

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: A Review of Consumer Complaints Procedures

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Representing (self or organisation/s): British Sky Broadcasting Ltd

Address (if not received by email):

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Name David Lowe

Signed (if hard copy)





RESPONSE FROM BRITISH SKY BROADCASTING GROUP PLC TO OFCOM'S CONSULTATION ON CONSUMER COMPLAINTS PROCEDURES

This comprises British Sky Broadcasting Group plc's ("Sky") written response to the Ofcom consultation concerning consumer complaints procedures of 18th December 2009 (the "**Consultation Document**").

The information set out in this response has been provided to Ofcom solely for the purposes set out in the Consultation Document.

1. DEFINITION OF "COMPLAINT"

- 1.1 Whilst Sky agrees with Ofcom that it is helpful to have a common definition of "complaint" that can be applied across the industry, Sky supports O2's view in response to Ofcom's 2008 consultation on Alternative Dispute Resolution and Complaints Handling Procedures (the "**2008 Consultation**") that "complaint" should be defined by reference to whether or not a customer is suffering or is likely to suffer financial loss or other harm or detriment.
- 1.2 We note that Ofcom dismissed O2's proposal on the basis that the concern as to whether a complaint is causing harm is only relevant to the discussion on the subsequent actions that CPs are required to take when they receive a complaint as opposed to a discussion about the appropriateness of Ofcom's proposed definition. Sky disagrees that this is the case. The Approved Code of Practice for Complaints Handling which Ofcom is proposing to introduce through its proposed amendments to General Condition 14 applies to all "complaints" and therefore CPs will have to comply with Ofcom's requirements on transparency, accessibility, effectiveness and record-keeping irrespective of whether or not the complaint is causing or is likely to cause harm to the consumer making the complaint.
- 1.3 Furthermore, aside from its arguments at paragraphs 3.5 and 3.9 of the Consultation Document, Ofcom has not provided any justification for the definition of "complaint" having such a wide scope. Throughout the Consultation Document, Ofcom refers repeatedly to the protection of consumers from avoidable consumer **detriment** being at the heart of its proposals. This would appear to be at odds with Ofcom's proposed definition of "complaint" which includes no reference to consumer harm or detriment.
- 1.4 As set out in the Consultation Document at paragraph A6.11, other regulatory bodies such as the FSA refer both to consumer harm and a level of materiality in their definition of "complaint". For example, the FSA definition describes a complaint as "*any oral or written expression of dissatisfaction, whether justified or not...., which alleges that the complainant has suffered (or may suffer) **financial loss, material distress or material inconvenience***". Sky therefore supports O2's

submission to which Sky considers Ofcom has not adequately responded, and proposes that in accordance with its stated intention to address those situations where customers suffer consumer harm or detriment, Ofcom narrows the definition of "complaint" to refer to those complaints which have, or are likely to result in, a customer suffering financial loss or material distress or inconvenience. These amendments would focus the regulations which Ofcom is seeking to introduce and thereby the efforts and associated costs for CPs on addressing consumer complaints where consumer harm has either occurred or may occur. Sky also proposes that the definition is amended to introduce an element of reasonableness into the circumstances in which a response to a complaint is implicitly expected.

1.5 As Ofcom has acknowledged, the definition of 'complaint' is also important in determining the scope of the circumstances to which any proposed regulation would apply. Sky's comments in this respect are set out at paragraphs 3.8 to 3.13.

1.6 Sky therefore proposes the following definition of "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 the customer has suffered (or is likely to suffer) financial loss, material distress or material inconvenience and a response or resolution is explicitly expected or, it is reasonable to consider it to be implicitly expected."

2. SINGLE OFCOM APPROVED CODE OF PRACTICE FOR COMPLAINTS HANDLING

2.1 Sky agrees that a single Ofcom Approved Complaints of Practice is preferable to the current practice of Ofcom approving each individual CP's code. However Sky proposes the following amendments to Ofcom's proposals for the new Code of Practice.

2.2 Firstly, Sky suggests that, in accordance with Ofcom's objective to avoid overly prescriptive regulation, the examples at paragraph 5.29 setting out how a CP could ensure that their Customer Complaints Code is well publicised and readily available, should be incorporated into Ofcom's Guidance Notes, as opposed to the Code itself.

