

Review of Alternative Dispute Resolution schemes

BT Group response to Ofcom's Call for
Inputs



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1. Introduction and summary

This is a combined response from BT (Business and Consumer), EE and PlusNet (collectively referred to as BT Group). BT Group welcomes this opportunity to respond to Ofcom's Call for Inputs on Alternative Dispute Resolution (ADR) Schemes (Review).

BT and EE are members of Ombudsman Services: Communications (OS) and PlusNet are members of the Communications and Internet Services Adjudication Scheme (CISAS). Until recently, EE were members of CISAS. BT Group has a detailed understanding and working knowledge of both ADR schemes. The views expressed by BT Group apply to both schemes unless otherwise specified.

BT Group welcomes Ofcom's review of the ADR schemes to ensure that all individual consumers especially those who are vulnerable or have a disability can easily access independent, fair, efficient, effective assistance and support when they have a complaint with their Communications Providers (CPs). It is important for both BT Group, and its customers, that the ADR providers are transparent and robust in their approach in reviewing and managing those complaints and are accountable for their decision making processes.

BT and EE have established a collaborative working relationship with OS to ensure that consumers who use the ADR scheme have a good experience and to improve processes where necessary.

Plusnet has also established a collaborative working relationship with CISAS and hold quarterly reviews. Plusnet and CISAS perform case collaboration, reviewing cases and understanding why decisions were made. This allows Plusnet to improve its customer experience and gain a greater understanding of what drives customer complaints.

We believe further improvements could be made to improve the performance and accessibility of the schemes and the quality of their adjudications. We believe improvements can be made in the following areas, and have included further details below:

- Accessibility can be improved by publishing the scheme rules prominently and transparently on the ADR schemes' websites;
- Independence of the schemes can be further strengthened by ensuring that Ofcom provides clear guidance to the schemes about the interpretation of its policy positions;
- Fairness can be improved by relevant training of the ADR schemes' advisors and by the schemes ensuring consistency in treatment of cases.

Additionally we ask Ofcom to:

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- Provide insight on how the targets for the schemes are set,
 - Ensure the targets are in line with industry standards;
 - Clarify what metrics it intends to use to assess the effectiveness of the schemes
 - Consider widening the market of Telecommunication ADR providers

Whilst we welcome Ofcom publishing accurate and relevant data about different aspects of industry, including ADR information, we must stress the importance of accuracy and comparability of this information. We urge Ofcom to take into account the relevant context, and not draw conclusions based on a small set of isolated metrics.

BT Group would be happy to discuss our response further with Ofcom. We would also be interested to understand the findings and any specific issues identified from the responses and suggest an Ofcom industry meeting, with other CPs. This may be a useful way CPs could assist Ofcom further with its review of the ADR providers.

2. BT Group's assessment of the criteria

Accessibility

BT Group considers that consumer's access to the current ADR providers is generally good but could be improved. We suggest access to the ADR scheme rules should be improved to ensure that consumers have a greater understanding of the types of matters covered by the ADR provider and the scheme rules which apply. This may improve consumers' understanding of the remit of the ADR providers and would be particularly helpful to consumers with disabilities and those in vulnerable circumstances.

For example, CISAS Rules are easily accessible within their website and consist of two documents, being the CISAS Rules which should be read in conjunction with the CISAS Customer Guidance. Our view is the OS Rules are not as clearly signposted on their website. The OS scheme rules are referred to as Terms of Reference documents within the Governance section of the OS website. It may not be immediately obvious or apparent to a consumer that these documents are the OS scheme rules or which ones apply to their particular complaint in the communications sector.

Whilst remaining impartial and independent, we see the OS approach to assist consumers in completing the application form beneficial and would be of great assistance to consumers unable to carry this out themselves. Such assistance helps give the consumer clarity on the rules of the scheme and whilst remaining impartial helps to set consumer expectations regarding the likely outcome of the claim. In contrast, consumers who use the CISAS scheme complete their form unaided by CISAS. Consumers who may have a disability or unable to complete the form themselves would benefit from some similar assistance from CISAS. More generally, we note Ofcom's focus on vulnerable customers, and we expect Ofcom to require the ADR schemes, to meet the same requirements as CPs, where relevant.

