



Review of Alternative Dispute Resolution and Complaints Handling Procedures

Consultation

Publication date: 10 July 2008

Closing Date for Responses: 4 October 2008

Contents

Section		Page
1	Summary	2
2	Introduction	4
3	Alternative Dispute Resolution	11
4	Communications Providers' Complaints Handling Procedures	29
5	Record Keeping	44
6	Implementation Period	49
7	Summary of Our Preferred Options	50
Annex		Page
1	Responding to this consultation	51
2	Our consultation principles	53
3	Consultation response cover sheet	54
4	Consultation questions	56
5	Notification of proposed modification to General Condition 14 of the General Conditions of Entitlement	58
6	Impact Assessment	64
7	Glossary	67

Section 1

Summary

- 1.1 Our principal duty under the Communications Act 2003 (“**the Act**”) is to further the interests of citizens in relation to communication matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition. We also have a specific duty under the Act to set regulation where appropriate for Alternative Dispute Resolution (“**ADR**”) and Communication Providers (“**CPs**”) complaints handling procedures.
- 1.2 ADR and CPs’ complaints handling procedures are an important part of the consumer experience in the communications market. Inadequate or inappropriate procedures can cause significant harm and detriment to consumers.
- 1.3 For the purposes of this Consultation Document we use the term “**consumers**” to refer to “Domestic and Small Business Customers”, as defined in the Act as residential consumers and businesses with 10 or less employees (who are not a CP).
- 1.4 We think that while our current regulation of ADR and complaints handling procedures is successful in many respects, we have identified potential problems around access to ADR. We have also found evidence of general levels of dissatisfaction with CPs’ complaints handling procedures.
- 1.5 In this Consultation Document we consider a number of different options to address these issues. We put forward the following as our preferred proposals.

ADR

- 1.6 We propose that improving consumer access to ADR will increase the overall effectiveness of the ADR system.
- 1.7 We propose that the appropriate ways to improve access are to:
 - (a) reduce the period before consumers have a right to go to ADR from twelve weeks to eight weeks; and
 - (b) give CPs new obligations to tell consumers about ADR.
- 1.8 We also propose key criteria to use when we undertake our future review of our approval of bodies that provide ADR (“**ADR Schemes**”). This includes a criteria that ADR Schemes must be “accessible”.

Complaints Handling Procedures

- 1.9 We propose that CPs should have to comply with a single Ofcom Approved Complaints Code of Practice, instead of CPs having an individual Code of Practice for Complaints which we approve. This single Ofcom Approved Complaints Code of Practice would set out high level minimum standards that a CPs’ complaints handling procedures must comply with. This includes a proposal to limit the amount that CPs can charge for complaints made over the phone.

Record Keeping

- 1.10 We also propose that CPs should have new record keeping obligations for complaints so that we can request effective information to ensure compliance.
- 1.11 These are our preferred options. However, we recognise that regulation in this area can have a significant impact on many stakeholders, including consumers and industry. Appropriate regulation should adequately protect and empower consumers while not placing unnecessary burdens on industry.
- 1.12 To ensure that the interests of citizens and consumers are advanced, it is crucial that we consider the impact of any proposed regulation on all relevant stakeholders. We are committed to a thorough and open consultation.
- 1.13 We are inviting comments on our proposals and on the other options we have considered by **4 October 2008**.

Section 2

Introduction

Why are we doing this Review?

- 2.1 We think that our current regulation for ADR and complaints handling procedures is successful in many respects.
- 2.2 However, we recognise that there are concerns among some stakeholders about aspects of the current system. These concerns are mostly about access to ADR and about the general standard of complaints handling procedures by CPs.
- 2.3 We are doing this review to see if there are ways in which we can improve the current regulation. The system has been in place for nearly five years and now is a good time for us to carry out a review and, where appropriate, make changes.

Why is it important to have appropriate and effective regulation for ADR and Complaints Handling Procedures?

- 2.4 Our principal duty under the Act is to further the interests of citizens in relation to communication matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition. We also have a specific duty under the Act to set regulation for ADR and complaints handling procedures, where appropriate.
- 2.5 ADR and complaints handling procedures are an important part of the consumer experience in the communications market. Inadequate or inappropriate procedures can cause significant harm and detriment to consumers - such as stress, anxiety, loss of income, unnecessary expenditure and wasted time.
- 2.6 ADR is also a well established and important mechanism for giving consumers access to justice where recourse to the court system may be impossible or impractical due to cost and resource restraints. It is an important way to redress the power imbalance between consumers and CPs - who normally have greater resources, knowledge and control over the products and services which are in dispute.

What is our approach to policy evaluation for ADR and Complaints Handling Procedures?

Focus on individual consumers

- 2.7 While we operate with a bias against intervention, we are also willing to intervene firmly, promptly and effectively where required.
- 2.8 In this Consultation Document we are reviewing the current regulations because we are concerned about consumer access to ADR. Appropriate and effective regulation of ADR and complaints handling procedures may be needed to protect and empower these consumers.

Ability to exercise right to take a dispute to ADR

- 2.9 For ADR, we believe this emphasis on how individual consumers are affected is particularly relevant because the Act gives every consumer a right to go to ADR.
- 2.10 As the Act gives consumers this right, we address the issue of whether consumers are *able to exercise their right*. For example, if there is evidence that consumers do not know about their right to ADR, then they would be unable to exercise it.

Balancing ability to exercise right to ADR with the costs

- 2.11 In this Consultation Document, we consider options for improving consumers' ability to exercise their right to ADR, particularly around ensuring consumers are aware of their right. In evaluating the different options, we also have regard to the costs that the different options would impose on CPs.
- 2.12 For the options we have considered, we set out the evidence we have on the direct costs of the changes we are proposing, such as the costs of giving consumers written notice of their right to ADR.
- 2.13 There will also be other indirect costs imposed on CPs from our proposals. For example, one indirect cost of improving information about the right to ADR may be an increase in the volume of cases going to ADR. We believe that these costs also need to be considered in evaluating options.
- 2.14 In considering the preferred policy option we then weigh the benefit of improving consumers' ability to exercise their right to ADR with the costs of so doing. In considering this, we do not regard consumers' ability to exercise the right to ADR as being an absolute requirement, in the sense that this ability should be ensured regardless of costs. Rather, while we place high weight on the benefits of ensuring that consumers are able to exercise their right to ADR, we also consider the costs that the policy option would imply. Our impact assessment therefore considers, for each option, both the extent to which the ability of consumers to exercise their right is improved and the costs implied by the change.

What is our current regulation?

- 2.15 Currently, we set out our regulation for ADR and complaints handling in General Condition 14.
- 2.16 These requirements apply for consumers who are being provided with Public Electronic Communications Services ("PECS") by a CP.

ADR

- 2.17 General Condition 14.7 requires that all CPs are a member of an ADR Scheme which we have approved. CPs must comply with the rules of that ADR Scheme, including the final decisions made by the ADR Scheme in individual cases.
- 2.18 We have approved two ADR Schemes so far – CISAS and Otelo. CPs may choose which ADR Scheme they are a member of.

Complaints Handling Procedures

- 2.19 General Condition 14.4 requires all CPs to have a Complaints Handling Code of Practice which we approve and comply with the terms of that Code of Practice.

2.20 Basic guidelines for our approval of Complaints Handling Codes of Practice are available on our website.¹

What is our legal and regulatory framework?

2.21 When we set regulation we must work within our legal and regulatory framework. When evaluating the options in this Consultation Document we have considered these requirements, including our powers and obligations under the Act.

The Act

2.22 Section 3(1) of the Act says that our principal duty in carrying out our functions, is to further the interests of:

- citizens in relation to communications matters; and
- consumers in relevant markets, where appropriate by promoting competition.

2.23 Section 4 of the Act requires that we act in accordance with the six European Community requirements for regulation. In summary, these requirements are to:

- Promote competition in the provision of electronic communications networks and services, associated facilities and the supply of directories;
- Contribute to the development of the European internal market;
- Promote the interests of all persons who are citizens of the European Union;
- Not favour one form of or means of providing electronic communications networks or services, i.e. to be technologically neutral;
 - Encourage the provision of network access and service interoperability for the purpose of securing;
 - Efficient and sustainable competition; and
 - The maximum benefit for customers of Communications providers; and
- Encourage compliance with certain standards in order to facilitate service interoperability and secure freedom of choice for the customers of communications providers.

2.24 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. The General Conditions are the main statutory instrument we can use to implement regulation in this area.

2.25 Section 47(1) of the Act requires that when we set or modify a General Condition it must be:

- objectively justifiable;

¹ http://www.ofcom.org.uk/telecoms/ioi/g_a_regime/gce/newccodes/

- not unduly discriminatory;
 - proportionate; and
 - transparent.
- 2.26 We have a specific duty under section 52 to set General Conditions that we think are “appropriate” about:
- “the handling of complaints made to public communications providers by any of their domestic and small business customers” (section 52(2)(a)); and
 - “the resolution of disputes between such providers and any of their domestic and small business customers” (section 52(2)(b)).
- 2.27 Section 52(3) requires that when setting these General Conditions, we must “secure so far as [we] consider appropriate” that:
- the complaints handling and dispute resolution procedures are “easy to use, transparent and effective”; and
 - that consumers can access them “free of charge”.
- 2.28 If a CP does not comply with a General Condition we can issue a notice requiring compliance and that the consequences of non-compliance be remedied. If a CP still does not comply we may fine a CP up to 10% of its annual turnover.

Have we done an Impact Assessment?

- 2.29 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom’s activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see the guidelines, Better policy-making: Ofcom’s approach to impact assessment, which are on our website:
http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf
- 2.30 In this Consultation Document we set out an impact assessment for each of the main proposals. This means that we consider the key options to address the issue that we have identified and the costs and benefits of each option.
- 2.31 We do this in Sections 3 - 6 and also in a summary in Annex 6.
- 2.32 To make sure that we are furthering the interests of citizens and consumers it is crucial that we consider the impact of any proposed regulation on *all* relevant stakeholders. Appropriate regulation should adequately protect and empower consumers whilst not placing unnecessary burdens on industry or creating unnecessary obstacles to efficient competition.

- 2.33 You should send any comments on this Consultation Document to us by the closing date for this consultation. We will consider all comments before deciding whether to implement our proposals.

What research have we done?

- 2.34 We have done a number of different types of research for this review which informs our impact assessment. Our research has included:

Information Requests

- 2.35 In 2007 we issued a formal information request under section 135 of the Act to a representative sample of small, medium and large CPs ("**2007 Information Request**"). We asked a number of questions about how CPs currently deal with complaints and the likely impact of potential regulation (for example, of notice obligations). We received responses from around 80 CPs

- 2.36 We also referred to responses made to an Information Request which we previously sent to 50 members of CISAS and Otelo for our Review of Alternative Dispute Resolution Schemes in 2005 ("**2005 Information Request**").²

Futuresight Report

- 2.37 In 2006 we commissioned research from Futuresight to look at consumers' experiences of making a complaint for fixed lines, mobiles and internet services ("**Futuresight Report**").³

- 2.38 There were two components to the research:

- Quantitative survey: This involved telephone omnibus surveys, conducted in July and August 2006, with a total sample of 2,167 UK consumers.
- Qualitative interviews: Of those consumers who had had reason to complain, 50 people took part in further in-depth qualitative interviews. These in-depth interviews gathered data on the practical and emotional implications of the complaints experience.

- 2.39 The 50 consumers who took part in the qualitative interviews were self selected and cannot be regarded as representative of all those who had cause to complain. Comparing the results of these 50 with the representative quantitative survey indicates that the 50 had tended to suffer significantly worse experiences in the way their complaints were handled than average.

Ofcom Communications Tracking Survey

- 2.40 This survey provides Ofcom with a continued understanding of consumer behaviour in the UK communications markets to help monitor changes and assess the degree and success of competition.

- 2.41 It is a continuous face-to-face survey conducted amongst 2000+ UK adults aged 15+ per quarter. The survey is reflective of the UK profile by sex, age, socio-economic

² <http://www.ofcom.org.uk/consult/condocs/adr/>

³ http://www.ofcom.org.uk/consult/condocs/alt_dis_res/futuresight/

group, region, employment status, cabled/non cabled areas, rural/urban areas and levels of deprivation.

Ernst & Young Report on Complaints Handling

- 2.42 We also consulted a report issued by Ernst & Young on the basis of research undertaken by Ipsos MORI which looks at complaints handling across different sectors.⁴

What this review is not about

- 2.43 This is not a review of our approval of the ADR Schemes. In this review we are in general focussing on regulatory obligations on CPs, although we do consider a discrete aspect of the terms of ADR Schemes approval regarding the period of time before a complaint can be taken to an ADR Scheme. We plan to undertake a full review of our approval of ADR Schemes in late 2009. This timescale allows the changes made after this review, which may have implications for the way in which the ADR Schemes operate, to take effect. We will, however, undertake the review earlier if there is evidence of significant problems. We use this review to discuss the key criteria which we propose using when we do our future review of our approval of the ADR Schemes.
- 2.44 We do not consider the class of persons and nature of the services to which the regulation applies in this review. The current regulation of ADR and complaints handling procedures applies for “Domestic and Small Business Customers” (residential consumers and businesses with 10 or less employees) who are being provided with Public Electronic Communications Services. We do not think that we need to change these parameters.
- 2.45 We do not consider in detail information disclosure on quality of complaints handling. We will consider the issue, including what regulatory obligations should apply, if any, in more detail as part of the review of Quality of Service information which we are currently undertaking and about which we intend to publish a Consultation Document shortly.

Other regulatory regimes

- 2.46 We have read with interest the consultations and statements on complaints handling and ADR procedures which have been recently released by Ofgem⁵ and Postcomm⁶, responding to the requirements of the *Consumers, Estate Agents and Redress Act*, which was given Royal Assent on 19 July 2007. This Act requires those regulators to set complaints handling standards and criteria for approval of ADR schemes for their respective sectors.
- 2.47 Our approach is generally consistent with that taken by these other regulators, taking into account the different nature and issues of our respective markets.

