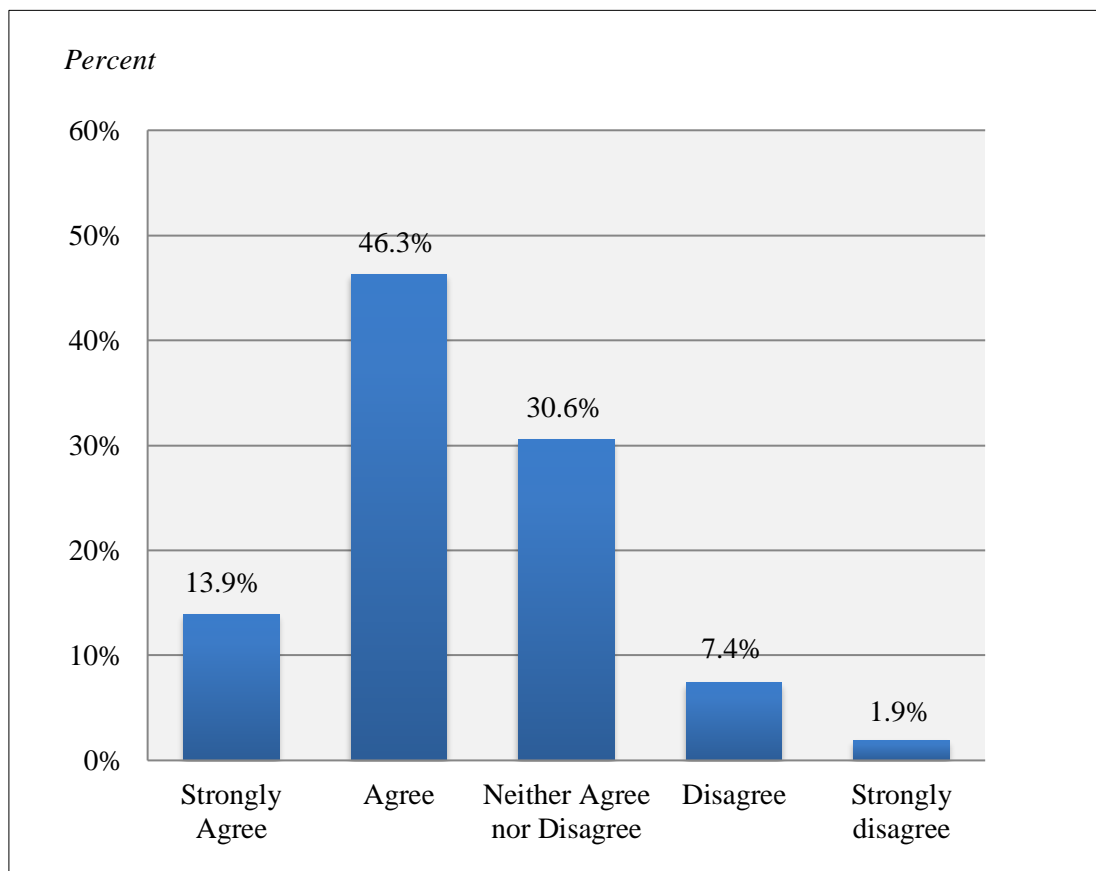
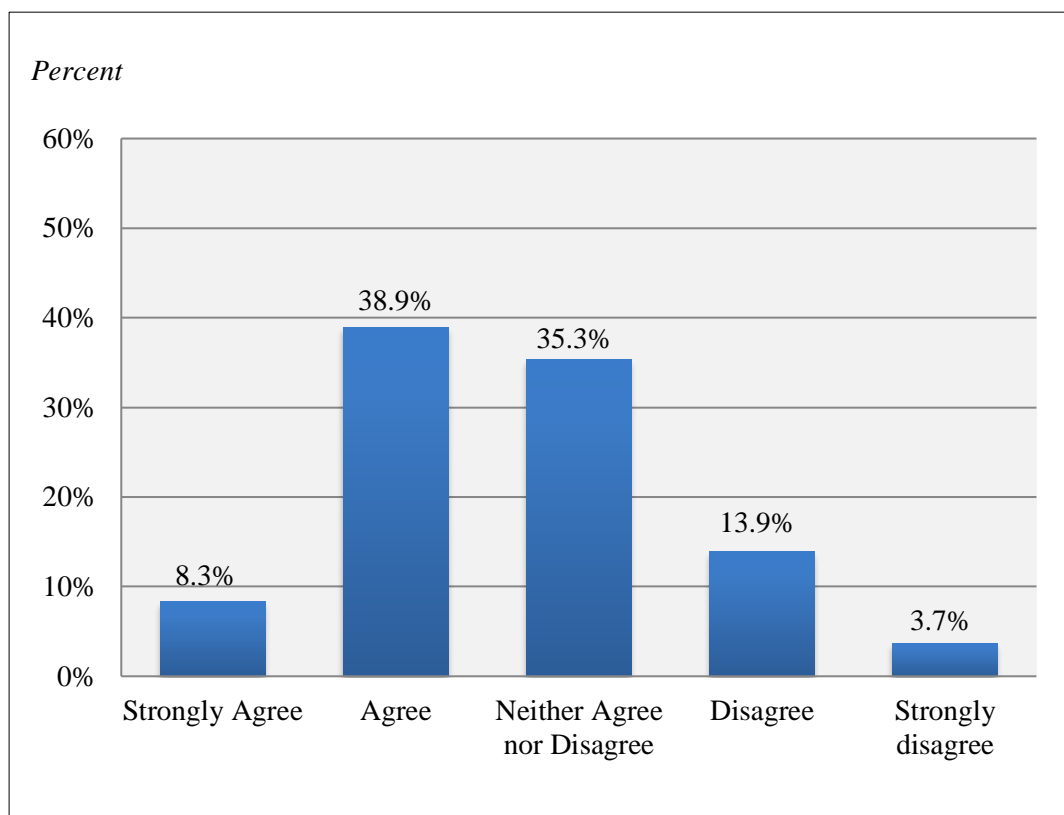**Figure 8.4   Percentage of Answers to the Question, *"Rate the following statement: You trust public authorities to protect your rights as a consumer"*.**

### 8.3.2.4 Consumer protection by retailers/providers

Figure 8.5 shows the response to the question about whether or not online retailers (providers) respect consumers' rights. 51 respondents (46.9%) "Agreed" or "Strongly agree" that retailers or providers respected their rights as a consumer. A considerable number (38 or 35.3%), were most likely to "Neither agree nor disagree" with the statement, while just19 (17.6%) "Disagree" and "Strongly disagree" that retailers and providers do not have a respectful manner in relation to consumer rights.

Figure 8.5   Percentage of Answers to the Question, *"Rate the following statement: Retailers/ providers respect your rights as a consumer"*

8.3.2.5   **Disputes settlement through out of court bodies**

Figure 8.6 shows respondent's attitudes to the statement that it is easier for them to settle their online purchasing disputes through out of court bodies such as arbitration, mediation or conciliation. 44 respondents (40.7), "Agree" or "Strongly agree" that it would be easier for them to claim their dispute through out of court systems, while 39 (36.1%) "Neither agree nor disagree" and 25 (23.1%)"Disagree" or "Strongly disagree".
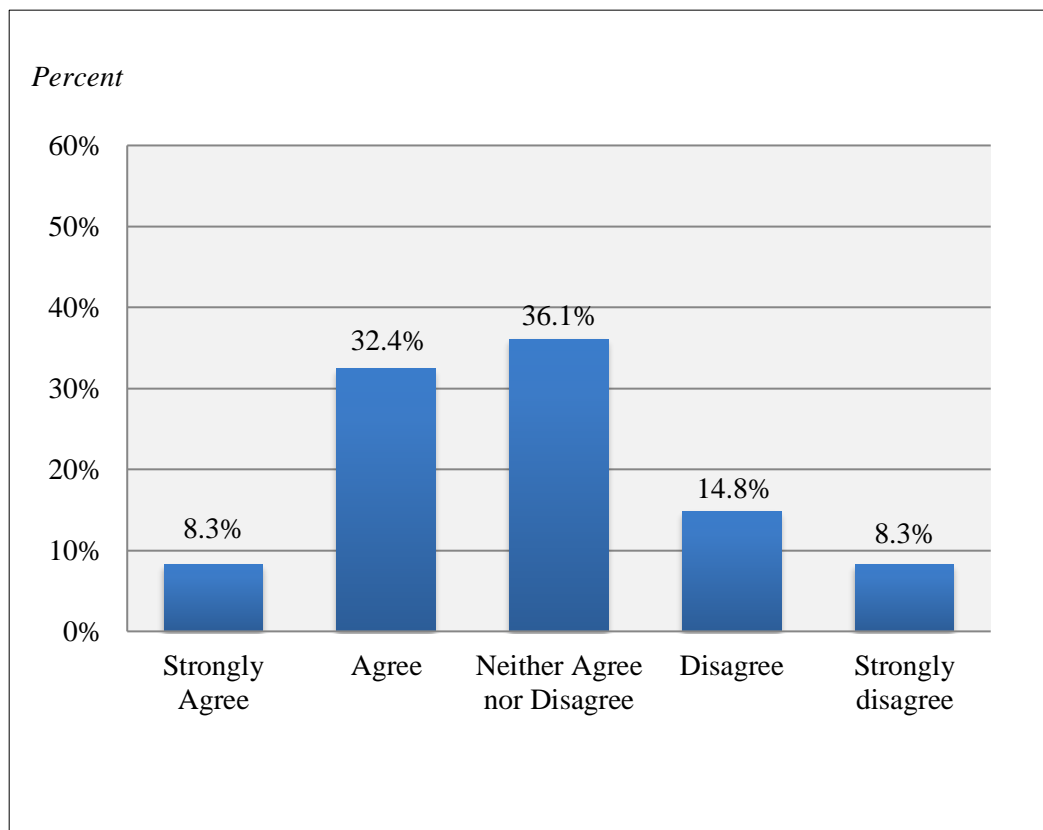
Figure 8.6   **Percentage of Answers to the Question, *"Rate the following statement: It is easy to settle disputes with retailers/providers through an out of court bodies such as arbitration, mediation, or conciliation".***

8.3.2.6   Dispute resolution through the court system

As shown in Figure 8.7, respondents were asked if it was easier for them to settle disputes with retailers/providers through the courts. Half (54 or 50.0%), were unable or unwilling to answer the question and "Neither agree nor disagree" because most consumers have limited knowledge of the judicial process, but 33 (30.6%), "Disagree" and "Strongly disagree", indicating that it was difficult to claim and settle their consumer case through the court system. Only 21 (19.5%) "Agree" or "Strongly agree".
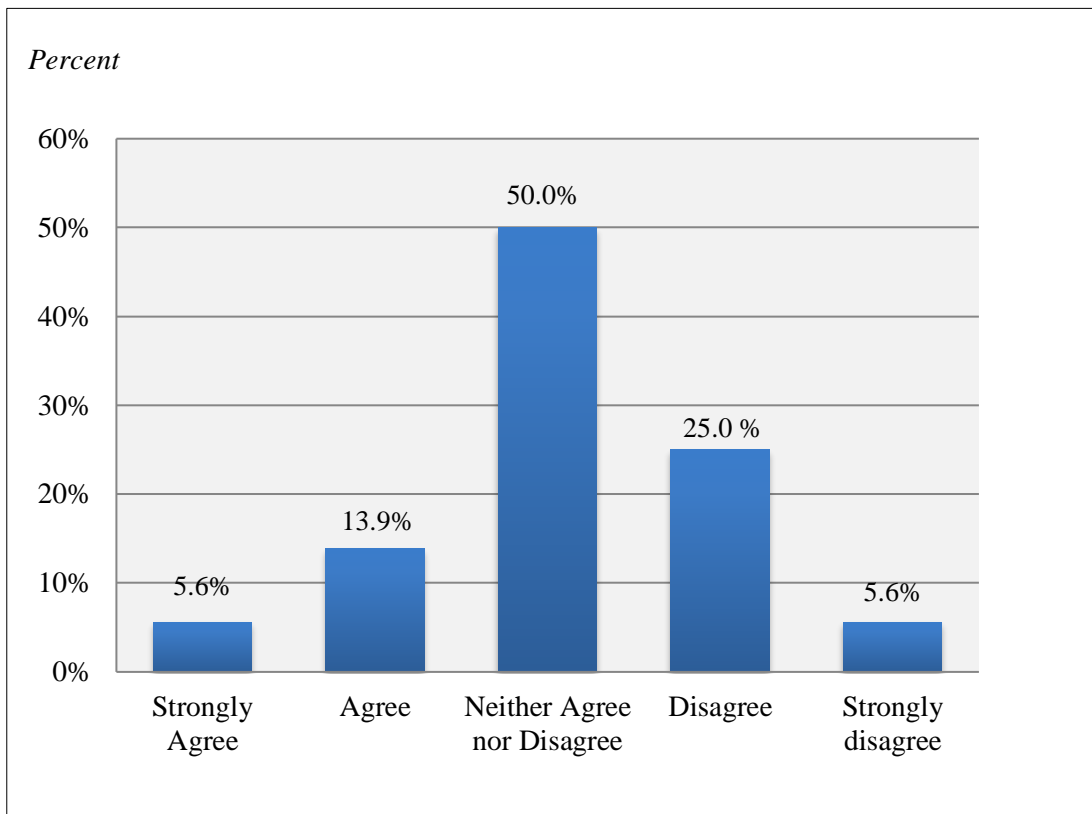
Figure 8.7   **Percentage of Answers to the Question,** *"Rate the following statement: It is easy to settle disputes with retailers/ providers through the courts".*

8.3.2.7　Consumer complaints

Table 8.4 (participants' complaints) indicates that 78 respondents had complained after having an online shopping problem. Of these 78 respondents, 69 (63.9%) complained directly to the online provider. Four respondents, (3.6%), obtained an independent out of court dispute resolution, while only 3 (2.8%) contacting the manufacturer, and 2 (1.9%), taking their dispute to a public authority. Almost one third of the 108 respondents (30 or 27.8%) preferred not to complain after they experienced an online shopping problem.

**Table 8.4　　Participants' Complaints**

Consumer Complaint

	Number	**Percent**
Directly to provider	69	63.9
Manufacturer	3	2.8
Public authority	2	1.9
Independent out of court dispute resolution systems	4	3.7
Never made a complaint	30	27.8
Total	108	100.0

8.3.2.8　　　Reasons for failure to complain

Figure 8.8 highlights the major reasons why the 30 respondents who were unhappy with their online purchase did not complain. Almost half (14 or 46.6%) indicated that the amount of the dispute involved was too small.

The second important reason for 6 respondents (20%) was that they were unlikely to and unsure to get results if they made a complaint. Other reasons were: dispute resolution takes too long (4 or 13%), inadequate knowledge about how to complain (2

or 7%), previous disputes were unsuccessful 2(7%), and being unsure of consumer rights (1 or 3.4). This was the final question asked of this group, as the rest of the survey questions did not relate to them, and they then skipped to the end of the survey.
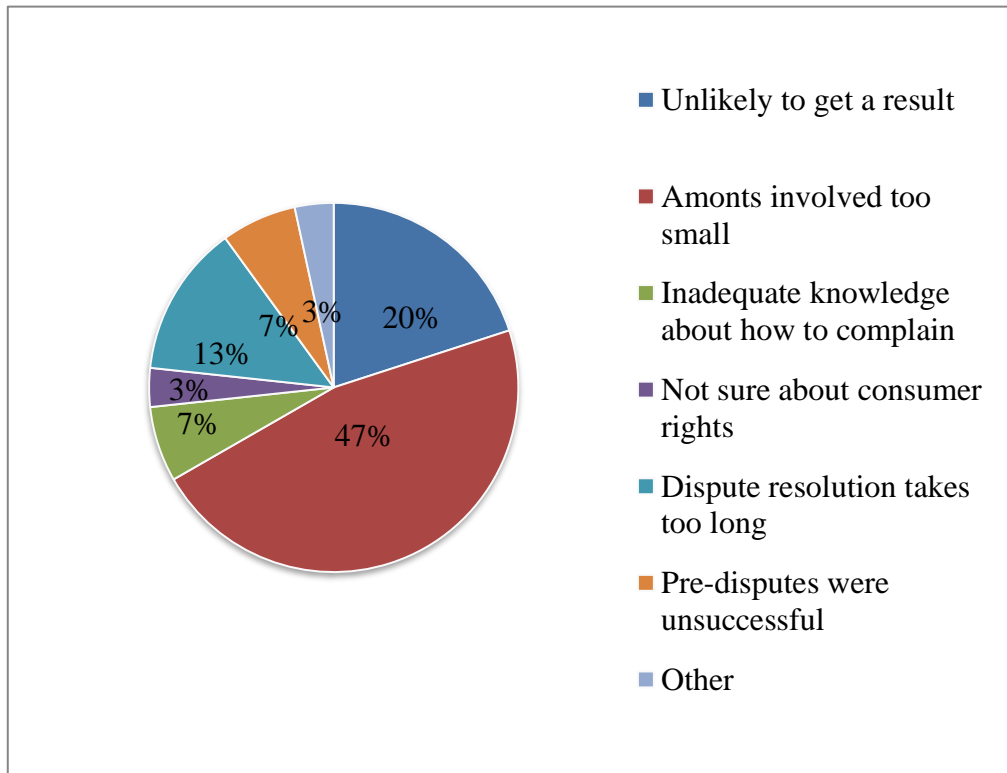
Figure 8.8   Reasons for not Complaining

8.3.2.9   Length of dispute resolution process

Table 8.5 shows the data about how the time taken to resolve a respondent's dispute. From the total of 78 respondents 27 (34.6 %) had their dispute resolved between one and seven days. By comparison, 4 respondents (5.1%) had their dispute resolved within a day. A significant, group of respondents (18 or 23.07%), stated that their problem had still not been resolved.

**Table 8.5   Length of Dispute Resolution Process**

How Quickly

	Number	Percent
Within a day	4	5.12
Between 1-7 days	27	34.61
More than a week	17	21.79
More than a month	12	15.38
The problem still exists	18	23.07
Total	78	99.97

8.3.2.10   Importance of OCMS services

This part of the questionnaire was designed to investigate respondents' attitudes about the definition and importance of fairness, trust and security in online dispute resolution systems, building on the findings gained of the ODR providers' experiences (see chapter 7: qualitative data collection). As the researcher thought respondents would have difficulty understanding the term ODR the term Online Complain Management System (OCMS) was used instead. Therefore, in this survey OCMS is synonym with ODR which has exactly the same meaning and impact in this research. Respondents were asked to rate the importance of OCMS (ODR) services based on their experiences. They were provided with a six-point Likert scale from "Strongly agree" to "Strongly disagree" and a "Not Applicable" option. This question includes twelve sub-headings from: i. to vii.

i. OCMS and feeling positive

Figure 8.9 illustrates how the 78 respondents felt about using OCMS services. 36 (46.1%) "Agreed" or "Strongly agree" that they had a positive feeling when using OCMS, but 33 (42.3%), were most likely to "Neither agree nor disagree" with the statement and 6 (7.6%), "Disagree" and "Strongly disagree".
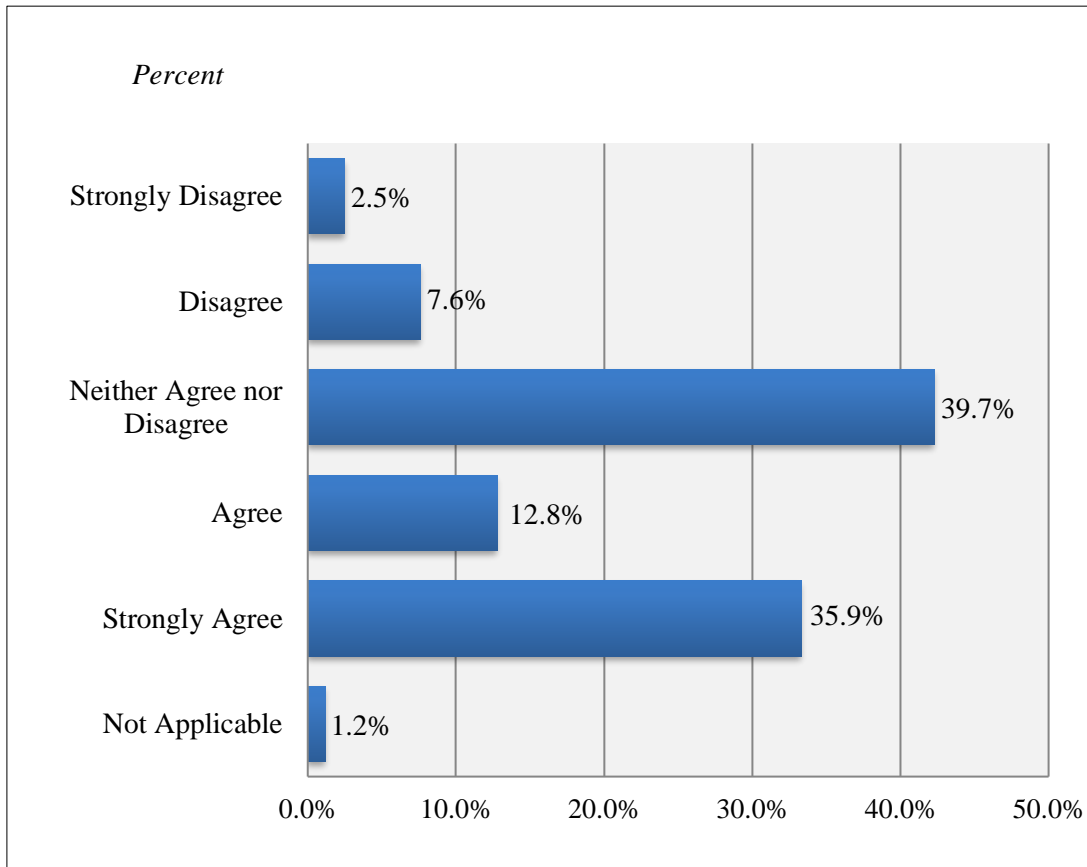
Figure 8.9   **Percentage of Answers to the Question, "Rate the following** *statement: I feel positive about using Online Complaint Management System (OCMS)".*

ii. OCMS trust in the beginning

As shown in Figure 8.10, respondents were asked to indicate whether or not it was initially difficult for them to trust an OCMS system. For almost half of the respondents (38 or 48.7%), it was difficult and they "Agree" or "Strongly agree" with the statement. However, 31 (39.7%), were unable or unwill to answer the question and responded with "Neither agree nor disagree", while 8 (10.1%), of "Disagree" or "Strongly disagree", believing they had trusted OCMS services from the beginning.
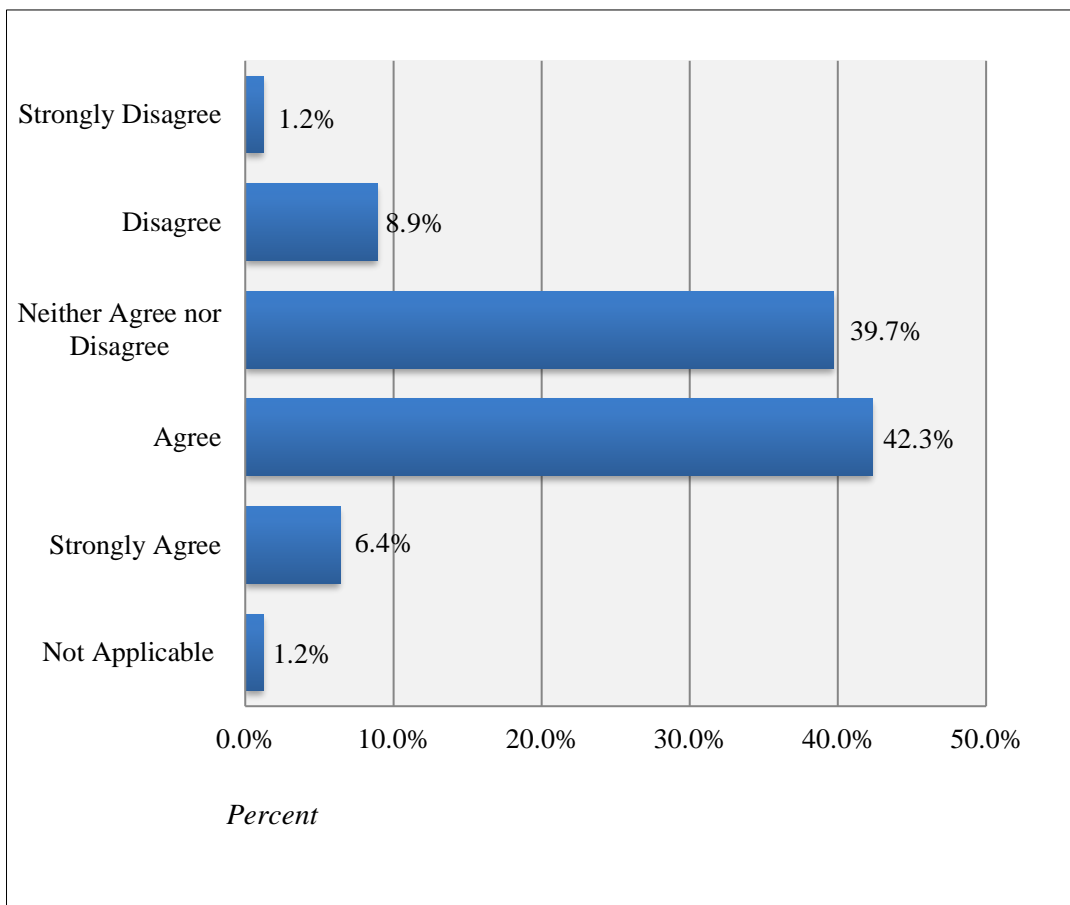
Figure 8.10 **Percentage of Answers to the Question *"Rate the following statement: At the beginning, it was difficult for me to trust Online Complaint Management System (OCMS) as a dissatisfied consumer***

