

Response to Ofcom consultation on the general conditions relating to consumer protection

17 March 2017

Ofcom - Consultation on the general conditions relating to consumer protection

Ombudsman Services' (OS) response

OS welcomes the opportunity to respond to the consultation.

We note that Ofcom is proposing a number of changes, including improving the transparency of complaints procedures, preventing providers from unilaterally closing complaints without the agreement of the complainant, and placing an obligation on companies to proactively issue an ADR letter whenever a complaint reaches deadlock. OS broadly welcomes and supports these proposals which should help to improve customer service and complaint handling in the sector and help facilitate access to ADR where appropriate.

The UK Customer Satisfaction Index 2016, published by the Institute of Customer Service, evaluates customer services across 13 sectors of the UK economy. The four worst performing sectors were found to be transport, public services, utilities, and telecommunications/media. The research identified the biggest differentiators between the best performing 50 companies across all sectors and the rest. Three of these six key drivers related to good complaint handling; the speed of resolving complaints, how complaints were handled and the outcome of complaints. It is therefore clear that effective complaint handling is essential to a well-functioning communications market.

But improving standards in this area is not just beneficial for consumers. Research published by Populus in 2016 highlighted that customer service rather than price was the attribute with the strongest correlation with customer retention. Whilst noting that price should not be underestimated, the report highlighted 'competitive prices in fact have a very low correlation with a customer's likelihood to stay with their supplier. Instead, customer service, clear and transparent bills, money saving advice, communication and trustworthy behaviour are the most important factors responsible for driving loyalty'. Therefore, there are clear incentives for businesses to engage

positively with the work that Ofcom is doing in this area and go beyond the minimum requirements to deliver excellent customer service.

OS would like to make some specific comments on several of the proposals set out in the consultation document. As Ofcom might expect, our comments largely relate to Section 7 on 'Complaints handling and access to ADR'.

Facilitating access to ADR

The consultation document makes a number of proposals to help facilitate prompt access to ADR where the complaint cannot be resolved by the provider. We note that the proposals include ensuring that deadlock and 8 week letters are presented in a common "ADR letter" format, and placing an obligation on companies to issue an ADR letter whenever a complaint reaches deadlock without the customer having to proactively request this.

OS broadly supports these proposals which should improve how providers inform their customers of the escalation mechanisms available to them, and also help raise consumer awareness of ADR in the sector more generally. As Ofcom will be aware, OS has worked closely with the industry via our ombudsmen and relationship managers since the publication of the Mott MacDonald report in 2015 to bring about improvements in this area. While we have seen some very positive results from this work, this has not been entirely consistent across the whole of the industry and there is still room for improvement from a number of companies. OS therefore welcomes these proposals and we will continue to work closely with companies and with Ofcom to ensure that consumers are informed of their right to ADR.

We believe that facilitating access to ADR is particularly important in the current climate as information published by BIS last year suggests that only half of all complaints made in the UK are fully resolved, with a third not resolved at all. OS's Consumer Action Monitor (CAM), a piece of research that we commission each year to track complaint trends, found that in 2016 a total of 6.9 million complaints were made by consumers in the Communications sector. When considered jointly, these two statistics indicate that there were potentially around 3.5 million communications complaints not fully resolved in the UK last year, and over 2 million not resolved at all. This highlights the important

role that ADR plays by offering consumers a crucial means of having their complaint reviewed by an independent third party in a fast, free, and non-adversarial way.

Unfortunately, the proportion of eligible consumers who utilise their right to ADR is still relatively low across all consumer sectors. Independent research indicates that this figure is around 5% -10%. This is why the more systemic, preventative work that an ombudsman carries out is crucial to the communications sector. While resolving individual complaints can benefit individual consumers who choose to bring their complaint to an ADR provider, the wider role of the ombudsman, in identifying and tackling systemic issues within individual companies and whole sectors, can bring benefits for all communications consumers, even those who are not aware of ADR.

Eight week time period for ADR

We note that Ofcom has considered suggestions from some stakeholders to reduce the time period after which consumers have the right to access ADR from 8 weeks to 4 weeks. The consultation document states that, after consideration, Ofcom is not proposing that the 8 week time period should be reduced at this time.

