

Response by Professor Richard Collins to Ofcom's Consultation on Consumer Complaints Procedures. 09 March 2010. (9 pages).

Question 1: Do you agree with our definition of a 'complaint'? **Yes.**

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)? **Yes.**

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

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

Question 5: Do you agree with each of our proposed obligations on CPs to ensure that their complaints handling procedures are accessible? **No. The obligations stated are reasonable, proportionate and desirable but CPs should additionally be required to provide the specified information on each bill and ensure that it is accessible to sight impaired, customers not using English as their preferred language and to the illiterate (eg through a recorded message accessible via a freephone number).**

Question 6: Do you agree with each of our proposed obligations on CPs to ensure that their complaints handling procedures are effective? **No. CPs should additionally be required to log all complaints (the cost involved will be low for those CPs which do not generate many complaints as will be the case for CPs providing good customer service). This data (see my response to Q 13) will provide a useful data base for Ofcom enabling it to identify emerging problems and to report accurately to enable consumers to make informed choices.**

When does a formal complaint start? Front line staff (and web forms) should be required to ask explicitly "Are you making a complaint at this point?" when customers make contact with a problem. There should be a suitable "escrow" period (say two weeks) in which the CP may resolve the complaint to the customer's satisfaction before the "8 week" countdown to ADR starts ticking. Customers should be advised of this and this information should be included in all code and complaint related communications.

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

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); **Yes.**
- 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; **Yes.**

- 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; **Yes.**
- 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. **Yes.**

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 [Otelco 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]. **Yes. However, for consumer friendliness it's desirable that there should be a single point of access for ADR from which requests for ADR can be "branched" to the appropriate agency.**

Question 10: Do you agree with our proposed record keeping requirement on CPs? **No. See responses to Qs 6 and 13.**

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. **My experience suggests that these records must be kept for at least a year. If only for 6 months, it may incentivise CPs to string out complaints procedures (eg by not formally recognising that a complaint has been made) and if this is done for more than 4 months then records may no longer be available should a consumer have recourse to ADR.**

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? **Yes, however web forms (see 2d) should enable complainants to send a record of their communication to themselves and to third parties. See also my responses to Qs 5, 6, 10.**

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. **Yes.**

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? **Yes.**

Ofcom should publish not less frequently than annually a “league table” (both in absolute numbers and adjusted for the size of CPs’ customer bases) showing:

Number of complaints.

Number of complaints by category (Ofcom to propose and adopt a classification scheme after consultation).

Number of complaints resolved by CP within 8 weeks.

Number of complaints referred to ADR.

Number of complaints upheld by ADR agency.

Number of complaints resolved by ADR within 1 month, 2 months and more than 2 months. For complaints taking more than 2 months to resolve the number delayed by inadequate provision of information by a) complainant and b) CP.

Please see my statement below which provides substantiation and context for my responses above.

The story of a complaint. Supplement to Richard Collins' response to Ofcom's consultation on Consumer Complaints Procedures, March 2010.

I begin by briefly (believe it or not) narrating my personal experience of progressing a complaint with a CP and to ADR. I identify my contacts with the CP in question, TalkTalk and with other bodies notably BT, Otelo and Ofcom. I draw conclusions which I believe to be of general relevance and which provide lessons for improving consumer experiences and the overall effectiveness of the complaints procedure and working efficiency of the communications market. I close with a summary.

TalkTalk.

Re Talktalk account [].

I cancelled my voice telephony contract with TalkTalk in a letter sent (to Talktalk, Carphone Warehouse, 1 Portal Way, London, W3 6RS) on March 23rd 2009. I continued to receive bills from TalkTalk. On calling Talktalk, in mid April I think, I was promised implementation of the cancellation but this was not done. Unfortunately I have not retained a note of the date on which I made this call or the person to whom I spoke.

On 5.10.2009 when it was clear no action had been taken, I spoke to Donna at TalkTalk who said no action had previously been taken but that she would cancel the account and show balance had been cleared. However, despite this action I continued unable to access numbers (notably 0800 numbers) because CPS has not been cleared.

On 5.11.2009 I spoke to Michael at TalkTalk who stated that CPS had not been cancelled, that he would do this and it would take effect in 24 to 48 hours.