⁴ <http://www.ey.com/global/Content.nsf/UK/FS - Complaints Handling>

⁵ <http://www.ofgem.gov.uk/Markets/RetMkts/Compl/ConsRep/Pages/ConsRep.aspx>

⁶ <http://www.psc.gov.uk/policy-and-consultations/consultations/redress-schemes-in-postal-services--approval-criteria.html> ; <http://www.psc.gov.uk/policy-and-consultations-consultations/complaints-handling-standards-for-licensed-postal-operators.html>; http://www.psc.gov.uk/postcomm/live/policy-and-consultations/documents-by-date/2008/2008_06_complaint_handling_standards_doc_v1.0.pdf

Ofcom Consumer Panel

2.48 The Ofcom Consumer Panel is an independent body which advises Ofcom on consumer interest issues. We have discussed our preferred options with the Consumer Panel and they have indicated their support for these proposals.⁷

⁷ Refer <http://www.ofcomconsumerpanel.org.uk/advice/>

Section 3

Alternative Dispute Resolution

Why is ADR important?

- 3.1 Under section 52 of the Act we have an obligation to set General Conditions that we think are “appropriate” for alternative dispute resolution, including provisions that make sure dispute resolution procedures are:
- easy to use;
 - transparent;
 - effective; and
 - free of charge.
- 3.2 An individual consumer can suffer significant harm and detriment if they are not able to effectively negotiate directly with a CP to resolve a complaint. Giving individual consumers the right to go to an independent body for fair and impartial dispute resolution is an important way in which a consumer may be protected and empowered when having a dispute with a CP.
- 3.3 ADR is a well established and important mechanism for giving a consumer access to justice where recourse to the court system by the consumer may be impossible or impractical due to cost and resource restraints. It is an important way to redress the power imbalance in disputes between consumers and CPs - who normally have greater resources, knowledge and control over the products and services which are in dispute.

What do we think about our current regulation of ADR?

- 3.4 We think that the current regulatory regime for ADR is successful in many ways. However, we think that there are ways in which it is appropriate to improve it.
- 3.5 In particular we have identified that there are potential problems with consumer access to ADR. There is no point in having an ADR system if consumers cannot access it. We think that the most important way we can make the ADR system function better is to improve consumer access to ADR.
- 3.6 We have identified three main potential barriers to consumer access to ADR:
- the twelve week period before consumers have a right to go to ADR;
 - the level of awareness amongst consumers of the right to go to ADR; and
 - the ease of access to the ADR Schemes, including the level of support provided to consumers by the ADR Schemes themselves.
- 3.7 In this section we look at these barriers and consider how we can overcome them to improve consumer access to ADR.

What is a Complaint?

- 3.8 Before we start to address these barriers, however, we need to make it clear what we are regulating.
- 3.9 The “disputes” which the ADR Schemes look at are “complaints” that have not been resolved between the consumer and a CP. We therefore need a definition of “Complaint”.
- 3.10 We also need a definition of “Complaint” for the regulation of CPs’ complaints handling procedures and record keeping that we look at in the next sections. The definition of “Complaint” that we propose in this section will be used for all the proposals in this Consultation Document.
- 3.11 The definition of “Complaint” is important as it will determine the scope of the transactions which our proposed regulation would apply to. This has implications for the circumstances in which consumers will be covered by regulation and for compliance processes and costs for industry.
- 3.12 We appreciate that CPs currently use a number of different definitions of “Complaint” in their internal procedures and systems. However, we think that it is possible to have a common definition which can apply across industry.
- 3.13 We need a common definition of complaint to make sure that our regulation properly captures the scenarios in which we think individual consumers are exposed to harm and detriment. We also need it to so that our regulation is applied uniformly by all CPs and consumers are therefore protected in the same way regardless of the CP they chose.
- 3.14 We propose using the definition used in ISO 10002:2004 (Quality Management – Customer Satisfaction – Guidelines for Complaints Handling in Organisations). The proposed definition is:

*“**Complaint** means an expression of dissatisfaction made to a Communications Provider related to its products or services, or the complaints-handling process itself, where a response or resolution is explicitly or implicitly expected.”*

- 3.15 An issue raised by some CPs in response to the 2007 Information Request, is whether “faults” should be included in this definition. Technical service delivery is a fundamental part of what a consumer buys. We consider that it should be included in the regulation we are proposing in this document. Therefore, for the avoidance of doubt, we think that faults would be included in the definition of “Complaint” which we are proposing, as set out above.

Question 1: Do you agree with the following definition of Complaint:

“Complaint means an expression of dissatisfaction made to a Communications Provider related to its products or services, or the complaints-handling process itself, where a response or resolution is explicitly or implicitly expected.”

How long should consumers have to wait before being able to go to ADR?

- 3.16 An important consideration in an effective ADR Scheme is deciding when a consumer should be able to go to ADR. A balance must be struck between giving CPs a reasonable time in which to resolve a complaint and giving consumers the ability to seek redress within a reasonable time.
- 3.17 At the moment, consumers have to wait twelve weeks before being able to go to ADR as set out unless a CP issues a “deadlock letter”. A CP can issue a “deadlock letter” before twelve weeks if it thinks that a complaint will not be resolved without going to ADR – in other words, the complaint is “deadlocked”. If a deadlock letter is issued a consumer may go to ADR earlier than twelve weeks.
- 3.18 Twelve weeks is a long time for a consumer to wait before they can go to ADR, particularly if the complaint is important to the consumer and they are experiencing high levels of stress and anxiety or suffering significant loss or damage.
- 3.19 There may often be little incentive for CPs to issue deadlock letters, especially because the CP must pay fees for ADR regardless of the outcome. We understand that the deadlock letter process may not be used often by all CPs.
- 3.20 In our 2007 Information Request we asked a question about the number of complaints that were received by the CP and the number of complaints that are resolved at first contact and within 28 days, 8 weeks, 10 weeks and 12 weeks.
- 3.21 The responses showed that the length of time to resolve a complaint varies between CPs. However, they suggest that only a very small proportion of complaints are resolved between eight weeks and twelve weeks - where CPs were able to give a breakdown of the time taken to resolve complaints, the proportion of complaints resolved between eight and twelve weeks represented less than one per cent of total complaints. Or, as a proportion of the complaints unresolved at eight weeks, those resolved between eight weeks and twelve weeks represented less than 10 per cent.
- 3.22 This means that, for the majority of complaints that cannot be resolved without going to ADR, there is no appropriate reason for waiting an additional four weeks before they go to ADR. Indeed, for such complaints, consumers may suffer detriment from the additional waiting period, such as stress and financial loss.
- 3.23 Our evidence (in particular from the Futuresight Report) indicates that making a complaint can result in varying degrees of stress, anxiety, frustration and anger.⁸ We believe that these are likely to be exacerbated by a prolonged period without resolution.

⁸ See the Futuresight Report, especially pages 23-24.

Options and Impact Assessment

- 3.24 We have considered two options for how long consumers should have to wait before being able to go to ADR.

Option 1 - Do nothing

- 3.25 We could leave the current regulation as it is, with a waiting period of twelve weeks.

Advantages

- 3.26 The advantage of this approach is that it would impose no costs on CPs as they would not need to make any changes to their existing arrangements.

Disadvantages

- 3.27 If we do nothing then consumers will not be able to exercise their right to ADR until after twelve weeks have passed. This means that the consumer protection and empowerment which the ADR system provides will not be as effective as possible. In other words, there will be a continued “cost” to consumers of not having earlier access to ADR.
- 3.28 This is because those consumers whose disputes are not resolved at twelve weeks (which our evidence suggests represent the majority of disputes outstanding at eight weeks) will continue to be exposed to additional harm and detriment (such as anxiety and financial loss) as a result of the additional four week waiting period.

Option 2 - Reduce the time that a consumer has to wait to go to ADR from twelve to eight weeks

- 3.29 We could decrease the time that a consumer has to wait to go to ADR from twelve to eight weeks.

- 3.30 We have chosen eight weeks as an alternative duration with which to contrast the current twelve weeks. As set out at paragraph 3.21 above, eight weeks appears to be the length of the time in which the majority of complaints are resolved, if they are able to be resolved. Additionally, we have considered other dispute resolution examples for good practice. For example, eight weeks is the period consumers have to wait in the energy industry before a complaint can be referred to the energy ombudsman.

Advantages

- 3.31 For the large majority of complaints that cannot be resolved without going to ADR the consumer would benefit from sending the complaint to ADR at eight weeks rather than twelve weeks, because the majority of such complaints are not resolved in the additional four weeks. Given the evidence (in particular from the Futuresight Report) that dealing with complaints can cause significant detriment to individual consumers (for example, stress and financial loss), a shorter period means a better outcome for individual consumers.

Disadvantages

- 3.32 The main potential disadvantage is the potential cost to CPs of cases that are resolved by twelve weeks but not eight weeks being referred to ADR. CPs would have to pay the case fees for such referrals (which could otherwise have been

avoided by resolution of the complaint). However, the extent of this increase is likely to be limited. Based on the responses to the 2007 Information Request, less than ten per cent of complaints that are unresolved at eight weeks are resolved between eight and twelve weeks.

- 3.33 We recognise that in a very limited number of instances it may not be reasonable to expect a CP to resolve a complaint within eight weeks – for example, where the complaint concerns engineering work or complex billing problems. However, the proposed change does not *require* that a consumer go to ADR after eight weeks but simply gives the consumer the *right* to go to ADR. After eight weeks the onus will be on the CP to convince the consumer that it is actively trying to resolve the issue in a timely way and that ADR is not yet appropriate.

Our Preferred Option

- 3.34 Our preferred option is for consumers to be able to go to ADR eight weeks after a complaint has been first received by a CP - instead of twelve weeks. We think that this is a reasonable timeframe before allowing consumers to exercise their right to ADR. It will enable many consumers to take their complaint to ADR four weeks earlier than at present. We recognise that this will impose additional costs on CPs, but we believe that these are not disproportionate when weighed against the improvement in consumers' ability to exercise their right to ADR.
- 3.35 We consider that the use of deadlock letters where a complaint cannot be resolved before a consumer automatically has the right to go to ADR is a valuable process which may benefit both consumers and CPs. Even though not all CPs use the deadlock system, we think that CPs should continue to have an option to issue deadlock letters before the end of the eight week period if the CP considers that the complaint cannot be resolved without going to ADR. If a CP does choose to issue a deadlock notice then the right to go to ADR will arise at that time and a CP will not be able to revoke that right after a deadlock letter has been issued.
- 3.36 To summarise, we propose that a consumer should have the right to go to ADR:
- (a) eight weeks after a complaint is first received by a CP; OR
 - (b) earlier, if a deadlock letter has been issued.
- 3.37 We propose affecting this by requiring as a term of our approval of the ADR Schemes that (subject to other existing criteria being satisfied), the ADR Schemes accept a complaint:
- (a) eight weeks after a complaint is first received by a CP; OR
 - (b) earlier, if a deadlock letter has been issued.

These provisions would then flow through into the ADR Schemes membership criteria, which is the primary instrument which determines when a consumer can take a complaint to ADR.

Tests set out in the Act

- 3.38 We consider that this proposal falls within our duties set out in sections 3 and 4 of the Act, including our principal duty of furthering the interests of consumers and citizens. This is because it will fulfil our duty of protecting consumers and citizens from the

potential harm they may suffer if complaints take a significant amount of time to be resolved. Additionally, we consider that the proposal is:

- objectively justifiable

We believe that the change is objectively justifiable because we believe that reducing the waiting term before consumers can go to ADR will be an important way to protect consumers from harm and detriment when they have a dispute with a CP.

- not unduly discriminatory

We consider that the proposals are not unduly discriminatory. This is because the proposed requirement would apply equally to all CPs who consumers make complaints to.

- proportionate

We consider that the proposed modifications are proportionate on the grounds that an eight week period still gives CPs a reasonable time to resolve a complaint while still providing consumers with an avenue for ADR before an excessive length of time.

- transparent

As the proposed policy change will take effect through the approval of the ADR Schemes, we consider that the proposal and its potential effect has been explained clearly in this document.

Question 2: Do you agree that a consumer should have the right to go to ADR:

- (a) *eight weeks after a complaint is first received by a CP; OR*
- (b) *earlier, if a CP has issued a deadlock letter.*

When and how should consumers be told about ADR?

- 3.39 For an ADR system to offer protection and empowerment to individual consumers, consumers must know about it.
- 3.40 At the moment the only requirement in the General Conditions to tell consumers about ADR is that a CP must include details of the ADR Scheme it is a member of in its Complaints Code of Practice. One of the ADR Schemes – Otelo – also requires that its members include a reference to Otelo on the back of customer bills.
- 3.41 If a CP chooses to notify consumers of their right to ADR in addition to these minimal requirements, there are a number of different methods which it may use. Responses to our 2005 Information Request showed that there is no uniform way in which CP inform customers of their right to ADR. For example, some CPs inform customers verbally when they make a complaint while others refer to ADR in “welcome letters”.
- 3.42 Our research with the Ofcom Tracker Survey shows that levels of consumer awareness of the right to ADR are low. Research conducted between July and August 2007 indicated that 15% of adults were aware of at least one of the two ADR schemes. Awareness was higher for Otelo (13%) than CISAS (7%). However, the

vast majority of consumers had not heard of either of the ADR Schemes (83%). As the following figure shows, awareness has not changed since 2006.