iii. Confidentiality and security of OCMS

Figure 8.11 presents the respondents' answer to how they felt about confidentiality and security of OCMS services. Nearly half 36 (46.1%), "Agree" or "Strongly agree", while only 7 (8.9%), "Disagree" or "Strongly disagree". Overall most of the respondents were satisfied with the confidentiality and security of OCMS systems, but 34 (43.5%), were not able or willing to comment and replied with "Neither agree nor disagree".
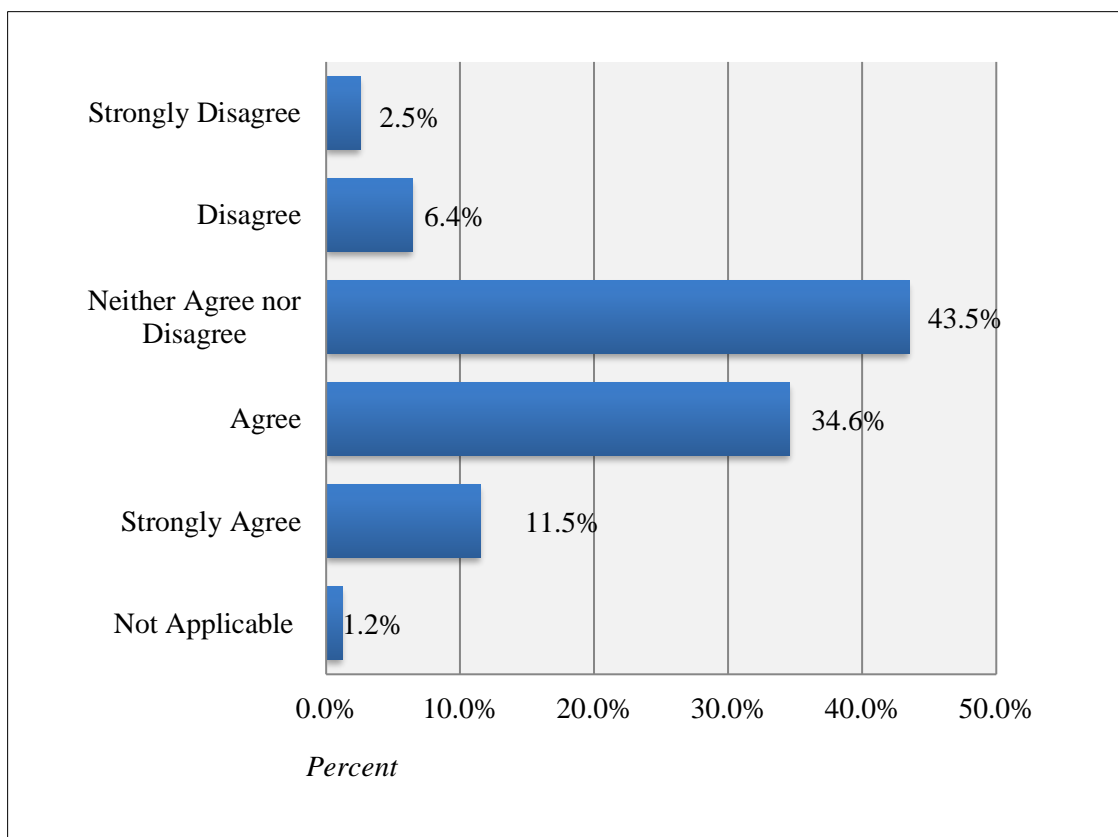
Figure 8.11 **Percentage of Answers to the Question** *"Rate the following statement: I feel an Online Complaint Management System (OCMS) is confidential and secure to use".*

iv. Trust in OCMS process

As described in Figure 8.12, respondents were asked to rate whether or not it was easy to trust the OCMS process. Half the respondents (50%) "Neither agree nor disagree", while 23 (29.4%) "Agree" or "Strongly agree" that it was hard to trust the OCMS procedure and 15 (19.2%) "Disagree" or "Strongly disagree as they found it easy to trust OCMS process.
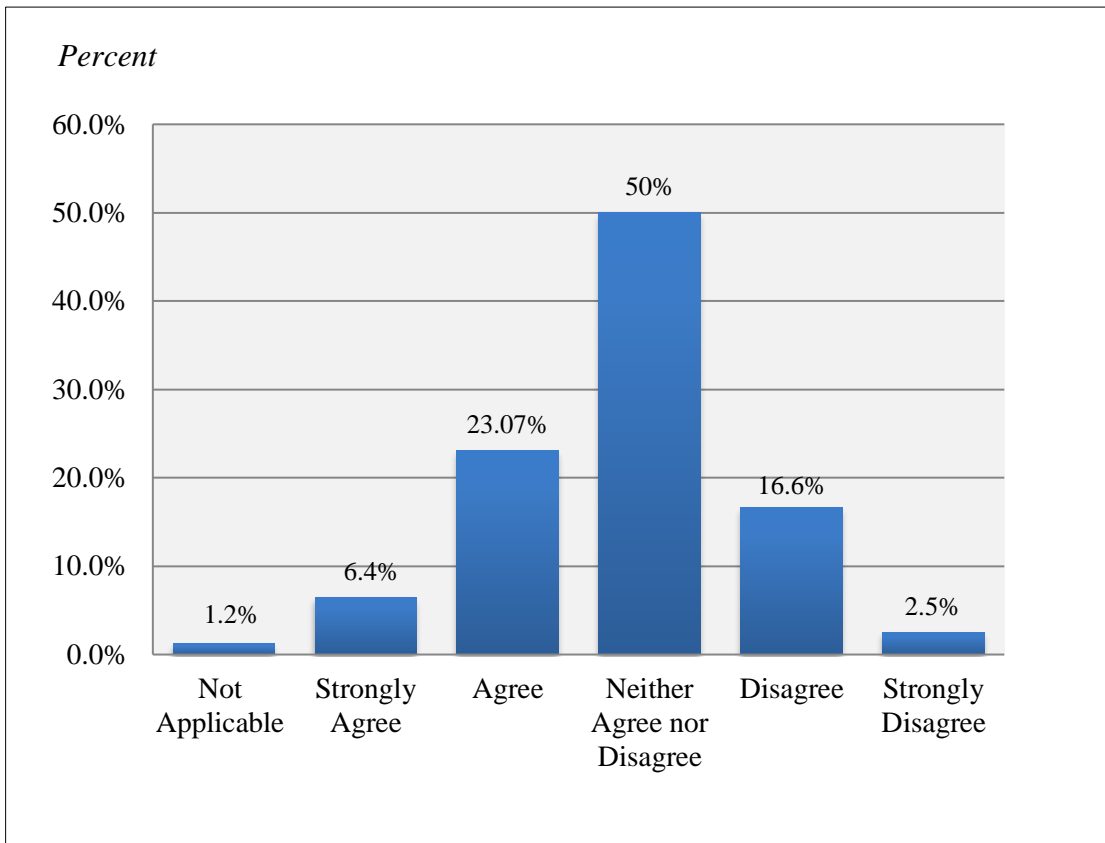
Figure 8.12 **Percentage of Answers to the Question** *"Rate the following statement: It is not easy to trust Online Complaint Management System (OCMS) process".*

v.   Satisfaction with OCMS outcomes

Figure 8.13 indicates the satisfaction of the respondents with OCMS outcomes. Almost half (38 or 48.7%) of the 78 respondents "Neither agree nor disagree", as they were not sure about their consent in relation to the OCMS results, while 35 (43.5%) "Agree" or "Strongly agree" with their outcomes. Only 5 respondents (6.7%) "Disagree" or "Strongly disagree".
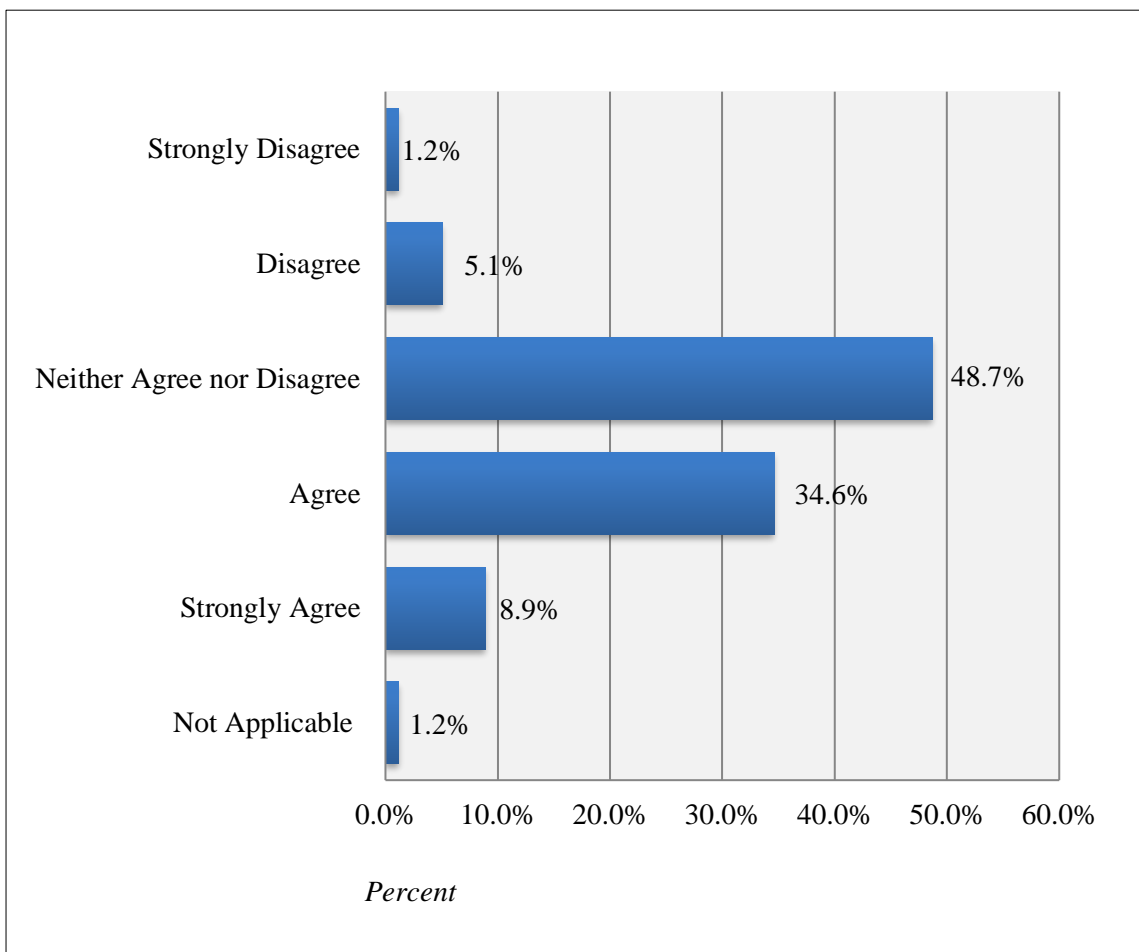
Figure 8.13   Percentage of Answers to the Question *"Rate the following statement: I was satisfied with outcomes".*

Figure 8.14 presents the data from respondents' answers to the question if they thought neutrals (third parties) in OCMS were fair. Over half (42 or 53.8%) "Neither agree nor disagree". Of the remainder, 31 (39.7%) "Agreed" or "Strongly agree", while only 3 (3.7%) "Disagree" or "Strongly disagree".
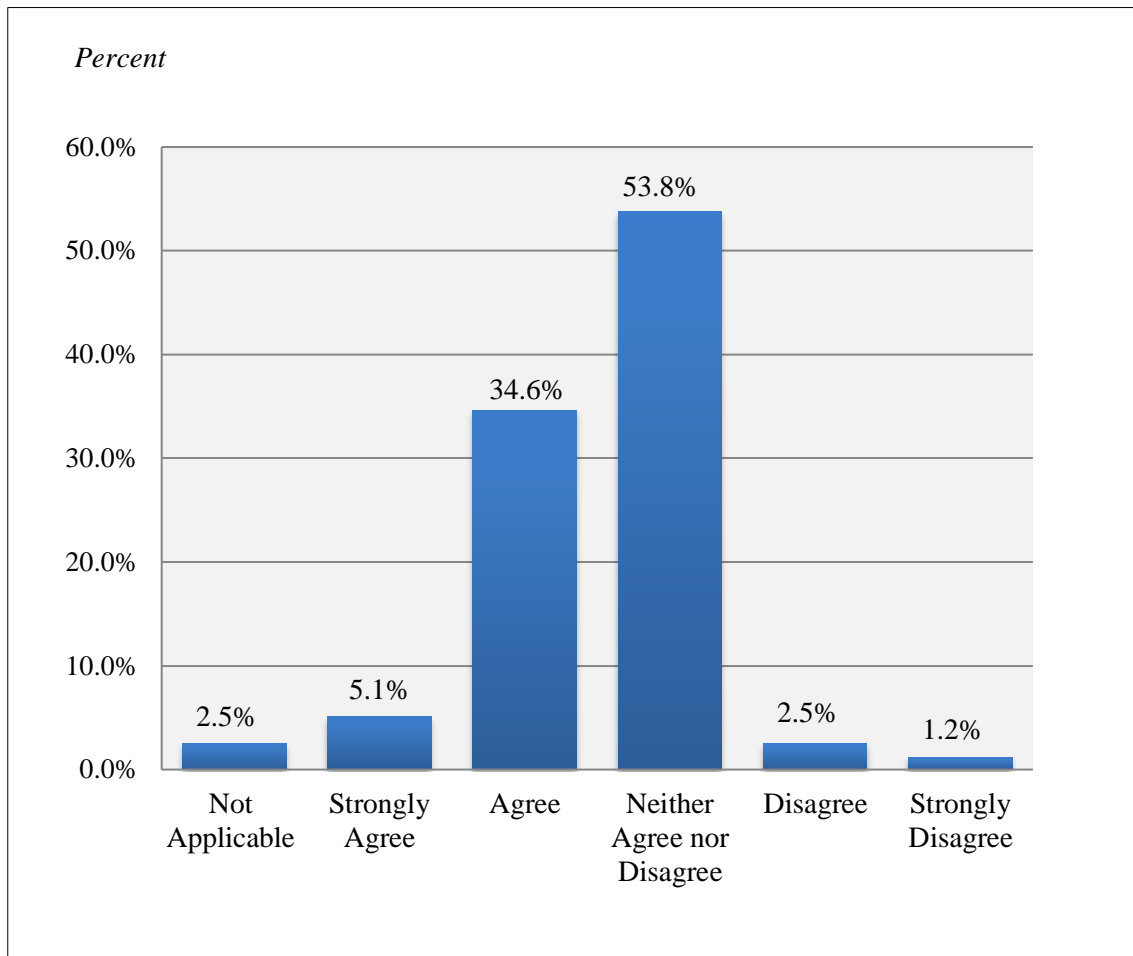
Figure 8.14   Percentage of Answers to the Question *"Rate the following statement: The neutrals (third parties) are fair".*

vii.   Fairness

Figure 8.15 summarises the response to the statement about whether or not respondents believed the Online Complaint Management System (OCMS) was a fair mechanism. The 37 respondents (47.3%) respondents who answered "Agree" or "Strongly agree" was equal to those who were most likely to "Neither agree nor disagree". Only a small number 3 (3.7 %) believed that OCMS was an unfair mechanism.
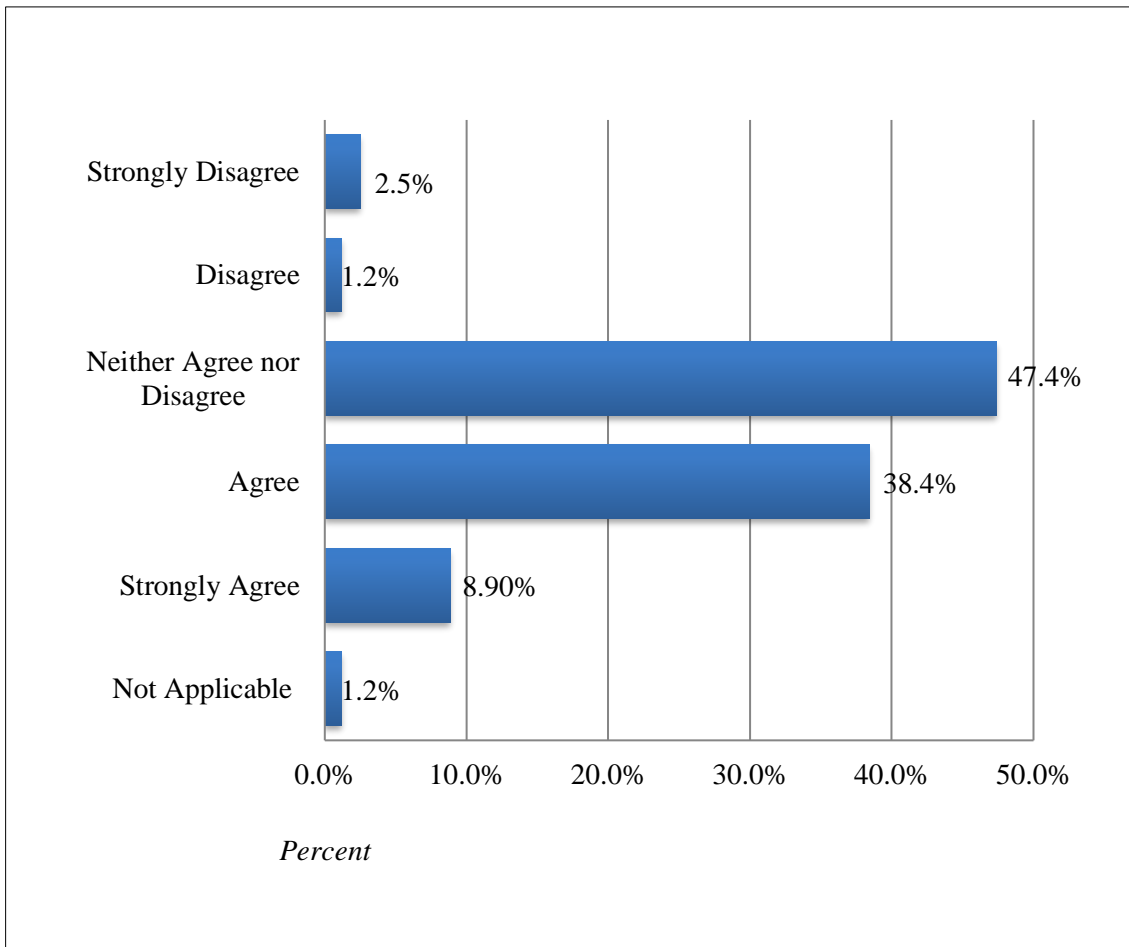
Figure 8.15   Percentage of Answers to the Question *"Rate the following statement: I believe Online Complaint Management System (OCMS) is a fair mechanism".*

As demonstrated in Figure 8.16, the statement aimed to establish whether or not OCMS increases consumer confidence. Significantly, 32 respondents (40.9%) answered "Agree" or "Strongly agree", while more than half 40 (51.2%) were not sure about the role of OCMS in increasing consumer confidence, and only 4 (5%) "Disagree" or "Strongly disagree".
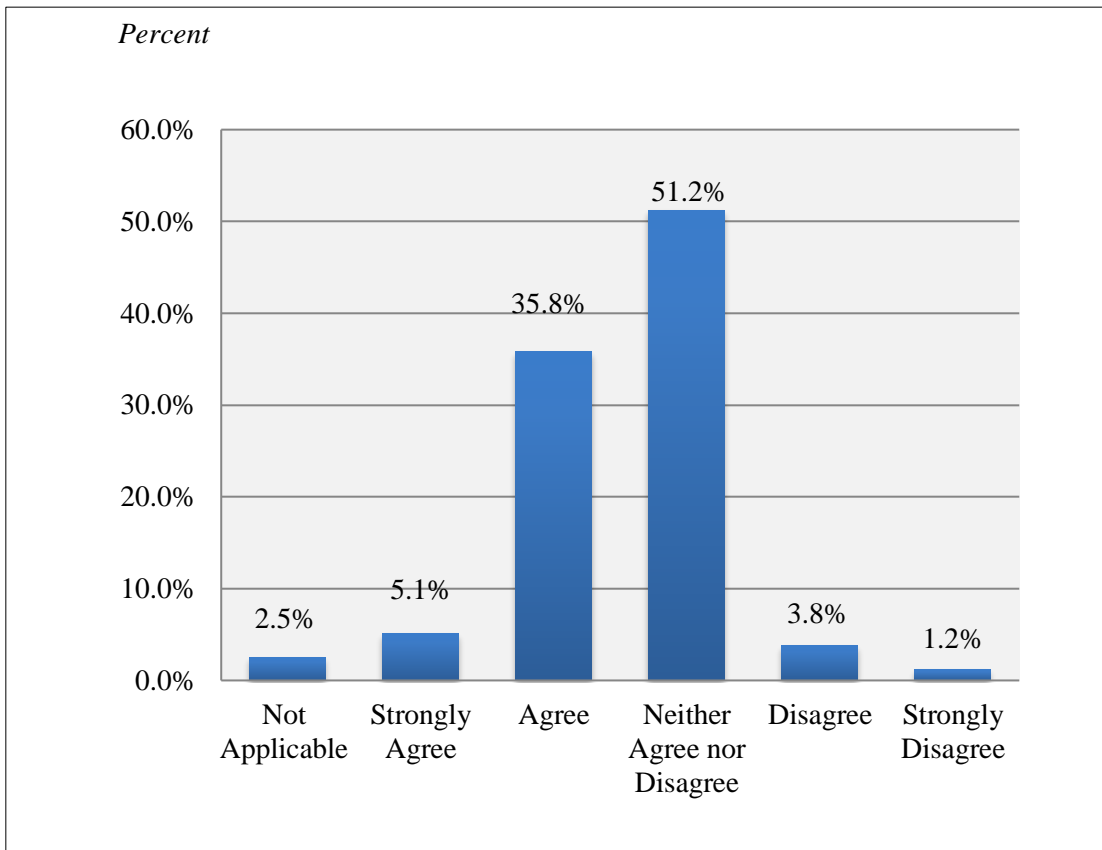
Figure 8.16   Percentage of Answers to the Question *"Rate the following statement: Online Complaint Management System (OCMS) increases consumer confidence*".

