12 March 2010

Jeff Loan
Strategy and Market Development
Ofcom

By email: jeff.loan@ofcom.org.uk

Dear Mr Loan

Consumer complaints consultation

Please find to follow the response of Vodafone Limited to Ofcom's consultation: 'A Review of Consumer Complaints Procedures', released on 18 December 2009.

If you have any questions about this response, please do not hesitate to contact me.

Yours sincerely

Richard Sullivan

Richard Sullivan
Regulatory Affairs Manager

Ofcom consultation: 'A Review of Consumer Complaints Procedures'

Response from Vodafone Limited ('Vodafone')

Executive summary

Vodafone fully accepts that complaints handling and access to alternative dispute resolution (ADR) are an important part of the consumer experience. We invest significant effort and resource to ensure a high-quality and consumer-friendly complaints handling process – where there are problems we want to be able to address them and find resolutions that meet with the full satisfaction of our customers. We also recognise that on the rare occasions where we cannot reach agreement with our customers there should be a robust ADR process. Vodafone supports – and was a founding member of – the ombudsman service Otelo.

Vodafone is strongly opposed to the proposals set out in this consultation however as they are incorrectly targeted and disproportionate. The burden that would result from the imposition of the proposed obligations would result in a level of incremental costs that has been materially underestimated by Ofcom.

Ofcom rightly recognises that its proposals involve a modification of a General Condition. Before proceeding to adopt a particular course of action, Ofcom is, pursuant to the provisions of the Communications Act 2003, obliged to ensure that its proposed course of action is:

- objectively justifiable
- proportionate
- transparent
- non-discriminatory

Applying the above statutory objectives in this instance, it is clear that Ofcom must ensure that it has adopted the least onerous course of action to achieve its objectives and that the benefits of its proposals outweigh the costs.

Vodafone welcomes the fact that Ofcom has undertaken a cost-benefit analysis to determine whether or not the criteria outlined above have been fulfilled. However, that cost-benefit analysis must be robust, which means that it is capable of withstanding profound and rigorous scrutiny. For reasons that are set out below, and in detail in the body of this submission, this cost-benefit analysis is seriously flawed. In simple terms, key inputs underpinning the cost-benefit analysis, specifically Ofcom's cost estimates, have not been adequately substantiated and are speculative. In the absence of credible cost data, the cost-benefit analysis must be

considered deficient. Moreover, again as we explain in depth in our submission, the purported benefits that Ofcom claims will flow from its proposals are unsound and have not been properly quantified.

These flaws mean that Ofcom has failed to demonstrate to the requisite standard that the criteria for modifying a General Condition have been met. Accordingly, a decision by Ofcom to proceed on the basis of the current consultation would be inconsistent with the statutory duties that Ofcom is required to observe.

As we set out in section one, Ofcom's assessment of costs and benefits start from a flawed assumption. Contrary to Ofcom's assertion in the consultation that it is: "no longer proposing that CPs log complaints or acknowledge that a complaint has been made…"[1], the only practical way of meeting the proposed obligations would be for Communications Providers to log all expressions of dissatisfaction as they occur, even if the vast majority of such customer contacts are resolved before the eight week threshold. Even in the event that a CP believed that a complainant had been satisfied, but it is subsequently contacted by the customer to express ongoing dissatisfaction, then the CP would have to link the initial complaint to the new complaint[2]. The only practical way of meeting such an obligation would be to log all 'complaints'.

The proposed obligations would require the development and deployment of a system that can interrogate complaints and intercept any complaint not resolved after eight weeks, notifying the customer of the right to take a complaint to ADR (from the point when the initial complaint was logged in the case of repeat complaints). Aside from this practically mandating the logging of all complaints, Vodafone would stress that it does not have this 'complaint interception' capability and Ofcom's assessment of costs is thus seriously understated.

Vodafone would also highlight that there are significant other costs from the proposed new obligations of which Ofcom does not take full account. New training for all customer service agents (CSAs) would have to be developed and deployed and there would be an increased average call handling time (AHT) for all contacts. Given the levels of Vodafone customer service activity, even a small increase in AHT would equal a significant increase in required resource. As set out in section one of our response, a relatively modest increase in AHT alone, without considering any other associated costs, would lead to a cost increase of over XX. Furthermore, the proposed obligations would necessitate the development of our call logging facilities and the interrogation functionality and an increase in our data storage capacity.

Vodafone would also have to fund more complaints going to Otelo, funding both successful and unsuccessful claims[3], and build-up its own human and systems capacity to resource this increase in ombudsman-bound

[1] Ofcom consultation: 'A Review of Consumer Complaints Procedures', paragraph 3.9, p.10
[2] Op. cit., 'Accompanying draft guidance notes on the Ofcom Code', 'What about repeat complaints?', p.91
[3] Though Vodafone is successful in the vast majority of the cases that go to Otelo, being successful in over XX of cases

complaints. Merely dismissing these costs as 'indirect' is not an adequate response – there is no doubt that if the number of ADR cases were to rise, then the cost to industry would also rise.

As set out in section three, Ofcom is not clear about the costs of implementation to industry, and the cost estimates it does cite should not be considered reliable as they are based on a flawed assumption and are a gross underestimate of the system and process costs created by its proposed obligations. Further, Ofcom's belief that the (in our view unreliable) costs are 'objectively justifiable' is simply unwarranted on the basis of the tendentious evidence Ofcom presents of the proposed obligations' benefits. The data supplied is piecemeal, incoherent and inconsistent and points to the need to improve the quality of data before it can be used to commit the industry to real and substantial additional costs of operation; a cost that will be ultimately borne by consumers.

Vodafone does not believe that Ofcom's proposed obligations are cost-effective or targeted. By way of example, Ofcom's proposal for notification at eight weeks would target the vast bulk of the proposed incremental expenditure, not on improving customer satisfaction per se but merely on recording, identifying and eventually discarding from consideration the vast majority of 'complaints' that are resolved or otherwise out of scope in order to notify a much smaller set of complainants of their ADR rights. In Vodafone's opinion this is an illogical and inappropriate deployment of scarce resources.

Vodafone has examined ways in which it could comply with Ofcom's proposals by looking at the proposed obligations, looking at Vodafone current practice, identifying whether there is a gap and then stating the remedial action that would need to be taken. As set out in section two, Vodafone assesses that the cost of Ofcom's proposals are over XX. And that this figure is a significant under-estimate given that the costs of a mail-out system, able to identify which complaints are at the eight week point, are absent given the challenges of costing this kind of major IT project. However, the cost emerging from this gap analysis alone, for Vodafone alone, is well at odds with Ofcom's seriously deficient assessment of an industry-wide cost of £4-12 million ongoing expenditure and £2-12 million one-off expenditure[4].

