



Improving Access to Alternative Dispute Resolution

Statement

Publication date:

19 May 2009

Contents

Section	Page
1 Summary	1
2 Introduction	2
3 Access to Alternative Dispute Resolution	6
4 Approval of ADR Schemes	16

Annex	Page
1 Comparison with other ADR Schemes	18
2 Estimate of Increase in Costs From Reducing ADR Threshold to 8 Weeks	19
3 Consumer Harm from Prolonged Complaints	21
4 List of Respondents	24

Section 1

Summary

Alternative Dispute Resolution (ADR) is an important part of the consumer experience in communications markets. ADR schemes consider cases referred to them by consumers who have unresolved complaints with their communications providers (CPs), examine both sides of the dispute and make a judgment, which could include a financial award and/or requiring the provider to take appropriate action.

ADR can improve the outcome for those consumers whose complaints might otherwise be unduly lengthy or remain unresolved. It also gives CPs additional incentives to improve their own complaints handling procedures and to resolve complaints quickly and effectively.

Ofcom requires all CPs to be members of an approved ADR scheme. There are two Ofcom-approved schemes: the Office of the Telecommunications Ombudsman (Otelo), and the Communications and Internet Services Adjudication Scheme (CISAS).

2008 Consultation

In July 2008 we published a consultation that examined how easy it is for customers to access these schemes, and the effectiveness of complaints handling in the industry. Included in the measures considered, we set out proposals to improve access by reducing the period that consumers have to wait before they can take complaints to ADR from 12 to 8 weeks. We also proposed criteria that we would use in our review of our ongoing approval of the two ADR schemes in 2010.

Our Conclusions

We have decided to proceed with the proposed change to the time period a consumer must wait before they can take a dispute to ADR. This will be reduced from 12 to 8 weeks after the complaint is first lodged with their provider. The majority of responses to the consultation supported this change.

Our evidence shows that the prospect of a complaint being resolved between the consumer and their provider diminishes substantially after 8 weeks and that the costs for industry from the change to 8 weeks are expected to be low. We believe that by enabling customers to take their unresolved complaints to ADR earlier, consumers will benefit from a reduction in the stress and anxiety which often accompany prolonged disputes. This change will come into effect on 1 September 2009.

We are also confirming the criteria we will use in our review of the approval of the two ADR schemes next year. These include accessibility, independence, fairness, transparency and effectiveness.

Further Proposals

In the 2008 consultation we also made other proposals: improving awareness of ADR by requiring providers to notify their customers about the schemes; setting minimum standards for complaints handling; and requiring providers to keep appropriate records of contacts with their customers. Responses from CPs indicated that we had understated the extent and costs of changes that would be needed to implement these proposals. We are currently seeking more information around these measures and will be consulting further later this year.

Section 2

Introduction

- 2.1 In 2007 Ofcom initiated a 'complaints review' project to examine access to ADR and the general standards of complaints handling procedures in the telecommunications industry. We recognised that it was time to examine the current regulatory regime, which had been in place for four years.

Progress since our 2008 Consultation Document

- 2.2 In July 2008 we published a consultation document,¹ which considered that our current regulation of ADR and complaints handling was successful in many respects but there were nevertheless areas of concern. These concerns were mostly about access to ADR and about the general standard of complaints handling procedures by CPs. The consultation document proposed five main initiatives:
- a) improving **access to ADR** by reducing the period before consumers have the right to go to ADR (from 12 to 8 weeks);
 - b) improving **awareness of ADR** by requiring CPs to notify their consumers about ADR (5 days after a complaint is lodged and subsequently when the consumer has the right to go to ADR);
 - c) setting **minimum standards** for complaints handling by establishing a single Ofcom-approved Complaints Code of Practice, instead of CPs having to submit their individual codes to Ofcom for approval;
 - d) facilitating **Ofcom monitoring** by requiring CPs to keep appropriate records of their contact with consumers; and
 - e) setting **criteria** for our review of the approval of ADR schemes, which will follow the current project.
- 2.3 Respondents to our consultation indicated strong support for some proposals, while also indicating that other proposals warranted a closer examination. In particular, many respondents raised concerns about the potential costs that CPs would face if they were required to develop and implement new internal systems to track the length of time complaints were unresolved and to subsequently issue written notification about ADR to relevant complainants. In order to better understand the costs that CPs would face we have recently issued a formal information request under section 135 of the Communications Act 2003 (the Act).
- 2.4 Once we have analysed the results of the information request we intend to issue a further consultation document covering options to improve awareness of ADR; the proposed features of a single Ofcom-approved Complaints Code of Practice; and appropriate record keeping requirements for CPs (areas previously covered by proposals b, c, and d above).

¹ http://www.ofcom.org.uk/consult/condocs/alt_dis_res/condoc.pdf

What does this Statement Cover?

- 2.5 This statement addresses two issues that were raised in the 2008 consultation document: the timeframe in which consumers are able to access ADR, and the criteria we intend to use as the starting point in our upcoming review of the approval of the ADR schemes (proposals a and e above).
- 2.6 These two matters are sufficiently discrete that there would be no benefit from delaying implementation while other aspects of the complaints review are considered. Given that changes to the ADR threshold will provide tangible benefits to consumers we are satisfied that we should progress this issue immediately.

Ofcom's Policy Objectives

- 2.7 Under section 3 of the Act it is the principal duty of Ofcom to further the interests of:
- citizens in relation to communication matters; and
 - consumers in relevant markets, where appropriate by promoting competition.
- 2.8 Section 4 of the Act requires Ofcom to act in accordance with the six European Community requirements for regulation. In summary, these requirements are to:
- promote competition in the provision of electronic communications networks and services, associated facilities, and the supply of directories;
 - contribute to the development of the European internal market;
 - promote the interests of all persons who are citizens of the European Union;
 - not favour one form of or means of providing electronic communications networks or services, i.e. to be technologically neutral;
 - encourage the provision of network access and service interoperability for the purpose of securing:
 - efficient and sustainable competition; and
 - the maximum benefit for customers of communications providers; and
 - encourage compliance with certain standards in order to facilitate service interoperability and secure freedom of choice for the customers of communications providers.
- 2.9 Ofcom has the power under section 45 of the Act to set 'General Conditions'. These are conditions that apply to all CPs who provide an Electronic Communications Network and/or Electronic Communications Service in the United Kingdom. The General Conditions are the main statutory instrument we can use to implement regulation in this area.
- 2.10 Under section 49 of the Act, where a condition has effect by reference to directions, approvals or consents given, and Ofcom is proposing to modify or withdraw a direction, approval or consent as to affect the condition's operation, Ofcom must not do so unless it is satisfied that is objectively justifiable; does not discriminate unduly

against particular persons; is proportionate to what it intends to achieve, and is transparent.

