



A Review of Consumer Complaints Procedures

Consultation

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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, 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'.¹
- 1.2 To date we have exercised our duties through 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 14.7). 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, less than half that in a number of other sectors with similar schemes); and
 - Ofcom continues to receive nearly 1,000 complaints a 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.

¹ Section 52(3) Communications Act 2003.

What is Ofcom proposing?

- 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. It is not the role of Ofcom to regulate customer service standards. Our aim instead 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 are proposing to improve the existing regulation of complaints handling in the telecommunications industry through:
 1. establishing some basic high level standards for complaints handling. This will ensure the accessibility and transparency of providers' complaints handling procedures and require providers to have processes in place to secure the fair and timely resolution of complaints. This proposal will replace the current requirement for providers to seek Ofcom approval of their Codes of Practice; and
 2. providing additional information to consumers to increase awareness of ADR, which has been shown to help resolve long-running complaints. Under our proposals, providers will need to include relevant information about ADR on all consumer 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.
- 1.7 We also signal our intention through this consultation to improve transparency of the relative performance of providers' complaints handling, which we believe could benefit both industry and consumers. We are seeking stakeholder views on the merits of publishing various measures of provider-specific performance.
- 1.8 Stakeholders have had an opportunity to express their views on some of these issues through our July 2008 consultation. Since that consultation we have refined our proposals in light of further market research and engagement with industry and consumer stakeholders. We consider the proposals we are setting out to be a proportionate response to the problems we have identified and address what we consider to be significant and avoidable consumer detriment.
- 1.9 We are inviting comments on our proposals by 12 March 2010.

Section 2

Introduction

- 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 do 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 the 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 consultation 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 proposals contained in this consultation document are targeted and are a proportionate response to the problems we have identified. The proposals 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' to examine access to 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 been in place for four years.
- 2.6 In July 2008 we published a consultation document,² 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);

² 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 current complaints review.

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).³ 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 are now in a position to re-consult.

What does this consultation cover?

2.8 This current consultation sets out our further consideration of the remaining areas initially examined through our July 2008 consultation. For the reasons set out in this consultation, we consider that changes are necessary to the existing regulation of industry complaints handling to ensure that consumers have access to effective complaints procedures.

2.9 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.

2.10 This consultation examines these two issues, considers stakeholder responses to proposals from the 2008 consultation and proposes a number of new and refined regulatory initiatives.

What has changed since the 2008 consultation?

2.11 This document should be read in conjunction with the July 2008 consultation document and accompanying research. It does not represent a new set of initiatives but rather Ofcom's refinement of previous proposals.

2.12 As well as building on the information contained within the 2006 Futuresight market research⁴ and our 2007 formal information request,⁵ we have:

³ http://www.ofcom.org.uk/consult/condocs/alt_dis_res/statement/

⁴ http://www.ofcom.org.uk/consult/condocs/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

- issued a further formal information request to 11 major CPs to clarify how the proposals from the 2008 consultation (and several variations) would impact on their operations, including the extent to which they would impose direct and indirect costs;
- commissioned detailed market research from Synovate to supplement the earlier Futuresight findings (the Synovate research is attached as Annex 8). 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;
- we engaged a call-centre expert and undertook seven site-visits to call-centres to better understand how CPs currently handle complaints and the scale of the changes required if Ofcom implemented various proposals;
- we have further examined complaints handling obligations in other sectors (summaries provided in Annex 6) and have 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.⁶

2.13 We have also shared the key findings of our market research 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 18 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;

⁶ 'Report for BERR on the 2008 Consumer Conditions Survey', undertaken for BERR by Ipsos MORI, <http://www.berr.gov.uk/files/file48855.pdf>

- 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 CP; 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. The General Conditions are the main statutory instrument we can use to implement regulation in this area. 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.
- 2.17 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 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?

- 2.20 The remainder of this document is structured as follows:
- Section 3 outlines Ofcom's position on what constitutes a 'complaint';
 - Section 4 considers the extent to which we believe there is a problem with complaints handling standards;
 - Section 5 considers specific policy proposals for improving complaints handling and proposes some minimum industry standards;
 - Section 6 outlines the role of ADR in the complaints process and policy proposals for ensuring effective consumer access to the ADR schemes;
 - Section 7 examines the extent to which record keeping obligations on CPs are necessary in order to facilitate any future Ofcom investigations;

- Section 8 outlines how we propose to give effect to our policy proposals and what we consider to be an appropriate length of time needed for implementation;
- Section 9 signals Ofcom's intention to do further work on improving publicly available information on providers' complaints handling performances; and
- Finally, section 10 aims to clear up any industry confusion that may exist about when consumers are able to take their complaint to ADR.

Have we done an impact assessment?

- 2.21 The analysis presented in sections 4-7 and the Annexes of this consultation represents an impact assessment, as defined in section 7 of the Act.
- 2.22 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
- 2.23 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.
- 2.24 We are required by statute to have due regard to any potential impacts that our proposals in this consultation 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 consultation 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 proposed remedies, in this consultation document.

Section 3

What is a ‘Complaint’?

- 3.1 Before we examine the adequacy of complaints handling in the telecommunications industry, or potential regulatory measures, we need to make it clear what we mean by the term ‘complaint’.
- 3.2 The definition of a ‘complaint’ is important as it will determine the scope of the transactions which our proposed 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.
- 3.3 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 possible (and indeed necessary) to have a common definition that can apply across the industry.

A working definition

- 3.4 We need a common definition of complaint to make sure that our regulation properly captures the scenarios in which we think individual consumers are exposed to harm and detriment. We also need it to so that General Condition 14 is applied uniformly by all CPs and consumers are therefore protected in the same way regardless of the CP they chose. As set out in our 2008 consultation, we propose basing our definition on the approach in ISO 10002:2004 (Quality Management – Customer Satisfaction – Guidelines for Complaints Handling in Organisations). The proposed definition is:

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.*’

- 3.5 We consider this definition to be appropriate as it captures those matters that may subsequently lead to consumer harm (i.e. where the consumer is dissatisfied with the status quo). Indeed, this definition mirrors the issues that the ADR schemes are able to examine, should the complaint remain unresolved for eight weeks.
- 3.6 The only difference from the ISO standard and the proposed definition in our 2008 consultation is that we have slightly varied this definition to address the point made by Yahoo! that we should limit the definition of a complaint to those products or services which fall within the remit of the Act.⁷ Accordingly we have inserted the term ‘Public Electronic Communications Services’, which derives its definition from section 151 of the Act.

Addressing matters from our 2008 consultation

- 3.7 Respondents to our 2008 consultation document raised a couple of significant issues with our proposed definition, which we would like to address below.

⁷ See http://www.ofcom.org.uk/consult/condocs/alt_dis_res/responses/Yahoo.pdf, page 1.

No requirement for consumer harm

- 3.8 In response to our 2008 consultation document, O2 expressed a view that was also made by other CPs: that the definition of ‘complaint’ was not appropriate as it did not differentiate between consumers who are experiencing harm and detriment, and those that are not.⁸ Of particular relevant to this concern were the corresponding proposals from Ofcom to require CPs to record all complaints and to subsequently acknowledge all complaints within five days.
- 3.9 We disagree that the concern as to whether a complaint is causing harm is relevant to whether our definition of a ‘complaint’ is appropriate – these concerns are more relevant to a discussion on any subsequent actions we may require CPs to take when they receive a complaint. As will become evident later in this paper, we are no longer proposing that CPs log complaints or acknowledge that a complaint has been made, so we consider the basis for these concerns about our definition will likely have been addressed.

Inclusion of network faults

- 3.10 CPs strongly opposed our view in the 2008 consultation that ‘faults’ should be included in the definition of a ‘complaint’. Various CPs noted that a fault is not a matter where consumers are exposed to harm or detriment, that no CP can guarantee to be fault free, that consumers would not expect a call to their CP about a fault to be considered ‘an expression of dissatisfaction’, and that including faults as complaints would skew complaint figures.⁹
- 3.11 We would like to clarify 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 proposed obligations set out in this paper. A complaint about a network fault would require CPs to adhere to the proposals in this paper.
- 3.12 This approach is consistent with our view that technical service delivery is a fundamental part of what a consumer purchases from their CP and should not be exempted from any regulatory obligations on the handling of complaints. The ADR schemes have jurisdiction to examine unresolved complaints about network faults, so it would be a very strange state of affairs if we were to state that our new regulatory proposals would not protect a consumer who was unfortunate enough to be complaining to their provider about a fault.
- 3.13 As we are no longer proposing the need for CPs to log all complaints and have revised a number of our earlier proposals on what a CP must do when it receives a complaint, we again consider that the main basis for opposition from CPs to our definition is likely to have been addressed. In particular, the most contentious proposal from the 2008 consultation that CPs should inform consumers about the availability of ADR is unlikely to apply to many faults, as we would expect the vast majority of faults to have been resolved within eight weeks (which is when a CP would be required to inform the consumer of their right to go to ADR – this possible initiative is discussed in more detail in section 6).

⁸ O2 submission, http://www.ofcom.org.uk/consult/condocs/alt_dis_res/responses/o2.pdf, paragraph 16.

⁹ See for example, the submission from BT, http://www.ofcom.org.uk/consult/condocs/alt_dis_res/responses/BTplc.pdf, page 3.

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.'

Section 4

Is there a Problem with Industry Complaints Handling Processes?

4.1 This section considers the extent to which there is a problem 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. It then sets out the evidence on whether competitive pressures, without further regulation, are delivering a sufficient standard of complaints handling. Ultimately we consider that the evidence on complaints handling is of sufficient concern to warrant regulatory intervention.

The importance of effective complaints handling procedures

- 4.2 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.
- 4.3 Ofcom's recently published research, 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.¹⁰ While such high satisfaction levels are to be commended, we are concerned here with the experience of the small minority that do have problems and the extent to which any resulting detriment is avoidable.
- 4.4 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.
- 4.5 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

- 4.6 The current regulatory regime recognises the importance of effective complaints handling by imposing obligations on CPs with respect to their residential consumers and small businesses (with ten or fewer employees)¹¹: to have Ofcom-approved Codes of Practice and to belong to an approved ADR scheme.

¹⁰ Consumer Experience 2009, see <http://www.ofcom.org.uk/research/tce/ce09/research09.pdf>, figure 4.3.1.

¹¹ 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.

Complaints Codes of Practice

- 4.7 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’.¹² The Act also empowers Ofcom to set General Conditions requiring CPs to conform to an approved Code of Practice.¹³
- 4.8 To date Ofcom has exercised its duties through General Condition 14, which requires CPs to develop and submit their 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 Code or 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

- 4.9 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 a consumer may be protected and empowered when having a dispute with a CP.
- 4.10 Parliament has recognised the importance of ADR schemes by imposing a duty on Ofcom to secure the availability of appropriate dispute resolution procedures.¹⁴ Through General Condition 14.7 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) ¹⁵ and the Communications and Internet Services Adjudication Scheme (CISAS).¹⁶
- 4.11 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.

¹² Section 52(3) Communications Act 2003.

¹³ Section 52(4) Communications Act 2003.

¹⁴ Section 52 Communications Act 2003.

¹⁵ www.otelo.org.uk

¹⁶ www.cisas.org.uk

The role of the market in protecting consumers with complaints

4.12 In response to our 2008 consultation where we raised specific concerns with complaints handling, O2 submitted that:¹⁷

‘...in a maturing market, where margins are under pressure, operators must find innovative ways to differentiate themselves from their competitors. Customer services is one such area.’

4.13 The theme that CPs already have appropriate incentives to resolve complaints promptly was supported by a number of other respondents, who urged Ofcom to show restraint when considering the prospect of introducing new regulations in this area.

4.14 We recognise 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.

4.15 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.¹⁸ This illustrates that CPs have commercial incentives to treat their customers well.

4.16 There clearly are some competitive pressures to ensure good complaint handling. But in theory there could be reasons why these are insufficient to ensure an adequate level of complaint handling by all CPs. In particular, we note:

- Consumers may not take complaint handling sufficiently into account when they choose a CP. This could weaken competitive pressures to improve complaint handling. This may be especially the case as 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 CP's 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

¹⁷ O2 submission, http://www.ofcom.org.uk/consult/condocs/alt_dis_res/responses/o2.pdf, page 5.

¹⁸ See section 4.6 of the Synovate market research.

CP's complaint handling procedures. They may therefore not take complaint handling performance into account as much as is in their own interests.

- 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.

4.17 It therefore seems possible to us that competitive pressure alone may not be sufficient to ensure an adequate 'safety net' for many consumers who complain to their provider. Below we consider whether in practice there is evidence that complaints handling standards are inadequate.

How effective are current standards of complaints handling?

4.18 The findings from the Synovate market research support the earlier conclusions of Futuresight,¹⁹ that a significant proportion of complainants have a negative experience when trying to pursue a complaint with their provider.

4.19 The recent Synovate research found that 23% of the population had made a complaint²⁰ to a mobile, broadband, or landline provider in the preceding year, with 30% of these complaints being unresolved 12 weeks later.²¹ 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.²²

4.20 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).²³ 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 proposals are implemented perfectly. However, given the consumer harm that often accompanies a lengthy unresolved complaint,²⁴ the number of unresolved complaints does indicate potential problems of sufficient scale to merit close regulatory scrutiny.

4.21 It is evident from the research that those complainants that cannot resolve their complaint relatively quickly with their CP are much more likely to experience greater

¹⁹ The Futuresight report can be found at www.ofcom.org.uk/consult/condocs/alt_dis_res/futuresight/

²⁰ 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.'

²¹ 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.

²² 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.

²³ 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.

²⁴ See May 2009 Ofcom Statement,

http://www.ofcom.org.uk/consult/condocs/alt_dis_res/statement/statement.pdf, Annex 3.

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.

- 4.22 The full research findings can be found in Annex 8. The following is a summary of the key findings:

Nature of complaints

- 4.23 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.
- 4.24 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.²⁵
- 4.25 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).²⁶ 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.²⁷ 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).²⁸

Difficulties with making a complaint

- 4.26 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.
- 4.27 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').

²⁵ The ADR 'threshold' in the energy and financial services sectors is eight weeks.

²⁶ See figures 3.7 and 3.8 from the Synovate market research.

²⁷ See figures 3.9 and 3.10 from the Synovate market research.

²⁸ See figures 3.11 and 3.12 from the Synovate market research.

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:

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

- 4.28 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 may not be possible to ensure that everyone is satisfied or very satisfied with their experience, it should be possible to minimise the likelihood of avoidable consumer detriment.
- 4.29 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%

- 4.30 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).
- 4.31 As evidenced by the research, long-lasting complainants are 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).²⁹
- 4.32 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

²⁹ 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).³⁰

The Impact on consumers from lengthy unresolved complaints

- 4.33 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.³¹ 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.
- 4.34 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;³²
 - 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;³³ 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.³⁴
- 4.35 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,³⁵ 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.

³⁰ See Futuresight Report, http://www.ofcom.org.uk/consult/condocs/alt_dis_res/futuresight/research.pdf, figure 9.

³¹ See Futuresight Report, http://www.ofcom.org.uk/consult/condocs/alt_dis_res/futuresight/research.pdf, section 5.11 for more details.

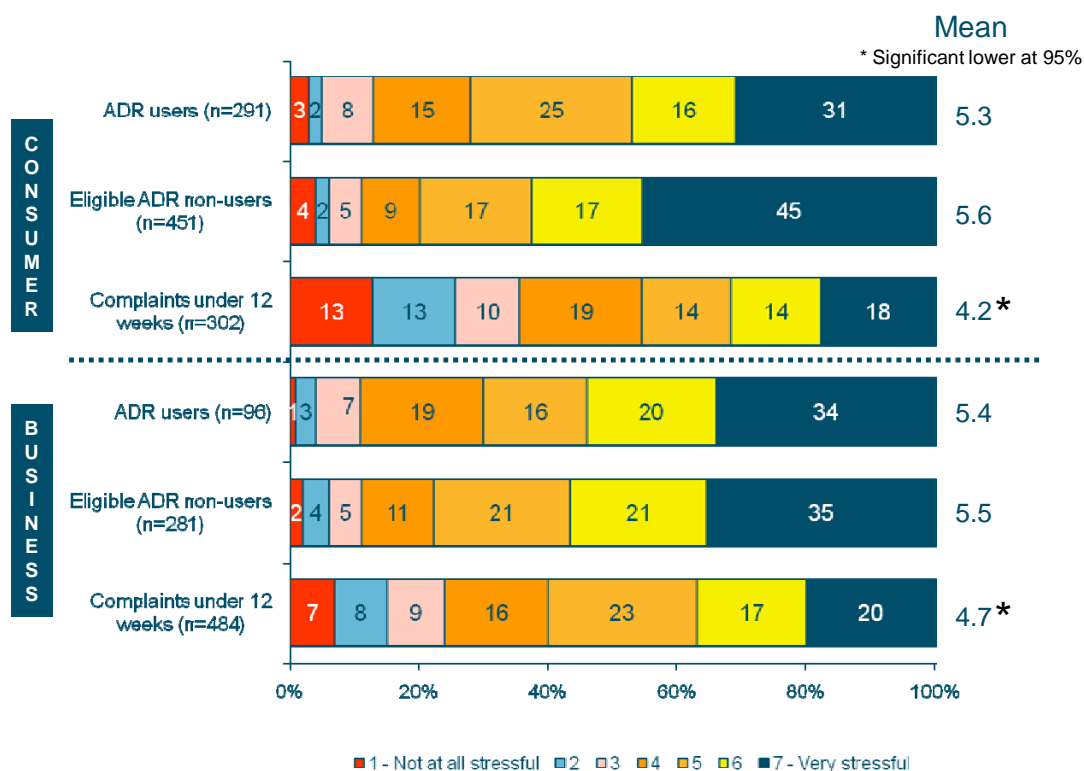
³² See section 4.2 and section 7 of the Synovate market research.