Figure 8.17 illustrates whether or not respondents think OCMS is based on businesses interests. Almost half of the respondents (38 or 48.71%), replied "Neither agree nor disagree", while more than one third (29 or 37.1%), "Agree" or "Strongly agree" that OCMS is based on business interests, and 8 (10.25%) "Disagree" or "Strongly disagree".
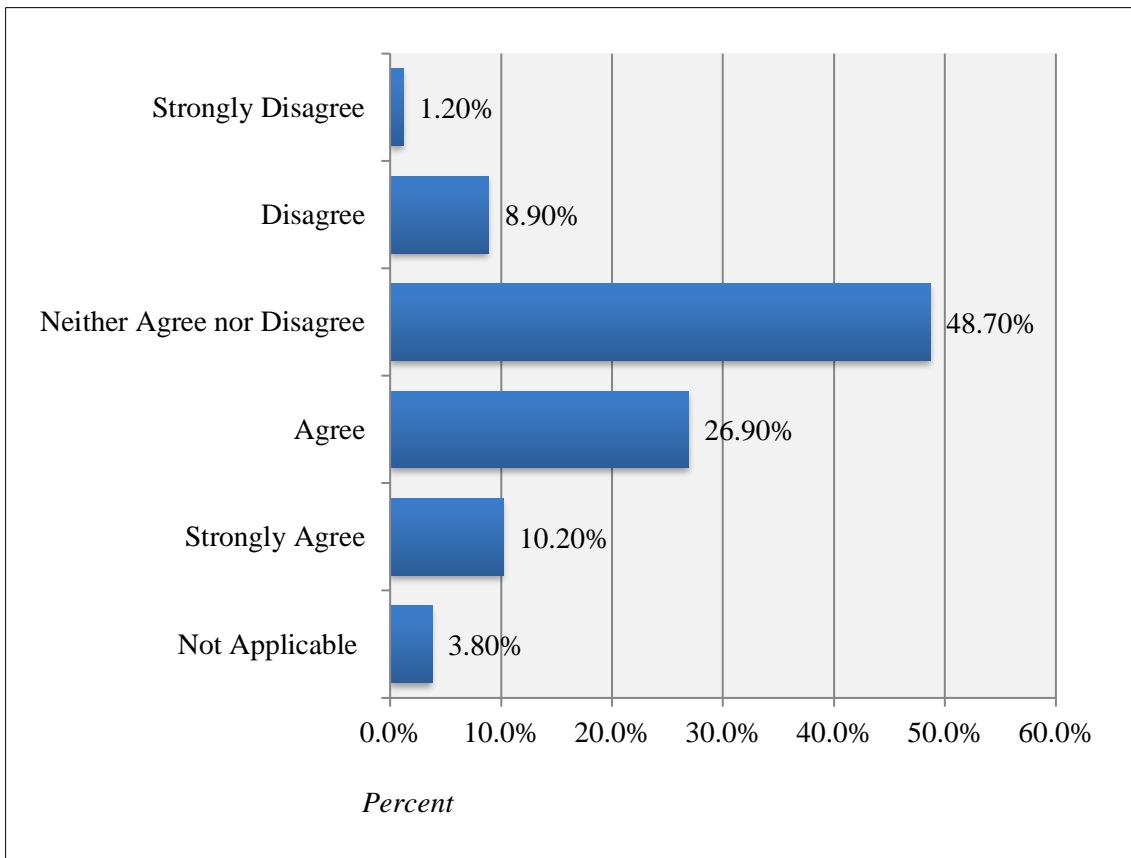
Figure 8.17   Percentage of Answers to the Question *"Rate the following statement: I feel Online Complaint Management System (OCMS) is based more on businesses interest".*

x.   Convenience

As shown in Figure 8.18, respondents were asked to rate if they found it easier to resolve their dispute online instead of using offline mechanisms. More than half (40 or 51.2%), "Agree" or "Strongly agree", compared to 8 (10.1%) who "Disagree" or "Strongly disagree", and 26 (33.3%) who "Neither agree nor disagree".
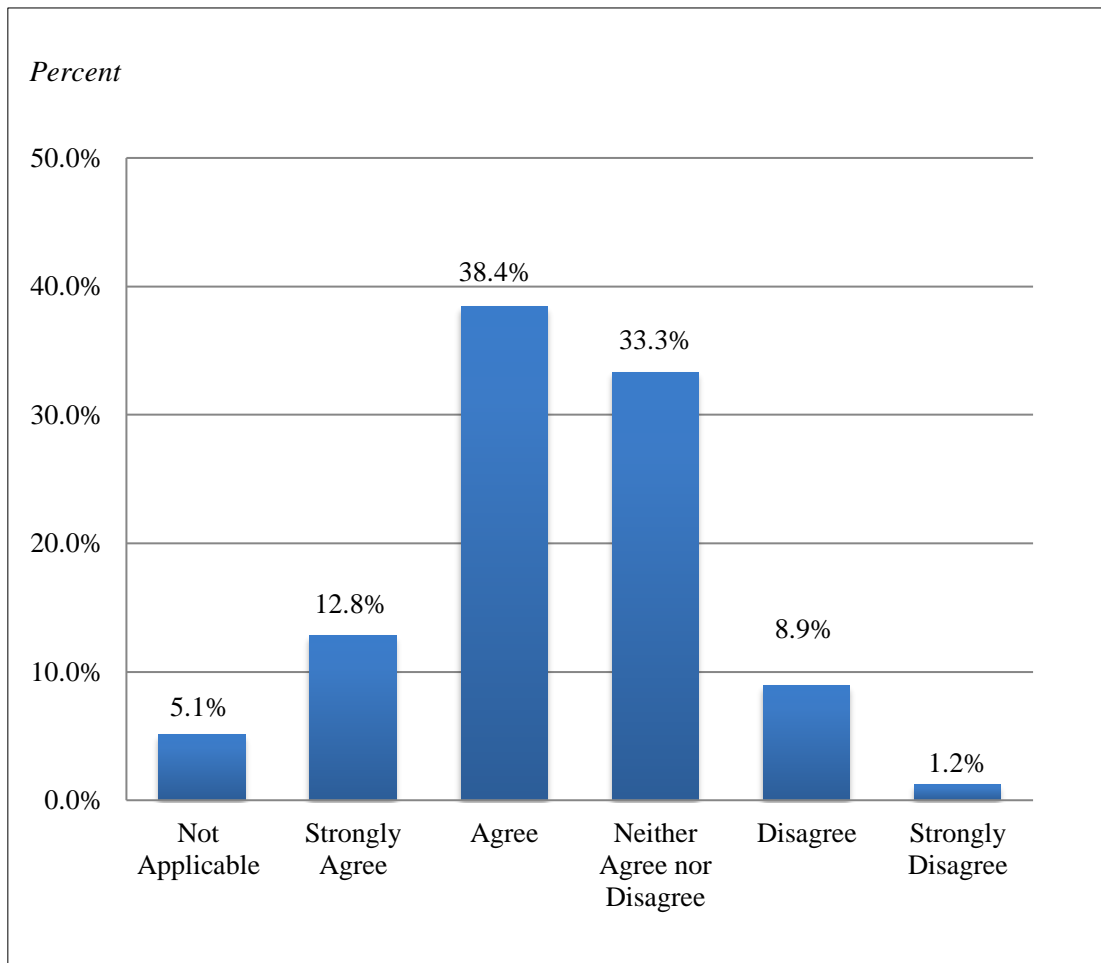
Figure 8.18   Percentage of Answers to the Question *"Rate the following statement: I find it easier to resolve my dispute online rather than using offline mechanisms such as court or other alternative methods".*

xi. Cost

Figure 8.19 illustrates the respondents' views on whether or not the cost of OCMS services is reasonable. The largest number of respondents, (40 or 51.2%), were unwilling to answer the question and "Neither agree nor disagree". While26 (33.2%) of the respondents "Agree" or "Strongly agree" that the money they paid for OCMS was reasonable, 6 (7.6%) "Disagree" or "Strongly disagree" that OCMS services are expensive.
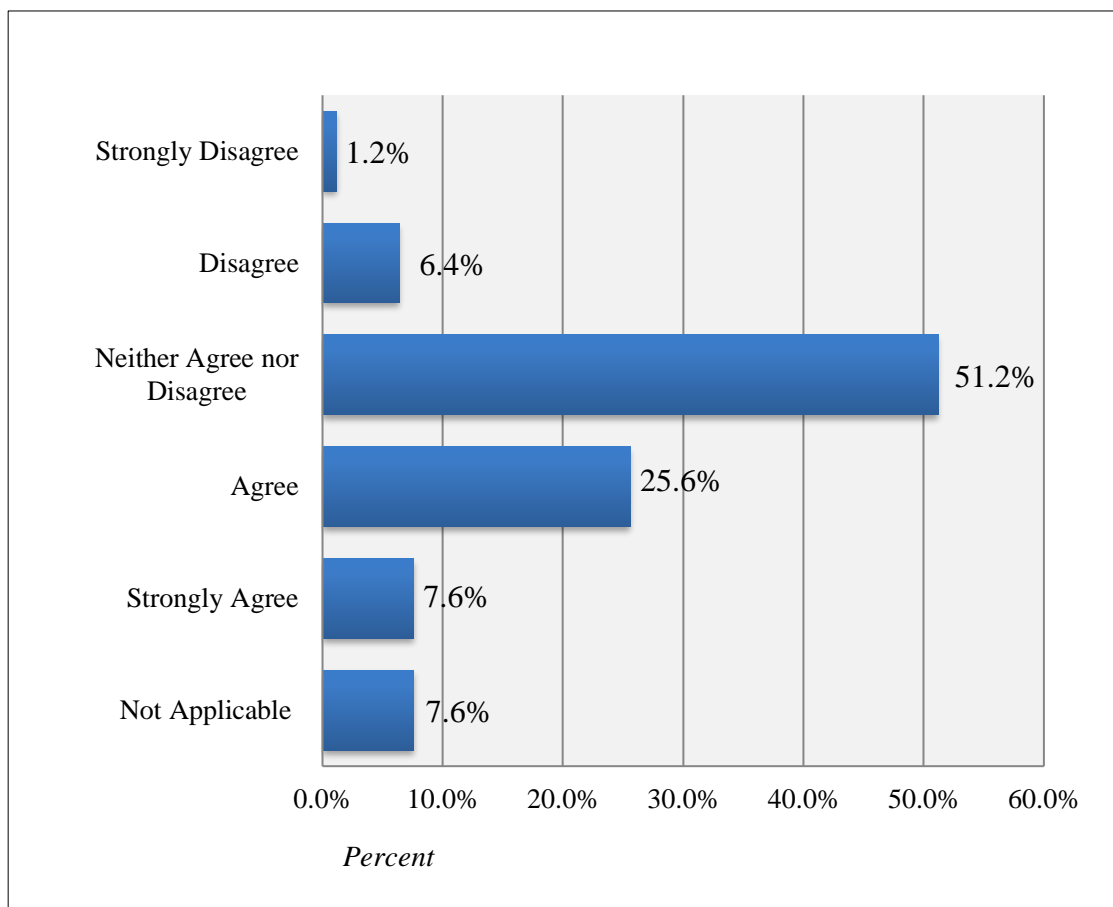
Figure 8.19   Percentage of Answers to the Question *"Rate the following statement: Cost of Online Complaint Management System (OCMS) is reasonable"*

Figure 8.20 illustrates the respondents' answer to the question about whether or not OCMS suggests better options for resolving online disputes. More than half (46 or 58.9%) "Neither agree nor disagree" as they were not sure if OCMS was a better option. Only four (5%) "Disagree" or "Strongly disagree" and 26 (33.9%) "Agree" or "Strongly agree" with the question.
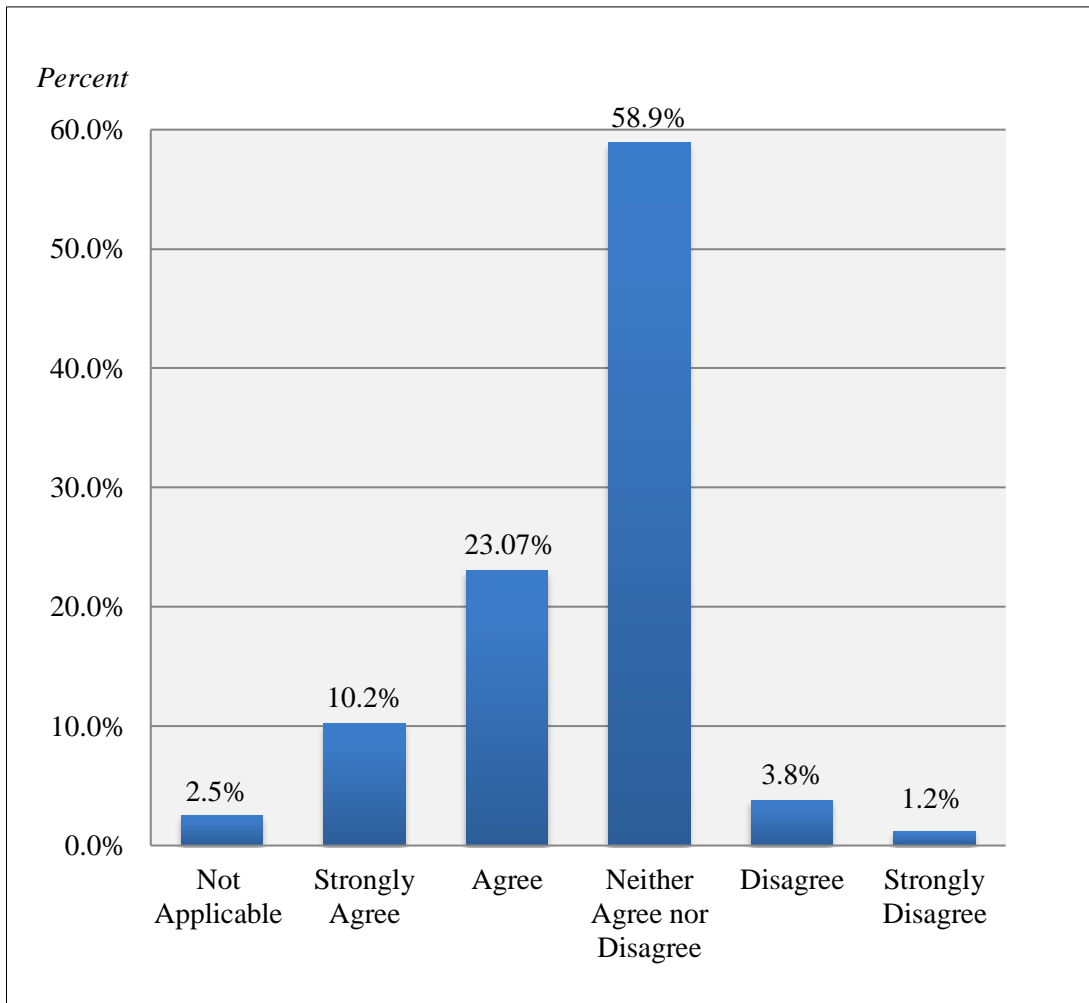
Figure 8.20   Percentage of Answers to the Question *"Rate the following statement: Online Complaint Management System (OCMS) suggests better options for resolving disputes"*.

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8.3.2.11   OCMS providers

Table 8.6 illustrates responses to the question about who should provide OCMS services. Less than half of the respondents (36 or 46.1%) preferred professional bodies to provide OCMS services for them. 26 (33.3%) believed that retailers should have OCMS services, 16 (20.5%) considered that OCMS needed to be provided by government.

Table 8.6   OCMS Providers

Dispute Resolution Provider

	Number	Percent
Retailer	26	33.33
Professional body	36	46.15
Government	16	20.51
Total	78	99.99

8.3.2.12   Overall satisfactions with OCMS mechanism

As demonstrated in Figure 8.21, the respondents were asked to rate their satisfaction with OCMS services. For this question, a 10-point Likert scale was used as a measurement, ranging from "0" (completely unsatisfied) to "10" (completely satisfied). Significantly, 34 (43.3%) or almost half of the respondents were satisfied with OCMS services, but One third (24 or 30.7%), were dissatisfied, and of these 4 (5.1%) were completely dissatisfied and gave a rating of 0. In contrast, only 2 (2.5 %) of the respondents were completely satisfied and gave a rating of 10.
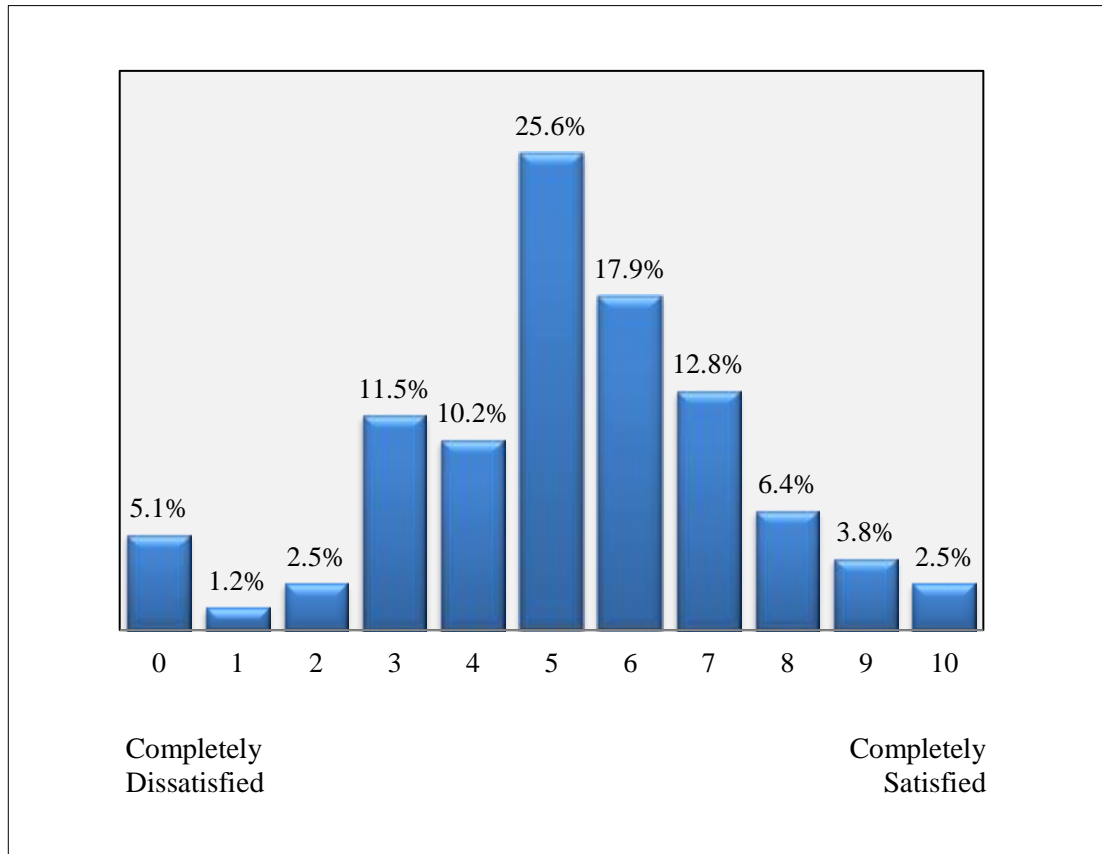
Figure 8.21 **Overall Satisfaction with OCMS Mechanism**

8.3.3 Recommendations and Comments

The survey concluded by asking two open-ended questions (See Appendix C). These questions were:

> *Q.14. what other <u>attributes</u> do you consider important for increasing Online Complaint Management System (OCMS) effectiveness? Please state.*

> *Q.15. Other <u>comments</u> about your experience?*

Of the 108 total respondents who participated in the survey 32 made recommendations about how to increase the effectiveness of OCMS while 19 provided comments about their online shopping experience. These recommendations and comments are explained below.

8.3.3.1   Attributes and recommendations on OCMS efficiency

Question number 14 of the survey asked participants what attributes they considered important for increasing the effectiveness of online complaint management systems (OCMS). Similar recommendations were categorized and named as impartial, independent, transparent and fair access, existence of OCMS rules, knowledge, online communication, security concerns; and length of the online resolution process. Some typical examples of the attributes that respondents identified and recommendations they made are presented as below.

Knowledge: Some respondents suggested there was little knowledge about OCMS services. They recommended that more advertising and information needed to be provided for consumers about OCMS. Typical examples were: "Educate others about these systems as same as me who may not know about this system" (SR29); "More advertisement to inform consumers about OCMS service" (SR60); "Information of accessing to OCMS services" (SR93).

Impartial, Independent, and Transparent and, Fair Access: Some respondents suggested OCMS services should be impartial, independent, and transparent, and provide fair access for parties. Comments included: "Impartiality, independence, fair access" (SR44); "Transparency and independency" (SR91); "More transparency" (SR88); "Treating customers with a caring friendly service" (SR67); "The system has been fair at the beginning but later I was disappointment with the retailer and mediator" (SR23).

Existence of OCMS Rules: A number of respondents recommended that there needed to be laws and rules for OCMS systems. Typical recommendations included: "Making of laws for online complaint management systems" (SR53); "Law is about substance and people who are involved are worry whether this online technology systems could take this aspect into account" (SR48); "Give customers the right to have their say about OCMS services if they are not satisfied with them" (SR8).

Online Communication*:* Some of the recommendations emphasised the importance of communication in OCMS, with comments such as: "consumer should have a better understanding of how to communicate through web online with OCMS and understand their rights as a consumer" (SR12); "OCMS should explore more on communication" (SR59); "There is need for quicker communication" (SR40).

Security Concerns: One respondent was concerned about the security of OCMS services: "Safety for consumer personal information is my concern" (SR16).

Length of the Process*:* The respondents were concerned about the length of the OCMS process to resolve the dispute. Typical responses were: "Disputes should be resolved quickly" (SR33); "The reliability of the systems, as well as the time length to solve the problem is important" (SR81); "Timing should be efficient" (SR75).

Therefore, the respondents addressed issues in regard to providing higher quality OCMS services.

8.3.3.2 Comments with online shopping experience

Question number 15 aimed to find out if participants had any other comments in regard to their online shopping experience. Some examples of comments that mostly addressed consumer experiences with online purchases were: "It was a bad experience but it was resolved" (SR37); "I had a back and forth communication, just beating around the bush" (SR48) "I bought an eyeliner online and they sent it to a wrong address, I complained to them, they sent me an email that saying it was your fault and we cannot do anything about it. They did not refund my money at all" (SR71); "I had bad experience from one of the online education websites" (SR100); "I am usually more successful with exchanges or refunds from smaller companies. This is difficult for overseas companies or larger companies as they don't care" (SR98); "I generally feel obtaining redress will take a long time, hence, when I never complain as I feel I have to fight hard for my consumer rights while those rights should be respected as a consumer in the first place" (SR14); "I have lower consumer confidence in online purchases" (SR93).

These recommendations and comments will be discussed together with other findings in the discussion chapter (Chapter 9: Discussion, recommendation and conclusion).

8.4   SUMMARY

This chapter presented the findings of the quantitative data from the surveys. It aimed to investigate consumer attitudes to the use of ODR systems and their fairness, trust and security. Descriptive statistics were used to present the large amount of quantitative data. All the graphs and tables showed there was minimal discontent with ODR systems, less than 10% for each question.

The next chapter will present the final phase of this research, which includes a full discussion and interpretation of both the qualitative and quantitative research findings.

