

**A response from the Council of Ombudsman Services to the
Ofcom consultation:**

A review of Consumer Complaints Procedures

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Introduction

Ombudsman Services is a not-for-profit private limited company which runs four high profile national, private sector ombudsman schemes. These are Otelo (the Office of the Telecommunications Ombudsman), the Energy Ombudsman, the Surveyors Ombudsman Service and the Ombudsman for PRS for Music.

We are an independent, service-oriented organisation which, through the different services we run, helps our members to meet requirements to provide independent dispute resolution to their customers. Each scheme is funded entirely by its members. Our aim is to raise public trust and confidence in the sectors it works with.

We welcome the opportunity to comment on Ofcom's proposals. One of our key concerns is that where any changes are made which affect consumers' experiences of customer service, there should be clear and measurable improvements for those consumers. Our view is that, overall, Ofcom's proposals will improve the experience of consumers when they have reason to complain about the services of Communications Providers (CPs). We do have some concerns that the certain aspects of the proposals set out in the consultation document may have the effect of placing the CP in the position of gatekeeper in the process, but we consider that these concerns can be minimised without compromising the integrity of the proposals.

Ombudsman services would welcome Ofcom arriving quickly at its final decisions without further consultation.

Responses to consultation questions:

Question 1:

Do you agree with our definition of a 'complaint'?

Complaint means 'an expression of dissatisfaction made by a customer to a Communications Provider related to the Communications Provider's provision of Public Electronic Communications Services to that customer, or to the complaint-handling process itself, where a response or resolution is explicitly or implicitly expected.'

Response to question 1

In the context of Ofcom's revised requirements, and its removal of the requirement to log all calls, it accepts that this is a reasonable working definition, with the proviso that once it is clear that the Communications Provider (CP) has been unable to resolve the complaint after eight weeks, there should be no difficulty in establishing the date on which the matter was first reported.

We would expect most faults to be resolved well within eight weeks. It is possible that a CP may be disadvantaged where it takes a few days for it to become clear that the fault has not been fixed and the matter has been raised to the status of a complaint, in which case it could have less than eight weeks to resolve the problem. However, to make the start date for ADR consideration the date on which the complainant considers the matter

to be a complaint, and expresses this view to the CP, could disadvantage those who are more patient, or less vocal. It would also make the start date for eight weeks dependent on the CP's interpretation of what constitutes a complaint.

Otelo would like further clarification on what Ofcom intends to be captured within the definition of a complaint regarding complaints about network faults.

We note Ofcom's statement in paragraph 10.3 of the consultation document about CPs' interpretation of what a formal complaint is. Our view is that this, together with Ofcom's proposal that the eight week period starts from the date a fault is reported, removes any scope for interpretation by the CP, and provides clarity for the complainant and the complaints process without unduly disadvantaging CPs.

Question 2:

Do you agree that the current approach to complaints handling in the telecommunications market is of sufficient concern to justify a degree of regulatory intervention (leaving aside any concern as to the nature of the intervention)?

Response to question 2

We agree that regulatory intervention is justified. Complainants come to Otelo with a variety of experiences. In its early days, some 20% of complainants had been "deadlocked" by their supplier; i.e. the supplier had recognised that there was a dispute, and issued a letter stating that no resolution could be reached and that the complainant had the option to go to ADR. Otelo had hoped that this percentage would rise as suppliers got better, if not at resolving disputes, at least at recognising that the clear existence of a dispute, but although the percentage has fluctuated it has showed no sustained increase. The majority of complainants still come to Otelo without having received a deadlock letter.

Once complainants come to Otelo, we find that many have not fully escalated their complaint, and where we are not satisfied that they have, we explain how they can do so, such as providing contact details. In our view this shows both that customers are unaware of the complaints procedure, and that their suppliers do not keep complainants informed both about the progress of the dispute and of the availability of ADR. We find that a significant number of complainants have clearly been trying to pursue the complainant for a long period of time, sometimes many months, before they find out about Otelo.