On 10.11.2009 CPS had still not been cancelled, I spoke to Willy at TalkTalk who said that no ticket to cancel had been raised and that there were "issues" with cancelling CPS. He undertook to raise a ticket and ensure cancellation.

On 25th November I complained to TalkTalk that the CPS had still not been removed using dialogue boxes on TalkTalk website (which do not provide a function enabling complainants to send a copy of their message to themselves) and also sent a hard copy to TalkTalk (at TalkTalk Correspondence Dept. PO Box 360, Southampton SO30 2LY). I asked for prompt ensure clearance of the CPS and in the event that this has not been done by December 4th I requested a deadlock letter to progress the matter with Otelo.

On 27.11.2009 Geoff Thirlwell at TalkTalk contacted me and followed up with calls on 11th and 14th of December to tell me that the CPS problem had been resolved. It was not resolved on the 11th nor on the 14th. The assurance on December 14th being the fifth time TalkTalk had assured me the problem would be addressed and resolved.

On 16.12.2009 Mr Thirlwell called me to say that TalkTalk had done all it could and that I should contact BT (my line rental provider) to see if the CPS was "with them".

On 18.12.2009. Mr Thirlwell called to check progress. I said I would take up the matter with BT but considered that formally the problem was still a TalkTalk responsibility and asked him to take up the matter with BT (see BT section below). He stated that TalkTalk could not do this as only the customer (ie me) had the status to do so. I again requested a deadlock letter and asked Mr Thirlwell to make a file note to the effect that I had formally reiterated my request for a deadlock letter. Mr Thirlwell undertook to 'phone me again on 4.1.2010.

On 5.1.2010 I 'phoned Geoff Thirlwell at TalkTalk and left a message on his voice mail to report the results of contact with BT (see BT below), that the substantive problem persists and that I still want a deadlock letter.

5.1.2010 Geoff Thirlwell returned my call, he recommended I ask BT to remove the CPS. I insisted that this was an issue for TalkTalk to resolve and reminded him that I had persistently requested a deadlock letter which had not been provided. He agreed again to take the substantive matter up with "our team here" and if they were unable to provide a solution to write to me formally recommending that I take up the matter with BT and if I was not prepared to do that then, on receipt of a letter from me to that effect, he would issue a deadlock letter. I observed both that I appreciated his personal efforts to resolve the matter and that I believed there was a systemic problem in TalkTalk and that only publicity with third parties such as Otelo and/or Ofcom would ensure that TalkTalk's senior management took problems such as this sufficiently seriously to ensure they would be resolved.

5.1.2010 Geoff Thirlwell called again to state that TalkTalk believed the CPS was with BT and they could do no more. He undertook to send me a letter to that effect as a step towards issuing a deadlock letter. Mr Thirlwell and I exchanged letters and e-mails between the 11th and 19th January resulting in statements by Mr Thirlwell that he would not issue a deadlock letter and had closed the complaint.

After my communications with Otelo (see Otelo below) Ms Linda Cunningham of the Chief Executive's Office" of TalkTalk telephoned on 9.2.2010. I spoke to her on 11.2.2010 when she tried to dissuade me from pursuing matter with Otelo saying "it will take a further three months". She stated that a 3 way conversation with BT was the only way to resolve this. I said this was a new idea, she said it had been suggested by Thirlwell, I agreed that this had been referred to in Thirlwell's e-mail of 19.1.2010 but that this mention had been the first time this course of action had been suggested. However, I said I still believed it was up to TalkTalk to restore my line to the condition it was in before my contract with TalkTalk and suggested that I authorise TalkTalk to liaise with BT on my behalf to resolve the matter. Ms Cunningham agreed that this should happen and wrote to me on 11.2.2010 stating: "Thank you for the courtesy extended to me in our conversation earlier. In order to allow me try and progress this matter with BT please give written authority for me to discuss your account with them. Please quote your account BT account number. Once I have an update I will contact you again".

I replied in writing, providing the information requested and giving her my authorisation to contact BT on my behalf, on 12.2.2010. Since then I have received no communications from TalkTalk despite Ms Cunningham's undertaking to contact me again and despite a reminder e-mail sent on 8.3.2010.

