



A Review of Consumer Complaints Procedures

Statement

Publication date:

22 July 2010

Contents

Section	Page
1 Summary	1
2 Introduction and Background	3
3 The Effectiveness of Complaints Handling in the Telecommunications Industry	9
4 Establishing Minimum Standards for Complaints Handling	25
5 Helping Consumers Access ADR	46
6 Record Keeping	86
7 Implementation Period	90
8 Improving Publicly Available Information on Complaints Handling	93
Annex	Page
1 Notification of a Modification to General Condition 14 of the General Conditions of Entitlement	94
2 Guidance Notes to the Ofcom Approved Code of Practice for Complaints Handling	102
3 Ofcom Comment on the Synovate Market Research	109
4 List of Respondents	115

Section 1

Summary

Ofcom's approach to industry complaints handling

- 1.1 Ofcom's principal duty under the Communications Act 2003 ('the Act') is to further the interest of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition. We also have a specific duty under the Act to secure, so far as is considered appropriate, 'that the procedures established and maintained for the handling of complaints and the resolution of disputes are easy to use, transparent and effective'.
- 1.2 To date we have imposed two regulatory obligations on communications providers regarding the handling of consumer complaints:
1. they must have a Complaints Code of Practice that is approved by Ofcom and with which they must comply (General Condition 14.4); and
 2. they must belong to an Ofcom-approved Alternative Dispute Resolution (ADR) scheme and adhere to the final decisions made by that scheme (General Condition 14.5). The ADR schemes are independent bodies that can examine complaints that have not been resolved within eight weeks, at no cost to consumers.

Why do we have concerns with current industry standards?

- 1.3 Our evidence shows that a significant proportion of consumers have a very poor experience when pursuing a complaint with their provider:
- recent Ofcom research shows that 30% of complaints are still unresolved after 12 weeks (representing around 3 million consumer complaints each year);
 - the majority of consumers who cannot resolve their complaint promptly have considerable difficulty getting their provider to recognise they are trying to make a complaint and in finding out information about the complaints process;
 - those consumers who are unable to resolve their complaint within 12 weeks are much more likely to suffer financially or through stress;
 - research shows ADR significantly improves outcomes for consumers, but awareness of ADR in the telecommunications sector is considerably lower than comparable schemes in other sectors, which we consider is undermining its effectiveness as a remedy of last-resort (only 8% of consumers are aware that they can take unresolved complaints to ADR, which is considerably lower than in a number of other sectors with similar schemes); and
 - Ofcom continues to receive significant numbers of complaints each month from consumers who are unhappy with their provider's complaints handling process.
- 1.4 The evidence suggests that providers' incentives to compete on the basis of customer service are not proving sufficient to ensure that individuals will receive satisfactory treatment from their provider when they try to pursue a complaint.

What is Ofcom doing to improve how complaints are handled?

- 1.5 We recognise that many communications providers view customer service as a key component of their operations and will endeavour to treat their customers fairly. Our aim is to ensure that when something goes wrong consumers are able to find out easily how to make a complaint and can be assured their provider will have appropriate processes in place to receive and handle their complaint.
- 1.6 We published a consultation document in December 2009 outlining our position that changes were needed to existing regulation to better protect consumers and proposing several new obligations to address specific areas of concern. Most of the 27 submissions we received were broadly supportive of our proposals, albeit a number of communications providers expressed some concern, particularly about the implementation of proposed measures to increase awareness of ADR.
- 1.7 Ofcom is satisfied that the current standards of complaints handling in the telecommunications industry are of sufficient concern to justify regulatory intervention and is therefore:
 1. establishing minimum standards for complaints handling procedures, which will apply to all communications providers ('the Ofcom Code'). The Ofcom Code establishes a regulatory requirement for providers to resolve complaints in a 'fair and timely manner' and also outlines minimum expectations about the accessibility, transparency and effectiveness of providers' complaints handling procedures. This will replace the current requirement for providers to seek Ofcom approval of their individual Codes of Practice; and
 2. requiring communications providers to provide additional information to consumers about their right to take unresolved complaints to ADR, which has been shown to help resolve long-running complaints. Providers will now need to include relevant information about ADR on consumers' bills and to write to consumers whose complaints have not been resolved within eight weeks to inform them of their right to go to ADR.
- 1.8 The specific requirements are attached as Annex 1 and reflect a number of changes that we have made since the publication of our consultation document. We consider the measures we are taking to be an appropriate response to the problems we have identified with complaints handling in this sector and will help address what we consider to be significant and avoidable consumer detriment.

When will the new rules come into force?

- 1.9 The minimum standards for the handling of complaints will come into force on 22 January 2011, with the exception of the proposals to increase awareness of ADR, which will come into force on 22 July 2011.

Section 2

Introduction and Background

- 2.1 The majority of consumers have a positive experience with communications services and do not have cause to complain to their provider. For those that encounter a problem, most who contact their provider are likely to have the matter promptly resolved to their satisfaction. The competitive nature of the UK telecommunications markets means that communications providers (CPs) are likely to be receptive to the needs of their consumers and have strong commercial pressures to ensure that consumers are satisfied with the service they receive.
- 2.2 However, we have concerns with the experience of a minority of consumers who may have a very negative experience from being unable to lodge or effectively pursue a complaint with their provider. In this Statement we are not concerned with the substance or validity of consumer complaints (be they mis-selling, migration problems, or billing disputes), but rather whether the complaints processes of CPs may be preventing consumers from having their complaint dealt with in a reasonable manner.
- 2.3 When considering the nature and scale of any problems with industry complaints handling as well as any possible remedies, we have been very careful about not being overly prescriptive in how CPs should be expected to engage with their customers. We strongly support providers marketing their customer service standards as a competitive differentiator and the ability of consumers to use their purchasing power to leave those providers who do not treat them appropriately. However, we consider that when something goes wrong, consumers should be able to expect some basic standards of complaints handling from their provider.
- 2.4 We are satisfied that the regulatory requirements contained in this Statement are targeted and are an appropriate response to the problems we have identified. The obligations on providers also meet the requirements under section 3(3) of the Act that regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. This is not a step Ofcom has taken lightly, but we consider it is a necessary one.

Development of the Consumer Complaints Review

- 2.5 In 2007 Ofcom initiated a 'Consumer Complaints Review' project to examine access to Alternative Dispute Resolution (ADR) and the general standards of complaints handling procedures in the telecommunications industry. We recognised that it was time to re-examine the current regulatory regime, which had then been in place for four years.
- 2.6 In July 2008 we published a consultation document,¹ which concluded that our current regulation of ADR and complaints handling was successful in many respects but there were nevertheless areas of concern. The consultation proposed five main initiatives:
- a) improving **access to ADR** by reducing the period before consumers have the right to go to ADR (from 12 to 8 weeks);

¹ See http://www.ofcom.org.uk/consult/condocs/alt_dis_res/condoc.pdf

- b) improving **awareness of ADR** by requiring CPs to notify their consumers about ADR (5 days after a complaint is lodged and subsequently when the consumer has the right to go to ADR);
 - c) setting **minimum standards** for complaints handling by establishing a single Ofcom-approved Complaints Code of Practice, instead of CPs having to submit their individual codes to Ofcom for approval;
 - d) facilitating **Ofcom monitoring** by requiring CPs to keep appropriate records of their contact with consumers; and
 - e) setting the **criteria** for our review of the approval of ADR schemes, which will follow the completion of this project.
- 2.7 In May 2009 we published a Statement reducing the ADR period and finalising the general criteria we will use for our upcoming review of the approval of the ADR schemes (proposals 'a' and 'e' above).²
- 2.8 In light of stakeholder concern with the remaining policy initiatives ('b' to 'd' above) Ofcom decided to re-examine the evidence for intervention and the potential impact that several initiatives may have on CPs. We subsequently published a further consultation document in December 2009.³

What does this Statement cover?

- 2.9 This Statement finalises Ofcom's position on addressing areas of concern we have with the complaints handling processes of the telecommunications industry and outlines new regulatory obligations that will apply to CPs. For the reasons set out in this Statement, we consider that changes are necessary to the existing regulation of industry complaints handling to ensure that consumers have access to effective complaints procedures.
- 2.10 We have specific concerns that:
- a significant number of complainants may experience considerable and avoidable detriment from trying to make and pursue their complaint with their provider; and
 - low awareness of ADR may be undermining the effectiveness of ADR as a remedy of last-resort for complainants.
- 2.11 This Statement examines these two issues, considers stakeholder responses to proposals from the most recent consultation and establishes a number of new regulatory obligations that we consider are appropriate responses for addressing the consumer harm we have identified.

What evidence has Ofcom relied on?

- 2.12 This document should be read in conjunction with the July 2008 and December 2009 consultation documents and accompanying research. The regulatory obligations

² See http://www.ofcom.org.uk/consult/condocs/alt_dis_res/statement/

³ See http://stakeholders.ofcom.org.uk/binaries/consultations/complaints_procedures/summary/adr_condoc.pdf

outlined in this Statement are the result of a considerable body of evidence that Ofcom has collected throughout this period. To help reach our conclusions we have:

- commissioned market research from Futuresight in 2006, which examined consumers' experiences in making complaints to mobile, landline and broadband providers;⁴
- issued a formal information request in 2007 to CPs to better understand how they receive complaints, how many complaints they receive, how they are dealt with internally, how long they take to resolve and what records are kept of consumer complaints;⁵
- published a consultation in 2008, which outlined a range of proposals to address areas of concern with complaints handling standards. In response to this consultation we received 21 submissions;
- issued a further formal information request in 2009 to major CPs to clarify matters arising from our consultation, including how various policy proposals would impact on their operations and the extent to which they would impose direct and indirect costs;
- commissioned further detailed market research from Synovate in 2009.⁶ This research included an omnibus survey of 963 nationally representative adults to generate an accurate picture of telecommunications complaint levels and ADR awareness when compared with similar essential services in the UK. Synovate also undertook quantitative research amongst 1,044 residential consumers and 861 small businesses (with ten or fewer employees) to better understand the experience of complainants in the telecommunications sector;
- commissioned a call-centre expert and undertook seven site-visits to call-centres in 2009 to better understand how CPs handle complaints and the scale of the changes required if Ofcom adopted various policy options;
- further examined complaints handling obligations in other sectors⁷ and consulted the Consumer Conditions Survey produced by the Department of Business Enterprise & Regulatory Reform (BERR) in 2008, which compares the relative consumer perceptions of various UK markets;⁸
- published a further consultation in December 2009, which affirmed our earlier view that complaints handling in the telecommunications sector was of sufficient concern to justify a degree of regulatory intervention and outlined a range of policy proposals to address areas of harm. We received 27 submissions; and

⁴ See http://stakeholders.ofcom.org.uk/consultations/alt_dis_res/futuresight

⁵ As referred to in paragraph 2.35 of the 2008 consultation document, http://www.ofcom.org.uk/consult/condocs/alt_dis_res/condoc.pdf

⁶ See http://stakeholders.ofcom.org.uk/binaries/consultations/complaints_procedures/annexes/annex8.pdf

⁷ See Annex 6 of the December 2009 consultation, http://stakeholders.ofcom.org.uk/binaries/consultations/complaints_procedures/summary/adr_condoc.pdf

⁸ 'Report for BERR on the 2008 Consumer Conditions Survey', undertaken by Ipsos MORI, <http://www.berr.gov.uk/files/file48855.pdf>

- have had intensive engagement since the close of the 2009 consultation with a number of CPs to better understand the basis of some of their concerns with the implications of some of our policy proposals.

2.13 We have also shared the key findings of our market research and some draft policy proposals with a number of CPs in order to highlight areas of concern and to discuss possible options for addressing these. This policy of engagement has continued over the past 24 months since we first published our 2008 consultation document and we are satisfied that we have taken reasonable steps to better understand existing complaints procedures and the impact of various policy options.

Ofcom's policy objectives

2.14 Under section 3 of the Act, Ofcom's principal duty is to further the interests of:

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

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

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

2.16 Ofcom has the power under section 45 of the Act to set 'General Conditions'. These are conditions that apply to all CPs who provide an Electronic Communications Network and/or Electronic Communications Service in the United Kingdom.

2.17 We have a specific duty under section 52 to set General Conditions that we think are 'appropriate' regarding:

- 'the handling of complaints made to public communications providers by any of their domestic and small business customers'; and
- 'the resolution of disputes between such providers and any of their domestic and small business customers'.

- 2.18 Section 52(3) requires that when setting these General Conditions, we must secure so far as appropriate that:
- the complaints handling and dispute resolution procedures are ‘easy to use, transparent and effective’; and
 - that consumers can access them ‘free of charge’.
- 2.19 Section 47(2) of the Act establishes tests for Ofcom to satisfy when making changes to General Conditions: that the modification is objectively justifiable, not unduly discriminatory, proportionate and transparent.
- 2.20 It is against all these duties that Ofcom has considered whether further regulatory initiatives are necessary to secure effective complaints handling procedures.

What is the structure of this document?

- 2.21 The remainder of this document is structured as follows:
- Section 3 outlines the extent to which we believe there is a problem with complaints handling standards;
 - Section 4 outlines our conclusion to establish minimum industry standards for complaints handling in order to address the consumer harm we identified;
 - Section 5 outlines the role of ADR in the complaints process, establishes a link between ADR and improved consumer outcomes, and records our decision to establish further regulatory requirements on CPs in order to better ensure effective consumer access to ADR;
 - Section 6 records our decision to establish record-keeping requirement on CPs in order to facilitate Ofcom monitoring of compliance with the new regulatory obligations;
 - Section 7 records our decision about when the resulting regulatory requirements will come into force; and
 - Finally, section 8 signals Ofcom’s intention to do further work on improving publicly available information on providers’ complaints handling performances.

Have we done an impact assessment?

- 2.22 The analysis presented in sections 3-7 and the Annexes of this Statement represent an impact assessment, as defined in section 7 of the Act.
- 2.23 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally Ofcom has to carry out impact assessments where its proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom’s activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of its policy decisions. For further information about Ofcom’s approach to impact assessments, see the guidelines, Better policy-making: Ofcom’s approach to

impact assessment, which are on the Ofcom website:

http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf

- 2.24 Specifically, pursuant to section 7, an impact assessment must set out how, in our opinion, the performance of our general duties (within the meaning of section 3 of the Act) is secured or furthered by or in relation to what we propose.
- 2.25 We are required by statute to have due regard to any potential impacts that the obligations in this Statement may have on race, disability and gender equality – an Equality Impact Assessment (EIA) is our way of fulfilling this obligation. Ofcom has undertaken a full EIA for this Statement because of concerns that vulnerable consumers could be more adversely affected by inadequate complaints handling procedures. Where we have specific areas of concern with equality we have highlighted these, and our remedies, in this Statement.

Section 3

The Effectiveness of Complaints Handling in the Telecommunications Industry

- 3.1 This section outlines the extent to which we consider there are problems with complaint handling processes in the telecommunications industry. It describes why we consider complaints handling to be important and the current regulatory obligations on providers.
- 3.2 It then sets out the evidence on whether competitive pressures, without further regulation, are delivering a sufficient standard of complaints handling and summarises the views of stakeholders. At the end of the section we set out the reasons why we consider the handling of consumer complaints in the telecommunications industry is of sufficient concern to warrant regulatory intervention.

The importance of effective complaints handling

- 3.3 Effective complaints handling procedures are an important aspect of ensuring that individual citizens and consumers are appropriately protected and empowered in their dealings with CPs. If a complaint is handled badly an individual consumer may suffer emotional and financial harm beyond that which may have been caused by the initial problem that prompted the complaint.
- 3.4 Ofcom's publication, the 'Consumer Experience', highlights the high levels of consumer satisfaction with overall telecommunications services, with 89% satisfaction with fixed line services, 92% satisfaction with mobile services, and 86% satisfaction with broadband services.⁹ While such high satisfaction levels are to be commended, we are concerned with the experience of the small minority that do have problems and the extent to which any resulting detriment is avoidable.
- 3.5 When considering regulatory intervention in this area we have been careful to balance the importance of regulation for consumer protection against the detrimental impact that regulation may have on efficient, effective and innovative customer service – which benefits all consumers.
- 3.6 We recognise that customer service and customer relationship management is an important way in which CPs can distinguish themselves and compete for customers. We also think it is important that consumers should have freedom to choose CPs based on the level of customer service that is appropriate for their needs. However, we want to make sure that when something goes wrong consumers are able to easily find out how to make a complaint and can be assured that their provider will have processes in place to receive and handle their complaint.

Current regulatory obligations on providers

- 3.7 The current regulatory regime recognises the importance of effective complaints handling by imposing obligations on CPs with respect to their residential consumers

⁹ Consumer Experience 2009, see <http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/research09.pdf>, figure 91.

and small businesses (with ten or fewer employees):¹⁰ to have Ofcom-approved Codes of Practice and to belong to an approved ADR scheme.

Complaints Codes of Practice

- 3.8 The Act places a duty on Ofcom when setting relevant General Conditions to secure so far as it considers appropriate ‘that the procedures established and maintained for the handling of complaints and the resolution of disputes are easy to use, transparent and effective’.¹¹ The Act also empowers Ofcom to set General Conditions requiring CPs to conform to an approved Code of Practice.¹²
- 3.9 To date Ofcom has exercised its duties through General Condition 14, which requires CPs to develop and submit their individual Codes of Practice for domestic and small business customers to Ofcom for approval. Although Ofcom approves each Code, Ofcom currently has no regulatory authority over the substance of a CP’s complaints handling procedures, except to approve or withdraw approval of the information contained within the Code. Indeed, Ofcom’s power with respect to CPs’ complaints handling procedures is largely limited to ensuring they follow the standards and processes that they themselves have established.

Recourse to ADR

- 3.10 While many consumers will be able to resolve their complaints quickly with their CP, for some, the process of pursuing a complaint can be a very frustrating and potentially fruitless exercise – and may result in varying levels of stress, anxiety, loss of income, unnecessary expenditure and wasted time. Giving consumers the right to go to an independent body for fair and impartial dispute resolution is an important way in which consumers may be protected and empowered when having a dispute with their CP.
- 3.11 Parliament has recognised the importance of ADR schemes by imposing a duty on Ofcom to secure the availability of appropriate dispute resolution procedures.¹³ Through General Condition 14.5 Ofcom requires all CPs to be a member of an approved ADR Scheme. We have approved two schemes, the Office of the Telecommunications Ombudsman (Otel) ¹⁴ and the Communications and Internet Services Adjudication Scheme (CISAS).¹⁵
- 3.12 The ADR schemes are free to consumers and are fully independent of CPs and Ofcom. If a complaint has not been resolved within eight weeks (or the CP acknowledges the complaint is ‘deadlocked’), a consumer can make an application to the relevant ADR scheme, which has the authority to examine the case and make an appropriate judgment – which could potentially include a financial award and/or requiring the CP to take necessary action. While CPs are bound by the decisions of the ADR schemes, consumers still have the ability to pursue their dispute through the legal system if they remain unsatisfied with their outcome.

¹⁰ For the avoidance of doubt, unless the context indicates otherwise, the use of the term ‘consumer’ in this paper refers to both residential and small business users.

¹¹ Section 52(3) Communications Act 2003.

¹² Section 52(4) Communications Act 2003.

¹³ Section 52 Communications Act 2003.

¹⁴ www.otelo.org.uk

¹⁵ www.cisas.org.uk

The role of the market in protecting consumers with complaints

- 3.13 Our consultation noted that there was evidence that many CPs will try to differentiate themselves based on the quality of their customer service offerings and that consumers may switch provider if they are unhappy with the way that their complaint has been handled. Indeed many consumers may be willing to accept relatively lower standards of customer service if this then provides them with other benefits, such as cheaper calls (a parallel could potentially be drawn with the manner in which airlines compete to offer flights from London to Europe). We fully support the ability of CPs to compete on customer service and are wary of prescribing how CPs should interact with their customers.
- 3.14 The Synovate market research demonstrates that there certainly is a role for competition to play in improving the complaints handling procedures of providers. For example, 32% of those whose complaint lasted at least 12 weeks had already changed provider, with a further 29% planning to do so as a direct consequence of the complaint.¹⁶ This illustrates that CPs have commercial incentives to treat their customers well.
- 3.15 Although competitive pressures may incentivise effective complaints handling, our consultation noted that in theory there could be reasons why these pressures are insufficient to ensure an adequate level of complaint handling by all CPs. In particular, we noted:
1. Consumers may not take complaint handling sufficiently into account when they choose a CP, which could weaken competitive pressures to improve complaint handling. This may especially be the case as robust complaint handling can be expensive and some CPs may conclude that they do not want to devote resources to it. There are a number of reasons why consumers may not take complaint handling into account sufficiently:
 - There may be a lack of transparency on the relative performance of CPs' complaints handling, that is, it may not be clear which CPs are poor at handling complaints.
 - Even if the information were available, it may not be worthwhile for consumers to research relative complaint handling performance, especially if they consider they are unlikely to have a complaint.
 - Consumers might concentrate excessively on headline prices when choosing a CP, or be overconfident that they will not need to use a CP's complaint handling procedures. They may therefore not take complaint handling performance into account as much as is in their own interests.
 2. Many complaints relate to disputes about contractual terms. For markets to function efficiently, contracts and property rights have to be well defined, clear, and enforceable. ADR is designed to be a low-cost mechanism for clarifying and enforcing contracts and property rights (e.g. billing disputes). However, for ADR to be effective, consumers need to know that it exists.
- 3.16 We considered it to be possible that competitive pressure alone may not be sufficient to ensure an adequate 'safety net' for many consumers who complain to their provider. The consultation subsequently examined available evidence to conclude

¹⁶ See section 4.6 of the Synovate market research.

that complaints handling standards are inadequate. This evidence is further summarised below.

How effective are current standards of complaints handling?

- 3.17 The findings from the Synovate market research support the earlier conclusions of Futuresight,¹⁷ that a significant proportion of complainants have a negative experience when trying to pursue a complaint with their provider.
- 3.18 The Synovate research found that 23% of the population had made a complaint¹⁸ to a mobile, broadband, or landline provider in the preceding year, with 30% of these complaints being unresolved 12 weeks later.¹⁹ We estimate that there are over 3 million complaints a year where the consumer regards the complaint as being outstanding for more than 12 weeks.²⁰
- 3.19 We do not have a view on whether the proportion of unresolved complaints is necessarily a problem in itself that justifies regulatory intervention: many complaints may be considered unresolved by consumers but would not necessarily be considered by the CP to be a discrete problem capable of resolution (particularly about broadband speeds or mobile coverage).²¹ It is not our intention (or role) to reduce the number of unresolved complaints to zero and we would still expect to see a number of unresolved complaints if our regulatory requirements are implemented perfectly. However, given the consumer harm that often accompanies a lengthy unresolved complaint,²² the number of unresolved complaints does indicate potential problems of sufficient scale to merit close regulatory scrutiny.
- 3.20 It is evident from the research that those complainants who cannot resolve their complaint relatively quickly with their CP are much more likely to experience greater detriment, including spending much greater time pursuing the complaint, incurring greater direct monetary costs, and experiencing higher levels of worry, stress and anger. In particular, consumers with long-standing unresolved complaints have greater difficulties trying to get their CP to recognise they are making a complaint and in finding out information about their complaints procedure than those whose complaints lasted for a shorter time.
- 3.21 The full Synovate research findings can be found at http://stakeholders.ofcom.org.uk/binaries/consultations/complaints_procedures/annexes/annex8.pdf. The following is a summary of the key findings.

¹⁷ The Futuresight report can be found at www.ofcom.org.uk/consult/condocs/alt_dis_res/futuresight/

¹⁸ A 'complaint' was defined as 'an expression of dissatisfaction made to a service provider related to its products or services, or the complaints-handling process itself, where a response or resolution is expected.'

¹⁹ When the research was undertaken consumers had the right to go to ADR after 12 weeks. This was reduced to 8 weeks from 1 September 2009.

²⁰ 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 We do however note that the Synovate market research shows that unresolved complaints are often about inaccurate bills, being charged for cancelled services, or being put on the wrong package – all matters that one could reasonably expect to be capable of resolution in negotiations between parties. See section 3.3 of the Synovate market research.

²² See May 2009 Ofcom Statement, http://www.ofcom.org.uk/consult/condocs/alt_dis_res/statement/statement.pdf, Annex 3.

Nature of complaints

- 3.22 Consumers are more likely to make a complaint in the telecommunications industry than in similar industries (23% of respondents had made a complaint in the preceding year, compared with 4% in post, 12% in energy, and 6% in financial services). By itself, this is not a cause for concern given the highly transactional nature of the telecommunications industry, the fact that most of the population will have at least one account, and the rapid emergence of new and innovative services which are more likely to have 'teething problems'. What we are primarily concerned about is the extent to which these complaints are resolved effectively.
- 3.23 Although the public are more likely to complain about their telecommunications provider than about providers of similar services, we note that a higher proportion of telecommunications complaints are resolved in a timeframe that means they are not eligible to go to ADR: 30% of telecommunications complaints lasted at least 12 weeks, while 37% of energy complaints and 42% of complaints in financial services lasted at least 8 weeks respectively.²³
- 3.24 The most common complaint to mobile operators that is not resolved within 12 weeks is that the 'phone bill is wrong / overcharging' (20% of residential complaints and 17% of small business complaints).²⁴ The most common complaint to landline operators that is not resolved promptly also concerns 'phone bill is wrong / overcharging', representing 26% of complaints from consumers and 16% of complaints from small businesses.²⁵ Both residential and small business customers are more likely to complain to their broadband provider about slow connection speeds than any other issues (comprising 21% and 24% of residential and small business complaints respectively).²⁶

Difficulties with making a complaint

- 3.25 The experience of those complainants whose complaints were not resolved within 12 weeks indicates the complaints process itself may be hampering the resolution of complaints. It is important to bear in mind when considering these statistics that the experience of those consumers whose complaint lasted at least 12 weeks is a relatively frequent experience – based on the market research conclusions it represents the experience for 30% of consumers who make a complaint.
- 3.26 In the Synovate market research a 7-point scale was used to gauge complainants' experiences of dealing with their provider through the complaint process (where a score of 1 indicates 'not at all satisfied' while a score of 7 indicates 'very satisfied'). The results in the following table (figure 1) clearly demonstrate that where a complaint lasts at least 12 weeks, the complainant is much more likely to have difficulties in their interaction with their provider. The table also demonstrates the significant improvement in the complaint experience where a consumer takes a case that has lasted at least 12 weeks to ADR:

²³ The ADR 'threshold' in the energy and financial services sectors is eight weeks.

²⁴ See figures 3.7 and 3.8 from the Synovate market research.

²⁵ See figures 3.9 and 3.10 from the Synovate market research.

²⁶ See figures 3.11 and 3.12 from the Synovate market research.

Figure 1: Mean scores of the complaint experience

Mean Scores (1-7), where '1' is 'not at all satisfied'	Consumer Complainants			Small Business Complainants		
	ADR users	Unresolved after at least 12 weeks (no ADR)	Resolved in less than 12 weeks	ADR users	Unresolved after at least 12 weeks (no ADR)	Resolved in less than 12 weeks
Satisfaction with outcome of complaint	4.0	2.6	4.6	4.0	2.6	4.1
Ease of resolving complaint with provider	3.5	2.0	4.1	3.3	2.0	3.7
Ease of getting provider to recognise complaint	3.7	2.7	4.6	3.7	2.7	4.0
Satisfaction with provider making it clear how complaint would be handled	3.7	2.3	4.2	3.3	2.2	3.7
Satisfaction with time taken to resolve complaint	3.5	1.8	4.2	3.3	1.8	3.6

- 3.27 Although on average, consumers with complaints lasting at least 12 weeks will be less satisfied with the whole process, we should be less concerned with the mean scores and more on the extent to which consumers are having very negative experiences. Whilst it will not be possible to ensure that everyone is satisfied or very satisfied with their experience of making a complaint, it should be possible to minimise the likelihood of avoidable consumer detriment, particularly where that detriment is linked to the complaints process rather than the substance of a complaint.
- 3.28 When we look at the extent to which consumers experience significant difficulties during the complaint process (as shown below in figure 2), then it is readily apparent that consumers whose complaints are not resolved within 12 weeks (and who do not go to ADR) are much more likely to be extremely dissatisfied with the complaints experience. It is also evident going to ADR significantly reduces the prospect of high levels of dissatisfaction amongst long-standing complainants.

Figure 2: Levels of dissatisfaction with complaints process

Percentage of complainants very dissatisfied (i.e. 1/7)	Consumer Complainants			Small Business Complainants		
	%			%		
	ADR users	Unresolved after at least 12 weeks (no ADR)	Less than 12 weeks	ADR users	Unresolved after at least 12 weeks (no ADR)	Less than 12 weeks
Satisfaction with outcome of complaint	15%	47%	15%	17%	44%	14%
Ease of resolving complaint with provider	22%	59%	18%	24%	56%	18%
Ease of getting provider to recognise complaint	16%	37%	14%	24%	37%	11%
Satisfaction with provider making it clear how complaint would be handled	20%	48%	18%	20%	45%	18%
Satisfaction with time taken to resolve complaint	28%	67%	19%	29%	63%	22%

- 3.29 Given their greater difficulty with being able to be able to 'lodge' a complaint, it may be expected that consumers with long-lasting complaints are much more likely to express strong dissatisfaction with the extent to which their provider had communicated the complaints process to them. Nearly 50% of complainants whose complaint lasted 12 weeks and did not go to ADR were very dissatisfied with the information that was made available to them on how their complaint would be handled (compared to only 18% of complainants who had their complaint resolved promptly).
- 3.30 As evidenced by the research, long-lasting complainants are also much more likely to have a negative experience from the first person they talk to from a CP (e.g. a call-back being promised but not happening, being told the problem had been fixed, refusal to escalate to a manager).²⁷
- 3.31 The findings from the Synovate market research appear to support the findings from our earlier market research from Futuresight: that although the vast majority of consumers are satisfied with their services, there are very high levels of dissatisfaction amongst consumers about the way their complaints have been

²⁷ See figure 4.2 from the Synovate market research.

handled (with extreme levels of dissatisfaction ranging from 36-48% of complainants in landline, mobile and broadband sectors).²⁸

The Impact on consumers from lengthy unresolved complaints

- 3.32 An important finding from the Futuresight market research was that the impact of making a complaint had both practical and emotional implications for complainants. The practical implications included time spent dealing with the complaint, general inconvenience and costs incurred. The emotional effect included varying degrees of stress, anxiety, frustration and anger.²⁹ Given the indication that these were common experiences we commissioned more in-depth research on each of these aspects to see how the complaints experience impacted on consumers.
- 3.33 The Synovate research shows that the impact on complainants who are unable to resolve their complaint promptly (i.e. within 12 weeks) is considerable:
- more time is spent trying to resolve the complaint, with consumers claiming to spend 10-14 hours actively pursuing complaints that take 12 weeks to resolve, compared with 3-6 hours for complaints resolved quickly;³⁰
 - greater direct costs are incurred, with consumers claiming to incur average costs of between £100-200 for such 'long-lasting' complaints, compared with approximately £60 for complaints resolved within 12 weeks;³¹ and
 - complainants who are unable to resolve their complaint relatively quickly are much more likely to be worried about the outcome of their complaint, stressed by their experience of making the complaint, and have a high degree of anger towards their CP.³²
- 3.34 The following chart shows the levels of stress experienced by complainants. Individuals with long-lasting complaints are much more likely to experience very high levels of stress (approximately 45% of such complainants who did not go to ADR found the complaints process very stressful,³³ compared with 18% of complainants who were able to resolve their complaint within 12 weeks). This finding is also mirrored for small business complainants. As figure 3 shows, if a complaint has lasted 12 weeks then going to ADR noticeably reduces the prospect of consumers experiencing high levels of stress, although ADR does not appear to affect stress-levels for small businesses.

²⁸ See Futuresight Report, http://www.ofcom.org.uk/consult/condocs/alt_dis_res/futuresight/research.pdf, figure 9.

²⁹ See Futuresight Report, http://www.ofcom.org.uk/consult/condocs/alt_dis_res/futuresight/research.pdf, section 5.11 for more details.

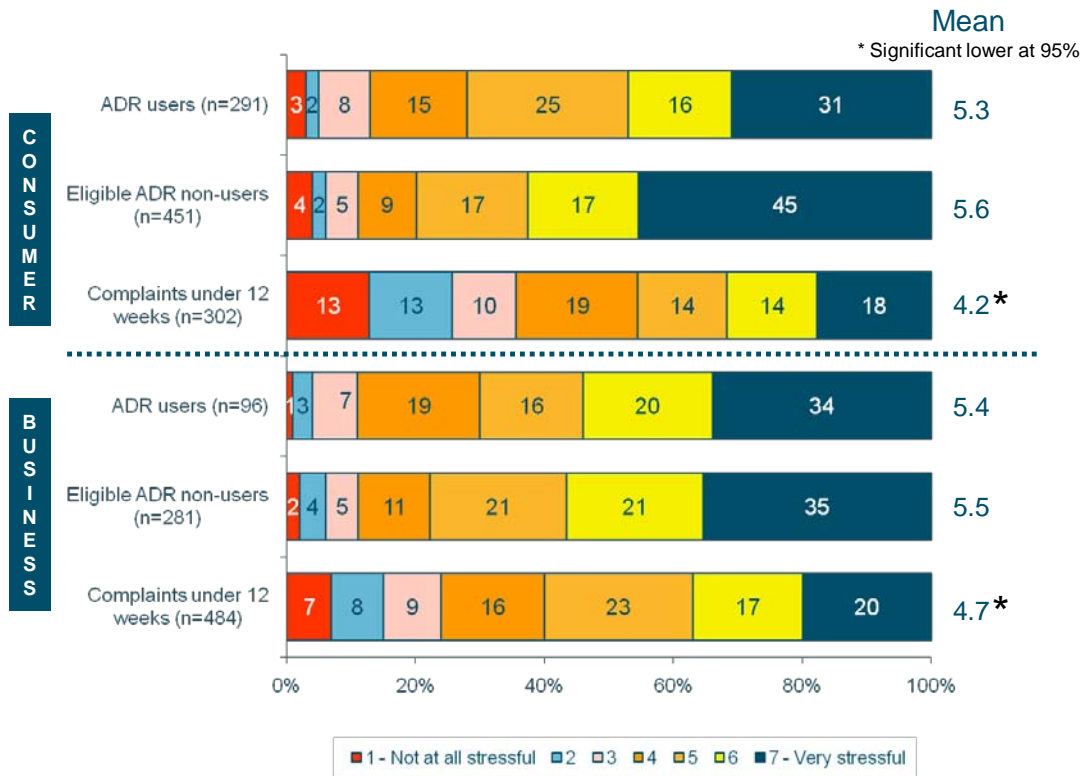
³⁰ See section 4.2 and section 7 of the Synovate market research.