Secondly, Sky proposes that the examples should be amended as follows (changes are underlined)

"...For example, we would regard either of the following as being easily accessible:

1. no more than '2 clicks' through from a CP's primary webpage for existing customers which primarily promotes the CP's Public Electronic Communications Services; or

2. from a 'how to complain' or 'help' portal, which is accessible no more than '2 clicks' through from the primary webpage for existing customers which primarily promotes the CP's Public Electronic Communications Services."
- 2.3 As Ofcom is aware, a number of CPs sell other products such as pay TV either together with their broadband and telephony services or as standalone products. These CPs, such as Sky, are likely to promote their other products with equal or possibly greater prominence than their broadband and telephony products on their existing customer homepage. As the General Conditions do not apply to pay TV services (in relation to which CPs may have a separate Code of Practice), it would be inappropriate and potentially confusing to refer to a Complaints Code of Practice on a web page which does not apply to all the services being promoted.
- 2.4 Sky suggests that it would be more appropriate to refer to the Complaints Code of Practice on the primary web-pages which relate specifically to the services which fall under the scope of General Condition 14. CPs who are selling more than just broadband and telephony products will often sign-post on their primary web-page the pages relevant to specific products, so consumers should not have difficulty navigating to these pages. It is also not unreasonable to expect a consumer who has a complaint about a specific product to go to the primary page for those services to find out how to make a complaint.
- 2.5 Sky also proposes that it should be adequate for the full text of the Customer Complaints Code to be two as opposed to one click away from a product specific primary web page. As CPs are likely to have a number of different codes of practice published on their web-site (e.g. the Sales and Marketing Code of Practice pursuant to General Condition 24), it is more practical for a CP to include a generic link to "Codes of Practice" which takes the customer to a list of the codes of practice which when clicked upon, direct the customer to the full text of the Code. This type of sign-posting from the primary product specific web-page together with the proposed sign-posting from the "help" section, should still enable customers to easily find the Customer Complaints Code of Practice.

3. AWARENESS OF ADR

Inclusion of ADR text on bills

- 3.1 Whilst Sky acknowledges that according to the data that Ofcom has presented in the Consultation Document, awareness of the availability of telecommunications ADR schemes is considerably lower than the equivalent schemes in other industries such as the financial services and the energy sector, Sky does not agree that Ofcom's requirement on CPs to include text about ADR schemes on the back of bills is either proportionate or appropriate to achieve Ofcom's stated objective.

- 3.2 Under current regulations, CPs are already required to refer to the availability of ADR schemes in their Complaints Codes of Practice and many CPs also refer to their complaints procedures in their terms and conditions. Under Ofcom's latest proposals, CPs will also be required to refer to the Complaints Code of Practice (which refers prominently, in Sky's case, to the availability of ADR schemes) in its welcome information and on its website, in addition to potentially sending individual notifications to consumers if they have a complaint which has remained unresolved for an 8 week period. To require CPs in addition, to include a reference to ADR schemes on every bill received by a consumer is disproportionate both in the context of the current proposals and in the likely impact it will have on consumers' awareness of ADR schemes based on Ofcom's own data.
- 3.3 Ofcom's own research at Figure 12 shows that providing information about ADR schemes on a bill was only the fourth most popular method with consumers. Furthermore, Ofcom's data also suggests that BT's current practice of including information on the back of customers bills has not had any significant impact in increasing customer awareness of ADR schemes. As Ofcom itself also points out, a likely reason for this is that customers are more likely to absorb information about their right to go to ADR if it is individualised, an issue which Ofcom has already sought to address with its proposals to require CPs to inform customers individually of their right to go to ADR if their complaint lasts for more than eight weeks.
- 3.4 Another cause of the ineffectiveness of BT's notice on their bills may be due to the fact that customers are unlikely to consider the back of a bill as an obvious place for finding out information about a CP's complaints procedures. Instead a customer is much more likely to look at their terms and conditions (which for almost all CPs will be available on-line) or a help page or "how to contact us" section of a CP's website, again issues which have already been addressed in Ofcom's proposals about the sign-posting of Complaints Codes on CPs' websites. This is even more likely to be the case for consumers who receive their bills electronically rather than by paper mail.
- 3.5 From the data Ofcom has provided, it appears that Ofcom does not have any robust evidence to suggest that including information on customer bills will have any impact on consumer awareness of ADR schemes or on the number of consumers who refer their complaints to ADR. The mere fact that the evidence that Ofcom has collated suggests that the costs to the industry are at the lower end of the scale in the context of the costs of its other proposals, does not justify the proposal being introduced in the absence of any evidence to support that the proposals will achieve the stated objectives.
- 3.6 Ofcom acknowledges at paragraph 6.45 of the Consultation Document that the heightened awareness of consumer ADR schemes in the energy and financial sectors is much more likely to be as a result of media coverage rather than general sign-posting of ADR schemes by providers. This would suggest that Ofcom would be better placed utilising its resources in increasing consumer awareness of ADR schemes through media coverage and consumer groups and

bodies, such as the Citizens Advice Bureau, rather than monitoring CP compliance with additional and unjustified requirements to include information on the back of customer bills.