We work closely with our ADR providers to ensure the schemes are administered correctly and they provide an effective alternative to court proceedings. As noted in the Ofcom ADR review in 2012, OS and CISAS have different approaches to dispute resolution. Our view is that such differences add value to the respective schemes and should not be discouraged. However we need to ensure there is parity in the way that customers and CPs are treated. Such differences need to be aligned with GC14, offer consumers equal protection and ensure that the ADR providers remain incentivised to constantly review and improve standards. This is beneficial to both consumers and CPs.

We would like to see a wider choice of telecommunication ADR providers and urge Ofcom to review the number of ADR providers approved as part of the Alternative Dispute Resolution for Consumer Disputes Regulations

2015 (ADR Regulations). Competition in the market is beneficial; it helps to improve ADR standards as well as giving CPs a wider choice of provider. Extending the number of ADR providers should only be done on the condition that potential providers meet all the relevant criteria and that there are no discrepancies in the way customers are treated between the different providers.

Independence

CPs pay the fees for each case and are bound by the decision should the consumer accept. It is therefore of extreme importance to BT Group that the ADR providers remain impartial.

Where Ofcom has policies which can be interpreted in different ways, they should provide guidance on how the policy should be interpreted. This would help to avoid differences between schemes which could result in a different treatment of customers according to the scheme their provider belongs to. This is undesirable and could lead to confusion amongst consumers and result in regulatory uncertainty.

Fairness

OS and CISAS have different approaches to dispute resolution, how they deal with cases and how the schemes operate. BT Group acknowledges and welcomes that there will always be differences, not only because of the nature of the schemes, but fundamentally that the decisions will be made on the merits of the individual circumstances of the particular case.

CISAS provides both the consumer and the CP with all documents submitted in the case. In contrast, OS collates the information from both parties and shares an extract and overview of the case along with any supporting material which they deem relevant to each party. In BT Groups view all ADR providers should share all the information provided by the consumer in support of their application at the outset so that the CP can understand the full extent of the consumer's claim. For example we have seen OS provide a summary of a case together with a recommendation for agreement. Following BT's agreement to the recommendation OS changed the decision stating the consumer had provided further evidence, giving BT no opportunity to review the new evidence.

The CISAS adjudicators who make the decisions are, in the main, legally trained. In contrast, OS cases are assessed initially by ADR representatives who are not legally trained. All ADR representatives should be given adequate and relevant training, for example, basic contract law training and operation of the scheme to ensure accurate and consistent decision making.

We welcome the examination of a sample of cases to assess the extent to which decisions made were reasonable and fairly reached and whether decisions made on similar cases are broadly consistent: We would also suggest that the examination of such cases be widened to include additional criteria such as effectiveness and transparency and also a comparison of cases across each provider as well as internally.

By way of example, we have seen instances where individual ADR representatives, presented with very similar cases and evidence, reached very different conclusions. This could be due to regulations being open to different interpretations, or the ADR representatives not being consistent in the way they assess cases or implement the Scheme. We believe the provider should identify those areas where there are inconsistencies and take appropriate action to ensure that consumers with similar problems are not treated differently.

Efficiency

The ADR providers are 'not for profit' organisations and therefore we believe that the decision making process and whether a case falls within the scheme rules should not be driven by the fees that the ADR provider would receive in dealing with such claim. We would expect that the ADR representatives make decisions on the merits of the case and within the remit of the Scheme and not be driven by fees that they may receive to deal with that claim. Additionally ADR representatives should not be incentivised to encourage consumers to increase their claim. Whilst we believe that this practice may not exist, we would like to raise this point, mainly because the final decision whether to accept a case rests with the ADR provider and the outcome of the case cannot be appealed. For example, we have seen instances where we have rejected a case as we had evidence that the consumer had more than 10 employees but the OS accepted the case and advised BT to investigate.

In respect of the KPI targets, BT Group would like to understand how those KPI targets are set and measured. Are such targets based on industry standards and are the KPI figures reported independently audited?

In comparison and contrast with the KPI figures for the ADR providers, in April 2017 EE answered 89% of calls in less than 2 minutes and 96% calls in less than 3 minutes.

