



**TELEFÓNICA O2 UK LIMITED RESPONSE TO OFCOM'S REVIEW OF CONSUMER
COMPLAINTS PROCEDURES**

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A *Telefonica* company

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TELEFÓNICA O2 UK LIMITED RESPONSE TO OFCOM'S REVIEW OF CONSUMER COMPLAINTS PROCEDURES.

Introduction

1. Telefónica O2 UK Limited ('O2') welcomes the opportunity to respond to Ofcom's proposals to improve complaints handling in the telecoms sector ('the consultation').
2. O2 has successfully entered the mobile, fixed telephony and broadband markets in the UK. Our mobile business serves over 21 million customers and has maintained its position as number one on every measure: number of customers; revenue; levels of customer satisfaction, and we aim to match that reputation across all our services. Our success is driven by a simple, but effective, promise to our customers - to help them, to make their lives easier, to change for the better and to continue offering them great value.
3. With T-Mobile and Orange merging to increase their market share, it is in O2's interest to ensure that that our commitment to this promise does not waiver and that it is not compromised by any unforeseen consequences of regulatory intervention, however well-intended that intervention may appear.
4. In this response, we demonstrate that a first class customer experience rests on a regulatory regime that is targeted and proportionate and that furthers the interests of consumers and citizens by preserving the very best outcomes produced by competition. We put forward our customer service processes as a good example of one of those 'best outcomes' and to illustrate how some of Ofcom's proposals may damage those processes and ultimately do more harm than good.
5. We would like to see an environment in which customers are informed (or know how to be informed) and are supported in their decision-making and choices about how to progress their concerns or complaints. This vision can only be achieved with a focused regulatory regime that aims to preserve best practice and, indeed, to encourage industry to aspire to it.

Executive Summary

6. We respect Ofcom's aim 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.
7. But we do not agree that Ofcom has executed these aims appropriately, nor informed its proposals with robust and sound evidence. Its proposals may seek to implement a set of minimum standards, but in their effect result in the micro-management of customer service delivery, at the risk of thwarting competitive differentiation. Ofcom's form-based approach risks imposing unnecessary costs by forcing changes to processes that work well for consumers in favour of those that would be far less effective and, most importantly, are likely to lead to poor performing Communications Providers ('CPs') designing processes to comply with narrow regulatory duties, without delivering assumed benefits to consumers - the equivalent of an NHS target system that distorts incentives and results in poorer service.

¹ The consultation, para.4.5, p.12



8. We urge Ofcom to target poor performing CPs and not to saddle those delivering good customer satisfaction with burdensome and unhelpful regulation.
9. We are confident that should Ofcom consider the matter afresh and ensure that it conducts its assessment *“with appropriate care, attention and accuracy so that their results are soundly based and can withstand the profound and rigorous scrutiny”*² it can successfully meet its objectives to protect consumers from those who cause them harm.

Customer Satisfaction

10. With a view to Ofcom’s duty to have regard to the principle of proportionality³, we emphasise that the scene in which this review is set is an accomplished one. Ofcom’s own insight rates the mobile sector as the highest for all electronic communication services, for customer satisfaction, with 92% of residential consumers satisfied⁴.
11. Further still, we are proud to demonstrate that we have retained a consistent lead in customer satisfaction indicator scores against our direct competitors, in **Figure 1**⁵, below. These results evidence that O2 delivers a best practice approach to customer service that is both workable and highly valued.

Figure 1

[3<]

12. Where such high levels of satisfaction are apparent it is important for Ofcom to remind itself of its stated intention to regulate with a bias against intervention⁶. Where the landscape is settled and competition fierce it seems that Ofcom’s first instinct should be not to intervene, or at the very least consider options to improve the landscape without using its formal powers to do so. If formal regulation is necessary it should, at the very least, ensure that such intervention does not distort the competitive differentiation of customer service offerings nor entice industry away from aspiring to deliver the best outcomes for customers.

² http://www.catribunal.org.uk/files/Judgment_1094_180908.pdf

³ Section 3(3) Communications Act 2003

⁴ The Consumer Experience Report, 8 December 2009

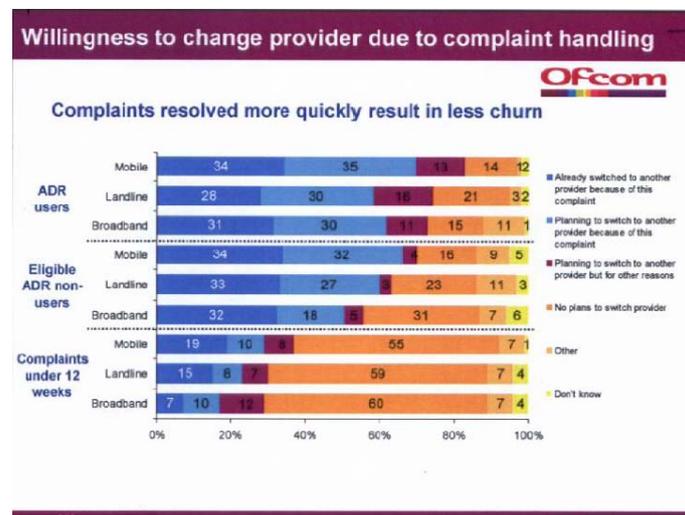
⁵ CSI scores are based on our own survey, run independently for O2 on a quarterly basis; covering 4000+ customers online and via telephone. The survey covers every element of the customer experience & provides direction as to which areas of the customer experience we need to focus on.

⁶ Ofcom Annual Plan 2010-2011

Is there a problem?

13. Despite such positive results it is, of course, disconcerting to see such a starkly contrasting picture of the industry in Ofcom’s research which indicates that 30% of complaints remain unresolved after 12 weeks and that high proportions of those complainants did not feel that the complaints process was explained to them satisfactorily.
14. Although these figures certainly give cause for concern and are sufficient to suggest that there is room for improvement, the nature and method of research used by Ofcom advocates a degree of caution in relying on the results as sufficient evidence to justify the need for regulatory intervention.
15. The data fails to give any indication about whether the research participants who form the 30% of enduring complaints are distributed evenly across CPs or concentrated on a few troublesome CPs. Certainly, if similar interrogation were to mirror the analysis of complaints received by Ofcom’s Advisory Team⁷ it would indicate that there are a small number of providers who are seemingly responsible for this failure. As a result it is impossible for Ofcom to assert that there has been general market failure to the degree that would justify widespread intervention.
16. Our experience indicates that consumers who have had cause for complaint find it very difficult to assess the complaints process objectively distinct from the subject matter of the complaint itself. Views are further biased depending on whether the individual achieved the outcome they desired and, in our view, this bias increases as the complaint progresses. Although it may have been possible to account for this bias by completing face to face interviews with cognitive questioning, Ofcom has chosen to accept an online self-completion survey as the means of collecting data, with no apparent measures to counter the expected bias.
17. We can, however, be usefully informed by the data as a means of encouraging some improvement. Indeed the data at **Figure 2** reflecting that complaints resolved more quickly result in less churn supports our view that there is a significant incentive for industry to compete on customer service - simply put any CP who wishes to retain a loyal customer base must deliver or their customers will walk.

