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# Review of Ofcom's approval of Alternative Dispute Resolution Schemes

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**STATEMENT:**

Publication Date: 27 November 2017

## About this document

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Alternative Dispute Resolution ('ADR') offers important protection to consumers who have a complaint about their communications provider ('CP'). CPs offering services to individuals and small businesses must be members of an ADR Scheme. The process allows people to escalate their complaint to an independent body, which will consider the case and reach a fair and impartial judgement.

Under powers in the Communications Act 2003 (the 'Act'), Ofcom currently approves two ADR Schemes: Ombudsman Services: Communications ('OS') and the Communications and Internet Services Adjudication Scheme ('CISAS'). We are required to keep these approvals under review.

We have also approved both Schemes under the Alternative Dispute Resolution for Consumer Disputes Regulations 2015 (the 'ADR Regulations') and are required to review these approvals every two years.

In March 2017 we published a Call for Inputs which launched our latest review. This statement concludes our review. We consider that both Schemes' performance meets the required criteria and are re-confirming our approval of both OS and CISAS under the Act and the ADR Regulations.

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# 1. Executive summary

- 1.1 Fair and effective complaints handling processes protect consumers and empower them in their relationship with communications providers ('CPs'). Alternative Dispute Resolution ('ADR') Schemes play an important role in complaints handling. In the event that a consumer or small business cannot resolve an issue with their CP they can refer their complaint to an ADR Scheme. The Schemes are independent bodies which examine and make judgements about cases referred to them. The Schemes can improve the outcome for consumers whose complaints might otherwise remain unresolved or be unduly delayed.
- 1.2 The Communications Act 2003 ('the Act') places a duty on Ofcom to secure the availability of ADR procedures for domestic and small business customers. Through General Condition 14.5 we have required all CPs to be a member of an approved ADR scheme. We currently approve two such Schemes: Ombudsman Services: Communications ('OS') and the Communications and Internet Services Adjudication Scheme ('CISAS') ('the Schemes').
- 1.3 The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 ('ADR Regulations') establish competent authorities to certify ADR Schemes and set the minimum standards that ADR Scheme applicants must meet to achieve certification. Ofcom is the competent authority for the communications sector, so we need to ensure each of the Schemes we approve under the Act also meets the minimum standards mandated by the ADR Regulations.
- 1.4 Ofcom is obliged to keep our approval of ADR Schemes under review. In March 2017 we began a review to establish whether CISAS and OS continue to offer an accessible and efficient service to consumers, and therefore can continue to be approved ADR Schemes. As part of our evidence gathering process, we assessed the consumer experience of using the Schemes, including the timeliness of their case handling, and we published a Call for Inputs ('CFI') inviting stakeholders to provide feedback on the performance of both Schemes. We also commissioned Mott MacDonald ('Mott') to review a sample of cases from both Schemes to assess the quality of decision-making and the consistency of case decisions both within and between the Schemes.
- 1.5 During the review (the Review) we have tested the Schemes against criteria established by the ADR Regulations and under the Act. The criteria require, in summary, that the Schemes are: accessible, independent, fair, efficient, transparent, effective, accountable and non-discriminatory. We have also assessed whether the different approaches adopted by each Scheme have led to inconsistencies between the Schemes.
- 1.6 Aspects of the ADR landscape that are not covered by the Act or ADR Regulations, such as the number of Schemes that Ofcom approves and the period of time that a consumer has

to wait prior to submitting a complaint to ADR, are not within the scope of the Review. Therefore, we have not addressed them in any detail in this report<sup>1</sup>.

1.7 **We have now completed our Review and are satisfied that both Schemes continue to meet the approval criteria set by the Act and the requirements of the ADR Regulations. Therefore, we are confirming the continued approval of OS and CISAS as ADR Schemes.**

1.8 As a result of feedback received throughout the Review, both Schemes have committed to make a number of changes to their processes and policies to further enhance their performance and improve the service they offer consumers. These changes include:

- adopting a new process for reporting their performance to help us ensure that consumers continue to receive timely decisions on their cases;
- making clearer the standards of service that consumers and CPs can expect and the steps they can take if they are not satisfied; and
- working to further align the Schemes' approaches so that consumers and CPs can be confident that the Schemes work in a consistent way.

1.9 We will continue to monitor the performance of both Schemes against a range of formal indicators<sup>2</sup> and around the implementation of the additional changes they have committed to make.

1.10 We note that we can re-open the issue of approval at any time should recommendations not be implemented in a timely manner and evidence emerge of a Scheme falling short of our approval criteria.

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<sup>1</sup> See 2.27 to 2.30

<sup>2</sup> See 3.43 for more information about the schemes' KPIs.

## 2. Introduction

- 2.1 ADR is a well-established and important mechanism for giving consumers free and swift access to redress when they have complaints that have not been able to resolve with their CP. ADR Schemes act as an independent middleman between a CP and a customer when an initial complaint cannot be resolved<sup>3</sup>.
- 2.2 Ofcom has a duty under the Act to secure the availability of appropriate procedures for the resolution of disputes between CPs and their domestic and small business customers<sup>4</sup>. Through General Condition 14.5 we have required all CPs to be a member of an Ofcom approved ADR Scheme. We currently approve two such Schemes: OS and CISAS. CPs are free to choose which of the approved Schemes they belong to.

### Why did we conduct the Review?

- 2.3 Ofcom is obliged by the Act to keep its approval of ADR Schemes under review. We monitor the Schemes' performance on an ongoing basis and periodically undertake a formal review. Our current Review is important in ensuring that the Schemes continue to meet the requirements of the Act and ensure that consumers continue to have confidence in using the approved Schemes.
- 2.4 Both OS and CISAS were also approved by Ofcom in 2015 as ADR Schemes under the Alternative Dispute Resolution for Consumer Disputes Regulations 2015 (ADR Regulations)<sup>5</sup>. The ADR Regulations set out the minimum requirements that Ofcom, as a competent authority under the ADR Regulations, must be satisfied an ADR body should meet. Approval under these Regulations must be carried out every two years. Therefore, as part of our current Review, we have also assessed whether OS and CISAS continue to meet the requirements of the ADR Regulations.

### What is the regulatory framework?

#### The Act

- 2.5 Section 3(1) of the Act states that our principal duty in carrying out our functions is to further the interests of:
- citizens in relation to communications matters; and

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<sup>3</sup> More information about how to log a complaint with an ADR scheme and how to identify which scheme a particular CP belongs to can be found on the Ofcom website. For example, <https://www.ofcom.org.uk/phones-telecoms-and-internet/how-to-report-a-complaint/billing> and <https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/problems/adr-schemes>

<sup>4</sup> Section 52 of the Act

<sup>5</sup> Ofcom has also approved ProMediate and Consumer Dispute Resolution under the ADR Regulations. Schemes approved under the ADR Regulations alone only offer ADR for services that are not covered by the ADR provisions of the Act, for example, the sale of mobile handsets and premium rate services.

- consumers in relevant markets, where appropriate by promoting competition.
- 2.6 Section 3(3) requires Ofcom, in performing these duties, to have regard to:
- the principles under which regulatory activities should be transparent, accountable, proportionate, consistent, targeted only at cases in which action is needed; and
  - any other principles appearing to Ofcom to represent the best regulatory practice.
- 2.7 Section 3(4) notes that in performing the duties under section 3(1), Ofcom must also have regard, amongst other things, to:
- the desirability of promoting and facilitating the development and use of effective forms of self-regulation; and
  - the opinions of consumers in relevant markets and of members of the public generally.
- 2.8 Under section 3(5), in furthering the interests of consumers, Ofcom must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.
- 2.9 Section 4 of the Act requires that we act in accordance with the six European Community requirements for regulation which give effect, amongst other things, to the requirements of Article 8 of the Framework Directive. Article 8(4)(b) of that Directive requires national regulatory authorities to ensure dispute resolution procedures are in place.