Vodafone would remind Ofcom that the general trend for the UK mobile market is that revenues and margins are falling year on year. Ofcom notes that: "spend on mobile services fell by nearly 6% during 2008, despite a 6% rise in the average number of voice calls per mobile connection"[5]. At the same time, satisfaction levels for mobile are high, with only three percent of consumers surveyed by Ofcom stating they are 'very dissatisfied' or 'fairly dissatisfied', compared to 92% 'satisfied' or 'very satisfied'[6]. This level of satisfaction, combined with falling

[4] Consultation, 6.80 and 6.81, p.57
[5] 'The Consumer Experience 2009', Ofcom, p.75
[6] Op. cit., figure 4.3.1

complaint levels[7], does not point towards a widespread or systemic problem and militates against Ofcom's disproportionate and untargeted approach.

Adding unnecessary costs into the mobile sector, especially as the UK is slowly coming out of recession, can only serve to harm the current, Ofcom recognised, mobile paradigm of revenue falling and usage rising. Ofcom must therefore be very certain that any intervention is justifiable and appropriate to avoid the risk of inconsistency with the statutory duties that it is required to observe.

As an alternative approach, as set out in section six, which would help Ofcom fulfil its obligations for targeted and proportionate regulation, an amended definition of 'complaint', which takes into account some form of harm or detriment, could be used for the purposes of its proposed obligations. Ofcom's proposed obligations do not push CPs towards a reduction in detriment by addressing higher value problems, but force the logging and retention of the far greater mass of small value problems; indeed not just problems, but any 'expression of dissatisfaction' whether of any value or not. And this concern is compounded by the need to intercept these 'complaints' after eight weeks.

Ofcom could look to the new obligations set out in its consultation to apply only to a new set of 'complaints', with harm or detriment criteria taken into account. This new set of complaints could be seen as 'escalated complaints'.

[7] Op. cit., figure 160

STRUCTURE OF RESPONSE

1. Logging of complaints in order to satisfy Ofcom's proposed obligations

2. Costs (gap analysis of Vodafone current practice compared to requirements of proposed obligations)

3. Ofcom's cost-benefit analysis

    i. Benefits of ADR notification after eight weeks
        a. Number of customers benefiting
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    ii. Costs of ADR notification after eight weeks
        a. Costs of reference to ADR body
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4. Sectoral comparisons

5. Mobile, fixed and broadband comparisons

6. Alternative approaches

7. Conclusion

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1. Logging of complaints to satisfy Ofcom's proposed obligations

A core concern of Vodafone emerges from Ofcom's observation that it is: "no longer proposing that CPs log complaints or acknowledge that a complaint has been made…"[8]. Vodafone disputes this assertion and contends that Ofcom's proposed obligations are based on a flawed assumption; the proposed obligations do from a practical point of view compel CPs to log all complaints.

This effective compulsion comes from:

- Ofcom's definition of a complaint as: "an expression of dissatisfaction"[9]
- Ofcom's draft guidance on the treatment of 'repeat complaints'[10]
- the need to notify complainants of their right to ADR after eight weeks, in the event of resolution which is not to the satisfaction of the complainant
- the requirement to issue a deadlock letter when requested by a complainant[11]

The effect of the combination of the above proposed obligations is that the only customer interactions that Vodafone can confidently not log are those which express no dissatisfaction[12] and those that are clearly resolved at first contact and a subsequent contact cannot be made by the customer that could be related to the initial contact. With Ofcom's draft guidance on its proposed Code, it is clear that the treatment of 'repeat complaints' compels the logging of all complaints, as expecting a Customer Service Agent (CSA), on each contact, to assess the certainty of resolution and hence decide not to record the contact as a complaint would be disproportionately burdensome and risky, given the customer's right to contact the CP with 'ongoing dissatisfaction' which would have to be linked back to the initial complaint.

The proposed obligations set out above would make it necessary for a CSA, on each contact, to consider whether there has been a previous complaint and then to assess whether the present contact is a new complaint or a re-contact about an existing complaint. This creates practical difficulties for the CSA – if a contact is a complaint about billing, and there has been a previous complaint about billing, is this the same complaint? Or is it a new complaint if it is about a new bill? What if the complaint is about, for example, not being happy about premium rate call charges? And then, six months later, the complainant calls again still not happy about premium rate call charges? Is this one complaint; a complaint that we automatically have to notify under the eight week rule?

[8] Ofcom consultation, paragraph 3.9
[9] Op. cit., 3.4, p.9
[10] Op. cit., annex, p.91
[11] Op. cit., 6.113, p.64
[12] Customer contacts that are clearly and explicitly not expressing some form of dissatisfaction are very much a minority

The detail that would have to captured by the CSA at first contact in order for another employee, perhaps months later, to be able to assess subsequently what is, and what is not, a re-contact about an existing complaint would also be significant; a development that will drive up average call handling times.

Below Vodafone sets out the impact of an increase of 60 seconds on average call handling time (AHT):

CONFIDENTIAL SECTION BEGINS

CONFIDENTIAL SECTION ENDS

The cost of any increase in AHT in a business taking multiple millions of calls is therefore significant and material.

It is also not clear from Ofcom's consultation for how long such complaints should be capable of interrogation. In other words, would Vodafone be expected to link a new contact back to an original complaint after two months? In this case, the ADR notification would automatically be triggered immediately without an opportunity for the CP to then deal with the complainant's concern. Would such linking back to the original complaint be necessary after three months? Or six months?

Ofcom's text in its 'Accompanying Draft Guidance Notes on the Ofcom Code', under the section 'What about Repeat Complaints?', makes Ofcom's expectations clear: "we would expect that the eight week period before notification must be provided would run from when the *initial* Complaint was logged with the CP"[13] (emphasis as original). Ofcom's consultation is not taking into account the level of sophistication and the data storage requirements of the kind of system necessitated by its proposed new rules and therefore not taking into account the level of cost that is associated with such a proposal.

Ofcom's new rules in effect even oblige CPs to follow Ofcom's rules beyond its statutory remit. The effect of Ofcom's proposed new regulations would oblige CPs to log all complaints, whether the complaint related to a CP's provision of a Public Electronic Communications Service (PECS) or not. We note Ofcom's amended definition of a complaint, taking in the definition of PECS[14], but it would simply not be practical to train front-line customer service staff in what is covered by the provision of PECS and what is not. Even if this were practical it would not be sensible to have two separate complaints handling systems and processes – one for those matters inside Ofcom's remit and one for those not in Ofcom's remit. In effect therefore Ofcom's proposed rules around

[13] Op. cit., Annex 5, p.91
[14] Op.cit, 3.4

logging complaints extend to areas beyond its remit (e.g. handset battery life, mast building) putting us at a competitive cost disadvantage in those areas where competitors do not have to meet Ofcom regulation.

The obligation from a practical point of view to log all complaints is further encouraged by the complex and dynamic ranges of products and services being provided by mobile operators, in contrast to say the domestic supply of energy. In the event of a complainant contacting us about not being able to make a call, or send a text or a picture message, or any of a wide range of data services, there are a whole host of possible issues; for example handset is faulty, battery is faulty, customer has failed to understand the handset, customer has failed to charge the battery, the network is temporarily down, there is no mobile signal indoors, there is no mobile signal indoors or outdoors, the customer lives in a basement property, the handset is network locked etc.