Figure 2



⁷ The consultation, Figure 8



18. Ofcom relies on the nature of complaints collected by the Ofcom Advisory Team to support the position that it is the complaints process that is corrupt. It appears to us that any CP who is consistently unable to resolve their customers' concerns within 12 weeks, or issue a deadlock letter, demonstrates a flagrant disregard for their customers and a clear intention to delay those customers. – an intention which even a seemingly appropriate complaints process would not combat. Ofcom's own analysis seems to support this view that, if there are any process problems, they are caused by a few poor performing CPs.
19. Ofcom accepts that its current powers extend to "*ensuring that they [CPs] follow the standards and processes that they themselves have established*"⁸. It would seem therefore that Ofcom does have the powers to address the process concerns it lists (ignoring complaints, refusing to escalate, refusing to address the point in dispute) all of which seem to point to a CP failing to follow any process at all, rather than the process itself being inadequate. On this basis it is disappointing that, as far as we know, Ofcom has not yet taken any action against those CPs who, it would seem, are the main contributors to the long duration complaints that are causing Ofcom such concern.
20. We support Ofcom's ambition to improve the customer service experience for the minority of dissatisfied customers however, we are concerned that an absence of profound evidence and adequate analysis of it, could lead to a potential mis-diagnosis of the problem, namely that the problems that need to be fixed lie within the complaints process itself rather than in heightened consumer awareness, empowerment and education. The resulting effect of an incorrect assessment of the problem is ineffective regulation and a wasted opportunity to address the real issues at hand. More seriously it may adversely affect the significant majority of satisfied consumers by distorting competition.
21. We alerted Ofcom to these concerns in our response to its 2008 consultation, where we refer to Ofcom's own observations that intervention is of itself a distortion of the market – since it is intervening to set basic quality of service levels⁹.
22. We also directed Ofcom to the OFT paper "Interactions between competition policy and consumer policy", (April 2008)¹⁰ which states "*A frequent way in which consumer policies can restrict choice is by imposing stringent minimum quality standards on a market. Of course, if quality is not observed by consumers, if reputational concerns are not effective, and if information remedies are not feasible, then it may be sensible to impose minimum standards. But the situation is rarely that bad*" [§5.7].

Deliberation and outcome

23. Once Ofcom has properly determined the industry behaviours it wants to retain and encourage, and those it seeks to dispel, only then can it properly assess its options for setting minimum standards requiring regulatory intervention through proposed amendments to General Condition 14. To do so, Ofcom must satisfy the duties and tests set out in the Communications Act 2003.

⁸ The consultation, para. 4.8, p.13

⁹ "The main disadvantage of detailed mandatory standards is that it does not leave CPs scope to tailor procedures to reflect their particular business models and customer service philosophies. We may prescribe specific details of complaints handling procedures which inappropriately interfere with a CP's customer relationship management strategies to the detriment of consumers. We are concerned that individual consumers are appropriately protected and empowered but we think it is important to allow CP[s] to determine the specific details and procedures which best fit within their business models to fulfil those standards." [§4.43]

¹⁰ http://www.ofg.gov.uk/shared_ofg/economic_research/07091.pdf



24. We note that in order to amend the General Condition, any successful proposal must have regard to:
- i. The principles of transparency, accountability, proportionality and consistency as well as ensure that actions are targeted only at cases in which action is needed¹¹.
 - ii. The desirability of promoting competition as well as encouraging investment and innovation in relevant markets¹²
 - iii. The interests of those consumers [whose interests Ofcom is seeking to further] in respect of choice, price, quality of service and value for money¹³.
25. In addition, any revised condition must be objectively justifiable, non-discriminatory, proportionate and transparent.¹⁴
26. Further in its Annual Plan for 2010-11 Ofcom set out its intention to regulate with a bias against intervention and, where intervention is required, to seek the least intrusive methods. We are not convinced that Ofcom has risen to meet that threshold with its current proposals. Ofcom can best achieve their regulatory objectives, and the objectives of this review, by adopting a more targeted approach which strikes a fair balance between minimum standards which enable more empowered consumers who are aware of their rights and choices, and the regulatory flexibility that preserves best practice whilst protecting consumers from the worst.

O2 best practice

27. O2 has invested heavily in customer services and has designed a best practice model based on our commitment to be bold, open, trusted and clear to our customers. This means providing our customers with a holistic support system that empowers them to access the information they want, when they want it, that the information is in a style and tone that they recognise and associate with their trusted brand and is easy to understand, to contact us in a manner suits them, to self-serve in their own time and convenience and to know that we will try and resolve any concerns the first time they get in touch. Most importantly, we give our customers choice and control over their experience.

Accessible customer information

28. It is our commitment to be open and clear that makes us confident that our customers are making a considered choice to manage their concerns with the front-line customer service advisor or to make a complaint through our Complaint Review Service, a distinction which Ofcom fails to recognise. We argue that robust and effective regulation that focuses on transparency will empower customers to the extent that intervention in the complaints process itself is not required nor justified.
29. Indeed, Ofcom recognises that *“there needs to be an effort on the part of the consumer to pursue the Complaint or to challenge the position of the CP¹⁵”* and as such, should ensure that customers have the right tools to enable them to do so.

¹¹ Section 3(3) Communications Act 2003

¹² Section 3(4) Communications Act 2003

¹³ Section 3(5) Communications Act 2003

¹⁴ Section 47 Communications Act 2003

¹⁵ Accompanying Draft Guidance Notes on the Ofcom Code (p.90)



30. We ensure our customers are equipped with a variety of tools, by setting out the complaints process and useful contact details in all the following information sources:
- in our terms and conditions (Figure 3);
 - on the back of our paper bills (Figure 4);
 - on our website (Figure 5); and
 - in our Ofcom-approved Code of Practice (Figure 6, Appendix 1).

Figure 3: Extract from Pay Monthly Terms and Conditions

8.3 If you have a complaint about our Service you may contact us by telephone by calling the Customer Services number on your bill. If you are still unhappy you can write for an impartial review to: Complaint Review Service, PO Box 116, Leeds, LS11 5DS. Please include your Mobile Phone number in any correspondence. If you are a Consumer Customer and we do not resolve your complaint you may contact the Telecommunications Ombudsman. You can find their details at www.otelo.org.uk. However, Otelo will only deal with your complaint if it remains unresolved after 8 weeks or earlier if we have notified you that a deadlock situation has been reached.

Figure 4

O₂ Complaint Review Service

If you've already spoken to a member of our Customer Service Management Team but remain unhappy with the way we've responded to a complaint, please write to: The O₂ Complaint Review Service, PO Box 302, Dunstable, LU6 9GN. Our impartial team will review your complaint and the way it was handled, and respond to you with their findings.

If we haven't been able to sort things out by talking to each other, the telecommunications ombudsman can review your complaint. Otelo will only consider cases that are over 8 weeks old unless there is a deadlock situation. You can contact them directly at: Otelo, PO Box 730, Warrington WA4 6WU.

Figure 5: Extract from O2.co.uk/support

How do I make a complaint?

At O2, we always try to make sure things run as smoothly as possible for our customers. If you're unhappy with any part of our service, please tell us.

Your complaints give us a chance to put things right and also means we can improve our service to you and our customers in future.

Our customer service teams are in the best position to deal with your complaint and should be the first people you contact. You can contact them by phone, letter or email. You can do this by clicking the 'Email Us' link below:

We'll look into your complaint immediately and try to sort the issue out as fully as we can. If you're unhappy with our decision, ask for one of our customer service team managers to investigate further.

We hope that we will have been able to sort out any problems by this stage. However, if you're still not satisfied after speaking to one of our managers and you'd like an impartial review, please write to:

O2 Complaint Review Service
PO BOX 302
DUNSTABLE
LU6 9GN

Alternatively you can email us directly at: complaintreviewservice@o2.com
or fax us on 0113 388 1153.

Please include the following information:

- Your name and address
- Your mobile and account numbers
- A daytime contact number
- A suggestion of what you'd like us to do to put things right

If you've had any previous correspondence relating to your complaint, please send copies of these as well as any names of supervisors and managers you've spoken to.

The telecommunications ombudsman, Otelo, can review your complaint if we haven't been able to sort the situation out using the steps above. Unless there is a deadlock situation, Otelo won't look at cases that are less than 8 weeks old.



Figure 6: Extract from O2 Customer Code of Practice

If things go wrong

Tell us. We want to know – and we'll do our best to put it right.

Your first point of contact

Contact our customer service team. You can phone, write or email. All our contact details are on page 16.

We'll try to sort out your complaint quickly. But if you're still unhappy, ask for one of our customer service team managers to take up the case.

If things still aren't right

If you've spoken to one of our managers, and you want an impartial review, write to:

O2 Complaint Review Service
PO BOX 202
Dunstable LU6 9GN
Fax: 0113 388 1153

Tell us:

- Your name and address
- Your mobile and account numbers
- A daytime phone number
- How you think we can put things right

Please send copies of anything else you've sent us in writing, as well as the names of supervisors and managers you've spoken to.