2.11 Under section 52 of the Act Ofcom has a duty to set General Conditions that we think are 'appropriate' for securing that CPs establish and maintain procedures, standards and policies with respect to:

- the handling of complaints made to public communications providers by any of their domestic and small business customers; and
- the resolution of disputes between such providers and any of their domestic and small business customers.

2.12 In setting these General Conditions we must secure that complaints handling and dispute resolution procedures are:

- easy to use, transparent and effective; and
- customers can access them free of charge.

2.13 Ofcom has a duty to keep under the review the dispute resolution procedures it approves.

What is the Structure of this Document?

2.14 The remainder of this document is structured as follows:

- Section 3 examines whether the period that consumers must wait before they can access ADR is appropriate and records Ofcom's decision;
- in section 4 we outline the proposed principles that we will use in our upcoming review of the ADR schemes; and
- Annexes 1, 2, and 3 outline additional supporting evidence for our approach.

What is our Approach to undertaking an Impact Assessment?

2.15 The analysis presented in section 3 and Annexes 1 to 3 of this statement represents an impact assessment, as defined in section 7 of the Act.

2.16 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally Ofcom has to carry out impact assessments where its proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of its policy decisions. For further information about Ofcom's approach to impact assessments, see the guidelines, Better policy-making: Ofcom's approach to impact assessment, which are on the Ofcom website:
http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf

2.17 Specifically, pursuant to section 7, an impact assessment must set out how, in our opinion, the performance of our general duties (within the meaning of section 3 of the Act) is secured or furthered by or in relation to what we propose.

- 2.18 We received consultation responses on specific issues raised by our impact assessment and we set out our consideration of them in section 3 of this statement.

Section 3

Access to Alternative Dispute Resolution

The Importance of ADR

- 3.1 Inadequate complaints handling by CPs has the potential to cause significant harm and detriment to consumers.² While many consumers will be able to resolve their complaints quickly with their CP, for some, the process of pursuing a complaint can be a very frustrating and potentially fruitless exercise – and may result in stress, anxiety, loss of income, unnecessary expenditure and wasted time. Giving consumers the right to go to an independent body for fair and impartial dispute resolution is an important way in which a consumer may be protected and empowered when having a dispute with a CP.
- 3.2 The benefits of a regulatory regime that promotes effective access to ADR include:
- reducing the power imbalance between consumers and CPs, who normally have greater resources, knowledge and control over the products and services in dispute;
 - improving the outcome for those consumers who would otherwise fail to pursue complaints out of frustration with their CP's response or lack of response;
 - empowering consumers to pursue their rights more effectively with their own CP, with the knowledge that they have an alternative option for redress if the complaint becomes intractable;
 - providing additional incentives for CPs to improve their complaints handling procedures and to resolve complaints quickly and effectively; and
 - giving consumers access to justice where recourse to the court system may be impossible or impractical due to cost and resource restraints, as well as reducing the 'system costs' that would occur if a high volume of relatively low monetary value disputes were instead required to be resolved by the legal system.
- 3.3 General Condition 14.7 requires that all CPs are a member of an ADR Scheme that Ofcom has approved. We have approved two schemes, Otelo³ and CISAS.⁴ CPs must comply with the rules of their ADR Scheme, including the final decisions made by the ADR schemes in individual cases.
- 3.4 The ADR schemes are free to consumers and are fully independent of CPs and Ofcom. Following an application by a consumer the relevant scheme will examine both sides of the dispute and make an appropriate judgment – which could potentially include a financial award and/or requiring the CP to take necessary action. While CPs are bound by the decisions of the ADR schemes, consumers still have the ability to pursue their dispute through the legal system if they remain unsatisfied.

² For the purposes of this statement we use the term 'consumers' to refer to "Domestic and Small Business Customers", as defined in the Act as residential consumers and businesses with 10 or less employees (who are not a CP).

³ www.otelo.org.uk

⁴ www.cisas.org.uk

The Current Rules for Accessing ADR

- 3.5 At the moment telecommunications consumers have to wait 12 weeks after they initially complained to their CP before they can go to ADR, unless their CP issues a 'deadlock letter'.⁵ A CP can issue a deadlock letter at any stage if it thinks that a complaint will not be resolved without going to ADR – in other words, the complaint is 'deadlocked'.
- 3.6 The use of deadlock letters is not widespread in the industry and the overwhelming majority of complaints being submitted to ADR are because complainants are unable to reach a satisfactory outcome with their CP within at least 12 weeks. Otelo notes that approximately 19% of complaints submitted to them in 2007/08 were triggered by the issue of a deadlock letter,⁶ while CISAS advises that 4% of their cases in 2008 were prompted by a deadlock letter.⁷
- 3.7 It is to be expected that many CPs have little incentive to issue deadlock letters – referring a complaint to ADR results in them incurring case fees for a dispute that they may otherwise be able to resolve or which may be dropped by the complainant. The limited use of deadlock letters makes it even more important that we have a high degree of confidence that the timeframe that consumers must wait before being able to submit unresolved complaints to ADR is appropriate.

The 2008 Consultation

Examining the Suitability of the Current ADR Threshold

- 3.8 In our consultation document we outlined our view that the current 12 week period that consumers have to wait before they can access ADR is unnecessarily long.

Complaint Resolution

- 3.9 Our consultation document noted that for an ADR regime to be effective it should target those complaints that cannot be resolved directly between consumers and CPs in a reasonable timeframe. Based on completed industry responses to our 2007 Information Request we can estimate that across the industry:⁸
- approximately 87% of all complaints are resolved within 4 weeks;
 - approximately 93% of all complaints are resolved within 8 weeks; and
 - approximately 93% of all complaints are resolved within 12 weeks.
- 3.10 These figures demonstrate that the overwhelming proportion of complaints are either resolved on first-contact or early in the complaint life-cycle. However, it is also clear that the prospect of resolution diminishes the longer that a complaint remains unresolved.

