

Emailed to: fairness.framework@ofcom.org.uk

Fairness Framework
Ofcom
Riverside House
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8 August 2019

Dear Sir/Madam,

Making communications markets work well for customers. A framework for assessing fairness in broadband, mobile, home phone and pay TV.

I write in response to your request for views in the recent discussion paper on the Framework for assessing fairness in broadband, home phone and pay TV. We would like to thank you for the opportunity to comment on what is an important area for consumer trust. We recognise that consumers want to feel that they are being treated fairly and feel that their providers are doing the right thing by them.

About Ombudsman Services:

Ombudsman Services is a not-for-profit private limited company established in 2002 which runs a range of discrete national ombudsman schemes across different sectors including energy and communications. Each scheme is funded by the companies under our jurisdiction and our service is free to consumers. In 2017 we received 172,865 initial contacts from complainants and resolved 92,110 complaints. For communications we received 78,085 initial contacts and resolved 41,751 complaints.

We are:

- to our consumers, the people they can turn to for impartial advice and solutions that's fair;
- to our partners, the people they look to for knowledgeable and insightful ways to help them reduce complaints by enabling them to make the changes they need to deliver better customer services;
- to our regulators, champions in protecting rights as well as partners in information sharing, we share our analysis so that regulators and business partners can make improvements; and
- to our people, here to enable them to deliver clarity to consumers and partners through meaningful work.

Concepts like fairness and reasonableness are things that we factor into our everyday work and go to the heart of what an ombudsman scheme does. We do this in coming to decisions on complaints that we receive but also in taking data to deliver insights, and working with the companies and all the stakeholders in the sectors that we operate in. As such we are in a good position to work with Ofcom and also communication providers to bring to life a fairness framework.



General comments:

We support the principles set out in the six Fairness for Customers Commitments and it is great to see that providers are supportive of these and willing to demonstrate the commitment to embedding these into their businesses to ensure fairer outcomes for consumers. Committing to building a market in which customers can be confident of fair treatment with the right procedures will help improve trust – it is right that customers should be able to get a fair deal which is right for their needs with appropriate information and fair pricing, that they get support in vulnerable circumstances and are supported to make the right decisions. Equally, it is important that those services work as promised and appropriate action is taken if things go wrong and customers can change and leave services quickly and easily.

Earlier this year, we produced our strategic priorities for the communications sector, and we were delighted to see so many areas in common with Ofcom's six fairness commitments. We think that to build consumer trust in the communications markets that:

- everyone should have access to high quality telecommunications services,
- customer should be able to manage the amount they spend on communications services without any nasty surprises,
- customers are entitled to expect a high level of customer service,
- all customers should be able to access services, including those who find themselves in vulnerable circumstances,
- it should be easy for all customers to shop around for the best deal,
- customers should be protected from unfair practices and should be entitled to complain to Ombudsman Services when things go wrong.

We think there is a real opportunity with such similar agendas to align and complement our areas of work to tackle unfair practices in the market.

Recommendations for regulators:

A number of reports have been published recently looking at how regulators understand more fully the implications for consumers of their policies. For example, the:

- National Audit Office report highlighted that while regulators have a good understanding of key consumer issues, there are common challenges across sectors and regulators can be more specific in defining and measuring consumer outcomes;
- the Public Accounts Committee (PAC) report called for regulators to demonstrate they are delivering positive outcomes for consumers. The PAC highlighted that consumers are facing the same challenges across sectors and has called for greater consistency between regulators to ensure better services and prevent consumers being exploited; and
- Competition and Markets Authority (CMA) put forward proposals to the government on reform of the competition and consumer protection regulation of markets. The CMA concluded that more can be done to put consumers at the heart of markets and ensure that consumer protection takes priority to reduce consumer detriment.

We think that joint working initiatives and regulators working together is positive and will help deliver better and fairer outcome for consumers. However, we think it is important that all stakeholders within a sector and indeed across sectors work together to really help deliver better and fairer outcomes for consumers.

An example of where this works well is the energy sector via the Tripartite working between Ofgem, Citizens Advice (including the Extra Help Unit) and the Energy Ombudsman. This involves sharing data and insight to spot consumer detriment early and to act accordingly.

Answers to specific questions:

1) Do you think our characterisation of what might constitute fair and unfair practices is appropriate?

We broadly agree with the characterisation of what may constitute fair and unfair practices. Procedural fairness and distributive fairness covered by the Fairness commitments may allow a more consistent lens to be applied across sectors and add more value to discussion in this area.

From the complaints that we see, we would hope that any assessment of fair and unfair practices ensures that the issues of accessibility regarding network, rural, new homes, and protections for consumers in vulnerable circumstances are all taken into account, as well as Fraud, Account Security and Data Protection. Also, from the complaints we see from microbusinesses (to a large extent the same issues as experienced by residential consumers) we think microbusinesses require the same protections as consumers. We will now explore some of the points raised above in a bit more detail:

a. Provision of services

We think it is crucial for all consumers and small and medium sized enterprises (SMEs) to have access to good quality services. We see issues relating to a lack of network coverage for mobile and broadband services.

b. Rural locations

We see consumers unable to access what are now 'essential services' for participation in modern society and those consumers not based in cities can face challenges in accessing good quality mobile and broadband services.