EE currently provides OS with monthly complaint volumes and numbers of signpost letters issued. Whilst we understand the desire for the ADR providers to be able to plan their resources, we believe the accuracy of forecasting is likely to be limited. We may be able to provide number of complaints and signposting letters across BT Group, but not all customers receiving a signpost letter will take their case to ADR. Our assessment of signposting letters and ADR referrals shows that there appears to be no apparent correlation between the two. However, BT Group would consider

working with industry, ADR providers and Ofcom for a trial period to see how effective a forecasting model would be before a final decision is made.

BT Group considers the involvement of a third party should a KPI be missed could be detrimental overall to the operation of the ADR scheme. In our view, third party involvement is likely to cause uncertainty for the consumer and could lead to an unfairness and inconsistency of decision making and approach.

We agree that Ofcom should review the role of the Independent Reviewer/Assessor and that consumers should be clear of the remit. However we would suggest that it would be beneficial for CPs to be able to refer cases to the Independent Review/Assessor where it believes that they have not been handled appropriately or the decision is inconsistent, rather than having to wait for or ask Ofcom to review the Schemes. This is important as CPs agree to be bound by the decision of the ADR representative and have no right of appeal.

OS use an online portal system called Peppermint which is used to log all the transactions and requests on cases. OS has encouraged all CPs to use the Peppermint system. However, the system appears to be unable to cope with the volume of traffic and the increased users which has resulted in a high number of system outages in recent months. These outages have an impact on BT and EE's efficiency in dealing with cases within the required timescales.

We would welcome the opportunity to discuss this further with Ofcom.

Transparency

BT Group suggests that the transparency of the ADR schemes could be improved by clearer and more consumer friendly rules which are easily accessible. We agree that the decisions reached by the ADR provider should be clear, transparent and easy for both the consumer and CP to follow and understand. However, at the same time, it is fundamental that the decisions set by the ADR provider are based on the legal and regulatory position together with the consumer's own individual set of circumstances and facts provided, setting a precedent only where the facts lead to the same conclusion as previous cases.

We seek clarification from Ofcom as to the intended purposes regarding the request for additional information from the ADR providers regarding specific detail about cases on a provider specific basis.

It is our opinion that providing statistical information regarding ADR referrals in isolation does not provide a fair and true representation of how complaints are dealt with by the CP. For example, CPs may choose to settle all disputes internally by paying consumers a sum of money to ensure that their volumes into the ADR provider remain low and therefore

appear to have a good complaints process. If a CP has a low number of ADR cases it does not necessarily mean that the CPs consumers have a good consumer experience. Ofcom should avoid presenting isolated metrics and drawing conclusions based on a limited set of metrics and should take all relevant factors into account.

In any event, if either Ofcom or the schemes start to publish provider specific information regarding ADR complaints, the information published by both schemes has to be comparable (categories, time periods etc.) and has to be accurate. In order to ensure accuracy and comparability, we consider CPs should be given the opportunity to respond prior to publication.

Effectiveness

We welcome a review into the effectiveness of the ADR providers.

It is not clear to BT Group which measures Ofcom will use to determine the effectiveness of the ADR providers when they investigate cases. We welcome clarity from Ofcom on how they will determine if cases have been effectively investigated and which metrics it proposes.

BT Group is currently concerned about the accuracy of the data published by the ADR providers on complaint types and outcomes of cases.

It is imperative that such information is captured correctly and that CPs are advised in advance of any publication of such reports so that the information can be validated. ADR providers should share the specific parameters of data which have been used to compile the reports. We also welcome an independent audit of such record keeping and a calibration exercise to ensure a fair and consistent approach within the ADR providers to ensure that any ADR representative dealing with the case applies the same set of measures and standards.

We are always open to feedback from the ADR providers in terms of understanding complaint drivers.

Accountability

BT Group would welcome documentation and adherence to a confirmed escalation process within the ADR providers to ensure that representatives dealing with the ADR cases are consistent in the approach. Whilst each case should be considered on its own merits it should follow a consistent and transparent approach which the ADR representatives are accountable for.