⁵ Rule 1(c) of 2007 edition of the CISAS Rules and clause 11.1 of the Otelo Terms of Reference.

⁶ Otelo, 2008 Annual Report, p27

⁷ Figure provided by CISAS.

⁸ We note that the data provided by the industry included significant variances between individual CPs and were not based on a common definition of 'complaint'. These figures exclude the data provided by one major CP, which was not provided in the format required by the Information Request and in any event appears to be a significant outlier. It is pertinent to note that even if the outlier is included, the proportion of complaints resolved between 8 and 12 weeks would still be less than 1% of all complaints.

- 3.11 The figures show that only a very small proportion of complaints are resolved between 8 and 12 weeks after a complaint was first made (less than 1% of total complaints lodged). From another perspective, of those complaints that have lasted 8 weeks, over 90% will still be unresolved 4 weeks later.

Consumer Harm

- 3.12 The Futuresight Report commissioned by Ofcom indicates that making a complaint can result in varying degrees of stress, anxiety, frustration and anger for the consumer.⁹ We noted in our consultation document that we considered these negative elements were likely to be exacerbated by a prolonged period without resolution.¹⁰

Comparable Industries and Jurisdictions

- 3.13 Our impact assessment referred to best practice in similar industries.¹¹ Further analysis supports our proposition that the current 12 week period before consumers are able to access ADR is unduly restrictive in comparison to other schemes (see Annex 1).

Options Examined in the Consultation Document

- 3.14 We identified two options in the 2008 consultation document for how long consumers should have to wait before being able to go to ADR:¹²
- a) retain the status quo of 12 weeks; or
 - b) reduce the ADR threshold from 12 to 8 weeks.
- 3.15 We chose 8 weeks as an alternative duration with which to contrast the current 12 weeks as this was the length of time after which we considered that complaint resolution becomes less likely. In our consultation document we also examined the practices of other dispute resolution schemes, and noted that eight weeks is the period consumers have to wait in the energy industry before a complaint can be referred to the energy ombudsman.¹³
- 3.16 We considered the current system to be imposing a continued 'cost' on those complainants going to ADR by unnecessarily delaying their access. For the large majority of complaints that cannot be resolved without going to ADR the consumer would benefit from sending the complaint to ADR at 8 weeks rather than 12 weeks because the majority of such complaints are not resolved in the additional 4 weeks. This would reduce their exposure to the potential harm caused by the prolonged nature of their dispute with their CP.
- 3.17 After an examination of the options we proposed in the consultation document to adopt the latter option: reducing the ADR threshold from 12 to 8 weeks.¹⁴ We

⁹ See Futuresight Report, www.ofcom.org.uk/consult/condocs/alt_dis_res/futuresight/, especially pages 23-25.

¹⁰ Ofcom, 'Review of Alternative Dispute Resolution and Complaints Handling Procedures' (10 July 2008), paragraph 3.23.

¹¹ Ibid, paragraph 3.30.

¹² Ibid, paragraph 3.24.

¹³ Ibid, paragraph 3.30.

¹⁴ Ibid, paragraph 3.34.

considered that the extent of an increase in costs to CPs arising from arising from having to pay additional ADR case fees would be limited.

Stakeholder Response

- 3.18 The majority of respondents were supportive of our proposal to reduce the threshold of ADR to 8 weeks (including 3, BT, Yahoo, Orange, Scottish and Southern Energy, Citizens Advice Bureau (CAB), CISAS, Otelo, and others who requested that their submission remained confidential).
- 3.19 The submissions from CISAS and CAB were particularly supportive of the proposed change. CISAS noted that many consumers view the 12 week wait as an unnecessary obstacle to the resolution of their complaint. In its view, lowering the threshold would be particularly beneficial to consumers whose CPs do not have effective internal complaints handling procedures. The submission from CAB provided some compelling descriptions of consumer harm, particularly in relation to vulnerable consumers. CAB noted that reducing the threshold from 12 to 8 weeks would be a positive first step in reducing the harm that can be experienced by consumers who are awaiting a decision from their CP.¹⁵
- 3.20 Where concerns were expressed by respondents they typically fell into four broad themes:
- concern with the costs associated with the proposed change;
 - concern that Ofcom had not demonstrated sufficient consumer detriment under the status quo, nor sufficient consumer benefit from lowering the ADR threshold to 8 weeks;
 - concern that the proposal would be counter-productive to early complaint resolution; and
 - concern that Ofcom had not distinguished between the relative needs of residential and business users to access ADR after 8 weeks.

Costs of the Proposal

- 3.21 Two CPs were of the view that the threshold for ADR should remain at 12 weeks as they would otherwise face substantially increased costs from more cases going to ADR.

Ofcom Response

- 3.22 The respondents that were concerned with the costs of this proposal calculated their likely new costs by multiplying the number of unresolved complaints they had after 8 weeks by the case fees they would face if all these cases were to go to ADR. The assumption that every unresolved complaint will now go to ADR as a result of this change is unfounded. It is possible these calculations were influenced by a separate Ofcom proposal in the 2008 consultation document to require CPs to notify every complainant of their right to go to ADR at the time that right arises.
- 3.23 In the absence of any improvement in signposting to ADR it is expected that awareness of ADR amongst complainants will remain relatively constant and the

¹⁵ A number of CAB case-studies have been included in Annex 3.

caseload of the ADR schemes will not significantly increase (i.e. many cases going to ADR will now go earlier). The key category of new cases going to ADR will be the small group of complainants that would otherwise have their complaint resolved between 8 and 12 weeks, are aware of the existence of ADR and now choose to have their case heard by one of the ADR schemes. For these limited number of cases CPs will now face additional ADR case fees.

- 3.24 In the July 2008 consultation document we noted that any increase in costs was expected to be limited. In reply to responses, we have now undertaken further analysis of these expected costs. We project that the whole industry will face additional annual costs that are likely to be in the range of £30,000-£150,000 as a result of new cases going to ADR (see Annex 2).