³¹ See section 4.2 and section 7 of the Synovate market research.

³² See section 4.4 and section 7 of the Synovate market research.

³³ I.e. a score of 7/7

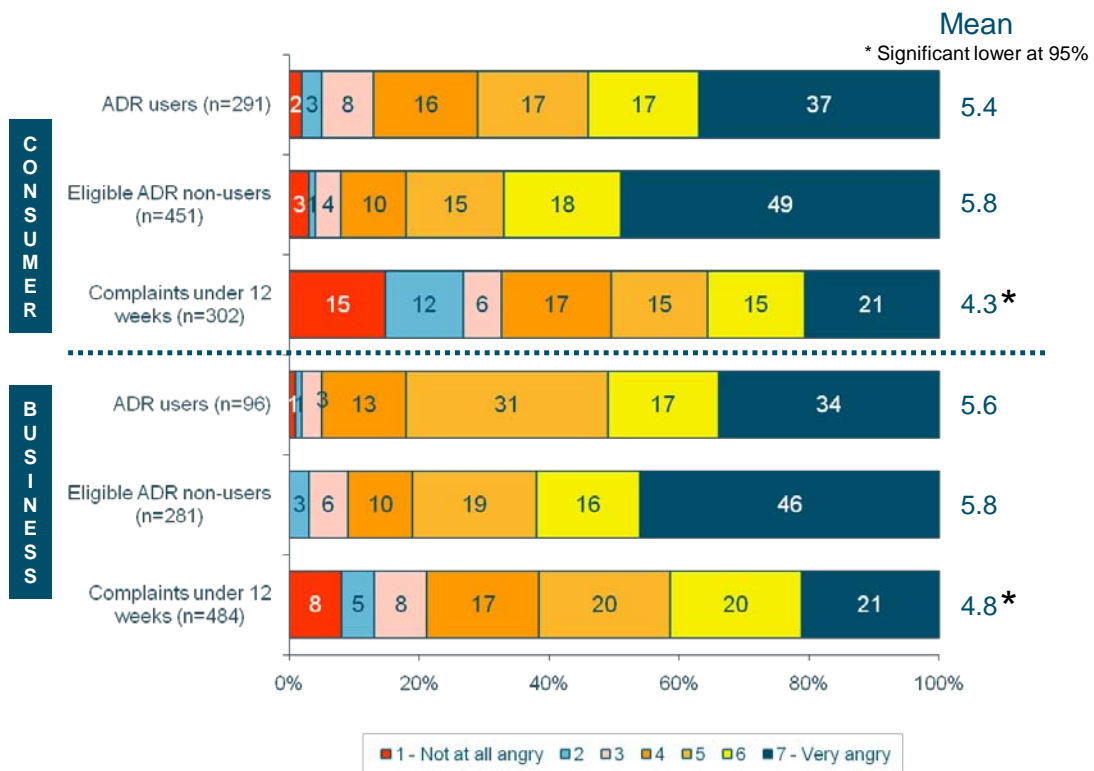
Figure 3: Levels of stress amongst complainants



3.35 The following chart shows the levels of anger experienced by complainants. It clearly shows that individuals with long-lasting complaints are much more likely to experience very high levels of anger (approximately 49% of those complainants who did not go to ADR were 'very angry' during the process,³⁴ compared with 21% of complainants who were able to resolve their complaint within 12 weeks). This finding is also mirrored for small business complainants. As figure 4 shows, if a complaint has lasted 12 weeks then going to ADR noticeably reduces the prospect of consumers and small businesses experiencing high levels of anger.

³⁴ I.e. a score of 7/7

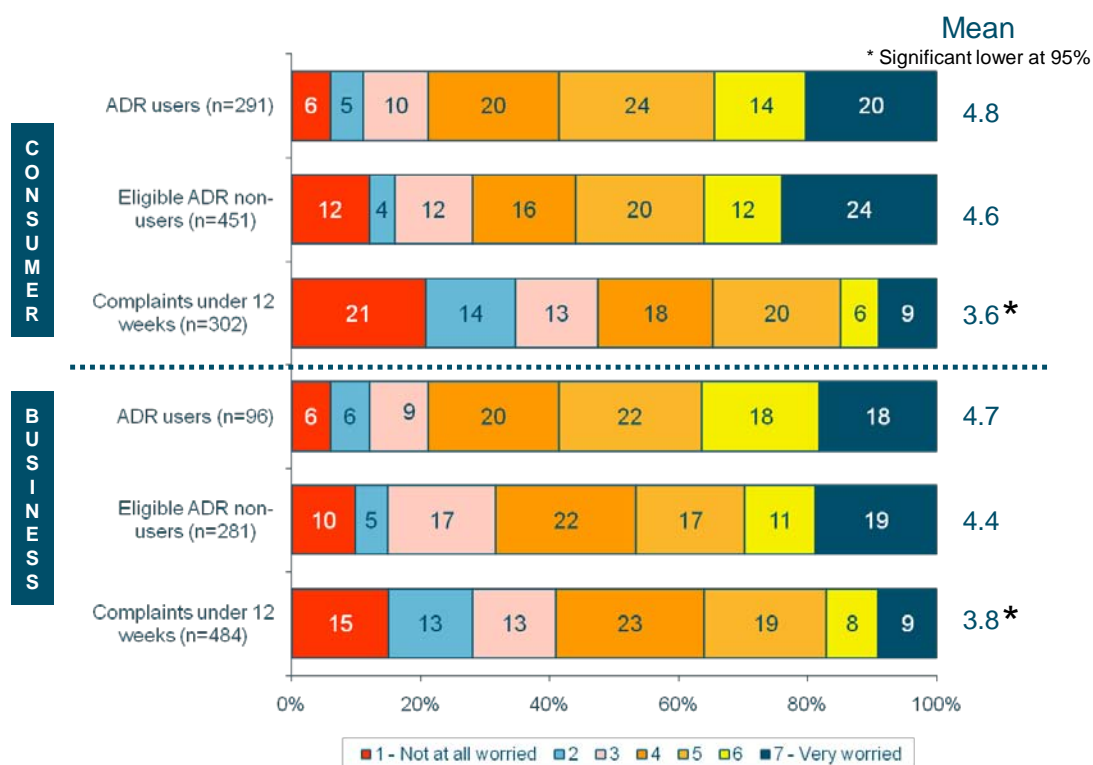
Figure 4: Levels of anger amongst complainants



3.36 Although consumers who are unable to resolve their complaint within 12 weeks are more likely to experience higher levels of worry during the process, this represents a smaller proportion than those who were stressed/angry. The following chart shows that complainants with long-lasting complaints are more likely to experience very high levels of worry (approximately 24% of such complainants were very worried during the process,³⁵ compared with 9% of complainants who were able to resolve their complaint within 12 weeks). This finding is also mirrored for small business complainants. As figure 5 shows, if a complaint has lasted 12 weeks, going to ADR does not appear to reduce the prospect of consumers or small businesses experiencing high levels of worry.

³⁵ I.e. a score of 7/7

Figure 5: Levels of worry amongst complainants



3.37 The potential for lengthy unresolved complaints to have a significant emotional impact on consumers was also supported by the submission of Citizens Advice to our 2008 consultation. As summarised in Annex 3 of our May 2009 Statement,³⁶ many consumers found the experience of trying to resolve an ongoing complaint to be very stressful.

The ability for consumers to seek a remedy through ADR

3.38 As well as demonstrating that consumers with long-standing complaints have a better experience if they go to ADR, the Synovate market research shows that awareness of ADR is extremely low. Awareness of ADR, the relationship between ADR and improved outcomes, and possible regulatory initiatives to improve awareness are discussed in more detail in section 5 below.

3.39 In our 2008 consultation we outlined our concern that ADR awareness amongst consumers was low – an Ofcom Tracker Survey showed that only 15% of consumers were aware of one of the ADR schemes.³⁷ The Synovate market research has re-confirmed that awareness is low:³⁸

- 8% of the general population are aware of at least one of the ADR schemes;

³⁶ http://www.ofcom.org.uk/consult/condocs/alt_dis_res/statement/statement.pdf

³⁷ See http://www.ofcom.org.uk/consult/condocs/alt_dis_res/condoc.pdf, paragraph 3.42.

³⁸ See section 3.1 of the Synovate market research.

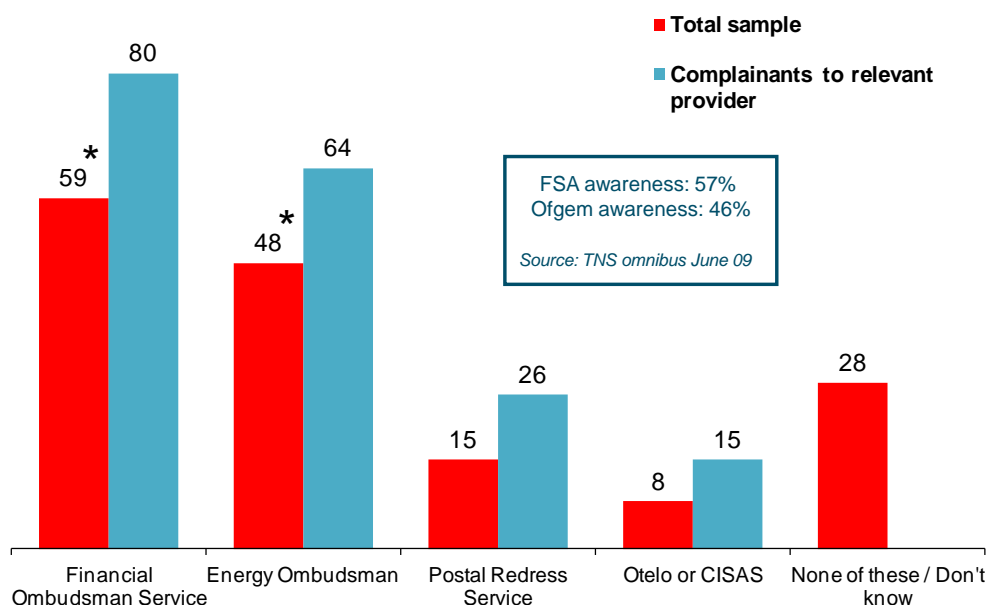
- 15% of telecommunications complainants are aware of at least one of the ADR schemes; and
- 23% of complainants who could potentially go to ADR (i.e. their complaint had lasted 12 weeks) are aware of at least one of the ADR schemes.³⁹

3.40 As should be expected, complainants are better informed about the availability of ADR than general consumers, while 'eligible complainants' are even better informed about their right to use ADR. This indicates that information on the availability of ADR is accessible, to some extent, to consumers who are looking for information about how to progress a complaint. However, it is concerning that 77% of complainants that could potentially use ADR are completely unaware that such a service is available (particularly given that such complaints have lasted at least 12 weeks).

3.41 Respondents to our 2008 consultation commented that although we had figures on the awareness of ADR in the telecommunications sector, we could not assert that such a figure was 'low' without examining awareness levels in other sectors. The Synovate market research clearly shows that awareness of ADR is considerably lower in the telecommunications sector than in most comparable industries, as demonstrated in Figure 6 below:⁴⁰

Figure 6: Awareness of official dispute resolution bodies

* Significant difference at 99%



³⁹ Those that could 'potentially go to ADR' were considered to be those whose complaint had lasted 12 weeks. Since the research has taken place the ADR 'threshold' has been reduced to 8 weeks.

⁴⁰ The sample sizes do not allow for a comparison of awareness levels across the industries amongst those complainants that could potentially take their complaint to their respective ADR schemes.

- 3.42 In terms of how consumers become aware of ADR, our consumer research found that 40% of consumers who have heard of Otelo or CISAS first heard about them via their CP, 28% were told by someone else (friend, family or colleague), 16% heard via the media and 6% via a 3rd party such as Ofcom or Citizens Advice.⁴¹
- 3.43 Of those who were aware of relevant ADR schemes, a higher proportion of consumers had found out about Otelo or CISAS from their telecommunications provider than had found out about the Financial Ombudsman Service and Energy Ombudsman from their respective financial services and energy providers.⁴² This might be interpreted to mean that telecommunications providers are adequately informing their customers about ADR. However, this would be misleading given that awareness of ADR in the telecommunications industry is substantially lower than in other sectors.

Additional insights into the consumer experience

- 3.44 Complaint levels to Ofcom also demonstrate that consumers often find it difficult to pursue complaints with their CP. Complaints about 'customer service' are typically the top call-driver to Ofcom's Advisory Team, prompting nearly 1,000 complaints per month.⁴³ Such complaints are not about why a consumer may originally have complained to their provider, but are complaints from consumers about an inability to get their provider to address the issue in dispute (and include where consumers are ignored while trying to make a complaint, CPs refuse requests for complaints to be escalated to someone who has authority to resolve the complaint, refuse to address the point in dispute, and 'pass' the consumer around the organisation). Such high levels of complaints about process issues rather than matters of substance indicate that many consumers find it very difficult to engage with their provider when trying to make a complaint.
- 3.45 This view that telecommunications users may not be receiving adequate treatment when they encounter problems is also supported by the 2008 Consumer Conditions Survey, undertaken by the Department for Business, Enterprise and Regulatory Reform.⁴⁴ The survey produces a Consumer Confidence Index score (CCI) of 45 UK markets relating to confidence and transparency. Mobile phone services, internet services and fixed line services were all ranked in the lower grouping of markets in which consumers had confidence. More importantly for the purposes of this Statement, all three telecommunications sectors received low scores from consumers on 'protecting consumers' rights'.⁴⁵ The propensity of consumers to make complaints in these sectors was also confirmed, with all three sectors placed in the top seven most complained about markets.⁴⁶
- 3.46 A survey conducted by Ipsos-Mori in late 2006 for Ernst & Young asked 1,925 consumers about their experience of complaint handling, focussing mainly on complaints about financial services.⁴⁷ This survey included a question about consumers' satisfaction with the way their complaint was handled for a number of different industries, including telecommunications. The results are shown below.

⁴¹ See figure 3.2 from the Synovate market research.

⁴² See figure 3.2 from the Synovate market research.

⁴³ See Consumer Experience, <http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/research09.pdf>, figure 157.

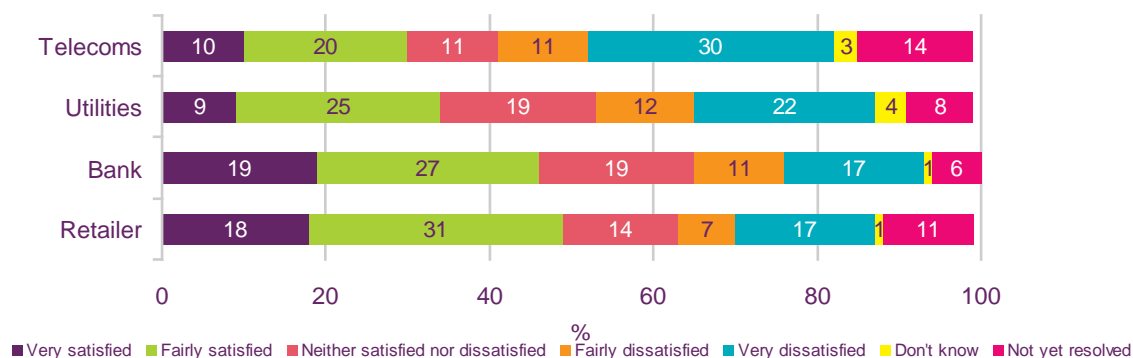
⁴⁴ 'Report for BERR on the 2008 Consumer Conditions Survey', undertaken for BERR by Ipsos MORI, <http://www.berr.gov.uk/files/file48855.pdf>

⁴⁵ See <http://www.berr.gov.uk/files/file48855.pdf>, p26.

⁴⁶ See <http://www.berr.gov.uk/files/file48855.pdf>, p30-32.

⁴⁷ http://www.ey.com/global/Content.nsf/UK/FS_-_Complaints_Handling

Figure 7: Level of satisfaction with how a complaint was handled⁴⁸



3.47 The telecommunications sector had more consumers dissatisfied with the way their complaint was handled than retailers and this difference was statistically significant. While telecommunications also had lower levels of satisfaction amongst complainants than utilities and banks, these differences were not considered to be statistically significant. This research supports our conclusion that a significant proportion of telecommunications complainants are dissatisfied with the way their complaint is handled.

Responding to Stakeholder Comments

3.48 In our consultation we concluded that the current industry approach to complaints handling was of sufficient concern to warrant changes to the regulatory framework. Specifically, we outlined concerns that:

- 30% of complaints are still unresolved after 12 weeks (representing approximately 3 million consumer complaints each year);
- the majority of consumers who cannot resolve their complaint promptly have considerable difficulty getting their provider to recognise they are making a complaint and in finding out information about the complaints process;
- those consumers that are unable to resolve their complaint within 12 weeks are much more likely to experience considerable detriment (including financial and emotional distress);
- awareness of ADR is considerably lower than comparable schemes in other sectors, potentially undermining the effectiveness of ADR as a remedy of last resort (77% of 'eligible' complainants are unaware of ADR);
- Ofcom's Advisory Team continues to receive nearly 1,000 complaints a month from consumers who are primarily ringing about their inability to pursue a complaint with their provider (i.e. complaints about process rather than substantive disputes); and
- the 2008 Government report on 'Consumer Conditions' shows high levels of complaints in the telecommunications sector and that consumers have relatively low confidence in their providers.

⁴⁸ Ipsos-Mori survey on behalf of Ernst and Young, 2006,

- 3.49 We noted that generally the market should provide incentives for adequate customer services standards; and indeed, in a healthy market this can form a key differentiator. Yet the evidence points to some issues in telecommunications markets with the experience consumers have when they seek to make a complaint. It also shows that consumers may not be able to exercise their right to use ADR due to very low awareness. Through the consultation we concluded that the current industry standards are sufficiently inadequate as to prompt regulatory intervention.

Views of Stakeholders

- 3.50 We specifically asked stakeholders through the consultation whether they agreed with our position that the current approach to complaints handling was of sufficient concern as to justify regulatory intervention.
- 3.51 We received 27 submissions from CPs and consumer groups. There was very strong support from consumer groups for Ofcom to address what many viewed as fundamental problems with how the sector handles complaints. Those who specifically supported further intervention included the Association for Interactive Media and Entertainment (AIME), BT, the Centre for Consumers and Essential Services (CCES), Citizens Advice, Consumer Focus, the Communications Consumer Panel, the Independent Dispute Resolution Service (IDRS, which runs CISAS), the Ombudsman Service (which runs Otelo), Scottish and Southern Energy (SSE), Tesco Telecoms, the Communication Workers Union (CWU), Which? and Professor Collins. Those CPs who supported regulatory intervention typically did so on the proviso that the specific nature of any intervention needed to be proportionate (these concerns are discussed in the following chapter).
- 3.52 Both CCES and Citizens Advice urged Ofcom to intervene with a degree of urgency to address what they both considered to be fundamental problems with how the communications sector handles complaints. Citizens Advice commented that in 2008/09 they dealt with 28,500 complaints about communications services and 60,000 complaints about telecoms debts. Consumer Focus noted that Consumer Direct received over 40,000 complaints from consumers about their mobile provider in 2009.
- 3.53 Those who disagreed with the need for regulatory intervention included O2, Vodafone and four confidential respondents. The main arguments raised against Ofcom intervention was that the market is believed to be working effectively (as indicated by high satisfaction rates and high levels of customer churn) and that Ofcom should instead use its existing powers to focus on 'problem' CPs rather than consider an intervention that was seen as regulating the entire industry simply to benefit a small minority of consumers.

Ofcom Response and Conclusion

- 3.54 We are satisfied that our original conclusion in the consultation remains valid: that the current state of complaints handling is of sufficient concern to justify regulatory intervention.
- 3.55 Our conclusion was widely supported by stakeholders, with both Citizens Advice and Consumer Focus highlighting the high volumes of consumers who contact third-party organisations about difficulties they are having with their communications provider. The data provided by these two organisations is another valuable insight into the scale of the problems affecting many consumers who encounter difficulties with their provider.

- 3.56 We dispute the contention from several CPs that the market is currently delivering effective outcomes for consumers. Although there may be high levels of satisfaction with communication services generally, the evidence we have gathered demonstrates that those consumers who are unable to effectively pursue a complaint often experience significant detriment. Our research shows that approximately 3 million consumer complaints are considered to be unresolved by the consumer after 12 weeks, with many of these consumers experiencing difficulty getting their CP to recognise they are trying to make a complaint. While we recognise that not all of these complaints will actually be able to be resolved easily, we consider some regulatory intervention is necessary to address specific issues that may be causing avoidable detriment to consumers, particularly with respect to the difficulties many complainants have in finding relevant information about how to complain and the difficulties many encounter in trying to get their CP to recognise they are making a complaint.
- 3.57 Several CPs urged Ofcom to take enforcement action against those providers who are falling below an acceptable standard as an alternative to regulating the entire industry. As we summarised in our consultation, we do not think existing regulation would allow us to sufficiently address industry-wide problems, a position that we discuss further below when examining the nature of any Ofcom intervention.

Section 4

Establishing Minimum Standards for Complaints Handling

4.1 This section describes the proposal we made in our consultation to establish a single Ofcom Code of Practice ('the Ofcom Code') containing minimum standards for complaint handling procedures. It describes stakeholders' responses to this concept and the proposed content of the Code, and records our decision to establish a single Ofcom Code. We also set out below the content of the Ofcom Code, which has been finalised following submissions from stakeholders. The full Ofcom Code can be found in Annex 1.

Establishing an Ofcom Code of Practice

4.2 As noted above at paragraph 3.9, CPs are currently required to submit their individual Codes of Practice to Ofcom for approval. In our 2008 and 2009 consultations we considered several mechanisms for addressing the consumer harm from poor complaints procedures, including:

1. The status quo;
2. Retaining the requirement for individual Codes to be submitted to Ofcom for approval, but supplementing this with further guidance on what information a Code of Practice must contain before Ofcom will provide approval; and
3. Establishing a single Code of Practice that all CPs must adhere to.

4.3 In both consultations we proposed implementing option 3: requiring CPs to comply with a single Ofcom Code of Practice, which would establish minimum standards for complaints handling processes of CPs.

4.4 We noted that although option 1 would not require CPs to incur any costs, it was not proving sufficient at the moment to address the harm resulting from difficulties individuals have in trying to make and pursue a complaint. With respect to option 2, we acknowledged that we could simply issue more prescriptive guidance about what needed to go in each CP's individual Code before they would be approved by Ofcom, but felt that this would be very convoluted approach to improving complaints handling procedures across the industry. It would effectively entail Ofcom establishing minimum standards (through guidance), but would also require Ofcom to assess and make a judgment on the appropriateness of all CPs' complaints handling procedures before approving individual Codes – a much more intrusive step than simply dealing with those CPs who breach a single Code containing minimum standards (option 3).

Views of Stakeholders

4.5 From the 27 submissions, there was overwhelming support from both consumer groups and CPs to require the industry to adhere to minimum standards for complaints handling. The support for the concept from three CPs was conditional on the resulting Ofcom Code not being overly prescriptive. This high level of support mirrored the responses we received to our 2008 consultation.

- 4.6 Only O2 and one confidential respondent were opposed to the principle of establishing an Ofcom Code for complaints handling. These two submissions noted that it was not apparent that any harm to consumers was the result of an industry-wide problem and that Ofcom had not demonstrated its inability to influence the processes of 'problem' CPs by enforcing existing regulation. The confidential respondent submitted that having an Ofcom Code would arguably only benefit Ofcom, which would no longer need to approve individual codes.

Ofcom Response and Conclusion

- 4.7 We are satisfied that establishing an Ofcom Code (option 3) is the most appropriate mechanism for addressing specific areas that are causing/prolonging the harm for consumers wishing to complain to their provider. We note this would bring the telecommunications sector into line with the energy, financial services and water sectors, where minimum standards for the handling of consumer complaints have been established.
- 4.8 The benefits of a single Ofcom Code are that it will ensure minimum standards in how CPs handle complaints across the industry, it will provide consistency in standards, and it will be easier to enforce against. While this approach may indeed be less resource intensive for Ofcom, we consider it will provide tangible benefits to consumers as Ofcom monitors compliance and takes enforcement action against those CPs that do not meet the requisite standards.
- 4.9 It is essential that an Ofcom Code only establishes minimum expectations of CPs and avoids being overly prescriptive in the way that CPs should engage with their customers. Those CPs who wish to provide a higher standard of service should be encouraged to do so – as it is apparent that many CPs already see their customer service functions as a competitive differentiator.
- 4.10 Based on the evidence outlined in section 3, we are of the view that when something goes wrong, telecommunications consumers should have the right to expect basic levels of service from their provider in trying to address that problem. However, Ofcom's power with respect to CPs' complaints handling procedures is currently largely limited to ensuring they follow the standards and processes that they themselves have established.
- 4.11 With respect to the claim that Ofcom should simply take enforcement action against 'problem CPs', we outlined in our consultation why this is not possible without a change to regulation. General Condition 14.4 is currently used to ensure that CPs' individual Codes of Practice contain relevant information for consumers about how to make a complaint (including the provision of basic information such as contact details and a description of a consumer's right to ADR). At present we would be unable to take enforcement action against a CP that was ignoring all complaints from consumers if that CP remained compliant with the minimum information they have chosen to put in their Code. Until such time as Ofcom establishes minimum expectations of complaints handling it will not be in a position to take enforcement action against 'problem CPs'.
- 4.12 On the basis of the evidence set out above and in the consultation, and taking account of the responses received, we have concluded that we should modify General Condition 14.4 to require all CPs to comply with the minimum standards as contained in an Ofcom Code of Practice. These standards will apply to how CPs receive and handle complaints from residential consumers and small businesses (with ten or fewer employees).

Tests under the Act

4.13 We consider that establishing an Ofcom Code falls within our duties under section 3 of the Act (including our principal duty of furthering the interests of consumers and citizens) and also meets the relevant tests under section 47(2) of the Act as follows:

(a) It is:

- objectively justifiable:

We believe that the decision is objectively justifiable as requiring CPs to comply with minimum provisions for complaints handling procedures will protect and further the interests of consumers by ensuring that they are empowered in their negotiations with CPs about complaints and by limiting their exposure to suffering detriment including stress, anxiety and financial loss. The evidence in section 3 of this paper suggests that the current industry approach to complaints handling is of sufficient concern to warrant a targeted intervention to address specific areas of concern. Minimum standards for complaints handling should benefit consumers and improve the quality of service they receive. Ofcom will also have the power to investigate and take appropriate enforcement action if it reasonably believes the complaints handling procedures of a CP were contravening the Ofcom Code.

- not unduly discriminatory:

We consider that the decision is not unduly discriminatory as the proposed requirement would apply equally to all CPs who provide Public Electronic Communications Services.

- proportionate:

We consider that establishing an Ofcom Code is a proportionate measure to take to help minimise the consumer harm resulting from ineffective complaints procedures, while still allowing CPs the scope to individually tailor their procedures. An Ofcom Code will provide a mechanism by which Ofcom can ensure that consumers are appropriately protected and empowered when they make a complaint to a CP. The proportionality of the costs of complying with the Ofcom Code is dependent on the substance of the Code, which is discussed in more detail below.

- transparent:

We are satisfied that the modification is transparent insofar as the nature and reasons for the obligations are clearly set out in this document.

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

The Ofcom Code of Practice for Complaints Handling (Ofcom Code)

4.14 We consider that CPs should have fair and reasonable procedures for the handling of complaints. However, we want to ensure that any regulatory measures do not

undermine the incentives the market and competition create for suppliers to continually improve their performance. It is also important that we do not stifle innovation and reduce the incentive for CPs to win market share by offering even better customer care. As such, the obligations below are what Ofcom considers to be the most fundamental aspects of a fair and reasonable complaints procedure and address process barriers that may be preventing consumers from effectively complaining to their provider.

- 4.15 It is important to make clear that the obligations imposed through the Ofcom Code apply to CPs' procedures and not how they should respond to individual consumer complaints. Through the Ofcom Code CPs will need to have complaints procedures that:
- are transparent;
 - are accessible;
 - are effective; and
 - promote access to ADR.⁴⁹
- 4.16 Despite our concern that a proportion of consumers have a very negative experience when trying to make a complaint, we recognise that most providers will endeavour to treat their customers fairly. We want to make clear that we are not seeking to regulate customer service standards, but to ensure that there are minimum expectations of the processes a CP should have in place for receiving and handling complaints.
- 4.17 The obligations discussed in this section also need to be considered in the context of the amendments that we have outlined in section 5 to improve access to ADR. We expect that our requirement to require CPs to inform relevant complainants about ADR will not only improve the effectiveness of ADR, but will create significant incentives for CPs to have effective complaints handling procedures in order to avoid the costs of ADR.
- 4.18 The Ofcom Code is attached as Annex 1, with the relevant guidance attached as Annex 2.

Defining a Complaint

- 4.19 The definition of a 'complaint' is important as it will determine the scope of the transactions which our regulation would apply to. This has implications for the circumstances in which consumers will benefit from regulation and for compliance processes and costs for industry.
- 4.20 We appreciate that CPs currently use a number of different definitions of 'complaint' in their internal procedures and systems. We also recognise that it will not always be apparent whether an issue raised by a consumer is a complaint and that front-line agents will often need to make difficult judgements based on the individual circumstances of the consumer. Nevertheless, we think that it is necessary to have a common definition that can apply across the industry to make sure that our regulation properly captures the scenarios in which we think individual consumers are exposed to harm and detriment and so that any regulation is applied uniformly.

⁴⁹ The extent of the obligations to promote access to ADR are discussed in section 5.

- 4.21 In our consultation we proposed a definition for the Ofcom Code that was modelled on the approach in ISO 10002:2004 (Quality Management – Customer Satisfaction – Guidelines for Complaints Handling in Organisations). The proposed definition was:

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.’*

- 4.22 We specifically noted that the definition of a complaint was not linked to how the complaint was made by a customer or whether the complainant was experiencing harm or detriment. We also clarified our position on network faults: where a consumer contacts their CP to express dissatisfaction with their service (whether it is due to a CP’s error or a network fault) and requests the CP to resolve the matter, then a CP would need treat this as a complaint and comply with any of the obligations set out in the Ofcom Code. A complaint about a network fault would therefore require CPs to adhere to the obligations in the Ofcom Code. We noted that as we were not proposing that CPs ‘log’ all complaints, much of the previous industry opposition to the inclusion of such network faults within the definition should have been addressed.

Stakeholder Views

- 4.23 Responses were fairly split on whether our proposed definition of a complaint was appropriate. The Ofcom definition was supported by CCES, BT, Citizens Advice, Professor Collins, Consumer Focus, the Communications Consumer Panel, 3, IDRS, the Ombudsman Service, CWU, Which? and one confidential respondent. Our proposed definition was opposed by AIME, FCS, O2, Sky, TalkTalk, THUS, UKCTA, Vodafone and three confidential respondents.
- 4.24 The following is a summary of some of the key issues raised:
- several CPs commented that the definition of a complaint was too subjective and that a simple test was required to remove any ambiguity. Various alternatives suggested by respondents included where the consumer was alleging a breach of the terms & conditions of the service, where the complaint was in writing, where the consumer used the term ‘complaint’, where the subject matter of the complaint is within the jurisdiction of the ADR schemes, or alternatively where the consumer alleged they were suffering from ‘financial loss’ or ‘material inconvenience’ (including from O2, Vodafone, UKCTA, and three confidential respondents);
 - two stakeholders submitted that it was essential that faults are included in the definition of a complaint in order to protect consumers (CCES, CWU), while BT commented that Ofcom’s approach to faults was sensible. Several fixed line CPs commented that fault reports should not be considered as complaints as they will not necessarily involve expressions of dissatisfaction (FCS, THUS and one confidential respondent);
 - a request was made by 3 and one confidential respondent for clarification that a matter would only be a ‘complaint’ if it is made in one of the prescribed means of making a complaint as outlined in a CP’s Customer Complaints Code (discussed further below);

- the Ombudsman Service and Which? both commented on the importance of any definition capturing issues from first-contact and not being dependent on how the CP subsequently reacts and whether the matter is referred to a dedicated complaints team;
- two respondents submitted that it was not clear if a customer needed to have an existing contract with the CP at the time of the complaint and requested that Ofcom clarify the treatment of past or prospective customers and complaints made by third parties (TalkTalk and a confidential respondent). Which? urged Ofcom to specify that the definition of a complaint would include situations where someone makes a complaint on behalf of the consumer;
- a confidential respondent queried whether there was any need for Ofcom to define a complaint given that CPs would not be required to 'log' complaints to front-line staff; and
- TalkTalk suggested that in discussions with Ofcom we had indicated that in order to be treated as a complaint there needed to be repeat contacts from a consumer. They requested that this position be reflected in the definition.

