

ISPA Response to the Ofcom ADR Call for input

Introduction

ISPA welcomes the opportunity to respond to this call for input into Alternative Dispute Resolution (ADR). ISPA is the trade association for providers of internet services in the UK, we have over 200 members, 90% of which are SMEs, and all play a fundamental role in delivering broadband and internet services across the UK to consumers and businesses.

Customer service is a priority for our members in what is a highly competitive and dynamic market. ISPA works with its members closely on consumer policy issues and we actively seek to improve the ADR system. We provide free membership of OS:C to members to help ensure compliance with Ofcom General Conditions, having previously partnered with CISAS, so have extensive experience of working with both Ofcom-approved schemes. We also run our own complaints procedure where consumers can complain against member companies once they have exhausted the member complaints procedure and before it reaches dispute stage. Our complaint numbers have fallen significantly in the past 10 years which demonstrates members' improved complaint handling.

Summary of our main points

ISPA supports the policy of an independent adjudicator that provides a free and easy-to-use redress for consumers and meets the requirements of the criteria set out by Ofcom and that of the ADR regulations. We believe that ADR can play an important part in resolving disputes between customers and business. However, our members experience suggests that the current system is underperforming and could be improved in the interests of both consumers and industry. Our members' feedback shows a number of problems with the current duopoly of ADR providers:

- Out of scope cases, including customers that employ more than 10 members of staff, are accepted too readily by ADR providers
- There is a lack of understanding of the communications industry which contributes to out of scope cases being accepted
- Cases take too long to resolve, with a lack of information provided to our members in the appropriate timeframe
- The early settlement process for more straightforward cases is ignored
- The case fee is disproportionate to the amount of work involved and the high costs acts as a disincentive for our members to use ADR, meaning it is cheaper to settle than reach the ADR stage, even if the complaint is unjustified and the CSP is confident of being vindicated.

Recommendations

To address these concerns, we believe the following recommendations will help the overall development of the ADR system for our members and ultimately consumers:

1. Promoting greater choice in ADR provision, by giving proper consideration of the benefits of options outside the current duopoly
2. Strengthening the rules for refusing disputes so that only cases that meet the scope are accepted
3. Ensuring there is a robust appeals process to challenge and report cases accepted that are out of scope
4. A commitment from ADR providers to continually understand and learn about the industries in which they operate
5. Reducing the size of the case fee levied by ADR providers to a more proportionate level

Call for input response

Based on feedback received from members on their experience with ADR, we have compiled members' feedback from a set of case studies detailed at the end of the document, and set out four areas we feel would improve the ADR process.

Promoting greater choice in the ADR landscape

Competition in the industries in which ADR providers regulate helps improve service quality and keeps prices low, and we believe the same principle should apply to ADR. Our members' experience of the current duopoly suggests that there is room for significant improvement and the lack of competition provides little incentive for substantial improvement. A choice of provider helps increase consumer outcomes by spreading potential spikes in complaints received across different schemes and ensures against the potential for complacency. Ofcom should consider the merits that an additional provider(s) could bring to an area that is need or real improvement.

Willingness by the ADR provider to accept out of scope complaints

Members' experience demonstrates that cases are still too readily accepted. To help address this, Ofcom should clarify and strengthen the rules for refusing disputes so that only cases that meet the required threshold are accepted. This should be accompanied with a process for providers to appeal or report cases that is not felt to be justified. The case studies outlined below are all in some way based on cases that should not have met the threshold – deadlock not met, the complainant employing more than 10 employees -

An ongoing commitment to understanding the industries ADR providers operate in

ISPA would like to see an increased focus on ADR providers committed to continual understanding the industries in which they operate. More could be done to ensure that all employees have a good understanding as services continue to evolve. This would help address concerns about complaints being too readily accepted. ISPA will be working with OS:C to increase the understanding the CSP sector with workshops, and at the same time working to raise awareness of ADR within industry.

A more proportionate case fee

The case fee, set at around the £300 mark per case is disproportionately high, both in relation to the cost of communications services and for the service provided by the ADR provider. The UK has a competitive and cost effective market for consumers and Ofcom's own data shows that the average household spend on telecommunications services is £15.05 a month¹. One case fee can therefore represent twice the cost of an average annual broadband service.

The size of the case fee in comparison to the amount of compensation being claimed also means it is often in our members' interest to settle a dispute rather than challenging it, even when the complaint is not justified and the CSP is confident of being vindicated. This acts as a disincentive for the wider use of ADR. A more reasonable case fee would mean a fairer, healthier system that meets the criteria set out in this call for evidence, including accountability, fairness and transparency.

