

Customer Codes of Practice for handling complaints and resolving disputes

**Guidelines for public electronic communication
service providers seeking Ofcom approval**

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Section 1

Summary

1. Section 52 of the Communications Act 2003 ('the Act') places a duty on Ofcom to set general conditions to ensure that communications providers establish and maintain procedures to, amongst other things, handle complaints and resolve disputes between them and their domestic and small business customers.
2. General Condition 14 is the relevant condition for complaint handling and dispute resolution (see http://www.ofcom.org.uk/telecoms/ioi/g_a_regime/gce/cvogc.pdf) Under General Condition 14.1 the communications provider must produce a basic code of practice for domestic and small business customers, which sets out clear and up to date information on standard terms and conditions, including prices and tariffs, for access to and use of a publicly available telephone services ('PATS'), as detailed in General Condition 10.2. This information must include details of the procedures for bringing an unresolved complaint to an alternative dispute resolution scheme (the 'Complaints Code of Practice').
3. The Complaints Code of Practice must be approved by Ofcom. These Guidelines are designed to help communications providers produce a Code which Ofcom will be able to approve. To facilitate the process, Ofcom will produce an electronic template which allows providers to submit codes for approval via email. Providers may use this template if they wish.

http://www.ofcom.org.uk/telecoms/ioi/g_a_regime/gce/newccodes/template.rtf
4. The Complaints Code of Practice must be written in plain English. It must be easy to understand and easily accessible to customers. It must be provided free of charge. The Code should be published on the provider's publicly accessible website where available.
5. Under General Condition 14.7 the provider is obliged to implement and comply with a dispute resolution scheme ('ADR'). If a provider is not a member of an approved ADR scheme, Ofcom will not approve its complaints code of practice.
6. There are penalties for non-compliance with General Condition 14. Under Section 96 of the Act, Ofcom may impose a penalty of up to ten per cent of turnover for failure to comply with a formal notification within the time period specified.
7. If you wish to comment on any aspect of these Guidelines, please write to feedbackcop@ofcom.org.uk.

Section 2

Who should provide a Complaints Code of Practice?

- 2.1 The obligation to provide a Complaints Code of Practice (the 'Code') for domestic and small business customers falls under the General Condition of Entitlement (GC) 14.4 and (GC) 14.7 (Codes of Practice and Dispute Resolution) as set out in sections 52 to 55 of the Communications Act 2003 (the Act).
- 2.2 The objective of GC 14 is to ensure that customers of electronic communication services have adequate information and protection regarding the services they purchase.
- 2.3 In order to determine whether General Condition 14 applies, communications providers should consider:
- Do you offer a public electronic communications service (PECS)?
 - If so, is the service offered to individuals or to small businesses (generally ten employees/volunteers/contractors or less)?

If you can answer yes to both these questions, then it is most likely that you are required to adhere to GC 14.4 and GC 14.7. This means that you are required to provide an alternate dispute resolution service (ADR) and a complaints code of practice for your domestic and small business customers.

- 2.4 Examples of a public electronic communications service would include voice telephony, data, internet, PAMR (Public Access Mobile Radio), CBS (Common Base Station) etc that are available to members of the public. Typically it would exclude private networks and services run on private networks, and other bespoke services which are not offered to the general public.
- 2.5 Some providers of new voice services, such as Voice over IP (VoIP) will be electronic communications service providers (ECS) whereas others may not. For example, customers downloading software and contacting other customers for free would not be an ECS as no service is being provided (and no money is being exchanged). However where a customer can use a VoIP service to call ordinary telephones (and pay to make these calls) this would be an ECS because a service is being provided, breaking calls out onto the PSTN and receiving payment for this service. The type of equipment being used is irrelevant. The deciding factor is whether the provider is providing a service or whether the consumer is managing the communication itself.
- 2.5 However it remains the responsibility of the provider (seeking legal independent advice if they so choose) to decide whether they are a provider of electronic communications services.

Section 3

What the Complaints Code of Practice should contain

- 3.1 Ofcom wishes to ensure that customers are able to identify and compare the basic terms and conditions of service, including complaints handling processes, offered by communications providers.
- 3.2 The Complaints Codes of Practice should provide, as a minimum, the following information:
- Company name and major office address.
 - A description of the service(s) offered.
 - Details of the services covered by any subscription or rental charge.
 - Details of standard tariffs, including any standard discounts or special/targeted tariff schemes, to cover access, usage and maintenance.
 - Company policy on compensation and refunds with specific details of any compensation/refund schemes offered.
 - Details of any maintenance service provided.
 - Details of standard contract conditions, including whether any minimal contract periods apply.
 - Details of the company procedures for resolving disputes and recourse to alternative dispute resolution mechanisms.

or make clear where the customer may find this information, as required under General Condition 14.1 in relation to the requirement under General Condition 10.2

http://www.ofcom.org.uk/telecoms/ioi/g_a_regime/gce/cvogc.pdf].

- 3.3 The Code of Practice for complaints must give details of how complaints received from domestic and small business customers will be handled. In addition customers must be made aware of the procedures for bringing an unresolved complaint to an independent alternative dispute resolution scheme. In practical terms, this means providers should be members of an Ofcom-approved dispute resolution scheme and be prepared to comply with any final decision of that scheme. Unless Ofcom is satisfied that a provider is a member of such a scheme, it will not approve the Code of Practice.

Branding issues

- 3.4 If a communications provider has more than one customer-facing brand/company name, the Code must refer clearly to all brands/names

recognised by the customer. If there is no difference between different services offered under different brand names, Ofcom may approve a single draft Code. This could then be branded differently when published or published referring to all the relevant brands.