OS agrees with Ofcom's approach here; we understand that the primary intention of the proposals is to encourage companies to deadlock as early in the process as possible. One point we would make however is that if a customer has already spent a protracted amount of time trying to resolve their issues directly with the company, this could create a barrier to the likelihood of them escalating the matter to ADR. The consumer may, at this point, view ADR as a step too far on the complainant journey, and opt to leave the issue unresolved and suffer in silence. Unaddressed consumer detriment is clearly not in the interests of consumers or the businesses and so it is essential that companies progress complaints through the process as quickly as possible so that unnecessary delays at the first tier do not become a barrier to ADR take up. If a company is aware earlier in the process that it will not be able to resolve the issues within the 8 week period, we would encourage the provider to act in the best interests of their customer and go beyond the minimum requirements to signpost them to ADR sooner.

Customer Service complaints

We note that Ofcom is proposing to extend the scope of the complaints process to include complaints about general customer service, in addition to the customer service received during the complaint-handling process. OS's understanding is that general customer service complaints already fall within our remit, so we wonder whether the intention of this proposal simply to make this more explicit within the general conditions. We would be keen to discuss this further with Ofcom to seek clarity on this point.

Equipment complaints

OS had understood that Ofcom would be consulting on extending the ADR requirement to cover complaints about mobile handsets and other equipment purchased as part of a contract, but we note that this is not included within the consultation document. OS believes that this is any area where consumers should have the right to mandatory ADR and we would ask Ofcom to clarify its intentions in respect of equipment complaints.

Vulnerable customers

We note that Ofcom is proposing the introduction of a new requirement for communications providers to put in place clear and effective policies for identifying vulnerable consumers to ensure they are treated fairly and appropriately.

OS supports these proposals and welcomes the shift towards a greater appreciation of the transitory nature of vulnerability and the fact that this can affect any customer at any time.

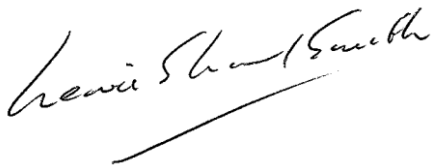
OS in particular notes that at paragraph 9.15 (d), Ofcom is proposing that providers ensure that their staff are made aware of, and are appropriately trained in, the relevant policies and procedures relating to vulnerable customers. OS agrees that this is a key consideration. These proposals will no doubt place a greater onus on customer service staff within individual companies to use their initiative and professional judgement to identify potentially vulnerable customers. Therefore, it is extremely important that front line staff are given the appropriate training and tools to allow them to do this. It is also very important this is done consistently across the industry to ensure that customers

have an equal chance of being identified as vulnerable regardless of which supplier they are with.

In respect of ADR, research carried out by OS shows that nearly half (45%) of people over the age of 65 are unsure of or do not know what their consumer rights are. Our research also showed that a lack of awareness of consumer rights is one of the main barriers to complaining. To help ensure that vulnerable customers are not suffering undue consumer detriment due to a lack of awareness of their right to ADR, OS would suggest that providers make additional efforts to facilitate access to ADR amongst vulnerable customers once the complaint reaches 8 weeks or deadlock. This would ensure that vulnerable customers do not miss out on the opportunity to have their concerns reviewed by an independent third party, simply due to a lack of awareness of consumer rights which we see amongst some vulnerable groups.

OS is happy to discuss our comments in more detail.

Yours sincerely



Lewis Shand Smith
Chief Ombudsman & Chief Executive

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Annex A - About Ombudsman Services

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

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

We have in the region of 10,000 participating companies. In 2015 we received 220,111 initial contacts from complainants and resolved 71,765 complaints. We saw a year on year increase in complaints of 118% between 2013 and 2014 and a further 35% increase between 2014 to 2015. The company currently employs more than 600 people in Warrington and has a turnover in excess of £27 million.

In July 2015 the EU Alternative Dispute Resolution Directive (the ADR Directive) came into force requiring all member states to ensure that ombudsman or ADR schemes are available in every consumer sector. The Department for Business Innovation and Skills, the government department responsible for implementing the ADR Directive in the UK, called upon the market to plug the gaps where no ADR provision existed and

to coincide with this in August 2015 we formally launched our new portal (<http://www.consumer-ombudsman.org>). The launch of this website was welcomed by BIS and means that consumers can raise a complaint about a product or service in any sector where there is no existing redress provision - including retail, travel and home improvement.

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

We are 'Good for Consumers and Good for Business'.

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

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

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