An independent view

If things have gone on for eight weeks or more, or you've received a letter from us confirming that we've reached a deadlock situation, you can contact Orelu for an independent review. (Orelu is the telecommunications ombudsman.)

Orelu
PO Box 730
Warrington
WA4 6WU
Phone: 0845 050 1614 or 0330 440 1614
Fax: 0330 440 1615
Textphone:
(for people who are deaf or hard of hearing):
0845 051 1513 or 18001 01925 430886
orelu.org.uk
enquiries@orelu.org.uk

Refunds

If you've been overcharged by us we'll refund any overcharged amount as soon as possible once we're aware of it. Pay & Go customers can use their credit as soon as it's applied. Pay Monthly customers will see the credit on their next bill.

If you need advice

You can get free advice on your consumer rights from your local citizens advice bureau (CAB), consumer advice centre, local authority trading standards or consumer protection department.

You'll find their numbers in the local telephone directory. Or ask at your town hall or local authority offices.

31. It is worth noting that in every case the customer can find all the information they need about the complaints process, including their ADR rights, regardless of which of the above sources of information they choose to consult. In contrast, Ofcom's proposals¹⁶ demonstrate a haphazard approach to transparency which we fear will, ultimately make it even harder for a customer to find the right information.
32. Ofcom has focused its minimum standards on terminology with which customers just aren't instinctively familiar, like 'Code of Practice' or 'ADR'. In particular, the prescribed text Ofcom seeks to include on all bills segregates information in a manner which may alert customers of their right to seek dispute resolution, but without any information on the context of the complaints process in which those rights arise or the options available to the customer prior to exercising those rights. Not only do these proposals, which are intended to heighten awareness and clarity for consumers, create opportunities that may actually confuse customers even more, they also risk creating opportunities in which disingenuous providers can easily mis-direct customers away from the information that they need.
33. We urge Ofcom to follow O2's example and concentrate on examining the effect – not the presentation – of how the complaints procedure is advised to customers. Our complaints process is set out clearly and we have seen no evidence to suggest that our methods have caused any confusion to customers or prevented them from resolving their concerns.
34. Ofcom proposes to set prescriptive rules in terms of where, on their websites, industry must locate their Codes of Practice. Again, we stress it is not the Code of Practice that is useful to consumers but details of the complaint process itself. The Code of Practice is merely one means by which information on the complaint process could be delivered, but certainly not the only or even the best means of doing so.

¹⁶ We refer here to the proposals regarding accessibility, in particular those requiring CPs to include a reference to the Code of Practice in terms and conditions and welcome material and to include prescribed text on all paper and electronic bills.



Terms and conditions

35. To illustrate further, Ofcom proposes that terms and conditions must include a reference to the existence of a Code of Practice and how they can locate it. It does so even when its research demonstrates that consumers have a distinct lack of familiarity or association with Codes of Practice¹⁷ and has failed to explore whether consumers understand that it would contain information on the complaints process. Furthermore, it forces customers to leap from one information source to another and locate the Code before they can find the information they want. This is further dependent on the assumption that consumers know what information Code of Practice will contain, will understand that the information will be useful to them, will contain information they expect, and that those customers are driven to take the necessary steps to find it and read it.
36. O2 does not currently refer to the Code within its terms. Instead our terms simply set out what a customer should do if they have any concerns – talk to our customer service teams if you want, contact our Complaint Review Service if you prefer, and get in touch with Otelo if you need to. Customers' rights to ADR are presented to them in the wider context of the complaints process ensuring that the customer is fully informed from the outset, with all the information they need in one place. Consequently, we cannot see how Ofcom's proposal furthers the interests of consumers, particularly O2 consumers, beyond that already provided. Nor how it encourages less well-intentioned CPs to correct the behaviours that obstruct and frustrate genuine complainants.
37. Whilst Ofcom may consider that there is nothing to prevent O2 from expanding its terms and conditions to include an additional piece of text referring to the Code, to already unavoidably text-heavy literature, we cannot see how this adds any benefit, particularly given the costs that it would impose. The Code only serves to duplicate the key information already provided in the terms and elsewhere. It adds nothing extra for the consumer, it merely raises their expectations that more information may be available (as opposed to the same information in a different location).
38. In any event, Ofcom must consider that there would be costs incurred to change terms and conditions. Whilst Ofcom consider these costs to be negligible, it should take account of circumstances in which any expense can be avoided, particularly if it leaves the customer less informed than they would be had the expense not been incurred. Proportionately does not only extend to the costs incurred for implementing new regulation, but also the costs that can be unnecessarily avoided.
39. Ultimately, however, Ofcom must consider whether its proposal to amend terms and welcome material is justified and proportionate. Ofcom has failed to define any marginal benefit that can arise by adding a reference to the Code, in circumstances where the relevant information about the complaints process and ADR rights is already provided.
40. Hypothetically, if this proposal is successful but we failed to amend our terms and conditions, it is likely that Ofcom would find us in breach of General Condition 14 and subject to sanctions. It would be a perverse outcome for Ofcom to find a CP in breach, where the information it provides to its customers is more than sufficient to meet Ofcom's objective to increase awareness of complaints procedures and ADR rights. We use this example to emphasise that whilst we support increased awareness for consumers, the details of this provision will result in disproportionate outcomes if not reconsidered carefully.

¹⁷ Consumer Complaints Market Research Report, Synovate. Figure 3.4.



41. We urge Ofcom to find a more balanced approach than this. In setting minimum standards, it should ensure that there is flexibility within the regulation to reward and encourage good practice. We consider that Ofcom should reconsider the transparency provisions relating to terms and conditions to be conditional upon those CPs who do not already provide a minimum information set in their terms. That is, the rules should be effects-based and not form-based.

Prescribed text on bills

42. A further example of how Ofcom's proposals may compromise best practice in favour of a lower threshold of minimum standards is found with the suggestion that prescribed text should be included on all bills. Ofcom consider that the bill medium of signposting meets the criteria of 'generic signposting' without any explanation or exploration of other options. For example, we see from Figure 8 that awareness of ADR was driven more significantly by 'friends and colleagues' and 'media' and yet there is no consideration of how these segments can be further exploited, through user forums and viral marketing, for example. Signposting on bills is one option, but it should not be assumed to be the only or even the best option.

Figure 8: Extract from Ofcom presentation Consumer Complaints Research

	Telecoms	Post	Energy	Financial
From a colleague / friend	28%	27%	14%	21%
Media	16%	12%	32%	26%
Back of bill	12%	9%	20%	13%

43. A significant omission from Ofcom's considerations is the fact that 57% of mobile customers are on prepay packages¹⁸, for whom a bill would not be relevant. This amounts to a significant proportion of mobile customers who would receive no benefit from Ofcom's proposal.
44. Of even greater concern, there is no evidence to support Ofcom's view that effective signposting is dependent on Ofcom-prescribed or approved text, nor any explanation for the form of words Ofcom has chosen to present. O2 ensures that ADR rights are presented in the context of the complaints process, so that customers can easily understand the stage at which their rights arise and the choices available to them before that right arises. In contrast Ofcom seek to confuse consumers further by presenting ADR rights without sufficient context that would allow the information to have any real meaning to them.
45. We do not see that the prescribed text offers O2 customers any additional benefit. In isolation from details of complaints process, we do not see that the prescribed text on ADR rights offers any benefit to other customers either. As a result, even if Ofcom can manage to meet its duties of proportionality, this provision fails to achieve a satisfactory minimum standard for consumers and therefore does not further their interests.
46. In order to consider that this is a proportionate measure Ofcom must have regard to its duties and demonstrate that there is;

¹⁸ The Consumer Experience Report, 2009. Figure 18, p.20



- a. An absence of general signposting, of which bill signposting in particular will deliver the most proportionate benefit, if any is required; and
 - b. Evidence that where signposting is offered, the choice of words currently used is ineffective or generally misleading to the extent that the cost of implementing prescribed wording is justified.
47. We consider that Ofcom may have failed to meet its duties on both counts. In order to satisfy Ofcom's proposals we would be required to incur unnecessary costs to re-write and reprint paper bills (and additional reconfiguration of online bills) to add prescribed text that is less clear and is less informative to O2 customers than the information already provided.
48. Ofcom appears to have drawn its proposals for a minimum standard from the assumption that many CPs do nothing. As a consequence, it has failed to appreciate the cost to businesses of meeting Ofcom requirements even where the information currently provided exceeds that recommended by Ofcom. One possible outcome of that is that, if costs must be incurred to change bills and terms to achieve regulatory compliance, that the changes made will seek to conform to the letter of regulation only. Best practice is, again, at risk of being replaced by the lowest possible standards.
49. Ofcom would be better able to achieve its objectives by introducing flexibility within the 'access to ADR' provisions that allows brand differentiation and personalisation – a way for CPs to talk to their customer, rather than being a messenger for Ofcom. By presenting a range of generally acceptable sign-posting methods of which Ofcom approves and key information that must be delivered (rather than set text), Ofcom may find that its objectives are more proportionate and considered as well as preserving and encouraging good behaviours.