Let us take a scenario in which a diagnosed problem in a particular instance is that there is no charge in the battery, and that there is then a further contact six weeks later that the customer cannot make a call that proves to be a coverage issue. As the problem is the same in both cases (an inability to make a call) is this one single complaint or, since the causes of the problem are very different, two separate issues? As the initial contact could simply identify that the complainant can't make a call, a whole host of scenarios, which are not in Ofcom's remit, would have to be logged in the event that the problem does transpire to be all (or in part) in Ofcom's remit.

Ofcom must therefore reconsider its statement that it is 'no longer proposing that CPs log complaints or acknowledge that a complaint has been made', as it sets up the rest of Ofcom's analysis on a flawed basis.

Vodafone looks at the implications of the need to log all complaints in the light of the obligation to notify at eight weeks in section three (ii); Costs of ADR notification after eight weeks.

2. Costs, based on gap analysis

Vodafone below sets out the following costs, based on the practical implementation of Ofcom's proposed obligations.

CONFIDENTIAL SECTION BEGINS

CONFIDENTIAL SECTION ENDS

The figure of £XXm is however inevitably an under-estimation, given that it does not include the costs of design and implementation of a mail-out system able to identify, by interrogating our complaints handling system, which unresolved complaints were currently at the eight week point.

Such an obligation would necessitate the development of a new complaints handling system. Given the size of Vodafone's customer base and the number of contacts it handles, Vodafone would have to design, develop, test and implement (and then integrate into our current systems) a sophisticated bespoke system. The information and functionality would be, at minimum:

- Customer details (name, address etc)
- Mobile and account number
- Initial complaint overview
- The ability to update the log and save
- The ability to access and update the system across any Vodafone touchpoint (XX)
- Automated reminder to CSA to contact customer in advance of eight weeks
- Automated deadlock letter / SMS generation at eight weeks
- The need to confirm the complaint has been resolved and the log closed
- Security to prevent unauthorised access, SOX15 compliance, Data Protection etc

Such a system would be complex to develop and operate and it could not be combined with existing customer relationship management (CRM) systems. Vodafone is not currently in a position to provide a precise figure for the potential capital expenditure that the proposed new rules would entail, but, based on our recent experience of large-scale system development and integration, we estimate the cost of development to the required standards to be many millions of pounds and taking several years to design, develop, test and implement – and integrate.

The concern outlined above is compounded by the human intervention necessary in advance of sending a mail-out notifying the complainant of his right to ADR after eight weeks. As we do not have postal addresses for a large percentage of our pre-pay customers, and do not have validated postal addresses for any of our pre-pay customer base, then such an automated mail-out would require significant additional staff intervention.

The estimate above is therefore decidedly low, given we will have to establish a team responsible for outbound calling of customers, which would have to happen at least once (even if we don't get through) to demonstrate 'reasonable efforts'[16].

Vodafone's assessment of the additional costs of Ofcom's proposed new obligations, in the light of the eight week notification rule, is explored further in the cost-benefit analysis section.

Conclusions

[15] The Sarbanes-Oxley Act of 2002 (Pub.L. 107-204, 116 Stat. 745), also known as the Public Company Accounting Reform and Investor Protection Act of 2002
[16] Consultation, 6.70, bullet 4, p.55

Revising our operating practices, system changes etc would mean a minimum extra operational expenditure of XX year on year. This figure, when considered as a disbenefit of Ofcom's proposed obligations, should be augmented by the multiple million pound capital and operating cost of a complaint interception system and the costs that would result from not having contact details for the majority of our customers.

3. Ofcom's cost-benefit analysis

i. Benefits of ADR notification after eight weeks

Putting aside Vodafone's view expressed in the sections above that Ofcom has started from a flawed assumption and has significantly underestimated the costs of implementing its proposed obligations, it is necessary to examine whether Ofcom's cost-benefit analysis reaches a conclusion that is justifiable on its own merits in terms of the assessment of the levels of costs and related benefits. In Vodafone's view it is clear that it does not.

Vodafone has the following concerns:

- Ofcom is unclear on any view of the level of costs
- The surveys contained in the research report and replicated in the consultation document are of questionable validity and Ofcom should not use them to generate an assessment of benefits
- In any event Ofcom has failed to generate quantified benefits
- Specifically – and most seriously – the eight week solution is wrongly directed and wrongly costed
- Ofcom has factored in the benefits it asserts that may arise from the acceleration of complaints handling into its assessment of the benefits of ADR notification, whereas there is no evidence presented that ADR notification on its own will achieve this supposed complaints handling acceleration

Ofcom is not clear what the costs of implementation of eight week notification across industry would be:

> "We estimate that there will be annual ongoing direct costs of £4m - £12m to the industry from implementing the proposal and depending on implementation decisions made by CPs there could be further one-off costs of £2m - £12m (although this is considered unlikely). In addition there is likely to be some increase in the indirect costs associated with dealing with an increase in ADR cases, including ADR case fees."[17]

Ofcom is confident however that this is reasonable:

> "We consider that these costs are objectively justifiable in light of very low awareness of consumers' right to take cases to ADR, and the clear evidence that ADR improves outcomes for consumers with lengthy unresolved complaints." [18]

In Vodafone's view this conclusion is unwarranted on the basis of the evidence that Ofcom presents: rather the data that Ofcom supplies is piecemeal, incoherent and inconsistent, and points only to the need to improve the

[17] Op. cit., 6.87, p.58
[18] Ibid

quality of the data before it can be used to commit the telecoms industry to real and substantial additional costs of operation. Ofcom acknowledges that: "from a regulatory perspective we need to ensure that any intervention is proportionate and targeted"[19]. Vodafone contends that this proposal is neither.

If one assumes that Ofcom's cost estimates quoted above are reliable (and, as discussed above, Vodafone does not) it is straightforward to assemble Ofcom's low-cost and high-cost overall scenarios, using for example a five year payback period and a 11.5% cost of capital:

- For the low-cost scenario Ofcom has estimated that an initial outflow of £2m capital expenditure (capex) and an ongoing expenditure of £4m operational expenditure (opex) for each of the five years can be applied. This gives a present value of £16.6m, requiring an annual level of benefits of at least £4.5m to justify the investment.

- Under the high-cost scenario of £12m capex and £12m opex, a present value of the expenditure of £55.8m is calculated, requiring a minimum benefit of £15.29m per year.

Ofcom has failed to demonstrate that annual benefits of this scale (or in fact any quantified scale) might be expected from automatic ADR notification at eight weeks from first contact.

Ofcom is in fact inconsistent on the nature of the benefit that ADR notification at eight weeks might generate. In the quote from paragraph 6.87 above, which summarises its assessment of the proposal, it is clear that it is emphasising the benefit to lengthy complaints – i.e. those that last more than eight weeks. However elsewhere in the text, at 6.75 and in subsequent discussion, it claims a benefit that will apparently ensue from accelerated claims handling in general. But neither of these benefits are properly worked out or quantified in the consultation. Clearly any benefit would have to be calculated in terms of two variables – the number of customers benefiting from the eight week notification and the value of the benefit per customer. Ofcom fails to quantify realistically either of these variables.