Figure 1: Prompted awareness of alternative dispute resolution schemes



Source: Ofcom Communications Tracking Survey, amongst UK adults aged 15+ conducted between July-Aug 2007 (n=1491), July-Aug 2006 (n=1452)

- 3.43 Awareness of ADR was higher amongst people who had made a complaint. During 2005 more than a fifth (22%) of consumers who had made a complaint about a telecoms service were aware of at least one of these schemes. More consumers were aware of Otelo (20%), than CISAS (12%). We could not analyse 2006 or 2007 data on this basis as complaints data was not collected on the same survey.
- 3.44 Data from 2007 showed that younger consumers aged 15-24 were amongst those least likely to be aware of these schemes – 5% said they had heard of at least one of them. Lower income groups (up to £17.5K annual household income) were also less likely to be aware (9% aware) than consumers living in higher income homes (20% of those earning £17.5K to over £30K were aware of at least one of the ADR Schemes).
- 3.45 Qualitative interviews conducted as part of the Futuresight Report suggest that even amongst those who are seeking to progress a complaint with a CP, awareness may be poor. None of the 50 complainants interviewed in the study were notified of the right to ADR by their CP.⁹ This was despite the fact that 18 of the 50 complaints had lasted twelve weeks or longer (with 12 lasting for sixteen weeks or longer).
- 3.46 We think that it is reasonable to conclude from this evidence that levels of consumer awareness of ADR are at an unacceptably low level.
- 3.47 We have identified three options for when a consumer should be told about ADR:
- (a) Notice when a CP first receives a complaint
A CP could tell a consumer about ADR when the CP first receives the complaint.
 - (b) Notice when a consumer can go to ADR

⁹ See the FutureSight Report, especially p 19.

A CP could tell a consumer about when the consumer can go to ADR – (the proposed) eight weeks after the complaint has been received or earlier if the CP issues a deadlock letter.

(c) General Signposting

Measures could be taken which are aimed at all consumers to increase general levels of awareness of ADR, rather than targeted at individual consumers who have made complaints. These measures could include:

- requirements for CPs make information on ADR more readily available to all consumers. For example, by including information on the back of bills, on their websites, and in complaints handling guidelines;
- further steps by us and/or the ADR Schemes. For example, public information campaigns; and
- mass advertising campaigns, funded by industry.

Options and Impact Assessment

3.48 There are a number of different possible combinations of these ways of telling consumers about ADR. We have identified the following five options as the most feasible:

- Option 1 – When a CP first receives a complaint
- Option 2 – When the consumer can go to ADR
- Option 3 – When a CP first receives a complaint AND when the consumer can go to ADR
- Option 4 - General Signposting
- Option 5 – Do nothing and continue with the existing requirement to refer to the ADR Scheme only in a CP's Complaints Code of Practice.

3.49 There are advantages and disadvantages which are common to Options 1 - 4 which look at changing the notice requirements. We look at these now. We then consider the costs and benefits specific to each option separately. We also consider the "Do nothing" option 5 below.

Options 1 - 4

Advantages

3.50 The advantage of these options is that they will improve consumers' ability to access the ADR System. The right to ADR is a fundamental consumer right, as is reflected in our duties under the Act. ADR offers protection and empowerment to individual consumers. For the right to be meaningful, consumers need to be able to exercise their right, which implies they need to know about their right.

Disadvantages

- 3.51 Balanced against the benefits of ensuring consumers know about their right to ADR are the costs of informing them. These costs will initially fall on the CPs, but may be passed, at least in part, to consumers in the form of higher prices.
- 3.52 For each of the options we have considered, we set out the evidence we have on the direct costs of informing consumers, such as the costs of sending out letters notifying consumers of their right. This evidence has been gathered largely through the 2007 Information Request.
- 3.53 There are also likely to be other, more indirect, costs. These include the costs of a likely increase in the volume of cases going to ADR. CPs have to pay case fees for ADR, regardless of the outcome of the case.
- 3.54 It is difficult to estimate the extent of any possible increase in the number of cases that might be referred to ADR. The evidence on the current low levels of awareness of ADR might suggest that there is potential for a significant increase in the number of cases going to ADR. But this will also depend on actions that CPs may take to minimise the number of ADR disputes, for example by improving their complaints handling procedures, though there may also be costs of doing this.
- 3.55 There is a risk that greater awareness of ADR may mean that there is a greater number of cases going to ADR that could be considered frivolous or vexatious. We note that the ADR Schemes already have rules and procedures in place to monitor and refuse frivolous or vexatious complaints. We will monitor the management of this by the ADR Schemes. At this stage we consider that there are sufficient mechanisms in place.
- 3.56 The case fees which CPs must pay for ADR are likely to give CPs a strong incentive to try to avoid referrals to ADR for most complaints by improving their complaint handling procedures. Making these improvements is likely to impose a second set of indirect costs on CPs. For example, CPs may find it most cost effective to offer higher and more routine compensation to consumers in the event of service failures and to increase expenditure on customer services. There might be some off-setting benefits to CPs from such expenditure, for example in terms of reduced consumer churn.
- 3.57 We now evaluate each option.

Option 1 - When a CP First Receives a Complaint

- 3.58 We clarify that, for this option, we think that written notice should be given because this is the most effective way of ensuring that consumers are able to properly understand and refer back to the information. Written notice cannot be given at the exact moment the complaint is made so we propose to require CPs to give notice within five working days of first receiving a complaint.

Advantages

- 3.59 By giving notice *at the start* of the complaints process that ADR is available after a certain period, this option ensures that consumers are fully informed of their right to ADR throughout the complaint process.
- 3.60 This option is most likely to reduce the stress and anxiety for consumers of making a complaint. Consumers are more likely to feel appropriately empowered when they progress their complaints with CPs. By “empowered” we mean that consumers will

know that they do not have to accept a resolution proposed by a CP, or inaction by a CP, if they are not happy with it because there is an independent body they can go to. If consumers do not know this we think that there is a risk that they are more likely to accept a resolution by a CP even if they are not happy with it or give up on a complaint because they feel that there is nothing they can do about it.

Disadvantages

- 3.61 There is a risk that a consumer may not recall information about ADR if the information has been provided weeks before the right to go to ADR arises. Therefore the ultimate goal of significantly increasing consumer awareness of ADR at the moment that it is likely to be most useful to a consumer may not be achieved.
- 3.62 If notice is given to all consumers who make a complaint it is likely that notice will sometimes be given to a consumer for whom a complaint has been resolved to the consumers' satisfaction. The Futuresight Report, for example, found that "an average of 22% had their complaint resolved by the first person they spoke to". Our clear preference is to minimise unnecessary or inappropriate notice obligations.
- 3.63 We think that if a complaint has been resolved at first contact there is not a significant benefit in giving consumers notice of ADR. We propose that, if this option is implemented, notice about ADR would not need to be sent where the complaint has been resolved at first contact.
- 3.64 We think that a complaint would be "resolved" if the consumer either indicates to the CP that they no longer wish to pursue the matter after discussing the complaint or that they do not wish to do so *provided that* the CP takes an agreed course of action to address the complaint.
- 3.65 However, if a consumer subsequently contacts a CP about the same matter again, notice would be required at that second time of contact. It is noted that this would not affect the time at which a consumer has the right to go to ADR – which would still be calculated from the time the complaint is first made.
- 3.66 We think that the most significant disadvantage of this option would be the potential costs to CPs. The main costs would be the costs of actually sending out the notice and costs for system and process changes needed to implement the notice process.
- 3.67 In an optional question in our 2007 Information Request, we gathered information about the potential costs to CPs of providing individual written acknowledgements for complaints not resolved at first contact. We assume that the cost of sending notice about ADR will be at most the same as such acknowledgements. Some CPs who answered this question said that these cost increases would be significant for them. Others said that cost increases would be zero or negligible (in some cases this was because they had no complaints). Of the CPs that said that there would be a cost increase, a small number provided an estimate of the likely size. These estimates varied considerably. The highest estimate by a single CP, by a very considerable margin, was for ongoing costs of £6.4 million per year. Other estimates were in the range from around £1,000 to £1 million. As a proportion of the CP's total fixed line, mobile and internet revenue, the cost estimates for the first year varied from being negligible to around 5 per cent for a small CP.
- 3.68 In total, the cost estimates (including the highest estimate of £6.4 million per year) provided for the first year were less than 0.1 per cent of the fixed line, mobile and internet revenue of all the CPs who provided estimates. Total telecoms industry retail

revenues in 2006 was £38.5bn¹⁰, but only part of this related to customers who would be covered by the ADR schemes. If we exclude all revenue from business telecoms services, then scaling up the estimates from CPs that provided them (including the £6.4 million estimate) would imply that set-up costs might be around £20m to the whole sector in the first year for setting-up the appropriate systems and for sending an acknowledgement for each complaint. This cost would be lower in later years as the system will already be set-up. For some companies, the 2007 Information Request responses implied that the costs would fall significantly in later years because some of the costs would be one-off rather than ongoing in nature. However, other responses indicated that the majority of the costs would be ongoing as they related to the cost of sending such notices.

Option 2 – When the consumer can go to ADR

Advantages

- 3.69 The main potential advantage of this option is that by giving individual notice of ADR at the point when the consumer is able to go to ADR, it would target consumers at the most relevant time for ADR.

Disadvantages

- 3.70 A risk with this timing is that consumers may not be aware of their right to ADR when they are initially progressing their complaint with the CP. A consumer may therefore not feel as empowered as they should when communicating with the CP.
- 3.71 There is also a risk with this option that notice may be given to a consumer for whom a complaint has already been resolved – which may be confusing to a consumer and of no value. This risk could be minimised by not requiring any notice at all if a complaint is resolved at first contact (as set out above) and if the matter is not resolved at the first point of contact but is resolved before the eight week period, allowing notice to be given before eight weeks at the earlier time the complaint is resolved.
- 3.72 The main disadvantage of this option is the potential costs to CPs. In addition to the actual cost of sending notices, CPs will also have to log complaints so that they can determine when the relevant period of time has elapsed and a consumer has the right to go to ADR.
- 3.73 Above we discussed the costs of sending out a notice to all complaints not resolved at the first point of contract (refer paragraphs 3.67 – 3.68). We would expect the ongoing costs for sending the second notice to be the same as those for sending the first notice. We would not anticipate that the set up costs for establishing the notice procedures would be greater because of these second notice obligations.
- 3.74 The costs implications of logging complaints appear to vary significantly between CPs. Some CPs already log the duration of complaints, but others have said they would have to incur significant costs to change their systems. The highest estimate we have received is for one CP incurring additional costs of £1 million to log complaints. The implications of imposing logging requirements on CPs is further considered in section 5. For the industry as a whole, the information provided

¹⁰ See section 4.2.2 of http://www.ofcom.org.uk/research/cm/cmr07/cm07_print/cm07_3.pdf

suggests that the costs might be of the order of £5 million in the first year, falling in later years.

Option 3 – When a CP first receives a complaint and when the consumer can go to ADR

Advantages

3.75 In addition to the general advantages set out above, the main advantage of this option is that it has the highest likelihood of ensuring that consumers are aware of their right to go to ADR when progressing their complaint and at the point that they can actually go to ADR.

Disadvantages

3.76 This option will incur the highest costs to CPs. We believe that the costs would be likely to be around the sum of the costs for Options 1 and 2. Based mainly on the responses to the 2007 Information Request, the direct costs might be of the order of £25 million to the entire sector in the first year, falling somewhat in later years.

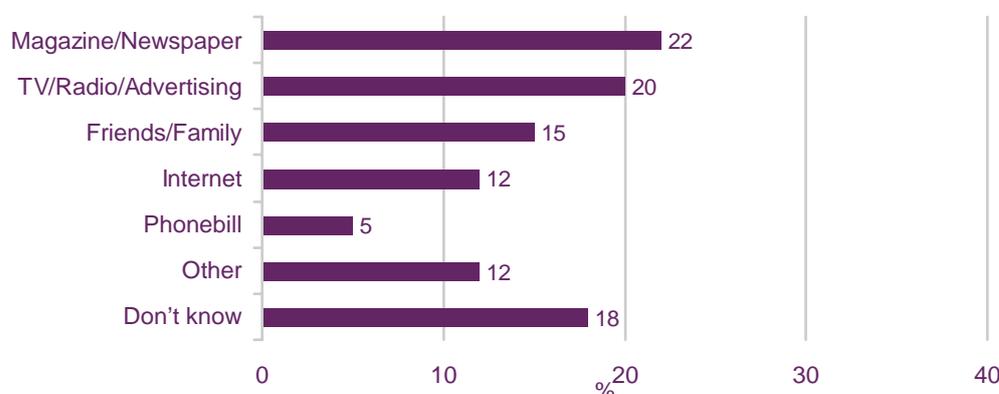
Option 4 – General Signposting

Advantages

3.77 There is some evidence that suggests that untargeted signposting may create higher levels of awareness of ADR among consumers.

3.78 In our research with the Ofcom Communications Tracking Survey, those consumers who were aware of at least one of the ADR Schemes were asked how they had found out about it. Results highlighted a range of sources most notably the media – magazines/newspapers (22%) and TV/Radio/Advertising (20%). Friends and family (15%) and the internet (12%) were the next most mentioned sources of information. Notably, relatively few (5%) mentioned their phone bill as their source of information. This suggests that an approach which relies merely on requiring CPs to include details of ADR Schemes on the back of their bill, as Otelo currently does, would not be particularly effective in raising awareness.

Figure 2: Sources of awareness for ADR schemes



Source: Ofcom Communications Tracking Survey, amongst UK adults aged 15+ aware of at least one ADR, conducted between July-Aug 2007 (n=211)

- 3.79 Another main advantage of this option is that it would not require CPs to incur costs to change current procedures and to send out notices.

Disadvantages

- 3.80 This option will still require CPs to incur some costs. The size of these costs would depend on the details of how this option is implemented. If it were limited, for example, though a requirement on CPs to place the information prominently on their web sites, in their Complaints Code of Practice and in customer material, we believe the costs would be small. On the other hand, a mass marketing campaign would be expensive.
- 3.81 It would be difficult to provide consumers with the specific details which they need to know about ADR at the right time. This is particularly the case as there are two ADR Schemes.

Option 5 – Do Nothing

Advantages

- 3.82 The advantage of this approach is that it would require no additional costs in terms of changing the existing arrangements.

Disadvantages

- 3.83 If we do nothing then some consumers will remain unaware of their right to ADR and will continue to be exposed to harm. The evidence set out earlier suggests that awareness is currently at an unacceptably low level.