Accessible complaints procedures

50. We agree with Ofcom's view that complaints processes, as with all goods and services, should be accessible to disabled customers and provide the same standard of service as they do to other customers. However, we are unclear how this provision expands upon or extends the protection already afforded to these customers by the Disability Discrimination Act ('DDA').
51. If Ofcom cannot identify any additional benefit afforded by this requirement¹⁹ over and above that required by the DDA or the existing General Condition 15 then we cannot see that it is necessary or efficient to include it in General Condition 14.

Effective complaints procedures

52. Notwithstanding our view that Ofcom's evidence fails to support an argument that regulatory intervention to improve the complaints process is justified, we have some sympathy and share Ofcom's concern that some CPs intentionally ignore complaints or delay their resolution unnecessarily. However, we do not consider that Ofcom's approach will be effective in addressing this problem. We share our experience and the benefits of our complaints procedure to illustrate this point.

¹⁹ We refer here to the proposal that Ofcom include a provision in a Code of Practice requiring CPs not to discriminate against a complainant on the grounds of their disability.



Concerns or complaints

53. We aim to be a trusted brand by ensuring customers' concerns are not 'processed' in a mechanical fashion, but that each individual customer is heard and has the opportunity to discuss with us how the matter will be progressed and resolved. This ambition at the front line results in concerns being resolved quickly, efficiently and fairly whilst securing sufficient resources to ensure that customers who wish to make a formal complaint have access to our Complaints Review Service.
54. Our method acts as a natural filter to distinguish concerns from complaints – a distinction that allows us to offer customers a Complaints Review Service made up of a team of the most highly skilled advisors. And, we are not the only organisation to recognise the long-term value of making such a distinction.
55. The government's Food Safety Inspection Service defines a consumer complaint as “*any complaint reported to FSIS that is initiated by a consumer, or on behalf of a consumer, that is related to an FSIS inspected product*²⁰” It requires that a matter must be formally reported to them before being classified as a complaint, equivalent to requiring a customer to contacting a complaints team or following some other defined process, if they wish to raise a complaint. Ofcom's own agency PhonepayPlus reports the number of calls into their contact centre with distinctions between 'enquiries' and 'complaints' – ensuring that a call to a regulator cannot be assumed to be a complaint. It is interesting to note that other countries also find the distinction practical. The Financial Market Authority (the regulatory and oversight body for Quebec's financial sector) sets out a definition of a complaint that is both practical and simple for industry and consumers to understand, as follows:

A complaint is the expression of at least one of the following elements that persists after being considered and examined at the operational level capable of making a decision on the matter:

*a reproach against an organization;
the identification of a real or potential harm that a consumer has experienced or may experience; or
a request for a remedial action.*

Complaints are generally expressed in writing through correspondence, e-mail, fax or other form that allows a complaint to be kept on file. Where a consumer complains by phone or in person and the complaint is handled and examined by the person responsible for the examination of complaints and designated as such in the organization's policy, the complaint must be documented so that it can be kept on file.

The initial expression of dissatisfaction by a consumer, whether in writing or otherwise, will not be considered a complaint where the issue is settled in the ordinary course of business. However, in the event the consumer remains dissatisfied and such dissatisfaction is referred to the person who is responsible for the examination of complaints and designated as such in the organization's policy, then it will be considered as a complaint.

However, organizations must refrain from any undue delay in referring a matter to a higher level solely for the purpose of avoiding reporting requirements.

²⁰ http://www.fsis.usda.gov/PDF/10_EIAO_CCMS_50606.pdf

Where a consumer remains dissatisfied after a reasonable attempt has been made to settle the issue, organizations without a multilevel complaint examination structure are then considered to have received a complaint.²¹

56. We consider that this is a balanced approach. It does not restrict providers from developing a competitive process for handling those complaints, but sets out a clear definition for consumers that means there can be no ambiguity about whether the consumer is making a complaint or not.
57. Whilst this precise approach is not adopted by the UK's Financial Services Authority, it is reflected in its guidance to customers about how to make a complaint²² displayed in Figure 9, below. This guidance sets customer expectations about the level of responsibility they should take when making a complaint and the maximum time within which providers can resolve the complaint. It is notable that this time period is set at 8 weeks - the period which must be exhausted before a customer's right to ADR arises.

Figure 9

<p>Tips for making an effective complaint</p> <ul style="list-style-type: none"> • You can complain in person or on the phone but make sure you make notes as well as recording the name of the person you spoke to and the date and time you called. • Keep the notes in a safe place – they are a record of your complaint. • You will often find you need to follow up any phone calls with a letter. • In fact it is usually best to make your complaint in writing to start with if you can, especially for more complex complaints. • Try to make your letter clear and simple and include essential information. This helps the firm to understand the problem. Use the following steps to help you: <ul style="list-style-type: none"> • Write 'Complaint' at the top of your letter. • Type the letter if possible, or write clearly in black or blue ink and include any reference numbers. 	<ul style="list-style-type: none"> • State your case clearly, and include relevant dates. • Put down the facts in a sensible order. Be firm but remain polite. • Every time you write, keep a copy of your own letter for reference. • You may want to send the letter recorded delivery. <p>How firms should respond</p> <p>The firm should investigate your complaint and then, within eight weeks, send you:</p> <ul style="list-style-type: none"> • an initial answer. This will ask you to tell the firm if you are still not satisfied; or • a final response. This will tell you that this is the firm's last answer and that you have six months to take your complaint to the Financial Ombudsman Service if you're still unhappy; or
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58. The guidance sets minimum standards to the extent that customers know what to expect, but it does not confuse customers by setting out a sub-set of qualifications or exemptions for those who may consider their complaint is more urgent than those of other complainants, in the manner Ofcom are suggesting with their proposal to issue deadlock letters at the request of the customer. Instead, it provides an effects-based objective

²¹ <http://www.lautorite.qc.ca/clientele/intervenant-secteur-financier/obligations-formalites-administratives/traitement-plaintes/definition-plainte.en.html>

²² <http://www.moneymadeclear.fsa.gov.uk/pdfs/complaint.pdf>



without removing the chance for providers to achieve a better or unique service that suits their customer needs.

59. It appears that Ofcom seeks to define a ‘complaint’ as a means of resolving concerns that long-standing complainants find it difficult to get a CP to recognise that they are making a complaint. We consider that this problem arises as a result of ambiguity – either on the part of the consumer’s ability to articulate their complaint or the CP whose advisors find it difficult to understand, and we do not consider that a definition that classifies complaints so widely as to include ‘any expression of dissatisfaction’ makes the circumstances any less ambiguous for either party.
60. It seems that as long as a complaints process is transparent and easily available, there is no room for ambiguity. Consumers will be in a position to know exactly what steps they must follow to make a complaint and are empowered to decide for themselves if they wish to take those steps.