We first examine the key case from the assessment, i.e. the impact on lengthy claims.

a. Number of customers benefiting

At the heart of Ofcom's limited factual data are two surveys – one on the volume of complaints, and the other on the nature of the impact on customers of a complaint. Synovate conducted the two surveys for Ofcom; the first of

[19] Op. cit.,6.67, p.54

which was part of an omnibus survey of approximately 1,000 UK adults in August 2009. From this, using Ofcom's very broad definition of a complaint, repeated by Synovate[20], it finds that 23% of the population have had a complaint with a CP in the last 12 months, and of these 30% (or 7% of the total) were not resolved within 12 weeks. This is quantified by Ofcom as follows:

> "Our market research found that 7% of the population had a complaint that was unresolved after 12 weeks. With an adult population in the UK of around 48 million, this would imply 3.3 million complaints are unresolved at 12 weeks."[21]

This may, or may not, be correct, but elsewhere in the consultation, at paragraph 6.21, Ofcom reveals that the same survey also showed that 12% of telecommunications complaints that last at least twelve weeks go to ADR[22]. This implies that 12% of 3.3 million, or 396,000 complaints, are dealt with every year by ADR. This total simply cannot be right.

Ofcom is silent on actual volumes of ADR activity (except mentioning that there has been no material change in the level of complaints received since the eight week minimum period was imposed (superseding the 12 week period)). We are aware however that Otelo, in its latest annual report, states that it received 6,964 complaints (2008/9)[23]. A limited amount of internet research reveals that the equivalent volume for Cisas was 2,667 (2008)[24]. This makes a total of 9,631 complaints.

In reality therefore the number of complaints that actually go to ADR is only 2.5% of the number derived from the survey extrapolation of 396,000 complaints. One must therefore be sceptical of the quality of Ofcom's survey data on the volume of complaints, and hence on the number of consumers who might be thought to benefit from an eight week ADR notification.

Somewhat perplexingly, it can be seen in paragraph 6.82 that Ofcom is in fact not necessarily envisaging a very significant increase in consumers taking in-remit complaints to ADR and it quotes the example of the energy sector, where an eight week notification led to only a 22% increase in applications. Taking the figure that about 10,000 complaints are resolved by Otelo and Cisas each year, even if one were to assume a 50% increase in activity, Ofcom's proposed new regulations might thus in Ofcom's view only result in an additional 5,000 customers per year using ADR and hence receiving whatever benefit may result from this..

b. <u>Extent of customer benefits</u>

[20] Synovate research report, p.14, footnote 3
[21] Op. cit., p.15, footnote 22
[22] Also noted in 1.3.2 of the Synovate annex
[23] Otelo Annual Report 2009, p.2
[24] Cisas Annual Report 2008, p.8

Ofcom claims that there is clear evidence that ADR improves outcomes for consumers with lengthy unresolved complaints. Vodafone is not convinced that this is demonstrated by the survey results or that any improvement is sufficiently material to justify the cost of ADR notification.

In Vodafone's view, whilst the survey results are interesting, they cannot safely be interpreted as being representative of all complaints and hence cannot be used as a basis of regulation. In order to understand this, one needs to look at the survey methodology of the second survey on customer complaints and its limitations. Synovate explains in detail how the survey was built:

> "Quantitative research was undertaken 14-31 August, 2009 among 1,044 consumers and 861 small businesses (defined as having between 1-10 employees). To qualify for interview, participants had to have complained to one of their communications service providers in the last 12 months. Quota controls were used to ensure robust numbers of complainants falling into 3 categories:
>
> - ADR scheme users
> - Eligible ADR non-users
> - Complaint lasting less than 12 weeks
>
> Quota controls were also used to ensure an approximate 3-way split of mobile, fixed telephony and broadband service provider complainants.
>
> Online panels were used to target this difficult to find group and the research was completed online via a self-completion methodology. *Due to the self-completion methodology and exclusion of eligible people who do not have online access, it is not possible to say the sample is representative of all people who raised or are eligible to raise an issue with a ADR body.* However, sufficiently large subsamples of people raising a telecoms, broadband or mobile issue were achieved to allow significant differences in these groups to be identified."[25] (emphasis added)

Synovate's substantive reservation on the quality of the data is not carried through into the body of the main consultation, but Vodafone considers it to be significant. The survey is not random, but basically self-selected, and therefore runs the risk of selection bias.

Vodafone's understanding of the survey process is that Synovate emailed those individuals who enrolled on its 'Global Opinion Panels', to seek responses to a telecoms questionnaire, filtered out those who responded but did not report a telecoms complaint in the last year, and then collected (in the case of consumers) roughly 100 or 150 responses for each of nine complaint categories, stopping when pre-determined quotas had been reached:

[25] Synovate research report, p.45

- ADR mobile (97 complaints)
- ADR fixed (97)
- ADR broadband (97)
- 12 weeks non ADR mobile (151)
- 12 weeks non ADR fixed (150)
- 12 weeks non ADR broadband (150)
- < 12 weeks mobile (101)
- < 12 weeks fixed (101)
- < 12 weeks broadband (100)

The results of these responses are simply summed, with most reporting being at the level of ADR, non-ADR lengthy complaints, and complaints under 12 weeks.

Whilst the results may be interesting and, as Synovate report, show significant differences between the groups (but importantly primarily between less than twelve week and greater than twelve week complaints rather than between ADR and >12 weeks non ADR complaints) to attempt to use the results to justify significant intervention is unsustainable because:

1. The results are a simple extract from those self-selected individuals who have applied on-line to join Synovate's opinion panel (which offers various rewards for participation) and who completed the survey sent to them in August 2009. No attempt has been made to normalise these results to reflect the UK population of telecoms users as a whole.

2. When summing the outputs, to report at the level of ADR or non-ADR or shorter complaints, no attempt is made to weight the results between mobile, broadband and fixed to reflect the proportions of each complaint type that actually come from mobile, fixed and broadband.

3. The cut-off between eligible ADR non-users and shorter complaints was set at twelve weeks, even though ADR eligibility is now eight weeks. It is not clear what the impact on the results of moving the eight to 12 week complaints to the correct category would be.

4. The 'eligible' ADR non-user category no doubt contains complaints that would not in fact be addressed by ADR[26], but no attempt has been made to exclude them from the comparison.

[26] XX

It is not possible therefore to be able to consider the survey results to be representative of the UK population's telecoms' complaints as a whole. The results from the survey can thus only be considered anecdotal, and cannot be interpreted as representative of the totality of telecoms complaints or of any difference between ADR, non-ADR over eight weeks, or shorter complaints, either at industry level or for mobile, fixed and broadband individually.