## General Conditions

- 2.10 We have the power under section 45 of the Act to set “General Conditions”. These are conditions which apply to all CPs who provide an electronic communications network and/or electronic communications service in the United Kingdom.
- 2.11 Under section 52(1) we have a duty to set General Conditions that we think are appropriate for securing that CPs establish and maintain procedures with respect to certain matters.
- 2.12 Those matters are:
- the resolution of disputes between CPs and any of their domestic and small business customers (section 52(2)(b)); and
  - the provision of remedies and redress in respect of matters that form the subject matter of such disputes (section 52(2)(c)).
- 2.13 Section 52(3) requires that when setting these General Conditions, we must secure so far as we consider appropriate that:
- dispute resolution procedures are easy to use, transparent, non-discriminatory and effective; and
  - that domestic and small business consumers can access them free of charge.
- 2.14 Our duties under sections 52(1) and (3) of the Act, are to be performed, to such extent as we consider appropriate, by the setting of General Conditions requiring CPs:

- a) to establish and maintain procedures for resolving disputes; and
  - b) to secure that those procedures are, and continue to be, approved by us (section 52(5)).
- 2.15 To approve dispute procedures, we need to be satisfied that the arrangements (section 54(2)):
- a) are administered by a person who is independent of both Ofcom and the CPs;
  - b) give effect to procedures that are easy to use, transparent, non-discriminatory and effective;
  - c) ensure the procedures are free of charge;
  - d) ensure that all information necessary for giving effect to the procedures is obtained;
  - e) ensure that disputes are effectively investigated;
  - f) confer powers to make awards of appropriate compensation; and
  - g) enable awards of compensation to be properly enforced.
- 2.16 We may approve dispute procedures subject to such conditions (including conditions as to the provision of information to us) as we think fit (section 54(3)). Under section 54(4) it is our duty to keep under review the dispute procedures for the time being approved by us.
- 2.17 We may:
- modify the conditions of their approval of any dispute procedures at any time;
  - withdraw such an approval at any time; or
  - give notice that the modification of those conditions, or the withdrawal of such an approval, will take effect from another specified time (section 54(5)).
- 2.18 Under section 54(6) of the Act, in approving dispute procedures or exercising the powers above, we must have regard to the matters in section 54(7) which are:
- a) the need to secure that customers are able readily to comprehend dispute procedures;
  - b) the need to secure that there is consistency between the different procedures for the time being approved by us; and
  - c) the need to secure that the number of different sets of procedures so approved is kept to a minimum.
- 2.19 Section 49 of the Act applies where a General Condition has effect by reference to an approval and the person who has given that approval is proposing to modify it so as to affect the operation of that General Condition.
- 2.20 Under section 49(2), we must not modify the approval unless we are satisfied that to do so:
- does not discriminate unduly against particular persons or against a particular description of persons;
  - is proportionate to what it is intended to achieve; and

- in relation to what is intended to achieve, is transparent.
- 2.21 Taking into account sections 52(3) and 54(2) of the Act, we have devised<sup>6</sup> approval criteria to assess the Schemes' performance:
- **Accessibility**
  - **Independence**
  - **Fairness**
  - **Efficiency**
  - **Transparency**
  - **Effectiveness**
  - **Accountability**
  - **Non-discriminatory**
- 2.22 In addition to these criteria, section 54(7) of the Act requires us to have regard to the need to ensure that there is **consistency** between the Schemes. Each criterion is discussed in more detail in section 3 of this document.

## The ADR Regulations 2015

- 2.23 The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 ('ADR Regulations') designates Ofcom as the "competent authority" for the communications sector (regulation 8 and Schedule 1), and requires us to assess applications to become an ADR entity (regulation 9) and maintain a list of approved ADR entities (regulation 10). Schedule 3 of the ADR Regulations set out the requirements we must be satisfied are met before approving an ADR entity, which closely mirror the abovementioned approval criteria in several respects. In summary, these are that the ADR entity:
- offers ADR services and officials are not employed or remunerated directly by parties to a dispute (paragraph 1);
  - is accessible online and by post (paragraph 2);
  - has appropriate expertise, is independent and impartial (paragraph 3);
  - has an appropriate conflict of interests procedure (paragraph 4);
  - meets transparency requirements (paragraph 5);
  - meets requirements as to effectiveness (paragraph 6);
  - meets requirements as to fairness (paragraphs 7 to 10);
  - meets requirements as to the legality of resolutions (paragraphs 11 to 12); and
  - refuses to deal with disputes it is competent to handle only in specified circumstances (paragraphs 13 to 16).

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<sup>6</sup> In May 2009, following a period of consultation, we set out the key criteria that we apply when reviewing the ADR schemes. See [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0018/62523/adr.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0018/62523/adr.pdf)

2.24 In relation to ADR entities approved by us, these are subject to a number of information requirements, including an obligation to provide us with certain information on the Schemes' activities on a biennial basis (regulation 11(3) and Schedule 6). We must review this information to assess whether the ADR entity continues to meet the Schedule 3 requirements (regulation 12), and must remove approval if the ADR entity ceases to meet the requirements for reasons within its control (regulation 13).

## Scope of the Review

2.25 The focus of this review is to establish whether the Schemes we approve continue to meet the minimum requirements stipulated by the ADR Regulations and the approval criteria derived from the Act.

2.26 A number of respondents to the CFI made comments on aspects of the Schemes that fall outside the scope of this review, including whether Ofcom should approve more than two Schemes under the Act, and the period of time that consumers in practice need to wait before being able to log a complaint with an ADR Scheme.

2.27 Given these issues are beyond the scope of this review, we have not addressed them in any detail within this report, but comment briefly below given their relevance to a number of respondents.

2.28 First, with regard to the number of Schemes approved, we note that the Act requires that we keep the number of Schemes approved to a minimum<sup>7</sup>. We keep an open mind on whether accepting a new entrant in the market would be consistent with that requirement and be of benefit to consumers. This review can only assess approvals of existing Schemes.

2.29 Second, on the time taken to progress a complaint to ADR, Ofcom recently introduced a new requirement through our review of the General Conditions<sup>8</sup> for CPs to inform consumers about their right to use ADR as soon as complaints are deadlocked, while retaining the eight-week backstop. We anticipate that this will result in more cases progressing to ADR more quickly; however, we will keep the eight-week limit under review.

2.30 In addition, since the introduction of the ADR Regulations in 2015, interest and scrutiny around the availability and quality of ADR services across both unregulated and regulated sectors has increased. Consumer bodies have published reports on the ADR landscape in 2017<sup>9</sup> which have raised issues such as the number of Schemes available in different sectors. We do not address the wider issues around the scope and operation of ADR that these reports raised. However, we will continue to engage with stakeholders, including government, on these issues.

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<sup>7</sup> Section 54(7) of the Act.

<sup>8</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-1/review-general-conditions>

<sup>9</sup> For example, Citizens Advice's report '[Confusion, gaps and overlaps](#)' and MoneySavingExpert's report '[Sharper teeth: the consumer need for ombudsman reform](#)'.