CHAPTER NINE
FINDINGS AND DISCUSSION

9.1 INTRODUCTION

A sequential exploratory mixed method that included both qualitative and quantitative approaches was adopted in this research. In chapter 7 qualitative findings (first phase) and in chapter 8 quantitative findings (second phase) were reported. The third phase of this research is interpretation and discussion of the research findings. This chapter reviews the statement of the research aims and the original research questions, and discusses the research findings in the context of their relation to the literature review. It also analyses the relationship between the findings of the research question and presents the conclusion. The Figure 9.1 below illustrates the organisation of the topics of discussion in this chapter.
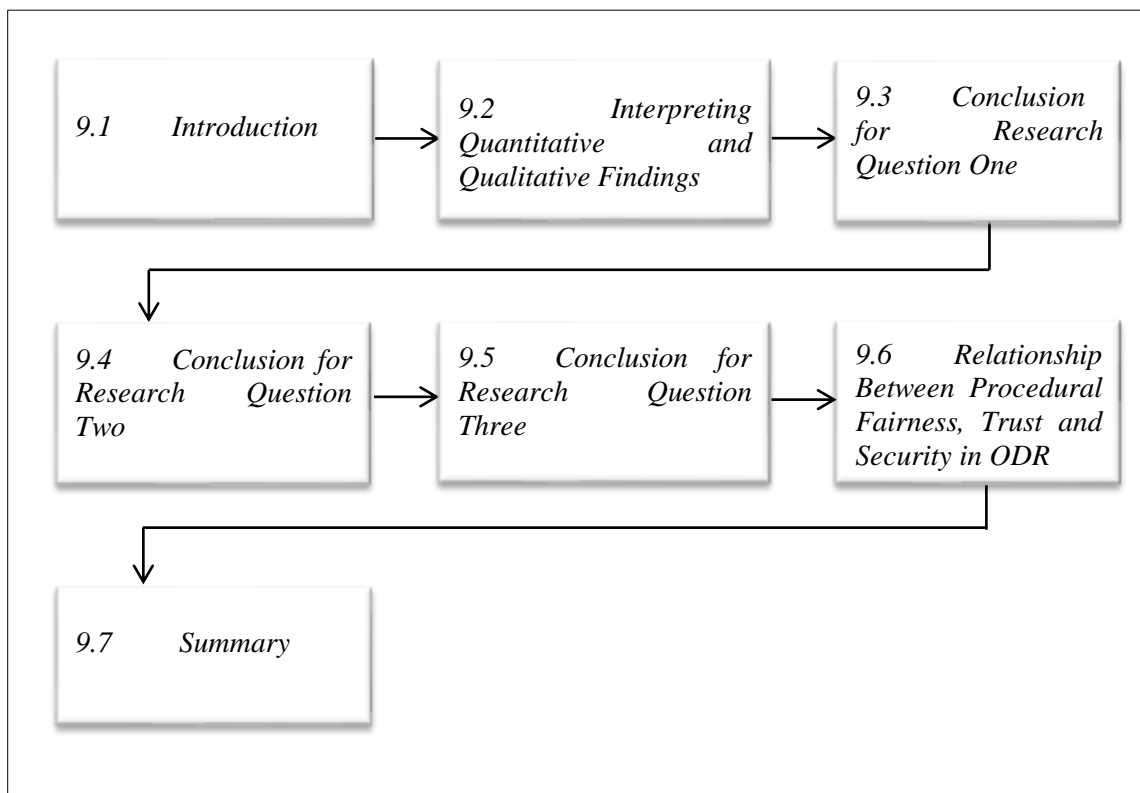
Figure 9.1   Chapter's Organisational Structure

9. 2   INTERPRETING QUANTITATIVE AND QUALITATIVE FINDINGS

This research addresses the three legal issues of fairness, trust and security in ODR systems. The purpose of this exploratory sequential mixed methods design (Creswell 2013) was to explore the experiences of ODR providers in relation to these legal issues in ODR systems as well as the experiences of consumers in online purchasing disputes. In the first (qualitative) phase of this study six ODR providers were interviewed to collect data. After the data was analysed, the findings informed the development of a survey questionnaire that was used to gather data for the second (quantitative) phase of this study which , collected data from a larger population who were consumers with online purchasing dispute experiences. In third phase, data from both the qualitative and quantitative phases was interpreted to answer the research questions of this study. This research included three research questions as follows:

> Research Q.1. *What is Fairness in ODR and how can it be measured? How is it different from the relevant notions in traditional ADR?*

> Research Q.2. *What is Trust in ODR and how can it be measured? How is it different from the relevant notions in traditional ADR?*

> Research Q.3. *What is Security in ODR and how can it be measured? How is it different from the relevant notions in traditional ADR?*

To integrate findings from both the quantitative and qualitative phases of the study and to answer each research question, the following steps were employed:

In the first step, qualitative findings addressing each of the major research questions were interpreted and reasons and justifications for these findings were explained. In the second step, the findings that answered the research questions in the quantitative phase of the research were discussed. This process allowed the findings from the second phase, the quantitative data, to be used to further explain qualitative findings gained from the first phase of the study (Creswell & Clark 2007).

Then, in the third step, results of the research were discussed in detail in the context of the literature review to determine the relationship between the research findings and previous studies. These three processes of research question findings are illustrated in Figure 9.2 below.

Figure 9.2   Research Question Findings Process

Each of the research questions are discussed in sections 9.3 (conclusion for research question one) to 9.5 (conclusion for research question three) of this chapter.

9.3 CONCLUSION FOR RESEARCH QUESTION ONE

Q.1. What is Fairness in ODR and how can it be measured? How is it different from the relevant notions in traditional ADR?
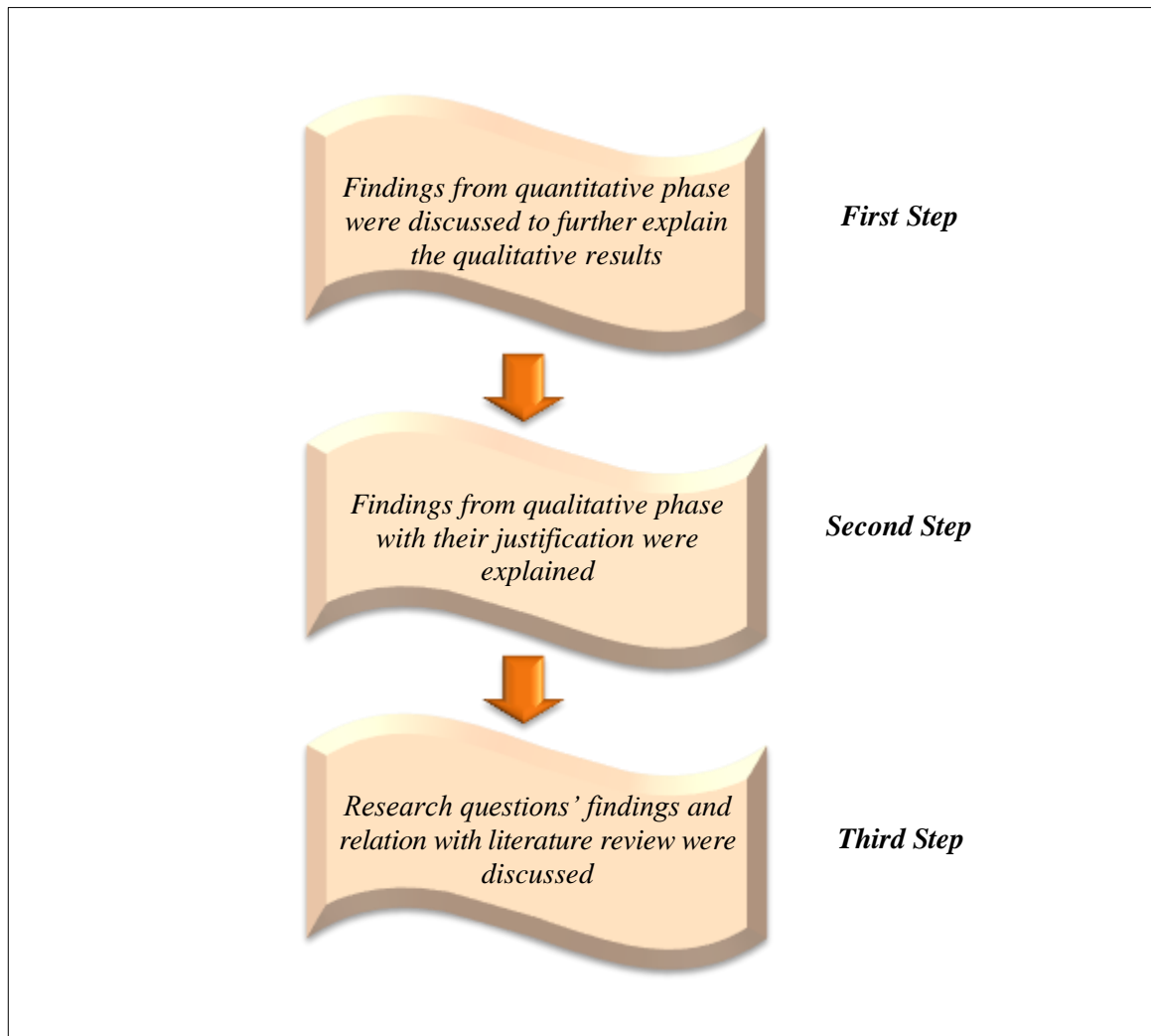
Fairness is divided into procedural and distributive justice. Procedural justice concerns peoples' views about the treatment they received during the dispute resolution process involved in decision-making (Thibaut & Walker 1975). This research question aimed to answer the question about what elements contribute to measuring and defining procedural justice in ODR systems.

The interview and survey data presented in chapters 7 and 8 were used to answer this research question. Analysing the qualitative research and finding themes (See chapter 7: qualitative data collection) gained from the interviews, the researcher identified six themes as elements that are related and contribute to measuring procedural fairness in ODR systems. These themes are: voice, respect, neutrality, trustworthiness, consistency, and ethicality rule. The quantitative research findings from the surveys (See chapter 8: quantitative data collection) show the importance of the fairness of the process (procedural justice) in ODR for users. Although consumers were not sure about the quality of ODR outcomes (distributive justice) (See chapter 8, Section 8.3.2.10: importance of OCMS services, Part xii: quality of outcomes), almost half (47.3%) considered that ODR was a fair mechanism (See chapter 8, Section 8.3.2.10, Part vii: fairness) and great number agreed about the neutrality (fairness) of the neutrals (39.7%) (See chapter 8, Section 8.3.2.10, Part vi: fairness of neutrals). This led to their satisfaction with the results for nearly half of respondents (43.5%) even though the results were not what they expected (See chapter 8, Section 8.3.2.10, Part v: satisfaction with OCMS outcomes).

In addition, consumers recommended (See chapter 8: quantitative data collection, Section 8.3.3: recommendations and comments) that ODR systems should be impartial, independent, transparent and fair and considered there was a need for laws and rules for ODR systems, as well as feedback and review forms to complain about ODR services.

Finally, after interpreting the findings from both qualitative and quantitative data, this research found six elements to measure and define procedural fairness in ODR mechanisms. These elements are: 1) equal treatment, 2) respect, 3) neutrality, 4) consistency, 5) trustworthiness, and 6) ethicality rule, which are illustrated in Figure 9.3.
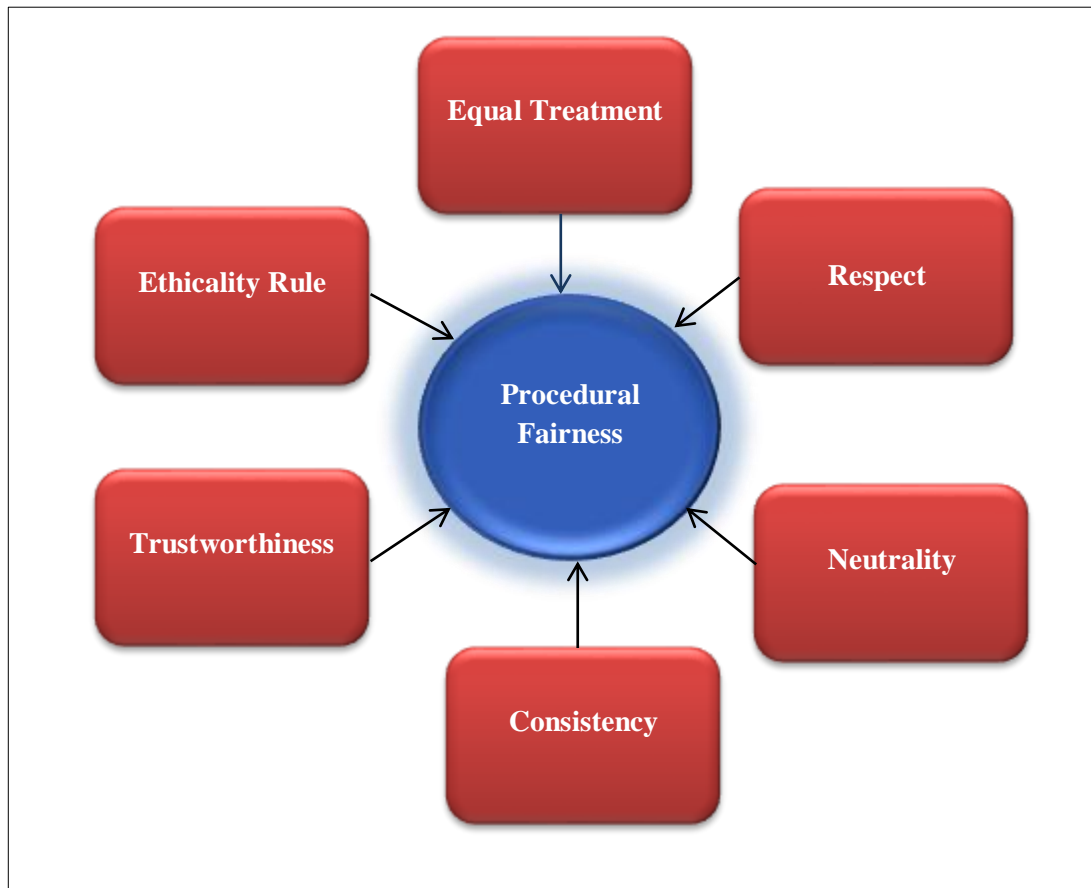
Figure 9.3   Procedural Fairness Elements in ODR

It is important to measure security in an ODR system based on these six elements. Each of these elements are fully explored and discussed in the following sections.

9.3.1   Equal Treatment

This is one of the most important elements that should be used to define and measure procedural fairness in any online dispute resolution mechanisms. The justification for its

significance is that individuals will not accept the outcomes of ODR systems if they receive unequal treatment from decision makers.

There are two criteria for equal treatment, which are illustrated in Figure 9.4:

- Providing equal opportunity for disputing parties to be heard and present their case and all related documents; for example, parties should have the same language or be provided with a translator.

- Minimizing the power imbalance of disputing parties due to different technology skills; for example, parties should have similar internet skills.
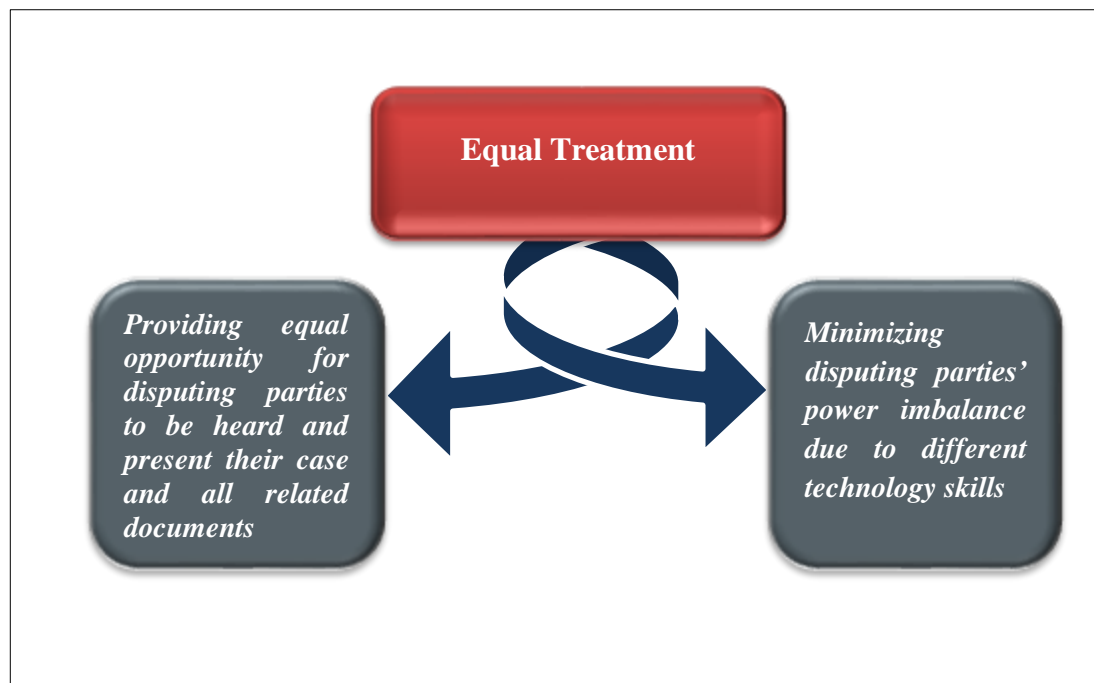
Figure 9.4   Equal Treatment Element Structure

The first aspect which provides an equal opportunity for disputants to present their case and to be heard has also has been noted by previous researchers such as Tyler (1997), Leventhal (1980), Thibaut and Walker (1975), and Hancock and d'Estree (2011) as an aspect of the voice criteria of procedural justice in dispute resolution systems.

Moreover, in ODR Parlade (2006) and Cho (2009) have noted that parties should be given equal and reasonable opportunity to present their case. For example, mediators in online mediation should have equal treatment for parties (Hornle 2009) and provide equal opportunity for them to present their case (Schmitz 2016).

Therefore, the equal treatment element recognized in this research for procedural fairness in ODR has the same definition as the voice element for procedural fairness that has been discussed in previous studies. However, in this research the voice element is called equal treatment due to the existence of technology in ODR.

9.3.2 Respect

Another element identified in this research is the measurement of procedural fairness in ODR systems. This means ODR providers should behave respectfully to parties, because when individuals receive respectful behaviour from decision makers and neutrals in ODR it enhances their satisfaction with the fairness of the procedure. Findings in this research identified three components of the respect element:

- Providing an opportunity for disputing parties to have control over the process and their outcomes; for example they can propose solutions where their rights are protected;

- Dignity for and equitable treatment of disputing parties regardless of the value of the purchase or the social status of the parties; and

- The proceedings should not be delayed without a reasonable cause.

The above components of respect element are illustrated in Figure 9.5 on the next page.
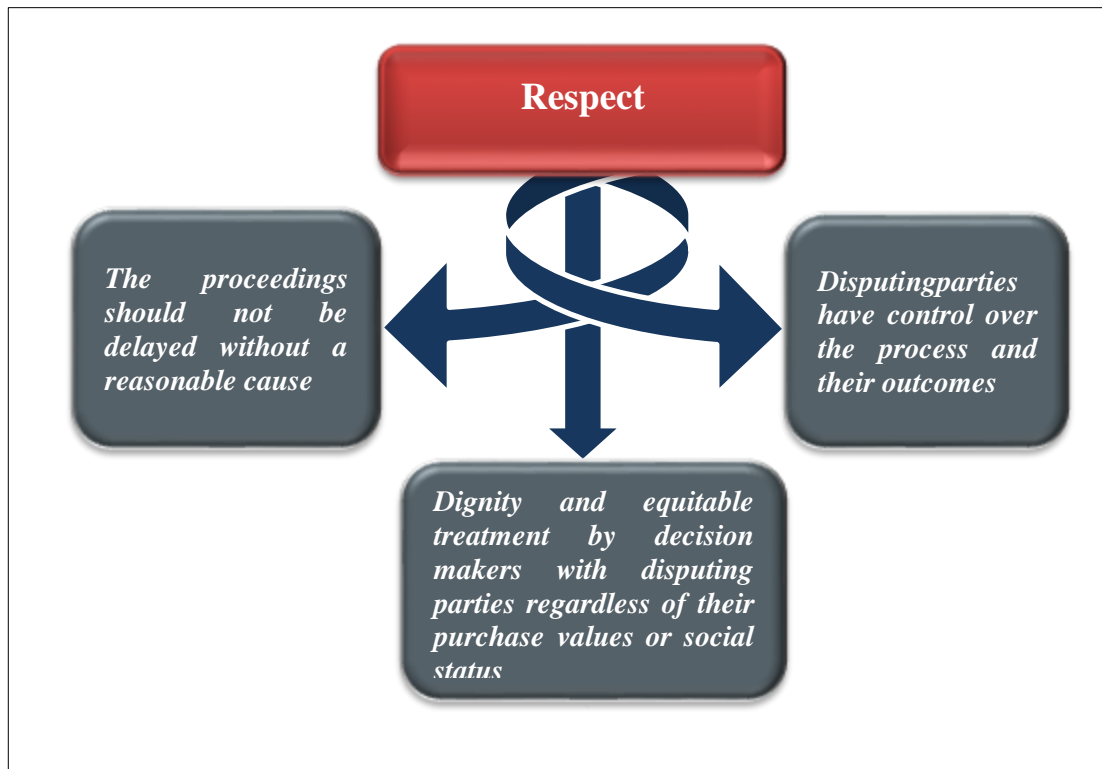
Figure 9.5   Respect Element

The literature emphasizes respectful treatment as a criterion which establishes procedural fairness. As suggested by Lind et al. (1990), Leventhal (1980) and Hollander-Blumoff and Tyler (2011) decision makers should protect individuals' rights and treat people with dignity.

Thibaut and Walker argue that decision control for parties is part of the voice element in procedural justice, while in contrast this research has found that decision control for parties is a sign of respectful behaviour by dispute resolution systems such as ODR. This has been confirmed by ODR other research (Cho 2009; Schmitz 2016). Moreover, the need to treat parties in ODR equally, regardless of their social and economic status, has been confirmed by Schmitz (2016). In addition, to create respect in ODR procedures the proceedings should not be delayed without any reasonable cause, as mentioned by Parlade (2006) and Cho (2009). Therefore, this research explored the significance of the respect element as one of the six elements that define and measure procedural fairness in ODR.

9.3.3 Neutrality

Neutrality is the third element recognized in this research and encompasses procedural justice in ODR systems. Neutrality is an important factor in ODR systems, especially as ODR takes place in an online space; it is difficult for parties to trust neutrals because of the absence of face-to-face interaction. As well, disputing parties are influenced by judgments made by neutrals and decision makers, so it is important to be skilled and trusted. If disputants consider the outcomes are unfair, one of the matters on which they may focus is unbiased behaviour and discrimination that they have experienced from decision makers or neutrals during the process. Therefore, to establish neutrality of procedural fairness in ODR, the following issues need to be addressed:

- Neutrals and decision makers should be impartial and independent; and

- Training courses and special qualifications for online neutrals and decision makers; for example, providing a mediator or arbitrator with offline experience as well as online experience to learn independence in online resolution cases.

Figure 9.6 (below) portrays this relationship.
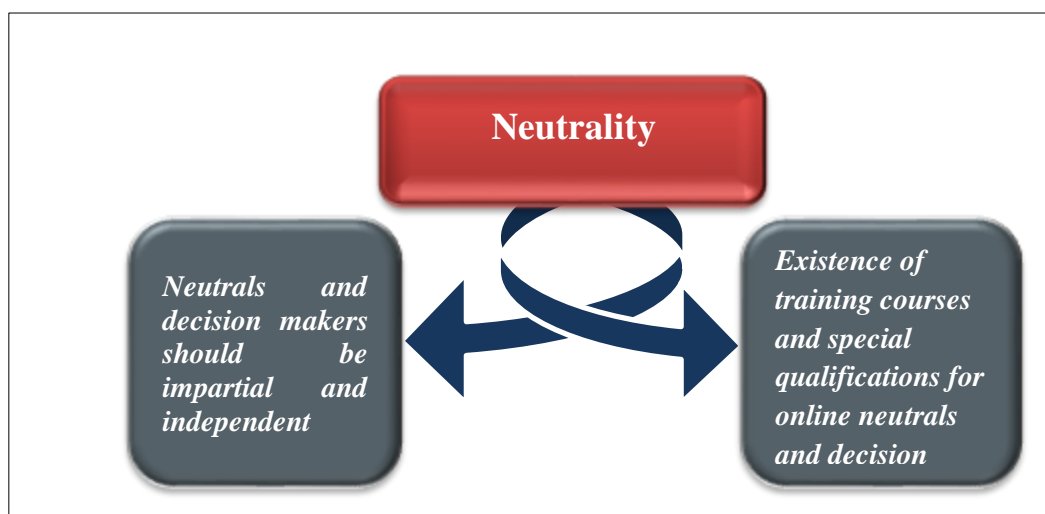
Figure 9.6   Neutrality Element

Online neutrals need to have online skills and qualifications to work on online systems. Moreover, the existence of an in-depth neutral selection process and selection guideline can improve the quality of more inexperienced neutrals.