Even setting aside Vodafone's (justified) concern over the interpretation of the survey results, it is not clear that what is actually presented by Ofcom gives a sufficiently large benefit to offset even Ofcom's optimistic view of implementation costs. Ofcom reports that of consumers who went to ADR, 45% considered that their complaints were completely resolved and 41% partly resolved; a total of 86%. Whereas for those lengthy complaints that did not go to ADR, 37% were completely resolved and 20% partly resolved; a total of 57%. From this one might presume that ADR has increased the resolution rate from 57% to 86% of complaints, or 29%[27].

Applying this 29% to the possible additional 5,000 cases going to ADR, from a 50% increase in ADR activity considered in the previous section, perhaps 1,450 of them might thus be fully or partly resolved that would not otherwise be so resolved by not going to ADR. Assuming Ofcom's low-cost scenario of a minimum breakeven cost of ADR notification of £4.5m per year, this would have to mean that each of these 1,450 cases would have to generate a benefit to the customer of £3,100. Under the high-cost scenario a benefit of over £10,500 per case would be necessary. It is difficult to see how this level of benefit might be assumed – in fact Ofcom does not attempt to quantify benefit. It is relevant in this context to note that in its 2008/9 report, Otelo asserts that the average financial award in its cases for that year was £104.30[28].

It is possible there might be other benefits in addition to successful resolution that could be adduced to ADR. In figures 3, 4 and 5 of section 4, Ofcom makes considerable play on the survey results that the levels of stress, anger and worry that arise from lengthy unresolved complaints that do not go do ADR are higher; however this is not relevant for any evaluation of the benefits of going / not going to ADR, since the comparison is in fact being made with complaints that are resolved in less than twelve weeks, rather than between those which actually go and could have gone to ADR. The survey data as presented shows in fact that the levels of stress, anger and worry are very similar between lengthy complaints that do, and do not, go to ADR – thus there is no reason from Ofcom's evidence to presume any benefit from this factor.

Turning to the supposed benefits of the proposed obligations in terms of consumer time spent on a complaint, has Ofcom demonstrated a discernible benefit? Vodafone would submit not as the research report states that for ADR consumer cases 11.8 hours are spent by the complainant, versus 11.2 hours for lengthy claims that do not

[27] Synovate research report, figure 4.1
[28] Otelo Annual Report 2009, p.20

go to ADR[29]. Similarly, for business complaints, the average is 9.1 hours for ADR and 9.0 hours for non-ADR. These results are so similar as for it to be impossible to draw any meaningful distinction. This is in fact very different from the direction taken by Ofcom on this point, which is worth quoting in full:

> "For example, if increased awareness of ADR reduced the time consumers spend pursuing long standing complaints then this could potentially have significant benefits to consumers. We estimate that there are of the order of 2 million complaints a year where the consumer regards the complaint as being outstanding for more than 12 weeks. If for half of these complaints the time spent pursuing them were to reduce by 1 hour on average, and if we assumed a value for consumers' time for pursuing complaints of the order of £10 per hour, this would translate into a benefit to consumers of the order of £10m."[30]

Looking at this more objectively, if 5,000 new cases went to ADR and for each case one hour was saved (when the survey result indicates that there is no reason to assume it would be), then at Ofcom's valuation of consumer time, this would be a benefit of approximately £50,000. Vodafone would suggest that this represents poor value against the Ofcom low-cost case minimum breakeven benefit of £4.5m per year. It is hard to see how the knowledge of ADR, but the decision not to use it, could reduce consumer time spent on a lengthy complaint.

The case for customer benefit arising from ADR on lengthy cases appears therefore to rely solely on improved 'resolution' levels. Is it fair or reasonable however to conclude from the survey that ADR obtains a clearly superior result? Vodafone questions how the survey respondents have interpreted the word 'resolved'. As above, the ADR complaint status is reported as 45% completely resolved, 41% partly resolved and 13% not resolved. But can this possibly mean that only in 45% of cases was the ADR body able to reach a full determination, with an inconclusive result in 41% of the time, and a complete failure to reach any conclusion at all in 13% of cases? This is unlikely to be a fair or accurate reflection of the ADR bodies' performance. 'Resolved' in the survey responses gathered from complainants is more likely therefore to be an expression of the degree to which the complaint has been settled in the customer's favour, i.e. a measure of the customer's satisfaction with, or at least acceptance of, the outcome of the complaint.

The lower 'resolution' rate for non-ADR complaints may thus simply mean that the customer has not obtained their desired outcome. Clearly there are many circumstances where the customer's desired outcome cannot be satisfied, and there is no or little fault on the part of the CP – 'my handset broke after I made a call on it whilst in the shower' etc. This insight is reinforced by comparison of figures 4.1, status of complaint and 4.5, satisfaction with outcome of complaint, in annex 8. Although these two figures read in opposite directions, there is very strong correspondence between the "not resolved at all" proportion in figure 4.1 and "not at all satisfied" result in figure 4.5 in all six data sets supplied.

[29] Synovate research report, figure 4.3
[30] Consultation, 6.31, p.47

So can one say that the lower level of satisfaction with non-ADR complaints means that if these particular complaints from the survey data had been taken to ADR the customer would have received a more satisfactory result? In Vodafone's view the case is not proven. It is possible to consider that the complaints in the ADR and non-ADR categories in the survey may not be identical in nature – or to put it another way, the non-ADR category may contain complaints where the customer is never going to be satisfied with the result e.g. where a high fixed broadband speed is physically not possible, but the customer realises there is no point taking the complaint to arbitration since this will not change the outcome. Potentially therefore the non-ADR complaint category contains a number of complaints of this nature, and is biased towards dissatisfaction in this manner. If so, it would be wrong to suggest that ADR would improve the outcome for these complaints, and thus there is no benefit to be captured.

A further suggestion that the ADR and non-ADR categories may not be drawn from the same population comes from a comparison between the two categories in figures 3.7 and 3.8, which examine the nature of the complaint in the case of mobile complaints. It is difficult to tell, since the sample sizes are so small, but there is at least a suggestion that the type of complaints are somewhat different between the ADR and non-ADR categories, with the latter much stronger on handset, coverage and other complaints – at least some of these are no doubt complaint types that would not be accepted by the ADR body in any case.

With a bigger and more representative set of data, it might have been possible to examine how satisfaction varies with complaint type and ADR status (and also between mobile, fixed and broadband). As it is, the case that there exists: "the clear evidence that ADR improves outcomes for consumers with lengthy unresolved complaints"[31] simply cannot be sustained by the evidence brought by Ofcom. The fact that Ofcom has made no serious effort to quantify any benefit that it claims to discern points to the weakness of its case.

[31] Op. cit. 6.87, p.58

ii. Costs of ADR notification after eight weeks

As set out in section two, Vodafone demonstrated that Ofcom's proposed obligations do, in practical terms, necessitate the logging of all complaints. Vodafone therefore demonstrated that the proposed obligations are based on a flawed assumption. Bearing this in mind, we look at the effect of Ofcom's proposed obligation to notify complainants of unresolved complaints of their right to ADR after eight weeks.