³³ See section 4.2 and section 7 of the Synovate market research.

³⁴ See section 4.4 and section 7 of the Synovate market research.

³⁵ I.e. a score of 7/7

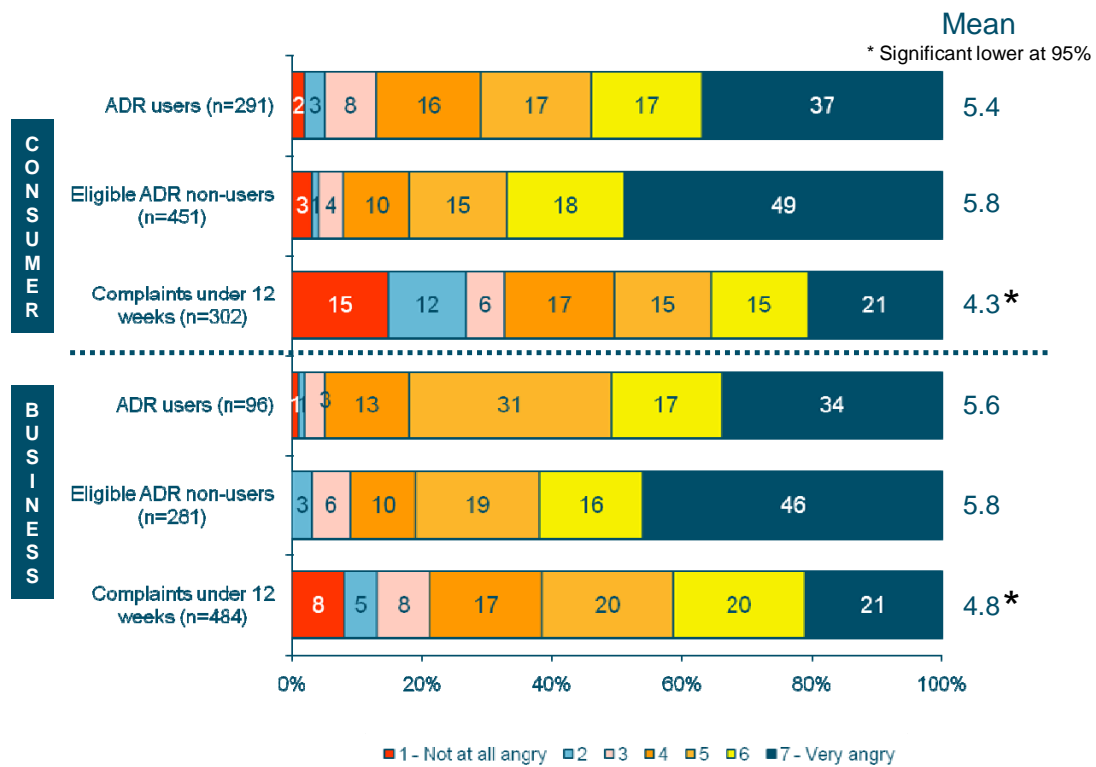
Figure 3: Levels of stress amongst complainants



4.36 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,³⁶ 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.

³⁶ I.e. a score of 7/7

Figure 4: Levels of anger amongst complainants



4.37 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,³⁷ 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.

³⁷ I.e. a score of 7/7

Figure 5: Levels of worry amongst complainants



4.38 The potential for lengthy unresolved complaints to have a significant emotional impact on consumers was also supported by the submission of the Citizens Advice Bureau to our 2008 consultation. As summarised in Annex 3 of our May 2009 Statement,³⁸ 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

4.39 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 6 below.

4.40 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.³⁹ Our recent market research has re-confirmed that awareness is low:⁴⁰

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

³⁸ http://www.ofcom.org.uk/consult/condocs/alt_dis_res/statement/statement.pdf

³⁹ See http://www.ofcom.org.uk/consult/condocs/alt_dis_res/condoc.pdf, paragraph 3.42.

⁴⁰ See section 3.1 of the Synovate market research.

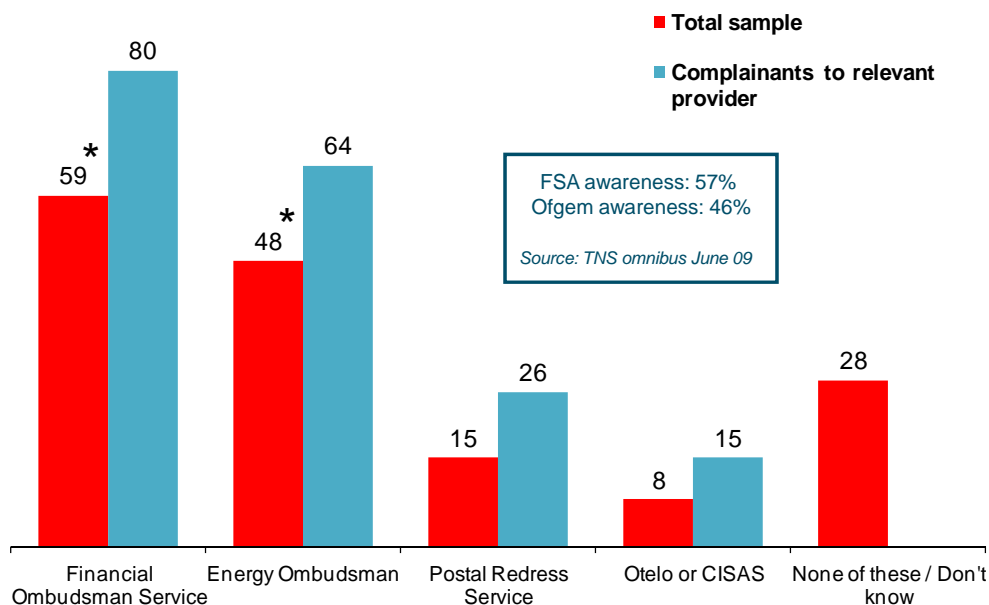
- 15% of telecommunications complainants are aware of at least one of the ADR schemes; and
- 23% of complainants who could potentially go to ADR (i.e. their complaint had lasted 12 weeks) are aware of at least one of the ADR schemes.⁴¹

4.41 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).

4.42 Respondents to our 2008 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. Our recent market research clearly shows that awareness of ADR is considerably lower in the telecommunications sector than in comparable industries, as demonstrated in Figure 6 below:⁴²

Figure 6: Awareness of official dispute resolution bodies

* Significant difference at 99%



⁴¹ 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.

⁴² 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.

- 4.43 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 provider, 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 the Citizens' Advice Bureau.⁴³
- 4.44 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.⁴⁴ This might be interpreted to mean that telecommunications providers are adequately informing their customers about ADR. However, this would be misleading. As we have demonstrated, awareness of ADR in the telecommunications industry is substantially lower than in other sectors.

Additional insights into the consumer experience

- 4.45 Complaint levels to Ofcom also demonstrate that consumers often find it difficult to pursue complaints with their providers. Complaints about 'customer service' are typically the top call-driver to Ofcom's Advisory Team, prompting nearly 1,000 complaints per month.⁴⁵ Such complaints are not about the original reason a consumer may have complained to their provider about, 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 indicates that many consumers find it very difficult to engage with their provider when trying to make a complaint.
- 4.46 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.⁴⁶ 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.
- 4.47 More importantly for the purposes of this consultation document, all three sectors received low scores from consumers on 'protecting consumers' rights'.⁴⁷ 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.⁴⁸
- 4.48 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.⁴⁹ This survey included a question about

⁴³ See figure 3.2 from the Synovate market research.

⁴⁴ See figure 3.2 from the Synovate market research.

⁴⁵ See Consumer Experience, <http://www.ofcom.org.uk/research/tce/ce09/research09.pdf>, figure 157.

⁴⁶ 'Report for BERR on the 2008 Consumer Conditions Survey', undertaken for BERR by Ipsos MORI, <http://www.berr.gov.uk/files/file48855.pdf>

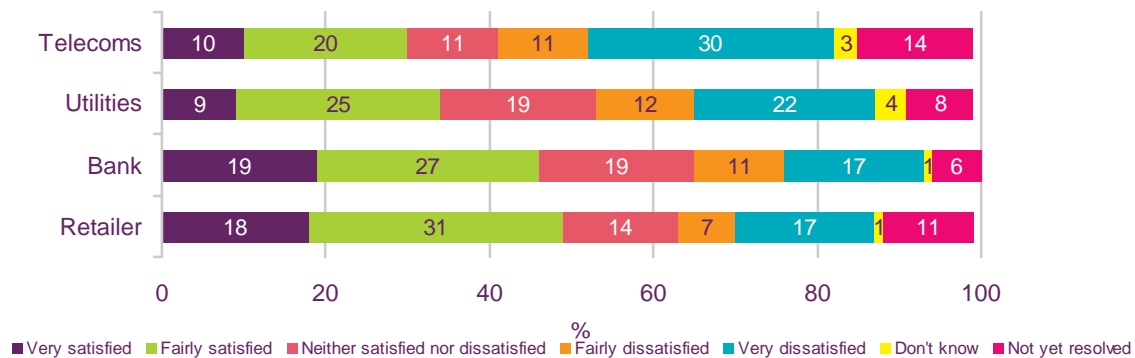
⁴⁷ See <http://www.berr.gov.uk/files/file48855.pdf>, p26.

⁴⁸ See <http://www.berr.gov.uk/files/file48855.pdf>, p30-32.

⁴⁹ [http://www.ey.com/global/Content.nsf/UK/FS - Complaints Handling](http://www.ey.com/global/Content.nsf/UK/FS_-_Complaints_Handling)

consumers' satisfaction with the way their complaint was handled for a number of different industries, including telecommunications. The results are shown below.

Figure 7: Level of satisfaction with how a complaint was handled⁵⁰



4.49 Telecoms had more consumers dissatisfied with the way their complaint was handled than retailers, and this difference was statistically significant. While telecoms also had lower levels of satisfaction than utilities and banks, these differences were not considered to be statistically significant. This research suggests that it is reasonable to conclude that a significant proportion of complainants are dissatisfied with the way their complaint is handled.

Conclusion

4.50 Ofcom considers that the current industry approach to complaints handling is of sufficient concern as to warrant changes to the regulatory framework.

4.51 We consider that a case has been established for a targeted intervention to address specific areas of concern. We have 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 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

⁵⁰ Ipsos-Mori survey on behalf of Ernst and Young, 2006,

- 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.

4.52 We consider that generally the market should provide incentives for adequate customer services standards; indeed, in a healthy market this can form a key differentiator. Yet the evidence does point 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.

4.53 Ofcom has a duty to ensure that 'the procedures established and maintained for the handling of complaints and the resolution of disputes are easy to use, transparent and effective'.⁵¹ We do not consider that current procedures are satisfactory and are proposing several initiatives, which are discussed in detail in the following sections:

1. introducing high-level minimum standards for complaints handling for the telecommunications industry (replacing the current obligation on each provider to seek Ofcom approval of their Codes of Practice);
2. improving awareness of ADR; and
3. further work to investigate increasing transparency of the performance of complaints handling.

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)?

⁵¹ Section 52(3) Communications Act 2003.

Section 5

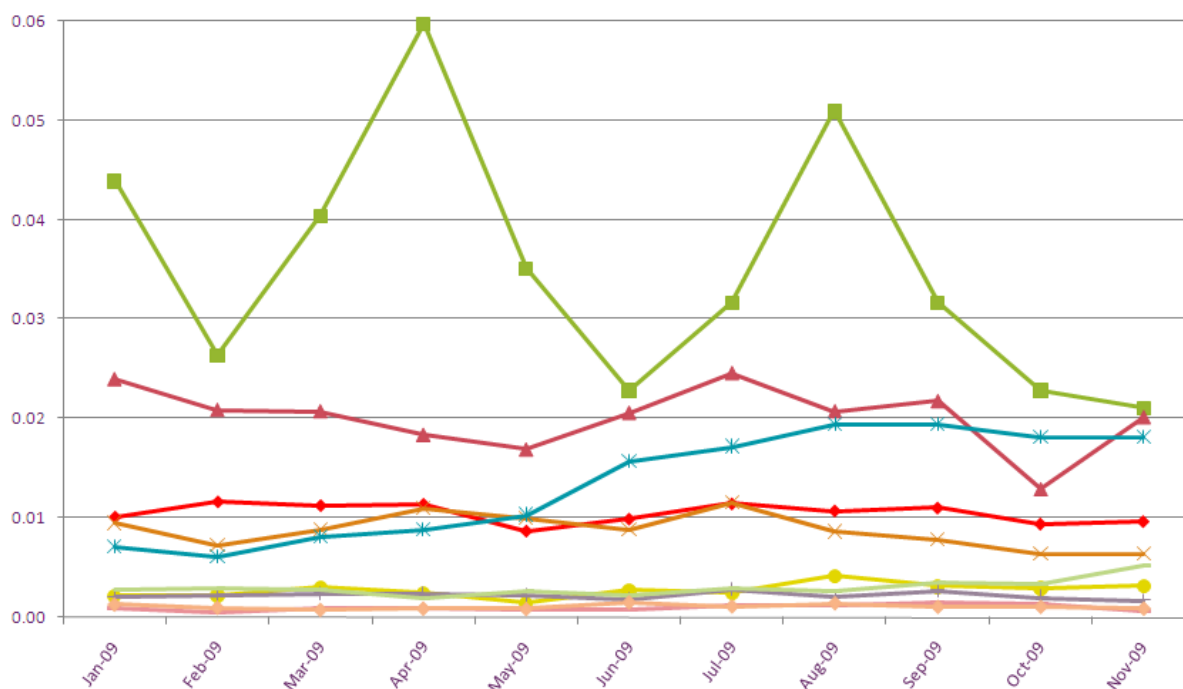
Establishing Minimum Standards for Complaints Handling

5.1 This section describes the proposals we made in our 2008 consultation on establishing a single Ofcom Code of Practice with minimum standards for complaint handling. It describes stakeholders' responses to this concept (which were generally supportive) and records our proposal to establish a single Ofcom Code. We have also set out our refined proposals for the Code and the likely impact on providers. Annex 5 contains our proposed Code of Practice for complaints handling in full.

Establishing a single Code of Practice

- 5.2 As noted above (paragraphs 4.7 - 4.8), CPs are currently required to submit their individual Codes of Practice to Ofcom for approval. In the 2008 consultation document we proposed removing this requirement and instead requiring CPs to comply with a single Ofcom Code of Practice, which would set out high-level standards for complaints handling.
- 5.3 Based on the evidence outlined in the previous section, we are of the view that when something goes wrong, telecommunications consumers should have the right to 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.
- 5.4 For illustrative purposes, we have included figure 8 below, which demonstrates that several CPs are currently generating up to 5-10 times as many complaints to Ofcom's Advisory Team about their customer service as other CPs (as a share of their customer base). While this may not necessarily signal deficiencies in their complaints handling, establishing an Ofcom Code would allow Ofcom to monitor areas of concern and to highlight any possible breaches of the Ofcom Code. Ofcom would have powers to investigate and take appropriate enforcement action if it reasonably believed the complaints handling procedures of a CP were contravening the Ofcom Code.

Figure 8: Complaints to Ofcom about the customer service of specific providers, as a share of 1000 customers



Options for Improving Complaints Handling Standards

5.5 We considered several regulatory options for addressing the problems with complaints handling procedures which we have identified in section 4.

Option 1: Retain the status quo of requiring providers to submit individual Codes to Ofcom for approval

5.6 The only advantage that we can see for this approach is that CPs would not need to incur any costs for making changes to the way that they handle complaints. We do not consider this option is practical, given the evidence we have that a large proportion of consumers experience harm when trying to make and pursue a complaint.

Option 2: Retain the requirement for providers to submit individual Codes to Ofcom for approval, but issue further guidance on what information a Code of Practice must contain before Ofcom will provide approval

5.7 One option we considered was whether Ofcom could issue much more prescriptive guidance as to what we would expect CPs to include in their individual Codes of Practice. Failure to include the relevant information would lead to Ofcom refusing to approve the Code and potential enforcement action under General Condition 14.4. A benefit of this approach is that Ofcom could then engage closely with ‘problem CPs’ to address any concerns and would not need to impose compliance costs across the whole industry.

5.8 This option would effectively require Ofcom to notify the industry that it would withdraw approval of Codes of Practice (and refuse to approve future Codes), which did not describe sufficiently high standards of complaints handling. Once a CP had described a suitable procedure in its Code of Practice, Ofcom would then approve

the Code and could take enforcement action against those CPs that failed to meet the standards outlined in their Code.