## Elements of the Review

- 2.31 In March 2017, we published our CFI to start the Review of the performance of both OS and CISAS (including the operations, structure and rules of both organisations). We received 26 responses from a range of CPs, individuals, trade organisations and consumer groups<sup>10</sup>.
- 2.32 We also commissioned Mott MacDonald (Mott) to carry out an independent review of both Schemes. That review predominantly focused on the quality of the decision-making of both Schemes and the consistency of decisions both within and between the Schemes. Mott also assessed the consumer experience of using each Scheme, including the quality of communication, timeliness and the amount of compensation awarded. To achieve this Mott reviewed the case materials relating to circa 80 cases<sup>11</sup> from each Scheme that had been concluded in January and February 2017.
- 2.33 Mott's report has been published alongside this statement and is available on the Ofcom website<sup>12</sup>.
- 2.34 During the Review, as well as taking into account the views of the Schemes, we also considered the Schemes' performance against Key Performance Indicators<sup>13</sup> ('KPIs') that we set, evidence from the Independent Assessor (IA) at OS and Independent Reviewer (IR) at CISAS, the schemes' internal operations and Terms of Reference. We have also reviewed complaints that Ofcom has received about the Schemes' performance.

## The structure of this document

- 2.35 In section 3 we address each of the approval criteria in turn, setting out where relevant, the sources of information we have used to assess the Schemes performance, including stakeholder feedback received in response to the CFI.
- 2.36 Section 4 sets out our conclusions and next steps, including our statement that we have re-approved both Schemes under both the ADR Regulations and the Act.

## Equality impact assessment

- 2.37 Ofcom is also required to assess the potential impact of all our functions, policies, projects and practices on the equality of individuals to whom those policies will apply. Equality impact assessments ('EIAs') assist us in making sure that we are meeting our principal duty

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<sup>10</sup> The non-confidential responses received to the CFI can be found on the Ofcom website at <https://www.ofcom.org.uk/consultations-and-statements/category-2/adr-review-17>

<sup>11</sup> MM also reviewed a sample of 40 OS cases which had been settled by Early Resolution, to assess the initial triaging process that OS adopts.

<sup>12</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0017/108206/ADR-Decision-Review.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0017/108206/ADR-Decision-Review.pdf)

<sup>13</sup> Ofcom sets KPIs for both schemes which cover the time taken to respond to calls and correspondence, and the time taken to reach a case decision. For further details see paragraph 3.43.

of furthering the interests of citizens and consumers regardless of their background or identity.

- 2.38 We have given careful consideration to whether or not our decision set out in section 4 will have a particular impact on race, age, disability, gender, pregnancy and maternity, religion or sex equality. We do not envisage that the decision in this statement will have a detrimental impact on any particular group of people. Indeed, we consider this decision can further the interests of all consumers and these end-users stand to benefit from the continued high performance of the ADR bodies and the additional changes both Schemes have committed to make.

## 3. Assessment of the Schemes

### The criteria for assessment of the Schemes

- 3.1 The objective of our Review<sup>14</sup> is to assess whether we should re-approve the Schemes under both the ADR Regulations and the Act.
- 3.2 In doing so, we have considered whether the Schemes are performing satisfactorily against the criteria below which were devised taking into account sections 52(3) and 54(2) of the Act:
- **Accessibility**
  - **Independence**
  - **Fairness**
  - **Efficiency**
  - **Transparency**
  - **Effectiveness**
  - **Accountability**
  - **Non-discriminatory**<sup>15</sup>
- 3.3 In addition to these criteria, section 54(7) of the Act requires Ofcom to have regard to the need to ensure that there is **consistency** between the Schemes.
- 3.4 These criteria are broadly consistent with the minimum standards set out in the ADR Regulations<sup>16</sup>.
- 3.5 Below we address each criterion in turn to assess whether the Schemes have been performing at the required level. In doing so, where relevant, we have referred to any potential concerns identified by Ofcom through its regular engagement with the Schemes, Mott's analysis and the comments received from stakeholders in response to our CFI.

### Accessibility

- 3.6 When assessing how accessible the Schemes are, taking account of the requirements of the Act and ADR Regulations, we have considered whether all consumers, particularly those with disabilities and those in vulnerable circumstances, are able to access all the information they require to understand the ADR process, log a complaint and make meaningful contributions throughout the process. We have considered the availability and clarity of information regarding the Schemes, the support available to those who have difficulties setting out their case, and any barriers to consumers making an application to the Schemes, including lack of awareness.

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<sup>14</sup> See 2.3 and 2.4 for more information.

<sup>15</sup> This criterion was omitted from this list in the March CFI. However, that document referred to earlier statements establishing the criteria.

<sup>16</sup> See 2.23 and 2.24

## CFI responses

- 3.7 A number of respondents agreed that accessibility was vitally important, particularly for vulnerable or disabled consumers, who may require additional support when engaging with an ADR Scheme and pursuing a complaint against their CP.
- 3.8 One consumer respondent said that both Schemes had refused to make reasonable adjustments to cater to his access needs.
- 3.9 Some respondents raised concerns regarding the availability and clarity of information regarding the scope and operation of the Schemes. Some believed the websites were cluttered and hard to navigate, while others noted that the terminology used was not always particularly user-friendly.
- 3.10 One consumer felt that it was difficult to locate information on the Schemes' websites about their complaint handling processes and how complaints could be escalated, including to the attention of the IA and IR.
- 3.11 Which? and the Communications Consumer Panel (CCP) believed that the Schemes could be doing more to increase consumer awareness of the existence of ADR and the Schemes' role within the communications sector.

## Ofcom assessment

- 3.12 We consider that the Schemes meet the accessibility requirements of the ADR Regulations in that they both maintain up-to-date websites with information regarding the procedures operated by the bodies and they can provide that information in a durable medium if required. Both accept complaints defined as in scope by the ADR Regulations.
- 3.13 In addition, the Schemes offer a range of different services to consumers to help them log a complaint; they accept complaints via phone, email and letter, and utilise online portals, which allow those consumers with internet access to monitor the progress of their case and submit additional information via the portal. The Schemes also have enquiry teams that can respond to consumer queries regarding the process and whether a particular complaint is within scope. The Schemes are able to provide documents in a variety of formats and in multiple languages where required.
- 3.14 An analysis of Ofcom's complaint data indicates that complaints regarding both Schemes remain low and did not identify any systemic issues, particularly in relation to the accessibility of their services.
- 3.15 Both Schemes publish reasonable adjustment policies, and the IA/IR in both Schemes can consider complaints about the case handling process, including where a complainant believes the Scheme has not met the requirements of its own policies or provided an accessible service more generally.
- 3.16 In the case of OS, the IA's report for 2016 included reference to 'reasonable adjustment' as an area that "...is difficult to get right and merits further consideration". We understand

that, as a result of that recommendation, OS has introduced a number of new initiatives including training for all staff around reasonable adjustments and vulnerable consumers.

- 3.17 More generally, for ADR Schemes to be accessible, it is important that consumers are aware of ADR, when they can go to ADR, and which Scheme they should address their complaint to. Under the General Conditions, all CPs are required to signpost their customers to the relevant ADR body. This includes references to ADR within their complaints handling policies and information regarding ADR in customers' bills. Further, CPs are required to issue deadlock letters upon request and eight-week letters informing a customer of their right to submit a case to ADR, naming the relevant Scheme, if their complaint has not been resolved to their satisfaction within eight weeks.
- 3.18 In addition, Ofcom recently announced the conclusion of our review of the General Conditions<sup>17</sup>, which includes new provisions around access to ADR. These include improved signposting and a requirement that CPs notify consumers about their right to use ADR as soon as a complaint is deadlocked. This will build on the monitoring and enforcement action we carry out to ensure CPs are directing consumers to ADR at the right time<sup>18</sup>. We consider the onus is on CPs to adequately signpost consumers to ADR and to continue to meet their obligations in this area. We will consider additional enforcement action in future if CPs consistently fail to meet those obligations. However, we remain supportive of any independent awareness work either scheme wishes to carry out.
- 3.19 Based on the evidence we have at this time **we consider that both Schemes meet the requirements around accessibility.**
- 3.20 We will continue to monitor any evidence that emerges of consumers, particularly those who are vulnerable or disabled, being unable to successfully log a complaint with either ADR Scheme, or progress their complaint through to conclusion.
- 3.21 While we consider that the current approaches adopted by both Schemes are sufficient to meet the 'accessibility' criteria, in response to the CFI feedback, both Schemes plan to make improvements to their websites in the coming year to ensure that consumers can easily find the information they need and that their processes are explained in a user-friendly way. This will include making it clearer to consumers the standards of service they can expect from the Schemes and the steps they can take if they are not satisfied with the service they have received.