Our Preferred Option

- 3.84 For consumer to be able to exercise their right to ADR, they need to know they have such a right.
- 3.85 We think that our current requirement that CPs must tell consumers about ADR in their Complaints Code of Practice is not working appropriately in giving information to consumers. We have therefore considered the options for improving consumers' awareness.
- 3.86 We believe that Option 3 - where notice must be given when a CP first receives a complaint and when the consumer can go to ADR - would be the most appropriate at giving adequate information about ADR at key stages of the complaints process.
- 3.87 The most important disadvantage of this option is the costs, which we recognise may be significant. In addition there might be increased indirect costs, as a result of additional ADR cases and increased expenditure on complaint handling procedures by CPs. We welcome submissions on the issue of the potential costs to CPs.
- 3.88 To summarise, our proposed option would require that a CP give written notice about ADR:
- (a) five working days after a CP first receives a complaint, unless the complaint is resolved at the first point of contact.

(If a consumer contacts a CP again about a matter which the CP reasonably believed to be resolved at first contact then notice should be given within five working days of that time)

AND

(b) eight weeks after the CP first receives the complaint, earlier if the a complaint has been resolved or when the CP issues a deadlock notice.

3.89 We propose that this option be implemented by changes to General Condition 14.7, which are set out in Annex 5.

Question 3: Do you agree with our preferred Option 4 that a CP should be required to give written notice about ADR:

(a) Within five working days after the CP first receives the Complaint, unless the complaint is resolved at the first point of contact; (If a consumer contacts a CP again about a matter which the CP reasonably believed to be resolved at first contact then notice should be given at that time)

AND

(b) eight weeks after the CP first receives the Complaint, earlier if the Complaint is resolved or when the CP issues a Deadlock Notice.

What should be in the notice about ADR?

3.90 If our preferred option is implemented we propose that the notice should set out the following key information about ADR, which we think it is appropriate to give consumers.

3.91 We do not think it is appropriate for us to stipulate a standard text. We recognise that the style and format of customer communications are an important part of CPs brands and a way in which they distinguish themselves.

3.92 We think that the notice about ADR should include at least the following:

- (a) be in writing in a durable form;
- (b) be in plain English, clearly written and concise;
- (c) include a reference for the relevant complaint;
- (d) include details of the ADR Scheme which the CP is a member of, including contact details; and
- (e) summarise when the consumer has the right to go to ADR Scheme and the role of the ADR Scheme.

3.93 We think that the notice should be in writing because this will be the easiest format for consumers to understand and refer back to.

3.94 For clarity, we consider a “durable form” of writing to be a form that is able to be stored and retrieved. We would not consider text messages to be “in writing in a

durable form”, particularly because text messages are more difficult to store and refer back to and are limited in space. We would, however, consider electronic mail to be writing in a durable form. However a CP should not send a notice by email where a consumer has indicated that they do not want to receive notice by that medium.

Question 4: Do you agree that the notice about ADR which CP should give must be:

(a) be in writing in a durable form

(b) be in plain English, clearly written and concise;

(c) include a reference for the complaint;

(d) include details of the ADR Scheme which the CP is a member of, including contact details; and

(e) summarise when the consumer has the right to go to ADR Scheme and the role of the ADR Scheme.

Tests set out in the Act

3.95 When we set or modify a General Condition we must meet various tests set out in the Act.

3.96 We consider that our proposed preferred option (including what should be in the notice about ADR) meets these tests as follows:

(a) falls within our duties set out in section 3 of the Act, including our principal duty of furthering the interests of consumers and citizens

The main aim of our changes is to further the interests of individuals both as consumers and citizens. We believe that our preferred option will fulfil our duty by protecting consumers and citizens from the potential harm which they may suffer if they are not aware of their right to go to ADR at the appropriate time.

(b) is:

- objectively justifiable

We believe that the change is objectively justifiable because we believe that providing notice about ADR to consumers will protect consumers by ensuring that they are able to exercise their right to ADR and by limiting their exposure to suffering detriment including stress, anxiety and financial loss.

- not unduly discriminatory

We consider that the proposals are not unduly discriminatory. This is because the proposed requirement would apply equally to all CPs who provide Public Electronic Communications Services to Domestic and Small Business Customers.

- proportionate

We consider that the proposed modifications are proportionate on the grounds that it is the least onerous solution to achieving Ofcom's key objective of making sure that consumers are aware of their right to ADR. We consider that the costs which it is likely that CPs will incur are proportionate to the benefit that consumers and citizens will receive as they are small on an industry wide basis compared to the significant benefit which individual consumers are likely to derive.

- transparent

We are satisfied that the proposed modifications are transparent insofar as the nature and obligations are clearly set out in this document.

- (c) complies with section 4 of the Act by being in accordance with the six European Community requirements for regulation, in particular the requirement to promote the interests of all citizens of the European Union. As set out above, our proposed option will protect consumers by ensuring that they are able to exercise their right to ADR and by limiting their exposure to suffering detriment including stress, anxiety and financial loss.

What criteria do we propose to use in our review of our approval of the ADR Schemes?

- 3.97 CPs can only use an ADR Scheme which we approve. So far we have approved two such schemes - Otelo and CISAS.
- 3.98 We have a duty under the Act to keep approved dispute resolution procedures under review. We last conducted a review of the ADR Schemes in 2005.
- 3.99 This Review is not a review of our approval of the ADR Schemes. We plan to undertake a review of our approval of ADR Schemes in the second half of 2009. This timescale will allow any proposals implemented following this Review, which may have implications for the way in which the ADR Schemes operate, to take effect. We will undertake the review earlier if evidence arises that there are significant problems.
- 3.100 However, we acknowledge the concerns raised by some stakeholders about the existence of two ADR Schemes with different operating models.
- 3.101 Some stakeholders argue that this makes it harder for consumers to know where to go and how to access an ADR Scheme.
- 3.102 Some stakeholders are also worried that allowing CPs to choose from two different ADR Schemes means that the ADR Schemes are inappropriately incentivised to focus on the delivery of service to CPs (who pay for the service) rather than consumers (who are in effect the "customers" of the service), and that this may lead to an incentive to save costs by reducing standards below an acceptable level. The National Consumer Council, for example, in a recently published pamphlet called *Lessons from Ombudsmania* (February 2008) raised concerns about the existence of two ADR schemes which CPs can choose from.¹¹
- 3.103 The approval process ensures that ADR Schemes operate to an acceptable standard. In light of these concerns expressed by stakeholders, we take this

¹¹ http://www.ncc.org.uk/nccpdf/poldocs/NCC198ft_ombudsmania.pdf

opportunity to make it clear what approach we propose taking in our future review of the approval of the ADR Schemes, and open for discussion the key criteria which we propose using.

3.104 When we undertake the review we will want to be convinced that all candidate ADR Schemes meet the proposed criteria and this will be important in determining whether we approve an ADR Scheme.

3.105 We propose these key criteria for approval of an ADR Scheme.

Criteria	Description
Accessible	Consumers to be able to access an ADR Scheme free of charge. Procedures must be easy to use and understand, including for disabled and vulnerable consumers. (We discuss the accessibility criteria in further detail below. This is particularly relevant to the overall issue of access to the ADR Schemes which we have identified in this Review. It is also a particular issue which has been raised with us by some stakeholders.)
Independent	The ADR Scheme to be impartial and independent of both the consumer and the CP.
Fair	Decisions to be based on principles of fairness, taking into account relevant principles of law and equity.
Efficient	The ADR Schemes to operate efficiently. They must deal with complaints in a timely manner and use their resources in a responsible and efficient manner.
Transparent	The ADR Schemes to be transparent about the rules which govern the use of their services and about the decisions which they make.
Effective	The ADR Schemes to have procedures in place, which are followed, to monitor the implementation of its decisions and compliance with rules. They must make sure that decisions are implemented by CPs.
Accountable	The ADR Schemes to provide detailed and transparent reporting on their operation to us and the public. We anticipate that it will be appropriate to review the current KPIs which the ADR Schemes are required to provide to us to ensure that they remain relevant and useful and to make them comparable where possible.

3.106 As set out above, we have identified that a key area for improvement for the current ADR system is access to ADR. Whether the ADR Schemes are meeting the “accessibility” criteria will be an important part of our review of our approval of the ADR Schemes. We will want to be satisfied that the way that ADR Schemes accept and process claims do not act as a barrier to consumers that are eligible to submit a case.

3.107 When assessing whether an ADR Scheme meets the accessibility criteria we propose looking at certain issues including but not limited to:

- the levels of support and assistance that the ADR Schemes give to consumers where appropriate, for example in filling in forms and following up on cases;
- the availability of an ADR Scheme to contact a consumer; and
- the existence and effectiveness of procedures to ensure equal access by disabled and vulnerable consumers

3.108 We will expect the ADR Schemes to provide data to demonstrate the proportion of consumers who contact the ADR Scheme with a valid request for dispute resolution who then did not progress that case further. We will engage with the current approved ADR Schemes to make sure that this data is collected on a fair and relevant basis and in a manner that makes this measure comparable between the ADR Schemes.

3.109 In short, we propose that we will withhold approval from any ADR Scheme where we are not satisfied that mechanisms are in place to ensure all eligible consumers are able to access the services of that ADR with sufficient ease. We propose working with CPs, consumer representatives and the ADR Schemes to understand the mechanisms already in place and how these may be improved. If we are not satisfied with the mechanisms in place, we may bring forward our review of approvals from our currently planned date of the second half of 2009.

3.110 We welcome views on these proposed criteria and any other comments that stakeholders may have which may inform our approach to our future review of our approval of the ADR Schemes.

3.111 We note that a public consultation will be undertaken when we undertake that future review.

Question 5: Do you have any comments on the criteria which we propose we will use in our future review approval of the ADR Schemes?

Section 4

Communications Providers' Complaints Handling Procedures

Why are good complaints handling procedures important?

- 4.1 We think that effective complaints handling procedures by CPs are an important aspect of ensuring that individual citizens and consumers are appropriately protected and empowered. If a complaint is handled badly an individual consumer may suffer significant emotional and financial harm and detriment.¹²
- 4.2 When thinking about this we have been careful to balance the importance of regulation for consumer protection and empowerment against the detrimental impact that regulation may have on efficient, effective and innovative customer service – which benefits all consumers.
- 4.3 We recognise that customer service and customer relationship management is an important way in which CPs can distinguish themselves. We think that it is important that CPs and consumers can choose how they want their customer relationship managed. However, we want to make sure that all individual consumers have a basic level of protection and empowerment regardless of the CP they choose.

What do we think about our current regulation of complaints handling?

- 4.4 We think that there is evidence that the current system of regulation of complaints handling procedures is not as effective as it should be, as set out in the following paragraphs.

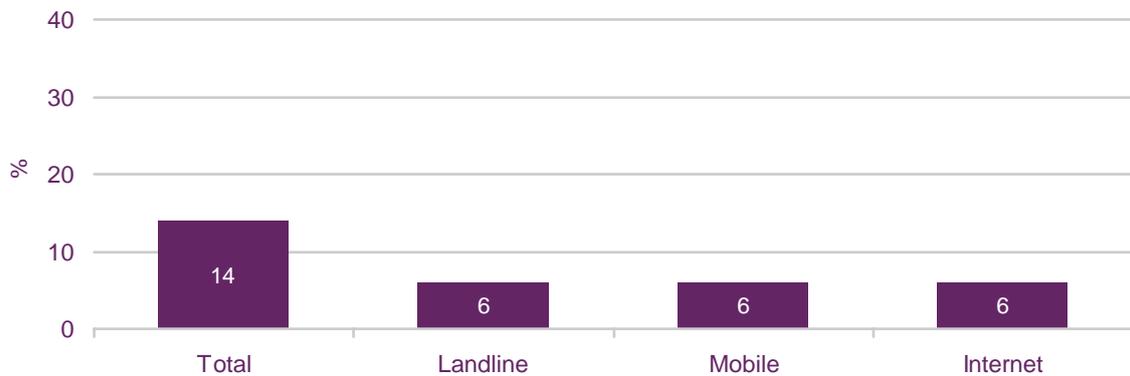
Are consumers happy with current complaints handling standards?

- 4.5 We have found that a significant proportion of complainants are very dissatisfied with the way their complaint is handled.
- 4.6 Consumers' general perceptions of customer service performance are fairly positive. For example, a study conducted by Ofcom in late 2006 found that 77% of fixed line customers, 77% of mobile customers and 68% of Internet customers perceived the customer service performance of their supplier as being 'good' or 'very good'.¹³
- 4.7 However, we are concerned more specifically with consumers' experience when making complaints. The 2006 Futuresight Report which we commissioned found the following.
- 4.8 The quantitative survey found that 14% of consumers had reason to be dissatisfied across any of the 3 services in the previous 12 months. For each one of the individual services, 6% had reason to be dissatisfied.

¹² Refer to the Futuresight Report, particularly pages 23-24.