There is significant doubt that Ofcom has correctly identified the likely costs of developing an eight week notification process. Given Ofcom's broad definition of a complaint, extensive modification of existing systems, additional manual input, and manual intervention at the eight week point, would all be among the requirements to ensure compliance with the proposed measures.

As discussed, any contact that might be construed as a compliant would have to be logged as such, and manually linked with any subsequent call from the same customer. All potential complaints would then need to be examined at the eight week point to determine if they were still open, potentially by means of contacting the customer. At this point ADR details would have to be sent to the customer – but over half our customer base is made up of pre-pay customers[32], the vast majority of whom are unregistered; for these notification would have to be via SMS. This leads to multiple costly challenges for Vodafone:

We do not have an existing system that is set up to send out notifications after eight weeks. This means that we would have to develop and deploy, alongside the eight week complaints interception system, a mechanism by which we send out SMS to our customers.

We doubt whether 160 characters is really enough to explain ADR. At minimum, a CP would have to explain that:

- the message is from Vodafone
- it pertains to a complaint, which is unresolved
- the customer has a right to go to alternative dispute resolution, which is free and independent
- the contact details of Otelo

This would mean an SMS message communicating information as follows:

From Vodafone: as your complaint regarding [insert reason] has not been resolved within eight weeks from your initial complaint, you now have the right to approach Otelo – an alternative dispute resolution scheme – to resolve

[32] And, relative to our competitors, Vodafone has a high proportion of contract customers

your complaint. Otelo is independent of Vodafone and free to use. It can be contacted on 0330 440 1614 or see www.otelo.org.uk

This, 353 character, SMS is clearly not a practical option. Conveying less information however would be inadequate for many consumers, leading to consumer confusion and thereby driving up communication with our contact centres. This is not in the consumer interest and it would drive up the industry's cost of implementing Ofcom's proposed obligations as we would have to manage the additional contact. This additional cost is not factored into Ofcom's analysis, even though it would be as a direct result of the proposed obligations.

We recognise however that communicating by SMS is not mandated in Ofcom's proposed new regulations. Having a system in which letters would have to be sent out after eight weeks however would also be a very costly option to implement[33]. As mentioned above, we simply do not have contact details for the majority of our consumer customer base. Even for those for whom we do have contact details, we would also have to build, test, implement and integrate a new system that could automatically generate letters after eight weeks, or this process would be entirely manual.

A further problem with pre-pay customers is that some who are registered may not have registered an accurate name and / or address. There is no reason to suppose that such activity is 'suspicious'; some customers just like to be anonymous or do not like companies to hold personal information on them. This means that we will have to assess manually which information might be accurate and which might not be accurate. Some examples, such as M Mouse, Disneyland, may be obvious (though not to a machine) but other customers may simply have registered a 'normal' (if not their own) name.

There is good reason to assume real cost to industry would be much higher than the Ofcom high scenario of £12m capex and £12m opex, that required minimum benefits of £15m per year. Any increase in cost would further put into question Ofcom's failure to quantify objectively the benefit.

A basic problem in Ofcom's proposal for a notification at eight weeks is that it is not properly targeted. The vast bulk of industry's cost would be spent on recording, identifying and eventually discarding from consideration the vast majority of 'complaints' that are resolved or otherwise out of scope as per the paragraph and five bullet points at 6.70, in order to notify a much smaller population of complainants of their ADR rights. In Vodafone's view this is disproportionate. It would force CPs to spend substantial sums with no obvious benefit.

[33] A more onerous solution to Ofcom's proposed obligations would be a situation in which we would have to develop, deploy and then run both an SMS and a letter system

a. Cost of reference to ADR body

Ofcom has failed to consider the real cost to industry of reference to ADR – it is not reasonable to consider the benefit arising to the consumer of additional cases being dealt with by ADR without factoring into the overall cost-benefit analysis the industry costs per ADR case, not only directly from the ADR body, but also the internal costs that arise. Merely dismissing these costs as 'indirect' is not an adequate response – there is no doubt that if the number of ADR cases were to increase, then the costs to industry would rise. This increase would ultimately be funded by the retail payments of our customers. Ofcom's failure to predict the increase in ADR cases arising from its proposed obligations is no way to ignore the incremental costs that would result from its actions.

We would remind Ofcom that the industry pays for complaints to ADR irrespective of the outcome. Vodafone is currently successful in the vast majority of its cases, with a 'success rate' of over XX %[34]. We can but assume that more consumers going to ADR will only improve Vodafone's success rate, as more consumers with more trivial problems become aware of ADR. If Ofcom does believe that its research is strong enough to stand up to scrutiny and going to ADR does make consumers more content we do ask the question as to whether it is reasonable to ignore the resulting increased retail charges for the rest of our customers. A consumer may *feel* better to be told by an independent third party that a resolution offered by a CP was entirely reasonable, but this is a costly and unnecessary process with consumer benefit existing in perception, not in reality.

If Ofcom is to make its case that the benefit of ADR notification arises from the improvement to lengthy complaints by consumers either being aware of ADR or actually going to ADR, then it should seek a more targeted method to develop the appropriate candidates for ADR notification. A targeted approach would involve much lower costs to implement and maintain. A more targeted approach could result from looking only at 'escalated complaints' (which we discuss further in the 'Alternative approaches' section). Ofcom should then attempt to match this cost against any benefit that might arise from eight week notification from lengthy complaints.

A further issue that Ofcom does not consider in the targeting of ADR notification is that there is a cost from excessive early notification. Otelo points out in its 2009 annual report that only 15% of their contacts received from customers in 08/09 could be proceeded with – 72% were member complaints outside their terms of reference. Otelo notes that: "Most commonly this is because the complainant has contacted Otelo too early in the complaints process and has not allowed the company adequate opportunity to resolve the complaint"[35]. For

[34] 'Success' being defined as being a consumer outcome from ADR that is the same, or worse, than that offered by Vodafone
[35] Otelo Annual Report, 2009, p.21

Cisas, taking the different measure of rejected applications, instead of contact, it sees its rate as "alarming"[36] and notes 1,169 rejected in 2008. Cisas goes on to note, in the same vein as Otelo, that:

> "The main reason for rejection is common year-on-year. Consumers apply to CISAS too early and do not give the company a chance to deal with their complaint in line with its published complaints procedures"[37].

This current situation, as explained by Otelo and Cisas, can only be further compounded by Ofcom's proposed obligation that a CP must promptly issue a deadlock letter when requested by a complainant[38].

b. Matching costs with benefits

Ofcom cites an alternative view of the benefit of its proposed eight week notification rule, by noting that: "requiring a CP to inform a complainant of ADR after eight weeks creates a very strong incentive on a CP to resolve a complaint before eight weeks passes"[39]. This may, or may not, be a valid assertion, but it certainly calls into question the precision of Ofcom's targeting and whether all relevant costs are included.