## Independence

- 3.22 The Act requires that the Schemes are administered by those who are independent of both Ofcom and CPs. This includes robust governance processes to ensure that member companies do not unduly influence decision making, measures to ensure that ADR officials

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<sup>17</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-1/review-general-conditions>

<sup>18</sup> Ofcom has an ongoing monitoring and enforcement programme regarding CPs' compliance with General Condition 14 relating to CPs' complaints handling procedures and awareness-raising of Alternative Dispute Resolution. More details regarding that programme can be found at [https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw\\_01101](https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw_01101)

discharge their duties in a way that is not biased as regards either party to the dispute and rules to ensure any potential conflict of interest is disclosed and addressed.

## CFI responses

3.23 Respondents did not raise any concerns regarding the independence of the Schemes.

## Ofcom assessment

3.24 The Schemes' published policies and additional information they have provided to us demonstrate that they still meet the requirements of the ADR Regulations around independence and impartiality. For example, both have independent boards, conflict of interest policies, and that remuneration of ADR officials is not in any way linked to the outcome of the alternative dispute resolution procedure.

3.25 Both OS's and CISAS's structures include the role of an IR and IA. If those party to a particular complaint are not satisfied with the way in which their case has been processed, and cannot resolve their complaint via the Schemes' complaint handling processes, they can escalate their complaint to the IR/IA for consideration who will then assess whether a process error took place and recommend remedial action, such as compensation, where appropriate.

3.26 **We are satisfied that CISAS and OS have structures and processes in place to provide a suitable environment for adjudicators and investigation staff to manage cases independently from interference or influence from member CPs.**

## Fairness

3.27 We have considered to what extent the Schemes' procedures and the decisions reached are fair and reasonable. Taking account of the requirements of the ADR Regulations and the Act, we have sought to ensure that the Schemes give parties to the disputes an opportunity, within a reasonable period of time, to submit all relevant arguments, evidence and documents; that there are appropriate review mechanisms in place, that staff are appropriately trained; and that there are appropriate internal guidelines in place for how decisions should be reached in particular cases. We have also considered whether the parties are notified of the outcome and the grounds on which that conclusion has been reached, and considered the findings of Mott's study, which looked, in particular, at the reasonableness of decisions reached by the Schemes in a sample of cases.

## CFI Responses

3.28 The Advisory Committee for Northern Ireland (ACNI), CCP, and BT Group welcomed Ofcom's review of a sample of cases from both Schemes, and emphasised the importance of a diverse sample.

3.29 The Internet Telephony Services Providers' Association Ltd (ITSPA), Andrews and Arnold Ltd, BT Group, and Evolving Networks, said the Schemes should have an appeals process in

place for providers. Some argued that the Schemes should introduce a review process whereby either party could challenge the findings, not solely process concerns. ITSPA argued that a CP should be compensated if a Scheme's decision was subsequently found to be manifestly wrong.

- 3.30 There were some concerns regarding what was perceived to be poor-decision making from both Schemes. Some respondents noted that OS's staff were not legally trained and, on occasion, made errors around basic legal principles such as breach of contract and statutory requirements.
- 3.31 Some also noted discrepancies between the processes of each Scheme, particularly around how the evidence was shared. It was noted that CISAS share all case documentation with both parties, whereas OS only shares the material they perceive to be relevant to the issue in hand.
- 3.32 One consumer respondent believed that OS had not acted on the IA's recommendations.

### Ofcom assessment

- 3.33 In accordance with the ADR Regulations, the Schemes' procedures enable both parties within a dispute to express their points of view and comment on the arguments of the other party. Both Schemes share all the arguments and documents submitted by the other party (upon request at OS), and advise the parties that they are not required to obtain independent legal advice, but that they are able to seek the assistance of a third party at any point in the process if they so wish. Finally, both ensure that all parties are notified of the outcome of their case and the grounds on which that conclusion has been reached.
- 3.34 In its study Mott found that 85% of cases at OS and 82% at CISAS were fully reasonable. It did not identify any cases from either Scheme as unreasonable. While 15% of cases at OS and 18% of cases at CISAS were judged to have been questionable (meaning that the decision was defensible but that another outcome may have also been reasonable, and therefore the Schemes may wish to review them again), these observations relate to a very small number of cases and do not suggest that there are any systemic issues with the Schemes' decision-making more broadly. We consider that Mott's results indicate that overall the Schemes are performing well and that the decisions they have reached are reasonable and defensible.
- 3.35 Mott concluded that the communication with complainants about case progress was good in 96% of cases at OS<sup>19</sup>. The decision was clearly explained to consumers in 98% of cases at OS and 100% of cases at CISAS.
- 3.36 Contrary to a number of respondents' perceptions, the Schemes' Terms of Reference/Scheme rules explicitly permit both consumers and CPs to complain about how their case was handled, including administrative and process errors. In addition, both CPs

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<sup>19</sup> From the materials shared, Mott was unable to make a similar assessment for CISAS's cases.

and consumers can escalate their unresolved complaints regarding the service they have received to the Schemes' IA or IR.

- 3.37 While the scope of the IR/IA is limited to process as opposed to the conclusions reached, both Schemes have confirmed that the IA and IR are able to refer cases back to the Scheme if they have concerns that an identified process flaw could have had an impact on the conclusions reached, so they can be addressed.
- 3.38 Both the IA and IR meet, and draft reports for, their respective boards at least once a year to highlight any trends from the complaints received and to make recommendations as to how any underlying issues can be resolved. We note that OS publishes the IA's annual report on their website. In addition, if OS were to reject a recommendation made by the IA on a specific case, OS has confirmed that it would explain in writing to both the complainant and IA why that was the case.
- 3.39 **For those reasons, we consider that both Schemes meet the requirements of the 'Fairness' criteria.**
- 3.40 As Mott recommends, we will discuss those cases Mott judged to be 'questionable' with the Schemes, to determine if there are lessons to be learnt or any changes to policy or process that need to be made as a result. Mott also thought that both Schemes could improve their guidance around what constituted 'good evidence', including the level of evidence that the Schemes could reasonably expect consumers to provide in particular circumstances. We intend to explore this further with both Schemes during 2018 and any additional or amended guidance will be published.
- 3.41 In line with OS, CISAS has agreed that if it rejects any recommendations that the IR has made on a case, it will set out the reasons in writing to both the IR and the complainant. To date, however, CISAS says it has not rejected any of the IR's recommendations. Further, it has committed to publish an annual report by the IR summarising their findings on its website.