Section 4

Making the Complaints Code of Practice accessible to customers

Ensuring customers are aware of the Code

- 4.1 In order for codes of practice to be meaningful, customers must be aware of their existence. Providers must find appropriate ways to do this as well as ensuring that customers are kept up to date with any changes made to the Code. All complaints Codes of Practice must be published and copies sent to customers on request. The Code should be published on the company website if there is one. If the company does not have a website then copies of the Complaints Code of Practice should be available for inspection at every major office.
- 4.2 It is essential that customers are made fully aware of the company procedures for handling complaints, particularly their right to refer an unresolved complaint to alternative dispute resolution once a deadlock letter has been issued and/or a period of twelve weeks has elapsed since the initial complaint was made.

Making sure customers can understand the Complaints Code of Practice

- 4.3 The Code must be easy to understand. The use of plain English is essential. Legal terminology or scientific jargon should be avoided. Clear, short sentences in well produced documents are best.
- 4.4 Providers may wish to seek certification of their Code by the Plain Language Commission or the Clear English Campaign.

Making sure the Code complies with the Disability Discrimination Act

- 4.5 Part III of the Disability Discrimination Act 1995 is based on the principle that disabled people should not be discriminated against by service providers or those involved in the disposal or management of premises. Subject to limited exceptions, all companies must therefore take reasonable steps to change any practice, policy or procedure that makes it impossible or unreasonably difficult for disabled persons to make use of their services. Providers should take these issues into account when preparing and publishing codes of practice. Further guidance can be found in the Disability Rights Commission publication: *Rights of Access: services to the public, public authority functions, private clubs and premises*.
http://www.drc.org.uk/library/publications/services_and_transport/code_of_practice_rights_of_ac.aspx

Section 5

Reviewing the Complaints Code of Practice and monitoring compliance

Process for gaining Ofcom approval of the Code

- 5.1 Ofcom will assess and approve Complaints Codes of Practice based on these guidelines. In order to assist providers to meet the criteria Ofcom has produced a draft template http://www.ofcom.org.uk/telecoms/ioi/g_a_regime/gce/ccodes/cop.rtf . The completed template may be submitted to Ofcom electronically for review and approval. All Complaints Codes of Practice should be sent to complaintcop@ofcom.org.uk.
- 5.2 Once the Code has been approved the provider's name will be listed on the Ofcom website, with a link to the published Code on the provider's website where applicable.
- 5.3 Ofcom will only approve Codes when it is satisfied that the provider is a member of an Ofcom approved alternative dispute resolution scheme. The two schemes which have Ofcom approval are:

Otelo
PO Box 730
Warrington
WA4 6WU

Telephone 0845 050 1614
or 01925 430 049

E-mail enquiries@otelo.org.uk

Web site www.otelo.org.uk

CISAS
c/o Dispute Resolution Services
The Chartered Institute of Arbitrators
12 Bloomsbury Square
London
WC1A 2LP

Telephone 020 7421 7432

E-mail cisas@drs-ciarb.com

Web site <http://www.arbitrators.org>

Process for reviewing and updating the Complaints Codes of Practice

- 5.4 Ofcom has a statutory duty to keep under review the Codes it has approved. Ofcom has the right to approve modifications made to a Code or to withdraw its approval.
- 5.5 Communications providers should therefore ensure that any changes to their business or services provided that may impact on their Code are reflected in the Code to ensure that they are consistent, accurate and up-to-date. When submitting a code to Ofcom for approval, providers should describe the processes they have in place to ensure this happens. For example, providers may wish to review Codes on a regular basis, or keep a log of changes that have been made.
- 5.6 Ofcom would not automatically transfer approval from one company/service to another. The provider must be satisfied that the code remains up to date and should notify both Ofcom and the alternative dispute resolution provider of any changes.

Penalties for non-compliance

- 5.7 If Ofcom has reason to believe that a provider may be contravening a general condition, Ofcom may issue a formal notification notice under section 94 of the Act, requiring the provider to comply. Under Section 96 of the Act, Ofcom may impose a penalty of up to ten per cent of turnover for failure to comply with the notification within the time scale specified.

Comments on these Guidelines

- 5.8 If you wish to comment on any aspect of these Guidelines, please write to feedbackcop@ofcom.org.uk.

Section 6

Definitions and Glossary of terms

Communications provider: a person who provides an electronic communications network or provides an electronic communications service.

Domestic and small business customer: when used in relation to a public communications provider means a customer of that provider who is neither:

- (a) himself a communications provider; nor
- (b) a person who is such a customer in respect of an undertaking carried on by him for which more than ten individuals work (whether as an employee or volunteers or otherwise)

Electronic communication: means a communication for transmission by means of an electronic communications network.

Electronic communications network: means –

- (a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of Signals of any description; and
- (b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the Signals –

- (i) apparatus comprised in the system;
- (ii) apparatus used for the switching or routing of the Signals; and
- (iii) software and stored data.

Electronic communications service: any service consisting in, or having as its principle feature, the conveyance by means of an electronic communications network of signals, except in so far as it is a content service.

Major office: means a Communications Provider's registered office and such other of its offices as the Director may from time to time direct.

Publicly Available Telephone Service: means a service available to the public for originating and receiving national and international calls and access to emergency organisations through a number or numbers in a national or international telephone numbering plan, and in addition may include one or more of the following services: the provision of operator assisted services, Directory Enquiry facilities, Directories, provision of Public Pay Telephones, provision of service under special terms, provision of special facilities for End Users with disabilities or with special social needs and/or the provision of non-geographic services.

Public Pay Telephone: a telephone available to the general public for the use of which the means of payment may include coins and/or credit/debit cards and/or pre-payment cards, including cards for use with dialling codes.

Public Electronic Communications Service: means any Electronic Communications Service that is provided so as to be available for use by members of the public.