



**Review of Consumer Complaints Procedures**

**TalkTalk Group's response to Ofcom consultation**

**12 March 2010**

## **Introduction**

TalkTalk Group welcomes the opportunity to comment on the proposals set out in the Ofcom consultation document.

We agree that good consumer complaints handling is a legitimate regulatory objective for Ofcom to pursue. However we believe that it is important that this objective is balanced against the need to avoid unduly prescriptive regulation that does little to achieve the objective and only burdens industry with unnecessary costs.

Communications providers have very strong commercial incentives to provide good complaints handling and those who fail to do so will be shown up in publicly available information such as customer satisfaction surveys, TV reports, blogs, etc. It is generally important to balance consumers' legitimate need for access to ADR against the need to avoid unwarranted or even vexatious complaints going to ADR because the hurdle to do so is set too low.

We fully support the need for ADR and we also supported the reduction from 12 to 8 weeks introduced last year within which customers can seek redress. We believe that change has had a positive impact on consumer experience although we do not believe sufficient time has elapsed since then to fully appreciate its benefits on consumer protection.

Against the above background, we address below each of the consultation questions in turn.

**Question 1: Do you agree with our definition of a 'complaint'? Complaint means 'an expression of dissatisfaction made by a customer to a Communications Provider related to the Communications Provider's provision of Public Electronic Communications Services to that customer, or to the complaint-handling process itself, where a response or resolution is explicitly or implicitly expected.'**

We appreciate that Ofcom may want to provide a formal definition of a complaint to provide clarity as to what the new regulations will cover. Our concern is that the proposed definition is potentially very far-reaching in that it would seemingly cover all instances where a customer mentions that they are not satisfied with a particular aspect of a communications service. Implementing a customer management system that complies with this definition under all circumstances is likely to both costly and potentially unnecessary.

The accompanying Draft Guidance Notes are helpful in that Ofcom clarifies that it is "primarily concerned with how CPs respond to unresolved Complaints that have not been resolved on first-contact." In meetings during the consultation period, Ofcom has also suggested that it is the fact that repeat contacts are made about the same issue that indicates it is a complaint. This does appear to suggest to us that the definition of a complaint goes further than what Ofcom actually intends to capture with the new regulations. This apparent contradiction can be resolved in one of two ways:

- (i) The complaints definition is specifically amended to reflect Ofcom's actual thinking in this area. We appreciate however that this may be difficult to achieve given that defining a complaint to cover all plausible situations may be difficult.
- (ii) Ofcom reflects its own thinking more accurately in the accompanying Guidance Notes than what currently is the case. We would also urge Ofcom to ensure that any enforcement activity with regard to the new regulations takes into account the fact that operators may interpret the definition of a complaint in slightly different (but plausible) ways.

We would also welcome some clarification as to what Ofcom perceives to be a "customer" and in particular whether this is intended to cover prospective customers who may not yet have entered into a legally binding contract with the operator.

**Question 2: Do you agree that the current approach to complaints handling in the telecommunications market is of sufficient concern to justify a degree of regulatory intervention (leaving aside any concern as to the nature of the intervention)?**

Ofcom provides a wealth of information in the consultation document to support its case that further and more detailed regulatory intervention in this area is justified. Our main concern with the current approach is that Ofcom may not have given sufficient time for previous additional regulation to have the envisaged effect. Specifically, we would welcome some more analysis as to the actual impact of the reduction from 12 to 8 weeks after which the customer can go to ADR. We would argue that this change (which took effect only in August/September 2009) must have had a positive impact of how customers perceive and use ADR. Failing to consider this impact may mean that Ofcom inadvertently imposes unnecessary rules on operators.

**Question 3: Do you agree with the principle that CPs should be required to comply with a single Ofcom Approved Complaints Code of Practice?**

Yes, in principle.

**Question 4: Do you agree with each of our proposed obligations on CPs to ensure that their complaints handling procedures are transparent?**

Yes, in principle.

**Question 5: Do you agree with each of our proposed obligations on CPs to ensure that their complaints handling procedures are accessible?**

We agree with the objective of making complaints handling procedures more accessible. Our concern is that the "one click" rule, whilst only a suggestion from Ofcom, could in an enforcement environment be interpreted as an absolute rule with which operators had to comply. We would argue that suggestions for what good compliance might look like should be included in the accompanying guidance notes instead leaving it to the sensible judgment of operators to determine how they comply in the best and most effective manner.

**Question 6: Do you agree with each of our proposed obligations on CPs to ensure that their complaints handling procedures are effective?**

We do not agree with the proposed obligation that a CP must ensure the fair and timely resolution of Complaints. The proposed wording would mean that a CP would have an absolute obligation to resolve a Complaint within a certain timescale and at any cost. This is clearly unreasonable and, actually, we doubt that is what Ofcom had in mind when drafting the text. We would suggest an alternative wording: “A CP must ensure there are fair and timely processes for resolving Complaints.”