- 3.7 In the event that Ofcom disagrees with Sky's submissions and does introduce a requirement for CPs to introduce wording about ADR on the back of customer bills, Sky submits that Ofcom's proposed wording set out at paragraph 6.56 should be moved into the guidance as an example only. To require CPs to include Ofcom's text verbatim is again an example of overly prescriptive regulation and is not necessary to achieve Ofcom's stated objective of increasing consumer awareness of ADR schemes.

8 week ADR notification

- 3.8 Whilst Sky acknowledges that Ofcom has modified its proposal from the 2008 consultation, Sky still considers Ofcom's proposal that CPs send individual complainants whose complaint has not been resolved, a written notification of their rights to go to ADR to be disproportionate and unreasonable.
- 3.9 Ofcom's requirement to notify after eight weeks will, contrary to Ofcom's assertions, require CPs to put in place robust methods to log all complaints received by front-line staff particularly in light of Ofcom's requirements relating to repeat complaints. Failure to log complaints in this way will make it extremely difficult for CPs to robustly comply with Ofcom's requirements to notify complainants with Eligible Complaints of ADR schemes as the CP will have no means of ascertaining when the complaint was first made and therefore to calculate the eight week period. This situation is exacerbated by Ofcom's wide definition of "complaint" which, as discussed above, is not defined by reference to "consumer harm".
- 3.10 Ofcom suggests at paragraph 6.79 that logging all complaints is not the only option for CPs to comply with its eight week notification requirements. Instead Ofcom suggests that CPs could take a lower cost option of ensuring that unresolved complaints are proactively escalated to a dedicated complaints team who will be able to individually monitor the progress of the complaint with a view to issuing, if necessary, the notification eight weeks after the complaint was made to the front line agent.
- 3.11 Firstly, Sky is not clear on how Ofcom believes this option would avoid front-line staff having to log every complaint. It is clear that complaints which are unable to be resolved at the first point of contact could be escalated promptly after the complaint was made to the customer complains team with information on the complaint and when it was made. However repeat complaints or complaints which the front-line agent reasonably considers to have been resolved, will not fall within this category and therefore will not be escalated. In these type of cases, it may be very difficult to establish when the complaint was first made without robust recording keeping requirements being in place across all front line staff. Again this situation is exacerbated by Ofcom's wide

definition of complaint which requires all complaints to be treated in the same manner whether or not any consumer harm has occurred or is likely to occur.

- 3.12 Secondly, Ofcom's proposed alternative option is not a viable long term option in the context of a large sales estate. To rely upon individual customer service agents to manually calculate the date for eight week notification and then to manually diarise the date, would simply not be practicable. For example, it is heavily reliant upon the same customer service agent managing the complaint throughout and does not take account of holidays, sicknesses or other absences.
- 3.13 In order to robustly comply with Ofcom's requirement, the long term solution for the majority of large CPs will be to develop IT systems to allow for robust capture and tracking of complaints from first point of contact. Sky would incur significant costs to implement such system changes and Sky believes that Ofcom's cost analysis in this regard underestimates the costs to the industry, which Sky submits would not be objectively justifiable or proportionate to the benefit derived by, as Ofcom itself acknowledges, a small minority of consumers.
- 3.14 As an alternative to the highly prescriptive obligation to send customers a written notification at eight weeks, Sky suggests a more flexible requirement on CPs to individually inform complainants of their rights to go to ADR whose complaint has been escalated from the first point of contact to a specialist customer complaints team, at least once during the period starting at the point of escalation and ending within one week of the date on which the customer would be entitled to refer their complaint to an ADR scheme. Notification should be permissible both in writing (e.g. by post or by email) and on the telephone given that a large number of complaints are dealt with in telephone conversations rather than in written correspondence.
- 3.15 This proposal would provide CPs with the flexibility to inform complainants of their rights to refer their complaint to ADR depending on the current operation of their customer management systems. For example, a customer service agent could inform the customer of their right to refer their complaint to ADR if the complaint was not resolved within eight weeks, or CPs could include information about a customer's right to go to ADR prior to the eight week deadline, in correspondence or conversations with the customer about their complaint, either by email or by post. Including this type of information at this point will not only provide customers with the information at the most appropriate point in the complaints process (for example it may be inappropriate to send a customer a notification at eight weeks if by that point the CP has agreed with the customer a course of action to resolve their complaint to the satisfaction of the complainant) but it will provide CPs with more flexibility as to how and when the information is provided and therefore should lessen the cost impact of Ofcom's proposal.
- 3.16 In the event that Ofcom disagrees with Sky's submission, Sky proposes that Ofcom's guidance should be amended to stipulate that in instances where it is