Benefits for all

61. Our model of escalation has proved to be not only the best outcome for customers, who have less cause to make repeat calls, but also to our front line advisors. They are empowered to take ownership of a complaint and seek the right resources and assistance to help the customer directly. This, in turn, allows team leaders and customer service managers the opportunity to monitor calls and coach individuals more regularly, opportunities which would be minimised in an environment in which front line advisors are encouraged to escalate too quickly and avoid challenging situations or training opportunities. Frontline advisors are greater in number, generally more close to the ‘real’ experiences and pass on the benefits of those experiences well. Team leaders and managers are focused on administrative, training and HR requirements. If Ofcom is specifically looking for proactive escalation to be included in a ‘reasonable escalation process’²³, then they must take full account of additional costs of time, resource and how other facilities may suffer.
62. In the consultation and guidance Ofcom acknowledges that consumers must take some responsibility for progressing their complaint, however we are concerned to see that this acknowledgement is not reflected in Ofcom’s which appears to advocate unprompted escalation. The proposed guidance suggests that a reasonable escalation process is one in which “*it is self-evident that the staff member involved can’t meet the customers expectations, but that someone else could*”²⁴. Not only do we disagree that unprompted escalation is a necessary part of a reasonable escalation procedure, but we do not see that this will address the problem that some complainants report that they are refused escalation.
63. There may be several legitimate reasons for refusing to escalate a matter but it seems that the Ofcom’s intention is to try and address illegitimate reasons for refusing. If that is the case then Ofcom’s guidance must be clear and unambiguous to customers and, most importantly, to operational staff. As it stands, Ofcom has presented guidance which is unclear and subjective, relying on the skills and understanding of an individual advisor at any given point in time. Furthermore, Ofcom has framed the guidance in a manner

²³ We refer here to Ofcom’s proposal to require CPs to have a ‘reasonable escalation process for dealing with Complainants’ and associated guidance on effective procedures.

²⁴ The consultation, Annex 5.



dependent on customer expectation without any qualification about the reasonableness of the customer's expectations.

64. The guidance does not provide sufficient certainty to assure well-intentioned CPs of their compliance, nor does it prevent less well-intentioned CPs from interpreting the term 'self-evident' so widely that it makes no real positive influence on improving sub-standard procedures.

Benefits for complainants

65. Our Complaints Review team have a proven track record, winning the National Consumer Awards 'Complaints Team of the Year' category in 2008 and 2009. They, like our frontline customer service teams, are incentivised by the full support and backing of our most senior directors. It is this message, most of all, that will determine how a CP will respond to its complainants.
66. We note that in the past Ofcom has been concerned that dedicated complaints teams can rely on a process of escalation and may result in unnecessary delays to the consumer. We counter these risks by guiding our team with key performance indicators to ensure the timely and efficient resolution of complaints, of which one possible resolution is the sending of a deadlock letter. Therefore as soon as it is apparent that no resolution is foreseeable, it is not in a complaint advisor's interest to continue to engage or prolong the customer's complaint. It is this approach which ensures that there is a commercial incentive to issue deadlock letters, contrary to Ofcom's assertion.
67. Furthermore, this team has a direct and dedicated liaison with Otelo, a relationship which allows them to develop themselves and feedback to all parts of the business to ensure continual improvement. The skill and judgement of this team are clear when we analyse the proportion of Otelo cases that are found in our favour. If a high number of Otelo cases were found to be in favour of the complainant that would suggest that the team or the process is broken to the extent that they are not making every effort to find a fair resolution for the customer, but the evidence demonstrates that only [3%]²⁵ of O2 customers who raised a case with Otelo received final decisions in their favour.
68. It is essential that new regulation does not exhaust resources to the extent that may compromise the ability of this team to maintain its functions or their ability to offer complainants the level of attention required. Our Complaint Review Service advisors have extensive experience specifically in handling complaints and, as such, are difficult to recruit and a scarce, valuable resource. We consider Ofcom's proposals²⁶ would result in a direct impact on the workload of this team but Ofcom has failed to consider this impact in its cost benefit analysis. Whilst it takes into account that there may be an increase in referrals to ADR schemes and subsequent case fees, it fails to account for the increased workload within the business where our Complaints Review Team continue to monitor and assist Otelo with the complaint. Ofcom must not assume that a case referred to an ADR scheme is a case removed from our workload and so requires less resource.
69. Above, we described our customer service model as a natural filter of complaints from the wider base of concerns and queries, which allows us to provide a dedicated resource for

²⁵ Figures are for Otelo cases resolved in January and February 2009.

²⁶ We refer here to proposals which require all complainants to be notified of ADR rights, to issue a deadlock letter at the customer's request and guidance that encourages unprompted pro-active escalation as well as proposals that envisage in their effect an increase in cases referred to ADR schemes.



formal complaints. Ofcom's proposal to treat all customers in the same fashion indicates an under-appreciation for the value of a dedicated complaints team to Otelco (who have direct liaison with the team) to our customers (who have an opportunity to have an independent assessment of their concerns with advisors who are authorised to consider a wider range of resolutions) and our business (which has empowered members of the Complaints Review Service to feedback to every part of the business on the complaints and issues that arise – including an unbiased and independent assessment of the front line customer service).

70. Ofcom's failure to define complaints in a practical fashion, results in a detrimental outcome for consumers who risk losing the benefits we set out above and which appears to advocate a 'one-size fits all' approach to complaint-handling. We do not consider Ofcom has demonstrated that it is either the best or most proportionate option available to it, particularly as it neither seeks to preserve a best practice customer service model nor does it encourage other CPs to aspire to it.

Access to ADR²⁷

71. In our experience those customers who actively seek to use our Complaint Review Service are the only customers who will truly benefit from additional information of their ADR rights by being notified them at the point at which they arise (Ofcom's option 5). Ofcom dismisses this option on the basis that it does not incentivise front-line agents to recognise when a consumer has an unresolved complaint nor address concerns that consumers find it difficult to get their CP to recognise that they are trying to make a complaint. We do not think that Ofcom has put forward any reasonable grounds for dismissing this option, for the following reasons:

Top down influence

72. Ofcom has misjudged how regulation may influence the judgement and skills of a front line advisor. Our experience is that the only real influence in this regard is at director level. O2's UK and European chief executives relay a consistent and passionate commitment to the entire business to do what's best for the customer and the impact is reflected in our lead on CSI and award-winning track record.
73. If Ofcom seeks to incentivise front line agents, it must first seek to incentivise directors and we consider that a regulatory regime which encourages competition and differentiation on customer service offerings is the best way to achieve this.

Recognising a complaint

74. Ofcom's concerns that consumers find it difficult to get a CP to recognise that they are making a complaint is already addressed by Ofcom's provisions relating to transparency and accessibility. If the complaints process is clear and easily available to customers, then it must follow that customers who choose not to escalate or progress their complaint are satisfied that the matter is resolved. Ofcom's guidance admits as much stating that it will "...make it clear that a consumer bears some responsibility for actively pursuing a complaint.²⁸". To offer this guidance to industry whilst also requiring CPs to classify all concerns as 'complaints' is inconsistent and contradictory.

²⁷ We primarily refer here to Ofcom's Option 4 (to notify all complainants of ADR rights) and proposals to issue a deadlock letter at the request of the customer.

²⁸ The consultation, para. 6.84



75. Ofcom has also failed to consider any other options available to it to address its concerns. The Financial Services Authority seek to deal with this problem by taking a lead role in consumer education. They have devised a consumer-facing website and leaflets which include ‘tips for making a complaint’: This advice educates the consumer about how to make their complaint clear and known to their provider. This is likely to have a more tangible benefit both to the individual consumer and on a wider social scale, as consumers share their experiences and become more empowered and proactive in general. Action of this nature furthers the interests of consumers and citizens and would be supported by Ofcom’s research data which “*provides evidence...that third party organisations like Ofcom and CAB are much more influential in raising awareness of ADR schemes among actual users*”²⁹

Targeting the right customers

76. In order to bring a matter to the attention of an ADR scheme, consumers have to make some effort to write to the scheme setting out the details of a complaint. It is not unreasonable, therefore, to assume that where a customer does seek to escalate a complaint beyond front line service advisors with their CP, that they would also not make the necessary effort to exercise their ADR rights and are therefore less likely to benefit from notification of these rights after 8 weeks. Any exceptions to this generalised rule are still protected by the enhanced transparency provisions that ensure that the complaints process and ADR rights are well publicised. Ofcom has a duty to ensure that actions are targeted only at cases in which action is needed³⁰ and, with this provision we do not consider that Ofcom has targeted its action appropriately.
77. As an alternative Ofcom may wish to consider whether its requirement to notify all complainants should only be imposed in circumstances where an adequately-skilled complaints team is not available or easily accessible as part of the complaints process. Alongside Ofcom’s transparency requirements to ensure that the complaints process is sufficiently prominent for customers, we are confident that an effects-based provision along these lines would ensure that CPs are not *required* to have a complaints team, but can aspire over time to achieve best practice in this regard. As a result, this approach is more capable of being targeted appropriately and would be a more proportionate response to Ofcom’s concerns.