- 5.9 This would be a very convoluted approach to improving complaints handling procedures across the industry. As General Condition 14.4 is currently used to ensure that CPs' Codes of Practice contain relevant information for consumers, it would be a very intrusive measure for Ofcom to assess and make a judgment on the appropriateness of all CPs' complaints handling procedures. Such an assessment would potentially require significant engagement with CPs and an examination of how CPs' processes were being implemented in practice. This would be an extremely resource intensive process for both Ofcom and CPs and is unlikely to be a proportionate means of improving complaints standards.

Option 3: Establish a single Ofcom Code of Practice

- 5.10 We do not think that the current process for the individual approval of Codes of Practice is the best way to establish minimum complaints handling standards.
- 5.11 The benefits of a single Ofcom Approved Complaints Code of Practice are that it will provide consistency in standards, it will be less resource intensive and it will be easier to enforce against. 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 – and it is apparent that many CPs already do see their customer service functions as a competitive differentiator.
- 5.12 There was broad agreement from respondents in our 2008 consultation that there could be merit in introducing an Ofcom Code of Practice – provided it was confined to high-level principles rather than prescriptive standards (including from Orange, O2, 3, Citizens Advice Bureau, Federation of Communication Services, Invomo, Scottish & Southern Energy, Verizon Business, Yahoo!, CISAS and Otelo). BT and two confidential respondents disagreed with the need for minimum standards for complaints handling, commenting that there were already sufficient commercial incentives for CPs to respond to consumer concerns.
- 5.13 We note that Ofgem, the Financial Services Authority (FSA), and Ofwat have all established minimum standards for the handling of consumer complaints in the energy, financial services and water sectors. Further information on these often quite detailed regulatory obligations in other sectors is available in Annex 6.

Ofcom's Preferred Option

- 5.14 We think that option 3 would provide appropriate protection – establishing an Ofcom Code would ensure fundamental minimum standards and allow us to act if there is clear consumer harm occurring whilst not imposing an ongoing burden on CP to comply with highly prescriptive standards.
- 5.15 We consider there is merit in modifying General Condition 14.4 by replacing the current requirement for each CP to have their Code of Practice approved by Ofcom, with a new obligation whereby the procedures of each CP must meet 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 fewer than ten employees).

- 5.16 We note the point raised by Verizon Business, the United Kingdom Competitive Telecommunications Association (UKCTA) and one other confidential respondent, questioning whether Ofcom could justify imposing such obligations on CPs with respect to their small business customers as well as their residential customers. We have specifically commissioned research on the experience of small business complainants and are satisfied that the experience of small business and residential consumers are very similar – there are significant proportions of both groups that have difficulties pursuing complaints and both groups of consumers are likely to experience harm when something goes wrong.⁵² We consider any Ofcom Code of Practice should equally protect the residential and small business customers of CPs.

Tests under the Act

- 5.17 We consider that the proposal to establish an Ofcom Code meets the relevant tests under the Act as follows:

- (a) It falls within our duties set out in section 3 of the Act, including our principal duty of furthering the interests of consumers and citizens. In performing this duty Ofcom must have regard to the interests of consumers in respect of quality of service.⁵³

We consider that our proposed decision to require CPs to comply with a single Ofcom Approved Code of Practice which sets minimum high level mandatory standards falls within the scope of section 3 of the Act. The evidence in section 4 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 would 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.

- (b) Is:

- objectively justifiable:

We believe that the change 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.

- not unduly discriminatory:

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

- proportionate:

⁵² See section 4 of this paper and the Synovate market research findings.

⁵³ Section 3(5) of the Communications Act 2003.

We consider that the proposal to establish an Ofcom Code is proportionate on the grounds it still allows CPs the scope to individually tailor their procedures to comply with the minimum standards while achieving Ofcom's key objective of ensuring 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 are dependent on the substance of the Code, which is discussed in more detail below.

- transparent:

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

- (c) 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 proposed option will protect consumers by ensuring that consumers are protected from harm and detriment when making complaints.

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

The proposed new Ofcom Code of Practice

- 5.18 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 creates 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.
- 5.19 The obligations outlined below represent what we consider to be the most fundamental aspects of a fair and reasonable complaints procedure. 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 of Practice we are proposing that the complaints procedures of CPs will need to be:
- transparent;
 - accessible; and
 - effective.
- 5.20 Despite our concerns with the experience that a proportion of consumers have when trying to make a complaint, we recognise that many 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.
- 5.21 Although stakeholders typically agreed with the concept of having an Ofcom Code of Practice, there was some disagreement as to the proposed components of the Ofcom Code. The most contentious aspect was our proposal to prohibit CPs from charging more than the equivalent of a geographic call rate to consumers wishing to make a complaint, with CPs submitting there was no evidence of consumer

detriment, that this would result in increases in costs elsewhere, and that there are no such obligations in other sectors. Our responses to the specific issues raised by CPs are addressed below where we outline the proposed aspects of the Ofcom Code of Practice.

- 5.22 The options discussed in this section also need to be considered in the context of the amendments that we have proposed in section 6 relating to improving awareness of ADR. We expect that our proposal 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.
- 5.23 The proposed wording for the regulatory obligations and the Ofcom Code, including relevant guidance, can be found in Annex 5.

Proposed transparency obligations

- 5.24 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 of Practice 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.

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.

- 5.25 We consider these transparency obligations are objectively justifiable and are a proportionate response for ensuring consumers are able to access information about how to make a complaint. They are consistent with Ofcom's previous guidance on what a Code of Practice should contain.⁵⁴
- 5.26 Currently CPs are required to have a 'Basic Code of Practice' for Domestic and Small Business Customers (publishing a range of tariff information and standard terms),⁵⁵

⁵⁴ See for example: http://www.ofcom.org.uk/telecoms/ioi/g_a_regime/gce/ccodes/ccodes.pdf

⁵⁵ As required by General Condition 14.1.

Codes of Practice for Sales and Marketing,⁵⁶ potentially a Code of Practice for Premium Rate Calls,⁵⁷ as well as their Ofcom-approved Complaints Code of Practice.⁵⁸ We are aware that some CPs choose to bundle the information required through these regulatory requirements into one (often lengthy) document. With respect to the Customer Complaints Code, this will no longer be acceptable. In order to ensure consumers are able to easily follow the relevant information it is reasonable to require complaints information to be in a standalone document. We are aware this may impose some additional costs on CPs in terms of redrafting and reprinting of Codes, but think these are likely to be relatively small and able to be minimised through an appropriate implementation period. We would particularly welcome submissions on this point.

Transparency: Key Changes from the 2008 consultation document

- 5.27 Respondents to the 2008 consultation document did not comment in detail on our proposed obligations on transparency. The criteria above have been refined to make it more explicit to CPs as to what minimum information we would expect to be included in relevant Customer Complaints Codes.

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

Proposed accessibility obligations

- 5.28 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.
- 5.29 As noted above in paragraphs 4.29-4.31, we have concerns that consumers with long-lasting complaints are much less likely to be informed about the complaints procedures of their provider and to experience significant difficulties in getting their provider 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 minimal effort.

We are proposing that each CP will have accessible complaints procedures, which will include, as a minimum, 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

⁵⁶ As required by General Condition 14.5.

⁵⁷ As required by General Condition 14.2.

⁵⁸ As required by General Condition 14.4.

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.

Accessibility: key changes from the 2008 consultation document

5.30 We have refined the above proposals in light of stakeholder responses to our 2008 consultation. Notable changes include:

- We recognise that the homepages of many CPs may not be primarily designed for existing customers (they may be corporate or entertainment pages), so we have introduced greater flexibility into where we think consumers should be able to access a CP's Customer Complaints Code;
- We are no longer proposing that each CP may only charge geographic call-rates for consumers making a complaint. Many respondents noted that there was no evidence of consumer detriment from charging for calls, that this move could increase costs for consumers elsewhere, could be used by non-complainants to bypass more expensive telephone numbers, and that such a move may stifle innovation in customer services (particularly if a CP wishes to discourage calls to contact centres). Accordingly, we are giving CPs some flexibility in choosing how they want to provide a 'low cost' option for receiving complaints. We consider that the costs of this proposal will be minimal, are necessary to ensure consumers are not deterred from making a complaint and can be justified by Ofcom's duty under

the Act to ensure the consumers can access complaints procedures for free,⁵⁹ and

- We are no longer proposing that CPs must set out information on their complaints handling procedures in relevant terms and conditions for products/services. It will be sufficient to signpost consumers to the availability of a Customer Complaints Code.

5.31 We considered several possible options for increasing customer knowledge of their CP's complaints handling procedures. Based on responses to a statutory information request, we consider that requiring CPs to provide all new consumers with a copy of their Customer Complaints Code of Practice once they sign up could potentially cost £5-£7m per annum. Requiring CPs to send out a Customer Complaints Code to consumers whose complaint was unresolved after 10 days might cost the order of £35-£40m per annum, on top of one-off costs to ensure accurate logging of complaints (the costs of which are discussed in more detail below).

5.32 We consider it would be disproportionate to require CPs to provide a Customer Complaints Code to such a wide body of consumers, many of whom may have no interest in receiving such information. Instead we think that it is objectively justifiable to require CPs to refer to the existence of their Customer Complaints Code (including a relevant web address) in their standard terms and conditions⁶⁰ and any welcome material that is provided to new customers. We expect the cost of these changes to be minimal.

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

Proposed effectiveness obligations

5.33 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.

We are proposing that the complaints handling procedures of each CP must be effective, including:

- 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.

⁵⁹ Communications Act 2003, section 52(3)(b).

⁶⁰ As is noted in the relevant guidance to the Ofcom Code (see Annex 5), we would not expect CPs to make this change where such an amendment would require re-negotiation of an existing contract.

- 5.34 An escalation process should allow for unresolved complaints to be referred upwards from front-line staff through the CP's line management or to a dedicated complaints-handling team. It is our expectation that CPs will have processes in place 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.
- 5.35 The proposal that CPs should make improvements to their complaints handling systems is intended to reinforce that CPs should be alert to areas where there could be bottlenecks in responding to complainants. Where Ofcom had serious concerns about a CP's approach to complaints handling, it is foreseeable that it could use this clause to require a CP to make improvements – potentially as a precursor to a more formal enforcement programme.
- 5.36 Given that each CP has a unique approach to handling consumer complaints, it is difficult to quantify the likely industry costs from meeting the above proposals on 'effectiveness'. However, we consider that CPs that already have reasonable complaint handling processes will not incur any costs in meeting these minimum standards. Some CPs will need to incur costs, including for example, improving the training of front line staff and improving escalation processes. We nevertheless consider that these proposed requirements are proportionate and are objectively justifiable – they are not overly burdensome, they give effect to Ofcom's statutory duty to ensure complaints handling procedures are 'effective', and they should go some way to minimise the significant consumer detriment identified through our recent market research.

Effectiveness: key changes from the 2008 consultation document

- 5.37 We have refined the above proposals in light of stakeholder responses to our 2008 consultation. Notable changes include:
- We are 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'; and
 - We are no longer proposing that a CP must acknowledge receipt of a complaint within five working days of the complaint being received. While such a measure may reassure a consumer that their complaint is being progressed, we do not consider such an obligation can be justified as a regulatory requirement. We proposed this obligation in the 2008 consultation document partly because we did not consider it would impose significant marginal costs on CPs above the costs they would incur through our proposed requirement to log all complaints and to send out letters informing consumers about ADR eight weeks after the complaint had been made. However, as we are now proposing a more flexible approach to ADR notification that will not necessarily require all CPs to log complaints (discussed in the following chapter), we are satisfied that the costs of this option cannot be justified.

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

Application to small businesses

- 5.38 We consider that the specific proposals for the Ofcom Code of Practice listed above should apply equally to residential and small business customers.⁶¹ As is evident from the information provided in section 4 and the Synovate report, small businesses have a very similar experience to residential consumers when trying to make and pursue a complaint with their CP.
- 5.39 As the Ofcom Code will only bind CPs in how they treat residential and small business consumers (with 10 or fewer employees), we recognise that there are two specific proposals, which could potentially cause confusion amongst larger business users if they were implemented in a uniform manner:
- reference should be made to the existence of the CP's Customer Complaints Code when 'welcome information' is provided to consumers; and
 - 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.
- 5.40 To minimise the potential disruption should larger business consumers consider the protection would apply to them, we have not proposed any wording for how CPs may choose to give effect to these two obligations. It would be perfectly acceptable for CPs to state in the relevant material that these protections only apply to residential and small business customers. The accompanying guidance to the Ofcom Code also makes clear that we do not expect CPs to inform consumers of this change to the terms and conditions, or to make this change for existing customers if such a change could only be made through a renegotiation of an existing contract.
- 5.41 We expect this approach will minimise the potential disruption of applying these proposals to a subset of a CP's business customers.

Our proposal

- 5.42 Our aim in developing the Ofcom Code of Practice 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, we have taken into account a number of submissions made to our 2008 consultation and are satisfied that these modified proposals strike a more appropriate balance between protecting consumers while still allowing CPs a suitable degree of flexibility in tailoring their own complaints procedures.
- 5.43 We consider the proposed Ofcom Code, as attached in Annex 5, meets the relevant tests as set out in the Act:
- a) It falls within our duties set out in section 3 of the Act, including our principal duty of furthering the interests of consumers and citizens. In performing this duty Ofcom must have regard to the interests of those consumers in respect of quality of service;⁶²

⁶¹ By virtue of section 52 of the Act Ofcom is entitled to set General Conditions it considers appropriate for 'the handling of complaints made to public communications providers by any of their domestic and small business customers'.

⁶² Section 3(5) of the Communications Act 2003.

The proposed transparency, accessibility and effectiveness obligations in the Ofcom Code will provide appropriate levels of consumer protection and empowerment for a consumer who makes a complaint to a CP. Ofcom would 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.

b) Is:

- objectively justifiable

We believe that the proposals 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;

- not unduly discriminatory

We consider that the proposals are not unduly discriminatory. This is because the proposed requirement 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 proposed 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 which it is likely that CPs will incur 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 proposed modifications are transparent insofar as the obligations and the reasons for them are clearly set out in this document.

c) 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 proposed option will protect consumers by ensuring that consumers are protected from harm and detriment when making complaints.

5.44 As noted above, it has not been possible to quantify the impact of some of these proposals. The current processes of CPs are unique and the proposals have been kept at a high-level to provide CPs with a large degree of flexibility in choosing how to implement them. Nevertheless, we are satisfied that the proposals are proportionate and are necessary to give effect to our statutory duties.

5.45 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'.⁶³ The findings from the Futuresight and Synovate market research, as well as additional insights from complaints to Ofcom and 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'.

- 5.46 We consider that the proposals 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.
- 5.47 In relation to equality considerations, we have had due regard to the potential impacts our proposals may have on race, disability and gender equality.
- 5.48 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 proposals to improve the transparency, accessibility and effectiveness of complaints handling procedures will help such consumers with trying to make and pursue a complaint.
- 5.49 Given the potential that poor complaints handling could affect people with disabilities more profoundly, we have specifically proposed that the complaints handling procedures of CPs must be sufficiently accessible to consumers with disabilities and that CPs must not discriminate against complainants on the grounds of their disability.
- 5.50 We would particularly welcome the views of consumer interest groups on these proposals.

⁶³ Section 52(3) Communications Act 2003.

Section 6

Helping Consumers Access ADR

- 6.1 This section sets out the role of ADR in the complaints handling process and considers whether we should take steps to improve awareness of ADR. We consider that ADR improves outcomes for consumers, but that current awareness of ADR is low. We conclude that improving awareness of ADR is appropriate and set out our proposals in this area.
- 6.2 We consider various options for increasing awareness and propose a requirement for CPs to notify consumers about ADR after a complaint has been outstanding for eight weeks. Compared with our 2008 consultation, we have modified our proposals on when a CP can regard a complaint as resolved and provided the industry with greater flexibility in how they can meet this requirement, so as to reduce the burden on CPs and ensure that regulation is appropriate and targeted effectively.

The importance of ADR

- 6.3 Through General Condition 14.7 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.
- 6.4 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. 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.
- 6.5 As has been shown in section 4, inadequate complaints handling has the potential to cause significant harm and detriment to consumers.⁶⁴ 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

⁶⁴ See paragraphs 4.18 - 4.52.

- providing additional incentives for CPs to improve their complaints handling procedures and to resolve complaints quickly and effectively.
- 6.6 Parliament has recognised the importance of ADR schemes by imposing a duty on Ofcom to secure the availability of appropriate dispute resolution procedures.⁶⁵ As noted in section 4, although competition is likely to be sufficient to remedy the overwhelming majority of customer complaints in a timely and efficient manner, it is likely to be less effective for those more serious disputes the nature of which cannot be resolved promptly. In such cases the market may not deliver effective outcomes because, with the costs of taking action against a CP too high relative to the value of the claim it is not credible for customers to threaten to go to court. In such cases, the availability of an effective ADR mechanism is very important for effective dispute resolution.

How consumers can access ADR

- 6.7 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'.⁶⁶ 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'.
- 6.8 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,⁶⁷ while CISAS advises that 4% of their cases in 2008 were prompted by a deadlock letter.⁶⁸
- 6.9 It is to be expected that many CPs have little incentive to issue deadlock letters – referring a complaint to ADR results in them incurring case fees for a dispute that may otherwise be dropped by the complainant.

Should we improve awareness of the availability of ADR?