Neutrality as an essential criterion of procedural justice, and has also been explored by previous researchers such as Leventhal (1980) and Tyler (1997). In other words, neutrals and decision makers need to demonstrate honest and impartial behaviour in justice system processes.

The necessity of impartially and independency of mediators and arbitrators in ODR has been noted by Parlade (2006). Neutrality is a compulsory element of procedural fairness in ODR systems that will make parties believe in the truthworthiness of the decision makers and will respect them, the process and the outcomes.

9.3.4   Trustworthiness

The fourth element that has significant impact on the procedural fairness of ODR systems is trustworthiness. The reason for this criterion is that individuals will trust, accept and follow the rules and procedure if they feel the authorities are fair. In fact, in ODR systems the quality of treatment and the decision-making process shape the attitude of disputing parties about the trustworthiness of the authorities. Therefore, disputants consider it is important whether or not mediators or arbitrators in their ODR process care about their case and try to find the best solution. Trustworthiness in ODR systems should be provided through:

- Evaluator systems for neutrals' and decision makers' practice.

For example, parties can make complaints against neutrals or give feedback to inform ODR providers about their neutrals' performance. Even the system itself could test neutrals regularly to see whether or not they have the minimum qualifications; and

- Panel of neutrals and decision-makers.

For example, the existence of a brief bio of mediators or arbitrators will help parties to choose who they prefer and it will create trust.

Figure 9.7 (below) presents the nature of trustworthiness.
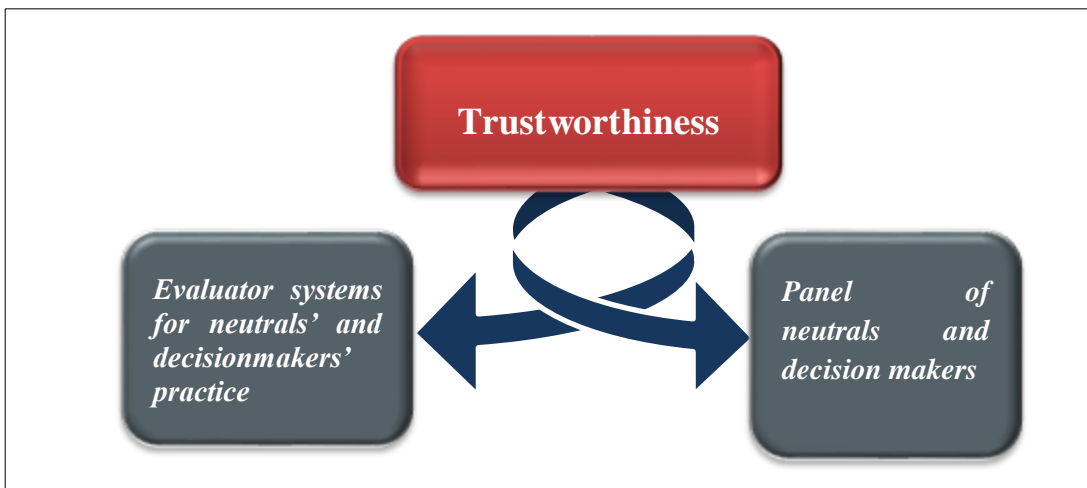
Figure 9.7   Nature of Trustworthiness Element

This element has been noted by previous commentators, such as Leventhal (1980) and Tyler (1997), who focused on trustworthiness as a significant element of procedural fairness and it is "multi-faceted, consisting of ability, benevolence, and integrity" (Tyler 1997). One of the ODR principles mentioned by Kohler and Schultz (2004) is "trustworthiness within the discretion of the neutral" which means integrity and authenticity in all circumstances has been considered.

9.3.5   Consistency

Consistency is an important element in measuring procedural fairness of ODR systems. Individuals evaluate the procedure based on established procedural expectations. When this expected procedure is deviated from or inconsistent then parties will perceive the process to be less fair.

Moreover, as mentioned in the literature review (see chapter five: legal issues on fairness, trust and security in online dispute resolution), based on Lind's (1992) fairness heuristic theory, individuals before taking their case into a justice system might feel uncertain about their relationship with the authority or they might have difficulty trusting the authority.

This issue is even stronger in ODR because of lack of face-to-face communication. Parties before entering ODR systems will start to collect information about the process and the trustworthiness of the system. When they are informed, they will expect certain procedures, so these expectations will shape their perception about fairness. Therefore, there is a need for consistent procedures in ODR systems as they shape parties' expectations about procedural fairness. In ODR systems for consistency rule of system, two requirements need to be considered:

- The existence of procedural guidelines; for example, ODR providers could adopt rules and principles for their procedure from well-established ADR guidelines; and

- The existence of consistent and predictable outcomes; this also leads to trust.

Figure 9.8 (below) illustrates the importance of consistency.
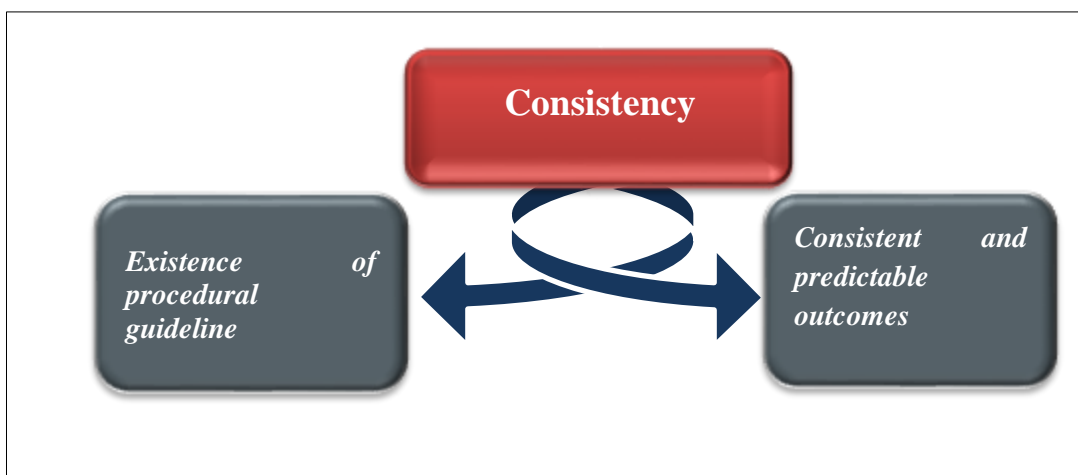
Figure 9.8   Consistency Element

Relevant research studies such Leventhal (1980), Bos, Vermunt and Wilke (1996), Lind (1992) and Greenberg (1982) have focused on the significant influence of consistency on procedural fairness. When individuals are given information about the procedure, they are informed about what to expect, and will then view events in a way that is either compatible or incompatible with their expectations (Lind 1992). So, individual's expectations have more effect on procedural fairness of the process compared to what they experience during the process or the outcome.

The importance of the fairness and consistency of outcomes in ODR has been discussed in literature relating to ODR, such as Rabinovich-Einy (2008). The existence of standards and guidelines in ODR mechanisms will provide information about the process for parties and will shape their expectations about procedural fairness. In addition, predictable and consistent outcomes will shape parties' expectations about procedural fairness, that if such a dispute happens again there will be consistent solutions. This also helps individuals trust that system as they find it is consistent.

9.3.6 Ethicality Rule

The last element found in this research in regard to the definition of procedural fairness in ODR systems is the ethicality rule. It is important that decision making procedures are based on moral values of individuals and ethical standards. The more individuals view the procedure as compatible with ethical values such as the decision maker's politeness and concern about their rights, the more likely they will view the process as fair and accept the outcomes. ODR providers should have:

- An ethical framework or ethical standards for ODR procedures.

An example is the provision of annual reports by an experienced ethics committee to evaluate their system. Moreover, self-ethical standards for neutrals will improve their ethicality rule.

Figure 9.9 below shows that to have an ethicality rule in systems, there needs to be an ethical framework.
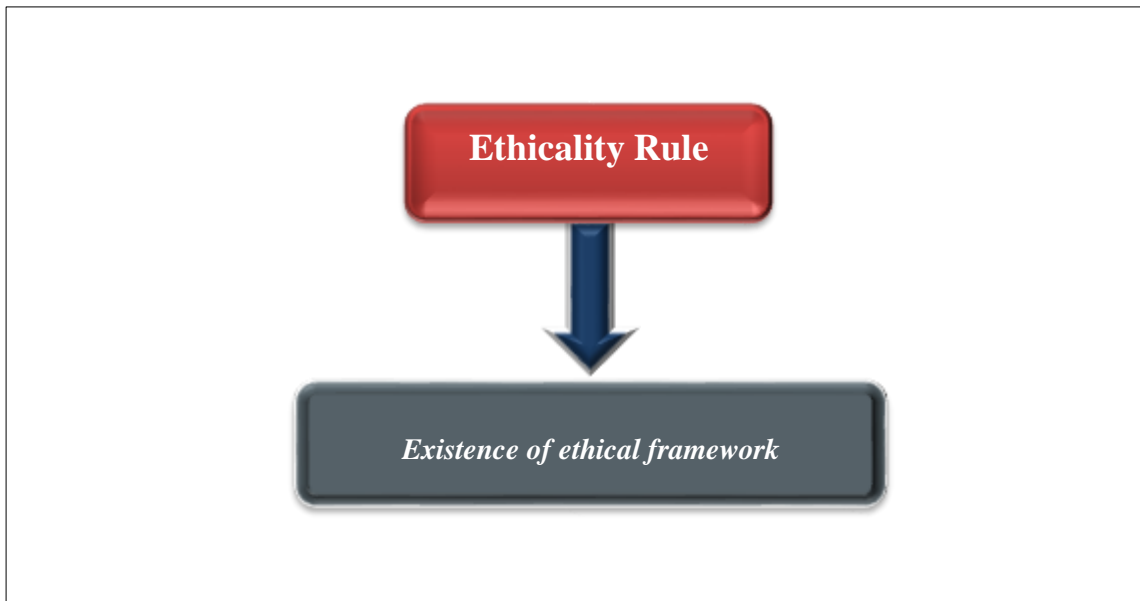
Figure 9.9   Ethicality Rule Element

Similarly, Leventhal (1980) has identified the ethicality rule as one of the main rules that influences procedural justice. Researchers such as Choi (2011), Tyler (1988), Schweitzer and Gibson (2008), stress the importance of the relationship between ethical standards and fairness of the process. In ODR, Cho (2009) indicates that the parties' rights should be protected based on international standards. However, in ODR there should be more attention to this rule as parties are more vulnerable because mostly communication is online, and there is lack of physical and verbal communication which might cause misunderstandings.

Therefore, the existence of an ethical framework will make individuals in ODR systems feel their rights in the procedure are protected and they will have more responsibility about outcomes.

9.4   CONCLUSION FOR RESEARCH QUESTION TWO

Research Q.2. What is Trust in ODR and how can it be measured? How is it different from the relevant notions in traditional ADR?

In ODR trust plays an important role compared to other dispute resolution mechanisms because communication is online and there is a lack of sense-based information such as a face-to-face meeting. This research question aimed to identify and examine the main elements that define and measure trust in ODR systems.

The interview and survey data presented in chapters 7 (Qualitative data collection) and 8 (Quantitative data collection) were used to answer this research question. By referring to the qualitative research findings (See chapter 7: qualitative data collection), three themes of knowledge, expectations of fairness, and code of ethics that should be considered in defining and measuring trust in ODR systems were identified. These results are supported by the quantitative survey data (See chapter 8: quantitative data collection).

The findings of the survey indicate that consumers trust public authorities (Chapter 8: quantitative data collection, Section 8.3.2.3: consumer protection by public authorities) to protect their rights; however, they consider it is easier to resolve disputes through out of court systems (See chapter 8, Section 8.3.2.5: disputes settlement through out of court bodies). The reason is that currently there is little knowledge and information about ODR services which leads consumers to trust public authorises more as they are familiar with these systems, even if they know the procedure can be long and complicated. Moreover, consumers are less likely to trust ODR processes because of lack of transparency and adequate information about the process (Chapter 8, Section 8.3.2.10: importance of OCMS services, Part iv: trust in OCMS process). In addition, for most consumers ODR is a fair mechanism (See chapter 8: quantitative data collection, Section 8.3.2.10: importance of OCMS services, Part vii: fairness) and they have confidence (trust) to use it processes (Chapter 8: quantitative data collection, section 8.3.2.10: importance of OCMS services, Part iv: trust in OCMS process) which

shows that there is a relationship between these two factors. Consumers in the survey recommended ODR (Chapter 8: quantitative data collection, Section 8.3.3: recommendations and comments).

To conclude, after interpreting data from both qualitative and quantitative findings, this research has identified three elements to measure and define trust in ODR systems. These elements are: 1) knowledge, 2) expectations of fairness, and 3) code of ethics to measure trust in ODR systems which are shown in Figure 9.10.
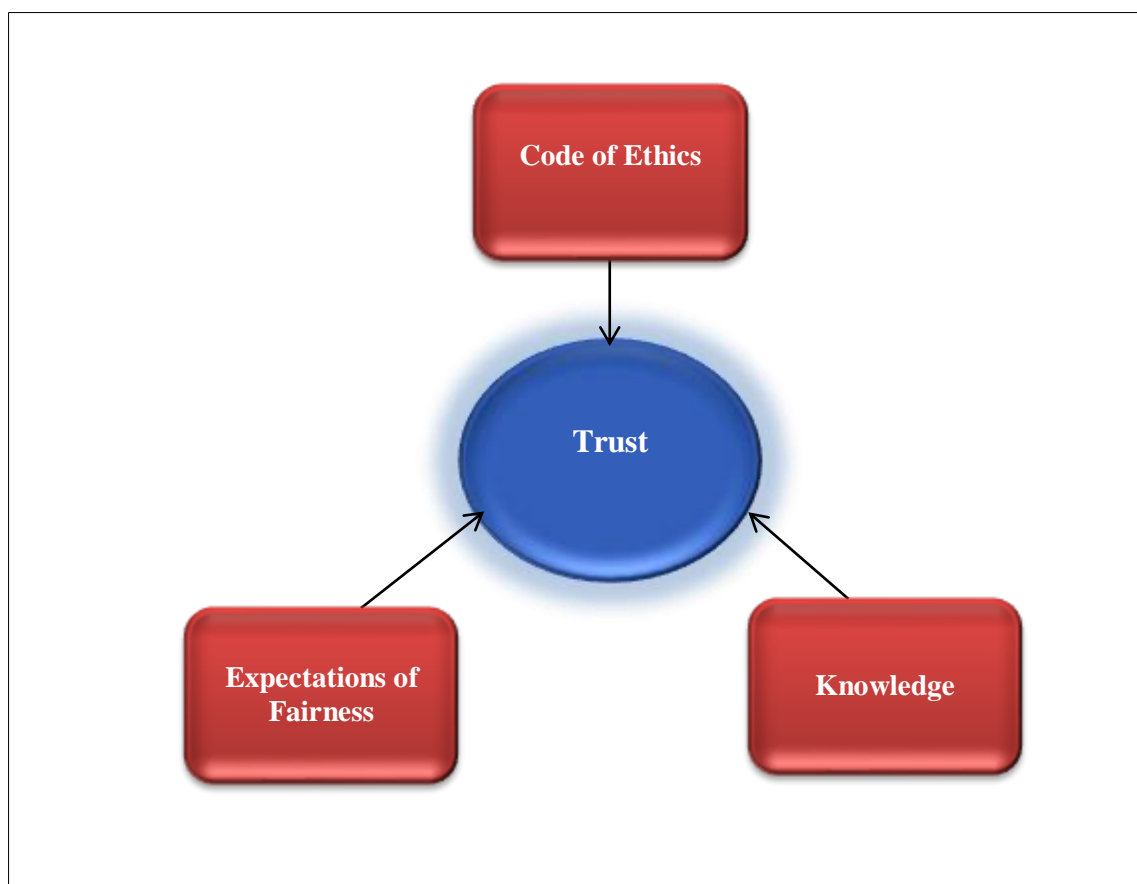
Figure 9.10   Trust Elements in ODR

ODR providers in designing their platform should concentrate on these elements to enhance trust and confidence in their systems. Each of these elements is fully discussed in the following sections.

9.4.1　Knowledge

One of the main elements that contribute to evaluation of trust in ODR systems is knowledge. It is important that individuals have adequate information and knowledge about ODR systems, in order to trust them. Moreover, there is a strong relationship between reputation of government authorities and trust. Therefore, a well-designed ODR platform provides knowledge for individuals; this could occur in two ways:

- Reputation and endorsement by official bodies

For example, ODR providers could create a strong reputation by using feedback systems and review forums, endorsement by recognized law firms or government bodies and presenting official logos on their website.

- Transparency of the procedure

ODR providers should offer a full map of their process for users, such as how their system is working, how long the process will take, what are the steps in the ODR process and what are the possible outcomes. This transparency could be achieved by a demonstration of virtual cases such as: anonymising cases which means taking the real names and facts from the case or mixing cases to find similar cases and taking the common procedure and creating data sets for transparency.

Referring to the ADR literature, researchers such as Lieberman and Henry (1986) have mentioned that in designing ADR systems trust is necessary; as the role of ADR is to enhance trust among individuals, they need to have information about how this ADR system works.

This is similar with ODR, where transparency of the procedure for creating user trust in ODR is essential. Moreover, researchers in the e-commerce and ODR field confirm the effect of individual's information about online systems on trust. There are different ways of transferring ODR knowledge to individuals, as discussed by Shneiderman

(2000), Ebner (2012), Kohler and Schultz (2004), Cortes (2010) , Raines (2006), Rule (2012), Rule & Friedberg (2005) and Ong (2015). They mention, for example, reputation and accreditation by reliable institutions, feedback mechanisms and transparency of the procedure, and providing information about ODR which indicates ODR is the most effective way of resolving online disputes. In addition, a trustworthy company is one which is impartial with users, not a company which does not experience any dispute or problem with its users (Winick 2000). Indeed, a pattern of predictable behaviour is part of trust.

The important role of information gained about ODR systems in creating trust has been confirmed by different researchers. However, none of them has used the term knowledge and its components, including reputation and transparency. When parties have sufficient knowledge about how trustable and how convenient ODR systems are, then they will enter into the process with a high level of confidence. Figure 9.11 highlights the relationship of knowledge elements.
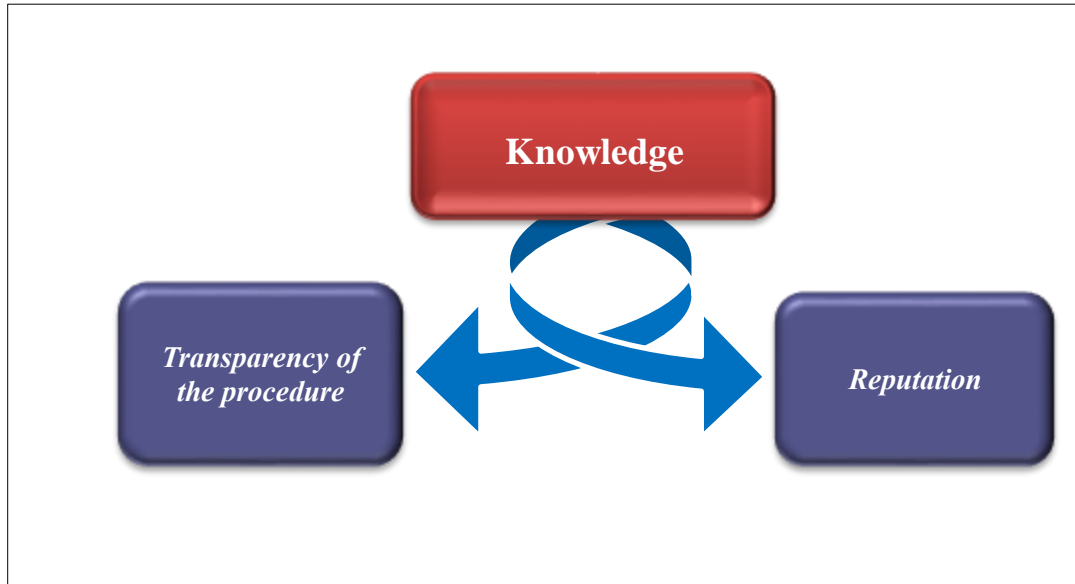
Figure 9.11   Knowledge Elements

9.4.2   Expectation of Fairness

Expectation of fairness is another criterion identified in this research which creates trust in ODR mechanisms. This element means that individuals in any ODR process expect some level of fairness that makes them trust the system, including informing them about their rights, providing them with correct and trustable data about the ODR process and enhancing trust in decision makers. In an ODR mechanism, an expectation of fairness is gained by:

- Confidentiality of personal data;

- Integrity and honesty of decision makers such as mediators;

- The existence of biographies and identifying images which establish parties' confidence and familiarity with each other and neutrals;

- Consistency of outcomes; and

- Simple and accessible redress procedures.

It might be questioned why the researcher in this thesis separated procedural transparency from the expectation of fairness criteria. The answer is that all of these factors follow one prominent objective which is to establish trust in ODR systems. However, transparency of the ODR process will enhance individual's knowledge about efficiency of ODR systems. Disputants expect to receive correct information about the process.

As mentioned in the procedural justice section of this chapter (section 9.3: conclusion for research question one), a belief in procedural fairness is based on an individual's established procedural expectations which could be damaged if the process is inconsistent. Therefore, it can be argued that procedural justice and trust are dependent on each other; if one of them deviates, the other will also be damaged.