Ofcom Response and Conclusion

- 4.25 We remain satisfied that the definition of a complaint, which has now been subject to two full consultations, remains both necessary and appropriate. As such we are not making any changes to the definition proposed in the consultation.
- 4.26 We accept there will often be an element of subjectivity in determining whether a consumer is making a complaint under our definition – for example, it may not always be readily apparent whether a consumer is expressing dissatisfaction or making a query. However, we still consider this definition to be most suitable for capturing those scenarios where consumers are unhappy with the status quo and require their provider to take positive steps to address their concerns. As outlined in our consultation we do not think the definition of complaint should be linked to the scale of harm suffered by a consumer or be linked to any other specific test (such as use of the term 'complaint'). The nature of harm suffered by a consumer is more relevant to the steps a CP should take in response to a complaint rather than whether the matter should be considered a complaint or not.
- 4.27 We wish to respond to the query from TalkTalk as to whether a matter would only be a complaint if there was repeat contact from a consumer. This is not the case. A complaint is an 'expression of dissatisfaction' regardless of how many occasions the consumer makes contact or whether there is any ongoing harm. There may have been some confusion as to Ofcom's expectation of who should receive ADR notifications after eight weeks – which as is discussed below in paragraphs 5.87-5.88, will be a narrower subset of consumers who have made repeat contacts.
- 4.28 It is also important to make clear that whether an issue is a complaint is not dependent on the means by which a consumer makes a complaint. So although through the Ofcom Code we require CPs to have some 'low cost' options for accepting complaints, it would not be appropriate (as suggested by 3) to only consider matters to be a complaint if they are made through these 'low cost' options. This is examined further below in paragraphs 4.63-4.64 where we discuss the relevance of the 'low cost' options for accepting complaints.

- 4.29 With respect to the issue of faults, there appears to be a degree of confusion amongst some CPs. FCS, THUS and one confidential respondent all made submissions that fault reports should not be considered complaints as they often do not involve expressions of dissatisfaction. We are not saying whether reports by consumers of faults are or are not complaints. We are instead saying that where a fault report by a consumer involves an expression of dissatisfaction and an explicit/implicit request for the CP to take action, then it will need to be treated as a complaint for the purposes of complying with the Ofcom Code. It is likely that many fault reports will meet this threshold, in which case a CP will need to adhere to the Ofcom Code and resolve the complaint in a fair and timely manner and notify the consumer of their right to go to ADR after 8 weeks if they have been unable to resolve the complaint. However, if as suggested by those three respondents some fault reports do not involve any expression of dissatisfaction by the consumer then those matters would not need to be treated as a complaint for the purposes of the Ofcom Code.
- 4.30 Finally, we need to clarify whether the Ofcom Code would apply if, for what would otherwise meet the definition of a complaint, the person making the complaint did not have an existing contract with the CP – so for example, expressions of dissatisfaction by past or prospective customers or by third parties. Nothing in the Ofcom Code should be interpreted as limiting the existing ability of consumers (including past or prospective customers) from making a complaint to a provider or from taking a complaint to an ADR scheme if such a complaint would be within the terms of reference of the relevant scheme. As is discussed below at paragraph 5.88, we have however narrowed the scope of potential recipients of the eight week ADR notification to exclude prospective customers (although the obligation will apply to current and former customers).
- 4.31 We note that some responses pointed to situations where providers accept complaints by third parties. Nothing in the Ofcom Code is intended to prevent or change that practice. Indeed we make it clear in the Ofcom Code that in the case of disabled consumers CPs should accept complaints from third parties who are acting on behalf of consumers with a disability.
- 4.32 The definition of a ‘complaint’ in the Ofcom Code is:

‘Complaint’ means:

- a) an expression of dissatisfaction made by a customer to a Communications Provider related to either:
 - i) the Communications Provider’s provision of Public Electronic Communications Services to that customer; or
 - ii) the complaint-handling process itself; and
- b) where a response or resolution is explicitly or implicitly expected.

Transparency Obligations

- 4.33 Our intention in setting transparency obligations on CPs is to ensure that the processes and procedures that a CP has in place for resolving complaints are clearly visible to a complainant. In this respect, the creation of the Ofcom Code (which all

CPs must comply with) does not alleviate the need for CPs to have their own written 'Customer Complaints Code' that contains all pertinent information that a consumer will require for making and escalating a complaint with their provider.

Proposals in the Consultation

- 4.34 The consultation proposed that a CP's own Customer Complaints Code must be short, easy to understand, and only contain relevant information about complaints handling procedures. This Code must be kept up to date and should include:
- the process for making a complaint;
 - the steps the CP will take with a view to investigating and resolving a complaint;
 - the timeframes in which the CP will work to resolve the complaint, including when the CP will notify the complainant about the progress or resolution of a complaint;
 - the contact details for the CP, including providing relevant 'low cost' options for contacting the CP (which are discussed below); and
 - the contact details for the CP's ADR Scheme and details on when a complainant will be able to access the service.
- 4.35 The consultation noted that these proposals were consistent with Ofcom's previous guidance on what individual Codes of Practice should contain.⁵⁰ The key change proposed from our 2008 consultation was that a Customer Complaints Code would now need to solely contain information about complaints handling and cannot be bundled with other information. This was to address a concern that CPs currently bundle many Codes of Practice into one often lengthy document – including a 'Basic Code of Practice' for Domestic and Small Business Customers (publishing a range of tariff information and standard terms),⁵¹ Codes of Practice for Sales and Marketing,⁵² potentially a Code of Practice for Premium Rate Calls,⁵³ as well as their Ofcom-approved Complaints Code of Practice.⁵⁴ We considered the cost of separating out the Customer Complaints Code would be small but invited industry submissions on this point.

Stakeholder Views

- 4.36 Respondents were supportive of the proposed transparency obligations, with no outright objection to having obligations around transparency. Specific changes suggested included:
- CPs should be required to include their individual Customer Complaints Code in welcome information (Consumer Focus);
 - there were queries whether it was actually beneficial to have information about complaints handling in a standalone document (SSE, BT, and one confidential respondent);

⁵⁰ See for example: <http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/guidelines.pdf>

⁵¹ As required by General Condition 14.1.

⁵² As required by General Condition 23.3.

⁵³ As required by General Condition 14.2.

⁵⁴ As required by General Condition 14.4.

- clarification was sought whether it would be sufficient to have a standalone Customer Complaints Code that consisted of a dedicated page on the website, which contained all the relevant information required (O2); and
- it was submitted that it would be counter-productive to require CPs to specify a timeframe for resolving complaints in their Customer Complaints Code and to then hold them to it. It was argued that this approach could result in CPs being held liable if they set overly-ambitious timeframes for resolving complaints and could punish those CPs who strive to resolve complaints promptly but who may not always succeed (3 and three confidential respondents).

4.37 No respondents challenged our position that the cost to CPs from separating information about complaints handling into a standalone Code would be minimal.

Ofcom Response and Conclusion

- 4.38 We remain satisfied that there should be minimum standards of transparency around how providers receive and handle complaints.
- 4.39 With respect to the proposal from Consumer Focus that all consumers should receive their provider's Customer Complaints Code when they open an account, this is a measure we have previously considered. As noted in our consultation such an obligation could cost £5m-7m per annum. Such a cost cannot be justified given that many recipients would not be interested in information on complaints handling at that stage and, in light of our other proposals to increase the accessibility of procedures, we consider there are more cost-effective options of making it easier for those consumers wanting information about how to make a complaint (discussed further below).
- 4.40 Although several CPs queried the usefulness of having information about how to complain in a standalone document, we remain of the view that this is a critical means of increasing the transparency of complaints procedures. The research highlighted that those consumers experiencing the most detriment from long-standing complaints are also those who have the greatest difficulty in finding information about how to complain and in getting their provider to recognise they are trying to make a complaint.⁵⁵ Having information on complaints handling that is short, concise and in a standalone format is a small step to take to try to increase transparency for consumers looking for information about how to complain.
- 4.41 We acknowledge the point made by O2 that, although Customer Complaints Code must be in a standalone format, there should no restriction on the ability of CPs to meet this obligation by having a dedicated page on a website containing all the relevant information. We have therefore amended our accompanying guidance to clarify this point. However, we note that this clarification does not remove the responsibility of the CP to provide a copy to a consumer on request, including a hard copy. This obligation is discussed further below.
- 4.42 We acknowledge the point raised by several respondents that our requirement for CPs to specify a timeframe for resolving complaints could have the unintended consequence of encouraging the industry to set artificially long timeframes so as to avoid regulatory responsibility if, for whatever reasons, they were unable to resolve a complaint promptly. Our intention in proposing this obligation was not to set a maximum time limit in which all complaints would be resolved but to provide

⁵⁵ As discussed above in paragraphs 3.25-3.30

consumers with an indication of likely timeframes in which they could expect to hear back from their provider (i.e. if they haven't heard anything within the specified time they may want to follow up). We have therefore amended this obligation to stress that the Customer Complaints Code should specify timeframes in which a CP will *endeavour* to resolve a complaint.

4.43 CPs will therefore be under an obligation to ensure their complaints procedures are transparent, specifically that:

- a) A CP must have in place a written code for handling complaints ('Customer Complaints Code') made by their Domestic and Small Business Customers. A CP must comply with its Customer Complaints Code in relation to each Complaint it receives.
- b) The Customer Complaints Code must be concise, easy to understand and only contain relevant information about complaints handling procedures.
- c) The Customer Complaints Code must be kept up to date and as a minimum include information about:
 - i) the process for making a Complaint;
 - ii) the steps the CP will take to investigate with a view to resolving a Complaint;
 - iii) the timeframes in which the CP will endeavour to resolve the Complaint, including when the CP is likely to notify the Complainant about the progress or resolution of a Complaint;
 - iv) the contact details for making a Complaint to the CP, including providing details about the relevant low-cost points; and
 - v) the contact details for the CP's Alternative Dispute Resolution Scheme, with appropriate details on when a Complainant will be able to access the service.

The precise wording of these regulatory obligations can be found in the Ofcom Code, attached as Annex 1. The accompanying guidance is attached as Annex 2.

Accessibility Obligations

4.44 Our intention in setting accessibility obligations on CPs is to ensure that those consumers wishing to lodge a complaint are able to do so in a straightforward manner at minimal cost. Information on how complaints can be made and how complaints will be investigated should be easily accessible to all consumers wanting the information.

4.45 As noted above in paragraphs 3.25-3.30, we have concerns that consumers with long-lasting complaints are much less likely to be informed about the complaints procedures of their provider and are more likely to experience significant difficulties getting their CP to recognise that they were trying to make a complaint. We consider that CPs should promote the availability of their Customer Complaints Code and that consumers should be able to locate a copy with relatively minimal effort.

- 4.46 The consultation proposed that CPs must have accessible complaints procedures, which as a minimum must include, that:
- the Customer Complaints Code must be well publicised and readily available, including:
 - being easily accessible on a webpage. For example, we would regard either of the following as being easily accessible:
 - ‘1 click’ through from a CP’s primary webpage for existing customers (i.e. a customer-facing webpage or portal); or
 - from a ‘how to complain’ or ‘help’ portal, which is accessible ‘1 click’ through from the primary webpage for existing customers.
 - reference being made to the existence of the Customer Complaints Code (including web address) when ‘welcome information’ is provided to new customers;
 - the relevant terms and conditions for a product and/or service should refer to the existence of the Customer Complaints Code and should signpost consumers to how they can access a copy; and
 - being provided to complainants upon request in hard copy or other format as agreed with the complainant.
 - complaints handling procedures must be sufficiently accessible to enable consumers with disabilities to lodge and progress a complaint;
 - a CP must not discriminate against a complainant on the grounds of their disability and must provide the same standard of service in attempting to resolve regardless of a complainants individual circumstances or the manner in which the complaint is made; and
 - the means by which a CP accepts complaints should not unduly deter consumers from making a complaint. A CP must have in place at least two of the following three low-cost options for consumers to lodge a complaint:
 - a free-phone number (0800) or a phone number charged at the equivalent of a geographic call rate;
 - a UK postal address; or
 - an email address or internet web page form.
- 4.47 These proposals were a refinement upon those contained in the 2008 consultation. As outlined in the consultation, we introduced greater flexibility into where a Customer Complaints Code could sit on a CP’s website, we removed the requirement that CPs could only charge geographic call-rates for consumers calling to make complaints (instead requiring CPs to have ‘low cost’ options for receiving complaints), and we no longer proposed that CPs should specify their complaints procedures in terms & conditions for services (instead requiring CPs to signpost consumers to the location of the Complaints Code).

4.48 There was broad support from stakeholders for our proposed accessibility obligations (with AIME, CCES, IDRS, the Ombudsman Service, and one confidential respondent supporting the proposals), although a number of specific proposals attracted opposition from respondents or drafting suggestions. The views of those stakeholders requesting changes to specific proposals and Ofcom's response are summarised below:

a) Location of CPs' Customer Complaints Code on websites

4.49 Many in the industry felt that Ofcom was being overly prescriptive about where a CP should be able to put their Customer Complaints Code on their website (including BT, SSE, FCS, 3, O2, TalkTalk, UKCTA, and two confidential respondents). Rather than requiring the Code to be 1 or 2 'clicks' from a homepage, these respondents typically felt the obligation should instead be for the Code to be 'easily accessible', with each CP free to choose the exact location on the website. One confidential respondent noted they had been unable to find examples of other sectors where the regulator had been so prescriptive in where information on complaints procedures should be located.

4.50 We acknowledge that Ofcom is being prescriptive in regulating the extent to which a CP is free to place their Customer Complaints Code on their website. However, we believe this is reasonable given the nature and scale of the problems with complaints handling. At present many CPs do not actively promote information about complaints handling, with many locating their codes under sections labelled 'regulatory' or 'legal' responsibilities. We consider the obligation to make the Customer Complaints Codes more accessible would not cause significant problems or costs for providers, and that that this proposal will benefit consumers who are wanting to find information about how to make or to progress a complaint. The market research clearly demonstrated the significant difficulty many consumers have in trying to make a complaint and we are satisfied that a clear Customer Complaints Code that can be logically and easily located from a CP's homepage will go some way to assisting those consumers looking for information on complaints handling. Our assertion that the cost of making this change would be low was not disputed.

4.51 The drafting of this proposal in the consultation appears to have created some confusion as it indicated the two options for locating Customer Complaints Codes on websites were examples and that CPs may still be free to choose alternative means of ensuring their Code was easily accessible. We have slightly amended the text of the obligation to clarify that CPs will have to choose one of two options for ensuring their Customer Complaints Code is easily accessible on websites: having a link to the Code on their homepage ('1 click access'), or having a link to the Code on a 'Contact Us' or similar page that can be accessed from their homepage ('2 click access').

b) Requiring Terms & Conditions to signpost consumers to where they can find a copy of the Customer Complaints Code

4.52 Many in the industry felt that amending terms & conditions to include text about the existence and availability of a Customer Complaints Code was another example of Ofcom being too prescriptive in specifying how CPs should promote the availability of their complaints procedures, with many also arguing the benefits of this obligation were likely to be minimal (including FCS, 3, O2, SSE, and UKCTA). BT submitted it was important that any requirement to alter terms & conditions did not extend to business customers (given that Ofcom is regulating for the benefit of individuals and small businesses with ten or fewer employees). SSE highlighted a scenario where a company may have one set of terms & conditions covering multiple brands (in the

case of SSE, both energy and telecoms brands) – a requirement to include information about telecoms complaints handling could therefore cause confusion for consumers or create additional costs.

- 4.53 We accept that requiring CPs to amend their standard terms & conditions to mention the availability of their Customer Complaints Code may not provide widespread benefits to consumers or to fundamentally alter the behaviour of CPs in handling complaints. Nevertheless, we are conscious that there are many consumers without access to the internet who will not benefit from the above provision to increase the visibility of the Customer Complaints Codes on websites. While many consumers are unlikely to look for information about how to progress a complaint in their terms and conditions, we are satisfied that a small proportion will. This position is supported by the Synovate market research, which indicated that of those consumers with long-standing complaints 8% would favour receiving information about ADR in their terms & conditions.⁵⁶ While we are not specifying that information about ADR should go in terms & conditions, we believe this evidence supports the case that terms & conditions should contain a minimum amount of information about the availability of a Customer Complaints Code and how a consumer can access a copy.
- 4.54 With respect to the submission from SSE that amending standard terms & conditions would create difficulties for companies with multiple brands, we consider that CPs are able to include appropriate wording in their terms & conditions to remove any possible consumer confusion. For example, a CP would be perfectly entitled to insert a qualifier into their terms & conditions noting that telecoms consumers wishing to make a complaint should be aware of the availability of the Customers Complaints Code. We note that although SSE has one set of standard terms & conditions for gas, electricity and telecoms consumers, there is already a separate section for telecoms consumers within its standard terms & conditions where a further couple of sentences could be inserted to meet this obligation.
- 4.55 We acknowledge the point made by BT that, given the Customer Complaints Code only applies to how CPs handle complaints from residential and businesses with ten or fewer ten employees, a case could be made for only applying this obligation to residential terms & conditions so as to avoid any confusion for larger businesses. This was an issue we covered in our consultation, where again we took the view that we had given CPs sufficient flexibility to be able to qualify in the terms & conditions that the protections only apply to residential and small business customers.
- 4.56 No submissions were received that causes us to revisit our provisional conclusion that the costs of complying with this obligation would be anything other than minor. We are satisfied that it is appropriate to proceed with this requirement in light of the potential to provide some benefits to consumers who are actively looking for information about the complaints procedures of their CP, particularly for those consumers without access to the internet.
- c) Requiring 'welcome material' for new customers to include a reference to the Customer Complaints Code, including the web address
- 4.57 Responses variously submitted that there was no evidence that such references in welcome material would be particularly effective in raising consumer awareness of complaints procedures (3, O2), that providing such information would foster a negative image of the company for new customers (confidential respondent), that it would discriminate against those CPs who voluntarily offer welcome material

⁵⁶ Synovate research, figure 6.2

(confidential respondent), and that there would be no need to further increase awareness of complaints procedures if Ofcom's other proposals to increase transparency/accessibility are successful (SSE).

- 4.58 We have noted the views expressed that requiring providers to signpost consumers to their Customer Complaints Code when they first open an account is unlikely to be particularly beneficial. Customers opening an account are unlikely to be particularly concerned with where they can find information about complaints handling and there is no evidence consumers retain such welcome packs or would consider referring to information in such packs if they were looking to make a complaint.
- 4.59 We no longer consider it appropriate to impose a requirement for CPs to include references to Customer Complaints Codes in welcome material to new customers. We consider it is sufficient instead to rely on improving accessibility to information on CPs' webpages and in signposting consumers to the existence of information about how to make a complaint in terms & conditions.

d) Requiring CPs to have two 'low cost' means for accepting complaints

- 4.60 Consumer groups felt Ofcom had not gone far enough in ensuring complaints procedures were truly accessible to consumers, claiming that Ofcom should require providers to offer a free-of-charge number regardless of whether the call originates on a mobile or landline (CCES and Citizens Advice). It was also claimed that Ofcom's approach would allow CPs to only accept complaints in writing, which could limit accessibility for many consumers (Citizens Advice and Consumer Focus).
- 4.61 Although there may be obvious benefits to consumers if they could call their CP to complain free-of-charge, it is simply not practical at present to mandate that all CPs should provide certain calls at certain rates (e.g. that 0800 calls should be free on all networks). As we noted in our consultation, there is limited evidence of detriment from CPs charging particular prices to call customer service lines, any move to specify certain pricing caps could increase costs for consumers elsewhere, and requiring 'free' phone numbers for complaints handling could also have a range of unintended consequences (e.g. by allowing non-complainants to bypass more expensive phone numbers).
- 4.62 We prefer the more flexible approach of requiring that the means by which CPs accept complaints 'should not unduly deter' consumers from making a complaint. As we have outlined in our guidance, Ofcom would take action where it was more expensive for consumers to call their provider to make a complaint than it was to call their provider's generic helpline. Similarly, a CP would likely be in breach of this obligation if they required consumers to ring an 09 number to make a complaint.
- 4.63 We have further specified that CPs need to have at least two out of three 'low cost' options for consumers to make a complaint: (i) a 'free to call' number or a phone number charged at the equivalent of a geographic call rate; (ii) a UK postal address; or (ii) an email address or internet web page form.
- 4.64 However, we wish to clarify that this does not mean, as was suggested by Citizens Advice and Consumer Focus, that a CP can therefore insist that all complaints need to be made in writing. The definition of a complaint is very broad ('an expression of dissatisfaction...') and is not dependent on the complaint being made in any particular form. Therefore, if a consumer rings a generic helpline of a CP (but not one of the 'low cost' options specified in their Customer Complaints Code) and complains to the agent the CP still needs to abide by the provisions in the Ofcom Code and resolve

the complaint fairly. Although Citizens Advice and Consumer Focus are correct to the extent that we are not requiring CPs to offer a phone number on which they can be contacted, if they do offer any phone service to consumers and they receive a complaint via that number then they will still need to treat it as a complaint for the purposes of the Ofcom Code. The one exception to the principle that CPs need to treat all expressions of dissatisfaction as complaints regardless of the form, is outlined in our accompanying guidance where we have specified that where a CP receives a complaint in-person (i.e. in a retail store) it would be acceptable to refer the consumer to another means of making a complaint.

e) Requiring CPs to provide a Customer Complaints Code to a consumer who requests a copy

- 4.65 Although there was no opposition to the proposal to require CPs to provide consumers with a copy of their Customer Complaints Code on request, two respondents felt that all consumers should be sent a copy of the Customer Complaints Code when they make a complaint (CCES and Consumer Focus). Citizens Advice also asked Ofcom to specify that the provision of a Code to consumers should be free of charge (Citizens Advice).
- 4.66 We consider the costs would be too prohibitive to require CPs to provide all complainants with a copy of their Customer Complaints Code when they first complain. Such a proposal is similar to an option we consulted upon in 2008 (to inform consumers about ADR within five days of a complaint being made) and two options we considered in our most recent consultation (to inform consumers about ADR when they first complain; and to provide copies of a Customer Complaints Code if a complaint remains unresolved after 10 days). We dismissed all three options as being too costly to be able to be justified – we estimated providing the Customer Complaints Code to consumers whose complaints were still unresolved after 10 days would cost £30m-40m p.a. so it is reasonable to assume that to provide such information to *all* complainants would be many times higher than this.
- 4.67 We accept the point made by Citizens Advice that we should specify that, when requested, a Customer Complaints Code should be provided *free of charge*. Such a position is consistent with the existing obligation under General Condition 23.3 for CPs to provide consumers with a copy of sales and marketing obligations free of charge. We have also inserted a caveat along the lines of General Condition 23.3 that a CP would only need to provide a copy free of charge if the consumer's request is reasonable.
- 4.68 No CPs highlighted any significant costs associated with providing such information to consumers or queried whether they would be able to recoup costs from consumers if a hard copy was provided. We consider it reasonable that a CP should bear the cost of providing a copy of their Customer Complaints Code to a consumer requesting a copy and are satisfied such costs will be minimal. We expect recipients of such copies are unlikely to have access to the internet and, as with all users, should be fully informed about the procedures of their CP without unnecessary barriers (such as cost) being erected.

f) Requiring procedures to be sufficiently accessible for consumers with disabilities and prohibiting discrimination against consumers by virtue of their disability

- 4.69 Several CPs noted that they are already subject to obligations under the Disability Discrimination Act (DDA) and submitted that it was not clear the extent to which

Ofcom was requiring providers to take steps beyond those they already take to meet their DDA obligations (O2, TalkTalk and one confidential respondent).

- 4.70 We have since re-examined the proposals in our consultation to consider whether they are strictly necessary or may be simply duplicating the existing laws and regulations. The DDA already provides adequate protection for such consumers and the Equality and Human Rights Commission (the body tasked with enforcing the DDA) is more suited for carrying out formal investigations and supporting legal action when discrimination does occur. Ofcom will nevertheless play an active role in bringing allegations of discrimination to the attention of the Equality and Human Rights Commission should we become aware of them. As a result, we have removed the proposed obligation that CPs should not discriminate against disabled consumers.
- 4.71 We are nevertheless retaining the requirement that complaints procedures must be 'sufficiently accessible' to enable consumers with disabilities to lodge and progress a complaint. We do not think this obligation will require many CPs to alter the way they currently deal with complaints. But it will, for example, provide Ofcom with the power to address issues where a CP does not have procedures in place for recognising and treating appropriately those consumers who require additional assistance. Similarly, as a result of this obligation CPs should have procedures in place to accept complaints from third parties who are acting on behalf of consumers with a disability and to provide correspondence in a consumer's preferred format.

Ofcom Conclusion

- 4.72 We remain satisfied that there should be minimum standards of accessibility for the complaints procedures of CPs. The obligations we have developed are targeted to address specific shortfalls: making it easier for consumers to find out about how to make a complaint and how that complaint will be handled, as well as ensuring that CPs are not establishing barriers to deter those consumers who wish to complain.
- 4.73 CPs will therefore be under an obligation to ensure their complaints procedures are accessible, specifically that:

a)	The Customer Complaints Code must be well publicised and readily available, including:
i)	being easily accessible on a webpage, with either:
1.	a weblink to the Customer Complaints Code being clearly visible on a CP's primary webpage for existing customers (i.e. '1 click' access); or
2.	a weblink to the Customer Complaints Code being clearly visible on a 'how to complain' or 'contact us' page, which is directly accessible from a primary webpage for existing customers (i.e. '2 click' access).
ii)	the relevant terms and conditions for a product and/or service should refer to the existence of the Customer Complaints Code and should signpost consumers to how they can access a copy; and
iii)	being provided free of charge to Complainants upon reasonable

request in hard copy or other format as agreed with the Complainant.

- b) Complaints handling procedures must be sufficiently accessible to enable consumers with disabilities to lodge and progress a Complaint.
- c) The means by which a CP accepts Complaints should not unduly deter consumers from making a complaint. A CP must have in place at least two of the following three low-cost options for consumers to lodge a Complaint:
 - i) a 'free to call' number or a phone number charged at the equivalent of a geographic call rate;
 - ii) a UK postal address; or
 - iii) an email address or internet web page form.

The precise wording of these regulatory obligations can be found in the Ofcom Code, attached as Annex 1. The accompanying guidance is attached as Annex 2.

Effectiveness Obligations

- 4.74 Our intention in requiring CPs to have effective complaints handling procedures goes to the heart of what we are trying to achieve in protecting consumers from avoidable consumer detriment. We do not wish to prescribe what a CP's complaints procedures should entail or how a CP should respond to a complaint, but we are focused on ensuring that CPs do not ignore complaints or allow them to drag on unnecessarily.
- 4.75 The consultation proposed that CPs must have effective complaints procedures, including that:
- a CP must ensure the fair and timely resolution of complaints;
 - there must be clearly established timeframes and a reasonable escalation process for dealing with complaints; and
 - a CP must make improvements to its complaints handling procedures as soon as practicable where areas requiring attention are identified through complaint analysis.
- 4.76 These proposals were a refinement upon those contained in the 2008 consultation. As outlined in the consultation, we were no longer proposing that an escalation process should contain a maximum of four escalation points, instead preferring the more flexible requirement that an escalation process should be 'reasonable'. We also were no longer proposing that a CP should acknowledge receipt of a complaint within five working days of the complaint being received, given the significant costs this would entail for CPs in logging and tracking all complaints they received.

Stakeholder Views

- 4.77 There was strong support for the 'effectiveness' obligations contained in the consultation, including from AIME, BT, CCES, Consumer Focus, FCS, IDRS, the Ombudsman Service, SSE, CWU, and from two confidential respondents. Although BT supported Ofcom's approach it suggested that Ofcom had not provided sufficient

clarity about scenarios where CPs would be expected to make improvements following 'complaint analysis'.

- 4.78 Several respondents thought the obligations were too vague and that the use of terms such as 'fair', 'timely', and 'reasonable' would create problems if Ofcom tried to take enforcement action (including Citizens Advice, 3, IDRS, Which?). Professor Collins, Citizens Advice and Which? all took the view that Ofcom should mandate that CPs log all complaints on receipt.
- 4.79 Regarding the need for CPs to have clearly established timeframes and a reasonable escalation process, a confidential respondent pointed out that Ofcom should be more focused on whether CPs were actually providing 'fair and timely' resolution of complaints and less on how CPs choose to deliver such standards. Two confidential respondents noted the timeframe for resolving a complaint would vary depending on the issue and it would not be practical to have clearly established timeframes for every possible scenario. The submission from Which? took the opposing stance and urged Ofcom to establish clearly defined and verifiable escalation procedures including a prescribed number of escalation points.
- 4.80 O2 and Vodafone both continued to submit that there is no evidence of consumer harm to justify Ofcom intervention to improve complaints handling. Both O2 and a confidential respondent claimed that it would be far too intrusive for Ofcom to grant itself the power to require CPs to make changes to their complaints procedures based on Ofcom's own analysis of where improvements could be made.

Ofcom Response and Conclusion

- 4.81 We remain satisfied that there should be high level obligations on CPs to provide effective standards of complaints handling to their consumers.
- 4.82 With respect to the position taken by O2 and Vodafone, we consider the evidence set out in section 3 of this statement and in the consultation demonstrates ongoing harm to consumers who have difficulty trying to get their complaint resolved. The obligation on CPs to ensure the 'fair and timely' resolution of complaints is reasonable and should not unfairly burden those CPs who genuinely endeavour to resolve complaints they receive. This provision will give Ofcom an important means of taking enforcement action against those CPs that, for example, ignore complainants, refuse to investigate legitimate grievances or who calculate they can treat complainants in a manner where many complainants, through a process of attrition, are forced to abandon their efforts.
- 4.83 We accept that the obligation to ensure 'fair and timely' resolution of complaints is a very high-level obligation, but we have consciously taken this position. We have deliberately not defined what effective procedures should entail so that CPs have significant freedom in meeting their customers' expectations – but we are confident that we will be able to identify instances where consumers are not being treated fairly and that we will be able to take appropriate enforcement action.
- 4.84 We have also decided to retain the requirement for CPs to have clearly established timeframes and reasonable escalation procedures for dealing with complaints. We wish to stress that the 'clearly established timeframes' for dealing with complaints would only need to be internal guidelines and there is no need to communicate these to consumers or for the timeframes to be included in the Customer Complaints Code (indeed as noted above, the Customer Complaints Code only needs to include 'typical timeframes'). We are also satisfied that it is appropriate to require CPs to

have a 'reasonable escalation process' so that there are procedures in place for front-line staff to be able to refer complaints upwards through the CP's line management or to a dedicated complaints-handling team. Again, this is a very broad requirement and we have not prescribed which matters should be subject to internal escalation. We have inserted the requirement for the escalation procedures to be 'clear' as well as 'reasonable'. This is to simply clarify our expectation that the escalation procedure of the CP must be communicated to, and understood by, front-line staff.

- 4.85 We took the position in our consultation that, as a result of an evidence-based assessment by Ofcom, CPs should be required to make specific improvements to complaints handling procedures. However, we are persuaded by submissions from BT, O2 and Vodafone that this may not be appropriate. It is difficult to picture a scenario where Ofcom would want to rely on this obligation to require specific changes to a CP's procedures, but where the CP in question would not be in breach of the general requirement to ensure 'fair and timely' complaint resolution. We are content that this broad power is more suitable for addressing areas of concern that we may identify with individual CPs rather than giving Ofcom the power to insist that internal changes be made.
- 4.86 CPs will therefore be under an obligation to ensure their complaints procedures are effective, specifically that:

- | |
|---|
| <ul style="list-style-type: none"> a) A CP must ensure the fair and timely resolution of Complaints. b) There must be clearly established timeframes and a clear and reasonable escalation process for dealing with Complaints. <p>The precise wording of these regulatory obligations can be found in the Ofcom Code, attached as Annex 1. The accompanying guidance is attached as Annex 2.</p> |
|---|

Conclusion

- 4.87 Ofcom has a statutory duty to secure, as appropriate, 'that the procedures established and maintained for the handling of complaints and the resolution of disputes are easy to use, transparent and effective'.⁵⁷ The findings from the Futuresight and Synovate market research, the additional insights from complaints to Ofcom, Consumer Direct and Citizens Advice, as well as the Consumer Conditions Survey, have led us to conclude that the current regulation of complaints handling is no longer appropriate for ensuring that complaints handling is 'easy to use, transparent and effective'.
- 4.88 Our aim in developing the Ofcom Code is to provide an underpinning for how CPs receive and deal with complaints, while keeping administrative burdens and any impact on competition to a minimum. As indicated above, taking into account the evidence set out in this document and the consultation, as well as submissions made to our 2008 and 2009 consultations, we are satisfied that these modified obligations strike an appropriate balance between protecting consumers while still allowing CPs a suitable degree of flexibility in tailoring their own complaints procedures.
- 4.89 As noted above, it has not been possible to quantify the impact of some of these obligations. The current processes of CPs are unique and the requirements have

⁵⁷ Section 52(3) Communications Act 2003.

been kept at a high-level to provide CPs with a large degree of flexibility in choosing how to implement them. For example, we do not consider it necessary (or practical) to estimate the costs to each CP of ensuring their complaints procedures are 'fair' but rely on the fact that the obligation is reasonable and is necessary to protect consumers from harm that may arise from ineffective complaints handling procedures.