If the purpose of the expenditure that Ofcom is proposing is primarily to identify, and thus reduce, the number of lengthy complaints in the first place then the expenditure is not well directed; rather it is a diversion of scarce funds away from the problem itself. The eight week ADR notification requirement will in fact not actually resolve whatever problem may exist, but would require further funds to address the problem identified, i.e. to speed up the handling of all complaints.

There are potential benefits to consumers in the more rapid resolution of complaints, in terms of less resource expended, less stress and so forth. This assertion makes the presumption however that the complaint can be resolved to the customer's satisfaction at all. If one were able to rely on the survey results as being representative of all complaints, then the comparison Ofcom draws in section 4 on the benefits to the consumer of a more rapid resolution might be useful – but as Vodafone shows above any differential is anecdotal and illustrative rather than statistically meaningful.

Ofcom in any case makes no attempt to quantify the benefits that might accrue from faster resolution of complaints, in terms of the number of complaints concerned, the degree of acceleration, or the level of benefit. Ofcom merely confines itself to an assertion of a principle which it takes to be self-evident.

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[36] Cisas Annual Report, 2008, p.8
[37] Ibid
[38] Consultation, 6.113, p.64
[39] Op. cit., 6.76, p.56

Neither does Ofcom make any attempt to quantify the costs to industry of accelerating complaint resolution; it merely hypothesises that the mandating of eight week ADR notification will make such acceleration happen. Vodafone does not see such a causal link to be proven – and any acceleration of complaint resolution would not be a cost free exercise. Ofcom, whilst asserting the unquantified benefits of such a change to ADR notification, has failed to factor in any resulting costs of acceleration, even in principle. A more realistic analysis drawn on these grounds would develop four costed elements into an assessment of costs and benefits:

- The cost of eight week notification
- The benefit to complaints that last longer than eight weeks that currently do not go to ADR of being taken to ADR, including the costs of ADR itself
- The cost of accelerated complaint resolution
- The benefit of accelerated complaint resolution

In the absence of any such analysis in this consultation, we must consider that Ofcom's conclusion that eight week ADR notification is proportionate and targeted is simply not substantiated.

4. Sectoral comparisons

One apparent 'defect' that Ofcom is aiming to address in its proposals is the low level of awareness of ADR in the telecoms market in comparison with other sectors. We would suggest that low level of awareness of ADR is as likely to be a product of the high satisfaction levels with the telecoms industry, rather than a problem in itself. Satisfaction levels for mobile are high, with only three percent of consumers surveyed by Ofcom stating they are 'very dissatisfied' or 'fairly dissatisfied', compared to 92% 'satisfied' or 'very satisfied'[40]. We would suggest that higher awareness of other dispute resolution bodies in other industries is likely to be a product of well-publicised, endemic, and individually expensive problems in other industries.

We would also remind Ofcom that the general trend for mobile is that the cost to the customer is falling year on year. Ofcom notes that: "Spend on mobile services fell by nearly 6% during 2008, despite a 6% rise in the average number of voice calls per mobile connection"[41]. This scenario is not repeated across other industry sectors – or in the retail price index which has generally been rising.

Vodafone would also suggest that Ofcom's assessment of an increase in complaints to Otelo, based on the energy sector, may be an underestimation. This is not because there is low satisfaction with mobile (indeed the reverse is true) but that the product that mobile companies are selling is relatively new, it is portable and it is evolving in a highly dynamic and rapid way. The face of mobile is unrecognisable from even five years ago and it didn't exist as a major consumer product twenty years ago.

The types of interaction between a customer and a mobile company are legion compared to the domestic gas, electricity or water markets. Fundamentally the utility companies have been supplying fundamentally the same product in the same way since at least the end of the Second World War. Complaints can only really be about billing or supply. The range of complaints that a mobile operator can receive is much greater and therefore any system that handles and tracks complaints has to be that much more sophisticated, leading to a greater burden.

This rapid evolution of mobile (coupled with high satisfaction and constantly falling customer cost) has been achieved without emerging from a statutory regulation environment. Burdensome and untargeted regulation of the mobile sector threatens its dynamism and its commitment to value.

[40] The Consumer Experience 2009, Ofcom, figure 4.3.1
[41] Op. cit., p.75

5. Mobile, fixed and broadband comparisons

It is broadly accepted that implementing Ofcom's proposed obligations will be most expensive for the mobile sector; more expensive than for fixed or ISP. At the same time however mobile has the highest satisfaction ratings among mobile, fixed and broadband suppliers according to Ofcom's own surveys[42]. Ofcom's latest data also shows fixed-line complaints to its contact centre running at almost seven times the level of mobile, with just over 100 complaints per month for mobile and just under 700 complaints per month for fixed[43], despite much higher subscription volumes for mobile than fixed. The effect of Ofcom's proposed obligations is to make the sector with the highest consumer satisfaction and the lowest level of complaints pay the most to improve (supposedly) its complaints handling processes and systems.

Ofcom's contact centre statistics would seem to demonstrate that there is a minority of CPs that do generate far more than their 'fair share' of complaints. The consultation notes that: "several CPs are currently generating 5-10 times as many complaints to Ofcom's Advisory Team about their customer services as other CPs (as a share of their customer base)."[44]

Vodafone would suggest that if there are specific examples of complaints handling bad practice then we would support Ofcom taking rapid and targeted action against such cases. We do not support Ofcom imposing a new regulatory burden on the industry as a whole, with onerous and expensive obligations. Ofcom must not use new obligations for all as a policy response to lack of compliance with current obligations by a few. Ofcom should first look to the existing regime and the powers it has under it, which would be an approach more consistent with the principles of Better Regulation.

[42] Op. cit., figure 4.3.1
[43] Op. cit., figure 160
[44] Consultation, 5.4, p.26

6. Alternative approaches

Ofcom dismisses the idea of a complaint being associated with some form of 'harm' or 'detriment'[45] and thereby the idea of a CP treating an escalated complaint in a different way to an 'expression of dissatisfaction'. As we have demonstrated above, Ofcom's proposed new regulations do, in effect, mandate the logging of all complaints, so we do not accept Ofcom's conclusion that: "we are no longer proposing that CPs log all complaints or acknowledge that a complaint has been made, so we consider the basis for these concerns about our definition will likely have been addressed"[46].

As we have noted previously, a fundamental problem with Ofcom's definition of complaints emerges when, combined with the proposed obligations on 'repeat complaints', it leads to a rule about notification at eight weeks that is not properly targeted. The vast bulk of industry's incremental cost would be spent on recording, identifying and eventually discarding from consideration the large majority of 'complaints' that are resolved or otherwise out of scope in order to notify a much smaller population of complainants of their ADR rights.