Consistency

78. The most contentious element of Ofcom’s preferred option (Option 4) is that it appears to implement a policy which has the effect of requiring CPs to log and track details of all complaints. In the 2008 consultation, Ofcom explicitly proposed that CPs should maintain complaint logs for all complainants. After due consideration Ofcom appeared to accept that that proposal is likely to be “*a significant cost-driver for some CPs*”³¹ requiring “*potentially complex changes to various IT systems used by front-line staff*”³² and imposing “*considerable costs on CPs – beyond those associated with any of the other proposals in this document*”³³ and accordingly, properly dismissed this proposal as disproportionate. It is therefore puzzling that in the very same document Ofcom has sought to implement a proposal which, although different in nature, has the very same practical effect of requiring

²⁹ Consumer Complaints Market Research Report, Synovate. p.12

³⁰ Section 3(3) Communications Act 2003

³¹ The consultation, para 7.5

³² The consultation, para.6.40

³³ The consultation, para.6.62



CPs to log all complaints. In practice, front line advisors will be unable to determine at first contact how long a complaint may last and whether, in 8 weeks, an 'ADR notification' may be due. In order to guard against the risks of non-compliance it would be necessary for all complaints to be logged and tracked at the front line.

79. Ofcom's failure to distinguish concerns from complaints with this option may have the unintended consequence of forcing CPs to decide whether there is any value in maintaining a dedicated complaints review service if they are unable to make any distinction between customers who use it and those who don't.
80. To pursue Option 4 without proper consideration of the costs and potential consequences of implementation, and in a manner inconsistent with its own policy, suggests to us that Ofcom would be unable to satisfy the statutory requirements necessary to amend General Condition 14.

Taking complaints seriously

81. In the consultation, Ofcom proposes to oblige CPs to issue a deadlock letter at a customer's request, with the intention of ensuring "*that a consumer is satisfied that their provider is taking steps to try and resolve their complaint (potentially relieving stress and worry)*"³⁴ but Ofcom offer no evidence to support their view other than the conjecture "*.....we think there may be some scenarios where a customer needs to be assured that their provider is taking their complaint seriously*"³⁵.
82. Our concern about this provision is primarily the absence of any evidence to justify its existence, but also that it appears that Ofcom has under-estimated the wider affects of the proposal (an increase in vexatious and minor cases to Otelo, stretching the limited resources of front line advisors and our Complaint Review Service) and whether they are proportionate to the mischief it seeks to address. We consider that it does not further the interests of consumers to increase further the complexity of the exceptions to the ADR qualifying period. This proposal only causes more confusion.
83. Ofcom fails to appreciate that the skills required of our Complaints Review Service advisors are specific and vary significantly from their colleagues on the front-line of customer service. Complaints advisors must exercise a precise and careful level judgement when addressing genuine complaints in order that they can be confident that where a deadlock letter is issued they are confident that the matter has been resolved to the very best of their ability. This is excellent judgement is reflected in our records which show that [3<] of cases brought to Otelo have been found in our favour³⁶. These skills are not common-place and as a consequence members of this team are hard to find and replace. To impose a provision which asks all front line advisors to exercise that the same level of skill and judgment is likely to require a significant investment in recruitment and re-training of front line advisors, of which we have approximately [3<].
84. As the proposal stands it relies too heavily on a subjective assessment about whether a matter is "*particularly urgent*"³⁷, or whether CP has '*genuine and reasonable grounds*'³⁸. As a result, the process itself, rather than the subject matter of the complaint, becomes the

³⁴ The consultation, para. 6.115

³⁵ The consultation, para. 6.112

³⁶ Figures represent cases decided in January and February 2010.

³⁷ The consultation, para. 6.114

³⁸ The consultation, para. 6.115



potential spark for further conflict and disagreement between the customer and the CP. This provision does not provide an incentive for CPs to take complaints seriously (arguably those CPs who want to already do) but it merely gives obstructive CPs more opportunity to confuse and delay their customers within what would become an Ofcom-legitimised process.

85. We appreciate that Ofcom are seeking to tackle a perceived problem that consumers with urgent complaints are not being dealt with in a timely fashion, but we do not see how a requirement for a CP to issue a deadlock letter on request will resolve this. It is commonly understood that ADR schemes are working to significant backlogs and that cases may take many months to resolve. Given the length of time it can take to have a matter resolved using ADR, it is somewhat perverse for Ofcom to consider that referral to an ADR scheme would resolve an urgent complaint any faster or have any additional benefit.
86. Notwithstanding the fact that Ofcom has presented no evidence that any mischief exists, it is clear that Ofcom has not considered the fact that this provision may have the unintended consequence that CPs may be incentivised not to issue any deadlock letters unless specifically requested to do so. It simply does not lay the groundwork for processes which will inspire CPs to improve their practices.
87. Ofcom has failed to do a thorough job in setting out any evidence of the problem it seeks to resolve with this provision or consider all reasonable options to address that problem. As a result we do not consider Ofcom has discharged its duties under the Act in proposing to change the General Conditions of Entitlement.

Record-keeping

88. The record-keeping requirements proposed run contrary to the principles to which Ofcom must have regard. Specifically, they take a discriminatory position – by requiring CPs who already keep records to continue doing so in order to assist Ofcom with potential investigations, whilst exempting CPs who do not retain any records from carrying any record-keeping obligations whatsoever.
89. The effect of this provision is, essentially, to increase the regulatory risk of those CPs who aspire to best practice by keeping good records whilst discouraging those CPs who currently maintain inadequate records to ever improve. The aim of this provision is to ensure that Ofcom can investigate compliance and yet it has failed to consider that those CPs who do not currently maintain adequate records are likely to be the very same companies against whom Ofcom will most likely investigate.
90. Furthermore we fail to see how any record-keeping requirement can be justified, when Otelo and CISAS have proved to be perfectly capable of adjudicating hundreds of cases based on the records and paperwork available to them. It is clear that it is not in the interests of CPs to not be able to produce adequate records, as one would see a disturbing number of ADR cases being decided in favour of the customer. We argue that if the ADR schemes have sufficient records available to them to consider the detail of specific cases, there is already sufficient information available for Ofcom to investigate general compliance. Consequently any further regulatory intervention would be disproportionate.



Impact Assessment

91. Although we understand Ofcom's sentiment that "*the justification for having a robust ADR regime is broader than a simple cost-benefit analysis*"³⁹ this does not absolve Ofcom from its duty to ensure that its proposals can withstand profound and rigorous scrutiny.
92. We do not consider that all direct costs have been properly accounted for, for example those direct costs relating to the potential increase in complaints to ADR (such that our resource for monitoring and assisting Otelo with those complaints increases), but most importantly the costs of implementing proposed Option 4 which would, in its effect, require the logging and tracking of all concerns arriving at our front line customer service advisors. The impact assessment fails to appreciate that it would result in costs to industry that it has already considered to be disproportionate.
93. Not only has Ofcom failed to properly account for all relevant industry costs of its proposals, but it has failed to consider how its proposals may incur unnecessary costs for industry, regardless of whether Ofcom consider those costs to be negligible over an appropriate implementation period.
94. Leaving aside the absence of a complete assessment of industry costs, Ofcom has based its assessment of consumer benefits on unsound assumptions that the proposals to increase awareness will incentivise CPs to improve the way they handle complaints (in our response we have outlined our concerns that Ofcom has misjudged CPs incentives for improving complaints handling), that the proposals will be effective in raising awareness of ADR (we have set out why we consider that Ofcom's proposals are unlikely to be as effective as it expects or desires) and that options to target the few CPs who are the primary contributors of the complaints received by Ofcom's Advisory Team would be costly and disproportionate.
95. We urge Ofcom to reconsider its analysis of costs and, more importantly the assumptions of apparent benefits and the evidence upon which those assumptions are based, and complete a thorough impact assessment which can withstand the Competition Appeals Tribunal's standard of scrutiny.