- 4.90 We consider that the requirements in the Ofcom Code are not overly burdensome and should go some way to providing a 'safety net' of minimum standards that consumers can expect from their CP. We consider that CPs that already have reasonable complaints handling processes are unlikely to incur significant costs in meeting these obligations. To the extent that CPs need to alter the way that they receive and handle complaints and publicise their processes (through website and terms and conditions), we consider these costs are proportionate and can be objectively justified.
- 4.91 In relation to equality considerations, we have also had due regard to the potential impacts our requirements may have on race, disability and gender equality.
- 4.92 There is a concern that vulnerable consumers, including some segments of the older population, people with disabilities and people on low incomes could be more affected by inadequate complaints procedures. These groups may have particular difficulties when trying to pursue a complaint with their telecommunications provider. We consider that our requirements for CPs to improve the transparency, accessibility and effectiveness of complaints handling procedures will help such consumers with trying to make and pursue a complaint. Given the potential that poor complaints handling could affect people with disabilities more profoundly, we have specifically required that the complaints handling procedures of CPs must be sufficiently accessible to consumers with disabilities, which should help those consumers.
- 4.93 We consider the Ofcom Code, as attached in Annex 1, falls within our duties under section 3 of the Act (including our principal duty of furthering the interests of consumers and citizens) and also meets the relevant tests under section 47(2) of the Act as follows:

a) It is:

- objectively justifiable

We believe that the obligations are objectively justifiable because requiring CPs to comply with these minimum provisions relating to transparency, accessibility and effectiveness of complaints handling will help protect and further the interests of consumers by limiting the unnecessary stress, worry, and financial loss that often accompany lengthy unresolved complaints. Ofcom will also have the power to investigate and take appropriate enforcement action if it reasonably believes the complaints handling procedures of a CP were contravening the Ofcom Code;

- not unduly discriminatory

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

- proportionate

We consider that the standards in the Ofcom Code of Practice are proportionate on the grounds that the Ofcom Code still allows CPs the scope to individually tailor their procedures to comply with these minimum standards while achieving Ofcom's key objective of ensuring that consumers are appropriately protected. We consider that the costs that CPs are likely to incur will be minimal and are proportionate to the benefit that consumers and citizens will receive arising from their increased protection and empowerment. For example, we have given CPs a choice as to how they implement 'low costs' procedures for consumers to lodge a complaint.

- transparent

We are satisfied that the modifications are transparent insofar as the obligations and the reasons for them are clearly set out in this document.

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

Section 5

Helping Consumers Access ADR

5.1 This section sets out the role of ADR in the complaints process, examines our proposals from the consultation and responds to stakeholder submissions. Of all the areas in our consultation, the proposals to improve awareness of ADR attracted the most attention from stakeholders and the greatest resistance from CPs. We conclude in this section that it is appropriate to improve awareness of ADR and set out a number of obligations on how the industry will need to go about this.

The importance of ADR

5.2 Through General Condition 14.5 Ofcom requires all CPs to be a member of an approved ADR scheme, presently Otelo and CISAS. CPs must comply with the rules of their ADR scheme, including the final decisions made by the ADR schemes in individual cases.

5.3 The ADR schemes are free to consumers and are independent of CPs and Ofcom. Following an application by a consumer the relevant scheme will examine both sides of the dispute and make an appropriate judgment – which could potentially include a financial award to the consumer and/or requiring the CP to take necessary action. Regardless of the outcome of a case the CP is liable to the ADR scheme for a case-fee. While CPs are bound by the decisions of the ADR schemes, consumers still have the ability to pursue their dispute through the legal system if they remain unsatisfied with their outcome.

5.4 As has been shown in section 3, inadequate complaints handling has the potential to cause significant harm to consumers.⁵⁸ The benefits of a regulatory regime that promotes effective access to ADR include:

- giving consumers access to justice where recourse to the court system may be impossible or impractical due to cost and resource restraints, as well as reducing the 'system costs' that would occur if a high volume of relatively low monetary value disputes were instead required to be resolved by the legal system;
- reducing the power imbalance between consumers and CPs, who normally have greater resources, knowledge and control over the products and services in dispute;
- improving the outcome for those consumers who would otherwise fail to pursue complaints out of frustration with their CP's response or lack of response;
- empowering consumers to pursue their rights more effectively with their own CP, with the knowledge that they have an alternative option for redress if the complaint becomes intractable; and
- providing additional incentives for CPs to improve their complaints handling procedures and to resolve complaints quickly and effectively.

⁵⁸ See paragraphs 3.17 - 3.49.

How consumers can access ADR

- 5.5 At the moment telecommunications consumers have to wait eight weeks after they initially complained to their CP before they can go to ADR, unless their CP issues a 'deadlock letter'.⁵⁹ A CP can issue a deadlock letter at any stage if it thinks that a complaint will not be resolved without going to ADR – in other words, the complaint is 'deadlocked'.
- 5.6 The use of deadlock letters is not widespread in the industry and the overwhelming majority of complaints being submitted to ADR are because complainants are unable to reach a satisfactory outcome with their CP within at least eight weeks. Otelo notes that approximately 19% of complaints submitted to them in 2007/08 were triggered by the issue of a deadlock letter,⁶⁰ while CISAS advises that 4% of their cases in 2008 were prompted by a deadlock letter.⁶¹
- 5.7 It is not an objective of Ofcom that significant numbers of complaints should be resolved by ADR. Our understanding is that the vast majority of complaints made to CPs can be dealt with quickly by CPs' customer service agents at first contact.⁶² We view ADR as a remedy of last-resort, most suited to dealing with cases where a consumer cannot agree a resolution with their CP or where a consumer is unable to get their CP to recognise they are making a complaint.

Should we improve awareness of the availability of ADR?

- 5.8 Parliament has placed a duty on Ofcom to ensure that procedures for the handling of complaints and resolution of disputes are easy to use, transparent and effective and that consumers can access these procedures free of charge.⁶³
- 5.9 Although there is a regulatory requirement for CPs to belong to an ADR scheme, there is no obligation on CPs to notify individual consumers about their right to go to ADR. The only requirement for CPs to publicise the availability of ADR is a requirement under General Condition 14.1 to include relevant details of the ADR Scheme of which they are a member in their relevant Code of Practice (as discussed above).
- 5.10 Some CPs notify consumers of the availability of ADR on their bills (including BT, O2, THUS and Virgin Mobile), issue deadlock letters referring consumers to ADR, include information about ADR in 'welcome letters' or claim to verbally inform consumers when they make a complaint. However, such activity is by no means widespread and we have concerns about the levels of awareness of ADR amongst the general population and, more specifically, amongst those complainants that could potentially have their complaint examined by an ADR scheme.
- 5.11 As outlined in section 3, only 8% of the population and 23% of 'eligible' complainants are aware of ADR. Furthermore our research indicated that awareness of ADR is considerably lower than in comparable schemes in other sectors.⁶⁴ We consider the

⁵⁹ Rule 1(c) of 2007 edition of the CISAS Rules and clause 11.1 of the Otelo Terms of Reference.

⁶⁰ Otelo, 2008 Annual Report, p27

⁶¹ Figure provided by CISAS.

⁶² See for example,

http://stakeholders.ofcom.org.uk/binaries/consultations/alt_dis_res/statement/statement.pdf, paragraphs 3.9-3.10.

⁶³ Communications Act 2003 section 53(3).

⁶⁴ See paragraphs 3.38 - 3.43 for more information on ADR awareness.

low awareness of ADR to be undermining the ability of consumers to access effective dispute resolution procedures, as well as unnecessarily prolonging the harm that can accompany long-standing complaints. In the consultation we noted that, even though awareness of ADR was sufficiently low as to be undermining the effectiveness of the ADR regime, we considered it appropriate to examine whether there is a correlation between ADR and improved consumer outcomes. The implication of this approach is that, although we place a high weight on consumers being able to effectively exercise their right to ADR, we would not intervene to increase awareness unless, in light of the circumstances of how complaints are currently handled, it would be appropriate to do so.

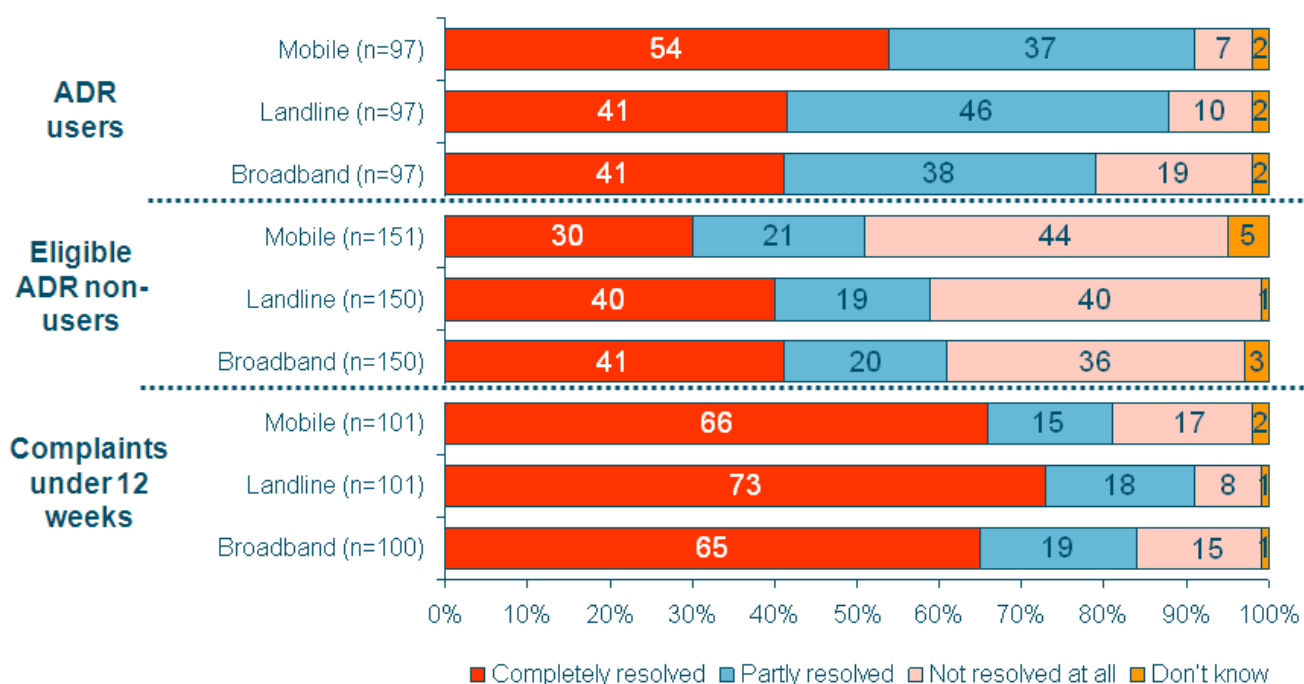
- 5.12 The evidence which we summarise below demonstrates the link between the use of ADR and the resolution of long standing complaints as well as satisfaction with the complaints process. It also shows how the use of ADR tends to correspond with lower proportions of consumers who feel very stressed, worried or angry during the complaint process. In light of this evidence we concluded in the consultation that Ofcom should take appropriate steps to improve awareness of ADR.

A link between ADR and improved outcomes

- 5.13 The Synovate market research demonstrates that ADR improves the prospect of a resolution for complaints that have not been resolved within 12 weeks.⁶⁵ For example, as shown in figure 8 below, 91% of mobile complaints that go to ADR are completely or partially resolved, compared with 51% of mobile complaints that were not resolved within 12 weeks (labelled as 'eligible ADR non-users' on the chart below).⁶⁶

⁶⁵ The Synovate market research was undertaken when the ADR 'threshold' was 12 rather than 8 weeks.

⁶⁶ We recognise that the category 'eligible ADR non-users' includes consumers who are still in the process of pursuing complaints or who have a problem that cannot reasonably be resolved.

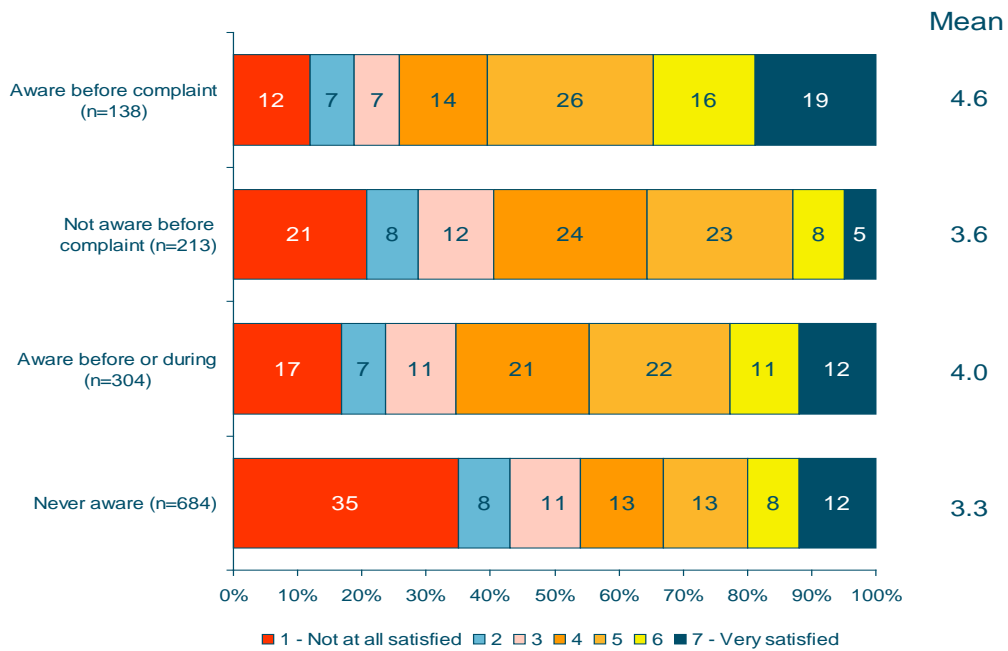
Figure 8: The Outcome of Consumer Complaints

- 5.14 Furthermore, for those complaints that are not resolved after 12 weeks, those that use ADR are much less likely to be very dissatisfied with the outcome of their complaint.⁶⁷ While this might be expected, given that those that use ADR are much more likely to have their complaint resolved, consumers are more satisfied with their outcome regardless of the actual outcome of their complaint – for example, for all complaints that lasted at least 12 weeks but were subsequently completely resolved, ADR users (residential and small business users) were much more positive about the outcome.⁶⁸ Such a finding tends to indicate that consumers not only receive a better outcome from ADR, but also experience a degree of benefit from having their dispute heard by an independent party - effectively ‘having their day in court’.
- 5.15 The market research also indicates that awareness of ADR (as distinct from usage) may result in improved satisfaction with the outcome of a complaint, with those who are aware of ADR less likely to experience extreme levels of dissatisfaction with the outcome of their complaint. For example, as Figure 9 shows below, 35% of those complainants who were unaware of ADR were very dissatisfied with the outcome of their complaint, as opposed to only 17% of consumers who were aware of ADR either before or during their complaint (as shown by the bottom two rows). Similarly, Figure 9 shows that consumers are less likely to be very dissatisfied with the outcome of their complaint if they are aware of ADR before they make their complaint, which supports an argument that knowledge of ADR may empower consumers in their negotiations with their provider.
- 5.16 Although this chart may indicate ADR improves consumer satisfaction, Synovate cautions that the differences in satisfaction in Figure 9 cannot be purely attributed to ADR awareness rather than ADR usage. As those that are aware of ADR will include a category of consumers that will have gone to ADR, the reduced dissatisfaction evident in this chart could be due to improved outcomes that result from using ADR rather than awareness of ADR per se.

⁶⁷ See figure 4.5 from the Synovate market research.

⁶⁸ See section 4.3 from the Synovate market research.

Figure 9: Satisfaction with outcome of complaint by ADR awareness (residential consumers)

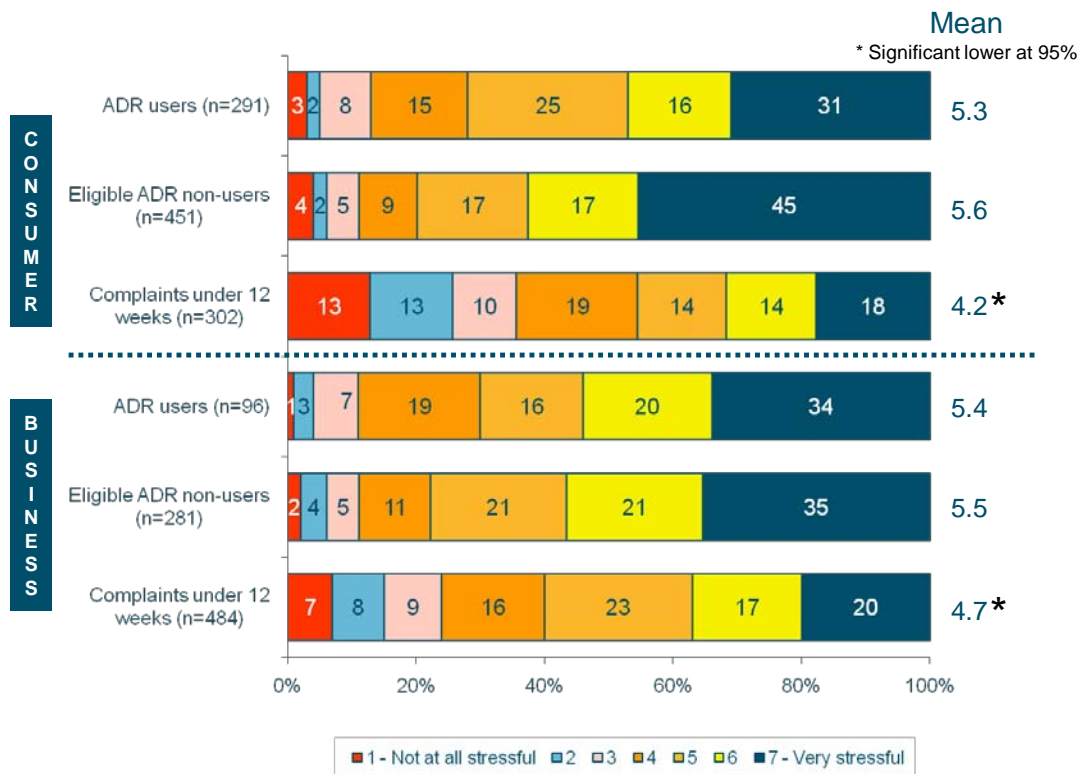


A link between ADR and reduced emotional distress

5.17 The market research also demonstrates that using ADR reduces the prospect of strong negative emotions for residential consumers with long-standing complaints. It is evident that going to ADR significantly reduces the prospect of complainants being very angry, very stressed, and slightly reduces the chance of a complainant being very worried about the process.⁶⁹ Figure 10 below shows 45% of complainants whose complaint is unresolved after 12 weeks (but do not go to ADR) are very stressed by the process, as compared to 31% of complainants whose complaint also lasted 12 weeks but who went to ADR. The corresponding graphs for ‘anger’ and ‘worry’ can be found in pages 33-34 of the Synovate market research report.

⁶⁹ See section 4.4 from the Synovate market research.

Figure 10: Levels of stress amongst complainants



5.18 It is pertinent to note that for those consumers with long-lasting complaints that do not go to ADR, whether a consumer is aware of ADR appears to have no correlation to whether they will experience strong negative emotions during the complaints process.⁷⁰

Link between ADR awareness and ADR usage

5.19 The evidence we set out in our consultation suggested that there was not a clear link between awareness of ADR and use of ADR. For example we said that although awareness of the Energy Ombudsman is much higher than that of the respective telecommunications ADR schemes (48% and 8% respectively), both the energy and telecommunications sectors have a similar proportion of long standing complaints going to ADR (10% of energy complaints lasting 8 weeks go to ADR, while 12% of telecommunications complaints that last 12 weeks go to ADR).⁷¹ The similar ratio of eligible complainants using ADR in both the energy and telecommunications sectors could call into question whether there is a barrier to telecommunications consumers accessing ADR that is sufficient to justify regulatory intervention.

5.20 However, such a conclusion ignores the fact that, given the substantially greater awareness of the Energy Ombudsman, energy ADR complainants are much more likely to have a choice as to whether to go to ADR.

⁷⁰ See figure 5.2 of the Synovate market research.

⁷¹ I.e. 10% of energy complaints that last 8 weeks go to ADR, and 12% of telecommunications complaints that last 12 weeks go to ADR.

- 5.21 It is self-evident that for consumers to be able to go to ADR they must first be aware that they have this right. Furthermore, as noted above, there is evidence to demonstrate that awareness of ADR itself (as distinct from usage) can lead to greater consumer satisfaction with the outcome of a complaint. Increasing awareness of ADR will increase the number of consumers that can choose whether to go to ADR (thereby getting improved outcomes), while also potentially leading to greater consumer satisfaction with the outcome of the complaint (for those that may not go to ADR).

Stakeholder views on awareness of ADR

- 5.22 Most respondents to our consultation agreed with Ofcom's conclusion that awareness of ADR was sufficiently low to justify a degree of regulatory intervention (CCES, 3, Citizens Advice, Consumer Focus, FCS, IDRS, the Ombudsman Service, CWU, SSE, Vodafone, Which? and one confidential respondent). Citizens Advice requested that Ofcom address this as a matter of urgency and commented that providers should not necessarily view additional cases going to ADR as a matter of concern. Consumer Focus, IDRS, the Ombudsman Service and the CWU all agreed that increased awareness of ADR would provide valuable benefits to complainants more generally as CPs would have strengthened incentives to resolve complaints before they could become eligible for ADR in order to avoid being levied an ADR case fee.
- 5.23 Six respondents considered that there was no need to increase consumer awareness of ADR or that Ofcom had not provided sufficient evidence to support the case for regulatory intervention (AIME, BT, O2, TalkTalk, and two confidential respondents). TalkTalk and one confidential respondent submitted there was a lack of evidence to show awareness of ADR is low; BT and O2 submitted there was a lack of evidence to show ADR is beneficial; while O2 and one confidential respondent commented that responsibility for increasing awareness of ADR should sit with Ofcom rather than CPs.
- 5.24 Five respondents (BT, 3, O2, Vodafone, and one confidential respondent) challenged Ofcom's position in the consultation that it was not necessary to take into account any of the 'indirect costs' that CPs would face as a result of greater ADR awareness (such as ADR case-fees, additional staffing requirements and the costs of settling complaints). These respondents urged Ofcom to factor these costs into our final impact assessment in this Statement.
- 5.25 BT submitted that it is slightly misleading to compare levels of awareness of the telecommunications ADR schemes with the financial services sector (where complaints are of an order of magnitude larger and there is significant media coverage) or the energy sector (where there has also been high media attention).
- 5.26 TalkTalk submitted that they did not think sufficient time had passed since Ofcom reduced the ADR threshold from 12 to 8 weeks to be able to fully appreciate the benefits this may have provided to consumers. 3 and Vodafone made a similar point that the Synovate research predated this change coming into effect.
- 5.27 Finally, several CPs questioned the methodology and findings from the market research and advocated caution in relying on the results (O2, Vodafone and a confidential respondent).

Ofcom conclusion on awareness of ADR

5.28 We are satisfied the evidence shows that current awareness of ADR is low. It is our position that current levels of awareness of ADR are sufficiently low as to be undermining the right of consumers to take unresolved complaints to ADR. When considering the appropriateness of Ofcom intervention to ensure that consumers are aware of their right to go to ADR we have given due regard to the evidence that many complainants have a very negative experience when trying to make a complaint⁷² and that ADR benefits those consumers that use it.⁷³ We also accept that Ofcom should consider the consequential impact that any resulting increase in awareness may have for CPs when considering whether to increase awareness of ADR and the proportionality of any proposed initiative.

Costs to CPs from Greater Use of ADR

5.29 The major cost to CPs if more consumers were to be aware of ADR is also likely to be the main reason why many CPs do not go out of their way to inform consumers of the availability of ADR – regardless of the result of a dispute, providers bear the case fee for all cases that go to ADR. If only a small proportion of the very large number of cases eligible to go to ADR were actually to go to ADR, then, just considering the ADR case fee alone, CPs could face some substantial costs. In our consultation we referred to these increased ADR case fee costs as being ‘indirect costs’, as they do not relate to the direct cost of policy proposals to increase awareness, but are a potential consequence of more consumers being able to effectively exercise their right to dispute resolution procedures.

5.30 It is difficult to say with certainty what impact any intervention will have on use of ADR. For example, comparing experiences in the energy and telecommunications sectors indicates that there is not necessarily a clear link between ADR awareness and usage,⁷⁴ suggesting that, rather than high volumes of cases necessarily going to ADR as a result of increased awareness, CPs may instead be able to mitigate some of the increased demand for ADR by resolving more complaints. While we can assume that any intervention will cause awareness of ADR to increase from current levels (23% awareness amongst consumers with complaints that are unresolved after 12 weeks), we do not know the extent to which the increase in awareness will lead to increases in ADR cases.

5.31 While we consider many CPs will choose to improve their complaints procedures to limit cases going to ADR, for the purposes of our impact assessment we need to factor in cost-estimates for a range of alternative scenarios. In the table below, we set out some illustrative figures of the additional costs of increased use of ADR under different scenarios (a calculation that factors in costs such as the ADR case fee,⁷⁵ an estimate of the increased consumer costs and an estimate of the increased case handling costs for CPs).

⁷² As outlined in section 3 above

⁷³ See paragraphs 5.13-5.21

⁷⁴ See figure 3.15 of the Synovate market research, which indicates that, despite greater consumer awareness of ADR in the energy sector, a similar proportion of consumers with long-standing complaints go to ADR in both sectors.

⁷⁵ Note, we have not revealed the specific ADR case fees for public policy reasons.

Scenario for increase in ADR cases	Additional ADR	Cost p.a.
No increase in ADR usage as CPs change processes to identify and promptly deal with unresolved complaints	0	£0
ADR usage changes in line with Ofgem experience of implementing an 8 week notification (an increase of 22%)	2,200	£1m
ADR usage doubles (an increase of 100%)	10,000	£4m
ADR usage quadruples (an increase of 300%) ⁷⁶	40,000	£16m

- 5.33 The second row reflects the experience in the energy sector when a requirement was introduced to individually inform consumers about ADR if their complaint had not been resolved within eight months. This table provides a useful indication that any Ofcom intervention to increase awareness of ADR could have significant implications for CPs if this was to translate into a large number of cases going to ADR. We consider the likely consequential impact that our specific proposals will have on CPs when we consider each in turn below.

Ofcom Comment on the Remainder of Submissions and Conclusion

- 5.34 We note several respondents had concern with the methodology of the market research and some of the specific findings, which appeared to contradict information in the market. The issues raised by respondents regarding the market research and responses from Synovate and Ofcom are attached as Annex 3. For the reasons set out in Annex 3, we believe that the Synovate research should form part of our evidence base. We note the Synovate research supports research from our 2008 consultation indicating low consumer awareness of ADR.⁷⁷
- 5.35 With respect to the claim from BT that Ofcom should not compare awareness of the telecommunications ADR schemes with those available in other sectors, we note that this was a specific action arising from submissions to our 2008 consultation. Respondents to that consultation made the point that although we had figures on the awareness of ADR in the telecommunications sector, we could not assert that such a figure was ‘low’ without examining awareness levels in other sectors. We do not expect levels of awareness to be equal across the sectors, but it is difficult to avoid the conclusion that consumers in the telecommunications sector are significantly less informed of their right to independent dispute resolution than in other sectors. When coupled with the evidence of poor complaints handling more generally we consider the case has been made for taking steps to improve awareness.
- 5.36 We note the views of TalkTalk, 3 and Vodafone that the Synovate research predated the change in the ADR threshold from 12 to 8 weeks and that Ofcom should consider the extent to which this change could have benefited consumers. We are satisfied that the 12 to 8 week change is unlikely to have improved awareness of ADR to such a level that would call into question the findings from the Synovate research. As was

⁷⁶ Note, we do not consider it practical to place much weight on a scenario where there is an increase in ADR cases of more than 100% given the likely inability of the schemes to be able to deal with these increases.

⁷⁷ See for example the results of the Ofcom Tracker Survey, http://stakeholders.ofcom.org.uk/binaries/consultations/alt_dis_res/condoc.pdf, paragraph 3.42.

clearly outlined in our Statement of May 2009, we did not anticipate that the reduction in the ADR threshold would result in more consumers being aware of ADR or more cases going to ADR – but rather it would simply shorten the period of time that a small proportion of consumers who were already aware of ADR would have to wait before being able to go to ADR. This prediction has been borne out by the fact there has been no increase in ADR cases over the past 12 months (indeed on a month-by-month comparison fewer cases are going to ADR than a year ago before the reduction in the threshold came into effect).⁷⁸

- 5.37 We believe that the low levels of awareness of ADR, even among consumers who have longstanding unresolved complaints, means that consumers are unable to effectively exercise their right to ADR. In light of the poor state of complaints handling in the telecommunications industry and the evidence that ADR improves consumer outcomes for consumers with lengthy unresolved complaints, we are satisfied that it is appropriate to consider measures to increase awareness.
- 5.38 However, this does not mean that we regard consumers' ability to exercise their right to ADR as being an absolute requirement, in the sense that this should be ensured regardless of cost. Rather, while we place high weight on ensuring that consumers are able to exercise their right to ADR, we will also need to consider the likely costs that various policy options would imply. We undertake this assessment in the section below.

Policy options for improving access to ADR and impact assessment

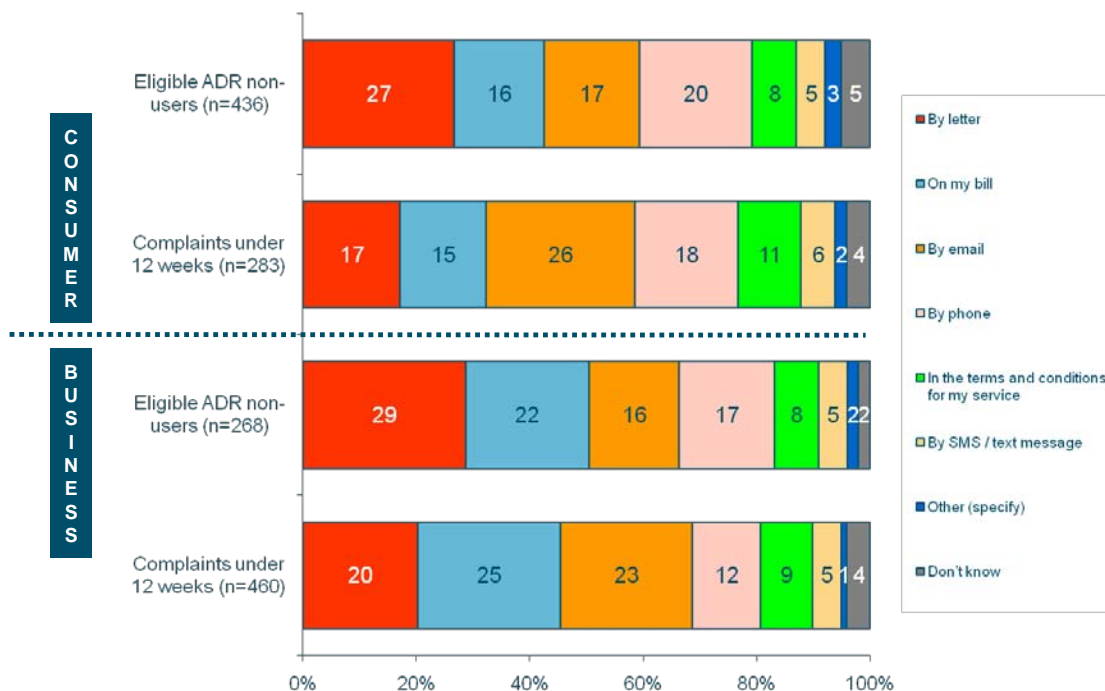
- 5.39 In our consultation we identified a number of possible options for improving consumer awareness of ADR:⁷⁹
- Option 1 – Do nothing;
 - Option 2 – General signposting of ADR;
 - Option 3 – Require CPs to send consumers a copy of their Customer Complaints Code 10 days after the complaint is first made;
 - Option 4 – Require CPs to notify consumers about their right to ADR eight weeks after their complaint is first made; and
 - Option 5 – Require CPs to notify consumers about their right to ADR eight weeks after their complaint is first made, but only for those complaints that they have subsequently escalated internally to a team responsible for handling complaints.
- 5.40 In the consultation we proposed adopting options 2 and 4: specifically, requiring CPs to include relevant information about ADR on consumers' bills and ensuring consumers whose complaints are not resolved within eight weeks are informed of their right to go to ADR. We proposed giving effect to this by inserting the requirements into the Ofcom Code, which was discussed in section 4 above.

⁷⁸ See Otelo figures at http://www.ombudsman-services.org/downloads/Otelo_Performance_report_April10.pdf

⁷⁹ These options were a refinement upon several alternatives examined in our 2008 consultation.

5.41 Before we examine the specific proposals, it is useful to examine how consumers favour finding out about ADR. Figure 11 below shows that ‘by letter’, ‘by phone’, ‘by email’ and ‘on my bill’ are the four most popular methods.