reasonable for the CP to consider the matter resolved to the satisfaction of the customer, the eight week period should run from the date on which the repeat complaint was received (as opposed to the date of the initial complaint).

- 3.17 Sky agrees with Ofcom that it is not reasonable for CPs to be obliged to accept complaints in person particularly as agents out in the field (such as or door-to-door agents) may have difficulty with effectively logging and escalating complaints. Therefore if Ofcom proceeds with its proposal for written notification, Sky proposes that the definition of "Eligible Complaint" should be amended to clarify that the eight week period starts from the date the complaint is first lodged directly with the CP rather than the date it is first mentioned to the CP's field agent.
- 3.18 Finally, Sky considers Ofcom's guidance on when a CP can regard a complaint to be resolved, to be confusing. Ofcom states that a CP can consider a complaint to be resolved where it is reasonable to consider it to be vexatious. However, Ofcom then states that even where a CP believes that the consumer's complaint is unreasonable or unable to be justified, the CP is still obliged to treat the matter as a complaint for the purposes of the Code, which includes writing to them about their right to take their case to an ADR scheme. The distinction between a "vexatious" complaint and an "unreasonable/unjustified complaint" is not clear, yet Ofcom's guidance suggests that the former would not require written notification whilst the latter would. Given that CPs incur the fees for ADR cases, Sky does not consider it reasonable or justifiable for it to be obliged to send out written notification of ADR schemes to a customer where the complainant has no reasonable grounds to support their complaint.

4. IMPLEMENTATION PERIODS

If Ofcom's proposals as set out in the Consultation Document remain unchanged, we agree that an implementation period of 6 months for Clauses 1-3 should be sufficient. However if Ofcom's proposals remain unchanged in respect of Clauses 4-5, Sky may need longer than 12 months to implement robust recording procedures for front-line staff to log all complaints.

5. IMPROVING PUBLICLY AVAILABLE INFORMATION

- 5.1 Sky acknowledges that Ofcom are only seeking general views on whether and how Ofcom should look to improve the availability of comparative information on CPs' effectiveness at handling complaints and that Ofcom shall be conducting further analysis on this matter.
- 5.2 However Sky considers that it is the market, not Ofcom, that is best placed to determine the information which consumers want when choosing a provider and in this respect, Sky would like to remind Ofcom of the obvious failings of the Topcomm scheme, where there was no evidence that ordinary customers (as opposed to the industry, Ofcom and consultants) actually used the published information to choose a CP. Ofcom should also be mindful in evaluating how necessary it is to publicise such information, of whether consumer facing

organisations and third party comparison websites are already satisfying consumer demand for the assessment of the relative strengths and weaknesses of CPs.

- 5.3 If Ofcom proceeds with proposals to improve the availability of comparative information on how effective CPs are at handling complaints, Sky maintains that it is imperative that the information published is both transparent and sufficiently granular for customers to clearly distinguish between the type of complaints being made. For example, Ofcom currently categorises a wide variety of complaints as “customer service complaints” which range from complaints about the time a CP has taken to answer a call to providing misleading information to consumers about products and services. These are distinctions a consumer would need to be able to make in order to make any informed decision on whether or not to choose that CP.
- 5.4 In addition, Sky would expect Ofcom, when considering the options available, to consult the industry and key stakeholders on the nature of complaints publication, including discussion of who will bear the cost of any proposed surveys/audits and how often they expect these to be commissioned, where the results will be published, and the sample sizes that would be appropriate.

British Sky Broadcasting Limited
22nd March 2010