## Efficiency

- 3.42 During our review we have considered the timeliness of the Schemes in handling cases and the extent to which their processes, including their fee structures, are efficient and incentivise CPs and the Schemes to arrive at appropriate and efficient outcomes.
- 3.43 In terms of the timeliness of handling cases, both Schemes are required to report their performance against Key Performance Indicators that Ofcom has set to us on a regular basis<sup>20</sup>. Current KPIs include:
- more than 80% of calls to be answered in less than two minutes;
  - more than 90% of calls to be answered in less than five minutes;

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<sup>20</sup> Both Schemes publish their KPIs on their respective websites: <https://www.cedr.com/cisas/key-performance-indicators/> and <https://www.ombudsman-services.org/for-consumers/service-standards>

- 100% of written correspondence to be replied to within ten days;
- more than 90% of case decisions to be issued within six weeks of the case being accepted; and
- less than 1% of case decisions to be issued later than eight weeks after the case has been accepted.<sup>21</sup>

3.44 During 2016, OS in particular faced challenges in meeting some of their KPIs. OS identified a large spike in complaints about one CP as the main cause for the failure to meet KPIs. That spike coincided with a more general increase in complaint numbers which may in part be a result of CPs issuing more notifications to consumers about the right to go to ADR when a case reaches deadlock or after eight weeks.

3.45 In our CFI we explored ways that the Schemes could improve their forecasting to better predict increases in case volumes, or be more appropriately incentivised to meet their KPIs. This included discussion of a new fee structure whereby all member CPs would have to submit forecasts regarding the volume of cases they anticipated at the beginning of every year, and would be penalised with a higher case fee for all cases received in addition to that estimate.

3.46 We also sought stakeholders' comments on whether we should align our KPIs with the requirements of the ADR Regulations, and require that the time taken for a case decision to be reached should commence from the point at which a Scheme has received a full case file as opposed to when a case has been accepted.

### CFI responses

3.47 A number of CPs raised concerns regarding the fees levied by the Schemes, believing them to be too high, disproportionate to the amounts at stake in individual cases, and that they wrongly incentivised CPs to agree to offer financial awards to consumers even when they believed the consumer was in the wrong, to avoid prohibitive case fees. Some noted that the Schemes did not give sufficient guidance regarding what a proportionate award for a particular type of claim would be, leading to unreasonably high claims. A number of CPs felt that the case fee should be reduced if the scheme found in favour of the CP or the complainant should be liable for the costs. Vectone Mobile suggested that compensation amounts should be proportionate to the size of the provider, so larger CPs were charged a higher case fee. BT Group and Virgin noted that the Schemes' financial model – a fee per case – could incentivise them to accept cases that should be out of scope.

3.48 OS emphasised that their inability to meet their KPIs throughout 2016 was in large part due to a lack of accurate forecasting information from CPs. They said they needed accurate complaint volume information and business intelligence from their member CPs to enable them to make accurate forecasts and then resource accordingly.

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<sup>21</sup> It should be noted that due to the Schemes' differing processes, the decisions issued for CISAS represent their final decision whereas, for OS, it represents the point at which an initial decision is issued.

## Review of approval of ADR schemes

- 3.49 In contrast, some respondents were opposed to greater information sharing with the Schemes. Some CPs believed there was little correlation between metrics such as the volume of deadlock letters sent out and the volume of complaints submitted to an ADR Scheme and that business intelligence was often confidential. However, BT Group was willing to extend the data-sharing arrangement they had in place for EE's data already and partake in a trial to establish what use complaints data was to the Schemes.
- 3.50 ITSPA, Three, Sky and Verastar disagreed with our suggestion that CPs should be penalised for poor forecasting. Some felt it could lead to CPs delaying issuing deadlock letters and Sky did not believe such an approach would incentivise improved case handling. Sky and Three believed it would be better to incentivise CPs by lowering the case fee for cases that were completed in a timely fashion.
- 3.51 ACNI and Three opposed our suggestion to revise our KPIs to align with the requirements of the ADR Regulations on the basis that it could draw out the length of the process and adversely impact consumers.
- 3.52 In contrast, OS believed it was reasonable to align its KPIs with the ADR Regulations and start recording the time taken from when it received a complete case file. OS noted that once it had received a complete case file it was in control over the time taken to complete an investigation.
- 3.53 OS also proposed that a degree of tolerance should be built into the KPIs, with the introduction of a 'RAG' rating system. Finally, it thought that new measures should be introduced to allow Ofcom to monitor how long it took OS to complete an investigation, as opposed to issuing a provisional decision.

## Ofcom assessment

- 3.54 Since the launch of our review OS has improved its performance against its KPIs and is currently meeting them. Further, it has introduced a series of measures to improve its resilience in the face of similar unexpected spikes in complaint volumes in future. This includes streamlining its training programme for new Investigation Officers, making more effective use of its outsourcing partners and working with CPs experiencing higher volumes of complaints to reduce the number of complaints proceeding to full adjudication. CISAS has also provided a statement setting out how it would react and maintain its KPIs in the face of an unforeseen and significant increase in case volumes.
- 3.55 Mott found that the Schemes are both completing their cases faster than during its previous review in 2011.
- 3.56 We note the concern that if we aligned our KPIs with the ADR Regulations, complainants could experience an increase in the time taken to obtain a decision on their case. Given that potential increase and the potential for an adverse impact on consumers, we do not intend to amend our current KPIs. We will, however, commence collecting data from the Schemes regarding the volume of cases completed 90 days after receipt of a complete case file to try to establish whether CPs or the Schemes are responsible for case delays, which may inform changes to KPIs in future.

- 3.57 We are sympathetic to OS's arguments around the importance of accurate forecasting data; however, we note the resistance from some CPs, including from one that is already sharing data on a regular basis. At this point, we do not have sufficient evidence to confirm that the forecasting data OS desires will be of significant benefit when predicting case volumes. We will support OS and those CPs willing to take part, to share as much data as possible on a trial basis, so we can establish the utility of such an arrangement and decide whether it should be formalised in future.
- 3.58 We note CPs' resistance to linking forecasting and case fees, and the more general feedback that case fees are too high. We remain open to the Schemes' adopting fee structures that they believe will incentivise improved co-operation from CPs and improve the speed at which they can process cases.
- 3.59 We note the improvement that OS has made in relation to their KPIs, CISAS's continued strong performance and also Mott's assessment that the large majority of their case decisions are reasonable. In light of that, we do not consider that an intervention is merited at this stage, and instead consider it remains efficient for the Schemes' approach to case fees and financial incentives to be a commercial decision.
- 3.60 **Given the Schemes' performance in reaching appropriate outcomes, OS's improved KPI performance, and the processes both Schemes now have in place to deal with large, unpredicted spikes in volumes in future, we consider both continue to meet the requirements of the efficiency criteria.**
- 3.61 In addition, we have agreed a new informal performance measure with OS for the time taken to close a case as opposed to the time taken to issue an initial decision<sup>22</sup>. We will monitor its performance against this measure going forward and review periodically before deciding whether to introduce it as a formal KPI or not. Further changes that the Schemes have committed to in terms of reporting their KPI are set out in the 'Accountability' section below.

## Transparency

- 3.62 In considering the transparency of the Schemes, we have taken into account the requirements of the Act and the ADR Regulations and assessed the extent to which their decisions and decision-making processes, are clear to consumers and to CPs. We have also considered the information that the Schemes provide about the cases they receive and whether they should publish more data regarding the cases they accept, including on a provider-specific basis.

## CFI responses

- 3.63 ACNI, Resolver, the CCP and Which? believed that the Schemes should publish more data about cases to help consumers compare CPs and to encourage CPs to improve their

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<sup>22</sup> As mentioned in footnote 18 above, because of the different process it adopts, the existing KPIs already measure the time taken for CISAS to close a case.

handling of complaints. The data respondents suggested includes; the number of complaints referred to ADR by CP (normalised to reflect the size of the CP's customer base, for example shown by 100,000 customers); the main types of complaint; the number of complaints upheld; the average financial award; and the number of complaints accepted where the CP has failed to provide a 'deadlock' letter.