To date (4.3.2010), the CPS has still not been cleared and I am unable to access 0800, 0500, 0844 etc numbers without entering a 1280 prefix.

BT.

On 19.12.2009 I emailed BT faults. On 29.12.2009, Leigh Machen of BT e-mailed me and stated (I extract from her e-mail):

I have checked your account and unfortunately your calls are not with BT, if you wish to revert the service back to BT we would need to place a new order. This can be done via bt.com, calling 0800 800030 or I can place the order if you wish.

I responded by e-mail on 2.1.2010 asking to speak to her and she called back on 3.1.2010 when I was not at home and said she would try again on 5.1.2010.

5.1.2010 Leigh Machen of BT 'phoned and said there is a CPS on the line but that BT cannot see where it is but agreed that since it was set up by TalkTalk it's likely to be theirs. I reported this to TalkTalk (see TalkTalk above).

Otelo.

On 10.11.2009 I completed Otelo's online form – it requires complainants to engage in careful record keeping (eg date of first complaint to CP) not all legitimate complainants will have kept such records.

On 31.1.2010 I wrote again to Otelo using the online form which permits entry of only a finite number of characters: complainants cannot always therefore, if they use the online form, provide a full account of their complaint.

On 1.2.2010 Otelo asked me to escalate the complaint within TalkTalk by writing to Mr Gareth Gilmour. I did so though this seems to me excessively formalistic and s further delay in resolution of my (and others') complaint(s). I wrote to Gilmour on 7.2.2010.

On 23.2.2010 I wrote again to Otelo and on 1.3.2010 received a letter from Otelo asking me to contact TalkTalk through Mr Gilmour. I replied on 1.3.2010 to state that I had done this on 7.2.2010. This is my last exchange to date with Otelo.

Ofcom.

10.11.2009 I initiated an exchange with Mr Alistair Bridge of Ofcom's Consumer Panel secretariat. Mr Bridge (and Ofcom's automated response), though helpful, made it clear that Ofcom does not resolve individual complaints.

Conclusions.

1. TalkTalk has been unable to resolve a substantive problem in spite of claiming five times it has done so.

It has both refused responsibility for the persistent CPS (stating that it is with BT and not TalkTalk's responsibility even though set up as part of my contract with TalkTalk) and also has undertaken to take up the matter with BT, after I authorised it to do so, but without securing rectification or making good on its promise to contact me within the three weeks that has elapsed since Ms Cunningham made an undertaking to do so.

This is a substantive issue, rather than one about complaints handling, which requires a substantive solution. It demonstrates the need for a switching process that enables consumers to switch service provider quickly and easily regardless of the underlying wholesale product (such as CPS) and regardless of whether they want to switch a single service or a bundle of services, such as fixed telephony and broadband. If such a solution were to be implemented complaints and costs to CPs, ADR agencies and Ofcom would be reduced.

2. There are major difficulties in lodging a complaint and securing effective processing of the complaint.

There is significant difficulty in identifying where to lodge a complaint and securing attention to a complaint and (as stated) I have yet to secure effective resolution of my complaint.

It is not clear to the consumer how to complain to TalkTalk. TalkTalk's complaints policies is not obvious on its website and no details of complaint procedures or ADR are on TalkTalk bills.

TalkTalk front line staff appear not to register complaints or to seek resolution of substantive problems.

The TalkTalk website has no obvious specific means of making a complaint. There is no place for complaints on TalkTalk home page, nor such a place specifically identified on the "Contact" page. There is no clear signposting of TalkTalk complaints policy (it's on the "Legal" section of the TalkTalk site and is signposted as "Code of Practice" – but it's not until one downloads the pdf that it becomes clear it refers to complaints). On searching (using TalkTalk box "search TalkTalk") nowhere in first page of results is complaints to TalkTalk shown. There is no signposting of recourse to Otelo. A complainant needs Acrobat to access the complaints policy.

The web form to communicate generally with the company (the only obvious means to enter a complaint) does not enable the consumer to copy a communication to her/himself inhibiting the comprehensive record keeping required to progress a complaint with the company and, if necessary, to ADR. Moreover, reliance on web provided information is unsatisfactory as not all consumers and complainants have web access (I believe the same objection applies to any proposal to communicate with consumers by SMS).