- 6.10 We consider that for an ADR regime to offer effective protection to consumers, consumers must know about it or be able to easily find out about its availability.
- 6.11 Although there is a regulatory requirement for CPs to belong to an ADR scheme, there is no correlating 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).
- 6.12 We are aware that some CPs notify consumers of the availability of ADR: at least one CP includes contact details on the back of bills, some others refer to ADR in 'welcome letters', while others may verbally inform consumers when they make a complaint. However, such activity is by no means widespread and we have concerns about the awareness of ADR amongst the general population, and more specifically,

⁶⁵ Section 52, Communications Act 2003.

⁶⁶ Rule 1(c) of 2007 edition of the CISAS Rules and clause 11.1 of the Otelo Terms of Reference.

⁶⁷ Otelo, 2008 Annual Report, p27

⁶⁸ Figure provided by CISAS.

amongst those complainants that could potentially lodge an application with an ADR scheme.

- 6.13 With only 8% of the population and 23% of 'eligible' complainants aware of ADR, awareness of ADR is considerably lower than of comparable schemes in other sectors.⁶⁹ We consider the low awareness of ADR to be undermining the effectiveness of the ADR regime and consider it appropriate to consult on options to address this low awareness.

Is ADR awareness/usage likely to improve consumer outcomes?

- 6.14 A number of respondents to our 2008 consultation noted that even if awareness of ADR is low, Ofcom should not seek to improve awareness unless it could demonstrate a correlation between ADR and improved consumer outcomes. To clarify our position – we certainly do not consider that having a dispute resolved at ADR is a desirable outcome at an early stage when a consumer simply wishes their provider to address their concerns. However, the right to go to ADR (and awareness of this right) has an important role to play in providing a remedy of last-resort and can also empower consumers during disputes with their provider. The Synovate market research supports this view, as explained below.

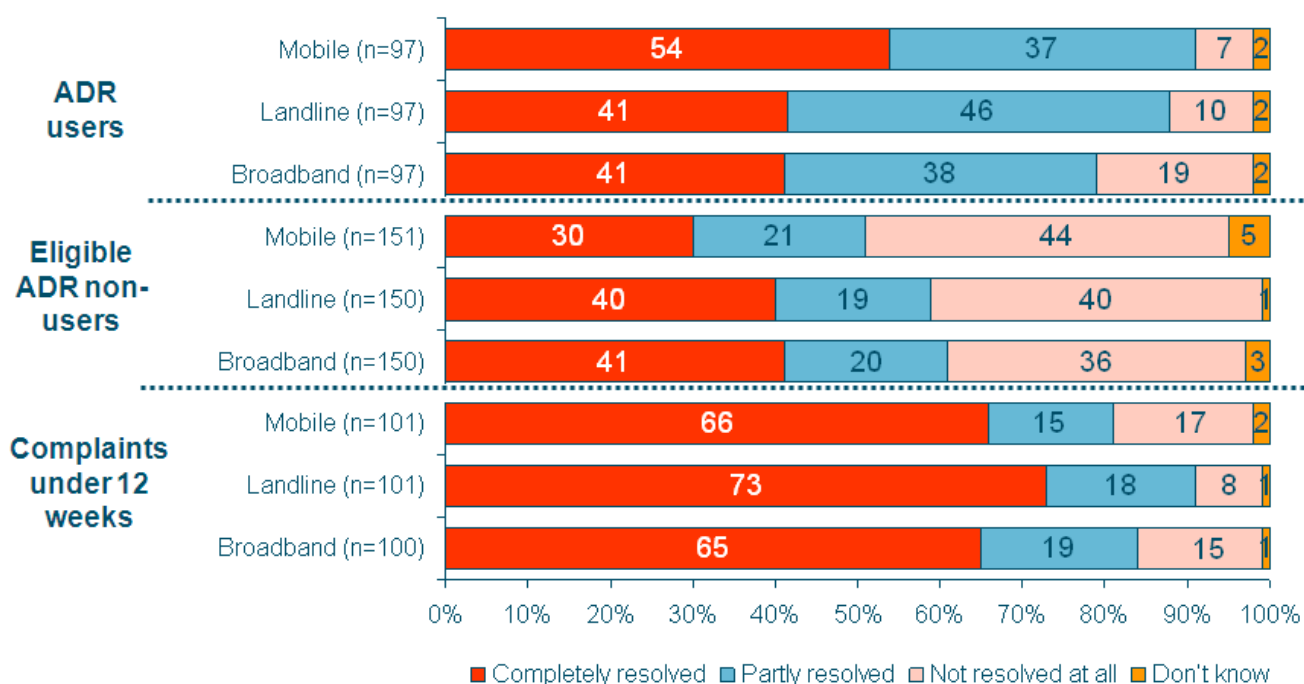
A link between ADR and improved outcomes

- 6.15 The Synovate market research clearly shows that ADR improves the prospect of a resolution for complaints that have not been resolved within 12 weeks.⁷⁰ For example, as shown in figure 9 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).

⁶⁹ See paragraphs 4.39 - 4.44 for more information on ADR awareness.

⁷⁰ The Synovate market research was undertaken when the ADR 'threshold' was 12 rather than 8 weeks.

Figure 9: The Outcome of Consumer Complaints



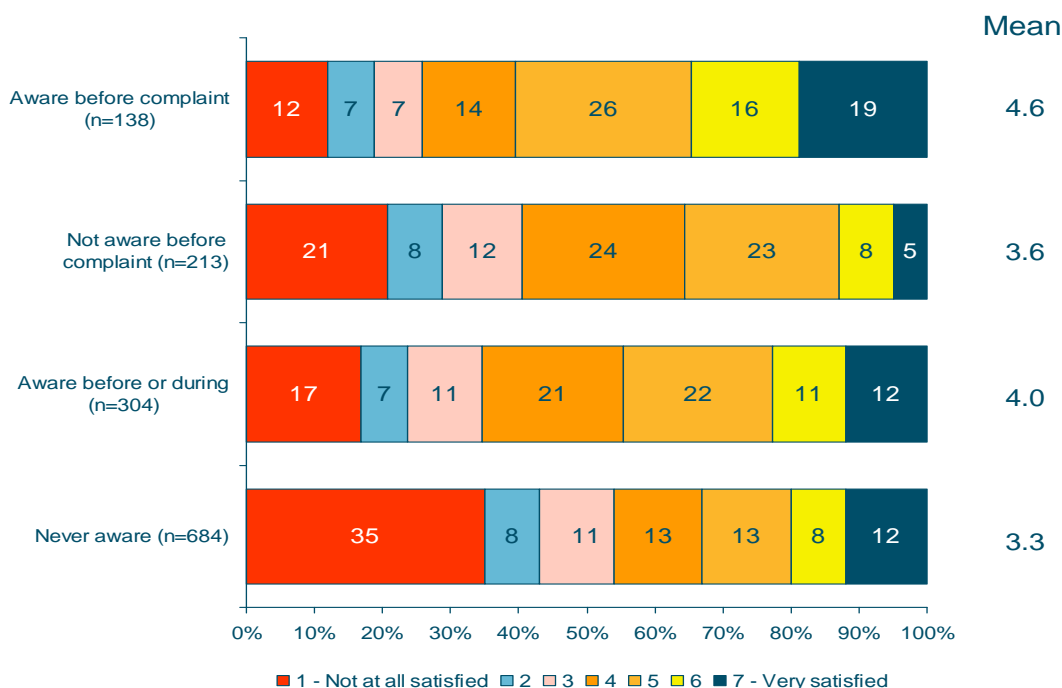
- 6.16 Furthermore, for those complaints that are not resolved after 12 weeks, those that use ADR are much less likely to be very dissatisfied with the outcome of their complaint.⁷¹ While this might be expected, given that those that use ADR are much more likely to have their complaint resolved, consumers are more satisfied with their outcome, even if we discount 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.⁷² 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’.
- 6.17 The market research also shows 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.
- 6.18 As Figure 10 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).⁷³ Similarly, Figure 10 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.

⁷¹ See figure 4.5 from the Synovate market research.

⁷² See section 4.3 from the Synovate market research.

⁷³ Synovate do caution that the differences in satisfaction in Figure 10 cannot be purely attributed to ADR awareness alone. 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.

Figure 10: Satisfaction with outcome of complaint by ADR awareness (residential consumers)

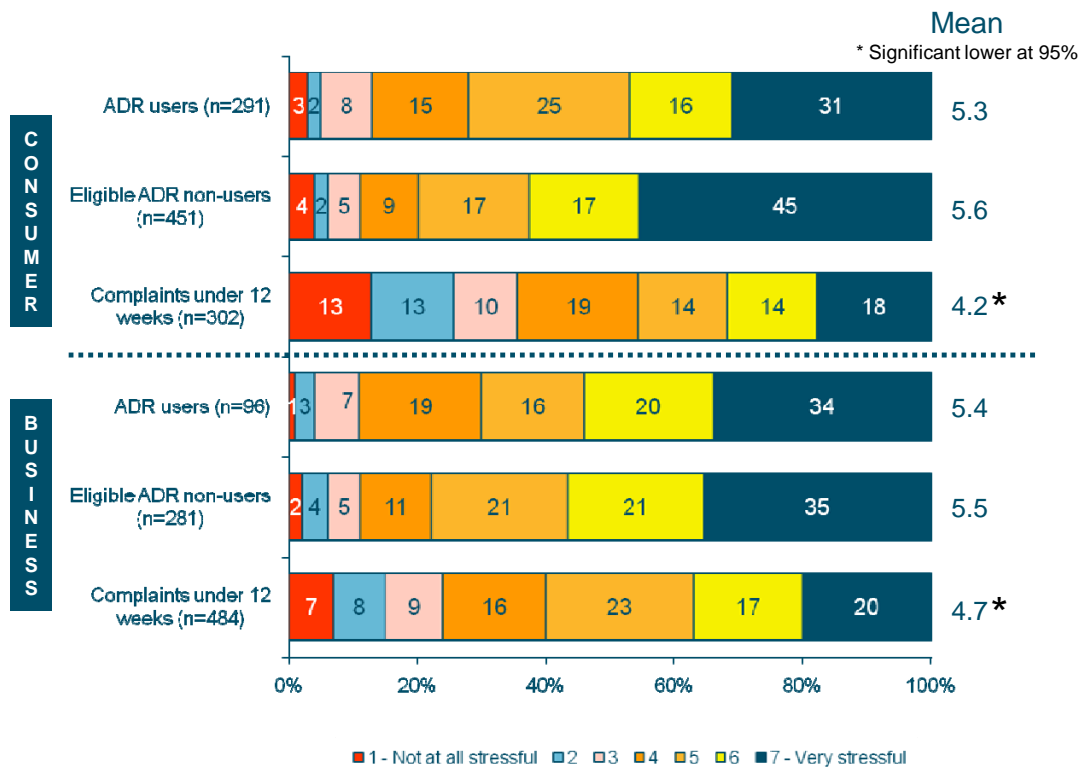


A link between ADR and reduced emotional distress

6.19 The market research also demonstrates that using ADR reduces the prospect of strong negative emotions for 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.⁷⁴ Figure 11 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.

⁷⁴ See section 4.4 from the Synovate market research.

Figure 11: Levels of stress amongst complainants



6.20 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.⁷⁵

Link between ADR awareness and ADR usage

6.21 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 ‘eligible’ 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).⁷⁶ 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.

6.22 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 – whereas the low usage in the telecommunications sector is much more likely to be due to consumer ignorance as to its availability.

⁷⁵ See figure 5.2 of the Synovate market research.

⁷⁶ 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.

- 6.23 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).

Are there costs associated with increased awareness of ADR?

- 6.24 We have demonstrated that there are likely to be a range of benefits for consumers from increased awareness of ADR. But before we examine any specific regulatory initiatives, we also need to consider the extent to which increased awareness of ADR may impact on the telecommunications industry.

Additional costs likely to be imposed on providers

- 6.25 The major cost to CPs if more consumers were to be aware of ADR is also 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. We estimate that there are of the order of 2 million complaints a year where the consumer regards the complaint as being outstanding for more than 12 weeks and is unaware of ADR.⁷⁷ Just considering the ADR case fee alone, it is apparent that if only a very small proportion of such cases went to ADR then CPs could face some substantial costs.⁷⁸ In our analysis we refer to these increased ADR case fee costs as being indirect costs, as they do not relate to the direct cost of increasing awareness, but are a potential consequence of higher awareness.
- 6.26 There is also a risk that increased consumer awareness of ADR may incentivise CPs to settle complaints more generously with consumers in order to avoid possible ADR case-fees if the consumer remained unsatisfied. CPs may have an incentive to do this even when they consider the consumer is being unreasonable and that the ADR scheme would find in the CP's favour. If consumers are aware of this, then there is a risk that they will deliberately behave unreasonably in order to try to take advantage of the fact that CPs pay the costs of ADR.
- 6.27 Unlike the courts system, as consumers do not incur any case fees for ADR, there is a limited rationing system for ensuring that only cases with a degree of merit are able to go to ADR. Although both CISAS and Otelo have procedures in place to prevent consumers bringing frivolous or vexatious claims, there is obviously a risk that consumers may abuse their ability to go to ADR to 'punish' their CP. If we were to implement any regulatory changes we would need to closely monitor the management of this by the ADR schemes and ensure that the role of ADR was not

⁷⁷ 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.

⁷⁸ Note, we have not revealed the specific ADR case fees for public policy reasons.

being misused. At this stage we consider that the safeguards put in place by CISAS and Otelo are sufficient to manage this risk.⁷⁹

- 6.28 The fact that ADR is a costly process for CPs could be taken to undermine any case for increasing awareness of it. However, we consider there are two reasons not to necessarily take this view.
- Firstly, improving awareness of ADR may not necessarily lead to a large increase in the number of ADR cases. Some CPs may respond to increased awareness of ADR by ensuring that they handle complaints in a way that leaves consumers satisfied, so as to avoid the case fees. While there would be costs for CPs of doing this, there would also be benefits to consumers in improved complaint handling; and
 - Secondly, 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.⁸⁰

Costs associated with changes to complaints handling procedures

- 6.29 As noted above, one of the main benefits of high levels of consumer awareness of ADR is that it increases the incentive on CPs to improve the way they handle complaints. In order to avoid the number of ADR referrals that may accompany any increase in awareness, it is likely that CPs will instead choose to improve their complaints handling processes so they are satisfied that they have taken reasonable steps to try to resolve a complaint before it lasts eight weeks.
- 6.30 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.⁸¹ This compared to 2-6 hours for complaints resolved in less than 12 weeks. 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.⁸²
- 6.31 For example, if increased awareness of ADR reduced the time consumers spend pursuing long standing complaints then this could potentially have significant benefits to consumers. We estimate that there are of the order of 2 million complaints a year where the consumer regards the complaint as being outstanding for more than 12 weeks. If for half of these complaints the time spent pursuing them were to reduce by 1 hour on average, and if we assumed a value for consumers' time for pursuing complaints of the order of £10 per hour, this would translate into a benefit to consumers of the order of £10m.
- 6.32 While general improvements in complaints handling is likely to benefit a wide range of consumers, we need to recognise that this will also impose some indirect costs on

⁷⁹ Both Otelo and CISAS have discretion not to accept cases they consider to be frivolous or vexatious.

⁸⁰ See Otelo Annual Report, 2008/09, which indicates the average Otelo award in 2008/09 was £104.

⁸¹ See section 4.2 of the Synovate market research.

⁸² 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.

the CPs who choose to make these improvements to the way they receive and handle complaints. Such indirect costs would vary considerably by CP but could include additional staff training, increased staff numbers, and improved escalation processes. It is not practical to try to quantify these costs as they will depend on the nature of CPs' existing procedures and their commitment to reduce the number of complaints lasting eight weeks.

Conclusion

- 6.33 ADR is not a desirable outcome for all complaints – it is a costly and complex process that is not intended to replace efforts by CPs to resolve complaints themselves. However, for a specific group of consumers who have been unable to resolve their complaint with their telecommunications provider in a reasonable timeframe, it provides for a low-cost and independent examination of a dispute.
- 6.34 Given that consumers have a right to take disputes to ADR, we believe that there is a very strong case for ensuring that they know about that right. Awareness of ADR is currently low and we believe is precluding a significant portion of consumers from deciding whether to exercise their right to go to ADR. Our market research clearly demonstrates that ADR leads to improved consumer outcomes.
- 6.35 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 will need to establish that the likely costs and benefits are proportionate, bearing in mind that consumers have a right to take complaints to ADR.

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

Policy options for improving access to ADR

- 6.36 In our 2008 consultation document our preferred option for improving awareness of ADR was to require all CPs to give written notification to consumers:
- within five days of a complaint being made, unless the complaint was resolved on first-contact; and
 - eight weeks after the complaint was first made, or earlier if the complaint was resolved.
- 6.37 We considered that such a requirement would cost approximately £20 million in the first year, with the costs being lower in later years. We considered that these costs were proportionate and could be objectively justified.
- 6.38 Various respondents argued that such a proposal was not sufficiently targeted at possible ADR users, would undermine the efforts of a CP to resolve their complaint and would result in premature contact between the ADR schemes and consumers. It was also apparent that many CPs did not have the internal systems to be able to log and track the duration of complaints made to front-line agents (only considering an issue to be a complaint if a consumer is dealing with a dedicated complaints team). Some CPs considered our cost estimates to be gross underestimates.