- 3.64 BT Group and Sky sought clarification regarding the intended purpose of publishing case data on a provider-specific basis. They do not believe that providing statistical information regarding ADR referrals in isolation provides a fair or true representation of how complaints are dealt with by CPs. If the data were to be published they consider it would need to be accurate and comparable. Both argued that the data should be independently audited, and that CPs should have sight of it prior to publication.
- 3.65 Consumer Dispute Resolution Ltd<sup>23</sup> and Three called for greater transparency of the Schemes' funding models and how case fees were spent.
- 3.66 As mentioned above, some respondents suggested that the rationale for case decisions could sometimes be clearer, and that improvements could be made to the information on both Schemes' websites about the overall process and the information a complainant would need to provide.

## Ofcom assessment

- 3.67 During our review both Schemes have demonstrated that they continue to meet the essential transparency requirements as set out in the ADR Regulations and more general requirements of the Act. Both bodies make a broad range of information available on their websites, in a clear and understandable manner and provide, on request, that information to any person in a durable medium. That information includes its contact details, a statement that it has been approved by Ofcom, the procedural rules it operates and the grounds on which it can refuse to deal with a dispute, and an annual report summarising its activity over the previous year<sup>24</sup>.
- 3.68 We note that Mott found that, at OS, in 98% of cases the verdict had been clearly and effectively explained. In the case of CISAS, Mott found this to be the case 100% of the time. We also note that, if rejecting a complaint as out of scope, both Schemes will clearly explain to the complainant why that is the case.
- 3.69 We consider that data about the cases the Schemes receive is a useful source of information for consumers regarding CP performance and may help them when deciding which CP to purchase a particular service from. We will continue to work with the Schemes to publish more complaints data when we are satisfied that it is robust and comparable. The Schemes are now publishing data on complaint categories and complaint outcomes, and we are working towards the publication of data on case acceptances. The Schemes

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<sup>23</sup> Previously, the Retail Ombudsman

<sup>24</sup> These can be found on the Schemes' respective websites. See <https://www.cedr.com/cisas/reports/> and <https://www.ombudsman-services.org/about-us/annual-reports/adr-entity-reporting>

ensure that CPs have the opportunity to review and check the accuracy of their data before publication.

- 3.70 Ofcom's 2017 Comparing Service Quality report<sup>25</sup> includes information on the two most common ADR case categories by CP. We plan to build on this in the 2018 report and publish more ADR data that enables easy comparisons between CPs.
- 3.71 In its report, Mott raised concerns about the case categories that the Schemes apply to their cases to help compare case outcomes and perceived inconsistencies between the Schemes. The category 'maintained', which was identified by Mott as most problematic, is only used internally and is not shared with complainants, so we consider Mott's comments largely a matter for the Schemes to consider.
- 3.72 In respect of the data that the Schemes publish on case outcomes and case categories, we have worked with the Schemes to ensure that the categories used for publication are aligned and meaningful to consumers. The data on case outcomes allows stakeholders to see the proportion of the complaints progressing to ADR where the CP in question has been found to have been at fault to at least some degree and those where the CP has effectively been exonerated. The data on case categories provides consumers with information on what drives complaints at each CP.
- 3.73 **Considering those factors, we consider that both Schemes are adequately transparent in terms of setting out their overall governance, case-handling processes and the rationale for the conclusions reached.**
- 3.74 The publication of additional financial information or greater clarity around case fees is not mandated by the ADR Regulations or the Act, and we consider that whether or not to do so is a commercial decision for the Schemes. We have made the Schemes aware of the concerns raised in this area, however, and both have committed to considering what, if any, additional information they should publish in the interests of improving their transparency in this area further.
- 3.75 As discussed above, both Schemes have also committed to reviewing and improving their websites to ensure consumers can quickly find the information they need to fully understand the ADR process, including the service standards they can expect and the steps they can take if they are dis-satisfied with how their complaint has been handled. We consider those changes will further enhance the transparency of both Schemes.

## Effectiveness

- 3.76 Taking account of requirements of the ADR Regulations and of the Act, we have considered whether cases have been effectively investigated, whether the Schemes keep accurate records of cases accepted, case details and of decisions made, and whether their case decisions are effectively implemented. We have also considered whether the Schemes adequately fulfil their role in assisting the industry more broadly to manage complaints

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<sup>25</sup> [https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0012/100605/comparing-service-quality-report.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0012/100605/comparing-service-quality-report.pdf)

better by working with CPs to understand complaint drivers and identify where complaints might have been addressed earlier by CPs.

## CFI responses

- 3.77 Several respondents, including OS and Which?, argued that an effective ADR Scheme should use its data and insight to not only identify trends for individual CPs but should also provide insight and feedback for the sector more broadly.
- 3.78 A number of CPs believe that the Schemes are accepting cases that are not within their own terms of reference. For example, some reported cases being accepted when deadlock had not been reached, the Schemes accepting cases from 'large' businesses or 'vexatious' complaints, or ignoring the early settlement process. There were also concerns about a lack of industry knowledge in some cases which lead to the wrong CP being held accountable for an issue (for example, the attribution of blame in switching cases).
- 3.79 Citizens Advice noted that in their recent report regarding ADR provision across all sectors<sup>26</sup> they found that, although OS receives a low number of complaints regarding its service, a high proportion of those complaints are 'upheld'. They said this was also noted in the IA's 2016 report.
- 3.80 Some respondents sought greater clarity as to how Ofcom defined 'effectiveness' in relation to ADR performance and how it was measured.

## Ofcom assessment

- 3.81 The ADR Regulations require that ADR is available and easily accessible to both parties irrespective of where they are located, ensures that the parties to a dispute are not obliged to obtain independent advice, and that ADR is available free of charge or for a nominal fee to consumers. Schemes are also required to notify the parties as soon as they have received a complete complaint file, and, with the exception of a highly complex dispute, notify the parties of the outcome of ADR within a period of 90 days from the date on which the body has received the complete case file. Both Schemes continue to meet those requirements. In particular, we note that consumers can log a complaint for free; the Schemes are funded by CP case and membership fees.
- 3.82 The Regulations also clearly stipulate the grounds by which a scheme can refuse to accept a complaint. These include cases where the complainant has not attempted to contact or resolve their complaint with their provider in the first instance; the issue is being, or has been, considered by another ADR entity or by a court; the value of the claim doesn't meet the criteria of the scheme; the complainant has not been submitted within the prescribed timescales; dealing with the dispute would seriously impair the effective operation of the body; or the dispute is frivolous or vexatious. In essence, the grounds by which a Scheme can refuse to accept a case are very limited.