Consumer Detriment and Benefit

- 3.25 Several respondents questioned the robustness of Ofcom's impact assessment and did not consider that Ofcom had made the case for lowering the ADR threshold. It is pertinent to note that O2, Verizon Business, the Mobile Broadband Group and the UK Competitive Telecommunications Association all supported the principle of moving to an 8 week timeframe but did not consider that Ofcom had provided sufficient evidence to justify its decision.

Ofcom Response

- 3.26 We have undertaken a further analysis of the qualitative interviews contained in the Futuresight Report, which support our initial view that the negative impact on consumers worsens the longer they have to wait for an outcome (see Annex 3).
- 3.27 It is self-evident that consumers that have reason to complain to their CP are likely to experience varying degrees of dissatisfaction. For the overwhelming majority of consumers this dissatisfaction will be resolved in very short order; however, a small group of consumers will experience harm from their inability to have their complaint dealt with effectively. We recognise that matters of consumer harm cannot be quantified easily, but believe that a qualitative assessment shows that the longer a complaint remains unresolved the greater the prospect will be of consumer detriment occurring. We are satisfied that those consumers who are having to wait 12 weeks before going to ADR would benefit if they did not have to wait the additional 4 weeks. We have also assessed the costs to industry (as outlined in Annex 2) and believe that these are outweighed by such benefits to consumers.
- 3.28 We are satisfied we had addressed the concern raised by respondents. We have evidence of a correlation between ongoing complaints and increased consumer detriment;¹⁶ we have surveyed the industry and concluded that the prospect of bilateral complaint resolution after 8 weeks is remote;¹⁷ we have examined best practice in similar industries and jurisdictions;¹⁸ and we have undertaken more detailed cost projections.¹⁹

¹⁶ Please see Futuresight Report (www.ofcom.org.uk/consult/condocs/alt_dis_res/Futuresight) and Annex 3.

¹⁷ Please see paragraph 3.9.

¹⁸ Please see Annex 1.

¹⁹ Please see Annex 2.

Counter-Productive to Complaint Resolution

- 3.29 Two respondents submitted that shortening the timeframe before a consumer could access ADR would not be in the best interest of the consumer as it would be counter-productive to an earlier mutual resolution of a complaint between parties. It was also submitted that CPs may suffer as consumers seek to exploit their right to go to ADR.

Ofcom Response

- 3.30 It is certainly not Ofcom's intention that the exercise of a consumer's right to ADR should replace a CP's own internal complaints handling procedures, or that access to ADR should occur before a CP has had a reasonable opportunity to resolve the matter.
- 3.31 As is currently the case, if a consumer believes their complaint is near resolution they will always have the choice of continuing with their CP's own complaints handling procedures. Ofcom's analysis indicates that the prospect of a complaint being mutually resolved diminishes substantially after 8 weeks, meaning that this intervention is targeted at those consumers who would benefit the most from an independent consideration of their complaint.
- 3.32 We do not consider that altering the ADR threshold will have a material impact on the number of consumers who go to ADR in the hope of 'punishing' their CP or receiving an improved settlement. Even if this change caused a slight increase in awareness of ADR, the ADR schemes have appropriate mechanisms for filtering out frivolous or vexatious complaints.
- 3.33 We recognise that in a very limited number of situations it may not be reasonable to expect the resolution of a complaint within 8 weeks – for example, where the complaint concerns engineering work or complex billing problems. However, as with the current situation, a CP is fully entitled to convince the consumer that it is actively trying to resolve the matter and that ADR is not yet appropriate.
- 3.34 The small group of users who will now go to ADR between 8-12 weeks, but who would otherwise have resolved their complaint during this period, are likely to face a more prolonged process through ADR than compared to the resolution of this dispute by their CP. However, it should be noted that for many consumers the harm they are exposed to through making a complaint can often be associated with their perceived inability to make progress with their CP rather than the original cause of the complaint – and the use of ADR, while prolonging their complaint, may nevertheless represent an improved situation for them. Indeed, Otelo's Customer Satisfaction Survey indicates that issues with CPs' 'customer service' are the most common complaint that they have to deal with.²⁰

The Distinction between Residential and Business Users

- 3.35 Several respondents questioned whether Ofcom had provided sufficient evidence of the benefits of reducing the ADR threshold for business customers. We note however, that these concerns were primarily raised in the context of the wider proposals in the 2008 consultation document, which if implemented would have required CPs to take steps to determine if a business user was eligible for ADR prior to issuing written notifications (i.e. satisfy themselves that the consumer employed

²⁰ Office of the Telecommunications Ombudsman, 'Customer Satisfaction 2008' (April 2008), [http://www.otelo.org.uk/downloads/FinalOtelo2008_\(3\).pdf](http://www.otelo.org.uk/downloads/FinalOtelo2008_(3).pdf).

ten or fewer employees) – matters which are not relevant to this statement. Indeed, only Verizon Business questioned whether Ofcom could justify lowering the ADR threshold for small business users.

Ofcom's Response

- 3.36 Under the Act both residential and small business users have a right to take unresolved complaints to ADR, subject to Ofcom setting conditions that it considers 'appropriate'. We consider that, for the purpose of determining when consumers can access ADR, we are justified in setting a single threshold for eligible residential and small business users.
- 3.37 The right to ADR is provided to both residential and small business consumers as their relative size means that they are at greater risk of being unable to effectively negotiate with their CP, leading to the prospect of an unsatisfactory treatment of their complaint. While negotiating power will always vary on a case-by-case basis, typically the difficulties that confront residential users when their complaint remains unresolved will also confront small business users. As with many residential users, there are likely to be many small business users who will not have the expertise to assess the performance of CPs against relevant terms and conditions, are unlikely to have sufficient commercial power to resolve matters in short order, and are also likely to include categories of vulnerable customers (such as those with language difficulties) who may have considerable difficulty pursuing a prolonged complaint.
- 3.38 As with residential users, we consider that those small business users currently taking their unresolved complaint to ADR are likely to face varying degrees of stress, anxiety, frustration and anger the longer that the complaint remains unresolved. Although we have not commissioned specific research on this point we believe it is a reasonable conclusion to draw from the Futuresight Report (which although focused on residential users, suggests a link between the length of time a complaint remains unresolved and the detriment to individuals²¹).
- 3.39 The information we have gathered (and provided above in paragraph 3.9) demonstrates that less than 10% of complaints that are unresolved after 8 weeks will be resolved in the following 4 weeks – a figure that includes those complaints made by small business users. We do not consider that this four week period in the complaint cycle is aiding the resolution of complaints – be they from residential or small business users.
- 3.40 Finally we note that CPs will face no additional internal costs if residential and small business users are able to access ADR at the same time. As access to ADR is typically driven by the complainant rather than the CP,²² this change to the ADR threshold will not require CPs to take any steps that they do not currently take to verify that a customer has the right to go to ADR. Indeed, creating different ADR thresholds for different consumers has the potential to create unnecessary complexity and may lead to greater administrative costs for the ADR schemes and CPs.