The literature, including Landau (1977), mentions that individual expectations will shape trust in justice. Some researchers consider that what individuals expect from justice systems shapes their trust; for example, Rousseau et al. (1998) have defined trust as "confident expectations and a willingness to be vulnerable". In ODR, it has been argued by Cortes (2014) that individuals who resolved their dispute through ODR services have more trust in these systems, as they expect that if a dispute happens again it will be resolved in a consistent way. Also, Ong (2015) asserts that parties expect to enter into a simple and accessible process. Moreover, Raines (2006) emphasises the relationship that exists between parties' perceptions about fairness depending on their high level of confidence and familiarity with each other and trust in ODR. Figure 9.12 highlights the relationship of expectations of the fairness elements.
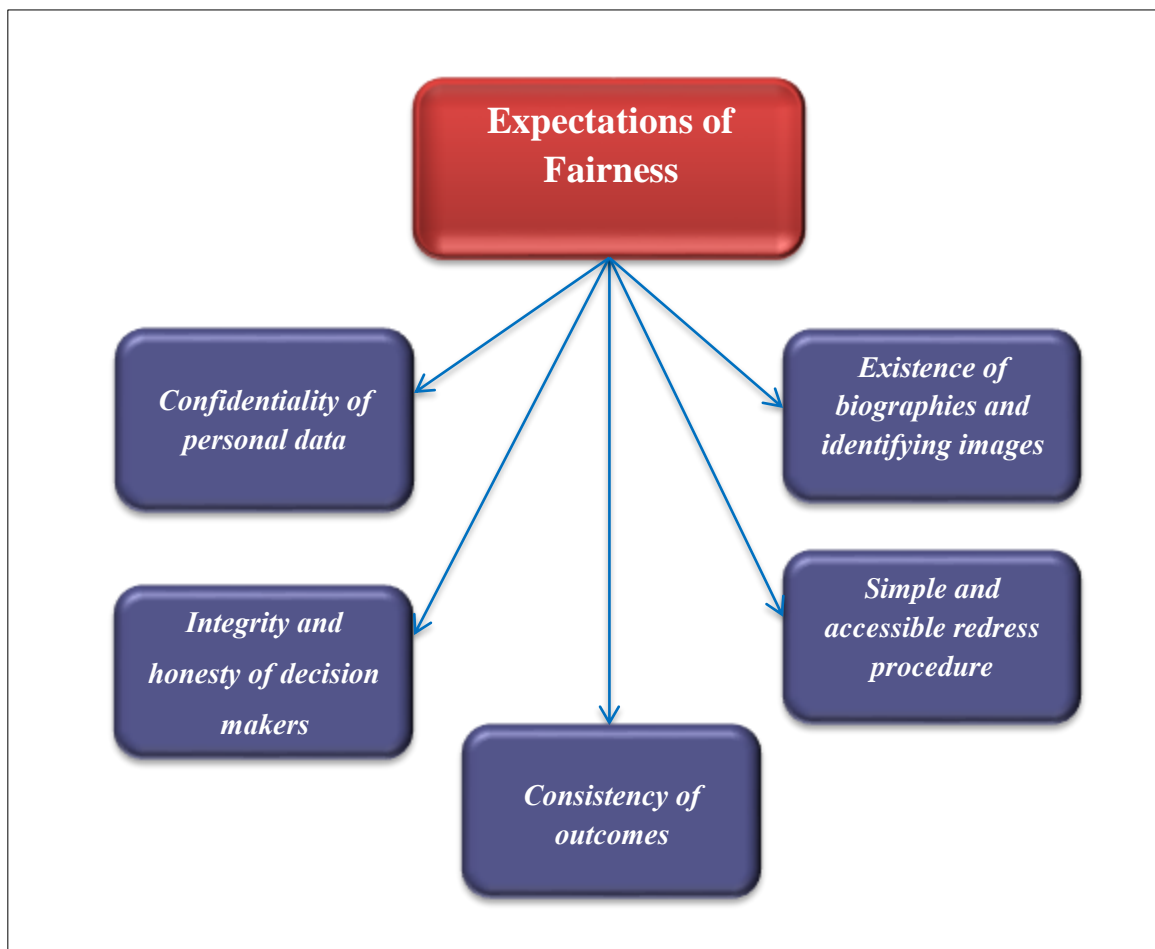
Figure 9.12   Expectations of Fairness Element

Consequently, an expectation of fairness is vital for an individual's expectations in creating trust. However, none of these researchers have mentioned expectations of fairness directly in this element as a necessary component to measure trust in ODR systems. ODR providers need to fulfill parties' expectations of fairness to have a trustable system.

9.4.3   Code of Ethics

The third significant element recognized in this research to measure trust in ODR systems is a code of ethics. The reason for the importance of a code of ethics in ODR systems is that its existence will help individuals feel confident and trust that the neutrals and decision makers are working professionally without any biased behaviour. Moreover, the existence of such elements not only enhances trust but also increases fairness in ODR systems. Therefore, a code of ethics in ODR systems includes an official certification for neutrals and decision makers to ensure their impartiality and professional competence. Figure 9.13 highlights the relationship of the code of ethics elements.
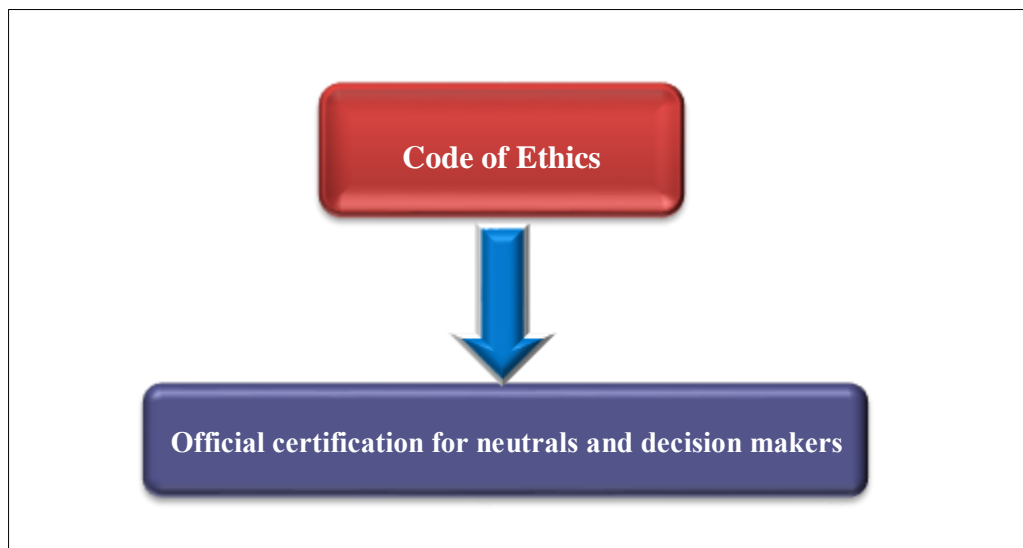
Figure 9.13   Code of Ethics Element

The existing literature in the ADR and ODR field, such as Cochran (1999), Kolb (1985), Deason (2005), Yiu and Lai (2009), Moore (2014), Blackstock (2001), Boulle, Colatrella and Picchioni (2008), Cheung and Yiu (2007), Chiles and McMackin (1996), Ross and LaCroix (1996)has considered significant aspects of a mediator's role is establishing trust in the procedure between disputants and themselves as a neutral. Moreover, Gislason (1998) argues that the existence of a code of ethics for neutrals' trustworthy behavior increases trust in ADR. Therefore, this research has recognized that the existence of a code of ethics in ODR mechanisms is necessary to create some level of trust for users.

9.5 CONCLUSION FOR RESEARCH QUESTION THREE

Research Q.3. What is Security in ODR and how can it be measured? How is it different from the relevant notions in traditional ADR?

The objective of this research question was to recognize the main factors and elements that define and measure security in ODR systems. One of the key concerns and sensitive issues people have in using online services is security. In ODR systems it is important to establish legal requirements and infrastructure to cover security matters of online platforms. If security is compromised the consumer will lose his/her faith in e-commerce. The interview and survey data presented in chapters 7 (Qualitative data collection) and 8 (Quantitative data collection) was used to answer the question. From the qualitative research findings, three themes for security issues in ODR emerged: information security, privacy, and authentication. The findings of the quantitative survey data show the importance of security in ODR systems (See chapter 8: quantitative data collection).

In addition, findings from the survey show that a high level of security in ODR systems (chapter 8: quantitative data collection, Section 8.3.2.10: importance of OCMS services, Part iii: confidentiality and security of OCMS) helps to increase the level of confidence for consumers (chapter 8: quantitative data collection, Section 8.3.2.10: importance of OCMS services, Part viii: Confidence) in using ODR systems and leads to a positive

attitude and feeling toward using ODR systems (Chapter 8: quantitative data collection, Section 8.3.2.10: importance of OCMS services, Part i: OCMS and feeling positive). Moreover, consumers claimed (See chapter 8: quantitative data collection, Section 8.3.3: recommendations and comments) one of their concerns with using ODR is safety of their personal information.

Consequently, after interpreting data from both qualitative and quantitative findings, this research recognized three elements of information security, privacy, and authentication as components of security for ODR systems, as illustrated in Figure 9.14.
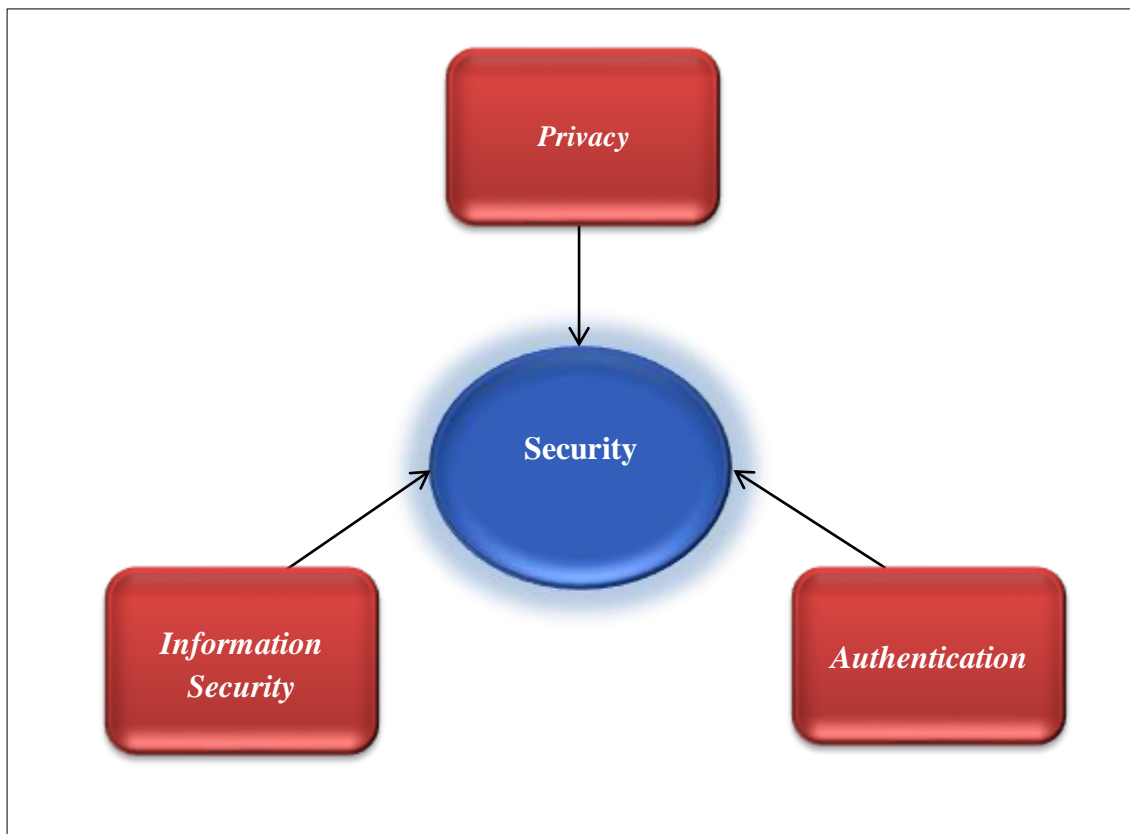
Figure 9.14   Security Elements in ODR

To conclude, it is important to measure security in ODR systems based on these three criteria. Each of these elements is discussed in the following sections.

9.5.1 Information Security

One of the main factors that need to be considered in ODR platforms is ensuring information is kept secure and confidential. In ODR systems, as with other network systems, there is a threat of unauthorized access to information or interception of data during transmission by an external hacker. These will lead to disclosure of information and loss of confidentiality. As communication in ODR is conducted through the internet and needs to have secure telecommunication links, there is a need to implement security measures for computers and web-servers. When individuals know that their information is protected in ODR systems, they will feel more confidence and trust in that system. Therefore, ODR systems should financially investigate and design information security plans through:

- Security guidelines created by professional data protection agencies

For example, security guidelines could include providing details of who can have access to data, how the data will be used, and the limitation to confidentiality procedures;

- Existence of an international security certificate for a platform; and

- Implementation of encryption methods which are defined as the process of encoding information or messages so that only the authorized parties can read it. This includes a private key (which means it must remain confidential to its respective owner) and a public key (which means it is made available to everyone via a publicly accessible repository or directory).

The importance of security measures (such as encryption methods) for confidentiality of information has been confirmed in e-commerce studies such as Mundra, Zanzari and Mundra (2014), Sengupta, Mazumdar and Barik (2005), Ngai and Wat (2002), Dumortier and Goemans (2004).

In ODR there is little literature focusing on information security. The significant role of confidentiality of information in dispute resolution systems such as ODR and its online communication tools has been mentioned by Kohler and Schultz (2004), Hornle (2009), Cortes (2010) and Schultz et al. (2002). Also, Wahab, Katsh and Rainey (2011) have noted the importance of information security in enhancing trust in technology used by ODR.
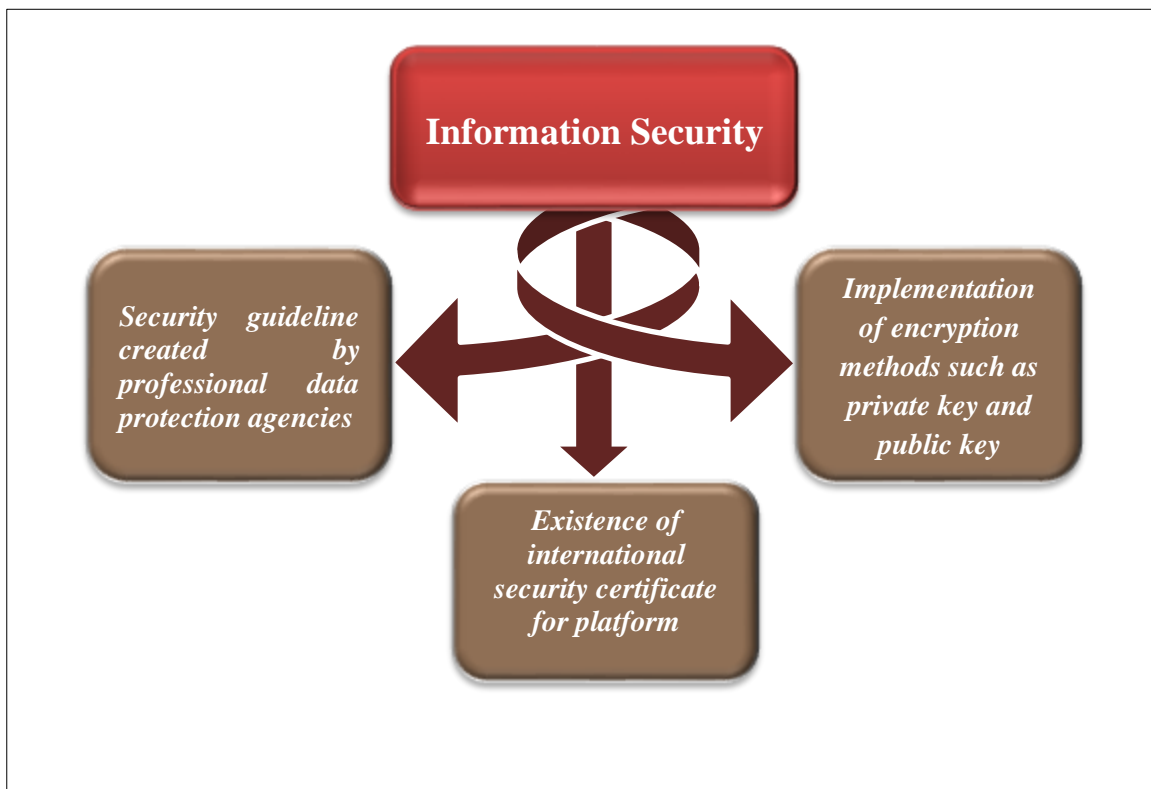
Figure 9.15   Information Security Element

9.5.2   Privacy

Another element that contributes to measuring and defining security in ODR is privacy. Although confidentiality is related to data protection, privacy concentrates on personal data protection. Security of information is about technology and privacy is personally based.

As mentioned earlier in this study, one of the main advantages of ODR is that everything is private. For ODR users it is important that all their personal information and case statements are private. However, in ODR systems personal information about users could be collected and disclosed without their permission.

On the other hand, in ODR it is necessary for some general procedures of ODR cases to be published as this gives parties a clearer expectation about the proceedings and possible outcomes and increases trust in ODR. Therefore, it is important for ODR providers to maintain a balance between privacy of information and transparency of the procedure. For example, ODR providers can publish cases by removing the identity of the users. To control privacy of personal information and credit card information of individuals, ODR providers should apply privacy security measures. These privacy measures for ODR systems include:

- Creating privacy ethical guidelines for systems, neutrals and decision makers that include laws and rules to restrict the publication of parties' personal data. Neutrals and decision makers should be obligated to keep all the information gained both during and after the process confidential;

- Publishing cases without identifying parties' details

For example, publicising only statistical information and anonymous case summaries that have the real name and facts of the cases removed; and

- Establishing a certified secure protected service for privacy statements

such as using a Secure Socket Layer (SSL) which is the secure communications protocol of choice for a large part of the internet community (Rights, 2001) and Secure Electronic Transactions (SET) that enable encryption of passwords and credit card information.

The importance of privacy and methods of ensuring privacy of information have been commented on by Bevan (1992), Ngai and Wat (2002), Cortes (2010), Cortes (2008), Sengupta, Mazumdar and Barik (2005), Hornle (2003), and Patrikios (2008). ODR

researchers such as Schultz et al. (2002) and Goldacre (2002) have described privacy of personal information which is in contrast to trasparency, could be done by publishing only the general procedure of ODR and removing details of the identity of the parties. The only exception of ODR providers publishing the results of the case with the details of the disputants, are those dispute resolution providers that work under the ICANN Uniform Domain-Name Dispute Resolution Policy (Patrikios 2008).

To conclude, it is important for users of ODR to keep all aspects of the proceedings private. It is also important to note that confidentiality and security of data will enhance users' trust of ODR systems. Figure 9.16 indicates the relationship of the privacy elements.
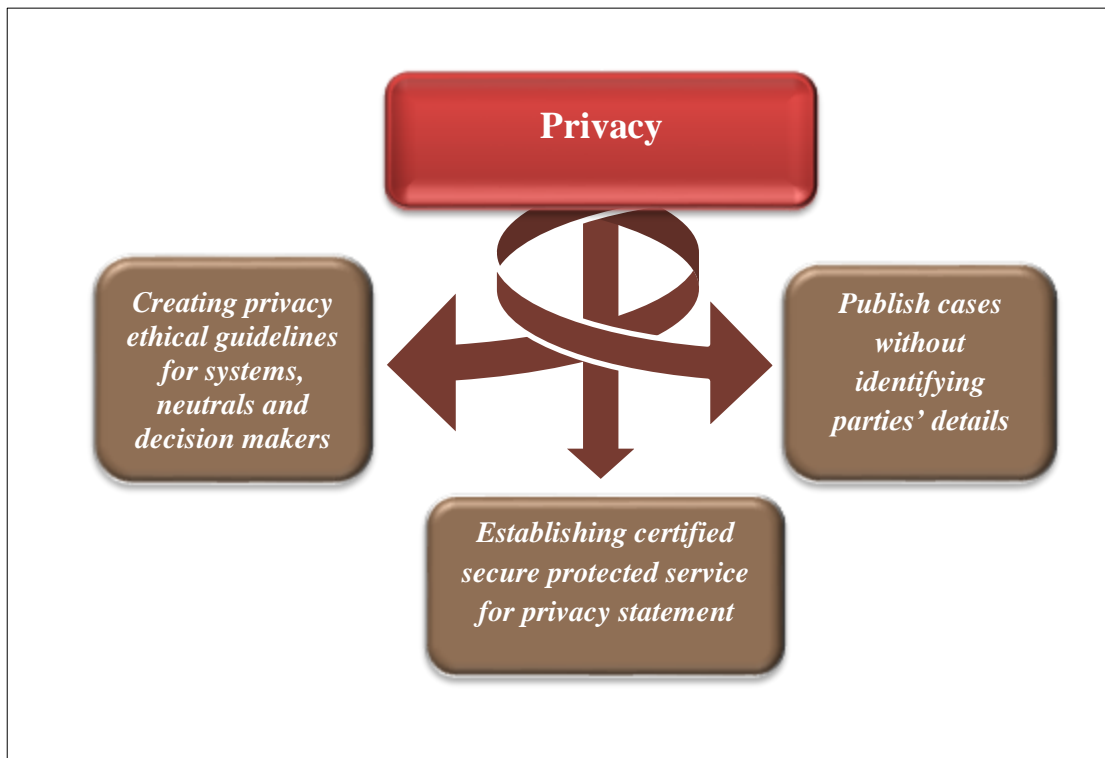
Figure 9.16   Privacy Element

9.5.3 Authentication

Authentication is a significant factor that measures the security aspect in ODR mechanisms. Authentication ensures that the parties in online transactions or communications are who they claim to be (Suh & Han 2003). As ODR is mostly based in the internet space, it is hard to verify the authenticity of messages and emails. Therefore, messages could be easily copied and sent by the person who appears to be the sender. In order to provide authentication in ODR systems, two different steps should be taken into consideration:

- Identity actions to authenticate the user of the device

Examples are: finger print recognition systems, recording key pressing speed of users, a facial capture system, identifying tracking ip addresses and the serial number of a user's processor, requesting a national identification number as a secure log in id, using digital signatures, and agreed procedures like confirming the receipt of an e-mail; and

- Platform administrator

A platform administrator includes controlling a website platform in ODR, and external and internal website security testing by official data protection agencies.

Figure 9.17 highlights the relationship of the authentication elements.
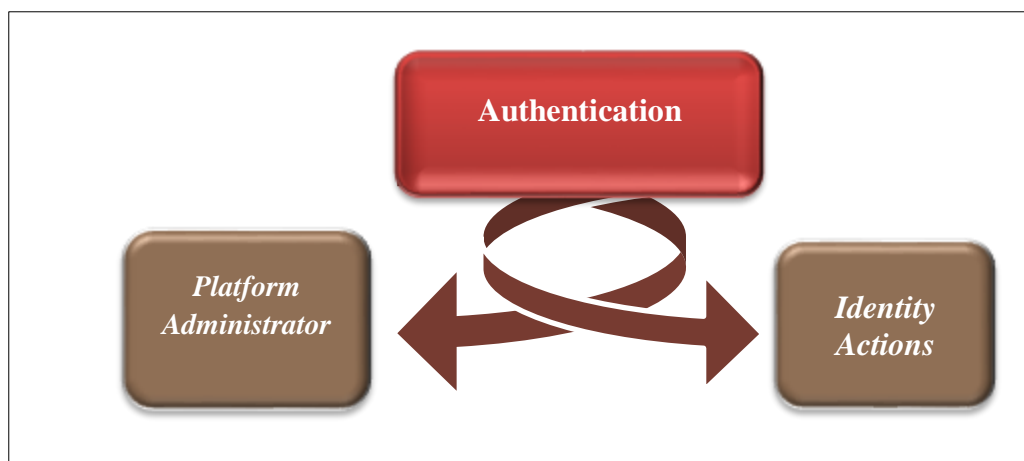
Figure 9.17   Authentication Element

Researchers such as Ghosh and Swaminatha (2001) and Shneiderman (2000) have argued there is a need for authentication to reduce platform risks and to preserve authenticity of users. Moreover, as in ADR, it has been mentioned by Lide (1996) that one of the identity actions that could be used is a digital signature as an encryption method to recognize authentication of the sender. In ODR the solutions for security have been examined by Pecnard (2004) and Schultz (2004), Suh and Han (2003), Bonnet et al. (2002), Ebner and Zeleznikow (2015), Sengupta, Mazumdar and Barik (2005) and Hornle (2003) who assert that digital safeguards and identity actions should be taken to provide authentication in ODR systems. However, this research has recognized authentication as one of the three elements that contributes to measuring security in ODR.

9. 6   RELATIONSHIP BETWEEN PROCEDURAL FAIRNESS, TRUST AND SECURITY IN ODR

One of the other purposes in this research, apart from studying the legal issues of procedural fairness, trust and security, was to investigate the possibility of a relationship between these issues. From both the findings of this research and the literature review, it has been established that fairness, trust and security are intertwined. ODR services that have a high degree of fairness are able to build stronger trust with users, and ultimately are more likely to be used (Bies & Moag 1986). Moreover, according to the findings in relation to the research questions discussed in this chapter, if an ODR system claims that it has a fair process it means it has trustable neutrals that operate within a code of ethics for neutrals. Therefore, disputants will make an agreement because they have faith that the neutrals are impartial (trust element).

If disputants find their information is not confidential and the other party has accessed their data (security element) this will weaken procedural fairness. Consequently, to establish procedural fairness, ODR providers should employ secure data protection systems. Overall, procedural fairness in ODR systems is affected by having trustable neutrals and a trustable website which is secure from any kind of security risk.

Trust in ODR systems cannot be gained if ODR services are not fair, and there is a lack of equal treatment for disputants or inconsistent procedures. Moreover, ODR users cannot trust the system if they are unsure of the security and privacy of their personal data in an ODR platform. Confidentiality of proceedings promotes trust. Therefore, to have a trustable ODR mechanism it is necessary to have a fair and a secure system.