In sum, a great deal of time, energy and stress is involved in prosecuting a complaint. There is no evidence that TalkTalk sees complaints as a useful form of feedback from consumers enabling the company to improve its service. TalkTalk's offer of financial

compensation, before the substantive problem had been rectified, was both derisory and open to interpretation as an inducement to go away and stop bothering the company. I have not accepted TalkTalk's initial (and thus far only) offer of financial compensation.

3. There is no speedy recourse to ADR.

A complainant shouldn't have to identify whether issue goes to Otelo or CISAS, there should be a single address from which complaints are directed as required.

To secure access to ADR necessitates previously effectively pursuing a complaint with the Communication Provider. In the case of TalkTalk (see above) this is not easy to do. It is not clear at what point TalkTalk recognised that I had complained, it has not facilitated my access to ADR (and its actions are open to the interpretation that it sought to delay and/or obstruct my recourse to ADR). All of this delays the start of the clock ticking and the elapse of the eight week qualifying period before recourse to ADR.

Once aware of ADR, the complainant has to identify which agency is appropriate and, in the case of Otelo, when in contact with the ADR agency the web form to communicate generally with the company does not enable the consumer to copy a communication to her/himself and requires communications in fewer than 2000 characters inhibiting full specification of a complaint.

I think Otelo has been excessively formalistic in not substantively engaging with my complaint (eg no response to my first message and requesting that communication to TalkTalk be addressed to a specific TalkTalk employee). It remains to be seen whether ADR can secure a resolution of a problem that has endured for nearly a year. For a service such as voice telephony, which is essential for citizen and consumer participation in modern society, this is unsatisfactory.

It is not yet clear whether ADR will provide an effective remedy.

4. Ofcom's role.

By not receiving complaints Ofcom denies itself important information about the actual effect and degree of implementation of its pro-consumer and pro-competition policies. I understand why Ofcom wishes to discourage direct complaints to it though I think such a policy is difficult to reconcile with its statutory duty to "to further the interests of consumers in relevant markets, where appropriate by promoting competition" and with good regulatory practice. Particularly when Ofcom has stated that it has ample evidence that there are large numbers of complaints about telephony and that these are often not speedily and effectively resolved.

Of course, the starting point should be the service provider (followed by prompt and user friendly recourse to ADR) but thereafter there should be, if needed, speedy, simple and effective recourse to the statutory body - as there more or less is (some BBC related complaints apart) in respect of Ofcom's broadcasting duties. Moreover, broadcasting complaints are published as are Ofcom's resolutions and reasoning.

There is a level of public transparency and accountability in Ofcom's broadcasting complaints handling that I've yet to find in respect of telecom issues.

Moreover, it seems a rather empty form of representing the consumer interest for the Consumer Panel (and Ofcom's advisory committees) to have no structured part in assessing the effectiveness of complaints handling procedures and for consumers to have no means of securing redress through recourse to these bodies.

Summary.

In short, I think my experience suggests that an effective, and consumer friendly, complaints procedure for voice telephony is not in place. The complaints and ADR system, at least as I have experienced it, has not been set up by imagining how the experience will be for a complainant: it is not user friendly. Moreover, in some cases, such as mine, a change of Communication Provider (CP) is not an effective remedy (to change CP I risk amplifying the existing problem with CPS and a diffusion of responsibility for its resolution).

My experience suggests that current complaints procedures do not provide a route to effective resolution of a substantive problem, demand an unreasonably high level of literacy, professional competence, record keeping and persistence, do not conform to the objectives of serving consumer and citizen interests in communications as defined in the Communications Act 2003 (and Ofcom therefore has a duty to ensure that consumers and citizens are able to secure their entitlements under the Act) and do not satisfy the well established consumer interest principles of:

Access, Choice, Redress, Representation, Information.

(see Potter, J: CONSUMERISM AND THE PUBLIC SECTOR: HOW WELL DOES THE COAT FIT? Public Administration. 1988. 66.2 p 149-164. at <http://www3.interscience.wiley.com/journal/119453473/abstract?CRETRY=1&SRETRY=0>).

I therefore warmly welcome Ofcom's consultation and wish this explanatory and contextual note to be considered as part of my response to the consultation on consumer complaints procedures.

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