Our Examination of the Options and Our Decision

- 3.41 Taking into account submissions made by stakeholders we have again examined the relative merits of leaving the ADR threshold at 12 weeks or reducing it to 8 weeks.

²¹ Please see Annex 3.

²² As demonstrated by the scarce use of deadlock letters within the industry, see paragraph 3.6.

- 3.42 We recognise that ADR is not a costless process and consumer detriment does not automatically subside simply because a case is referred to ADR. It is therefore important to strike the delicate balance between ensuring that consumers can effectively access ADR at the stage when ADR offers the greatest value in the complaints process, while also ensuring that the availability of ADR does not undermine CPs' own complaints handling procedures.

Option 1: Do Nothing

- 3.43 For the reasons set out at paragraphs 3.9 to 3.40 we consider the 12 week wait before consumers are able to take an unresolved complaint to ADR to be unnecessarily long. It is likely that this current requirement is prolonging cases that are currently going to ADR and causing stress and anxiety for consumers.
- 3.44 We acknowledge that a benefit of maintaining the status quo would be that CPs would face no additional costs.

Option 2: Reduce the Time Limit that a Consumer has to wait to go to ADR from 12 to 8 Weeks

- 3.45 Our analysis indicates that reducing the ADR threshold to 8 weeks is likely to improve access to ADR and reduce the harm that occurs to consumers from a lengthy dispute with their CP. This statement has outlined that:
- a) while making a complaint can result in varying degrees of detriment to complainants (including financial loss, stress, anxiety, and anger), the longer a complaint remains unresolved the greater the prospect will be of consumer detriment occurring;
 - b) the use of 'deadlock letters' by CPs as a means of referring complaints to ADR is not common practice across the industry, meaning that it is even more important that the right of consumers to take their CP to ADR occurs at the stage in the complaints-cycle when the prospect of bilateral resolution becomes unlikely;
 - c) the prospect of a complaint being resolved diminishes substantially 8 weeks after the complaint is lodged, with 90% of complaints that are unresolved at 8 weeks still being unresolved 4 weeks later;
 - d) ADR is intended to offer a low-cost mechanism for resolving disputes that cannot be resolved bilaterally. It is reasonable to conclude that complaints at the 8 week stage are more likely to have become polarised and may benefit from the use of ADR;
 - e) in comparison with similar regulated industries and overseas jurisdictions, the current 12 week threshold before consumers can access ADR is unduly restrictive;²³ and
 - f) there is broad support for this change from industry, including from most CPs that expressed a view (and upon whom the additional costs would fall).
- 3.46 We recognise that under this approach the industry is likely to face additional costs from more cases going to ADR. Our analysis indicates the costs of this change are

²³ Please see Annex 1.

expected to be £30,000-£150,000 per annum across the industry, which we consider to be a proportionate cost in light of the expected improved consumer outcomes.

Our Decision

- 3.47 We consider the 8 week period to be a reasonable timeframe to allow for the resolution of a complaint by a CP. We have concluded that consumers will be able to go to ADR 8 weeks after they have first lodged their complaint with their CP – instead of the current 12 weeks.
- 3.48 Under section 3 of the Act it is the principal duty of Ofcom to further the interests of citizens in relation to communication matters; and consumers in relevant markets, where appropriate by promoting competition. In addition section 4 of the Act requires that we act in accordance with the six European Community requirements for regulation which include promoting the interests of all citizens who are members of European Union. In setting General Conditions under section 52(3) of the Act and in approving dispute resolution procedures, Ofcom must ensure they are easy to use, transparent and effective.
- 3.49 For the reasons set out in paragraph 3.45 above, Ofcom believes our decision meets the above requirements. Reducing the time that consumers have to wait before they can access ADR will further the interests of consumers and citizens by reducing the prospect of harm that can often accompany prolonged unresolved disputes between consumers and CPs, empowering consumers to pursue their rights more effectively with their CP, and reducing the power imbalance between consumers and CPs. Additionally, we consider that the proposal is:
- objectively justifiable: we believe that the change is objectively justifiable because we believe that reducing the waiting term before consumers can go to ADR will be an important way to protect consumers from harm and detriment when they have a dispute with a CP;
 - not unduly discriminatory: we consider that the change is not unduly discriminatory. This is because the requirement would apply equally to all CPs who consumers make complaints to;
 - proportionate: we consider that the modification is proportionate on the grounds that an eight week period still gives CPs a reasonable time to resolve a complaint while providing consumers with an avenue for ADR before an excessive length of time; and
 - transparent: we consider that the decision and its potential effect has been explained clearly in this document. The policy change will take effect through our approval of the ADR schemes.
- 3.50 We recognise that this change will impose some additional costs on CPs, but we consider that these costs are not disproportionate when weighed against the improvement in consumers' ability to exercise their right to ADR.

Implementation

- 3.51 Implementation of this change will require amendments to be made to the Terms of Reference for the ADR schemes and is also likely to require changes to the internal systems for the ADR schemes and CPs, which will impose minimal costs. As

outlined in the consultation document, we consider that an implementation period of approximately 3 months is sufficient to manage the transition.