Conclusion

96. We appreciate that Ofcom has refined its thinking significantly since the 2008 consultation. The current proposals are, indeed, far less intrusive than their predecessors. Nonetheless the principles to which Ofcom must have regard remain steadfast and a sound evidence-base must be delivered with a proportionate, consistent, transparent and objectively justified response. On this occasion we do not consider that Ofcom has reached the required threshold on every measure.
97. We have developed our customer service talents over time and by learning from our experience. It is a mistake to create circumstances in which front line advisors are encouraged to escalate a complaint without proper cause. The result is that advisors feel less empowered to use their own imitative and common sense, to seek out a resolution on their own and to ensure the customer has a single point of contact. It is a mistake to create an environment in which team leaders become a bottle-neck and personal coaching is sacrificed for unnecessary escalations. It is a mistake to minimise the opportunities for specifically-trained complaint advisors to feedback and interact with all parts of the

³⁹ The consultation para.6.28



business. We are concerned that some of the Ofcom proposals create an environment in which these mistakes can be made, with the result being a less satisfactory outcome for consumers.

98. We encourage Ofcom to revisit the provisions with a fine-toothed comb. We suspect that closer analysis will demonstrate that increased awareness and transparency of the complaints process will be sufficient to safeguard the needs of consumers without requiring intervention in the process itself, that regulation can, if approached sensitively, preserve the very best practices as well as requiring minimum standards, and can create an environment in which CPs can aspire to and benefit from exceeding the minimum standards.
99. Our response to specific consultation questions is set out at Appendix 1.

Telefónica O2 UK Limited
12 March 2010



Appendix 1

Do you agree with our definition of a ‘complaint’?

Ofcom has visited our contact centre twice and on both occasions expressed a positive response to the processes we have designed to deliver a competitive and effective customer support function. These processes do not apply Ofcom’s definition of a complaint and yet have proven to be effective in terms of customer satisfaction and award-winning service.

The value we have obtained from making a distinction between queries and complaints is set out below:

- a. Front line advisors have greater access to training. ‘Passing the buck’ on a complaint is not a first response of our advisors and ensures that customers are not delayed and frustrated by needless call transfers between operators. Team leaders are on hand to coach and support the front line advisor to find a resolution themselves, an approach we believe has a greater long term benefit than if the advisor were to escalate the call to the team leader to resolve.
- b. Front line advisors become increasingly empowered to do whatever is necessary to resolve the matter. They ‘take ownership’ of the customers concern – rather than passing them through to a stranger.
- c. Team leaders can spend more time coaching and training advisors. There is often a high turnover of staff and to maintain standards of customer care, it is essential that advisors get the right support network to learn. By regulating the process by which complaints can and should be escalated risks exhausting the resource of team leader support, as they will necessarily have to sacrifice time spent coaching and managing teams in order to resolve complaints that may well have been best resolved by front line agents.
- d. The filtration of queries from complaints at the front line, enables us to resource a dedicated Complaints Review Service team, made up of the most experienced and highly skilled advisors in the company. As a result their members are not easy to find, recruit and train to the levels expected. By reserving the skills of this team for genuine complainants we are ultimately able to offer a better service to all our customers. By broadening the complaint definition to capture any matter received at the front line, suggests that Ofcom is expecting the same skill and judgment expected of our Complaints Review Service advisors to be displayed at the front line, but has failed to account for the costs of the recruitment and the training necessary to do so, nor provided sufficient evidence to demonstrate that it is necessary to do so.
- e. All front line advisors and customer-facing literature identifies the Customer Review Service as a key point of contact if a customer wants to make a complaint. This ensures that all complaints into the business, whether they are received by generally publicised channels or not, are directed to a single central team and organised efficiently. Ofcom’s proposal to broaden the definition of ‘complaints’ carries a risk that minor or non-genuine complainants will now be escalated unnecessarily, limiting the resources available to them to deal with genuine complaints. We are concerned that, as a result, our service standards may be compromised.



- f. The Complaints Review Service also adds value to Otelo, to whom they are able to provide a dedicated liaison to assist with the workload of cases under their control. We note that Ofcom has not accounted for the costs of ongoing CP resource to manage any potential increase in cases raised by ADR schemes.

Our view is that Ofcom's aims to improve consumer's ability to make a complaint is not dependent on a broad definition of a complaint, but on whether customers know and understand that definition and the steps they must take to identify their issue as a complaint, and that they are empowered to take those steps. We consider these concerns are addressed fully with provisions relating to transparency.

An additional benefit of distinguishing between 'complaints' and 'concerns' is that it gives customers an opportunity to make a choice about whether they want to complain or not, rather than making an assumption on their behalf.

We appreciate finding a universally acceptable definition of a 'complaint' is not easy, particularly when that definition is devised by a regulatory body who is a step removed from both the day to day issues faced by consumers and operational constraints faced by industry, but at its heart the definition must be one that is practical, easy to recognise and can be applied without leaving any ambiguity about the customer's intent. A simple instruction that 'all complaints must be writing' or 'sent to our Complaints Team' or must have 'complaint explicitly stated' prevents any ambiguity from arising, and cannot be obstructive when coupled with Ofcom's proposed obligations regarding accessibility and transparency of the complaints process.

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)?

We do not think that the evidence relied on by Ofcom lends any significant weight to the argument that regulatory intervention in the complaints process itself is justified, although more weight can be given to the view that greater transparency and consumer awareness of complaints processes and ADR rights may be required.

We consider that the use of online self-survey data does not sufficiently account for and balance the risk that respondents are unlikely to be able to articulate their view of the complaints process independently from the substance of the complaint itself and whether the outcome of that complaint was in their favour.

In the main body of our response we have highlighted some examples where it appears no evidence is available to confirm that a systemic problem exists and consequently no justification for regulatory intervention in the complaints process.

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

We do not see that Ofcom has demonstrated that a single Ofcom Code of Practice is the least intrusive method of regulatory intervention nor that is the most effective means of addressing its concerns that it is currently unable to comment on the substance of a CP's process. It has, in fact, failed to provide any evidence to indicate Ofcom's ability to influence the substance of a CP's complaints process needs to be or should be extended in this way.



Ofcom refers to the complaints received by its Advisory Team to highlight that there is a problem with individual CPs' Codes of Practice and a problem with some complaints processes themselves. However it is clear that the complaints are the result of a few significant contributors, rather than a systemic industry-wide problem. Furthermore, the nature of the complaints reported to the OAT (ignoring complaints, obstruction and delay) indicate failures to comply with a process rather than a problem with the process itself. If this is the case, then Ofcom should consider using enforcement to target poor-performing CPs before imposing a further layer of regulation in the form of another Code of Practice.

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

We do not object to Ofcom's proposals to ensure that complaints handling procedures are transparent, but we are not convinced that Ofcom has safely discharged its duties to do so by providing any evidence to support its view that the complaints process is any less transparent when all regulatory-required codes are provided to customers in one source. The complaints process is transparent to our customers as it generates its own page on our support portal, it is presented in terms and conditions and on the back of paper bills. Our experience demonstrates that customers are more likely to turn to these resources to find the information they seek than a 'Code of Practice' regardless of whether that Code contains more than one set of required information. Ofcom has failed to demonstrate anything to the contrary.

To satisfy its obligation to be proportionate and to ensure that actions are targeted only at cases where it is needed, Ofcom must demonstrate that a single Code will bring distinct benefits to consumers, over and above a combined Code, even where the key information and effect can be achieved by other, less costly means.

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

No. In the main body of our response we have set out the reasons that we consider the provision requiring that a reference to the Code of Practice is included in terms and conditions and welcome information is not an effective response to raise awareness of the CPs complaints processes.