¹³ Refer *Consumer Experience Research Annex 4: Consumer Decision-Making in the Telecoms Market* <http://www.ofcom.org.uk/research/tce/report/annex4.pdf>

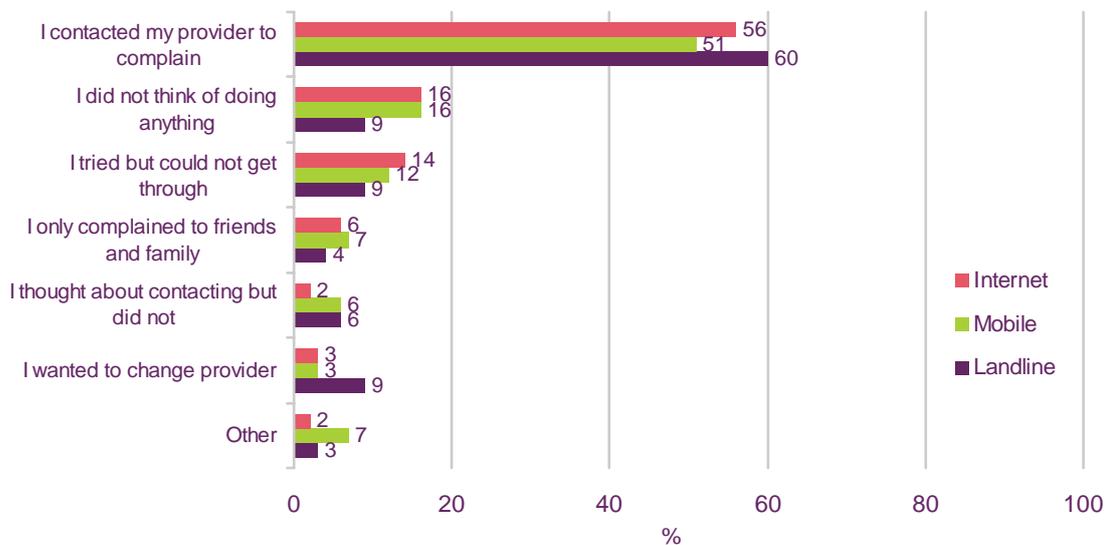
Figure 3: Consumers with any reason to be dissatisfied with their telecommunications providers



Source: ICM survey on behalf of Futuresight between July-Aug 2006 (n=2,167)

4.9 Of those who had reason to be dissatisfied, just over half made a complaint.

Figure 4: Actions of consumers who were dissatisfied with their service provider

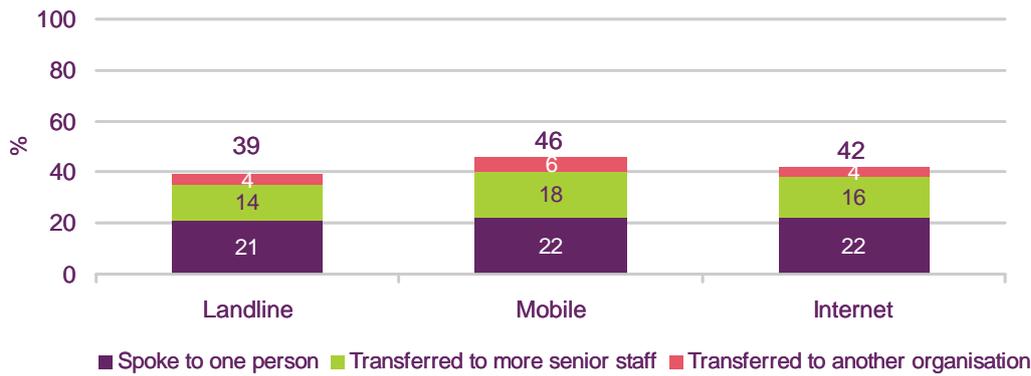


Source: ICM survey on behalf of Futuresight between July-Aug 2006, all dissatisfied with service provider (mobile n=125, landline n=137, internet n=135)

4.10 The most common reason for not making a complaint when the consumer was dissatisfied was that making a complaint was in the category that it was "too much hassle".

4.11 An average of 42% of complaints were found to have been resolved (landline 39%, Internet 42%, mobile 46%). 22% had their complaint resolved by the first person they spoke to and 16% had their complaint resolved when transferred to more senior staff. The results were broadly similar for all three services, as shown by the following figure.

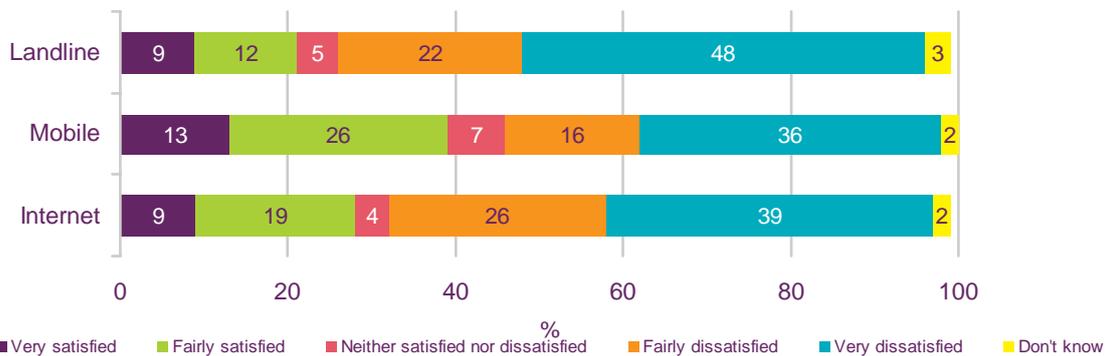
Figure 5: Stage at which complaint resolved



Source: ICM survey on behalf of Futuresight between July-Aug 2006, all made a complaint to service provider (mobile n=63, landline n=84, internet n=84)

- 4.12 The majority of those whose complaint was not resolved dropped out of the process and did not pursue the complaint.
- 4.13 The Futuresight Report also asked about the level of satisfaction with how the complaint was handled. The results are shown below.

Figure 6: Level of satisfaction with how complaint was handled



Source: ICM survey on behalf of Futuresight between July-Aug 2006, all made a complaint to service provider (mobile n=63, landline n=84, internet n=84)

- 4.14 We have combined the information above on the proportion of complaints where the level of satisfaction was unsatisfied with the information from the 2007 Information Request to obtain an estimate of the number of complaints for landline, mobile and internet for the industry as a whole.¹⁴ This suggests of the order of 1,200,000 complaints per annum where the consumer was fairly or very unsatisfied with the way the complaint was handled, of which 800,000 were very unsatisfied.

¹⁴ For CPs that were able to give us data on both the volume of complaints and subscriber numbers, we estimates the ratio of complaints per subscriber. We did this separately for fixed, mobile and internet. We then scaled up the number of complaints based on information on the total number of subscribers for each service to arrive at a estimate for the total number of complaints for each three services. We then applied the percentages for the level of satisfaction from the Futuresight Report.

- 4.15 Of those who had reason to complain, 50 consumers took part in further in-depth qualitative interviews. These in-depth interviews gathered data on the practical and emotional implications of the complaints experience.
- 4.16 The in-depth interviews found that the experience of making a complaint imposed costs on complainants in terms of time, money and emotional impact. Costs incurred included telephone calls, replacement equipment and lost revenue:
- the 5 respondents whose fixed line had interference or had been disconnected reported incurring costs by having to use their mobile phone to make their complaint. 4 out of the 5 reported incurring costs of approximately £3-4, with one claiming costs of £20;
 - one respondent incurred costs of £20 due to purchasing a new telephone which she discovered was not necessary; and
 - two businesses reported loss of earnings – one in the region of £500, and the other around £3-4,000 pounds. Both were offered compensation for the days their line rental was down, amounting to 70p and £8.40 respectively.
- 4.17 The Futuresight Report found that:
- “Emotional implications combined varying degrees of stress, anxiety, frustration and anger. Secondary, indirect implications included family tension, a general sense of not coping and health problems.”*
- 4.18 Combining these emotional implications together to produce a qualitative measure of the impact of making a complaint, the results suggest that the ways in which complaints were handled had an overall negative impact on the vast majority of complainants in the qualitative sample.
- 4.19 Across the interviews, the experience of making a complaint had:
- a strong negative impact on 21 complainants, including 5 at an extreme level;
 - a medium negative impact on 24 complainants; and
 - a small negative impact on 4 complainants, with just a single complainant where the outcome was satisfactory.
- 4.20 Of the 50 consumers, 16 had switched provider, 5 were waiting for the end of their contract to switch, 4 were considering switching and 1 was in the process of switching. In almost all of the cases, it was the way in which the complaint was handled that was the reason for switching, rather than the problem itself.
- 4.21 The significant detriment observed for the 50 consumers involved in the qualitative interviews is not representative. For example, 49 of the 50 consumers who took part in the qualitative interviews said they were either fairly dissatisfied or very dissatisfied with the way their complaint was handled, which represents a much higher percentage than in the quantitative survey.
- 4.22 However, these 49 consumers who took part in the qualitative interviews who were fairly or very dissatisfied represented a significant proportion of the total 141 dissatisfied complaints found in the quantitative part of the survey. So while the results of the qualitative interviews are not representative of the average

complainant, they do represent a sizeable proportion of the total number of dissatisfied complainants in the quantitative survey.

- 4.23 A survey conducted by Ipsos-Mori in late 2006 for Ernst & Young asked 1,925 consumers about their experience of complaint handling, focussing mainly on complaints to financial services.¹⁵ This survey included a question about consumers' satisfaction with the way their complaint was handled for a number of different industries, including telecommunications. The results are shown below.

Figure 7: Level of satisfaction with how complaint was handled



Source: Ipsos-Mori survey on behalf of Ernst and Young, 2006 (n=1,925)

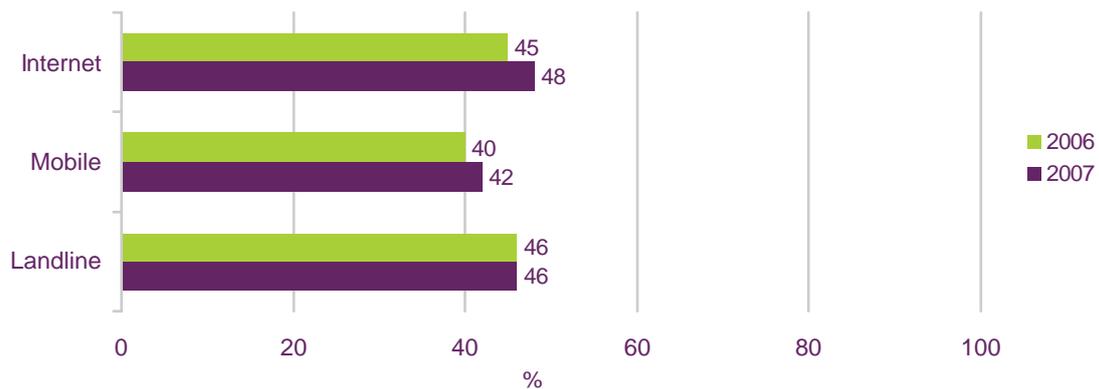
- 4.24 Telecoms had more consumers dissatisfied with the way their complaint was handled than retailers, and this difference was statistically significant. While telecoms also had lower levels of satisfaction than utilities and banks, these differences were not statistically significant.
- 4.25 This research suggests that it is reasonable to conclude that a significant proportion of complainants are dissatisfied with the way their complaint is handled.

Are consumers aware of CPs' Complaints Codes of Practice?

- 4.26 Consumers were more aware of CPs' Complaints Codes of Practice than they were of the ADR schemes. As shown in figure 4 below, almost half of customers for each service were aware that their CP had a Complaints Code of Practice. Awareness was marginally higher in the landline and internet markets (46% and 48% respectively) compared to the mobile market (42%). There had been no significant changes in awareness levels over the last year.

¹⁵ http://www.ey.com/global/Content.nsf/UK/FS_-_Complaints_Handling

Figure 8: Awareness of CPs Complaints Codes of Practice



Source: Ofcom Communications Tracking Survey, amongst adults with a landline (n=1335), adults who personally use mobile (n=1232), adults with internet at home (n=904), conducted between July-Aug 2007

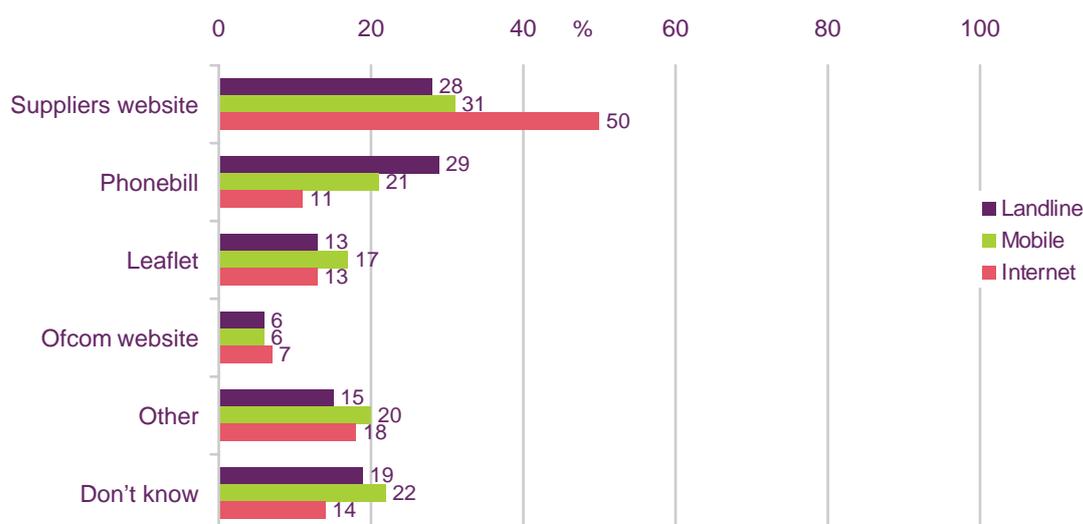
- 4.27 Consumers for each of the telecoms services cited a range of sources for where they found out about their CPs' Complaints Code of Practice. In the landline and mobile markets the most common source was 'their supplier' – mentioned by around a third in each market. In the internet market however, 'the internet' was the most frequently cited source of information, closely followed by 'supplier'.
- 4.28 However, a significant proportion were unsure where they would find the Code of Practice. This perhaps suggests awareness is somewhat overstated and consumers assume their supplier has a Code of Practice but do not know where to find this.

Figure 9: Consumer sources of information on code of practice



Source: Ofcom Communications Tracking Survey, amongst adults aware of landline (n=599), mobile (n=498), and internet code of practice (n=429), conducted between July-Aug 2007

- 4.29 Half of internet customers who were aware of their CP's Complaints Code of Practice said they would like to find this on their CP's website. This compares to just under a third in each of the other telecoms markets (28% landline and 31% mobile).

Figure 10: Consumer preferred sources of information on code of practice

Source: Ofcom Communications Tracking Survey, amongst adults aware of landline (n=599), mobile (n=498), and internet code of practice (n=429), conducted between July-Aug 2007

How should we set complaints handling standards?