Figure 11: Views of complainants of how providers should them of ADR



Option 1: Do nothing

5.42 In our consultation we said that the only benefit of doing nothing to improve awareness of ADR is that CPs would not face any additional costs. However we noted that awareness of ADR was at an unacceptably low level, meaning that many consumers with long standing complaints were unnecessarily exposed to ongoing harm. We therefore did not consider that the status quo was a credible option.

Stakeholder Views

5.43 We have already summarised the views of stakeholders on whether a degree of regulatory intervention is needed to improve awareness of ADR, at paragraphs 5.22-5.27. As noted, there was very strong stakeholder support for Ofcom to take further action in this area, albeit several CPs were concerned that Ofcom had not provided sufficient evidence to justify taking any additional steps to improve awareness.

Ofcom Response and Conclusion

5.44 Our research demonstrates that the status quo is precluding significant numbers of consumers with long-standing complaints from deciding whether to exercise their right to take their complaint to ADR. As we summarised above at paragraphs 5.28-5.38, we consider that awareness of ADR is at unacceptably low levels and that the

status quo cannot be justified, particularly in light of the harm that is evident when consumers are unable to resolve their complaint promptly.

Option 2: General signposting of ADR

- 5.45 There is some evidence that suggests general signposting of ADR is effective at creating awareness of ADR among consumers. The Synovate research demonstrates that there is significantly higher consumer awareness of the ADR schemes in the energy and financial services sectors and that awareness of those schemes is much more likely to be a result of media coverage.⁸⁰
- 5.46 We noted in the consultation that Ofcom will continue to take steps where it can to increase awareness of the ADR schemes, for example by giving prominence to the availability of ADR on our website, in consumer-facing documents and through relevant press releases and briefings. However, we do not consider it appropriate to rely on media coverage alone. For example, it is pertinent to note that Ofcom's decision to reduce the ADR threshold from 12 to 8 weeks in September 2009 attracted minimal media coverage and did not result in any increase in cases going to ADR.⁸¹
- 5.47 In addition to our proposal to increase the visibility of CPs' Customer Complaints Codes to better inform consumers of their rights, we also consulted on two generic signposting options for improving awareness of ADR:
- requiring CPs to include appropriate wording about ADR on all paper and electronic bills; and
 - Ofcom working with the ADR schemes to improve signposting amongst consumer-facing organisations.
- 5.48 We signalled our intention in the consultation document to proceed with both initiatives.
- 5.49 We accepted there were challenges in trying to judge how effective having text about ADR on bills would be at increasing awareness. We noted that several CPs (including BT) already had information about ADR on their bills, which could call into question how effective it would be to require other CPs to also do this. The Synovate research indicates only 13% of the ADR users first heard of ADR from information provided on their bill.⁸²
- 5.50 Nevertheless, the market research indicated that many consumers would like information about ADR to be provided on bills (particularly small businesses).⁸³ We were also conscious that many of the disputes going to ADR involve some kind of billing dispute and there may be some merit in publicising the availability of the ADR schemes in such a highly relevant place for consumers. This approach could also lead to consumers finding out about ADR at the beginning of the complaint process,

⁸⁰ See figures 3.1 and 3.2 of the Synovate market research.

⁸¹ See http://www.ombudsman-services.org/downloads/Otelo_Performance_report_April10.pdf

⁸² Figure 3.3 from the Synovate market research.

⁸³ See figure 11, 16% of residential consumers and 22% of small businesses with long-standing complaints would prefer to learn about ADR from information on their bills.

which consumers say they want and which evidence suggests leads to increased satisfaction from the complaints process.⁸⁴

- 5.51 Based on responses to our 2009 information request, we estimated that including information about ADR on bills will cost the industry in the order of £200,000 in one-off costs, which is relatively low when compared to the possible benefit. These costs related to changing the billing design and are based on the assumption that the required text would be relatively short.
- 5.52 Although this proposal to include text about ADR on bills is not targeted at potential ADR users, for the relatively low sums of money involved we considered that it was an appropriate measure to take. We therefore proposed that CPs should include the following text (or Ofcom approved equivalent text) on all paper and electronic bills in a reasonably prominent manner:

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].

Stakeholder Views

- 5.53 There was widespread support from stakeholders for information about ADR to be put on bills, with many respondents taking the view that it would be a logical place for many consumers to look if they were wanting information about their rights (supported by AIME, BT, CCES, Citizens Advice, Professor Collins, Consumer Focus, the Ombudsman Service, SSE, CWU, Vodafone and two confidential submissions made by CPs).
- 5.54 The proposal regarding information on bills was opposed by seven stakeholders (Sky, FCS, 3, TalkTalk, O2, and two confidential respondents). Of those opposing this proposal, the following were the main reasons given:
- there is no evidence to suggest information on bills will be particularly effective at increasing awareness of ADR, or that it would be needed if Ofcom is successful in increasing the visibility of CPs' Customer Complaints Codes on websites (Sky, 3, O2, TalkTalk and one confidential respondent);
 - it will prompt premature consumer contact with the ADR schemes and may create the potential for consumers to 'game' their CP by using their knowledge of ADR to increase their compensation (variations raised by FCS and two confidential respondents);
 - it will be a costly exercise for CPs and may require some existing information on bills to be removed to create space (TalkTalk and two confidential respondents); and
 - it may create customer confusion, particularly amongst business customers, most of whom will not be eligible to take complaints to ADR (a confidential respondent).

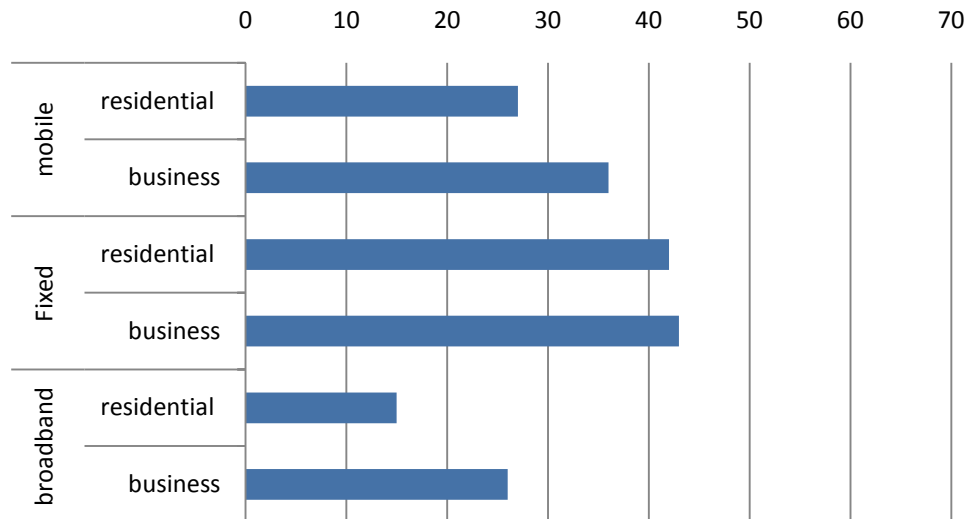
⁸⁴ See figures 5.1 and 5.3 from the Synovate market research.

5.55 There was overwhelming opposition to the specific text that we proposed should be included on bills about the availability of ADR. The vast majority of CPs wanted freedom to use their own wording, noting that Ofcom’s proposed wording was not customer-friendly and would not fit their respective brands (AIME, Sky, BT, 3, O2, SSE, TalkTalk, THUS, Vodafone and three confidential respondents).

Ofcom Response and Conclusion

5.56 We remain of the view that requiring CPs to include information about ADR on their bills is an appropriate means of increasing awareness of ADR. We agree with those respondents who pointed out that problems with either billing, charging or tariffs were one of the most significant causes of complaints for consumers with longstanding complaints and that therefore the bill is an obvious place to put information about ADR. Figure 12 below demonstrates that billing, charging and tariff problems accounted for at least between 27% and 43% of complaints about mobile and fixed services that lasted at least 12 weeks but did not go to ADR.

Figure 12: Percentage of complaints lasting at least 12 weeks that related to billing issues⁸⁵



5.57 Furthermore, evidence from Otelo confirms that 40% of the complaints it handles were related to either charging or billing issues.⁸⁶

5.58 There was nothing raised in responses that has caused us to revisit our estimate that the likely direct cost to the industry of putting information about ADR on bills would be around £200,000 in one-off costs.⁸⁷

⁸⁵ Sourced from figures 3.7-3.12 of the Synovate market research. ‘Complaints related to billing issues’ is considered to include complaints regarding overcharged or inaccurate billing, charged for cancelled services, cost of international and roaming call, inclusive calls not credited, charging for ring-tones/subscription/SMS, put on the wrong tariff/package, unexplained premium rate numbers on the bill, charge for not paying by direct debit.

⁸⁶ Figure 4, Otelo Ombudsman report 2009.

http://www.otelo.org.uk/downloads/Otelo_Annual_Report_2009_copy_1.pdf

⁸⁷ These costs relate to changing the billing design and are based on the assumption that the required text would be relatively short. Figures are sourced from an information request issued under section 135 of the Communications Act 2003.

- 5.59 A number of respondents questioned how effective this initiative would be, highlighting the fact that awareness of ADR is still very low despite the fact that BT already provides text about ADR on their paper bills. We accept that it is difficult to judge the likely impact this requirement will have on improving consumer awareness of ADR. However we are satisfied that, particularly in light of the low costs, a sufficient case has been made for requiring such information, including the very low awareness of ADR, the relatively high proportion of complaints being about billing,⁸⁸ the preference for consumers to receive information on their bills,⁸⁹ the preference for consumers to receive information about ADR at the beginning of the complaint process,⁹⁰ and the fact that receiving such information at the start of the complaints process is likely to be linked to increased satisfaction.⁹¹
- 5.60 We included the following illustrative calculation in our consultation to show the size of the increase in awareness that would justify this measure. Suppose that with this option, awareness of ADR for complainants who could potentially go to ADR were to increase from 23% to 24%. Based partly on our consumer research, we believe that this might imply an increase of up to 30,000 extra complainants a year becoming aware of their right to potentially go to ADR. Assuming the £200,000 direct cost is purely a one off cost, then the cost per complaint made aware would be of the order of £1.⁹² While we have limited information to assess the likely increase in awareness, we consider that an increase in awareness to 24% from 23% does not seem implausible and that the benefits to individual complainants of being informed of ADR will exceed £1.
- 5.61 Beyond the direct costs and benefits associated with increasing awareness of ADR, we recognise that this requirement will also have the consequential impact of increasing the number of cases going to ADR. As outlined above at paragraphs 5.29-5.33, there is the potential that these 'indirect costs' to CPs, in the form of ADR case fees, could be significant. However, we note that if more consumers exercised their right to go to ADR there would also be indirect benefits from this requirement, as our market research demonstrates that consumers with lengthy unresolved complaints benefit from going to ADR. Given that some CPs already have information about ADR on their bills and that this initiative is targeted at consumers generally rather than complainants who may be 'eligible' to go to ADR, we consider these consequential costs and benefits will be less than those that result from the eight week ADR notification obligation, which is discussed further below at paragraphs 5.96-5.116.
- 5.62 We have had discussions with some CPs who queried the necessity of requiring information about ADR to be included for online bills. We accept that, as a result of our requirement to increase the prominence of Customer Complaints Codes on websites consumers with online access will find it much easier to locate information about ADR. As such, we are now narrowing this obligation, so that information about ADR only needs to be included on *paper* bills.
- 5.63 A confidential respondent submitted to Ofcom that if a CP has a separate billing format that is used for business customers, it would be disproportionate to require text about ADR to go on these bills given that only a small fraction of those business

⁸⁸ See for example figures 3.7-3.12 from the Synovate market research

⁸⁹ See figure 11 above

⁹⁰ See figure 6.1 from the Synovate market research.

⁹¹ See figures 5.1 and 5.3 from the Synovate market research.

⁹² This illustrative figure of around £1 is calculated assuming the £200,000 is a one-off cost which results in an ongoing benefit of 30,000 extra complainants being informed about ADR each year. We assumed these benefits would last for 10 years.

customers would actually be able to go to ADR (i.e. have ten or fewer employees). Given that only a small proportion of businesses would benefit from information about ADR going on bills and the fact that small business customers will now find it easier to learn about ADR through some of our other regulatory requirements,⁹³ we are satisfied that CPs should only include text on bills for residential customers. For the avoidance of doubt, the obligation to include such information on bills for residential customers means that if a CP only uses one bill template for all its customers (residential and business) it will still need to include the relevant information, but can precede it with an appropriate qualifying statement, such as ‘if we have been unable to resolve your complaint within eight weeks and you are a residential customer or a business with ten or fewer employees...’

- 5.64 We also accept the point made by many CPs that Ofcom should not prescribe the exact text to go on bills. We are satisfied that the key elements that we wish to be conveyed to consumers can be specified, but that each CP is free to choose how to best communicate these. As such we are requiring each CP to ensure their bills:
- provide the name of the relevant Alternative Dispute Resolution Scheme;
 - make reference to the fact that the scheme offers independent dispute resolution;
 - make reference to the fact that the scheme can be accessed eight weeks after a complaint was first made to the CP; and
 - make reference to the fact that consumers can utilise the scheme at no cost to themselves.
- 5.65 Several CPs and IDRS expressed concern that consumers would prematurely contact the ADR schemes, which would cause additional costs and increase consumer frustration. We are conscious that this measure is not targeted at raising awareness amongst ‘eligible’ complainants but rather amongst consumers more generally. As such, there is a risk that consumers may see a phone number for an ADR scheme on their bill and immediately contact the ADR scheme before the point at which their case becomes eligible. We are therefore not requiring CPs to include the contact details of the relevant ADR scheme on their bill. We are satisfied that the key message that needs to be conveyed to consumers is that they have a right to have their complaint independently examined at no cost, and if consumers want the ADR scheme to examine their complaint it is not unreasonable to expect consumers to take the minimal steps required to locate the relevant contact details.

Option 3: Require CPs to send consumers a copy of their Customer Complaints Code 10 days after the complaint is first made

- 5.66 We also consulted on whether to require CPs to provide consumers with a copy of their Customer Complaints Code if their complaint had not been resolved within 10 days.
- 5.67 We noted that after 10 days the CP will have had time to make a reasonable effort to resolve the complaint, so those consumers who are still dissatisfied may be likely to benefit from receiving a Customer Complaints Code. If consumers read their CP’s Customer Complaints Code then this option may lead to many complainants being better informed about how to pursue their complaint and of their right to go to ADR

⁹³ Through increasing the prominence of CPs’ Customer Complaints Codes, text being added to terms & conditions, and receipt of the 8-week letter which is discussed further below.

(albeit many weeks before they would actually have that right). This is consistent with our survey results which suggest that knowing about ADR at the beginning of the process improves outcomes for consumers.⁹⁴

- 5.68 However, this was not our preferred option as we noted that it would potentially result in one-off costs for the industry of between of £2m to £12m, with annual costs of perhaps £30m to £40m.⁹⁵ Furthermore, many consumers may not read the Customer Complaints Code and there is also a risk that this approach could lead to a significant increase in ADR cases and case fees – particularly if consumers who would have been prepared to settle a complaint may now decide to take it to ADR. CPs have also noted that consumers are likely to find such contact very frustrating as they would want the CP to focus on addressing the complaint rather than informing them of what may happen if it remains unresolved for a further six weeks.

Stakeholder Views and Ofcom Conclusion

- 5.69 We did not receive any submissions that would cause us to revisit our initial view that it would not be appropriate to require CPs to send consumers with unresolved complaints a copy of the Customer Complaints Code after 10 days.
- 5.70 This option is likely to be costly, has the potential to frustrate consumers, and there is no evidence that recipients would actually read the Code of Practice and then recall that they have the right to go to ADR if their complaint remained unresolved.
- 5.71 We consider that consumers should already find it easier to locate a copy of the relevant Customer Complaints Code – it will be easier to find on websites, its existence will be referenced in terms & conditions, and consumers will be entitled to a free copy on request.

Option 4: Inform complainants about ADR after eight weeks

- 5.72 We also consulted on our intention to require CPs to inform consumers whose complaints had not been resolved within eight weeks of their right to go to ADR.
- 5.73 We noted that, as consumers have the right to go to ADR after eight weeks, there is merit in requiring CPs to inform those complainants of their right at the stage at which the right arises. The consultation expressed the view that this requirement would not only benefit those consumers who have unsuccessfully pursued a complaint for eight weeks by informing them of their right to ADR, but would also strengthen the complaints procedures of CPs more generally. The reasons for this include:
- to comply with this obligation, CPs would need to have procedures in place to more effectively identify unresolved complaints (addressing our concern outlined in section 3 above that many consumers find it very difficult getting their CP to recognise they are trying to make a complaint); and
 - given the prospect that many consumers who receive the letter may choose to exercise their right to go to ADR, we considered CPs would be strongly incentivised to resolve complaints before they last 8 weeks.

⁹⁴ See figures 5.1 and 5.3 from the Synovate market research.

⁹⁵ Costs might include IT changes, postage and printing, training customer agents, clarificatory calls following receipt of the Code and possible increased call handling time to determine whether the issue was 'resolved'

- 5.74 To address some concerns that this requirement may result in ADR notifications being sent to complainants where ADR may not necessarily be relevant we proposed a number of exemptions in our consultation for when a CP would not need to issue the notification after eight weeks:
- a) If it is reasonable to consider the matter resolved to the satisfaction of the customer;
 - b) If it will be resolved to the satisfaction of the customer provided that the CP takes an agreed course of action;
 - c) If the customer indicates either explicitly or implicitly by their actions that they no longer wish to pursue the complaint (we specifically noted that CPs should not have to issue notifications for one-off complaints that the consumer has not followed up);
 - d) If it is reasonable to consider the complaint to be vexatious; or
 - e) If the CP is unable to follow up with the customer after making reasonable efforts to contact them.
- 5.75 In the consultation we acknowledged that many CPs do not currently have the capability to track complaints to front-line staff or to automatically identify when eight weeks has passed from an initial expression of dissatisfaction. Fixed line operators typically already have IT systems to 'log' and monitor complaints from the initial point of contact due to the requirements of the Topcomm scheme to measure the percentage of complaints processed within 28 days.⁹⁶ However, most mobile operators are only able to monitor the number and duration of complaints that have been escalated internally to a dedicated complaints team – with this escalation typically being reactive when a consumer refuses to accept the position of the front-line agent and asks to speak to a manager. To be able to track the duration of all complaints would potentially require the mobile providers to make changes to various IT systems used by front-line staff.
- 5.76 We noted our expectation that, although having IT systems that enabled the logging and tracking of complaints from first contact may be a particularly effective means of compliance, it was not necessarily the only approach that CPs could take to identify unresolved complaints. We noted that in order to identify complaints that were unresolved after eight weeks CPs could choose to either:
1. Log and track the duration of unresolved consumer complaints from the day they are first made to front-line staff and ensure that complainants are informed of their right to go to ADR after eight weeks has passed from initial contact; or
 2. Ensure unresolved complaints are escalated by front-line staff within eight weeks to someone, who, if unable to resolve the matter, could write to the complainant informing them of their right to go to ADR eight weeks after the initial contact (i.e. we would expect someone in a dedicated complaints team to be able to manually calculate when the eight week period had expired by examining notes on the consumer's account). This could be a lower-cost option of ensuring that a CP is able to individually identify unresolved complaints, with greater costs likely to be incurred in ongoing operational costs rather than one-off IT costs.

⁹⁶ Topcomm was designed to enable fixed-line customers to compare providers on a range of quality-of-service indicators.

- 5.77 If as a result of this obligation most CPs were to amend their IT systems to enable logging and tracking of unresolved complaints (approach 1 above) then we estimated that one-off industry costs would likely be in the range of £2m to £12m.⁹⁷ While we were of the view that such costs would be proportionate to the resulting benefits for consumers, we considered the one-off costs might be significantly lower as some CPs might find it more cost effective to instead improve their escalation procedures and manual identification of unresolved complaints (option 2 above).
- 5.78 In terms of the ongoing costs, based partly on responses to our information request and 2008 consultation and partly on advice from an independent call centre expert, we estimated that the eight-week notification requirement could impose annual costs on the industry in the range of £4m-£12m. This figure includes training costs, potential increased call handling times and the costs of the notification.⁹⁸

Stakeholder Views

- 5.79 The proposal that CPs should inform those consumers whose complaints are unresolved after eight weeks that they have the right to take their complaint to ADR was certainly the most contentious aspect of our consultation.
- 5.80 Those respondents supporting the proposal included AIME, BT, CCES, Citizens Advice, Professor Collins, Consumer Focus, FCS, 3, IDRS, the Ombudsman Service, SSE, Which? and CWU. Several consumer groups thought Ofcom needed to go further and potentially require the notification to be also issued after five days (Which?) and 10 days (Citizens Advice and CWU). SSE commented that the proposal was reasonable and mirrored the requirements in the energy sector.
- 5.81 Seven CPs opposed the obligation, arguing that the proposal was disproportionate and that Ofcom had under-estimated the costs to providers (Sky, O2, TalkTalk, Vodafone and three confidential respondents).
- 5.82 The main opposition to the eight week notification proposal appears to stem from Ofcom's treatment of repeat complaints. In the accompanying guidance to the consultation we expressed the view that, for the purpose of determining whether a CP should issue the notification after eight weeks, 'we would not consider a complaint to have been resolved if, despite the CP considering that their response would be likely to satisfy the complainant, the consumer subsequently contacted the CP to indicate their ongoing dissatisfaction.' It was submitted that this would effectively require front-line staff to begin capturing information about all expressions of dissatisfaction even if the matter was reasonably considered to have been completely resolved to the consumer's satisfaction on first-contact – on the off chance that the consumer may ring back about the same issue many weeks later, subsequently prompting the eight week letter to be sent. CPs submitted that it was unrealistic for Ofcom to expect CPs to identify such issues simply by improving their complaints procedures and that all CPs would need to invest in new IT systems. It was submitted that, as fixed operators already had such IT systems, this obligation effectively discriminated against mobile providers.

⁹⁷ Our cost estimates were based on formal information requests and advice provided by a call-centre expert who undertook site-visits on our behalf. Our consultation noted the difficulty of forecasting the precise costs any more accurately without undertaking a project to study internal IT systems of CPs in considerable detail.

⁹⁸ The consultation proposed that the notification had to be in writing, but could be sent by post, email or by text message.

5.83 Other points made by respondents opposing the obligation included:

- that there are no proven and quantifiable benefits from informing consumers of their right to ADR after eight weeks (O2, TalkTalk and Vodafone);
- that Ofcom cannot support the assertion that impending ADR notification will improve the complaints handling of CPs by accelerating resolution (Vodafone and O2);
- that this obligation was not sufficiently targeted and should be dependent on consumers experiencing some kind of harm (Sky, O2, Vodafone and one confidential respondent). Respondents suggested that CPs should only have to notify consumers about ADR if the CP has internally escalated the complaint to their complaints team;
- that the obligation would add unnecessary complexity to the work of front-line agents (O2, Vodafone and one confidential respondent). Vodafone submitted that a front-line agent would not know whether any given complaint would be within the subject matter of an ADR scheme and that it would therefore be difficult for a CP to ensure consumers who are eligible for ADR receive the appropriate notification; and
- that a CP will not be aware whether any given complainant is part of a business with ten or fewer employees and should therefore receive the eight week letter. It was submitted that for a CP to determine how many employees a complainant had would add unnecessary costs (confidential respondent).

5.84 As noted above, five respondents (BT, 3, O2, Vodafone, and one confidential respondent) challenged Ofcom's position in the consultation that it was not necessary to take into account any of the 'indirect costs' that CPs would face as a result of greater ADR awareness (such as ADR case-fees, additional staffing requirements and the costs of settling complaints). These respondents urged Ofcom to factor these costs into its final impact assessment.

5.85 We address each of the issues raised by stakeholders in the following sections.

Direct costs and benefits of informing complainants of ADR after eight weeks

5.86 We accept that to some extent our proposed treatment of 'repeat complaints' undermined our expectation that CPs could manually identify unresolved complaints at relatively low cost. Vodafone's submission is relevant in summarising the view of those opposing this obligation: '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.'⁹⁹ We are confident that changes we have made since the consultation have addressed what would have been the greatest cost-driver for CPs, while still putting in place a regulatory obligation that would ensure those consumers who are likely to benefit the most from ADR receive prompt notification of this right at the eight week stage of their complaint.

⁹⁹ See

http://stakeholders.ofcom.org.uk/binaries/consultations/complaints_procedures/responses/Vodafone.pdf, page 28

- 5.87 To this end we have made some modifications to the eight week notification requirement about when, for the purpose of this one specific obligation, a CP can consider a complaint to be resolved and therefore not have to issue an eight week notification. Our accompanying guidance to the Ofcom Code will note that for the purpose of determining whether to issue an eight week notification a CP may reasonably consider a complaint to be resolved if:
- a) the CP has taken actions that mean it is reasonable to consider the complainant is no longer dissatisfied (so for example, if following a complaint a CP credits a consumer's account and it is reasonable to consider the complainant is no longer dissatisfied, the CP would not need to issue the ADR notification); or
 - b) the complainant has indicated explicitly, or it can be reasonably inferred, that they no longer wish to pursue the complaint (so for example, if the complaint is a one-off complaint and there is no further contact from the consumer during the eight week period the CP would not need to issue the ADR notification¹⁰⁰); or
 - c) the CP and complainant have agreed a course of action which, if taken, would resolve the complaint to the satisfaction of the complainant (so for example, although the substance of the complaint may not have been addressed after eight weeks, if the CP and complainant agree a course of action that would resolve the complaint the CP would not need to issue the ADR notification).
- 5.88 The net effect of this guidance is that we have slightly narrowed the potential category of recipients of the eight week letter to those consumers who contact their provider at least twice about the same complaint within an eight week period and for whom it would not be reasonable to consider that the complaint has been resolved to their satisfaction.
- 5.89 It is pertinent to note that since the consultation we have removed the specific exemptions whereby CPs would not need to issue the eight week ADR notification if a CP was unable to follow up with the complainant or where it would be reasonable to infer that a consumer has dropped their complaint. We consider the primary test for whether the CP should issue the notification is whether 'it is reasonable to consider the Complaint has been resolved'. We are content that this broad test will allow CPs to examine complaints in light of their individual circumstances and to make judgements as to whether the consumer is likely to still be dissatisfied. If it is reasonable in light of the circumstances, to consider the complainant to still be dissatisfied, then we consider it to be appropriate that the CP informs the consumer of their right to ADR. The accompanying guidance to the Ofcom Code will provide CPs with assistance as to when it may be reasonable to consider a complaint to be resolved.
- 5.90 We also wish to clarify that we would expect CPs to provide such eight week ADR notifications to both current and former customers (provided the subject matter of the complaint arose when there was a customer-supplier relationship). However, we do not expect CPs to issue such notifications to prospective customers in light of the significantly increased costs this could cause¹⁰¹ and the fact that prospective customers are typically not likely to be facing the same type of harm from an

¹⁰⁰ Note, the accompanying guidance explicitly notes that if a consumer contacts their CP twice about the same matter within an eight week period, then it will not be reasonable for the CP to infer that the consumer 'no longer wishes to pursue the complaint'.

¹⁰¹ As prospective customers are unlikely to have a customer account against which relevant information/notes could be recorded, extending this obligation to benefit those consumers would be likely to result in costs that could not be objectively justified.

unresolved complaint as current and former customers. This approach is consistent with that taken by the two ADR schemes who will accept applications from complainants even if the original complaint to the CP was made after the consumer left the provider.

- 5.91 As a result of this approach all CPs will, as a minimum, need to capture sufficient information whenever a consumer makes a complaint that is not resolved to the consumer's satisfaction. If the consumer contacts the CP again during the eight week period and the complaint is still not resolved to the consumer's satisfaction, the CP will need to have automated or manual processes in place so that an ADR notification letter can be issued eight weeks after the date of the *initial* complaint.
- 5.92 We do not consider it to be unreasonable or particularly onerous to require all CPs to have processes in place for identifying repeat unresolved complaints. We are satisfied that we have addressed a major cost-driver for CPs by explicitly ruling out the need for CPs to issue ADR notifications in scenarios where they had reasonably considered a complaint to be resolved and by also avoiding the need for ADR notifications to be issued for one-off complaints. We accept that not all complainants will therefore receive a letter if their complaint is unresolved after eight weeks, but we consider this to be a pragmatic solution that ensures those consumers who are unsuccessfully pursuing a complaint will be individually informed of their right to ADR.
- 5.93 In our post-consultation engagement with those stakeholders who had identified substantial implementation costs from this proposal, we raised this refined approach as a possible means of avoiding unnecessary costs when identifying unresolved complaints. Those CPs who considered the initial proposal would require them to capture enormous amounts of information about all expressions of dissatisfaction have confirmed that this modified approach would alleviate the need for substantial upfront IT costs and significant data capture. They have confirmed that, although they would certainly incur costs, it would be possible to comply with this obligation by improving their escalation processes.
- 5.94 We consider an eight week notification obligation could result in the following direct costs:
- our understanding from recent discussions with CPs is that **one-off costs** to the industry are likely to be relatively low (probably less than £2m). However, if most of the industry chose to invest in new IT systems to enable front-line staff to 'log' all complaints, then it is possible that these one-off costs could instead be £2m-12m (we consider such a scenario to be unlikely, but note that CPs argue that, if necessary, such IT costs would be higher); and
 - **annual ongoing costs** for the industry that are likely to be £4-12m as CPs incur additional costs identifying unresolved complaints and issuing notifications after 8 weeks.¹⁰²
- 5.95 As noted above, we consider this requirement to be highly targeted, being designed to increase awareness of ADR amongst a specific group of consumers who have accrued the right to go to ADR. Those consumers who have been unsuccessfully pursuing their complaints with their CP will directly benefit from being individually notified of their right to ADR and the next steps they could take towards resolution. We note this obligation mirrors an obligation from the energy sector.

¹⁰² The direct costs we have identified are the result of two section 135 requests and some projected costs provided by a call-centre expert who visited the call centres of five major CPs in order to assess the steps each would need to take to become compliant.

Indirect costs and benefits of informing complainants of ADR after eight weeks

- 5.96 Five respondents (BT, 3, O2, Vodafone and one confidential respondent) submitted that Ofcom should have accounted for the costs the industry will face from greater ADR awareness. As well as the direct costs of notifying relevant complainants about their right to go to ADR, we acknowledge there will be additional indirect costs and benefits flowing from consumers' increased awareness, such as improved outcomes for consumers who go to ADR and the resulting increase in case fees from an increase in the number of disputes going to ADR.
- 5.97 The indirect costs and benefits from the increased use of ADR reflect the fact that consumers are able to exercise their right to effective dispute resolution and complaints handling procedures, a right from the Communications Act 2003. Arguably they fall outside the scope of our impact assessment which is not intended to test whether consumers should have the right to 'easy to use, effective and transparent complaints handling and dispute resolution procedures'.
- 5.98 Our impact assessment focuses on assessing the cost effectiveness of options to provide consumers with information about their right to use ADR. Nonetheless when assessing options for improving awareness of ADR we consider that the indirect costs and benefits are relevant to our assessment of proportionality. But although we will take them into account in our impact assessment, we consider it is appropriate to attach less weight to them than the direct costs and benefits associated with an increase in awareness of ADR, for the reasons in the previous paragraph. We have tried to give some illustration of the possible size of some of these indirect costs and benefits of the eight week obligation below, although there is very considerable uncertainty over the scale of them.
- 5.99 The eight week ADR notification obligation could potentially lead to the following types of indirect costs and benefits:
- increased awareness/use of ADR improves consumer outcomes;
 - wider consumer benefits as CPs improve complaint handling;
 - the costs to CPs of greater use of ADR;
 - the increased costs of improved complaint handling; and
 - the potential costs of increased compensation payments.
- 5.100 We consider these in turn below. To some extent CPs have a choice between the different type of indirect costs they will face. The eight week ADR notification obligation may lead to greater use of the schemes or CPs may respond by improving complaints handling processes resulting in lower use of ADR.

Increased Awareness/Use of ADR Improves Consumer Outcomes

- 5.101 We consider this eight week ADR notification requirement will not only increase the proportion of eligible complainants who are aware of their right to ADR, but will result in improved outcomes for those who subsequently take those complaints to ADR.
- 5.102 As set out above at paragraphs 5.13-5.21, we believe we have demonstrated that ADR has an important role in providing a remedy of last-resort. The research demonstrates a link between the use of ADR and the resolution of long-standing

complaints, increased satisfaction with the complaints process and a reduced likelihood of consumers feeling very stressed, worried or angry during the complaints process.

- 5.103 It is difficult to estimate how many consumers will directly benefit from this obligation by taking their unresolved complaint to ADR, as rather than necessarily issuing ADR notifications CPs may instead choose to improve their complaints procedures to limit the extent of the ADR case fees they pay (discussed further below). Given the likely capacity constraints on the ability of the ADR schemes to accept large numbers of applications in the short term, we consider it reasonable to consider that approximately 2,200¹⁰³ to 10,000¹⁰⁴ consumers may directly benefit from taking their complaint to ADR (although many more may actually receive the notification).

