



**Consumer
Focus**
Campaigning for a fair deal

Consumer Focus response to Ofcom Review of Consumer Complaints Procedures

March 2010

About Consumer Focus

Consumer Focus is the statutory organisation campaigning for a fair deal for consumers in England, Wales, Scotland, and, for postal services, Northern Ireland. We are the voice of the consumer, and work to secure a fair deal on their behalf. We were created through the merger of three consumer organisations – energywatch, Postwatch and the National Consumer Council (including the Welsh and Scottish Consumer Councils). The new approach allows for more coherent consumer advocacy, with a single organisation speaking with a powerful voice and able to more readily bring cross-sector expertise to issues of concern.

Response summary

- Consumer Focus welcomes Ofcom taking steps to address consumer detriment in relation to complaints against Communications Providers (CPs), and approves of the proposal for a single Ofcom Approved Code of Practice for Complaints Handling
- Consumer Focus has some concerns about the limitations of the record keeping requirements that Ofcom proposes to introduce for CPs
- Consumer Focus urges Ofcom to facilitate the publication of accessible, robust, comparative information on CPs' complaint handling standards and customer service performance

Review of Consumer Complaints Procedures

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

Complaint means 'an expression of dissatisfaction made by a customer to a Communications Provider related to the Communications Provider's provision of Public Electronic Communications Services to that customer, or to the complaint-handling process itself, where a response or resolution is explicitly or implicitly expected.'

Consumer Focus agrees with the definition of a complaint proposed by Ofcom. We believe it is important to establish a uniform approach to defining and, more importantly, recording complaints in order to make information on complaint levels transparent and comparable. For example, differences in recording repeat contacts relating to a single unresolved complaint could lead to variations in the complaint levels that CPs record. Consumer Focus considers that further guidance from Ofcom on this issue would be helpful, but that this uniform approach may be something that CPs could agree among themselves, without explicit prescription from Ofcom.

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

Consumer Focus agrees that regulatory intervention is justified on the basis of concerns with CPs' current approach to complaints handling. The research that Ofcom has produced makes a convincing case that consumers are experiencing significant detriment in relation to complaints handling. We are particularly concerned by the data showing that, of the 23 per cent of consumers that have made a complaint in the past 12 months, 30 per cent of complaints remain unresolved 12 weeks after the complaint was made (equating to 7 per cent of all telecoms consumers). Mobile telecoms is a sector characterised by high complaint levels more broadly. Consumer Direct received over 40,000 complaints about mobile phones in 2009 and over 50,000 in 2008.

The problems associated with high levels of telecoms complaints are compounded by a lack of transparent, comparable data on complaint levels and complaint handling standards. CPs may argue that customer services and complaint handling is an area in which they can compete by differentiating on the quality of these services. Consumer Focus believes that this argument is undermined by the lack of published information available to consumers. In the absence of published data on customer service levels, consumers may rely on 'hearsay' and recommendations from friends and family when forming opinions on CPs' customer service performance. In addition, introducing a requirement to publish customer service information would increase the competitive pressure on CPs to improve their complaints handling performance, relative to their competitors.

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

Consumer Focus agrees that CPs should be required to comply with a single Ofcom Complaints Code of Practice. We consider that, while the implementation of a single

complaint handling standard will set the bar higher for CPs, it does not remove their ability to differentiate on the basis of customer service levels. Companies would still be free to compete for customers on the basis of a superior service; some might choose to offer the consumer an option of paying a premium price for a supplier offering 'gold standard' customer service.

We consider that there are significant risks to consumers of not introducing a single Ofcom Complaints Code of Practice. By failing to place sufficient emphasis on complaints handling as a 'core function' of CPs, Ofcom would send a message to CPs about the relative importance it places on customer service. There is a danger that consumer confidence in complaining could be eroded, and consumers demoralised about the poor service offered by CPs, to the point at which they do not bother to complain. If an overall decrease in satisfaction levels takes place, consumers may become disengaged from the market, meaning that suppliers are no longer adequately incentivised to provide good customer service.

Ofcom should ensure that sufficient mechanisms are in place to independently monitor and audit the proposed Code of Practice, particularly during the early period of its implementation. The complaints code for energy suppliers that was introduced by Ofgem in 2008 has experienced significant teething problems during the first year of its operation. Ofcom should prepare for a similar scenario to occur and take steps in advance to detect and address possible problems with the operation of the code.