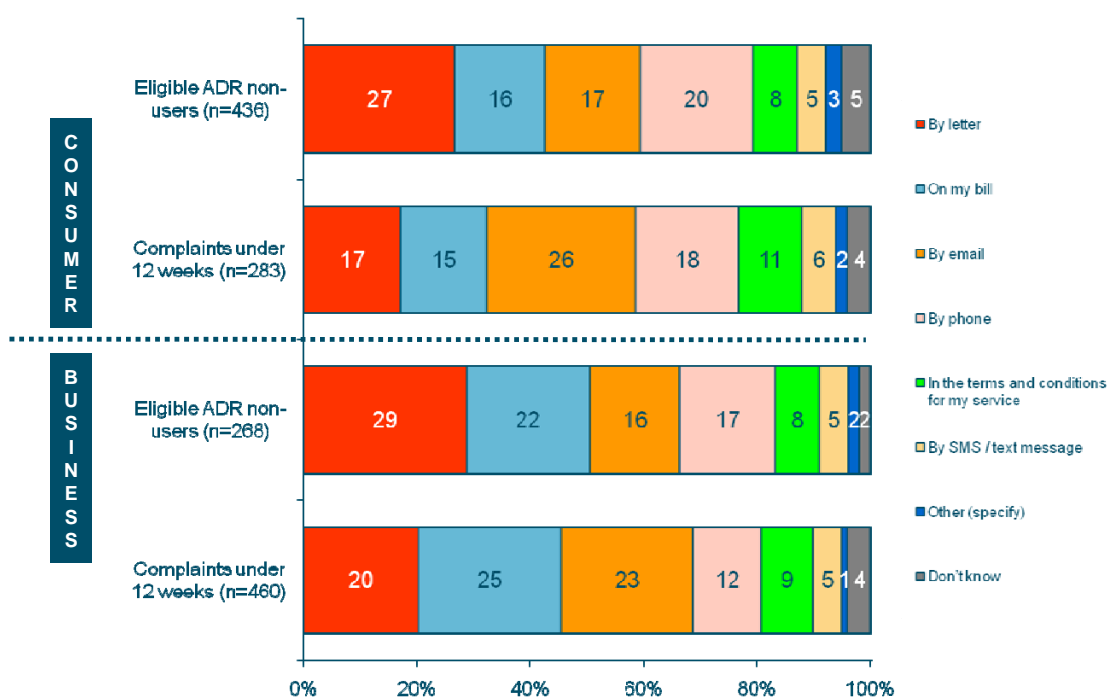
- 6.39 Since the 2008 consultation and in order to better understand the direct costs CPs would incur from monitoring the duration of unresolved complaints to front-line agents we have used our statutory power to request information from major CPs and have also commissioned expert advice and undertaken site-visits to call-centres of several CPs.
- 6.40 The IT changes that would be required for CPs to log and track all complaints would be particularly costly for mobile operators and not so for the fixed line providers. This is because the major fixed line operators have already had to ensure their IT systems are able to record complaints at the initial point of contact due to the requirements of the Topcomm scheme to measure the percentage of complaints processed within 28 days.⁸³ This obligation to record complaints has never been extended to the mobile operators. The mobile operators are currently unable to determine how many complaints have been made to their front-line staff and are only able to monitor the number and duration of complaints that have been escalated into dedicated complaints teams – with escalation typically being reactive where a complainant 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 require potentially complex changes to various IT systems used by front-line staff.

Our revised options for improving awareness and impact assessment

- 6.41 We have identified a number of possible options for improving consumer awareness of ADR:
- 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 have subsequently been escalated to a team responsible for handling complaints (i.e. what many CPs currently consider to be ‘formal complaints’).
- 6.42 Our proposal is that Ofcom should adopt options 2 and 4: specifically, require CPs to include relevant information on consumer bills and ensure consumers whose complaints are not resolved within eight weeks are informed of their right to go to ADR. If implemented, we intend to give effect to this by inserting the requirements into the Ofcom Code, which as discussed in section 5 above, would be binding on all CPs through a modification of General Condition 14.4.
- 6.43 Before we examine the specific proposals, it is useful to examine how consumers favour finding out about ADR. Figure 12 below shows that ‘by letter’, ‘by phone’, ‘by email’ and ‘on my bill’ are the four most popular methods.

⁸³ Topcomm was designed to enable fixed-line customers to compare providers on a range of quality-of-service indicators.

Figure 12: Views on how providers should inform consumers of ADR



Option 1: Do nothing

6.44 The only benefit from maintaining the status quo is that CPs would not face any costs from having to change their procedures to comply with regulation. For the reasons outlined in section 4 and paragraphs 6.3 - 6.35, we do not consider that the status quo is a credible option. Awareness of ADR is at an unacceptably low level, meaning that many consumers with long standing complaints are unnecessarily exposed to ongoing harm.

Option 2: General signposting of ADR

6.45 There is some evidence that suggests general signposting of ADR is particularly effective at creating awareness of ADR among consumers. The Synovate Market 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.⁸⁴ Ofcom will continue to take steps where it can to increase media coverage of the ADR schemes, but we do not consider it appropriate to rely on media coverage alone. For example, it is pertinent to note that the recent reduction in the ADR threshold from 12 to 8 weeks has not resulted in any marked increase in cases going to ADR – not only indicating that there is limited awareness of ADR, but that there is very limited media coverage of the availability of this regime.

⁸⁴ See figures 3.1 and 3.2 of the Synovate market research.

- 6.46 We believe there are two generic signposting options that are worth further consideration:
- 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.

Advantages

- 6.47 These measures are likely to increase awareness to some extent, which should improve satisfaction for complainants. However, it is difficult to assess the likely benefit from putting information about ADR on bills. Although BT includes information about ADR on the back of its bills (and has ~23% of retail customers), less than 1% of the population derived their awareness of ADR from the information provided on their bill.⁸⁵
- 6.48 Nevertheless, the market research shows that many consumers would like information about ADR to be provided on bills (particularly small businesses). We are 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 type of awareness could lead to consumers finding out about ADR at the beginning of the complaint process, which consumers say they want and which evidence suggests leads to increased satisfaction from the complaints process.⁸⁶
- 6.49 Based on responses to the information request sent to industry, we estimate 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 relate to changing the billing design and are based on the assumption that the required text would be relatively short.

Disadvantages

- 6.50 The option to require CPs to include information on the back of bills will require the industry to incur costs that they would otherwise not incur.
- 6.51 A particular risk of this option is that consumers may approach ADR schemes too early. Consumers reading about ADR on their bills may now approach an ADR scheme before they have attempted to resolve the complaint with their CP. These premature approaches would lead to higher costs for the ADR schemes who have to redirect consumers back to CPs and might also lead to increased confusion and frustration for consumers. This risk could be mitigated by having the precise wording on bills make clear that ADR is only available after eight weeks have passed. But there may also be some positive consequences for consumers. Consumers may benefit from being directed by the ADR scheme to the department at the CP that deals specifically with complaint handling.

⁸⁵ Figure 3.3 from the Synovate market research.

⁸⁶ See figures 5.1 and 5.3 from the Synovate market research.

Assessment

- 6.52 We consider that requiring information about ADR to be included on bills can be justified. Although this initiative is not targeted at potential ADR users, for the relatively low sums of money involved it is likely to be a particularly effective means of empowering consumers who are trying to pursue a complaint.
- 6.53 One way to help assess the costs relative to the benefits is to consider how this measure could be justified. 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 who could potentially go to ADR becoming aware of their right. Assuming the £200,000 cost is purely a one off cost, then the cost per complaint made aware would be of the order of £1. So if we considered the benefit per complainant made aware was significantly more than £1, then this measure would be justified. While we have limited information to assess the likely increase, an increase that at least raises awareness to 24% from 23% does not seem implausible.
- 6.54 The above calculation ignores the indirect costs (such as the ADR case fees). Our survey results did not allow us to estimate the likely increase in the number of ADR cases. There is likely to be an increase in the costs of ADR case fees, but it is likely to be only a small proportion of those who are made aware of ADR. In any event, given that consumers have the right to take these cases to ADR, we are satisfied that any additional case-fees incurred by CPs are within their control and are objectively justifiable.
- 6.55 We recognise that many CPs may have a standard template for their bills, particularly for business customers, and there is the potential that the proposal to include information about ADR on bills could result in confusion amongst those larger businesses that are ineligible for ADR. To mitigate this risk we have ensured that the proposed wording on bills makes clear that ADR is only available to residential and small business customers.
- 6.56 We propose the following wording for the Ofcom Code:
- Every bill or itemised usage of an account (whether paper or electronic) must include the following text (or Ofcom approved equivalent text) 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].*
- 6.57 In light of the importance of the media in raising awareness of ADR schemes, Ofcom will also make a concerted effort through its communications and work with other organisations to raise awareness of ADR.

Option 3: Inform complainants after 10 days by sending Customer Complaints Code

- 6.58 A further option is to require CPs to provide consumers with unresolved complaints with a copy of their Customer Complaints Code 10 days after a complaint is first made.

- 6.59 This is a variation on our proposed option in the 2008 consultation – where CPs were concerned that notification after 5 days may be premature. We consider issuing the notice 10 days after the complaint could instead be more appropriate. After 10 days the CP will have had time to make a reasonable effort to resolve the complaint, while targeting those complaints that have lasted 10 days is likely to benefit those complainants who have potentially rejected their CP's initial offer of resolution and who may benefit from receiving a Customer Complaints Code.

Advantages

- 6.60 The Synovate market research clearly shows that consumers want to be informed about the availability of ADR early in the complaints process – with the vast majority wanting to be informed within one month of the complaint being made.⁸⁷ If consumers read their provider'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 (albeit many weeks before they would actually have that right).
- 6.61 Consumers may also be empowered by understanding the complaints process and knowing about their right to ADR at the beginning of the process, making them less likely to drop complaints if they are not satisfied with the way the CP is handling their complaint. This is consistent with our survey results which suggest that knowing about ADR at the beginning of the process improves outcomes for consumers.⁸⁸

Disadvantages

- 6.62 It is likely that requiring CPs to send their Customer Complaints Code to all consumers with unresolved complaints after 10 days would impose considerable costs on CPs – beyond those associated with any of the other proposals in this document. Through our information request some CPs were able to give indicative estimates of likely costs, but many were unable to quantify the possible costs, beyond noting that they would be substantial. 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'.
- 6.63 We estimate that this proposal could potentially result in one-off costs for the industry of between of £2m to £12m, with annual costs of perhaps £30m to £40m.
- 6.64 It is also possible that many consumers would not actually read the Complaints Code that they receive and that sending it at this stage may achieve little. There is also a risk that this could lead to a significant increase in ADR cases and case fees, and that relatively minor complaints may be referred to ADR under this option – i.e. consumers who would have been prepared to settle an issue may now decide to take it to ADR. CPs also submitted during our 2008 consultation 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 6 weeks.

⁸⁷ See figure 6.1 from the Synovate market research.

⁸⁸ See figures 5.1 and 5.3 from the Synovate market research.

Assessment

- 6.65 This option is likely to empower consumers in the way they interact with the CP by ensuring consumers are informed of their provider's complaints procedures (and their right to ADR) early in the process. However, we consider that this option should not be pursued because: it is likely to be extremely expensive, has the potential to frustrate consumers, and there is no evidence that recipients would read the Code of Practice and then recall that they have the right to go to ADR if their complaint remains unresolved. There would also be a high risk of a large increase in relatively minor complaints going to ADR, which may not be in consumers' interests if the increased costs feed through to higher prices for services.
- 6.66 In light of the steps we are proposing in the previous section to improve the visibility of CPs' Customer Complaints Codes (including references being made in terms and conditions and making it more prominent on websites), we do not think that CPs should also have to provide copies to complainants shortly after they have made a complaint.

Option 4 – Inform complainants about ADR after eight weeks

- 6.67 While it may be desirable from a public-interest perspective to have near-universal awareness of the availability of ADR, from a regulatory perspective we need to ensure that any intervention is proportionate and targeted.
- 6.68 In this respect the target audience for awareness of ADR is not necessarily all consumers, nor even all complainants, but rather those complainants who actually have the option of taking their complaint to ADR. While limited awareness of the existence of ADR may undermine the effectiveness for the system there is also a risk that casting the net too wide in terms of promoting ADR will prompt some complainants to prolong their complaint in the hope of an improved settlement whereas others will inadvertently create unnecessary costs by contacting ADR too early in the process.
- 6.69 As consumers have the right to go to ADR after eight weeks we consider there may be merit in requiring CPs to inform complainants of this right at the stage at which the right arises. This obligation closely resembles the proposal in our 2008 consultation document and mirrors an obligation in the energy sector. However, compared to our 2008 consultation we have made some important modifications to reduce the burden on CPs and to make the requirement more targeted.
- 6.70 We propose that any such requirement should be in the following terms:

A CP must ensure that Complainants with an Eligible Complaint receive prompt Written Notification of their right to go to Alternative Dispute Resolution.

Where an 'Eligible Complaint' would be defined as a complaint that had not been resolved within eight weeks of first being brought to the attention of the CP and where the subject matter of the complaint falls within the jurisdiction of the ADR scheme. To address some of the concerns from CPs to the 2008 consultation that such a requirement would result in unnecessary ADR notifications being issued to consumers, we would propose that CPs would not need to send the notification if:

- it is reasonable to consider the matter resolved to the satisfaction of the customer;

- it will be resolved to the satisfaction of the customer provided that the CP takes an agreed course of action;
- the customer indicates either explicitly or implicitly by their actions that they no longer wish to pursue the complaint;
- it is reasonable to consider the complaint to be vexatious; or
- the CP is unable to follow up with the customer after making reasonable efforts to contact them.

The term 'Written Notification' would require the CP to provide relevant contact details of their ADR scheme and could be sent by post, email or by text message.

6.71 As noted above, we are aware that many CPs only consider an issue to be a 'complaint' if it has been escalated to a dedicated complaints team. Our proposal (which is in line with the jurisdiction of the ADR schemes) would require the eight-week period before a letter is sent to start running from the date at which the complaint was made to a front-line agent. If this proposal was to be put into effect we would issue guidance noting that we would focus our investigations on where there had been systemic failings on the part of the CP in putting appropriate processes in place to ensure compliance, rather than whether there had been individual failings to send out the eight week letter. Our guidance would note that CPs could adopt one of two approaches for ensuring effective compliance:

1. either 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 proactively 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. Adopting this approach to implementation does not alleviate the need for Written Notification to be sent after eight weeks, but could be a lower-cost option of ensuring that a CP is able to individually identify unresolved Complaints (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).

6.72 The exact wording that we are proposing and the accompanying guidance can be found in Annex 5 ('Notification of Proposed Modification to General Condition 14 of the General Conditions of Entitlement').

6.73 We have made a number of significant changes from the 2008 consultation in order to address industry concerns: we are proposing guidance as to how CPs can ensure compliance to emphasise that CPs do not necessarily have to incur the costs of altering their IT systems; we are proposing guidance that investigations will focus on the procedures that a CP has put in place rather than whether a specific consumer receives ADR notification on the exact date required; we have clarified that CPs do not need to accept complaints in-person (i.e. retail stores); we have removed the requirement that notification should be issued even when complaints was resolved; we have clarified that notification should not be issued if the complaint is outside the scope of ADR (i.e. about a commercial decision by a CP); we are only requiring 'prompt' notification at eight weeks (i.e. as soon as practical after the eight weeks has passed) ; and we are now proposing that such notifications can be sent by text

message (potentially alleviating the need to request address information from PAYG customers). The most significant development is that we have now outlined five exclusions where a CP will not have to send out the ADR notification (see above at paragraph 6.70).

Advantages

- 6.74 The main advantage of this option is that it only targets those complainants with lengthy unresolved complaints and only requires CPs to provide the notification at the time at which that right arises. As consumers have the right to take an unresolved complaint to ADR after eight weeks, we consider it reasonable to require CPs to individually notify those complainants of their right. Given that the CP will have had eight weeks to try to resolve the complaint, we do not consider such an obligation would undermine the CP's own complaints handling procedures. We consider this proposal will result in significantly improved outcomes for the 77% of complainants whose complaint has lasted 12 weeks and are unaware of ADR.
- 6.75 This proposal is also likely to have some benefits for the category of consumers that would otherwise take their case to ADR (i.e. who would have found out about ADR through other channels). Market research from Otelo indicates that approximately 27% of complainants to Otelo had pursued their case with their CP for over 7 months before contacting the ADR scheme.⁸⁹ The Futuresight market research demonstrated that consumer harm is likely to be exacerbated by a prolonged period without resolution,⁹⁰ indicating that many complainants who may eventually have found out about ADR through their own endeavours may benefit by being informed about their right after eight weeks.
- 6.76 Another important advantage of this option is that it will improve outcomes for complainants more generally. As noted above, as CPs are charged a case-fee for each case that goes to ADR, they typically do not have an incentive to inform complainants of its availability. Requiring a CP to inform a complainant of ADR after eight weeks creates a very strong incentive on a CP to resolve a complaint before eight weeks passes.
- 6.77 The Synovate market research shows that many consumers find it very difficult to get their provider to recognise that they are trying to make a complaint.⁹¹ We consider this eight-week notification will go a considerable way to improving the outcomes for complainants – regardless of whether they are subsequently eligible to take complaints to ADR. We would expect front-line agents to be aware of the regulatory obligations that will be triggered should an 'expression of dissatisfaction' not be resolved within eight weeks as it would not be acceptable for clear expressions of dissatisfaction by a consumer to be ignored by front-line agents. As indicated above, if it remains unresolved we would expect such complaints to be logged for monitoring or to be escalated to someone in the organisation who has the authority to look into the matter. This is likely to be a significant change for many providers who currently only treat a matter as a complaint if the consumer explicitly requests to have the matter escalated from a front-line agent to a manager.