Wider Consumer Benefits as CPs Improve Complaints Handling

- 5.104 In the consultation document we noted that the indirect benefits of greater awareness of ADR would include:
- improved outcomes for those consumers with long-standing complaints who may subsequently exercise their right to take their complaint to ADR (as demonstrated by the research findings above); and
 - improved outcomes for complainants more generally as CPs are better incentivised to resolve complaints before they become eligible for ADR.
- 5.105 With respect to the latter point we described some of the potential wider benefits associated with greater awareness of ADR. We commented that, given CPs pay the ADR case fees, we would expect greater consumer awareness to incentivise CPs to attempt to avoid cases going to ADR, primarily by resolving complaints before they last eight weeks. We noted that we expected many CPs would respond to the prospect of facing additional costs from more cases going to ADR by improving their complaints handling processes and by more effectively identifying unresolved complaints. Particularly with respect to the eight week ADR notification obligation, we consider this to be a logical assumption to make – for many CPs it will be more cost-effective to resolve complaints than for them to go to ADR, and rather than necessarily sending out tens of thousands of notifications to dissatisfied consumers about their right to ADR, we consider most CPs will re-examine those unresolved complaints to ensure only those consumers with truly entrenched complaints that cannot be resolved bilaterally will receive ADR notifications.
- 5.106 This conclusion was supported by Consumer Focus, IDRS, the Ombudsman Service and the CWU, all of whom agreed that increased awareness of ADR would provide valuable benefits to complainants more generally as CPs would have strengthened incentives to resolve complaints before they could become eligible for ADR.
- 5.107 As outlined in section 3, the impact on complainants who are unable to resolve their complaint promptly (i.e. the 30% of complainants that cannot resolve their complaint within 12 weeks) is considerable. Improved complaints handling (incentivised through this policy option, which will require improved complaint identification by CPs and

¹⁰³ Representing a 22% increase in cases, as was the case when a similar obligation was introduced in the energy sector.

¹⁰⁴ We consider it doubtful whether the ADR schemes could accept more than a 100% increase in their current caseload in the short-term.

encourage CPs to resolve complaints before the eight week ADR eligibility threshold) may have benefits beyond just those consumers who subsequently go to ADR:

- improved complaint handling may reduce the time consumers spend pursuing complaints. For complaints that last longer than 12 weeks, our consumer survey found that consumers spend an average of 10-14 hours actively pursuing the complaint, compared to 3-6 hours for complaints resolved in less than 12 weeks.¹⁰⁵ It seems natural that consumers spend longer pursuing complaints that take longer to resolve. However, part of the reason that complaints lasting longer than 12 weeks involve a significant commitment of time by consumers pursuing the complaint is that some consumers struggle to have their complaint taken seriously by the CP;¹⁰⁶
- improved complaint handling may reduce the direct costs that consumers incur when pursuing complaints. Our research indicated that consumers incur average costs of between £100-200 for such 'long-lasting' complaints, compared with approximately £60 for complaints resolved within 12 weeks;¹⁰⁷ and
- improved complaint handling may reduce the strong negative emotions that often accompany long standing complaints. Our research indicates that consumers with long standing complaints are much more likely to experience higher levels of stress, worry, and anger.¹⁰⁸

5.108 For illustrative purposes we have quantified the scale of this potential consumer benefit. 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 approximately 2 million complaints a year where consumers regard the complaint as being unresolved for more than 12 weeks and are unaware they may have the right to go to ADR.¹⁰⁹ We have estimated the potential benefit if half of these complaints were handled more quickly by CPs (either because compliance with this obligation requires CPs to better identify unresolved complaints or because CPs will have improved incentives to resolve complaints before eight weeks passes).

5.109 We have considered the impact on consumers if more effective processes reduced the amount of time consumers with lengthy unresolved complaints had to spend pursuing the case by one hour on average, and saved the consumer £10 in costs pursuing the case (i.e. their costs fall from around £150 to £140). In these circumstances this requirement could lead to the following consumer benefits: each hour saved would release consumer benefits of around £11m,¹¹⁰ each £10 saved

¹⁰⁵ See section 7.2 of the Synovate market research.

¹⁰⁶ As evidenced by the fact that long-lasting complainants experienced greater difficulty getting their CP to acknowledge that they were trying to make a complaint.

¹⁰⁷ See section 7.2 of the Synovate market research.

¹⁰⁸ See paragraphs 3.34-3.37 above and section 7.2 of the Synovate market research.

¹⁰⁹ Our market research found that 7% of the population had a complaint that was unresolved after 12 weeks and that of these only 23% were aware of ADR. With an adult population in the UK of around 48 million, this would imply 2.6 million complaints unresolved at 12 weeks where the complainant was unaware of ADR. However, some of these complaints may be about matters outside the remit of the ADR schemes, so the actual number of complaints may be somewhat less than 2.6 million. We have assumed it may be of the order of 2 million.

¹¹⁰ We have assumed the value of an average person's time is £11 per hour. This is based on a recent HM Treasury document put the value of an average employee's time at £14.20 including a 30% uplift for staff overheads. For our purposes we exclude the 30% overhead to value an average

would release consumer benefits of £10m. We recognise the inherent uncertainty in the scale of these benefits which could turn out to be larger or smaller, but this approach provides a useful indication of the scale of potential benefits that could result from improved complaints handling. If the eight week obligation makes even relatively small changes in the amount of money or time that consumers spend pursuing complaints then this obligation could realise benefits of tens of millions of pounds.¹¹¹

The Costs to CPs of Greater use of ADR

- 5.110 As outlined above at paragraphs 5.29-5.33, any increase in awareness of ADR will have a consequential impact as CPs incur additional ADR case fees as additional consumers exercise their right to go to ADR,
- 5.111 It is difficult to say with certainty what impact this eight week notification obligation will have on use of ADR. As we noted in the consultation, when the energy sector introduced a similar measure there was a 22% increase in ADR cases in the following twelve months.¹¹² This may offer a useful comparison, albeit certainly not a definitive benchmark. We should be cautious to assume that the effect will be similar in the telecoms sector because: the nature of the complaints may be different, the initial number of complaints is higher in telecoms sector, awareness of the Energy Ombudsman is much higher than the telecoms ADR providers and may have been higher prior to the change in the eight week notification policy.
- 5.112 Vodafone noted that a 50% increase in caseload may be a useful starting point for calculating the likely impact on the industry, although other respondents did not comment on a likely increase – except to note that Ofcom should factor in such indirect costs to its impact assessment.
- 5.113 We consider it to be a reasonable assumption that as a result of the eight week obligation there may be an increase in ADR awareness that results in a subsequent 22%-100% increase in cases (costing both industry and consumers between £1m and £4m).

The Increased Costs of Improved Complaint Management

- 5.114 As noted above, we expect CPs will have an incentive to resolve complaints before they progress to the stage where they will be eligible for ADR (in order to avoid ADR cases fees). While this will provide benefits to consumers, we need to recognise it will also require CPs to spend more than they currently do on handling complaints. Any such costs would vary considerably by CP but could potentially include additional staff training, increased staff numbers, and improved escalation processes.
- 5.115 As with the obligation for CPs to have ‘fair’ complaints procedures,¹¹³ we do not consider it necessary for Ofcom to try to quantify with any degree of precision the additional costs CPs may face from identifying and resolving complaints more effectively. The precise costs will depend on the nature of each CP’s existing procedures and their commitment to reduce the number of complaints lasting eight weeks. We might expect the cost of resolving more complaints to be less than the

person’s time at £10.92 in January 2010. See section 4.3 of <http://www.hmrc.gov.uk/research/cost-of-time.pdf>

¹¹¹ See paragraphs 3.25-3.31

¹¹² Although we note that since this initial increase, ADR cases have actually fallen on a month-by-month comparison over the past year.

¹¹³ Discussed at paragraph 4.89.

alternative cost of raising awareness amongst eligible complainants, or else CPs would have more of an incentive to raise awareness. We also note that to the extent that CPs incur costs on improving their management of complaints, there will also be corresponding benefits to consumers. There is very considerable uncertainty over the size of these indirect costs but it is certainly possible that they might be of the order of tens of millions of pounds.¹¹⁴

The Potential Costs of Increased Compensation Payments

5.116 Increased awareness of ADR could alter CPs' incentives to offer more generous compensation. For example, rather than issue the eight week ADR notification to a clearly dissatisfied consumer a CP may give compensation to settle a case that they otherwise would not, or increase the size of their settlement offer in an attempt to avoid the costs involved in using ADR. This would increase firms' costs. By way of illustration, if 100,000 consumers were able to negotiate an increased settlement of on average £50¹¹⁵ such that CPs were able to avoid ADR (and thereby avoid incurring an ADR case fee) then the annual cost to CPs could be £5m.

Comparing the eight week ADR notification obligation with other options to increase awareness

5.117 A key consideration for Ofcom has also been whether it would be more appropriate to proceed with generic signposting obligations alone (i.e. information about ADR on bills and improved visibility of Customer Complaints Codes on websites), rather than also requiring providers to individually notify consumers of ADR after eight weeks.

5.118 The consultation document noted that although we considered generic signposting was an appropriate means of informing consumers of their right to ADR given the relatively low costs of implementation, we said that we did not consider generic signposting would be sufficient by itself to address the consumer harm we had identified.¹¹⁶ This position remains unchanged and we consider that, given the scale of poor consumer complaints handling and the low awareness of ADR, the additional benefits from an eight-week letter obligation are sufficient to justify the additional costs of also requiring this obligation. Relevant considerations for this approach include:

- the scale of the lack of awareness problem is large, with perhaps 3 million complaints outstanding at 12 weeks and only around 23% of those complainants being aware of ADR;
- some CPs already include information about ADR on the back of their bills. BT, O2, THUS and Virgin Mobile already do this (so therefore nearly half of all customers currently receiving paper bills already receive information about ADR);
- the benefit of the eight-week ADR letter is not simply in raising awareness of ADR amongst 'eligible' complainants, but it may be particularly effective at getting CPs to improve their internal complaints practices. By virtue of the need for CPs to identify unresolved complaints in order to comply with this obligation we think many CPs will now be more effective at recognising when consumers are

¹¹⁴ See paragraphs 5.29-5.33.

¹¹⁵ The current average ADR settlement is around £100 for the 12 months to March 2010,

<http://www.tosl.org.uk/pages/4performance.php>

¹¹⁶ See paragraph 6.100 of the consultation document

expressing dissatisfaction and will identify complaints that many consumers may have previously struggled to get recognised;

- the eight-week requirement provides a very strong incentive on CPs to resolve complaints before eight weeks have passed. As we have outlined above, we consider it reasonable to conclude that CPs will resolve more complaints rather than send out a letter to a category of complainants who are likely to be having a very unsatisfactory experience pursuing their complaint and who are likely to be a receptive audience to a letter outlining their right to seek an independent examination of their case;
- the most preferred option for consumers with long-standing complaints wanting to receive information about ADR is through a letter to them from their CP (favoured by 27% of such consumers and 29% of such SMEs); and
- the evidence suggests that different consumers would prefer to receive information about ADR in different ways and our requirements ensure that a wide range of consumers with longstanding complaints are likely to be made aware of their rights (through the individualised eight week notification at the stage at which consumers accrue the right to ADR, the increased visibility of Customer Complaints Codes on websites for consumers who are actively looking for information, and information on bills which, for example, is likely to be particularly relevant for consumers without internet access or who have a billing complaint).

5.119 We are therefore satisfied that, although it is difficult to quantify the precise benefits from the obligation to notify complainants at 8 weeks of ADR, it is reasonable to conclude that the obligation will provide sufficient benefits to consumers beyond those provided by more generic signposting options to justify Ofcom adopting this requirement.

Considering exempting small business consumers from receiving the eight week ADR notification

5.120 With respect to the submission that business customers should be excluded as potential recipients of the eight week letter due to the difficulties a CP may face in ascertaining whether they have ten or fewer employees (and are therefore potentially eligible for ADR), this was an issue we previously canvassed in the consultation.

5.121 The consultation noted it may not always be practical for CPs to ascertain whether the bill payer is part of a business with ten or fewer employees. To do so could increase call handling time and potentially cause unnecessary frustration for the consumer concerned. However, given the benefit that ADR can provide to small business users and the fact that we have a duty to ensure appropriate dispute resolution procedures are available for domestic *and* small business customers, we are satisfied the eight-week ADR notification should apply to both residential and small business users.

5.122 We want to signal to CPs that, as with all our investigations, there is an element of reasonableness that can be read into assessing compliance. We would be satisfied if a CP had reasonable internal processes/guidelines in place for identifying whether any given account was a small business and therefore eligible to receive the eight-week ADR notification. For example, some CPs may choose to enquire about the number of employees a small business has, while others could apply a reasonable proxy of annual expenditure for making a judgment as to whether a business is likely

to have 10 or fewer employees. Ofcom would only become concerned if a CP's procedure for identifying small business consumers was unreasonable.

Responding to other points made by respondents regarding the eight week ADR notification

- 5.123 We do not agree with the claim made several respondents that the proposed obligation was not sufficiently targeted. By virtue of only targeting those consumers that have been unsuccessfully pursuing their complaint for eight weeks, this obligation is targeted at the precise group of consumers who will benefit from being informed about their ability to seek an independent examination of their case. We want to be careful not to encourage excessive use of ADR so consider it reasonable to require CPs to inform consumers with outstanding complaints at a stage when both parties have had time to reach an appropriate resolution.
- 5.124 We accept the submission that the obligation will add a degree of complexity to the work of front-line agents, but only to the extent that when it is apparent that a consumer is making a complaint it will now be unacceptable to ignore the consumer. We appreciate that some front-line agents may now need to seek further information from consumers and will need to record sufficient detail of the nature of the complaint so that it is possible to see if a consumer is complaining about a recurring problem. Given the scale of the problem with complaints handling in the telecommunications industry we do not think this approach to be unreasonable.
- 5.125 We also recognise that prior to sending out the ADR notifications at eight weeks someone internally will need to examine the case and make a judgment on whether it is within the terms of reference of the ADR scheme. Vodafone submitted that this would be beyond the skills of a front-line agent, with the implication that front-line agents would end up unnecessarily escalating a high volume of unresolved complaints internally to someone with more skills who may subsequently decide that the consumer does not require an ADR notification. It is perfectly within the ability of CPs to choose whether this filtering of cases that are eligible for ADR is undertaken by front-line agents or by back-office staff and we do not believe it is a particularly onerous task for the jurisdiction of the ADR schemes to be succinctly summarised to assist staff in this task. Furthermore, even if the filtering was being undertaken by back-office staff (so front-line staff simply escalate all unresolved complaints), there will still likely be benefits to consumers from having the complaint they have been unsuccessfully pursuing for some time being dealt with at a more senior level. We consider that over time CPs will be able to determine the most cost-effective means of complying with this requirement, including the extent to which decisions on whether a complaint is eligible for ADR is undertaken by front-office staff or a dedicated complaints team.
- 5.126 Finally, we accept the point made by several respondents that the requirement for the written notification to include the term 'alternative dispute resolution' would limit the ability of CPs to use text messages to notify consumers about ADR. As a result we have modified the obligation so that the CP must inform the Complainant of the availability of independent dispute resolution, but have not prescribed any specific text that must be used to convey this concept.

Ofcom conclusion on the eight week notification

- 5.127 We are satisfied that, given the low levels of consumer awareness of ADR and the significant difficulties many consumers experience when trying to make and pursue a complaint against their CP, that it is appropriate to require CPs to notify those

consumers whose complaints have not been resolved within eight weeks that they have the right to take their complaint to ADR.

5.128 The eight week notification is the central aspect of our drive to address areas of consumer harm from complaints handling. We anticipate that this obligation will:

- directly benefit consumers with long-standing unresolved complaints by ensuring they are informed of their right to go to ADR (with the research indicating low awareness is undermining Ofcom's ability to ensure dispute resolution procedures are 'effective'); and
- indirectly benefit complainants who may otherwise encounter procedural difficulties getting their complaint recognised by their CP.¹¹⁷ With a regulatory obligation to identify consumers who have unresolved complaints we expect CPs will improve their identification of ongoing issues and will have strong incentives to reduce the number of complaints that last 8 weeks without being resolved (to avoid an ADR case-fee).

5.129 We accept that our impact assessment relies on non-cash releasing benefits to consumers from increased awareness of ADR and improved complaints handling, and that we have had to make some assumptions about the costs CPs will face from this obligation. We have therefore not been able to fully quantify a cost benefit analysis. But the justification for our decision is in any case wider than a simple cost benefit analysis, as it relies on ensuring individual consumers are able to exercise their rights and be treated fairly. As we said in the consultation, the justification for having a robust ADR regime is broader than a simple cost benefit analysis – particularly when one considers that the average case fee for Otelo and CISAS significantly exceeds the average financial award made to consumers.¹¹⁸

5.130 While we believe there is a case for increasing the levels of awareness of ADR compared to current levels, it is not our intention to encourage a large number of complaints to actually proceed to ADR. ADR is not a costless process and is therefore not a suitable option for all complaints. A risk of raising awareness of ADR is that a large number of relatively minor complaints go to ADR, or that CPs take disproportionate measures to avoid complaints going to ADR, such as settling complaints in the consumers' favour even when the complaint is unmeritorious. However, by only requiring notification for complaints that a consumer has actively pursued, we anticipate these risks are to some extent mitigated. As noted above, we expect CPs to instead respond to this obligation by improving their complaints procedures and resolving a number of complaints that may otherwise be 'falling between the cracks'.

5.131 We consider this obligation to be justified in light of the low awareness of ADR, the poor state of complaints handling in telecommunications industry,¹¹⁹ the benefits ADR provides to those consumers who are unsuccessfully pursuing long-standing complaints,¹²⁰ and our view that this obligation is likely to incentivise improved complaints handling more generally.¹²¹

¹¹⁷ We note that the Synovate research shows 37% of complainants with long-standing complaints expressed strong dissatisfaction with the inability of their CP to recognise that they were trying to make a complaint.

¹¹⁸ See Otelo Annual Report 2008/09, which indicates the average Otelo award in 2008/09 was £104.

¹¹⁹ See section 3 above

¹²⁰ See paragraphs 5.13-5.21

¹²¹ See paragraphs 5.104-5.109

5.132 We acknowledge that ensuring that consumers are aware of their right to use ADR will also have to consequential impacts on CPs, including increased demand for ADR; and that increased demand could therefore impose indirect costs on industry (for example increased case fees or more resources devoted to effectively identifying and handling complaints). However, taking the possible indirect costs into account and on the basis of the evidence we have available we consider this eight week ADR notification obligation to be a proportionate and objectively justifiable measure.

Option 5: Inform complainants about ADR after eight weeks, but only if the complaint is escalated

5.133 We consulted on a variation on the eight week notification examined above (option 4), where CPs would be required to issue the ADR notification eight weeks after the consumer first complains to a front-line agent, but only for those complaints that are subsequently escalated internally to a CP's complaints department. The rationale for considering this option is that CPs would not need to incur any costs for altering their IT systems to monitor unresolved complaints.

5.134 We noted that this proposal would be unlikely to result in as many consumers being notified of their right to ADR as option 4 discussed above and it would not require front-line agents to recognise when a consumer has an unresolved complaint that needs further action. The only significant change that is likely to occur is that complaints may be resolved quicker once they have reached a dedicated complaints team. However, our view is that those consumers that manage to have their complaint dealt with by a dedicated complaints team typically have a relatively good experience. Indeed, when we undertook site-visits to major call centres, all the complaints teams noted that it would be extremely unusual for an 'escalated complaint' not to have been resolved within eight weeks.

5.135 We also noted that a particular risk of this option is that CPs may be given perverse incentives not to escalate complaints from frontline staff, which could reduce the effectiveness of CPs' own internal efforts to resolve complaints and operate against consumers interests.

5.136 We therefore did not regard this option as being an appropriate means of either increasing awareness of ADR or incentivising changes in CPs' complaints handling.

Stakeholder Views

5.137 This proposal did not attract much comment from stakeholders, with most choosing to express a view for or against Ofcom's recommendation to pursue option 4.

5.138 The Ombudsman Service noted that making the receipt of an ADR notification dependent on whether a CP chose to escalate a consumer's 'potentially places significant hurdles in the way of consumers'.¹²²

5.139 Several CPs who were opposed to informing complainants about ADR after eight weeks supported the idea that they should instead be able to notify complainants about ADR after eight weeks if the complainant has been successful in getting their complaint escalated internally by a CP to their dedicated complaints team. An

¹²² See

http://stakeholders.ofcom.org.uk/binaries/consultations/complaints_procedures/responses/OmbudsmanServices.pdf

alternative approach that was suggested was for the ADR notification to only apply when consumers are suffering some form of harm or detriment.¹²³

Ofcom Response and Conclusion

- 5.140 We remain of the view that this option is not practical. While it may result in some minor increase in awareness of ADR, it is unlikely to be effective as it would not impose an obligation on CPs to treat unresolved complaints differently when they are first made to front-line staff. Those consumers who are currently successful in getting their complaint escalated internally already appear to have a significantly improved experience. Moreover we are concerned that CPs would avoid having to inform consumers about ADR by not escalating complaints, and this could even make complaint handling less effective than currently.
- 5.141 One benefit of this approach is that it clarifies that CPs do not need to log unresolved complaints. However, we do not consider this to be a reason for favouring this proposal as we are satisfied that compliance with option 4 (notification to complainants after eight weeks) would not necessarily require new IT systems to enable logging and tracking of all complaints.
- 5.142 We are not persuaded that individual ADR notification should be linked to some arbitrary judgment by CPs as to the scale of harm that a complainant is likely to be facing. It would not be practical for us to effectively draw a line on where we think a consumer is suffering sufficient harm to require an ADR notification to be issued. To do so would be to likely overlook many instances where consumers may not be facing financial harm from a complaint but are nevertheless suffering significant inconvenience and emotional harm that may be addressed by ADR. If, as is implied, CPs are reluctant to inform consumers with relatively 'minor' complaints about their right to ADR then a more logical approach would be for the CP to address the source of the dissatisfaction within eight weeks. We recognise not all complaints can be resolved – but as is outlined below, for those complaints that are being pursued by a complainant, have not been resolved after eight weeks, and are within the jurisdiction of the ADR schemes, we consider it reasonable that such complainants are informed of their right to take their complaint to ADR.

Our preferred options for improving awareness of ADR

- 5.143 For consumers to be able to exercise their right to ADR as provided by section 52 of the Act, they need to know they have such a right. We are satisfied that regulatory intervention to increase awareness of ADR is justified to ensure effectiveness of the right to ADR.
- 5.144 We believe that options 2 and 4 examined above – general signposting to ADR (including information on consumer bills) and providing notice to consumers with unresolved complaints after eight weeks – are the most appropriate options for improving awareness of ADR. As we have noted, we do not consider that consumers' ability to exercise their right to ADR should be ensured regardless of cost. However, we are satisfied that the costs of these two obligations are proportionate and justifiable in light of the very low levels of awareness of ADR,¹²⁴ the role of ADR in

¹²³ See

http://stakeholders.ofcom.org.uk/binaries/consultations/complaints_procedures/responses/Vodafone.pdf, page 28-29.

¹²⁴ As outlined in paragraphs 3.38-3.43.

protecting consumers improving outcomes for complainants,¹²⁵ and the poor standards of complaints handling in the telecommunications sector.¹²⁶

5.145 We are satisfied that our preferred options of including information about ADR on bills and requiring CPs to notify consumers about ADR if their complaint has lasted eight weeks both fall within our duties under section 3 of the Act (including our principal duty of furthering the interests of consumers and citizens) and also meet the required tests under section 47(2) of the Act, as follows:

(a) It is:

- objectively justifiable:

Given the low levels of ADR awareness, we consider these requirements to be objectively justifiable as they will better inform consumers of their right to take unresolved complaints to ADR and will better ensure that the right to ADR is effective. As we have noted at paragraphs 5.8-5.38, improved awareness of ADR is likely to have a range of other indirect benefits, including improving the prospect of resolution for long-standing complaints, improving consumer satisfaction with the outcome of the complaint, and reducing the prospect of strong negative emotions for consumers with long-standing complaints. We also consider these requirements will improve the ability of CPs to identify unresolved complaints and will create strong incentives on CPs to resolve complaints before they become eligible to go to ADR.

Including information about ADR on bills is likely to increase general consumer awareness of ADR, which the Synovate research demonstrates is also likely to lead to improved outcomes for consumers. The eight week ADR letter is targeted at those consumers who have the right to go to ADR and are likely to benefit from increased awareness at this stage.

- not unduly discriminatory:

We consider that the changes are not unduly discriminatory as they apply equally to all CPs. The requirement to include information about ADR on bills will apply to all CPs and to paper bills. With respect to the eight week ADR notification, we have taken steps to accommodate existing variances in how CPs receive complaints by providing some flexibility in the way in which CPs (most likely to be mobile providers) can choose to monitor the duration of unresolved complaints.

- proportionate:

We consider that the preferred obligations are proportionate to achieving the aim of informing consumers of their right to go to ADR, while also addressing some of our concerns with industry complaints handling more generally. We are satisfied that we have adopted the least-intrusive measures that meet our aim of increasing awareness of ADR and improving standards of complaints handling in the telecommunications sector.

Including information about ADR on bills is likely to result in one-off costs of £200,000 for the industry, which we consider is a very cost-effective means of

¹²⁵ As outlined in paragraphs 5.8-5.38.

¹²⁶ As outlined in paragraphs 3.17-3.57.

raising consumer awareness. The eight week ADR notification could result in ongoing annual costs of £4m-£12m and one-off costs of £2m-£12m, although we consider our flexibility on how CPs can meet this requirement means the one-off costs will be at the low-end of this scale and in any event would be proportionate. We are aware that both these initiatives to increase awareness of ADR will result in further 'indirect costs' to the industry of potentially £10m-£20m (from ADR case fees, increased costs associated with managing complaints and from 'settling' complaints to avoid ADR).¹²⁷ However, as outlined above, we place less weight on these indirect costs given that a prior decision has already been made that the benefits to society of giving consumers the right to ADR outweighs the costs to providers.

In light of the right of consumers to take unresolved complaints to ADR, the low awareness of ADR and the benefits that ADR provides to consumers with lengthy unresolved complaints, we consider these costs are proportionate to the aim to be achieved. In reaching this conclusion we have also taken into account our expectation that this obligation will improve CPs' identification of unresolved complaints and will incentivise complaint resolution.¹²⁸

- transparent:

We consider that the initiatives and their likely effect have been explained clearly in this document. We have also drafted guidelines to further clarify our intention and expectations for implementation (see Annex).

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

Other options for improving access to ADR

5.146 As well as the initiatives for improving awareness of ADR, we consulted on two options designed to improve access to ADR regarding to the training of staff and the issuance of deadlock letters. We considered that, in light of the benefits available to consumers who take lengthy unresolved complaints to ADR,¹²⁹ these were justifiable obligations for improving access to ADR.

Staff Training

5.147 When providing guidance in 2003 on the characteristics needed for an effective ADR scheme, the Director General of Telecommunications commented that 'in order for direct access to be practical, the communications provider must adequately publicise the availability of the dispute procedure scheme....Communications providers' call

¹²⁷ See paragraphs 5.29-5.33 and 5.96-5.116.

¹²⁸ See 5.104-5.108.

¹²⁹ As noted above in paragraphs 5.13-5.21.

centre staff should be fully briefed on the existence of the appropriate dispute procedure scheme.¹³⁰

- 5.148 In the consultation we commented that our visits to contact centres we were struck by the very low awareness amongst front-line agents of a consumer's right to take a complaint to ADR – the overwhelming majority of front-line staff we spoke to were unaware that consumers had this right. We did not consider that the status quo is acceptable for ensuring an effective ADR regime.
- 5.149 While we noted that front-line agents should not necessarily be expected to refer consumers to ADR, we would expect agents to at least be aware that consumers have this right, so that they realise that consumers have other options if they are dissatisfied with the way in which their complaint is handled and can also clarify any relevant consumer queries.
- 5.150 We considered there to be merit in formalising this expectation by requiring as part of the Ofcom Code that CPs ensure front-line staff are fully informed of the right of consumers to use ADR. To the extent which ADR notification obligations are also imposed, we considered that front-line staff should also be informed of Ofcom's role in investigating compliance with General Conditions (and particularly any eight-week notification requirement). We did not consider this to be an onerous obligation and would simply require CPs to take steps to ensure their staff are appropriately informed. While there would be some small costs we considered these will be minimal if information is provided to staff members through regular training or through electronic circulation of relevant information.

Views of Stakeholders

- 5.151 With the exception of one respondent, all submissions supported requiring CPs to ensure that front-line staff are trained about the right of consumers to take unresolved complaints to ADR. The Ombudsman Service submitted that 'in our view, too many consumers find that their CPs front-line agents are unaware of the existence of their right to use ADR, and as a result may spend much longer pursuing the complaint before they are told, or they find out by accident. Delays in eligible complaints being referred to ADR is likely to lead to an increase in consumer detriment, especially where charges are still being applied and no service is provided.'
- 5.152 BT submitted that, rather than front-line staff being trained about ADR, it should be sufficient if they can easily located information about ADR when required in the context of their role.
- 5.153 Four respondents queried why Ofcom considered it necessary for front-line staff to be trained about Ofcom's enforcement powers, when that information would not assist them in their day to day work (3, TalkTalk, Vodafone and one confidential respondent).

Ofcom Response and Conclusion

- 5.154 We are satisfied that it is appropriate to require CPs to ensure that their staff are fully informed about the rights of consumers to take unresolved complaints to ADR. Given

¹³⁰ Final guidelines issued by the Director General of Telecommunications (August 2003), see http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/2003/disputeprocedure0803.htm. paragraph 4.6.

the increased prominence that the obligations in the Ofcom Code will place on increasing awareness of ADR (including text on bills and eight week notification letters), we consider that front-line staff should be able to field queries from consumers wishing to understand their rights. If front-line staff are unaware of consumer rights then not only will they be unable to assist consumers seeking information, but there is a very real risk that their ignorance may actually confuse consumers or contribute to prolonging their complaint.

- 5.155 However, we acknowledge that it may not be particularly beneficial to require CPs to train their staff on the role of Ofcom in enforcing General Conditions. We had originally proposed this obligation as a means of ensuring that front-line staff did not ignore complaints in breach of obligations on CPs through the Ofcom Code. We are satisfied that this specific obligation is not required and that a CP's responsibility for being compliant with the Ofcom Code will inevitably require them to train their staff to act in a manner compliant with the provider's regulatory obligations.

Deadlock Letters

- 5.156 In the consultation we noted that while the obligations in the Ofcom Code will improve outcomes for consumers, we did not think they would necessarily be sufficient for reassuring an individual that their complaint is being actively looked into. We considered that some mechanism is needed to ensure that, where a case is particularly urgent, a CP is required to at least attempt to resolve the complaint in a timely manner. We therefore proposed requiring a CP to issue a deadlock letter when requested by a consumer (referring a complaint to ADR before the eight week threshold has been reached).
- 5.157 We considered this obligation would be particularly relevant where a complaint is particularly urgent, where a complainant has been unable to get responses to repeated correspondence with their CP or where a complainant has rung an organisation such as Ofcom out of frustration (and Ofcom is able to inform dissatisfied consumers of this mechanism).
- 5.158 The intention behind creating an obligation for a CP to issue a deadlock letter on request was to ensure that a consumer is satisfied that their provider is taking steps to try to resolve their complaint (potentially relieving stress and worry), rather than the matter necessarily going to ADR for resolution. As such we would not expect the CP to issue a deadlock letter if:
- the subject-matter of the complaint is outside the jurisdiction of the CP's ADR scheme; or
 - the CP has genuine and reasonable grounds for considering that the complaint will be resolved in a timely manner and subsequently takes active steps to attempt to resolve the complaint.
- 5.159 We anticipated that the costs of this proposal will be minimal. In order to benefit under this proposal a consumer would need to be aware of ADR, be aware of their ability to request a deadlock letter, not be satisfied with the response they are receiving from their CP and not be satisfied with waiting the eight weeks until they have the right to take a case to ADR. If a deadlock letter was issued then the result would simply be to reduce the period before the case went to ADR – the CP would still bear the same indirect costs of the case going to ADR. In order to be excluded from issuing the deadlock letter the CP would only need to consider the case to be resolvable and 'take active steps to attempt to resolve the complaint'.

- 5.160 We did not consider this to be a particularly onerous requirement and did not consider it would impose additional administration costs on CPs above that which they would already face from dealing with the complaint.

