

# Ofcom's Proposed Annual Plan 2016/17

## Ombudsman Services' Response

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## **1. Summary about OS**

Established in 2002, The Ombudsman Service Ltd (TOSL) is a not for profit private limited company which runs a number of discrete national ombudsman schemes across a wide range of sectors including energy, communications, and property.

We are an independent organisation and help our members to provide independent dispute resolution to their customers. Each scheme is funded by the participating companies under our jurisdiction. Our service is free to consumers and, with the exception of an annual subscription from Department of Energy and Climate Change (DECC) for the Green Deal, we operate at no expense to the public purse. OS governance ensures that we are independent from the companies that fall under our jurisdiction and participating companies do not exercise any financial or other control over us.

We have in the region of 10,000 participating companies. Last year we received 215,968 initial contacts from complainants and resolved 62,806 complaints. We have seen a year on year increase in complaints of 118% between 2013-2014 and a further 35% increase from 2014-15. The company currently employs more than 600 people in Warrington, Cheshire, and has a turnover in excess of £27 million.

In July 2015 the EU Alternative Dispute Resolution Directive (the ADR Directive) came into force requiring all member states to ensure that ombudsman or ADR schemes are available in every consumer sector. The Department for Business Innovation and Skills, the government department responsible for implementing the ADR Directive in the UK, called upon the market to plug the gaps where no ADR provision existed and to coincide with this in August 2015 we formally launched our new service, the Consumer Ombudsman. The launch of the Consumer Ombudsman was welcomed by BIS and means that consumers can raise a complaint about a product or service in any sector where there is no existing redress provision - including retail, travel and home improvement.

Our complaints resolution service operates once a company's own complaints handling system has been exhausted, and we have the authority to determine a final resolution to each complaint. Our enquiries department handles primary contacts and makes decisions on eligibility. If a complaint is not for us, or has been brought to us too early, we signpost the consumer and offer assistance. Eligible complaints are then triaged. The simplest can be resolved quickly, usually by phone in two or three hours. Around 10% are dealt with in this way. For the majority of complaints we collect and consider the evidence from both parties, reach a determination and seek agreement; about 55% are settled like this. The most complex cases require a more intensive investigation; they may require more information and lead to further discussion with the complainant and the company to achieve clarification. The outcome will be a formal and binding decision.

**For consumers**, we offer a free, fast and accessible form of civil justice with no requirement for legal representation or specialist knowledge, and with a particular focus on access for vulnerable consumers. We ensure that complaints are dealt with swiftly in an impartial manner, and we make decisions based on what is fair and reasonable rather than narrow remit of the law.

**For businesses**, we offer a fast and low-cost alternative to the courts, and make decisions based on expertise in industries. By looking to resolve disputes, we promote brand loyalty and repeat purchasing as well as building reputation and trust. We offer guidance on improving standards of service hence sharpening competitiveness. We go beyond individual complaints to find broader trends which can be a source of innovation.

**More broadly**, we provide an efficient and effective means of addressing consumer detriment and building business capability without recourse to the public purse. We take pressure and cost away from small claims court and legal system and help to build consumer confidence which bolsters the economy.

## 2. Ofcom's goals for 2016/17

We welcome the chance to respond to Ofcom's Proposed Annual Plan 2016/17.<sup>1</sup>

### Ofcom's three Goals

Within the plan, Ofcom sets out its three high-level, long-term goals;

- Promoting competition and ensuring markets work effectively for consumers;
- Securing standards and improving quality; and
- Protecting consumers from harm.

### OS's comments

In its capacity as an ADR entity to the sector, OS believes it is able to play an important role, furthering these goals and supporting Ofcom in the execution of the strands of its work plan that relate to the provision of broadband, mobile, fixed line and related services.<sup>2</sup>

We set out our response to each high-level goal, below.

### Goal 1: Promoting competition and ensuring markets work effectively for consumers

#### Ofcom's strategy

*Ofcom says it will ensure both consumers and businesses can benefit from a market that offers good outcomes in terms of "choice, price, quality investment and innovation". It says it will use regulation, where appropriate, to ensure consumers can benefit from competition.*

#### OS's comments

OS agrees that a functioning market, in which consumers feel informed about their options and empowered to make decisions, will likely drive higher standards and innovation in the sector overall.