Options and Impact Assessment

- 4.30 We have identified three options for the regulation that we could set for addressing the problems with complaints handling procedures which we have identified above .
- 4.31 The options discussed in this section should be considered in the context of the amendments that we have proposed in Section 3 relating to ADR. We expect that if the changes we propose, particularly the proposed provisions requiring CPs to give consumers notice about ADR, are implemented it will improve accessibility and significantly strengthen the effectiveness of ADR. This should in turn create greater incentives for CPs to have good complaints handling procedures to avoid the costs of ADR.

Option 1 – Do Nothing

- 4.32 We could make no change to the current regulation. This would mean retaining the current obligation for CPs to have an individual Complaints Code of Practice which CPs send to us for approval.

Advantages

- 4.33 The advantage of this approach is that those CPs who already have approved Complaints Codes of Practice would not need to make any changes.

Disadvantages

- 4.34 A disadvantage is that as the guidelines are minimal and each Complaints Code of Practice is approved separately it is difficult to ensure consistency in standards. CPs are required to comply with the terms of their Complaints Code of Practice, rather than any common standards. Although we approve the Complaints Codes of Practice, to a certain extent CPs are setting their own standards. There is a

disincentive on CP to set rigorous standards as we can only take action on the basis of the standards set out in the Complaints Code of Practice.

- 4.35 The current system also creates a high degree of uncertainty about the regulatory requirements for complaints handling procedures.
- 4.36 Another disadvantage of this approach is that it is resource intensive and imposes a significant administrative burden on CPs and Ofcom.
- 4.37 Any benefits to consumers from having individual Complaints Codes of Practice are also likely to be reduced by the fact that awareness of Complaints Codes of Practice is low. As set out above, our evidence suggests that consumer awareness of Complaints Code of Practice is less than 50%.

Option 2 - Single Ofcom Approved Code of Practice setting out **Detailed Mandatory Standards**

- 4.38 We could approve a single Ofcom Approved Code of Practice for Complaints Handling which sets out detailed mandatory standards for complaints handling procedures.
- 4.39 These mandatory standards would prescribe the detail of CPs' complaints handling procedures and could include standards such as a requirement that all complaints must be processed within twenty-eight working days of receipt.
- 4.40 The current regulatory requirements on complaints handling procedures which are imposed in the finance sector by the Financial Services Authority are a good example of the type of regulation which we could impose under this option.¹⁶

Advantages

- 4.41 The key benefits of a single Ofcom Approved Complaints Code or Practice are that it will provide consistency in standards, it will be less resource intensive and it will be easier to enforce against.
- 4.42 The benefit of detailed mandatory standards is that it could ensure rigorous and consistent standards across industry.

Disadvantages

- 4.43 The main disadvantage of detailed mandatory standards is that it does not leave CPs scope to tailor procedures to reflect their particular business models and customer service philosophies. We may prescribe specific details of complaints handling procedures which inappropriately interfere with a CP's customer relationship management strategies to the detriment of their consumers. We are concerned that individual consumers are appropriately protected and empowered but we think it is important to allow CP to determine the specific details and procedures which best fit within their business models to fulfil those basic standards.
- 4.44 With this option there would also be costs for CPs to change their processes to comply with the new procedures. Some CPs that currently have relatively high standards of complaints handling may face high costs in order to comply with the

¹⁶ Refer http://www.financial-ombudsman.org.uk/publications/pdf/PS_F_back_CP49_web.pdf

standards required by the single Ofcom Approved Complaints Code of Practice. The more detailed our prescription of standards are the higher costs are likely to be.

Option 3 – Single Ofcom Approved Code of Practice setting out **High Level Mandatory Standards**

- 4.45 We could approve a single Code of Practice for Complaints Handling which sets out high level mandatory standards. In setting these high level standards, we would seek to ensure that all CPs comply with minimum basic standards in complaints handling procedures, while still allowing CPs the scope to be innovative and efficient in their individual approaches to complaints handling.
- 4.46 Specifically, we could set a minimum requirement that a CP must “have and comply with fair and reasonable procedures” for handling complaints.
- 4.47 This minimum “fair and reasonable” standard would include, but not be limited to, a requirement that complaints handling procedure comply with the following criteria. We think that these criteria represent the most fundamental aspects of fair and reasonable complaints handling procedures that are necessary to provide the basis standard of consumer protection and empowerment.

Transparent

Complaints handling procedures must be well publicised and readily available, including by:

- setting out information on the CP’s complaints handling procedures in the relevant terms and conditions for a product and/or a service; and
- setting out such information on the CP’s website in a reasonably prominent manner that is easily accessible. We would expect the information to be able to be directly accessed from the website homepage, by a maximum of one “click through” link (for example, by a click through from a “How To Complain” link).

This information must as a minimum include information about:

- the process for making a Complaint;
- the timeframes in which the CP will work to resolve the Complaint, including when the CP will notify the complainant about the progress or resolution of a Complaint; and
- the complainant’s right to go to a Dispute Resolution Scheme and the contact details of the Dispute Resolution Scheme of which the CPs is a member.

- 4.48 The transparency criteria is important because consumers need to know about how the processes by which their complaint will be handled. This is so that they can be aware of how they can make and progress a complaint.

Accessible

- A Communications Provider must provide a way to make a Complaint that is easy to use for a consumer of the relevant product and/or service.
- Consumers must be able to make a Complaint free of charge, except that where a complaint is made by a phone call to the Communications Provider, the Communications Provider may charge the equivalent of a geographic call rate.
- Complaints handling procedures must be easily accessible for consumers with disabilities or vulnerable complainants. Where necessary dedicated procedures must be provided for such consumers.
- All information about complaints handling procedures and about individual complaints must be easy to understand, concise and correct. For example, where Communications Providers set out information on their website about their complaints handling procedures this must be in a short and easy to understand document which is only about complaints handling procedures.

- 4.49 The accessibility criteria is important because if access to complaints handling is a barrier to individual consumers they are effectively unable to exercise their rights to use the complaints handling and ultimately the ADR procedures.
- 4.50 Our duty is to protect consumers and citizens. It is important that all individual consumers have access to complaints handling procedures, including disabled or vulnerable consumers. We would of course expect CPs to comply with relevant legislation, for example regarding the treatment of disabled consumers. However, in addition to this we specifically require that complaints handling procedures must be easily accessible for disabled or vulnerable consumers. In some instances this may require that CPs have dedicated processes for these consumers. We would welcome submissions on particular groups that may require dedicated procedures.
- 4.51 An important part of accessibility for all individual consumers we could propose is also that they should not pay to make a complaint. This is specifically referred to in section 52(3) of the Act.
- 4.52 We have considered the charges that CPs may make for complaints made over the phone. We propose to prohibit CPs from imposing premium charges for calls to make complaints.
- 4.53 We have considered two further possible options:
- Option One – all CPs should be required to have a free phone number for complaints; and
 - Option Two – CPs may charge the equivalent of a geographic call rate.

- 4.54 In our 2007 Information Request, we included an optional question about the implication of a requirement to have a free phone number for consumers to call for complaints.¹⁷
- 4.55 Of the CPs that responded to this optional question, a small number already provided a free phone number for customer services, which included complaint handling. Some offered free customer service for particular groups of customers, such as business customers or pre-pay customers. However, the large majority of CPs did not currently offer a free number that could be used for complaint handling for all customers.
- 4.56 Of the CPs that would need to make changes if a free phone number for complaints were required, some were able to give estimates of the cost implications. The absolute estimates ranged very considerably, from £3 to £7 million at the upper end to £175 at the lower end. If we express these estimates in terms of the cost per subscriber (using the subscriber numbers from the 2007 Information Request), then they were generally in the range of ten pence to one pound per subscriber, with a significant proportion of these costs being ongoing annual costs. Other CPs were unable to estimate the cost of providing a free complaints phone number, but said the cost implications could be significant.
- 4.57 The benefit to consumers of limiting the costs of calls to make a complaint is that charging high rates for calls to make a complaint may deter consumers from making justified complaints. We also think that it is not appropriate for CPs to be able to generate profit (eg through revenue share arrangements) through phone numbers used for complaints – and thereby benefit from their own customer errors. However we do consider that it may be reasonable for a consumer to pay the cost of a geographic call to make a complaint, just as a consumer would pay for a stamp to post a complaint. We welcome submissions on this point.

Responsive

- There must be clearly established timeframes and escalation processes for dealing with Complaints. There should be a maximum of four escalation points.
- The Communications Provider must acknowledge receipt of the Complaint to the consumer within five working days of the Complaint being first received by the Communications Provider.
- The Communications Provider must deal with the Complaint promptly.

- 4.58 As we have acknowledged above (refer paragraph 3.16), we consider that it is important that CPs are given a reasonable amount of time to resolve a complaint. However, we think that it is important that CPs progress complaints promptly – the eight week period before a consumer can go to ADR that we propose above should be seen as a maximum rather than a standard period to work towards for complaints resolution.

¹⁷ In the 2007 Information Request, we specifically asked about the implications of an 080 Freephone number. A number of responses, especially from mobile operators, argued that it would be unnecessarily restrictive to require a 080 number. We are considering here a less prescriptive requirement for a free phone number.

- 4.59 It is also important that CPs tell consumers how their complaint is being progressed. Consumers can find it very frustrating and suffer significant anxiety if they are not aware of how a CP is progressing their complaint.

Effective

- A Communications Provider must have and comply with procedures to monitor and review the implementation of its Complaints Handling Procedures.

- 4.60 An important part of having a fair and reasonable complaints handling procedure is reviewing and monitoring the implementation of the complaints handling procedures.

Advantages

- 4.61 As for Option 2, the benefits of a single Ofcom Approved Complaints Code of Practice are that it will provide consistency in standards, it will be less resource intensive and it will be easier to enforce against.
- 4.62 The main benefit in setting high level mandatory standards rather than detailed mandatory standards is that it allows scope for innovation in CPs processes and procedures.

Disadvantages

- 4.63 There may be costs incurred by CPs to change their processes to comply with the new procedures.
- 4.64 We consider that it is likely that these costs will not be significant, except in two instances.
- 4.65 Firstly, a significant cost may be that of giving notice to consumers within 5 days of receiving a complaint, acknowledging the complaint and setting out the procedures for dealing with the complaint. However, we anticipate that this notice will normally be given in the same notice as the ADR notice which we are proposing above (refer paragraphs 3.86 – 3.90). The costs of the ADR notice are discussed in paragraph 3.80 above. Accordingly, if the ADR notice provisions are implemented the obligations proposed should not impose any significant additional costs above those considered for the ADR notice provisions. However, if the ADR notice provisions are not implemented then the cost of giving this notice would probably be similar to our estimate of the order £20 million per year for the costs of giving ADR notice.
- 4.66 A second potential cost is associated with our proposal that CPs not be allowed to charge at or not greater than a geographic call rate for calls to make a complaint or that CPs be required to provide a free phone number – this is part of the “accessibility” requirement and we discuss the potential costs above at paragraphs 4.56 – 4.58.

Our Preferred Option

- 4.67 We think that the current process for the individual approval of Code of Practice system is not the best way to impose minimum complaints handling standards.

Our preferred option is Option 3 – a Single Ofcom Approved Code of Practice setting out **High Level** Mandatory Standards.

- 4.68 We think that Option 3 would provide appropriate protection - it would ensure fundamental minimum standards and allow us to act if there is clear consumer harm occurring whilst not imposing an ongoing burden on CP to comply with highly prescriptive standards.
- 4.69 When considering our regulatory options, we must balance the importance of increased consumer protection and empowerment against the possibility that regulation may hinder the ability of providers to service their consumer efficiently and effectively and respond to consumer demand appropriately.
- 4.70 Our basic policy position is that we wish to ensure a minimum level of protection and empowerment for consumers, whilst allowing CPs the scope to be innovative and efficient in their own approaches to complaints handling. Inappropriate and overly prescriptive regulation could in fact be detrimental to consumers.
- 4.71 Our proposed position ensures that all consumers will have a basic level of protection, while still allowing scope for CPs to tailor complaints procedures (and price their products accordingly) above that minimum standard in response to consumer demand.
- 4.72 We propose that this option be implemented by changes to General Condition 14.7, as set out in Annex 5. The proposed General Condition sets out an obligation to comply with a single Ofcom Approved Complaints Code of Practice and sets out the Ofcom Complaints Code of Practice.
- 4.73 We note that in determining the minimum standards set out in Option 3, we have considered other key standards used in this and other jurisdictions, including the ISO 10002:2004 *Quality Management – Customer Satisfaction – Guidelines for Complaints Handling in Organizations* and AS 4269-1995 *Australian Standard – Complaints Handling*. We note that we would support the adoption of such standards as good practice to ensure high quality complaints handling procedures which meet the proposed regulatory requirements.

Tests set out in the Act

- 4.74 When we set or modify a General Condition we must meet various tests set out in the Act.
- 4.75 We consider that our proposed preferred option meets these tests as follows:
- (a) falls within our duties set out in section 3 of the Act, including our principal duty of furthering the interests of consumers and citizens

We consider that our proposed decision to require CPs to comply with a single Ofcom Approved Code of Practice which sets minimum high level mandatory standards falls within the scope of section 3 of the Act. This is because, as explained in this document, Ofcom considers that this will provide appropriate levels of consumer protection and empowerment for a consumer who makes a complaint to a CP.

- (b) is:

- objectively justifiable

We believe that the change is objectively justifiable because we believe that requiring CPs to comply with these minimum provisions for complaints handling procedures will protect consumers by ensuring that they are empowered in their negotiations with CPs about complaints and by limiting their exposure to suffering detriment including stress, anxiety and financial loss.

- not unduly discriminatory

We consider that the proposals are not unduly discriminatory. This is because the proposed requirement would apply equally to all CPs who provide Public Electronic Communications Services.

- proportionate

We consider that the proposed modifications are proportionate on the grounds that the proposed option still allows CPs the scope to individually tailor their procedures to comply with these minimum standards while achieving Ofcom's key objective of ensuring that consumers are appropriately protected and empowered when they make a complaint to a CP. We consider that the costs which it is likely that CPs will incur are proportionate to the benefit that consumers and citizens will receive arising from their increased protection and empowerment.