Case Studies

The following are examples of ISPA members experience with both the Ofcom approved ADR providers in recent years.

Case Study 1: ADR provider accepting multiple cases against different companies on the same issue

Context

- The complainant transferred from one provider to another and this involved porting an existing phone number. During the transfer process an installation delay caused by a third party resulted in a delay to the number being transferred.

Case

- The customer made a complaint against multiple providers involved in the service. The initial service was taken out with a provider that was subsequently taken over by another provider.
- Complaints against both the old and new companies were accepted by the ADR provider in contravention of the rules and it took time and effort from the new company to repeatedly point that complaints could not be accepted against multiple companies for the same complaint

¹ https://www.ofcom.org.uk/data/assets/pdf_file/0020/26273/uk_context.pdf

Case Study 2: A medium sized ISP and an out of scope complaint

Context

- A customer that employed 15 members of staff claimed loss of 20 hours service and calculated it had cost them a figure of £10,000.

Case

- The customer in this case made it clear in their submission that they employed 15 staff members, in clear breach of the criteria set for ADR.
- The customer provided their declaration with a date of 31 March for 20 hours loss of service. Yet the report and supporting information provided by the customer had information into April and May.
- The customers claim for £10,000 was also based on a calculated combined hourly charge rate. There was no supporting evidence to advise what the actual loss of business was that they had incurred, other than this being the maximum figure that can be claimed under the scheme, and providing no justification.

Ruling

- The ADR provider accepted that there was no case and the customer's claim was rejected. However, the ISP had to pay an administrative charge despite the complaint being out of scope.

Case Study 3: A large CSP and lack of screening process

Context

- A customer had an issue with a large CSP over a charge for a 30p mobile call cost.

Case

- The customer had 2 previous ADR disputes rejected (each time requesting £2000 and £500 compensation) and sought ADR for a third time over the call cost and £500 in 'lump sum' compensation. The CP offered to refund the cost of the call (30p) as a goodwill gesture.

Ruling

- CISAS adjudication found no evidence had been provided in support of the customer's claim or any evidence of poor customer service and therefore no breach. The CP was still forced to pay £426.00 (£1278 in total if the first two unsuccessful adjudications are taken into account) in ADR fees.

Case Study 4: A small fixed wireless ISP and an illogical adjudication

Context

- An end user's modem is damaged by lightning and needs replacing. The device is owned by the end user and has not been provided by the ISP. As a sign of goodwill and dedication to customer service, the ISP provides that end user with a loan modem. After a further lightning strike, the loan device also breaks down. The ISP does not provide another loan modem but also does not pursue the customer for cost of providing the broken loan unit.

Case

- The end user takes the ISP to ADR as the provider on the grounds of "poor customer service". By not providing another replacement the customer is able to argue that it is 'poor service' even if they have no contractual right to have a replacement. The ISP is now in a position of having to replace the modem and yet the customer could still go to ADR claiming poor customer service.

Ruling

- ADR rules in favour of the consumer who is awarded £500 compensation for poor customer service, the costs of a new modem and including the ADR fee of £355 (+VAT) the ISP is left with total costs of approximately £1000 for a router.

Case Study 5: Lack of preliminary investigation

Context

- A case is accepted by the ADR provider despite the fact that the complainant has had their case resolved, with the provider agreeing to the customer requests for compensation and a downgrade.

Case

- The complaint is raised with the ADR provider despite not being at deadlock phase and a resolution being agreed. This suggests there lacks an ability for the case to be reviewed as 'preliminary' after notification.
- There was a lack of support was a lack of support available for the CSP, with the CSP having to chase the ADR provider for an update 6 weeks after the submission of the original complaint and a total time of almost 3 months for the case to be closed after initially being accepted.

Ruling

- A case fee was levied on the CSP for little more than formal recognition of something the CSP had already done.

Case Study 6: Disproportionate case fee

Context

- The customer was unhappy that their attainable broadband speed was lower than they had anecdotally experienced from another provider.

Case

- The customer had raised multiple tickets with the CSP's tech team, and nothing from a technical point of view had been able to satisfy the customer's expectation of an ADSL speed of 20Mbps+.

Ruling

- No ruling was made; as soon as the complaint was forwarded to the CSP, it acquiesced to the customer's demands in full yet the full fee was charged - resulting in a significant financial loss to their business. The customer then agreed to withdraw their complaint, the provider paid to pay a fee disproportionate to the actual cost of forwarding this complaint.