⁸⁹ See http://www.otelo.org.uk/downloads/Otelo_Customer_Sat_Report_2009_-_FINAL_copy_1.pdf, paragraph 4.14.

⁹⁰ See Ofcom discussion of the correlation between the length of an unresolved complaint and consumer harm in Annex 3 of

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

⁹¹ See figures 4.2 and 4.6 from the Synovate market research.

Disadvantages

- 6.78 The main disadvantage of this eight-week notification proposal is the costs it will place on CPs who will now have to alter the way they handle complaints. CPs will need to train front-line staff to recognise when a complaint to them is unresolved (i.e. where a consumer is still dissatisfied and wants a response or resolution) and put processes in place to ensure that notifications are issued to those with complaints that are still unresolved after eight weeks.
- 6.79 In our 2008 consultation document we proposed requiring CPs to log all complaints they received to front-line staff, considering that this was the most effective means of determining when the eight-week period had elapsed. We still consider this is likely to be the most effective means of ensuring compliance; however, we are satisfied that this is not the only means. It is possible that some CPs may choose not to amend their IT systems to log complaints, but instead ensure that, where necessary, unresolved complaints are *proactively* escalated to complaints teams – once the complaint has reached the complaints team they will be able to individually monitor its progress, and if necessary, issue the ADR notification eight weeks after the complaint was made to the front-line agent.
- 6.80 As noted in paragraphs 6.38 - 6.40, we recognise that the changes some of the mobile operators would need to be made to their IT systems to identify the duration of unresolved complaints could be considerable. Where the changes are significant, it is difficult to forecast the likely cost without a detailed study of how the individual CP's current systems could be changed. It is possible that the costs could be as high as £3m for two CPs in particular, though they are probably considerably lower than this. Should the entire industry amend their IT systems to enable logging and tracking of unresolved complaints, then we estimate that industry costs are likely to be in the range of £2m to £12m. However, we consider that the one off costs will be significantly lower as many CPs will find it more cost effective to improve their escalation procedures.
- 6.81 In terms of the ongoing costs, based on responses to our information request and 2008 consultation, we estimate 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. The proposal to allow the notification to be sent by SMS is a change from the 2008 consultation that is designed to help mitigate ongoing operational costs.
- 6.82 As with all proposals to increase awareness of ADR, this eight-week requirement is likely to lead to an increase in cases going to ADR and a subsequent increase in the case fees that CPs will face. It is not possible to make a judgment on the scale of this increase, which will in part depend on the extent to which CPs improve their complaints handling processes to limit the number of cases lasting eight weeks. It is pertinent to note that in the 12 months since Ofgem introduced the eight week ADR notification in the energy sector, applications returned to the Energy Ombudsman have increased 22%.⁹² In any event, given that consumers have the right to take these cases to ADR, we are satisfied that any additional case-fees incurred by CPs are within their control and are objectively justifiable.

⁹² See http://www.ombudsman-services.org/downloads/Otelo_Performance_Report_September_2009.pdf, calculating percentage change in applications returned from October 2008 to September 2009.

- 6.83 A further disadvantage with only sending the ADR notification after eight weeks is that consumers may not be aware of their right to go to ADR when they are initially progressing their complaint with their CP. A consumer may therefore not feel as empowered as they should when communicating with the CP – indeed, the market research demonstrates that consumers would strongly prefer their CP to inform them about the availability of ADR at the time they make their complaint.⁹³ We think the possible risk that this proposal would not sufficiently empower consumers during their complaint is reduced to the extent that the back-of-the-bill option is pursued (option 2 above).
- 6.84 As with other proposals to increase awareness of ADR, there is also a slight risk that this proposal will result in relatively minor complaints being referred to ADR. Consumers who may have been prepared to drop a minor issue may now decide to take it to ADR when they receive a letter informing them of this option. It is certainly not our intention to create a situation whereby a single complaint from a consumer subsequently leads to an obligation on a CP to write to the consumer eight weeks later to inform them about the availability of ADR. We have mitigated this risk by providing a number of exemptions to the notification requirement and providing guidance on when a CP could consider a complaint to be resolved (see paragraph 6.70 and Annex 5) – and our guidance makes it clear that a consumer bears some responsibility for actively pursuing a complaint. In any event, we are satisfied that the ADR schemes have appropriate mechanisms for filtering out frivolous or vexatious complaints.

Assessment

- 6.85 We consider that requiring CPs to notify eligible complainants that they can take their case to ADR is a highly targeted proposal that should be pursued. We consider the benefits of this approach will be significant – more consumers will be aware of ADR, more consumers with protracted complaints will have the choice of going to ADR, and importantly, CPs will have very strong incentives to reduce the number of complaints that last eight weeks.
- 6.86 We consider that this proposal will address several of the concerns that CPs had regarding the proposal in the 2008 consultation: namely we have narrowed the definition of those complaints where we would expect a CP to issue an ADR notification letter and have outlined in what circumstances a CP can regard a complaint as being resolved. By providing guidance that we will be primarily interested in the processes that a CP puts in place to issue the ADR notification, we expect to alleviate concerns of many CPs that they would potentially be subject to Ofcom investigation if they failed to send the notification to specific complainants.
- 6.87 We estimate that there will be annual ongoing direct costs of £4m-£12m to the industry from implementing this proposal and depending on implementation decisions made by CPs there could be further one-off costs of £2m-£12m (although this is considered unlikely). In addition, there is likely to be some increase in the indirect costs associated with dealing with an increase in ADR cases, including ADR case fees. We consider that these costs are objectively justifiable in light of very low awareness of consumers' right to take cases to ADR and the clear evidence that ADR improves outcomes for consumers with lengthy unresolved complaints.
- 6.88 We accept that the success of this proposal rests on the premise that consumers will read the notification they receive from their CP and that this will lead to increased

⁹³ See figure 6.1 from the Synovate market research.

awareness of ADR and possible usage of ADR. We think these are reasonable assumptions to make – this is targeted at those consumers who are likely to be having an unsatisfactory experience pursuing a complaint with their CP and who are likely to be a receptive audience to a letter outlining their right to seek an independent examination of their case.

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

- 6.89 A variation on option 4 is that CPs should 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 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.

Advantages

- 6.90 The advantage of this proposal is that it would not necessarily entail major changes to the way that CPs currently handle complaints and would not require CPs to consider implementing new IT systems for front-line agents.
- 6.91 Many larger CPs have dedicated complaints teams, who can examine a customer's account to work out when they first contacted the CP to discuss the issue in question. Under this scenario, once a complaint entered the complaints department, relevant staff members would only need to check when the complaint was first made to a front-line agent, and if they were unable to resolve the matter in the appropriate timeframe, ensure the ADR notification was issued by the eight-week stage.

Disadvantages

- 6.92 The main disadvantages of this proposal are that it is unlikely to result in as many consumers being notified of their right to ADR as option 4 discussed above and it will not incentivise front-line agents to recognise when a consumer has an unresolved complaint that needs further action.
- 6.93 As the market research indicates, a key problem to complaint resolution is that many consumers are unable to get their CP to recognise that they are trying to make a complaint. This proposal is unlikely to result in changes to the way front-line staff handle complaints and the only significant change that is likely to occur is that complaints may be resolved quicker once they reach a dedicated complaints team (i.e. within the eight week period). 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 a 'formal' complaint not to have been resolved within eight weeks.
- 6.94 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. We could aim to avoid this by setting very prescriptive rules about how and when complaints should be escalated from front-line staff to managers and then to complaints department. However, comprehensive rules would be costly to implement, would likely be very intrusive and could give rise to risks of unintended consequences.

- 6.95 We are also aware, that while this obligation may suit some providers, it is unlikely to be practical to apply across the industry as many CPs do not have dedicated complaints teams (particularly smaller CPs). As such, it is unlikely to be practical to draft an obligation that the eight-week letter should only be sent if escalated to an appropriate team.

Assessment

- 6.96 We do not consider this option is practical. While it may result in some increased awareness of ADR, it is unlikely to be significant as it would not impose an obligation on CPs to treat unresolved complaints differently when they are first made to front-line staff. Any effort by Ofcom to prescribe how such complaints should be escalated by front-line staff is likely to be unwieldy and unnecessarily prescriptive.
- 6.97 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 noted above in the discussion of option 4, we are no longer insisting that the ADR notification requirement is dependent on CPs logging all complaints and it is open CPs to develop their own improved escalation procedure. By simply setting the end objective in option 4 (effectively that 'complainants receive ADR notification after eight weeks') it is not necessary to get into a level of prescription around how CPs may choose to escalate complaints – something that would be necessary if we were to try to implement option 5 effectively.

Our preferred option for improving awareness of ADR

- 6.98 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 do not consider that the current requirement that CPs must inform consumers about the availability of ADR through their Code of Practice is sufficient for informing consumers of their right to ADR. As we have seen in paragraphs 6.10-6.35, ADR improves outcomes for consumers.
- 6.99 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.
- 6.100 We considered whether general signposting to ADR (i.e. information on bills and Ofcom initiatives to raise awareness) would be sufficient to raise awareness of ADR by itself (as an alternative to eight-week notification). While important complementary initiatives, we are satisfied that general signposting options will not be effective on their own:
- although BT refers to ADR on its bills (and has ~23% of retail customers), less than 1% of the population are aware of ADR from the information on their bill;
 - our research demonstrates that residential consumers prefer to receive information about ADR in a letter (with information on their bill ranked 4th favoured option); and
 - it is reasonable to expect that consumers are more likely to absorb information about their right to go to ADR if it is individualised (i.e. it is about their specific complaint) and it is relevant (i.e. they are informed about ADR at the stage at which they can go to ADR).

6.101 We consider 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 (including what should be in the notice about ADR) both meet the required tests under the Act, as follows:

- (a) It falls within our duties set out in section 3 of the Act, including our principal duty of furthering the interests of consumers and citizens. In performing this duty Ofcom must have regard to the interests of those consumers in respect of choice and quality of service.

The main aim of our changes is to further the interests of individuals both as consumers and citizens. ADR improves the prospect of a resolution for complaints that have lasted 12 weeks and awareness of the right to ADR may improve satisfaction with the outcome of the complaint for other consumers. In addition, using ADR reduces the prospect of strong negative emotions for consumers with long-standing complaints. We also consider our proposals will create strong incentives on CPs to resolve complaints before they become eligible to go to ADR.

- (b) Is:

- objectively justifiable:

We believe that the changes are objectively justifiable because they further the interests of consumers. The right to take unresolved complaints to ADR cannot be effective given that so few people with 'eligible' complaints are aware they have this right. As noted above at paragraphs 6.10- 6.35, use of ADR and awareness of the right to ADR has benefits for consumers and citizens.

Including information about ADR on bills is likely to increase general consumer awareness of ADR, which the Synovate research demonstrates is 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. As evident from the market research, ADR is likely to have a positive outcome for consumers with lengthy unresolved complaints.

- 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 and electronic 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 can choose to monitor the duration of unresolved complaints.

- proportionate:

We consider that the preferred proposals are proportionate to achieving the aim of informing consumers of their right to go to ADR.

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

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. 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 anticipated consumer benefits.

- 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 (see Annex 5).

- (c) 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 proposed option 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.

Application of the eight-week ADR notification to small business customers

- 6.102 Through the 2008 consultation, Verizon Business, UKCTA, and one other confidential respondent raised concerns that applying any eight-week ADR notification to small business customers would have a disproportionate impact on CPs. It was submitted that, in order to ensure a potential recipient of an ADR notification was actually eligible to go to ADR, a CP would first need to identify whether the account was being used for business purposes and then whether the business had ten or fewer employees.
- 6.103 We accept that 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.
- 6.104 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 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.
- 6.105 To clarify, although a CP may use a reasonable proxy for the purpose of determining whether to issue the eight-week ADR notification, this flexibility does not extend to whether a small business will be able to take a case to ADR – this eligibility criteria still requires a business to have 10 or fewer employees in order to go to ADR.

Other options for improving access to ADR

6.106 As well as examining possible initiatives for improving awareness of ADR, we have considered whether there are other options that could be pursued to improve access to ADR – particularly in light of the benefits available to consumers who take lengthy unresolved complaints to ADR.

Staff training

6.107 We consider that an effective ADR regime and the success of the proposals in this consultation largely depend on the staff of CPs being informed about the availability of ADR and their responsibilities under the Ofcom Code.

6.108 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 centre staff should be fully briefed on the existence of the appropriate dispute procedure scheme.’⁹⁴

6.109 In 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 do not consider that the status quo is acceptable for ensuring an effective ADR regime.

6.110 While 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, if for no other reasons that they realise that consumers have other options if they are dissatisfied with the way in which their complaint is handled and can clarify relevant consumer queries.

6.111 We consider there is 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 consider 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 do 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 will be some small costs we consider these will be minimal if information is provided to staff members through regular training or through electronic circulation of relevant information.

Issuing deadlock letters

6.112 As shown by the Synovate market research, many consumers find it difficult to get their provider to recognise they are trying to make a complaint. To some extent we think this will be addressed through the eight-week ADR notification requirement; however, we think there may be scenarios where a consumer needs to be assured that their provider is taking their complaint seriously.

⁹⁴ 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.

- 6.113 While we think the remaining proposals in this consultation will improve outcomes for consumers, we do not think they will necessarily be sufficient for assuring an individual that their complaint is being actively looked into. We consider 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 propose requiring a CP to issue a deadlock letter when requested by a consumer.
- 6.114 This obligation may 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).
- 6.115 The intention behind creating an obligation for a CP to issue a deadlock letter on request is primarily designed 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.
- 6.116 We anticipate 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 under 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'. We do not consider this to be a particularly onerous requirement and it should not impose additional administration costs on CPs above that which they would already face from dealing with the complaint.

Tests under the Act

- 6.117 We are satisfied it is reasonable to require CPs to ensure that their front-line staff are adequately trained about ADR and the role of Ofcom, 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 proposals would improve access to ADR and meet the required tests under the Act, as follows:
- (a) falls within our duties set out in section 3 of the Act, including our principal duty of furthering the interests of consumers and citizens. In performing this duty Ofcom must have regard to the interests of those consumers in respect of quality of service.

We believe that our preferred options will fulfil our duty as we have shown at paragraphs 6.10 - 6.35 that awareness and usage of ADR leads to significantly improved outcomes for consumers with lengthy unresolved complaints.

(b) 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 would cause unnecessary confusion when consumers contact CPs to enquire about ADR. Our aim of improving consumers' access to ADR will be helped by our proposal 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.

- not unduly discriminatory:

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

- proportionate:

We consider that the proposals are proportionate because the costs to CPs should be low compared to the benefits highlighted at paragraphs 6.10 - 6.35 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 has been explained clearly in this document. We have also drafted guidelines to further clarify our intention and expectations for implementation (see Annex 5).

(c) 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 proposed option 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 our proposals to improve access to ADR

6.118 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.

6.119 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.

- 6.120 This consultation document recommends that the following initiatives should be pursued (the specific wording of these requirements can be found in clause 4 of the Ofcom Code⁹⁵):
1. Relevant text about ADR to be included on bills (paper and electronic);
 2. 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;
 3. CPs must 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
 4. 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.
- 6.121 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 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.
- 6.122 In relation to equality considerations, we have had due regard to the potential impacts our proposals may have on race, disability and gender equality.
- 6.123 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 and therefore more likely to benefit from being able to take a case to ADR. Interestingly, the Synovate market research showed that disabled users are over-represented amongst ADR users, which may indicate there is no barrier to their ability to access the schemes.⁹⁶ Although not necessarily designed to improve equality, we consider our proposals to improve access to ADR will also benefit vulnerable consumers by further raising awareness of ADR.
- 6.124 We would particularly welcome the views of consumer interest groups on these proposals.

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;*

⁹⁵ See Annex 5.

⁹⁶ See section 3.6 of the Synovate market research.

- 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.*

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

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

Section 7

Record Keeping

Proposals from our 2008 consultation

- 7.1 In our 2008 consultation document 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. We specifically proposed requiring CPs to log complaints when they are first received and as they are dealt with. It was anticipated these records would need to include as a minimum for each complaint a log setting out:
- (a) details of the complainant, including their name and address;
 - (b) the date on which the complaint is first received;
 - (c) a description of the complaint; and
 - (d) a description of how the CP deals with the complaint.
- 7.2 We considered that requiring CPs to keep these logs for at least 15 months was a reasonable period to allow us to undertake investigation and enforcement action. We estimated this record retention would potentially cost the industry £5m in one-off costs, with significantly lower ongoing costs.