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<sup>26</sup> [Confusion, gaps and overlaps](#), April 2017

- 3.83 Ofcom has previously worked with both the Schemes to devise some guidance around what constitutes a ‘vexatious’ or ‘frivolous’ complaint, which the Schemes use when deciding whether a complaint is in scope or not. In addition, as stipulated by the Act, both Schemes define a small business as one for which a maximum of ten individuals work, regardless of whether they are part time workers or volunteers<sup>27</sup>.
- 3.84 While some respondents gave us some anecdotal examples of cases they perceived to be out of scope, the limited evidence submitted did not suggest a systemic issue regarding cases being accepted when they should not have been. Both Schemes assured us that if a CP challenged whether a particular case was within scope, those concerns would be addressed and escalated as appropriate to ensure the right cases were adjudicated on. They assured us that case fees were not levied for those cases that were confirmed to be out of scope. While we note Citizens Advice’s comments regarding the proportion of appealed cases found to be at fault, Mott’s analysis concludes that the Schemes’ case handling is generally good with reasonable outcomes reached and clear explanations of the rationale for a case decision.
- 3.85 In addition, we consider that the Schemes’ record keeping is robust and serves as a useful tool by which the Schemes can monitor CP performance, and can give CPs and Ofcom early warning of arising issues that may require intervention. We also understand that both Schemes arrange meetings with member CPs, which drive a large volume of cases, on a regular basis to discuss best practice and issues that may have been identified from recent analysis of their case data.
- 3.86 On enforcement, we understand that compliance by CPs with adjudications by the Schemes on cases is generally good and that, where adjudications are not implemented on time, this is typically the result of administrative errors, or linked to CPs that are going into administration. Both Schemes have processes in place to ensure CPs act on the Schemes’ adjudications and, if non-compliance persists, both can ultimately suspend or terminate a CP’s membership. As stated previously, the General Conditions require CPs to be a member of an ADR Scheme and comply with their ADR decisions. Therefore, if a CP consistently fails to implement the final decisions reached by the Schemes and/or is expelled from their respective Scheme, then Ofcom can intervene and open a formal investigation regarding their compliance<sup>28</sup>.
- 3.87 We note that the CFI responses and our review of data about complaints made to Ofcom did not identify any trends whereby particular CPs were regularly failing to act on the Schemes’ adjudications.
- 3.88 In light of the above, we consider the structures and processes in place at both Schemes are sufficiently robust to ensure that decisions are made following examination of

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<sup>27</sup> Section 52(6) of the Act

<sup>28</sup> In November 2015 and October 2017, Ofcom opened investigations into Reseller UK Ltd and Care Free Communications Ltd, respectively, concerning compliance with General Condition 14.5 [https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw\\_01167](https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/all-closed-cases/cw_01167) and [https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw\\_01197](https://www.ofcom.org.uk/about-ofcom/latest/bulletins/competition-bulletins/open-cases/cw_01197).

evidence, complied with by CPs and remedies are properly enforced. **Therefore, we consider that both Schemes meet the ‘effectiveness’ criterion.**

- 3.89 While respondents did not provide sufficient evidence to suggest a systemic issue with the acceptance of cases that should be out of scope, there was great strength of feeling amongst respondents, and both Schemes also reported similar feedback from their member CPs. Therefore, while we have decided to re-approve both Schemes at this point, we intend to commission an external consultancy to review a sample of cases that CPs have challenged as being out of scope to see if there are any underlying issues that need to be addressed. Both Schemes have agreed to act on the findings and recommendations resulting from that piece of work.
- 3.90 We envisage that that piece of work will be carried out in early 2018, and the conclusions will be reported on Ofcom’s website.

## Accountability

- 3.91 In assessing whether the Schemes are sufficiently accountable we have considered whether the requirements for the Schemes to report on their performance remain appropriate, whether their KPIs are adequately publicised, and whether complainants are aware of the steps they can take if they are unhappy with the service they have received (such as the time taken to resolve their case).
- 3.92 In our CFI we discussed whether the Schemes had the necessary arrangements and incentives in place to identify and address risks that may have cause them to miss their KPIs. We suggested new interventions where KPIs are missed over a sustained period, such as the involvement of a third party or for a review of the Scheme(s) by Ofcom to be triggered.

## CFI Responses

- 3.93 Responses suggested a lack of awareness that both Schemes publish data showing their performance against KPIs.
- 3.94 The CCP believed it to be vitally important that the Schemes were held to account for missed KPIs and CDR also argued it was unacceptable for the Schemes to miss their KPIs.
- 3.95 BT Group did not support the involvement of a third party to provide advice on how processes could be improved in the face of missed KPIs, as they feared that would lead to inconsistencies between the two Schemes.

## Ofcom assessment

- 3.96 We note that both Schemes regularly report their KPIs to Ofcom and publish information regarding their performance on their respective websites<sup>29</sup>. Ofcom uses that data to

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<sup>29</sup> Both schemes publish their KPIs on their respective websites: <https://www.cedr.com/cisas/key-performance-indicators/> and <https://www.ombudsman-services.org/for-consumers/service-standards>

monitor the Schemes' performance and as a means to seek further information regarding fluctuations in performance, particularly downward trends, including the cause and potential remedies.

- 3.97 The Act also provides Ofcom with the right to launch a review of either Scheme should it have concerns regarding either Scheme's performance.
- 3.98 **We consider that the current KPIs and reporting mechanisms in place allow Ofcom to adequately hold both Schemes to account.**
- 3.99 While we consider the Schemes meet the required criteria, as a result of our Review, and to ensure that stakeholders have greater awareness of, and can scrutinise the Schemes' performance to a greater extent, we plan to publish the Schemes' quarterly KPI results on the dedicated section of our website. Similarly, we hope that the measures both Schemes have committed to in terms of simplifying and enhancing the information on their websites regarding their service standards, complaints processes and the existence and role of the IA/IR will further empower parties to a complaint to hold the Schemes to account for poor performance, particularly poor timeliness.
- 3.100 To further enhance Ofcom's oversight of any potential downward trend in KPI performance, and ensure the Schemes, Ofcom and the relevant CP can quickly identify any issues and work together to explore how best to resolve them, the Schemes have agreed to a new performance reporting process.
- 3.101 If a Scheme misses a KPI for two successive quarters, they will be required to write to Ofcom's Consumer Group Director to explain why and the measures they have put in place to get back within KPI. If, after another quarter, they have still not met the relevant KPI, they must write to the Director again to account for that continued failure. At that point, depending on the circumstances, the Director may decide to launch a formal review of the Scheme's approval.
- 3.102 We understand that both Schemes monitor customer satisfaction with the service received and that OS publish that data on an annual basis. To improve transparency in this area we will work with both Schemes to monitor their results and how they are using that data to improve their performance. In addition, CISAS have agreed to start publishing their customer satisfaction data from 2018.
- 3.103 Both Schemes have also agreed to publish a statement on their respective websites setting out the approval criteria approval derived from the Act and the measures they have in place to meet them.

## Non-discriminatory

- 3.104 In assessing this criterion, we have considered whether the Schemes have adequate processes and policies in place to ensure that they are not discriminating against, or in favour of, consumers and small businesses or CPs in making decisions.

## CFI Response

3.105 No respondents raised concerns regarding discrimination in the Schemes' decision-making.

## Ofcom assessment

- 3.106 During Mott's previous review of the Schemes in 2011, it identified a number of issues which were resulting in differences in the outcomes reached for consumers using each Scheme. These included the occasional tendency for CISAS to be unduly dismissive of the consumer's argument.
- 3.107 Mott then carried out further work to assist the Schemes to adopt a more harmonised approach. This led to the adoption by both Schemes of some 'Decision Guidelines'<sup>30</sup> which set out the factors that should be taken into account by adjudicators when reaching a fair and reasonable outcome. Those Guidelines include the statement that any outcome will "Demonstrate a level playing field between the CP and the consumer so that neither is disadvantaged", "Promote neither the position of the consumer nor the CP", "Recognise that both parties must provide evidence to support their position" and "Give equal credence to the word of the consumer and the word of the CP".
- 3.108 Mott's 2017 report makes clear that, in general, the quality of the Schemes' decision-making is high and adjudicators have fairly balanced the evidence and statements of the relevant parties and reflected on the ease by which both parties will have been able to demonstrate their case. Mott noted improvements in decision making since the introduction of the Guidelines.
- 3.109 **In light of Mott's analysis and noting the lack of concerns raised in responses to the CFI, we consider that both Schemes continue to meet the requirement to be non-discriminatory.**
- 3.110 We note from Mott's analysis that CISAS have amended the original 'Decision Guidelines' and that in a small minority of cases Mott believed the Schemes may not have adequately accepted the word of the consumer, or had had unreasonable expectations regarding the evidence that a consumer was likely to produce. Both Schemes have committed to review those particular cases to see if there are any lessons to be learnt. As Mott recommends, we also intend to revisit the Decision Guidelines with the Schemes to assess whether any revisions are appropriate. We intend to carry out this work in 2018, and any new or amended guidance produced as a result will be published by Ofcom or the Schemes, as appropriate.