Other than the above, we agree, in principle, with the draft wording.

**Question 7: Do you agree that (depending on the specific measure) Ofcom should take steps to improve awareness of ADR?**

It is our experience that our customers are generally aware of the possibility of going to ADR, either through general information in our code of practice or by requesting this information at the point when a complaint remains unresolved.

**Question 8: Do you agree with our proposals to improve awareness of ADR by requiring:**

- a) **Relevant text about ADR to be included on bills (paper and electronic);**
- b) **CPs to ensure consumers whose complaint has not been resolved within eight weeks of first being made to a front-line agent receive written notification about their right to go to ADR;**
- c) **CPs to ensure front-line staff are fully informed of the right of consumers to use ADR, as well as the role of Ofcom in investigating compliance with General Conditions; and**
- d) **On request from a complainant, CPs must issue a deadlock letter referring a matter to ADR unless the subject-matter of the complaint is outside the jurisdiction of the ADR scheme or the CP has genuine and reasonable grounds for considering the matter will be resolved in a timely manner, and subsequently takes active steps to attempt to resolve the complaint.**

We do not agree with the first two proposals to require inclusion of text on customer bills and to write to customers after eight weeks. We believe they would add unnecessary cost to our business with no proven benefit to customers’ awareness or ability to seek redress through ADR.

With regard to the third and fourth proposals:

- (i) We believe our front-line staff are already capable of providing customers with all the necessary and relevant information about ADR and Ofcom as part of our existing obligations under General Condition 14 (we do not agree our staff needs to know about Ofcom as long as they are aware of our regulatory obligations).

- (ii) We would already provide a customer with a deadlock letter upon request prior to the end of the eight-week period.

We therefore believe these proposals would amount to unnecessary regulation.

**Question 9: Leaving aside concerns about the merits of the proposal, do you agree that CPs should include the following wording (or Ofcom-approved equivalent text) on paper and electronic bills?**

**If you are a residential consumer or part of a business with fewer than ten employees and we have been unable to resolve your complaint within eight weeks, you have the right to ask [Otelo or CISAS] (an alternative dispute resolution scheme) to investigate your complaint at no cost. Their website is [insert web address], you can call them on [insert phone number], or write to them at [insert postal address].**

No, we do not believe Ofcom should prescribe a specific wording in this manner. If anything operators should be free to choose their own wording provided this offered an adequate level of information.

**Question 10: Do you agree with our proposed record keeping requirement on CPs?**

**A CP must retain written records collected through the complaint handling process for a period of at least six months, including written correspondence and notes on its Customer Record Management systems. Where call recordings are available, these need to be retained for at least three months.**

We do not quite understand the purpose of this proposed obligation. TalkTalk already retains written records for six months and call recordings for at least three months. However, the obligation does not seem to require written records to be kept if a CP for some reason is not retaining them in the first place. Similarly, if a CP is not recording calls, this obligation would not bite at all. This would mean that TalkTalk would actually be worse off as a result of this obligation because (i) it would now have to introduce additional compliance safeguards and (ii) it would be required to comply although other CPs may not be. This would be an unfair and unreasonable outcome of this (possibly well-intentioned) obligation.

Finally, on a point of clarification, we assume the requirement to retain written records does not mean retention of actual paper copies but that scanned versions would be sufficient.

**Question 11: Do you have any views on the Ofcom Code and accompanying guidance (Annex 5)? Do you consider we have adequately captured the policy intentions we have outlined in the consultation document?**

The accompanying guidance is a valuable document and should be expanded in places as discussed above.

In addition, we have already raised with Ofcom the section regarding disabled customers. As drafted this section appears to suggest that a CP would have to maintain complaints handling procedures for disabled customers to a standard over and above required by existing law (e.g. general disability legislation and General Condition 15). We do not believe that is Ofcom's intention but would welcome clarification in the final version of the guidance.

**Question 12: Do you agree that it is reasonable to require CPs to implement:**

- **Clauses 1 – 3 of the Ofcom Code (transparency, accessibility and effectiveness of complaints procedures) six months after the publication of any Statement; and**
- **Clauses 4 – 5 of the Ofcom Code (facilitating access to ADR and record keeping obligations) 12 months after the publication of any Statement.**

We do not disagree with the timescales but, as explained above, we do disagree with some of the proposed obligations.

**Question 13: Do you have any views on whether (and how) Ofcom should look to improve the availability of comparative information on how effective providers are at handling complaints?**

We are happy for Ofcom to look to improve availability of comparative information as long as this does not give rise to any obligation on the part of CPs to produce comparative information along the lines of the repealed Topcomm scheme. Ofcom eventually abandoned this scheme last year following the proven failure of this type of regulation. We would suggest that customer research carried out by an independent market research agency might be a good alternative way forward.