Responses from stakeholders

- 7.3 There was strong opposition from stakeholders to having to keep such records about complaints (including from 3, O2, Orange, BT, Yahoo!, and 5 other confidential submissions). Respondents submitted that the information required by Ofcom went beyond what was required for an investigation, would disproportionately affect some CPs, was inconsistent with approaches taken for investigating compliance with other General Conditions, and the high costs could not be justified on a cost-benefit analysis.
- 7.4 Orange made a point that was reflected in other submissions, that through this requirement Ofcom was being overly prescriptive in how CPs could structure and operate their customer relationship management systems.

Revised options and impact assessment

- 7.5 As noted in the preceding chapter, we consider that requiring all CPs to put in place IT systems to enable the logging of complaints is likely to be a significant cost-driver for some CPs. We no longer consider it necessary to mandate call logging in order to implement our proposals or to monitor compliance. As investigations will primarily focus on the procedures put in place by CPs, we also no longer require CPs to retain consumer records for 15 months or to ensure there are complete records of all contact from consumers (i.e. written and phone contacts) if they do not currently hold that information.
- 7.6 However, in order to be able to investigate industry compliance with any proposals that proceed through this consultation, we need to be assured that there is an appropriate level of information available on CPs' contact with consumers. We have

considered the extent to which the following options will be sufficient to facilitate any Ofcom investigations:

- 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).

Option 1: No record keeping requirements

- 7.7 Given that we are likely to focus investigations on the extent to which CPs have put appropriate procedures in place to ensure compliance with the Ofcom Code a case can be made that it is not necessary for CPs to retain any records they have of contact with customers.
- 7.8 However, we consider that some information on consumer contact is necessary for an investigation to be successful. In order to test the reasonableness of a CP's procedures we would expect to examine a significant number of complaints that had been received by front-line staff. At the very least this is likely to require access to written complaints, notes on the customer record management system and, ideally, access to some call recordings.
- 7.9 As noted in our previous 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.

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

- 7.10 Through our information request it is evident that many CPs already retain written correspondence with consumers and requiring CPs to retain such correspondence for six months should not impose any further costs. However, in order to get a more complete picture of how a CP handles complaints there would be advantages from requiring CPs to record calls to front-line staff. As many CPs do not have a dedicated complaints phone number, we consider that a random sample of 100 calls to front-line staff could be sufficient.
- 7.11 However, we are persuaded that this proposal should not be introduced given the likely disproportionate impact it would have on smaller CPs. To a large extent, the introduction of call-recording systems would impose fixed costs on CPs, which could potentially be very high for a relatively small CP.

Option 3: Require CPs to retain all written records and call recordings that they already hold (for 6 months for written information and at least 3 months for any call recordings).

- 7.12 This proposal would not require CPs to collect information that they do not currently hold. However, where written information is held (be it correspondence or notes on a customer's account), CPs would be under an obligation to retain that information for a period of six months. Where call recordings are available, these would need to be

retained for at least three months – so for example, CPs who undertake call recordings for quality control purposes would need to retain these calls.

- 7.13 We are satisfied that this information about individual complaints, along with information from CPs about their processes (including readily available information such as training material and interviews with staff) will be sufficient for any future Ofcom investigations.
- 7.14 We consider the costs of this requirement will be minimal. Through our information request it is evident that 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, those that do record calls typically retain the recordings for 2-3 months. While the retention of call recordings that exist for 3 months may impose some additional costs on CPs to increase their storage, we do not consider these will be significant.

Our preferred policy option

- 7.15 As with other preferred proposals in this consultation document, any record keeping obligations we propose must be among other things proportionate and appropriate. 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.
- 7.16 We consider that option 3 above would provide Ofcom with the minimum amount of information we would require to pursue an investigation into compliance with the proposals contained in this document. This proposal would not require CPs to collect information that they do not currently hold, but would impose an obligation on them to retain information they do hold for 6 months for written information and 3 months for call recordings. Our engagement with CPs suggests the costs of such an approach will be minimal and we are satisfied that this approach can be objectively justified.
- 7.17 We recognise there is a risk that some CPs will not record any information, which could undermine Ofcom's ability to investigate potential breaches of the Ofcom Code. However, we consider it is worthwhile taking an incremental approach – if this approach does not produce sufficient records for Ofcom investigations we can examine whether to introduce stronger record keeping requirements at a later date.
- 7.18 We consider that our preferred record keeping option meets the relevant tests under the Act as follows:

- (a) falls within our duties set out in section 3 of the Act, including our principal duty of furthering the interests of consumers and citizens

These record keeping obligations will allow us to effectively ensure compliance with the proposed requirement to send a written notification to a complainant of their right to go to ADR eight weeks they made a complaint. As we have seen at paragraphs 6.10- 6.35 above, this requirement will improve awareness of the availability of ADR, a process which improves the outcomes of consumers and reduces the prospect of consumers suffering stress anger and worry. In addition it will help Ofcom monitor compliance with the provisions of the Ofcom Code which are aimed at ensuring the effectiveness of complaints handling.

- (b) is:

- objectively justifiable

We believe that the change is objectively justifiable because it helps to achieve the aim of ensuring minimum standards in complaints handling as Ofcom will be able to monitor a CP's complaints handling process. In addition it will further the interests of consumers by protecting them from potential detriment (including stress, anxiety and financial loss) by ensuring that CPs comply with our proposed obligation to send written notification of ADR to complainants at eight weeks.

- not unduly discriminatory

We consider that the proposals are not unduly discriminatory. This is because the proposed requirement 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 be required to hold the information for 6 months; however, only those CPs who currently record calls are required to retain call recordings (for 3 months). We examined requiring all CPs to introduce call recording systems but consider this approach is more appropriate in light of the possible significant costs that could be borne by smaller CPs if they were required to invest in call recording systems.

- proportionate

We consider that the proposed modifications are proportionate on the grounds that it is the least onerous solution for 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 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 they are small on an industry wide basis compared to the significant benefit which individual consumers are likely to derive.

- transparent

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

- (c) 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 proposed option 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.

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.

Section 8

Implementation

Implementing the regulatory proposals

- 8.1 We consider that the proposal to introduce minimum standards and the proposals to facilitate improved access to ADR are inextricably linked with our policy objective of ensuring an appropriate level of complaints handling standards. For this reason, and for ease of access, we propose implementing the proposals contained in this consultation document through the single Ofcom Code of Practice.
- 8.2 We note that Ofcom is today publishing its Statement on protecting consumers from mis-selling of fixed-line telecommunications services and that this Statement contains a Notification modifying General Condition 14.
- 8.3 We propose to give effect to the Ofcom Code through a modification to General Condition 14.4, which will require CPs to comply with the Ofcom Code. The notification of the proposed modification to General Condition 14.4 and the annexed Ofcom Code of Practice are both attached as Annex 5 and take into account today's modification through the Statement on mis-selling of fixed-line telecommunications services. Should our proposed change to General Condition 14.4 go ahead, then we would expect to publish the accompanying guidance to the Ofcom Code on the Ofcom website. At present, the guidance can also be found in Annex 5 to this paper.
- 8.4 We consider this Code meets the requirements for an approved Code of Practice under section 53 of the Act. As such, CPs will no longer be required to submit their individual Codes of Practice to Ofcom for approval.

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?

Implementation period

- 8.5 We proposed through the 2008 consultation document that the industry should have three months from the date of publication of any Statement to implement the relevant changes.
- 8.6 This period of implementation was unanimously opposed by the industry as inadequate. A number of stakeholders commented that the proposals would necessitate complex systems change, re-training of staff, printing of new publicity material and monitoring of new processes. The most common response was that the industry would need at least 6-12 months before the regulatory change would come into effect.
- 8.7 While we do not think our revised proposals will necessarily involve complex systems changes, we do acknowledge that some aspects could require significant changes to the complaints procedures of some CPs. We also think that if the proposals are finalised there would be merit in industry workshops and possibly further guidance as CPs implement changes to their processes.
- 8.8 We consider that the 'minimum standards' discussed above in section five can be implemented relatively quickly by CPs and will not require significant changes for the

vast majority of providers. However, we accept the views of respondents that it will be more difficult to alter existing process to ensure ADR notifications are issued to consumers whose complaints have not been resolved within eight weeks. As such, we are proposing a staged implementation period following the publication of any Statement:

- CPs will 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 will 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.

8.9 We consider these periods of time are 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.

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.*

Section 9

Improving Publicly Available Information on Complaints Handling

- 9.1 Ofcom's principal duty under the Act is to further the interests of UK citizens and consumers in carrying out our functions. In addition to securing the availability of a wide range of electronic communications services, we must have regard in particular to the interests of consumers in respect of price, quality and value for money. We consider that complaints handling is an important feature in determining the experience of many telecommunications consumers. As such, as part of this consultation exercise, Ofcom is seeking views as to what information is being provided to consumers on how individual CPs perform in this area and whether this is sufficient.
- 9.2 As signalled in the Consumer Experience, Ofcom will be carrying out a piece of work to help us better understand what consumers need to know about the quality of service of providers.⁹⁷ For example, whether by Ofcom or provided by the general market, Ofcom considers that publishing provider-specific complaints information is likely to benefit consumers in respect of price, quality and value for money. This being the case, the publication of this type of information is something that Ofcom is seeking views on.
- 9.3 There are a number of possible ways for such information to be made public, subject to further investigation, which are considered briefly below:
- a) The ADR Schemes could publish the number of complaints that the ADR schemes 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. (Such an approach could mirror that taken by Ofgem to measure the relative performance of energy providers and to improve publicly available information (see Annex 6)).
- 9.4 As yet, we are only seeking general views on this issue, on the relative merits of the various options set out above (or indeed any other options you can think of) for improving publicly available information on complaints handling performance.

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?

⁹⁷ See the Consumer Experience 2009 - Evaluation Report, <http://www.ofcom.org.uk/research/tce/eval09/tidb.pdf>, paragraph 4.24.

Section 10

Clarifying when Consumers can go to ADR

- 10.1 Finally, we would like to clarify what appears to be some industry uncertainty about when consumers can take their unresolved complaint to ADR.
- 10.2 When we reduced the ADR threshold from 12 to 8 weeks, with effect from 1 September 2009, we directed that 'a consumer will have the right to go to ADR eight weeks after a complaint is first received by a CP.'⁹⁸ It was our intention when making this change that a 'complaint' should be defined as an 'expression of dissatisfaction', as was outlined in the preceding 2008 consultation document and in paragraph 3.4 of this document.
- 10.3 We have become aware that some CPs may be interpreting the eight week period as running from when a consumer lodges a 'formal complaint', i.e. a consumer expressly uses the term 'complaint' or is successful in having the matter escalated to a complaints team. The CISAS rules may have compounded this confusion by stating that eligibility for ADR occurs if the complaint has not been resolved within eight weeks of 'putting it through the company's own formal complaints procedure'. Otelo has no such qualification and at Ofcom's request CISAS has indicated that the reference to a formal complaint will be removed in early 2010.

⁹⁸ See http://www.ofcom.org.uk/consult/condocs/alt_dis_res/statement/

Annex 1

Responding to this Consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 12 March 2010**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at https://www.ofcom.org.uk/consult/condocs/complaints_procedures/howtorespond/form as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email jeff.loan@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Jeff Loan
Floor 6
Strategy & Market Developments
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7783 4103
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Jeff Loan on 020 7981 3761.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement by mid-2010.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is as easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash
Ofcom
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW

Tel: 0141 229 7401
Fax: 0141 229 7433

Email vicki.nash@ofcom.org.uk

Annex 2

Ofcom's Consultation Principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation Response Cover Sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation Questions

A4.1 Please find below a list of questions included in the consultation document.

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.’

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)?

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

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

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

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

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

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

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

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].*

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.

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?

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.*

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?

Annex 5

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

Notification of a Proposed Modification under Section 48(2) of the Communications Act 2003

Proposal for modification of General Condition 14 (as amended) of Part 2 of the General Condition Notification regarding Codes of Practice and Dispute Resolution under section 48(2) of the Communications Act 2003 for the purpose of imposing requirements upon Communications Providers.

1. OFCOM in accordance with section 48(2) of the Act hereby makes the following proposal for the modification of General Condition 14 (as amended) of Part 2 of the General Condition Notification, regarding Codes of Practice and Dispute Resolution.
2. 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'.
3. 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".
4. On 29 March 2007, OFCOM published a notification under section 48(1) of the Act modifying General Condition 14, entitled "Regulation of VoIP Services".
5. 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".
6. 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".
7. 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".
8. On 23 April 2009, Ofcom published a notification under section 48(1) of the Act modifying General Condition 14, entitled "Changes to 0870".
9. 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".
10. 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" ("this Notification").
11. The draft modifications are set out in the Schedule to this Notification.

12. The effect of, and OFCOM's reasons for making, the proposals referred to in paragraphs 1 and 11 above is set out in the accompanying explanatory statement.

13. OFCOM consider that the proposed modification referred to in paragraph 1 above complies with the requirements of sections 45 to 50 of the Act, as appropriate and relevant to their proposal.

14. In making the proposal 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.

15. Representations may be made to OFCOM about their proposal set out in this Notification and the accompanying statement by 5pm on 12 March 2010.

16. Copies of this Notification and the accompanying statement have been sent to the Secretary of State in accordance with section 50(1)(a) of the Act.

17. In this Notification:

- (i) **'the Act'** means the Communications Act 2003;
- (ii) **'General Condition Notification'** means as 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; and
- (iii) **'OFCOM'** means the Office of Communications.

18. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification (including the Schedule) and otherwise words or expression shall have the same meaning assigned to them in the General Condition Notification and otherwise any word or expression shall have the same meaning as it has in the Act.

19. 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.

20. The Schedule to this Notification shall form part of this Notification.

Signed by: Claudio Pollack

Title: Director of Consumer Affairs

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

Date: 18 December 2009

Schedule

Proposal for 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 Complaints Code of Practice 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 “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 complaints-handling process itself, where a response or resolution is explicitly or implicitly expected.

“**Ofcom Approved Complaints Code of Practice**” means the Complaints 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 Complaints Code of Practice for Complaints Handling (the 'Ofcom Code') sets out the minimum standards that Ofcom has set for the handling of Complaints made by Domestic and Small Business Customers to Communications Providers (CPs) about the provision of Public Electronic Communications Services.

A list of definitions can be found on page following the specific obligations. Explanatory guidance can be found on the Ofcom website.⁹⁹

A CP must have complaints handling procedures that:

- 1) Are **transparent**:
 - a) A CP must have in place, a written complaints code of practice ('Customer Complaints Code') for 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 short, 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 with a view to investigating and resolving a Complaint;
 - iii) 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;
 - iv) the contact details for the CP, including providing details about the low-cost points of contact required in clause 2(d) 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. For example, we would regard either of the following as being easily accessible:

⁹⁹ For the purpose of this consultation, the draft guidance can be located following this Ofcom Code.

1. '1 click' through from a CP's primary webpage for existing customers; or
 2. directly visible on a 'how to complain' or 'how can we help?' portal, which is accessible '1 click' through from the primary webpage for existing customers.
- ii) reference being made to the existence of the Customer Complaints Code (including web address) when 'welcome information' is provided to new customers;
 - iii) 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;
 - iv) being provided to Complainants upon 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) A CP must not discriminate against a Complainant on the grounds of their disability and must provide the same standard of service to all Complainants regardless of their individual circumstances or the manner in which the complaint is made.
 - d) 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-phone phone number (0800) 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 reasonable escalation process for dealing with Complaints.
 - c) A CP must make improvements to its complaints handling procedures as soon as practicable where areas requiring attention are identified through Complaint analysis.
- 4) **Facilitate appropriate access to Alternative Dispute Resolution:**
- a) A CP must ensure its front-line staff are fully informed of the right of consumers to use an Alternative Dispute Resolution Scheme, as well as the role of Ofcom in investigating compliance with General Conditions.

- b) Every bill or itemised usage of an account (whether paper or electronic) must include the following text (or Ofcom approved equivalent text) 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 [Otelio **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].*
 - c) A CP must promptly issue a written Deadlock Letter when requested by a Complainant, unless:
 - i) the subject-matter of the Complaint is outside the jurisdiction of the CP's Alternative Dispute Resolution scheme; or
 - ii) 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.
 - d) A CP must ensure Complainants with an Eligible Complaint receive prompt Written Notification of their right to go to Alternative Dispute Resolution.
- 5) Retain appropriate **records** of contact with Complainants:
- a) 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.

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.

'Communications Provider' means a person who, meeting the conditions of the Act, provides an electronic communications network or an electronic communications service.

'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.

'Complainant' means a domestic or small business customer (as defined by section 52(6) of the Communications Act 2003) 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.

'Eligible Complaint' means a Complaint:

- a) that has not been resolved within eight weeks of the Complaint first being brought to the attention of the Communications Provider. A Communications Provider may consider a Complaint to be resolved if:
 - i) it is reasonable to consider the matter resolved to the satisfaction of the customer;
 - ii) it will be resolved to the satisfaction of the customer provided that the Communications Provider takes an agreed course of action;
 - iii) the customer indicates either explicitly or implicitly by their actions that they no longer wish to pursue the Complaint;
 - iv) it is reasonable to consider the Complaint to be vexatious; or
 - v) the Communications Provider is unable to follow up with the customer after making reasonable efforts to contact them; and
- b) where the subject-matter falls within the jurisdiction of the Communications Provider's Alternative Dispute Resolution scheme.