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

We believe that transparency in CPs' complaint handling procedures is vital and approve of Ofcom's proposed obligations. Consumers stand to benefit from CPs producing their own complaints code in the form of a single, readable document. We agree with the proposed items for inclusion in the code, but believe further detail could be added on when, and how regularly, providers are expected to supply copies of the code to customers.

Rather than 'welcome information' to new customers including a *reference* to the existence of the Customer Complaints Code, we would consider it appropriate for the code document itself, if produced in the form of a short, easy-to-read document, to be included with this material. At a minimum, a copy of the code should be provided to complainants, where complaints are not resolved at the initial point of contact.

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

Consumer Focus broadly agrees with Ofcom's proposed obligations.

We note that there is a significant emphasis on providing CPs' Complaints Codes online, and believe this will limit the accessibility of the codes. This applies not only to consumers who do not have access to the internet, but also to those who may simply prefer to receive the information in hard copy. If hard copies of the complaint code are only provided on request, this removes an incentive on the company to make consumers aware of their availability.

The access proposals place a requirement on providers to offer two of three prescribed methods for lodging a complaint with a CP. Consumer Focus believes complaints must be accepted by providers in all formats, with telephone access being free or at low cost. The consultation paper notes the risk in providing free complaints numbers of giving non-complainants a way of bypassing more expensive phone numbers when contacting their CP. However, the reverse scenario also applies; more savvy consumers will use the freephone numbers provided by CPs (usually sales lines) when lodging complaints.

Consumers should not have to rely on tricks, specialist knowledge or indirect routes when lodging complaints, and those without this knowledge should not be financially disadvantaged when complaining as a result.

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

Consumer Focus believes that there are particular challenges around setting objectives to ensure the effectiveness of CPs' complaint handling procedures. We agree with the proposals Ofcom has made, but believe these must be accompanied by independent monitoring to review the applicability of the objectives Ofcom is proposing.

Complaints can provide CPs with valuable feedback that can be used to carry out root-cause analysis and prompt changes to company policy. The effectiveness with which companies undertake this analysis is something that Ofcom should consider including within these proposed obligations. In particular, the way that companies record complaints can serve as a good indicator of this practice; for example, where only written complaints are recorded, rather than complaints received verbally, companies' ability to carry out this analysis will be inhibited.

It will be important for Ofcom to measure the impact of the new obligations on consumers, in terms of their experience of making complaints. Consumer research undertaken by Ofgem after new energy complaint handling standards were introduced in October 2008 revealed very poor results, with less than one in four customers who had complained to their supplier reporting satisfaction with the complaint handling process.¹ Following the introduction of the Code proposed by this consultation, Ofcom should undertake similar research to gauge consumer experience.

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

Consumer Focus agrees that Ofcom should act to improve awareness of Alternative Dispute Resolution (ADR). The evidence that Ofcom has produced showing low consumer awareness of ADR indicates that there is a clear need to bring awareness up to levels similar to those seen in the energy and financial services sectors.

In taking steps to improve consumer awareness of ADR, Ofcom can expect significant resistance from CPs, who are likely to argue that their own complaint handling procedures are sufficient to resolve the majority of those complaints that proceed to ADR. CPs also have a financial incentive to reduce the number of ADR cases brought by their customers, because they are required to meet the cost of these. Ofcom must make the case to CPs that taking steps to improve consumer awareness of ADR is intended to incentivise them to resolve a greater number of complaints within the initial eight-week period.

Addressing issues around ADR more broadly, Consumer Focus believes Ofcom should also seek to address the current quality issues that exist across the telecoms ADR schemes. Primarily, we believe consumers would be better served by a single ADR scheme, rather than the two separate schemes that currently operate. A single scheme would be easier to publicise and would be less confusing for consumers seeking to enter ADR. It would also make Ofcom's role in identifying and addressing quality issues in the ADR process more straightforward.

¹ Research carried out by Harris Interactive for Ofgem, December 2008
<http://www.ofgem.gov.uk/Sustainability/Cp/Cr/CJwg/Documents1/Complaints%20handling%20audit%20research%20and%20complaints%20statistics.pdf>

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

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

We agree that all of the four proposals being made by Ofcom are appropriate to improve consumers' awareness of ADR. The text that appears on bills should be located carefully to ensure that it is displayed prominently enough, without prompting a large number of consumers to contact Ombudsman schemes before attempts have been made by their CP to resolve their complaint. In addition, our answer to question 9 below outlines our view that informing consumers fully about the escalation process for complaints is helpful in ensuring that consumers do not seek ADR prematurely in the complaints process.