- 3.52 We require the ADR Schemes to insert the following wording, or Ofcom-approved equivalent wording, into their Terms of Reference or appropriate Rules:

With effect from 1 September 2009, a consumer will have the right to go to ADR:

- a) Eight weeks after a complaint is first received by a CP; or*
- b) Earlier, if a deadlock letter has been issued.*

- 3.53 For the avoidance of doubt, this means that an unresolved complaint that was initially lodged with a CP on or before 7 July 2009 will become eligible for ADR on 1 September 2009.

- 3.54 This statement constitutes an appropriate notice to the ADR schemes under section 54(5) of the Communications Act 2003.

- 3.55 We have discussed implementation of this proposal with the ADR schemes and they are satisfied with this method of implementation.²⁴ We are aware that initially there will be a slight increase in caseload as a result of the increase in eligible consumers and we are satisfied that the 3 month notice period will allow the schemes and CPs to prepare and adjust their resources as necessary.

- 3.56 CPs will also be required to alter their Complaints Code of Practice to reflect the reduction in the ADR threshold from 12 to 8 weeks. For this one specific change we do not require CPs to re-submit their Codes of Practice to Ofcom for approval.

²⁴ An alternative method of implementation would have been for a 'phased' approach, e.g. 'for complaints lodged with a CP from 'x date' a consumer will have the right to go to ADR eight weeks after the complaint was received'. We rejected this approach as it would have imposed additional administrative costs on the ADR schemes, as well creating unnecessary complexity for consumers, as during the transition period different timing thresholds (the 8 and 12 week rules) would need to be applied to consumers depending on when they first lodged their complaint.

Section 4

Approval of ADR Schemes

- 4.1 CPs may only use an ADR scheme that we have approved. To date we have approved two ADR schemes – Otelo and CISAS.
- 4.2 We have a duty under the Act to keep approved dispute resolution procedures under review. We last conducted a review of the ADR Schemes in 2005. We are planning to undertake a review of our approval of ADR schemes in 2010.
- 4.3 As we noted in our 2008 consultation document, we are aware of the concerns raised by some stakeholders about the existence of two ADR schemes with different operating models and procedures.
- 4.4 Some stakeholders have concerns that allowing CPs to choose from two different ADR Schemes means that the ADR Schemes are inappropriately incentivised to focus on the delivery of service to CPs (who pay for the service) rather than consumers (who are in effect the ‘customers’ of the service), and that this may lead the ADR schemes to reduce standards below an acceptable level. Other stakeholders have argued that the existence of two schemes makes it harder for consumers to know where to go and how to access an ADR scheme.
- 4.5 These issues, and others, will be examined in our upcoming review.

2008 Consultation Document

- 4.6 In the 2008 consultation document we outlined the approach we intended to take in our review and opened discussion on the key criteria that we intended to use. Our consultation document outlined seven high-level principles that we intended to apply in our upcoming review of our approval of the ADR schemes:

Criteria	Description
Accessible	Consumers to be able to access an ADR Scheme free of charge. Procedures must be easy to use and understand, including for disabled and vulnerable consumers.
Independent	The ADR Scheme to be impartial and independent of both the consumer and the CP.
Fair	Decisions to be based on principles of fairness, taking into account relevant principles of law and equity.
Efficient	The ADR Schemes to operate efficiently. They must deal with complaints in a timely manner and use their resources in a responsible and efficient manner.
Transparent	The ADR Schemes to be transparent about the rules which govern the use of their services and about the decisions which they make.
Effective	The ADR Schemes to have procedures in place, which are

	followed, to monitor the implementation of its decisions and compliance with rules. They must make sure that decisions are implemented by CPs.
Accountable	The ADR Schemes to provide detailed and transparent reporting on their operation to us and the public. We anticipate that it will be appropriate to review the current KPIs which the ADR Schemes are required to provide to us to ensure that they remain relevant and useful and to make them comparable where possible.

- 4.7 We note that since the consultation Ofcom has published a statement entitled 'Identifying Appropriate Regulatory Solutions: Principles for Analysing Self- and Co-Regulation'.²⁵ This statement articulates best practice principles that should be used when implementing self- and co-regulatory schemes, including: public awareness, transparency, significant industry participation, adequate resources, clarity of processes, ability to enforce codes, audits of performance, system of redress in place, involvement of independent members, regular review of objectives, and commitment to non-collusive behaviour.
- 4.8 The principles proposed in our 2008 ADR consultation paper attracted little attention from respondents and we intend to use these principles as the starting point for the upcoming review of our approval of the ADR schemes. We will however, also be taking into account the recently released co- and self-regulatory principles outlined by Ofcom. We do not consider it necessary to finalise the criteria at this stage.

²⁵ See www.ofcom.org.uk/consult/condocs/coregulation/statement/statement.pdf

Annex 1

Comparison with other ADR Schemes

- A1.1 In formulating the proposals in our consultation document we examined the ADR rules applicable to the Energy sector, but submitters also drew our attention to other schemes such as the Financial Ombudsman. Following a wider examination of other ADR schemes it would appear that the current 12 week period before consumers are able to access ADR in the telecommunications sector is unduly restrictive.
- A1.2 For example, both the Energy Ombudsman and the Financial Ombudsman Service can examine unresolved complaints after 8 weeks have passed since the initial complaint was made. Other ADR schemes have a greater degree of flexibility about when they can become involved. The Consumer Council for Water is able to exercise jurisdiction over complaints once the provider has had a 'reasonable opportunity' to resolve the complaint and the Postal Redress Service is able to examine those complaints that have not been resolved through internal procedures to the satisfaction of the complainant.
- A1.3 The Australian Telecommunications Industry Ombudsman can examine complaints where a CP has had a reasonable opportunity to consider a complaint and the complainant remains unsatisfied – and is guided by the industry code which notes that the timeframe for resolving complaints is typically 30 days.²⁶ New Zealand's Telecommunication Dispute Resolution Scheme is empowered to become involved in a complaint if the matter is not resolved within 6 weeks, while the Canadian Commissioner for Complaints for Telecommunications Services is able to investigate after direct communications between a complainant and a CP has proven ineffective.
- A1.4 While not all of these schemes have a time-bound threshold, on the whole they have the flexibility to be able to intervene earlier than the UK telecommunications ADR schemes if they consider it necessary.

²⁶ Australian Communications Industry Forum, 'Industry Code: ACIF C547:2004 Complaint Handling', clause 7.32.