Views of Stakeholders

- 5.161 Views from stakeholders were mixed on the proposal for deadlock letters to be issued on request in specific situations. The proposal was supported by nine respondents, including AIME, CCES, Citizens Advice, Professor Collins, Consumer Focus, the Ombudsman Service, CWU, and two confidential respondents. Six respondents opposed the proposal, including BT, FCS, IDRS, O2, SSE, and Vodafone. The main reasons given for opposing the proposal included that:
- This obligation will polarise a complaint and will not encourage its resolution (IDRS, O2, and one confidential respondent);
 - If a complaint is truly urgent, then referring the matter to ADR before the usual eight week threshold will not be productive as the ADR schemes take months before reaching an adjudication (O2);
 - There is no evidence of significant consumer harm that would require Ofcom to further reduce the current ADR threshold of eight weeks, and even if there is such evidence, then Ofcom's other proposals will address consumer detriment from poor complaints handling (O2);
 - Vodafone submitted that there was evidence from Otelo and CISAS to demonstrate the disadvantages of early use of ADR; and
 - There needs to be an exemption to the obligation to issue a deadlock letter if the request is obviously unreasonable (FCS)

Ofcom Response and Conclusion

- 5.162 We are satisfied that it is appropriate to require CPs to refer complainants to ADR in a narrow range of circumstances.
- 5.163 We note that at present consumers can already request a deadlock letter, which their CP is perfectly entitled to refuse to provide. This obligation simply requires that before a CP refuses to issue a deadlock letter it must have genuine and reasonable grounds for considering that the complaint will be resolved in a timely manner and must take active steps to resolve the complaint. In other words a CP will only be required to issue a deadlock letter in situations where a complainant has requested such a letter and the CP recognises that the complaint cannot be resolved or they are not prepared to take any steps to try to resolve the complaint.
- 5.164 It is pertinent to note that if a complainant is at the stage where they are requesting early referral to ADR then in all likelihood they will be prepared to pursue their complaint until they are satisfied, which, given they already know about ADR means there is a high prospect that such a complaint will go to ADR after eight weeks. If in these circumstances the CP recognises the complaint cannot be resolved, or is not willing to take any steps to resolve the complaint, then we do not consider there is any benefit for progress towards resolution of the complaint to be delayed.
- 5.165 We are certainly conscious of the risk that this obligation could create situations where both consumer and CP are distracted from trying to resolve the complaint and

instead become involved in a separate dispute on whether it is appropriate for the CP to issue a deadlock letter. This risk is likely to be heightened if consumers consider they are 'entitled' to a deadlock letter. We indicated in the consultation that where consumers are experiencing difficulties getting a complaint resolved Ofcom may recommend to individuals that they ask for a deadlock letter. Based on submissions we will be very cautious about the scenarios in which we would provide this advice to consumers out of concern that it could lead to a further entrenchment of positions. We are likely to refer consumers to this obligation where it is obvious that a consumer is having difficulties getting their provider to recognise they are making a complaint.

- 5.166 We accept the point made by O2 that ADR is not a particularly useful means of resolving urgent cases. However, as we outlined in our consultation, it is not our expectation that this obligation will necessarily result in additional cases going to ADR. We expect CPs will refuse to issue many consumers with deadlock letters on the grounds that they are now taking 'active steps to resolve the complaint' – which for many consumers (particularly those with urgent complaint) may be a particularly useful means of making rapid progress towards the resolution of their complaint. In those scenarios where a CP does issue a deadlock letter (i.e. they recognise the complaint cannot be resolved), we consider that these complaints are likely to be destined to go to ADR anyway, so for those consumers we are simply shortening the time period in which they need to wait for an independent examination of their complaint.
- 5.167 We disagree with Vodafone's contention that there is evidence from CISAS and Otelo demonstrating the disadvantages of early use of ADR that calls into question whether this requirement should be implemented. The evidence cited by Vodafone simply shows the number of out-of-reference enquiries that both CISAS and Otelo had to reject recently, primarily due to consumers approaching the schemes before the eight week period had lapsed. Such figures simply show that many consumers are not fully informed about the conditions under which they can make an application to an ADR scheme and do not provide any insights into what may happen if these consumers were able to have their complaint considered by one of the schemes. We note that if, as a result of this requirement, a consumer had a deadlock letter from their CP then there would no need to wait the eight weeks.
- 5.168 We accept the point made by FCS that the exemptions to this obligation should be widened to ensure that CPs are not issuing deadlock letters in situations where the complaint is patently unreasonable. We are therefore including a further exemption that the deadlock letter does not need to be issued 'if it is reasonable to consider the complaint to be vexatious'.
- 5.169 CPs will therefore be under an obligation to promptly issue a written Deadlock Letter when requested by a Complainant, unless:
- (a) the CP has genuine and reasonable grounds for considering that the Complaint will be resolved in a timely manner and subsequently takes active steps to do so; or
 - (b) it is reasonable to consider the Complaint to be vexatious; or
 - (c) the subject-matter of the Complaint is outside the jurisdiction of the CP's Alternative Dispute Resolution scheme.

Tests under the Act

5.170 We are satisfied it is reasonable to require CPs to ensure that their front-line staff are adequately trained about ADR, and that CPs should issue a deadlock letter on request if they are not going to be able to resolve a complaint. We consider that these two requirements fall within our duties under section 3 of the Act (including our principal duty of furthering the interests of consumers and citizens) and also meets the relevant tests under section 47(2) of the Act as follows:

(a) they are:

- objectively justifiable:

We believe that the changes are objectively justifiable as our aim of ensuring consumers are aware of their right to go to ADR is undermined if front-line agents are unaware of the existence of ADR. There is the potential that the status quo could cause unnecessary confusion when consumers contact CPs to enquire about ADR. Our aim of improving consumers' access to ADR will be helped by a requirement that, where a consumer requests that a case go to ADR and the CP does not intend to try to resolve the complaint, then the eight week threshold should not apply. As we have shown at paragraphs 5.13-5.21, awareness and usage of ADR leads to significantly improved outcomes for consumers with lengthy unresolved complaints.

- not unduly discriminatory:

We consider that the requirements are not unduly discriminatory as they apply equally to all CPs.

- proportionate:

We consider that the requirements are proportionate because they will directly benefit consumers by improving access to ADR and will not unreasonably burden CPs. The costs to CPs should be low compared to the benefits highlighted at paragraphs 5.13-5.21 above of ensuring that consumers know of their right to go to ADR and are able to fully utilise that right.

- transparent:

We consider that the initiatives and their potential effect have been explained clearly in this document. We have also drafted guidelines to further clarify our intention and expectations for implementation.

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

A summary of the requirements to improve access to ADR

5.171 Low usage of ADR is not necessarily a problem in itself, particularly if complainants are satisfied with relying on their CP's efforts to address their concerns. However, the high percentage of unresolved complaints and the low awareness of ADR amongst

complainants who have the legal right to utilise the service, indicates that there is a barrier to consumers accessing ADR.

5.172 The case for improving ADR awareness rests on the premise that a right to ADR cannot be effective if consumers are unaware of it and that awareness/usage of ADR leads to significantly improved outcomes for consumers with lengthy unresolved complaints.

5.173 We are therefore establishing a number of requirements through the Ofcom Code for CPs to facilitate appropriate access to ADR, specifically that:¹³¹

- | |
|--|
| <ul style="list-style-type: none"> a) Relevant text about ADR is to be included on paper bills provided to domestic customers (providing the name of the relevant ADR scheme, noting that the ADR scheme offers a dispute resolution service that is independent of the CP, noting that the scheme cannot be accessed unless eight weeks have passed since the consumer first complained to the CP, and stating that ADR can be utilised by the consumer at no cost); b) CPs must ensure consumers whose complaint has not been resolved within eight weeks of first being made to a front-line agent receive written notification about their right to go to ADR; c) CPs must ensure front-line staff are fully informed of the right of consumers to use ADR; and d) On request from a complainant, CPs must issue a deadlock letter referring a matter to ADR unless the subject-matter of the complaint is outside the jurisdiction of the ADR scheme, the complaint is vexatious, 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 do so. |
|--|

The precise wording of these regulatory obligations can be found in the Ofcom Code, attached as Annex 1. The accompanying guidance is attached as Annex 2.

5.174 We recognise that these changes will impose costs on CPs, but we consider that these costs are not disproportionate when weighed against the improvement in consumers' ability to exercise their right to ADR. Improving awareness of ADR will also further the interests of consumers and citizens by reducing the prospect of harm that can often accompany prolonged unresolved disputes between consumers and CPs, reducing the power imbalance between consumers and CPs, and providing CPs with very strong incentives to reduce the number of complaints that last eight weeks.

5.175 In relation to equality considerations, we have had due regard to the potential impacts these obligations may have on race, disability and gender equality. Although not necessarily designed to improve equality, we consider the obligations improve access to ADR and will also benefit vulnerable consumers by further raising awareness of ADR.

¹³¹ The specific wording of these requirements can be found in clause 4 of the Ofcom Code.

Section 6

Record Keeping

Position in the consultation

- 6.1 In both our 2008 and 2009 consultations we noted that in order to investigate whether CPs were complying with our obligations (particularly the eight-week notification requirement), we needed CPs to improve their record keeping, particularly regarding their contact with consumers.
- 6.2 We noted that as investigations would primarily focus on the procedures put in place by CPs, we did not require complete records of all contact CPs have had with all consumers (including written and phone records). In order to monitor a CP's compliance with the Ofcom Code we would expect to examine how a number of complaints that had been received by front-line staff had been handled by a CP. In our view this would necessitate a certain amount of record keeping by a CP.
- 6.3 We considered three options for record keeping requirements on CPs:
- Option 1 - no record keeping requirements;
 - Option 2 - require CPs to retain written records and a random sample of customer service calls of at least 100 calls per week for 6 months;
 - Option 3 - require CPs to retain written records and call recordings that they already hold (for at least 6 months for written information and at least 3 months for any call recordings).
- 6.4 As noted in our consultation, our 2007 information request indicated that not all CPs routinely kept adequate records from complaints. As such, we are satisfied that there needs to be some minimum obligations on CPs to retain records to facilitate any possible Ofcom investigation.
- 6.5 We discounted the status quo (no record keeping requirements) as we considered the lack of records kept by some CPs would undermine our ability to enforce the provisions of the Ofcom Code. The consultation noted that our ability to undertake investigations was dependent on having access to written complaints, notes on the customer record management system and, ideally, access to some call recordings.
- 6.6 With respect to option 2, we noted that many CPs already retain written correspondence with consumers and requiring CPs to retain such correspondence for six months should not impose any material costs. However, in order to get a more complete picture of how a CP handles complaints we considered there could be advantages from requiring CPs to record calls to front-line staff. Nevertheless, we discounted the notion of requiring all CPs to introduce call-recording systems, noting that such an obligation would impose fixed costs on CPs, which could have a disproportionate impact on smaller CPs.
- 6.7 We decided to propose option 3 - requiring CPs to retain all written records relating to complaints (for six months) and all call recordings (for three months). This obligation would not require CPs to collect information that they do not currently hold. We were satisfied that this would provide us with sufficient information to examine how CPs

handled certain complaints which, along with information from CPs about their processes, would be sufficient for any future Ofcom investigations.

- 6.8 On the basis of responses to our 2009 information request, we stated that we considered that the costs of this requirement would be minimal – particularly as we were not requiring CPs to collect information they did not already hold. Many CPs already retain written correspondence with consumers and requiring CPs to retain such correspondence for six months should not impose any further costs. With respect to call recordings, we noted that those that do record calls typically retain the recordings for 2-3 months. While the retention of call recordings for 3 months may impose some additional costs on CPs to increase their storage, we did not consider that these would be significant.

Views of stakeholders

- 6.9 There was overwhelming opposition from stakeholders to our record keeping obligations. Although the proposals were supported by five respondents (AIME, BT, CCES, IDRS, and CWU), the obligations were opposed by 15 respondents (Citizens Advice, Professor Collins, Consumer Focus, the Consumer Panel, FCS, 3, O2, the Ombudsman Service, SSE, UKCTA, Vodafone, and four confidential respondents).
- 6.10 Of those opposing the proposal, consumer groups generally thought Ofcom had not gone far enough. There was a sense from these respondents that Ofcom's focus on what information was necessary for undertaking investigations overlooked considerations of the benefits that improved record keeping could have for complainants. It was submitted that Ofcom should require CPs to 'log' all complaints and should require records to be held for longer.
- 6.11 Those CPs opposing the proposal variously commented that:
- Ofcom has not proven it needs such information to be able to investigate compliance with the Ofcom Code (O2, SSE, UKCTA, and one confidential respondent);
 - as inbound call recordings are not currently retained for three months there could be high incremental costs for retaining these call recordings (3, SSE, UKCTA, FCS, and two confidential respondents); and
 - Ofcom's requirement for CPs to only retain information that they hold discriminates against those that currently keep comprehensive records and may incentivise CPs to decide to no longer collect certain information. (O2, TalkTalk and Vodafone).

Ofcom response and conclusion

- 6.12 We are still of the view that in order to assess compliance with the Ofcom Code we will require a minimum amount of information from CPs as to their approach to handling complaints. This information will need to include sufficient information to enable Ofcom to examine a number of individual consumer complaints to see if the CP is complying with the Ofcom Code – including for example, resolving complaints in a 'fair and timely manner' and issuing ADR notifications to consumers whose complaints have not been resolved within eight weeks.
- 6.13 As with other decisions in this Statement, any record keeping obligations we propose must be amongst other things be objectively justifiable and proportionate. Whilst

record keeping obligations would have a significant positive impact on our ability to pursue effective enforcement, this must be balanced against the cost which such record keeping obligations would impose on CPs.

- 6.14 We are satisfied that it is necessary for CPs to retain all written records collected through the complaint handling process including, as a minimum, written correspondence to/from consumers and notes on customer record management systems. The retention of all such information will enable Ofcom to make enquiries about how a CP has dealt with certain complaints and will allow Ofcom to examine how a CP has dealt with a complaint from the stage when an initial expression of dissatisfaction was made through to complaint resolution or the ADR notification being sent out. This will enable Ofcom to build a picture of the CP's compliance.
- 6.15 To facilitate our investigations we consider it to be reasonable for CPs to retain such written information for six months. Stakeholders did not challenge our position in the consultation that the cost of retaining such information for six months would be minimal.
- 6.16 As a result of submissions made, we will no longer require CPs to retain call recordings that they may have in their possession. We accept that the proposal implied that the availability of call recordings was of sufficient importance that CPs should retain them if they had them available, but that they were not sufficiently important that we would require CPs to make call recordings in the first place. Such an approach would arguably disadvantage those CPs who choose to make call recordings and it is likely that if they became the focus of Ofcom investigations that CPs would choose not to make any such recordings in the future.
- 6.17 We have revisited the minimum amount of information we think would be needed to facilitate effective Ofcom investigations and we do not consider we would necessarily require access to call recordings to be able to investigate compliance. It is likely that on the basis of written records made by a CP that we will be able to make judgments as to whether any given CP has complied with the Ofcom Code. In any event, if Ofcom were to open an investigation into any CP it already has powers to request all call recordings that the CP has in its possession – which alleviates the need for CPs to proactively retain call recordings for a defined period.
- 6.18 We consider that this record keeping requirement falls within our duties under section 3 of the Act (including our principal duty of furthering the interests of consumers and citizens) and also meets the relevant tests under section 47(2) of the Act as follows:

(a) it is:

- objectively justifiable

This record keeping obligation will allow us to monitor the extent to which CPs are complying with the Ofcom Code, particularly with the requirements to resolve complaints in a 'fair and timely manner' and to send written notifications to complainants of their right to go to ADR eight weeks after they made a complaint. We believe that the change is objectively justifiable because it supports our aim of establishing minimum standards of complaints handling and ensuring that CPs comply with their regulatory obligations.

- not unduly discriminatory

We consider that the requirement is not unduly discriminatory. This is because the record keeping obligation would apply equally to all CPs who provide Public Electronic Communications Services to Domestic and Small Business Customers. All CPs who receive written correspondence (e.g. emails, letters) will now be required to hold the information for 6 months. We considered requiring all CPs to introduce call recording systems or to retain those call recordings they already make, but concluded that this could introduce significant costs for some CPs.

- proportionate

We consider that the record keeping obligation is proportionate on the grounds that it is the least intrusive means of achieving Ofcom's key objective which is to ensure that consumers are appropriately protected and empowered when they make a complaint to a CP and that Ofcom can take effective enforcement action and compliance monitoring. By only requiring CPs to retain written information that they hold, we consider the costs will be minimal. We consider that any costs which CPs will incur are proportionate to the benefit that consumers and citizens will receive as the costs are small on an industry-wide basis compared to the significant benefit which individual consumers are likely to derive Ofcom being able to enforce the provisions of the Ofcom Code.

- transparent

We are satisfied that the record keeping obligation is transparent insofar as the reasons for and the nature of the obligation is clearly set out in this document.

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

6.19 CPs will therefore be under an obligation to retain appropriate records of contact with complainants, specifically:

- a) A CP must retain written records collected through the complaints handling process for a period of at least six months including, as a minimum, written correspondence and notes on its customer record management systems.

The precise wording of these regulatory obligations can be found in the Ofcom Code, attached as Annex 1. The accompanying guidance is attached as Annex 2.

Section 7

Implementation Period

Position in the consultation

- 7.1 In our 2009 consultation we noted that stakeholders had previously commented that a number of proposals from the 2008 consultation would necessitate complex systems change, re-training of staff, printing of new publicity material and monitoring of new processes. The most common view from the industry was that CPs would need at least 6-12 months before the regulatory change would come into effect.
- 7.2 While we were of the view that our revised proposals would not necessarily involve complex systems changes, we did acknowledge that some aspects could require significant changes to the complaints procedures of some CPs.
- 7.3 We considered that the 'minimum standards' discussed above in section four (clauses 1-3 of the Ofcom Code) could be implemented relatively quickly by CPs and will not require significant changes for the vast majority of CPs. However, we accepted the views of respondents that it will be more difficult to alter existing processes to ensure ADR notifications are issued to consumers whose complaints have not been resolved within eight weeks. As such, we proposed a staged implementation period following the publication of any Statement:
- CPs would be required to comply with clauses 1 – 3 of the Ofcom Code (requirements on transparency, accessibility and effectiveness of complaints procedures) six months after the publication of any Statement; and
 - CPs would be required to comply with clauses 4 – 5 of the Ofcom Code (requirements on facilitating access to ADR and record keeping obligations) 12 months after the publication of any Statement.
- 7.4 We considered these periods of time were appropriate for allowing the industry to make any necessary changes to their complaints handling processes, while also sufficiently compressed to ensure the identified harm is likely to be addressed.

Views of stakeholders

- 7.5 Stakeholders provided a range of varying views on our proposal for implementing the Ofcom Code. Those supporting our proposal for a staged implementation over 6-12 months included AIME, BT, Professor Collins, FCS, 3, SSE, TalkTalk, Tesco Telecoms, CWU and one confidential respondent.
- 7.6 We have addressed a number of policy issues which some CPs considered could have required a longer implementation period, such as our decision not to impose obligations beyond those in the Disability Discrimination Act and our decision to drop the requirement for CPs to retain call recordings. Given that we have addressed those areas of concern, the only remaining requests for a longer implementation period were due to the following submissions:
- six months is not sufficient to make the changes required by the accessibility, transparency and effectiveness obligations of the Ofcom Code (clauses 1-3). It was also submitted that 'making changes to billing systems' can take between

12-18 months, while having to train staff in the UK and abroad on the new obligations would also take several months (confidential respondent);

- changes to a website required by clause 2 of the Ofcom Code could take longer than six months (SSE);
- a 12 month implementation period was also needed for a CP to comply with the 'effectiveness' obligations in clause 3 of the Ofcom Code (confidential respondent); and
- compliance with the ADR obligations in the Ofcom Code (clause 4) would require 24 months (confidential respondent).

- 7.7 Consumer Focus took the view that the implementation period was too long and submitted that six months should be sufficient.
- 7.8 Both Citizens Advice and Vodafone submitted that the Ofcom Code represented a package of initiatives and should therefore be implemented at the same time. As an illustration Vodafone questioned how a CP could publish an accurate Customer Complaints Code on their website, which by virtue of clause 1(c)(v) of the Ofcom Code must refer to the requirement for CPs to provide a deadlock letter on request and ADR notification after eight weeks – both obligations that would not actually come into force for a further six months. It was submitted such a reference could only be inaccurate and confusing.

Ofcom response and conclusion

- 7.9 It remains our view that CPs should have a 12 month implementation period before clause 4 of the Ofcom Code comes into force – given that the ADR obligations within that clause are likely to require the most significant changes to CPs' internal procedures. Only one CP thought this period was not long enough, while Consumer Focus considered it was too long. We are satisfied that our amended guidance on the eight week ADR notification obligation is likely to have addressed the concerns of the confidential respondent who considered the obligation would require an implementation period of 24 months – the same CP has since provided follow-up correspondence confirming that Ofcom's guidance on this obligation would alleviate their need to make substantial IT investments.
- 7.10 We are also satisfied that it is possible to have a staged implementation period and to require CPs to implement more quickly those obligations that are unlikely to require either costly or complex changes to procedures. As proposed in the consultation, CPs will therefore have six months before they need to be compliant with clauses 1-3 of the Ofcom Code.
- 7.11 We disagree with the point made by SSE that the changes CPs will be required to make to their website could take longer than six months, noting this is out of line with our own experience of such changes and inconsistent with the position of other respondents. We also disagree with the claim by a confidential respondent that CPs will require longer than six months to comply with clause 3 of the Ofcom Code ('effectiveness' obligations). It is pertinent to note that clause 3 simply requires CPs to ensure the 'fairly and timely' resolution of complaints and to have internal procedures that include 'clearly established timeframes and a clear and reasonable escalation process'. We do not consider these high level obligations to be particularly onerous and think six months is more than enough time for CPs to offer what we

would consider to be the absolute minimum of requirements for an effective complaints handling process.

- 7.12 We accept that this approach of staged implementation will require CPs to make a further change when clause 4 of the Ofcom Code comes into effect after 12 months. At this time CPs will need to ensure their Customer Complaints Code makes reference to the obligation on them to issue a deadlock letter on request and to send a written notification about ADR if the complaint remains unresolved after eight months. We consider the cost and time to make this change will be negligible and certainly outweighed by the advantages of implementing clauses 1-3 of the Ofcom Code as quickly as is reasonable.
- 7.13 The one change we are making to the implementation timetable is that CPs will be required to comply with the record keeping obligations (clause 5 of the Ofcom Code) after six months (as opposed to the 12 months proposed in the consultation). The original rationale for proposing to give CPs 12 months to comply with this obligation was because we were conscious that our proposal to require CPs to retain call recordings would have cost implications for CPs, many of whom may have needed to develop new storage systems. As CPs are only now required to retain written records for six months, we consider it reasonable that the implementation timeframe is also brought forward.
- 7.14 No stakeholders specifically commented on the implementation period they would require for retaining written records. However, as noted above in chapter 6, when we proposed requiring CPs to retain written records, stakeholders did not identify any additional costs that would be incurred from this obligation, with many noting that they already retain such records. We are satisfied that six months notice is sufficient time for CPs to ensure that they are retaining written documentation associated with consumer complaints.

We have therefore modified General Condition 14.4 to require CPs to comply with the Ofcom Code. The Ofcom Code will therefore come into force on 22 January 2011, with the exception of clause 4 of the Ofcom Code, which will come into force on 22 July 2011.

- 7.15 We consider that the implementation period for the Ofcom Code is reasonable in the circumstances and that it falls within our duties under section 3 of the Act (including our principal duty of furthering the interests of consumers and citizens) and also meets the relevant tests under section 47(2) – of being objectively justifiable, not unduly discriminatory, proportionate and transparent. We have adopted a staged implementation whereby the implementation of those requirements in the Ofcom Code that may require some CPs to make significant internal changes (the ADR obligations) will not delay the tangible benefits that may result from the earlier implementation of the remainder of the provisions of the Ofcom Code. We consider this to be a reasonable approach to take, while still giving CPs an appropriate amount of time to ensure they are compliant by the time the Ofcom Code comes into force.

Section 8

Improving Publicly Available Information on Complaints Handling

- 8.1 We consider that complaints handling is an important feature in determining the experience of many telecommunications consumers. As such, we considered publishing provider-specific complaints information would be likely to benefit consumers in respect of price, quality and value for money.
- 8.2 We noted there are a number of possible ways for such information to be made public, including:
- a) The ADR schemes could publish the number of complaints that they uphold against each CP (subject to strengthened requirements for CPs to signpost consumers to ADR);
 - b) Ofcom could undertake and then publish market research into the experiences of consumers trying to pursue a complaint with their CP;
 - c) Ofcom could publish the provider-specific complaints data it receives from Ofcom's Advisory Team (i.e. the part of Ofcom that deals with complaints from the general public). Such data would need to be suitably modified to enable comparisons between CPs with variable customer bases; and/or
 - d) Ofcom could commission and publish audits of the complaints procedures of CPs against the expectations of the Ofcom Code.
- 8.3 We received submissions that canvassed the entire spectrum of views on how useful provider-specific information on complaints handling would be for consumers. Groups such as Citizens Advice, Consumer Focus, the Consumer Panel and Which? all claimed it was essential that Ofcom publishes such information to inform consumers of relative performance, while CPs such as Sky, O2, Vodafone and a confidential respondent all claimed that such information would be of little use to consumers in a competitive market.
- 8.4 It is beyond the scope of this review to take the matter of provider-specific complaints data any further, but this is certainly an area that Ofcom will be considering in the future. We recently signalled that, although the performance of CPs in delivering effective customer service may well be an important consideration for some consumers, on the basis of recent research we do not consider it appropriate for Ofcom to provide the market with such quality of service information.¹³² We are however continuing to explore the possibility of publishing details of the complaints Ofcom receives from consumers (option c above).

¹³² See <http://stakeholders.ofcom.org.uk/consultations/topcomm/gos-report/>

Annex 1

Notification of a Modification to General Condition 14 of the General Conditions of Entitlement

Modification of General Condition 14 of Part 2 of the General Conditions Notification, regarding Codes of Practice and Dispute Resolution (as amended) under section 48(1) of the Act

WHEREAS

- A. The Director General of Telecommunications (the "Director") issued on 22 July 2003 the General Conditions Notification, which took effect on 25 July 2003 by way of publication of a notification pursuant to section 48(1) of Act.
- B. On 13 April 2005, OFCOM published a notification under section 48(1) of the Act modifying General Condition 14, entitled "Protecting citizens and consumers from mis-selling of fixed-line telecommunications services".
- C. On 19 April 2006, OFCOM published a notification under section 48(1) of the Act modifying General Condition 14, entitled "Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services".
- D. On 29 March 2007, OFCOM published a notification under section 48(1) of the Act modifying General Condition 14, entitled "Regulation of VoIP Services".
- E. On 22 May 2007, OFCOM published a notification under section 48(1) of the Act modifying General Condition 14, entitled "Protecting consumers from mis-selling of telecommunications services".
- F. On 9 July 2008, OFCOM published a notification under section 48(2) of the Act proposing to modify General Condition 14 entitled "Review of Alternative Dispute Resolution and Complaints Handling Procedures".
- G. On 27 February 2009, OFCOM published a notification under section 48(1) of the Act modifying General Condition 14, entitled "Review of the 070 personal numbering range".
- H. On 23 April 2009, Ofcom published a notification under section 48(1) of the Act modifying General Condition 14, entitled "Changes to 0870".
- I. On 18 December 2009 OFCOM published a notification under section 48(1) of the Act modifying General Condition 14, entitled "Protecting consumers from mis-selling of fixed line telecommunications services".
- J. On 18 December 2009, OFCOM published a notification under section 48(2) of the Act proposing to modify General Condition 14 entitled "Review of Consumer Complaints Procedures" ("the First Notification").

- K. A copy of the First Notification was sent to the Secretary of State in accordance with section 50(1) (a) of the Act.
- L. In the First Notification and the accompanying explanatory statement, Ofcom invited representations on any of the proposals set out therein by 12 March 2010;
- M. By virtue of section 48(5) of the Act, Ofcom may give effect to any proposals to modify General Condition 14 as set out in the First Notification, with or without modifications, where:
- (i) they have considered every representation about the proposals made to them within the period specified in the First Notification; and
 - (ii) they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State.
- N. Ofcom received 23 non-confidential and 4 confidential responses to the First Notification and have considered every such representation made to them in respect of the proposals set out in both the First Notification and the accompanying explanatory statement; and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for this purpose;
- O. For the reasons set out in the explanatory statement accompanying this Notification, Ofcom are satisfied that, in accordance with section 47(2) of the Act, this modification is:
- (i) objectively justifiable in relation to the matters to which it relates;
 - (ii) not such as to discriminate unduly against particular persons or against a particular description of persons;
 - (iii) proportionate to what it is intended to achieve; and
 - (iv) in relation to what it is intended to achieve, transparent.

THEREFORE

1. Ofcom, in accordance with section 48(1) of the Act, hereby modifies General Condition 14 regarding Codes of Practice and Dispute Resolution as set out in the Schedule to this Notification.
2. The effect of, and Ofcom's reasons for making, the modifications referred to in paragraph 1 above is set out in the accompanying explanatory statement to this Notification.
3. Ofcom considers that the modifications referred to in paragraph 1 above complies with the requirements of sections 45 to 50 of the Act.
4. In making the modification set out in this Notification, OFCOM has considered and acted in accordance with their general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
5. A copy of this Notification and the accompanying explanatory statement have been sent to the Secretary of State in accordance with section 50(1)(a) of the Act.

6. In this Notification:
 - (i) “the Act” means the Communications Act 2003;
 - (ii) “General Conditions Notification” means as set out in the Schedule to the Notification under Section 48(1) of the Act published by the Director General of Telecommunications on 22 July 2003;
 - (iii) “OFCOM” means the Office of Communications.
7. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification (including the Schedule to this Notification) and otherwise any word or expression shall have the same meaning as it has in the Act.
8. For the purpose of interpreting this Notification:
 - (i) headings and titles shall be disregarded; and
 - (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
9. The Schedule to this Notification shall form part of this Notification.
10. The modification to General Condition 14 set out in the Schedule to this Notification shall enter into force on 22 January 2011 with the exception of the wording in square brackets which takes effect on 22 July 2011.

Claudio Pollack

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

22 July 2010

Schedule

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

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

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

“14.4 The Communications Provider shall have and comply with procedures that conform to the Ofcom Approved Code of Practice for Complaints Handling when handling Complaints made by Domestic and Small Business Customers about its Public Electronic Communications Services.”
2. The following definition is deleted in Paragraph 14.7(b):

“**Code of Practice for Complaints**” means a code of practice approved from time to time by the Director for the purpose of this Condition in accordance with sections 52 and 53 of the Act;”
3. The following definitions are inserted in alphabetical order in Paragraph 14.7:

“**Complaint**” means

 - a) an expression of dissatisfaction made by a customer to a Communications Provider related to either:
 - i) the Communications Provider’s provision of Public Electronic Communications Services to that customer; or
 - ii) the complaint-handling process itself; and
 - b) where a response or resolution is explicitly or implicitly expected.

“**Ofcom Approved Code of Practice for Complaints Handling**” means the code of practice set out in Annex 4 to this General Condition 14.
4. The following code is inserted in General Condition 14, at Annex 4:

The Ofcom Approved Code of Practice for Complaints Handling

This Ofcom Approved Code of Practice for Complaints Handling (the 'Ofcom Code') sets out the minimum standards that Ofcom has set for Communications Providers (CPs) in the handling of Complaints made by Domestic and Small Business Customers (as those terms are defined in General Condition 14.7) about the provision of Public Electronic Communications Services (as defined in the General Conditions of Entitlement).

A list of further definitions can be found on the page following the specific obligations. Explanatory guidance can be found on the Ofcom website.

A CP must have complaints handling procedures that:

- 1) Are **transparent**:
 - a) A CP must have in place a written code for handling complaints ('Customer Complaints Code') made by their Domestic and Small Business Customers. A CP must comply with its Customer Complaints Code in relation to each Complaint it receives.
 - b) The Customer Complaints Code must be concise, easy to understand and only contain relevant information about complaints handling procedures.
 - c) The Customer Complaints Code must be kept up to date and as a minimum include information about:
 - i) the process for making a Complaint;
 - ii) the steps the CP will take to investigate with a view to resolving a Complaint;
 - iii) the timeframes in which the CP will endeavour to resolve the Complaint, including when the CP is likely to notify the Complainant about the progress or resolution of a Complaint;
 - iv) the contact details for making a Complaint to the CP, including providing details about the low-cost points of contact required in clause 2(c) below; and
 - v) the contact details for the CP's Alternative Dispute Resolution scheme, with details on when a Complainant will be able to access the service (with reference to the requirements on a CP in both clause 4(c) and 4(d) below).
- 2) Are **accessible**:
 - a) The Customer Complaints Code must be well publicised and readily available, including:
 - i) being easily accessible on a webpage, with either:

1. a weblink to the Customer Complaints Code being clearly visible on a CP's primary webpage for existing customers (i.e. '1 click' access); or
 2. a weblink to the Customer Complaints Code being clearly visible on a 'how to complain' or 'contact us' page, which is directly accessible from a primary webpage for existing customers (i.e. '2 click' access).
- ii) ensuring the relevant terms and conditions for a product and/or service refer to the existence of the Customer Complaints Code and should signpost consumers to how they can access a copy; and
 - iii) being provided free of charge to Complainants upon reasonable request in hard copy or other format as agreed with the Complainant.
- b) Complaints handling procedures must be sufficiently accessible to enable consumers with disabilities to lodge and progress a Complaint.
 - c) The means by which a CP accepts Complaints should not unduly deter consumers from making a complaint. A CP must have in place at least two of the following three low-cost options for consumers to lodge a Complaint:
 - i) a 'free to call' number or a phone number charged at the equivalent of a geographic call rate;
 - ii) a UK postal address; or
 - iii) an email address or internet web page form.
- 3) **Are effective:**
- a) A CP must ensure the fair and timely resolution of Complaints.
 - b) There must be clearly established timeframes and a clear and reasonable escalation process for dealing with Complaints.
- 4) **[Facilitate appropriate access to Alternative Dispute Resolution:**
- a) A CP must ensure front-line staff are fully informed of the right of consumers to use Alternative Dispute Resolution.
 - b) Every paper bill provided to domestic customers must include, in a reasonably prominent manner, relevant text regarding the right of consumers to take unresolved complaints to Alternative Dispute Resolution. Such text will:
 - i) provide the name of the Alternative Dispute Resolution scheme;
 - ii) make reference to the fact that the scheme offers dispute resolution, which is independent of the CP;
 - iii) make reference to the fact that the scheme can only be accessed eight weeks after a Complaint was first made to the CP; and
 - iv) make reference to the fact that consumers can utilise the scheme at no cost to themselves.