Consumer Focus believes it is important to have clarity around when the eight week complaint period starts. The consumer may consider that the eight weeks starts when the initial complaint is lodged, while the CP may take an alternative view, for example when an email containing a written complaint is first read or first responded to. The eight week timetable should start when the initial complaint is lodged, in order to empower the consumer making the complaint and to ensure that he or she is fully aware of this start date.

Ofcom has proposed the requirement for front-line staff to be fully informed about the right of consumers to use ADR. While we believe this objective is worthwhile and should be introduced, we expect that it will involve significant challenges for CPs to introduce, and would therefore urge adequate monitoring arrangements and compliance criteria to be put in place to ensure that front-line staff are trained with this knowledge in a timely way.

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

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

Consumer Focus believes that the proposed wording is appropriate. However, our view is that information about ADR should form part of wider information on the whole complaint handling process, to ensure that consumers understand the full escalation process and do not seek to proceed to ADR too early.

In addition, consideration should be given to signposting of sources of independent help and advice for consumers. This could include either Consumer Direct, as is currently the case for energy customers, or the Ofcom Advisory Team. We do recognise, however, that there would be potential resource implications for these services if a significant increase in consumer demand was prompted, meaning that further detail and discussions would need to take place before this idea is developed further.

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

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

Consumer Focus has some concerns about the record keeping requirements proposed by Ofcom. We understand Ofcom's wish to avoid the proposals having a disproportionate impact on small CPs, in terms of the introduction of call-recording requirements where these do not currently exist. However, we do not believe that the rules introduced by Ofcom should allow small CPs to 'get off lightly' in terms of record keeping requirements, or that the customers of these companies should find themselves in a potentially disadvantaged position when making a complaint.

Regarding the length of time that written and recorded correspondence is retained by CPs, the requirement should be longer than Ofcom proposes. We believe the retention time should be aligned with the maximum length of time that is allowed for the consumer to access ADR, which is nine months from the date that the complaint is first made to the CP. This would ensure that information related to a consumer's complaint is kept for as long as the customer can take his or her case to ADR if necessary.

The consultation document acknowledges the risk that some CPs will not record any information. At the very least, we believe Ofcom should identify any situations where this is the case in advance and take appropriate steps to pre-empt problems that may arise. It is not acceptable for any consumers to have to go through a flawed complaints process before adequate recording requirements are imposed on particular companies.

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

Consumer Focus has four comments on the proposed Ofcom Code of Practice.

Firstly, the Code does not explicitly allow for consumer complaints to be made orally. Point 2)d requires any two of three proposed low-cost options for contact to be implemented, but allows that the chosen options could exclude contact by telephone. CPs should always be prepared to accept complaints made orally and this should be set out clearly in the code to avoid any potential confusion or breaches.

Secondly, the low-cost telephone contact option outlined at point 2)d)i refers to a free-phone number or a phone number charged at the equivalent of a geographic call rate. The code should make clear that this criteria applies whether the complainant is calling from a fixed-line or a mobile phone. Mobile phone users will typically pay significantly higher charges for calls to 0800, 0845 and 0870 numbers than fixed-line callers, and

consumers who use mobile phones to register complaints should not be excluded from Ofcom's prescribed low-cost options as a result. This is particularly significant, not only because of the increasing number of consumers that only have a mobile phone, not a fixed line (currently 13 per cent), but also because a significant proportion of these mobile-only customers are on low incomes, with 22 per cent in social groups DE.²

Thirdly, the proposed Code refers to CPs' retention of records of contact with complainants, but we would question whether sufficient detail is included on what information should be recorded. Prescribing that a summary of the complaint be recorded, as well as a summary of advice given or action taken or agreed by the CP, along with further information such as the preferred method for future communication, could ensure more complete record-keeping and a more straightforward complaints process for the consumer.

Fourthly, the Code does not include any requirement on CPs to report on complaint levels and complaint handling standards. For reasons outlined in answer to question 13 below, our view is that it is in consumers' interests that reporting along these lines takes place, and we believe Ofcom should consider whether the Code is the appropriate vehicle for placing a reporting requirement on CPs.