- transparent

We are satisfied that the proposed modifications are transparent insofar as the nature and obligations are clearly set out in this document.

- (c) complies with section 4 of the Act by being in accordance with the six European Community requirements for regulation, in particular the requirement to promote the interests of all citizens of the European Union. As set out above, our proposed option will protect consumers by ensuring that consumers are protected from harm and detriment when making complaints.

Question 6: Do you agree that should CPs' be required to comply with a single Ofcom Approved Complaints Code of Practice which sets out high level mandatory standards for complaints handling?

Will CPs still have to have a Basic Code of Practice?

- 4.76 We note that we are not proposing to amend General Condition 14.1, which requires that a CP shall have a "Basic Code of Practice" for its Domestic and Small Business Customers which sets out the information which a CP is required by General Condition 10 to publish.
- 4.77 The current Guidelines for the Complaints Code of Practice indicate that this information must be included in the Complaints Code of Practice. In light of our proposals to change the current regulation for complaints handling, we do not consider that it would be appropriate to "combine" the two Codes of Practice.
- 4.78 Accordingly, under our proposed options, CPs will continue to have an obligation to have a basic Code of Practice which sets out the information required by General

Condition 10 in addition to the obligations regarding complaints handling procedures set out above.

Section 5

Record Keeping

Why do we need record keeping?

- 5.1 Record keeping requirements allow us to check to make sure that CPs are complying with the proposed regulatory obligations.
- 5.2 It also follows as a natural result of our proposed requirements to give notice about ADR that CPs must keep a record of complaints so that they can work out when 8 weeks have passed and they must send a notice about ADR.

What are our current requirements for record keeping?

- 5.3 While we note that Communications Providers are obliged to keep phone logs for a year under *the Data Retention (EC Directive) Regulations 2007*¹⁸, there are currently no specific record keeping obligations for complaints in the General Conditions.

What do we think about our current requirements?

- 5.4 As we have made clear in this document, we consider that adequate ADR and complaints handling procedures are important to ensure that consumers are protected and empowered. We consider that the amendments to General Condition 14 that we are proposing will ensure this. It is therefore important that we are able to monitor CPs' compliance with the proposed General Condition notification and take enforcement action for non-compliance.
- 5.5 In many instances we will be able to do this in accordance with our standard procedures and powers for investigation and enforcement of the General Conditions. However, the limits of these powers is that they do not allow us to require that CPs recreate consumer complaint information if they have not already made a record of them. The responses to the 2007 Information Request indicated that not all CPs routinely keep adequate records for complaints.
- 5.6 In light of the nature of the obligations that we are proposing, such as the obligation to give notice after eight weeks after a complaint has been made, we consider it appropriate to propose specific record keeping obligations for ADR and complaints handling to make sure that CPs keep the information which we need to make sure that they are complying with the obligations.

What record keeping should we require?

Options and Impact Assessment

- 5.7 In considering what is appropriate regulation to ensure that Ofcom can request the necessary information to investigate compliance with the obligations proposed as part of this consultation, we think there are three options.

¹⁸ See for example, Regulation 5 (1) which requires among other things the retention of: the telephone number from which the telephone call was made, name and address of the subscriber and registered user of that telephone; the number dialed; the date, time of the call; and, the telephone service used.

Option 1 – Do Nothing

5.8 We could make no change to the existing regulation.

Advantages

5.9 The advantage of this is that there would be no cost to CPs to change their systems and procedures and no ongoing costs to keep records.

Disadvantages

5.10 The main disadvantage of this is that our ability to monitor compliance and take effective enforcement action will be limited for the reasons set out above, in particular at paras 5.4 to 5.6.

Option 2 - Logging

5.11 We could require CPs to log complaints when they are first received and as they are dealt with. These records must include as a minimum for each Complaint a log setting out:

- (a) details of the complainant, including their name and address;
- (b) the date on which the complaint is first received;
- (c) a description of the complaint; and
- (d) a description of how the CP deals with the complaint.

5.12 We could require that CPs keep these logs for at least fifteen months, subject to relevant data protection legislation. We consider that this is a reasonable period to allow us to undertake investigation and enforcement action.

Advantages

5.13 The main advantage of this option is that we could request the information to help us determine if a CP is complying with their notice obligations and also whether they are dealing with complaints in accordance with the Ofcom Approved Complaints Code of Practice - for example, if a complaint has been dealt with "promptly".

5.14 This means that we would be able to more effectively monitor compliance and take enforcement action where needed.

Disadvantages

5.15 The main disadvantage is the possible cost to CPs.

5.16 In our 2007 Information Request, we included an optional question seeking companies views on the costs of logging and monitoring all complaints, including recording and reporting the elapsed time between when the complaint was made.

5.17 Of those CPs that answered the question on the cost of logging all complaints, the responses varied very considerably. The majority of those that responded said that there would be no impact on them (as they already logged and monitored all complaints) or that the cost of the changes they would have to make to their systems

and process would be small or negligible. Other companies said that there would be substantial costs to implement such a requirement. While some of these companies said that they were unable to estimate the costs without detailed investigation (for example, into the costs of changing customer service systems), others estimated that the costs could be 1% or 2% of revenue. The highest absolute estimate from a CP was for the year one costs to be over £1 million, then falling to around £350,000 in subsequent years.

5.18 If we take the total costs for those CPs that provided estimates, and scaling up for total revenue on residential customers, it would imply total set up costs to the industry as a whole of around £5 million in the first year, with significantly lower ongoing costs of inputting the information on to the CP's systems.

5.19 We welcome further submissions on this point.

Option 3 – Complete Records

5.20 We could require the CPs to keep detailed records of all stages of a complaint, including call recordings of all communications with a complainant.

5.21 As with Option 2, we would require that these logs be kept for fifteen months. We consider that this is a reasonable period to allow us to undertake investigation and enforcement action.

Advantages

5.22 The advantages to this option are similar to those outlined above at paragraph 5.13. In addition, we will have an even greater ability to monitor compliance and take effective enforcement action.

Disadvantages

5.23 The main disadvantage with this option is the cost to CPs. In the 2007 Information Request we also included an optional question on keeping call recordings of complaints.

5.24 Responses varied. Some CPs said there would be no additional costs, while others said that the costs could be substantial. Some CPs said that the costs would depend on the details of the requirement. In particular, the costs would depend on whether full call recording and retrieval systems were required, and on how long these call recording records were required to be kept.

Our Preferred Proposed Option

5.25 As with other preferred proposals in this Consultation Document, record keeping obligations we propose must be among other things proportionate and appropriate. Whilst record keeping obligations would have a significant positive impact on our ability to pursue effective enforcement, this must be balanced against the cost which such record keeping obligations would impose on CPs.

5.26 Our proposal is that the costs associated with Option 2 are likely to be proportionate to the benefits it creates. Therefore at the very least we propose to impose regulation reflecting Option 2.

- 5.27 We propose giving effect to Option 2 by setting a new General Condition 14.5, as set out in Annex 5. In summary this proposes a new obligation to keep a log of complaints.

Tests set out in the Act

- 5.28 When we set or modify a General Condition we must meet various tests set out in the Act.

- 5.29 We consider that our proposed preferred option meets these tests as follows:

- (a) falls within our duties set out in section 3 of the Act, including our principal duty of furthering the interests of consumers and citizens

We consider that this falls within section 3 of the Act because these record keeping obligations will allow us to effectively ensure compliance with our proposed regulations, which will protect consumers and citizens from potential harm and detriment.

- (b) is:

- objectively justifiable

We believe that the change is objectively justifiable because we believe that these obligations will protect consumers by ensuring that CPs comply with the provisions which we are proposing which will protect consumers suffering detriment including stress, anxiety and financial loss.

- not unduly discriminatory

We consider that the proposals are not unduly discriminatory. This is because the proposed requirement would apply equally to all CPs who provide Public Electronic Communications Services to Domestic and Small Business Customers.

- proportionate

We consider that the proposed modifications are proportionate on the grounds that it is the least onerous solution for achieving Ofcom's key objective which is to ensure that consumers are appropriately protected and empowered when they make a complaint to a CP and that Ofcom can take effective enforcement action and compliance monitoring. We consider that the costs which it is likely that CPs will incur are proportionate to the benefit that consumers and citizens will receive as they are small on an industry wide basis compared to the significant benefit which individual consumers are likely to derive.

- transparent

We are satisfied that the proposed modifications are transparent insofar as the nature and obligations are clearly set out in this document.

- (c) complies with section 4 of the Act by being in accordance with the six European Community requirements for regulation, in particular the requirement to promote the interests of all citizens of the European Union. As set out above, our proposed option will protect consumers by ensuring

that they are able to exercise their right to ADR and by limiting their exposure to suffering detriment including stress, anxiety and financial loss.

Question 7: Do you agree that CPs should be required to keep a log of all complaints? We could require CPs to log complaints when they are first received and as they are handled. These records must include as a minimum for each Complaint a log setting out:

(a) details of the Complainant, including their name and address;

(b) the date on which the Complaint is first received;

(c) a description of the Complaint; and

(d) a description of how the CP deals with the Complaint.

Section 6

Implementation Period

- 6.1 We appreciate that some of the proposals presented in this Consultation Document will require CPs to undertake system and process changes.
- 6.2 Accordingly, we want to allow a reasonable period before any changes to the regulation come into force.
- 6.3 We think that if the changes which we are proposing as our preferred options are made, three months from publication of any Statement for this review is likely to be an appropriate period to allow CPs to make the necessary changes.
- 6.4 We seek submissions on what a reasonable period would be.

Question 8: Do you agree that three months from publication of the Statement for this Review is a reasonable period to implement the changes proposed in this Consultation Document?

Section 7

Summary of Our Preferred Options

7.1 We consider it useful to summarise the key points of our preferred options which are set out in this Consultation Document so that the practical effect of our proposed regulatory changes are clear.

7.2 The following points are a high level summary of the key obligations which we are proposing apply to CPs. This is a high level summary only and does not set out all the obligations which we are proposing be applied to a CP. We propose that:

- CPs will not be required to have an individually approved Code of Practice for Complaints Handling.
- CPs complaints handling procedures will have to comply with a single Ofcom Approved Code of Practice which will be set out as an annex to General Condition 14. CPs will not be required to publish this single Ofcom approved Code of Practice. However, a CP will be required to provide information on its complaints handling procedures as set out in the Ofcom Approved Code of Practice.
- CPs will be required to give a notice in a durable written form to a consumer who makes a complaint:
 - Within five working days of the CP receiving the complaint. This notice must include:
 - an acknowledgement of receipt of the complaint;
 - information on the CPs' complaints handling procedures; and
 - information about ADR.

AND

- eight weeks after the CP first receives a complaint, earlier if the complaint has been resolved or when the CP issues a Deadlock Notice.

If the complaint is resolved in the first contact then notice does not need to be sent.

- CPs will be required to keep a log of all complaints setting out the complainant's details, details of the complaint and details of the way in which the CP deals with the complaint at each stage.
- CPs will have three months to implant the changes once in force.

7.3 When undertaking its review of the approval of ADR Schemes, Ofcom proposes to use the following criteria to evaluate ADR Schemes – accessible; independent; fair; efficient; transparent; effective and accountable.

Annex 1

Responding to this consultation

How to respond

- A1.1 We invite written views and comments on the issues raised in this document, to be made by **5pm on 4 October 2008**.
- A1.2 We strongly prefer to receive responses using the online web form at http://www.ofcom.org.uk/consult/condocs/alt_dis_res/howtorespond/form, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email alan.pridmore@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted, faxed to the address below or emailed to the address below, marked with the title of the consultation.

Alan Pridmore
Floor 6
Dept Consumer Policy
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Fax: 020 7981 3000

Email: complaintshandlingreview@ofcom.org.uk

- A1.5 Note that we do not need a hard copy in addition to an electronic version. We will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how our proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Alan Pridmore on 0207 7981 3861.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your

response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to us to use. Our approach on intellectual property rights is explained further on our website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.11 Following the end of the consultation period, we intend to publish a statement in **Autumn 2008**.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Our consultation processes

- A1.13 We seek to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how we conduct our consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how we could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom consultation champion:

Vicki Nash
Ofcom
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW

Tel: 0141 229 7401
Fax: 0141 229 7433

Email vicki.nash@ofcom.org.uk

Annex 2

Our consultation principles

A2.1 We have published the following seven principles that we will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will normally allow ten weeks for responses to consultations on issues of general interest.

A2.6 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organizations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

After the consultation

A2.8 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can we still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation questions

Question 1: Do you agree with the following definition of Complaint:

“Complaint means an expression of dissatisfaction made to a Communications Provider related to its products or services, or the complaints-handling process itself, where a response or resolution is explicitly or implicitly expected.”

Question 2: Do you agree that a consumer should have the right to go to ADR:

- (a) eight weeks after a complaint is first received by a CP; OR*
- (b) earlier, if a CP has issued a deadlock letter.*

Question 3: Do you agree with our preferred Option 4 that a CP should be required to give written notice about ADR:

(a) Within five working days after the Communications Provider received the Complaint, unless the complaint has been resolved at the first point of contact; (If a consumer contacts a CP again about a matter which the CP reasonably believed to be resolved at first contact then notice should be given at that time)

AND

(b) eight weeks after the CP first receives the complaint, earlier if the complaint is resolved or when the CP issues a Deadlock Notice.

Question 4: Do you agree that the notice about ADR which CP should give must be:

- (a) be in writing in a durable form be in plain English, clearly written and concise;*
- (b) include a reference for the complaint; include details of the ADR Scheme which the CP is a member of, including contact details;*
- (c) and summarise when the consumer has the right to go to ADR Scheme and the role of the ADR Scheme.*

Question 5: Do you have any comments on the criteria which we propose we will use in our future review approval of the ADR Schemes?

Question 6: Do you agree that CPs' should be required to comply with a single Ofcom Approved Complaints Code of Practice which sets out high level mandatory standards for complaints handling?