## Consistency

3.111 When assessing the consistency of the Schemes, we have considered to what extent the parties using both Schemes will have broadly the same experience, in terms of the

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<sup>30</sup> See pages 27 and 28 of [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0021/51393/statement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0021/51393/statement.pdf)

outcome reached, including the levels of compensation awarded. We have also considered the level of consistency within the Schemes themselves.

### CFI responses

- 3.112 The CCP believes there should be consistency between the Schemes' case handling and the outcomes reached. BT Group welcomed the differences between the Schemes and the services they offer, but said Ofcom needed to ensure there was parity in the way customers and CPs were treated. Others welcomed the fact that consistency was an explicit measure that Ofcom assessed.
- 3.113 A member of the public, BT Group, Sky and Verastar noted instances where OS's decisions were inconsistent as it reached different conclusions on cases raising the same issue or awarded different remedies.

### Ofcom assessment

- 3.114 Both Schemes need to ensure that they meet a range of requirements stipulated by the ADR Regulations and meet the criteria derived from the Act. Our predominant concern is that consumers using either Scheme will secure broadly the same outcomes in terms of the complaint being found in their favour or not, and will receive the same amount of compensation, if the issue presented is largely the same. If that consistency exists we are not unduly concerned about how the Schemes go about achieving those ends or if they utilise different processes, many of which we consider remain commercial decisions.
- 3.115 As a result of our 2011/12 review, the Schemes both introduced some Decision Guidelines to ensure that they fairly balanced the evidence provided by both parties in a dispute and to improve consistency in their decision making. We note that Mott's 2017 report concludes that the Schemes are performing well and that in the majority of decisions the outcome reached is reasonable and defensible.
- 3.116 We note that some CPs believe the Schemes are reaching contradictory conclusions internally. Mott's study did not identify concerns regarding this; however, both Schemes have confirmed that if a CP has evidence of inconsistent positions being reached on cases raising the same concerns, then they are welcome to raise it with the Scheme directly.
- 3.117 In terms of compensation, in its 2011 review, Mott noted that the amount of compensation awarded covered a large range and there was a lack of consistency both within and across the Schemes. In this review, Mott has concluded that there have been improvements in the consistency with regard to compensation awards, with a greater degree of standardisation particularly at the £50 and £100 level.
- 3.118 **In light of that, we consider that both Schemes continue to meet the requirement of being adequately consistent as to the outcomes reached.**
- 3.119 As suggested by Mott, we intend to conduct further work with the Schemes to assess whether the Decision Guidelines should be revised. In addition, Mott noted that there were still differences in the patterns of financial awards made by the Schemes, with CISAS

making awards in 56% of cases, versus 74% at OS, but awarding much higher sums, and that some differences in the Schemes' application forms and processes could account for that discrepancy. We also note that there are still some inconsistencies around the circumstances in which a complainant is awarded an apology. Therefore, we will carry out further work with the Schemes to see if consistency can be further improved. We envisage this work will be carried out in 2018 and any new or amended guidance produced as a result will be published by Ofcom or the Schemes, as appropriate.

## 4. Conclusions and next steps

### Re-approval

4.1 As set out in section 3, we consider that both Schemes continue to meet the requirements of the ADR Regulations and the approval criteria devised from the Act. **On that basis we are re-approving both Schemes as ADR providers under both the ADR Regulations and the Act. This statement is a notification of their continued approval.**

### Legal Tests

4.2 Pursuant to section 49(2) of the Act, we consider that re-approving both Schemes would be:

- **not unduly discriminatory** because we are applying the same, non-discriminatory set of criteria to both Schemes in relation to the decision as to whether or not to re-approve, and have considered consistency between the two Schemes;
- **proportionate** because while the Review has identified areas where the Schemes' performance could be further enhanced, we consider that they meet the minimum requirements set out by the ADR Regulations and the criteria derived from the Act. The proportionate way to address the specific potential areas for improvement appears to us to be for the Schemes to take the steps set out above to further improve performance rather than to withdraw approval. We are content that both Schemes continue to offer an acceptable service to consumers and that additional interventions that could compromise the Schemes' commercial independence are not merited; and
- **transparent** because this review sets out how we have assessed the Schemes under each of the relevant approval criteria and explained why we consider that the Schemes continue to meet the required standard.

4.3 Therefore, we consider that the Schemes meet the statutory criteria at section 49(2) of the Act.

4.4 Further, we are satisfied that the Schemes meet the approval criteria at section 54(2) of the Act, and the Schemes meet the requirement of consistency under section 52(7)(b) of the Act.

### Next steps

4.5 While we confirm re-approval of both Schemes, both Schemes have committed to make changes or undertake additional work with us to further enhance their performance. These are identified in section 3 and summarised below.

4.6 The Schemes have agreed to undertake additional work to:

- review Mott’s findings with us to see if there are any lessons to be learnt and to see if greater consistency can be achieved in terms of case outcomes. In doing so, we will revisit the Decision Guidelines and consider whether the Schemes’ expectations of the evidence consumers are able to provide are reasonable;
- review Mott’s findings in relation to the compensation amounts awarded and the Schemes’ approach to apologies, and whether differences in their application forms or processes could be leading to those discrepancies;
- publish more ADR complaints data where the data is robust, comparable and will be of benefit to consumers; and
- take part in a further study regarding whether decisions to accept or reject cases are appropriate.

4.7 To help ensure that consumers continue to receive timely decisions on their cases:

- both schemes will put additional processes in place to handle spikes in complaint volumes to ensure a high level of customer service is maintained despite high case volumes; and
- OS will report an additional performance measure on the number of cases completed 90 days after receipt of a complete case file (reflecting the requirements set out in the ADR Regulations).

4.8 To improve transparency and their accountability to consumers and CPs who use their service, the Schemes will:

- adopt a new performance reporting process whereby they must alert Ofcom formally to a consistent failure to meet their KPIs and explain the measures they are taking to rectify that failure. Depending on the circumstances, Ofcom could then trigger an interim review;
- publish statements on their websites explaining how they meet the approval criteria derived from the Act;
- make changes to their websites to improve the ease of navigation and make clear the standards of service users can expect, and the steps they can take when those standards are not met;
- review the customer satisfaction data they collect and publish in 2018. We will monitor the customer satisfaction results achieved by both schemes and the results will inform any future decisions to improve performance;
- consider what additional financial information they can publish to enhance transparency regarding their case fees and expenditure;
- make clear that CPs can log process complaints with the IA/IR;
- publish an annual report summarising the IA’s/IR’s findings over the previous year, and if they do not adopt the IA’s/IR’s recommendations in a specific case, explain to both the complainant and the IA/IR why.

4.9 In addition to these measures the Schemes’ performance against their formal KPIs will be published on the Ofcom website on a quarterly basis.

## Review of approval of ADR schemes

- 4.10 We will continue to monitor the Schemes' performance and their progress against making the changes they have committed to in the coming months
- 4.11 We note that we can re-open the issue of approval at any time should recommendations not be implemented in a timely manner and evidence emerge of a Scheme falling short of our approval criteria.