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

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

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

Consumer Focus believes that Ofcom could reasonably expect CPs to implement the full Code if Practice within a six-month period.

Clause 4 includes a requirement to ensure that front-line staff are fully informed of the right of consumers to use ADR. CPs are likely to argue that a six-month timescale for implementation of this clause presents significant challenges for them in terms of staff training. However, we believe that well-trained, consumer-facing staff should already possess knowledge of consumer rights around access to ADR, and that any lack of staff expertise in this area represents a failure on the part of CPs to date.

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

Consumer Focus remains concerned at the approach that Ofcom has taken to the publication of CPs' comparative complaints handling information. In our response to Ofcom's 2009 Quality of Service consultation, we criticised Ofcom's decision to remove the requirement on CPs to publish Quality of Service information through its withdrawal of the Topcomm Direction, without first determining what would replace it:

² Ofcom, *The Consumer Experience* (2009) page 24
<http://www.ofcom.org.uk/research/tce/ce09/research09.pdf>

‘Consumer Focus believes that a better approach would have been to retain the existing Topcomm scheme and replace it only once a new model had been agreed. Currently, the Direction requires providers of specified fixed line telephony services to collect and publish quality of service information. Our concern, however, is that by withdrawing Topcomm, Ofcom will be faced with a fresh challenge to win support from the telecommunications industry for any replacement scheme.’³

Consumer Focus believes that the recording and publication of comparative information on complaints handling standards serves a number of useful functions in the telecoms market:

- The information provides consumers with a means of making comparisons between CPs when choosing between the range of deals or packages on the market. Currently, we believe consumers rely on anecdotal evidence and the experiences of family and friends when making judgements about providers’ customer service standards. The mobile market in particular is characterised by complexity and the presence of a huge number of different deals for consumers to choose from.⁴ Consumers stand to benefit from information on customer service performance being formalised as a tool to aid comparisons between providers.
- The information creates competition between CPs to improve their relative performance. Publishing information on complaint handling standards in a comparative format creates an incentive for those CPs rated lower than their competitors to address the causes of the differences in performance, in order to drive up their comparative ranking.

The risk in recording and publishing comparative information on CPs’ complaint handling standards is that the information may not accurately represent the situation in reality. For example, a provider that places extra emphasis on the value of accurately handling complaints may choose to classify more consumer contacts as ‘complaints’ than another CP that classifies as few consumer contacts as ‘complaints’ as possible, disadvantaging itself in comparative rankings as a result. Also, if CPs are aware of the measures by which information on complaint handling standards are being compared, they may choose to ‘game’ the comparison by prioritising these measures, to the broader detriment of their complaint handling processes. In taking decisions around the requirement that it places on CPs in relation to publishing comparative information, Ofcom must ensure that any processes are sufficiently robust to deal with these types of risks.

Consumer Focus believes that Ofcom should seek to publish, or mandate the publication of, accessible, robust comparative information on CPs’ complaint handling standards, along with relevant related information on CPs’ customer service performance.

³ Consumer Focus consultation response, *Ofcom Quality of Customer Service review second consultation* (June 2009) page 3

<http://www.consumerfocus.org.uk/assets/1/files/2009/11/ConsultationSubmissiontoOfcomQualityofCustomerServiceReviewsecondconsultation.PDF>

⁴ Ofcom-accredited mobile price comparison website BillMonitor currently compares 8.9 million mobile deals, offering over 71,000 different tariffs



Consumer Focus response to Ofcom Review of Consumer Complaints Procedures

Contact: Nick Hutton, Senior Policy Advocate
Tel: 020 7799 7963
Email: nick.hutton@consumerfocus.org.uk

Edited by: Alexis Bailey

www.consumerfocus.org.uk

Copyright: Consumer Focus

Published: February 2010

If you require this publication in Braille, large print or on audio CD please contact us.

For the deaf, hard of hearing or speech impaired, contact Consumer Focus via Text Relay:

From a textphone, call 18001 020 7799 7900

From a telephone, call 18002 020 7799 7900

Consumer Focus

4th Floor
Artillery House
Artillery Row
London SW1P 1RT

Tel: 020 7799 7900

Fax: 020 7799 7901

Media Team: 020 7799 8004 / 8005 / 8006