Independent research commissioned by OS indicates that the communications sector is the second most complained about retail sector in the UK (see section 3, p.7). Clearly, there is important work to be done.

In section 4 (p.7) of our response we offer insights from the 24,500 cases we investigated in 2015 to highlight the issues that consumers have told us have caused them greatest concern.

OS believes that improvements in these areas will foster greater trust in providers, empowering consumers to take full advantage of the market with confidence.

OS will also continue to make data available throughout 2016, making it easier for consumers to assess their options.

<sup>1</sup>[http://stakeholders.ofcom.org.uk/consultations/annual\\_plan\\_2016-17/](http://stakeholders.ofcom.org.uk/consultations/annual_plan_2016-17/)

<sup>2</sup> See Annex 1 at p.16 for Ofcom's detailed work plan.

**Goal 2: Securing standards and improving quality**

**Ofcom's strategy**

*Ofcom aims to secure access to affordable communications services across the UK. Competition is at the heart of this approach but Ofcom believes this alone will not deliver the full range of desirable outcomes. It says it will make targeted interventions where the market cannot act alone.*

**OS's comments**

OS agrees – unrestricted competition will not always deliver desirable outcomes to consumers. Equally, formal regulatory intervention can be slow and expensive and so maybe inappropriate in many circumstances, too.

OS believes there is an important role for Alternative Dispute Resolution ("ADR") in modulating the market.

Not only does it deliver direct benefits to individual consumers who make use of it – OS's complaints data is able to highlight recurring issues and our casework analysis helps make sense of the underlying causes.

Our insights can both inform targeted regulatory intervention and foster industry-led self-improvement.

In our view, ADR is able to bring about timely industry-led self-improvement without delay to consumers or costs to the regulator.

**Goal 3: Protecting consumers from harm**

**Ofcom's Strategy**

*Ofcom says it will seek to ensure consumers, especially vulnerable consumers, do not suffer due to sharp practices. It says it will continue to implement additional measures where there is risk of exposure to harmful behaviours.*

**OS's comments**

OS believes that the protection of vulnerable consumers is vital.

We agree that communication services should be considered an essential service in the twenty-first century.<sup>3</sup>

We believe it is vital that vulnerable consumers are able to turn to us if things go wrong. For this reason, we seek to ensure our ADR services are readily available to all eligible consumers.

OS has undertaken significant work to make consumers aware of our services particularly amongst vulnerable or disengaged groups, producing guides to assist elderly consumers and students in pursuing complaints.<sup>4</sup>

In section 5 (p.8) we further explain the steps we have taken to make our service easily and what more Ofcom can do to better support us in our work.

<sup>3</sup> <http://media.ofcom.org.uk/speeches/2015/the-consumer-and-citizen-at-the-heart/>

<sup>4</sup> <https://www.ombudsman-services.org/national-consumer-week-comment.html>

### **3. "Promoting competition" - OS's Research**

For the last three years OS has commissioned its own independent research, examining consumer attitudes towards standards of service. In February we published our most recent Consumer Action Monitor report.<sup>5</sup>

Our research indicates consumers made a total of 52 million complaints in 2015. 8.3 million were about telecoms. For many consumers, then, the communications market is not working as it should.

We believe poor faith in communications companies damages the sector as a whole.

Research commissioned by the Department for Business, Innovation and Skills indicates consumers who are unhappy with their service providers may be less, not more, likely to "shop around" –feeling disempowered and reluctant to engage with the market.

To foster a truly healthy market, then, Ofcom must address direct obstacles (unfair contract terms, delayed or unactioned "switching", etc) and poor standards, in the broadest sense, which lead to consumer disengagement.

OS believes good quality ADR, that consumers have faith in, has a vital role in empowering consumers. Research undertaken by Oxford University's Centre for Socio-Legal Studies looked into OS's Energy Ombudsman scheme and found that more than 70% of complainants were satisfied with our process, felt the outcome was fair and would recommend it to others.<sup>6</sup>

### **4. "Market efficiency" - Insights from our casework**

As explained in section 3, OS believes poor standards of service impede healthy competition. Our data gives insights into how communications providers are failing consumers.

In 2015 OS investigated more than 25,000 complaints raised by domestic consumers and small businesses.