We consider that Ofcom's proposals, when fully implemented by the CPs, should reduce the likelihood of complainants, in effect, being lost within the CPs' systems. However, we recognise that in such cases the CP may not have had a reasonable opportunity to resolve the complaint. It could be argued that if a CP is unable to recognise when a consumer has recognised a complaint, the consumer should not be denied the right to use ADR immediately. However, if a complaint, once brought to the attention of a CP, can potentially then be resolved to the satisfaction of the consumer, without the need for ADR, this would benefit both parties. When we refer consumers to escalate the matter to the CP, we ask them to wait ten days for a response. Once a consumer has escalated the matter, and has then got no response and the eight weeks deadline has passed, our view is that the consumer should then have the right, without further delay, to ask for the intervention of the ADR scheme.

Question 3:

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

Response to question 3

We agree. Our view is that Codes vary considerably, and the customers of some CPs have difficulty finding the Code, and establishing what their options are for complaining and on the availability of ADR.

The establishment of a minimum standard for Codes should make it simpler for consumers to find out how to make complaints and what they can do if they are unable to resolve disputes.

It is unclear how Ofcom intends to monitor compliance with the code. Otelo could supplement regulatory monitoring through the data it supplies to Ofcom but it cannot be the totality of it.

Question 4:

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

Response to question 4

We have some concerns that the volume of calls to Otelo may increase substantially, causing a severe strain on our services with complainants enquiring about ADR, even where they may not be at a stage qualify to have their complaint considered. Our view is that the Code should make it clear that there are explicit entry criteria for ADR, and that as far as possible complainants should ensure that they have taken reasonable steps to pursue the complaint before they ask us to resolve it. They should also, as far as possible, familiarise themselves with the service, and whether we could investigate their complaints, such as by checking their ADR scheme's website first.

Question 5:

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

Response to question 5

We concur with Ofcom's proposals. In our experience complainants often find it difficult to find information about customer service procedures and how to make a complaint. We referred in our response to Question 2 to the difficulties some consumers had in finding out about their CPs' complaints procedures.

Question 6:

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

Response to question 6

We agree with each of the proposals.

Regarding bullet point three, Otelo's view is that it is better to ensure that complaints are resolved as close as possible to when the problem occurred and if possible without the need for ADR. However, it is not always possible to resolve a complaint by following the CP's procedures, even where the complaint has already been handled in an effective manner, and where the matter is referred to ADR it will ensure that it is resolved with minimal further delay and detriment.

Question 7:

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

Response to question 7

We support the proposals to increase awareness. Higher awareness empowers consumers and does not necessarily increase use of ADR if it is accompanied by a range of measures to ensure that complaints are properly recorded and managed. In only a small proportion (less than a quarter) of our investigations has a deadlock letter been issued. While this is not an absolute measure of CPs' knowledge and management of complaints, our view is that some complaints are not handled effectively because they are not properly tracked and managed.

Ofcom noted that the case fee significantly exceeds the average financial award, but one argument for ADR is that an investigation can relieve the CP of the burden of trying to resolve a complaint, particularly in cases where a resolution may be unlikely without the benefit of an independent view.

Question 8:

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

- a) Relevant text about ADR to be included on bills (paper and electronic);*
- b) CPs to ensure consumers whose complaint has not been resolved within eight weeks of first being made to a front-line agent receive written notification about their right to go to ADR;*
- c) CPs to ensure front-line staff are fully informed of the right of consumers to use ADR, as well as the role of Ofcom in investigating compliance with General Conditions; and*
- d) On request from a complainant, CPs must issue a deadlock letter referring a matter to ADR unless the subject-matter of the complaint is outside the jurisdiction of the ADR scheme or the CP has genuine and reasonable grounds for considering the matter will be resolved in a timely manner, and subsequently takes active steps to attempt to resolve the complaint.*

Response to question 8

We broadly support the proposals. We agree that the status quo is not appropriate, or that complainants should be informed within 10 days of making a complaint. On this option, given that many of the complainants will simply be fault reports, it is likely that many of these which pass the 10 day mark are likely to be resolved before eight weeks, and that while notification of ADR may give them some comfort that they have a fall-back option, the costs are likely to exceed the benefits. Otelo is concerned that any requirement which gives consumers further, specific information about ADR significantly before the time a which they have the right to use it may significantly increase our costs of handling enquiries which have not yet qualified for ADR.

We are, however, concerned about Ofcom's proposed criteria for sending notifications to complainants, in particular that these could make a CP the gatekeeper for the ADR process. Our specific concerns are about the proposals that:

- it is reasonable for the CP to consider the matter resolved to the customer's satisfaction;
- it will be resolved to the complainant's satisfaction provided that the CP takes an agreed course of action;
- the complaint appears to be vexatious.