In this context, Vodafone would highlight research conducted by the OFT to support its contention about the need to target regulation correctly:

> "While the distribution of problems is heavily skewed towards lower values, the total amount of detriment is heavily skewed towards higher value problems. This is an important finding. In terms of activity directed at reducing detriment, there appears to be greater potential for reductions in detriment to be achieved by addressing these higher value problems than in the elimination of small value problems."[47] (emphasis as original)

Ofcom's proposed obligations do not push CPs towards a reduction in detriment by addressing higher value problems, but force the logging and retention of the far greater mass of small value problems; indeed not just problems, but any expression of dissatisfaction whether of any value or not.

The concern over logging and retention of complaints is compounded by the need to intercept complaints after eight weeks, whether of value or not. Targeting those complaints that represent higher value problems would offer greater value in the reduction of detriment, but would also mean that a radically lower volume is subject to the costly and burdensome eight week notification obligation.

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[45] Consultation, 3.8, p.10
[46] Consultation, 3.9, p.10
[47] OFT, 'Consumer Detriment: Assessing the frequency and impact of consumer problems with goods and services' (2008), p. 25

To help fulfil Ofcom's obligations for targeted and proportionate regulation, an alternative definition of 'complaint', which takes into account some form of harm or detriment, should be re-considered by Ofcom.

As an alternative to Ofcom amending the definition of a complaint, it could look to the new obligations set out in its consultation to apply only to a new set of 'complaints', with the harm or detriment criteria above taken into account. This new set of complaints could be seen as 'escalated complaints'. This amendment to Ofcom's proposed obligations would allow the targeting of action at those complaints which are the most serious, helping to ensure targeted and proportionate regulation in line with Ofcom's regulatory principles.

The concerns that Ofcom expresses that "many consumers are unable to get their CP to recognise that they are trying to make a complaint"[48] would be better targeted with monitoring and enforcement action than by imposing untargeted and disproportionate obligations on the industry as a whole.

[48] Consultation, 6.93, p.59

7. Conclusion

Ofcom's consultation leads off with the flawed assumption that its proposed obligations could be met without logging all complaints. As we have demonstrated, this is not an accurate reflection of the situation that would result from the proposed obligations. This flawed assumption inevitably leads Ofcom to underestimate the costs of its proposed obligations.

Even ignoring the initial flawed assumption, the cost assessments that Ofcom develops should not be considered robust. The costs of increased average call handling time or the cost of the eight week complaint intercept facility simply are not adequately taken into account.

The underestimation of the costs is compounded by an overestimation of the benefits, which do not seem to flow consistently from the research provided. And this problem itself is compounded by research which should not be considered reliable or instructive for the population as a whole.

The real and substantial additional costs of operation which would flow from the proposed obligations are simply not close to being outweighed by the benefits, so Ofcom must reconsider the obligations it is proposing before proceeding with regulation.

Annex 1

Ofcom consultation questions

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

Vodafone does not agree with using this definition as it applies to the proposed new obligations in its consultation.

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

Vodafone does not agree that the high level of intervention proposed in the consultation is appropriate given a high level of consumer satisfaction, consumer cost going down, consumer use going up and complaint levels going down. In the event of specific concerns, targeted enforcement should be used.

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

Vodafone does not object to this proposal in principle.

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

Vodafone does not object, in principle, to the transparency obligations. The practical effect of the regulations given Ofcom's definition of complaint, and the reference to section 4 (c) and 4 (d), makes compliance with the regulations complicated and expensive.

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

Vodafone does not object to Ofcom's proposals in this area, but our ongoing concerns about the definition of a complaint in this context should be noted.

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

As set out in detail above, Vodafone does not see Ofcom's proposed obligations as being objectively justifiable, proportionate or transparent.

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

Vodafone would support effective and cost-based measures to improve awareness of ADR.

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

a) Relevant text about ADR to be included on bills (paper and electronic);

Vodafone supports Ofcom's call for relevant text to be included on bills.

b) CPs to ensure consumers whose complaint has not been resolved within eight weeks of first being made to a front-line agent receive written notification about their right to go to ADR;

Vodafone does not agree that this would be an effective approach to improving the customer experience of complaints handling, but would stress that the costs to CPs would be significant.

c) CPs to ensure front-line staff are fully informed of the right of consumers to use ADR, as well as the role of Ofcom in investigating compliance with General Conditions; and

Vodafone supports Ofcom's call for front-line staff to be fully informed of the right of consumers to use ADR, but the burden Ofcom is placing on front-line agents when it talks about 'the role of Ofcom in investigating compliance with General Conditions' is not realistic or fair.

d) On request from a complainant, CPs must issue a deadlock letter referring a matter to ADR unless the subject-matter of the complaint is outside the jurisdiction of the ADR scheme or the

CP has genuine and reasonable grounds for considering the matter will be resolved in a timely manner, and subsequently takes active steps to attempt to resolve the complaint.

Vodafone does not support this approach, which seems one-eyed and unnecessary. CPs should have the right to resolve complaints from their customers and Otelo and Cisas research demonstrates the disadvantages of early use of ADR.

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

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

Vodafone believes that this level of prescription is not necessary and that CPs should have the ability to decide how best to communicate this information to their customers.

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

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

Vodafone recognises Ofcom's desire not to impose too onerous a burden in this area, but we believe that this approach can drive the wrong sort of behaviour. The proposed regulation could encourage the holding of no call recordings as, if the CP has no call recordings, then the CP need not keep them. A CP considering introducing call recordings for training or quality purposes, but not keeping them for three months, would be discouraged from proceeding at all. A company considering 100% call recording may be discouraged from proceeding if the data storage implications of three months storage were found to be significantly more than (say) six weeks or two months.

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

Vodafone does not see Ofcom's policy intent as being successfully met by its Code and accompanying guidance. As set out above, it does not go to achieve Ofcom's goal of addressing the concerns of that proportion of consumers who have a poor experience from CPs' complaints handling procedures.

Vodafone would also suggest that Ofcom's Code and accompanying guidance do not, in reality, meet with some of the assertions of policy intent set out in the consultation document; principally that the proposed obligations do not mandate the logging of all expressions of dissatisfaction and that this area has been dealt with to the satisfaction of CPs.

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

• Clauses 1 – 3 of the Ofcom Code (transparency, accessibility and effectiveness of complaints procedures) six months after the publication of any Statement; and

• Clauses 4 – 5 of the Ofcom Code (facilitating access to ADR and record keeping obligations) 12 months after the publication of any Statement.

As discussed above, Vodafone does not feel that Ofcom has captured the significance of the burden that the new rules will bring to CPs and therefore cannot support its implementation timeframe.

As a matter of detail, Vodafone does not see how clause 1 (c) (v) could be implemented in advance of clauses 4 (c) and 4 (d), as the former must relate to the latter. And if the latter is not in place then the reference could only be inaccurate – and confusing.

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

The Ofcom-mandated scheme, Topcomm, which aimed to set out comparable quality of service information, was not a success. It was expensive for operators and barely used by consumers. The same can be said of the mobile operators' self-regulatory scheme looking at coverage strength around major highways, TopNet. The market must be allowed to deliver this sort of information for consumers.

In this context the price comparison calculator mark 'approved by Ofcom' is to be commended.