'Written Notification' means a notification sent to a Complainant by post, email, or by text message, that:

- a) is in plain English;
- b) is solely about the relevant Complaint;
- c) informs the Complainant of their right to use Alternative Dispute Resolution and specifically includes the words 'alternative dispute resolution';
- d) provides the name and appropriate contact details for the relevant Alternative Dispute Resolution scheme; and
- e) informs the consumer that they can utilise the scheme at no cost to themselves.

Accompanying Draft Guidance Notes on the Ofcom Code

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 Code. It is expected that this guidance will be posted on the Ofcom website. The guidelines are not binding on Ofcom. However, where Ofcom departs from the guidelines it expects to give reasons for doing so.

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 appreciate that 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. However, we think that it is possible to have a common definition which can apply across industry.

At this stage, we are not concerned with ensuring that all Complaints are logged on receipt – although logging and tracking Complaints may be a particularly effective means of ensuring compliance with other obligations in the Ofcom Code. Our proposed definition clearly 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. We are primarily concerned with how CPs respond to unresolved Complaints that have not been resolved on first-contact.

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 ADR, they should also be caught within these new complaints handling standards. However, we recognise that some flexibility is required in this area given that many CPs have limited control over the infrastructure that their services are delivered across. We do not expect that an initial call from a consumer to notify a CP about a fault would require subsequent escalation or notification of ADR if there was no further contact from the customer – however, we would expect a fault to be treated as a Complaint if the customer subsequently called back to say it had still not been fixed by the time they were told it would be (discussed further below).

When can a CP regard a Complaint as Resolved?

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 first contact front-line staff. We recognise there needs to be an effort on the part of the consumer to pursue the Complaint or to challenge the position of the CP. For example, we do not want to create a situation whereby a single contact from a consumer subsequently leads to an obligation on a CP to write to the consumer eight weeks later to inform them about the availability of ADR.

For the purposes of meeting obligations under this Ofcom Code, we consider that a CP may consider a Complaint to be resolved in any of the following scenarios:

- it is reasonable to consider the matter resolved to the satisfaction of the customer. For example, where a CP has taken steps to address a complaint and there is nothing in subsequent contact with the consumer to indicate that they are still dissatisfied with the subject-matter of the Complaint;
- it will be resolved to the satisfaction of the customer provided that the CP takes an agreed course of action. For example, we would consider initial Complaints about

network faults as falling within this category, provided that the CP undertook to resolve the matter and subsequently took this action;

- the customer indicates either explicitly or implicitly by their actions that they no longer wish to pursue the Complaint. For example, where a consumer can be considered to have dropped their Complaint (they have not responded to contact from the CP or a significant period of time has elapsed between communications) or have accepted/acquiesced to the CP's response;
- it is reasonable to consider the Complaint to be vexatious. For example, if 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; or
- the CP is unable to follow up with the customer after making reasonable efforts to contact them.

Even if a CP believes that they have made every effort to give the consumer a full explanation, or that the consumer's Complaint is unreasonable or unable to be justified on the facts, the CP is still obliged to treat the matter as a Complaint for the purposes of the Ofcom Code. This includes subsequently writing to the Complainant about their right to take their case, free of charge, to an ADR scheme.

What about Repeat Complaints?

The definition of 'Eligible Complaint' sets out those circumstances in which a CP may consider a Complaint to be resolved and would not need to issue any written notification about a consumer's right to go to ADR (replicated above).

For the avoidance of doubt, 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. Similarly, if a CP agreed to take a particular course of action to resolve a Complaint, but subsequently failed to do so, we would not consider the Complaint to have been resolved. In both these scenarios, we would expect that the eight week period before notification must be provided would run from when the *initial* Complaint was lodged with the CP.

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.

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 prevent CPs from burying the Code on their website. We recognise that many CPs have corporate websites, while others view their website as an entertainment portal, where for both 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 website for existing customers' is used to denote the principal website where telecommunications users would be expected to visit in seeking information on 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 generic terms and conditions rather than individual contracts. The terms and conditions should signpost consumers to a specific webpage on which the Customer Complaints Code is located and should note it is available on request if consumers want to request a copy be sent out to them. We do not expect CPs to inform consumers of this change to the terms and conditions, or to make this change for existing customers if such a change could only be made through a renegotiation of an existing contract.

We do not intend to require CPs to accept Complaints in person, such as at retail stores. While CPs may wish to do so, it would be acceptable for consumers to be referred to one of the low-cost options for making a Complaint.

The requirement that CPs should not accept Complaints in a manner that unduly deters consumers from making a Complaint, is intended to ensure that CPs do not create process obstacles to prevent consumers from contacting the CP to make the Complaint or to check on progress. Example of key indicators which 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; and requiring consumers 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.

Vulnerable Consumers

We would of course expect CPs to comply with relevant legislation regarding the treatment of disabled consumers. However, in addition to this we specifically require that complaints handling procedures must be easily accessible for disabled consumers. We would expect CPs to have processes in place for recognising when a consumer may require additional assistance and in some instances this may require that CPs have dedicated processes for these consumers.

Effective Procedures

We are aware that competitive pressures will be a key driver of effective complaints handling procedures. However, we consider that there is a requirement for some minimum standards to ensure individuals who wish to pursue a Complaint are able to do so. Our intention is not to prescribe how a CP should respond to a Complaint, but is to ensure that CPs do not ignore Complaints or allow them to drag on unnecessarily.

We are aware that current escalation processes are typically reactive and require the consumer to explicitly request that their Complaint is handled by someone higher up the organisation. An escalation process should allow for unresolved Complaints to be referred upwards from front-line staff through the CP's 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 include procedures for front-line staff to identify and treat appropriately those consumers experiencing significant harm and where the situation should be treated with a degree of urgency (such as a loss of service) and to identify and treat appropriately those consumers who are repeatedly contacting the CP to complain about the same issue.

Complaints handling procedures should also be adaptable and a CP should take steps to improve areas of concern. For example, following an examination of complaints to the Ofcom Advisory Team, Ofcom may informally approach a CP to draw attention to a large amount of complaints about poor customer services and a failure to escalate Complaints. In such a situation, it is reasonable to expect that a CP will be responsive and take steps to improve their current procedures.

Recourse to ADR

Our intention is to ensure that consumers are appropriately informed of the availability of ADR to examine unresolved Complaints. Those consumers that are eligible to go to ADR should be individually informed by their CP of their right to go 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. Where online billing is used we expect the information about ADR to appear on the same page as the actual bill (i.e. the text would be included in any print-out of the bill).

The phrase 'itemised usage of an account' is intended to capture situations where a pay-as-you-go customer is able to access an online statement of their account activity. We would not expect this information to be displayed on mobile-only web pages.

Issuing a Deadlock Letter

The intention behind creating an obligation for a CP to issue a Deadlock Letter is primarily designed to ensure that a CP takes a Complaint seriously and tries to resolve the Complaint, rather than the matter necessarily going to ADR for resolution. This obligation may 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.

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, charges regarding paper billing etc). 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)(ii) 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.

Written Notification

Our intention in imposing this requirement 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 matter was first brought to the attention of the CP by the Complainant. It is important to note that Eligible Complaints are only those complaints where the subject-matter of a Complaint can be considered by the ADR scheme and where the eight week period has passed.

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

1. Logging and tracking of unresolved consumer Complaints from the day they are first made to front-line staff. This approach will enable a CP to monitor unresolved Complaints to ensure that Complainants that have Complaints outstanding after eight weeks are promptly informed of their right to go to ADR; or
2. Ensuring escalation procedures provide a sufficient level of assurance that unresolved Complaints will have been proactively 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. This approach would not require the development of new IT systems, but is likely to require CPs to make changes to their escalation procedures. Adopting this approach to implementation does not alleviate the need for Written Notification to be sent after eight weeks, but could be a lower-cost option of ensuring that a CP is able to individually identify unresolved Complaints.

Nature of the Notification

For the avoidance of doubt, although the notification required to be issued under clause 4(d) 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 notification must fully inform the consumer of their right to access ADR at no charge and should be clear and concise.

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).

We are aware that CPs may not hold the information required to be able to notify some Complainants about the existence of ADR – including a physical address, an email address,

or a mobile number to send a text message (or the CP may not have the facilities to support text messaging). A lack of consumer information does not alleviate the requirement for a CP to take reasonable steps to contact the consumer (please see the definition of an 'Eligible Complaint'). As a minimum we would expect a CP to at least have rung the consumer back in an effort to ascertain an address for notification.

With respect to issuing Written Notification to Small Businesses, we are 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 has reasonable processes in place for identifying small businesses. This could potentially include the CP using a reasonable proxy of annual expenditure on accounts for making a reasonable judgment as to whether the business had ten or fewer employees and should therefore receive a Written Notification.

Record Keeping Obligations

It is pertinent to note that the proposal for CPs to retain existing records of customer contacts does not extend to an obligation on CPs to implement a call recording system. However, where information is available to a CP regarding the nature of a customer Complaint (i.e. receipt of an email), then the CP will be under an obligation to retain that information for at least six months (except for call recordings, which only need to be retained for three months).

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 take appropriate action where we consider there is evidence of systemic failings in the handling of Complaints by CPs. Any investigation would usually 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 6

Regulatory Standards in Comparable Sectors

Complaints Standards in the Energy Sector (Ofgem)

Minimum Standards for Complaints Handling

- A6.1 The 'complaints handling standards decision' was handed down on 1 July 2008.¹⁰⁰ A key element of this decision was the requirement for regulated providers to have a complaints handling procedure. Under the regulation, each regulated provider's complaints procedure must satisfy a range of criteria.¹⁰¹
- A6.2 The relevant criteria include requirements that complaints handling procedures be plain and intelligible, describe the steps that a regulated provider will take when resolving a complaint and outline how long this process should take.

ADR Signposting Obligations

- A6.3 Ofgem requires providers to write to consumers informing them of their right to refer an eligible complaint to a redress scheme either one working day after the provider becomes aware that it is not able to resolve a complaint to the consumer's satisfaction (i.e. when it issues a deadlock letter), or once a specific amount of time has lapsed from when the provider first received the consumer's complaint (8 weeks for large providers and 12 weeks for smaller providers).
- A6.4 This written notification must also include information on the independence of the redress scheme from the provider, that the redress scheme is free of charge, the types of redress available and that any outcome of the redress scheme is binding upon the provider but not on the relevant consumer.

Publishing Complaints Statistics

- A6.5 Regulated providers are required under the regulation to publish annually a consumer complaints report at a prominent location on their website and provide a copy of this report, free of charge to any person who requests a copy. The report must contain information about the number of complaints received that had become 'unresolved complaints' after the first day of receipt.
- A6.6 The report must also note that the regulated provider has a complaints handling procedure, where to locate it, the existence of the regulations and how and from where a copy of the regulations may be obtained.
- A6.7 After the regulations were introduced, Ofgem undertook an audit of how regulated providers were operating to the new requirements. In the document that followed, Ofgem published complaints data from the big six energy suppliers for the first six months of the new consumer representation arrangements (1 October 2008 – 31

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<http://www.ofgem.gov.uk/Markets/RetMkts/Compl/ConsRep/Documents1/Complaint%20Handling%20Standards%20Decision%20July%202008.pdf>

¹⁰¹ See Part II (3) of the Consumer Complaints Handling Standards Regulation, *ibid.*

March 2009), including the percentage of unresolved complaints after day one for each regulated provider.¹⁰²

- A6.8 The Energy Ombudsmen Customer Satisfaction 2009 research report documents the number of complaints that the Energy Ombudsmen received. Complaints are not categorised by regulated provider, rather, type of provider (Gas or Electricity), nature of complaints and duration of complaints.

Complaints Standards set in the Financial Services Sector (FSA)

Minimum Standards for Complaints Handling

- A6.9 All firms are required to have in place appropriate and effective procedures for dealing with complaints. These procedures must be written down. A small number of specific rules set out what the FSA see as the minimum standards for an appropriate complaints procedure.
- A6.10 These are set out in Chapter 1 of the Dispute Resolution: Complaints Sourcebook¹⁰³ in the FSA Handbook and cover matters such as time limits for dealing with complaints, record keeping, and reporting requirements. Firms must publicise the availability of their complaints procedure 'at the point of sale' and, under certain circumstances, inform complainants of their right to refer their complaint to the Financial Ombudsman Service (FOS).

ADR Signposting Obligations

- A6.11 Financial services companies must provide details about their complaints handling procedures at the point of sale, when requested by consumers and when acknowledging a complaint. A company's complaints handling procedure must contain details about the FOS. A complaint is defined as:

'any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.'

- A6.12 Companies can (within limits) reproduce the FOS logo in marketing literature.

Publishing Complaints Statistics

- A6.13 According to the rules in the FSA Handbook, 'twice a year a firm must provide the FSA with a complete report concerning complaints received from eligible complainants' in an FSA mandated format. One use for this data is the FSA publication 'Aggregate Complaints Statistics: 2006 to 2008'.¹⁰⁴ This document lists complaints by product and cause, as well as the number of complaints by product group, FSA firm type, cause of complaint and the speed of resolution.
- A6.14 The July 2009 consultation paper titled 'Transparency as Regulatory Tool and Publication of Complaints Data' outlines a number of new measures to publish

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<http://www.ofgem.gov.uk/Consumers/Representation/Documents1/Complaints%20handling%20audit%20research%20and%20complaints%20statistics.pdf>

¹⁰³ <http://fsahandbook.info/FSA/html/handbook/DISP>

¹⁰⁴ http://www.fsa.gov.uk/pubs/other/complaints_data.pdf.

complaints data.¹⁰⁵ The FSA intends to consolidate complaints data and produce comparative tables every six months. This table would document the number of complaints opened and closed over a year, percentage of complaints closed within eight weeks and the number of complaints upheld by the company.

- A6.15 This proposal would be limited to the firms accounting for the largest numbers of complaints. The FSA states that its proposals would enable companies to control the presentation of their own data and allow for additional explanation to be provided (i.e. explaining volumes, trends and circumstances).
- A6.16 The FOS website publishes complaints data by financial institution and by product: <http://www.ombudsman-complaints-data.org.uk/>. These figures cover financial businesses only where the FOS received at least 30 new cases and resolved at least 30 cases during the six-month period from 1 January to 30 June 2009. Complaints relating to these businesses made up 90% of the total number of cases handled by the FOS in this period.

Complaints Standards set in the Water Sector (Ofwat)

Minimum Standards for Complaints Handling

- A6.17 A summary of complaints handling is needed as part of each company's customer codes of practice, which Ofwat formally approves every three years.
- A6.18 When deciding whether to approve companies' complaint procedures, Ofwat have proposed to consider a number of different criteria, split into three categories:
- Communication issues – how the complaint procedure is communicated to consumers;
 - Process issues – how the complaint is handled; and
 - Organisational issues – the company's complaint handling culture.
- A6.19 Under the criteria 'Communication issues', Ofwat state that they consider the complaint handling process should be free of charge and there should be no hidden charges (for example, expensive phone lines). They add that all consumers should be able to locate clear information on how complaints can be made or pursued on any subject matter and through any avenue (for example, written, phone, face-to-face, e-mail, etc).
- A6.20 Customers of water and sewerage companies are also entitled to guaranteed minimum standards of service (including complaints handling), as laid down by the Government. Where a company fails to meet a standard then it is required to make a specified payment to the customer affected. This is referred to as the Guaranteed Standards Scheme (GSS).
- A6.21 The GSS sets out how water companies are required to respond to written complaints: 'If a customer complains in writing to a water company about the supply of water, or to a sewerage company about the provision of sewerage services, the company must despatch a substantive response to the customer within ten working days of receipt of the complaint. If the company fails to do this, the company must automatically make a GSS payment.'

¹⁰⁵ http://www.fsa.gov.uk/pubs/cp/cp09_21.pdf

- A6.22 Frivolous or vexatious complaints, complaints relating to a company's ability to respond during severe weather conditions and complaints arising through industrial action from its staff are a number of exemptions from this requirement.

ADR Signposting Obligations

- A6.23 Ofwat ensures that the role of CC Water (and the stage they can become involved) is included within water companies' complaints leaflets. Ofwat also note on their website that water companies must provide complaints procedure details on the back of bills.

Publishing Complaints Statistics

- A6.24 Ofwat collects various pieces of information from companies in relation to their performance against written complaints, telephone contact and compliance with the GSS.
- A6.25 CC Water use the information presented to Ofwat in an annual report on complaint handling in the water industry. The report gives a summary of complaints data, compares each company's performance against other companies and looks at the long and short term trends, taking into account the differences in how companies categorise complaints and their individual complaint procedures. Numbers of complaints are broken down into five categories (billing and charges, water service, sewage service, metering and other activities).

Annex 7

Glossary

Act	Communications Act 2003
ADR	Alternative Dispute Resolution
ADR Scheme	A body which provides ADR
CP	A Communications Provider who provides an Electronic Communications Service, as defined in the Act.
Domestic and Small Business Customers	Residential consumers and businesses with 10 or less employees (who are not a CP), as defined in the Act.
General Condition	Set of conditions applying to CPs, imposing legal obligations on CPs.
Ofcom Code of Practice	Proposed as part of this consultation to establish some minimum standards for complaints handling.
Public Electronic Communications Service	As defined by section 151 of the Communications Act 2003: 'any electronic communications service that is provided so as to be available for use by members of the public'.

Annex 8

Consumer Complaints Market Research (Synovate)

A8.1 The market research report is attached separately.