On the first and second points, the nature of a dispute (by definition) can mean that the complainant and CP have opposing views of the nature of a complaint and the resolution. We see a not insignificant number of cases where a CP notifies us that the matter has been resolved and the customer accepts this, but where the customer disagrees. It is not necessary for us to formally investigate a complaint to assess whether the matter has been resolved to the complainant's satisfaction. We can frequently make such an assessment via our initial enquiries, and if it appears that the complainant is not satisfied that the matter will be resolved we can investigate the complaint.

Even if the complainant agrees that the matter will be resolved on completion of an agreed course of action, the complainant and CP may have differing views on what resolution means. To the CP it may mean that a problem or fault is fixed, but to the complainant it might mean the provision of compensation for loss of service, stress and inconvenience, and time spent trying to resolve the problem.

On the third point, whether a complaint can be regarded as vexatious may be a subjective judgement. Paragraph 11.2(g) of our Terms of Reference states that the Ombudsman shall not accept a complaint about a matter if it appears that it is frivolous or vexatious. The complainant cannot, therefore, pursue a frivolous or vexatious complaint with Otelo, and we regard this as an effective safeguard for member companies.

Option 5, that consumers be notified after eight weeks but if the matter has been escalated to the complaints handling team, has some merits, but in our experience this potentially places significant hurdles in the way of consumers, who may not be familiar with their CPs' processes, and should therefore not be denied the opportunity to come to ADR after eight weeks if they have not been able to raise the profile of their complaint within their CP.

We note, however, that if we receive complaints where we are not satisfied that the complainant has taken sufficient steps to pursue the matter, we will generally refer the complainant to the complaints handling office of the CP, and will provide contact details. We consider this to be reasonable, and ensures that CPs do have a reasonable opportunity to resolve the matter before ADR can be used and they incur a case fee.

We agree with the proposal to require relevant text to be included on bills. The majority of our member companies, by size, already do this.

We agree that consumers should be notified at eight weeks of their right to use ADR, although it is important that they should be informed that the eligibility to use a service will be subject to the terms of reference of that service.

In our view, too many consumers find that their CPs front-line agents are unaware of the existence of their right to use ADR, and as a result may spend much longer pursuing the complaint before they are told, or they find out by accident. Delays in eligible complaints being referred to ADR is likely to lead to an increase in consumer detriment, especially where charges are still being applied and no service is provided. Cases tend to increase in complexity as a result of age, and the sooner a case can be resolved, whether by the CP or by the ADR scheme, the better.

Otelo supports the requirement for CPs to issue a deadlock letter on request. While we think that some complainants may use this as a lever either to go to ADR before the CP

has had a reasonable opportunity to resolve the matter, or to get a better resolution direct from the CP, the qualifications proposed by Ofcom should reduce those problems.

In relation to small business customers, and the submissions that a CP would first need to identify whether an account was being used for business purposes, Otelo notes that a significant number of its complaints are from very small businesses, often one-man bands, who use a residential service (i.e. as defined by the CP and in the terms and conditions) for business purposes. However, as such complainants would qualify both as a business or residential customer, there is no need to distinguish them from the point of view of eligibility. Our view is that it may be more important first to decide whether the account-holder is a small business, rather than the whether the account was being used for business purposes.

Question 9:

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

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

Response to question 9

We agree in principle with the proposed wording, but it does not completely capture those cases where small businesses may be eligible on the basis of the ADR scheme’s criteria but not on the basis of the legal eligibility criteria.

We recognise that as a regulator, Ofcom cannot require CPs to approve text which may not reflect the wording of the Communications Act 2003, but in our view it would be helpful if Ofcom were to amend the wording to reflect the fact that, at the moment, Otelo uses a proxy of £5,000 annual spend with their CP, although regardless of this we will accept complaints where there are ten employees or fewer.

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

Question 10:

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

“A CP must retain written records collected through the complaint handling process for a period of at least six months, including written correspondence and notes on its Customer Record Management systems. Where call recordings are available, these need to be retained for at least three months.”