Question 7: Do you agree that CPs should be required to keep a log of all complaints? We could require CPs to log complaints when they are first received and as they are handled. These records must include as a minimum for each Complaint a log setting out:

- (a) details of the Complainant, including their name and address;*
- (b) the date on which the Complaint is first received;*
- (c) a description of the Complaint;*
- (d) and a description of how the CP deals with the Complaint.*

Question 8: Do you agree that three months from publication of the Statement for this Review is a reasonable period to implement the changes proposed in this Consultation Document?

Annex 5

Notification of proposed modification to General Condition 14 of the General Conditions of Entitlement

Notification of a proposed modification under section 48(2) of the Communications Act 2003

Proposal for modification of General Condition 14 (as amended) of Part 2 of the General Condition Notification regarding Codes of Practice and Dispute Resolution under section 48(2) of the Communications Act 2003 for the purpose of imposing requirements upon Communications Providers.

1. OFCOM in accordance with section 48(2) of the Act hereby makes the following proposal for the modification of General Condition 14 (as amended) of Part 2 of the General Condition Notification, regarding Codes of Practice and Dispute Resolution.
2. On 13 April 2005, OFCOM published a notification under section 48(1) of the Act modifying General Condition 14, entitled '*Protecting citizens and consumers from mis-selling of fixed-line telecommunications services*'.
3. On 19 April 2006, OFCOM published a notification under section 48(1) of the Act modifying General Condition 14, entitled "*Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services*".
4. On 29 March 2007, OFCOM published a notification under section 48(1) of the Act modifying General Condition 14, entitled "*Regulation of VoIP Services*".
5. On 22 May 2007, OFCOM published a notification under section 48(1) of the Act modifying General Condition 14, entitled "*Protecting consumers from mis-selling of telecommunications services*".
6. On 2 May 2008, OFCOM published a notification under section 48 (2) of the Act proposing to modify General Condition 14, entitled "*Changes to 0870*".
7. On 10 July 2008, OFCOM published a notification under section 48(2) of the Act proposing to modify General Condition 14 entitled "*Review of Alternative Dispute Resolution and Complaints Handling Procedures*" ("**this Notification**").
8. The draft modifications are set out in the Schedule to this Notification.
9. The effect of, and OFCOM's reasons for making, the proposals referred to in paragraphs 1 and 8 above is set out in the accompanying explanatory statement.
10. OFCOM consider that the proposed modification referred to in paragraph 1 above complies with the requirements of sections 45 to 50 of the Act, as appropriate and relevant to their proposal.
11. In making the proposal set out in this Notification, OFCOM has considered and acted in accordance with their general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.

12. Representations may be made to OFCOM about their proposal set out in this Notification and the accompanying statement by **5pm on 4 October 2008**.

13. Copies of this Notification and the accompanying statement have been sent to the Secretary of State in accordance with section 50(1)(a) of the Act.

14. In this Notification:

- (i) **'the Act'** means the Communications Act 2003;
- (ii) **'General Condition Notification'** means as set out in the Schedule to the Notification under Section 48(1) of the Communications Act 2003 published by the Director General of Telecommunications on 22 July 2003; and
- (iii) **'OFCOM'** means the Office of Communications.

15. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification (including the Schedule) and otherwise words or expression shall have the same meaning assigned to them in the General Condition Notification and otherwise any word or expression shall have the same meaning as it has in the Act.

16. For the purpose of interpreting this Notification:

- (i) headings and titles shall be disregarded; and
- (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

17. The Schedule to this Notification shall form part of this Notification.

Signed by: Claudio Pollack

Title: Director of Consumer Policy

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

Date: 10 July 2008

Schedule

Proposal for modification to General Condition 14 of Part 2 of the General Condition Notification regarding Codes of Practice and Dispute Resolution, which is set out in the Schedule to the Notification under Section 48(1) of the Communications Act 2003 published by the Director General of Telecommunications on 22 July 2003.

General Condition 14 on Codes of Practice and Dispute Resolution shall be modified as set out below:

1. General Condition 14.4 is deleted and replaced by the following wording:

“14.4 The Communications Provider shall have and comply with procedures that conform to the Ofcom Approved Complaints Code of Practice when handling Complaints made by Domestic and Small Business Customers about its Public Electronic Communications Services.”
2. General Condition 14.7 is deleted and replaced by the following wording:

“14.7.1 The Communications Provider shall be a member of and comply with the rules of a Dispute Resolution Scheme (including any final decision of the Dispute Resolution Body made in accordance with this Scheme), for the resolution of disputes between the Communications Provider and its Domestic and Small Business Customers about its Public Electronic Communications Services.

14.7.2 A Communications Provider must provide a Domestic and Small Business Customer with the following notice about the Dispute Resolution Scheme, unless the Complaint is resolved when Communications Provider first receives the Complaint:

 - (a) within five working days after the Communications Provider receives the Complaint;

and

 - (b) eight weeks after the Communications Provider first receives the Complaint or earlier if the Complaint is resolved; or
 - (c) when the Communications Provider issues a Deadlock Notice.

14.7.3 The notices required to be given by General Condition 14.7.2 above must:

 - (a) be in writing in a durable form;
 - (b) be in plain English, clearly written and concise;
 - (c) include a summary of the Complaint;
 - (d) include details of the Dispute Resolution Scheme of which the Communications Provider is a member, including how the Dispute Resolution Scheme can be contacted; and

- (e) explain when the Domestic and Small Business Customer has the right to go to the Dispute Resolution Scheme and what the Dispute Resolution Scheme will do.”
3. General Condition 14.9 is now numbered as 14.10.
4. A new General Condition 14.9 is inserted as follows:

“14.9.1 A Communications Provider shall keep a record of all the Complaints it receives, which includes as a minimum:

 - (a) the details of the Complainant, including their name and address;
 - (b) the date on which the Complaint is received;
 - (c) a description of the Complaint; and
 - (d) a description of how the Communications Provider deals with the Complaint.

14.9.2 Subject to any Relevant Data Protection Legislation, a Communications Provider shall keep these records for at least fifteen months.”
5. The following definition is deleted in Paragraph 14.10:

“**Code of Practice for Complaints**” means a code of practice approved from time to time by the Director for the purpose of this Condition in accordance with sections 52 and 53 of the Act;”
6. The following definitions are inserted in alphabetical order in Paragraph 14.10 (as renumbered):

“**Complaint**” means “an expression of dissatisfaction made to a CP related to its products or services, or the complaints-handling process itself, where a response or resolution is explicitly or implicitly expected.

“**Complainant**” means a Domestic and Small Business Customer who makes a Complaint to a Communications Provider about a Public Electronic Service.

“**Deadlock Notice**” means a notice from a Communications Provider that it considers that a Complaint cannot be resolved without going to a Dispute Resolution Scheme;

“**Ofcom Approved Complaints Code of Practice**” means the Complaints code of practice set out in Annex 5 to this General Condition 14.
7. The following code is inserted in General Condition 14, at Annex 5:

Ofcom Approved Complaints Code of Practice

This Ofcom Approved Complaints Code of Practice sets out the minimum standards which Ofcom has approved for the handling of Complaints made by Domestic and Small Business Customers to Communications Providers about the provision of Public Electronic Communications Services.

- 1 A Communications Provider must have and comply with fair and reasonable procedures for handling Complaints.
- 2 The requirement set out in paragraph (1) above includes, but is not limited to, a requirement that the procedures for handling Complaints are:
 - (b) Transparent, in that:
 - (i) information on the Complaints handling process must be well publicised and readily available, including by:
 - a. placing such information in the relevant terms and conditions for a product and/or a service; and
 - b. setting out such information on the Communications Provider's website in a reasonably prominent manner that is easily accessible.
 - (ii) The information which must be disclosed in accordance with paragraph 2(a) above must be kept up to date and as a minimum include information about:
 - a. the process for making a Complaint;
 - b. the timeframes in which the Communications Providers will work to resolve the Complaint, including when the Communications Provider will notify the Complainant about the progress or resolution of a Complaint; and
 - c. the Complainant's right to go to a Dispute Resolution Scheme and the contact details of the Dispute Resolution Scheme of which the Communications Provider is a member.
 - (c) Accessible, in that:
 - (i) a Communications Provider must provide a way to make a Complaint that is easy to use for a consumer of the relevant product and/or service;
 - (ii) a Complainant must be able to make a Complaint free of charge, except that where a Complaint is made by a phone call to the Communications Provider, the Communications Provider may charge the equivalent of a geographic call rate;
 - (iii) Complaints handling procedures must be easily accessible for disabled or vulnerable Complainants and where necessary dedicated procedures must be provided; and

- (iv) all information about Complaints handling procedures and about individual Complaints must be easy to understand, concise and correct.
- (d) Responsive, in that:
 - (i) there must be clearly established timeframes and escalation processes for dealing with Complaints, with a maximum of four escalation points;
 - (ii) the Communications Provider must give written acknowledgement in a durable form of receipt of the Complaint within 5 working days of receiving the Complaint, unless the Complaint is resolved when the Communications Provider first receives the Complaint; and
 - (iii) The Communications Provider must deal with the Complaint promptly.
- (e) Effective, in that a Communications Provider must have and comply with procedures to monitor and review the implementation of its Complaints Handling Procedures.

Annex 6

Impact Assessment

Introduction

A6.1 This annex is a summary of the Impact Assessment that we have undertaken for this Review, as described in detail in sections 2 – 6 of this Consultation Document.

The citizen and/or consumer interest

A6.2 In this Review we are considering what is effective and appropriate regulation for ADR and CPs' complaints handling procedures.

A6.3 Inadequate or inappropriate ADR and complaints handling procedures can cause significant harm and detriment to individual consumers - such as stress, anxiety, loss of income, unnecessary expenditure and wasted time.

A6.4 In this Review we are considering the best way that we can protect and empower consumers who make a complaint and become involved in a dispute with a CP.

Ofcom's Policy Objective

A6.5 Our policy objective is to ensure that our regulation of ADR and CP's complaints handling procedures is the most effective and appropriate way of protecting and empowering consumers.

A6.6 As part of this we are concerned to make sure that we do not inappropriately or unnecessarily burden CPs. Appropriate regulation should adequately protect and empower consumers while not placing unnecessary burdens on industry or creating unnecessary obstacles to efficient competition. We do not want to inappropriately or unnecessarily interfere in the customer relationship between a CP and a consumer.

Options Considered

A6.7 We have considered the following different options for regulation. Further details on these are set out in the relevant sections in the main body of this Consultation Document.

ADR

- **How long should consumers have to wait before being able to go to ADR?**

Option 1 – Do Nothing

A6.8 The regulation stay the same - consumers have to wait twelve weeks to go to ADR, unless a CP sends a Deadlock Letter.

Option 2 - Reduce the time that a consumer has to wait to go to ADR from eight to twelve weeks

A6.9 The regulation could be changed so that a consumer has to wait eight weeks to go to ADR, unless a CP sends a Deadlock Letter.

- **When and how should consumers be told about ADR?**

Option 1 – When a CP first receives a complaint

A6.10 A CP could tell a consumer about ADR when the CP first receives the complaint

Option 2 - When the consumer can go to ADR

A6.11 A CP could tell a consumer about when the consumer can go to ADR; that is, (assuming that the proposal set out in Consultation Question 2 is implemented) eight weeks after the complaint has been received, or earlier if the CP issues a deadlock letter.

Option 3 When a CP first receives a complaint AND when the consumer can go to ADR

A6.12 This is a combination of Option 1 and Option 2.

Option 4 - General Signposting

A6.13 Measures could be taken which are aimed at all consumers to increase general levels of awareness of ADR, rather than targeted at individual consumers who have made complaints.

Option 5 – Do Nothing

A6.14 We could leave the regulation as it is – where a CP is only required to make a reference to ADR in their Complaints Code of Practice.

Complaints Handling Procedures

- **How should we set complaints handling standards?**

Option 1 – Do Nothing

A6.15 We could make no change to the current regulation. This would mean retaining the current obligation for CPs to have an individual Complaints Code of Practice which we approve.

Option 2 - Single Ofcom Approved Code of Practice setting out Detailed Mandatory Standards

A6.16 We could approve a single Code of Practice for Complaints Handling which sets out detailed mandatory standards for complaints handling procedures.

Option 3 – Single Ofcom Approved Code of Practice setting out High Level Mandatory Standards

A6.17 We could approve a single Ofcom Approved Code of Practice for Complaints Handling which sets out high level mandatory standards. In setting these high level standards, we would seek to ensure that all CPs comply with minimum basic standards in complaints handling procedures, while still allowing CPs the scope to be innovative and efficient in their individual approaches to complaints handling.

Record Keeping

- **What record keeping should we require?**

Option 1 – Do Nothing

A6.18 We could make no change to the existing regulation.

Option 2 - Logging

A6.19 We could require CPs to log complaints when they are first received and as they are handled.

Option 3 – Complete Records

A6.20 We could require to keep detailed records of all stages of a complaint, including call recordings of all communications with a complainant.

Analysis of the different options

A6.21 We set out in the body of the Consultation Document an analysis of the advantages and disadvantages of each option.

The preferred option

A6.22 Our preferred options are as follows. Our detailed reason for these preferences are set out in each relevant section.

ADR

- **How long should consumers have to wait before being able to go to ADR?**

Option 2 - Reduce the time that a consumer has to wait to go to ADR from eight to twelve weeks

- **When and how should consumers be told about ADR?**

Option 3 When a CP first receives a complaint AND when the consumer can go to ADR

Complaints Handling Procedures

- **How should we set complaints handling standards?**

Option 3 – Single Ofcom Approved Code of Practice setting out High Level Mandatory Standards

Record Keeping

- **What record keeping should we require?**

Option 2 - Logging

Annex 7

Glossary

Act	Communications Act 2003
ADR	Alternative Dispute Resolution
ADR Scheme	A body which provides ADR
CP	A Communications Provider who provides and Electronic Communications Service, as defined in the Act.
Domestic and Small Business Customers	Residential consumers and businesses with 10 or less employees (who are not a CP), as defined in the Act.
General Condition	Set of conditions applying to CPs, imposing legal obligations on CPs.