Security could be compromised if neutrals are not impartial and misuse disputants' information, and if the system is not able to protect disputant's rights. Hang (2000) asserts that protecting trust and discussion processes will make the parties consider that the process is secure and will not be used against them. In addition, based on the findings of the research discussed in this chapter, if individuals cannot trust neutrals, even though security measures have been applied to the system, parties will still not feel that system is secure. Parties to the dispute should have equal security identity measures and equal protection for their privacy on the web.

Therefore, fairness, trust, and security are all inter-dependent; and improving one of these concepts in ODR systems leads to improvement of the other two concepts. Figure 9.18 below shows the relationship between the concepts of fairness, trust, and security in ODR systems.
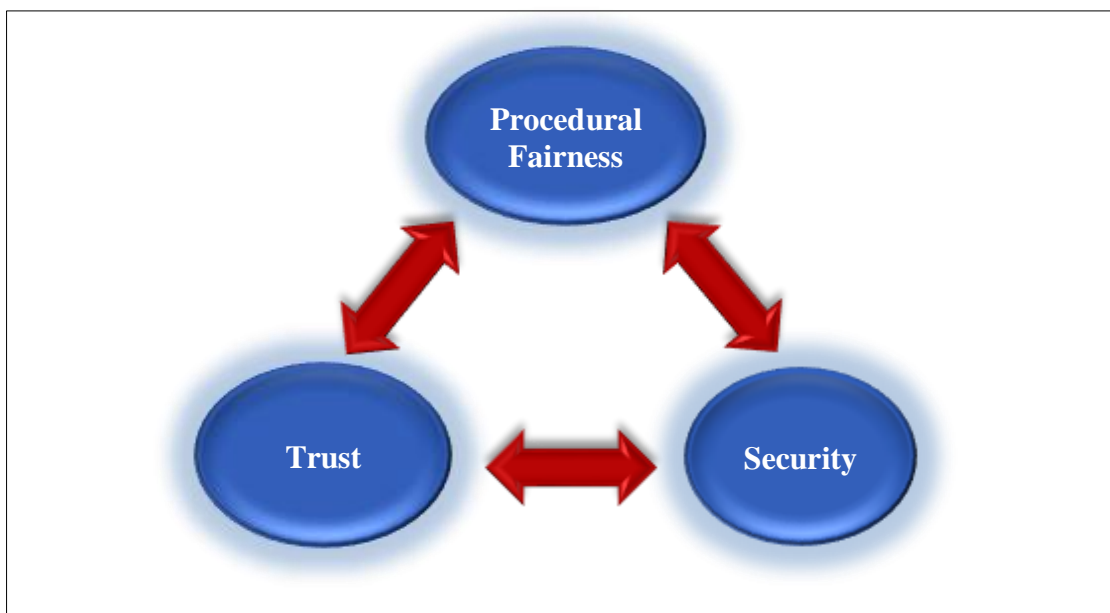
Figure 9.18   Correlations between Fairness, Trust and Security

9. 7   SUMMARY

This chapter presented the final analysis and findings of the study to answer the three research questions. These findings emerged from interpreting qualitative and quantitative data. The chapter reviewed the literature to justify the research findings and discuss whether or not there is a gap in the literature. The first research question explored the six elements for measuring and defining procedural fairness in ODR systems. These elements were: equal treatment, respect neutrality, consistency, trustworthiness, and the ethicality rule. The second research question identified the three elements of knowledge, expectations of fairness and a code of ethics for measuring and defining trust in ODR systems. In the third research question three elements - information security, privacy and authentication - were recognized for defining and measuring security in ODR systems. The chapter then established the close relationship between these three concepts of procedural fairness, trust and security. The next chapter is the final chapter of this thesis which is the conclusion and recommendations of this research.

CHAPTER TEN
IMPLICATIONS, RECOMMENDATIONS AND CONCLUSION

10.1   INTRODUCTION

The previous chapter illustrated and discussed the findings of this research. The aim of this exploratory mixed methods research was to conduct an empirical investigation to determine the elements that contribute to evaluating procedural justice, trust and security in ODR systems. The goal of this study was to establish universal standards for ODR providers. The chapter includes a summary of research findings, implications of the research, recommendations for future research, the limitations of the study and the conclusion which are illustrated in chapter outline in Figure 10.1 below.

10.1 Introduction	*10.2 Summary of Research Findings*	*10.3 Research Implications*
10.4 Recommendations for Future Research	*10.5 Limitations of the Study*	*10.6 Conclusion*
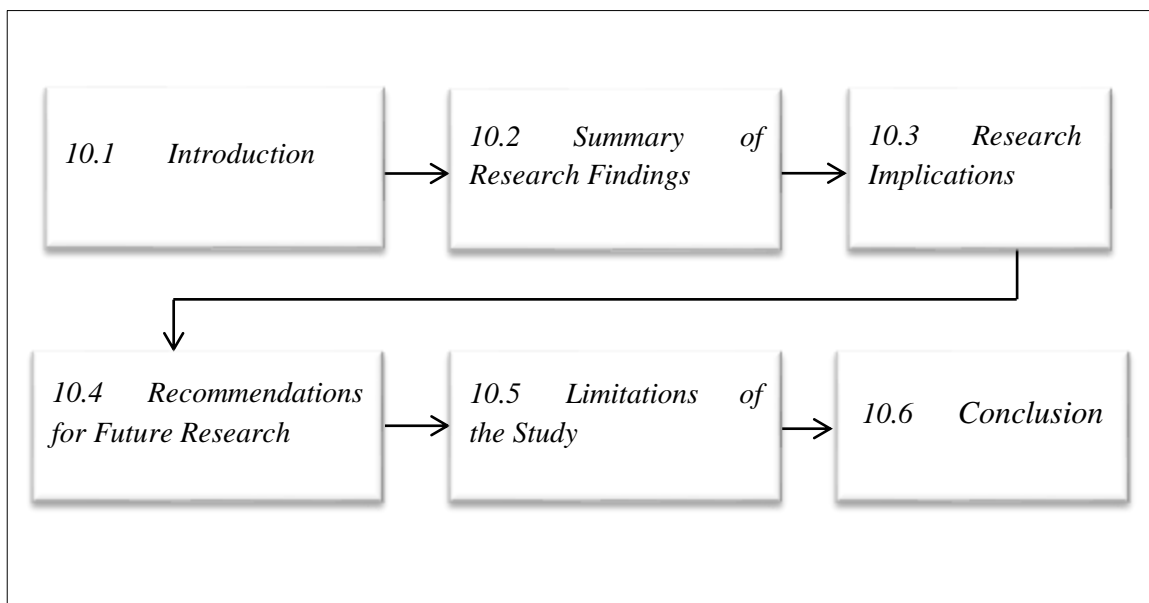
Figure 10.1   Chapter's Organisational Structure

10.2   SUMMARY OF RESEARCH FINDINGS

This research focused on the issues of fairness, trust and security to increase the effectiveness of ODR systems and to develop better online consumer protection. The

main question in this research was *"What is the definition and measurement for concepts of Fairness, Trust and Security in ODR systems?"*. Three subsidiary questions from this main question were:

Research Q.1. *What is Fairness in ODR and how can it be measured? How is it different from the relevant notions in traditional ADR?*

Research Q.2. *What is Trust in ODR and how can it be measured? How is it different from the relevant notions in traditional ADR?*

Research Q.3. *What is Security in ODR and how can it be measured? How is it different from the relevant notions in traditional ADR?*

To answer these research questions, this research found that an exploratory sequential mixed methods study (See chapter 6: Research design and methodology) would be best suited. This method included three phases:

1) *The qualitative phase (phenomenological research)*: data was collected from face-to-face interviews with six ODR providers who were asked about their lived experiences and perceptions of fairness, trust and security in ODR systems (See chapter 7: qualitative data collection);

2) *The quantitative phase*: The aim of this phase was to further explain the qualitative results. So, an online survey was designed based on the qualitative findings. Data was collected from with 108 consumers who had experienced problems when shopping for goods and service online (See chapter 8: quantitative data collection); and

3) *Interpretation of qualitative and quantitative findings*: in this phase both qualitative and quantitative results were interpreted and compared with previous studies, and final findings to answer the research questions of this research (See chapter 9: findings and discussion) were drawn.

All phases were used in answering three research questions of this research. The summaries of the research process and findings in relation to the research question are represented graphically in Figure 10.2 below.
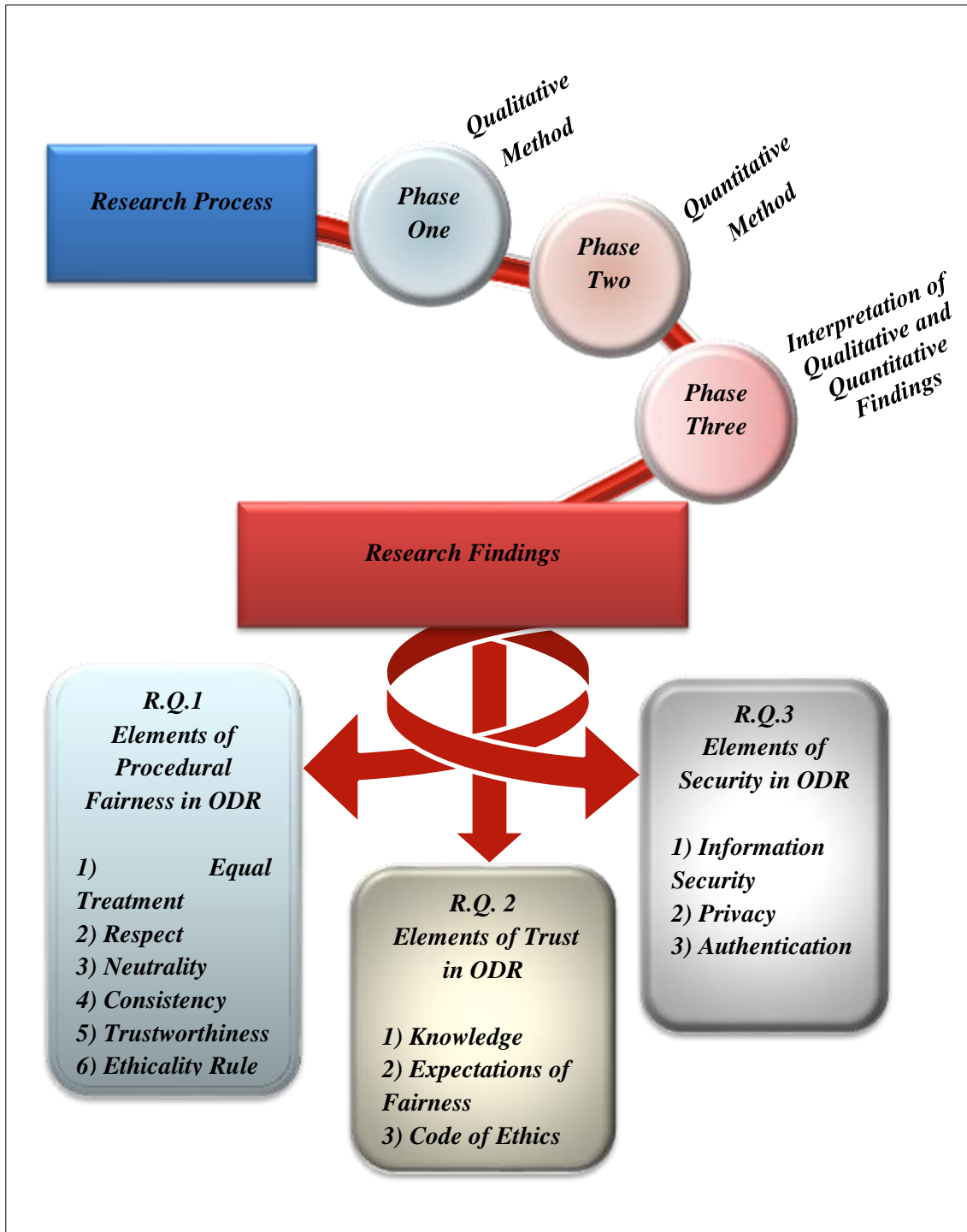
Figure 10.2   Overview of the Research Process and Research Findings

In this section, the summary of findings for the three research questions will be presented.

Research Q.1. *What is Fairness in ODR and how can it be measured? How is it different from the relevant notions in traditional ADR?*

Although there are several types of fairness (See chapter 5: legal issues of fairness, trust and security in Online Dispute Resolution) this research question aimed to focus on procedural fairness which concentrates on reasonable procedures used by decision makers when making a decision. As discussed in the literature, (See chapter 5: legal issues of fairness, trust and security in online dispute resolution) people who take their case to legal systems are more concerned about the fairness of the procedure than the expected outcome. Therefore, for any dispute resolution mechanism including ODR the existence of clear standards for procedural fairness which shapes strategies and expectations is necessary. Based on finding of this research, there are six elements, which define procedural fairness in ODR systems. These are: 1) equal treatment, 2) respect, 3) neutrality, 4) trustworthiness, 5) consistency, and 6) ethicality rule.

1) Equal Treatment: Decision makers and neutrals in ODR systems should ensure equal treatment of all individuals. This element includes two parts: a) providing equal opportunity for disputing parties to be heard and present their cases; b) minimizing the power imbalance of disputing parties due to different technological skills.

2) Respect: Decision makers and neutrals in ODR systems should behave respectfully to the parties. This will enhance an individual's satisfaction about procedural fairness. This element of respect involves: a) providing an opportunity for disputing parties to have control over the process and their outcomes, b) dignity and equitable treatment for disputing parties regardless of the value of their purchase or their social status, and c) the proceedings should not be delayed without a reasonable cause.

3) Neutrality: It is important that decision makers and neutrals in ODR systems are unbiased in their behaviour, especially as ODR is based online and there is lack of face-to-face communication, which can create challenges for individuals to trust neutrals.

This element in ODR systems can be provided by: a) neutrals and decision makers being impartial and independent, and b) the existence of training courses and special qualifications for online neutrals and decision makers. An example is training mediators or arbitrators who have offline experience with online tools to teach them how they can work in an online environment without any biased behaviour.

4) Trustworthiness: In ODR, users will follow the procedure if they feel the developers are fair and trustable. This element in ODR systems can be established by: a) evaluator systems for neutrals' and decision maker's practices, and b) a panel of neutrals and decision makers.

5) Consistency: ODR systems should have consistent procedures as this shapes individuals' expectations about procedural fairness. Parties enter into ODR systems based on the information they have collected about the process. During the ODR procedure individuals will evaluate the system based on their expectations. To establish the consistency rule in ODR systems, two requirements need to be considered: a) existence of procedural guidelines; for example' how the process works, this guideline could be adopted from well-established ADR systems; and b) the existence of consistent and predictable outcomes (this also leads to trust).

6) Ethicality Rule: The procedure in ODR systems should be compatible with moral values of individuals and ethical standards. The ethicality element in ODR systems means there is a need for ethical standards for ODR systems procedures. The existence of such a framework will help parties to feel their rights are protected and be more willing to accept the ODR outcomes.

> **Research Q.2.** *What is Trust in ODR and how can it be measured? How is it different from the relevant notions in traditional ADR?*

Building trust is a great challenge in ODR compared to other dispute resolution mechanisms. Because ODR systems are based in online space and there is a lack of face-to-face communication this can pose an obstacle to informed trust for parties. Consequently, it is important to find how ODR systems define and measure trust that will enhance their users' confidence.

This research identified three elements to define and measure trust in ODR systems: 1) knowledge 2) expectations of fairness, and 3) code of ethics.

1) Knowledge: If individuals have adequate information and knowledge that ODR systems can be trusted, they will have more confidence to use the systems. Knowledge about ODR systems for individuals could be provided by: a) reputation and endorsement by official bodies and b) transparency of the procedure.

2) Expectations of Fairness: This element includes the principle that individuals in ODR processes expect some levels of fairness which helps them to trust ODR systems. In ODR systems this element could be gained by: a) confidentiality of personal data, b) integrity and honesty of neutrals, c) the existence of biographies and identifying images which establish parties' confidence and familiarity with each other and neutrals, d) consistency of outcomes, and e) simple and accessible redress procedures.

3) Code of Ethics: This is another significant component for measuring trust in ODR systems as it helps individuals to feel confident that neutrals and decision makers are professional and do not behave in a biased manner. This element in ODR systems includes an official certification of neutrals and decision makers to ensure their impartiality and reinforce their professional competence.

> **Research Q.3.** *What is Security in ODR and how can it be measured? How is it different from the relevant notions in traditional ADR?*

Technology and the online nature of ODR have highlighted the significance of security issues in these systems. The information in ODR, as in other network systems, could be accessed by unauthorized parties. This would lead to loss of confidentiality and privacy of data in ODR systems. Consequently, it is important for ODR providers to consider measures to ensure security of their system.

To find answers to the third research question, the results of interviews and survey data together with the literature were analysed (See chapter nine: findings and discussion, Section 9.5: conclusion for research question three). This data identified three elements

to measure procedural security in ODR systems. These three elements are: 1) information security, 2) privacy, and 3) authentication.

1) Information Security: It is important in ODR systems to protect information and keep it confidential. Because communication in ODR is mainly online, secure telecommunication tools and measures need to be implemented. Information security will also lead to trust for users because they know their information will be kept confidential. ODR systems could provide information security through: a) security guidelines created by professional data protection agencies, b) the existence of an international security certificate for the platform, and c) implementation of encryption methods.

2) Privacy: privacy is another element that contributes to evaluating and measuring security in ODR systems. Privacy is about the protection of personal data while security of information is about technology and is system based. For individuals in ODR it is important that their personal and case-related information is kept private. Privacy measures that ODR providers should apply to their systems include creating ethical privacy guidelines for their system, neutrals and decision makers that encompass laws and rules which restrict the publication of parties' personal data.

Neutrals and decision makers should ensure: a) that all the information gained both during and after the process will be kept confidential, b) that cases will be published without identifying details of the parties in the dispute; and c) establishing certified secure protected service for privacy statements.

3) Authentication: The element of authentication is significant in measuring security in ODR systems. Using authentication ensure parties in online transactions or communications are who they claim to be. Authentication of ODR systems could be provided by: a) identity actions to authenticate the user of the device, and b) a platform administrator.

10.3   RESEARCH IMPLICATIONS

The findings of this research have several implications for further understanding of ODR systems. These practical and methodological implications are discussed in the following sub-sections.

10.3.1   Practical Implications

The findings of this research have practical implications for four groups: ODR providers, E-commerce companies, regulators and consumer organizations. These implications are discussed in the sections below (A to D).

A)   *ODR Providers*

This research has identified different dimensions and effects of procedural fairness, trust and security on the efficiency of ODR systems. The results of this study showed that it is necessary to implement new online dispute resolution schemes that cover the issues of procedural fairness, trust and security. Based on the results presented in this thesis these three concepts are intertwined and therefore ODR providers cannot focus on only one of these concepts. These elements can be implemented by ODR providers in a new dispute resolution framework which is internationally accepted. One of the advantages of this framework is that it encompasses the attitudes of both ODR providers and consumers and therefore meets as many of their needs and interests of as possible. The existence of such an ODR framework will produce trust for users as they will see that all ODR providers are consistent in achieving a fair outcome because they all follow certain laws and rules.

The successful adoption of this framework depends on several factors. ODR providers should aim to design and develop their programs based on these consistent standards. Decision makers and neutrals need to be trained and regularly evaluated to examine their performance based on the system's established rules and principles (See chapter 9: findings and discussion).

Therefore, sufficient preparation is necessary to implement a new internationally accepted dispute resolution framework that would be compulsory for all ODR providers. This framework includes:

i. Measuring and defining procedural fairness of ODR systems based on the six elements of: 1) equal treatment, 2) respect, 3) neutrality, 4) consistency, 5) trustworthiness, and 6) the ethicality rule. (See chapter 9: findings and discussion; section 9.3: conclusion for research question one);

ii. Measuring and defining trust in ODR systems based on the three elements of: 1) knowledge, 2) expectations of fairness and 3) a code of ethics. (See chapter 9: findings and discussion; part 9.4: conclusion for research question two);

iii. Measuring security of ODR platforms based on the three elements of: 1) information security, 2) privacy and 3) authentication. (See chapter 9: findings and discussion; section 9.5: conclusion for research question three);

iv. Clear and simple provisions for users including ODR procedures (See chapter 9: findings and discussion; section 9.4: conclusion for research question two); and

v. The existence of an experienced ethics committee to issue annual reports on ODR practice (See chapter 9: findings and discussion; section 9.3.6: ethicality rule).

The adoption of these universal standards will remove the uncertainty of multiple laws and rules for ODR providers and should enhance consumer confidence when shopping online.

B)   *E-commerce Companies*

E-commerce companies should work closely with ODR providers to implement efficient online resolution systems that will promote the online market. When consumers consider they are protected in their online transactions (See chapter 8: quantitative data collection) their communication, whether it is negative or positive with e-commerce holders, will be enhanced. This provides great advantages for e-commerce providers. Moreover, according to the results of the online survey (See chapter 8: quantitative data collection) consumers do not have adequate knowledge about availability of online redress mechanisms and their legal rights which creates obstacles to building a relationship with online traders. As discussed by Cortes (2015b), it is necessary to create a provision for an effective dispute resolution mechanism which will boost competition between e-commerce companies and lead to e-economic growth. Therefore, the implications of this research for e-commerce companies are: providing information about the availability of ODR services/providers on their website (See chapter 9: findings and discussion, Section 9.4.1: knowledge) and applying security tools (confidentiality of information) (See chapter 9: findings and discussion, Section 9.5.1: information security) to create trust and security for consumers.

C)   *Policy Makers and Regulators*

It is necessary for governments and regulators to recognize and support ODR providers to maximise the effectiveness of ODR systems and provide equal access for consumers in relation to their e-commerce transaction claims, regardless of their value. According to the literature review discussed in Chapter five of this thesis, although the European Commission has implemented a Regulation on consumer ODR (Negi 2015), this legislation does not cover how to measure fairness, trust and security in ODR systems. Moreover, in the US there is lack of any ODR regulation, which has resulted in a variety of practices by ODR providers and less consumer protection (See chapter 5: legal issues of fairness, trust and security in online dispute resolution, Section 5.11: EU and US approach toward online dispute resolution).

The findings of this research have implications for EU and US regulators who should adopt the elements identified in this research for measuring procedural fairness, trust and security of ODR systems to create consistency of outcomes for ODR mechanism. In addition, to enforce ODR systems outcomes and protect consumer rights, legal enforcement authorities should have access to the ODR platforms (See chapter 5: legal issues of fairness, trust and security in online dispute resolution, Section 5.11: EU and US approach toward online dispute resolution).

D) *Consumer Organizations*

The concept of consumer protection online is very important. The implications of the findings of this research on consumer organizations are that consumers trust consumer organizations to protect their rights (See chapter 8: quantitative data collection, Section 8.3.2.2: consumer protection by an independent consumer organization), It is their duty to provide consumers with adequate information and knowledge about their legal rights when purchasing online and about the existence of online redress mechanisms' namely ODR systems (See chapter 8: quantitative data collection, Section 8.3.3.1: recommendations on OCMS efficiency).

Therefore, as discussed, the findings of this research have implications for four groups: ODR providers, e-commerce companies, regulators and consumer organizations.

10.3.2 Methodological Implications

This research adopted a mixed-methods explanatory approach in which quantitative findings from surveys supported qualitative findings from face-to-face interviews. This has provided for first time a new approach in the ODR field. No similar research has been conducted and so this research has significant implications for future researchers in the ODR field.

This research strengthened its findings with a qualitative investigation. Although conducting qualitative face-to-face interviews about ODR was difficult because ODR providers are located all over the world, a carefully well planned discussion though a

face-to-face interview could help researchers to better understand how ODR systems work and how to increase ODR effectiveness. Face-to-face interviews with ODR providers guided the researcher into significant themes and findings that were supported by survey data collected from consumers who experienced online purchasing disputes. This method established a new way of measuring not only legal issues in ODR but also could be used to measure cross cultural issues and other aspects of ODR systems.