Response to question 10

While we recognise that Ofcom must be able to assess compliance, this proposal does not seem to address the needs of Otelo, in investigating a case, to have as detailed information as possible about the complaint and the events leading up to it. We do not see the justification for having different retention periods for log notes and call recordings. The cost of holding data has fallen significantly, and continues to fall, and in our view it would be justifiable to have the same retention period, which should be at least six months.

We also consider that CPs should, once a complaint is raised, be required (or at least requested) to retain any information which it already holds about a customer, even if the retention period expires while the complaint is being processed.

Question 11:

Do you have any views on the Ofcom Code and accompanying guidance (Annex 5)? Do you consider we have adequately captured the policy intentions we have outlined in the consultation document?

Response to question 11

We are satisfied that both the Code and the guidance capture the policy intentions.

Question 12:

Do you agree that it is reasonable to require CPs to implement:

- *Clauses 1 – 3 of the Ofcom Code (transparency, accessibility and effectiveness of complaints procedures) six months after the publication of any Statement; and*
- *Clauses 4 – 5 of the Ofcom Code (facilitating access to ADR and record keeping obligations) 12 months after the publication of any Statement.*

Response to question 12

One of our concerns is that we are able to prepare for what seems likely to be a significant increase in the number of complaints brought to us. We do not anticipate that the requirements in the first stage are likely to lead to this, but the key element of the Code is the requirement for CPs to notify complainants in writing about ADR. Otelo considers that it should work closely with its member companies to assess the likely increase.

The steps in phase 1 may lead to an increase in the number of cases referred to ADR, but the increased transparency requirements may provide a counterbalance by making consumers more aware of the CPs' complaints handling process, which could mean that CPs have greater opportunities to resolve complaints before further problems have developed.

We expect to be able to assess the impact of phase 1 in planning for phase 2, and will continue to work with member companies in assessing likely changes in volumes of complaints coming to ADR. The numbers of complaints being handled by our member companies is an important input to our planning processes, and can provide early indications of the numbers of complaints we are likely to expect. Once the increased transparency requirements in phase 1 are in place our member companies may be better placed to provide information about the numbers of likely ADR cases. We have already referred to the use of deadlock letters, which inform consumers clearly about their rights, and if consumers know more about the complaints procedures this may give CPs clearer opportunities to decide whether they think that a case can be resolved without the use of ADR, or whether resolution without ADR is less likely.

Question 13:

Do you have any views on whether (and how) Ofcom should look to improve the availability of comparative information on how effective providers are at handling complaints?

Response to question 13

We have always felt that consumers would benefit from having more information about their CPs, the likelihood of a complaint arising, and the ability of the CP to resolve the complaint, with or without recourse to ADR.

We have, however, been concerned that it may be invidious for Otelo to publish its own information, as this would not necessarily give a clear indication of likely consumer experience since it would not be normalised according to the number of customers of each CP. It would also not necessarily indicate the absolute number of complaints received by each CP, since the number being referred to ADR depends not only on the ability of the CP to resolve complaints without the use of ADR, but on the level of information provided by the CP about ADR. Perversely, a low number of complaints coming to ADR (even normalised to accommodate different customer bases), could indicate that the CP resolves complaints effectively with minimal use of ADR, or handles them very badly without telling its complainants about ADR.

As there are two ADR schemes in the telecoms sector, any publication of data would have to apply equally to both services in order to remove the possibility that CPs may move from one service to another because it would make the CP look better.

If Ofcom were to impose any requirements, Otelo considers that it must first implement the remedies as set out in the current con doc in order to ensure that any differences in approach by the CPs, or by the ADR schemes, are as far as possible removed.

Otelo also considers that in any case any information should be published by Ofcom, because it has access to a much wider range of information, including complaints to its own Advisory Team, and can also request information directly from CPs, which Otelo would not be able to get. In doing so, Ofcom could take into account various factors such as CP size, and overall complaint numbers, and produce synthesised information which would ultimately be much more helpful to consumers and would provide adequate incentives on CPs to improve their complaints handling processes.

In summary, we do not support the notion of ADR schemes publishing comparative complaint handling data about CPs. In Otelo's case this was never envisaged as a purpose or objective of the organisation.

Peter Holland CBE, DL

A handwritten signature in blue ink, appearing to read 'Peter Holland', with a long horizontal flourish extending to the right.

**Chairman
Ombudsman Services**

12 March 2010