Problems around billing and service standards accounted for 60% of all the communications complaints we looked at in 2015.

Billing complaints encompasses issues such as complicated or inaccurate invoices, disputed charges, incorrect Direct Debit payments and so on.

Service standards complaints incorporates faults and loss of service, slow or intermittent broadband, poor mobile coverage and suchlike.

In February 2016 Ofcom published its tenth Consumer Experience report.<sup>7</sup> It highlighted Ofcom's concerns with complicated pricing and cancellation arrangements, perceiving these to be barriers to an efficient market.

OS agrees these are significant contributors to market inefficiency.

<sup>5</sup> The CAM report can be accessed at: [https://www.ombudsman-services.org/downloads/CAM2016\\_report.pdf](https://www.ombudsman-services.org/downloads/CAM2016_report.pdf)

<sup>6</sup> <https://www.law.ox.ac.uk/trusting-middle-man-impact-and-legitimacy-ombudsmen-europe>

<sup>7</sup> <http://stakeholders.ofcom.org.uk/market-data-research/market-data/consumer-experience-reports/consumer-experience-15/>

## **5. "Protecting consumers" – What OS is doing, how Ofcom can help us to do more**

OS believes ADR provides a vital role in consumer protection, enabling individual consumers to secure redress when things go wrong and offering insights to assist companies and the regulator to put things right for everyone.

Traditionally our focus has been on handling individual complaints, ensuring that consumers, where appropriate, receive redress. In future we will take a much more proactive role. Firstly, through identifying and tackling issues in individual companies, and making recommendations to improve customer service and complaint handling. Secondly, by identifying systemic industry wide issues and making recommendations for improvement. This will allow us to make a stronger contribution in the sectors in which we operate, and in addressing emerging problems before they become systemic.

To function effectively, OS believes it is vital that ADR is made as easily accessible as possible to consumers.

### **Facilitating access to ADR**

In 2013 Ofcom commissioned Mott McDonald to investigate if communications providers were doing enough to signpost consumers to ADR. Specifically it asked Mott McDonald to consider whether communications providers were writing to consumers to inform them of their right to go to ADR. The study did this by looking at a number of randomly sampled complaint cases. In September 2015 it published its report, "*Facilitating access to ADR*".<sup>8</sup>

<sup>8</sup> [http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/adr-access/Access\\_to\\_ADR.pdf](http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/adr-access/Access_to_ADR.pdf)

## **Mott MacDonald's key findings**

Mott MacDonald analysed records from 897 consumer complaints. It found;

- in 881 cases (98%) the communications provider had not issued written notification to the consumer of their right to ADR after eight weeks;
- in 672 cases (75%) written notification ought to have been issued (but hadn't);
- in 80% of cases the communications provider appeared to have incorrectly logged the start date of the complaint.

## **Ofcom's stance**

Within the Proposed Annual Plan, Ofcom says it has secured action plans from communications providers to deliver improvements by March 2016.

It pledges to investigate further if significant improvements do not ensue.<sup>9</sup>

## **OS's comments**

It is essential that consumers are properly told about their right to ADR.

We have already written to communications providers to remind them of their obligations to signpost. We will keep our casework under review and look for evidence of communications providers properly notifying consumers of their right to ADR in the documentation they provide to us.

We very much hope to work closely with Ofcom – to monitor this issue and to ensure the desired improvements are implemented in full.

<sup>9</sup> See p.23 of the Proposed Annual Plan.





**For further information, including data breakdowns, please contact:**

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**About Ombudsman Services**

- Ombudsman Services is a not for profit, private company limited by guarantee.
- Ombudsman Services runs national, private sector ombudsman schemes which provide independent dispute resolution for the communications, energy, property, copyright licensing sectors, the Green Deal, the ABFA, Reallymoving.com and Which? Trusted Traders scheme.
- Ombudsman Services provides an expert dispute resolution service. The service focuses on encouraging early agreed resolution wherever possible and does not charge a fee so it's able to offer access to redress for consumers to resolve their complaints without proceeding to the civil courts.
- Ombudsman Services is a full member of the Ombudsman Association (OA) and adheres to its principles.
- Further information about Ombudsman Services can be found at [www.ombudsman-services.org](http://www.ombudsman-services.org)

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