

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

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

Definition of a Complaint

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

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

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

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

Transparent Procedures

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

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

Although a Customer Complaints Code must be in a standalone format, there is no restriction on the ability of CPs to meet this obligation by having a dedicated page on a website containing all the relevant information (although, as required by clause 2(a)(iii) a CP

will still need to make arrangements for a hard copy to be provided to a Complainant upon reasonable request).

Accessible Procedures

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

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

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

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

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

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

Disabled Consumers

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

CPs to have procedures in place to accept complaints from third parties who are acting on behalf of consumers with a disability and to provide correspondence in a consumer's preferred format.

Effective Procedures

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

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

Recourse to ADR

Information on Bills

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

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

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

Issuing a Deadlock Letter

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

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

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

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

Informing Consumers about ADR after Eight Weeks

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

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

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

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

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

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

- i. **whether the CP has taken actions that mean it is reasonable to consider the Complainant is no longer dissatisfied.** For example, CPs could consider a Complaint resolved for the purpose of this obligation where they have taken steps to address the Complaint (e.g. provided a refund, an explanation etc) and it is

reasonable to conclude that such steps have addressed the dissatisfaction of the Complainant; or

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

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

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

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

Some Examples

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

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

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

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

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

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

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

The above examples make clear that not all dissatisfied consumers will be informed about ADR after eight weeks. It is important to stress that although CPs will not have to issue the Written Notification if a consumer does not contact them about the Complaint for eight weeks, this does not in any way undermine their right to go to ADR at the eight week stage. If the Complainant subsequently contacts an ADR scheme to lodge an application it will still be for the ADR schemes to determine the eligibility of the Complaint based on their Terms of Reference.¹

What is a Vexatious Complaint?

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

Nature of the Notification

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

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

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

¹ As noted by Ofcom in December 2009, the ADR schemes can consider unresolved complaints eight weeks after the *initial* complaint was made by a consumer to their CP. See http://www.ofcom.org.uk/consult/condocs/complaints_procedures/adr_condoc.pdf, paragraphs 10.1-10.3.

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

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

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

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

Record Keeping Obligations

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

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

Our Approach to Investigations

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

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

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