O2 aims to deliver best practice by including our complaints process in terms and conditions. Ofcom's proposal fails to consider that it may be disproportionate to seek that CPs who reach a standard that exceeds that required by Ofcom, must incur unnecessary costs to refer customers to another location for duplicate information.

If the transparency provisions Ofcom proposes are effective then this will inevitably drive awareness of the Code and complaints processes. For Ofcom to consider this proposal to be proportionate it must be satisfied that such a change will result in a marginal benefit beyond that delivered by enhanced transparency, and provide evidence to that effect,.

Additionally, we do not see that Ofcom's proposals to include a specific provision for disabled customers offers any further protection to customers beyond that provided by the Disability Discrimination Act and General Condition 15. As a result, it cannot be said to an efficient method of regulation nor can it satisfy Ofcom's aims to regulate with a bias against intervention and with the least intrusive methods.

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



We do not consider that Ofcom has demonstrated sufficient weight or reliability of evidence to justify that regulatory intervention in the complaints process itself is required.

Notwithstanding the fact that we already meet the provisions' requirements, in meeting its duty to consider the desirability to promote competition, Ofcom must consider whether regulatory intervention in the customer service process would risk diluting customer service differentiation which has served mobile customers particularly well. We have argued, and Ofcom's research confirms, that customers who are dissatisfied with a CP's customer service will walk and, consequently, that there is a clear incentive for CPs to offer a unique and brand specific service.

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

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)

No. We do not consider that Ofcom has demonstrated that inclusion of text on bills amounts to be the least intrusive method of regulation or a proportionate one, particularly when other agencies (friends and family, media and regulators) were demonstrated to carry significantly more influence. Ofcom has failed to explore any of the alternative options before settling on that which requires CPs to incur unnecessary costs. As a result the proposal cannot be considered to be a proportionate response.

Furthermore, Ofcom has offered up no evidence to support the need for Ofcom-prescribed or approved text. Our paper bills do currently include information which informs users how to make a complaint and, of their right to seek ADR and when that right arises, and we do so in a manner that is consistent with the tone of voice and relationship we have with our customers.

If Ofcom can meet raise this provision to meet the duties of proportionately in principle, and insists that ADR rights are included on all bills, it is not absolved of taking all the necessary steps to demonstrate that it is objectively justifiable to require prescribed text from all CPs, where the objective can be otherwise satisfied (as evidenced by O2 paper bills).

b. CPs to ensure consumers whose complaint has not been resolved within 8 weeks of first being made to a front-line agent receive written notification about their right to go to ADR

No. This provision is entirely inconsistent with Ofcom's assessment that a requirement to log and track all complaints would be disproportionately costly with no corresponding level of benefit to consumers. In order to confidently satisfy this provision it would implicitly require CPs to invest in IT systems that require the logging and tracking of all complaints by front line agents and the relevant training and cost of call handling times associated with it.

It appears to us that Ofcom has dismissed Option 5 too readily (to notify complainants escalated to complaints teams) without fully considering all the benefits that it can deliver or considering how regulation can be applied to cover all CPs whether they choose to have a dedicated complaints team or, indeed, any form of escalation.

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



We do not consider that this provision is onerous, although we question whether it is information that they will be required to recall and relay to consumers on a regular basis.

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.

No. Ofcom has presented no evidence of significant harm arising from complaints resolved within 8 weeks. This is the relevant period considered by Ofcom to be the right amount of time needed to allow the CP opportunity to resolve a complaint before it is appropriate to seek ADR. Given this, relatively recent decision, it would seem that only the most robust of evidence could justify the creation of an exception to a rule so recently reviewed and amended.

Furthermore, it is clear that Ofcom has not fully considered the potential impact of imposing this provision. Not only does it encourage an increase in vexatious complainants, but it equally increases the pull on resources from our Complaints Review Service, who provide direct assistance to Otelo. As cases to Otelo increases, so does their workload.

Ofcom has made several assumptions to arrive at this provision which, when examined further, do not suggest that it is objectively justifiable.

Ofcom assumes that a complainant in the urgent circumstances described would necessarily want to seek ADR. We do not consider that this is the case. Our records indicate that complaints who utilise the ADR schemes do not receive a final decision for many months, frequently up to a year, after being referred. On this basis, it seems odd that Ofcom should consider it necessary to ensure that these complainants should have enhanced access to rights that would not affect the speed with which their matter is resolved by anything more than a few weeks.

Ofcom has assumed that this provision will incentivise front-line advisors to recognise a complaint where they, apparently, currently fail to do so. We challenge this assumption. Our experience is that front-line advisors and, in fact, all parts of the operational business, are directly influenced and incentivised by the top down attitude of their directors. O2 is proud to say that our Chief Executives and Customer Service Directors frequently stress the importance and relevance of customer service and satisfaction. As a result front-line agents are inspired and motivated to do everything they can to empathise and help the customer. We argue that where top level influence is to cut costs or shorten call handling times, then that will result the front-line advisor's approach to a customer's complaint and how well or badly they recognise it. The only incentive that can influence this is fierce competition. Consequently it would serve Ofcom's purpose to intervene less and encourage competition more.

Additionally, Ofcom has incorrectly assumed that there would be no costs associated with this provision, on the further assumption that the relevant complainant would seek ADR at some point anyway. Again we disagree with this assumption. Our deadlock letters are issued by highly skilled advisors on the Complaints Review Team who exercise care and judgement in doing so, to ensure that all possible channels for resolving the matter have been explored, as soon as possible and always within the requisite 8 weeks. The level of their skill is reflected in the fact that [3<] of cases raised by Otelo are resolved in our favour. This provision would require all our front line advisors to apply the same level of skill and judgement as the Complaints Review Service team, something that would require significant recruitment and training costs to deliver.



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?

No. There is no objective justification to support the fact that the proposal would be any less effective if the words used were designed and delivered in a tone of voice that suited the brand and organisation with which customers are familiar relationship.

Leaving aside the merits of the proposal, the terminology used is unclear and without the context of where, in the complaints process, those ADR rights arise. It fails to make clear to consumers their role and responsibility in bringing the complaint to the attention of the CP and thus, ultimately fails in its objective to increase awareness of ADR with a view to increased uptake. If Ofcom is keen to ensure that customers do not misunderstand their rights, then we do not consider that these words are effective in doing that.

Do you agree with our proposed record keeping requirement of CPs?

No. It is discriminatory and simply encourages those companies who currently keep no records to ever start keeping records. If Ofcom's intention here is to ensure that they can fully investigate a complaint then it should consider that Otelio and CISAS have been able to adjudicate on the evidence provided to them by CPs and individuals for a long time. We consider that if the ADR schemes have managed to function well without imposing record keeping requirements in their scheme rules, it is not objectively justifiable for Ofcom to require regulatory intervention for their own investigations.

Furthermore, this is a further example of where Ofcom's definition of complaint adversely impacts on its record-keeping proposals. If Ofcom are able to differentiate between 'concerns' and 'complaints' then we do not see that smaller CPs would have as much difficulty complying with a record-keeping duty.

However, if Ofcom extends record-keeping obligations to front line agents, explicitly or implicitly, it will have a direct impact on call handling times and associated resources.

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?

No. Please refer to paragraphs 88 -90 in the main body of our response.

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?

We do not consider that Ofcom should look to improve comparative information, until such time that the evidence demonstrates that there are meaningful, objective, consistent and universally applicable criteria against which all CPs that can be compared fairly.

We consider that competition has resulted in significant benefits to customers and customer service models that are branded and specific to the provider that they are with. Consequently, it will be impossible to compare 'like with like'. Even within each business, CSI and customer service may well be product specific (e.g. O2 has customer service teams and measures for each of [3<]). On the measures which may be comparable (for example, call handling times) they provide no meaningful measure of how well a company is able to resolve your complaint.



Our experience dictates that there is no such need for comparable data. The power of user-generated forums and feedback are such that those customers who value and differentiate CPs based on their customer service record do have sufficient access to user reviews and customer generated comments, as well as the opinions of friends and family who they are most likely to rely upon, to make a considered assessment.