Annex 2

Estimate of Increase in Costs From Reducing ADR Threshold to 8 Weeks

A2.1 This Annex describes why we consider it likely that the increase in costs to industry from our decision will be in the range of £30,000 to £150,000 per annum.

A2.2 In terms of new costs, we consider it likely that the key category of complaints that will be affected by our decision are those complaints that would otherwise be resolved between 8 and 12 weeks. For complaints that are currently outstanding at 12 weeks, we do not think there will be any significant impact from our decision on costs for the following reasons:

- Either complaints outstanding at 12 weeks already go to ADR. For such complaints, our decision may mean that some of these complaints go to ADR earlier than they do now. But we have assumed that earlier referral to ADR does not lead to a significant difference in costs; and
- Or complaints outstanding at 12 weeks do not currently go to ADR. We consider that such complaints will be unaffected by our decision. We see no reason to assume that such complaints would go to ADR with our decision, given they did not previously go to ADR at 12 weeks.

A2.3 Of those complaints that are currently resolved between 8 and 12 weeks, we assume that a percentage of those complaints would now go to ADR when they would not previously have done so. We can therefore estimate how many extra ADR cases there would be per year. We have also assumed that the only additional cost of each of these cases is the case fee. We have used a weighted average case fee for Otelo and CISAS (taking account of the fact that some include the early settlement case fee for CISAS). Our estimate of the costs is therefore based on the following calculation:

$$\text{Cost estimate} = \text{complaints currently resolved between 8 and 12 weeks} \times \text{percentage of these complaints assumed to go to ADR} \times \text{average case fee}$$

A2.4 We based our assumption for the percentage of these complaints that would go to ADR on the number of complaints that go to ADR at 12 weeks divided by the total number of complaints outstanding at 12 weeks.

A2.5 Our calculations are based on the data we gathered in our 2007 Information Request, and are assuming that it is reasonable to use these to project costs into the future. This gave us information about when complaints were resolved and how many cases went to ADR. The definition of complaint used was typically the companies' own definitions, as this was the only definition for which they had data.

A2.6 Based on this data set, the percentage of complaints that currently go to ADR at 12 weeks as a proportion of the complaints that are outstanding at 12 weeks was small. But the data was highly variable between individual companies and for some companies the number of disputes going to ADR without deadlock letters exceeded the number of complaints outstanding at 12 weeks. We have nevertheless included

the data for such companies in our calculations. Given our methodology, this means that the costs will tend to be higher than if they were excluded.

A2.7 We scaled up our results so as to include companies not covered by the 2007 Information Request (or those who were unable to provide data). We used the proportion of ADR disputes for the companies for which we had data, compared to the total number of ADR disputes. Our data set covered more than half of the total number of disputes to ADR, so we regard it as a good sample.

A2.8 But we recognise that there are various limitations in our approach. There are some reasons for thinking the above methodology gives too high an estimate:

- Assuming that the same percentage of complaints go to ADR for complaints resolved between 8 and 12 weeks as is currently the case for outstanding complaints at 12 weeks may be unrealistic:
 - The percentage of consumers who go to ADR at 12 weeks may include some complainants who have decided early in the process to go to ADR and are simply waiting for the deadline to be reached. Whereas for complaints that are currently resolved between 8 and 12 weeks, those complainants have clearly not resolved to go to ADR because the complaint is currently settled;
 - Because complaints resolved in 8 to 12 weeks are near resolution at 8 weeks, the consumer may be more likely to be persuaded to wait for resolution than go to ADR;
 - Some complaints that go to ADR after 12 weeks may be referred to ADR well after 12 weeks,²⁷ and including these in the percentage that go at 12 weeks may also bias the estimate upwards; and
- It is possible that companies may be able to change their behaviour in response to the deadline being 8 weeks, so as to bring forward the resolution of complaints.

A2.9 On the other hand, there may be one factor that will push the costs up. It is possible that some complainants currently drop out of the complaints process before 8 weeks because the 12 week wait for ADR seems too long. For those complainants within this group who are aware of ADR, it is possible that some of these may be encouraged to continue with their complaint in order to get to ADR when the time limit is reduced to 8 weeks. This may mean that our estimate is biased downwards. We think this is likely to be minor effect, not least because awareness of ADR is very low.

A2.10 Reflecting the extent of the uncertainties and possible biases, we consider that it is only possible to forecast the possible cost increase within a fairly wide range. We consider that the cost to industry of our decision it is likely to be in the range of £30,000 to £150,000 per annum.

²⁷ Otelo reports that in 2008, more than 1 in 3 complainants said their CP had been dealing with the complaint for more than 6 months before they decided to approach Otelo. However, this definition of complaint (from the consumers' perspective) may not be consistent with that used in the above calculations, which use companies' definition of complaint. Companies' definitions vary, but some companies only capture data for complaints that have been escalated in some way.

Annex 3

Consumer Harm from Prolonged Complaints

Futuresight Report

- A3.1 In 2006 Ofcom commissioned research from Futuresight to examine consumers' experiences of making a complaint for fixed lines, mobiles and internet services. As part of this research Futuresight undertook interviews with 50 consumers who had had reason to make a complaint.
- A3.2 The 50 consumers who took part in the qualitative interviews were self selected and cannot be regarded as representative of all those who had cause to complain. Comparing the results of these 50 with the quantitative research Futuresight undertook indicates that these 50 consumers tended to have suffered significantly worse experiences in the way their complaints were handled than the average. Nevertheless, their experiences provide a useful insight into the correlation between the duration of a complaint and the impact on the consumer.
- A3.3 The Futuresight report²⁸ contains information on the lifespan of each consumer's complaint as well as a categorisation of the impact on the consumer, from low-medium-high.

Prospect of a complaint having a high impact on consumers

- A3.4 Of the 50 consumers, 17 consumers had a complaint that lasted 3 months or longer. Of these 17 consumers, 59% (10) considered the impact on them of making the complaint to be 'high'.
- A3.5 For the 33 consumers that had a complaint that lasted less than 3 months, only 33% (11) considered the impact on them of making the complaint to be 'high'.
- A3.6 While not determinative, these figures support our proposition that the longer a complaint remains unresolved, the greater the prospect of significant consumer detriment occurring.