c. New Homes

Consumers moving into new build homes can be restricted to the provider who installed the service originally and we think that where possible, consumers should have the opportunity to change provider and get the best deal to suit their needs.

d. Fraud, Account Security and Data Protection

It is important for consumers to trust that their providers will take appropriate measures to secure their data and protect against fraud. Fraud is a growing concern as mobile contracts often include the issuing of high value equipment and security measures to protect against fraudulent activity varies across providers.

e. Customers in Vulnerable Circumstances

It is important, as highlighted in the discussion of distributive fairness, that certain groups are considered and that market outcomes are made fairer for customers in vulnerable circumstances. In our recent Consumer Action Monitor, we found that 64% of vulnerable people are filled with dread at the thought of complaining. 70% of vulnerable customers suffered in silence rather than complaining (in comparison to 47% of the rest of the population).

f. SMEs

We see complaints from small businesses experiencing the same issues as residential consumers and can be more challenging as they rely on good quality services for their livelihood. Earlier this year the Financial Conduct Authority expanded the definition of microbusiness and SMEs to enable more SMEs to have similar protection as do domestic consumers and importantly to have free access to independent redress via the Financial Ombudsman Service. We think there is direct read across to other regulated sectors such as the communication and energy sectors and we would support a similar move in those sectors.

2) Do you agree with the questions set out in our fairness framework? Are there any other questions that should be included? Please set these out in your response.

We agree with the questions set out for consideration in assessing fairness. We appreciate that the list is not exhaustive, nor a checklist and that no one factor should be determinative on its own. We see the introduction of the Fairness Framework and Commitments as a key move towards principle-based regulation with fairness at its heart. So, it is important that the questions and factors within do not become a prescriptive list for companies to abide by. They may need to be applied differently for different people and different circumstances. It will be important to review how the fairness framework works in practice and how it is interpreted by communications providers, consumers and other stakeholders, it should help to provide some consistency in the level of service that consumers receive and help to build trust and competition in the market.

We see the value in having such a framework as a starter to help identify whether unfairness is present in the market. We look forward to working with companies, Ofcom and other stakeholders to make the fairness framework a success.

3) What additional information or guidance, if any, would you like to see included in our fairness framework?

Fairness is a concept which sometimes can be difficult to get right and what is clear to one person or organisation, isn't so for another. We think that people want to do the right thing but may struggle at times to define what fair looks like in some circumstances. For that reason, we think it is important for Ofcom to provide a steer, without being overly prescriptive, through workshops, guidance, case study examples, and to encourage engagement across the whole sector between communications providers, ADR providers and other consumer bodies.

From our experience of facilitating workshop with communication providers around working with consumers in vulnerable circumstances, we found that there was a real willingness to work collaboratively and learn from each other and from other sectors. Indeed, we had companies from the energy sector sharing experiences with communication providers and representative from organisations such as Citizens Advice and the CMA sharing experiences. There needs to be a continued dialogue with PCs. Besides the vulnerability events, we ran Sector Liaison Panels, we continue to build relationships with PCs and we have recently built a B2B portal with information, guidance, products and services available. We think providing a toolkit of materials and helping to facilitate things like workshops is invaluable in building good practice and consistency in approach to deliver positive and fair outcomes for consumers.

We welcome the direction of moving to a principle-based system and see it as an ambitious, yet key step for pushing behavioral and cultural change within the communications and regulatory landscape. It is important to consider how the whole system fits together; how advocacy, advice, redress and enforcement are lined up to ensure better joint working and better sharing of data to ensure better outcomes for consumers.

We see real value in having a consistent, consumer advocate as it is necessary to ensure that consumers are not left out of the process or any discussions of fairness. As previously mentioned, we find the Tripartite system which has Citizens Advice as consumer advocate works well and allows us to identify consumer detriment earlier. We view redress as an important component of a fair system and think it is a clear signal to consumers that fairness is at the heart of consumer journeys and that they matter to businesses and regulators. Fairness should run through the entire system

As mentioned earlier, there have been several reports calling for regulatory action and we think that there is more to be done by all within the communications landscape. We need to create a shared sense of values, of all working to the same fairness principles, whether we work in advocacy, advice, redress or enforcement.

We welcome the framework and think it is great to encourage companies to think in terms of fairness, but we also need to ensure the consumer voice is heard. The framework will be key in terms of getting the intent right, but it won't ensure outcomes unless you get the execution right. The changes must permeate through the culture and operations of the whole business. The challenge is aligning the delivery with the intent of the framework which means it needs to be a business-wide exercise and not just used in isolation by feeding into the framework and seeing what pops out. As the move to the Fairness Framework happens, we think Ofcom need to make sure that the wider system can support and reinforce the change. This includes looking at how redress should also be aligned around fairness rather than through a black and white, legalistic lens. What must follow from a principle-based approach is knowing where the risks are and what the data is telling you about the success of those outcomes. There's an opportunity to think about what a regulator can do and how redress, with a more granular perspective can help to translate the intent to positive outcomes for consumers. We are keen to continue this conversation with Ofcom and support the transition.

Please do not hesitate to contact us if you would like further information regarding our response. We welcome the opportunity to work closely with Ofcom and other industry stakeholders on the Fairness framework to make sure it works for consumers.

Yours sincerely,

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Matthew Vickers
Chief Executive and Chief Ombudsman

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