- c) A CP must promptly issue a written Deadlock Letter when requested by a Complainant, unless:
 - i) the CP has genuine and reasonable grounds for considering that the Complaint will be resolved in a timely manner and subsequently takes active steps to do so; or
 - ii) it is reasonable to consider the Complaint to be vexatious; or
 - iii) the subject-matter of the Complaint is outside the jurisdiction of the CP's Alternative Dispute Resolution scheme.
- d) A CP must ensure Complainants receive prompt Written Notification of their right to go to Alternative Dispute Resolution eight weeks after the Complaint is first brought to the attention of the CP, unless:
 - i) it is reasonable to consider the Complaint has been resolved; or
 - ii) it is reasonable to consider the Complaint to be vexatious: or
 - iii) the subject-matter of the Complaint is outside the jurisdiction of the CP's Alternative Dispute Resolution scheme.]
- 5) Retain appropriate **records** of contact with Complainants:
 - a) A CP must retain written records collected through the complaints handling process for a period of at least six months including, as a minimum, written correspondence and notes on its customer record management systems.

Definitions for the Ofcom Code

The following definitions should be used for interpreting this Code of Practice:

'Alternative Dispute Resolution' means any dispute procedures approved by Ofcom under section 54 of the Communications Act 2003.

'Complaint' means:

- a) an expression of dissatisfaction made by a customer to a Communications Provider related to either:
 - i) the Communications Provider's provision of Public Electronic Communications Services to that customer; or
 - ii) the complaint-handling process itself; and
- b) where a response or resolution is explicitly or implicitly expected.

'Complainant' means a Domestic or Small Business Customer who makes a Complaint to a Communications Provider.

'Deadlock Letter' means a letter or email from a Communications Provider to a Complainant agreeing that the Complaint can be referred to the relevant Alternative Dispute Resolution scheme.

'Written Notification' means a written notification sent to a Complainant that:

- a) is in plain English;
- b) is solely about the relevant Complaint;
- c) informs the Complainant of the availability of dispute resolution, which is independent of the CP;
- d) provides the name and appropriate contact details for the relevant Alternative Dispute Resolution scheme; and
- e) informs the Complainant that they can utilise the scheme at no cost to themselves.

Annex 2

Guidance Notes to the Ofcom Approved Code of Practice for Complaints Handling

These guidance notes do not form part of General Condition 14.4, but are intended to provide some insight into the rationale behind each particular requirement, outline Ofcom's expectations and provide some guidance as to Ofcom's likely approach to investigating compliance with the Ofcom Approved Code of Practice for Complaints Handling (the Ofcom Code). The guidelines are not binding on Ofcom. However, where Ofcom departs from the guidelines it expects to give reasons for doing so. Words and expressions used in the Ofcom Code shall have the same meaning when used in these guidance notes.

Definition of a Complaint

Our intention in defining a Complaint is to ensure there is clarity as to the scope of the matters that our regulation will apply to. We are aware that Communications Providers ('CPs') currently use different definitions in their internal procedures and systems, and that many do not recognise a Complaint until it has been escalated within the company.

Our definition captures all expressions of dissatisfaction that are made to a CP, regardless of whether or not a CP subsequently decides to escalate the Complaint internally. The definition also captures all expressions of dissatisfaction regardless of the form in which the Complaint is made. However, we wish to signal that we would not expect CPs to comply with the Ofcom Code with respect to Complaints that are made in person, such as at retail stores. While CPs may wish to do so, it would be acceptable for such consumers to be asked to make a Complaint by another means.

The definition of a Complaint makes clear that it is the retail provider that has responsibility for appropriately handling a Complaint from a Complainant, regardless of whether the cause may be attributable to an underlying wholesale service.

For the avoidance of doubt, complaints about network faults are included within the definition of a Complaint. As complaints about network faults are currently eligible to go to Alternative Dispute Resolution ('ADR'), they should also be caught within these complaints handling obligations.

Transparent Procedures

Our intention in setting transparency obligations on CPs is to ensure that the processes and procedures that a CP has in place for resolving Complaints are clearly visible to a Complainant. In this respect, the creation of the Ofcom Code does not alleviate the need for CPs to have their own written Customer Complaints Code that contains all pertinent information that a Complainant will require for lodging and escalating a Complaint.

We are aware that some CPs have previously chosen to bundle the information required through numerous regulatory requirements into one lengthy document, of which complaints handling procedures are but one aspect. With respect to the Customer Complaints Code, this will no longer be acceptable – it should be a standalone document to meet the transparency requirements.

Although a Customer Complaints Code must be in a standalone format, there is no restriction on the ability of CPs to meet this obligation by having a dedicated page on a

website containing all the relevant information (although, as required by clause 2(a)(iii) a CP will still need to make arrangements for a hard copy to be provided to a Complainant upon reasonable request).

Accessible Procedures

Our intention in setting accessibility obligations on CPs is to ensure that those consumers wishing to lodge a Complaint are able to do so in a straightforward manner at minimal cost. Information on how Complaints can be lodged and how Complaints will be investigated should be easily accessible to all consumers wanting the information.

The requirement that the Customer Complaints Code should be easily accessible from a CP's primary webpage for existing customers is intended to ensure that consumers can easily and logically locate a copy of the Code on their CP's website. We recognise that many CPs have corporate websites, while others view their website as an entertainment portal where the provision of information to consumers may be simply one of many functions of the webpage (possibly alongside providing news, online content, information for shareholders). The term 'the primary webpage for existing customers' is used to denote the principal website where telecommunications users would be expected to visit when seeking information about their account.

The requirement that the relevant terms and conditions for a service should provide consumers with information on where they can locate the Customer Complaints Code is intended to apply to standard terms and conditions rather than individually negotiated contract terms. The terms and conditions should signpost consumers to how they can access a copy of the Customer Complaints Code (potentially referring to a website link or providing a phone number) and should note that a copy is available on request if consumers want to request a copy be sent out to them.

The requirement that the means by which a CP accepts Complaints should not unduly deter consumers from making a Complaint is intended to ensure that CPs do not intentionally or unintentionally create process obstacles to prevent consumers from contacting the CP to make the Complaint or to check on progress. Example of key indicators where we are likely to consider a CP to be deterring consumers from making Complaints are: where the cost of calling to make a Complaint is higher than the cost of calling a generic customer service line; or where consumers are required to call an 09 number to make a Complaint (or similar priced mobile shortcode).

Although we are requiring CPs to have low-cost options for receiving Complaints, we are not requiring these options to be used solely for the purpose of processing Complaints. These low-cost options may serve other broader customer service functions.

We wish to clarify that the definition of a Complaint is not dependent on the Complaint being made in any particular form by a consumer. So although a CP may have prescribed specific low-cost options for accepting Complaints in its Customer Complaints Code, the CP still needs to abide by all the provisions in the Ofcom Code if it receives a complaint in another form. The only exception to this is that we do not intend to require CPs to accept Complaints in person, such as at retail stores (as noted above).

Disabled Consumers

We would of course expect CPs to comply with relevant legislation regarding the treatment of disabled consumers. However, we specifically require that complaints handling procedures must be 'sufficiently accessible' for disabled consumers. We would expect CPs to have processes in place for recognising and treating appropriately consumers who may

require additional assistance. For example, as a result of this obligation we would expect CPs to have procedures in place to accept complaints from third parties who are acting on behalf of consumers with a disability and to provide correspondence in a consumer's preferred format.

Effective Procedures

Our intention is not to prescribe how a CP should respond to a Complaint, but is to ensure that CPs have effective complaints procedures and resolve complaints in a fair and timely manner. We would have concerns, for example, if CPs ignored Complaints or delayed providing an appropriate response.

A reasonable escalation process should allow for Complaints which cannot be resolved by front-line staff to be referred upwards from front-line staff through their line management or to a dedicated complaints-handling team. It is our expectation that CPs will implement processes for escalating Complaints where it is evident to the staff-member involved that they will be unable to meet the customer's expectations, but that someone else in the organisation is likely to be able to do so. We consider that a reasonable escalation process will also include procedures for front-line staff to identify and treat appropriately Complaints from consumers experiencing significant harm; Complaints that should be treated with a degree of urgency (such as a loss of service); Complaints from consumers that are vulnerable in any way; or Complaints where consumers are repeatedly contacting the CP to complain about the same issue.

Recourse to ADR

Information on Bills

With respect to the requirement in clause 4(b) for written information about ADR to be included on bills, we expect that this information should be easily legible, horizontal and presented in a way that does not negate the intention to fully inform consumers of the availability of ADR.

To clarify, we are not requiring CPs to provide information about ADR on online bills, as we consider this could be a significant driver of costs for CPs. Also, CPs are not required to include such information on bills to business customers, but will need to ensure the information is included on paper bills to all domestic/residential customers.

Although CPs must make reference to the time period before Complainants can go to ADR (8 weeks), Ofcom is not requiring that CPs include the contact details of the ADR schemes on bills, although CPs can of course choose to do so.

Issuing a Deadlock Letter

The obligation for a CP to issue a Deadlock Letter is primarily designed to ensure that a CP takes a Complaint seriously and takes sufficient steps to try to resolve the Complaint, rather than the matter necessarily going to ADR for resolution. This obligation may be particularly relevant where a Complaint is urgent or where a Complainant has been unable to get a response to repeated correspondence with their CP.

It is not our intention that the obligation to issue a Deadlock Letter should be applied to those matters that would be ineligible for an ADR scheme to examine (for example, complaints about commercial decisions on whether to provide a service, cable and wiring inside a premises, pricing for a service). Where the subject matter of the Complaint would fall outside

the jurisdiction of the ADR scheme, the CP can refuse to issue a consumer with a Deadlock Letter.

Our intention with respect to the remaining exemptions from issuing a Deadlock Letter in clause 4(c) are:

- ‘genuine and reasonable grounds’: when refusing to issue a Deadlock Letter to a Complainant, the CP must not only have genuinely believed that the Complaint would be resolved in a timely manner, but this belief must itself be reasonable;
- ‘takes active steps to resolve the Complaint’: if a CP refuses to issue a Deadlock Letter it has an obligation to take active steps to resolve the Complaint – i.e. it cannot ignore the Complaint or assume that the Complainant will accept a resolution that they have previously rejected; and
- vexatious complaints: a CP could consider a Complaint to be vexatious where it is readily apparent that the Complainant is pursuing a Complaint that is totally without merit and is made with the intention of harassing or creating an unnecessary burden for the CP.

Informing Consumers about ADR after Eight Weeks

Our intention in establishing this obligation is to ensure that Complainants are informed of their right to go to ADR at the stage when this right occurs - eight weeks after the Complaint was made by the Complainant. This obligation is not intended to result in all consumers who have an unresolved Complaint receiving ADR notification after eight weeks, but rather a subset of Complainants who have been unsuccessfully pursuing their Complaint.

Given the degree of subjectivity associated with determining whether someone has made a Complaint and whether the Complaint has subsequently been resolved within the eight week period, we have endeavoured to provide some clarification about this obligation.

When should CPs regard Complaints as Resolved for the Purpose of this Obligation?

Identifying a Complaint is often a very subjective decision – and is largely determined by the attitude and response of the consumer to what they are told when they contact front-line staff. In order to receive an eight week ADR notification, we consider there needs to be an effort on the part of the consumer to pursue the Complaint or to challenge the position of the CP. We want to ensure those Complainants who are unsuccessfully trying to pursue a Complaint are informed about ADR, but do not want to create a situation whereby a single contact from a consumer subsequently leads to an obligation eight weeks later on the CP to inform the consumer about the availability of ADR.

In enforcing this obligation Ofcom does not intend to investigate whether any individual Complaint should be considered resolved or unresolved after eight weeks, but rather whether a CP has appropriate internal procedures for identifying those Complaints that are still unresolved after eight weeks and are sending out Written Notifications.

It is important to note that determining whether a Complaint is still unresolved after eight weeks will inevitably turn on the facts of the Complaint in question. However, key considerations that may assist a CP to determine whether a complaint can reasonably be considered resolved after eight weeks include:

- i. **whether the CP has taken actions that mean it is reasonable to consider the Complainant is no longer dissatisfied.** For example, CPs could consider a

Complaint resolved for the purpose of this obligation where they have taken steps to address the Complaint (e.g. provided a refund, an explanation etc) and it is reasonable to conclude that such steps have addressed the dissatisfaction of the Complainant; or

- ii. **whether the Complainant has indicated explicitly, or it can be reasonably inferred, that they no longer wish to pursue the Complaint.** For example, even if the substance of the Complaint has not been addressed, it would be reasonable to infer that a Complainant was no longer pursuing a Complaint if there was no further contact during the eight week period (i.e. a one-off complaint). If a Complainant raises the same Complaint twice within any eight week period then it is unlikely to be reasonable for a CP to assume that the Complainant had dropped the Complaint; or
- iii. **whether the CP and Complainant have agreed a course of action which, if taken, would resolve the Complaint to the satisfaction of the Complainant.** For example, although the substance of the Complaint may not have been addressed after eight weeks, if the CP and Complainant agree a course of action to resolve the Complaint we would not expect the CP to subsequently write to the Complainant about the availability of ADR if they then took this action to resolve the Complaint.

We would therefore expect CPs to have processes in place for identifying repeat unresolved Complaints and, if the subject matter of the Complaint is within the jurisdiction of the ADR scheme, to issue Written Notification in these circumstances.

There are likely to be two approaches for CPs to choose between to ensure effective compliance with this obligation:

1. Having an IT system that allows logging and tracking of all unresolved Complaints from the day they are first made to front-line staff. Under such an approach a Complaint would likely be date-stamped and the CP could be prompted after eight weeks to review the status of the Complaint and, if it was still unresolved, to promptly inform the Complainant of their right to go to ADR; or
2. Ensuring escalation procedures provide a sufficient level of assurance that repeat unresolved Complaints will have been escalated by front-line staff members within the eight week period to someone internally, who, if unable to resolve the matter, could write to the Complainant.

Some Examples

To assist CPs' compliance activity we have provided some guidance below on a number of possible scenarios raised by stakeholders in our consultation:

- *after an initial Complaint there is no further contact from the Complainant until 9 weeks later*

For the purpose of this obligation it is reasonable for a CP to consider a Complaint to be resolved if there has only been one contact from the Complainant during the eight week period (i.e. a CP can reasonably infer that the Complaint has been dropped if there has been no further contact about the issue eight weeks later). So for the purpose of deciding when a Written Notification will be sent, if the second expression of dissatisfaction from a consumer occurs after eight weeks then this should be considered as a new Complaint.

- *an initial Complaint is reasonably considered to be resolved to the Complainant's satisfaction, but there is a subsequent Complaint about the same issue seven weeks later where it becomes apparent the Complaint has not been resolved*

There is no requirement to issue the eight week Written Notification if it is reasonable to consider the Complaint to have been resolved to the Complainant's satisfaction – at any stage during the eight week period. So in this scenario the subsequent Complaint after seven weeks should be treated as a new Complaint.

- *a Complainant is still dissatisfied after eight weeks, although the CP does not consider the Complaint can be justified on the facts*

Regardless of whether a CP considers a Complaint to be unjustified, as long as the Complaint is not considered vexatious and is within scope of the ADR Scheme, a CP must still issue the Written Notification to all Complaints that are unresolved after eight weeks.

The above examples make clear that not all dissatisfied consumers will be informed about ADR after eight weeks. It is important to stress that although CPs will not have to issue the Written Notification if a consumer does not contact them about the Complaint for eight weeks, this does not in any way undermine their right to go to ADR at the eight week stage. If the Complainant subsequently contacts an ADR scheme to lodge an application it will still be for the ADR schemes to determine the eligibility of the Complaint based on their Terms of Reference.¹³³

What is a Vexatious Complaint?

A CP does not have to issue a Written Notification after eight weeks if it is reasonable to consider the Complaint to be vexatious. A vexatious Complaint is a very narrow category where it is readily apparent that the consumer is pursuing a Complaint that is totally without merit and is made with the intention of harassing or creating an unnecessary burden for the CP. To clarify, this exclusion cannot be used simply if a CP believes the Complaint cannot be justified on the facts.

Nature of the Notification

For the avoidance of doubt, although the Written Notification required to be issued under clause 4(d) of the Ofcom Code must inform the Complainant of the availability of ADR, it does not need to direct the Complainant to contact the ADR scheme or state that ADR is the only manner in which the Complaint can be resolved. For example, a CP is fully entitled to summarise the Complaint, apologise for any delays and assure the Complainant that they are making progress. However, the Written Notification must fully inform the consumer of their right to access ADR at no charge and should be clear and concise.

The notification must be written, which would include a letter, email, SMS or other written format.

With the respect to the requirement for the Written Notification to include 'appropriate contact details' of the relevant ADR scheme, we would expect this to include the relevant phone

¹³³ As noted by Ofcom in December 2009, the ADR schemes can consider unresolved complaints eight weeks after the *initial* complaint was made by a consumer to their CP. See http://www.ofcom.org.uk/consult/condocs/complaints_procedures/adr_condoc.pdf, paragraphs 10.1-10.3.

number, postal address and weblink of the ADR scheme. The only exception to this would be where SMS is used to provide the Written Notification where, due to limitations on the characters available, we would not expect CPs to provide all three contact details.

The requirement that the Written Notification must be solely about the relevant Complaint is designed to ensure that a CP does not meet the requirement through more generic contact with a Complainant (for example, the back-of-the-bill information in clause 4(b), or by including a small paragraph on a sales pamphlet that is sent out). There is however, no requirement that the Written Notification should be individualised or include specifics of the Complaint in question. So a CP can comply with this requirement by issuing a standard form letter that informs the relevant Complainant of the availability of ADR.

We are aware that CPs may not hold the information required to be able to provide the Written Notification to some Complainants – including a physical address or an email address. A lack of consumer information does not alleviate the requirement for a CP to take all reasonable steps to contact the consumer (including the use of SMS notification).

With respect to issuing Written Notification to Small Business Customers, we would be satisfied if, rather than having to contact the Complainant to determine whether they have ten or fewer employees (and is therefore potentially 'eligible' to take a case to ADR), a CP instead had reasonable processes in place for determining whether business customers are likely to be small businesses for the purpose of this obligation (for example, making an assessment based on annual communications expenditure of that customer).

Record Keeping Obligations

We would expect a CP to retain all written records collected through the complaints handling process for six months. This should include, as a minimum, letters and emails to/from Complainants and notes made by staff on customer record management systems.

Note, it would be acceptable if a CP chose to scan relevant documents and retain them as electronic copies rather than physical copies.

Our Approach to Investigations

It is not our intention to investigate individual consumer Complaints or individual breaches of the Ofcom Code. We will however monitor complaints received by Ofcom and/or information from other consumer organisations, appropriate action where we consider there is evidence of failings in the handling of Complaints by CPs. Any investigation would likely focus on the processes and procedures that the CP in question has in place to ensure its compliance with the Ofcom Code.

Our investigative approach will follow Ofcom's published enforcement guidelines ('The Guidelines'). The Guidelines set out Ofcom's processes and submission requirements for complaints about anti-competitive behaviour, breaches of certain ex ante conditions and disputes. They are intended to help businesses and their advisers to understand Ofcom's processes and how best to present a case so that Ofcom can deal with it in an efficient manner. The guidelines are not binding on Ofcom. However, where Ofcom departs from the guidelines it expects to give reasons for doing so.

http://www.ofcom.org.uk/bulletins/eu_directives/

Annex 3

Ofcom Comment on the Synovate Market Research

Stakeholder Comments

- A3.1 Three CPs commented that the nature and method of the market research undertaken by Synovate should prompt Ofcom to be cautious in relying on the results as showing that there was a problem with complaints handling, that awareness of ADR is low, or that there is a link between ADR and improved outcomes (O2, Vodafone, and a confidential respondent).
- A3.2 Points variously made by these three respondents include that:
- the results could be further biased by the self-selection of respondents to participate in the online survey, the failure to include those consumers who do not have internet access, and Ofcom's failure to consider face-to-face research
 - complainants find it hard to objectively assess the complaints process as distinct from the subject-matter of their own complaint which could bias the results
 - the responses had not been normalised to reflect the make-up of the market;
 - the category of complaints labelled 'eligible complaints' is simply those complaints that have lasted 12 weeks and Ofcom made no attempt to exclude those cases that cannot go to ADR; and
 - that the research must be unreliable as it implies that 12% of complaints that lasted 12 weeks went to ADR, which would represent nearly 400,000 cases a year. In fact the ADR schemes dealt with approximately 10,000 cases a year.

Ofcom Response

- A3.3 As the consultation made clear, the basis for regulatory intervention was not solely based on the results of the Synovate research. However, the research provided by Synovate provides a valuable insight into the experience of those consumers who made a complaint to their provider. In addition to the Synovate research, we have also relied on:
- 3.3.1 a market research report commissioned from Futuresight for our 2008 consultation, which included a telephone quantitative survey of 2,167 consumers and in-depth qualitative interviews with 50 consumers;¹³⁴
- 3.3.2 the Ofcom Communications Tracking Survey, which is a regular survey we have used to monitor levels of ADR awareness over time;¹³⁵

¹³⁴ See http://stakeholders.ofcom.org.uk/binaries/consultations/alt_dis_res/condoc.pdf

¹³⁵ http://stakeholders.ofcom.org.uk/binaries/consultations/alt_dis_res/condoc.pdf

- 3.3.3 the Consumer Conditions Survey produced by the Department of Business Enterprise & Regulatory Reform (BERR) in 2008, which compares the relative consumer perceptions of various UK markets;¹³⁶
- 3.3.4 an Ipsos-Mori survey for Ernst & Young from 2006 asking consumers about their experience of complaint handling in various sectors;¹³⁷ and
- 3.3.5 complaints into Ofcom's Advisory Team, which as noted in the consultation receives high volumes of complaints from consumers experiencing problems trying to progress a complaint with their CP.
- A3.4 The combined weight of this research has provided a very clear picture of the consumer harm that results poor complaints handling in the telecommunications sector and confirms our view that awareness of ADR is at very low levels. We are satisfied that the Synovate research is sufficiently robust to be given due weight in our analysis.
- A3.5 Below we examine the issues raised by respondents in turn.

The Use of an Online Panel

- A3.6 The research included an omnibus survey of 963 nationally representative adults to generate an accurate picture of telecommunications complaint levels and ADR awareness when compared with similar essential services in the UK. Synovate also undertook quantitative research amongst 1,044 residential consumers and 861 small businesses (with ten or fewer employees) to better understand the experience of complainants in the telecommunications sector.
- A3.7 It was submitted to us that the use of an online panel to better understand the experience of complainants could result in biased results. O2 had concerns that online survey participants may not be able to sufficiently articulate their views on the complaints process independently of the substance of their complaint. Vodafone commented that as survey participants are self-selected there is a risk of selection bias.
- A3.8 We asked Synovate to comment on the methodology and they noted:

'One of the key thoughts in designing any quantitative survey methodology is whether it will answer the key objectives. In this case an online method (which has obvious benefits in terms of costs and timeliness over other potential approaches such as telephone or face-to-face) was 'fit for purpose' because it allowed Ofcom to identify and survey the 3 distinct consumer groups (users, eligible non-users, other complainants) on a like-for-like basis. This means any comparisons made about the differences in response from the 3 groups were made with confidence.

In practical terms, an online approach was appropriate because of the assumed very low incidence of ADR users. The online methodology allowed Ofcom to target a large number of consumers very quickly and identify, through appropriate screening questions, those eligible for interview. Often concerns are raised about the representativeness of online panels and it is of course true that they exclude the c25% of UK consumers who are not online by definition. However, panels are very

¹³⁶ 'Report for BERR on the 2008 Consumer Conditions Survey', undertaken for BERR by Ipsos MORI, <http://www.berr.gov.uk/files/file48855.pdf>

¹³⁷ [http://www.ey.com/global/Content.nsf/UK/FS - Complaints Handling](http://www.ey.com/global/Content.nsf/UK/FS_-_Complaints_Handling)

thoroughly profiled in terms of gender, age group, social status and region which means that we were able in this research, as in all research where we want to speak to a representative group of consumers, to ensure that invitations were issued to a representative sample of online consumers. We also factor in knowledge about relative response rates among different panel sub-samples (i.e. men and older consumers are less likely than women and younger consumers to respond to invites and so fewer invites are issued) to ensure that the response is proportional by demographic sub-group'.

- A3.9 Ofcom is satisfied that the use of an online panel is appropriate for our research requirements and that the methodology does not call into question the research findings.
- A3.10 We accept the point made by O2 that there is always a risk when asking consumers about their experiences in making a complaint that any given consumer will be unable to separate out their views on how their complaint was handled from their views on how the substance of the complaint. However, we note that there is no evidence that this risk is heightened by the use of online surveys. It is pertinent to note that even if this were the case we would expect it to hold true for all complainants answering the questions – nevertheless, the market research demonstrates there are statistically significant differences in the views of consumers on the harm/detriment/difficulties they experienced depending on how promptly their complaint was handled and whether they subsequently went to ADR. We are also satisfied that we have a considerable body of evidence that corroborates the Synovate finding that there are a significant portion of telecommunications complainants who experience considerable difficulty when trying to make and pursue a complaint with their provider.
- A3.11 We disagree with the claim made by Vodafone that the research should be discounted as it required participants to self-select themselves. In response to this claim Synovate note:
- 'Online research is used widely throughout the industry and provided that questions are asked in an appropriate 'non-leading' way, as in this research, there is no basis to suggest any biases will occur due to methodological reasons. Additionally, there is no reason to believe that self-selected participants will have an axe to grind which might bias the findings in any way – again Ofcom, have identified and interviewed 3 groups of consumers in the same way and compared and contrasted their responses so this would not apply to one group over any of the others.'*
- A3.12 It is pertinent to note that we used a nationally representative survey where necessary – to establish benchmarks with comparable sectors, to identify complaint levels across the population, to identify the proportion of complaints that were resolved promptly or went unresolved for at least twelve weeks, and to ascertain awareness of ADR amongst the population and complainants. However, in order to better understand the difference in the experiences of specific categories of complainants (ADR users, consumers with lengthy unresolved complaints, and consumers who were able to have their complaint resolved promptly) a nationally representative sample would not have been practical (hence the use of the online panel).
- A3.13 It is important to note that we only relied on the results from the online panel to explain the comparative differences between various consumer groups that have been deemed to be statistically significant. Assertions in our consultation and Statement that certain datasets are nationally representative (such as ADR

awareness levels and complaint levels) are sourced from the nationally representative omnibus survey undertaken by Synovate.

Whether the Data should be Normalised

A3.14 With respect to this claim Synovate notes:

'Large online panels allow us to reflect the market representatively from a demographic/regional perspective. Panels are large and we are experienced in issuing invitations to participate that will generate a representative response. There was no basis for normalising the data (no source available to do so) and the survey objectives – need to compare data from 3 distinct groups of consumers identified and interviewed in the same manner – did not call for normalisation.'

A3.15 We are satisfied that it was not necessary to normalise the resulting data to reflect the make-up of the UK telecommunications users. The representative omnibus survey provides a valuable insight into the experience of the population as a whole and is of sufficient size to be able to rely on the findings as likely to be sufficiently representative of telecommunications users.

A3.16 With respect to the online panel, we did check the results on a per-provider and per-market basis to determine whether the areas of concern we identified were specific to several CPs or were the result of an industry-wide problem. While some CPs certainly performed worse than others in handling complaints, as with the nationally representative sample, there was enough evidence to draw the conclusion that problems with complaints handling were evident on an industry-wide basis.

The Category of Consumers labelled 'Eligible Complainants'

A3.17 We identified complainants in the online panel as being either ADR users, complainants who were successful in having their complaint resolved within 12 weeks, and those consumers who had not resolved their complaint within 12 weeks and had not gone to ADR (this latter category was labelled 'eligible non-users'). We used the differences in experiences between these three categories of consumers to draw conclusions about the detriment to consumers from lengthy unresolved complaints as well as the effectiveness of ADR.

A3.18 It was submitted to us by Vodafone that this label was misleading as it implied that all complainants within this category were capable of going to ADR (many may actually be outside the scope of the ADR schemes) and were actually capable of being resolved (many may be long-standing complaints because by their nature they cannot be resolved on an individual basis e.g. complaints about slow broadband speeds).

A3.19 While the label used by Synovate may not have been entirely accurate, it was only a label and was not used by Ofcom to imply that all 'eligible non-users' may actually be eligible to go to ADR. Indeed Synovate again explicitly noted that this label should not be taken at face value:¹³⁸

'Note: The term 'eligible non-user' was used for complaints that last 12 weeks that do not go to ADR. We recognise however, that the subject matter of some

¹³⁸ See

http://stakeholders.ofcom.org.uk/binaries/consultations/complaints_procedures/annexes/annex8.pdf, page 3.

complaints means that even though they may have lasted 12 weeks, they may not be able to go to ADR.'

- A3.20 We recognised that we should not consider all complaints within this category as being eligible for going to ADR and have specifically discounted the size of this group of consumers when drawing conclusions about potential ADR users to reflect that likely ADR users will only be a small sub-category.¹³⁹
- A3.21 We accept the point that there will be some complaints within this category which, by their nature, will not be capable of resolution. We have therefore tried not to rely too much on assuming that all complaints are capable of resolution or that the research is representative of the experience of long-standing complaints that can be resolved. We are satisfied we have achieved this objective in both our consultations and in this Statement. We note that the research still identified a number of process issues consumers encountered in trying to make a complaint and considerable ongoing harm to consumers who cannot resolve their complaint promptly. We also note that the research shows that there are significant similarities between the nature of complaints that go to ADR and the nature of complaints that last over 12 weeks¹⁴⁰ – which would indicate that low awareness of ADR may be hindering complaint resolution of long-standing complaints.

The Number of Complaints going to ADR

- A3.22 Vodafone submitted that the research from Synovate must be unreliable as it implies that 12% of complaints that last 12 weeks went to ADR, which would represent nearly 400,000 cases a year. Given that we know from the ADR schemes that they only deal with approximately 10,000 cases a year, it was submitted that Ofcom should therefore not place weight on the research.
- A3.23 The research noted that:
- a) 23% of the population had made a complaint in the preceding 12 months;
 - b) of those who had made a complaint, 30% were still unresolved after 12 weeks
 - c) of those complaints that were still unresolved after 12 weeks, 12% of went to ADR.
- A3.24 In the consultation we noted that if the research findings regarding the proportion of complaints unresolved after 12 weeks (finding b above) were extrapolated across the country, then we could reasonably conclude that there would be around 3 million complaints a year that lasted at least twelve months. We felt confident enough to rely on this calculation as of those consumers sampled there were 222 responses where consumers considered their complaint had not been resolved after 12 weeks.
- A3.25 Naturally, with respect to finding c above, the customer base must be significantly smaller. With only 68 long-standing customer complaints going to ADR from the nationally representative sample, we must exercise caution before extrapolating these results across the country. The research indicated that based on the above findings one could infer that 0.8% of the UK population had referred a case to ADR,

¹³⁹ See for example paragraph 5.129 where we note that only a portion of the group labelled by Synovate as 'eligible non users' will actually be eligible for ADR.

¹⁴⁰ See

http://stakeholders.ofcom.org.uk/binaries/consultations/complaints_procedures/annexes/annex8.pdf, figures 3.7-3.12.

which we know cannot be correct. This could simply be down to a statistical anomaly or it could simply be a case of consumers mis-interpreting the question. Consumers were specifically asked if they had 'referred' their case to ADR, so it could be that some consumers interpreted this question as asking whether they had had any contact with an ADR scheme.

- A3.26 It is important to note that, even though the percentage of cases going to ADR appears higher than expected, this result was sourced from the omnibus survey (i.e. the survey to establish benchmarks with other industries). There is no evidence to show this anomaly affected the online quantitative survey, where the research showed that going to ADR improved complaint resolution and consumer satisfaction. Indeed for the online quantitative survey the ADR schemes were fully described to the participants and rather than being asked if their complaint was 'referred' to one of the schemes they were asked 'for any of your complaints with your provider, did you submit an application to have your complaint considered by the Alternative Dispute Resolution scheme provided by Otelo or CISAS?'. So even though this one finding from the representative survey may not be accurate, we are satisfied it did not affect the key findings about the impact of ADR, which were drawn from the online quantitative survey.
- A3.27 In any event, we did not place much weight on this particular finding. As Vodafone pointed out, the real number of ADR cases is substantially lower than that indicated by the market research, so if we had relied on the market research on this aspect, it would have biased the case away from regulatory intervention – with the finding potentially demonstrating that a higher than possible number of consumers were taking their complaints to ADR. Similarly, if participants in the omnibus survey were mistakenly of the belief that they had taken a complaint to ADR when they actually had not, one could expect that this would also mean that the levels of ADR awareness highlighted from that survey (which we considered to be very low) were actually over-stated, again biasing the case against regulatory intervention.

Annex 4

List of Respondents

The following stakeholders submitted non-confidential responses to our consultation. The responses can be found at

http://stakeholders.ofcom.org.uk/consultations/complaints_procedures/?showResponses=true

- The Association for Interactive Media Entertainment
- British Sky Broadcasting
- BT
- Centre for Consumers and Essential Services
- Citizens Advice
- Collins, Prof. Richard
- Consumer Focus
- Consumer Panel
- Federation of Communication Service
- Gamma Telecom
- Hutchison 3G
- IDRS
- Name Withheld 1
- O2
- Ombudsman Services
- Scottish and Southern Energy
- TalkTalk Group
- Tesco Telecoms
- The Communication Workers Union
- THUS
- UKCTA
- Vodafone
- Which?

In addition, we received four confidential responses.