Overall impact of duration of complaint on consumers

- A3.7 By attributing figures to the levels of consumer harm it is also possible to draw further conclusions. In this case we attributed a score of '1' to low impact cases, '3' to medium impact cases and '5' to high impact cases.
- A3.8 For those consumers whose complaints lasted 3 months or longer, the average score for the impact on the consumer was 4.2. By contrast, for those complaints lasted less than 3 months, the average score was 3.4.
- A3.9 While not determinative, these figures also support our proposition that the longer a complaint remains unresolved, the greater the consumer harm that is likely to occur.

²⁸ www.ofcom.org.uk/consult/condocs/alt_dis_res/futuresight/

Submission from the Citizens Advice Bureau

- A3.10 The submission from the CAB provided numerous case studies demonstrating the difficulty that consumers (particularly more vulnerable consumers) can have in pursuing a complaint with their CP. Many of the problems that initially arise are often compounded by delay, an inability by the CP to recognise the impact that a situation may be having on a consumer, and inadequate responses from frontline staff members. The case studies provided by the CAB support our position that the longer a complaint remains unresolved the greater the harm will be on individuals.

A Sample of the CAB Case Studies

A CAB in Hampshire reported a case in which their client, who is permanently disabled and suffers from depression and stress, moved into a council flat on 9th June 2008 and brought her existing telephone contract with her to her new residence. However, the client discovered that there was no telephone socket in her new flat. The client informed her CP on 14 July that there was no socket and she cancelled her direct debit. They replied that she would have to sort it out with the council and sent her a bill for £28.69 for July. The client phoned her CP again on 21 July and they agreed to suspend billing until she informed them she had a working line. On August 6 she received another bill for 2 months' service charge. On 5th September she received a final demand for £54.43 with the threat of debt collection. On 8 September the CAB got the CP to agree to suspend action for a 'short' time pending the client sorting the problem out. On 9 September CAB wrote a letter to the CP setting out her situation and the details leading up to the present time and sent it to the address provided on the Final Demand. On 16 September the CAB phoned Consumer Direct who referred them to Otelo. However, they could not help until the client had followed the provider's complaints procedure and allowed 3 months to elapse. The CAB therefore called the CP to ask for the CP's complaint handling document. They were informed that the CP did not have one and that the CAB adviser should first phone technical support and if they couldn't help, then write to their Head Office. The CAB adviser explained that they and their client had tried phoning but (a) it was expensive from a mobile phone; and (b) they were unable to get a satisfactory response.

A CAB in Northumberland reported that their client, an elderly man, had experienced repeated difficulties with his internet service provider. The client had responded to a CP's advert in January 2008 for a Telephone Bundle upgrade but due to errors on the part of the CP (which they acknowledged with an offer of £10 credit) this package was not installed. In April, without notice, the CP took a direct debit of £24.82 (overcharging the client £11.84). The client cancelled his direct debit and called the CP to cancel his account. He was given a reference number and told his account would be closed by the end of May but this was not done. Between 2 June and 20 August the client contacted the local CAB seven times and on two occasions the CP told CAB advisers that the matter would be settled within 28 days, with a credit payment to the client. The CP failed to keep any of their commitments and the CAB sent them a letter of complaint on 20 August. The client, who is retired and meticulous about such matters, sought CAB help because he felt exasperated by the CP's failure to keep to their undertakings and intimidated by their relentless pursuit of payments which were not due or correct.

A CAB in Somerset reported a case in which their client had moved into private rented accommodation and taken over the landlord's landline and telephone number but that this had caused untold difficulties. The client was given a new phone number by the CP but was not informed so the client therefore had 2 accounts for one landline and duplicate billing. As a result the client was disconnected three times in the period from October to February. When the client came to the CAB she had already written to the CP three times to try to resolve the issue. Despite this, the ADR scheme refused to consider the complaint until 3

months had elapsed. When the CAB contacted the CP it turned out that they had initiated 4 separate orders for telephone lines for the client, two of which had been abandoned. The latest disconnection was because, instead of closing the account on the old phone number, the CP closed the account on the new one. This whole episode caused the client a lot of stress and meant her only telephone was out of use three times within four months.

A CAB in Hertfordshire dealt with a case in which an elderly couple who were moving to a new bungalow were caused considerable stress and inconvenience by their CP. The client had contacted his CP to ask what he needed to do to transfer his phone line when moving home. On 6 February 2008 the client discovered that his telephone and broadband connections had been disconnected. He had not given this date or any other date for his proposed move because his removal date had not yet been confirmed. Since then client has telephoned his CP at least twice a day but the problem is still unresolved and they remain without a home telephone. His CP is refusing to reconnect him and are insisting he has to pay for reconnection, even though none of this is the client's fault. The client is 78 and his wife is 81 so they feel very vulnerable without a telephone connection. The client does have a mobile phone but it is costly for him to use. The client's CP has been very uncooperative – for example not returning promised phone calls. The client was not at any stage made aware of the complaint handling procedure. The CAB adviser noted that while referral to the CP's ADR scheme was an option "[the ADR scheme] will only take on a case if client has not received satisfaction after 3 months of making a complaint but the client and wife need the problem sorting out now."

Annex 4

List of Respondents

A4.1 The following stakeholders have submitted non-confidential responses to our 2008 consultation. The responses can be found at www.ofcom.org.uk/consult/condocs/alt_dis_res/responses

- BT
- Citizens Advice Bureau
- Federation of Communication Services
- Hutchison 3G
- IDRS
- Mobile Broadband Group
- O2
- Orange
- Scottish and Southern Energy plc
- The Ombudsman Service Limited
- UK Competitive Telecommunications Association
- Verizon
- Yahoo

A4.2 In addition, we received eight confidential responses.

Annex 5

Glossary

Act	Communications Act 2003
ADR	Alternative Dispute Resolution
ADR Scheme	A body which provides ADR
CP	A Communications Provider who provides and Electronic Communications Service, as defined in the Act.
Domestic and Small Business Customers	Residential consumers and businesses with 10 or less employees (who are not a CP), as defined in the Act.
General Condition	Set of conditions applying to CPs, imposing legal obligations on CPs.