10.4   RECOMMENDATIONS FOR FUTURE RESEARCH

The recommendations for future research are presented in this part, based on findings and implications discussed above. These recommendations are as follows:

- Additional research is needed to further investigate other possible legal issues such as jurisdiction and enforcement of outcomes that might arise and effect ODR systems.

- Future research is needed to identify and measure what are the cross-cultural issues such as language barriers and different time zones and that affect ODR systems.

- Additional research is needed to determine how e-commerce companies deal with and view the three concepts of fairness, trust and security for ODR systems.

- Further research is needed to find out how governments deal with any disputes against ODR providers.

- Additional research is needed to measure how countries could be encouraged to join and invest in a union for controlling and enforcing ODR systems globally.

- Further research could be undertaken on how we can ensure that resources to provide the public with advice and information about ODR effectively increase participation in ODR.

- Future research is needed to determine the impact of social media activities on the development of ODR systems.

- Additional research is needed to find out under which conditions EU and USA would establish these standards as a framework for their ODR providers.

- It would also be beneficial to conduct research that considers fairness, trust and security for public ODR systems, as this research focused on private ODR systems.

In summary, the researcher recommended possible areas to be studied and actions for future development of ODR systems and consumer protection online.

10. 5 LIMITATIONS OF THE STUDY

This research included several limitations. The sample size in the second phase of this study impacted on the generalizability of the quantitative findings. The total of the 108 respondents in this study do not represent the whole population of global consumers who purchase online.

A further limitation of this study was the inability of the researcher to conduct face-to-face interviews with e-commerce companies as only one company replied to the interview invitation. Although this research has been able to make significant findings, a major limitation for this study was the inability to fully explore the e-commerce companies' attitudes about fairness, trust and security in ODR systems. This should be considered the focus for future studies.

Another limitation of this research was that because ODR users are from all over the world, cross cultural issues might have been considered as this research collected data from international students who came from different backgrounds. Therefore, the effects of culture on consumer's attitude toward fairness, trust and security of ODR would be important to consider and it is recommended for future studies. Moreover, as this research identifies measurement of three concepts of fairness, trust and security in ODR, due to limited time the researcher was not able to propose these standards to ODR providers and examine the results of using these measurements in their systems. The goal of this this quantitative survey was not to find new knowledge but confirm the findings found in the qualitative stage.

10.6 CONCLUSION

The researcher set out to answer the research questions raised in this thesis. In doing so, an exploratory, sequential mixed methods approach was adopted. The main research question in this thesis was *"What is the definition and measurement for concepts of Fairness, Trust and Security in ODR systems"*. Three subsidiary questions were raised from this main question. The qualitative phase of this research included face-to-face interviews with six ODR providers about their life experiences and attitudes to the research phenomena (fairness, trust and security in ODR systems.). Data collected and analysed from the qualitative phase helped to develop the online survey, completed by 108 consumers about their views on ODR systems. In the final phase of this research, after analysing and interpreting data from both groups, research questions were answered based on the interests of both groups.

Research question RQ 1 asked, *"What is Fairness in ODR and how can it be measured? How is it different from the relevant notions in traditional ADR?"*. The research resulted in six elements being identified to measure procedural fairness in ODR systems:

      a. Equal treatment

      b. Respect

      c. Neutrality

      d. Trustworthiness

      e. Consistency

      f. Ethicality rule

Research question RQ 2 asked, "Research Q.2. *What is Trust in ODR and how can it be measured? How is it different from the relevant notions in traditional ADR?"*. The research resulted in three elements to measure trust in ODR systems:

      a. Knowledge

      b. Expectations of fairness

      c. Code of ethics

Research question RQ 3 asked, "*What is Security in ODR and how can it be measured? How is it different from the relevant notions in traditional ADR?*". The research resulted in three elements to measure security in ODR systems:

      a. Information security

      b. Privacy

      c. Authentication

This research by investigating these key elements to measure fairness, trust and security in ODR systems has added to the growing body of international literature and has filled an important gap in the literature in the ODR field. Moreover, this research identified the relationship between these three issues and the impact they have on each other.

In terms of the impact of the thesis findings, with the absence of a universal guideline for ODR systems, this research provides a universal framework and standards for any existing ODR system. This framework would ensure consistency of ODR systems practice, provide greater fairness for its users, and also enhances consumer protection.

This means from a practical perspective the results of this research improve the effective implementation of ODR systems for B2C e-disputes. Moreover, the results will benefit e-commerce companies by increasing the number of consumers who purchase goods and services online, as they will have confidence that if a dispute happens there is a fair, trustable, secure and efficient dispute resolution available online to resolve their dispute. In addition, if the EU and the US adopt and establish this framework this will ensure a consistent and universal approach for any ODR system.

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APPENDICES

Appendix A: Semi-structured Interview Questions

VICTORIA UNIVERSITY
MELBOURNE AUSTRALIA

PARTICIPANTS' INTERVIEW QUESTION SHEET

Thank you very much for being willing to speak with me today. In this interview, I will be asking you a series of questions and with your consent, this interview will be audio taped. Everything you say will be treated privately and confidentially.

RESEARCH QUESTION 1.   WHAT DO YOU THINK ABOUT THE CONCEPT OF FAIRNESS AND PROCEDURAL FAIRNESS FROM AN ODR PROVIDER PERSPECTIVE?

Q1. What do you think about the concept of fairness and procedural fairness from an ODR provider perspective?

    a) As a dispute resolution providers do you have the requirements of the procedural fairness including hearing appropriate to the circumstances, lack of bias, evidence to support a decision; and inquiry into matters in dispute?
    b) What are current standards to ensure fair process in ODR?
    c) How do you implement such process?

Q2. How does procedural fairness apply to a decision maker?

    a) How do you make sure and apparent that any third party who is involved in the process is unbiased?

RESEARCH QUESTION 2.   WHAT DO YOU THINK ABOUT THE CONCEPT OF TRUST IN ODR SYSTEMS?

Q3. What do you think about the concept of Trust in ODR systems?

    a) Do think that ODR could play the role of a trust provider or facilitator for improving e-commerce? If yes, how?

Q4. From your experience, how do you provide information about your system to the users (public) that they can trust your system is an effective dispute resolution system?

    a) In the absence of the usual physical environment in e-commerce and ODR, how do you create architecture of Trust for ODR users to trust each other or neutral?

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RESEARCH QUESTION 3.   FROM YOUR EXPERIENCE HOW DO YOU DEFINE SECURITY AND HOW IMPORTANT DO YOU THINK IT IS IN ODR SYSTEMS?

Q5. From your experience how do you define security and how important do you think it is in ODR systems?

Q6. In your experience as an ODR providers, how do you make your system secure?

a) Information security: How do you protect parties' information from being shared by others as a result of human activity? (For example mediator should keep a process confidential)
b) Data security: how do protect communication channels, the software the server and any hardware used for ODR secure?
c) How do you protect users from actual harm (physical is less or emotional such as video conferencing

Q7. In your experience, do you think that ODR is same as ADR or its different?

Q8. Do think these three issues of fairness, security, and trust are related? Do they all have same impact?

Q9. What do you think about government regulation for ODR providers?

Are there any other issues or areas on which you would like to comment? If so, we would welcome your views.

We thank you for your participation,

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Appendix B: Consent Form for Participants Involved in Research (Interview)

VICTORIA UNIVERSITY
MELBOURNE AUSTRALIA

CONSENT FORM FOR PARTICIPANTS INVOLVED IN RESEARCH

INFORMATION TO PARTICIPANTS:

We would like to invite you to be a part of a study into: Universal Standards for the Concepts of Fairness, Trust and Security in Online Dispute Resolution in B2C E-disputes.

My research aims to understand the legal issues of fairness, trust and security associated with users of online dispute resolution (ODR) to increase the efficiency of ODR and consumer protection in electronic commerce. You have been approached because you fit these criteria, you are more than 18 and less than 70, you are physically capable to participate. We would appreciate if you can help shed light on your experiences with ODR as a disputant or a provider which will help us to learn about how ODR is being used, pros and cons of ODR, what are the suggested solutions for these issues

CERTIFICATION BY SUBJECT

I _____(participant's name)

Of_____(participant's village/location)

Certify that I am at least 18 years old and that I am voluntarily giving my consent to participate in the study: Universal Standards for the Concepts of Fairness, Trust and Security in Online Dispute Resolution in B2C E-disputes being conducted at Victoria University by: Professor. John Zeleznikow, Dr. Christopher Brien and Ms. Fahimeh Abedi

I certify that the objectives of the study, together with any risks and safeguards associated with the procedures listed hereunder to be carried out in the research, have been fully explained to me by: Ms. Fahimeh Abedi and that I freely consent to participation involving the below mentioned procedures:

- Interview

I certify that I have had the opportunity to have any questions answered and that I understand that I can withdraw from this study at any time and that this withdrawal will not jeopardise me in any way.

I have been informed that the information I provide will be kept confidential.

Signed: _____

Date: _____

Any queries about your participation in this project may be directed to the researcher: "Professor. John Zeleznikow", email: John.Zeleznikow@vu.edu.au, contact number: +61 432154217
If you have any queries or complaints about the way you have been treated, you may contact the Ethics Secretary, Victoria University Human Research Ethics Committee, Office for Research, Victoria University, PO Box 14428, Melbourne, VIC, 8001, email Researchethics@vu.edu.au or phone (03) 9919 4781 or 4461

V.1/2013   1 of 1

Appendix C: Consumer Respondents' Online Survey (Qualtrics)

The resolution of consumer disputes via the Internet

We would like your help to improve efficiency of resolving disputes which happens when buying goods and services online.

By answering these questions you will be helping us to provide online dispute resolution services that are appropriate for maximising consumer protection online.

All answers all confidential and you will not be able to be identified from the information you provide.

Your participation is entirely voluntary. I freely consent to participate in the below survey:

- ○ Yes
- ○ No

Please indicate your gender.

- ○ Male
- ○ Female
- ○ Prefer not to say

Please indicate your age range.

- ○ Less than 18
- ○ 18 - 24
- ○ 25 - 34
- ○ 35 - 44
- ○ 45 - 54
- ○ 55 - 64
- ○ 65 and over
- ○ Prefer not to say

What is your highest level of education?

- ○ Did not complete high school
- ○ Completed high school
- ○ TAFE or Trade certificate or Diploma
- ○ Started University but did not complete
- ○ Completed an Undergraduate degree
- ○ Completed a Post graduate degree
- ○ Other

Have you ever shopped online and experienced a problem ?

- ○ Yes
- ○ No

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Have you experienced any of the following problems when buying from online retailers ? (you may tick more than one)

☐ Item was received late.

☐ Item was faulty.

☐ Item was not as described on the website.

☐ Non-delivery (item never arrived).

☐ Problems with payment.

☐ My card details were stolen.

☐ The trader did not give me adequate information about the total cost.

☐ I wanted to buy something but the website would not accept my order as I was based in another country.

☐ The website was difficult to use because it did not offer information in my language.

☐ Other (please specify)

     [_____]

Related to online disputes, do you agree or disagree with each of the following statements.

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree
You trust independent consumer organisations to protect your rights as a consumer.	○	○	○	○	○
You trust public authorities to protect your rights as a consumer.	○	○	○	○	○
Retailers\ providers respect your rights as a consumer.	○	○	○	○	○
It is easy to settle disputes with retailers\providers through an out of court bodies such as arbitration, mediation or conciliation .	○	○	○	○	○
It is easy to settle disputes with retailers\ providers through the courts.	○	○	○	○	○

Who have you complained to after experiencing a problem when buying products and services from online retailers ? (Please select your priority)

☐ Directly to the online retailer\provider.

☐ To the manufacturer of the product.

☐ To a public authority.

☐ Another consumer organisation in my own country.

☐ An independent out-of-court dispute resolution scheme such as an ombudsman, arbitration, mediation or conciliation body.

☐ I've never made a complaint.

☐ Other (please specify)

     [_____]

If you were unhappy with an online transaction , why did you NOT take action? (Please select your priority)

☐ You were unlikely to get a satisfactory solution to the problem you encountered.

☐ The amounts involved were too small.

☐ You did not know how or where to complain.

☐ You were not sure of your rights as a consumer.

☐ You thought dispute resolution would take too long.

☐ You tried to complain but it was unsuccessful in the past.

☐ Other (please specify)

     [_____]

How quickly was the dispute resolved?

○ Within a day

○ Between 1-7 days

○ More than a week

○ More than a Month

○ The problem still exists

When consumers buy goods and services online, disputes can arise, and as it is difficult to take the case to court, there are online ways of resolving disputes; for example, consumers and businesses send emails to resolve disputes (online negotiation) or they may agree to have an expert as a neutral to help them resolve the dispute (by video conferencing, emailing, etc). These ways of resolving disputes online are called Online Complaint Management System (OCMS).

For each of the statements below, please select the response that best expresses the importance of Online Complaint Management System (OCMS) to you.

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	Not Applicable
I feel positive about using Online Complaint Management System (OCMS).	○	○	○	○	○	○
At the beginning it was difficult for me to trust Online Complaint Management System (OCMS) as a dissatisfied consumer.	○	○	○	○	○	○
I feel Online Complaint Management System (OCMS) is confidential and secure to use.	○	○	○	○	○	○
It is not easy to trust Online Complaint Management System (OCMS) process.	○	○	○	○	○	○
I was satisfied with outcomes.	○	○	○	○	○	○
The neutrals (third parties) are fair.	○	○	○	○	○	○
I believe Online Complaint Management System (OCMS) is a fair mechanism.	○	○	○	○	○	○
Online Complaint Management System (OCMS) increases consumer confidence.	○	○	○	○	○	○
I feel Online Complaint Management System (OCMS) is based more on businesses interest.	○	○	○	○	○	○
I find it easier to resolve my dispute online rather than using offline mechanisms such as court or other alternative methods.	○	○	○	○	○	○
Cost of Online Complaint Management System (OCMS) is reasonable.	○	○	○	○	○	○
Online Complaint Management System (OCMS) suggests better options for resolving disputes.	○	○	○	○	○	○

Who do you think should provide the Online Complaint Management System (OCMS) :

☐ Retailer

☐ Professional bodies

☐ Government

☐ Other (please specify)

[   ]

How satisfied are you with your Online Complaint Management System (OCMS) experience?

Completely dissatisfied										Completely satisfied
0	1	2	3	4	5	6	7	8	9	10
○	○	○	○	○	○	○	○	○	○	○

What other attributes do you consider important for increasing Online Complaint Management System (OCMS) effectiveness, please state here:

Other comments about your experience?

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Appendix D: Ethics Approval

Quest Ethics Notification - Application Process Finalised - Application Approved

quest.noreply@vu.edu.au

Mon 8/12/2014 11:38 AM

Inbox

To: john.zeleznikow@vu.edu.au <john.zeleznikow@vu.edu.au>;

Cc: Fahimeh Abedi <fahimeh.abedi@live.vu.edu.au>; Chris.Brien@vu.edu.au <Chris.Brien@vu.edu.au>;

Dear PROF JOHN ZELEZNIKOW,

Your ethics application has been formally reviewed and finalised.

» Application ID: HRE14-263
» Chief Investigator: PROF JOHN ZELEZNIKOW
» Other Investigators: MS Fahimeh Abedi, DR CHRISTOPHER BRIEN
» Application Title: Universal Standards for the Concepts of Fairness, Trust and Security in Online Dispute Resolution in B2C E-disputes (A comparative study between Europe and US)
» Form Version: 13-07

The application has been accepted and deemed to meet the requirements of the National Health and Medical Research Council (NHMRC) 'National Statement on Ethical Conduct in Human Research (2007)' by the Victoria University Human Research Ethics Committee. Approval has been granted for two (2) years from the approval date; 08/12/2014.

Continued approval of this research project by the Victoria University Human Research Ethics Committee (VUHREC) is conditional upon the provision of a report within 12 months of the above approval date or upon the completion of the project (if earlier). A report proforma may be downloaded from the Office for Research website at: http://research.vu.edu.au/hrec.php.

Please note that the Human Research Ethics Committee must be informed of the following: any changes to the approved research protocol, project timelines, any serious events or adverse and/or unforeseen events that may affect continued ethical acceptability of the project. In these unlikely events, researchers must immediately cease all data collection until the Committee has approved the changes. Researchers are also reminded of the need to notify the approving HREC of changes to personnel in research projects via a request for a minor amendment. It should also be noted that it is the Chief Investigators' responsibility to ensure the research project is conducted in line with the recommendations outlined in the National Health and Medical Research Council (NHMRC) 'National Statement on Ethical Conduct in Human Research (2007).'

On behalf of the Committee, I wish you all the best for the conduct of the project.

Secretary, Human Research Ethics Committee
Phone: 9919 4781 or 9919 4461
Email: researchethics@vu.edu.au

This is an automated email from an unattended email address. Do not reply to this address.

Appendix E: Information to Participants Involved in Research

INFORMATION TO PARTICIPANTS INVOLVED IN RESEARCH

You are invited to participate

You are invited to participate in a research project entitled 'Universal Standards for the Concepts of Fairness, Trust and Security in Online Dispute Resolution in B2C E-disputes'

This project is being conducted by a student researcher **Fahimeh Abedi** as part of a **PhD study** at Victoria University under the supervision of **Professor John Zeleznikow** from **College of Business**.

Consumers buying online goods and services should be protected as if they are buying offline, to ensure consumer confidence and trust in electronic commerce. From the last decade, there has been a felt need for a proper dispute resolution in electronic commerce. The combination of electronic commerce and Alternative Dispute Resolution (ADR), has turned Online Dispute Resolution (ODR) into an efficient mechanism for resolving consumer electronic commerce disputes by taking advantage of the internet using online communication methods. However, there are different national and international legal frameworks on ODR. Also, there is not any universal agreement toward the concepts of fairness (procedural), trust, security in ODR. Given uncertainty over ODR outcomes and in the absence of recognized global practice results in ODR systems having a complex and problematic nature, is unable to gender trust. This is a mix methods qualitative and quantitative research, which will use primary data such as interviews and questionaries to conduct thesis with the aim of introducing a universal standard for the concepts of fairness, trust and security in ODR.

What will I be asked to do?

Regarding to your role as an ODR provider, businesses presenter and consumer there would be three different processes as below:

ODR provider -If you are a ODR provider it will require you to participate in a face to face interview , that would be take around three hours of your time. You will be asked about your experiences of using ODR.

Businesses presenter- If you are a business participant, you will be required to participate in a face-to-face interview or Skype interview that would be long last one hour. You will be asked about your experiences of using ODR.

Consumer- If you are a consumer, online questionaries is provided to be answered within half an hour. You will be asked about your experiences of using ODR.

What will I gain from participating?

It is anticipated that such study will benefit three groups of participants including consumers, businesses, and ODR providers. It is important to note that there may be no benefits for individual participants. However, publication of the results of this study will be helpful for these groups more

broadly in the future. The potential benefits are: First of all this study would maximise consumer protection in online transactions with introducing a proper dispute resolution mechanism. Secondly, global framework for ODR would bring more certainty and growth for industries and businesses in the context of electronic commerce. Finally, after the suggested principles for ODR providers are implemented, providers of online dispute resolution would be able to increase the efficiency of their ODR mechanism.

How will this project be conducted?

This study involves mixed-method quantitative and mainly qualitative research by using a phenomenological methodology for gathering and analysis the data. This project is concerned with the experiences of online dispute resolution users and providers. The main method for data collection is doing interviews. For this objective questionnaire will be developed for each category of interviewees. The first group will be five ODR providers and experts, doing semi-structured in-depth, long (one hours) face-to-face interview. The second groups of participants are 10 Businesses such as eBay, Amazon, Qantas, will be interviewed face to face or by Skype. The third groups are around 100 consumers that are asked to answer online questioner, addressing issues raised in-group one and two.

Who is conducting the study?

- **This research is a PhD research project in Business. Ethic approval is a requirement of the Doctor of Philosophy degree in Business and indeed all research of Victoria University.**
- **This research is being supervised by Professor John Zeleznikow (John.Zeleznikow@vu.edu.au)**
- **This research is being undertaken by Fahimeh Abedi (Fahimeh.abedi@live.vu.edu.au)**

Appendix F: An Introductory Email as an Invitation to Participate in Interview

INVITATION TO PARTICIPATE IN INTERVIEW (EMAIL)

Dear _____,

I am a PhD student of Prof. John Zeleznikow working on the concepts of fairness, trust, and security in ODR. I believe this research has the potential of confidentiality significantly towards a healthy public opinion and confidence in ODR practices and may highlight important route for efficiency in ODR services.

Please find a one-page summary of the project as attached.

As important of this research rest on structured interview of ODR providers. I will be glad have you to participate in this interview.

I expect to attend ODR conference (New York, June 3-5) and ICAIL Conference (San Diego, June 8-12) and would like to schedule interviews around these conferences. Would that be possible?

Locking forward to hearing from you.

Yours sincerely,

Fahimeh

Appendix G: Summary of the Research for Participants Involved in Research (Interview)

VICTORIA UNIVERSITY
MELBOURNE AUSTRALIA

Fahimeh Abedi
Email: fahimeh.abedi@live.vu.edu.au
Date: 06/02/2015

ONE-PAGE SUMMARY OF THE PROJECT

Topic: Proposed Standards for the Concepts of Fairness, Trust and Security in Online Dispute Resolution in Business to Commerce E-disputes

Dear _____ ,

To ensure consumer confidence and trust in electronic commerce, consumers purchasing online goods and services should be protected in a similar manner as if they were conducting the transaction offline. The combination of electronic commerce and Alternative Dispute Resolution (ADR) has resulted in the development of Online Dispute Resolution (ODR) an efficient mechanism for resolving consumer electronic commerce disputes by taking advantage of online communication methods.

There are different national and international legal frameworks for the development of ODR. At the moment, there is no universal agreement about the concepts of fairness, trust, security in ODR although issues have been widely discussed in the field of ADR. Given uncertainty over ODR outcomes and in the absence of recognized global practice results in ODR systems, such systems are unable to engender trust by users. Hence we believe it is vital to develop a set of protocols, or at the very least standards, so that Ecommerce users have faith in the fairness, security and trust of ODR systems.

To develop such protocols, we propose the development of a research study that uses mixed methods of both qualitative and quantitative research. We will use interviews and questionnaires involving ODR developers, ODR users and consumers, to conduct research with the aim of developing standards for the concepts of fairness, trust and security in ODR.

As the vital information gathering first step, we would like to hold face-to-face interviews (one hour) with ODR developers. Through such interviews we want to clarify the issues and develop standards and processes that we can discuss with ODR users and consumers. We hope you or someone in your company would be willing to engage in one of these detailed face-to-face interviews.

Yours sincerely,

Fahimeh Abedi

LLB, LLM, PhD student of John Zeleznikow and Chris Brien
College of Business, Victoria University
256 Queen Street, Melbourne, Victoria, AUSTRALIA
Email: fahimeh.abedi@live.vu.edu.au
Mobile: 61.478160575

Appendix H: An Introductory Email as an Invitation to Participate in Online Survey (Qualtrics)

consumer experiences with buying goods or services online

consumer experiences with buying goods or services online

Fahimeh Abedi <noreply@qemailserver.com>

Fri 1/07/2016 3:53 PM

To:

You are invited to participate in a research project with the aim of protecting consumers with buying goods or services online from online traders and resolving online disputes to establish principles for a fair, trustable and secure online dispute resolution system.

We are conducting a follow-up survey of all consumers with online buying experiences. Your response to this survey is crucial and will benefit you by **maximising consumer protection online.**

The survey is very brief and will only take about 5 minutes to complete.

Please click the link below to go to the survey Web site. It is expected we receive your response within 10 days after receiving this email.

Follow this link to the Survey:
Take the Survey

Or copy and paste the URL below into your internet browser:
https://vuau.qualtrics.com/SE?SID=SV_eVb1tBaxj65eCep&Q_CHL=preview&Preview=Survey

Follow the link to opt out of future emails:
Click here to unsubscribe

Your response and time is greatly appreciated. Thank you!

Sincerely,

Fahimeh Abedi